

JOSE H. MENDOZA, PLAINTIFF AND APPELLEE, VS. ANDRES ALANO AND GREGORIO SALCEDA, DEFENDANTS AND APPELLANTS.*G.R. No. 16222. May 31, 1961*

Ponente: LABRADOR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-16222/>**LABRADOR, J.:**

This is originally an appeal to the Court of Appeals from an order of the Court of First Instance of Camarines Sur, Hon. Perfecto R. Palacio, presiding, dated September 20, 1956, entered in Civil Case No. 90 of his court, declaring Andres Alano and Gregorio Salceda guilty of contempt of court under subsection (b) of Section 3 of Rule 64 of the Rules of Court and sentencing each of them to suffer an imprisonment of four months. For the reason that the only question raised in this appeal is purely of law, the Court of Appeals has certified the case to Us for review.

In Civil Case No. 90, entitled "Jose H. Mendoza, plaintiff, versus Andres Alano and Gregorio Salceda, defendants," for forcible entry, and unlawful detainer, judgment was rendered awarding possession of two parcels of land occupied by the defendants in favor of the plaintiff Mendoza. The Clerk of Court issued a writ of execution, Exhibit "B", which commands the defendants Andres Alano and Gregorio Salceda to vacate the premises and to deliver the same to the plaintiff and orders the city sheriff to refrain and desist said defendants from possessing and benefiting from the lands described, etc. On March 10, 1956, Deputy Sheriff Pedro Rivera went to the house of the defendants to deliver the writ. Gregorio Salceda refused to accept the writ, while Pedro Alano received the writ. Both defendants, however, refused to vacate the premises, as a consequence of which the sheriff was not able to deliver the same to the plaintiff. For this reason the plaintiff filed a motion to declare the defendants in contempt, alleging therein the refusal of the defendants to vacate the premises inspite of service to them of the writ of execution.

The trial court required the defendants to answer the motion. On May 9, 1956, defendant Alano filed his answer, asking suspension of the hearing on the contempt charge until after termination of Civil Case No. 3276 filed by him to annul the decision sought to be enforced. On May 18, 1956, defendant Salceda also filed his answer, claiming that plaintiff cannot enforce the decision because he is disqualified by law to lease the lands from the Bureau of Lands because he is a big landowner.

After several postponements, a trial on the contempt charge was conducted, and the lower court, thereafter, issued the order in question. Hence this appeal.

The record discloses that only defendant-appellant Andres Alano has filed his brief.

It is claimed by the appellant that the judgment sought to be enforced is an ordinary judgment enforceable under the provisions of Sec. 8, paragraph (d) of Rule 39; that the clerk of court had no authority to issue the writ directed to the defendants, but instead should have directed it to the sheriff; that the defendants had not disobeyed any order of the court, but only the unauthorized writ issued by its clerk.

We find the above contentions to be well founded. The judgment of the lower court is for delivery of possession of a piece of land to the plaintiff. By express provisions of the Rules, such kind of judgment must be executed in accordance with paragraph (d), Section 8 of Rule 39, and not with Section 9 thereof.

"The execution must issue in the name of the Republic of the Philippines from the court in which the judgment or order is entered; must intelligibly refer to such judgment or order, stating the court, province, and municipality where it is of record, and the amount actually due thereon if it be for money; and must require the sheriff or other proper officer to whom it is directed substantially as follows:

x x x x

"(d) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property, and if sufficient personal property cannot be found, then out of the real property."

The clerk of court had no authority to treat the judgment as a special judgment and issue a writ in accordance with Section 9, Rule 39. He should have directed the writ to the sheriff, for the latter to place the plaintiff in possession of the premises in accordance with Section 8, paragraph (d), Rule 39, instead of directing the writ to the defendants themselves. Legally speaking, there was, therefore, no valid writ issued and consequently no legal and valid order disobeyed by the defendants.

Moreover, We have already held in the case of *Quizon vs. Philippine National Bank*, 85 Phil., 459 that refusal to comply with a judgment ordering delivery of real property is not punishable for contempt under paragraph (b), of Section 3, of Rule 64, but under paragraph (h) thereof.

"* * * when the judgment requires the delivery of real property, it must be executed not in accordance with section 9 of Rule 39 but in accordance with paragraph (d) of section 8, Rule 39 and any contempt proceeding arising therefrom must be based on paragraph (h) of section 3, Rule 64, and not on paragraph (b) of the same section in relation to section 9 of Rule 39."

Paragraph (h), Section 3, Rule 64 mentioned in the above-quoted decision punishes for contempt:

"The act of a person who after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts to enter into or upon such real property, for the purpose of executing acts of ownership or possession or in any manner disturbs the possession given to the person adjudged to be entitled thereto."

But the judgment in the case at bar could not be executed and plaintiff placed in possession of the premises, because of the refusal of the defendants to vacate the same. Hence defendants may not be punished for contempt under the above-quoted provision of paragraph (h) Section 3, Rule 64, because they did not enter upon the lands after plaintiff had been placed in possession thereof by the sheriff.

Wherefore, the order appealed from is hereby set aside, without finding as to costs.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, De Leon, and Natividad, 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.