

JOSE GATMAITAN, ET AL., PLAINTIFFS AND APPELLANT, VS. THE DIRECTOR OF PUBLIC WORKS, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-10012. December 27, 1956

Ponente: MONTEMAYOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ebe6194e0dd9/>

MONTEMAYOR, J.:

The facts in this case are not disputed. In 1945, Mercedes Gatmaitan was listed as the owner of Lot No. 8709, situated at Kaytukong, Paombong, Bulacan, served by the Angat Irrigation System. For failure to pay the irrigation charges for the years 1945, 1946, 1947, 1948 and 1949, proceedings for the collection of unpaid irrigation charges were instituted in the Court of First Instance of Bulacan (Irrigation Case No. 1), in accordance with Irrigation Act No. 2152, as amended. Among the delinquent lots proceeded against was Lot No. 8709. Under section 13 of the Irrigation Law, as amended by Section 4 of Act 3523, it is provided that:

"Charges for administration expenses of irrigation system are declared preferred liens over all other liens except that for taxes on the land or any mortgage lien in favor of the Philippine Agricultural Bank or its successor and such preferred lien shall not be removed until all charges are paid or the property is sold for payment thereof."

Section 13 further provides:

"Within one year after default of payment on an installment payable on any parcel of land, the Municipal President, the Provincial Treasurer or the Director of Public Works shall file with the Clerk of Court of First Instance of the district in which the land is situated, a list of all lands upon which default has been made. The Clerk of Court shall thereupon publish in the manner provided for the publication of summons in a civil action, a list of the lands so filed by the Director of Public Works, accompanied by a notice requiring all the owners to file an answer thereto within thirty days after the completion of the publication.

"Upon the filing of an answer by the person interested, the action in respect to such person shall proceed to judgment, as provided for other actions by the Code of Civil Procedure. Upon termination of such thirty days, judgment shall be entered against such persons as have not answered, and their lands, or the portion thereof, deemed necessary, shall be sold, after ten days public notice, auction by the Sheriff to satisfy such preferred lien."

Evidently, the publication! above described was made and upon failure of Mercedes Gatmaitan to file her answer within the period prescribed, judgment by the court was rendered against her, ordering the sale of Lot No. 8709 or such portion thereof as may be necessary, to satisfy the delinquencies in the irrigation charges, and costs of the proceedings. Thereafter, Mercedes and six others who claim to be purchasers from Mercedes of the greater portion of Lot No. 8709, brought the present action, seeking to enjoin the defendants, Director of Public Works, the Supervising Project Engineer of the Angat River Irrigation System, and the Provincial Sheriff of Bulacan, from executing any writ of execution or any alias writ of execution which may be issued to satisfy the said judgment in so far as they (plaintiffs) are concerned. A writ of preliminary injunction was issued on the basis of a

stipulation of facts submitted by the appellees. The Court of First Instance of Bulacan, presided by Judge Jesus Y. Perez, rendered judgment dismissing plaintiffs' complaint, without costs, and ordering the dissolution of the writ of preliminary injunction already issued. Plaintiffs appealed the decision to the Court of Appeals, which appeal was indorsed to us on the ground that only a question of law was involved.

The present appeal involves the interpretation of the Irrigation Act, as amended, as regards the proceedings for the collection of unpaid irrigation charges, whether said action is one in rem or it is an action in personam. Judge Perez, in a well prepared decision, held that inasmuch as the Irrigation Act created a statutory lien on the lot in question as regards the irrigation charges, and the proceedings being one for the enforcement of said statutory lien on real property, the action is in rem, and that by the mere publication of the list of delinquent lots or parcels as contemplated by the Irrigation Act, even without personal notification to Mercedes Gatmaitan, the trial court acquired jurisdiction and consequently, the judgment rendered ordering the sale of Lot No. 8709, was valid. The holding of the trial court is not entirely without basis. In some jurisdictions, an action to enforce a statutory lien on real property is regarded as an action in rem, while in others the same action is considered an action in personam. Said this Court in the case of *Lopez vs. Director of Lands*, 47 Phil. 29:

"An examination of practically all of the authorities has been made upon the question whether or not the proceeding for the collection of taxes upon real estate is an action in personam or an action in rem. The result of that examination is, that the authorities are about equally divided. Some hold that the proceeding is an action in personam while others hold that it is an action in rem. In this jurisdiction, by virtue of the procedure adopted in relation with the remedy given, we have held in the case of *Government of the Philippine Islands vs. Adriano*, supra, that the proceedings here are in personam and not in rem."

In deciding between the two theories, the question of public policy also enters. In the case of *Government of the Philippine Islands vs. Adriano*, 41 Phil. 112, this Court held that the proceedings to collect real estate taxes is an action in personam. Although the proceeding provided by law in the enforcement of the Government lien on lands by reason of irrigation fees is a little different, for the protection of the landowner delinquent in the payment of said irrigation fees, we should adopt and follow in this jurisdiction as the better rule, that said proceedings be considered in personam in the sense that, although the delinquent landowner is summoned by publication, he should be sent personal notice of the delinquency and of the necessity to answer, addressed to his last known address and by ordinary mail. This is in accordance with the provisions of Rule 7, section 17 of the Rules of Court, taken from section 399 of the Code of Civil Procedure, referring to publication of summons in a civil action, mentioned in section 13 of the Irrigation Act, aforementioned and quoted. Section 17, Rule 7, reads:

"Sec. 17. Extraterritorial service.—When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 7; or by registered mail; or by publication in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by ordinary mail to the last known address of the defendant; or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer."

The Government or the Irrigation Board certainly has a list of the owners whose lands are served by the irrigation system. It may be that in the course of time, said owners may have conveyed and sold their parcels to other persons without notifying the Irrigation Board. In such cases, the personal notice may be sent to or addressed to the owner appearing in said list, and this would be sufficient compliance with the law because the irrigation

authorities are not bound by any changes in ownership or title of the lands served by it if not duly notified thereof.

One reason for this view that a delinquent irrigation fee payer should be given personal notice and an opportunity to appear and question the legality and propriety of the enforcement of the lien, which has for its object the sale of his land, is that as held by this Court in the case of *Arriete vs. Director of Public Works*, 58 Phil. 507:

"* * * Due process requires that the statutes under which it is attempted to deprive a citizen of private property without or against his consent must, as in expropriation cases, be strictly complied with, because such statutes are in derogation of general right. * * *"

In fact, in said case of *Arriete vs. Director of Public Works*, this Court has already squarely decided that the owner of land delinquent in the payment of irrigation fees should be personally notified of the proceeding. The trial court was aware of this case of *Arriete* but it declined to be bound by its ruling on the ground that the reason this Tribunal considered the proceedings in that case as an action in personam was because the judgment rendered against defendant was a personal one.

Another reason is that it is a matter of common knowledge that our people in the rural areas served by irrigation systems, are not yet given too much reading of newspapers and periodicals, specially of published court or judicial notices, and naturally, would be in no position to know of the threatened and impending sale of their delinquent lots.

In view of the foregoing, the appealed decision is hereby set aside and the writ of preliminary injunction in plaintiffs' favor is made permanent. We hold and declare that the trial court in Irrigation Case No. 1 lacked jurisdiction in said case for failure to personally notify Mercedes Gatmaitan. Consequently, the proceedings therein as regards Lot. No. 8709 are null and void. To enforce the lien against said lot, new proceedings will have to be instituted with proper notifications as required by law. No costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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.