

JUAN L. ORBETA, PETITIONER, VS. FILEMON SOTTO ET AL., RESPONDENTS.

G.R. No. 39562. September 27, 1933

Ponente: HULL, J.

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HULL, J.:

Original petition for certiorari. The petitioner has been convicted in the Court of First Instance of Cebu of the crime of arson and in addition to a sentence for the crime has been held to indemnify respondent Sotto in the sum of P40,000. From this sentence, Orbeta has appealed to this court.

After appeal, Sotto brought a civil action in the Court of First Instance of Cebu for the sum of P40,000 based on the same acts for the value of the identical property, that forms the basis of the criminal prosecution. At the time of bringing the civil action a writ of attachment was granted, and the motion to discharge attachment has been denied. In this proceeding, we are asked to pass upon the validity of the attachment, and if it is found to be improperly or irregularly issued, to discharge the attachment.

Articles 112 and 114 of the Spanish Law of Criminal Procedure are applicable to this case. (Secs. 1 and 107, General Orders, No. 58; Almeida Chantangco and Lete vs. Abaroa, 218 U. S., 476; 40 Phil., 1056; Alba vs. Acuña and Frial, 53 Phil., 380.) They read as follows:

"Art. 112. When the criminal action is instituted, the civil action shall be deemed included therein, unless the party injured or prejudiced waives it, or expressly reserves it to be brought after the criminal action has been decided, should it lie.

"If only the civil action arising from one of those crimes which cannot be prosecuted save upon private complaint is instituted, the criminal action shall forthwith be extinguished."

"Art. 114. Upon the institution of criminal proceedings for a felony or misdemeanor, no civil suit on the same act shall be prosecuted; and should it have been instituted, it shall be suspended, pending final judgment in the criminal case.

"It shall not be necessary for the prosecution of the criminal action that the civil suit arising from the same felony or misdemeanor should have been previously instituted."

The civil responsibility of Orbeta to Sotto will be decided in the criminal proceedings. If the conviction is upheld, an indemnity will be awarded. If Orbeta is finally acquitted, no civil responsibility for his alleged crime exists. The Almeida case aforesaid, like this, grew out of a case of arson and holds that the civil liabilities of the accused were settled by the criminal prosecution.

Therefore civil proceedings instituted contrary to the provisions of the Spanish Law of Criminal Procedure above quoted, are without force and effect. An attachment issued in the course of such an improper proceeding must be vacated, as one of the requirements before an order of attachment can issue under section 426 of the Code of Civil Procedure is "that a sufficient cause of action exists".

Writ granted. Costs against respondent Sotto. So ordered.

Malcolm, Villa-Real, Abad Santos, and Imperial, JJ., concur.

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