

**PERFECTO M. ALEJO, PLAINTIFF, VS. PABLO S. SISON, DEFENDANT.
BENEDICTO JAVIER, ASSIGNEE OF PABLO S. SISON, APPELLEE;
VISAYAN SURETY AND INSURANCE CORPORATION, BONDSMAN AND
APPEL...**

G.R. No. 48489. January 30, 1943

Ponente: OZAETA, J.

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OZAETA, J.:

In civil case No. 53926 of the Court of First Instance of Manila, entitled "Perfecto M. Alejo vs. Pablo S. Sison," for a sum of money, the plaintiff procured a writ of preliminary attachment which was levied upon the personalities of the defendant. The herein appellant Visayan Surety and Insurance Corporation executed a bond of P1,000 "under the condition that it and the plaintiff will pay all costs which may be adjudged to the defendant Pablo S. Sison, and all damages which the said defendant may sustain by reason of the attachment if the same shall finally be adjudged to have been wrongful or without sufficient cause." After the trial of the case on the merits, Judge Sixto de la Costa, on November 27, 1940, dismissed the complaint with costs against the plaintiff. Thereafter, and on March 24, 1941, the attorneys for the defendant presented a bill of costs aggregating P934.04, the largest items of which were the following:

Clerk's fees in re guarding of defendant's chattels (Exhs. "21" to "21-h")

P813.00

Ditto in re storage of defendant's automobile (Exh. "23").....

91.60

Copy of said bill of costs Was served on the attorney for the plaintiff on the same date, March 24, 1941. A week later, that is to say, on March 31, 1941, the defendant petitioned the court for the issuance of a writ of execution against the plaintiff "in accordance with the judgment rendered by this court on November 27, 1940, and the bill of costs filed." That petition was granted by Judge de la Costa "como se pide." On April 8, 1941, the clerk of court sent a notice to the attorneys for both parties setting the bill of costs for hearing before him on April 15, 1941, at 9:30 a.m. It does not appear that either the plaintiff or his attorney objected then or at any other time to any of the items of the bill of costs presented by the defendant. Evidently the clerk of court taxed the costs as claimed by the defendant, from which taxation of costs the plaintiff did not appeal to the court; for a writ of execution was thereafter issued against the plaintiff to enforce the collection of the costs. That writ, however, was subsequently returned unsatisfied by the sheriff, who reported that the plaintiff was insolvent.

Thereafter, and on May 5, 1941, the herein appellee Benedicto Javier, as assignee of the defendant, presented a

motion in court for the issuance of a writ of execution against the appellant Visayan Surety and Insurance Corporation, as plaintiff's bondsman, to make good its bond above mentioned. That motion was opposed by the Visayan Surety and Insurance Corporation, which contested the legality of the two items of costs hereinbefore set forth. Judge Jose R. Carlos, in his order dated May 21, 1941, overruled the opposition and granted Benedicto Javier's motion for the issuance of a writ of execution against the herein appellant. Hence this appeal.

The appellant insists that the trial court should have sustained appellant's objection to the inclusion in the bill of costs of the expenses defrayed by the defendant for guarding his chattels and for the storage of his automobile in connection with the maintenance of the attachment thereon.

Section 8 of Rule 131 of the Rules of Court provides as follows:

"Sec. 8.—Costs, how taxed.—In inferior courts, the costs shall be taxed by the justice of the peace or municipal judge and included in the judgment. In superior courts, costs shall be taxed by the clerk on five days' written notice given by the prevailing party to the adverse party. With this notice shall be served a statement of the items of costs claimed by the prevailing party, verified by his oath or that of his attorney. Objections to the taxation shall be made in writing, specifying the items objected to. Either party may appeal to the court from the clerk's taxation. The costs shall be inserted in the judgment if taxed before its entry, and payment thereof shall be enforced by execution."

The plaintiff, in whose shoes the appellant now stands, aside from the reglementary five days' notice given him by the defendant, was given by the clerk of court another notice of a hearing on the taxation of the costs, but did not avail himself of the opportunity to present any objection thereto. Neither did he appeal to the court from the clerk's taxation.

Altho section 8 of Rule 131 above quoted does not fix the time within which either party may appeal to the court from the clerk's taxation, we cannot regard appellant's objection to appellee's motion for the issuance of a writ of execution- against appellant as an appeal, and much less as a timely appeal, from the clerk's taxation to the court. The appellant surety or its principal, the plaintiff, should have presented the appeal expressly, in due form, and within a reasonable time. We fix five days from the date of notice of the clerk's taxation as a reasonable time within which to present such appeal.

Since the clerk's taxation of costs had become final, it was no longer reviewable by the court when appellant presented its objection thereto in connection with its opposition to appellee's motion for the issuance of a writ of execution.

The order appealed from is affirmed, without any finding as to costs in this instance wherein appellee entered no appearance. So ordered.

Yulo, C. J., Moran, Paras, and Bocobo, JJ., concur.

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