

ANDRES PUIG ET AL., PLAINTIFFS AND APPELLANTS, VS. ANTONINO MERCADO, DEPUTY SHERIFF, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 4802. March 13, 1909*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4802/>**TORRES, J.:**

On the 20th of July, 1907, the representative of the plaintiff set forth in writing: That by virtue of the execution of the judgment of the justice of the peace of Mabalacat entered in the suit between Dolores Lumbera and Simona Dizon for the recovery of possession and for loss and damages, the sheriff, the defendant herein, attached as property of the defendant debtor one house and lot, one steam engine, and 20 carabaos, and advertised the sale thereof for the 17th day of the said month of July, at 10 a. m.; that on a certain day in the said month (the date not being stated) the so-called heirs of the late Mariano de la Cruz appeared as third parties claiming the ownership of the property, and on the 15th, the plaintiff administrators also claimed in legal form the engine and the carabaos levied upon. The two claims were admitted by the said sheriff without a bond being given by the attaching creditor before the 17th, the day fixed for the sale, and it was only on the 18th, the following day, that a bond was given in the sum of P2,000; that the said sheriff did not take into account that the bond given did not state to which of the claims it referred, nor the insufficiency of the same for any of the claims, as well as of the fact that it was given out of time; that the plaintiffs called his attention in due course to all of these facts, but notwithstanding this notice he continues to retain the attached property and has again advertised the sale of the same for the 27th of said month; that if the sale of the property claimed by the plaintiffs is carried out without a sufficient bond being given with reference to their claim as provided by section 451 of Act No. 190, the interests of the intestate estates administered by the plaintiffs will be greatly prejudiced, because the steam engine is worth more than P3,500 and the 20 carabaos at the rate of P150 each, the current price per head, make up the sum of P3,000, while the undetermined bond accepted by the sheriff amounts to P2,000 only; and that if it is not possible to issue a writ of mandamus before the 27th of said month, or in case the sheriff does not obey it, the only legal remedy to avoid the continuation of such acts and the consequent prejudice as shown, is to enjoin every act tending to effect the said sale during the pendency of these proceedings, and a preliminary injunction should be issued against the sheriff and the defendants or their agents, upon a bond being given as offered by the representative of the plaintiffs. To this end he requests that a preliminary injunction be issued to the said sheriff ordering him to release the said property on account of the lack of sufficient bond, and to expressly consider the claim of the plaintiffs; and that, in addition, a preliminary injunction be issued against the sheriff himself, the defendant, his agents or assistants, as alleged in paragraphs 7 and 8 of his complaint, together with any other equitable relief.

On the 14th of November, 1907, upon a bond for P4,000 being given, the court granted a preliminary injunction and the writ was issued on the 16th of the said month.

On the 20th of the said month of November, the defendants demurred to the complaint alleging that the plaintiffs were without capacity to sue.

In answer to the complaint the defendants offered a general and special denial of each and every allegation

contained in the complaint, and as a special defense alleged that the defendant had furnished bond in the sum of P4,000 in order to proceed with the sale of the attached property of Simona Dizon and to answer for any loss or damage caused to third persons, and that the facts alleged in the complaint do not constitute a cause of action in favor of the plaintiffs as against the defendants.

As a counterclaim the defendant, Dolores Lumbera, alleged that the suspension of the sale of the steam engine would cause her a loss Of P2 per day, and that of the carabaos P10 per day, for which reason the defendants prayed the court to hold trial of the case as soon as possible, and that judgment be entered in due course absolving the defendants of the complaint; that the preliminary injunction be dissolved, and that the defendant Dolores Lumbera be allowed an indemnity of P12 per day for the losses suffered by her, to be paid by the plaintiffs with costs.

On the 18th of January, 1908, the court below ordered the demurrer offered by the defendants to be set aside for the reason that the defendants had answered the complaint.

On the 24th of March, 1908, the trial judge entered his decision in the case and ordered: That the preliminary injunction be dissolved; that the deputy sheriff proceed to sell the attached property of Simona Dizon, both real and personal, at 10 a. m. on April 28, 1908; that the said property, or so much thereof as should be necessary, be sold in order to pay the amount of the execution costs and expenses together with interest on the debt until the date when the said preliminary injunction was issued; and that the plaintiffs pay the interest on the amount due from the date of the preliminary injunction until the sale of the attached property is made together with the costs. A writ of execution was issued for the said amounts.

The representative of the plaintiffs, upon being informed of the foregoing decision, excepted thereto, and on the 26th of March presented a motion setting forth that the trial of the case, which had been set for the 20th, was postponed to the 27th at his request (of the attorney for the plaintiffs), and that for said reason the plaintiffs failed to appear on the said 20th day, and because the decision was contrary to law.

By an order of the 6th of April, the court below in view of the above motion fixed the date for the hearing of the matter for the 15th of said month. The hearing took place, and on the same day the court below overruled the motion for new trial for reasons which it stated in its decision. From said decision the attorney for the plaintiffs excepted and announced in writing his intention to submit a bill of exceptions in order to appeal to the Supreme Court.

On the 20th of April, the representative of the plaintiffs filed a new motion praying the court below to reconsider several decisions entered in this case, and to modify them in accordance with its merits in order to protect the interest of the plaintiffs. The motion was overruled, the plaintiffs excepted and the bill of exceptions was thereupon submitted, but without the evidence adduced during the course of the proceedings, inasmuch as the documents exhibited and connected with the decision appealed from have not been attached thereto.

Notwithstanding the fact that one of the documents, which, according to the said decision, was exhibited by the defendants, states that the plaintiffs claimed, as third parties, on account of the attachment, yet, it does not appear that an intervention was presented claiming the ownership of the attached property, or preference for collecting the value thereof. What the representative of the plaintiffs has done is to avail himself of the special remedy of mandamus to defend his rights, in accordance with the provisions of Section 222 of the Code of Civil Procedure.

Besides asking in his complaint that a preliminary injunction be issued, he asked that a writ of mandamus be issued to the sheriff ordering him to release the said property on account of the lack of sufficient bond, and to refer expressly to the claim of the plaintiffs. Such is the principal petition filed by the representative of the

plaintiffs, which was to be the subject of decision in this matter.

It is alleged by the said representative that the steam engine and the 20 carabaos which were attached, formed part of the property of the intestate estate administered by the plaintiffs, but said allegation and the simple claim and protest presented to the sheriff are not sufficient to enable the said principal petition for the special remedy to prosper before the courts of justice. It becomes necessary to show and prove the reason or the right upon which they rely as third parties whose prejudice it was intended to avoid.

Although in connection with attachment proceedings, the sheriff, under the Code of Civil Procedure, may use his discretion, and is personally responsible if he fails to listen to a claim based on and in accord with the law thereby causing prejudice to a third person, responsibility which shall be shared by the party who applied for the attachment in case he has given a bond securing the officer who carries out the levy; however, it is indispensable that such third party shall exercise his right in accordance with the law, and fulfill the formalities and conditions prescribed by it in order that he may be granted the protection which he justly deserves. (Secs. 442 and 451, Code of Civil Procedure.)

The representative of the plaintiffs has preferred to exercise the special remedy of mandamus, alleging that if the sale of the said property was carried out without a sufficient bond, great prejudice would be inflicted to the interests of the said intestate successors; therefore, it was incumbent upon him to establish the basis for his application in order to ask for such remedy, as well as the right of the plaintiffs to the property levied upon. This he has not done.

In the judgment appealed from the court below says: "In view of the fact that the plaintiffs and their attorney have offered no satisfactory reason for the suspension of the proceedings and have not proven the complaint," and by a subsequent ruling of the 6th of April it adds that the evidence adduced by the representative of the plaintiffs in support of the motion for the reconsideration of the matter has not convinced the court that the same was well founded, but, for the purpose of protecting the interests of the parties and to administer justice, it appointed the 15th of April for the new hearing of the matter; but since the petitioner had not alleged any reason in support of his motion, the same was denied with costs. From all of the foregoing it has been demonstrated that the plaintiffs have not alleged any reason nor established any right by which they might invoke the said special remedy, because it has not been proved that they were the owners of the property levied upon, nor that they had a preferential right to the value thereof.

In order that the said remedy may lie, and that the court below may issue a decisive order against the said defendant sheriff and other defendants, it is necessary to prove that they have failed to perform a function which the law specially prescribes as a duty attached to the office of sheriff, and that the defendants unlawfully prevented the plaintiffs from the use and enjoyment of a right that belongs to them. It does not appear in, the case that the representative of the plaintiffs has complied with this duty, as stated in the decision appealed from and in the previous decisions entered in the case.

It should be noted that as the evidence has not been submitted with the case it is not proper to enter the question as to whether or not the decision appealed from is supported by the result thereof. The judgment as rendered must be accepted as to the facts.

As to the right to ask for a preliminary injunction, or a writ of prohibition, it must be known that the said remedy may be sought by any person who, by reason of an attachment, has presented or interposed a plea for intervention; and that when the claim for intervention has been finally denied, it is proper to forthwith grant the dissolution or release of the said preliminary injunction, inasmuch as said remedy can not be sustained after the intervention, which is the principal complaint upon which the said injunction depends, has been overruled and dismissed.

With respect to the provision of the judgment appealed from that the deputy sheriff shall proceed to sell the real and personal property at the hour and day therein appointed, in order to pay the amount of the execution together with the costs and expenses and the legal interest until the day the preliminary injunction was issued, such a decision should be rendered by the judge who ordered the attachment and sale of the said property, for the reason that, after the preliminary injunction was vacated and upon release of the prohibition that prevented the sheriff from carrying out the execution ordered by the justice of the peace of Mabalacat, the authority and jurisdiction of the latter again became effective, and the deputy sheriff was thereby enabled to discharge his duties. After the preliminary injunction was dissolved, the judge of first instance, who issued it on account of a petition of mandamus, is not permitted to interfere in the enforcement of a judgment of the justice of the peace.

For the reasons stated above, it is proper that the plaintiffs be held liable for the interest on the amount owed by Simona Dizon from the time when the sale was withheld by virtue of the said injunction until the property levied upon is sold, and for the costs of these proceedings.

Therefore, in view of the considerations set forth it is held: That the complaint interposed by the representative of the administrators of the intestate estates of Miguel Puig and Andres Safont must be dismissed, and that the mandamus asked for must be denied. The first issue of the judgment appealed from vacating the preliminary injunction is hereby affirmed. It is further held, that the plaintiffs are responsible for legal interest on the amount of the debt claimed from Simona Dizon since the suspension of the execution of the judgment entered by the justice of the peace of Mabalacat with the property levied upon until the sale thereof by the deputy sheriff, and for said reason they must pay the same with the costs of both instances. The second issue of the judgment appealed from is set aside as to the sale of the said property at the hour and day appointed therein. The judgment appealed from is thus affirmed as far as it agrees with this decision.

Arellano, C. J., Mapa, Johnson, Carson, and Willard, 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.