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contention of appellant clashed with his own testimony that Myrna had followed him (a married man) to his own house to press him to elope with her, to get even with her own husband for the latter's carrying on an affair with another woman. All in all, appellant's contentions appeared contrived and implausible indeed and were correctly rejected by the trial court.

WHEREFORE, the Decision of the trial court is hereby AFFIRMED, except that the indemnity which accused shall pay to offended party is hereby INCREASED to P30,000.00, in line with recent case law of this Court.[12]

SO ORDERED.

Fernan, C.J. (Chairman), Gutierrez, Jr., Bidin and *Davide, Jr., JJ.*, concur.

FIRST DIVISION

(G.R. No. 89870. May 28, 1991)

DAVID S. TILLSON, *petitioner*, *vs.* HON. COURT OF APPEALS, HON. JUDGE LOURDES K. TAYAO-JAGUROS, JOHN M. COONEY, DEPUTY SHERIFF ROLANDO A. BALINGIT, and LT. COL. JUAN REYNALDO, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; PROVISIONAL REMEDIES; REPLEVIN; CONSTRUED.--** The term *replevin* is popularly understood as "the return to or recovery by a person of goods or chattels claimed to be wrongfully taken or detained upon the person's giving security to try the matter in court and return the goods if defeated in the action"; "the writ by or the common-law action in which goods and chattels are replevied," i.e., taken or gotten back by a writ for replevin"; and to replevy, means to

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[12] People v. Dalinog, 183 SCRA 88 (1990); People v. Dinola, 183 SCRA 493 (1990).

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recover possession by an action of replevin; to take possession of goods or chattels under a replevin order. Bouvier's Law Dictionary defines *replevin* as "a form of action which lies to regain the possession of personal chattels which have been taken from the plaintiff unlawfully..., (or as) the writ by virtue of which the sheriff proceeds at once to take possession of the property therein described and transfer it to the plaintiff upon his giving pledges which are satisfactory to the sheriff to prove his title, or return the chattels taken if he fail to do"; the same authority states that the term "to replevy" means "to re-deliver goods which have been distrained to the original possessor of them, on his giving pledges in an action of replevin." The term therefore may refer either to the action itself, for the recovery of personalty, or the provisional remedy traditionally associated with it, by which possession of the property may be obtained by the plaintiff and retained during the pendency of the action. In this jurisdiction, the provisional remedy is identified in Rule 60 of the Rules of Court *as an order for delivery of personal property.*

2. ID.; ID.; ID.; APPLICATION IN CASE AT BAR.-- The case is not removed from the operation of Rule 60 by the fact that after the property was taken from the defendant it was not turned over to the plaintiff (Cooney) but to the Coast Guard, on instructions of the Trial Court. That circumstance is totally inconsequential. For one thing, it does not alter the reality of the defendant's loss of possession; it is unreasonable to approve of the taking of the boat from his possession pursuant to Rule 60, and then deny him the remedies prescribed by that selfsame rule; and if the seizure was not effected in accordance with Rule 60, then the seizure was unjustified. For another, property seized under a writ of delivery or replevin is not supposed to be turned over to the plaintiff until after the lapse of five (5) days, a proposition that is made plain by Section 6 of Rule 60. Hence, whether the property remained with the sheriff, or was given over to another officer designated by the Court is of no significance, and certainty should not be taken as disabling the defendant from moving for the return of the property to him by either of the modes set out in Section 5 of Rule 60: (1) by objecting to the sufficiency of the plaintiff's replevin bond, or (2) if he does not so object, by filing a counter-bond "in double the value of the property as stated in the plaintiff's affidavit." There is, therefore, no reason whatsoever to refuse to apply Rule 60 to the case at bar.

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3. ID.; ID.; ID.; FILING OF BOND DOUBLE THE VALUE OF THE PROPERTY BY THE PLAINTIFF; SUFFICIENTLY COMPLIED WITH IN CASE AT BAR.-- It is plain from the record that Tillson's counsel had presented an "Appearance and Urgent Ex-Parte Motion" on *April 21, 1989* announcing that he would "file the necessary counter Bond, in accordance with Section 5 of Rule 60 of the Rules of Court," and that on *April 25, 1989*, he did post a bond in the amount of P800,000.00 for that very purpose, that amount being more than double the value of the boat stated by Cooney, P300,00.00. The original of the bond was attached to an "Urgent Motion for Approval of Bond and Surrender of the Creala 40" filed on April 25, 1989 by Tillson's attorney. Copies of the urgent motion and of the bond itself were sent by registered mail to Cooney's counsel on the same day, and were subsequently received by the latter in due course. The urgent motion was set for hearing on May 2, 1989, but on that day, the Court reset the hearing to May 5, 1989 to give Cooney's attorney an opportunity to be heard. At the hearing on May 5, 1989, among other things, the registry return card evidencing receipt of the urgent motion and bond was shown to the Court, but as above already stated, the Trial Court nevertheless refused to order the return of the boat to Tillson, which action the Court of Appeal later upheld. Upon these facts, the Court rules that Tillson had substantially complied with the requirements of Section 5, Rule 60 for the return to him of the vessel in question.

4. ID.; ID.; ID.; SERVICE OF COUNTER-BOND; SUBSTANTIALLY COMPLIED WITH IN CASE AT BAR.-- A copy of the counter-bond was sent to the plaintiff (Cooney) on the fifth day "after the taking of the property by the officer." The copy having been sent by registered mail, it was received after said fifth day. Cooney does not deny that the copy of the bond was indeed sent to him on the fifth day, and that he actually received it afterwards; and it is a fact that on the day on which the Trial Court re-scheduled the hearing on the motion for approval of the bond and for return of the property, May 5, 1989, Cooney had already received the copy of the bond. What he postulates is that his receipt of the counter-bond *after* the fifth day, was a fatal defect proscribing return of the vessel to Tillson, a proposition which the Court of Appeals sustained. The proposition is unacceptable to the Court. It accords unwarranted importance

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to technicality. If technicality were indeed to be the order of the day, Tillson could also claim timeliness of Cooney's receipt of a copy of the bond since, as the record shows, Cooney did receive the copy within the time stated by Section 5 of Rule 60, i.e., "before the delivery of the property to the plaintiff." He could also claim that the requirement of service of the counter-bond on the plaintiff cannot be all that important since there is no provision in Rule 60 imposing that requirement, which appears to have been derived simply from the general prerequisite laid down for pleadings, motion, notices, orders and other papers filed with the court (Rule 13, Rules of Court). In *Case and Nantz vs. Jugo, et al.*, a 1946 case (77 Phil. 517, 521), where a copy of the counter-bond was never given the plaintiff although it had been seen and read by the latter's attorney, this Court held that there had been substantial compliance with the requirement of service of the defendant's counter-bond. "Since the sole purpose of furnishing a copy of the counter-bond," said the Court, "is to enable the plaintiff to see if the bond is in the prescribed form and for the right amount and to resist the return of the property to the defendant if it is not, that opportunity was afforded the petitioners to the fullest extent when their attorney was shown in the sheriff's office the defendant's counter-bond. After the plaintiff's attorney read or saw the counter-bond, service of a copy thereof on him became purposeless, unnecessary formality. There is no reason why the maxim, 'equity regards substance rather than form,' should not hold good here." Considering the established facts, and the additional circumstance that the record shows no prejudice whatever to have been caused to plaintiff Cooney by the omission of service of the counter-bond on him, there is no reason why the same disposition should not be made here as in *Case*, and substance rather than form be made to prevail.

5. ID.; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; PROCEEDINGS WHERE PROPERTY CLAIMED BY THIRD PARTY.— It should be apparent that Sec. 17, Rule 39 of the Rules of Court and others like it, providing for an expeditious mode of recovering property alleged to have been wrongfully or erroneously taken by a sheriff pursuant to a writ of execution or other process, has reference to a *stranger* to the action, and not to a party therein. The remedy thereby granted is meant to accord said stranger, whose property is taken by the sheriff to secure or satisfy a judgment against a party to

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said action, a speedy, simple, and expeditious method of getting it back. All he has to do is draw up "an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor." If the sheriff is persuaded of the validity of the third party's claim, then he gives back the property. The purpose of the provision is achieved. On the other hand, if the sheriff is not convinced and opts to retain the property (requiring the judgment creditor to post an indemnity bond to answer for any liability he may incur by reason of such retention), the third party may then vindicate "his claim to the property by any proper action." A party to the action, however, has no business filing a third party claim over property involved in that action and which he himself claims to belong to him. He is evidently not the stranger, or third party, contemplated by the aforementioned Section 17, Rule 39. He has the standing, and the opportunity at any time, to ask the Court for relief against any alleged errors, excesses or irregularities of the sheriff. It is incongruous to seek relief from a sheriff which the Court itself could as easily and expeditiously grant.

APPEARANCES OF COUNSEL

Guevara Law Office for petitioner.
Edilberto Barot, Jr. for private respondent.

DECISION

NARVASA, *J.*:*

Sometime in May, 1987, David S. Tillson brought suit in the Regional Trial Court at Pasig, Rizal against (1) Leonard La Pierre (alleged to be doing business under several trade names, *viz.*: La Pierre International Yacht, La Pierre Distributors International, La Pierre Contracting Co., Ltd.) and (2) Seacraft International Corporation. The action was described as one for "specific performance and damages with prayer for preliminary injunction and restraining order." It was docketed as Civil Case No. 54587 and assigned to Branch 165.

* Chairman, First Division.

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Briefly, Tillson's complaint alleged that:

1) he entered into a contract with La Pierre for the construction of a yacht, named "Creala 40," at a cost of U.S. $65,000.00, to be delivered to Tillson in Manila in July, 1986;

2) it was Seacraft International Corporation that actually undertook the construction of the boat, advances on the price being made by Tillson;

3) the money thus advances was, however, used by La Pierre and Seacraft for the construction, not of the "Creala 40," but of another vessel, "Creala 36."

Upon this factual averments, Tillson prayed that both defendants be ordered (a) to complete construction of "Creala 40," removing from "Creala 36" all parts placed therein originally intended for "Creala 40," and using and placing them in the latter; and (b) jointly and severally, to pay to Tillson such damages as might be adjudged proper and attorney's fees of U.S.$ 5,000.00.

On Tillson's application, the Trial Court issued two (2) writs: one, of preliminary injunction forbidding the removal of "Creala 40" from its location at the time, and the other, of preliminary attachment which was levied on "Creala 36."

Summonses were duly served on both defendants.

Only Seacraft filed answer, denying Tillson's claims to the vessels and asserting that there was no privity between it and Tillson relative to the construction of the "Creala 40." La Pierre failed to answer within the reglementary period and was consequently declared in default.

The Court thereafter received Tillson's evidence against La Pierre *ex parte* and on the basis thereof, rendered judgment by default against La Pierre on March 2, 1988, which contained the following dispositive portion:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiff as against defendant Leonard La Pierre and the latter is hereby ordered to pay plaintiff the following:

U.S.$52,000.00, representing advances made by plaintiff to defendant, plus interest of 12% per annum from 1985 until fully paid; moral damages

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U.S.$5,000.00; actual damages, U.S.$10,000.00 and attorney's fees, U.S.$20,000.00, and costs of suit.

The judgment became final and executory, no appeal having been taken by La Pierre. The action however continued as regards his co-defendant, Seacraft International Corporation (hereafter, simply Seacraft).

At Tillson's instance, the Trial Court authorized execution of the default judgment against La Pierre. In July, 1988, the Sheriff levied on, and subsequently took possession of, the two (2) yachts above mentioned, "Creala 36" and "Creala 40."

Seacraft filed a third-party claim in respect of both vessels in accordance with Section 17, Rule 39 of the Rules of Court, contending that the yachts belonged to it, and not to La Pierre. Tillson thereupon posted a bond to indemnify the Sheriff against such third-party claim insofar as it was asserted against "Creala 40." The execution sale of "Creala 40" was then scheduled and held on February 7, 1989 by the Sheriff, resulting in the boat's being struck off to Tillson as the highest bidder.

On October 10, 1988, the "Creala 36" was somehow delivered by the Sheriff to Tillson's counsel, Atty. Alberto Guevara, Jr. It was thereafter moved by Tillson to the Manila Yacht Club.

But a claim for that same vessel ("Creala 36") was being put forth by a certain John M. Cooney, grounded on a compromise agreement between him and La Pierre. Indeed, there was then pending in another branch of the same Regional Trial Court an action which had been commenced by Cooney against La Pierre as early as October 15, 1987, docketed as Civil Case No. 55152. The action was originally assigned to Branch 158, but was later transferred to Branch 166.[1] On November 11, 1988, said Branch 166 issued orders directing the sheriff to take immediate possession of "Creala 36" and deliver it to Cooney after the expiration of five days. Tillson promptly instituted a *certiorari* action in the Court of Appeals, praying for nullification of that order.[2]

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[1] Presided over by Hon. Jesus Bersamira.

[2] The action was docketed as CA-G.R. SP No. 16122.

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The Court of Appeals dismissed Tillson's action, by Decision promulgated in December 27, 1988.[3] It found that no valid levy on attachment had been effected of the "Creala 36" in Civil Case No. 54587; that, on the other hand, the vessel had been properly attached by the Sheriff in Case No. 55152 but subsequently had been "forcibly taken from the latter's custody by petitioner Tillson and his men who did not issue receipt and showed no written order from any lawful authority." The Appellate Court consequently upheld the order for the seizure and retaking from Tillson of the "Creala 36," but prohibited release thereof to Cooney "pending the final disposition of his case."

Cooney next turned his attention to the "Creala 40" which, as above stated, had been earlier acquired by Tillson at the auction sale on February 7, 1989 in Civil Case No. 54587. On April 12, 1989, Cooney filed with the Regional Trial Court of Manila an action against Tillson for annulment of the sale and for delivery thereof to him by way of *replevin*. In his complaint he alleged that by a deed of sale executed on December 5, 1988 by Seacraft, on authority of its board of directors, he had become owner of the "Creala 40"; that in conspiracy with the Sheriff and other persons, Tillson had illegally acquired possession of the vessel; that as owner, he was entitled to a "preliminary order for the immediate delivery" upon "a bond in a reasonable amount," and, "after trial of the issues," to be declared owner and recover damages from the defendants. To his complaint he attached (1) his affidavit stating *inter alia* that "the boat would be probably valued conservatively at P300,000,00" and "has not been taken for tax assessment or fine pursuant to law, or seized under execution, or and attachment against the property of herein plaintiff," and (2) a bond in the amount of P800,000.00 issued by Utility Assurance Corporation denominated "Plaintiff's Bond for Manual Delivery of Personal Property (Replevin Bond)." The action was docketed as Civil Case No. 89-48520 and assigned to Branch 21, presided over by Hon. Lourdes K. Tayao-Jaguros. Judge Jaguros ordered the issuance of "the corresponding Writ of Repelevin of Personal Property," on April 17, 1989. The "writ of

[3] Limcaoco, *J.*, (now retired) wrote the decision for the Fifth Division, which was concurred in by Mendoza and Paras, *JJ.*

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replevin issued on the same day but, as will shortly be narrated, custody of the vessel was not taken by the Sheriff until three days later.

On April 20, 1989, Cooney filed a "Manifestation/Motion" stating that when the Sheriff went to the place where the vessel was moved, he discovered that "the number of the boat (sought to be seized) had been deliberately tampered with," and prayed that the Court authorize "the sheriff . . . and such other governmental agency or agencies deputized to aid . . . (the sheriff) seize and take possession (of the vessel) under the existing writ of replevin. . .. Cooney filed an amended manifestation on the same day, stating additional details of the alleged tampering, and adding to his prayer the request that the Sheriff "deposit (the Yacht) for safekeeping with the Philippine Coast Guard, pending determination and/or resolution by this Honorable Court of his motion." On the same day, the Court granted the motion and ordered (a) "the sheriff to deposit the boat for safekeeping with the Philippine Coast Guard at the Farola Compound, Binondo," and (b) also "the defendant's and/or any person claiming rights under them . . . to turn over the possession of the said boat to the Philippine Coast Guard, in the meantime, until further orders. . .." In virtue of this order of April 20, 1989, the Sheriff took custody of the "Creala 40" and delivered it for safekeeping to the Coast Guard. It is pertinent to state that both defendants, Tillson and Sheriff Sofronio Villarin, while denying any hand in the alleged tampering, subsequently admitted "that the boat, now in the possession of the Coast Guard upon pertinent Order . . . is the boat, subject of the Replevin Order . . .."

On the following day, April 21, 1989, Tillson's counsel, Mr. Alberto B. Guevara, Jr., filed an "Appearance and Urgent Ex-Parte Motion." He alleged that on April 20, he had "secured copy of the complaint and related documents"; that his client was submitting himself to the jurisdiction of the Court "as if summons had been served upon him"; that he was aware of the bond filed by Cooney "in accordance with Section 3 of Rule 60, and another Order for the Coast Guard to take custody of the boat; that he had no objection to the boat remaining temporarily with the Coast Guard and/or the Sheriff; that Tillson had "valid defenses to traverse the complaint

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of Cooney''; and he prayed that his appearance be made of record and . . .

". . . That the Sheriff and/or the Coastguard, be ordered to keep possession of the Boat, for the requisite five (5) days, keeping said Boat in its present location, without moving same, until Tillson can file the necessary counter Bond, in accordance with Section 5 of Rule 60, of the Rules of Court, or as otherwise may be mandated, under Rule 60 of the Rules of Court.

Then on April 25, 1989, Tillson filed thru counsel an "Urgent Motion for Approval of Bond (and) Surrender of Creala 40," submitting a bond issued by Domestic Insurance Co. of the Philippines in the amount P800,000.00 and praying that the boat seized from him by the sheriff "be ordered returned/surrendered/ released to Tillson, in accordance with Section 5 of Rule 60 of the Rules of Court." A copy of the motion and the bond was sent by registered mail to and in due course received by, Cooney's attorney, Mr. Edilberto Barot, Jr.

However, the Trial Court refused to order re-delivery of the boat to Tillson. In an Order dated May 5, 1989, it held that the provision for the return of seized property on a counterbond in Rule 60 --

". . . is not exactly applicable to the situation . . . because said provision presupposes that possession is to be given to the plaintiff; however, . . . the writ precisely ordered that the possession and control of Creala 40 . . . be put under the Coast Guard which is a disinterested third person; . . . (and to) transfer . . . possession and control of the boat to either party would render the case moot and academic."

Once again, Tillson went to the Court of Appeals. He filed a petition for *certiorari*, prohibition and *mandamus* to nullify the Order of May 5, 1989 and compel re-delivery of the "Creala 40" to him. This action was docketed as CA-G.R. SP No. 17586. Once again, the verdict of the Appellate Tribunal went against Tillson.[4] By Decision promulgated on September 1, 1989, the Court denied his petition on two grounds: *first*, since the boat was not delivered to Cooney, "there is no replevin in legal contemplation . . . (and) no replevin bond and redelivery bond to speak of"; and *second*, even

[4] The decision was written for the Eleventh Division by Victor, *J.*, with whom concurred Pronove, Jr. and Kalalo, *JJ.*

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if the case be considered one of replevin, Tillson had failed to furnish a copy of his redelivery bond to the plaintiff within the time set therefor, in violation of the relevant requirements of Rule 60.

At the same time, Tillson also had to be dealing with Seacraft International Corporation. While the matter of the ownership and custody of the "Creala 36" was being disputed in Civil Case No. 55152 and CA-G.R. SP No. 16122, as above narrated, and before the public auction of the "Creala 40" could be conducted (on February 7, 1989) in execution of the default judgment rendered in Civil Case No. 54587, Seacraft made another move to get both boats back. It filed an "Urgent Motion to Restrain Plaintiff and the Provincial Sheriffs and to Dismiss the Case against Seacraft." Tillson opposed the motion, contending that La Pierre had left the country to avoid prosecution and deportation for circumvention of the immigration laws; that Seacraft and its ostensible officers were merely his dummies; and that Seacraft had breached the Corporation Code by misrepresenting itself as a 100% Filipino corporation when in truth its stock was owned by La Pierre, a foreigner. He prayed that the Court pierce the veil of corporate fiction in respect of Seacraft and declare that La Pierre was the actual owner of "Creala 36" and "Creala 40."

Chiefly on this issues, the Trial Court received the parties' proofs and arguments. Thereafter the Court rendered judgment on the merits,[5] under date of February 7, 1990: (a) finding that the evidence "abundantly established that defendant Seacraft International Corporation is a mere *alter ego* of La Pierre, used and utilized by the latter to defraud his creditors," and (b) making the following dispositions, to wit:

"1 - Declaring Seacraft International Corporation as a mere dummy of La Pierre, consequently, annulling and disregarding its supposed separate corporation fiction and personality;

2 - Ordering any and all assets in the name of Seacraft International Corporation which are not otherwise encumbered, shall be answerable for the satisfaction of the Judgment, now final and executory, issued by the court in favor of the plaintiff and against defendant La Pierre;

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[5] Per Hon. Milagros V. Caguioa (also, now retired).

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3 - Dismissing the Complaint-in-Inter-vention of John Quinn for failure to prosecute and the Counterclaim of defendant Seacraft. . ., and

4 - Ordering Seacraft to pay costs.

There was yet another proceeding involving Tillson and Seacraft in another forum, the Securities and Exchange Commission. The proceeding, commenced at Tillson's instance, SEC Case No. 3610, was for the revocation of Seacraft's certificate of registration on the ground of fraud. Summons was served on Seacraft "thru its incorporating directors/stockholders." However, no answer was ever filed or appearance made in behalf of Seacraft. Seacraft was accordingly declared in default.

John M. Cooney filed a motion for intervention, alleging that he had acquired Seacraft's properties. The motion was denied by the Commission in an Order dated February 12, 1990, which declared Cooney's acquisition of Seacraft assets to have no relation to the cancellation of Seacraft's registration on account of fraud by its incorporators/directors. Cooney's motion for reconsideration was denied by Order dated February 12, 1990, the Commission considering it a "mere scrap of paper" for failure of the movant to set the motion for hearing, and because filed beyond the reglementary period therefor. Thereafter, evidence was received, after which a Decision was rendered on August 20, 1990 which - upon a finding that there was "ample proof" that "Seacraft was a mere dummy of La Pierre and that La Pierre is the real owner of SEACRAFT" - revoked the franchise or certificate of registration of Seacraft International Corporation and directed the appointment of a receiver to liquidate its corporate affairs in accordance with Section 122 of the Corporation Code.

Turning back to the decision promulgated by the Court of Appeals in CA-G.R. SP No. 17586 - denying Tillson's petition to nullify Judge Jaguros' Order of May 5, 1980 in Civil Case No. 89-48520 and compel re-delivery of the "Creala 40" to him, it is Tillson's thesis that fundamental errors were committed by the Appellate Tribunal when in that judgment it ruled that --

1) the provisions of Rule 60 were inapplicable upon the following ratiocination:

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"In essence, since the trial court ordered the boat to be custodia legis under the temporary physical control of the Coast Guard, the provisions of Rule 60 on replevin find no application under the circumstances at bar. As the boat was not delivered to plaintiff John M. Cooney, the replevin bond filed by him does not serve the purpose for which the said bond was filed. Consequently, as there is no obligation on the part of John M. Cooney to return the boat which was not placed in his possession, the filing of the counterbond for the redelivery of the boat to petitioner becomes of no virtue whatsoever.

"In fine, as there is no replevin in legal contemplation, there is no replevin bond and redelivery bond to speak of. . . .";

and

2) assuming Rule 60 to be applicable, Tillson had failed to furnish a copy of his redelivery bond to the plaintiff within the time set therefor by said rule, i.e., "within five (5) days from the date the sheriff took possession of the property."

The term *replevin* is popularly understood as "the return to or recovery by a person of goods or chattels claimed to be wrongfully taken or detained upon the person's giving security to try the matter in court and return the goods if defeated in the action"; "the writ by or the common-law action in which goods and chattels are replevied," i.e., taken or gotten back by a writ for replevin";[6] and to replevy, means to recover possession by an action of replevin; to take possession of goods or chattels under a replevin order.[7] Bouvier's Law Dictionary defines *replevin* as "a form of action which lies to regain the possession of personal chattels which have been taken from the plaintiff unlawfully . . ., (or as) the writ by virtue of which the sheriff proceeds at once to take possession of the property therein described and transfer it to the plaintiff upon his giving pledges which are satisfactory to the sheriff to prove his title, or return the chattels taken if he fails so to do"; the same authority states that the term "to replevy" means "to re-deliver goods which have been distrained to the original possessor of them, on his giving pledges in an action of replevin."[8] The term therefore may refer either to the action itself, for the recovery of personalty, or the

[6] Webster's Third New International Dictionary, copyright 1986.
[7] *Ibid.*
[8] Third (Rawle's) Revision, Vol 2.

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provisional remedy traditionally associated with it, by which possession of the property may be obtained by the plaintiff and retained during the pendency of the action. In this jurisdiction, the provisional remedy is identified in Rule 60 of the Rules of Court as an *order for delivery of personal property.*

That the action commenced by Cooney against Tillson, et al. on April 12, 1989, in the Manila Regional Trial Court of Manila was one for *replevin* - and the provisional remedy therein applied for, the writ *or order of delivery* just described - hardly admits of doubt. The facts set out in his complaint and the affidavit accompanying it, as well as his filing of a bond in double the value of the property sought to be recovered, show that Cooney filed the action precisely with Rule 60 in mind. This is evident from a perusal of Sections 1 and 2 of the Rule.[9]

"SECTION 1. *Application.* - Whenever the complaint in an action prays for the *recovery of possession of personal property,* the plaintiff may, at the commencement of the action or at any time before answer, apply for an order for the delivery of such property to him, in the manner hereinafter provided.

"SEC. 2. *Affidavit and bond.* - Upon applying for such order the plaintiff must show by his own affidavit or that of some other person who, personally knows the facts:

(a) That the *plaintiff is the owner* of the property claimed, particularly describing it, or is entitled to the possession thereof;

(b) That the property is *wrongfully detained by the defendant,* alleging the cause of detention thereof according to his best knowledge, information and belief;

(c) That it has *not been taken for a tax assessment or fine pursuant to law, or seized under an execution, or an attachment against the property of the plaintiff, or, if so seized, that it is exempt from such seizure;* and

(d) The *actual value* of the property.

The plaintiff must also give a *bond, executed to the defendant in double the value of the property* as stated in the affidavit aforementioned, for the return of the property to the defendant if the return thereof be adjudged, and for the payment to the defendant of such sum as he may recover from the plaintiff in the action."

[9] Italics supplied.

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As will be noted, Cooney's complaint incorporates the factual allegations necessary to bring his cause within the operation of Rule 60 of the Rules of Court. In his complaint he *asserts that he is the owner* of the "Creala 40" in virtue of the deed of sale executed in his favor on December 5, 1988 by Seacraft; that he was being *deprived of possession* thereof by Tillson, who was acting in conspiracy with the Sheriff and the other persons; that as owner, he was entitled to a "preliminary order for the immediate delivery" upon "a bond in a reasonable amount," and, "after trial of the issues," to have his ownership vindicated and recover damages from the defendants. Annexed to his complaint were (1) his affidavit stating *inter alia* that "the boat would be probably valued conservatively at P300,000.00" and "*has not been taken for tax assessment or fine pursuant to law, or seized under execution, or an attachment against the property to herein plaintiff,*" and (2) a *bond* in the amount of P800,000.00 entitled *"Plaintiff's Bond for Manual Delivery of Personal Property (Relieving Bond)."*

And that it was so understood by the Regional Trial Court can scarcely be doubted, too. In her Order of April 17, 1989, Judge Jaguros directed the issuance of *"the corresponding Writ of Replevin of Personal Property."* Moreover, a writ denominated "writ of replevin" issued on the same day, pursuant to which - and to another order dated April 20, 1989, *supra* - the sheriff took possession of the "Creala 40" on *April 20, 1989.*

The case is not removed from the operation of Rule 60 by the fact that after the property was taken from the defendant it was not turned over to the plaintiff (Cooney) but to the Coast Guard, on instructions of the Trial Court. That circumstance is totally inconsequential.

For one thing, it does not alter the reality of the defendant's loss of possession; it is unreasonable to approve of the taking of the boat from his possession pursuant to Rule 60, and then deny him the remedies prescribed by that selfsame rule; and if the seizure was not effected in accordance with Rule 60, then the seizure was unjustified.

For another, property seized under a writ of delivery or replevin is not supposed to be turned over to the plaintiff until after the lapse

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of five (5) days, a proposition that is made plain by Section 6 of Rule 60:

"SEC. 6. *Disposition of property by officer.* -- If within five (5) days after taking of the property by the officer, the defendant does not object to the sufficiency of the bond, or of the surety or sureties thereon, or require the return of the property as provided in the last preceding section; or if the defendant so objects, and the plaintiff's first or new bond is approved; or if the defendant so requires, and his bond is objected to and found insufficient and he does not forthwith file an approved bond, the property shall be delivered to the plaintiff. If for any reason the property is not delivered to the plaintiff, the officer must return it to the defendant."

Hence, whether the property remained with the sheriff, or was given over to another officer designated by the Court is of no significance, and certainly should not be taken as disabling the defendant from moving for the return of the property to him by either of the modes set out in Section 5 of Rule 60: (1) by objecting to the sufficiency of the plaintiff's replevin bond, or (2) if he does not so object, by filing a counter-bond "in double the value of the property as stated in the plaintiff's affidavit."

There is, therefore, no reason whatsoever to refuse to apply Rule 60 to the case at bar.

The next issue is whether or not Tillson, as defendant in the replevin action, had properly complied with the requisites of Rule 60 for the return to him of the seized vessel. The provision of the Rules upon which the issue turns is Section 5, Rule 60. It reads as follows:

"SEC. 5. *Return of property.* - If the defendant objects to the sufficiency of the plaintiff's bond, or of the surety or sureties thereon, he cannot require the return of the property as in this section provided; but if he does not so object, he may, at any time before the delivery of the property to the plaintiff, require the return thereof, by filing with the clerk or judge of the court a bond executed to the plaintiff, in double the value of the property as stated in the plaintiff's affidavit, for the delivery of the property to the plaintiff, if such delivery be adjudged, and for the payment of such sum to him as may be recovered against the defendant, and by serving a copy of such bond on the plaintiff or his attorney."

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Now, it is plain from the record that Tillson's counsel had presented an "Appearance and Urgent Ex-Parte Motion" on *April 21, 1989* announcing that he would "file the necessary counter Bond, in accordance with Section 5 of Rule 60 of the Rules of Court," and that on *April 25, 1989*, he did post a bond in the amount of P800,000.00 for that very purpose, that amount being more than double the value of the boat stated by Cooney, P300,000.00. The original of the bond was attached to an "Urgent Motion for Approval of Bond and Surrender of the Creala 40" filed on April 25, 1989 by Tillson's attorney. Copies of the urgent motion and of the bond itself were sent by registered mail to Cooney's counsel on the same day,[10] and were subsequently received by the latter in due course.[11] The urgent motion was set for hearing on May 2, 1989, but on that day, the Court reset the hearing to May 5, 1989 to give Cooney's attorney an opportunity to be heard. At the hearing on May 5, 1989, among other things, the registry return card evidencing receipt of the urgent motion and bond was shown to the Court,[12] but as above already stated, the Trial Court nevertheless refused to order the return of the boat to Tillson, which action the Court of Appeals later upheld.

Upon these facts, the Court rules that Tillson had substantially complied with the requirements of Section 5, Rule 60 for the return to him of the vessel in question.

The amount of the bond, P800,000.00, was adequate. It was more than double the sum of P300,000.00, which was the value stated by Cooney in the affidavit attached to his complaint in support of his application for the provisional remedy of writ of delivery or replevin, *supra*.

The counter-bond was posted within the period prescribed by Rule 60, i.e., "within five (5) days after the taking of the property by the officer,"[13] and "before the delivery of the property to the plaintiff."[14]

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[10] *Rollo*, p. 28.

[11] *Id.*, p. 111: Annex K-1, petition which does not however indicate the actual date of receipt; nonetheless, no issue has been raised by Cooney's attorney relative to said Annex K-1 (SEE *rollo*, pp. 370, 371).

[12] *Id.*, p. 32.

[13] SEC. 6, Rule 60.

[14] SEC. 5, Rule 60.

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A copy of the counter-bond was sent to the plaintiff (Cooney) on the fifth day "after the taking of the property by the officer." The copy having been sent by registered mail, it was received after said fifth day. Cooney does not deny that the copy of the bond was indeed sent to him on the fifth day, and that he actually received it afterwards; and it is a fact that on the day on which the Trial Court re-scheduled the hearing on the motion for approval of the bond and for return of the property, May 5, 1989, Cooney had already received the copy of the bond. What he postulates is that his receipt of the counter-bond *after* the fifth day, was a fatal defect proscribing return of the vessel to Tillson, a proposition which the Court of Appeals sustained. The proposition is unacceptable to the Court. It accords unwarranted importance to technicality. If technicality were indeed to be the order of the day, Tillson could also claim timeliness of Cooney's receipt of a copy of the bond since, as the record shows, Cooney did receive the copy within the time stated by Section 5 of Rule 60, i.e., "before the delivery of the property to the plaintiff." He could also claim that the requirement of service of the counter-bond on the plaintiff cannot be all that important since there is no provision in Rule 60 imposing that requirement, which appears to have been derived simply from the general prerequisite laid down for pleadings, motions, notices, orders and other papers filed with the court.[15]

In *Case and Nantz vs. Jugo, et al.*, a 1946 case,[16] where a copy of the counter-bond was never given the plaintiff although it had been seen and read by the latter's attorney, this Court held that there had been substantial compliance with the requirement of service of the defendant's counter-bond. "Since the sole purpose of furnishing a copy of the counter-bond," the Court said, "is to enable the plaintiff to see if the bond is in the prescribed form and for the right amount and to resist the return of the property to the defendant if it is not, that opportunity was afforded the petitioners to the fullest extent when their attorney was shown in the sheriff's office the defendant's counter-bond. After the plaintiff's attorney read or saw the counter-bond, service of a copy thereof on him became purposeless,

[15] Rule 13, Rules of Court.

[16] 77 Phil. 517, 521; *cf.* Bachrach Motor Co., Inc. *vs.* Albert, 60 Phil. 308.

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unnecessary formality. There is no reason why the maxim, 'equity regards substance rather than form,' should not hold good here."

Considering the established facts, and the additional circumstance that the record shows no prejudice whatever to have been caused to plaintiff Cooney by the omission of service of the counter-bond on him, there is no reason why the same disposition should not be made here as in *Case*, and substance rather than form be made to prevail.

One last word, concerning the *third-party claim* filed by Seacraft over the "Creala 36" and "Creala 40." These two boats, it will be recalled, constituted the *res* in Civil Case No. 54578 and had been levied on in execution of the default judgment in said case against Seacraft's co-defendant, Leonard La Pierre. Seacraft filed its claim supposedly in accordance with Section 17, Rule 39, *viz.*:

"SEC. 17. *Proceedings where property claimed by third person.* - If property levied on be claimed by any other person than the judgment debtor or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand of the officer, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution.

The officer is not liable for damages, for the taking or keeping of the property, to any third-party claimant unless a claim is made by the latter and unless an action for damages is brought by him against the officer within one hundred twenty (120) days from the date of the filing of the bond. But nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property by any proper action.

. . . . . .

It should be apparent that this provision, and others like it,[17] providing for an expeditious mode of recovering property alleged to have been wrongfully or erroneously taken by a sheriff pursuant to a writ of execution or other process, has reference to a *stranger*

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to the action, and not to a party therein. The remedy thereby granted is meant to accord said stranger, whose property is taken by the sheriff to secure or satisfy a judgment against a party to said action, a speedy, simple, and expeditious method of getting it back. All he has to do is draw up "an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor."

If the sheriff is persuaded of the validity of the third party's claim, then he gives back the property. The purpose of the provision is achieved. On the other hand, if the sheriff is not convinced and opts to retain the property (requiring the judgment creditor to post an indemnity bond to answer for any liability he may incur by reason of such retention), the third party may then vindicate "his claim to the property by any proper action."

A party to the action, however, has no business filing a third party claim over property involved in that action and which he himself claims to belong to him. He is evidently not the stranger, or third party, contemplated by the aforementioned Section 17, Rule 39. He has the standing, and the opportunity at any time, to ask the Court for relief against any alleged errors, excesses or irregularities of the sheriff. It is incongruous to seek relief from a sheriff which the Court itself could as easily and expeditiously grant.

WHEREFORE, the Decision of the Court of Appeals promulgated in CA-G.R. SP No. 17586 on September 1, 1989 is REVERSED and SET ASIDE, and another rendered ANNULLING AND SETTING ASIDE the Order of the Trial Court of May 15, 1989 in Civil Case No. 89-48520 and COMMANDING the Sheriff of Manila, the Coast Guard and/or their deputies and representatives immediately to deliver possession of the Creala 40 (Hull No. 4001, LPY-G-5-86) to the petitioner, with costs against respondent John M. Cooney.

SO ORDERED.

Cruz, Gancayco, Griño-Aquino and *Medialdea, JJ.*, concur.