

**NARCISA DE LA FUENTE AND HER HUSBAND, JOSE TEODORO, JR.,
PETITIONERS, VS. FERNANDO JUGO, JUDGE OF FIRST INSTANCE OF
MANILA, AND LUIS BORROMELO, RESPONDENTS.**

G.R. No. L-212. March 12, 1946

Ponente: FERIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/eec7f5c21304/>

FERIA, J.:

Although the petition in this case is for a writ of certiorari on the ground that the respondent judge exceeded his jurisdiction in denying the motion filed by the petitioners with the Court of First Instance of Manila presided over by said judge, praying that a writ of execution of the judgment rendered by the municipal court be issued pursuant to section 8, Rule 72, of the Rules of Court, because the respondent Luis Borrromeo failed to deposit the rent for May 1945—this is really a petition for mandamus to compel the respondent judge to issue said writ of execution under section 3, Rule 67, for if the petitioners' contention were well taken, the respondent judge, in denying petitioners' motion for a writ of execution, failed to perform a duty specifically enjoined by law.

Petitioners obtained on April 25, 1945, a judgment from the municipal court which sentenced the defendant (now respondent) Luis Borrromeo to vacate the premises leased to him by the petitioners and to pay a monthly rental of P40 from March 1, 1945. Defendant appealed to the court of first instance, and the latter on August 21, 1945, rendered judgment sentencing defendant to restore the possession of the premises to petitioners and to pay them the rents thereof at the rate of P40 a month from March 1, 1945, until defendant vacated the premises. Defendant appealed from said judgment of the court of first instance to this court, the appeal having been perfected on October 24, 1945, when the record on appeal was approved by said court. On October 30, 1945, said record was transmitted to this court.

In view of the foregoing, it is evident that the court of first instance had no power or jurisdiction to grant the motion filed by petitioners on November 12, 1945, and order the execution of the judgment of the municipal court, and therefore mandamus does not lie to compel the respondent judge to do so, for the following reasons:

First, because inasmuch as the judgment of the municipal court had been superseded by the judgment of the court of first instance rendered on August 21, 1945, the latter could not order the execution of said judgment of the municipal court which had become *functus officio*. Section 8, Rule 72, of the Rules of Court provides that "should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon motion of the plaintiff, of which the defendant shall have notice, and upon proof of such failure, shall order the execution of the judgment appealed from * * *. If the case is tried on its merits in the Court of First Instance, any money paid into court by the defendant for the purposes of stay of execution shall be disposed of in accordance with the provisions of the judgment of the Court of First Instance * * *." (Italics ours.) According to section 9 of the same Rule 72, the judgment of the court of first instance may be executed during the pendency of the appeal to this court, if the defendant and appellant fails to pay "either to the plaintiff or into the appellate court the same amounts referred to in the preceding section to be disposed of in the same

manner as therein provided."

And secondly, because when the motion for a writ of execution was filed by petitioners on November 12, 1945, the court of first instance had already lost jurisdiction over the case, in accordance with section 9, Rule 41, of the Rules of Court, which is applicable to ordinary as well as to special civil actions. For the respondent had appealed from the judgment of the court of first instance to this court, and the record on appeal filed by the defendant and appellant was approved on October 24, 1945. And as the court of first instance had already lost jurisdiction over the case when the motion for execution was filed, the respondent judge had no power and, consequently, can not be compelled by mandamus to order the execution of the judgment not only of the justice of the peace, assuming that it was still in force, but of the very court of first instance presided over by him.

Petition is therefore denied with costs against petitioners.

Ozaeta, Paras, Jaranilla, De Joya, Pablo, Perfecto, Hilado, Bengzon, and Briones, 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.