

PAULO GAMAY ET AL., PETITIONERS, VS. HONORABLE EDUARDO GUTIERREZ DAVID, JUDGE OF FIRST INSTANCE OF NUEVA ECIJA, ET AL., RESPONDENTS.

G.R. No. 25234. February 25, 1926

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-25234/>

MALCOLM, J.:

The legal issue in these certiorari proceedings is whether when the prevailing party presents a motion in court for the issuance of an execution on a judgment, notice of that motion must be given the adverse party.

Sometime in September, 1922, Tranquilino Santiago et al., filed a complaint in the Court of First Instance of Nueva Ecija against some seventy individuals to recover the possession of a tract of land containing one thousand and twenty-four hectares and damages. An answer to the complaint was presented in due time. A trial was had at which the plaintiffs offered their evidence, but apparently the defendants did not. On October 20, 1925, a decision was handed down by the trial judge which was in favor of the plaintiffs and against the defendants, ordering the defendants to leave the land and to pay damages to the plaintiffs. The losing parties received notice of this decision on December 5, 1925.

On December 11, 1925, counsel for the plaintiffs presented a motion ex parte in which, citing section 144 of the Code of Civil Procedure, the court was asked to order execution on the judgment. On the same day, the trial judge acceded to the motion and ordered execution, unless the defendants should present a bond in the amount of P4,000 to cover the damages that might arise through the suspension of the execution in case the judgment was affirmed by the Supreme Court. As a consequence of this order, it is asserted that the provincial sheriff and his deputy are attaching the crops and other property of the defendants.

Out of the above facts arose the petition for a writ of certiorari filed by the defendants in the case described, now become the petitioners, directed to the trial judge and the plaintiffs in the said case, now become the respondents. The answer of the respondents, while alleging certain facts, yet presents no question of fact which it is necessary to resolve.

Additional to our narration of the facts, it is only necessary to emphasize again that the defendants were never notified of the motion presented to secure execution. Counsel for the petitioners claims that he had valid and effective objections to said motion, and would have offered the same had he been notified of the pendency of the motion. Counsel for the respondents, on the other hand, contends that notice to the losing parties is unimportant since the whole matter, with or without a motion, rests in the sound discretion of the trial judge.

Section 144 of the Code of Civil Procedure provides that "except by special order of the court, no execution shall issue upon a final judgment rendered in a Court of First Instance until after the period for perfecting a bill of exceptions has expired." With reference to the last clause, it may be said that the period for perfecting a bill of exceptions had not expired when the execution issued. The law continuing provides that "the filing of a bill of exceptions shall of itself stay execution until the final determination of the action." This clause is not in point

since, as pointed out, the bill of exceptions was not filed when these proceedings were begun. The last sentence of section 144 provides, "But the court may require as a condition of a stay of execution that a bond shall be given reasonably sufficient to secure the performance of the judgment appealed from in case it be affirmed in part or wholly." It must be this particular sentence which the trial judge had in mind when he promulgated his order.

In all of these cases, the issuance of orders to stay execution is made to depend upon the sound discretion of the judge of the Court of First Instance wherein the case was tried.

The issuance of the execution and the presentation of a bond, it will be recalled, came to the notice of the trial judge by motion of the plaintiffs. Unless it be that section 144 of the Code of Civil Procedure should be construed in isolation from other provisions, Rules 9 and 10 of the Courts of First Instance apply. Rule 9,, for instance, provides that when no other provision is made by law no action shall be taken on any motions or applications unless it appears that the adverse party had notice thereof three days before the time set for the hearing thereof. The next following rule provides that no motion shall be accepted for filing without proof of notice thereof having been given the adverse party, at least three days in advance, that same will be submitted on the next motion day or on a date specifically designated by the court.

In the well known case of *Manakil and Tison vs. Revilla and Tuaño* ([1921], 42 Phil., 81), it was held that a motion presented in the Court of First Instance, which does not comply with the requirements of Rule 10 of the Courts of First Instance, is nothing but a piece of paper filed with the court, and that the court has no right to consider it and the clerk has no right to receive it without that compliance with the rules. We are shown no good reason why we should depart from this doctrine and hold otherwise as to executions. The defendants had a very deep interest in the result of the motion, and particularly did desire to contest the issuance of the execution, or, if it were to be conceded that it should issue, the amount of the bond they must file to stop the performance of the judgment. It is plain, therefore, that the Judge of First Instance has acted in excess of jurisdiction.

To avoid misunderstanding, let it be said that this decision does not decide that the court may not on its own initiative order execution or grant a stay of execution. What we decide is, that when a party by motion asks the court to issue execution, that motion must comply with the requirements of the rules as to notice, to give the court jurisdiction to act on it.

The petition shall issue as prayed for, with costs against the respondents other than the trial judge.

Avanceña, C. J., Johnson, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.
Ostrand, J., with whom concurs

DISSENTING

STREET, J.,

I dissent. This is a petition for a writ of certiorari and it is well settled both by the Code of Civil Procedure and by numerous decisions of this court that a writ of certiorari to an inferior court will not issue unless that court has exceeded its jurisdiction or pursued it in such an irregular manner as to amount to a failure of jurisdiction. There is nothing in section 144 of the Code of Civil Procedure which requires a motion to be filed by a plaintiff in execution to enable the Court of First Instance to order the issuance of a writ of execution at the time of the

approval of the bill of exceptions, and it seems obvious that the court has jurisdiction to do so on its own initiative. Assuming that the motion for a writ of execution presented by the plaintiffs in the case in question was, for lack of due notification, a mere "piece of paper filed with court" and, therefore, had no legal existence, I am unable to see how the filing of that piece of paper could have deprived the court of its jurisdiction to issue the writ as long as the same court had jurisdiction to do so without any motion at all. In my opinion, the petition should have been denied. Writ granted.

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.