

**FLORENCIO DOMINGO, PETITIONER, VS. TOMAS FLORDELIZA, AS
AUXILIARY JUDGE, AND LUCIO BENITO, RESPONDENTS.***G.R. No. 12971. February 18, 1918*

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12971/>**JOHNSON, J.:**

This is an action to obtain the writ of mandamus to require the respondent judge to dismiss an appeal from a judgment of the court of justice of the peace in an action of desahucio, to require the appellant to pay to the appellee "diez uyones de palay" (ten uyones of palay) or its equivalent value in the sum of P150 for each of the years 1913, 1914, 1915, and 1916 and for each year thereafter until the final determination of the cause. The facts upon which the petition is based are as follows:

That on the 26th day of January, 1914, the petitioner herein, Florencio Domingo, commenced an action in the court of the justice of the peace of the municipality of Piddig, of the province of Ilocos Norte, to recover the possession of a certain piece or parcel of land described in paragraph 2 of that complaint, together with damages for the use and occupation of said parcel of land; that upon the 27th day of February, 1914, and after hearing the respective parties, the justice of the peace rendered a judgment in favor of the plaintiff and against the defendant, requiring the latter to deliver to the former "diez uyones de palay" or its equivalent value in the sum of P150 and to deliver the possession of the land to the plaintiff. From that judgment the defendant appealed and executed and delivered in aid of his appeal a bond in the sum of P200 to guarantee the compliance with the judgment of the justice of the peace; that upon the 8th day of January, 1917, the appellee, petitioner herein, presented a motion in the Court of First Instance praying that the appeal be dismissed, that the cause be returned to the court of justice of the peace for the execution of the sentence, for the reason that the appellant (Lucio Benito) had not paid nor deposited the amount of said judgment, and to require him to pay the amount corresponding to the years 1914, 1915, and 1916. That motion was denied by the lower court on the 27th day of February, 1917.

Under the provisions of section 2 of Act No. 1778, in cases like the present, if the defendant should fail to make the payment prescribed by said Act in accordance with the provisions of the same, upon proof of such failure, the Court of First Instance was required to dismiss the appeal. (Sec. 2, Act No. 1778; Yango vs. Romero, 32 Phil. Rep., 129; Castro vs. Javier, R. G. No. 12140 [decided January 11, 1918].)[1] That provision of section 2 of Act No. 1778, however, has been repealed by section 1 of Act No. 2588 and the Courts of First Instance are no longer permitted nor required to dismiss an appeal from a court of the justice of the peace in a desahucio case for a mere failure on the part of the defendant-appellant to pay the various sums mentioned in said Act. Now, if the defendant fails to make the payments prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon motion, etc., shall order the execution of the judgment of the court which had original cognizance of the case relative to the possession of the property in litigation, and that such order for the execution of the judgment shall not be a bar to the appeal in the Court of First Instance until the final decision thereof on its merits.

It will thus be seen that the court, in refusing to grant the motion of the plaintiff herein, did not violate the

provisions of the existing law. The remedy of the plaintiff herein was to file a motion asking for an execution of the judgment rendered by the justice of the peace, and not for a dismissal of the appeal.

Appeals of the kind we are now discussing can no longer be dismissed upon motion for a mere failure to pay the different amounts required in a judgment of desahucio rendered by a justice of the peace. If the appeal is properly perfected the remedy of the appellee for a failure on the part of the appellant to pay the different amounts specified in the law is to ask for an execution of the judgment of the court below, and not for a dismissal of the appeal.

For the foregoing considerations, the writ of mandamus prayed for is hereby denied, with costs. So ordered.

Arellano, C. J., Carson, Araullo, Street, Malcolm, Avanceña, and Fisher JJ. concur.

[1] Not published.

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.