

**VICENTE QUESADA, AS ADMINISTRATOR OF THE ESTATE OF
PAULINO QUESADA, PLAINTIFF AND APPELLEE, VS. ISABELO
ARTACHO, AS SHERIFF OF THE PROVINCE OF PANGASINAN,
DEFENDANT AND APPELLANT.**

G.R. No. 3644. October 21, 1907

Ponente: ARELLANO, J.

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ARELLANO, J.:

This is an appeal from the judgment of the Court of First Instance of Pangasinan dated September 20, 1900, by which the defendant was sentenced to make restitution to the plaintiff, Vicente Quesada, administrator of the estate of Paulino Quesada, of the merchandise and effects set forth in Exhibit A, deducting those set forth in Exhibit H of the amended complaint, or otherwise to pay to said plaintiff the sum of P2,491.65, with interest thereon at the rate of (i per cent per annum in either case, on the sum of P2,491.65, value of the seized merchandise and effects, from the 7th of March, 1906, until such property be restored or the value thereof be paid, and to pay the costs of the action. The appellant filed with this court a bill of exceptions (an assignment of errors), and after due consideration thereof this court finds:

- 1. That the court below did not err in declaring that the defendant, Isabelo Artacho, as sheriff for the Province of Pangasinan, unlawfully and without any right seized and deprived Paulino Quesada, on the 7th of March, 1905, of the merchandise and effects claimed by the plaintiff. If the procedure was not illegal because it was an act in execution of an order from the court, yet the persistence in the seizure and the consequent act of dispossession carried out in spite of the ownership claimed by the plaintiff over certain personal property seized by the defendant made the act illegal. In this respect section 442 of the law (the Code of Civil Procedure), cited by the appellant himself, provides that upon claim being made by a third party, and his affidavit served upon the officer, the officer shall not be bound to keep the property under the attachment, in excess of the plaintiff, on demand of him, or his agent, indemnify the officer against such claim by an obligation with two sufficient sureties. The court below established this conclusion:

"That the late Paulino Quesada was the owner by purchase from Tan Samco, of the merchandise and effects set forth and described in Exhibit A of the amended complaint, with the exception of those appearing in Exhibit B, and that the said merchandise and effects were in the possession of Paulino Quesada." (B. of E., 7.)

- . That neither did the court err in not declaring that the action taken herein should have been directed against the person at whose instance the attachment was levied, and against the party whose property had been attached. Such was the procedure under the Ley de Enjuiciamiento Civil, formerly in force, according to which an officer executing an order from the court acted merely in execution of a ministerial duty that strictly bound him to carry it out, while under the Code of Civil Procedure, at present in force, a discretionary power and personal liability are involved in his functions, and he is therefore informed that he shall not be bound to keep the property under the attachment if it is claimed by a third party; and for the same reason the law in force authorizes him (which was not

the case formerly) to consider that the claim is not a valid one unless made as already stated—that is, by (the third party claiming) setting forth under oath his title of ownership or his right to the possession with a statement of the grounds in support thereof; and for this reason, finally, he is authorized to protect himself, if he persists in keeping property under the attachment, against the claimant, by requiring an obligation with two sufficient sureties who, together with the party who applied for the attachment, shall indemnify him. This provision would have no meaning if the person to be indemnified was other than the sheriff, or if the intervention must necessarily be against the person who applied for the attachment and the party whose property was attached, as in the old Law of Civil Procedure.

- Neither did the court err in not declaring that the defendant was in no way liable for the attachment and for the return or payment of the property claimed by the plaintiff. The court below could make no such declaration of irresponsibility on the part of the defendant who, as an officer of the court, executed the writ and kept the property under attachment, notwithstanding the claim of the third party, now the plaintiff herein; (1) because he was cautioned by law that a claim by a third party for the property or for damages suffered by reason of the attachment could be filed against him, or, as more clearly provided in section 451, "no claim to such property shall be valid against the officer, or shall be received or be notice of any rights against him, unless made as herein provided," to wit, by a written claim, verified by the oath of such claimant setting out his title thereto, his right to possession thereof, and stating the grounds of such title; (2) because actually and ostensibly no other than the court officer is the one who executes the act of dispossession of the third party claiming, who is not bound to know more than what he sees with his own eyes as the immediate cause for depriving him of his title or possession, and the person who remains in possession or is holding the property the recovery of which he seeks by means of an intervention.

- Nor have the other errors been committed, as alleged, under the theory that the sheriff's official acts are of a mere ministerial nature for which he can not be held responsible so long as he adheres strictly to the terms of the order of the court, or to the request and indications of the party seeking the attachment and upon whom the sheriff believes he can thrust all responsibility as the real party concerned in the matter, for the reason that the supposition on which such theory is based, in view of the present method of procedure and the general principles of the law, is a false one. Under the present method of procedure a judicial officer, when serving such process, has the same responsibility, with some exceptions, as any private individual who attempts to take or hold property or possession claimed by a third party who has neither been heard nor defeated in an action, and who can in no wise be dispossessed of what belongs to him, and who is in quiet and peaceful possession thereof. In a case similar to the present one, it was held by this court that—

"For the purpose of limiting the responsibility of the sheriff in such cases, and to provide that some notice should be given to him of the claims of third persons, this section [451] requires such third persons to make such claims in writing, so that the sheriff, after the notice is given to him, can decide for himself whether he will proceed with the levy or abandon the property. (Waite vs. Peterson et al., 5 Off. Gaz., 556.[1])"

Therefore, the judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Torres, Johnson, Willard, and Tracey, JJ., concur.

[1] 8 Phil. Rep., 449.

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