

**JOSE C. BUCOY, PROVINCIAL SHERIFF OF ZAMBOANGA, PLAINTIFF,
VS. JOHN R. MCFIE, JR., ET AL., DEFENDANTS. JUAN S. ALANO AND
FT. E. HOLMES, APPELLANTS.**

G.R. No. 43850. April 03, 1939

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-43850/>

DIAZ, J.:

The question before us in this appeal of defendants Juan S. Alano and R. E. Holmes may be expressed thus: Do the credits of said defendants have preference over those of their codefendants John R. McFie, Alfonso Marquez and Adam O. Poole?

The lower court decided the question declaring that the credits of John R. McFie, Alfonso Marquez and Adam O. Foole are preferred in the order mentioned; and that the claim of R. E. Holmes being guaranteed by the bond posted by Alfonso Marquez and Adam O. Poole should not be filed here but in a separate action.

The facts to be considered in deciding the question are those appearing in the stipulation presented by the parties concerned in the lower court on February 13, 1935, couched in the following language:

"Come now the plaintiff, Provincial Sheriff of Zamboanga, defendants Alfonso Marquez and Adam O. Poole by their undersigned attorney, and the other defendants R. E. Holmes and Juan S. Alano by their undersigned attorney, and hereby submit this case to this Honorable Court for decision upon the following stipulation of facts:

"1. That defendant Alfonso Marquez obtained judgment in civil case No. 2159 against J. J. Loewinsohn, which judgment was the subject matter of a writ of execution issued fcy this court on October 22, 1934; that on the same date, the plaintiff sheriff, at the instance of Alfonso Marquez, garnished the amount of P386.20 of certain funds in the possession of Jos. S. Johnston, as a result of the decision rendered in civil case No. 2066, and affirmed by the Supreme Court, entitled J. J. Loewinsohn, plaintiff, vs. Jos. S. Johnston, defendant.

"2. That the record of said civil case No. 2066 was received, on appeal, in the clerk's office of this court on November 13, 1934.

"3. That on October 25, 1934, defendant Adam O. Poole obtained a preliminary attachment in civil case No. 3211 of the justice of the peace court of Zamboanga, where Adam O. Poole is plaintiff and J. J. Loewinsohn, defendant, and by virtue of said preliminary attachment, the plaintiff sheriff, on the same day, garnished the funds still remaining in the possession of Jos. J. Johnston, after deducting the amount of the garnishment of the defendant Alfonso Marquez.

"4. That later, defendant Adam O. Poole obtained judgment against J. J. Loewinsohn in said civil case No. 3211 of the justice of the peace court of Zamboanga, which decision is now final as neither party appealed, and which involves the amount of P69.85, with legal interest from October 25, 1934, plus P17.22 as costs.

"5. That on October 17, 1934, defendant John R. McFie registered his lien by right of retention of fees owed him by J. J. Loewinsohn for P100 in the aforementioned civil case No. 2066 of the Court of First Instance, entitled J. J. Loewinsohn vs. Jos. S. Johnston, the amount of which judgment, as already stated, was garnished

by the plaintiff sheriff by virtue of the claims of Alfonso Marquez and Adam O. Poole.

"6. That on October 26, 1934, in accordance with section 37 of the Code of Civil Procedure, the defendant Juan S. Alano registered in said civil case No. 2066 his right of retention for attorney's fees due him by J. J. Loewinsohn in the amount of P250 for services rendered in said case before the Court of First Instance and the Supreme Court, which services are still unpaid.

"7. That on November 21, 1934, defendant R. E. Holmes filed two third-party claims on the garnishments made by the plaintiff sheriff in civil case No. 2152 of this Court of First Instance in favor of the defendant Alfonso Marques and in civil case No. 3211 of the justice of the peace court of Zamboanga in favor of Adam O. Poole, on the strength of a document entitled 'Acknowledgment of Indebtedness' executed by J. J. Loewinsohn on March 22, 1933, which forms part of R. E. Holmes' answer.

"8. That in view of said two third-party claims filed by P. E. Holmes, the plaintiff sheriff required defendants Alfonso Marquez and Adam O. Poole to give bonds in the total amount of P720 if they desired to retain the garnishment made by the plaintiff sheriff on October 22, 1934, and on December 3, 1934, said defendants Alfonso Marquez and Adam O. Poole filed the bonds required by the plaintiff sheriff, in accordance with Act No. 4108.

"9. That on March 22, 1933, J. J. Loewinsohn executed a notarial document in favor of defendant R. E. Holmes, entitled 'Acknowledgment of Indebtedness' whereby Loewinsohn, in consideration of the sum P2,300, ceded to Holmes all his rights and interest in the decision in civil case No. 2066, and on which rights are based the third-party claims filed by R. E. Holmes with the plaintiff sheriff on November 21, 1934, the document forming part of defendant R. E. Holmes' answer in this case, and that said claims are still unpaid."

From the foregoing stipulation it will readily be seen that all the defendants wanted to collect their respective credits from the sum of P656.27 now in the possession of the plaintiff sheriff, obtained from Jos S. Johnston, the losing party in civil case No. 2066 of the Court of First Instance of Zamboanga and G. R. No. 41419 (60 Phil., 1052) of the Supreme Court, entitled J. J. Loewinsohn vs. Jos. S. Johnston, by virtue of a writ of execution issued at the instance of J. J. Loewinsohn, the winning party in said case. This was so because all were, although independently of each other, creditors of the latter. It is also evident from said stipulation that the credit of P100 of John R. McFie is for attorney's fees for having represented Loewinsohn in said case No. 2066, a credit which he caused to be entered upon the records in compliance with the formalities of the law, on October 17, 1934, several days before Alfonso Marquez obtained the garnishment on the amount of P386.20 out of the sum of P656.27 which the plaintiff sheriff actually has in his possession. The garnishment obtained by Alfonso Marquez took place on October 22, 1934.

The garnishment which Adam O. Poole, in turn, obtained from the justice of the peace court of Zamboanga in civil case No. 3211 is subsequent to that of Alfonso Marquez, since the former obtained his garnishment only on October 25, 1934, or three days after the latter obtained his. The claim of Adam O. Poole against Loewinsohn, for the payment of which it was necessary to obtain a garnishment in the aforementioned case, is for the sum of P69.85 with legal interest thereon from October 25, 1934, and P17.22 for costs.

There is no doubt that the credit of John R. McFie enjoys preference over all the others under section 37 of Act No. 190. A lawyer, according to said section, has the right of retention upon all judgments and decrees for the payment of money, and executions issued in pursuance of such judgments and decrees which he has secured in a litigation, in favor of his client, from the time his said right has been entered upon the records, enabling him to enforce his lien on all judgments, orders and writs of execution that may be rendered in favor of his client.

Immediately after McFie's credit comes that of Alfonso Marquez which should be paid, and next is that of Adam O. Poole, because credits of the nature of these three should follow the order of the dates of the judgments

wherein they are recognized. (Art. 1924, Civil Code.)

The claim of Juan S. Alano amounting to P250 for attorney's fees for his defense of Loewinsohn in case No. 2066 being subsequent to the credits of his codefendants McFie, Marquez and Poole should be paid after the claims of his codefendants have been satisfied, inasmuch as his right of retention was not entered upon the records until October 26, 1934, and, as already stated, section 37 of Act No. 190 provides that a lawyer's right of retention shall take effect only from the time such lien has been recorded in the corresponding case.

With respect to the claim of R. E. Holmes, we agree with the lower court that a bond having been furnished by Adam O. Poole and Alfonso Marquez to guarantee its payment, it should be presented in another case within the corresponding prescriptive period.

For all the foregoing, finding as we do the appealed judgment in accordance with law, we affirm it in all its parts, with the costs against the appellants. So ordered.

Avancena, C. J., Villa-Real, Imperial, Laurel, Concepcion and Moran, 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.