

[ G. R. No. 18624. March 31, 1922 ]

**GREGORIO MARQUEZ AND MARIA JURADO, PETITIONERS, VS. THE HONORABLE BARTOLOME REVILLA, JUDGE OF FIRST INSTANCE OF TAYABAS, DANIEL MARQUEZ, AND RICARDA JARBINA, RESPONDENTS.**

**D E C I S I O N**

**OSTRAND, J.:**

This is a petition for a writ of certiorari. It appears from the record that in an action pending in the Court of First Instance for the dissolution of a partnership the court, after hearing, appointed a receiver to take charge of the partnership property. The appointment was based upon the following allegations in the complaint in said case:

“That due to the sad and unfortunate disagreement and lack of harmony now existing between the parties with regard to the management and administration of the enormous estates herein involved—a situation which plaintiffs exceedingly regret but cannot avoid—and in view of the fact that the defendant Gregorio Marquez insists upon imposing his will upon the plaintiff Daniel Marquez with regard to such management and administration, to the prejudice of the plaintiffs, the latter will suffer incalculable loss and damage unless the coownership or community of property existing between the parties is at once terminated and their common property partitioned and divided, and unless in the meantime, pending the final determination of this cause, a receiver is appointed by this court to take the possession, control, management, and administration of the estates and property herein involved; that plaintiffs are ready and willing to relinquish their control of said common property in favor of such receiver, for the common benefit of the parties.”

The petitioners contend that the allegations quoted do not show sufficient cause for the

appointment of a receiver; that it does not appear that the property has been mismanaged by the petitioners or that it is in danger of being lost; that the petition for the appointment of a receiver was not properly verified inasmuch as the verification is only made upon information and belief; and that the petitioners will suffer irreparable damage if the receivership is maintained. The petitioners therefore ask that the respondent judge be ordered to certify the record of the case in which the receiver was appointed to this court and that, thereupon, the appointment be declared illegal and the property under the receivership restored to the petitioners.

We do not think that the writ of certiorari will lie in the present case. This court has on numerous occasions consistently held that under our statutes a writ of certiorari brings up for review only the question whether the inferior tribunal, board, or officer, exercising judicial functions, has exceeded its, or his, jurisdiction and cannot be used as a writ of error for the correction of mistakes either in law or fact, committed by the inferior tribunal within the limits of its jurisdiction. (*In re Prautch*, 1 Phil., 132; *De los Reyes vs. Roxas*, 1 Phil., 625; *Araneta vs. Heirs of Gustilo*, 2 Phil., 60; *Springer vs. Odlin*, 3 Phil., 344; *Somes vs. Crossfield*, 8 Phil, 284; *Artacho vs. Tan Chu Chay*, 11 Phil., 47; *Lagahit vs. Nengasca and Wislizenus*, 12 Phil., 423; *Banes vs. Cordero*, 13 Phil., 466; *Arzadon vs. Chanco and Baldueza*, 14 Phil, 710; *Herrera vs. Barretto and Joaquin*, 25 Phil., 245; *Gala vs. Cui and Rodriguez*, 25 Phil., 522, and eight other election cases; *De Fiesta vs. Llorente and Manila Railroad Co.*, 25 Phil., 554; *Labiano vs. McMahon*, 28 Phil., 168; *Napa vs. Weissenhagen*, 29 Phil., 180; *Government of the Philippine Islands vs. Judge of First Instance of Iloilo and Bantillo*, 34 Phil., 157; *Perlas vs. Concepcion*, 34 Phil., 559; *Macasieb Sison vs. Court of First Instance of Pangasinan*, 34 Phil., 404; *Mercader vs. Wislizenus*, 34 Phil., 847; *Oria vs. Campbell and Gutierrez Hermanos*, 34 Phil., 850; *Alvendia vs. Moir and Dinio*, 35 Phil., 356; *Campos vs. Wislizenus and Aldanese*, 35 Phil., 373; *Bustos vs. Moir and Fajardo*, 35 Phil., 415; *De la Cruz vs. Moir*, 36 Phil., 213; *Javier vs. Nadres*, 36 Phil., 226; *Venturanza vs. Court of First Instance of Batangas and Cabrera*, 36 Phil., 545, and *Leung Ben vs. O'Brien*, 38 Phil., 182.)

The decisions in the two cases of *De Castro and Morales vs. Justice of the Peace of Bocaue* (33 Phil., 595), and *Valdez vs. Querubin* (37 Phil., 774), where the writ was granted on the ground of abuse of discretion on the part of justices of the peace in requiring excessive bonds may, at first sight, seem out of harmony with the rule above stated, but on close analysis it will be found that in these cases the abuse of discretion was such as to be equivalent to a failure of jurisdiction.

The irregularities alleged by the petitioners do not, as far as we can see, go to the jurisdiction of the court below. The allegations quoted from the complaint, and on the strength of which the receiver was appointed, may well have been sufficient, under subsection 4 of section 174 of the Code of Civil Procedure which authorizes the appointment “whenever \* \* \* it shall be made to appear to the court that the appointment of a receiver is the most convenient and feasible means of preserving and administering the property which is the subject of litigation during the pendency of the action,” and a showing as to past mismanagement of the property by the adverse party is not essential. Neither does the fact that the complaint was verified merely on information and belief affect the jurisdiction of the court; this might have been of some importance if the receiver had been appointed *ex parte*, but in the present case the appointment was made upon notice and hearing where the necessity for positive verification is less imperative.

The writ is denied and the proceeding dismissed, with the costs against the petitioners. So ordered.

*Araullo, C. J., Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.*