

**MACHINERY & ENGINEERING SUPPLIES, INC., PETITIONER, VS.
THE HONORABLE COURT OF APPEALS, HON. POTENCIANO PECSON,
JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, IPO
LIMESTONE CO....**

G.R. No. L-7057. October 29, 1954

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/86611d828746/>

CONCEPCION, J.:

This is an appeal by certiorari, taken by petitioner Machinery and Engineering Supplies Inc., from a decision of the Court of Appeals denying an original petition for certiorari filed by said petitioner against Hon. Potenciano Pecson, Ipo Limestone Co., Inc., and Antonio Villarama, the respondents herein. The pertinent facts are set forth in the decision, of the Court of Appeals, from which we quote:

"On March 13, 1953, the herein petitioner filed a complaint for replevin in the Court of First Instance of Manila, Civil Case No. 19067, entitled 'Machinery & Engineering Supplies, Inc., Plaintiff, vs. Ipo Limestone Co., Inc., and Dr. Antonio Villarama, defendants', for the recovery of the machineries and equipments sold and delivered to said defendants at their factory in barrio Bigti, Norzagaray, Bulacan. Upon application ex-parte of the petitioner, accompanied by the affidavit of Ramon S. Eoco, president of petitioner company, and upon approval of petitioner's bond in the sum of P15,769.00, on March 13, 1953, respondent judge issued an order, commanding the Provincial Sheriff of Bulacan to seize and take immediate possession of the properties specified in the order (Appendix I, Answer). On March 19, 1953, two deputy sheriffs of Bulacan, the said Ramon S. Roco, and a crew of technical men and laborers proceeded to Bigti, for the purpose of carrying the court's order into effect. Leonardo Contreras, Manager of the respondent Company, and Pedro Torres, in charge thereof, met the deputy sheriffs, and Contreras handed to them a letter addressed to Atty. Leopoldo C. Palad, ex-officio Provincial Sheriff of Bulacan, signed by Atty. Adolfo Garcia of the defendants therein, protesting against the seizure of the properties in question, on the ground that they are not personal properties. Contending that the Sheriff's duty is merely ministerial, the deputy sheriffs, Roco, the latter's crew of technicians and laborers, Contreras and Torres, went to the factory. Roco's attention was called to the fact that the equipments could not possibly be dismantled without causing damages or injuries to the wooden frames attached to them. As Roco insisted in dismantling the equipments on his own responsibility, alleging that the bond was posted for such eventuality, the deputy sheriffs directed that some of the supports thereof be cut (Appendix 2). On March 20, 1953, the defendant Company filed an urgent motion, with a counter-bond in the amount of P15,769, for the return of the properties seized by the deputy sheriffs. On the same day, the trial court issued an order, directing the Provincial Sheriff of Bulacan to return the machineries and equipments to the place where they were installed at the time of the seizure (Appendix 3). On March 21, 1953, the deputy sheriffs returned the properties seized, by depositing them along the road, near the quarry, of the defendant Company, at Bigti, without the benefit of inventory and without re-installing them in their former position and replacing the destroyed posts, which rendered their use impracticable. On March 23, 1953, the defendants' counsel asked the Provincial Sheriff if the machineries and equipments, dumped on the road would be re-installed to their former position and condition (letter, Appendix 4). On March 24, 1953, the Provincial Sheriff filed an urgent motion in court, manifesting that Roco had been asked to furnish the Sheriff's office

with expenses, laborers, technical men and equipments, to carry into effect the court's order, to return the seized properties in the same way said Roco found them on the day of seizure, but said Roco absolutely refused to do so, and asking the court that the Plaintiff therein be ordered to provide the required aid op relieve the said Sheriff of the duty of complying with the said order of March 20, 1953 (Appendix 5). On March 30, 1953, the trial court ordered the Provincial Sheriff and the Plaintiff to reinstate the machineries and equipments removed by them in their original condition in which they were found before their removal at the expense of the Plaintiff (Appendix 7). An urgent motion of the Provincial Sheriff dated April 15, 1953, praying for an extension of 20 days within which to comply with the order of the court (Appendix 10) was denied; and on May 4, 1953, the trial court ordered the Plaintiff therein to furnish the Provincial Sheriff within 5 days with the necessary funds, technical men, laborers, equipments and materials to effect the repeatedly mentioned re-installation (Appendix 12)." (Petitioner's brief, Appendix A, pp. I-IV.)

Thereupon petitioner instituted in the Court of Appeals civil case G. R. No. 11248-R, entitled "Machinery & Engineering Supplies, inc. vs. Honorable Potenciano Pecson, Provincial Sheriff of Bulacan, Ipo Limestone Co., Inc., and Antonio Villarama." In the petition therein filed, it was alleged that, in ordering the petitioner to furnish the provincial sheriff of Bulacan "with necessary funds, technical men, laborers, equipment and materials, to effect the installation of the machinery and equipment" in question, the Court of First Instance of Bulacan had committed a grave abuse of discretion and acted in excess of its jurisdiction, for which reason it was prayed that its order to this effect be nullified, and that, meanwhile, a writ of preliminary injunction be issued to restrain the enforcement of said order of May 4, 1953. Although the aforementioned writ was issued by the Court of Appeals, the same subsequently dismissed the case for lack of merit, with costs against the petitioner, upon the following grounds:

"While the seizure of the equipments and personal properties was ordered by the respondent Court, it is, however, logical to presume that said court did not authorize the petitioner or its agents to destroy, as they did, said machineries and equipments, by dis mantling and unbolting the same from their concrete basements, and cutting and sawing their wooden supports, thereby rendering them unserviceable and beyond repair, unless those parts removed, cut and sawed be replaced, which the petitioner, notwithstanding the respondent Court's order, adamantly refused to do. The Provincial Sheriff's tortuous act, in obedience to the insistent proceedings of the president of the petitioner, Ramon S. Roco, has no justification in law, notwithstanding the Sheriff's claim that his duty was ministerial. It was the bounden duty of the respondent Judge to give redress to the respondent Company, for the unlawful and wrongful acts committed by the petitioner and its agents. And as this was the true object of the order of March 30, 1953, we can not but hold that same was within its jurisdiction to issue. The ministerial duty of the Sheriff should have its limitations. The Sheriff knew or must have known what is inherently, right and inherently wrong, more so when, as in this particular case, the deputy sheriffs were shown a letter of respondent Company's attorney, that the machineries and equipments were not personal properties and, therefore, not subject to seizure by the terms of the order. While it may be conceded that this was a question of law too technical to decide on the spot, it would not have cost the Sheriff much time and difficulty to bring the letter to the court's attention and have the equipments and machineries guarded, so as not to frustrate the order of seizure issued by the trial court. But, acting upon the directives of the president of the Petitioner, to seize the properties at any cost, the deputy sheriffs lent themselves as instruments to harass and embarrass the respondent Company. The respondent Court, in issuing the order sought to be annulled, had not committed abuse of discretion at all or acted in an arbitrary or despotic manner, by reason of passion or personal hostility; on the contrary, it issued said order, guided by the well known principle that if the property has to be returned, it should be returned in as good a condition as when taken (*Bachrach Motor Co., Inc., vs. Bona*, 44 Phil., 378). If any one had gone beyond the scope of his authority, it is the respondent Provincial Sheriff. But considering the fact that he acted under the pressure of Ramon S. Roco, and that the order impugned was issued not by him, but by the respondent Judge, We simply declare that said Sheriff's act was most unusual and the result of a poor judgment. Moreover, the Sheriff not being an officer exercising judicial functions, the writ may not reach him, for certiorari lies only to review judicial actions.

The Petitioner complains that the respondent Judge had completely disregarded his manifestation that the machineries and equipments seized were and still are the Petitioner's property until fully paid for and as such, never became immovable. The question of ownership and the applicability of Art. 415 of the new Civil Code are immaterial in the determination of the only issue involved in this case. It is a matter of evidence which should be decided in the hearing of the case on the merits. The question as to whether the machineries or equipments in litigation are immovable or not is likewise immaterial, because the only issue raised before the trial court was whether the Provincial Sheriff of Bulacan, at the Petitioner's instance, was justified in destroying the machineries and in refusing to restore them to their original form, at the expense of the Petitioner. Whatever might be the legal character of the machineries and equipments, would not in any way justify their destruction by the Sheriff's and the said Petitioner's." (Petitioner's brief, Appendix A, pp IV-VII.)

A motion for reconsideration of this decision of the Court of Appeals having been denied, petitioner has brought the case to Us for review by writ of certiorari. Upon examination of the record, We are satisfied, however, that the Court of Appeals was justified in dismissing the case. The special civil action known as replevin, governed by Rule 62 of the Rules of Court, is applicable only to "personal property".

"Ordinarily replevin may be brought to recover any specific personal property unlawfully taken or detained from the owner thereof, provided such, property is capable of identification and delivery; but replevin will not lie for the recovery of real property or incorporeal personal property". (77 C. J. S. 17) (Italics supplied.)

When the sheriff repaired to the premises of respondent, Ipo Limestone Co., Inc., the machinery and equipment in question appeared to be attached to the land, particularly to the concrete foundation of said premises, in a fixed manner, in such a way that the former could not be separated from the latter "without breaking the material or deterioration of the object." Hence, in order

to remove said outfit, it became necessary, not only to unbolt the same, but, also, to cut some of its wooden supports. Moreover, said machinery and equipment were "intended by the owner of the tenement for an industry" carried on said immovable and tended "directly to meet the needs of the said industry." For these reasons, they were already immovable property pursuant to paragraphs 3 and 5 of Article 415 of Civil Code of the Philippines, which, are substantially identical to paragraphs 3 and 5 of Article 334 of the Civil Code of Spain. As such immovable property, they were not subject to replevin.

"In so far as an article, including a fixture annexed by a tenant, is regarded as part of the realty, it is not the subject of trover, replevin, detenus, or any action lying only for personalty; * * *.

"* * * the action of replevin does not lie for articles so annexed to the realty as to be part thereof, as, for example, a house or a turbine pump constituting part of a building's cooling system; * * *" (36 C.J.S. 1000 & 1001)

Moreover, as the provincial sheriff hesitated to remove the property in question, petitioner's agent and president, Mr. Ramon Roco, insisted "on the dismantling at his own responsibility," stating that, precisely, "that is the reason why plaintiff posted a bond." In this manner, petitioner clearly assumed the corresponding risks.

Such assumption of risk becomes more apparent when we consider that, pursuant to Section 5 of Rule 62 of the Rules of Court, the defendant in an action for replevin is entitled to the return of the property in dispute upon the filing of a counterbond, as provided therein. In other words, petitioner knew that the restitution of said property to respondent company might be ordered under said provision of the Rules of Court, and that, consequently, it may become necessary for petitioner to meet the liabilities incident to such return.

Lastly, although the parties have not cited, and We have not found, any authority squarely in point—obviously because real property are not subject to replevin—it is well settled that, when the restitution of what has been

ordered, the goods in question shall be returned in substantially the same condition as when taken (54 C.J., 590-600, 640-641). Inasmuch as the machinery and equipment involved in this case were duly installed and affixed in the premises of respondent company when petitioner's representative caused said property to be dismantled and then removed, it follows that petitioner must also do everything necessary to the re-installation of said property in conformity with its original condition.

Wherefore, the decision of the Court of Appeals is hereby affirmed, with costs against the petitioner. So ordered.

Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo and Reyes, J. B. L., JJ., concur.

Paras, C. J., concurs in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.