

**WALTER E. OLSEN & CO., PLAINTIFF AND APPELLEE, VS.
WALTER E. OLSEN, DEFENDANT AND APPELLANT.***G.R. No. 23237. November 14, 1925*

Ponente: VILLA-REAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-23237/>**VILLA-REAL, J.:**

This is an appeal taken by the defendant from a judgment of the Court of First Instance of Manila, sentencing him to pay plaintiff corporation the sum of P66,207.62 with legal interest thereon at the rate of 6 per cent per annum from February 1, 1923, the date of the filing of the complaint, until full payment, and the costs, and dismissing the cross-complaint and counterclaim set up by him.

As ground of his appeal, the defendant assigns four errors as committed by the trial court, to wit: (1) The holding that the defendant-appellant contracted fraudulently the debt which the plaintiff-appellee seeks to recover in its complaint; (2) its failure to set aside the writ of preliminary attachment issued by it ex parte; (3) the fact of it not having absolved the defendant from the complaint of the plaintiff corporation and of not having given judgment for the defendant and against the plaintiff for the amount of his counterclaim, after deducting the debt due from him to the plaintiff corporation in the sum of P66,207.62; and (4) its action in denying the motion for new trial of the defendant.

As the first two supposed errors are intimately connected with each other, we will discuss them jointly.

The first question that arises is whether or not an order denying a motion for the annulment of a preliminary attachment may be reviewed through an appeal.

The preliminary attachment is an auxiliary remedy the granting of which lies within the sound discretion of the judge taking cognizance of the principal case upon whose existence it depends. The order of the judge denying a motion for the annulment of a writ of preliminary attachment, being of an incidental or interlocutory and auxiliary character, cannot be the subject of an appeal independently from the principal case, because our procedural law now in force authorizes an appeal only from a final judgment which gives an end to the litigation. (Section 143, Act No. 190; 3 C. J., 549, par. 389.) This lack of ordinary remedy through an appeal does not mean, however, that any excess a lower court may commit in the exercise of its jurisdiction is without remedy; because there are the especial remedies, such as certiorari, for the purpose. (Leung Ben vs. O'Brien, 38 Phil., 182.)

While it is true that an order denying a motion for the annulment of a preliminary attachment is not subject to review through an appeal independently from the principal case, it not constituting a final order, yet when the writ of preliminary attachment becomes final by virtue of a final judgment rendered in the principal case, said writ is subject to review jointly with the judgment rendered in the principal case through an ordinary appeal. The appellate court has the power to revoke or confirm said order, in like manner as a judgment on the merits; because it is a ruling to which an exception may be taken, and therefore is subject to review in an appeal by bill of exceptions. (Secs. 141-143, Act No. 190.) The fact that section 441 of the Code of Civil Procedure does not provide any remedy against the granting or denial of a motion for the annulment of a writ of preliminary

attachment, except in case of excess of jurisdiction, does not confer upon said order a final and irrevocable character, taking it out from the general provisions as to appeal and review, for a special provision is necessary for that purpose.

Having arrived at the conclusion that an order denying a motion for the annulment of a preliminary attachment may be reviewed in an appeal taken from a final judgment rendered in the principal case, in which said order was entered as an auxiliary remedy, we will now turn to consider the question whether or not the trial court committed error in denying the motion for the annulment of the preliminary attachment levied upon the property of the defendant-appellant.

It is admitted by the defendant-appellant that he is indebted to the plaintiff-appellee corporation in the sum of P66,207.62, but denies that he has contracted said debt fraudulently.

The evidence shows that the defendant-appellant was president-treasurer and general manager of the plaintiff-appellee corporation and exercised direct and almost exclusive supervision over its function, funds and books of account until about the month of August, 1921. During that time he has been taking money of the corporation without being duly authorized to do so either by the board of directors or by the by-laws, the money taken by him having amounted to the considerable sum of P66,207.62. Of this sum, P19,000 was invested in the purchase of the house and lot now under attachment in this case, and P50,000 in the purchase of 500 shares of stock of Prising at the price of P100 per share for himself and Marker. A few days afterwards he began to sell the ordinary shares of the corporation for P430 each. The defendant-appellant attempted to justify his conduct, alleging that the withdrawal of the funds of the corporation for his personal use was made in his current account with said corporation, in whose treasury he deposited his own money and the certificates of title of his shares, as well as of his estate, and that at the first meeting of the stockholders, which took place on February 1, 1919, a statement of his account with a debit balance was submitted and approved.

Having, as he had, absolute and almost exclusive control over the function of the corporation and its funds by virtue of his triple capacity as president, treasurer and general manager, the defendant-appellant should have been more scrupulous in the application of the funds of said corporation to his own use. As a trustee of said corporation, it was his duty to see by all legal means possible that the interests of the stockholders were protected, and should not abuse the extraordinary opportunity which his triple position offered him to dispose of the funds of the corporation. Ordinary delicacy required that in the disposition of the funds of the corporation for his personal use, he should be very careful, so as to do it in such a way as would be compatible with the interests of the stockholders and his fiduciary character. And let it not be said that he did every thing openly and with the security of his shares of stock, because as he could dispose of the funds of the corporation so he could dispose of his own shares and with greater freedom. And let it not also be said that other officers of the corporation, such as the vice-president, the secretary and other chiefs and employees, were doing the same thing, because that does not show but that his bad example had spread among his subordinates and all believed themselves with the same right as their chief to dispose of the funds of the corporation for their personal use, although it were merely by way of loan, without any security of whatever kind of course. The approval of his account at the first meeting of the stockholders cannot be considered as a justification of his conduct, nor does it remove every suspicion of bad faith, because the corporation was constituted exclusively by the defendant-appellant himself and his cospeculator, Marker, and nothing else could be expected from it. As to the debt he owed to the corporation, Walter E. Olsen was in effect a lender and a borrower at the same time. The conduct of the defendant-appellant in connection with the funds of the corporation he represented was more than an irregularity; and while it is not sufficiently serious to constitute a criminal fraud, it is undoubtedly a fraud of a civil character, because it is an abuse of confidence to the damage of the corporation and its stockholders, and constitutes one of the grounds

enumerated in section 424, in connection with section 412, of the Code of Civil Procedure for the issuance of a preliminary attachment, and the order of the Court of First Instance of Manila, denying the motion for the annulment of the injunction in question, is in accordance with law.

As to the counterclaim set up by the defendant-appellant, we have nothing to add to the considerations of the trial court which we make ours.

For the foregoing, and no error having been found in the judgment appealed from, the same is hereby affirmed, with the costs against the defendant-appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.
Johnson, J., did not take part.

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.