

**PASTOR D. AGO, PETITIONER, VS. HON. TEOFILO B. BUSLON, ET AL.,
RESPONDENTS.***G.R. No. L-19631. January 31, 1964*

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/5e96c0ead9d2/>**CONCEPCION, J.:**

Original action for certiorari.

On or about April 11, 1960, respondent spouses, Monica Urbiztondo and Pedro Orcullo, instituted, against petitioner Pastor D. Ago, civil case No. 1349 of the Court of First Instance of Surigao, to recover the rentals allegedly due for the use, as a private road, for his logging operations in the municipality of Lianga, Province of Surigao, of portion of a land, allegedly belonging to said respondents, in the aforementioned municipality and province. In the complaint filed in said case respondents prayed for judgment in their favor:

"* * * (a) requiring the defendant to pay rentals for the passage of his private road across the land of the plaintiffs at the rate of P50.00 a month;

"(b) ordering defendant to pay the accrued rentals since February, 1957 up to the filing of this complaint in the total sum of P1,950.00;

"(c) requiring defendant to pay P200.00 for the destroyed coconut trees and nipa palms;

"(d) ordering the closing of the road, if the defendant fail to pay the rentals; and

"(e) requiring defendant to pay attorney's fees in the sum of P500.00 and to pay the costs."

In his answer to the complaint, petitioner, alleged, inter alia, that the aforesaid road traverses, not the land of the Orcullos, but that of one Olimpia C. Jalandoni, and that respondent court had no jurisdiction to try and decide the case. Petitioner, likewise, set up a counterclaim, for alleged damages, aggregating P37,000.00. After the filing of respondents' answer to this counterclaim, the case was set for hearing on October 11, 1960. Petitioner's counsel moved for the postponement of said hearing, for the reason that he had, on the same date, another hearing in the Court of First Instance of Manila. On October 1, 1960, this motion was denied upon the ground: (1) that the notice sent to petitioner's counsel, advising him that the case would be heard on October 11, 1960, is dated August 13, 1960, whereas the notice of hearing of the Court of First Instance of Manila had been sent to him on September 3, 1960; and (2) that the date of hearing appearing in the latter notice was originally October 4, 1960, but the typewritten digit "4" thereon was crossed out and number "11" hand written in lieu thereof, in ordinary ink, without any initial to indicate the identity of the person who had made the correction.

Ten (10) days later, respondent court received a telegram of petitioner herein, dated October 10, 1960, once more requesting postponement of the hearing, alleging this time that he had "just" been informed of the aforementioned order of October 1, 1960, and that he had no time to appear before respondent court, in the Province of Surigao, he having gone to Manila to attend the hearings in cases Nos. 36770 and 39990 of the "Manila Court". This motion was, likewise, denied because it had not been served on the opposing counsel, and the Orcullos and their

counsel were ready for trial, they "having come all the way from Lianga to Tandag, thru rough seas, and their counsel, also, having come all the way, from (the municipality of) Surigao to (that of) Tandag, a distance of 186 Kms."

Thereupon, respondent court proceeded to receive respondents' evidence, but it did not render judgment until over eight (8) months later, or on June 13, 1961, after noting that petitioner had meanwhile "done nothing in the premises." On the date last mentioned, decision was rendered sentencing petitioner to pay to the Orcullos: (a) P220 as damages for trees cut by petitioner; (b) P2,250 as rentals from February, 1957 to October, 1960; (c) P50 a month from November, 1960, until the disputed land shall have been vacated by petitioner; (d) P500 as attorney's fees; (e) P90 as incidental expenses; and (f) the costs.

On or about July 11, 1961, petitioner filed a motion to set this decision aside and to dismiss the case for lack of jurisdiction, which motion was denied on November 24, 1961. Notice of the order to this effect was received by petitioner on January 6, 1962, who instituted the present action for certiorari on April 6, 1962, upon the theory that respondent court had no jurisdiction to hear and decide said case; that the decision therein rendered is, accordingly, null and void; and that petitioner has "no appeal, nor other plain, speedy and adequate remedy in the ordinary course of law."

Being a party in said case No. 1349 and having been duly notified, not only of the decision therein rendered, but, also, of the order of November 24, 1961, denying his motion of July 11, 1961, it is obvious that petitioner could have appealed from said decision, and from the aforementioned order of November 24, 1961, and that such an appeal would have been a plain, speedy and adequate remedy in the ordinary course of law. Yet, he did not avail of such remedy. What is more, it would appear that the present action has been resorted to in order to offset petitioner's failure to appeal from the decision and order adverted to above. Indeed, although notice of the order of November 24, 1961, denying his motion of July 11, 1961, had been received on January 6, 1962, petitioner took no step whatsoever to seek any relief from said decision and order until April 6, 1962, or long after the expiration of the reglementary period to interpose said appeal. It is well settled that the writ of certiorari may not be availed of to make up for the loss, through omission or over-sight, of the right to appeal (*Casilan, et al. vs. Hon. Filomeno B. Ibanez, et al.*, L-19968-69, October 31, 1962; *Santos vs. Vda. de Cerdenola, et al.*, L-18412, July 31, 1962; *Francisco, et al. vs. Hon. Hermogenes Caluag, et al.*, L-1536B, December 26, 1961; *City of Manila vs. Hon. Higino B. Macadaeg, et al.*, L-15134, November 29, 1961; *Paringit vs. Hon. Honorato Masakayan, et al.*, L-16578, July 31, 1961; *Hon. Francisco Jose, et al. vs. Zulueta, et al.*, L-16598, May 31, 1961; *Profeta, et al. vs. Gutierrez David, et al.*, 71 Phil. 582, see, also, *Grospe, et al. vs. Court of Appeals*, 106 Phil., 1144; *Ong Sit vs. Piccio*, 79 Phil., 785; *Castro vs. Pena*, 80 Phil., 488; *Gil vs. Gil III*, 80 Phil., 791; *Gov't of U.S. vs. Judge of CFI of Pampanga*, 50 Phil. 975, 979; *Santos vs. Court of Appeals*, 49 Phil., 398; *Ello vs. Judge of First Instance of Antique*, 49 Phil., 152; *Gonzales vs. Salas*, 49 Phil., 1; *De los Santos vs. Mapa*, 46 Phil., 791).

Moreover, although an action for the recovery of not more than P5,000 falls within the exclusive original jurisdiction of justice of the peace courts, the Orcullos premised their right of action upon their alleged title to the land described in the complaint and petitioner contested such allegation, thus putting the title to said land in issue, the determination of which is within the exclusive original competence of courts of first instance. Then, too, petitioner's counterclaim for P37,000 was, also, within the exclusive original jurisdiction of the latter courts, and there are ample precedents to the effect that "although the original claim involves less than the jurisdictional amount, * * * jurisdiction can be sustained if the counterclaim (of the compulsory type)"—such as the one set up by petitioner herein, based upon the damages allegedly suffered by him in consequence of the filing of said complaint—"exceeds the jurisdictional amount". (*Moore Federal Practice*, 2nd ed. [1948], Vol. 3, p. 41; *Ginsburg vs. Pacific Mutual Life Ins. Co. of California*, 69 Fed. [2d] 97; *Home Life Ins. Co. vs. Sipp II Fed.* [2d] 474;

American Sheet Tin Plate Co. vs. Winzeler [D.C.], 227 Fed. 321, 324; Brix vs. People's Mutual Life Ins. Co., 41 P. 2d. 537, 2 Cal. 2d. 446; Coggins vs. Superior Court, 16 P. 2d. 148, 127 Cal. App. 412; Emery vs. Pacific Employees Ins. Co., 67 P. 2d. 1046, 8 Cal. 2d. 663.)

Wherefore, the petition is hereby denied and the case dismissed, with costs against the petitioner. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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.