

WALTER EASTON, PLAINTIFF AND APPELLEE, VS. E. DIAZ & COMPANY AND THE PROVINCIAL SHERIFF OF ALBAY, DEFENDANTS AND APPELLANTS.*G.R. No. 10012. November 09, 1915*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10012/>**TORRES, J.:**

This is an appeal by bill of exceptions, filed by counsel for the defendant E. Diaz and Company, from a judgment of March 10, 1914, in which the Honorable P. M. Moir, judge, held that the alambique, or ilang-ilang still, in litigation belongs to the plaintiff, made final the writ of preliminary injunction issued on October 24, 1913, by which the defendants were restrained from selling the said still at public auction and the sheriff was ordered to return it to the plaintiff, dismissed the plaintiff's action for recovery of damages, as well as the counterclaims of the defendant E. Diaz and Company for damages, and sentenced the latter to pay the costs of the proceedings. The claim against the sheriff was dismissed.

On October 24, 1913, counsel for Walter Easton filed a written complaint in the Court of First Instance of Albay in which he alleged as a cause of action that he was the sole and exclusive owner of a still bearing the trade-mark "Ecrot," valued at P500, installed on a piece of land occupied by Smith, Bell & Co., Ltd., and in charge of Jose Parlade; that, as a result of the civil case No. 1737 of said court, brought by E. Diaz and Company against Jose Parlade, in spite of Parlade having testified the still was the property of the plaintiff Walter Easton, the defendant E. Diaz & Co., knowing that this still did not belong to Parlade, and for the purpose of prejudicing the plaintiff, sought in bad faith to have it attached; that, on October 22, 1913, it was duly attached by the sheriff who took it apart and removed it from the place where it stood; that, on October 23, 1913, the plaintiff presented to the sheriff a third party claim of ownership, setting forth therein that damages to the extent of not less than P100 a day were being caused the claimant for each day the sheriff retained the still in his possession because this was the season for the distillation of ilang-ilang, a period which lasts only until the end of the month of November; but that the defendant company gave bond to secure the sheriff in order that he might proceed to sell the still at public auction; that the said sheriff would proceed with the said public sale and would cause the plaintiff damage, very difficult if not impossible to repair, unless the court ordered the suspension of the sale; that, by the retention of the still by the sheriff or other persons, the plaintiff was being damaged to the extent of P100 for each day that it was out of his possession, which damages could be only partly prevented by the immediate restitution of the property so detained to the plaintiff. The latter's counsel, therefore, prayed the court that a preliminary injunction issue against the defendant company, its attorneys, agents and employees, and the provincial sheriff, restraining them from performing any act whatever which might prevent the plaintiff from using the said distilling apparatus; to order the sheriff to make immediate return of the still to the place where it had been installed, upon the furnishing of such bond as the court might consider sufficient; to declare that the said still is the exclusive property of the plaintiff, and to sentence the defendant company to pay to the plaintiff the sum of at least P100 for each day that has elapsed or may elapse from the date of the attachment of the still to that of its return; with the costs against the

defendant.

In conformity with the plaintiff's petition, on October 24, 1913, the court issued the preliminary injunction requested and ordered the sheriff immediately to return the still to the place where it had been installed.

On October 25, 1913, the defendant E. Diaz & Co. answered the complaint by a general and specific denial of all the paragraphs thereof, and as a special defense and counterclaim alleged that, of the P10,000 awarded the defendant company by the judgment rendered in its behalf in the civil case No. 1737 against Jose Parlade, there remained a balance of P2,000; that in the supplementary proceedings had in connection with the said case, the said Parlade was examined on the subject of his property and he stated that the still referred to in the complaint had been conveyed by him to Walter Easton by means of a private instrument executed on December 15, 1912; that the said statement by Parlade is false, for the instrument of conveyance in question in favor of the plaintiff Easton was executed long subsequent to December 15, 1912; that the said instrument was made for the sole purpose of prejudicing the defendant company and defrauding it as creditor, by preventing the said still from being levied upon and the defendant company from collecting its credit; that the allegations of the complaint with respect to the losses and damages suffered by not being able to distil ilang-ilang as a result of the attachment are false and malicious and were made for the purpose of influencing the court; and that the still, the subject matter of the complaint, had never been in the plaintiff's possession, but always under the control and in the ownership of the judgment debtor, Jose Parlade, who, through his henchmen, had kept it hidden in order that it might not be levied upon by virtue of the attachment issued in the said case No. 1737. As a second special defense and counterclaim the defendant company, reproducing its previous allegations as a part of this counterclaim, set forth that the plaintiff had brought this action in bad faith, knowing that he had no valid right against the defendant company, and solely for the purpose of supporting and protecting a fraud committed by the said Parlade; and that by bringing this action the plaintiff had caused losses and damages to the extent of P250, the amount of the attorney's fees incurred by the defendant company in its defense. This defendant, therefore, prayed the court to render judgment by dismissing the complaint and finding that the conveyance made by Parlade in favor of the plaintiff is fraudulent, null and void, and that the plaintiff has no interest whatever in the still in question; and by sentencing him to forever hold his peace with respect to his claim and to pay to the defendant company the sum of P250 for losses and damages caused by filing the complaint, and to the payment of the costs.

On November 6, 1913, the defendant provincial sheriff answered the complaint by denying all the allegations therein contained, and, as a special defense, set forth that the attachment referred to in the complaint was levied by him at the request of the defendant E. Diaz & Co.; that when the plaintiff filed his third-party claim, the said sheriff notified the other defendant thereof and the latter furnished bond in the sum of P1,000 in order that the attachment and sale might proceed; that on October 25, 1913, by reason of the said writ of injunction he suspended all proceedings with respect to the property in litigation; that the still was now in the possession of the plaintiff Easton; and that, as the defendant sheriff had no interest in this case, he prayed to be absolved from the complaint, without costs.

The plaintiff answered the counterclaim of E. Diaz & Co. by denying each and all of the allegations thereof.

After the hearing and an examination of the evidence adduced by both parties, the court rendered the judgment aforementioned, to which the defendant E. Diaz & Co. excepted and moved in writing for a reopening of the case and a new trial. This motion was denied, an exception was entered by the said petitioner, and, upon presentation, the proper bill of exceptions was approved and transmitted to the clerk of this court.

The question now submitted to us on appeal involves the specific point as to who was the owner of the ilang-ilang still which, on October 22, 1913, at the instance of E. Diaz and Co., was attached as belonging to Jose Parlade.

The plaintiff, Walter Easton, claims it as his, alleging that he purchased it from the said Parlade on December 15, 1912, for the sum of P500, a transfer, however, which the defendant company alleges was made by means of a feigned and fictitious contract made after December 15, 1912, for the purpose of defrauding the defendant E. Diaz & Co. and preventing the collection of the amount owing by the said Jose Parlade.

On or about the 1st of February, 1913, E. Diaz & Co. filed suit in the Court of First Instance of Albay against Jose Parlade to recover P10,219.31, the balance due the plaintiff company on December 31, 1912. The complaint recited that the defendant Parlade, foreseeing that his property was going to be attached, had closed his store in Ligao, Albay, and fraudulently disposed of all the merchandise thereof for the purpose of preventing its attachment by the plaintiff company; that, therefore, on February 1, 1913, the court issued a writ of preliminary attachment of all of Parlade's property, which attachment was raised only after the defendant had furnished the required bond, Exhibit 1. On March 27, 1913, the court rendered judgment in which he sentenced Jose Parlade to pay to E. Diaz & Co. the sum of P10,219.31 together with the interest thereon and the costs and, after the execution of judgment, there still remained unpaid, on September 22, 1913, the sum of P2,875.66; therefore the sheriff, in compliance with another subsequent writ of execution, attached, on October 22 of the same year, the still in litigation together with its accessory parts which were standing on the grounds of the judgment debtor, Jose Parlade, but it was not sold by the sheriff on account of its being claimed by Walter Easton and its sale having been forbidden by an order of the court.

The plaintiff, Walter Easton, bases his claim of ownership to the said still on the alleged fact of his having purchased it on December 15, 1912, as set forth in the private document, Exhibit C, which is of the following tenor:

"I, Jose Parlade, declare that I have sold to Mr. Walter Easton a still for the distillation of ilang-ilang flowers, for the sum of five hundred pesos (P500), which he has paid me in this act, in the presence of the witnesses who sign this document.

"Ligao, December 15, 1912.

(Sgd.) "JOSE PARLADE.

(Sgd.) "SILVESTRE REBOTICA.

"GREGORIA STO. DOMINGO."

Notwithstanding the statement in this document Exhibit C that the selling price of the still was P500 and that this sum was paid in the act by Easton to the vendor Parlade, they both testified at the trial that the value of the still was credited on account of a larger sum which Parlade owed Easton (record, pp. 5 and 14) and, while Easton maintained that the purchase price was P500 (p. 5), Parlade insisted that it was only P450 (p. 14).

In order to show that the evidence adduced by both parties was weighed justly and in accordance with the rules of sound judgment and common sense, we shall insert herein below the essential parts of the testimony of the witnesses who testified at the trial of this case.

The plaintiff testified that in December, 1912, he had gone to Ligao to obtain some ilang-ilang essence, and, having talked with Parlade concerning the business of distilling this flower, he decided that same day to acquire the still in question; that Parlade offered to sell it to him for P500; that after agreeing upon the terms of the sale, it was stipulated that this sum should be deducted from the amount which Parlade then owed him, the vendor to have charge of the management of and to superintend the running of the still in the pueblo of Ligao; that the still needed repairs and when they had been made it was removed to a building rented by Smith, Bell & Co., where the still was put in operation in September, 1913; that in December, 1912, and in February, 1913, Parlade was a mere

hemp buyer in Ligao for the firm of Smith, Bell & Co. "who received from the firm money in advance with which to buy hemp," (though he subsequently said that Parlade had been appointed agent of the firm of Smith, Bell & Co., but did not remember the exact date of his appointment); and that after the sale Parlade continued to distil for witness.

Jose Parlade corroborated the statements made by the plaintiff relative to the sale of the still and further stated that the price agreed upon was P450, which was to be deducted from his debt to the purchaser, and that witness sent the deed of sale, Exhibit C, to Easton some time afterwards; that the still needed repairs and therefore the tinsmith took away the pieces that required fixing and left the rest of the apparatus in witness' house, but he did not know why his wife, Gregoria Sto. Domingo, sent the rest of the still to the house of his storekeeper, named Pabucan; that in September, 1913, after the still had been repaired, it was installed in a house, rented by Smith, Bell & Co., which he occupied as he was this firm's agent in Ligao; that he operated it from that time until it was attached on October 22, 1913, the distillation having been interrupted for six days; that when he sold his still on December 15, 1912, E. Diaz & Co. had not yet filed suit against him, nor had the preliminary attachment of his property been ordered; that, notwithstanding he testified in court that the still in question belonged to Easton, it was attached at the request of E. Diaz & Co.; that during the last months of 1913 the people of Ligao knew he was an agent of Smith, Bell & Co. by the sign he displayed at his place of business, though it was true that he possessed no formal appointment as Smith, Bell & Co.'s agent—notwithstanding which he was a buyer in the pueblo of Ligao for this firm.

One of the witnesses to Exhibit C, Silvestre Rebotica, testified that he saw Easton leave Parlade's store in Ligao a few days before the festival of that pueblo in the year 1912; that this festival was held on December 25th; and that after Easton had gone out, Rebotica signed as one of the witnesses to the document marked Exhibit C.

The deputy sheriff, Lorenzo A. Duran, stated among other things that when he attached the still in question it was situated on a lot rented by Smith, Bell & Co. for its business; that Parlade's wife, Gregoria Sto. Domingo, was the person who indicated to him the place where the still was located; and that he was sure that the still was not in operation, because Gregoria herself told him so, and besides because, desiring to obtain a little ilang-ilang essence, he examined the apparatus and found that it was empty.

Venancio Cabada Diaz and Antonio Barberan testified that in January 25, 1913, they were in Parlade's store in Ligao whither they had gone to ascertain whether or not the latter was selling his goods on account of the suit which E. Diaz & Co. was going to file against him; that they observed many articles had been removed from the store; that in a warehouse behind the store, they saw two complete stills, one of which, the one in litigation, belonged to Parlade and the other, which had been rented by Parlade, to the estate of Josefa Garcia Pascual. Venancio Cabada Diaz added that he owned four stills and knew at a glance whether they were or were not complete, and that he was not mistaken as to the identity of Parlade's still found behind the latter's store, because the witness Barberan knew Parlade's still very well, having one exactly like it and, besides, having personally taken part in its purchase for Parlade.

Antonio Alvarez testified to the same effect as the witnesses Venancio Cabada Diaz and Antonio Barberan, namely, that as the result of a storm which passed over Ligao in October, 1913, all the ilang-ilang flowers were destroyed and the stills were unable to continue operating, for want of flowers.

Simeon Pabucan declared in a sworn statement that, being an employee of Parlade in 1913, he knew the still in question; that he did not know why, two or three days before the preliminary attachment was levied, his employer at about 9 or 10 o'clock at night ordered him to take the still in dispute to his own house and keep it there; that he did so, placing same in a chicken house, where it remained until the middle of August, 1913, when it was

removed in sections by a tinsmith and other persons at Parlade's order, only the water tank remaining.

Victor Juarez, Parlade's laborer, testified that about the month of January or February, 1913, before the attachment, he and another laborer, Pablo Calagdag, removed said still from Par lady's warehouse to Simeon Pabucan's house; that the apparatus had all its accessory parts; that they deposited same in Pabucan's chicken house; that it remained until July or August; that the tinsmith Melecio removed it at night by sections which he put in a sack so that they might not be seen; and that these facts were known to witness because he was living in Pabucan's house.

The fact of the sale of the still by Parlade to Easton having been impugned, and that the latter purchased the still belonging to the former having been denied it behooves us to inquire into the probatory value of the deed of sale dated December 15, 1912, and to determine whether or not the alleged conveyance actually took place on the date of the said instrument.

As regards the probatory value of the document in question, article 1227 of the Civil Code prescribes:

"The date of a private instrument shall be considered, with regard to third persons, only from the date on which it may have been filed or entered in a public registry, from the death of any of those who signed it, or from the date on which it may have been delivered to a public official by virtue of his office."

The said instrument, drawn up on December 15, 1912, was presented only at the trial of this case on March 9, 1914, and was delivered to the court over the objection and exception of the defendant who is the third person who might be injured by its value and efficiency; and, therefore, in accordance with the provisions of the aforecited article of the Civil Code, even supposing that the alleged sale was genuine and valid, it cannot be considered as having been made on December 15, 1912, but on March 9, 1914, much later than the date of the attachment which was levied on October 22, 1913.

By means of the said instrument the plaintiff intended to prevent the defendant company from exercising its right in the still, a part of the property of the debtor Parlade, in order that it might collect its credit against him, a vain and useless intent, since the said instrument did not acquire any value as evidence until the lapse of four months and some days after the still had been attached, and, therefore, cannot legally affect the rights of the creditor-company, the defendant.

Therefore the sale of the still in question, the title under which the plaintiff claims to be its owner, legally exists then only from March 9, 1914, the date when instrument attesting the acquisition of the still by the plaintiff was presented at trial; and, as the record discloses no other conclusive proof that the sale actually took place on December 15, 1912, nor on any other date prior to its attachment to satisfy the defendant company's credit, it is unquestionable that the sale of the said apparatus on the aforementioned date was simulated for the purpose of preventing its attachment and sale and of preventing the defendant company, Parladdg's creditor, from collecting its credit out of the proceeds from the sale of the said still.

Were it true that the still was sold to the plaintiff Easton on December 15, 1912, and that he was its owner from that time on, the conduct of the alleged vendor, Parlade, is inexplicable, for he kept the still in his possession until the middle of January, 1913, and, several days before the attachment was levied on his property, removed the said still and hid it in & warehouse situated behind his store where it was seen by the witnesses Venancio Cabada and Antonio Barberan who knew it, as the latter had taken part in its acquisition by Parlade and had purchased another still like the one found hidden in the said warehouse.

Furthermore, as Parlade did not believe that the still would be properly kept in the said warehouse, several days prior to the attachment of his property he ordere4d his employees, Victor Juarez and Pablo Calagdag, to remove

it, together with all its accessory parts, to the house of Simeon Pabucan and store it in the chicken house on the premises, whence, in July or August, 1913, the tinsmith, Melecio went to remove it at night in pieces which were placed in a sack in order that they might not be seen by anyone. All these acts were performed by Parlade's order, as was also the subsequent installation of the still on the land belonging to the house rented by Smith, Bell & Co., in Ligao, and in which Parlade was living some time in or about September of that year.

Were it true that the still in question belonged to Easton from the 15th of December, 1912, forward, Parlade would have had no need to cause it to be hidden. This was done undoubtedly for the purpose of freeing it from the attachment levied on his property for, had he acted in good faith, he would of course have delivered the still to its owner, and, as its vendor, he was not obliged to do more, inasmuch as after its conveyance he no longer had any right to dispose of it, but he performed or ordered done all the acts mentioned, because he was and is the true owner of the still, which he intended to protect from the action of his creditors.

The debtor Parlade alleged that it was his concubine, Gregoria, who ordered the removal of the still to Pabucan's house and that he only learned of the occurrence afterwards. This conflicts with the testimony of his two employees who contradict him. Gregoria Sto. Domingo did not testify at the hearing of this case, and as a witness who signed the deed of sale she was aware either that the still belonged to Easton, if the said sale was true, or, if simulated, that the still could be attached by the sheriff, in which case she had the same interest in it as her companion, Parlade.

The fact that the still was never delivered to the purchaser is an additional circumstance which, in view of the evidence adduced by the defendant company, strengthens the conviction that no such sale took place and that the still continues to belong to Parlade.

For the acquisition and transmission by law of ownership and other property rights, delivery of the things transferred is indispensable. (Art. 609, Civ. Code.)

It is a doctrine established by jurisprudence, that the delivery of a thing is a necessary and indispensable requisite in order to acquire its ownership by virtue of a contract. (Fidelity and Deposit Company of Maryland vs. Wilson, 8 Phil. Rep., 51; see also Manresa's Commentaries on the Civil Code, vol. 10 p. 339.)

In the decision of the case of Kuenzle & Streiff vs. Macke & Chandler (14 Phil. Rep., 610) and also in others, the following doctrine is laid down:

"The ownership of personal property cannot be transferred to the prejudice of third persons except by delivery of the property itself, and a sale without such delivery gives the would-be purchaser no rights in said property except those of a creditor."

In the decision of *Oria vs. McMicking* (21 Phil. Rep., 243), it is said that the failure of the vendee to take exclusive possession of all property and the fact that the consideration of the conveyance is fictitious are some of the circumstances attending sales which have been denominated by the courts badges of fraud.

It is an undeniable fact that the stimulation of the sale of the said still was prejudicial to the defendant *E. Diaz & Co.*, the creditor of its lawful owner *Jose Parlade*", inasmuch as it obstructed the proceedings brought to secure judicial compulsion and the execution of the judgment and also delayed the collection of the debt owing by *Parlade*.

After the still had been hidden for several months and thus saved from the attachment on the property of the debtor *Parlade* in February, 1913, it was installed in the house rented by *Smith, Bell & Co.* in the pueblo of *Ligao*. This fact is not proof that the plaintiff, *Walter Easton*, took possession and assumed control of the said still, for the evidence adduced at trial shows without a shadow of doubt that the still always continued under *Parlade's*

ownership in spite of its pretended sale, and the assertion made by Miss Janet Elizabeth Tangye in her deposition taken before the American consul in Paris, relative to her having delivered to Easton £20 for investment by him in the purchase of a still, does not accord with the result and merits of the case because, if the price of the apparatus was deducted from the sum which Parlade was owing Easton, as they both testified it was, then it is not true that Easton invested the said £20 in the purchase of the said still. Nor can any weight attach to the statement made by Mrs. Newlove, as it is mere hearsay and therefore inadmissible for the reason that on this lady asserting that the still belonged to the plaintiff, she did so, not from her own knowledge, but from hearing Easton say that the apparatus was his; her statement, therefore, was a repetition of what she was told by the plaintiff and, consequently, does not constitute proof of his ownership of the still in litigation.

In conclusion, it appears then from the record in this case that the still attached against Jose Parlade at the instance of E. Diaz & Co. is the exclusive property of the debtor and that the sale said to have been made by Parlade to the plaintiff, Walter Easton, was simulated and made long after the attachment of the said still and for the purpose of preventing its sale and the payment of the sum which Parlade owed to E. Diaz & Co.

For the foregoing reasons the judgment appealed from is reversed in so far as it holds that the said still is the property of the plaintiff Easton. as it makes final the injunction issued on October 24, 1913, and as it orders the costs to be taxed against the defendant E. Diaz & Co. The latter company is absolved from the complaint, and the still in question is hereby held to be the property of Jose Parlade; we lift and dissolve the said injunction, and affirm the dismissals contained in the judgment appealed from on the grounds therein set forth, without special finding as to the costs of both instances. So ordered.

Arellano, C. J., Johnson, and Araullo, JJ., concur.

DISSENTING OPINION

CARSON, J.:

I dissent. I think that the evidence of record sufficiently and satisfactorily establishes the sale of the alambique in manner and form, and as of the date alleged in the complaint, and fully sustains the contentions of the plaintiff and appellee.

The findings of the trial judge who saw and heard the witnesses testify and had an opportunity to observe their conduct and demeanor on the witness stand should not lightly be disturbed by this court; and, accepting his findings of fact, it seems to me that the judgment should be affirmed.

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.