

ENRIQUE CLEMENTE, PLAINTIFF AND APPELLEE, VS. DIONISIO GALVAN, DEFENDANT AND APPELLEE. JOSE ECHEVARRIA, INTERVENOR AND APPELLANT.

G.R. No. 45662. April 26, 1939

Ponente: DIAZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-45662/>

DIAZ, J.

The intervenor Jose Echevarria having lost in the Court of First Instance of Manila which rendered judgment against him, the pertinent portion of which reads: "and with respect to the complaint of the intervenor, the mortgage executed in his favor by plaintiff is declared null and void, and said complaint in intervention, as well as the counterclaim filed by the defendant against the intervenor, is dismissed, without pronouncement as to costs," he appealed to this court on the ground that, according to him, the lower court committed the errors assigned in his brief as follows:

"I. The court a quo erred in finding in the appealed decision that plaintiff was unable to take possession of the machines subject of the deed of mortgage Exhibit B either before or after the execution thereof.

"II. The court a quo likewise erred in deciding the present case against the intervenor-appellant, on the ground, among others, that 'plaintiff has not adduced any evidence nor has he testified to show that the machines mortgaged by him to the intervenor have ever belonged to him, notwithstanding that said intervenor is his close relative.'

"III. The lower court also erred in declaring null and void the mortgage executed by plaintiff in favor of the intervenor and, thereby, dismissing the complaint in intervention. "IV. The lower court lastly erred in ordering the receiver J.D. Mencarini to deliver to the defendant the aforesaid machines upon petition of the plaintiff."

In order to have a clear idea of the question, it is proper to state the facts bearing on the case as they appear in the decision and judgment of the lower court and in the documents which constitute all the evidence adduced by the parties during the trial.

On June 6, 1931, plaintiff and defendant organized a civil partnership which they named "Galvan y Compañia" to engage in the manufacture and sale of paper and other stationery. They agreed to invest therein a capital of P100,000, but as a matter of fact they did not cover more than one-fifth thereof, each contributing P10,000. hardly a year after such organization, the plaintiff commenced the present case in the above-mentioned court to ask for the dissolution of the partnership and to compel defendant to whom the management thereof was entrusted to submit an accounting of his administration and to deliver to him his share as such partner. In his answer defendant expressed his conformity to the dissolution of the partnership and the liquidation of its affairs; but by way of counterclaim he asked that, having covered a deficit incurred by the partnership amounting to P4,000 with his own money, plaintiff reimburse him of one-half of said sum. On petition of the plaintiff a receiver and liquidator to take charge of the properties and business of the partnership while the same was not yet definitely dissolved, was appointed, the person chosen being Juan D. Mencarini. The latter was already discharging the duties of his

office when the court, by virtue of a petition ex parte of the plaintiff, issued the order of May 24, 1933, requiring said receiver to deliver to him (plaintiff) certain machines which were then at Nos. 705-707 Ylaya Street, Manila, but authorizing him to charge their value of P4,500 against the portion which may eventually be due to said plaintiff. To comply with said order, the receiver delivered to plaintiff the keys to the place where the machines were found, which was the same place where defendant had his home; but before he could take actual possession of said machines, upon the strong opposition of defendant, the court, on motion of the latter, suspended the effects of its order of May 24, 1933. In the meantime the judgments rendered in cases Nos. 42794 and 43070 entitled "Philippine Education Co., Inc. vs. Enrique Clemente" for the recovery of a sum of money, and "Jose Echevarria vs. Enrique Clemente", also for the recovery of a sum of money, respectively, were made executory; and in order to avoid the attachment and subsequent sale of the machines by the sheriff for the satisfaction from the proceeds thereof of the judgments rendered in the two cases aforecited, plaintiff agreed with the intervenor, who is his nephew, to execute, as he in fact executed in favor of the latter, a deed of mortgage Exhibit B encumbering the machines described in said deed in which it is stated that "they are situated on Singalong Street No. 1163", which is a place entirely different from the house Nos. 705 and 707 on Ylaya Street hereinbefore mentioned. The one year agreed upon in the deed of mortgage for the fulfillment by the plaintiff of the obligation he had contracted with the intervenor, having expired, the latter commenced case No. 49629 to collect his mortgage credit. The intervenor, as plaintiff in the said case, obtained judgment in his favor because the defendant did not interpose any defense or objection, and, moreover, admitted being really indebted to the intervenor in the amount set forth in the deed of mortgage Exhibit B. The machines which the intervenor said were mortgaged to him were then in fact in custodia legis, as they were under the control of the receiver and liquidator Juan D. Mencarini. It was, therefore, useless for the intervenor to attach the same in view of the receiver's opposition; and the question having been brought to court, it decided that nothing could be done because the receiver was not a party to the case which the intervenor instituted to collect his aforesaid credit. (Civil case-No. 49629.) The question ended thus because the intervenor did not take any other step until he thought of joining in this case as intervenor.

- From the foregoing facts, it is clear that plaintiff could not obtain possession of the machines in question. The constructive possession deducible from the fact that he had the keys to the place where the machines were found (Ylaya Street Nos. 705-707), as they had been delivered to him by the receiver, does not help him any because the lower court suspended the effects of the order whereby the keys were delivered to him a few days after its issuance; and thereafter revoked it entirely in the appealed decision. Furthermore, when he attempted to take actual possession of the machines, the defendant did not allow him to do so. Consequently, if he did not have actual possession of the machines, he could not in any manner mortgage them, for while it is true that the oft-mentioned deed of mortgage Exhibit B was annotated in the registry of property, it is no less true that the machines to which it refers are not the same as those in question because the latter are on Ylaya Street Nos. 705-707 and the former are on Singalong Street No. 1163. It can not be said that Exhibit B-1, allegedly a supplementary contract between the plaintiff and the intervenor, shows that the machines referred to in the deed of mortgage are the same as those in dispute and which are found on Ylaya Street because said exhibit being merely a private document, the same cannot vary or alter the terms of a public document which is Exhibit B or the deed of mortgage.

- The second error attributed to the lower court is baseless. The evidence of record shows that the machines in contention originally belonged to the defendant and from him were transferred to the partnership Galvan y Compania. This being the case, said machines belong to the partnership and not to him, and shall belong to it until partition is effected according to the result thereof after the liquidation.

- The last two errors attributed by the appellant to the lower court have already been disposed of by the considerations above set forth. They are as baseless as the previous ones.

In view of all the foregoing, the judgment appealed from is affirmed, with costs against the appellant. So ordered.
Avanceña, C. J., Villa-Real, Imperial, Laurel, Concepcion, and Moran, 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.