

ANDRES MUÑOZ, PETITIONER, VS. DIEGO LOCSIN, JUDGE OF FIRST INSTANCE OF SORSOGON, AND JULIANA MELENDRERAS VIUDA DE MUNOZ, RESPONDENTS.*G. R. No. 45113. November 28, 1936*

Ponente: ABAD SANTOS, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45113/>**ABAD SANTOS, J.:**

By this petition for a writ of certiorari the petitioner seeks to have set aside an order issued by the respondent judge appointing a receiver in a suit involving the foreclosure of a mortgage. The mortgage proceeding was instituted by the respondent Juliana M. Vda. de Muñoz and Maria Muñoz against the petitioner Andres Munoz, wherein a judgment by default was entered together with the usual order. Upon failure of the petitioner to satisfy the money judgment, the parcels of land covered by the mortgage were sold at public auction, and the respondent Juliana M. Vda. de Muñoz was the purchaser of one undivided half thereof. The sale was subsequently approved by the respondent judge over the objection of the petitioner, who appeared for the first time for the purpose of contesting the validity of said sale. From the order of the court approving the sale, an appeal was taken, which is still pending action.

After the perfection of the appeal, the respondent Juliana M. Vda. de Muñoz filed a verified petition in the court below for the appointment of a receiver, which was objected to by the petitioner herein. Whereupon, the respondent judge appointed a commissioner to receive evidence in support of the conflicting claims of the parties to the receivership proceeding. The record shows that after hearing the parties interested, the commissioner submitted a report to the respondent judge, and thereafter the challenged order was issued. A motion for reconsideration thereof was filed by the petitioner, which motion was denied by the respondent judge for the reasons stated in the order of denial.

Section 174 of the Code of Civil Procedure provides that a receiver may be appointed in an action by the mortgagee for the foreclosure of a mortgage where it appears that the property is in danger of being wasted or materially injured, and that its value is probably insufficient to discharge the mortgage debt. And section 177 provides that:

"If a receiver be appointed upon an ex parte application, the Court, before making the order, may require from the plaintiff or person filing the application for such appointment, an obligation with sufficient sureties, to be approved by the court, in an amount to be fixed by the court, to the effect that the applicant will pay to the defendant in the application all damages he may sustain by reason of the appointment of such receiver and the entry by him upon his duties, in case the applicant shall have procured such appointment without sufficient cause; and the court may, in its discretion, at any time after the appointment, require an additional obligation as further security for such damages * * *."

It will be observed that the law authorizes the appointment of a receiver even without a hearing, upon an ex parte application.

In the case now before us, the respondent judge, after hearing the parties, found that the mortgaged property was in danger of being wasted and that its value was probably insufficient to discharge the mortgage debt. The mere fact that this finding was based partly on the commissioner's report as to which no hearing was had, cannot affect the jurisdiction of the court below to appoint a receiver of the mortgaged property. And this court has held that certiorari will not lie where the irregularities alleged to have been committed in the appointment of a receiver do not go to the jurisdiction of the appointing court. (Marquez and Jurado vs. Revilla, 43 Phil., 274.)

That disposes of the real issue in this case. The other points raised by the petitioner are too unsubstantial to require further discussion.

The petition for a writ of certiorari is denied, and the preliminary injunction issued herein dissolved, with costs against the petitioner. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, 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.