

**FRANCISCO MUÑIZ ET AL., PLAINTIFFS AND APPELLANTS, VS.
ARISTON MUÑIZ ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 27692. March 19, 1928*

Ponente: OSTRAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-27692/>**OSTRAND, J.:**

This action is brought to recover the possession of nine parcels of land situated in the municipalities of Lubang and Looc, Province of Mindoro. Eight of the parcels in question originally belonged to Juan Muñiz who died before the year 1882 leaving two sons, Francisco and Ariston Muniz, and a daughter, Manuela Muñiz. Francisco, the elder of the sons, died in the year 1901 leaving a widow, Petrona Crisostomo, and seven children, the herein plaintiffs. Francisco's brother, Ariston, and his sister, Manuela, are the real defendants in this case, the other defendants, Valeriano Alveyra and Eduardo Muñiz, being merely caretakers of the land in question and claiming no present proprietary rights therein. The ninth parcel appears to have been purchased by Ariston Muñiz from one Jose Daulat.

In 1895, a possessory information proceeding in regard to the land inherited by Francisco, Ariston and Manuela Muñiz was instituted. As often occurred during that period, the land of the members of the family was placed in the name of the elder brother, probably with a view to saving expenses and to simplify the proceedings. At that time Ariston Muñiz was justice of the peace of the municipality of Lubang and, notwithstanding his personal interest in the matter, the possessory information proceedings were had before him. It may also be noted that as justice of the peace of Lubang, Ariston had no jurisdiction of the municipality of Looc in which municipality a considerable portion of the land was situated. In 1896, a verbal partition of the parcels described in the possessory information was made, and the brothers remained in possession of their respective parcels, Francisco also retaining possession of two of the parcels assigned to Manuela.

As above stated, Francisco Muñiz died in 1901. In 1910, his widow decided to sell some of the land left in her possession and fearing that Ariston and Manuela might claim an interest in the land to be sold, she entered into a written agreement with them, which in effect ratified and confirmed the verbal partition made in 1896. The majority of Francisco's children were then of age and signed the agreement with their mother. The present action was brought on September 12, 1922, subsequent to the death of Francisco's widow and is based entirely on the fact that the parcels in question are included in the possessory information in the name of Francisco Muñiz. But the court below gave full credence to the testimony of the defendants in regard to the circumstances surrounding the possessory information proceedings and in effect held that the evidence of possession presented by the defendants prevailed over the possessory information and rendered judgment in their favor absolving them from the complaint. From this judgment the plaintiffs appealed.

The appellants present ten assignments of error, none of which are of substantial merit. The first assignment has reference to certain depositions presented by the defendants and admitted in evidence by the court below. The facts in connection with this matter are that the case was assigned for trial on November 18, 1925, but the court being occupied with other cases continued the case until the following day. On that day the plaintiffs filed an

amended complaint. The defendants immediately filed a demurrer which was overruled the same day. Counsel for the defendants thereupon filed an affidavit to the effect that the testimony of the defendants Ariston and Manuela Muñiz was necessary for their defense, but that by reason of their advanced age they were unable to undertake the voyage from their home to the provincial capital, a distance of over 70 marine miles, and that it therefore was necessary to take their depositions. Upon this affidavit, the court granted a continuance of the case so as to give the defendants an opportunity to present their defense.

The plaintiffs' contention is (1) that motions for the taking of depositions cannot be presented after the day for which the case, in which the depositions are to be used, is assigned for trial and (2) that the affidavit filed by counsel for the defendants was not in proper form and that no copy of it was served upon the plaintiffs.

We can only in part follow the reasoning upon which these propositions are based. The law relating to the subject may be found in sections 355, 361 and 364 of the Code of Civil Procedure, which read as follows:

"SEC. 355. Depositions of a witness within the Philippine Islands.—The testimony of a witness in the Philippine Islands may be taken by deposition, in an action, any time after the service to the summons or the appearance of the defendant, and, in a special proceeding, after the question of fact has arisen therein, in the following cases:

"1. When the witness is a party to the action or proceeding, or an officer, or a member of a corporation which is a party to the action or proceeding, or a person for whose immediate benefit the action or proceeding is prosecuted or defended;

"2. When the witness resides out of the province in which his testimony is to be used;

"3. When the witness is about to leave the province where the action is to be tried and will probably continue absent when the testimony is required;

"4. When the witness otherwise liable to attend the trial is nevertheless too ill or infirm to attend;

"5. When the testimony is required upon a motion, or in any other case, when the oral examination of a witness is not required;

"6. When the witness is the only one who can establish facts or a fact material to the issue: Provided, The deposition of such witness shall not be used if his presence can be procured at the time of the trial of the cause.

"SEC. 361. Taking depositions within the Philippine Islands.—Either party may have the deposition taken of a witness in the Philippine Islands, in either of the cases mentioned in section three hundred and fifty-five, before any judge, justice of the peace, or notary public, on serving on the adverse party previous notice of the time and place of examination, together with a copy of an affidavit showing that the case is within section three hundred and fifty-five. Such notice must be served at least two days before the time is fixed for taking the deposition, and must in all cases give the party reasonable time after notice to be present at the taking thereof, and without a notice of such reasonable length of time the deposition shall not be admissible in evidence. The court shall determine, if the deposition is offered in evidence, whether a reasonable notice of taking has been given.

"SEC. 364. Deposition may be read at any stage of action.—When a deposition has been once taken, it may be read by either party in any stage of the same action or proceeding where the reception of evidence is proper, or in any other action between the same parties upon the same subject-matter, and is then deemed the evidence of the party reading it."

Neither in the sections quoted nor in any other part of the Code is there any indication that a trial court may not grant a continuance of a case for the purpose of giving the parties opportunity to have necessary depositions

taken. The matter lies in the sound discretion of the court, and we cannot say that that discretion was abused in the present case.

The failure of counsel for the defendants to serve a copy of his affidavit upon the adverse party was an irregularity which under other circumstances might well have rendered the depositions fatally defective; statutes authorizing the taking of depositions are in derogation of the Common Law and the general rule is, therefore, that the provisions of the statute must be strictly complied with. But it is well settled that mere formal defects and irregularities in taking depositions will be disregarded when they do not affect the rights of the parties. (*Semmens vs. Walters*, 55 Wis., 675; *Owens vs. Kinsey*, 51 N. C., 50; *Hayward Rubber Co. vs. Duncklee*, 30 Vt., 29; *Locke vs. Tuttle*, 41 Mich., 407; *Morris vs. White*, 28 La. Ann., 855; *Grimes vs. Martin*, 10 Ia., 347.)

In the present case, counsel had ample notice of the taking of the depositions and both he and his clients must have had full cognizance of the reasons for the inability of the deponents to appear in court and there testify. It is further to be noted that counsel was present at the taking of the depositions and cross-examined the deponents. As to the sufficiency of the affidavit filed with the court by counsel for the plaintiffs, there can be no doubt; it set forth facts which, if truly stated, clearly authorized the taking of the depositions under paragraph 4 of section 355, above quoted. Considering these circumstances, and it being evident that the rights of the appellants were not adversely affected by the irregularity in question, we do not think the court below erred in admitting the depositions.

The appellants' other assignments of error involve only questions of facts and elementary propositions of law which were correctly disposed of by the court below and which are unworthy of a detailed discussion.

The appealed judgment is affirmed with the costs against the appellants. So ordered.

Johnson, Malcolm, Villamor, Johns, Romuctidez, 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.