

**CRISTETA ALMARZA, WITH HER HUSBAND LUIS DALISAY, AND
ESTEBAN MORALDA, PETITIONERS, VS. FERNANDO SALAS, JUDGE
OF THE COURT OF FIRST INSTANCE OF ILOILO, ENCARNACION
NELLAMA AND RU...**

G.R. No. 23977. July 22, 1925

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-23977/>

JOHNSON, J.:

This is a petition for the extraordinary writ of prohibition. Its purpose is to prevent the respondents from executing a judgment rendered by the Court of First Instance of the Province of Iloilo in an action for the detention of a certain piece or parcel of land, and damages.

It appears from the record that on or about the 14th day of April, 1923, the respondent Encarnacion Nellama commenced an action in the court of the justice of the peace of the municipality of Miagao, of the Province of Iloilo, to recover of the therein defendants, Esteban Moralda and Petra Moralda, the possession of a certain piece or parcel of land located in the barrio De Valencia, of said municipality, composed of about one cavan de semilla de palay, more or less, and prayed for damages in the sum of P25 for the unlawful detention of said parcel of land. On the 12th day of May, 1923, the justice of the peace of said municipality rendered a judgment in favor of said plaintiff and against said defendants, ordering and directing the latter to deliver to the former the possession of said parcel of land and to pay damages in the sum of P25 and the costs. From that judgment of the justice of the peace the defendants appealed to the Court of First Instance. To perfect said appeal the defendants executed and delivered the usual bond required by law, with the petitioners herein as bondsmen.

The record contains some confusion concerning the amount of said bond. In one part of the petition it is alleged that the bond was for the sum of P50, or double the amount of the judgment for damages of the justice of the peace, while in another part of the petition it appears that the bond was for the sum of P500, and in addition thereto the sum of P9 for costs. In the Court of First Instance the original plaintiff instead of renewing the complaint presented in the court of the justice of the peace, presented practically a new complaint in which he prayed for the possession of said parcel of land together with damages for the sum of P100 instead of P25, and costs. The record does not disclose what was the defense of the original defendants in the Court of First Instance.

Upon the trial of the issue presented in the Court of First Instance the respondent judge rendered a judgment in favor of the original plaintiff and against the original defendants, ordering and directing the said defendants to deliver to the plaintiff the said parcel of land and to pay P100 as damages together with costs. The original defendants having failed to satisfy said judgment, an execution was issued thereon and placed in the hands of the sheriff, directing and ordering him to collect of the defendants, including the bondsmen on appeal, the sum of P500 and costs. The lower court justified the issuance of said execution for the sum of P500 as the amount of the bond, instead of for P50, upon the ground that the said bond was in truth and in fact a bond for the sum of P500. After repeated motions for reconsideration of the order directing the execution, and many delays, the present

petition was presented.

Upon the presentation of the petition the respondents were required to show cause why the prayer thereof should not be granted. In answer to that order the respondents demurred, alleging, first, that the facts stated in the petition were not sufficient to constitute a cause of action justifying the granting of the writ of prohibition and, second, that the petition was ambiguous, unintelligible and vague. Upon the issue thus presented, the cause was submitted to this court without argument.

It is argued pro and con by the respective parties, that the respondent judge was without jurisdiction to issue a writ of execution upon said judgment against said bondsmen without a further hearing, contending at the same time that the bond was for P50 and not for P500. The question of the amount of the bond was fixed by the lower court, and the record contains no fact or facts justifying us in arriving at a different conclusion. It has been held in numerous decisions by this court, that the sureties on a supersedeas bond were jointly and severally liable with the principal debtor, and that an execution might issue against their property, concurrently with the execution against the property of the principal. (*Molina vs. De la Riva*, 7 Phil., 345; *Chinese Chamber of Commerce vs. Pua Te Ching*, 16 Phil., 406; and many other cases which might be cited; articles 1144, 1822, 1831 and 1856, Civil Code.)

Upon the question whether or not the plaintiff in an action of forcible entry and detainer can change the character of his action on appeal in the Court of First Instance, by increasing the amount of his damages, is one upon which there is a difference of opinions in different jurisdictions. Inasmuch as the question has not been squarely presented to us, we express no opinion.

The entire record in fact presents but two questions, and they are: First, Did the respondent judge exceed his jurisdiction? And, second, Did the petitioners have another adequate and speedy remedy? The first question must be answered in the negative, for the reason that the judgment had become final and the respondent had full jurisdiction to issue an execution thereon. The defendants had another speedy and adequate remedy by an appeal. If they were not satisfied with the judgment of the respondent judge, they might have appealed. They did not avail themselves of that remedy. The mere fact that the time has elapsed for the perfection of the appeal does not create a right to the remedy prayed for. If the finding of the respondent judge was that the appeal bond was for P500 instead of P50, then the petitioners had suffered no damages and they are simply being required to comply with the contract which they voluntarily entered into.

We find no reason nor foundation whatever for granting the remedy prayed for. The same is, therefore, hereby denied, with costs against the petitioners. So ordered.

Street, Malcolm, Villamor, Johns, and Villa-Real, 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.