

**ROBERT C. PEYER, PETITIONER, VS. FELIX MARTINEZ, JUDGE,
COURT OF FIRST INSTANCE OF MANILA, TERESA FANLO PEYER,
AND HONGKONG & SHANGHAI BANKING CORPORATION,
RESPONDENTS.**

G. R. No. L-3500. January 12, 1951

Ponente: TUASON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/46b9f281541e/>

TUASON, J.:

This is a petition for certiorari and mandamus to review certain orders of the Court of First Instance of Manila in civil case No. 7769, and to command the respondent judge to reopen that case and allow petitioner's intervention therein.

It appears that Teresa Fanlo Peyer is, or was, the wife of Robert C. Peyer, who left the Philippines on April 1, 1948 with one Grace Ryle allegedly to escape trial for concubinage with which he and Ryle were to be charged in the Court of First Instance of Manila.

On March 30, 1949, Teresa Fanlo Peyer brought an action, docketed as case No. 7769, in the said court of first instance against the Hongkong and Shanghai Banking Corporation (1) to compel that Bank to cancel a real state mortgage executed in its favor by Robert C. Peyer over the conjugal house at 150 V. Mapa, Manila, and (2) upon payment of the outstanding mortgage debt in the sum of P15,000, to surrender to the plaintiff the Torrens certificate of title to that house, Manufacturer's Life Insurance policy No. 683258, and certain shares of stock or corporate securities, all of which admittedly are owned in common by the spouses.

It was alleged that Robert C. Peyer formerly had an indebtedness of P120,000, more or less, by way of overdraft in current account with the defendant Bank; that as security for the payment of his indebtedness Robert C. Peyer executed a real estate mortgage in favor of the Bank on the conjugal home aforementioned and also pledged the said insurance policy and shares of stock or securities; that during the enemy occupation the payment of Peyer's debt was demanded by the Bank of Taiwan in its capacity as liquidator of the so-called enemy banks, and such payment was effected except the P15,000 which was left outstanding. It was explained that although the aforesaid house, insurance policy, and shares of stock or securities were conjugal assets, yet she was bringing the action as a feme sole (a) because the plaintiff had been living at said house separate and apart from her husband since June, 1945, for the reason that, as above stated, the latter had abandoned and deserted her in order to live with another woman not his wife, which led to the filing of a criminal complaint for concubinage against him and Grace Ryle; (b) because Robert C. Peyer was a fugitive from justice having fled from the Philippines on April 1, 1948 together with Grace Ryle without any intention of returning in order to avoid trial and punishment for said crime; (c) because in thus leaving the Philippines Robert C. Peyer had rendered himself absolutely disqualified to discharge the duties incumbent upon him as manager of the conjugal properties and exposed these to lose and damage; (d) because in order to defraud and further prejudice the interest of the plaintiff in the community property, Robert C. Peyer on September 12, 1946 changed the beneficiary of his various insurance policies, including the

Manufacturer's Life Insurance policy, the premiums on which had been paid out of the conjugal funds, and substituted for the plaintiff as beneficiary, without her consent, the name of Lula G. Ryle; (e) because the plaintiff was without any means to support herself and her daughter, who had been placed under her legal custody, as Robert C. Peyer had failed to send her monthly allowances' in violation of a court order in civil case No. 70172, an order which was affirmed by the Supreme Court in G. R. No. L-145, on September 7, 1946.[1]

The complaint was subsequently amended, with the court's approval previously had, so as to include a prayer for authority "to dispose of or sell said shares and/or securities and have the complete power of disposition over the conjugal house and Manufacturer's Life Insurance policy No. 683258."

The defendant Bank made a motion for compulsory joinder of Robert C. Peyer as an indispensable party. That motion having been denied, the Bank filed an answer alleging that its only interest in this litigation was that it be paid whatever balance remained unpaid of the overdraft account of Robert C. Peyer, after deducting the payment alleged to have been made during the Japanese occupation to the Bank of Taiwan; that upon receipt of such balance it was ready and willing to execute a cancellation of the mortgage on the house at 150 V. Mapa and to hand over the insurance policy and the corporate securities which it had received in pledge from Robert C. Peyer, to whoever the court might find lawfully entitled thereto.

The court upon trial handed down a decision the dis-positive part of which is as follows: "For the foregoing, let a judgment issue requiring the defendant bank to execute a deed of cancellation of the real estate mortgage over the house at 150 V. Mapa, upon payment of the amount of P15,000, and thereafter to surrender to the plaintiff the corresponding title and to deliver to the same plaintiff the Manufacturer's Life Insurance Policy No. 683258 and the shares of stock and/or securities listed in Annex 'A'.

"The plaintiff shall preserve and properly manage those properties, and she may dispose thereof for the purposes, and subject to the conditions set forth above. She may also lease the property on 150 V. Mapa St., Manila."

This judgment was promulgated on July 12, 1949 and the Hongkong and Shanghai Banking Corporation did not appeal, but on August 11, the law firm of Gibbs, Gibbs, Chuidian and Quasha, as attorneys for Robert C. Peyer filed a motion to intervene, to reopen the case and to set aside the judgment. The last motion having been denied, the said attorneys instituted the instant proceedings, alleging that "the respondent Judge acted not only without or in excess of his jurisdiction, but also unlawfully excluded petitioner, without his presence, from the use and enjoyment of his managerial rights over the conjugal properties to which he is by law entitled."

Foremost among the questions raised is whether Robert C. Peyer is an indispensable or necessary party to the action. The answer to this question will largely decide the others. Consideration of collateral matters brought out in the annexes to the pleadings will be omitted from this decision except in so far as they may have some bearing on the issues herein formulated.

Section 4 of Rule 3 provides:

"Sec. 4. Married woman.—A married woman may not sue or be sued alone without joining her husband, except in the following instances:

- (a) When the action concerns her paraphernal property;
- (b) When the action is between herself and her husband;
- (c) When she is living separately and apart from her husband for just cause."

Subparagraph (c) of this section fits into the facts of the present case. Not only are the plaintiff and her husband living apart but he has deserted and abandoned his wife and child. More than that, the suit, it is to be kept in mind,

is not one against the husband but one, in the eyes of the law at least, to preserve the property in which he and the plaintiff have a common interest, and to use it to meet common responsibilities. From both viewpoints and from the very nature of the situation, the wife must necessarily sue alone to protect her natural right and manage the property during her husband's absence. The husband can not expect to be made a party when it is precisely from his inability to act and from the exigencies of the case that the wife derives her cause of action. To include him and require that he be served with process by publication or any other mode would, to a large measure, be a contradiction and defeat the law's purpose.

Aside from specific rules of court, authorities are numerous and emphatic in the assertion of the legal capacity of the wife to sue without her husband under such circumstances as those in which the plaintiff here finds herself and the conjugal property. Grounded on public policy, on simple justice, and on the fundamentals of ownership, these authorities are of universal application, sound and good under all legal systems of civilized society. A few of them, selected at random, should suffice for illustration.

"In exceptional cases the wife may sue to recover community property." Law of Marital Rights, Speer, 3d Ed., sec. 510.

"One of these cases is when she has been abandoned and deserted by her husband." (Savage Oil Co., vs. Johnson et al., No. 3941, 141 S. W., 2d, p. 996.)

"Mr. Sanborn has abandoned his family and his homestead, and abjured the realm. He is in voluntary banishment and hiding, a confessed criminal, to avoid arrest and punishment for a great crime. A wife, under those circumstances, is regarded by the law as a feme sole for the purpose of suing and being sued. Story Eq. PL, sec. 71; 6 Am. & Eng. Enc. Law, 734; Clarke vs. Valentino, 41 Ga., 145; Love vs. Moynihan, 16 111., 278; Gregory vs. Pierce, 4 Mete. (Mass.), 478." (Sanborn vs. Sanborn, 62 N. W., 372.)

"A husband's right to sue alone for the recovery of community property is incidental to his statutory right to the exclusive management thereof based on the assumption that he will discharge his obligations as the head of the family, and not on any legal disability of the wife, so that when the husband leaves his wife, the reason for his control over community property ceases, and an action by the wife alone for damages for slander was not fundamentally defective that her petition would be disregarded and her suit treated as a nullity. * * * It was not essential to her right to sue alone that the husband should have expressly refused to bring a suit, as the jury might conclude that if she had not brought it, it would not have been brought, and that any damages recoverable would have been lost, and that she was dependent on her own resources or the generosity of her parents for support." (Davis vs. Davis, 186 S. W., 776.)

"While the right to manage and control the community estate is by the terms of the statute to continue with the husband during the existence of the marriage relations, still it must be necessarily meant to apply only in those cases where the husband by his presence and willingness to assume such duty and trust is in a position to properly discharge the same with justice to the wife. 'The authorities are numerous to the effect that, where the husband has abandoned his wife and is no longer discharging the duties incumbent upon him as manager of the connubial partnership, the rights of the wife which have hitherto been passive immediately become active, and she herself may do things which ordinarily are intrusted by law to the husband as the head of the family. This arises out of necessity of the situation, based upon the inherent right of the wife herself to her own property and a share in the community, and out of the dereliction of the husband in the discharge of the statutory duties imposed upon him as agent of the community.' Speer's Law of Marital Right, sec. 112, p. 154. See authorities there cited in note." (Webster vs. Isbell, 71 S. W., [2d], 346.)

Article 1441 of the Civil Code, cited and relied upon by the petitioner, tends to uphold rather than detract from the validity of the challenged judgment. The article says:

"Art. 1441. The management of the property belonging to the marriage shall be transferred to the wife:

"1. Whenever she may be the guardian of her husband in accordance with article 220;

"2. When she institutes proceedings to have her husband adjudged an absentee, in accordance with articles 183 and 185;

"3. In the case provided for by the first paragraph of article 1436.

"The courts shall also confer the management upon the wife, with such limitations as they may deem advisable, if the husband should be a fugitive from justice or should have been adjudged in default in a criminal case, or, if, being absolutely disqualified for the administration, he should have taken no steps with respect thereto."

These provisions refer to permanent transfer of management of the community property, and it is doubtful if they contemplate temporary administration such as that granted the wife by the respondent Judge. Supposing however that they are, by analogy, applicable, then the wife's cause is rendered the stronger by reason thereof; for the article permits the wife to assume the management, with the authority of a court of competent jurisdiction, when the husband is absent or otherwise unfit to discharge his duties as administrator. The plaintiff and the court below did just that.

Counsel are probably right in contending that under the article in question, declaration of the husband's absence must precede the transfer of the management; i.e., it must be sought in a separate action in which the absent husband or his representative was given an opportunity to be heard. But if this be so, the requirement, eminently remedial or procedural in character, must be deemed superseded by the new Rules of Court. By section 4 of Rule 3, *supra*, applications to pronounce the husband an absentee and to place the management of the conjugal assets in the hands of the wife may, in our opinion, be combined and adjudicated in one and the same proceeding.

We therefore conclude that Robert C. Peyer was not an indispensable or necessary party and that the court below properly proceeded in trying and deciding the case without him being joined. It likewise follows that the lower court did not err in disallowing his motion to intervene.

Allowance of a motion to intervene rests in the sound discretion of the court where the proposed intervenor is not an indispensable party. In the exercise of that discretion, the court "shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the intervenor's rights may be fully protected in a separate proceeding. (Sec. 3, Rule 113.) In the light of this provision and of the circumstances of the case, and putting aside the fact that the judgment had become final when the husband's¹ motion to intervene was registered, the court did not abuse its discretion. There was no possible injury to the husband's interest flowing from his omission for which he could not obtain redress in other ways; nor was there any valid objection to the proceeding which he could make. (The nature of his objection and what he intended to do are not disclosed.) As long as he stays away we can not see any substitute for the wife's management which he could offer. Upon the principles set out in the decisions hereinbefore quoted, nothing short of his physical presence in the country or his ready availability personally to administer the conjugal property should stop the wife from replacing him in the administration. It is only upon these conditions that he can keep the management under the Civil Code. Managing the conjugal property by remote control over the opposition of his wife who has an equal share in the property would not do. (See *Davis vs. Davis*, *supra*, and *Webster vs. Isbell*, *supra*.)

The husband's management of the conjugal estate is not a natural right like his right to do as he pleases with his private affairs. It is a mere privilege or preference given him by law on the assumption that he is better able to handle the administration. It results that when his supposed superiority over the woman in this regard; when indeed, as in this case, his ability as manager totally disappears, the *raison d'être* of the privilege vanishes, and it

is only just and proper that his co-partner should take control.

Upon the facts of this case, the petitioner should be content with instituting, if he so desires, an independent action to liquidate the partnership or contest the right of his wife to take over its management. Not being a party to his wife's action he is not barred from pursuing this course. If such procedure would, as he claims, entail delay, he can afford to wait better than his wife and his child. After all, he himself has created the emergency and is estopped from complaining against its consequences. While, as a general proposition, multiplicity of suits is abhorrent, this is one case which should operate as an exemption to the rule. The case demands prompt and resolute action to cope with an existing emergency—to enable the plaintiff to tide over her plight, to meet her and her child's necessities, and to meet conjugal obligations long overdue. As Mr. Chief Justice Cardozo of the New York Court of Appeals, later Associate Justice of the United States Supreme Court, has said, "The law does not stand upon punctiliousness if there is a starving wife at home."

It is interesting to note, apropos of this topic, that the husband had time and opportunity at the start of the suit to come into the case and do whatever he now proposes to do. Notwithstanding the plaintiff's objection to his joinder suggested by the Hongkong and Shanghai Banking Corporation, Attorneys Ross, Selph, Carrascoso and Janda, who were or had been his lawyers, were notified by the counsel of the defendant of the pending suit. We find no denial that the notification was relayed to the plaintiff which in the ordinary course of professional dealings the said attorneys are presumed to have done.

Before closing, it is worth repeating and re-emphasizing that under the terms of the judgment complained of, the administration conferred upon the wife is temporary; that said administration is open to the defendant to reclaim and resume if and when he comes forward and puts himself in a position to attend to it in the manner and form provided by law, and that in the last analysis the wife is authorized by the judgment) to do no more than what the defendant himself would be compelled to do if he were the administrator.

Upon the foregoing considerations, the petition for certiorari and mandamus is dismissed, with costs against the petitioner.

Ozaeta, Feria, Pablo, Bengzon, Montemayor and Reyes JJ., concur.

[1] 43 Off. Gaz., 3041; 77 Phil., 366.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.