

THE PASAY ESTATE CO., LTD., PLAINTIFF, VS. THE HONORABLE SIMPLICIO DEL ROSARIO ET AL., DEFENDANTS.*G.R. No. 4893. October 01, 1908*

Ponente: WILLARD, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4893/>**WILLARD, J.:**

This is an original action of mandamus in this court. The grantor of the plaintiff, E. H. Warner, obtained a final decree in the Court of Land Registration, by virtue of which he was inscribed as the owner of the Pasay Estate. That judgment was confirmed by this court. (Warner vs. 771 Objectors, 5 Phil. Rep., 153.) After the case had been remanded to the Court of Land Registration and a writ of possession had been issued, under which a part only of the property had been delivered to the plaintiff, it made in July, 1908, an application for an alias execution. The court, by an order of July 17, 1908, directed the issue of another writ of possession, but expressly limited its effects to those persons who, being parties in the former proceeding, had appeared therein and opposed the petition. The plaintiff, not being satisfied with a writ so limited, brought this action against the judge of that court and certain defendants in the former proceeding who had been served with process therein but had not appeared nor answered. Several answers have been filed in this proceeding, among which is one by the judge himself. To that answer the plaintiff has demurred, and the case is now before us for the resolution of this demurrer.

Section 17 of the Land Registration Act (No. 496), as amended by section 5 of Act No. 1108, is in part as follows :

"SEC. 17. The Court of Land Registration, in all matters over which it has jurisdiction, may enforce its orders, judgments, or decrees in the same manner as orders, judgments, and decrees are enforced in the Courts of First Instance, including a writ of possession directing the governor or sheriff of any province or of the city of Manila to place the applicant in possession of the property covered by a decree of the court in his favor; "

The theory of the judge who made the order is that this writ of possession can be directed only against those who have been defeated in the suit, and those persons only can be considered as defeated who have appeared and answered and against whom a judgment has been rendered. In effect, the judge says that a person who has been duly served with process in a proceeding in the Land Court, who has failed to appear or answer, and against whom a judgment by default has been entered, can not be said to have been defeated in the suit, and against him no writ of possession can be issued. This theory can not be sustained. The question here has nothing to do with a person who is not duly served with process, but is limited to those persons who, being served with process, have neither appeared nor answered. It is very clear that such persons are just as much defeated in a suit as they would have been if they had appeared, answered, presented their evidence, and finally had a judgment entered against them.

In his answer, the judge moreover says, as to these persons who have not appeared, that the plaintiff has a remedy, by proceeding in a court of the justice of the peace against them: if they are tenants, for nonpayment of the rent or other breach of the conditions of the lease; or, if they are precarious occupants, for their summary eviction.

But this construction of the law entirely defeats its purpose. It would compel a successful litigant in the Court of Land Registration to commence other actions in other courts for the purpose of securing the fruits of his victory. The evident purpose of the law was to prevent that very thing; and we think it clear, from the language of section 17, above quoted, that the plaintiff is entitled to such a writ of possession as it asked for.

The demurrer is accordingly sustained, and the defendant judge allowed ten days within which to file an amended answer. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ.,

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.