

**MARIA G. AGUAS, FELIX GUARDINO AND FRANCISCO SALINAS,
PLAINTIFFS AND APPELLANTS, VS. HERMOGENES LLEMO,
DECEASED DEFENDANT SUBSTITUTED BY HIS REPRESENTATIVES,
PERPETUA YERRO-LLE...**

G.R. No. L-18107. August 30, 1962

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/89b267113ba8/>

REYES, J.B.L., J.:

On 14 March 1960, Francisco Salinas and the spouses Felix Guardino and Maria Aguas jointly filed an action in the Court of First Instance of Catbalogan, Samar (Civil Case No. 4824), to recover damages from Hermogenes Llemos, averring that the latter served them by registered mail with a copy of a petition for a writ of possession, with notice that the same would be submitted to the said court of Samar on February 23, 1960 at 8:00 a. m.; that in view of the copy and notice served, plaintiffs proceeded to the court from their residence in Manila accompanied by their lawyers, only to discover that no such petition had been filed; and that defendant Llemos maliciously failed to appear in court, so that plaintiffs' expenditure and trouble turned out to be in vain, causing them mental anguish and undue embarrassment.

On 1 April 1960, before he could answer the complaint, the defendant died. Upon leave of court, plaintiffs amended their complaint to include the heirs of the deceased.

On 21 July 1960, the heirs filed a motion to dismiss, and by order of 12 August 1960, the court below dismissed it, on the ground that the legal representative, and not the heirs, should have been made the party defendant; and that anyway the action being for recovery of money, testate or intestate proceeding should be initiated and the claim filed therein (Rec. on Appeal, pp. 26-27).

Motion for reconsideration having been denied, the case was appealed to us on points of law.

Plaintiffs argue with considerable cogency that contrasting the correlated provisions of the Rules of Court, those concerning claims that are barred if not filed in the estate settlement proceedings (Rule 87, sec. 5) and those defining actions that survive and may be prosecuted against the executor or administrator (Rule 88, sec. 1), it is apparent that actions for damages caused by tortious conduct of defendant (as in the case at bar) survive the death of the latter. Under Rule 87, section 5, the actions that are abated by death are: (1) claims for funeral expenses and those for the last sickness of the decedent; (2) judgments for money; and (3) "all claims for money against the decedent, arising from contract express or implied". None of these includes that of the plaintiffs-appellants; for it is not enough that the claim against the deceased party be for money, but it must arise from "contract express or implied", and these words (also used by the Rules in connection with attachments and derived from the common law) were construed in *Leung Ben vs. O'Brien*, 38 Phil. 182, 189-194,

"to include all purely personal obligations other than those which have their source in delict or tort"

Upon the other hand, Rule 88, section 1, enumerates actions that survive against a decedent's executors or

administrators, and they are: (1) actions to recover real and personal property from the estate; (2) actions to enforce a lien thereon; and (3) actions to recover damages for an injury to person or property. The present suit is one for damages under the last class, it having been held that "injury to property" is not limited to injuries to specific property, but extends to other wrongs by which personal estate is injured or diminished (*Baker vs. Crandall*, 47 Am. Rep. 126; also 171 A. L. R. 1395). To maliciously cause a party to incur unnecessary expenses, as charged in this case, is certainly injury to that party's property (*Javier vs. Araneta*, 90 Phil., 287).

Be that as it may, it now appears from a communication from the Court of First Instance of Samar that the parties have arrived at an amicable settlement of their differences, and that they have agreed to dismiss this appeal. The settlement has been approved and embodied in an order of the Court of First Instance.

The case having thus become moot, it becomes unnecessary to resolve the questions raised therein. This appeal is, therefore, ordered dismissed, without special pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, 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.