

character when they are entrusted to a public officer for his official custody (People vs. De la Serna, 40, O.G. [Supp. 12] 159).

2. *IBID; IBID.*—Red Cross, Anti-Tuberculosis, and Boy Scouts funds delivered to an assistant cashier of a provincial treasurer for his custody acquire the attributes of public funds.

Dominador T. Tugade for appellant.

Solicitor General Juan R. Litwag and *Solicitor Felix V. Makasiar* for appellee.

DECISION

REYES, J.:

The accused Leon Aquino was charged in the Court of First Instance of Pangasinan with malversation of public funds for having on or about July 16, 1951, misappropriated public funds amounting to P20,944.27 entrusted to his care in his capacity as municipal treasurer and postmaster of Mabini, Pangasinan, and "ex-officio in-charge of the properties and funds of the National Rice and Corn Corporation (NARIC)." Pleading guilty to the charge, the accused was, in accordance with Article 217, paragraph 4, of the Revised Penal Code and the Indeterminate Sentence Law, sentenced as follows:

- "(a) In accordance with the Indeterminate Sentence Law and Art. 217, par. 4 of the Revised Penal Code, and taking into account his plea of guilty, to suffer a penalty of EIGHT YEARS and ONE DAY of 'Prision mayor' as a minimum and TWELVE YEARS and ONE DAY of 'Reclusion temporal' as a maximum;
- "(b) To suffer the penalty of perpetual special disqualification;
- "(c) To pay a fine of P10,472.13, without subsidiary imprisonment because of the principal penalty imposed;
- "(d) To indemnify the National Rice and Corn Corporation in the amount of P12,656.83;
- "(e) To indemnify the Government of the Republic of the Philippines in the amount of P2,910.44;
- "(f) To indemnify the Bureau of Posts and the Government of the Republic of the Philippines in the further amount of P5,377.00;
- "(g) To pay the costs of this case."

From this sentence the accused has appealed, and his attorney in this instance contends that the lower court should have applied paragraph 3 instead of paragraph 4 of the article mentioned. In support of this contention attention is invited to the fact disclosed in the information that P12,656.83 of the funds malversed belonged to the NARIC, and, on the theory that NARIC funds are not public funds because the NARIC is a corporation separate and distinct from the Government, counsel argues that with respect to that sum the accused cannot be held guilty of malversation of public funds. With that sum excluded, the amount of public funds malversed, so counsel contends, would only be P8,287.44 and would come under paragraph 3 of the article in question, which provides for a penalty lighter than that prescribed in paragraph 4.

The contention is without merit. Even supposing that funds belonging to the NARIC are not public funds, they become impressed with that character when they are entrusted to a public officer for his official custody (People vs. De la Serna, 40 O.G. [Supp. 12] 159). Thus this Court has held that Red Cross, Anti-Tuberculosis, and Boy Scouts funds delivered to an assistant cashier

of a provincial treasurer for his custody acquire the attributes of public funds (People vs. Velasquez, 72 Phil. 98).

We find the sentence appealed from in accordance with law. We, therefore, confirm it with costs against the appellant.

Paras, Pablo, Bengzon, Jugo, Bautista Angelo, Labrador, and Concepcion, J.J., concur.

Mr. Justice Padilla did not take part.

XVII

Carmen Festejo, Demandante-Apelante, contra Isaias Fernando, Director de Obras Publicas, Demandado-Apelado, R.G. No. L-5156, promulgada, Marzo 11, 1954, Diokno, M.

PUBLIC OFFICERS; WHEN PERSONALLY LIABLE; CASE AT BAR.—Plaintiff owned some parcels of land totalling about 9 hectares. The Director of the Bureau of Public Works "without authority obtained first from the Court of First Instance of Ilocos Sur, without first obtaining a right 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 and caused an irrigation canal to be constructed on the portion of the three parcels of land x x x." Consequently, she asked the court "to return or cause to be returned the possession of the portions of land unlawfully occupied and appropriated, etc." The defendant, through the Solicitor General, presented a motion to dismiss on the ground that the court had no jurisdiction over the case in view of the fact that the action was against the Republic of the Philippines and said Republic had not consented to be sued. The inferior court dismissed the case. HELD: The action against the Director of the Bureau of Public Works is one which is directed against him personally for acts which he performed in his capacity as such official. The law does not excuse him from responsibility for acts which he performed or ordered to be performed beyond the scope of his power in the performance of his official functions.

Eloy B. Bella for appellant.

Solicitor General Pompeyo Diáz and *Solicitor Antonio A. Torres* for appellee.

DECISION

DIOKNO, M.:

Carmen Festejo, dueña de unos terrenos azucareros, de un total de unas 9 hectareas y media de superficie, demandó a "Isaias Fernando, Director, Bureau of Public Works", "que como tal Director de Obras Publicas tiene a su cargo los sistemas y proyectos de irrigación y es el funcionario responsable de la construcción de los sistemas de irrigación en el país," alegando que—

The defendant, as Director of the Bureau of Public Works, without authority obtained first from the Court of First Instance of Ilocos Sur, without obtaining first a right 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 24179 square meters to the damage and prejudice of the plaintiff." — *R. on A. p. 3.*

causando a ella variados daños y perjuicios. Pidió, en su consecuencia, sentencia condenando al demandado:

... to return or cause 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 expenses of the defendant." x x x

"In the remote event that the portions of land unlawfully occupied and appropriated can not be returned to the plaintiff, then to order the defendant to pay to the plaintiff the sum of P19,342.20 as value of the portions totalling an area of 24, 179 square meters;" — *R. on A., p. 5.*

y ademas a pagar P9,75619 de daños y P5,000 de honorarios de abogado, con las costas. *R. on A., pp. 5-6.*

El demandado, por medio del Procurador General, presentó mocion de sobremocion de la demanda por el fundamento de que el Juzgado no tiene jurisdiccion para dictar sentencia valida contra el, toda vez que judicialmente la reclamacion es contra la Republica de Filipinas, y esta no ha presentado su consentimiento a la demanda. El Juzgado inferior estimo la mocion y sobreseyó la demanda sin perjuicio y sin costas.

En apelación, la demandante sostiene que fué un error considerar la demanda como una contra la Republica y sobreeser en su virtud la demanda.

La acción contra "Isaias Fernando, Director de Obras Publicas", "encargado y responsable de la construccion de los sistemas de irrigación en Filipinas" es una dirigida *personalmente* contra él, por actos que asumió ejecutar en su concepto oficial. La ley no le exime de responsabilidad por las extralimitaciones que cometa o haga cometer en el desempeño de sus funciones oficiales.

Un caso semejante es el de Nelson v. Babcock (1933) 18 Minn. 584, 24 NW 49, 90 ALR 1472. Allí el Comisionado de Carreteras, al mejorar un trozo de la carretera ocupó o se apropió de terrenos contiguos al derecho de paso. El Tribunal Supremo del Estado declaró que es personalmente responsable al dueño de los daños causados. Declaro ademas que la ratificación de lo que hicieron sus subordinados era equivalente a una orden a los mismos. He aqui lo dijo el Tribunal:

"We think the evidence and conceded facts permitted the jury in finding that in the trespass on plaintiff's land defendant committed acts outside the scope of his authority. When he went outside the boundaries of the right of way upon plaintiff's land and damaged it or destroyed its former condition and usefulness, he must be held to have designedly departed from the duties imposed on him by law. There can be no claim that he thus invaded plaintiff's land southeasterly of the right of way innocently. Surveys clearly marked the limits of the land appropriated for the right of way of this trunk highway before construction began. x x x.

"Ratification may be equivalent to command, and cooperation may be inferred from acquiescence where there is power to restrain." It is unnecessary to consider other cases cited, x x x, for as before suggested, the jury could find or infer that, in so far as there was actual trespass by appropriation of plaintiff's land as a dumping place for the rock to be removed from additional appropriated right of way, defendant planned, approved, and ratified what was done by his subordinates." — *Nelson v. Babcock, 90 A.L.R. 1472, 1476, 1477.*

La doctrina sobre la responsabilidad civil de los funcionarios en casos parecidos se resume como sigue:

"Ordinarily the officer or employee committing the tort is personally liable therefor, and may be sued as another citizen and held answerable for whatever injury or damage re-

sults from his tortious act." — *49 Am. Jur. 289.*

". . . . If an officer, even while acting under color of his office, exceeds the power conferred on him by law, he cannot shelter himself under the plea that he is a public agent," — *43 Am. Jur. 86.*

"It is a general rule that an officer-executive, administrative quasi-judicial, ministerial, or otherwise who acts outside the scope of his jurisdiction and without authorization of law may thereby render himself amenable to personal liability in a civil suit. If he exceeds the power conferred on him by law, he cannot shelter himself by the plea that he is a public agent acting under color of his office, and not personally. In the eye of the law, his acts then are wholly without authority." — *43 Am. Jr. 89-90.*

El Art. 32 delCodigo Civil dice, a su vez:

"Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

x x x x x

"(6) The right against deprivation of property without due process of law:

x x x x x

"In any of the cases referred to in this article, whether or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

"The indemnity shall include moral damages. Exemplary damages may also be adjudicated."

Veane tambien Lung v. Aldanese, 45 Phil. 784; Syquia v. Almada, No. L-1648, Agosto 17, 1947; Marquez v. Nelson, No. L-2412, Septiembre 1950.

Se revoca la orden apelada y se ordena la continuación de la tramitacion de la demanda conforme proveen los reglamentos. Sin especial pronunciamiento en cuanto a las costas.

Asi se ordena.

Padilla, Reyes, Jugo, Bautista Angelo, y Labrador, J.J.; conformes. *Paras, and Montemayor, J.J.*, reserved their votes. *Justice Concepcion* dissented in a separate opinion. *Pablo, J.*, took no part.

CONCEPCION, J., dissenting:

To my mind, the allegations of the complaint lead to no other conclusion than that appellee Isaias Fernando is a party in this case, not in his personal capacity, but as an officer of the Government. According to said pleading the defendant is "Isaias Fernando, Director, Bureau of Public Works." Moreover, in paragraphs 4 and 5 of the complaint, it is alleged:

"4. That the defendant as *Director of the Bureau of Public Works* is in charge of irrigation projects and systems, and the official responsible for the construction of irrigation system in the Philippines;

5. That the defendant, as *Director of the Bureau of Public Works*, without authority obtained first from the Court of First Instance of Ilocos Sur, without obtaining first a right

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