

CONCEPCION P. CASTRO AND ANDRES M. CASTRO, PETITIONERS, VS. HON. EMILIO PEÑA, JUDGE OF COURT OF FIRST INSTANCE OF MANILA, VALERIANO FUGOSO, CITY MAYOR OF MANILA, EMILIA MATANGUI...*G.R. No. L-1444. March 23, 1948*

Ponente: HILADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6c1937f00422/>**HILADO, J.:**

This is a petition for certiorari with preliminary injunction. Petitioners Concepcion P. Castro and Andres M. Castro under date of December 6, 1946, filed a complaint with the Court of First Instance of Manila in Civil Case No. 1318 against the Honorable Valeriano S. Fugoso, as Mayor of Manila, and Emilia Matanguihan and Venacio Segismundo, in which complaint, among other things, it was prayed that, after hearing on the merits, a permanent writ of injunction be issued perpetually enjoining the defendant City Mayor, his agents, employees, and all persons acting under his control and authority, as well as the defendant Emilia Matanguihan, from enforcing the "decisions" of October 14 and November 26, 1946, of the defendant City Mayor mentioned in the body of the complaint (Annex A), with any other equitable relief. Said so-called decision of October 14, 1946, of the Mayor of Manila cancelled the assignment and adjudication alleged to have been made of stalls Nos. 347 and 348, Divisoria Market, in favor of the plaintiff Concepcion P. Castro by the former Mayor of the same city; and by the so-called decision of November 26, 1946, the same defendant Mayor reiterated his so-called decision of October 14, 1946, above referred to. It was alleged in said complaint that these two so-called decisions were rendered arbitrarily, unlawfully, and without or in excess of the power and jurisdiction, and with grave abuse of the discretion, of the said defendant Mayor.

In the answer filed by said Mayor (Annex C) he, among other things, admitted having addressed to the therein plaintiff Concepcion P. Castro the letter or what the latter calls a "decision" referred to in paragraph 6 of the above-mentioned complaint, which is the so-called decision of October 14, 1946, as well as having rendered the other so-called decision referred to in paragraph 7 of the same complaint and dated November 26, 1946, but denied having acted in both cases arbitrarily, unlawfully and without or in excess of his power and of his jurisdiction and with grave abuse of discretion, alleging as a reason for such allegation that he caused to be conducted a thorough investigation of the case wherein it was disclosed that an error was committed in the first "decision" adjudicating the stalls in question to the therein plaintiff Concepcion P. Castro "who was not entitled to such adjudication under resolution No. 50, Series of 1945, of the Municipal Board". It was further averred in said answer that "the adjudication made by the former City Mayor on May 27, 1946, of the stalls in question in favor of the plaintiff Concepcion P. Castro was erroneous and contrary to the provisions of Resolution No. 50, series of 1945, of the Municipal Board, because it turned out that the said plaintiff Concepcion P. Castro in May, 1945, obtained the material occupation of the stalls in question from co-defendant Emilia Matanguihan, the then legal occupant thereof, through fraud."

Upon petition of the plaintiffs in said case the therein defendants Emilia Matanguihan and Venacio Segismundo

were declared in default by an order dated January 2, 1947 (Annex E).

The Court of First Instance, the Honorable Emilio Peña presiding, decided that case on April 7, 1947, and in the pertinent parts of its decision found the following facts:

"The only question to be determined in this case is whether or not the adjudication of the stalls to the defendant, Matanguihan, is arbitrary, contrary to the facts and laws involved, and constitutes an abuse of the exercise of the power of the City Mayor, as it is alleged by the attorney for the plaintiff. From the evidence on record, the Court is of the opinion that such adjudication was not in disregard of the provisions of Resolution No. 50 of the Municipal Board approved on December 15, 1945. Neither was it against the provisions of the Market Code. It should be "taken into account that since October, 1941, the defendant, Matanguihan, was occupying the stalls in question under special assignment, and, having filed a regular application therefor, she was given the regular assignment thereof during the year 1943. Since then up to the month of May, 1945, she, as such regular holder, had been paying the regular fees. It is an undisputed fact, however, that the plaintiff, Concepcion, was not the regular holder of stalls Nos. 347-348 before the outbreak of the war, inasmuch as she was a regular holder of stalls Nos. 183-184 of the Divisoria Market, which, at the time she came back to Manila on May 1, 1945, were occupied by others, and it was only on May 9, 1945, with the permission of the market collector, during the absence of the regular holder, when plaintiff Concepcion began to occupy the stalls in question, and in lieu of claiming her former stalls to which she had a preferred right to occupy, as per Resolution No. 50 above referred to, she chose to claim the stalls in question because they are better located. Under the facts above stated, it is, therefore, quite clear that the defendant, Emilia Matanguihan, has a better right to the occupancy of said stalls. (Annex "F", p. 2).

Whereupon, said court determined the case by rendering judgment as follows:

"WHEREFORE, judgment is hereby rendered against the plaintiff and in favor of the defendant, Emilia Matanguihan, declaring the latter the legal occupant of stalls Nos. 347-348 of the Divisoria Market, Manila, which the former is hereby ordered to vacate immediately, without special pronouncement as to costs. The preliminary injunction issued in this case is hereby dissolved." (Annex F, p. 2; italics supplied.)

Under date of April 30, 1947, that is, twenty-three days after the rendition of the aforesaid judgment, counsel for the City Mayor presented a petition for execution of the judgment (Annex I), and upon that petition, despite the answer and opposition of the plaintiff therein (Annex J), the court by an order of May 6, 1947, decreed the issuance of the writ of execution prayed for.

This writ of execution is known in the record as Annex L of the instant petition, and it commanded the sheriff of Manila, among other things, "to cause the plaintiff Concepcion P. Castro to forthwith vacate the stalls known as Nos. 347-348 Divisoria Market, Manila, and that the defendant Emilia Matanguihan have possession of the same, x x x". It is now contended that the instant respondent Emilia Matanguihan having been declared in default for not having answered the complaint nor appeared in said case No. 1318, it was beyond or in excess of the jurisdiction and it was with grave abuse of discretion of the respondent judge, Honorable Emilio Peña, of the Court of First Instance of Manila, to issue the aforementioned writ of execution.

Three questions are presented, namely, (a) whether, procedurally, certiorari lies under the above stated facts; (b) whether the Court of First Instance had jurisdiction and power to include in its judgment above transcribed the decree that the plaintiff therein immediately vacate the stalls in question; and (c) whether the writ of execution Annex L was totally or partially beyond or in excess of the jurisdiction of the said court to issue, or its issuance was with grave abuse of its discretion.

As to the first question, it will be noticed that said civil case No. 1318 was for injunction and "any other equitable relief"—the complaint therein is entitled "complaint for injunction". And the prayer in its paragraph (a) was for "a

permanent writ of injunction". Such a case is specifically covered by Rule 39, Section 4, as regards, among other things, the execution of the judgment therein. Said section provides:

"Sec. 4. Injunction, receivership and patent accounting, not stayed.—Unless otherwise ordered by the court, a judgment in an action for injunction x x x shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from a judgment x x x denying an injunction, may make an order x x x granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party."

If it was, therefore, desired to insist upon the granting of the injunction, the above quoted provision of the rules required that the party take an appeal from the judgment of the trial court and, as an incident thereto, seek the exercise of said court's discretion in the sense of granting a preliminary injunction pending the appeal. Although petitioners did not strictly follow this procedure, the instant petition in its paragraph 15 (and it is admitted in paragraph 1 of the answer of the respondents Judge Peña, Mayor Fugoso, and Sheriff Pasicolan) that on May 6, 1947, the instant petitioners perfected their appeal from the judgment in the main case, and it is alleged in paragraph 11 of the same petition that on May 5, 1947, they had prayed in their answer to the petition for execution that said execution be stayed either by the reinstatement of the writ of preliminary injunction or by allowing them to file a supersedeas bond, which allegation is also admitted in paragraph 1 of the said answer. In this petitioners substantially followed the procedure marked by Rule 39, Section 4.

The Court of First Instance, exercising its discretion expressly conferred by the above cited section, refused to reinstate the writ of preliminary injunction pending the appeal. In view of the grounds supporting the judgment of said court and the other circumstances of record, we can not say that it abused its discretion in thus refusing to act as requested by petitioners.

In the recent case of *Kabiling vs. Peña*, G. R. No. L-1268, September 30, 1947, we held that unless otherwise ordered by the court, a judgment in an action for injunction shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal. In that case, as in this, the judgment of the Court of First Instance dissolved the preliminary injunction previously issued.

"As a general rule, the taking of an appeal stays the execution of the judgment. But such is not the case when the judgment is rendered in an action for injunction, or in a receivership action, or when the judgment is one directing an accounting in an action for infringement of letters patent. Such judgments must be enforced notwithstanding the appeal, unless the trial court, in an action for injunction, provides otherwise upon such terms, as to bond or otherwise, as it may deem proper for the security of the adverse party. This is in consonance with rulings of our Supreme Court. When, in an action, a preliminary injunction is issued, and is later dissolved in the final judgment, the taking of an appeal does not stay its dissolution, unless the trial court provides for the continuance of the status quo, subject to further orders of the appellate court. x x x". (*I Moran*, 2nd ed., p. 647).

But this is not all. It is true that the relief thus granted in the underscored portion of the judgment was not demanded in the defendant Mayor's answer Annex C, but it is no less true that the allegations of his answer, placed against those of the complaint therein, properly authorized the granting of said relief. In paragraphs 2 and 3 of said answer facts are alleged tending to show that the therein plaintiff Concepcion P. Castro was not entitled to the adjudication of the stalls in question under Resolution No. 50, Series of 1945, of the Municipal Board and that said adjudication was erroneous and contrary to said resolution because said plaintiff in May, 1945, obtained material occupation of said stalls from Emilia Matanguihan, the then legal occupant, thru fraud. And these allegations were upheld by the court in its decision Annex F, as we have seen above.

The Court of First Instance, of course, had jurisdiction to decide that case. Whether its decision was erroneous or correct is entirely apart from its jurisdiction and authority to render it, and however erroneous such decision might be, the error would not divest the court of its jurisdiction, and could only be corrected, if at all, by appeal. (*Herrera vs. Barretto*, 25 Phil. 245, 251, 271).

As to the second question, we are of opinion that the Court of First Instance did have jurisdiction and power to include in its judgment the decree that the therein plaintiff immediately vacate said stalls. It is clear that the main issue in the case, as raised by the plaintiff's complaint and the defendant Mayor's answer, was as to who, between the plaintiff and the defendant Emilia Matanguihan, was legally entitled to occupy the aforesaid stalls. And it is equally clear that the court before which that question was submitted had plenary jurisdiction to decide who of the said parties was legally entitled to occupy the stalls, and that jurisdiction included not only the power to decide the said question, but also the power "to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction" (7 R. C. L. p. 1033, Sec. 62 and cases therein cited), and the authority "to make such orders and issue such writs as may be necessary and essential to carry the judgment or decree into effect and render it binding and operative" (7 R. C. L. p. 1034, sec. 63 and cases therein cited; *italics supplied*).

"62. Inherent Powers of Courts.—It is fundamental that every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction, x x x" (7 R. C. L. p. 1033).

"63. A court having jurisdiction to render a judgment or decree, has authority and jurisdiction to make such orders and issue such writs as may be necessary and essential to carry the judgment or decree into effect and render it binding and operative." (7 R. C. L. p. 1034; *italics*)

Rule 124, section 5(c) mentions as one of the inherent powers of every court that "to compel obedience to its judgments, orders, and process" in a case pending therein. As already stated, the then plaintiff Concepcion P. Castro, under the allegations of her complaint, claimed the better right to the occupancy of the controverted stalls, but the respondent City Mayor, under the allegations of his answer, asserted that the party to whom he had finally adjudicated said stalls, the therein defendant Emilia Matanguihan, had the better right to occupy them under resolution No. 50, Series of 1945, of the Municipal Board. Hence, the Court of First Instance was called upon to decide said question within the issues raised by the said pleadings. And the jurisdiction of the Court of First Instance comprised not solely the authority to decide said question but also to make its judgment or decree operative and binding, or to put it otherwise, to compel the parties litigant to respect it. It had, undoubtedly, jurisdiction to declare, as it did, that Emilia Matanguihan was the one legally entitled to occupy said stalls, and such declaration was necessary to its judgment upholding the legality and correctness of the Mayor's action. The court possessing that jurisdiction, it would indeed be absurd to say that said court, after having so adjudged and decreed, lacked authority to order the adverse party Concepcion P. Castro to immediately vacate the stalls. Concepcion P. Castro, like the rest of the parties litigant in the case, was certainly bound to respect and abide by the judgment decreeing that Emilia Matanguihan was the party legally entitled to occupy the stalls. Without prejudice to her right of appeal and any stay opportunely and properly granted, would she be respecting and abiding by that judgment by refusing to vacate? The most effective way of disobeying and defying said judgment, with the saving just indicated, was for her to persist in occupying the stalls. If the Court of First Instance had jurisdiction, power and authority to make her respect and abide by its judgment, it necessarily had jurisdiction, power and authority to order said occupant to vacate the stalls.

Such order to vacate was "necessary and essential to carry the judgment or decree into effect and render it binding and operative", for the court's judgment that Emilia Matanguihan was the one legally entitled to occupy the stalls would be meaningless if the court lacked the power and authority to make it work through the additional decree of

ouster.

Of course, that judgment inured to the benefit not only of the City of Manila represented by the respondent Mayor but also of the respondent Matanguihan, even as a defaulted defendant in said case No. 1318 (*Velez vs. Ramas*, 40 Phil. 787, 792; *Frow vs. De la Vega*, 15 Wall. 552; 21 Law. ed. 60).

One of the cases cited in support of the above quotation from 7 R. C. L. is that of *Taylor vs. Bulett*, 15 Idaho 265, 19 L. R. A. (N.S.), 535, which cites, among others, the case of *Root vs. Woolworth*, 150 U. S. 401; 37 Law. Ed., 1123, from which last case the following is quoted:

"It is said, however, on behalf of the appellant that the original decree only undertook to remove the cloud upon the title, and did not deal with the subject of possession of the premises, and that the present bill, in seeking to have possession delivered up, proposes to deal with what was not concluded by the former decree. This is manifestly a misconception of the force of the original decree, which established and concluded Morton's title as against any claim of the appellant, and thereby necessarily included and carried with it the right of possession to the premises as effectually as if the defendant had himself conveyed the same. The decree in its legal effect and operation entitled Morton to the possession of the property, and that right passed to the appellee as privy in estate.

"In *Montgomery vs. Tutt*, 11 Cal., 190, there was a decree of sale, which did not require or provide for the delivery of possession of the premises to the purchaser. Subsequently the defendant refused to surrender possession, and a writ of assistance was sought by the purchaser to place him in possession of the premises under the master's deed. Field, J., delivering the opinion of the court, said:

" 'The power of the court to issue the judicial writ, or to make the order and enforce the same by a writ of assistance, rests upon the obvious principle that the power of the court to afford a remedy must be co-extensive with its jurisdiction over the subject-matter. Where the court possesses jurisdiction to make a decree, it possesses the power to enforce its execution. It is true that in the present case the decree does not contain a direction that the possession of the premises be delivered to the purchaser. It is usual to insert a clause to that effect, but it is not essential. It is necessarily implied in the direction for the sale and execution of a deed. The title held by the mortgagor passes under the decree to the purchaser upon the consummation of the sale by the master's or sheriff's deed. As against all the parties to the suit, the title is gone; and, as the right to the possession, as against them, follows the title, it would be a useless and vexatious course to require the purchaser to obtain such possession by another suit. Such is not the course of procedure adopted by a court of equity. When that court adjudges a title to either real or personal property, to be in one as against another, it enforces its judgment by giving the enjoyment of the right to the party in whose favor it has been decided.'" (37 Law. ed., 1126.) (Italics supplied.)

The principles enunciated in the foregoing quotation are clearly applicable to the present controversy. In *Root vs. Woolworth*, *supra*, as it appears from the foregoing quotation, the original decree of the court was only to remove the cloud upon the title of Morton, but it was held that that decree in its legal effect and operation entitled Morton to the possession of the property, and that said right passed to the appellee as privy in estate. In the main case now under consideration (Civil Case No. 1318) the Court of First Instance decreed that Emilia Mutanguihan had the better right to occupy the stalls; upon the same principle and for the same reason as in the *Root-Woolworth* case, that decree in its legal effect and operation entitled said Matanguihan to the occupation of the stalls: and what is even plainer is that said decree in its legal effect and operation divested Concepcion P. Castro of the right to continue occupying said stalls, except when a stay of execution should be timely and properly granted her.

Similarly, as decided in *Montgomery vs. Tutt*, 11 Cal., 190, cited in the *Root-Woolworth* decision, when a court adjudges a title to either real or personal property to be in one as against another, "it enforces its judgment by giving the enjoyment of the right to the party in whose favor it has been decided".

Moreover, the aforesaid decree of ouster and writ of execution can still be sustained even if it should be said, on petitioners' side, that the execution of such decree of ouster should be governed by Section 2, instead of Section 4, of Rule 39. It will appear that the respondent judge's order Annex K, directing the issuance of execution, and the petition for execution Annex I, filed by counsel for the respondent Mayor and counsel for the respondent Emilia Matanguihan, bring the case within the discretionary power of the trial court to order that execution issue before the expiration of the time to appeal, pursuant to said Section 2. There can be no question that in the decree of ouster the City of Manila, represented by the respondent Mayor, had a distinct interest of its own, as the owner of the stalls in controversy—it was interested in the stalls being disposed of in the manner it, as such owner, had determined through its Mayor. The decree was a vindication of its own proprietary rights. As such interested party, the City, through the Mayor, was the first movant in the petition for execution, Annex I, wherein reasons were alleged which the judge deemed "well founded" in his order Annex K. Liberally construed (Rule 1, Section 2), this order should be considered as adopting by reference the reasons alleged in the petition for execution, Annex I, within the meaning and intent of Rule 39, Section 2. In fact, this was the holding in *Joven vs. Boncan*, G. R. No. 45898, April 10, 1939, wherein the Court said that a statement by reference of the good reasons required by the rule, as it existed in section 144 of Act 190, was sufficient as, for instance, "when such reasons appear in a motion for execution, and reference thereto is made in the special order as ground therefor". (I Moran, Comments on the Rules of Court, 2nd ed., p. 643). It has been held in two other cases (*Lusk vs. Stevens*, 64 Phil., 154, and *Guevara vs. Court of First Instance of Laguna*, No. 46698, June 20, 1940, 40 Off. Gaz., [7th Supp.], 191) that the element that gives validity to an order of execution is the existence of the good reasons if they may be found distinctly somewhere in the record (cited volume and page of same Comments on the Rules of Court).

As above stated, Emilia Matanguihan, by her counsel, also was a movant in the petition for execution Annex I. Did she have a right to be such, having been declared in default? In *Frow vs. De la Vega*, supra, cited as authority in *Velez vs. Ramas*, supra, the Supreme Court of the United States adopted as ground for its own decision the following ruling of the New York Court of Errors in *Clason vs. Morris*, 10 Johns., 524:

"It would be unreasonable to hold that because one defendant had made default, the plaintiff should have a decree even against him, where the court is satisfied from the proofs offered by the other, that in fact the plaintiff is not entitled to a decree". (21 Law. Ed., 61).

The reason is simple: justice has to be consistent. The complaint stating a common cause of action against several defendants, the complainant's rights—or lack of them—in the controversy have to be the same, and not different, as against all the defendants, although one or some make default and the other or others appear, join issue, and enter into trial. For instance, in the case of *Clason vs. Morris* above cited, the New York Court of Errors in effect held that in such a case if the plaintiff is not entitled to a decree, he will not be entitled to it, not only as against the defendant appearing and resisting his action but also as against the one who made default. In the case at bar, the cause of action in the plaintiffs' complaint was common against the Mayor of Manila, Emilia Matanguihan, and the other defendants in Civil Case No. 1318 of the lower court. The Court of First Instance in its judgment found and held upon the evidence adduced by the plaintiff and the defendant Mayor that as between said plaintiff and defendant Matanguihan the latter was the one legally entitled to occupy the stalls; and it decreed, among other things, that said plaintiff, immediately vacate them. Paraphrasing the New York Court of Errors, it would be unreasonable to hold now that because Matanguihan had made default, the said plaintiff should be declared, as against her, legally entitled to the occupancy of the stalls, or to remain therein, although the Court of First Instance was so firmly satisfied, from the proofs offered by the other defendant, that the same plaintiff was not entitled to such occupancy that it peremptorily ordered her to vacate the stalls. If in the cases of *Clason vs. Morris*, supra, *Frow vs. De la Vega*, supra, and *Velez vs. Ramas*, supra, the decrees entered inured to the benefit of the defaulting defendants, there is no reason why that entered in said case No. 1318 should not be held also to have

inured to the benefit of the defaulting defendant Matanguihan. Indeed, the doctrine in said three cases plainly implies that there is nothing in the law governing default which would prohibit the court from rendering judgment favorable to the defaulting defendant in such cases. If it inured to her benefit, it stands to reason that she had a right to claim that benefit, for it would not be a benefit if the supposed beneficiary were barred from claiming it; and if the benefit necessitated the execution of the decree, she must be possessed of the right to ask for the execution thereof as she did when she, by counsel, participated in the petition for execution Annex I.

Section 7 of Rule 35 would seem to afford a solid support to the above considerations. It provides that when a complaint states a common cause of action against several defendants, some of whom answer, and the others make default, "the court shall try the case against all upon the answer thus filed and render judgment upon the evidence presented by the parties in court". (Italic supplied.) It is obvious that under this provision the case is tried jointly not only against the defendants answering but also against those defaulting, and the trial is held upon the answer filed by the former; and the judgment, if adverse, will prejudice the defaulting defendants no less than those who answer. In other words, the defaulting defendants are held bound by the answer filed by their co-defendants and by the judgment which the court may render against all of them. By the same token, and by all rules of equity and fair play, if the judgment should happen to be favorable, totally or partially, to the answering defendants, it must correspondingly benefit the defaulting ones, for it would not be just to let the judgment produce effects as to the defaulting defendants only when adverse to them and not when favourable.

The third question, in view of the foregoing considerations, must be answered in the negative.

Wherefore, it is adjudged and decreed that, with the dissolution of the writ of preliminary injunction heretofore issued, the instant petition be, as it is hereby, denied with costs.

So ordered.

Paras, Pablo, Bengzon, Briones, Padilla, and Tuason, JJ., concur.

Paras, J., I hereby certify that Chief Justice Manuel V. Moran voted for the denial of this petition.

DISSENTING OPINION

PERFECTO, J.:

The main question in this case hinges on whether the order and writ of execution, both issued on May 6, 1947, in civil case No. 1318 of the Court of First Instance of Manila, Concepcion P. Castro, et al. vs. the Honorable Valeriano B. Fugoso, et al., should be set aside or not.

Stalls Nos. 347 and 348 of the Divisoria Market, Manila, actually occupied by petitioners, are the object of controversy in said civil case, where the complaint filed by petitioners seek to restrain Mayor Fugoso from enforcing his orders cancelling the assignment and adjudication of the market stalls in question made in favor of petitioners by Mayor Nolasco on May 27, 1946, pursuant to resolution No. 50, series of 1945, of the municipal board.

Respondents Emilia Matanguihan and Venancio Segismundo, claimants of the same stalls and defendants in said civil case, having failed to file any answer to the complaint, notwithstanding the fact that they had been served with a copy of said complaint and summoned since December 7, 1947, were declared in default by order of respondent judge of January 2, 1947.

Upon filing a bond in the amount of P500.00, respondent judge ordered, on December 13, 1946, the issuance of a

writ of preliminary injunction, ordering defendants to refrain from ejecting petitioners from the market stalls in question.

On April 7, 1947, respondent judge rendered decision declaring Emilia Matanguihan legal occupant of the stores in question, ordering petitioners to vacate them and dissolving the writ of preliminary injunction.

On April 15, 1947, petitioners filed a motion for reconsideration, which was denied on April 19, 1947.

On April 30, 1947, Emilia Matanguihan moved for the immediate execution of the decision in accordance with Sections 2 and 4 of Rule 39. Petitioners opposed the motion, alleging that Emilia Matanguihan has not shown adequate interest in the case, she having been declared in default on January 2, 1947; that no probable damage has been alleged to the City of Manila by the maintenance of status quo in the case; that petitioners were willing to post a bond in an amount to be fixed by the court in accordance with the second sentence of Section 4 of Rule 39.

On May 6, 1947, respondent judge issued an order as follows:

"Considering well-founded the petition for execution filed on May 2, 1947, by the Assistant City Fiscal;

"Let a writ of execution be issued.

"It is so ordered."

The above order clearly appears not to be in conformity with Rule 39, Sections 2 and 4 of which are as follows:

"Sec. 2. Execution discretionary.—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the special order shall be included therein. Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part.

"Sec. 4. Injunction, receivership and patent accounting, not stayed.—Unless otherwise ordered by the court, a judgment in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party."

The order, therefore, is null and void, and this court should declare it so.

Striking circumstances alleged by petitioners make more imperative the granting of the petition.

It is alleged that the Mayor's answer contains no counterclaim or prayer for the ejectment of petitioners or for the delivery of the stalls in question to respondent Emilia Matanguihan and, therefore, respondent judge was without power or authority to issue a writ of execution to enforce a relief not based on any counterclaim and not prayed for by any of the defendants in the case, one of them having been declared in default.

Another important fact that must be taken into consideration is that petitioners were deprived of their opportunity to be heard in the morning of May 6, 1947, the day set for the hearing of the petition for execution, because that morning petitioners' counsel found the courtroom deserted and there was no one to hear the petition.

Notwithstanding the fact that no hearing took place in said morning, a writ of execution was served on petitioners before noon of the same day, May 6, 1947, by a sheriff accompanied by one Anacleto Hernandez, a former private secretary to the Mayor. The officious intervention of said person in the case, there being no showing that

he is an agent or attorney of Emilia Matanguihan, the defaulted party who is being favored by the writ of execution, casts a distressing shadow in the legal situation, making more imperative the correction of the order of respondent judge, Issued in violation of the Rules.

For all the foregoing, we vote to grant the petition.

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.