

C. HEINSZEN & CO., PLAINTIFFS AND APPELLEES, VS. JAMES J. PETERSON AND THE FIRST NATIONAL BANK OF HAWAII, DEFENDANTS AND APPELLANTS,

G.R. No. 2129. March 12, 1908

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-2129/>

JOHNSON, J.:

On the 10th day of August, 1903, the plaintiffs filed an amended complaint in an action against the defendant, James J. Peterson, as sheriff of the city of Manila, to recover the possession of certain personal property, more particularly described on pages 4, 5, and 6 of the record of the lower court, or P1,500, the value of the same, and also to recover the sum of P2,500 as damages for the wrongful withholding of the said property.

On the 18th day of August, 1903, the defendant, James J. Peterson, filed an answer to the complaint of the plaintiffs and, among other things, alleged that one Joseph H. Hartman was the owner of the property in question and denied that the plaintiffs were the owners thereof.

On the 3d day of November, 1903, the defendant, the First National Bank of Hawaii, intervened in said cause, alleging that the property in question was the property of the said Joseph H. Hartman, and also prayed for a judgment against the plaintiffs for \$135.25, United States currency, as damages and also the sum of \$902.87, United States currency, with interest at the rate of 8 per cent from the 12th day of July, 1903.

On the 9th day of November, 1903, the plaintiffs filed a demurrer to the answer of the First National Bank of Hawaii.

On the 16th day of November, 1903, the judge of the Court of First Instance of the city of Manila overruled the said demurrer and after hearing the evidence adduced during the trial of said cause, on the 14th day of December, 1903, filed a decision in said cause, in which he made the following findings of fact:

"1. The plaintiff is a. corporation duly organized under the laws of the Philippine Islands, and doing business in the city of Manila;

"2. On the 10th day of June, 1903, one J. H. Hartman, being the owner of a saloon and fixtures, consisting of the property set forth in the inventory in the sheriff's return, on pages 4, 5, and 6 of this record, and being indebted to the plaintiffs in this action, executed to the plaintiffs a bill of sale, a copy of which is set forth on page 38 of the record in this case, as security for the indebtedness of said Hartman to the plaintiffs and the responsibilities which the plaintiffs had assumed in behalf of the said J. H. Hartman;

"3. The defendant is the duly appointed and acting sheriff of the city of Manila, and on the 10th day of June, 1903, in a certain action, No. 1817, pending in the Court of First Instance, wherein the Pacific and Oriental Trading Company was plaintiff and the said J. H. Hartman was defendant, did seize and attach the property set forth in said sheriff's return hereinbefore mentioned, pursuant to an order of attachment duly issued in said action, No. 1817;

"4. That thereupon the plaintiffs, in order to protect their interests in said property, as security for the claim which they had against said J. H. Hartman, caused said attachment to be released, and paid the claim of the plaintiff in said action, No. 1817;

"5. That on the 29th day of June, 1903,, the First National Bank of Hawaii commenced an action in the Court of First Instance for the city of Manila against said J. H. Hartman, to recover money for a debt, and on the said date the sheriff of Manila duly attached and seized the property hereinbefore mentioned, pursuant to an order of attachment issued in said cause, as the property of said J. H. Hartman, and that the plaintiffs herein had knowledge of said attachment proceedings;

"6. That on the 3d day of July, 1903, the plaintiffs herein claimed to be the owners of the property hereinbefore mentioned, and to be entitled to the possession thereof, and demanded of the defendant, as sheriff of the city of Manila, possession of the said property, pursuant to the provisions of the Code of Civil Procedure;

"7. That thereupon the defendant, as sheriff of the city of Manila, on the 6th day of July, 1903, delivered to the plaintiffs, C. Heinszen & Co., said property above described;

"8. That thereafter, on the 7th day of July, 1903, an alias order of attachment was issued in cause No. 1928, in the Court of First Instance for the city of Manila, First National Bank of Hawaii vs. J. H. Hartman, and the defendant, as sheriff of the city of Manila, again seized and took possession of the property hereinbefore mentioned and in controversy in this suit;

"9. That on the 7th day of July, 1903, the said J. H. Hartman executed to the plaintiffs in this case a new bill of sale for the property hereinbefore mentioned, and it is a controverted fact whether this second bill of sale was executed prior to or after the alias writ of attachment had been executed upon the property in question."

From the record it appears that sometime prior to the, 10th day of June, 1903, the Pacific and Oriental Trading Company commenced an action against the said J. H. Hartman for the purpose of recovering the sum of money due the former from the latter, by virtue of which action the plaintiff secured an attachment against the property of the said Hartman, which property is admitted to be the same property enumerated on pages 4, 5, and 6 of the record in the present cause. In order to relieve the property of the said Hartman from said attachment, the plaintiffs herein executed and delivered a bond to the said Pacific and Oriental Trading Company, guaranteeing the payment of the indebtedness due from Hartman to said company. The record discloses that the said Hartman was also indebted to the plaintiffs herein at that time in a certain sum of money, Heinszen & Co., the plaintiffs herein, in order to secure themselves against loss by virtue of the said bond as well as to secure payment of the indebtedness of Hartman to them, obtain from the said Hartman on the 10th day of June, 1903, the following contract or bill of sale:

"Know all men by these presents: That I, J. H. Hartman, of Manila, P. I., for and in consideration of the sum of three thousand dollars (\$3,000), local currency, and the signing of a bond for one thousand two hundred dollars (\$1,200), United States currency, in the case of The Pacific and Oriental Trading Company vs. J. H. Hartman, do hereby sell, assign, and transfer unto C. Heinszen & Co., of Manila, my saloon at the corner of Calle Soledad and the Binondo Canal, Manila, P. I., known as the 'Merchants Exchange,' with all fixtures and stock therein contained, as well as the name and 'good-will' thereof.

"To have and to hold the same unto the said C. Heinszen & Co., their heirs and assigns. And I do hereby covenant and agree to warrant and defend the sale of said property unto the said C. Heinszen & Co., their heirs and assigns, against all and every person and persons whomsoever lawfully claiming or to claim the same.

"Provided that in case of a sale of said saloon to a third party the proceeds shall be applied as follows:

"First. Twelve hundred dollars (f 1,200), United States currency, to be held by the said C. Heinszen & Co. until all liability on said bond is annulled

"Second. To the payment of the claim of the said C. Heinszen & Co.

"Third. The balance to be paid to the said J. H. Hartman, including the twelve hundred dollars (\$1,200), United States currency, held as indemnity on said bond.

"In witness whereof, I have hereunto set my hand this tenth day of June, A. D. nineteen hundred and three.

"J. H. HARTMAN.

"[Notarial seal of Thomas D. Aitken.]

"UNITED STATES OF AMERICA,

"Philippine Islands, City of Manila, ss.:

"Before me, Thomas D. Aitken, notary public in and for the city of Manila, personally appeared this day J. H. Hartman, known to me to be the person named in the foregoing instrument, and acknowledged to me that he subscribed and executed the same as his free and voluntary act and deed.

"In witness whereof I have hereunto set my hand and attached my official seal this 30th day of June, 1903, at the said city of Manila.

"THOS. D. AITKEN,

"Notary Public, Manila, P. I.

"Commission expires January 1, 1905."

It is admitted in the record that the said Hartman was permitted to continue in the possession and control of said property, notwithstanding this alleged bill of sale executed by him to the plaintiffs herein on said 10th day of June, 1903. The record also discloses that the said Hartman was in possession of the property in question at the time of the attachment in favor of the First National Bank of Hawaii of the same property by the sheriff of the city of Manila on the 29th day of June, 1903. The record also discloses that the plaintiffs herein made due demand upon the sheriff for the possession of the property in question, in accordance with section 442 of the Code of Procedure in Civil Actions, on the 2d day of July, 1903, and that the said sheriff, by reason of the failure of the said First National Bank to execute and deliver to the said sheriff a forthcoming bond, as provided for in said section, delivered the property in question to the plaintiffs herein on the 6th day of July, 1903, and that the plaintiffs herein took possession of said property on said date. The record also discloses that on the 7th day of July, 1903, the said First National Bank of Hawaii obtained from the Court of First Instance of the city of Manila another attachment, which was served by the sheriff of the city of Manila upon the property in question after the same had been delivered, as above indicated, to the plaintiffs herein.

The contention of the plaintiffs herein is that by virtue of the said contract of the 10th day of June, 1903, and by virtue of the fact that they obtained possession of said property on the 6th day of July, 1903, they had a preferred right to the property in question, and that the attachments of the First National Bank of Hawaii on the 7th day of July, 1903, created no preferred rights in favor of the said bank as against the said property over that of the plaintiffs herein.

Certainly the plaintiffs obtained no preferred rights over the property in question by virtue of said contract of June 10, 1903, at that time for the reason that they did not take possession of said property. (Art. 1863 of the Civil Code.) Moreover, we are of the opinion that the plaintiffs, under said contract, might at any time, by virtue of said contract, complete the pledge by obtaining the actual possession of said property. It will be noted, however, that the sale of the said Hartman to the plaintiffs was a conditional one, and that whenever the plaintiffs herein attempted to enforce the conditions of said sale they were obligated by the conditions imposed therein.

The record discloses that upon the 7th day of July the said Hartman attempted to make another bill of sale of the property in question to the plaintiffs herein. The record does not fully disclose whether this second bill of sale was made before or after the attachment of the same date in favor of the First National Bank of Hawaii. There is no doubt, however, that the plaintiffs herein had taken possession of the said property on the 6th day of July and thereby had completed the pledge of said property under and by virtue of the contract of the 10th day of June. At the time the plaintiffs herein took possession of said property, thereby completing their pledge on the 6th day of July, there was no lien or attachment upon said property other than that of the said plaintiffs. There is no question raised in the record with reference to the consideration between the plaintiffs herein and the said Hartman for the contract of June 10.

The decision of this question depends upon the question as to whether the contract of pledge, entered into by and between the plaintiffs herein and the said Hartman, made by the latter to the former, coupled with the fact that the plaintiffs herein obtained possession of said property at a time when no other liens existed against it, gave the plaintiffs a preferred right over the said property. If this question is answered in the affirmative, then the property could not have been legally levied upon by the sheriff at the request of the defendant, the said First National Bank of Hawaii. (Arts. 1921 and 1922, Civil Code.)

The contract of June 10, coupled with the actual possession of the property on the part of the plaintiffs herein, complies with all the requisites provided for in article 1857 of the Civil Code. The contract, therefore, together with the possession of the property, was a perfect contract of pledge under said article 1857 and article 1863 of said code. (*Banco Español-Filipino vs. Peterson*, 7 Phil. Rep., 409.) It was not proven that the said contract of June 10 and the possession of July 6 were in any way fraudulent. The indebtedness existing between the plaintiffs herein and the said Hartman, mentioned in said contract, was not denied.

We are of the opinion, therefore, and so hold, that the plaintiffs herein are entitled to the possession of the property in question in accordance with the terms of the contract of June 10, 1903, and the proceeds thereof must be applied in accordance with the terms of said contract, and if, after the disposition of said property, there is anything remaining in favor of the said Hartman, such surplus may be disposed of in accordance with the provisions of the Code of Procedure in Civil Actions.

Therefore the decision of the lower court is hereby affirmed, with costs. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, 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.