

## CATALINO BALDERRAMA, PLAINTIFF AND APPELLANT, VS. LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS ET AL., DEFENDANTS AND APPELLEES.

*G.R. No. L-1917. July 26, 1909*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

From the bill of exceptions the following facts appear;

First. That, some time prior to the commencement of the present action, La Compañia General de Tabacos de Filipinas, Uy-Golan and Yap-Anching, as plaintiffs in an action in some court (the record does not disclose what court) against one Sabino Balderrama, obtained a judgment against said defendant for a sum of money.

Second. That, upon the 8th day of December, 1903, the sheriff, the said James J. Watkins, took possession of certain personal property, to wit, un carro de dos ruedas y un vacuno de pelo medio retinto, and so forth, under and by virtue of an execution issued by the court in said case.

Third. That, upon the 19th day of December, 1903, the plaintiff herein made a demand upon the sheriff for the possession of said property, alleging that the same belonged to him, and presented a sworn statement to the said sheriff of said fact.

Fourth. That after the plaintiff herein had made the said demand upon the said sheriff (Watkins), the other defendants herein, or the said Uy-Golan and Yap-Anching, executed and delivered to the said sheriff the bond provided for in section 451 of the Code of Procedure in Civil Actions. By virtue of the bond of the said Chinos the sheriff retained possession of the said property.

Fifth. On the 31st day of December, 1903, the plaintiff herein commenced an action against the defendants herein, alleging that he was the owner of said carro y vacuno and prayed that the court should order a return of said property to him and that the defendants should pay the costs.

Sixth. To this complaint the defendants demurred, alleging that the said complaint did not state facts sufficient to constitute a cause of action.

Seventh. After hearing the arguments of the respective parties, the lower court sustained the demurrer and dismissed the complaint.

Eighth. Against this order of the lower court sustaining the demurrer, the plaintiff duly excepted and presented his bill of exceptions.

The lower court did not give the plaintiff the right to amend his complaint in accordance with the provisions of section 101 of the Code of Procedure in Civil Actions. This was an error. (Molina vs. La Electricista, 6 Phil. Rep., 519; Serrano vs. Serrano, 9 Phil. Rep., 142.)

The plaintiff and appellant assigns two errors in this court:

First. That the lower court committed an error in holding that the facts set out in the complaint were not sufficient to constitute a cause of action; and

Second. That the lower court committed an error in sustaining the demurrer.

These two assignments of error constitute but one error, to wit, that the lower court committed an error in deciding that the facts contained in the complaint were not sufficient to constitute a cause of action.

Upon an examination of the facts alleged in the complaint, we are inclined to hold, and do hold, that the facts were sufficient to constitute a cause of action. The substantial facts of the complaint were simply that the sheriff, by virtue of an execution against a third party, had levied upon and taken possession of property belonging to the plaintiff herein, and that he was still retaining the possession and denying the right of possession on the part of the plaintiff. If these facts are true, then surely the plaintiff is entitled to recover the property in question. The allegations being sufficient, the plaintiff should be given an opportunity to prove them. Therefore, the judgment of the lower court sustaining the demurrer is hereby reversed and the cause is hereby remanded to the lower court, with the instruction that the defendants be given five days within which to answer the said complaint after due notice of this decision. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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[1] The following causes involving the same subject-matter were considered at the same time and decided with the same result; No. 1918, *Balderrama vs. La Compañia General de Tabacos de Filipinas et al.*; No. 1919, *Delecana vs. La Compañia General de Tabacos de Filipinas et al.*

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