

LADISLAO AFABLE, PLAINTIFF AND APPELLANT, VS. CARMEN BELANDO, DEFENDANT. “LA URBANA,” MUTUAL BUILDING AND LOAN ASSOCIATION, INTERVENOR AND APPELLEE.

G.R. No. 32154. October 20, 1930

Ponente: AVANCEÑA, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-32154/>

AVANCEÑA, C.J.:

On August 27, 1928, the plaintiff, Ladislao Afable, brought an action against the defendant, Carmen Belando, for the payment of a promissory note in the amount of P1,249.27. In the course of this action the plaintiff, on September 4th of the same year, obtained a preliminary attachment against the defendant's property and certain rents on lands in Cavite leased to several persons. On January 18, 1929, judgment was rendered requiring the defendant to pay the plaintiff P1,109.27 with interest at 12 per cent per annum, and 12 per centum of this amount as penalty, and, in addition, P160 for certain expenses. In pursuance of the writ of execution, the rents on the lands aforementioned, which had been attached, were delivered to the plaintiff on April 3, 1929.

A few days after the delivery of the rents to the plaintiff, the association La Urbana was admitted as intervenor in this case to recover said rents which had been delivered to the plaintiff. It appears that on August 5, 1927, La Urbana brought suit against Carmen Belando for foreclosure of the mortgage, secured judgment in the Court of First Instance on January 14, 1928, against the defendant for payment of P49,162.62, and upon failure to make payment within three months, the mortgaged property was decreed for sale in satisfaction of this amount. Upon appeal the judgment was affirmed by this court on March 27, 1929.[1]

It also appears that the rents delivered to the plaintiff by virtue of his judgment against the defendant were those collected on the property mortgaged to La Urbana.

In deciding the intervention of La Urbana the court below, in its brief and well-founded decision, rendered on May 9, 1929, ordered the sheriff to return the amount of P1,241.84 to the Bank of the Philippine Islands, the depositary appointed in the case of La Urbana against the defendant. This sum is the total amount of the rents delivered to the plaintiff in pursuance of his judgment against the same defendant, Carmen Belando. It is from this decision that the instant appeal has been taken.

The only question invoked in this case is purely a legal one, namely, whether, according to article 1877 of the Civil Code and 111 of the Mortgage Law, the rents of the property mortgaged to La Urbana could have been attached by the plaintiff in the course of his ordinary action against the defendant for the collection of a sum of money.

As we have said, when the plaintiff brought suit against the defendant on August 27, 1928, and when on September 4, 1928, a preliminary attachment of the rents of the defendant's property was granted, La Urbana had already brought an action against the same defendant for the foreclosure of the mortgage (August 5, 1927), and had secured judgment therein (January 14, 1928) which was affirmed by this court. Therefore, when the plaintiff attached these rents, the defendant's obligation to La Urbana had already fallen due. According to article 1877 of

the Civil Code and 110 and 111 of the Mortgage Law, a mortgage includes all rents of the mortgaged property not collected when the obligation falls due, and all rents payable until the credit is satisfied. (Decision on motion for reconsideration in *Hijos de I. de la Rama vs. Betia*, 54 Phil., 991.) In accordance with this provision, when the rents were attached by the plaintiff, they were already liable for the mortgage in favor of La Urbana, and could not have legally been attached by the plaintiff.

It is immaterial that the judgment in favor of La Urbana contained no mention of the rents, but only of the property itself, for after all, under the law, every mortgage includes the rents. So also is the fact that the court below excluded the P575, which is a part of the amount of P1,241.84, from the deposit inasmuch as that sum also comprises rents included in the mortgage in favor of La Urbana.

On the other hand, we find no merit in the plaintiff's contention that La Urbana waived its rights under the Civil Code and the Mortgage Law respecting the rents from the mortgaged property, in that being entitled, according to its contract with the defendant, to take possession of the property, it abstained from doing so, and brought an action for foreclosure instead. We fail to see how this implies a waiver.

For the foregoing considerations, the judgment appealed from is affirmed with costs against the appellant. So ordered.

Street, Malcolm, Villamor, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

[1]La Urbana vs. Belando, G. R. No. 30310, not reported.

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.