

ROGELIO DY, SY JIAN AND DY CHING ENG, PETITIONERS, VS. THE HONORABLE JUDGE MANUEL LOPEZ ENAGE AND HEIRS OF EMMANUEL O. TOLENTINO, REPRESENTED BY MARIA DUGOS VDA. DE TOLENTINO, R...

G.R. No. L-35351. March 17, 1976

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for "certiorari, prohibition and mandamus, with preliminary injunction" asking the Court to declare null and void the orders of respondent judge of July 18, 1972 and July 25, 1972 in Civil Case No. 1251 of the Court of First Instance of Agusan del Norte and Butuan City and to enjoin said respondent from further taking cognizance of the case except to dismiss the same by command of this Court, which prayer was enlarged in a supplemental petition to include the order of attachment of September 28, 1972 and the decision of September 20, 1972, and all implementing orders thereof, among the actuations sought to be annulled. Later, a second supplemental petition was filed to impugn other subsequent orders of respondent judge to be specifically referred to later in this decision. After issues were joined, a special motion dated February 10, 1973 was filed by private respondents praying that the Court of First Instance of Cebu, Branch XIV, be enjoined to dismiss Civil Case No. R-13062 therein filed by Atty. Elias Q. Tan, counsel of herein petitioners in the above-mentioned case in Agusan del Norte, against said respondents, for damages, and that the writ of preliminary attachment issued therein be quashed, and after comment thereon was filed by petitioners, the Court issued the following resolution on May 4, 1973:

"L-35351 (Rogelio Dy, et al. vs. Hon. Manuel Lopez Enage, etc., et al.). - Considering the urgent motion of the respondents for the issuance of a temporary restraining order to enjoin the Court of First Instance of Cebu from taking further proceedings in Civil Case No. R-13062 during the pendency in this Court of respondents' motion to dismiss said civil case or for the issuance of injunction or restraining order with quashal of preliminary attachment, the Court Resolved: (a) to issue a TEMPORARY RESTRAINING ORDER effective immediately and until further orders from this Court, and (b) to require both the petitioners and private respondents within ten (10) days from notice hereof, to file such pleadings as may be necessary so as to properly implead the Court of First Instance of Cebu City taking cognizance of Civil Case No. R-13062." (Page 562, Record.)

Voluminous representations have been filed by the parties relative to this resolution but none of them adequately amounts to any of the pleadings called for by the situation and required by the resolution. And considering that the matters treated in said motion of February 10, 1973 are not procedurally related to the petition in this case, the Court will not resolve the merits of said motion, without prejudice to the private respondents filing the proper separate petition so that issues may be regularly joined and resolved, albeit the restraining order issued by the Court shall continue in force until the court in which respondents might file their action acts one way or the other in the premises, but if no such separate action is filed by respondents within ten (10) days from notice hereof, the said restraining order shall be deemed automatically lifted. In other words, this decision will deal exclusively on the original and supplemental petitions herein.

It appears that on October 10, 1968, petitioners filed with respondent court Civil Case No. 1251 against one Emmanuel O. Tolentino, predecessor in interest of private respondents. Pertinently, the complaint alleged as follows:

"FOR FIRST CAUSE OF ACTION

1 – That plaintiffs are of legal ages and residents of the municipality of Cabadbaran, province of Agusan, Philippines and the defendant is likewise of legal age and a resident of said municipality and province where he may be served with summons.

2 – That after the liberation plaintiffs spouses Dy Ching Eng and Sy Jian resumed their general merchandise and copra business in the municipality of Cabadbaran, province of Agusan, continued their aforesaid general merchandise business until the present time and closed their copra business in the year 1965, and their son, plaintiff Rogelio Dy engaged in the copra business in said municipality and province beginning 1966 and continues it until the present time.

3 – That the defendant who is the younger brother of plaintiff Sy Jian is likewise engaged in the general merchandise and copra business in said municipality and province and during the period from 1960 or thereabouts until 1964 bought from plaintiffs Dy Ching Eng and Sy Jian copra on credit basis and the said plaintiffs Dy Ching Eng and Sy Jian delivered on credit basis to the defendant on July 24, 1964, 288 sacks of copra weighing 11,679 kilos net at P48.00 per 100 kilos worth P5,605.92; on July 26, 1964, 146 sacks of copra weighing 5,749 kilos net at P48.00 per 100 kilos, worth P2,759.52; on July 31, 1964, 144 sacks of copra weighing 5,716 kilos net at P48.00 per 100 kilos worth P2,858.00; on August 6, 1964, 343 sacks of copra weighing 14,187 kilos net at P48.00 per 100 kilos worth P6,809.76; on August 14, 1964, 126 sacks of copra weighing 5,296 kilos net at P46.00 per 100 kilos worth P5,296.00; on August 14, 1964, 75 sacks of copra weighing 2,867 kilos net at P46.00 per 100 kilos worth P1,318.82; on August 20, 1964, 225 sacks of copra weighing 8,659 kilos net at P44.00 per 100 kilos worth P3,809.96; and on August 27, 1964 303 sacks of copra weighing 12,514 kilos net at P44.00 per 100 kilos worth P5,506.16 as shown by corresponding Statements of deliveries, copies of which are hereto attached, marked as annexes 'A', 'B', 'C', 'D', 'E', 'F', 'G', and 'H' and made integral parts hereof, valued in all at P31,104.30.

4 – That the defendant made partial payments for said plaintiffs' copra in checks drawn against the Philippine Bank of Communications, Cebu Branch, Cebu in the total sum of P10,000.00, among which was check No. T-445253 dated November 13, 1967 for P2,000.00 which check could not be collected and cashed by plaintiffs spouses for the reason that defendant stopped payment of the same, as shown on the face and reverse sides of said check No. T-445253, photostat copies of which face and reverse sides are hereto attached, marked as Annexes 'I' and 'I-A' and made integral parts hereof, and also in cash for P6,000.00 as shown by a 'vale' dated November 18, 1967 signed by plaintiff Sy Jian, copy of which is hereto attached as Annex 'J' and made an integral part hereof, all which partial payments amounted to P16,000.00, thereby leaving an unpaid balance of P15,104.30 and despite earnest efforts exerted by plaintiffs spouses towards a compromise and extra-judicial amicable settlement of said defendant's indebtedness, the same have failed and despite repeated demands made by said plaintiffs upon the defendant to pay said unpaid balance, the latter failed and refused and still continues to do so without valid and justifiable cause thereof, thereby committing breach of contract in evident bad faith and fraudulently for which defendant should be held liable to said plaintiffs for actual damages in the amount of P3,625.03 until the present time and for moral damages in the amount of P5,000.00.

FOR SECOND CAUSE OF ACTION

Plaintiffs respectfully allege:

1 – That the plaintiffs hereby reproduce and incorporate as part hereof the averments contained in paragraphs 1, 2, 3, and 4 under the first cause of action hereof.

2 – That in 1966 to 1967 defendant used to buy from plaintiff Rogelio Dy copra at most at P68.00 per kilo, but considering that the current market price of copra at that time was much higher than the price per kilo paid by the defendant for said plaintiff's copra, the said plaintiff Rogelio Dy stopped in 1967 to sell his copra to the defendant.

3 – That by reason of plaintiff Rogelio Dy's refusal to continue selling his copra to the defendant, the defendant on or about November 22, 1967 after plaintiff Sy Jian had received from him the amount of P6,000.00 shown in the receipt, Annex 'J' sent for plaintiffs Sy Jian and Rogelio Dy to go his store at Cabadbaran, Agusan; that while plaintiff Sy Jian was in the said store ahead of Rogelio Dy, the defendant scolded her on account of their failure to sell copra to him; that when Sy Jian explained that she could not interfere and control her son Rogelio Dy in connection with the management of his business, the defendant threatened to cause bodily harm to her and sent for plaintiff Rogelio Dy to go to his store; that once the said plaintiff Rogelio Dy was in defendant's store and saw his mother being treated by the defendant, the defendant began to scold plaintiff Rogelio Dy for not having continued to sell copra to him, threatened to kill him and under threats and intimidation with a pistol compelled without any lawful authority the said plaintiff Rogelio Dy to sign a blank form on said date, the printed recitals of which blank form tend to show that plaintiff Rogelio Dy supposedly received from the defendant on the date stated therein the amount of P16,000.00 in trust for the purpose of buying copra and with the supposed obligation of delivering to him the copra and/or returning the said amount, when in truth and in fact, the said plaintiff Rogelio Dy never at all prior to the date mentioned in said defendant's printed form received from the defendant the sum of P16,000.00 nor did said plaintiff Rogelio Dy ever act as supposed purchasing agent for copra for the defendant; that by reason of the threats and intimidation made by the defendant to kill not only Sy Jian but also him, the plaintiff Rogelio Dy by reason of fear was compelled to affix against his will his signature on the said printed form.

4 – That the supposed contract of agency prepared by the defendant without the intervention, consent or authority of any one herein plaintiffs, mentioned the sum of P16,000.00 which was the partial payments made by the defendant for the said deliveries of copra belonging to the plaintiffs spouses; that, as a matter of fact and in truth, after the defendant had succeeded through threats and intimidation to make plaintiff Rogelio Dy sign the said supposed contract of agency, the defendant delivered to Sy Jian the receipt for P6,000.00 annex 'J' hereof.

5 – That the said supposed contract of agency is null and void, illegal and invalid, is fraudulent and constitutes a falsification of a private document.

6 – That by reason of the unlawful, malicious, wrongful, and fraudulent acts of the defendant, the plaintiffs have suffered actual damages in the amount of P16,000.00 and moral damages for mental anguish, serious anxiety, social humiliation and wounded feelings in the amount that the court may fix.

7 – That despite earnest efforts exerted by the plaintiffs towards a compromise, the same have failed and despite repeated demands made by plaintiff Rogelio Dy to cancel the supposed contract of agency and to desist from enforcing it in any manner, the defendant refused to do so and continues to threaten to prosecute plaintiff Rogelio Dy for supposed estafa for the purpose of harrassing, oppressing and humiliating the said plaintiff Rogelio Dy in particular and his parents in general." (Pages 137, 141, Record.)

In his answer, the defendant made specific denials and alleged affirmative defenses and in addition interposed counterclaims as follows:

"COMES NOW the defendant in the above-entitled case, thru counsel, and in answer to the complaint, to this Honorable Court most respectfully alleges:

1. That defendant admits the allegation contained in paragraph 1 for the first cause of action in the complaint.
2. That defendant has no information as to the truth of the allegations contained in paragraph 2 of the

complaint (first cause of action). But whether plaintiffs had license to engage in the copra business or not the fact is that plaintiffs were acting only as copra purchasing agents for the defendant.

3. That defendant admits that he is engaged in the general merchandise and copra business in the municipality of Cabadbaran and province of Agusan; but specifically denies the information that he is a younger brother of plaintiff Sy Jian; the truth of the matter is Sy Jian was an adopted daughter of defendant's father and coincidentally when they happened to reside together in Agusan they considered themselves as brother and sister, and they were known as such in the community of Agusan. Defendant further denies that he had business relation on credit basis with plaintiffs' son. The truth being that all the plaintiffs were merely copra purchasing agents to the defendant. And the defendant has no knowledge or information to form a belief as to the truth of the matter alleged in the remaining portion of paragraph 3 of the first cause of action of the complaint, and, therefore denies the same, and further denies under oath the self-serving annexes attached to the complaint and marked as annexes 'A', 'B', 'C', 'D', 'E', 'F', 'G', and 'H' which apparently are tally sheets for being manufactured documents and inadmissible evidence.

4. That the allegation contained in paragraph 4 are hereby denied. The truth of the matter is hereinafter alleged in the special and affirmative defenses.

5. That the allegations contained in paragraph 5 are hereby denied. The truth of the matter is hereinafter alleged in the special and affirmative defenses, and that further defendant is not obligated in anyway to pay any amount of actual damages, much less is defendant liable for moral damages.

6. That paragraph 1 of the second cause of action, being a mere reproduction of the previous allegations, is also hereby denied, and the allegations contained in the previous paragraph of this answer are hereby reproduced and replead.

7. That the allegations contained in paragraph 2 of the second cause of action are hereby denied. The truth of the matter being that in no time as far as defendant's recollection is concerned the exaggerated price of P68 per kilo of copra has ever been obtaining in Agusan or elsewhere. And further it is denied that defendant has ever purchased copra from the plaintiff Rogelio Dy. The truth being that plaintiff Rogelio Dy has been a copra purchasing agent for the defendant.

8. That the allegations contained in paragraphs 3 and 4 of the second cause of action of the complaint are hereby denied. It is specifically denied that plaintiffs Sy Jian and Rogelio Dy were ever threatened of bodily harm much less threatening Rogelio Dy to be killed. It is further specifically denied that Rogelio Dy was compelled to sign a blank form. The truth of the matter further is hereinafter alleged in the special and affirmative defenses. With respect to the receipt for P6,000.00 marked in the complaint as Annex 'J' is admitted that it was returned to Sy Jian together with another receipt for P10,000.00 after the receipt for P16,000.00 was signed by plaintiff Rogelio Dy who appeared to have in his possession the P16,000.00 and who was the licensed copra dealer. And the truth of the matter further is hereinafter alleged in the special and affirmative defenses.

9. That the allegations contained in paragraph 5 are conclusions of law. But it is denied that the contract of agency is null and void, illegal and invalid, much less, fraudulent and constitutes a falsification of private document. The trust of the matter is that said contract of agency is legal and valid, not fraudulent nor falsification, it having been executed in due course and for value.

10. That the allegations contained in para-graph 6 of the second cause of action are again conclusions of fact and conclusions of law. But if plaintiffs have suffered actual damages in the amount of P16,000.00 and undetermined moral damages and plaintiffs alone are responsible therefor and defendant is not liable of the same.

11. That the allegations contained in paragraph 7 of the second cause of action are hereby denied. The truth of

the matter is that it was the defendant who exerted earnest efforts to secure payment of plaintiffs' obligations but despite of such efforts exerted by defendant plaintiffs have remained adamant and entirely disregarded the repeated request of the defendant, and due to this refusal of the plaintiff Rogelio Dy to pay his obligation to the defendant the latter was compelled to seek the intervention of the Office of the Provincial Fiscal in order to legally enforce the agency contract sometime in August 18, 1968. But until now no payment was effected by said plaintiff. And the truth of the matter further is that in seeking the intervention of the Provincial Fiscal of Agusan it was not the purpose of defendant to harass, oppress and humiliate plaintiff Rogelio Dy but merely in the legitimate exercise of legal rights of the defendant.

12. That as to the allegations common to first and second causes of action, particularly paragraphs 7 and 8 affecting petition for injunction, said allegations are untenable, because merits of the criminal action involved are to be determined by proper authorities vested with powers and jurisdiction to act on the matter. If criminal action has merits, and at least PRIMA FACIE evidence shown, the exercise of such power is vested with the Provincial Fiscal in this particular case; and with respect to the civil action involved the same is hereinafter incorporated in a counterclaim. Both criminal and civil action cannot be prevented by injunction.

SPECIAL AND AFFIRMATIVE DEFENSES

defendant respectfully alleges:

13. That prior to August 26, 1964, Mr. and Mrs. Dy Ching Eng of Cabadbaran, Agusan had been copra purchasing agents of the defendant, by virtue of which agency they were accorded by the defendant cash advances.

14. That the liquidation of cash advances and value of copra delivered were effected at the end of every month.

15. That on August 26, 1964 a liquidation of cash advances and value of copra delivered was made, and plaintiffs spouses Dy Ching Eng and Sy Jian had an outstanding balance payable to the defendant in the amount of P10,368.69.

16. That sometime on September 1, 1964 a big fire occurred in Cabadbaran, Agusan in which the spouses Dy Ching Eng and Sy Jian suffered heavy losses.

17. That due to the losses suffered by said spouses Dy Ching Eng and Sy Jian both spouses were not required to liquidate immediately their account of P10,368.69, and on the contrary they were further given P1,000.00 on September 3, 1964 covered by mere vales signed in chinese characters by Sy Jian, and in order to further help them rehabilitate themselves from the fire losses both spouses were not pressed for payment of their total outstanding account in the sum of P12,368.69 leaving the matter for future liquidation at their own request.

18. That sometime in 1966 plaintiff Dy Ching Eng transferred his copra business to his son Rogelio Dy who eventually took over the copra business of his parents from that time on until now, although plaintiffs Dy Ching Eng and Sy Jian continued to help their son Rogelio Dy in running the copra business.

19. That on two (2) occasions particularly November 13 and 17, 1967 plaintiff Sy Jian came to defendant's store and requested for advance amount of P10,000.00 and P6,000.00 respectively. She specifically requested and so the defendant accommodated that the amounts be covered by checks of P2,000.00 each to facilitate her and her son Rogelio Dy's purchases of copra as agent of defendant. The November 13 checks were five (5) in number for the total amount of P10,000.00 and the November 17 checks were three (3) in number for a total of P6,000.00.

20. That the above eight (8) checks were covered by two (2) provincial receipts or values, one dated November 13, 1967 and the other dated November 17, 1967. The latter value is now Annex 'J' of the complaint.

21. That late in the afternoon of November 18, 1967 plaintiff Rogelio Dy came to the store and after

confirming the values of plaintiff Sy Jian he prepared in his own handwriting a cash advance receipt which is partly printed and partly handwritten receipt for P16,000.00. This is a requisite which had to be effected in view of the fact that it was plaintiff Rogelio Dy who was and still is the licensed copra dealer.

22. That after preparing the partly printed and partly handwritten cash advance receipt for P16,000.00, and after the same was signed by Rogelio Dy the same was handed over by said Rogelio Dy to the defendant and in turn defendant returned to Sy Jian thru Rogelio Dy the two previous values signed by Sy Jian.

23. That during that period of time between November 13 up to and including November 18, 1967 defendant noticed that there were accumulations of the stock of copra in the bodega of the plaintiffs which bodega incidentally is located just across the street where defendant's store is situated.

24. That on the 19th of November 1967 defendant came to Cebu and had only returned to Cabadbaran on the 22nd day of November 1967.

25. That upon his return to Cabadbaran, Agusan he noticed that the bodega of plaintiffs was already empty. So, he went to confront plaintiff Rogelio Dy and his mother Sy Jian why was it that their bodega was empty. They replied to the defendant that the copra was sold to a purchaser in Surigao because according to them said purchaser paid a better price for the copra.

26. That defendant told plaintiffs Rogelio Dy and Sy Jian that at least they should have advised the defendant because defendant was also willing to pay an increased price. But both plaintiffs answered that the matter is already closed and there was nothing they could do about it. So, defendant asked for the return of his money. But plaintiffs could not readily do it. So, defendant wired the Philippine Bank of Communications of Cebu City to stop payment of the eight (8) checks above-mentioned, but unfortunately four (4) checks were already cashed and stopping paying was only effected on the other four (4) checks.

27. That in view of the fact that no payment of the amount was made, much less a delivery of copra effected despite the lapse of considerable length of time and notwithstanding repeated demands, defendant was compelled to seek the intervention of the Provincial Fiscal, but still no payment was effected until now.

28. That the filing of the present case is a plain harassment and a clear retaliation for what defendant has done in seeking the intervention of the Provincial Fiscal.

As

FIRST COUNTERCLAIM

Defendant respectfully alleges:

29. That for the sake of brevity defendant hereby reproduces and repleads all the allegations contained in the previous paragraphs of this answer and special and affirmative defenses.

30. That defendant has ascertained that out of the eight (8) checks at the rate of P2,000.00 each, four (4) checks were already cashed, particularly checks Nos. T-445251, T-445255 and T-445269 or a total amount of P8,000.00, and the other four (4) checks totalling P8,000.00 were not effectively cashed because payment of the same was accordingly stopped.

31. That the cash advance receipt, of P16,000.00 is therefore reduced to only P8,000.00 if and when the four (4) other checks shall be returned by the plaintiffs to the defendant.

As

SECOND COUNTERCLAIM

Defendant respectfully alleges:

32. That for the sake of brevity defendant hereby reproduces and repleads all the allegations contained in the previous paragraphs of this answer and special and affirmative defenses, including the allegations contained in the first counterclaim.

33. That plaintiffs are indebted to the defendant in the total sum of P12,368.69 as acknowledged by Sy Jian, particularly in her cash advance of August 26, 1964 and values of September 2 and September 3, 1964 respectively, which account totalling P12,368.69 remains unpaid and outstanding until now, despite repeated demands subsequently made by the defendant for its payment.

As

THIRD COUNTERCLAIM

Defendant respectfully alleges:

34. That for the sake of brevity defendant hereby reproduces and repleads all the allegations contained in the previous paragraphs of this answer and special and affirmative defenses, including the allegations contained in the first and second counterclaims.

35. That defendant is a businessman of good standing in the Municipality of Cabadbaran and Province of Agusan with quite a considerable gross negotiations every year.

36. That defendant also enjoys good standing in the community of Cabadbaran, Agusan having been President since 1966 and he is still President of the Cabadbaran Lions Club until now.

37. That defendant has been maligned by the plaintiffs by bringing this clearly unfounded civil action against him in gross and evident bad faith, and as a consequence defendant suffered actual losses in his business and also suffered moral damages, and in view of the fact that plaintiffs have acted in gross bad faith and evident malice in filing the complaint they should be made to pay actual, moral and exemplary damages in such amount as to this Honorable Court may determine in the exercise of its sound discretion.

38. That plaintiffs, by maliciously filing the instant complaint against the defendant, have compelled the latter, for the protection of his interest, to incur litigation expenses, and engage the services of undersigned counsel with whom he has agreed to pay attorney's fees in the amount of P5,000.00." (Pp. 151-160, Record.)

On November 14, 1971, the defendant Tolentino died. This was before he had completed the formal presentation of his evidence in support of his counterclaims. Whereupon, Atty. Vicente Jayme for the respondents, after their proper substitution as heirs of defendant Tolentino, filed a so-called "Jurisdictional Motion of Dismissal of Plaintiffs' Complaint" on December 13, 1971, asking however that notwithstanding the dismissal of the complaint prayed for, the court proceed with the trial and final disposition of the counterclaims. The motion was based on the ground that inasmuch as the plaintiff's case was a claim for money, under Section 21 of Rule 3, it should be dismissed as an action and filed as a claim in the special proceedings for the settlement of the estate of the deceased defendant. Petitioners opposed said motion contending that the second cause of action was for damages and that their defense to the counterclaims of the defendant was in their complaint and citing the case of Javier vs. Araneta, L-4369, August 31, 1953, in support of their opposition. On January 5, 1972, respondent judge denied the motion to dismiss thus:

"FOR not being well-founded, the motion filed by Atty. Vicente Jayme, counsel for the defendants, dated December 13, 1971 based on the grounds therein stated (See: pp. 470-471, Records) is hereby ordered

DENIED.

SO ORDERED." (Page 9, Record.)

Thereafter, the court proceeded with the trial and on May 4, 1972 ordered the admission of the documentary evidence of defendants listed in the order of even date, and upon manifestation of plaintiffs that they have rebuttal evidence to present, set the case for hearing for the purpose of receiving the same, but instead of agreeing to the dates proposed by them: July 11, 12 and 13, 1972, the court, in its order of May 22, 1972, set the reception of said evidence on July 3, 1972, only to change, this later on June 28, 1972, to July 5, 1972 for fear that July 3, 1972 might be declared a public holiday, and still later to July 25, 1972 upon motion of plaintiffs' counsel.

In the meanwhile, on June 27, 1972, plaintiffs filed the following motion, which they set for hearing on July 3, 1972, albeit no hearing appears to have been held on said date:

"COME NOW the plaintiffs, through counsels, and to this Honorable Court respectfully allege:

1. That the reception of plaintiffs' rebuttal evidence in the above-entitled case has been set for July 3rd, 1972, at 8:30 A.M.
2. That as defendant Emmanuel O. Tolentino died before completion of plaintiffs' cross-examination and before finality of judgment on plaintiffs' respective money claims against him, and as the substituted defendants have filed jurisdictional motion for dismissal of this case, the plaintiffs hereby withdraw their opposition to said jurisdictional motion by reason of the fact that, as pointed out therein, this Honorable Court is divested of jurisdiction to continue taking cognizance of plaintiffs' money claim and said money claim should be filed with the proper probate court.
3. That in the interest of justice and in order not to render judgment on said money claim null and void for lack of jurisdiction, the plaintiffs desire to present completely competent, relevant and material evidence before the proper probate court to substantiate their aforesaid money claims and for this reason they are constrained to move this Honorable Court to dismiss provisionally this case without prejudice of re-filing same with the proper probate court and of reproducing therein the evidence and presenting rebuttal evidence according as the nature of defendants' evidence may demand.
4. That in view of the foregoing considerations, the plaintiffs hereby manifest that they no longer will present rebuttal evidence reserving same to be adduced instead in the proper probate court.

WHEREFORE, this Honorable Court is most respectfully prayed to dismiss provisionally the above-entitled case without prejudice of re-filing same with the proper probate court and of presenting and reproducing therein plaintiffs' evidence for final determination and decision by said probate court." (Pp. 10-11, Record.)

On July 13, 1972, defendants filed the following:

"DEFENDANTS' COUNTER-MANIFESTATION AND OPPOSITION TO THE MOTION DATED JUNE 27, 1972

COME the defendants in the above-entitled case, thru the undersigned counsel, and to this Honorable Court most respectfully manifest and submit an opposition to the dismissal of defendants' counterclaim on the following grounds:

1. That copy of plaintiffs' Manifestation and Motion dated June 27, 1972 appears to have been mailed from Butuan City on June 28, 1972, and received by us after July 3, 1972.
2. That as far back as December 13, 1971 we have submitted to this Honorable Court a pleading entitled "JURISDICTIONAL MOTION FOR DISMISSAL OF PLAINTIFFS' COMPLAINT (PRIVILEGED AND

URGENT)".

3. That our grounds therein alleged are here-to replead and reproduced IN TOTO).

4. That said motion has been opposed by the plaintiffs under a pleading entitled 'OPPOSITION TO JURISDICTIONAL MOTION FOR DISMISSAL OF PLAINTIFFS' COMPLAINT' dated December 29, 1971.

5. That an order dated January 5, 1972 was issued by this Honorable Court denying our motion.

6. That in the meantime and in due course continuation of the trial was held and the formal offer in evidence of all the exhibits of the defendants was effected under date of February 19, 1972, which exhibits were admitted by the Court in its order of May 4, 1972.

7. That as it is the case of the defendants is completed with their counterclaim duly substantiated.

8. That the counterclaim is in itself an independant action, not subject to suspension or dismissal because it survives the deceased Don Emmanuel O. Tolentino.

9. That as a matter of fact it is now deemed submitted to the decision of the Honorable Court without any strings attached to said counterclaim.

WHEREFORE, in reiteration, this Honorable Court is most respectfully prayed to grant the motion to dismiss plaintiffs' complaint, and to declare the case of the defendants as far as their counterclaim is concerned, submitted for the decision of this Honorable Court." (Pp. 12-13, Record.)

And on July 18, 1972, the court issued the following order:

"For lack of merit, the manifestation and motion filed by Atty. Cipriano C. Alvizo, Sr. for the plaintiffs (See: pp. 543-544, Records), and the counter-manifestation and opposition filed by Atty. Vicente Jayme for the defendants (See: pp. 547-548 Records) are hereby ordered DENIED.

As prayed of (for) by Atty. Alvizo, Sr., set this case for the reception of the rebuttal and surrebuttal evidence on July 25, 1972 from 8:30 A.M. to 7:00 P.M. with due notice to all counsel." (Page 14, Record.)

A motion dated July 23, 1972, for reconsideration of this order was filed by plaintiffs but on July 25, 1972, what happened is narrated in the order of the court of said date as follows:

"When this case was called for the reception of plaintiffs' rebuttal evidence for the second time at exactly 11:23 A.M. today, Atty. Cipriano C. Alvizo, Sr., counsel for the plaintiffs, together with all the plaintiffs themselves, failed to appear in court despite due notice to them in open court the first time this case was called at 8:30 A.M., and in spite of the two personal notices given to said Atty. Alvizo, Sr., who was by then within the sala of Branch I of this court sitting, where no sessions were yet had, first by Court Process Server Rodrigo T. Macion and second, by CIC Raymundo C. Morgadez minutes before the second call as above said.

The reception of plaintiffs' rebuttal evidence was previously set by the court, upon previous prayer of plaintiffs, thru counsel, in their Manifestation and Motion dated May 15, 1972 (See: p. 537, Records), on July 3, 1972 in an order dated May 22, 1972 (See: p. 541, Records). Later, plaintiffs, thru counsel, prayed the court again in the Urgent Ex Parte Motion dated June 30, 1972 -

'to reset for July 25, 1972 the hearing of this case.' (See: p. 545, Records.)

Again plaintiffs' above said motion was granted by the court as prayed for by them in an Order dated July 18, 1972 resetting the reception of plaintiffs' rebuttal evidence today, July 25, 1972 from 8:30 A.M. to 7:00 P.M., with due notice to said Atty. Cipriano C. Alvizo, Sr. by personal service on July 22, 1972 (See: p. 550, Records).

First call of the case was had Atty. Alvizo, Sr. appeared and presented plaintiffs' Urgent Motion for Reconsideration dated July 23, 1972 but only filed today 25 minutes before the first call. The court intimated to said Atty. Alvizo, Sr. that it could not entertain the said motion on grounds which the court would give in an Order to be issued later and insisted on plaintiffs' presentation of their promised rebuttal evidence. The court, however, in fairness to plaintiffs who were absent in court, gave said Atty. Alvizo, Sr. until 11:00 A.M. to present his rebuttal witnesses. Then the second call came at exactly 11:23 A.M. as above said and what happened was what was already narrated by the court at the opening of this Order.

By reason of all the foregoing, it is the sense of the court that plaintiffs have elected to waive their right to present rebuttal evidence, prompting the court to consider, as it hereby HOLDS that this case is now considered reglementarily submitted for decision on the merits. There being no rebuttal evidence to sur-rebut, Atty. Lydio J. Cataluña, counsel for the defendants, presented no objection to the foregoing.

Plaintiffs' Urgent Motion for Reconsideration filed only today, 25 minutes before 8:30 A.M. (See: p. 553, Records) when this case was called for the reception of their promised rebuttal evidence as prayed for by them thru said Atty. Alvizo, Sr. as above said (See: pp. 553-555, Records), is hereby ordered, for being unreglementary and dilatory in nature and timing, DENIED, pursuant to Section 4, Rule 15 of the Revised Rules of Court." (Pp. 18-20, Record).

On July 29, 1972, plaintiffs filed a manifestation to the effect that they would elevate "to the higher court" the above order of July 18 and 25, 1972 and prayed that they be given "sufficient time to take proper steps as above indicated before this Honorable Court takes further action on the aforesaid orders." On August 9, 1972 the original petition herein was filed but on September 26, 1972, the Court dismissed the same only for the reason that the copies of pertinent pleadings were not attached thereto, but it was given due course on December 27, 1972, after it was properly amended by way of a Supplemental Petition dated October 2, 1972, and the required comments were filed by the parties. Thus, on October 9, 1972, the Court required the respondents to comment on the supplemental petition and ordered the issuance of a restraining order against the implementation of the impugned orders of July 18 and 25, 1972.

Apparently unaware of the proceedings going on in this Court, on September 20, 1972, respondent judge rendered a decision pertinent portions of which read as follows:

"On July 25, 1972, an Order was dictated in open Court considering plaintiffs as having waived their right to present rebuttal evidence due to their repeated failure to present any despite sufficient notice and of the ample opportunity granted them to do so. Forthwith, the Court considered the case submitted for decision.

On August 1, 1972, plaintiffs filed a Manifestation (See: p. 277, Records) to the effect that abovesaid Order, including that one dated July 18, 1972, which set the reception of plaintiffs' rebuttal evidence on July 25, 1972, as prayed for by plaintiffs' counsel in a written motion (See: p. 545, Records), 'will be elevated (by plaintiffs) to the higher Court' by certiorari, prohibition and mandamus, the same 'having been issued in excess of jurisdiction and for being contrary to law.' (See: p. 277, Records).

It appearing that despite the lapse of more than FIFTY (50) DAYS from August 1, 1972 to date, no advice was received by this Court from plaintiffs' counsel as to what come out of their preferred action elevating the abovesaid Orders to the 'higher Court', much less has there been any notice from either the Supreme Court or the Court of Appeals restraining this court from taking further cognizance of the the instant case; and it further appearing that this court cannot for long wait for plaintiffs' announced intention which may not, after all, be forthcoming; and considering ad extremum that the questioned order has already become final and unappealable (Section 1, Rule 39, Revised Rules of Court), this court hereby renders judgment on the bases of evidence adduced by both parties.

This is an action for collection of sum of money, annulment of supposed contract of agency, and damages with writ of preliminary injunction filed on October 1, 1968.

* * * * *

The court believes, and is of the opinion, that the action must not be dismissed despite the death of original defendant Emmanuel O. Tolentino because of his counterclaim. The counterclaim which partakes of the nature of a complaint and/or a cause of action against the plaintiffs has issues intertwined with those of the main action brought by plaintiffs themselves. The main action cannot be dismissed without dismissing at the same time, the counterclaim. And once the said counterclaim is dismissed, it cannot again be invoked in a new complaint against the same plaintiffs or party. As held by Supreme Court:

'A counterclaim partakes of the nature of a complaint and/or a cause of action against the plaintiff in a case (Pomeroy's Code Remedies, 868, cited in Francisco's Rules of Court, Vol. 1, Part 1, p 544). To interpose a cause of action in a counterclaim and again invoke it in a complaint against the same person or party would be splitting a cause of action not sanctioned by the rules' (Borses vs. Villamera, 25 Phil. 473; Ledesma vs. Morales, G.R. No. L-3251, August 24, 1950; 47 O.G. Suppl. December 1951, p. 382; Matela vs. Chua Tay, 5 SCRA 169).

The court is of the opinion that provision of Section 21, Rule 3 of the Revised Rules of Court, to wit:

'When the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules.'

apply only to a case which is solely for recovery of money against a defendant who dies before final judgment but not to a case where said defendant has also in the same action a claim for recovery of money against the plaintiff as in the instant case. For if the case is dismissed, the counterclaim cannot remain pending for independent adjudication by the court. And what will then be the remedy of the defendant against the plaintiff if plaintiff elects not to file an action in the probate proceedings just because the action just dismissed was just a cover-up for a just debt plaintiff owes the deceased defendant? Will not the heirs of deceased defendant be left without any remedy at all? And it is highly doubtful, to say in passing, that said counterclaim could be set up reglementarily in the probate proceedings.

This matter merits the particular attention of the court especially because it is convinced that plaintiffs' action was filed not only to stop the estafa case which defendant Emmanuel O. Tolentino wanted to file against plaintiff Rogelio Dy by reason of Exhibit 5 - original above said, but also to prevent the collection of their indebtedness to said defendant in the amount above-specified.

And to cap it all, the Supreme Court held that a case may not be dismissed where the defendant, in effect, opposes the dismissal of the counterclaim. We quote:

'It is clear that the counterclaim stated above is one that arises from, or is necessarily connected with, appellees' own action and cannot remain pending for independent adjudication by the court. We have already held that, in such case, the court may not dismiss the case over the opposition of the defendant. (Belleza vs. Huntington, G.R. No. L-3319, August 16, 1951; Froilan vs. Pan Oriental Shipping Co., G.R. No. L-6060, September 30, 1954; Domingo vs. Santos, et al., 55 Phil. 361; Ynotorio vs. Lira, 12 SCRA 373; italics supplied.)

FOR ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered:

- (a) DISMISSING plaintiffs' complaint and GRANTING defendants' counterclaim;
- (b) ORDERING plaintiff Rogelio Dy to pay defendants the sum of SIXTEEN THOUSAND (P16,000.00)

PESOS, with legal rate of interest from December 1967 up to the time when said amount shall be fully paid;

(c) ORDERING plaintiffs Dy Ching Eng and Sy Jian to pay defendants, mancomunadamente and in solidum, the sum of TWELVE THOUSAND THREE HUNDRED SIXTY EIGHT & 69/100 (P12,368.69) PESOS, with legal rate of interest from December 1967 up to the time when said amount shall be fully paid;

(d) CONDEMNING all the plaintiffs to pay defendants, mancomunadamente and in solidum, the sum of FIFTY THOUSAND (P50,000.00) PESOS by way of moral damages, with legal rate of interest from October 10, 1968 when this case was tiled up to the time when the said amount shall be fully paid;

(e) CONDEMNING all the plaintiffs to pay defendants, mancomunadamente and in solidum, the sum of FIVE THOUSAND (P5,000.00) PESOS as attorney's fees, and the further sum of THREE THOUSAND (P3,000.00) PESOS as expenses of the litigation, with legal rate of interest from October 10, 1968 when this case was filed in court up to the time when the said amount shall be fully paid; and

(f) TAXING all the plaintiffs, mancomunadamente and in solidum, to pay the costs of this suit." Pages 29-30; 50-54, Record.)

The "'Urgent Omnibus Motion for Reconsideration" of the decision filed by plaintiffs on October 2, 1972 and set for hearing on October 5, 1972 was forthwith denied on the latter day. These developments, followed by allegedly abusive issuance of successive orders of preliminary attachment, were made more difficult by strict requirements as to the counter-bond for the lifting thereof, and what is more, a citation for contempt of counsel for plaintiffs, Atty. Elias Q. Tan, for having made allegedly critical but unfounded statements about the actuaciones of respondent judge in the very case below, which is still sub-judice, and for having filed administrative charges against said respondent with the President of the Philippines while the same case was still pending before him. These matters are the subject of the Second Supplemental Petition dated October 28, 1972. At this point, it may be stated that this last petition has not been answered by respondents. However, considering that in view of our decision hereinunder to be stated as regards the original and supplemental petitions, the question of legality of the preliminary attachments ordered by respondent judge, which is the subject of the second Supplemental Petition, will be automatically resolved, and, as regards the contempt proceedings, the same may be taken up separately later, the Court deems it pointless to require yet at this late stage a formal answer to the second supplemental petition. The case may therefore be deemed as already submitted for decision.

The principal ground of the petition is the alleged violation by respondent court of Section 21 of Rule 3 of the Rules of Court in refusing to dismiss petitioners' complaint, which they contend constitutes a money claim, notwithstanding the death of the defendant, private respondents' pre-decessor in interest, before final judgment could be rendered. While respondents do not seem to seriously deny the basis of petitioners' gripe, they maintain that inasmuch as petitioners had apparently abided with the earlier adverse ruling of the court by taking part in the trial which, in fact, is almost through except for the presentation of the "rebuttal" evidence of petitioners, the latter are in estoppel to question the action of the court. Moreover, it is respondents' position that since they have alleged counterclaims in their answer and have actually completed proving the same, it would be against the rules to dismiss the subject complaint.

Even a cursory reading of the complaint, quoted earlier in this decision, would readily show that it alleges two distinct and separate causes of action emanating from different factual and legal relationships between the parties. Indubitably, in the first cause of action what is alleged is a contractual breach, while in the second, it is a tort, if not a criminal act of coercion. Although the relief prayed for in both instances is the payment of money, only the first cause of action constitutes a money claim in the sense contemplated in the invoked provisions of Section 21, Rule 3 as well as Section 5 of Rule 86 and Section 1 of Rule 88. The payment of money demanded under the second cause of action is for damages arising from alleged tortious or penal acts of private respondents which

have nothing to do with the contractual breach referred to in the first cause of action.

In the light of these considerations, the conclusion is inevitable that respondent court deviated from the course laid down by the aforementioned provisions of the rules when it refused to dismiss petitioners' complaint in so far as their first cause of action is concerned. The fact that the trial was practically finished is no legal excuse for such departure from the established procedure, considering no final judgment had yet been rendered. The language of Section 21 of Rule 3 is too clear in this respect as to require any interpretation or construction. It very explicitly says that "when the action is for the recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner specially provided in these rules," meaning, Section 5 of Rule 86 and its related provisions. There can be no question that a violation of this provision constitutes grave abuse of discretion, as it wrecks the orderly procedure prescribed for the settlement of claims against deceased persons designed to protect the interests of the creditors of the decedent.

Evidently, what respondent court has overlooked is that the two causes of action alleged in the complaint do not only refer to distinct subject matters but, what is more important, they have independent legal individualities and constitute in themselves separate actions against the private respondents as if two separate complaints had been filed against them. Accordingly, the first could be dismissed without necessarily affecting the other.

Moreover, it is of no consequence that respondents have counterclaims in their answer. To begin with, examining said counterclaims, they apparently relate more to the second rather than to the first cause of action. In any event, any counterclaim against a money claim which has to be dismissed because of the death of the defendant does not have to be affected by such dismissal, for it may be continued by the executor or administrator or may be alleged in the probate court pursuant to Section 10 of Rule 86. Obviously, viewed from the clear intent of the procedure laid down to govern claims against the estate of a deceased person, the rule invoked by respondents to the effect that a complaint may not be dismissed when there is a compulsory counterclaim against the plaintiff does not apply to actions that are required to be dismissed by Section 21 of Rule 3.

What renders respondent court's impugned actuation more offensive is that both parties were virtually in agreement as to the necessity of the dismissal prayed for. Indeed, respondents' counsel, Atty. Vicente Jayme, was the first to aptly invoke the applicable rule in his "Jurisdictional Motion for Dismissal of Plaintiffs' Complaint" of December 13, 1971. True it is that petitioners opposed said motion at the beginning and went as far as to take part in the trial after the court denied it, but before said trial could be terminated, they reversed their stand and asked also for dismissal, and significantly, again, even at such later stage, the respondents not only did not oppose the idea but, on the contrary supported it. (See pp. 10-11; 12-13, *supra*.) The sole qualification desired by respondents was that the proceedings be continued as regards their counterclaims, which is but proper, even if petitioners expressed dissent thereto.

Now, in connection with respondents' counterclaims, We find that respondent court acted precipitately in declaring in its order of July 25, 1972 that petitioners "have elected to waive their right to present rebuttal evidence, prompting the Court to consider, as it hereby HOLDS that this case is now considered reglamentarily (sic) submitted for decision on the merits." It will be recalled that private respondents' counsel was the first one to question the authority of the court to proceed with the trial of the case immediately after the death of their predecessor in interest. Petitioners' motion of June 27, 1972 praying for the dismissal of the case "without pre-judice of refileing the same with the proper probate court and of presenting and reproducing therein plaintiffs' evidence for final determination and decision of said probate court" merely followed up respondents' motion just mentioned, which they opposed earlier. Anent this motion, respondents' counsel prayed in a counter-manifestation dated July 13, 1972 that "this Honorable Court is respectfully prayed to grant the motion to dismiss plaintiffs' complaint, etc." But respondent court denied both prayers and set the reception of the rebuttal evidence for July

25, 1972, saying that it was doing so upon motion of Atty. Cipriano C. Alvizo Sr. of plaintiffs, when actually there was nothing to such effect in Atty. Alvizo's motion of June 27, 1972. And then, on said latter date, when Atty. Alvizo presented for consideration of the court his motion for reconsideration of the order of July 18, 1972 denying the common prayer for dismissal of both parties, respondent judge simply declared Atty. Alvizo's motion for reconsideration as improperly filed, and at 11:23 o'clock held the trial ended because Atty. Alvizo had been given up to 11 o'clock only that morning to present his "rebuttal witnesses" and he failed to do so. Considering that the motion for reconsideration was based on the conformity of the adverse party and it reiterated the court's lack of jurisdiction over petitioners' case, (at least, over their first cause of action) We cannot see why respondent judge deemed the same as "unreglamentary and dilatory in nature and timing", just because it was filed only that same morning shortly before 8:30 o'clock. It is evident that respondent judge was unjustifiably impatient. Considering that the issue raised commonly by the parties was jurisdictional and it does not appear that the attorneys for respondent were questioning the timeliness of the motion, it was not in keeping with the dictates of prudence and the usual course of judicial procedure to preemptorily brush aside the matter. What should have been done was to resolve the issue of the court's competence squarely, with reasons in support of its ruling. But the way respondent judge disposed of the matter before it, without stating any legal grounds as to why it had authority to proceed further left the parties to a loss as to what exactly to do next. The omission to state the facts and the law on which the order was based leaves much to be desired, specially because the sole ground which turned out to be the one relied upon by respondent judge, as explained by him later on in his decision, is untenable. As already explained earlier, the existence of a counterclaim by the deceased against the plaintiffs is not a ground for applying Section 21 of Rule 3.

There is another point which respondent court has overlooked. Under the order of trial laid down in Section 1 of Rule 30, the presentation by the plaintiff of rebuttal evidence to that offered by the defendant to support his defenses is entirely a different item or stage from the presentation of plaintiff's evidence to prove his defenses to defendant's counterclaim. In fact, that latter stage should be ahead of the former. (Section 1, Rule 30, pars. (e) and (f); the first refers to the defense to the counterclaim and the second to the rebuttal evidence.) Thus, by specifically declaring the petitioners to have waived their right to offer rebuttal evidence, it did not necessarily follow that petitioners' right to present evidence in defense to the counterclaim was also foreclosed. While generally in actual practice, very little attention has been given by the unperceiving practitioners and judges to the distinction here pointed out, in the case at bar, We believe that the circumstances obtaining herein, what with the confusion brought about by the question of dismissal on which both parties were agreed but which the respondent judge groundlessly refused to consider, warrant the drawing of the distinction in order to avoid manifest injustice to petitioners. But it must be stated here that as a matter of good practice, such distinction should be clearly borne in mind.

In consequence of all the foregoing, the attachment order issued by respondent court has lost its main basis, namely, the decision which We are ordering to be set aside. It is to be noted that the orders of attachment in question do not contain any findings at all, whether of fact or of law. They merely adopt by reference the grounds alleged in respondents' motions, which is disposal by petitioners of their properties with intent to defraud. But the allegation of this ground is in general terms and has no particulars of alleged dispositions, either actual, attempted or proposed, made by petitioners. This is not as it should be. Attachment being a harsh remedy must be issued on concrete and specific grounds and not on general averments merely quoting the words of the pertinent rules. Most importantly, the motion relies heavily on the findings in the decision, apparently as proof of the existence of a sufficient cause of action, but as already discussed above, said decision is predicated on the assumed correctness of the court's denial of the motion to dismiss and the order depriving the petitioners of the right to complete their evidence, which assumption We have found above to be erroneous. It results, therefore, that as of the time the

orders of attachment complained of were issued, respondent court acted with grave abuse of discretion, and the writs issued thereunder and all subsequent proceedings related thereto must consequently be as they are hereby set aside.

PREMISES CONSIDERED, judgment is hereby rendered granting the instant petition. The trial court's decision of September 20, 1972 as well as its orders of July 18 and 25, 1972, together with all its orders of preliminary attachment against the properties of the petitioners are hereby set aside and rendered without force and effect. Respondent court is enjoined to dismiss the subject case before it (Civil Case No. 1251) in so far as petitioners' first cause of action is concerned, without prejudice to its being filed as a money claim in special proceedings for the settlement of the estate of the deceased Emmanuel O. Tolentino. Respondent court is further ordered to proceed with the trial of respondents' counterclaims by allowing the petitioners to present their evidence in defense thereto, after which another decision should be rendered as the facts and the law may warrant.

The incident of contempt shall be continued upon appropriate motion of the interested parties. With respect to the matter of alleged irregular and illegal attachment secured by Atty. Elias Q. Tan from the Court of First Instance of Cebu, the Court rules that it should be made the subject of a separate action, albeit the restraining order issued by this Court on May 4, 1973 is hereby maintained until such appropriate action is filed, in which event, the court taking cognizance thereof may act as it may deem proper in regard to said restraining order which was issued only to maintain the status quo, for the purpose of avoiding that the controversy between the parties should be more complicated in the instant proceeding.

Costs against respondents.

Antonio, Aquino, Concepcion, Jr., and Martin, JJ., concur.

Fernando, J., is on official leave.

Martin, J., was designated to sit in the Second Division.

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