

**THE ASIATIC PETROLEUM (P. I.), LTD., PLAINTIFF AND APPELLANT,
VS. CO QUICO, DEFENDANT AND APPELLEE.***G.R. No. 46529. January 23, 1940*

Ponente: LAUREL, J.

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On October 13, 1927, the defendant-appellee entered into a contract of agency with the appellant corporation (Exhibit A-I) by virtue of which the former became sales agent on commission of the latter. It was stipulated that the defendant-appellee was to sell the gasoline, kerosene and other petroleum products of the plaintiff corporation in cash and subject to other conditions, among which was that the defendant-appellee was to render proper accounting. On the date of the filing of the complaint, May 24, 1933, the defendant-appellee was in default in the sum of K,123.80, after deducting the cash bond filed by the appellee, and his payments, allowances and commissions. The defendant-appellee, without rendering account to the plaintiff-appellant, left for China. The appellant in its complaint sought to recover two items: one for F2,123.80 and the other for P109.67, and prayed for preliminary attachment of appellee's properties. On May 26, 1933, the trial court issued a preliminary attachment upon defendant's deposit with the Mercantile Bank of China. According to the Bank Commissioner, in his capacity as receiver of the bank, defendant at the time had deposits with the Mercantile Bank of China in the amount of P3,421.61 and in Foreign Currency Savings Account the amount of Amoy \$3,403.16. However, on August 21, 1933, the Bank Commissioner revised his reply, stating that the defendant had transferred said deposits to his son, Co Chio. By order of the trial court dated June 6, 1933, the defendant was ordered summoned by publication because his whereabouts was unknown. The order further provided that the clerk of court shall mail a copy of the order and of the complaint to the defendant at his last known address, Tarlac, Tarlac.

Defendant defaulted and the court, on November 17, 1933, rendered its decision, sentencing the defendant to pay to the plaintiffs the total amount prayed for in the complaint. A writ of execution was issued by the court and levy was made on the deposits of the defendant-appellee with the Mercantile Bank of China. In view, however, of the transfer made by the appellee to his son, Co Chio, his deposits with the said Bank, the execution was returned unsatisfied and an alias writ of execution was issued by the court addressed to the Provincial Sheriff of Tarlac, where appellee was supposed to have some property. But according to the return of the provincial sheriff, the defendant had no property subject to execution. The appellant applied to the court for another alias writ of execution which was issued and levied on said deposits. The Mercantile Bank of China replied that they had made a notation of said levy and payments would be made in due course, making reference to their letters to the appellant respectively dated, May 27 and August 21, 1933. Co Chio, the transferee of said deposit made written statement (Exhibit H) which stated, among other things, that his father, Co Quico, the appellee herein was the real owner of said deposits.

On August 20, 1938, special appearance was entered by counsel for the appellee solely for the purpose of having all proceedings had in this case declared null and void. On the same date, his counsel filed a motion to that effect, alleging as grounds therefor, first, that the court had not acquired jurisdiction over the person of the defendant;

and, second, that the defendant had been deprived of his property without due process of law. After memoranda had been presented by both parties, the lower court issued the order now appealed from, the dispositive part of which reads:

"In view of the foregoing considerations, the court hereby sets aside and declares null and void all proceedings heretofore had in this case, except the filing of the complaint. This case is therefore reopened, and the defendant shall at once be summoned in accordance with law."

The trial court in the foregoing order avoided its order of November 17, 1933 and set aside all the proceedings theretofore had, on the ground that the action was strictly one in personam against a nonresident who was summoned by publication and did not appear. The question presented is one of jurisdiction with reference to the proceedings that resulted in the issuance of the lower court's judgment of November 17, 1933.

It should be observed that the complaint tiled in this case sought for a writ of attachment on the sworn allegation that the defendant had disposed of part of his property and was disposing of the rest with intent to defraud his creditors; that in view thereof, the lower court, on May 26, 1933, issued the corresponding writ of attachment which was duly served on the Mercantile Bank of China then in the process of liquidation, which Bank acknowledged that the defendant had a deposit in current account in the amount of P3,421.61 and in foreign currency savings account the amount of \$3,403.16 in Amoy currency; and that the Bank subsequently noted the garnishment of the defendant's deposit covered by receiver's certificate of proof of claim No. 207 in the amounts thus indicated. It is evident, then, that the defendant-appellee in this case although he was outside of the Philippines at the time this action was instituted against him, possessed property found and located here and that such property was within the reach of our courts. It is well to emphasize in this connection the general proposition that all property within a State is subject to the jurisdiction of its courts, and they have the right to adjudicate title thereto, to enforce liens thereupon, and to subject it to the payment of the debts of its owners, whether resident or not. The sovereign power may lay hands on any and all persons or property within its borders, and where, as in our case, the functions of government are departmentalized, what is within the reach of executive and legislative action, must also be within the reach of the judiciary. The modern tendency in this regard is to make no distinction between mobility and immobility of property established by the time-honored principles of *lex rei sitae* and *mobilia personam sequuntur*. We find it neither necessary nor fruitful to indulge in any characterization as to whether the present proceedings should be described as those in rem or quasi in rem. Such characterization is of no legal significance in this connection. The situs of the res is clear no less than the garnishment of the res at the commencement of the action, and reasonable notice and opportunity to be heard presumptively had by virtue of the publication of the summons in accordance with the provisions of section 398 of the Code of Civil Procedure.

The order of September 12, 1938, of the Court of First Instance of Manila is accordingly reversed, with costs against the plaintiff-appellee, Co Quico. So ordered.

Avanceña, C.J., Villa-Real, Imperial, and Diaz, JJ., concur.

Order reversed.

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