

of way, and without the consent and knowledge of the plaintiff, and against her express objection, unlawfully took possession of portions of the three parcels of land described above, and caused an irrigation canal to be constructed on the portion of the three parcels of land on or about the month of Feb. 1951 the aggregate area being 24,179 square meters to the damage and prejudice of the plaintiff." (Underscoring supplied.)

The emphasis thus placed upon the allegation that the acts complained of were performed by said defendant "as Director of the Bureau of Public Works," clearly shows that the designation of his office was included in the title of the case to indicate that he was being sued in his official capacity. This conclusion is bolstered up by the fact that, among other things, plaintiff prays, in the complaint, for a judgment

"Ordering the defendant to return or caused to be returned the possession of the portions of land unlawfully occupied and appropriated in the aggregate area of 24,179 square meters and to return the land to its former condition under the expense of the defendant." (Paragraph a, of the complaint).

We take judicial notice of the fact that the irrigation projects and systems referred to in the complaint—of which the defendant Isaias Fernando, according to the same pleading, is "in charge" and for which he is "responsible" as Director of the Bureau of Public Works—are established and operated with public funds, which, pursuant to the Constitution, must be appropriated by law. Irrespective of the manner in which construction may have been undertaken by the Bureau of Public Works, the system or canal is, therefore, a property of the Government. Consequently, in praying that possession of the portions of land occupied by the irrigation canal involved in the present case be returned to plaintiff herein, and that said land be restored to its former condition, plaintiff seeks to divest the Government of its possession of said irrigation canal, and, what is worse, to cause said property of the Government to be removed or destroyed. As held in *Sy Quia vs. Almada* (47 O.G. 670-671), the Government is, accordingly, "the real party in interest as defendant" in the case at bar. In other words, the same par-takes of the nature of a suit against the state and may not be maintained without its consent.

Hence, I am constrained to dissent.

I concur in the above dissent. — *Bengzon, J.*

### XVIII

*Juan Planas and Sofia Verdon, Petitioners, vs. Madrigal & Co., et als, Respondents, G. R. No. L-6570, April 12, 1954, Bautista Angelo, J.:*

**CIVIL PROCEDURE; EXECUTION OF JUDGMENT; DUTY OF THE SHERIFF.** — The duty of the sheriff in connection with the execution and satisfaction of judgment of the court is governed by Rule 39 of the Rules of Court. With regard to the proceedings to be followed where the property levied in execution is claimed by a third person, section 15 provides that if such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making levy, the officer shall not be bound to keep the property unless the judgment creditor, on demand, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. If the third claim is sufficient, the sheriff, upon receiving it, is not bound to proceed with the levy of the property, unless he is given by the judgment cre-

ditor an indemnity bond against the claim (*Mangaogang v. The Provincial Sheriff, L-4869, May 26, 1952*). Of course, the sheriff may proceed with the levy even without the indemnity bond, but in such case he will answer for any damages with his own personal funds. (*Waite v. Peterson, et al., 8 Phil. 449; Alzua et al. v. Johnson, 21 Phil. 308; Consulta No. 341 de los abogados de Smith, Bell & Co., 48 Phil. 565.*) And the rule also provides that nothing therein contained shall prevent a third person from vindicating his claim to the property by any proper action (Section 15, Rule 39).

*Jeremias T. Sebastian* for petitioners.

*Bausa & Ampil* for respondents.

### DECISION

**BAUTISTA ANGELO, J.:**

This is a petition for certiorari seeking to set aside certain orders of respondent Judge with the view to reviving or giving course to the third party claims filed by petitioners with the Provincial Sheriff of Rizal claiming to be the owners of the houses levied in execution and to excluding them from the list of individuals who were ordered to vacate the land of Madrigal & Co. Inc., issued in Civil Case No. 954 of the Court of First Instance of Rizal.

This petition stems from a case of forcible entry and detainer instituted by Madrigal & Co. Inc., against Concepcion L. Planas and Iluminado L. Planas in the Court of First Instance of Rizal (Civil Case No. 954), which culminated in a judgment in favor of plaintiff and against the defendants, whereby the latter were ordered to vacate the property in litigation and to pay to the former the corresponding rentals for their occupancy of the property until it is vacated. This judgment was affirmed by the Court of Appeals and became final and executory.

On November 28, 1952, upon petition of plaintiff, a writ of execution was issued by the court and was given course by the clerk of court by virtue of which the defendants were given 15 days within which to vacate the land. Defendants having failed to do so, plaintiff filed a motion for the issuance of a special order of demolition of the buildings constructed thereon.

On December 16, 1952, Juan Planas filed an action in the same court claiming to be the owner of two of the buildings, plus two other adjacent buildings marked as annexes, contemplated to be demolished and praying for the issuance of a writ of preliminary injunction. The writ prayed for was denied. Instead, the court granted the motion of plaintiff for the demolition of the buildings belonging to the defendants.

On January 23, 1953, the provincial sheriff commenced the demolition of the buildings, whereupon Juan Planas filed on January 28, 1953 with said sheriff a third party claim alleging to be the owner of the four buildings which were ordered to be demolished as belonging to defendants, and on the same date, January 28, 1953, Sofia Verdon filed likewise a third party claim alleging to be the owner of the personal property found in said buildings. At the same time, Juan Planas wrote to the sheriff requesting him to stop the demolition of the buildings and to require the judgment creditor to file an indemnity bond as required by the rules. This request was transmitted by the sheriff to counsel of the plaintiff requesting appropriate action, but instead of heeding the request counsel filed an urgent motion to quash the third party claims filed by Juan Planas and Sofia Verdon. A timely objection was interposed to this motion by the third party claimants.

On February 5, 1953, the court granted the motion to quash and discarded the third party claims as well as the notice given

to the sheriff requiring the plaintiff to post an indemnity bond. The claimants moved for the reconsideration of this order but the same was denied.

On February 9, 1953, to follow up his claim in line with his interest, Juan Planas filed another third party claim with the sheriff requesting the latter to turn over to him all the materials that were dismantled and brought down from the houses that had been demolished, alleging to be the owner thereof, and to require the judgment creditor to put up the necessary indemnity bond for his protection. The sheriff failed to act on this third party claim. Instead, in the afternoon of February 10, 1953, Juan Planas received a copy of an urgent motion to quash said second third party claim filed by counsel for the plaintiff. Juan Planas moved for postponement of the hearing of this motion but his motion was ignored, and on February 11, 1953, the court granted the urgent motion and discarded the second third party claim of Juan Planas.

On February 10, 1953, Juan Planas received a copy of an order of the court issued of February 2, 1953 which directs that certain individuals, including Juan Planas, vacate the land of the plaintiff pursuant to the judgment of the court. On February 17, 1953, these individuals, including Juan Planas, filed a joint petition for the reconsideration of the order of February 2, 1953 but this joint petition was denied. Hence, this petition for certiorari seeking to set aside the orders above adverted to.

The question to be determined is whether the respondent Judge acted with grave abuse of discretion when he ordered the quashing and discarding of the first and second third party claims interposed by petitioners on January 28, 1953, and February 9, 1953, and in ordering petitioner Juan Planas to vacate the land of the plaintiff not being a party to the case of forcible entry and detainer instituted by Madrigal & Co. Inc., against Concepcion L. Planas and Iluminado L. Planas.

The duty of the sheriff in connection with the execution and satisfaction of a judgment of the court is governed by Rule 39 of the Rules of Court. With regard to the proceedings to be followed where the property levied in execution is claimed by a third person, section 15 provides that if such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy, the officer shall not be bound to keep the property unless the judgment creditor, on demand, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. If the third party claim is sufficient, the sheriff, upon receiving it, is not bound to proceed with the levy of the property, unless he is given by the judgment creditor an indemnity bond against the claim (*Mangaang v. The Provincial Sheriff, L4869, May 26, 1952*). Of course, the sheriff may proceed with the levy even without the indemnity bond, but in such case he will answer for any damages with his own personal funds. (*Waite v. Peterson, et al., 8 Phil. 449; Alzua, et al. v. Johnson, 21 Phil. 308; Consulta No. 341 de los abogados de Smith, Bell & Co., 48 Phil. 565*.) And the rule also provides that nothing therein contained shall prevent a third person from vindicating his claim to the property by any proper action (Section 15, Rule 39).

In the present case, the provincial sheriff departed from the regular procedure prescribed by the rules. He chose to proceed with the levy even without the indemnity bond in view of the urgent motion to quash filed by the judgment creditor in the main case. It should be remembered that the court, after proper hearing, wherein the parties were allowed to submit documentary evidence, found the third party claims to be without merit and ordered that they be discarded and quashed. Indeed, the court found that Juan Planas, the third party claimant, is the son of defendants Concepcion L. Planas and Iluminado L. Planas, and a stockholder

of a firm of which Concepcion L. Planas was the principal stockholder. It also found that since the filing of the ejectment case against the spouses Planas up to December 29, 1952, the four houses claimed by Juan Planas were registered in the name of his mother, Concepcion L. Planas, in the assessment rolls of Pasay City, and that it was only on said date that said assessments were transferred to Juan Planas. On the other hand, the answer submitted by spouses Planas in the ejectment case contains a clear averment that the four houses now in dispute were contradicted and were the property of said spouses. Likewise, the letter of Atty. Arcadio Ejercito, counsel of Concepcion L. Planas, sent to the provincial sheriff in connection with the demolition of the four buildings in question, contains an averment which indicates that said buildings belonged to said defendant. This circumstantial evidence must have engendered in the mind of the court the conviction that the claim of ownership put up by Juan Planas at so late an hour is but an eleventh hour attempt to thwart and frustrate the execution of the judgment rendered in the ejectment case.

We hold that the action taken by the respondent Judge on this matter is justified. At any rate, the right of Juan Planas to the property is not completely lost, for the rule reserves to him the right to vindicate his claim in a proper action (Section 15, Rule 39). This he did by bringing an action in court asserting his ownership over the property. This action is still pending and will be decided in due time (Civil Case No. 1961).

Anent the order of respondent Judge dated February 2, 1953 which directs that Jose Isla, Carlos Neri, Jose T. Josue, Juan Planas and the San Miguel Brewery, Inc. vacate the land of plaintiff pursuant to the judgment of the court in the ejectment case, which order is now attacked as illegal because they were not parties to that case, the record shows that, before issuing said order, the court conducted a summary hearing to determine the nature of the possession of the property claimed by Juan Planas and other occupants, and that at that hearing respondent Judge summoned all of them to appear to show cause why they should not be ejected from the premises. And after the hearing was over respondent Judge found that Juan Planas and the other occupants were mere transferees or possessors *pendente lite* of the property in question. Respondent Judge found that if they had any right at all to occupy the property, that right is merely subsidiary to that of defendant Concepcion L. Planas. As such, they are bound by the judgment rendered against the latter in consonance with the doctrine laid down in the cases of *Brodett v. De la Rosa, 44 O. G., No. 3, pp. 874-875, and Gozon v. De la Rosa, 44 O. G., pp. 1227-1228*. Of course, these are questions of fact as to which there may be controversy, but the proper place where this should be threshed out is not in this proceedings, but in an ordinary action. For the present, we are satisfied that the respondent Judge has acted on the matter in the exercise of his sound discretion.

Wherefore, the petition is dismissed, with costs.

*Parás, Pablo, Benzon, Montemayor, Reyes, Jugo, Labrador, and Diokno, J.J., concur.*

*Justice Concepcion concurred in the result.*

#### XIX

*The People of the Philippines, Plaintiff-Appellant, vs. Lee Diet, accused, Rizal Surety and Insurance Company, Bondsman-Appellee, G. R. No. L-5256, November 27, 1953, Bautista Angelo, J.*

CRIMINAL PROCEDURE; BAIL; DISCHARGE OF SURETIES; CASE AT BAR.—R company was the defendant's surety. On the day of the preliminary investigation of the case, the defendant failed to appear. Counsel for the accused appeared and informed the court for the first time that