

**JOSE MARQUEZ LIM, PLAINTIFF AND APPELLEE, VS. JOHN G. NELSON J.E. KELLEY, DAVID KEITH AND VERN BOSTER, DEFENDANTS AND APPELLANTS.***G.R. No. L-2412. September 19, 1950*

Ponente: PARAS, J.

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On December 1, 1945, the plaintiff-appellee, Jose Marquez Lim, instituted a complaint In the Court of First Instance of Iloilo against John G. Nelson, J.E. Kelley and David Keith, for the purpose of recovering a motor, launch or its value P10,000, plus damages in. the sum of P300 daily from November 20, 1945, it being alleged that the three defendants illegally seized on November 19, 1946, said motor launch belonging to the plaintiff. On January 10, 1946, the three defendants, represented by the provincial fiscal of Iloilo, filed an amended answer alleging in special defense that the vessel belonged to the United States Government, that the defendants merely acted as agents of said Government, and that the United States Government is therefore the real party in interest. On January 31, 1946, the plaintiff filed an amended complaint so as to include, as a party defendant, Vern Boster, then detailed as head of the Military Police Command in the City of Iloilo, to whom the launch was delivered by the defendant John G. Nelson in the early part of January, 1946. The vessel subsequently sank while it was being towed from Iloilo to Manila by the U.S. naval authorities. On January 17, 1947, the Court of First Instance of Iloilo rendered a decision the dispositive part of which reads as follows:

"In view of the foregoing, judgment is rendered: (a), declaring plaintiff Jose Marquez Lim to be the legal owner of the motor launch 'SEA HAWK' and with exclusive right of possession thereon: (b) ordering defendants John G. Nelson, J.E. Kelley, David Keith and Vern Boster to pay the plaintiff jointly and severally the" sum of P10,000 representing the value of the boat., and the further sum of P10,000 as damages; and (c) ordering defendants to pay the costs."

After the trial court had denied the motion for new trial filed by the provincial fiscal of Iloilo and the motion to set aside the judgment filed by the defendant Vern Boster thru his counsel J.A. Wolfson, the present appeal was interposed.

At the time the vessel in question was seized, the defendant John G. Nelson was the commanding officer of the U.S. Naval Section Base, Navy No. 3959, of the United States Navy in the City of Iloilo; the defendant J.E. Kelley was an officer in said naval section base; and the defendant David Keith was the Provost Marshal of the United States Army Military Police in Iloilo. It is not pretended that said defendants did not act officially as agents of the United States Navy in the seizure of the motor launch in question. It is not pretended also that the defendant Vern Boster had anything to do with said seizure, having been joined as a party defendant in the amended complaint in virtue solely of the fact that possession of the launch was delivered to him when he took command of the Military Police in Iloilo. Hence It is beyond controversy that the action at bar is directed against the defendants for having acted as agents of the United States Government.

The appealed decision, however, ruled that the fact that the defendants were members of the armed forces of the "United States does not place them beyond the power and jurisdiction of the civil courts, and the case of *Tan Te vs. Bell*, (27 Phil. 354), is cited.

In the case of *Pedro Syquia vs. Natividad Almeda Lopez et al.*, L-1648, decided August 17, 1949, (47 Off. Gaz., 665[1]), we made the following applicable pronouncements:

"We shall concede as correctly did the Court of First Instance, that following the doctrine laid down in the cases of *U.S. vs. Lee* and *U.S. vs. Tindal*, supra, a private citizen claiming title and right of possession of a certain property may, to recover possession of said property, sue as individuals, officers and agents of the Government who are said to be illegally withholding the same from him, tho in doing so, said officers and agents claim that they are acting for the Government, and the courts may entertain such a suit altho the Government itself is not included as a party-defendant. Of course, the Government is not bound or concluded by the decision. The philosophy of this ruling is that unless the courts are permitted to take cognizance and to assume jurisdiction over such a case, a private citizen would be helpless and without redress and protection of his rights which may have been invaded by the officers of the Government professing to act in its name. In such a case the officials or agents asserting rightful possession must prove and justify their claim before the courts, when it is made to appear in the suit against them that the title and right of possession is in the private citizen. However, and this is important, where the judgment in such a case would result not only in the recovery of possession of the property in favor of said citizen but also is a charge against or financial liability to the Government, then the suit should be regarded as one against the Government itself, and, consequently, it cannot prosper or be validly entertained by the courts except with the consent of said Government. (See case of *Land vs. Dollar*, 91 Law ed., 1209.)"

Inasmuch as the payment of the sum of P10,000 as the value of the motor launch in question and of the further sum of P10,000 as damages, will in fact be a charge against or a financial liability to the Government of the United States, the present action should be regarded as one against the United States Government itself which cannot prosper or be validly entertained by the courts except with the consent of said Government.

Wherefore, the appealed judgment is hereby set aside and the complaint is dismissed. So ordered, without costs.

Moran, C. J., Ozaeta, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

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[1] 84 Phil., p. 312

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