

ERIBERTO BALMEO, PLAINTIFF AND APPELLEE, VS. SEGUNDA DEVEZA ET AL., DEFENDANTS. SEGUNDA DEVEZA, APPELLANT.*G.R. No. 42984. January 30, 1935*

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-42984/>**IMPERIAL, J.:**

In case G. R. No. 37484, entitled Eriberto Balmeo, plaintiff and appellant, vs. Segunda Deveza et al., defendants and appellees, civil case No. 3123 of the Court of First Instance of Tayabas, this court entered judgment ordering the parties to proceed with the partition of the properties in question in accordance with section 184 of the Code of Civil Procedure and, upon their failure to arrive at an agreement, to report such failure to the court so that it could appoint three competent commissioners for that purpose.[1]

The parties failed to arrive at an agreement and the court had to intervene and appoint commissioners. Said commissioners filed their report in writing and recommended the manner in which the properties should be apportioned and adjudicated to the interested parties. After a hearing on the report, which was objected to by counsel for Segunda Deveza, the court on July 11, 1934, entered an order approving it and directing, the partition and adjudication of the properties as proposed in the report. Counsel for Segunda Deveza was notified of this order on July 16th. Said counsel filed his exception thereto on the following day. On the 24th of said month, counsel for Segunda Deveza filed a motion for new hearing of the order of July 11th and for the suspension of its effects and of the running of the period fixed by law for the filing of the appeal therefrom. In connection with said motion it was alleged that the partition proposed by the commissioners and the order approving it were contrary to law on the ground that the commissioners had included therein properties no longer in the possession of the parties, and which had been sold with the consent of all of them and excluded credits paid by Segunda Deveza. In an order of July 24th, the court suspended the running of the legal period for the filing of an appeal from the order of the 11th of said month.

On August 27, 1934, the court entered another order denying the motion for a new hearing, of which the attorney for Segunda Deveza was notified on September 4th. The following day, September 5th, said attorney filed his exception to said order denying his motion for a new hearing and announced his intention to appeal. On the same date he filed his bill of exceptions. On October 22, 1934, the court entered another order disapproving said bill of exceptions on the ground that the order of August 27th was not appealable, in accordance with section 146 of the Code of Civil Procedure, and that in connection with the order of July 11th, the bill of exceptions had been filed outside the reglementary period. A motion for reconsideration was filed and the attorney for Segunda Deveza excepted to the order denying it.

Segunda Deveza filed this petition for a writ of mandamus to compel the respondent judge to approve and certify the bill of exceptions in question. From the facts above stated it clearly appears that the bill of exceptions was filed on time and in accordance with law. The disapproval thereof was entirely due to a misunderstanding for it was held that the appeal was from the order of August 27, 1934, denying the motion for a new hearing when, as a matter of fact, it was an appeal from that of July 11th of said year. It cannot be said that the bill of exceptions was

filed out of time because in an order dated August 24th of said year, the court, upon motion of the attorney, suspended the legal effects of said order of July 11th, thereby suspending ipso facto the running of the period fixed by law for the filing of the necessary bill of exceptions.

It is immaterial that the order denying the motion for a new hearing was not appealable, assuming that the contention that said motion did not contain any of the legal grounds stated in section 145 of the Code of Civil Procedure, was correct. The truth is that paragraph 4 of said motion expressly alleged that the report of the commissioners as well as the order approving it was in violation of and contrary to law, which is equivalent to one of the grounds on which this appellate court may review the questions of law raised by the appellant. At any rate, the petitioner had the right of appeal from the order of July 11th and to have her bill of exceptions approved and certified.

The attorney for the respondent has insinuated in his oral argument that the petition should be denied on the ground that it was filed too late and after the petitioner had already incurred estoppel by laches. From the date on which the attorney for the petitioner was notified of the order denying his motion for reconsideration until he instituted these proceedings, only forty-two days had elapsed. Under these circumstances of the case, we are of the opinion that this period denotes neither abandonment nor negligence which constitutes estoppel as alleged by the attorney for the respondent.

The remedy prayed for is granted, and the judge of the Court of First Instance, who tried the case, is ordered to approve and certify said bill of exceptions, with costs against the respondent Eriberto Balmeo. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Writ granted.

[1] 58 Phil., 921.

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.