

3 Phil. 276

[ G.R. No. 1723. January 30, 1904 ]

**FRANCISCO GUTIERREZ REPIDE, PETITIONER, VS. JAMES J. PETERSON, AS SHERIFF OF THE CITY OF MANILA, RESPONDENT.**

**D E C I S I O N**

**WILLARD, J.:**

That the Court of First Instance had jurisdiction of the parties and the subject-matter of the suit between the Strongs and the petitioner is not denied. That this action belongs to the class of actions in which the Court of First Instance has jurisdiction to appoint a receiver can not be denied. Nor can it be denied that in an action in which the court has the power to appoint a receiver it may make an order requiring parties to the action to deliver to the receiver the property in litigation. If a Court of First Instance has power to issue an order it has jurisdiction to punish a person for a refusal to comply with such order.

Having the power and jurisdiction in this class of cases to issue an order requiring a defendant to deliver the property to the receiver and to proceed against the defendant for a failure to comply with such order, any mistakes which the court may have made in exercising that power in this particular case must be corrected on an appeal. The allegations in the petition for the writ of *habeas corpus* to the effect that the receiver was appointed Without notice to the defendant and that no bond or no sufficient bond was required; that in the proceedings for contempt no complaint had been filed when the first order was made, and that the court wrongfully decided upon the evidence that the defendant had in his possession the stock in question, all

fall within this rule. If these were errors which the court below committed during the progress of the case, nevertheless they did not make its order committing the defendant an absolute nullity. (Code of Civil Procedure, sec. 528.)

It is claimed by the petitioner that the attachment of 800 other shares of the same stock belonging to the defendant had the effect to render absolutely void the order in question. The attachment seems to have been granted under sections 412, third, and 424. We do not see how an attachment under that section on the ground that the defendant has concealed the property in litigation can absolutely deprive the court of the power through its receiver to take possession of the property itself, if it should be afterwards found, or to continue proceedings then pending looking to a discovery of its whereabouts. There is nothing in the Code of Civil Procedure which declares that the attachment shall have such effect. The contention of the petitioner would lead to the result that if the day after the attachment had been levied the defendant had exhibited in court the shares in litigation the court would have had no power to order their delivery to the receiver, and apparently to the further result that no such order could have been inserted in the final judgment, the attachment which the law allows in this class of cases thus having the effect of changing the nature of the case itself from one for the recovery of specific personal property to one for the recovery of its value.

The fact that the plaintiff's claim might in such case be doubly secured could not destroy the jurisdiction in regard to the receiver which the court had acquired prior to the attachment.

The remedy of the petitioner for the correction of the errors he alleges have been committed in this case is by appeal and not by *habeas corpus*.

The prisoner must be remanded to the custody of the sheriff.

*Arellano, C. J., Torres, Cooper, Mapa, McDonough, and Johnson, JJ., concur.*

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