

DOMINGA CONCEPCION, PETITIONER, VS. GREGOBIO GARCIA, AS SPECIAL DEPUTY SHERIFF, RESPONDENT.*G.R. No. 32380. November 29, 1929*

Ponente: STREET, J.

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This is an original petition presented in this court by Dominga Concepcion wherein she seeks to obtain a peremptory order of mandamus directed to the respondent, Gregorio Garcia, as special deputy sheriff in civil case No. 35867, in the Court of First Instance of the City of Manila, requiring him to surrender the possession of certain personal property claimed by the petitioner, as third-party claimant in an attachment issued in the civil case mentioned, with general relief and with costs. The case has now been submitted upon answer of the respondent.

It appears that on August 9, 1929, the Government of the Philippine Islands instituted a civil action (No. 35867) in the Court of First Instance of the City of Manila, against Florencio Reyes, former chief of the stamp division in the Bureau of Posts, for the purpose of recovering the sum of P212,349.42, the value of stamps alleged to have been misappropriated by him. In connection with the complaint in said case the Government obtained an attachment against the defendant, by virtue whereof the respondent, in the capacity of deputy sheriff, levied upon certain household effects as the property of the defendant. On September 20, 1929, the present petitioner, Dominga Concepcion, the wife of Reyes, presented in writing to the sheriff a third-party claim asserting ownership in the household effects which had been taken upon attachment, all pursuant to section 442 of the Code of Civil Procedure. Upon receiving this claim the respondent Garcia demanded that the Government should give bond to secure him against liability from said claim; and inasmuch as the estimated value of the property was in the amount of P5,500, the respondent demanded an indemnity bond in the amount of P11,000. At the request of the Attorney-General the period for the giving of this bond was extended until October 10, 1929, and before this date arrived the Legislature enacted a statute (Act No. 3531) adding an amendment, in the form of a proviso, to both sections 442 and 451 of the Code of Civil Procedure. This proviso has the same wording in the additions to each of the provisions mentioned, to the following effect:

"Provided, however, That when the plaintiff, or the person in whose favor the writ of attachment runs, is the Insular Government, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or attaching officer is sued for damages as a result of the attachment, he shall be represented by the Attorney-General and if held liable therefor, the actual damages adjudged by the court shall be paid by the Insular Treasurer out of such funds as may be appropriated for the purpose."

This Act was approved on September 28, 1929, and it was therefore in full effect upon October 10, 1929, when the period expired within which the bond demanded by the sheriff should have been given. However, under the authority of the amendment above mentioned, the respondent deputy sheriff maintained the attachment, and he now admittedly has the attached property in his possession.

The present petition seeks to compel the respondent, by mandamus, to surrender the property, consisting of the

household effects described in the petitioner's third-party claim; and the theory underlying the petition is that Act No. 3531 is not applicable to the situation described, and that, if the Act should be interpreted as applicable thereto, it should be held unconstitutional. In this connection it is claimed that, if the Act be interpreted as applicable to the subject matter of the aforesaid attachment, it would thereby be given an ex post facto effect inconsistently with that portion of section 3 of our organic law which prohibits the enactment of ex post facto laws.

The criticism directed to the statute is not well founded. Act No. 3581 is an Act dealing exclusively with remedies and modes of procedure. Such an Act is repugnant to no constitutional provision, and its legality is beyond question. A person has no vested right in any particular remedy, and a litigant cannot insist on the application to the trial of his case, whether civil or criminal, of any other than the existing rules of procedure. Statutes making changes in the remedy or procedure are laws within the discretion of the lawmaking power, and are valid so long as they do not deprive the accused of any substantial right, or conflict with specific and applicable provisions of the Federal Constitution (6 R. C. L., p. 294). Moreover, the term "ex post facto" as applied to statutes, in section 3 of our organic law, is a technical term, used only in connection with crimes and penalties. The term is never used to indicate the obnoxious character of statutes dealing retroactively with civil rights. Of course retroactive statutes dealing with civil rights may also be unconstitutional if they impair the obligations of contracts or deprive a person of a vested right, but this remedial Act is not subject to criticism on this ground. As was said in *Roman Catholic Bishop of Lipa vs. Municipality of Taal* (38 Phil., 367, 377), "The Act in question is not an ex post facto law, as it is not penal in its nature. It has long been settled that the phrase 'ex post facto laws', Is not applicable to civil laws, but to penal and criminal laws which punish a party for acts antecedently done which were not punishable at all, or not punishable to the extent or in the manner prescribed. In short ex post facto laws relate to penal and criminal proceedings, which impose punishment or forfeitures, and not to civil proceedings, which affect private rights retrospectively."

What has been said is sufficient to dispose of the petition, but, as pointed out in the memorandum of the Attorney-General, there is an additional obstacle to the granting of the writ of mandamus in this case. This is found in the circumstance that, under section 442 of the Code of Civil Procedure, the sheriff is not under legal duty to surrender attached property when no bond is given. On the contrary, said section leaves the officer entirely free to hold the property or not, and merely leaves him at liberty, in the ordinary case where the Government is not a party, to surrender the property if the bond indicated in that section be not given. It results that the sheriff is under no legal duty to surrender the property, and the enactment with respect to the giving of bond was made exclusively for his protection. In the case before us the sheriff is content to hold the property in reliance upon the protection given by the amendment.

The petition, in our opinion, is without legal merit, and the same is hereby dismissed, with costs against the petitioner. So ordered.

Avanceña, C. J., Johnson, Malcolm, Ostrand, Johns, and Romualdez, JJ., concur.

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