

**PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION (PVTA)
PETITIONER VS. HON. WALFRIDO DELOS ANGELES AS JUDGE OF
THE COURT OF FIRST INSTANCE OF RIZAL (QUEZON CITY, BRANCH
IV); UNITED NA...**

G.R. Nos. L-30085-87. December 26, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

Original action of mandamus to compel respondent Judge of the Court of First Instance of Rizal, Quezon City (Branch IV), to set the hearing for the approval of petitioner's record on appeal in Civil Cases Nos. Q-11547, -11578 and Q-11659, and, thereafter, approve the same and give due course to petitioner's appeal.

Private respondents are domestic corporations engaged in the business of producing and selling flue-cured Virginia tobacco. On various dates in October, 1967, they filed complaints against petitioner Philippine Virginia Tobacco Administration (hereinafter referred to as the PVTA) and the Farmers' Virginia Tobacco Redriers, Inc. (hereinafter referred to as the FVTR) with the Court of First Instance of Rizal, Quezon City (Branch IV). Fifteen (15) of the respondents filed their complaints, docketed as Civil Case No. Q-11547, on October 18, 1967; five (5) of them on October 30, 1967, docketed as Civil Case No. Q-11578; and one (1) on October 30, 1967, docketed as Civil Case No. Q-11659.

The three (3) complaints uniformly alleged that defendant PVTA entered into a contract of procurement, redrying and servicing of Virginia tobacco with the FVTR, the other defendant, whereby the latter was authorized to buy or procure, redry and service, for and in behalf of the PVTA, a total of seven (7) million kilos of flue-cured Virginia tobacco; that the plaintiff corporations had, on various dates in 1963, shipped and delivered to the FVTR, at the latter's redrying plant in Bauang, La Union, certain quantities of Virginia tobacco with a total value of P492,661.48 in Civil Case No. Q-11547, P439,746.68 in Civil Case No. Q-11578, and P24,491.26 in Civil Case No. Q-11659; that the said tobacco was duly accepted by the defendants, which thereby became liable to the plaintiffs for the value of the shipments, plus interest, damages and attorney's fees; and that the defendants failed and refused to pay the plaintiffs the amounts due them despite repeated demands therefor.

Petitioner PVTA, as a defendant in the three (3) cases, filed an answer to each of the complaints, making some admissions and denials and putting up special defenses, among which are that it had entered into only one management contract with its co-defendant, the FVTR, to accept and receive for and in behalf of the PVTA only two (2) million kilos of flue-cured Virginia tobacco; that pursuant to said management contract entered into by and between the PVTA and the FVTR on April 29, 1963, the FVTR undertook to advance for the PVTA the payment to the authorized trading entities for all flue-cured Virginia tobacco delivered to and graded, weighed, accepted and procured by the FVTR, so that if the alleged shipments of the plaintiffs were actually received by the FVTR, payments thereof should be made by the FVTR; that while the FVTR was granted an additional allocation of three (3) million kilos for procurement, redrying and servicing purposes, the same was subject to certain

conditions which were not complied with; and that since the PVTA had not entered into any other management contract with the FVTR after April 29, 1963, the FVTR, in receiving and accepting the shipments of the plaintiffs in excess of the authorized original allocation of two (2) million kilos granted to it, became solely liable from April 29, 1963 henceforth for any tobacco shipment of the plaintiffs received by it.

In each of its answers to the complaints herein, petitioner PVTA interposed a cross-claim against FVTR, for the tobacco shipments accepted and actually received by the latter which were not authorized under the management contract of April 29, 1963. FVTR admitted accepting deliveries of tobacco from the plaintiffs, claiming, however, that it did so, not for its own account and behalf, but by authority and direction of its co-defendant PVTA, which in fact and in law was the actual purchaser of the flue-cured tobacco, and that it had consequently filed a cross-claim against PVTA, asserting therein that said party had unreasonably and unjustifiably refused to pay for the plaintiffs' tobacco deliveries and likewise prayed that PVTA reimburse FVTR for payments it had made to the plaintiffs and/or to pay plaintiffs such sums as PVTA may be ordered by final judgment.

Upon motion of the parties, the three (3) cases were ordered consolidated.

On December 13, 1967, which was the second day of the pre-trial hearing, the parties submitted to the court a "Stipulation of Facts", which reads:

"STIPULATION OF FACTS

"COME NOW the parties in the above-entitled cases, through their respective counsel, and before this Honorable Court, respectfully manifest that they have agreed, as they hereby agree, on the following stipulations:

"1. That the parties herein have the juridical personality to sue and be sued and are residents of, or have their principal places of business at the places set after or opposite their respective names in and as indicated in the complaints;

"2. That the plaintiffs in the aforesaid cases are tobacco trading entities duly organized and existing under the laws of the Philippines duly authorized to sell tobacco leaf or otherwise to trade with herein defendant Philippine Virginia Tobacco Administration (PVTA) and/or its procurement agent, including herein defendant FVTR (Farmers' Virginia Tobacco Redriers, Inc.);

"3. That on April 24, 1963, defendant PVTA's Board of Directors passed and approved Resolution No. 113, S. 1963, awarding to defendant FVTR a contract for the procurement, redrying and servicing of two (2) million kilos of flue-cured Virginia tobacco, a copy of the said Resolution being attached hereto as Annex 'A-Stipulation of Facts' (Stifacts for short), and made an integral part hereof;

"4. That on April 29, 1963, pursuant to the aforesaid Resolution (Annex 'A-Stifacts'), defendants PVTA and FVTR entered into a 'Management Contract' under which the latter was to procure, redry and service for and in behalf of the former a total of two (2) million kilos of Virginia tobacco, a copy of the said 'Management Contract' being attached hereto as Annex 'B-Stifacts', and made an integral part hereof;

"5. That on May 8, 1963, defendant PVTA's Board of Directors passed and approved Resolution No. 131, S. 1963, confirming and ratifying 'Management Contract' referred to in the next preceding paragraph hereof, a copy of the said Resolution being attached hereto as Annex 'C-Stifacts' and made an integral part hereof;

"6. That by virtue of the aforesaid 'Management Contract' (Annex 'B-Stifacts') referred to herein, defendant FVTR started on June 18, 1963, to procure, accept and receive, as it had, indeed, procured, accepted and received, for purposes of redrying and servicing, tobacco shipments from PVTA-recognized tobacco trading entities, including the plaintiffs in the above-entitled cases;

"7. That among the tobacco shipments procured, accepted and received by defendant FVTR for and in behalf of defendant PVTA under the aforesaid 'Management Contract', Annex 'B-Stifacts', were those of the plaintiffs' as appearing on defendant PVTA's 'Status of 1963 Shipments to FVTR within the 2 million Kilo Allocated under Category I showing the Unpaid and Paid Shipments as of October 31, 1966', a document prepared and submitted by a special committee composed of defendant PVTA's officials showing what its title indicates, a copy of the said document being attached hereto as Annex 'D-Stifacts,' and made an integral part hereof;

"8. That for purposes of clarity and convenience, the said shipments procured, accepted and received by defendant FVTR from the plaintiffs as stated in the next preceding paragraph hereof are condensed in a separate list entitled 'Condensed List of Accepted Tobacco Shipments of Plaintiffs and Their Corresponding Value' and bearing the signatures of the counsel for the parties herein which is attached hereto as Annex 'D-1-Stifacts,' and made an integral part hereof;

"9. That on December 12, 1966, the special committee referred to in Paragraph 7 hereof submitted a report to the Officer-in-Charge of defendant PVTA, recommending among others, that 'Subject to the presentation of the usual necessary supporting papers, unpaid 1963 shipments to the FVTR up to and including shipment No. 217 under Category No. 1 should be paid,' a copy of the said committee report being hereto attached as Annex 'E-Stifacts,' and made an integral part hereof; that annexed to the said committee report were Annexes 'A' (already previously marked as Annex 'D-Stifacts'), 'B', 'C' and 'D', copies of the latter three being attached hereto as Annex 'E-1-Stifacts', 'E-2-Stifacts', and 'E-3-Stifacts', respectively;

"10. That the shipments listed in the 'Condensed List of Accepted Tobacco Shipments of Plaintiffs and Their Corresponding Value' (Annex 'D-1-Stifacts') are within the said priority shipments Nos. 1-217 or classified under the said committee's Category No. 1 and that the said shipments have not yet been paid to this date;

"11. That on March 1, 1967, defendant PVTA's Board of Directors passed and approved Resolution No. 68, S. 1967, resolving, among others, to authorize the PVTA management 'to pay all 1963 shipments to the FVTR up to and including shipment No. 217, classified under Category I (shipments within the original allocation of two (2) million kilos of FVTR,' a copy of the said Resolution being attached hereto as Annex 'F-Stifacts,' and made an integral part hereof;

"12. That on June 15, 1967, Mr. E.P. La Rosa, defendant PVTA's Auditor, refused to consider and act on a journal voucher covering some claims for payment of shipments falling within the first 217 shipments and classified as within Category 1, stating his reasons in his '1st Indorsement' of the same date, a copy of the said '1st Indorsement' being attached hereto as Annex 'G-Stifacts' and made an integral part hereof;

"13. That on August 7, 1963, defendant PVTA's Board of Directors passed and approved Resolution No. 236, S. 1963, which Resolution was subsequently modified by Resolution No. 245, duly passed, and approved by the same Board of Directors on August 21, 1963, granting to defendant FVTR an additional of 1.5-million-kilo tobacco procurement allocation, copies of the said resolutions being attached hereto as Annexes 'H-Stifacts' and 'H-1-Stifacts', respectively, and made integral parts hereof;

"14. That on September 23, 1963, defendant PVTA's Board of Directors passed and approved Resolution No. 284, granting to defendant FVTR an additional procurement allocation of 1.5 million kilos of tobacco, 'in addition to the 3.5 million kilos of tobacco previously awarded' to the said defendant, a copy of the said resolution being attached hereto as Annex 'I-Stifacts', and made an integral part hereof;

"15. That no new management contract similar to the one referred to above (Annex 'B-Stifacts') was executed by and between the herein defendants covering the additional tobacco procurement allocations of 1.5 million kilos each granted under Resolution No. 236, as amended by Resolution No. 245, and No. 284 (Annexes 'H-Stifacts', 'H-1-Stifacts', and 'I-Stifacts' respectively);

"16. That on October 2, 1963, defendant PVTA's General Manager wrote and forwarded a letter to defendant

FVTR's General Manager reminding the latter about the conditions relative to the two (2) additional allocations of 3 million kilos of Virginia tobacco, a copy of which letter is hereto attached as Annex 'J-Stifacts', and made an integral part hereof:

"17. That attached to the aforesaid letter (Annex, 'J-Stifacts') was a prepared form which was supposed to be accomplished by tobacco shippers which states, among others, that defendant PVTA would not be held liable for shipments made under the aforesaid two additional allocations of 3 million kilos of tobacco unless the requisite management contract covering the said additional allocations shall have been executed by and between PVTA and FVTR, a copy of the said form being attached hereto as Annex 'J-1-Stifacts', and made an integral part hereof;

"18. That the said letter (Annex 'J-Stifacts') and the said form (Annex 'J-1-Stifacts') attached thereto were received at the defendant FVTR's redrying plant in Bauang, La Union, on October 3, 1963; by Mr. Prudencio Pimentel, then PVTA plant manager at the said plant, and Mr. Tranquilino Galica, defendant FVTR's then plant superintendent, receipt of the said papers by the latter being for and in behalf of the said FVTR;

"19. That the plaintiffs have not been notified, formally or otherwise, about the said letter (Annex 'J-Stifacts'), by either of the defendants;

"20. That of its entire allocation of 5 million kilos of tobaccos defendant FVTR has accounted to defendant PVTA only 1,772,176.7 kilos of Virginia tobacco with a total net cost of P5,123,378.40, and, further, that the said defendant had not presented to the PVTA quedans or warehouse receipts covering the shipments supposedly received by it under two additional allocations;

"21. That on December 14, 1962, defendant PVTA, through its then General Manager, Mr. Eduardo Bananal, issued Circular No. 4, S. 1962, prescribing rules and regulations to be followed by agents of the said defendant including defendant FVTR, in the procurement of tobacco, a copy of which circular being attached hereto as Annex 'K-Stifacts' and made an integral part hereof;

"22. That the plaintiffs against whom counterclaims were set up in the Answers filed by defendant PVTA for alleged unpaid merchandising loans had indeed secured and obtained from the said defendant the aforesaid loans on various dates but that partial payments had been made by them and the remaining unpaid accounts as certified to and verified from defendant PVTA's Chief Accountant are admitted and payable from the proceeds due the said plaintiffs for their tobacco shipments payment for which is demanded in the complaints;

"23. That all exhibits mentioned by plaintiffs may be received in evidence without the necessity of proving the documents; (NOTE: CANCELLED and duly initialed by the parties.)

"24. That the parties herein reserve their right to submit in the future to this Honorable Court additional stipulation of facts or present documentary or testimonial evidence on any other material points not otherwise touched upon in this or other Stipulations of Facts as they may deem fit and proper for the better prosecution or defense of their respective cases.

"WHEREFORE, it is respectfully prayed that the foregoing Stipulation of Facts which is hereby submitted, be approved by this Honorable Court.

"Quezon City, Philippines, December 13, 1967.

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M a n i l a

"With the reservation as to the correctness of figures in paragraph 20, and, further, that PVTa rejected other quedans presented by FVTR.

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Counsel for Defendant FVTR

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On December 15, 1967, the court, through respondent Judge, rendered a "Partial Judgment" the dispositive portion of which reads:

"In view of the foregoing this Court hereby renders judgment:

"A. Ordering the defendant PVTa to pay the plaintiffs as follows:

"Vintar Facoma, the sum of P27,448.07 with legal interest (6% per annum) computed from and upon the expiration of 48 hours from July 16, 1963 until payment thereof; also the sum of P26,161.48 with legal interest computed from and upon the expiration of 48 hours from July 17, 1963.

"Central Agricultural Prod. Assn., the sum of P33,853.93 with legal interest computed from and upon the expiration of 48 hours from July 17, 1963, until fully paid; also the sum of P23,667.27 with legal interest

computed from and upon the expiration of 48 hours from August 21, 1963.

"Progressive TPA, the sum of P18,278.14 with legal interest computed from and upon the expiration of 48 hours from July 17, 1963 until fully paid thereof;

"United Narvacan Planters Association the sum of P27,569.31 with legal interest computed from and upon the expiration of 48 hours from July 24, 1963, also the sum of P34,745.34 with legal interest computed from and upon the expiration of 48 hours from August 24, 1963, also the sum of P33,043.07 with legal interest computed from and upon the expiration of 48 hours from August 24, 1963 until fully paid, also the sum of P49,002.24 with legal interest computed from and upon the expiration of 48 hours from August 27, 1963 until fully paid;

"Narvacan Union TPC, the sum of P23,546.89 with legal interest computed from and upon the expiration of 48 hours from August 23, 1963, until fully paid;

"Southern Balaoan, the sum of P31,478.84 with legal interest computed from and upon the expiration of 48 hours from August 23, 1963, until fully paid;

"Ilocos Agricultural Producers Association, the sum of P20,071.92 with legal interest computed from and upon the expiration of 48 hours from August 27, 1963 until fully paid;

"Golden Leaf VTPA, the sum of P28,554.19 with legal interest computed from and upon the expiration of 48 hours from August 25, 1963 until fully paid;

"B) Directing defendant PVTA to pay plaintiffs, in the concept of Attorney's fees, a sum equivalent to Five Per Cent (5%) of the total money value of all the flue-cured Virginia leaf tobacco deliveries as mentioned in the preceding paragraphs hereof with an aggregate value of P377,418.69.

"C) Directing plaintiff Golden Leaf VTPA to pay the sum of P28,342.26 to PVTA; plaintiff Ilocos Agricultural Producers Association, Inc. to pay the sum of P5,520.96 to PVTA; plaintiff Southern Balaoan TPA, Inc. to pay the sum of P15,000.00 to PVTA.

"D) Ruling that this judgment is without prejudice to PVTA's right to reimbursement or contribution from its co-defendant FVTR should the Court find it to be so entitled when the remaining issues in these cases are finally decided.

"SO ORDERED."

In its "Partial Judgment" the court stated as follows:

"Upon admission of said Stipulation of Facts, all the parties manifested in open court that they will not submit any further testimonial or documentary evidence on the issues and claims covered by their stipulations and further agreed to submit to a partial decision these cases with respect only to the tobacco shipments covered by said Stipulation of Facts, specifically those mentioned in par. 8 and enumerated in Annex 'D-1-Stifacts'."

Within the reglementary period, petitioner PVTA filed its notice of appeal, appeal bond, and later, after securing an extension, record on appeal.

On January 13, 1968, the plaintiff corporations filed with the trial court a "Motion to Strike Out Notice of Appeal and Opposition to Motion for Extension of Time to File Record on Appeal" on the grounds, that (a) the "Partial Judgment", partakes the nature of a judgment by confession and/or a compromise, hence, the appeal would be frivolous and in bad faith; (b) the judgment did not cover the PVTA's cross-claims against its co-defendant FVTR, for contribution or compensation, and, therefore, PVTA's rights or claims in the cases are not irreparably lost or prejudiced pending final resolution of all the incidents and issues in the cases; and (c) the PVTA is estopped from

questioning the judgment because it had already accepted or received the benefits due it under the judgement in the form of payment for merchandizing loans adjudicated in its favor.

In an Order dated January 17, 1968, the court, finding —

"x x x that the decision being appealed by the defendant Philippine Virginia Tobacco Administration is merely a partial judgment based on Stipulation of Facts and/or compromise which is actually a confession of liability in so far as plaintiffs' claims are concerned; that the intended appeal would at most be a meaningless gesture, even frivolous and in bad faith considering that said defendant's counsel has given several advice discouraging useless litigation or appeal there being no ground therefor; that in the partial judgment rendered in said cases which is now the subject of defendant PVTa's appeal, said defendant's cross-claims against its co-defendant FVTR for contribution or compensation are not included in the said partial judgment, hence PVTa's rights or claims in these cases are not irreparably lost or prejudiced pending final resolution of all the issues not covered by the said judgment; that the defendant PVTa is now estopped from questioning the judgment on the ground that it had accepted from plaintiffs the payment for merchandising loans adjudicated in its favor by the said partial judgment; and that the partial judgment subject of the appeal has already been executed and the amounts adjudged therein have already been collected and paid to the plaintiffs."

ordered the Notice of Appeal and Record on Appeal, if any there be, filed by petitioner PVTa, stricken from the records of the cases.

On January 27, 1968, petitioner PVTa filed a motion to reconsider the Order of January 17, 1968, alleging that the grounds relied upon by the plaintiff corporations in their motion to strike, upon which the court based its order, are not valid, legal or sufficient to justify the issuance of the order which in effect was a dismissal of appeal; that the stipulation of facts cannot be construed as a compromise agreement that would bar any of the parties from appealing from the partial judgment; that the court should not have taken into consideration the plaintiffs' allegations regarding the advice of defendant PVTa's counsel to said defendant, considering that said advice was strictly confidential and privileged; and that to strike from the record defendant PVTa's Notice of Appeal and Record on Appeal is tantamount to depriving said party of a substantive right without due process.

In a "Joint Motion for the Suspension of the Running of the Period to Appeal" dated January 18, 1968, filed by the parties, they alleged that on the basis of stipulations of facts submitted to the court, five (5) separate partial judgments, the first of which is dated December 15, 1967, were rendered by the court; that the series of appeals from partial judgments would result in multiplicity of actions, additional expenses and undue delay in the disposition of the cases; that all these could be avoided if the court would suspend the period within which to appeal all its partial judgments until such time as all the issues shall have been fully and completely decided, the period to appeal to commence from date of receipt by the parties of the judgment completely resolving all the issues in these cases; and that in consideration of the suspension of the running of the period to appeal from the judgments promulgated in the cases, the PVTa would withdraw its Notice of Appeal and Record on Appeal. The parties accordingly prayed that the running of the period within which to appeal the partial judgment dated December 15, 1967, and all other judgments thereafter promulgated, be suspended until a judgment fully and completely resolving all the issues involved shall have been rendered; and that the Notice of Appeal and Record on Appeal filed by the PVTa on January 11, 1968 and January 15, 1968, respectively, be considered withdrawn, without prejudice to their automatic reinstatement or re-filing should the period for the appeal of the partial judgment sought to be appealed start to run again.

On November 21, 1968, respondent Judge issued an Order denying the "Joint Motion for the Suspension of the Running of the Period to Appeal," on the ground that "[t]he period within which to perfect an appeal having been fixed by law, the running of the same could not be suspended by the Court." On the same date, respondent Judge

issued an Order denying the PVTA's motion to reconsider the Order of January 17, 1968, which struck from the record the PVTA's Notice of Appeal and Record on Appeal.

Petitioner contends that respondent Judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction when he issued the Order dated January 17, 1968 dismissing the appeal, and the Order dated November 21, 1968 denying its motion for reconsideration, for (a) it had seasonably perfected its appeal; (b) the "Stipulation of Facts" upon which the partial judgment was based was not a compromise agreement, much less a confession of liability; (c) the appeal taken was not frivolous, there being issues of law of grave importance which were not properly resolved by the court in its partial judgment, "such as the payment of attorney's fees and the interest which, even if due, should not have been computed from the date following the lapse of 48 hours from the supposed acceptance of the shipments as was done by the respondent Judge, but rather, in view of the absence of proof as to when demands for payment of the shipments had been made, on the date the judicial demands were made or the date of the filing of the complaints in each of the cases."

According to the aforementioned "Stipulation of Facts," petitioner PVTA admitted that the private respondents as plaintiffs in the aforementioned civil cases delivered to the Farmers' Virginia Tobacco Redriers, Inc. (FVTR) several shipments of flue-cured Virginia tobacco, among which were those enumerated in Annex "D-1" of the "Stipulation of Facts" with an aggregate value of P377,418.69; that the aforesaid shipments were all accepted and received by FVTR for and in behalf of petitioner PVTA pursuant to the aforesaid "Management Contract"; that the said tobacco shipments were within the two-million kilos allocated under Category I which were unpaid as of October 31, 1966, and the payments thereof were authorized by the PVTA management; and that pursuant to the aforementioned "Management Contract" defendant FVTR was bound to advance for the PVTA the payment to the plaintiffs for the said tobacco shipments which was to be made within forty-eight (48) hours from date of delivery and acceptance of the tobacco. The plaintiffs Golden Leaf VTPA, Ilocos Agricultural Producers Association, Inc. and Southern Balaoan TPA, Inc. also admitted in the said "Stipulation of Facts" that they were indebted to petitioner PVTA in the sums of P28,342.26, P5,520.96 and P15,000.00, respectively. It was on the basis of these admissions of the parties and their manifestation "in open court that they will not submit any further testimonial or documentary evidence on the issues and claims covered by their stipulation and further agreed to submit to a partial decision these cases with respect only to the tobacco shipments covered by said 'Stipulation of Facts,' specifically those mentioned in part. 8 and enumerated in Annex 'D-1-Stifacts'," that the court a quo rendered its partial judgment on December 15, 1967.

It will be observed that the "Stipulation of Facts" was submitted to the trial court on the second day of pre-trial. One of the express purposes of pre-trial conferences is to consider the possibility of obtaining stipulations or admissions of facts and of documents to avoid unnecessary proof.[1] The trial court may render judgment on the pleadings or a summary judgment as justice may require if at the pre-trial it finds that facts exist upon which a judgment on the pleadings or a summary judgment may be made.[2] This is precisely what the trial court did in these cases: it rendered a summary judgment on the basis of the pleadings and the facts agreed upon by the parties, together with the documents pertinent thereto and forming part of the stipulation of facts. Those facts are nothing less than judicial admissions which the parties' respective lawyers could certainly make, and, not having been shown or even pretended to have been made through palpable mistake, do not require proof and cannot be contradicted.[3] In fact, it appears from the partial judgment — and it is not disputed — that upon the admission of the "Stipulation of Facts" the parties manifested in open court that they would not submit any further testimonial or documentary evidence on the issues and claims covered by the stipulations, and that they agreed also to submit the cases to a partial decision with respect to the tobacco shipments covered by the stipulation of facts.

Petitioner does not dispute its liability to the plaintiffs with respect to the aforementioned amounts, but it contends

that the amount of the attorney's fees and the computation of the interest on the amounts due are not in accordance with the facts.

While the petitioner PVTa may have the right to appeal from the partial judgment on those issues, We note from the Order of January 17, 1968, that petitioner PVTa "had accepted, from plaintiffs the payment for merchandising loans adjudicated in its favor by the said partial judgment; and that the partial judgment subject of the appeal has already been executed and the amounts adjudged therein have already been collected and paid to the plaintiffs." The court's finding that the partial judgment has already been executed was never refuted by petitioner PVTa in the court below. Neither does said petitioner deny in the present proceeding, either in its petition or in its memorandum, the correctness of said finding. It is, therefore, uncontroverted that the partial judgment sought to be appealed has already been executed, petitioner PVTa having accepted payments from those private respondents which had been ordered to make payments, and said petitioner having paid to private respondents the sums of money due them. In light of this fact a doctrine long recognized in this jurisdiction must once more come into application, and it is "that the party who voluntarily executes, either partially or in toto, a judgment rendered for or against him, or who voluntarily acquiesces in or ratifies either partially or in toto, the execution of such judgment, is not permitted to appeal from it."^[4]

In declining to give due course to petitioner's appeal, it cannot be held that respondent Judge had committed a gross abuse of discretion, manifest injustice or culpable exercise of authority. In the absence of such a gross abuse of discretion in denying the appeal, mandamus is not available to petitioner.

WHEREFORE, the present petition is denied, without pronouncement as to costs.

Fernando, (Chairman), Barredo, Fernandez, and Aquino, JJ., concur.

[1] Section 1(d), Rule 20, Revised Rules of Court.

[2] Section 3, *ibid.* Cf. *PNB vs. Pineda*, L-28505, August 29, 1969, 29 SCRA 290, 292 (Concurring opinion of Justice Barredo).

[3] Section 2, Rule 129, *ibid.*

[4] *Verches vs. Rios*, 48 Phil. 16; *Desbarals vs. de Vera*, 83 Phil. 382, *Asian Surety & Insurance Company, Inc. vs. Relucio*, L-32442, October 23, 1972, 47 SCRA 225, 237-238.

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