

LIANGA LUMBER COMPANY AND NORTH ZAMBALES LUMBER COMPANY, PETITIONERS, VS. LIANGA TIMBER CO., INC. AND HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-38685. March 31, 1977

Ponente: ANTONIO, J.

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ANTONIO, J.:

Petitioners filed the present appeal by certiorari from the Resolutions of the Court of Appeals dated February 19, 1974 and May 9, 1974 in case CA-G. R. No. 37365-R,[1] under Rule 45 of the Revised Rules of Court, and at the same time as a special civil action of certiorari under Rule 65, assailing the validity of the same Resolutions.

The antecedent proceedings are summarized briefly as follows:

Petitioner Lianga Lumber Company is the licensee of a timber concession in Agusan; while private respondent Lianga Timber Co., Inc., is the licensee of another timber concession in Lianga, Surigao.

On October 13, 1959, the petitioners filed a complaint against the private respondent alleging, among others, that:

"3. That the Lianga Lumber Company is the owner and possessor of an Ordinary Timber License, No. 1468-'54, originally issued on January 28, 1954, a photostat copy of which is hereto attached as Annex 'A'. The license has been extended from time to time up to the present, the latest extension being O. T. License No. 864-'59. The area included in the concession contains a total forested area of about 10,000 hectares in the province of Agusan, Municipal Districts of Azpitia, Los Arcos, and Prosperidad. The northeast corner of the concession is point '3', which is the junction of the interprovincial road and the boundary between the provinces of Agusan and Surigao, and the eastern boundary is the Surigao-Agusan inter-provincial road;

* * * * *

"6. That on or about September 13, 1959, defendant corporation, thru its agents, entered into the above-described concession of plaintiff, more particularly the place known as Sitio Tagabaca, Los Arcos, at a place located south of the seat of actual logging operations of the plaintiff, and outside the limits of defendant's concession and began marking trees therein, and on or about September 18, 1959 defendant posted armed men on the said sitio and thru force, intimidation and threats, prevented the laborers of plaintiff from entering said place and logging therein. These acts of defendant were committed with the peaceful objection of the plaintiff and its agents;

"7. That said sitio of Tagabaca is in the Province of Agusan, west of the Surigao-Agusan boundary, outside of defendant's concession, and within that of plaintiff's;

"8. That on September 22, 1959, the plaintiff Lianga Lumber Company and the defendant, thru their respective authorized agents, entered into an agreement whereby both parties agreed to desist from logging within the disputed area pending the settlement of the boundaries of the adjoining claims by the proper authorities, a copy of which agreement is attached hereto and made an integral part hereof and marked as Annex 'B';

"9. That notwithstanding the above-mention-ed agreement, the defendant, thru force, threats and intimidation, entered into the disputed area on October 8, 1959, and started building a road towards the same with a view to logging therein, in violation of the above-mentioned agreement;

"10. That the only way and manner in which plaintiffs can be protected in their right to log over the area, is for this Honorable Court to issue a writ of preliminary injunction commanding the officers, agents and laborers of the defend-ant to leave the said place especially the place known as Sitio Tagabaca, Los Arcos, Agusan, and allow plaintiffs and their laborers to peacefully continue logging operations therein;[2]

and praying, inter alia:

"(a) That the place invaded and illegally occupied by the defendant and its agents be dec-lared part of the timber concession of the plain-tiffs, and upon the fixing and approval of the proper bond, a writ of preliminary injunction be issued by this Court ordering the defendant's officers, agents and laborers to leave the above-mentioned sitio of Tagabaca, Los Arcos, Agusan, to desist from interfering with, and preventing by force, intimidation and threats, the logging operations of the plaintiffs, their agents and laborers, and be prohibited from logging there-in;[3]

* * * * *

Private respondent filed an Amended Answer with Counterclaims alleging, among others, that:

"5. Defendant denies the allegations con- tained in paragraph 7 of plaintiffs' complaint, the truth being that subject-area is within defendant's concession and is a territorial part of the Province of Surigao;

* * * * *

"AND BY WAY OF COUNTERCLAIMS, defendant al-leges that:

1. Defendant adopts, repleads and reproduces the foregoing allegations material and pertinent to the instant counterclaims;
2. By reason of plaintiffs' repeated unlaw-ful, surreptitious and stealthy logging operation in defendant's concession area, defendant suffered losses in the form of:

(a) logs, yarded and taken out from defend-ant's concession area and loaded in the ship of plaintiffs' customers totalling an estimated 400,000 board feet which could be reasonably assessed and valued at P40,000.00;

(b) 180,000 board feet of logs 'fall and back' that is, logs already cut and topped by plaintiffs, ready for yarding but still within the defendant's con-cession area which could be reasonably assessed and valued at P18,000.00;

3. By reason of plaintiffs' aforesaid acts and conduct:

(a) defendant's logging operations were dis-rupted as a result of which defendant shall suffer monthly losses during the pendency of the instant case in the amount of P15,000.00 until the defend-ant can resume operations;

(b) defendant shall incur losses in the amount of P60,000.00 for failure to keep up with defendant's November 15, 1959 commitment to ship to its buyers 650,000 board feet of logs and shall incur the same amount of losses every month there-after until defendant can resume opera-tions and fulfill its pending commit-ments with its buyers."[4]

and praying that judgment be rendered in its favor by dismissing plaintiffs' complaint and ordering said party to pay defendant the sum of:

"a) P40,000.00 as payment for logs cut and yarded by plaintiffs and loaded in their customers' ship;

- b) P18,000.00 for logs cut and yarded by plaintiffs but still not loaded in their customers' ship;
- c) P15,000.00 a month for disruption of defendant's logging operations in the subject-area from October, 1959 until defendant can resume operations;
- d) P60,000.00 a month starting in November, 1959 until defendant can resume operations and fulfill its commitment with its customers;
- e) P3,000.00 as attorney's fees;
- f) Moral and exemplary damages;
- g) Costs."^[5]

After due hearing on the application of petitioners for the issuance of a writ of preliminary injunction, the trial court issued an Order, dated November 12, 1959, granting said application, which Order reads as follows:

"The plaintiffs came to this Court asking for a writ of preliminary injunction against the defendant corporation which illegally entered a portion of the area covered by their ordinary timber license, particularly, the place called Taga-baca of Los Arcos, Agusan. The concessions covered by the timber licenses of both parties are adjacent to each other, and their common boundary is the provincial boundary line of Agusan and Surigao, West of this line is the forest concession of the plaintiffs, located in the Province of Agusan, while east thereof is the concession of the defendant which lies within the province of Surigao.

"The boundary between Agusan and Surigao is fixed by law, specifically by Sec. 1 of Act 1693 of the Philippine Commission which reads as follows:

'Section 1. There is hereby established a province which shall be known as the Province of Agusan. It shall be composed of two subprovinces which shall be known as Butuan and Bukidnon, respectively. The boundary line of the subprovince of Butuan shall be a line beginning at the northern point of the present boundary line between the provinces of Surigao and Misamis and extending in a general southerly direction along this line to the eighth parallel of north latitude; thence due east along said parallel of latitude to the crest of the watershed between the Agusan River Valley and the Pacific Ocean; thence in a northerly direction along the crest of this watershed to the northern extremity of the Island of Mindanao; thence along the sea coast to its point of origin; the general purpose in establishing this boundary line being to include within it all municipalities and settlements in the Agusan River Valley and all settlements west of the crest of the watershed in the northern peninsula of the province of Surigao.'

"From the above quoted legal provision, the crest of the watershed between the Agusan River Valley and the Pacific Ocean is the boundary between the two provinces of Surigao and Agusan, and this crest which is the highest ridge of the Diwata Mountain, was located by Mr. Justice Labrador who personally went to the place to lay the corner of the northeastern boundary of the plaintiffs' concession. This ridge was recently located by the District Forester of Agusan and actually measured as 8.501 kilometers from the Lianga beach (Exhs. A-1 and A-2). Plaintiffs constructed a logging camp west of this ridge when the plaintiffs began their logging operations in 1956 and their possession and logging operation were continuous and peaceful until the month of September, 1959, when the defendants unlawfully entered a portion of the area on the side, west of the logging camp and began cutting trees thereon from hauling. In order to avert trouble, the parties through their respective representatives entered into an agreement, Annex B to the petition, whereby they agreed not to touch the contested area until after the same is finally adjudicated. But, before steps could be taken for the settlement of the dispute, the defendant in violation of the agreement reentered the area on October 8, 1959, thereby forcing the plaintiffs to seek injunctive relief against defendant.

"The evidence clearly established the following: that the contested area known as Taga-baca is part of the

province of Agusan being on 'the west of the crest of the watershed between the Agusan River Valley and the Pacific Ocean; that this area forms part of the timber concession of the plaintiffs and that on October 8, 1959 the defendant in violation of the agreement, Annex B to the complaint, through the use of force and by taking the law into its own hands, entered the place Tagabaca which had been in the possession of the plaintiffs since 1956; that there is necessity of stopping the illegal acts of intrusion, invasion and usurpation of the defendant in order to prevent irreparable damages to the plaintiffs because of their commitments to supply timber to foreign buyers. Injunction is the only remedy here available to the plaintiffs to restrain the acts of trespass and illegal interference of possession. The claim of the defendant that the contested area is part of its lumber concession is not supported by evidence. In fact, its witness admitted that they do not know the provincial boundary of Agusan and Surigao.

"WHEREFORE, it is hereby ordered that upon the filing of the bond in the sum of P10,000.00, with sufficient sureties approved by the Court, a writ of preliminary injunction shall issue commanding the defendant corporation, its agents, officers and laborers to leave the contested area of Tagabaca, Los Arcos, Agusan and to restrain them from logging therein, and ordering them to desist from interfering with and preventing by force, intimidation and threats the logging operations of the plaintiffs." [6]

Likewise, after due trial on the merits, the trial court rendered a Decision, dated June 1, 1965, declaring the contested area or the place invaded by the private respondent as part of the timber concession of the petitioners and awarded damages in favor of the petitioners amounting to P47,578.75. Said Decision reads:

"Plaintiff Lianga Lumber Co., is the owner and possessor of an O. T. License No. 864-'59 is-sued for the year 1959, covering a forest concession which is situated in the province of Agusan while adjoining it, is another forest concession which belongs to the defendant Lianga Timber Co., located in the province of Surigao and covered by O.T. License No. 804-'59, likewise issued for the year 1959. The common boundary of the two concessions is the interprovincial boundary line of Agusan and Surigao. West of this line is the forest area of the plaintiff Lianga Lumber Co., comprised within the province of Agusan, while east thereof, is the area of the defendant Lianga Timber Co., which lies in the province of Surigao.

"By agreement between the Lianga Lumber Co. and the North Zambales Lumber Co., the latter has been authorized to conduct logging operations in the concession of the former without protest from any adjoining concessionaire and said operations continued in the year 1959 on the area in the northeast corner of the concession, west of the Agusan-Surigao boundary.

"On September 13, 1959; the defendant corporation thru its agents entered the concession of the plaintiffs at Sitio Tagabaca, Los Arcos, Agusan, and, on September 18, 1959, the defendant posted armed men in said sitio and, thru force, threats and intimidation, prevented the laborers of the plaintiffs from entering and logging there in. Against these acts of trespass, the plaintiffs vigorously objected and protested.

"Efforts were exerted to settle amicably the dispute in order to avert bloodshed between the parties and, on September 22, 1959, the plaintiff Lianga Lumber Co., and the defendant Lianga Timber Co., thru their respective resident managers, entered into an agreement whereby both parties agreed in writing to desist from logging within the disputed area, pending the final settlement of the conflicting claims, by proper authorities. (Annex B to the complaint; Exhibit 7 of the defendant).

"By virtue of the above, agreement, there was cessation of logging operations by the contracting parties in the disputed area but two weeks later or to be exact on October 8, 1959, the defendant corporation by force and intimidation, again entered the said area and started building a road for the purpose of logging therein, in gross violation of the conditions of the agreement, thereby forcing the plaintiff to file this complaint to stop the unlawful acts of trespass committed by the said defendant.

"The defendant answered the complaint, with general denial and set up the defense that its logging operations had always been confined within its concession area covered by its Ordinary Timber License No. 864-'59 and

that the area in question is definitely found in said concession area. It further stated that on October 8, 1959, defendant built a road not for the purpose of logging but in order to gain access to the other points of its concession, the same being conveniently accessible thru a road traversing the area in question; that the plaintiffs are instead the ones guilty of invading and encroaching upon the concession area of the defendant, thereby causing enormous damages to the latter.

"After an exhaustive hearing of the petition for preliminary injunction, it was found out that the contested area especially that place known as Tagabaca is part of the province of Agusan and west of the Agusan-Surigao boundary line, the same being west of the highest mountain ridge or crest, between the two provinces which divides the watershed flowing west into the Agusan River Valley and that flowing east into the Pacific Ocean, as defined by section 1 of Act 1693 of the Philippine Commission; that the crest of the watershed crosses the Lianga, Surigao-Los Arcos, Agusan interprovincial road at kilometer 8.501 from Lianga. This point of crossing and a line drawn therefrom southward is the dividing line between the concession of the plaintiffs and the concession of the defendant. Plaintiffs constructed a logging camp west of this ridge and began their logging operation in that place since 1956, and their operation was continuous and peaceful until the month of September 1959, when the defendant and its men unlawfully entered a portion of the area on the side west of the logging camp and began cutting trees thereon.

* * * * *

"Before the issuance of the injunction, the plaintiffs already suffered damages because when the defendant corporation entered the contested area in October 1959, it cut illegally 63 trees which were subsequently scaled by the Bureau of Forestry. The total volume of the timber cut is 454.50 cubic meters equivalent to 191,805 bd. ft. At the price of \$58.00 per thousand board feet, the price of lumber in 1959, the value of the 63 trees cut, in pesos would amount to P21,982.60 (Exh. D-1, auxiliary invoice covering 454.50 cubic meters of timber).

"When the defendant entered the concession of the plaintiff in the month of October, 1959, the plaintiffs have already cut 100 trees more or less, which when scaled by the Bureau of Forestry were found to have a total volume of 707.31 cubic meters of timber (Invoice Exh. D), equivalent to 299,889 board feet and valued at P33,538.74. Because the defendant corporation did not allow the plaintiffs to haul these cut trees they got rotten and became a total loss. This damage however cannot be charged to the defendant because by virtue of the agreement of September 22, 1959, the plaintiffs were not prevented from removing these logs. The loss must be borne by them and not by the defendant.

"Because of the injunction, the defendant was restrained from logging in the disputed area but in December 1960, the defendant surreptitiously entered the eastern portion of the plaintiffs' area and cut 135 trees. These were scaled by the Bureau of Forestry to be 789.61 cubic meters in volume equivalent to 335,558.24 board feet and valued at P49,295.53. The damage caused by this illegal cutting should be charged to the defendant (Invoice, Exh. D-2).

* * * * *

"WHEREFORE, judgment is hereby rendered for the plaintiffs and against the defendant:

- (a) declaring the contested area or the place invaded by the defendant as part of the timber concession of the plaintiffs;
- (b) making the injunction herein issued final and permanent by perpetually restraining the defendant from logging in the area covered by the concession of the plaintiffs and from interfering with the possession and logging operations of the plaintiffs;
- (c) ordering the defendant to pay the plaintiffs by virtue of an amended complaint and supplemental complaint, the sum of P47,578.75 as actual damages; and

(d) sentencing the defendant to pay the costs."[7]

Private respondent appealed to the Court of Appeals.[8] This case was submitted for decision on September 4, 1967,[9] and on February 19, 1971, a Decision of the Appellate Court (penned by then Pre-siding Justice Salvador V. Esguerra and concurred in by Justices Edilberto Soriano and Lourdes P. San Diego), affirming en toto the appealed Decision, was promulgated. The Court of Appeals said:

"The jugular vein of the controversy in this case is the boundary line which separates the for-est concessions of the two timber corporations. Plaintiff-appellee Lianga Lumber Company contends that the disputed area situated in Sitio Tagabaca, Los Arcos, is embraced within its timber license, while defendant-appellant claims that it is a part of its concession. As proof of its assertion that the disputed area is within the area granted it by the Director of Forestry, the plaintiff-appellee, Lianga Lumber Company, invites atten-tion to the fact that the sitio of Tagabaca where the logging controversy arose, is a part of the Province of Agusan, and its timber license covers a forest concession 'situated in the province of Agusan.'

"Defendant Lianga Timber Company, Inc. coun-ters by alleging that the area in dispute is within its logging permit. In spite of the fact that its timber license states that the forest conces-sion where it is allowed to operate is 'in the province of Surigao', defendant points out that its ordinary timber license established as its corner 'No. 6' the intersections of the Agusan--Surigao boundary line and the Los Arcos-Lianga Road which is about 10 kilometers to the town of Lianga. Defendant further claims that as indica-ted in the official concession maps, the aforesaid intersection is exactly 9.7 kilometers by a straight line from Lianga town. Inasmuch as its license states 10 kilometers from the town of Lianga its logging area extends west of the in-terprovincial boundary line.

"There is abundant proof to show that the boundary line between the two forest concession is the interprovincial boundary line of Agusan and Surigao. The timber license of plaintiff-appellee Lianga Lumber Company states that the forest concession awarded to it is in the province of Agusan, while that of the defendant, Lianga Timber Company, Inc., indicates that its forest concession is situated in the province of Surigao.

"The boundary between Agusan and Surigao is fixed by law. Section 1 of Act 1693 of the Phil-ippine Commission provides as follows:

* * * * *

"It is clear from the afore-quoted legal provision that the crest of the watershed between the Agusan River Valley and the Pacific Ocean is the boundary between the two provinces of Surigao and Agusan.

"Furthermore, the contested area known as Tagabaca is part of the province of Agusan from being west of the crest of the watershed between the Agusan River Valley and the Pacific Ocean. Defendant-appellant apparently overlooks the fact that the western boundary of its concession is the physical ridge separating the province of Surigao from the province of Agusan and their boundary ridge is 8.5 kilometers along the Los Arcos-Lianga road from Lianga town. It is not 10 kilometers as stated in defendant-appellant's li-cense. This distance was merely calculated. The full distance of 10 kilometers from Lianga town would run into, and encroach on, the province of Agusan. This is shown in the timber license of the defendant-appellant itself.

'* * * to Corner 5, a point on the Agusan-Surigao boundary line in a general northerly direction about 3,500 meters to Corner 6, the inter-section of same Agusan-Surigao bound-ary line and Los Arcos-Lianga Road.'

"In other words, the limit of the forest concession of defendant-appellant Lianga Timber Company, Inc. on the west begins from Corner 5 which is a point on the Agusan-Surigao boundary line and passes northward over a span of about 3,500 meters to Corner 6 which is the intersect-ion of same Agusan-Surigao boundary line and Ar-cos-Lianga Road. This definitely shows that the boundary limit of the defendant-appellant's for-est

concession on the west is the Agusan-Surigao boundary line. In view of this, this Court is constrained to recognize the interprovincial boundary of Agusan and Surigao beginning from Corner 5 to Corner 6 of defendant-appellant's timber license as the common boundary of the two contending logging corporations; despite the distance of 'about 10,000 meters from Corner 6 to Corner 1, the point of beginning in Lianga' as stated in the timber license of defendant-appellant.

"The insistence of Lianga Timber Company, Inc. that it owns the area up to Kilometer No. 10 on the Los Arcos-Lianga Road from Lianga town proper made defendant-appellant encroach on a forest area west of the boundary line belonging to the plaintiff-appellee situated in the province of Agusan. The area encroached upon by it is encompassed by the lines connecting Corner 5 of the timber license of Lianga Timber Company, Inc. to Kilometer No. 10 of the Los Arcos-Lianga Road, to Corner 6, then back to Corner 5 of the defendant-appellant's timber license along the Surigao--Agusan boundary line. It is not denied that it cut down trees in said place. The Lianga Timber Company, Inc. must therefore account for the trees taken from the disputed area.

"As to the amount of damages awarded in favor of the plaintiff-appellee, we fully concur with the observation of the lower court on the matter, * * *.

"The above observation of the lower court well-supported by the evidence on record. The same should not be disturbed.

"Anent the issue raised by the defendant-appellant that the plaintiffs-appellees have not exhausted their administrative remedies before bringing this action, the same does not deserve serious consideration. The record shows that there was an agreement between the parties to suspend operations on September 2, 1959, but on October 8, 1959, defendant-appellant's agents entered the forest area in question with the intention of logging therein, thus preventing the plaintiffs-appellees from conducting logging operations. To have appealed first to the Director of Forestry would have been too late a move because before the matter could be brought to his attention, the defendant-appellant shall have already started its own logging operations. Appeal from administrative action would have been too late and inadequate, not prompt, adequate and speedy. The trespass to be prevented had already started and was continuing. It could not be promptly stopped without court intervention. One of the exceptions to the principle of exhaustion of administrative remedies is when its application will cause great and irreparable damage like in the case at bar. (*De Lara, et al. vs. Cloribel, et al.*, G. R. No. L-21763, May 31, 1965). Precisely, the remedy of injunction was availed of to abate defendant-appellant's illegal actual entry into plaintiffs-appellees' concession. That was the only way to stop the intrusion and prevent further felling of trees therein." [10]

On March 9, 1971, private respondent filed a motion for reconsideration of said Decision of February 19, 1971, [11] and the Court of Appeals (thru the same Presiding Justice [Esguerra] and Justices [Soriano and San Diego]), denied the same in its Minute Resolution of March 22, 1971 (Quoted on p. 23 of Petition).

On April 10, 1971, with leave of court, the private respondent filed a second motion for reconsideration on substantially the same grounds as its first motion for reconsideration, namely:

"1. That, apart from being contrary to the concession grant itself, the conclusion of this Honorable Court to the effect that the interprovincial boundary line of Agusan and Surigao, as established on the ground by Justice Alejo Labrador delimits to the West the concession area of defendant-appellant in spite of its technical descriptions is contrary to the facts established during the trial.

"2. That this Honorable Court obviously failed to appreciate the fact that the lower court had not yet acquired jurisdiction over the person of the defendant-appellant as to the amendment to the complaint and supplemental complaint and, therefore, acted without jurisdiction in rendering judgment and awarding damages in favor of plaintiffs-appellees on the bases thereof.

"3. That this Honorable Court obviously failed to consider the fact that the lower court acted with grave abuse of discretion, equal to want of jurisdiction, in enjoining only the def-endant-appellant from logging in the timber con-cession area in dispute.

"4. That the facts admitted and established at the trial of this case, which were ignored by the lower court, clearly showed that it was the plaintiffs-appellees who disregarded the agree-ment between them and appellant; that it was they who defied the orders of the Bureau of Forestry. Upon the other hand, the defendant-appellant went out of its way to honor and respect them, and that the appellant gave no cause to justify non-exhaustion of administrative remedies by appel-lees.

"5. That, considering the facts established during the trial, the defendant-appellant ought to have been awarded the damages and the appellees denied any."[12]

On September 8, 1971, the petitioners filed their opposition to the second motion for reconsi-deration alleging, among others: (1) that said mo-tion was filed on April 12, 1971, two (2) days, be-yond the period granted by the court, the due date being April 10, 1971, for private respondent received on March 31, 1971 the respondent Court's Re-solution, dated March 30, 1971, giving said private respondent ten (10) days from notice thereof within which to file said second motion for reconsidera-tion; and (2) the grounds of said motion are, in substance, a rehash of what private respondent had already raised in its brief.[13]

After oral arguments were heard from, and memoranda were filed by, the parties, the respondent Court of Appeals issued a Resolution on June 15, 1972,[14] reversing its decision of February 19, 1971, the dispositive portion of which reads:

"WHEREFORE, the second motion for reconsideration is granted. Our decision, dated February 19, 1971, affirming the judgment appealed from is hereby vacated and a new one-entered dismissing the complaint, and declaring:

1. That the forest area in question is a part of the forest concession of the defendant-appellant; and
2. That plaintiffs-appellees be ordered to pay the defendant-appellant the sum of \$1,218,000.00 representing the value of logs cut down and ap-propriated by plaintiffs-appellees from the area in dispute. The amount is to be computed at the prevailing rate of exchange of the Philippine pe-sos. (Art. 1250, New Civil Code.)

"The plaintiffs-appellees are ordered to pay to the defendant-appellant as attorney's fees the amount of P3,000.00 and the costs of the suit."[15]

This Resolution of June 15, 1972, is referred to by the private respondent as the Esguerra Resolution.

On June 27, 1972, the petitioners filed a mo-tion for rehearing or reconsideration of the Esguerra Resolution, on the grounds that the interprovincial line delimiting the Agusan-Surigao boundary must prevail over the technical description; and that the award of \$1,218,000.00 in favor of defendant-appellant is not supported by competent evidence and not pleaded in the court a quo.[16]

By Resolution of August 16, 1972, the respond-ent Court of Appeals required the private respondent to comment on the aforesaid motion within fif-teen (15) days from notice. Private respondent filed a motion for an extension of time to file comment, which was granted. However, respondent did not file any comment, but instead filed a mani-festation on February 7, 1973 that, in lieu of a written opposition, it will sum up its arguments in opposition to the motion during the oral argument on February 9, 1973. After the oral arguments, both parties were required to submit their respective memoranda, which they did.

On April 30, 1973, the respondent Court of Ap-peals issued a Resolution (penned by Acting Presid-ing Justice Juan P. Enriquez and concurred in by Justices Manuel P. Barcelona and Emilio A. Gancayco), reversing the

Esguerra Resolution of June 15, 1972 and declaring, as in its original decision of February 19, 1971, that the forest area in dispute is part of the concession of the petitioners and awarding the amount of P32,863.62 as actual damages. The dispositive portion of this Resolution reads:

"WHEREFORE, the motion for rehearing/reconsideration is granted. Our resolution dated June 15, 1972 reversing the decision of February 19, 1971 which affirmed that of the court below is hereby set aside and a new one entered, declaring:

1. That the forest area in dispute is part of the concession of plaintiffs-appellees;
2. Ordering defendant-appellant to pay plaintiffs-appellees the sum of P32,863.62 as actual damages;
3. And the further sum of P3,000.00 as attorney's fees and the costs of the suit." [17]

This Resolution of April 30, 1973 is referred to by the private respondent as the Enriquez Resolution.

On May 21, 1973, private respondent filed a "Motion for Reconsideration of 30 April 1973 Resolution and Motion to Assign Subject Motion for Reconsideration to Special Division of Five Members" on the grounds that: (1) the alleged August 1964 agreement between parties -- basis of Enriquez Resolution of April 30, 1973 -- is spurious because no such agreement was introduced or offered or admitted in evidence during the entire trial court proceedings; (2) the genuine agreement, undisputed on record, is the February 1959 accord of parties whereby their common forestry boundary was established by them on the ground pursuant to Forestry Control Map (Exhibit "1") and timber licenses (Exhibit "3") by forestry officials and the parties-litigants' respective duly authorized representatives; (3) the findings of fact of the Enriquez Resolution are patent distortions of evidentiary facts on record; and (4) the official interpretation by issuing administrative agency -- the Bureau of Forestry -- as to the meaning of the term "Agusan Surigao Provincial Boundary" as mentioned in Parties' Timber Licenses should prevail and control. [18]

On June 27, 1973, petitioners filed their opposition to the foregoing motion for reconsideration. [19] Both parties submitted their respective memoranda. Thereafter, or on February 19, 1974, the respondent Court of Appeals promulgated its appealed Resolution (penned by Justice Emilio A. Gancayco and concurred in by Justices Mateo Canonoy and Guillermo S. Santos) setting aside the Enriquez Resolution of April 30, 1973 and ordering the remand of the records of the case to the trial court for further proceedings, the dispositive portion of which reads:

"WHEREFORE, the resolution of this Court of April 30, 1973 is set aside, the record of this case is remanded to the lower court for further proceedings, with the instruction that a resurvey of the disputed area, of the Agusan-Surigao boundary as provided for by law, as well as of the area covered by the respective licenses of the parties must be conducted by the District Engineers and District Foresters of Surigao and Agusan or their representatives, in the presence of the parties, or their representatives, the expenses to be shouldered by the parties equally, and thereafter further proceedings should be held to enable the parties to adduce additional evidence if they so desire. Thereafter, the trial court should render a new decision based on the evidence on the record, and such additional evidence and facts as may be adduced. The writ of preliminary injunction issued by the lower court enjoining the appellant from logging in the contested area is maintained until these proceedings are terminated. No pronouncement as to costs." [20]

This Resolution of February 19, 1974 is referred to by private respondent as the Gancayco Resolution.

On March 14, 1974, the petitioners filed their Motion for Rehearing or Reconsideration of the aforesaid Gancayco Resolution of February 19, 1974, praying that this Resolution be set aside and vacated, and that the Decision dated February 19, 1971 or the Enriquez Resolution of April 30, 1973 be revived. [21] Private respondent filed its opposition thereto. [22] On May 9, 1974, respondent Court of Appeals promulgated the other appealed Resolution

denying petitioners' motion for rehearing or reconsideration by Minute Resolution (Quoted on p. 28 of Petition, par. 15). Hence, the present appeal.

This case is unique in the sense that the decisions/resolutions of the respondent Court of Appeals, during a period of four (4) years, had swayed from one side to the other, finally ending in an order for the remand of the case to the trial court for a rehearing.

We deplore such judicial vacillation. This Court has emphasized that:

"* * * Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were instituted was to put an end to controversies. To fulfill this purpose and to do so speedily, certain time limits, more or less arbitrary, have to be set up to spur on the slothful. If a vacillating, irresolute judge were allowed to thus keep causes ever within his power, to determine and redetermine them term after term, to bandy his judgments about from one party to the other, and to change his conclusions as freely and as capriciously as a chameleon may change its hues, then litigation might become more intolerable than the wrongs it is intended to redress. (See *Arnedo vs. Llorente and Liongson* [1911], 18 Phil., 257.)"[23]

While there are several issues raised by both parties, nevertheless, the same can be reduced into two (2), namely:

1. Is there necessity for remanding the case to the trial court for further proceedings as declared in the Court of Appeals' Resolution of February 19, 1974?
2. In the negative, is there sufficient evidence to affirm the decision of the trial court?

In the appealed Resolution of the respondent Court of Appeals of February 19, 1974,[24] the records of this case are ordered remanded to the trial court for further proceedings with instruction that a resurvey of: a) the disputed area; b) the Agusan-Surigao boundary as provided for by law; and c) the area covered by the respective licenses of the parties be conducted by the District Foresters of Surigao and Agusan and, thereafter, further proceedings; should be held to enable the parties to adduce additional evidence if they so desire.

This case has been litigated by the parties since 1959, or for almost eighteen (18) years now. Public interest demands its early disposition.

I

We find that there is no necessity for the remand of the case to the trial court for further proceedings. It must be noted that the trial court, in its Order of November 12, 1959, granting the application for the issuance of a preliminary injunctive writ, already found as clearly-established by the evidence that the contested area known as Tagabaca is part of the Province of Agusan, and that the claim of the defendant that the contested area is part of its lumber concession is not supported by the evidence. Again, the trial court, in its decision on the merits of June 1, 1965, found as established by the evidence that "on September 13, 1959, the defendant corporation, thru its agents, entered the concession of the plaintiffs at Sitio Tagabaca, Los Arcos, Agusan, and, on September 18, 1959, the defendant posted armed men in said sitio and thru force, threats and intimidation, prevented the laborers of the plaintiff from entering and logging therein", and that "after an exhaustive hearing of the petition for preliminary injunction, it was found out that the contested area; especially that place known as Tagabaca, is part of the Province of Agusan * * *"[25] and "the evidence further established that the contested area is an integral part of the lumber concession of the plaintiff, which the latter has possessed since 1956 and the defendant corporation merely intruded therein thru the use of force on October 8, 1959 * * *". The decision of the Court of Appeals of February 19, 1971, affirming en toto the appealed decision of the trial court of June 1, 1965, also stated "that there is abundant proof to show that the common boundary lines between the two forest concessions is

that provincial boundary line of Agusan and Surigao* * *" and that "the contested area known as Tagabaca is part of the province of Agusan * *", which conclusion of the lower court "is well supported by the evidence on record."

The decision of the Court of Appeals of April 30, 1973,[26] likewise found as sufficiently established by the evidence that:

"* * * the boundary line delimiting the two adjacent concessions is the Agusan-Surigao Provincial Boundary Line located at the highest ridge, 8.5 km. along the Los Arcos-Lianga Road (Exhibits 'A-1'; 'A-2'). The result therefore is that the disputed area which is 9.7 km. along the road is within the plaintiffs-appellees' concession and within the province of Agusan.

"The foregoing conclusion finds support in the technical description of the parties' concessions which shows that plaintiffs' concession is in Agusan while that of defendant is in Surigao. Moreover, the disputed area is in Los Arcos, Agusan, as is provided for in Section 40 of the Revised Administrative Code showing, that Los Arcos is one of the municipalities within the territorial jurisdiction of Agusan Province. Furthermore, there is the admission of Senator Tolentino that Tagabaca where the disputed area is, is located in Los Arcos, Agusan (tsn, pp. 225, 229, June 25, 1962). Even the findings of Forester Macabeo of the Bureau of Forestry fixed the highest point of ridge marking the boundary between the two provinces at 8.501 kms. (Exhibit 'A-2') Finally, if the plaintiffs had really encroached on 420 hectares of valuable timber land in April 1959, defendant would not have sought the dismissal of the case (pp. 68-82, Rec. on Ap.), instead of having the case tried and decided on the merits without any delay and thus soon recover damages therefor, unmasking thereby Justice Labrador as trespasser and intruder. Indeed, it is incomprehensible why defendant did not initiate the present case or another action for redress. Finally, there is the strong presumption as to the correctness of the decision appealed from, especially after it was affirmed and the first motion for reconsideration thereof had been denied by this Court." (at pp. 6-7).

Even the Gancayco Resolution[27] stated that:

"We have carefully reviewed the entire records of this case including the transcript of stenographic notes and exhibits, and We find that there is no dispute as to the following -

1. The appellee's concession is covered by an ordinary timber license with a total forested area of about 10,000 hectares in the province of Agusan (Exh. C), while the license of the appellant covers a total forested area of about 5,800 hectares in the province of Surigao (Exhibit 2).

* * * * *

3. The disputed area as referred to in the complaint as the Sitio Tagabaca, Los Arcos, is in the province of Agusan, in accordance with the provisions of Sections 38 40 of the Revised Administrative Code." (Resolution, pp. 20-21, Italics supplied.)

It is likewise significant to note that even private respondent agrees in its answer (p. 20) that to remand the case is unnecessary, since what is being sought by the Resolution of February 19, 1974 had already been accomplished. It is true that the Court of Appeals, in its Resolution of February 19, 1974 (Gancayco Resolution), sought to remand the case to the lower court, in order to ascertain where the Agusan-Surigao provincial boundary line is located. There is no question, however, that the Agusan-Surigao provincial boundary line has already been specifically fixed and described by law. As correctly found by the Court of Appeals in its Resolution of April 30, 1973 (Enriquez Resolution), the Surigao-Agusan provincial boundary line as described in Section 1 of Act 1693 of the Philippine Commission is "the crest of the watershed between Agusan River Valley and the Pacific Ocean." There appears, therefore, to be no justification of remanding the case only for the purpose of locating the political boundary between the two provinces. Besides, appellants claim now that they do not rely on the political

boundary between the two provinces but on the boundary as fixed by the control map (Exhibit "1") of the Bureau of Forestry which should prevail over the provincial boundary line established by Act No. 1693.

Indeed, it is not disputed that the trial court had received all the 'evidence presented by both parties. As a matter of fact, the aforementioned trial court, as well as the Appellate Court, were able to pass upon the said evidence and decide the case on its merits. To remand the case to the trial court for further proceedings, therefore, will only prolong the termination of a case that has been pending in the courts for almost two decades, and thus subvert the very interests of justice.

II

Private respondent now claims that it has been its theory even before the trial court that the boundary between the two concessions is not the political boundary between the provinces of Agusan and Surigao but the forestry boundary indicated in the control map of the Bureau of Forestry, which may not actually coincide with the political boundary mentioned by law. Private respondents position, in effect, is that the location of the political boundary of the two provinces is not relevant to the issue since the area of its concession may extend beyond such political boundary. This is, however, not fully supported by the records. Except for its statement in its Motion to Dismiss Proceedings which it filed on February 19, 1960, private respondent has always insisted in the court a quo that its timber concession was entirely located in the Province of Surigao, while that of petitioner is situated within the Province of Agusan. It cannot be denied that private respondent never alleged in their answer that its timber concession extended to the province of Agusan, since its forestry boundary is not necessarily delimited by the political boundary of the two provinces. Thus, in paragraph 5 of its amended answer, private respondent specifically alleged that "the subject area is within defendant's concession and is territorial part of the Province Surigao." [28] That the principal issue litigated by the parties before the court a quo is whether or not the disputed area falls within the province of Surigao is further shown by the recitals contained in the orders issued by the court a quo. Thus, in its Order of November 12, 1959, the trial court specifically stated that the concessions covered by the timber licenses of both parties "are adjacent to each other, and their common boundary is the provincial boundary line of Agusan and Surigao. West of this line is the forestry concession of the plaintiffs located in the Province of Agusan, while east thereof is the concession of the defendants which lies within the Province of Surigao." Private respondent did not question the correctness of this statement of the issue of the case. As a matter of fact, private respondent conceded that such was the issue when it insisted in its Motion for Reconsideration, filed on December 4, 1959, that "the contested area is a territorial part of Surigao Province." [29] This theory of private respondent was continued in the brief which it filed with the Court of Appeals. Thus, it stated that "the lower court actually had no jurisdiction over the subject matter as the area in dispute is beyond its territorial jurisdiction" considering that on the basis of the technical description of its concession the disputed area is within the municipality of Lianga, Surigao. [30]

As correctly contended by the petitioners; the circumstance that the counsel for private respondent invoked "the theory of forestry boundary" in its Motion to Dismiss Proceedings and to Dissolve the Writ of Preliminary Injunction on February 19, 1960 does not necessarily imply that such was the issue of the case when it was being tried before the trial court. The issues in each case are limited to those presented in the pleadings. [31] Generally speaking, issues are raised by affirmative allegations in the pleadings of one party which are denied by the pleadings of the adversary. Since ' the object of the pleadings is "to draw the lines of battle between the litigants and to indicate fairly the nature of the claims or defenses of both parties * * * " and "a party cannot subsequently take a position contrary to, or inconsistent with, his pleadings * * * ", [32] the rule requires that every pleading "shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be * * * ". [33]

The complaint filed by petitioners before the Court of First Instance of Agusan on October 13, 1959 specifically alleged, among others, that "on or about September 13, 1959, defendant corporation, thru its agents, entered into the above-described concession of plaintiff, more particularly the place known, as Sitio Tagabaca, Los Arcos, * * * outside the limits of defendant's concession * * *" which "sitio of Tagabaca is in the Province of Agusan, west of the Surigao-Agusan boundary, outside of defendant's concession, and within that of plaintiff's," As stated heretofore, private respondent directly traversed this, by insisting in its answer of October 24, 1959, as well as its afore-quoted amended answer, that the disputed area is within defendant's concession and is a territorial part of the Province of Surigao.

Since the issue raised in the court a quo, on the basis of the evidence presented and upon which the court rendered its judgment, is whether or not the contested area is located within the province of Surigao, such question could not now be changed by private respondent on appeal. Well-settled is the rule that questions which were not raised, in the lower court cannot be raised for the first time on appeal. In order that the question may be raised on appeal, it is essential that it be within the issue made by the parties in their pleadings. Consequently, when a party deliberately adopts a certain theory and the case is tried and decided upon that theory in the lower court, he will not be permitted to change his theory on appeal because to permit him to do so will be unfair to the adverse party.[34] Indeed, the petitioners would have no more opportunity to present further evidence, material to the new theory, which they could have done had they been aware earlier of the new theory at the time of the hearing before the trial court, since a reopening for that purpose would be out of the question after the appeal. In other words, in the interest of justice and within the sound discretion of the appellate court, a party may change his legal theory on appeal only when the factual bases thereof would not require presentation of any further evidence by the adverse party in order to enable it to properly meet the issue raised in the new theory.

III

Having found no justification, on the basis of the evidence of record, for the remand of the case for further proceedings with the lower court as held by the Court of Appeals in its Resolution of February 19, 1974, the next question to be resolved is: Did the Appellate Court err in affirming the decision of the trial court?

There is no question that the Court of Appeals in its Resolution of February 19, 1974, found as an undisputed fact that: (a) petitioners' concession, with a total forested area of about ten thousand (10,000) hectares, is situated in the province of Agusan, while private respondent's concession, with a total forested area of about five thousand eight hundred (5,800) hectares, is located in the province of Surigao; (b) that both licenses of the parties specify the "Agusan-Surigao Boundary line" as the dividing line between the two concessions; and (c) that the disputed area as referred to in the complaint as the Sitio Tagabaca, Los Arcos, is in the province of Agusan in accordance with the provisions of Sections 38 and 40 of the Revised Administrative Code, It is also important to note that the Court of Appeals in the same Resolution found that "By and large, the evidence * * * tends to support the claim of the appellees * * *" and at the same time refused to give credence to the Forestry Control Map (Exhibit "1") which was submitted in support of private respondent's claim that their forestry boundary is different from the political or statutory boundary of the two provinces, considering that said document was obviously prepared only in the year 1959, or some years after the issuance of the timber licenses to the parties, "since appearing and reflected thereon are the areas covered by licenses issued as late as 1959, as O.T.-181--59 of Butuan Lumber Manufacturing Co. and O.T.-864--59 of the Lianga Lumber Company, Ltd." and "no evidence has been adduced to show that the same control map was the basis of the issuance of the ordinary timber license of the appellees (Exhibit "C") of January 28, 1954 or of the ordinary timber license of the appellant issued on September 3, 1956 (Exhibit "2").[35] The same Court of Appeals also declared the opinion of the Acting Director of Forestry, Tiburcio Serevo,[36] upon which appellant also relies for support, as a mere opinion of one "who had nothing to

do with issuance of said licenses, and who had not demonstrated in court the technical basis of his opinion", apart from the fact that the same official had "advanced an earlier and inconsistent opinion upholding the political boundary." These findings may be deemed as accepted by private respondent, considering that said party did not file any motion for the reconsideration of the aforementioned Resolution, much less appeal therefrom. The net result is that private respondent cannot now impugn the correctness of the findings of fact contained in the afore-mentioned judgment. Settled is the rule that an appellee cannot impugn the correctness of a judgment not appealed from by him, and while he may make counter assignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof.[37]

The afore-mentioned findings of the Court of Appeals support and buttress, rather than detract from, the Appellate Court's decisions of February 19, 1971 and of April 30, 1973 (Enriquez Resolution). Thus, the Decision of the Court of Appeals of April 30, 1973, which was a re-affirmance of the original decision of the Court of Appeals of February 19, 1971, summarized the factual basis of the conclusion that the "common boundary line between the two forest concessions is the interprovincial boundary, line of Agusan and Surigao, as found by the trial court -- which was Sustained by our resolution of March 22, 1971, denying appellant's first motion for reconsideration", thus --

"The boundary of defendant's timber concession upon which defendant-appellant rests its case started at Corner 1, a point in the town of Lianga where Los Arcos-Lianga road begins and proceeds to Corner 6, the intersection of the Agusan-Surigao boundary line and to Los Arcos-Lianga Road about 10,000 meters and Corner 1 (Exhibit '2').

"But this Corner 6 is identical to Corner 3 of appellee's timber concession, which is the crossing of the Los Arcos-Lianga Road and Surigao--Agusan Provincial boundary, 3,700 meters to point 6 (Exh. 'A').

"The meeting point between the two concessions is clearly the Surigao-Agusan boundary line.

"Our inquiry is thus shifted to this. Where is the Surigao-Agusan provincial boundary line? Section 1, of Act 1693 of the Philippine Commission described this line to be the crest of the watershed between Agusan River Valley and the Pacific Ocean. The parties recognized this line established by the foregoing Act. For it must be stressed that the parties have stipulated and/or agreed during the survey made in the presence of representatives of both plaintiffs-appellees and defendant-appellant, that this point is situated at the highest crest of Agusan-Surigao Surigao-Agusan Provincial Boundary (See Annexes A and B to Motion for Rehearing or Reconsideration, pp. 181--182, Rollo). It is the duty of the Court to abide by that stipulation even if in its opinion it may appear at variance with the previous agreements (Martinez vs. Villanueva, L-7256, August 17, 1954). We are of the opinion that the Court erred in holding that the boundary line for the simple reason that the same is a deviation from what was agreed upon by the parties.

"Appellant's claim that the boundary line delimited in the technical description contained in the timber license should prevail over the provincial boundary line established by Act 1693, relying mainly on the letter of the Bureau of Forestry (Exhibit '11') and we quote:

'..... this office considers the technical description contained in the timber license it issues to appellant for timber concessions as controlling in the delimitation of the area within which a particular license may legally operate natural or political landmarks are merely descriptive and incidental (Exh. '11').'

"We cannot however close our eyes to the fact that the boundary line established by Act 1693 is a natural landmark - a ridge. There is no evidence that this mark has been changed by the interplay of natural forces; that there has been any alteration in the course of the Agusan River, considering the character of the monument and the practical impossibility of secretly removing them or changing their position. The technical description appearing in Exhibits 'A' and '2' can hardly be relied upon for determination of the boundary line as the result

of the survey of the concessions were not accurate. In fact the sketch, guide map Exhibit '1', has not been presented and approved by the Bureau of Forestry's authorities. And even granting that it was so approved, the survey was made on the basis of courses and distances. Courses and distances will yield to known, visible and definite object (*Sayoc vs. Alarcon*, CA-G.R. No. 3735-R, June 19, 1950); monuments control courses and distances as well as the calculated area (*Scot vs. Abad*, 47 Phil. 573; 8 Am. Jur. 780-781; *Columbian Rope Co. vs. Bangoy*, CA-G.R. 16543-R, July 31, 1958; 56 O.G. 452; *Heguera vs. U.S.*, 18 Law Ed. [US] 469; *Connelson vs. Hammon*, 224 N. C. 757, 235 F 2d 326; *Cotabato Timberland Co., Inc. vs. Plaridel Lumber Co., Inc.*, L-19432, Feb. 26, 1965, 13 SCRA 235).

'Where the calls for the Loca-tion of boundaries to land are incon-sistent, other things being equal, resort is to be had first to natural objects of landmarks, next to artificial monument, then to adjacent boudaries and thereafter the course distances.

'The reason for the rule is that mistakes in courses and distances are now probable and frequent than in marked trees, mountains, rivers and other objects capable of being clear-ly designated and accurately des-cribed; course and distances are usually descriptive of the designated monument and depend for their accura-cy upon the skill and experience of the surveyor (8 Am. Jur. 781-782).' (Emphasis our)

"All things considered, we are satisfied that the boundary line delimiting the two adja-cent concessions is the Agusan-Surigao Provincial Boundary Line located at the highest ridge, 8.5 km. along the Los Arcos-Lianga Road (Exhs. 'A-1'; 'A-2'). The result therefore is that the disputed area which is 9.7 km. along the road is with-in the plaintiffs-appellees' concession and with-in the province of Agusan.

"The foregoing conclusion finds support in the technical description of the parties' conces-sions which shows that plaintiffs' concession is in Agusan while that of defendant is in Surigao. Moreover, the disputed area is in Los Arcos, Agu-san, as is provided for in Section 40 of the Revised Administrative Code showing that Los Arcos is one of the municipalities within the territo-rial jurisdiction of Agusan province. Furthermore, there is the admission of Senator Tolentino that Tagabaca where the disputed area is, is located in Los Arcos, Agusan (tsn., pp. 225, 229, June 25, 1962). Even the findings of Forester Macabeo of the Bureau of forestry fixed the high-est point or ridge marking the boundary between the two provinces at 8.501 kms, (Exhibit 'A-2'). Finally, if the plaintiffs had really encroached on 420 hectares of valuable timberland in April 1959, defendant would not have sought the dismis-sal of the case (pp. 68-82, Rec. on Ap.), instead of having the case tried and decided on the merits without any delay and thus soon recover damages therefor, unmasking thereby Justice Labrador as trespasser and intruder. Indeed, it is incomprehensible why defendant did not initiate the pre-sent case or another action for redress. Finally, there is the strong presumption as to the correctness of the decision appealed from, espe-cially after it was affirmed and the first motion for reconsideration thereof had been denied by this Court." (Enriquez Resolution pp. 3-7).

Private respondent assails this Resolution of the Court of Appeals, contending that Annexes "A" and "B", which were adverted to in said Resolution, are "spurious", as said documents were not present-ed at the trial of the case before the Court of First Instance of Agusan which ended sometime in February, 1964 and the purported authority of the alleged representatives of private respondent to sign said documents were repudiated by the President and Chairman of the Board and Treasurer-Director of private respondent as shown by their affidavits of May 18, 1973. As explained by petitioners, these documents were submitted as annexes to their Motion for Rehearing or Reconsideration in CA-G. R. No. 37365-R, and were intended to show that pursuant to a directive of the Bureau of Forestry to "fix the boundaries" of both concessions a survey was made for that purpose sometime in August, 1964. This was after the trial of the case before the court a quo was terminated. According to petitioners, these documents were never questioned by private respond-ent during the oral argument nor in its memorandum at the time of the consideration of said motion, Annexes "A" and "B" are xerox copies of affidavits executed before Forester and Officer-in-Charge Mele-cio S. Agra by Delfin Alamban, on behalf of Lianga Lumber Company, and

Coletto G. Campos and Gorgonio Alegre, as representatives of Lianga Timber Company, dated August 4 and 9, 1964, respectively. Annex "B" is attested to by Wenceslao Ortiz of the Bureau of Forestry. The afore-cited documents certified to the correctness of the "fact-finding survey of the Bureau of Forestry officials and representatives of the adjacent licensees concerned" of the boundary of the two licensees "starting from the junction of Los Arcos-Lianga Road and the highest ridge thence following the highest ridge in a general southeasterly and southwesterly direction that divides the watershed of the province of Agusan and Surigao del Sur."

While it is true that private respondent submitted evidence repudiating the authority of Coletto G. Campos to enter into any agreement on behalf of Lianga Timber Co., Inc., it has not been shown that the allegation that a fact-finding survey to locate the boundary of the two concessions was made by the Bureau of Forestry officials and the persons mentioned therein is not true. Be that as it may, the findings of the aforesaid survey as to the location of the boundary between the two concessions is merely confirmatory of the findings of the trial court in the appealed decision and the holding of the Court of Appeals in its Decision of February 19, 1971, which was affirmed by the same Appellate Court in its Resolution of March 22, 1971, denying private respondent's first Motion for Reconsideration.

Upon the other hand, this Court cannot place much reliance on the so-called "Forestry Control Map" (Exhibit "1") which is one of the principal props of the case of private respondent. In the first place, the Ordinary Timber License of Lianga Lumber Company (Exhibit "C") clearly and specifically referred to a grant to said licensee of a forested area within the district of Azpitia, Los Arcos and Prosperidad, in the Province of Agusan, while the license of private respondent (Exhibit "2") likewise specifically referred to a forested area in the Municipality of Lianga, Province of Surigao. Pursuant to Section 40 of the Revised Administrative Code, Azpitia, Los Arcos, and Prosperidad are municipal districts within the Province of Agusan, while under Section 38 of the same Code, the municipality of Lianga is part of the Province of Surigao. If the purpose of the forestry officials was to include a part of a forested area in Agusan in the timber license granted to private respondent, no logical explanation had been given why such matter was not clearly and specifically stated therein. Consider also the fact that both licenses were subsequently renewed and yet no correction or amendment in the description of the timber area granted to either party to conform to the forestry control map was ever made. Thus, Exhibit "C" was renewed on June 28, 1954 (Exhibit "C-1"), August 26, 1955 (Exhibit "C-2"), August 24, 1956 (Exhibit "C-3"), September 24, 1958 (Exhibit "C-4") and August 17, 1959 (Exhibit "C-5") without any changes or alterations of the description of the forested area in the two timber concessions. Secondly, no less than private respondent's counsel, Atty. Arturo C. Mojica, admitted that the Forestry Control Map (Exhibit "1") was not yet prepared when the boundary of the concessions of both parties were laid allegedly on the ground.^[38] Thirdly, it was found as an established fact by both the trial court and the Court of Appeals that Exhibit "1" was not prepared earlier than 1959 and, consequently, could not have been the basis of the technical descriptions appearing in the timber licenses originally issued to Lianga Lumber Company on January 28, 1954 (Exhibit "C") or of the timber license issued to Lianga Timber Company, Inc. on August 28, 1956 (Exhibit "2"). Neither are we persuaded that the phrase "Agusan-Surigao Provincial Boundary" in the timber licenses (Exhibits "C" and "2") was not intended to mean the Agusan-Surigao provincial boundary line as provided by law but an artificial or imaginary line fixed by the forestry officials. It must be noted that both timber licenses mentioned existing natural or other well known monuments as landmarks to indicate the respective limits of each concession. Thus, the Ordinary Timber License of petitioners (Exhibit "C") refers to the Sibung River, the Los Arcos-Lianga Road and Tinanguanan Creek, while the license of private respondent refers also to the Los Arcos-Lianga Road and the mouth of the Wakat River to indicate the boundaries of each concession. Considering that the "Agusan-Surigao boundary line" has already been fixed by law and is of public knowledge to all concerned, since everyone is presumed to know the law, is it not more logical to assume that when the Director of Forestry stated as the common boundary of each concession

the "Agusan-Surigao boundary line" he was referring to the boundary line fixed by law, and not to an imaginary line, the location of which is not known to the parties or to the public? Certainly, the Director of Forestry, at the time he issued the license, could not have been re-ferring to the technical boundary in the Forestry Control Map considering that said document was not yet then in existence. It must be presumed that official duty has been regularly performed.[39] There is also the report of Forester Marcelino Maca-beo (Exhibit "A-1") to the District Forester of Bu-tuan City. In his report, said official stated that in order to determine on the ground the approximate boundary line dividing the two provinces of Agusan and Surigao, he conducted a survey and found that the boundary line between the two provinces is located at Km. 8.501 from the beach of Lianga, Surigao, "which is the highest point of the ridge or divide wherein the drainage is divided between the two pro-vinces * * *". This report was forwarded to the Director of Forestry by the District Forester of Butuan City on August 6, 1959 (Exhibit "A-2"), in-forming the Director of Forestry that according to said findings the highest point is located at 8.501 km. of the Los Arcos-Lianga Road, and this should be the point through which the Agusan-Surigao boundary should pass. These findings corroborate those of witness Esmeraldo Osin, Forest Guard of the Bureau of Forestry who was front Chairman of the survey team which found that the highest ridge is at Km. 8.501.[40] These are written statements in the performance of duty by public officers, with official knowledge of the facts stated therein, and should be prima facie evidence of the facts thus stated.[41]

The boundary line provided by law specifically referred to the crest of the watershed or the highest ridge between the Agusan River Valley and the Pacific Ocean. Having been in existence in the statute books since 1907, it could be assumed that this high-est ridge adverted to is known to the public as a clearly identifiable natural landmark to indicate the boundary of the two provinces. As correctly stated by the Court of Appeals, natural objects will ordinarily, in case of conflict in the description of boundaries to land, control all other calls. Thus, it is settled that "calls for courses and distances, * * * will, in case of conflict, be controlled by and will yield to, one for a natural object or landmark or permanent artificial monument. The reason for the rule is that mistakes in courses and distances are more probable and frequent than in marked trees, mountains, rivers, and other ob-jects capable of being clearly designated and accu-rately described * * *"[42]

We are, therefore, satisfied that the afore-mentioned Resolutions of the Court of Appeals af-firming the trial court's judgment are supported by substantial evidence.[43]

On the contention of private respondent that this Court has no power to revive the original deci-sion of the Court of Appeals affirming the trial court's judgment, suffice it to state that such po-wer is necessarily implied from the authority con-ferred upon this Court by the Constitution and by the law to review, revise, reverse, modify or af-firm the final judgment or a decision of inferior courts.[44] Moreover, the Court need not actually revive the original decision of the Court of Appeals of February 19, 1971. By reversing the Resolution of February 19, 1974 (the Gancayco Resolution), the Court can just as well merely affirm the decision of the trial court and virtually treat the Esguerra Resolution and the Enriquez Resolution as non-existing, the same having been superseded in contemplation of law by the Gancayco Resolution. Stated otherwise, what is before Us for review only are the Gancayco Resolutions of February 19, 1974 and May 9, 1974, and since it is Our conclusion that the same are erroneous, the necessary consequence is that We must as We do affirm the decision of the trial court, just like in any other ordinary case where We reverse the Court of Appeals in favor of the trial court's judgment.

In view of the foregoing conclusions and the final result favorable to petitioners, We consider it superfluous to discuss the issue raised by them that the second motion for reconsideration of pri-vate respondent which gave rise to the Esguerra Resolution was pro forma and unauthorized and, therefore, could not have suspended the period for the finality of the Decision of February 19, 1971.

We prefer to treat the present action as an appeal thru petition for review, rather than as an original action for

certiorari.

WHEREFORE, the resolution-decision of the Court of Appeals of February 19, 1974[45] and its Resolution of May 9, 1974[46] denying reconsideration thereof are REVERSED, and, instead, the judgment of the trial court is hereby AFFIRMED, with the sole modification that private respondent shall pay petitioners the sum of P32,863.62 as actual damages, instead of P47,578.75, plus P3,000.00 as attorney's fees, and private respondent to pay the costs.

Fernando, (Chairman), Barredo, Aquino, and Martin, JJ., concur.
Concepcion, Jr., no part.

[1] Entitled "Liang Lumber Company and North Zambales Lumber Company, Plaintiffs-Appellees, versus Liang Timber Company, Inc., Defendant-Appellant."

[2] Record on Appeal, pp. 2-5; SC Rollo, p. 265.

[3] Ibid., p. 6.

[4] Ibid., pp. 35; 39-40.

[5] Ibid., pp. 41-42.

[6] Ibid., pp. 43-47.

[7] Ibid., pp. 127-134.

[8] CA-G. R. No. 37365-R, entitled "Liang Lumber Company and North Zambales Lumber Co., Plaintiff-Appellees, versus Liang Timber Company, Inc., Defendant-Appellant." Record on Appeal, p. 135.

[9] CA Rollo, p. 43.

[10] CA Decision, pp. 5-11; SC Rollo, pp. 72-78. Italics supplied.

[11] Annex A-1 of Petition, SC Rollo, pp. 79-80.

[12] Annex A-2, Ibid.; pp. 81-92, SC Rollo.

[13] Annex A-3, Ibid.; pp. 93-104, SC Rollo.

[14] Penned by then Presiding Justice Salvador V. Esguerra and concurred in by Justices Edilberto Soriano and Lourdes P. San Diego, the same Justices that rendered the decision dated June 19, 1971, affirming the appealed decision of the lower court, and the Resolution dated March 22, 1971, denying the motion for reconsideration of said decision.

[15] Annex B of Petition; pp. 105-121, SC Rollo.

[16] Annex C, Ibid.; pp. 122-151, Ibid.

[17] Annex D, Ibid.; pp. 151A-159, SC Rollo.

[18] Annex E, Ibid.; pp. 160-179, SC Rollo.

[19] Annex F, Ibid.; pp. 180-214, Ibid.

[20] Annex G, Ibid.; pp. 216-245, SC Rollo.

[21] Annex H, Ibid.; pp. 246-258, Ibid.

[22] Annex I, Ibid.; pp. 259-264, Ibid.

[23] Dy Cay v. Crossfield and O'Brien, 38 Phil. 521, 526-527; Albert v. Court of First Instance, 23 SCRA 948.

[24] Gancayco Resolution, Annex "G" of the Petition.

[25] Record on Appeal, p. 130.

[26] Enriquez Resolution, Annex D of the Petition.

[27] Annex "G" of the Petition.

[28] Record on Appeal, p. 35. Italics supplied.

[29] Ibid., p. 55. Italics supplied.

[30] Brief for the defendant-appellant, pp. 37, 41-44.

[31] Palmer v. Humiston, 87 Ohio St. 401, 101 NE 283; Shapiro v. Kornicks, 103 Ohio App. 49, 124 NE 2d. 175.

[32] The Mentholatum Co., Inc., et al. v. Anacleto Mangaliman, et al., 72 Phil. 524, 529.

[33] Section 1, Rule 8, Revised Rules of Court.

[34] Hautea v. Judge Magallon, 12 SCRA 514, 517; City of Manila v. Ebay, 1 SCRA 1086, 1089; Jimenez v. Bucoy, 103 Phil. 40, citing American Express Co. v. Natividad 46 Phil, 207; San Agustin v. Barrios, 68 Phil. 475, 480; and Toribio v. Dacasa, 55 Phil. 461.

[35] This Ordinary Timber License of appellant Lianga Timber Co., Inc. was originally in the name of Diez and Dumlao, first obtained in 1951 in a public bidding.

[36] Exhibit "11", letter dated August 25, 1961.

[37] Gorospe v. Peñaflorida, 101 Phil. 886 Lapuz v. Sy Uy, L-10079, May 17, 1957; Pinada & Ampil Manufacturing Co. v. Bartolome, 95 Phil. 930; David v. De la Cruz, 103 Phil. 380, 383.

[38] T.s.n., pp. 271, July 22, 1963.

[39] Section 5(m), Rule 131, Revised Rules of Court.

[40] T.s.n., pp. 18-19, November 3, 1959.

[41] Sec. 38, Rule 130, Rules of Court; 30 Am. Jur. 2d 277.

[42] 12 Am. Jur. 2d 604.

[43] The general rule is that the judgment of the Court of Appeals is conclusive as to the facts and cannot be reviewed by this Court, except on questions of law (Cabrera v. Lopez, 84 Phil. 834-835; Pacheco v. Arro, 85 Phil. 505, 515; Abeto v. People, 90 Phil. 581, 582.) In order that the findings of facts of the Appellate Court may not be reviewed by this Court it must be supported by substantial evidence. (Joaquin v. Navarro, 93 Phil. 259).

"Substantial evidence has been defined to be such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, and its absence is not shown by stressing that there is contrary evidence on record, direct or circumstantial, * * *for the appellate court cannot substitute its own judgment or criterion for that of the trial court in determining wherein lies the weight of evidence or what evidence is entitled to belief."

(Picardal vs. Lladas, 21 SCRA 1483, 1489, citing Chavez v. CAR, et al., 9 SCRA 412; Lustre, et al. v. Court of Agrarian Relations, et al., 10 SCRA 659)

Justice Laurel, in Ang Tibay v. Court of Industrial Relations (69 Phil. 635, 642), defined substantial evidence as ""* * * more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.' Appalachian Electric Power v. National Labor Relations Board, 4 Cir. 93 F. 2d 985; 989* * *)"

Substantial evidence has been described "as such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred * * *. The test is whether the administrative decision finds reasonable support in substantial evidence, whether the evidence reasonably tends to support the findings, or, it has been indicated whether the decision is not clearly contrary to the overwhelming weight of the evidence." (2 Am. Jur. 2d pp. 573-579, Sec. 688).

[44] Section 5, Article X, New Constitution; Section 17, Judiciary Act of 1948, as amended by Republic Acts Nos. 2613 and 5440.

[45] Gancayco Resolution.

[46] Resolution denying petitioners' motion for reconsideration.

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