

**M. A. ZARCAL, MAGDALENA DE ZARCAL AND HERIBERTO ZARCAL,
PETITIONERS, VS. S. HERRERO, REMEDIOS HERRERO VDA. DE
GONZALES, FILOMENA VDA. DE HERRERO, FELIPE NATIVIDAD,
JUDGE OF FIRS...**

G.R. No. L-2423. May 26, 1949

Ponente: PARAS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6abc33912018/>

PARAS, J.:

In an ejectment case between respondent S. Herrero, as plaintiff, and herein petitioners, as defendants (civil case No. 2801), the municipal court of Manila rendered a decision on March 5, 1947, sentencing the petitioners to vacate the premises in question and to pay to respondent Herrero the monthly rental of P77 from January 1, 1947, until the premises shall have been vacated, plus the costs.

Upon appeal by the petitioners to the Court of First Instance of Manila, the respondent Judge, Hon. Felipe Natividad, rendered a decision dismissing the complaint, with costs against the plaintiffs (it appears that in the Court of First Instance the complaint was amended so as to include other parties plaintiff). The plaintiffs (herein respondents other than the respondent judge and the respondent sheriff), duly submitted their record on appeal as one of the steps for elevating the case to the Court of Appeals. In the meantime, or on May 9, 1948, the respondent Herrero and others filed a petition with the Court of First Instance of Manila for the execution of the decision of the municipal court, on the ground that the defendants (herein petitioners) failed to pay or deposit the rentals for the months of January to May, 1948. On August 9, 1948, the respondent judge of the Court of First Instance of Manila issued an order granting the aforesaid petition and directing the issuance of a writ for the execution of the judgment of the municipal court. On the same date, or August 9, 1948, the record on appeal filed by the plaintiffs (herein respondents other than respondent judge and respondent sheriff) was approved by the respondent judge, and the case was ordered certified to the Court of Appeals.

The petitioners have instituted the present petition for certiorari, with a view to obtaining the annulment of the order directing the issuance of a writ of execution against the petitioners. There is merit in said petition. We have already held that the judgment of the municipal court is superseded by the judgment of the Court of First Instance, and the latter court cannot order the execution of said judgment of the municipal court which has become *functus officio* (*De la Fuente and Teodoro, vs. Jugo and Borromeo*, 76 Phil., 262). The action of the respondent judge in ordering the execution of the decision of the municipal court, in spite of the judgment of said respondent in favor of the herein petitioners, amounts to a reversal of his own judgment pending appeal by the plaintiffs (herein respondents other than respondent judge and respondent sheriff).

Moreover, it appears that the execution was ordered on the ground that herein petitioners failed to pay the rentals awarded in the decision of the municipal court. This is erroneous not only because the rental to be paid or deposited by the defendant in an ejectment case pending appeal from a judgment of the Court of First Instance, is that determined by the latter court (*Romero vs. Pecson*, 83 Phil., 308)—in the case at bar the judgment of the Court

of First Instance dismissed the complaint,—but because the defendant in an ejectment case has to pay or deposit said rentals only in case he appeals from the judgment of the Court of First Instance, in order to stay execution. In the case now before us, the petitioners are not bound to pay or deposit said rentals, because it is the plaintiffs (herein respondents other than respondent judge and respondent sheriff) who have appealed from the decision of the Court of First Instance. (Rule of Court No. 72, section 9.)

The petition for certiorari is hereby granted and the order of the respondent judge in civil case No. 2102, directing the issuance of a writ for the execution of the judgment of the municipal court, is set aside. The writ of preliminary injunction heretofore issued is made permanent. So ordered, with costs against the respondents other than respondent judge and respondent sheriff.

Moran, C. J., Ozaeta, Feria, Pablo, Perfecto, Bengzon, Tuason, Montemayor, and Reyes, 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.