

**COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND
APPELLEE, VS. ROMANA GAUZON AND JUAN D. POMAR,
DEFENDANTS. JUAN D. POMAR, RECEIVER AND APPELLANT.**

G.R. No. L-6305. September 26, 1911

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/70531ad540a6/>

JOHNSON, J.:

The present appeal is made by the defendant Juan D. Pomar, as receiver, against the order of the Hon. Albert E. McCabe, judge of the Province of Occidental Negros, disallowing certain items in the final account of the said receiver.

It appears from the record that the defendant, Romana Gauzon, on the 10th day of September, 1904, executed and delivered to the plaintiff (Compañia General de Tabacos de Filipinas) a mortgage upon an hacienda known as "San Jose," in the municipality of San Carlos, in the Province of Occidental Negros. The said defendant (Romana Gauzon) having failed to pay the said mortgage, the plaintiff (Compañia General de Tabacos de Filipinas), on the 22d day of September, 1905, commenced an action for the foreclosure of said mortgage, and asked, in addition to the foreclosure of the mortgage, that a receiver be appointed to take charge of the property in question, pending the said action. On the same day (22d of September, 1905) the Hon. Vicente Jocson, after hearing the petition filed in said cause, appointed the said defendant, Juan B. Pomar, an employee of the plaintiff, receiver of the property involved in said foreclosure proceedings. Said foreclosure proceedings continued to a termination. The result of said proceedings may be found in two decisions of this court, the cases of La Compañia General de Tabacos de Filipinas vs. Ganson (13 Phil. Rep., 472) and La Compania General de Tabacos de Filipinas vs. Ganson (13 Phil. Rep., 481). The facts relating to the foreclosure proceedings and the judgment therein are not important in the present cause, further than to show the history of the transactions of the receiver, the defendant, Juan D. Pomar.

After the termination of the receivership, the court required of the receiver (Juan D. Pomar) a report and an accounting of his operations as receiver. It appears from the record that the lower court had a good deal of trouble in securing a final report. The receiver apparently acted as though his only responsibility was to the plaintiff (Compañia General de Tabacos de Filipinas) ; however, finally the lower court secured what appears to be a final accounting by the receiver, upon the 9th or 10th day of August, 1909. The report of the receiver contained many items. After a careful consideration of the various items of the account of the receiver, Judge McCabe allowed the following items of said account -

1. Care of cane before cutting..... P1,522.30
2. Cutting and grinding, according to report of commissioners 8,565.97
3. Fuel
150.00

4. Expenses in Iloilo, according to receiver's Exhibit B.....	2,591.20
5. Storage.....	428.28
6. Insurance	428.28
7. Selling commission	648.12
8. Judgment for plaintiff in cause No. 249.....	9,187.80
9. Receiver's pay.....	1,000.00
Total	24,522.04

and ordered the receiver, Juan D. Pomar, to pay into court on or about the first Tuesday of November, 1909, the sum of P7,883.76, a balance which he ought to have had in his possession. From the order allowing said items only the defendant appealed to this court and made the following assignments of error:

"I. The court erred in reducing to P8,565.97 the P22,944.73 spent by the receiver for cutting, hauling, and manufacture of 8,005.58 piculs of sugar, for packing, transportation and storage thereof, and insurance and selling commission thereon.

"II. The court erred in not allowing the item of P147.86 paid out by the receiver as interest on money borrowed to cover the first expenses of his receivership.

"III. The court erred in not approving the disbursement made by the receiver of the P3,001.94 delivered to the aparceros as their share of the crop.

"IV. The court erred in reducing to P1,000 the P4,860.87 which the receiver claimed as compensation for his services.

"V. The court erred in holding that the order appointing the receiver does not extend his powers beyond those prescribed in section 175 of Act No. 190."

With reference to the first assignment of error, it will be noted that the receiver presented an account for cutting, grinding, etc., of the sugar cane upon the hacienda, over which he had control as receiver, amounting to P22,944.73. Judge McCabe refused to allow that amount for the cutting and grinding, etc., of said sugar cane, upon the ground that it was an unreasonable charge. The parties in the lower court agreed to the appointment of three commissioners for the purpose of ascertaining the reasonable cost of cutting, grinding, etc., of the sugar cane upon the said hacienda. The commissioners were duly appointed, the plaintiff selecting one, the defendant another and the court selecting the third. In due time and after due deliberation, the commissioners reported that the reasonable cost for cutting, grinding, etc., of the said sugar cane per pico was P1.07. There were 8,005.58 picos of sugar cane, which calculated at the rate of P1.07 per pico for cutting, grinding, etc., would amount to P8,565.97, which amount the lower court allowed the receiver. The commissioners appointed by the lower court were men who had had experience in the cutting and grinding of sugar cane. It was the duty of the receiver to harvest the sugar cane at the least possible cost to the owners of the crop. There is much proof in the record to indicate that the receiver did not harvest the crop of sugar cane as expeditiously as he should have done. There is no proof in the record which shows that the amount estimated by the said commissioners for the cutting, grinding, etc. of the sugar cane in question, was not a reasonable amount for that expense. We find nothing in the record which justifies us in modifying the decision of the lower court with reference to this first assignment of error.

With reference to the second assignment of error, it appears that the receiver attempted to charge P147.86, as interest on money borrowed by him during his administration as receiver. There is no proof in the record that the

receiver was authorized to borrow money for the purpose of carrying on his work as receiver of said hacienda; neither is there any proof in the record which shows that it was necessary for him to borrow money to properly conserve the interests of the owners and creditors interested in the administration of the hacienda. The lower court correctly said, "a receiver has no authority to borrow money unless the same is expressly given by the court." We would be inclined, however, to allow this amount (P147.86) had the necessity been fully demonstrated for borrowing the money. In the absence of authority expressly given and especially in the absence of proof of the absolute necessity for incurring this item of expense, we refuse to modify the conclusions of the lower court with respect to this item.

With reference to the third assignment of error above noted, the receiver included in his account the item of P3,001.94, being the amount, according to this statement, of money and effects delivered to "los aparceros de la hacienda" during his administration. It is a well known custom among sugar growers in the Philippine Islands, that the aparceros plant and cultivate sugar cane at their own expense, receiving one-half of the sugar produced and delivering the other half to the owner of the land. It is also a well known custom that the owners of the land from time to time advance money and effects to the aparceros, deducting the value of the same from the value of the sugar after the same is harvested. In the present case it appears that the receiver delivered one-half of the sugar to the aparceros without deducting the amount of money and effects advanced to them. If he, in fact, advanced to the aparceros the said sum (P3,001.94) he should have deducted it from the amount due said aparceros, and not have attempted to collect the same from the amount due the owner of the hacienda, prejudicing the owner of the hacienda thereby. Here again the receiver exceeded his authority. Nevertheless we would be inclined to allow this amount (P3,001.94) if it were a just charge against the administration of the hacienda. But, as was said above, it is not a just charge against the owner of the hacienda. This amount should have been collected from the aparceros. Judge McCabe committed no error in disallowing this item in the account of the receiver.

With reference to the fourth assignment of error above noted, it will be seen that the receiver included in his account the sum of P4,860.87 as compensation for his administration as receiver. The lower court disallowed that amount but did allow him the sum of P1,000 as his just compensation as receiver. The lower court, in the appointment of the receiver, did not fix any sum for his compensation; neither is it customary for courts in appointing receivers to fix their compensation in advance. Their compensation is a matter which is always left to the sound discretion of the court, to be allowed from time to time. The receiver attempted to recover as his compensation 15 per cent of the value of the sugar. The lower court found that the amount of P4,860.87 was an unreasonable amount to be allowed as compensation for the services of the receiver in the present case. The court found that the receiver might have done all the work which he did do in the course of his administration as receiver in one hundred days. The Code of Procedure in Civil Actions allows administrators of estates of deceased persons the sum of P4 a day for the time actually employed in the administration of the estate. The lower court, following this provision of the law, believing the present case to be somewhat analogous, allowed the receiver P4 a day for his services. The lower court also allowed an additional amount, the basis of which does not clearly appear in the record, making the total compensation of the receiver the sum of P1,000. Against that order the owner of the hacienda did not appeal. Considering the negligent manner in which the receiver administered the hacienda, as appears from the record, as well as his negligence in complying with the various orders of the court with reference to rendering accounts, etc., we are of the opinion that the sum of P1,000 is, in fact, more than a just compensation for his services. In view, however, of the fact that the owner of the hacienda did not appeal from the order of the court allowing said sum (P1,000) we approve the finding of the lower court.

With reference to the fifth assignment of error above noted, the appellant seems to believe that section 175 of the Code of Procedure in Civil Actions gave him full power to administer the property placed under his control as receiver as he might deem wise and necessary, without any intervention on the part of the court or of the

interested parties. The appellant evidently overlooked the phrase of said article which says: "The receiver shall have, under the control of the court in which the action is pending, power, etc." The judge of the lower court in his decision goes into detail at length and cites authorities extensively, for the purpose of showing the general duties, powers and responsibilities of receivers, evidently for the purpose of instructing receivers in his district. The receiver is generally defined to be "an indifferent person between the parties litigant, appointed by the court and on behalf of all the parties, and not of the plaintiff or defendant only, to receive and hold the thing or property in litigation, pending the suit (Booth vs. Clark, 17 How. (U.S.), 822, 331), to receive the rents, issues or profits of the land or thing in question (Booth vs. Clark, supra), to receive the rents or other income, to hold possession and control of the property which is the subject matter of the litigation, and to dispose of the same or deliver it to such person or persons as may be directed by the court. (Wiswall vs. Kunz, 173 Ill., 110.)" The reports of the decisions of the courts are filled with decisions supporting the above doctrine. The receiver is said to be the arm and hand of the court a part of the machinery of the court, by which the rights of parties are protected. He is required not only to preserve the property, but to protect the rights of all of the parties interested. If he is not versed in the law, he should secure legal advice, with the permission of the court and in case of doubt should advise with the court and receive direction.

After a full consideration of the above assignments of error, in connection with the facts contained in the record, we find no reason for changing or modifying the decision of the lower court, and the same is hereby affirmed, with costs.

Torres, Mapa, and Moreland, JJ., concur.

CONCURRING

CARSON, J.,

I concur. I think it proper, however, to add that the observation of the lower court, quoted with approval in the opinion of this court, that "a receiver has no authority to borrow money unless the same is expressly given by the court," while undoubtedly true, as a general proposition, must not be understood as absolutely prohibiting the borrowing of money by a receiver and its repayment with interest as a lawful and necessary expense incurred by the receiver in the performance of his duty, where it is impracticable or impossible to secure the prior approbation of the transaction by the court.

As a rule, consent of court should first be obtained; but as clearly indicated in the majority opinion, where the necessity for incurring the expense actually exists, and is fully and clearly established, the transaction will be ratified and approved when all the facts are shown to the court. The receiver and the lender take the risk that the transaction may not be ratified by the court, on the ground that in the opinion of the court there was no necessity therefor; and without the approval of the court previously obtained or the ratification and approval obtained when the matter is finally reported, the property in the hands of the receiver is not and can not be bound for the repayment of the indebtedness.

If it were shown in the case at bar that to save a growing crop from destruction, or to harvest it at the proper time, it became necessary to borrow money to pay laborers or the like, and that under all the circumstances it was impracticable to secure the previous consent of the court to the transaction, it will not be doubted that on a proper

showing the court would ratify and affirm the transaction, and that this subsequent ratification would bind the property in the hands of the receiver for the repayment of the money borrowed, together with interest and the expenses necessarily incurred in and about the making of the loan.

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.