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Teehankee, Makasiar, Antonio, Aquino, Concepcion Jr., Santos, Fernandez, Guerrero, De Castro, and *Melencio-Herrera, JJ.*, concur.

Fernando, C.J., took no part.

Barredo, J., concurs in the finding of guilt but consistently with my opinion in *People vs. Borja*, G.R. No. L-22947. I vote for life imprisonment.

Abad Santos, J., concurs in the finding of guilt but due to his long detention under sub-human conditions, I vote for life imprisonment.

FIRST DIVISION

[G.R. No. L-34657. October 23, 1979]

ERLINDA RAVANERA and husband OSCAR RAVANERA, *petitioners, vs.* **FELIPE I. IMPERIAL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; AUCTION SALE; WHAT IS REQUIRED IS THAT THE JUDGMENT DEBTOR MUST BE NOTIFIED OF THE AUCTION SALE BEFORE THE ACTUAL DATE OF SALE.**— It appears in this case that the notice of levy was registered with the Register of Deeds on September 29, 1969. From a certification of the Postmaster at Naga City, it also appears that registered letter No. 13687 containing the notice of levy and the notice of auction sale addressed to respondent Felipe Imperial was delivered on October 15, 1969 to Pelaguia Comba, member of the household of the addressee. Respondent Imperial was, therefore, notified by registered mail of the levy and the auction sale long before November 3, 1969, the date

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of the auction sale. What is required is that the judgment debtor must be notified of the auction sale before the actual date of sale which was done in the case at bar.

2. **ID.; ID.; ID.; ID.; ID.; LEVY OF PROPERTY; RULE UNDER LAND REGISTRATION ACT.**— Section 7 (paragraph a) of Rule 57 is so explicit that only as to property which has been brought under the operation of the Land Registration Act should the notice of levy contain the volume and page in the registration book where the certificate is registered. Impliedly, the requirement does not apply to property not registered under the said Act. It is enough that the notice of levy upon unregistered land be registered under Act 3344, as was done in this case.

3. **ID.; ID.; ID.; ID.; ID.; INADEQUACY OF THE PURCHASE PRICE OF THE PROPERTIES SOLD IN THE EXECUTION SALE NOT A GROUND TO ASSAIL THE VALIDITY OF THE SALE.**— The alleged inadequacy of the purchase price of the properties sold in the execution sale is no ground to assail the validity of the sale, for the judgment debtor has the right to redeem the property, and the smaller the price, the easier is it for him to buy back the property.

4. **ID.; ID.; ID.; ID.; ID.; NOT AFFECTED BY ISSUANCE OF ALIAS WRIT OF EXECUTION.**— We rule that contrary to the contention of respondent Imperial, the writ of execution that gave rise to the levy of the properties in question and their sale in a public auction is valid and regular in all respects. That the alias writ of execution was issued by the Clerk of Court and not by the judge is no ground for holding invalid said alias writ, considering that the Clerk of Court is not without authority to issue ordinary writs and processes, under the seal of the Court (Session 4, Rule 136, Revised Rules of Court).

5. **ID.; ID.; ESTOPPEL; PRINCIPLE OF ESTOPPEL APPLICABLE IN CASE AT BAR.**— In any event, respondent Imperial as judgment debtor is in estoppel by his failure to seasonably make an objection to the allegedly defective notice of levy and notice of sale before the actual sale, or before redeeming some of his properties despite the supposed defect of the notice of levy. He should have interposed objection to the levy and the sale from the very beginning, from October 15, 1969 when he received notice of levy and notice of sale. A waiver on his part

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to question the validity of the auction sale may also be said to arise from his failure to pay the arrears in real estate taxes, or to redeem the mortgage of one of the properties sold at public auction, during the period of redemption. These are omissions which are clearly an indication of acquiescence in the sale, or his awareness that the execution sale was valid and legally unassailable. To allow him to turn back on his manifest conformity to the levy and sale on execution of his properties, after petitioners have bought the property as the highest bidder during the auction sale, would be patently unjust to the said petitioners, who had every reason to rely on the presumed regularity of the proceedings as official acts of both the judge and his own court officer, the sheriff.

6. **ID.; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; DISPUTABLE PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS; CASE AT BAR.**— Respondent Imperial also brands the levy as irregular for failure of the occupants of the attached or levied properties to be left with copy of the order, notice of levy and description of the properties. The finding of facts of the respondent Court of Appeals which was quoted in full above, fails to disclose the existence of occupants of the properties levied upon other than the owner, respondent Imperial. It was incumbent on said respondent to prove by evidence duly submitted to the Court a fact that would tend to support his claim that the levy is void or otherwise illegal. The levy being an official act of a government functionary its regularity is presumed.

APPEARANCES OF COUNSEL

Borja & Naval for petitioners.
Abonal & Abonal for respondent.

D E C I S I O N

DE CASTRO, *J.*:

Appeal by *certiorari* taken by petitioners from (a) the decision of the Court of Appeals in CA-G.R. No. SP-00080, entitled "*Felipe I. Imperial, petitioner versus Hon. Delfin Vir. Sunga, Judge, Court of First Instance of Camarines Sur, Erlinda*

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Ravanera and husband Oscar Ravanera, respondents" promulgated on November 16, 1971 setting aside the orders dated March 18, 1971 and March 30, 1971 issued by the Court of First Instance of Camarines Sur in Civil Case No. 5292, entitled "The Roman Catholic Archbishop of Caceres, plaintiff, versus Felipe I. Imperial, defendant," and from (b) the former's resolution of January 10, 1972 denying petitioners' motion for reconsideration.

The facts found by the Court of Appeals are as follows:

"It appears that on October 17, 1961 the Roman Catholic Archbishop of Caceres filed an action for Rescission of Contract and Recovery of Possession against the herein petitioner before the respondent court. Said case was decided by the respondent court in favor of the plaintiff on January 28, 1966.

"On February 17, 1966 pending approval of the Record on Appeal, plaintiff Archbishop of Nueva Caceres filed a Motion for Execution of the decision or to order defendant to file supersedeas bond and to deposit the amount of ₱500.00 every month as rentals.

"On May 6, 1966 the respondent Court granted the motion for execution pending appeal and at the same time ordered that to stay the execution, the defendant put up a supersedeas bond in the amount of ₱40,000.00 for the rents due as of February, 1966, for the amount of moral damages, and for the expenses of suit and to deposit the amount of ₱500.00 as monthly rental of the property. This order became the subject of a Special Civil Action for *Certiorari* and prohibition before the Supreme Court and by reason of the pendency of said special civil action the order of execution was not enforced by the plaintiff.

"On December 10, 1966, the record on appeal was approved and the appealed case is now docketed as CA-G.R. No. 39115-R, in this Court.

"On May 22, 1968, the Supreme Court dismissed the petition for *certiorari* on the ground that the order of execution being incidental to the appeal, the same should be addressed to the Court of Appeals. So on June 21, 1968, the plaintiff filed another motion for execution. On July 16, 1968 the respondent Court ordered the issuance of a writ of execution, but the petitioner was given fifteen (15) days from

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receipt of the order to put up the ₱40,000.00 supersedeas bond and to deposit the monthly rental of ₱500.00 in order to stay the execution.

"Inspite of his receipt of the order on July 23, 1968, petitioner failed to post the required supersedeas bond and to deposit the ₱500.00 monthly rental. Thus, on November 20, 1968, the plaintiff Archbishop filed a motion for the issuance of a writ of execution. On December 20, 1968 the respondent Court granted the motion for execution requiring however the plaintiff to put up a bond in the amount of ₱20,000.00 to answer for any judgment that may be awarded to petitioners should the decision be reversed on appeal.

"The plaintiff Archbishop posted the required bond of ₱20,000.00 and on February 14, 1969 a writ of execution was issued. Said writ was not enforced upon instance of the counsel for plaintiff as an amicable settlement was proposed and after the 60 days period had lapsed the Sheriff made a return of the writ stating therein:

> "This is to certify that this writ was not acted upon at the instance of counsel for the plaintiff for the reason that amicable settlement between parties was proposed.
>
> "Upon request of counsel for the plaintiff let this writ be returned and an alias writ be issued for the proposed amicable settlement abovestated failed to materialize.
>
> "Naga City, Philippines, July 14, 1969.
>
> SGD. MAURO B. FAJARDO
> *Ex Oficio* City Sheriff"

"Pursuant to this return, the Clerk of Court of the respondent Court, issued an alias writ of execution on August 24, 1969. On September 24, 1969 the Sheriff issued a notice of Levy by which certain properties of the petitioner were attached or levied upon. On September 25, 1969 the alias writ was personally served by the Sheriff upon the petitioner. On October 7, 1969, the Sheriff issued a Notice of Public Auction sale of the properties levied upon which was published in the "Bicol Star" a weekly newspaper of general circulation on October 11, 18 and 25, 1969. Private respondent alleges that copies of the Notice of Levy and the Notice of Sale were sent by Registered Mail which according to the certificate of the Postmaster was received on October 15, 1969. Receipt of the Notice of Levy is denied by petitioner.

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"On November 7, 1969 the public auction sale was held, and the respondent Erlinda Ravanera being the highest bidder a Provisional Deed of Sale was issued in her favor. Within the one-year period of redemption, the petitioner redeemed some of the properties bought at auction sale, but he failed to redeem some others on account of which at the end of the redemption period or on December 8, 1970 the Sheriff executed a Definite Deed of Sale of said unredeemed properties in the name of respondent Erlinda Ravanera. She likewise paid the arrears in real estate taxes of said properties, redeemed a mortgage on one of them and caused the property to be declared in her name.

"On February 9, 1971 respondent Erlinda Ravanera filed a motion for a writ of possession of the properties covered by the Definite Deed of Sale, to which motion petitioner filed his opposition alleging that the notice of levy was null and void and hence the provisional as well as the definite deed of sale were likewise void, and that respondent Ravanera had no personality in the case, she not being a party thereto.

"On March 18, 1971, the respondent Court issued an order granting the motion for a writ of possession and on March 27, 1971 the petitioner filed a motion for reconsideration on the ground that there was no formal hearing and reception of evidence on the motion and that the order did not state the finding of facts which could be the basis for the grant of the motion. On March 30, 1971 the respondent Court issued an order denying the motion for reconsideration, however, it suspended the effectivity of the writ of possession to April 25, 1971. Hence this petition.

"The petitioner attacks the order of March 15, 1971 granting the motion for a writ of possession on the following grounds:

1. That the writ of execution issued by the Court on December 30, 1968 is void defendant having on December 10, 1966 perfected his appeal;

2. That the Alias writ of Execution issued by the Deputy Provincial Sheriff is void there having been no order coming from the Court granting such issuance of an Alias Writ;

3. Notice of Levy Null and Void:

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4. That Erlinda Ravanera has no personality to file Motion for Writ of Possession;

5. That there was no formal hearing or reception of evidence from the parties;

6. That there is a pending appeal before the Court of Appeals under G.R. No. 39-115-R;

7. That order issuing the Writ of Possession did not state findings of facts as basis for the order or issuance of the writ;

8. That the price for which the properties have been bidded is grossly inadequate and is therefore unconscionable amounting to lack of consideration.

"From the facts recited in the complaint, the answer as well as the decision of the respondent court appears that the main case partakes more of the nature of an unlawful detainer and damages case rather than one for recission of contract as it is admitted by the parties that the contract of lease had already expired and there is no showing that the same had been expressly or impliedly renewed. Hence there was actually no contract to be rescinded and subsequent orders of the respondent court reveal that it considered the case as one for ejectment and damages."[1]

On November 16, 1971, the Court of Appeals rendered a decision setting aside the orders dated March 18, 1971 and March 30, 1971 issued by the Court of First Instance of Camarines Sur and making the preliminary injunction previously issued permanent.[2]

Petitioners filed a motion for reconsideration of the decision which was denied by the Court of Appeals in its resolution of January 10, 1972.[3]

From the above-mentioned decision and resolution, petitioners seek in this petition to correct errors committed by the Court of Appeals as follows:

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[1] Annex to Petition, pp. 44-49, *Rollo*.

[2] Page 56, *Rollo*.

[3] Page 60, *Id*.

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"1. The Court of Appeals erred in annulling the Notice of Levy merely because it did not comply with some of the formal requirements of the Rules of Court which were not shown to have prejudiced any substantial rights of the respondent Imperial;

"2. The Court of Appeals erred in applying to one unregistered parcel of land and the one unregistered residential house described in the Notice of Levy the formal requirements of the Rules of Court which are applicable only to registered properties;

"3. The Court of Appeals erred in requiring service upon respondent Imperial of the Notice of Levy before the publication of the Notice of Public Auction Sale considering that the Rules of Court does not so require;

"4. That the Court of Appeals erred in not applying to the case at bar the presumption of regularity in the official acts and proceedings of the Sheriff, particularly in the matter of leaving with the occupant of the land, copy of the Notice of Levy, considering that there is no evidence to the contrary;

"5. The Court of Appeals erred in not applying against respondent Imperial the principle of estoppel or waiver of whatever procedural defects there were in the Levy when he repurchased part of the properties levied upon by the Sheriff but failed to repurchase properties which are now in question herein;

"6. That the Court of Appeals erred in not considering against respondent Imperial undisputed facts which show bad faith and intent to delay the proceedings and to thwart a fair administration of justice;

"7. The Court of Appeals erred in not considering in favor of the petitioners undisputed facts showing that they were innocent purchasers for value, and therefore, should not be made to suffer the prejudice caused by the alleged invalidity or ineffectiveness of the levy." (pp. 9-10, *Rollo*)

The main issue raised before Us in this petition is whether or not there was a valid levy upon the properties of respondent Felipe I. Imperial.

The Court of Appeals annulled the levy and all the proceedings subsequent thereto on two grounds, to wit: 1) The occupants or possessors of the properties levied upon were not furnished with a notice of levy and as Section 7 of Rule 57, paragraph

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(a) makes this a requirement for the validity of the levy, non-compliance therewith has made the levy ineffective, and 2) The Notice of levy made by the sheriff did not contain the volume and the page in the Registry where the certificate is registered.[4]

Anent the first ground, the Court of Appeals, in support thereof, cited the case of *Philippine Surety vs. Zabal*[5] wherein this Court held:

"In the case at bar, no notice of the levy was given to the occupant of the land. There was, therefore, no valid levy on the land, and its registration in the registry of deeds and annotation in the title were invalid and ineffective. The fact that the person in whose name the land was registered was duly notified of the attachment does not cure the defect, because personal service of the copy of the writ, description of the property and notice to the owner, who is not the occupant, does not constitute compliance with the statute.

"The evident purpose of the law in imposing these requirements is to make the levy public and notorious, to prevent liens from attaching secretly and by surreptitious entries and endorsements, and to enable the affected party to inquire into the date and circumstances surrounding the creation of the encumbrance, as well as to give him ample opportunity to file timely claims to the property levied upon."

The ruling relied upon by the Court of Appeals has already been modified by the case of *Pamintuan vs. Muñoz*, 22 SCRA 1109 wherein this Court briefly stated:

"Petitioners finally argue that they had not been served a notice of the levy nor a notice of the sale as required by the Rules. The sheriffs return, however shows that the notice of levy had been registered with the Register of Deeds pursuant to Rule 57, Section 7 in connection with Rule 39, Section 15 of the Rules, and that the notice of sale had been sent by registered mail on December 28, 1964, to petitioners. Even assuming then that petitioners were not served a copy of the notice of levy, yet We have already ruled in *Philippine*

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[4] Pages 53 and 54, *Rollo*.

[5] 21 SCRA 682.

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Bank of Commerce vs. Macadaeg, L-14174, October 31, 1960, that this defect is cured by service of notice of sale upon the judgment debtors prior to the sale, which was done here. The levy was validly effected then."

It appears in this case that the notice of levy was registered with the Register of Deeds on September 29, 1969. From a certification of the Postmaster at Naga City, it also appears that registered letter No. 13687 containing the notice of levy and the notice of auction sale addressed to respondent Felipe Imperial was delivered on October 15, 1969 to Pelaguia Comba, member of the household of the addressee. Respondent Imperial was, therefore, notified by registered mail of the levy and the auction sale long before November 3, 1969, the date of the auction sale. What is required is that the judgment debtor must be notified of the auction sale before the actual date of sale which was done in the case at bar.[6]

It cannot be gainsaid that if it were only to afford an opportunity to respondent Imperial to avoid the auction sale, he had ample opportunity to file his objection to such sale because the auction sale took place on November 3, 1969. The respondent had nineteen days after he received the notice of levy and the notice of auction sale on October 15, 1969 and thirty-nine (39) days from September 25, 1969 when he was served personally by the Sheriff a copy of the writ of execution to avoid the sale had he wanted to. Moreover, he had exactly one year from November 27, 1969 when the provisional Deed of Sale executed in favor of the petitioner was registered with the Register of Deeds to redeem the property.

Regarding the second ground, We are constrained to make a distinction for the levy of property registered under Act 496 (Land Registration Act) and the property not brought under the operation of said Act.

The Court of Appeals concluded in its Resolution dated January 10, 1972 that the requirements of Section 7 of Rule 57 do not

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[6] *Pamintuan vs. Muñoz, supra.*

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make distinction whether the property is under the operation of the Land Registration Act or not. Petitioners contend otherwise and such contention is not without merit, under the provisions of Section 15 (Paragraph 2) of Rule 39 and Section 7 (Paragraph a) of Rule 57, which are pertinent.

Section 15 (Paragraph 2) of Rule 39 expressly provides:

"x x x x x x x x x

"Real property, stocks, shares, debts, credits and other personal property, or any interest in either real or personal property, may be levied on in like manner and with like effect as under a writ of attachment."

Section 7 (paragraph a) of Rule 57 also provides the following:

"Attachment of real and personal property, recording thereof. — Properties shall be attached by the officer executing the order in the following manner:

"(a) x x x. Where the property had been brought under the operation of the Land Registration Act, the notice shall contain a reference to the number of the certificate of title and the volume and page in the registration book where the certificate is registered. The registrar must index attachments filed under this paragraph in the names both of the plaintiff and of the defendants."

Section 7 (paragraph a) of Rule 57 is so explicit that only as to property which has been brought under the operation of the Land Registration Act should the notice of levy contain the volume and page in the registration book where the certificate is registered. Impliedly, the requirement does not apply to property not registered under the said Act. It is enough that the notice of levy upon unregistered land be registered under Act 3344, as was done in this case.

In the case of *Siari Valley Estates vs. Lucasan*,[7] which clearly applies to this case, it was held by this Court:

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[7] 58 O.G. 5882.

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"The requirement that the notice of levy should contain a reference to the number of the certificate of title and the volume and page in the registration book where the certificate is registered is made in order that the debtor as well as a third person may be properly informed of the particular land or property that is under the custody of the court. This can only be accomplished by making a reference to the certificate of title covering the property. The situation differs if the land is unregistered, in which case it is enough that the notice be registered under Act 3344. This conclusion finds support in the following authorities:

'An attachment levied on real estate not only recorded in the registry of property is not an encumbrance on the attached property, nor can such attachment, unrecorded in the registry: serve as a ground for decreeing the annulment of the sale of the property, at the request of another creditor.' (*Gonzalez Diez v. Delgado and Imperial*, 37 Phil. 389)

'* * * In conformity with the provisions of Section 71 of the Land Registration Act, the sheriff of the City of Manila filed a notice of the levy with the register of deeds, which notice was entered in the primary entry book of the register's office, but was afterwards, on May 20, 1920, returned to the sheriff with the information that the property was registered in the name of Buenaventura Dizon, having been conveyed to the latter by the defendant in execution, Celerino Arellano, and that, therefore, no memorandum of the notice had been entered upon the outstanding certificate of title. *It may be noted that the notice contained no reference to the number of the certificate of title of the land to be effected, and the volume and page in the registry book where the certificate is registered, and that to that extent, the notice did not meet the requirements of said Section 71.*' (*De Ocampo v. Treasurer of the Philippine Islands*, 50 Phil. 140, 141; Emphasis supplied.)"

The properties which were acquired by the petitioners as the highest bidders in the auction sale on November 3, 1969 are as follows:

1. A parcel of land located at Naga City registered under Act 496 and covered by Transfer Certificate of Title No. 257;

2. A two-storey residential house located at Naga City *not registered under Act 496* but covered by Tax Declaration No. 14276; and

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3. A parcel of residential land located at Naga City *not registered under Act 496* but covered by Tax Declaration No. 8732. (Annex J to Petition, pages 39 and 40, *Rollo.*)

From the records of the case, the notice of levy made by the sheriff as regards the registered land contains reference to the number of its certificate of title but not to the volume and page in the registry book where the title is registered. Nevertheless from what was stated in the case of *Siari Valley Estate vs. Lucasan, supra*, it would seem that the purpose of the requirement of Section 7(a), Rule 39 of the Revised Rules of Court is substantially complied with. This is more so where as in this case, there appears in the notice of levy the following certification:

"It is hereby certified that this instrument has been duly registered proper memorandum hereof made on transfer Certificate of Title No. 257 & 258 and on its owner's duplicate Reg. Book No. 3; File No. 1-248.

"Naga City, Sept. 29, 1969."

Reference to the number of the certificate of title of every registered land in the notice of levy, together with the technical description thereof, would certainly suffice to inform the debtor, as well as third persons what particular land or property is brought to the custody of the court, as is the purpose of the aforecited provision of the Rules of Court. Incidentally, no third person appears to be interested in the matter now before this Court. From the fact that respondent Imperial was able to exercise his right of redemption with reference to three registered parcels of land, it can be easily deduced that insofar as respondent Imperial is concerned, the purpose of the requirement of reference having to be made to the number of the certificate of title, and also the volume and page in the registration book where the certificate is registered, has been fully served or attained.

It may also be pertinent to note that in the Siari Valley case, heavily relied upon by the respondent court in voiding the notice of levy in the instant case, the land involved which was actually

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registered with OCT No. 2492 was described in the notice of levy as *unregistered land*, which was thus a misleading information.

We, therefore, find no substantial defect in the notice of levy on all the properties levied upon and sold to petitioners in the auction sale, that should be a basis, as the respondent court deemed it to be, for annulling the sale made pursuant to the levy.

Respondent Imperial also brands the levy as irregular for failure of the occupants of the attached or levied properties to be left with copy of the order, notice of levy and description of the properties. The finding of facts of the respondent Court of Appeals which was quoted in full above, fails to disclose the existence of occupants of the properties levied upon other than the owner, respondent Imperial. It was incumbent on said respondent to prove by evidence duly submitted to the Court a fact that would tend to support his claim that the levy is void or otherwise illegal. The levy being an official act of a government functionary its regularity is presumed.

The alleged inadequacy of the purchase price of the properties sold in the execution sale is no ground to assail the validity of the sale, for the judgment debtor has the right to redeem the property, and the smaller the price, the easier is it for him to buy back the property.[8]

Respondent Imperial goes back to the issuance of the order of execution on December 30, 1968 to show that the order is invalid because it was issued after he has perfected his appeal on December 10, 1966 (p. 22, Respondent's Brief). What the Court of Appeals, however, stated in its decision is that "on February 17, 1966, pending approval of the Record on Appeals, plaintiff Archbishops of Nueva Caceres filed a Motion for

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[8] *Barrozo vs. Macaraeg*, 83 Phil. 378; *Tolentino vs. Agcaoili*, L-4349-51, May 28, 1952; *Velasquez vs. Coronel*, 5 SCRA 985; *Ponce de Leon vs. Rehabilitation Finance Corporation*, 36 SCRA 289; *De Leon vs. Salvador*, 36 SCRA 567; *Development Bank of the Philippines vs. Vda. de Moll*, 43 SCRA 82.

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Execution of the decision or to order defendant to file supersedeas bond and to deposit the amount of ₱500.00 every month as rentals," and that on May 6, 1966, the respondent court (CFI of Camarines Sur) granted the motion for execution pending appeal. This order was brought up by respondent Imperial to the Supreme Court on *certiorari* as a special civil action, resulting in the stay of the enforcement of the order of the execution. The special civil action, however, was dismissed on May 22, 1968, by the Supreme Court, and the dismissal merely reactivated the order of execution pending appeal issued on May 6, 1966.

Clearly, the original order of execution pending appeal was perfectly valid, and the issuance of *alias* writ when the original writ was not acted upon at the instance of the plaintiff for the reason that amicable settlement between the parties was proposed but failed to materialize, did not affect the validity of either the original or alias *writ* of execution. Accordingly, We rule that contrary to the contention of respondent Imperial (see pages 22-23, Brief for the Respondent), the writ of execution that gave rise to the levy of the properties in question and their sale in a public auction is valid and regular in all respects. That the alias writ of execution was issued by the Clerk of Court and not by the judge is no ground for holding invalid said alias writ, considering that the Clerk of Court is not without authority to issue ordinary writs and processes, under the seal of the Court (Session 4, Rule 136, Revised Rules of Court).

In any event, respondent Imperial as judgment debtor is in estoppel by his failure to seasonably make an objection to the allegedly defective notice of levy and notice of sale before the actual sale, or before redeeming some of his properties despite the supposed defect of the notice of levy. He should have interposed objection to the levy and the sale from the very beginning, from October 15, 1969 when he received notice of levy and notice of sale. A waiver on his part to question the validity of the auction sale may also be said to arise from his failure to pay the arrears in real estate taxes, or to redeem the mortgage of one of the properties sold at public auction, during the period of redemption. These are omissions which are clearly

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an indication of acquiescence in the sale, or his awareness that the execution sale was valid and legally unassailable. To allow him to turn back on his manifest conformity to the levy and sale on execution of his properties, after petitioners have bought the property as the highest bidder during the auction sale, would be patently unjust to the said petitioners, who had every reason to rely on the presumed regularity of the proceedings as official acts of both the judge and his own court officer, the sheriff.

WHEREFORE the decision appealed from is hereby reversed. The notice of levy and the sale of the properties in question, both registered and unregistered in favor of the petitioners are hereby declared valid. No pronouncement as to cost.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.

Teehankee, Acting C.J. (*Chairman*), in the result.

EN BANC

[G.R. No. L-35278. October 23, 1979]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LEONIDES QUINTO,** *defendant-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CONSPIRACY; WHERE CONSPIRACY IS ABSENT, EACH OF THE ACCUSED IS RESPONSIBLE ONLY FOR THE CONSEQUENCES OF HIS OWN ACT.— In the absence of conspiracy, it is necessary to prove who shot and killed the victim, as mere presence of the accused at the scene of the crime, in the company of others,