

**ANTONIO R. BANZON AND ROSA BALMACEDA, PETITIONERS, VS.
HON. FERNANDO CRUZ, SPOUSES PEDRO CARDENAS AND LEONILA
BALUYOT AND ASSOCIATED INSURANCE & SURETY COMPANY,
INC. REPRESENTED...**

G.R. No. L-31789. June 29, 1972

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

An original action to enjoin respondent court from enforcing a writ of possession and order of demolition over one of two Caloocan City lots originally owned by petitioners-spouses pending the outcome of their suit for reconveyance of said lots from private respondents.

Sometime in 1952, Maximo Sta. Maria obtained crop loans from the Philippine National Bank (hereinafter referred to as the bank). Respondent Associated Insurance & Surety Co., Inc. (hereinafter referred to as Associated) acted as surety of Sta. Maria, filing surety bonds in favor of the bank to answer for prompt repayment of the loans. Petitioner Antonio R. Banzon and Emilio Ma. Naval in turn acted as indemnitors of Associated and were obligated to indemnify and hold harmless Associated from any liability for thus acting as surety of the loan. Sta. Maria failed to pay his obligations to the bank, which accordingly demanded payment from Associated as surety.

Instead of paying the bank, Associated filed a complaint dated November 19, 1956 with the Court of First Instance of Manila^[1] against debtor Sta. Maria and indemnitors Banzon and Naval, alleging that the outstanding obligations of Sta. Maria with the bank guaranteed by it amounted to P6,100.00, P9,346.44 and P14,811.42, or a total of P30,257.86, excluding interest. On December 11, 1957, the said court rendered judgment ordering Sta. Maria, Banzon and Naval "to pay jointly and severally unto plaintiff for the benefit of the Philippine National Bank" the amounts mentioned above, with interest thereon at 12% per annum, P593.76 for premiums and documentary stamps due, and 15% attorney's fees, "the 15% and the interest to be paid for the benefit only of the plaintiff."

What happened thereafter is narrated in the decision of this Court rendered on November 29, 1968 in the appeal instituted by petitioner Banzon and his spouse, co-petitioner Rosa Balmaceda, from a subsequent action of Associated in the Court of First Instance of Rizal wherein the Rizal court ordered Banzon to surrender for cancellation his owner's duplicates of titles to his two Caloocan City lots which had been levied upon and purchased at the execution sale by Associated in supposed satisfaction of the Manila court's judgment, docketed as Case L-23971 of this Court, entitled Associated Ins. & Surety Co, Inc., plaintiff-appellee vs. Antonio Banzon and Rosa Balmaceda, defendants-appellants,^[2] as follows:

"As the above decision^[3] became final and executory, the corresponding writ of execution was issued and levy was made upon the properties of the judgment debtor Antonio R. Banzon covered by Transfer Certificates of Title Nos. 39685 and 53759 issued in his name by the Register of Deeds of Rizal. The first covered a parcel

of land containing an area of 650 square meters situated in Barrio Calaanan, Caloocan, Rizal, and the second, another parcel of 650 square meters situated in the same barrio of the same municipality. After the proceedings required by law in connection with execution sales, the aforesaid properties were sold, the judgment creditor, Associated Insurance and Surety Co., Inc., having been the highest bidder, for the total sum of P41,000.00. The Sheriff of Rizal issued in its favor the corresponding certificate of sale dated June 27, 1957, which was duly registered on June 30, 1959. As the period of redemption expired on June 20, 1960 without the judgment debtor or any proper party having exercised it, the judgment creditor and purchaser obtained in due time the corresponding final certificate of sale, which was likewise duly registered.

"In view of the foregoing, herein petitioner-appellee made demands upon Antonio R. Banzon to deliver to it the owner's duplicate of Certificate of Title Nos. 39685 and 53759 mentioned heretofore, but the latter refused to do so. As a result it filed in the Court of First Instance of Rizal in Case No. 3885, G.L.R.O. Record No. 11267, a petition for an order directing Antonio R. Banzon to present his owner's duplicate of Certificate of Title Nos. 39685 and 53759 to the Register of Deeds of Rizal for cancellation, and for another order directing the Register of Deeds of Rizal to cancel said duplicates and to issue new transfer certificates of title covering the properties in the name of petitioner.

"Banzon filed his opposition to the petition claiming mainly that (1) the decision of the Court of First Instance of Manila in Civil Case No. 31237 was void as far as he was concerned because he had never been summoned in connection therewith, and that (2) the levy and sale of the properties covered by the petition were likewise void because they were conjugal properties belonging to him and his wife, Rosa Balmaceda.

"After a hearing on the motion and opposition mentioned above, the lower court, on February 17, 1961, rendered a decision whose dispositive portion is as follows:

'In view of the foregoing, judgment is hereby rendered in favor of the petitioner granting the relief prayed for. The oppositors are hereby ordered to surrender to the Register of Deeds of Rizal the Certificate of Title in question for cancellation and let a new one be issued in the name of the petitioner.'

"In this appeal interposed by them, the Banzons seek a reversal of the above decision upon the same grounds relied upon in their opposition filed in the lower court." [4]

This Court in its decision of November 29, 1968 affirmed the decision of the trial court, relying upon the lower court's findings on Banzon's failure to substantiate his claims which "would amount to a deprivation of (Banzon's) property without due process of law" had he but discharged his burden of proof, thus:

"With respect to appellants' contention that Antonio R. Banzon had not been duly served with summons in connection with Civil Case No. 31237 of the Court of First Instance of Manila, it is enough for us to quote here the pertinent portions of the well-considered decision of the lower court —

With respect to the first contention of oppositors, the latter in effect contends that not having been served by summons, Antonio Banzon never became a party defendant to the aforesaid civil case and hence not bound by any judgment rendered therein. It is erroneous on the part of the petitioner to contend that the objection as to lack of jurisdiction on the defendant's person has been waived for said waiver applies only when summons has been served although defectively, such as one not served by the proper officer. If the contention of the oppositor were true, that is, no summons was ever served upon him and that he was completely unaware of the proceedings in the civil case aforementioned, the properties in question could not be levied upon for that would amount to a deprivation of oppositor's property without due process of law.

'The burden, however, rests upon the oppositors to prove that there was in fact no service of summons and this, the court believes, the oppositors have failed to substantiate with sufficient evidence. It is a fundamental rule that the regularity of all official actions and proceedings will be presumed until the contrary is proved. In said civil case No. 31237, the records show, particularly the answer and the motion to dismiss, that the

proceedings were conducted by counsel in behalf of all the defendants therein including the oppositor, Antonio Banzon. The presumption therefore, of the regularity of the proceedings as against said defendant will be maintained including the fact that either summons was duly served or that the defendant Banzon voluntarily appeared in court without such summons. It is therefore incumbent upon the oppositors to rebut this presumption with competent and proper evidence such as the return made by the sheriff who served the summons in question. This, however, the oppositors have not met.

'Moreover, the circumstances of the case all the more bear out the strength of this presumption when it is considered that the oppositor Antonio Banzon received a notice of execution and levy of these properties and notice of the sale of the same at public auction. Had the oppositors have been prejudiced by being deprived of due process, they should have filed either a third party claim upon the property levied or an injunction proceeding to prevent its sale at public auction, nor would they have allowed the consummation of the sale and the lapse of one year within which the redemption would have been exercised. These facts gravely militate against the merits of the opposition, not only insofar as it strengthens the aforesaid presumption of regularity, but also insofar as they are indicative of the fact that the properties levied upon are not conjugal property or even if they were that the debt involved was one which redound to the benefit of the family for which the conjugal partnership may be held liable.'

"Appellants' second contention namely, that the properties now in question are their conjugal properties, is belied by the record before us which shows that Transfer Certificates of Title Nos. 39685 and 53759 were issued in the name of Antonio R. Banzon. Moreover, there is no sufficient evidence in the record to show that the properties were acquired during appellants' marriage.

"IN VIEW OF ALL THE FOREGOING, the decision appealed from is hereby affirmed, with costs."[5]

It has now been exposed that notwithstanding the judgment of December 11, 1957 obtained from the Manila court by Associated and executed by it against petitioner Banzon as indemnitor for the benefit of the Philippine National Bank," and which judgment it obtained and executed on the representation to the said court that the bank was exacting payment from it as surety of the debtor Sta. Maria's loans, and that it was therefore enforcing Banzon's undertaking as indemnitor in turn to indemnify it, that it never discharged its liability as surety to the bank nor ever made any payment to the bank, whether in money or property, to discharge Sta. Maria's outstanding obligations as guaranteed by it.

As will be shown later, this suit of Associated against Banzon as indemnitor and the execution against him of the judgment obtained in trust "for the benefit of the Philippine National Bank" were absolutely premature and uncalled for, since Article 2071 of the Civil Code permits the surety, even before having paid; to proceed only "against the principal debtor * * * (4) when the debt has become demandable, by reason of the expiration of the period for payment" and that "the action of the guarantor is to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor."

In fact, since the bank failed to exact payment from Associated as surety of the debtor Maximo Sta. Maria's matured obligations, the bank itself filed on February 10, 1961, its own complaint with the Court of First Instance of Pampanga against principal debtor Maximo Sta. Maria, his six brothers and sisters (who had executed a special power of attorney in Sta. Maria's favor to mortgage a 16-hectare parcel of land jointly owned by all of them as security also for the bank's loans), and Associated itself, surety, as defendants, for the collection of the outstanding obligations due from the principal debtor, Maximo Sta. Maria.

After trial, the court ordered all the defendants jointly and severally to pay the bank the outstanding amounts due on the crop loans to Sta. Maria, which as of that much later date, August 20, 1963, amounted only to P6,100.00

and P9,346.44 or a total of P15,446.44, exclusive of interests. It should be noted therefore, that the debtor Sta. Maria had been making payments all along to the bank on account of his crop loans so much so that by 1963, the total principal due and amount outstanding thereon amounted only to P15,446.44. This amounts to practically one-half of the advance judgment for the total amount of P30,257.86, excluding interests, obtained by Associated six (6) years earlier in 1957 against Banzon 'for the benefit of the Philippine National Bank' allegedly as the amount due from Sta. Maria and which Associated as surety would have to pay the bank, and which as it turns out, Associated never paid to the bank.

These facts and figures are of record in this Court's decision of August 29, 1969, in Philippine National Bank vs. Sta. Maria, et al.;[6] wherein it is further recorded that "(D)efendant Maximo Sta. Maria and his surety, defendant Associated Insurance & Surety Co., Inc. who did not resist the action, did not appeal the judgment (sentencing all defendants jointly and severally to pay the bank the above referred to principal amount of P15,446.44, excluding interests)."

This Court sustained the appeal taken by the debtor Maximo Sta. Maria's brothers and sisters, and reversed the lower court's judgment against them, as follows:

" * * * This appeal has been taken by his six brothers and sisters, defendants-appellants who reiterate in their brief their main contention in their Answer to the complaint that under the special power of attorney, Exh. E, they had not given their brother, Maximo, the authority to borrow money but only to mortgage the real estate jointly owned by them; and that if they are liable at all, their liability should not go beyond the value of the property which they had authorized to be given as security for the loans obtained by Maximo. In their answer, defendants-appellants had further contended that they did not benefit whatsoever from the loans, and that the plaintiff bank's only recourse against them is to foreclose on the property which they had authorized Maximo to mortgage.

"We find the appeal of defendants-appellants, except for defendant Valeriana Sta. Maria who had executed another special power of attorney, Exh. E-1, expressly authorizing Maximo to borrow money on her behalf, to be well taken.

"1. Plaintiff bank has not made out a cause, of action against defendants-appellants (except Valeriana), so as to hold them liable for the unpaid balances of the loans obtained by Maximo under the chattel mortgages executed by him in his own name chattel alone."

* * * * *

"6. Finally, as to the 10% award of attorney's fees, this Court believes that considering the resources of plaintiff bank and the fact that the principal debtor, Maximo Sta. Maria, had not contested the suit, an award of five (5%) per cent of the balance due on the principal, exclusive of interests, i. e., a balance of P6,100.00 on the first cause of action and a balance of P9,346.44 on the second cause of action, per the bank's statements of August 20, 1963, (Exhs. Q-1 and BB-1, respectively) should be sufficient.

"WHEREFORE, the judgment of the trial court against defendants-appellants Emeteria, Teofilo, Quintin, Rosario and Leonila, all surnamed Sta. Maria is hereby reversed and set aside, with costs in both instances against plaintiff. The judgment against defendant-appellant Valeriana Sta. Maria is modified in that her liability is held to be joint and not solidary, and the award of attorney's fees is reduced as set forth in the preceding paragraph, without costs in this instance."

The bank thus collected directly from its debtor Sta. Maria the amounts owing to it, with Associated never having put in one centavo. Per the bank's letter dated February 20, 1970 to Associated, it informed Associated that the amounts of its judgment credit against judgment defendants in the aforementioned case terminated by this Court's decision of August 29, 1969, "had already been satisfied as of February 16, 1970 by virtue of the payment made

by and thru the Provincial Sheriff of Bataan on the proceeds of the extra-judicial sale of the mortgaged properties of defendants Sta. Marias'' in view of which "we (Philippine National Bank, have now released the Associated Insurance & Surety Co.. Inc. of its joint obligation with Maximo Sta. Maria, et al. in the aforementioned case." [7]

This should have put an end to the matter and Banzon's two lots therefore restored fully to his ownership, but for certain complications involving the intervention of the other private respondents, the spouses Pedro Cardenas and Leonila Baluyot, and Associated's own unjustifiable actions, as shall presently be seen.

According to the Banzons' petition at bar, sometime in 1965, even before ownership over the two parcels of land belonging to the Banzons could be consolidated in the name of Associated (since the judgment was "for the benefit of the Philippine National Bank" and it had not discharged its surety's liability to the bank), Associated "in clear collusion and confederation with (respondent) Pedro Cardenas, allowed and permitted the latter to execute and levy on one of the two parcels of land (that covered by T.C.T. No. 39685-Rizal, Lot 6, Block No. 176 of subdivision plan Psd-2896, G.L.R.O. Rec. No. 11267) for a judgment debt of P5,100.00 (of Associated in favor of Cardenas)[8] notwithstanding that the property in question was worth P130,000.00 more or less, and further notwithstanding the fact that said respondent (Associated) knew the property was merely being held in trust by it for the benefit of the Philippine National Bank and therefore, not being the legal owner thereof, it cannot validly dispose of it in any manner." [9] Respondent Cardenas being allegedly the lone bidder in the auction sale for execution of his P5,100.00 judgment against Associated was awarded the property in full satisfaction of his judgment, and eventually succeeded in having Banzon's title cancelled and a new one, T.C.T. No. 8567-Caloocan City issued thereto in his name, notwithstanding that Associated's right thereto was still sub-judice in Associated vs. Banzon, to be resolved much later yet by this Court's decision of November 29, 1968. Associated made no move to question or challenge this action of Cardenas, notwithstanding an order for its liquidation and dissolution issued on December 31, 1965 by the Court of First Instance of Manila and eventually affirmed by this Court per resolution of June 20, 1968 in G.R. No. L-38934. Nor did Associated make any effort to resist execution on said property of Banzon's, knowing as it did that its interest in said property was impressed with a trust character since the clear tenor and intent of the judgment granted against Banzon nominally in its favor but expressly "for the benefit of the Philippine National Bank" was to make the execution and operation of the judgment contingent or conditioned, upon Associated's being made or compelled to pay the bank, which contingency never materialized.

The Cardenas, spouses thereafter filed with the Court of First Instance of Rizal, Caloocan City Branch XII, Reg. Case No. C-211 (LRC Case No. 11267) entitled "Pedro Cardenas, et al., petitioners vs. Antonio Banzon, et al., respondents," to secure possession from the Banzons of the lot covered by T.C.T. No. 8567. A writ of possession was issued in said case on May 21, 1965, but the enforcement thereof was held in abeyance in view of the filing with the same court of Civil Case No. C-531 entitled "Antonio Banzon, et al. vs. Pedro Cardenas and Leonila Baluyot, Associated Insurance and Surety Co., Inc. and Benito Macrohon." Banzon's complaint in Civil Case No. C-531 was, however, dismissed on August 6, 1969, on the ground that "the matter of the legality of the transfer of ownership of the property in question from the plaintiff to the Associated Insurance & Surety Co., Inc., has been upheld by the Supreme Court in its decision promulgated on November 29, 1968, and consequently the transfer to the spouses Pedro Cardenas and Leonila Baluyot must perforce be considered also as valid and legal."

Consequently, respondent Cardenas filed a motion on October 13, 1969, in Case No. C-211 for the issuance of an alias writ of possession; this was granted on October 23, 1969. The alias writ was served on Banzon, who refused to vacate the premises and to remove the improvements thereon. In view of this, an order was issued on December 9, 1969, for the issuance of a writ of demolition, but its enforcement was held in abeyance because a temporary restraining order, later changed to a writ of preliminary injunction, was issued by the Court of Appeals on December 13, 1969, in view of the filing by the Banzons with the said appellate court of a petition for

injunction.[10]

On February 28, 1970 the Court of Appeals rendered judgment dismissing the petition because it found the same to be allegedly "merely a device to prevent the execution of a final judgment by the filing of a new suit based upon the same grounds which have already been interposed and passed upon in the case where the final judgment had already been rendered * * *." Cardenas thereafter filed a motion for the enforcement of the order of demolition and writ of possession previously issued in Reg. Case No. C-211. On March 13, 1970, Judge Fernando A. Cruz of the Court of First Instance of Caloocan City Branch XII, issued an order granting the motion.[11]

On March 13, 1970, the Banzons having learned of the bank's release to Associated as of February 20, 1970, supra, accordingly filed a complaint for reconveyance and damages with the Court of First Instance of Manila against respondents Associated and the Cardenas spouses.[12] In their complaint, the Banzons impute bad faith, collusion and confederation between Associated and the Cardenases with regard to the latter's prematurely obtaining T.C.T. No. 8567 covering one of Banzon's lots in their name. The Banzons therein alleged for the first time their new cause of action based on the subsequent development that the Philippine National Bank had collected directly on February 16, 1970 from the principal debtor Sta. Maria the loan guaranteed by Associated (which amounted only to a principal of P15,446.44 as of August, 1963, excluding interests or just one-half of the premature judgment for P30,257.86, excluding interests obtained by Associated six (6) years earlier in 1957 against Banzon in trust and for the benefit of the bank allegedly as the amount owed by Sta. Maria and to be discharged by Associated, which Associated never discharged);[12a] and that the bank, per its letter of February 20, 1970 had therefore absolutely released Associated of any liability on its surety undertaking.[12b] The Banzons therefore prayed for the return and reconveyance of their two parcels of land covered by T.C.T. No. 8567 (in Cardenas' name) and No. 53759 (still in Banzon's name), in discharge of Associated's implied trust not to unjustly enrich itself and appropriate Banzon's properties at absolutely no cost to itself.

On March 16, 1970, the Sheriff of Caloocan City served upon the Banzons copy of the aforesaid order giving them until March 20, 1970, within which to deliver possession of the parcel of land covered by T.C.T. No. 8567, and to remove the improvements thereon; otherwise, the said sheriff would proceed to enforce the same.

Petitioners Banzons therefore came to this Court on March 20, 1970, by means of the present petition for injunction. At petitioners' instance, the Court on March 24, 1970 restrained respondents and their representatives from enforcing the questioned writ of execution and order of demolition, and respondent Associated from disposing in any manner of its alleged rights and interests over the two lots in question.

Respondents Cardenas spouses filed in due course their Answer dated April 2, 1970, admitting in effect the antecedents of the case as recited above, citing even this Court's decision of November 29, 1968 in Associated vs. Banzon, supra, which affirmed the money judgment in favor of Associated "for the benefit of the Philippine National Bank[13] but alleging that ownership to one parcel (Lot 6, Block 176 covered by T.C.T. No. 8567) "has already absolutely and irrevocably vested in herein respondent Pedro Cardenas." [14] Said respondents further averred that "there is no longer anything that may be restrained," since per the sheriff's return of March 23, 1970, he enforced on said date respondent court's writ of possession and demolition order and demolished all the improvements erected in the premises.[15]

To this petitioners countered that "the special deputy sheriff of Rizal did succeed in demolishing the building erected on the lot in question. This he did notwithstanding the fact that he has been duly informed by petitioner Banzon of the existence of a restraining order in this case. However, after accomplishing his purpose, he and his men left the premises." [16]

Most relevant, however, was a pleading entitled "Explanation and Manifestation" dated April 25, 1970 filed by

Atty. Feliberto Castillo, as former counsel for Associated, "in the interest of justice and in the name of truth and as an officer of the Court," wherein with respect to the summons for Associated received by his law office, he manifests:

"3. That he is entertaining a serious doubt whether he could still represent the Associated Insurance & Surety Co., Inc. in view of the fact that in Civil Case No. 56995 of the Court of First Instance of Manila, entitled 'Republic of the Philippines, represented by the Insurance Commissioner vs. Associated Insurance & Surety Co., Inc.' the said Court of First Instance of Manila ordered the liquidation and dissolution of this surety company, which was appealed to the Court of Appeals, CA-G.R. No. 37985-R, but affirmed the decision of the Court of First Instance of Manila in a decision promulgated on January 3, 1968, which was appealed again by the Associated Insurance & Surety Co., Inc. to the Honorable Tribunal, G.R. No. L-28934, also affirming the decision of the Court of Appeals by denying the petition for a writ of certiorari in its resolution of June 20, 1968, and therefore, since then, the decision of the Court of First Instance of Manila ordering the liquidation and dissolution of the Associated Insurance & Surety Co., Inc. became final and executory, and thereafter, the Insurance Commissioner demanded the surrender of books, documents and other papers of this surety company, and as a matter of fact, books, documents and other papers salvaged were already surrendered to the Insurance Commissioner for liquidation of this company, so that by virtue thereof, the Insurance Commissioner being the liquidator appointed by the court to liquidate the Associated Insurance & Surety Co., Inc., is now the legal representative of this surety company to whom a copy of this paper will be furnished." [17]

In his "Explanation and Manifestation," Atty. Castillo further states that his law office was the counsel for Associated in the cases involved in these proceedings, viz, Civil Case No. 31237 of the Court of First Instance of Manila, Case No. 3885, G.L.R.O. Record No. 11267 of the Court of First Instance of Rizal, for consolidation in Associated's favor of T.C.T. No. 29685-Rizal and T.C.T. No. 53759-Rizal, and in G.R. No. L-23971 of the Supreme Court, Associated vs. Banzon, supra, affirming on November 29, 1968 the Rizal court's judgment for consolidation; and

- That since Associated was ordered liquidated and dissolved by the Manila court of first instance in Civil Case No. 56995, as affirmed by the Court of Appeals in CA-G.R. No. 37985-R, which became final upon this Court's denial of review per its resolution of June 20, 1968 in G.R. No. L-28934, the Insurance Commissioner as the appointed liquidator of Associated is the legal representative thereof who may duly act for Associated and upon whom summons should be served;
- That even before the promulgation of the Supreme Court decision on November 29, 1968 in Associated vs. Banzon he, as counsel for Associated, never attempted to secure new titles for his said client, considering that its ownership over the parcel of land covered by them was then "still sub judice;"
- That even after the promulgation of the said Supreme Court decision, he never attempted to secure new titles for his client, because by that time Associated had already been ordered dissolved and liquidated, hence, to be represented in all instances by the Insurance Commissioner as liquidator;
- That he wonders how respondent Pedro Cardenas was able to secure T.C.T. No. 8567 (formerly T.C.T. No. 39685-Rizal) in his name in 1965, when Associated, which really owed Cardenas a certain sum, could only secure new titles over the parcels of land after not before November 29, 1968, when the Supreme Court's decision in G.R. No. L-23971 was promulgated; and that in his opinion, the issuance to respondent Cardenas of T.C.T. No. 8567 was "fraudulent and irregular for being without basis when the same was issued, so that the register of deeds of Caloocan City committed some sort of mistakes or negligence in issuing this title to respondent Pedro Cardenas, and as such, this T.C.T. No. 8567 is null and void and without force and effect and calls for an investigation of the guilty parties responsible for the issuance of this T.C.T. No. 8567 in the name of respondent Pedro Cardenas, who might have committed some falsifications;" (for indeed how could

Cardenas cause title to said lot to be transferred to Associated for him in turn to levy against it for his P5,100 judgment against Associated, when Associated's case against Banzon for such transfer and consolidation of title was then still pending appeal before this Court, and Associated's judgment against Banzon was one of trust, expressly therein declared to be "for the benefit of the Philippine National Bank?"[18] and

– That "anybody who will attempt to offer the said parcel of land for sale would be committing a crime as the disposition of the same belongs exclusively to the Insurance Commissioner who is the liquidator of the Associated Insurance & Surety Co., Inc.; consequently, the petitioner should not entertain any worry as said parcel of land is not being disposed of not only because the power to sell the same exclusively belongs to the Insurance Commissioner, but also because the Associated Insurance & Surety to., Inc. has no titles yet over these parcels of land as it did not attempt to secure any even before and after the promulgation of the decision of the Honorable Tribunal in G. R. No. L-23971 in view of the circumstances earlier explained."

On May 11, 1970, we issued summons on the Insurance Commissioner as liquidator of Associated to answer the petition. In her answer filed on May 29, 1970, the Acting Insurance Commissioner through the Solicitor General disclaimed knowledge of practically all the allegations of the petition for lack of knowledge or information sufficient to form a belief as to their truth, manifesting that she first learned of the material facts averred in the petition when she received copy of Atty. Castillo's "Explanation and Manifestation", because the records and documents pertinent to this case were not among those surrendered to her, and affirming she is the liquidator of Associated by virtue of the Manila court's order dated December 31, 1965 of liquidation and dissolution of said corporation, as follows:

"3. That the herein Acting Insurance Commissioner is the liquidator of Associated Insurance & Surety Co., Inc. by virtue of an order of liquidation and dissolution of said corporation dated December 31, 1965, by the Court of First Instance of Manila in Civil Case No. 56995, which decision was affirmed on appeal by the Court of Appeals in its decision (CA-G. R. No. 37985) dated January 3, 1968, which decision was again affirmed on appeal by this Honorable Tribunal when it denied the petition for a writ of certiorari in its Resolution of June 20, 1968 (G. R. No. L-38934) and which on July 9, 1968, became final and executory;

"4. That by virtue of the aforesaid decision, the Insurance Commissioner as liquidator of Associated Insurance & Surety Co., Inc., is vested by authority of law with the title to all of the property, contracts, and rights of action of said corporation as of the date of the order of liquidation (Sec. 175-C, par. 3 of the Insurance Act, as amended);

"5. That any subsequent sale or disposition of the property of said corporation without the knowledge and consent of the herein Acting Insurance Commissioner and approval by the Liquidation Court is contrary to law and null and void;

"6. That after the aforesaid order of liquidation, and dissolution became final and executory, the Acting Insurance Commissioner demanded for the surrender of all the books, documents and properties of Associated Insurance & Surety Co., Inc. However, the records and documents pertinent to the above-entitled case were not among those surrendered to the Insurance Commissioner and it was only upon receipt of the 'Explanation and Manifestation' of Atty. Feliberto Castillo, dated April 25, 1970, and the present 'Petition' that she came to know for the first time of the alleged facts averred in this case."[19]

A "Motion to Dissolve Temporary Restraining Order and to Dismiss Petition" was filed on February 12, 1971, by respondents spouses Cardenas and Baluyot. They contend that the restraining order issued by this Court should be dissolved, and the petition itself, insofar as they are concerned, be dismissed, because the petition is predicated on petitioners' complaint for reconveyance and damages in Civil Case No. 79244 before Branch VIII of the Court of First Instance of Manila, and the said court issued an order on October 28, 1970, dismissing the said complaint with respect to defendants therein Cardenas and Baluyot, which dismissal was not appealed and became final and

executory on January 5, 1971, per entry of judgment attached to the motion. Consequently, according to these respondents, the temporary restraining order issued by this Court enjoining the enforcement of the writ of execution and the order of demolition in Reg. Case No. C-211 of the Court of First Instance of Rizal, has become inoperative and without any legal basis, the present petition has lost its legal basis, and petitioners have no more cause of action against respondents Cardenas and Baluyot. The said order of dismissal of the complaint against these respondents was issued pursuant to Section 5, Rule 16 of the Rules of Court, after a preliminary hearing on the affirmative defenses of bar by prior judgment and lack of cause of action set up by said respondents in their answer, with the lower court opening that petitioners' action was already barred by the prior judgments of this Court of November 29, 1968 in *Associated vs. Banzon* and of the Court of Appeals of February 28, 1970 in *Banzon vs. Hon. Fernando Cruz*, supra.[20]

The Solicitor General filed on March 29, 1971 on behalf of the Insurance Commissioner as liquidator of Associated a strong opposition to the motion to dissolve the restraining order and dismiss the petition.[21] The commissioner-liquidator after complaining that "she is still demanding for the surrender of all the books, documents and properties of Associated" and that "it was only upon receipt on March 11, 1971 of the voluminous records of the cases handled by counsel Feliberto V. Castillo for (Associated) that (her) undersigned counsel have verified and confirmed the truth of the status of the different cases," contends inter alia as follows:

"18. That, however, during the pendency of the aforesaid appeal of petitioner Antonio R. Banzon with this Honorable Tribunal and while the case was still sub-judice, particularly on February 8, 1964, the herein respondent Pedro Cardenas as winning party in a case entitled 'Pedro Cardenas vs. Victoria Vda. de Tengco and Pablo Tuazon,' Civil Case No. 36174, Court of First Instance of Manila, and where the Associated Insurance and Surety Co., Inc. was surety for the defendants therein, executed and levied upon one of the parcels of lands involved in the aforesaid appeal. Ultimately, Pedro Cardenas was able to acquire the land in question (Lot No. 6, Block No. 176, then covered by T.C.T. No. 39685) as highest bidder, for the judgment debt of defendants in said action, plus incidental expenses for the sum of P5,100.00 only;

"19. That subsequently thereafter, said respondents Cardenas, thru some scheme and devise, succeeded in having the title of said parcel of land transferred in their names under T.C.T. No. 8567, Registry of Deeds of Caloocan City; on May 5, 1965, at a time when the Associated Insurance & Surety Co., Inc. had not yet earned the authority to consolidate in its name said property, as the case was then pending with this Honorable Tribunal. As alleged in paragraph 18 hereof, the question of consolidation was resolved by this Honorable Tribunal on February 28, 1968;[21a]

"20. That by the nature of the decision in Civil Case No. 31237, CFI, Manila, as alleged in paragraph 15 hereof, the property or sums of money recovered from defendants therein shall be reserved for the benefit of the Philippine National Bank for the purpose of paying the principal debtor's (Maximo Sta. Maria's) obligation therein, and consequently, the Associated Insurance & Surety Co., Inc. shall hold the property in question or the sums recovered in said action, in trust and for the purpose of paying the aforesaid obligation of Maximo Sta. Maria.[22]

"21. That the Associated Insurance & Surety Co., Inc. failed to pay from its own funds under its surety undertaking, nor from funds realized from the property levied upon by virtue of the decision in Civil Case No. 31237, CFI, Manila, but on the other hand, the principal debtor Sta. Maria paid his own obligation with the Philippine National Bank thus, releasing it (Associated Insurance & Surety Co., Inc.) from its obligation under the suretyship undertaking with respect to said obligation of Maximo Sta. Maria, and similarly herein petitioner Antonio R. Banzon was released from his obligation as co-indemnitor in said undertaking;

"22. That in fairness to petitioners Antonio R. Banzon and Rosa Balmaceda, the two parcels of land executed and levied upon by virtue of the decision in Civil Case No. 31237, Court of First Instance of Manila, deserve to be reconveyed to them;

"23. That one of the lots involved, namely, Lot No. 6, Block No. 176 covered by T.C.T. No. 856 Registry of Deeds of Caloocan City, in the names of the present respondents Pedro Cardenas and Leonila Baluyot, being one of the two parcels of lands levied upon in Civil Case No. 31237 but transferred to said respondents under dubious circumstances and patently unauthorized by law, should be ordered reconveyed to the Associated Insurance Co., Inc. through the Insurance Commissioner for the purpose stated in the next preceding paragraph, as the transaction on the transfer of said parcel of land to them is null and void from the very beginning." [23]

Petitioners likewise oppose the motion of the Cardenases. They contend that the present petition is not solely predicated on their complaint for reconveyance and damages in Civil Case No. 79244 for, as admitted by the Insurance Commissioner, they are entitled to the reconveyance of the lot covered by T.C.T. No. 8567 and for contribution or indemnification for damages which they may recover from Associated; that respondents Cardenases secured said title fraudulently and irregularly without any legal basis, hence, said title having been anomalously issued, is null and void and without force and effect, and, that, as stated by the Insurance Commissioner-liquidator, in fairness and justice to petitioners, the two parcels of land levied in favor of Associated by virtue of the decision in Civil Case No. 31237 should be reconveyed to them; and that to dissolve the temporary restraining order and to dismiss the present petition would leave petitioners without a legal remedy.

In a minute resolution dated April 19, 1971, the Court denied the said motion to respondents Cardenas and Baluyot "to dissolve temporary restraining order and to dismiss petition."

1. The immediate objectives of this petition are: (a) to enjoin respondent Judge Fernando Cruz of the Court of First Instance of Rizal, Caloocan City Branch, and respondents Pedro Cardenas and Leonila Baluyot, and their representatives, from enforcing the writ of execution and order of demolition issued by said respondent Judge in Reg. Case No. C-211 in relation to the lot covered by T.C.T. No. 8567; and (b) to enjoin respondent Associated from disposing its alleged rights and interests in the two lots covered by T.C.T. No. 8567 and T.C.T. No. 53759, the injunction in both cases to be made effective during the pendency of the reconveyance case, Civil Case No. 79244, filed by petitioners as plaintiffs before the Manila court of first instance.

The real and substantive objectives of the petition are to seek the rightful restoration and reconveyance to petitioners Banzons of their two Caloocan city lots, covered by T.C.T. 53759 (still in Banzon's name, but on the back whereof is annotated the sheriff's final deed of sale in favor of Associated) and by T.C.T. No. 8567 (in the name of respondents Cardenases) on the fundamental ground that Associated's levy in execution of said lots was in trust for the benefit of the Philippine National Bank for the purpose of paying the bank the loan obligation of Maximo Sta. Maria which Associated had guaranteed as surety and against which liability Banzon in turn as indemnitor had undertaken to indemnify and hold harmless Associated.

Now, the basic 1957 judgment of the Manila court sentencing Banzon to pay Associated a total of P30,257.86 excluding interest, "for the benefit of the Philippine National Bank" expressly made of record the said court's intent and disposition that the execution and operation of its judgment against Banzon were contingent and conditioned upon Associated as plaintiff-surety actually paying or being made or compelled to pay the bank-creditor an equivalent amount as guaranteed by it. That this is so is made more evident when we consider the provisions of Article 2071 of the Civil Code which permit the surety to file such an advance suit against the principal debtor (not against an indemnitor such as Banzon) only to obtain release from the guaranty or security against the danger of the debtor's insolvency. Where the debtor directly discharged his loan obligation to the bank which in turn released Associated from its suretyship liability without Associated having incurred a centavo of liability, it is indisputable that Associated in turn would necessarily release Banzon as indemnitor and the basic 1957 judgment would be inoperable and unenforceable against Banzon.

When Associated nevertheless prematurely and contrary to the intent and condition of the basic 1957 judgment levied in execution on the two Caloocan City lots of Banzon, the interest it acquired was clearly impressed with a trust character. Such acquisition of Banzon's properties by Associated was effected, if not through fraud[23a] on Associated's part, certainly through mistake[23b] and therefore, Associated was "by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes" by virtue of Article 1456 of the Civil Code[23c] since Associated not having paid nor having been compelled to pay the bank had no right in law or equity to so execute the judgment against Banzon as indemnitor. Had there been no fraudulent concealment or suppression of the fact of such non-payment by Associated or a mistaken notion just assumed without factual basis that Associated had paid the bank and was thus entitled to enforce its judgment against Banzon as indemnitor, the writ for execution of the judgment against Banzon's properties would not have been issued.[23d]

Furthermore, Associated's conduct, upon being sued by the Philippine National Bank directly with the principal debtor Sta. Maria for collection of the debt[23e] and sentenced by the Pampanga court of first instance in 1963 (which it did not appeal) to pay the debt in the much lesser amount of only P15,446.44, excluding interests, in not so discharging its liability notwithstanding that it had already executed its 1957 judgment against Banzon as indemnitor and taken in execution Banzon's two properties, was indeed rank fraud. Associated therefore stands legally bound by force of law to now discharge its implied trust and return Banzon's properties to him as their true and rightful owner.

The obligation imposed upon Associated as implied trustee to so restore Banzon's properties becomes even more compelling when it is considered that in the premature execution sale by virtue of the basic 1957 judgment, Associated ostensibly was the highest bidder therefor applying its purported judgment credit of P41,000.00 when in law such judgment was not subject to execution since the condition of Associated as surety being made to pay the bank to make the judgment operable and enforceable had not materialized and in fact. Associated not having paid anything to the bank did not possess such purported judgment credit of P41,000.00, nor did it put out a single centavo for which it could hold Banzon answerable and therefore take Banzon's properties in execution and satisfaction thereof. Actually, as already indicated above, the principal debt of the bank's debtor, when directly collected by the bank six (6) years later, amounted merely to 1/2 the amount or P15,446.44 as of August, 1963, excluding interests:[23f] As already stated above, Associated did not pay even this much lesser amount, notwithstanding the Pampanga court's judgment against it in the suit directly filed by the bank.

Finally, it would be an outrage on simple justice and iniquitous unjust enrichment if a surety such as Associated, after taking title in execution to the indemnitor's properties in order to protect or reimburse itself from liability to the creditor for the debt guaranteed by it, were to be allowed to retain ownership of the properties even though it did not incur or discharge its liability at all, 'since it succeeded in evading payment to the creditor who thereafter collected the debt directly from the debtor. Thus, the law (Article 1456, Civil Code) impresses properties thus acquired with a trust character and constitutes the erring surety as "trustee of an implied trust for the benefit of the person from whom the property comes," in this case, Banzon as the true and rightful owner of the properties.

2. As Cardenas in levying in turn for satisfaction of his P5,100.00 judgment against Associated on one of Banzon's lots acquired only whatever interest Associated had in the lot, and with the knowledge that Associated's basic 1957 judgment against Banzon was "for the benefit of the Philippine National Bank" and hence Associated's interest in the Banzon properties was impressed with a trust character, subject to the obligation of Associated as implied trustee to return the properties to Banzon, the trust character of the lot titled by Cardenas necessarily passed to him. Cardenas could not claim actual or absolute ownership of the lot so titled but could only hold the same as trustee, like Associated as his causante or predecessor.

The respondents Cardenas' pleadings of record show clearly that they were fully aware of these vital antecedents and premises of the suits between Associated and the Banzons. In their memorandum, they cite the Manila court of first instance's basic decision in Civil Case No. 31237 "condemning defendants to pay jointly and severally upon (sic) plaintiff (Associated) but for the benefit of the Philippine National Bank" [24] the several amounts sought by Associated, as surety, totalling P30,257.86. As far as their own claim against Associated is concerned, they likewise recite in their memorandum that

"On April 29, 1959, then Judge (now Justice) Jesus Perez of the Court of First Instance of Manila rendered a decision in Civil Case No. 36194, entitled 'Pedro Cardenas vs. Victoria Vda. de Tengco, et al.,' ordering the defendants, including the Associated Insurance & Surety Co. Inc., as surety, to pay certain sums of money to Pedro Cardenas. The liability of the Associated Insurance & Surety Co. Inc., was affirmed by the Court of Appeals in a Decision promulgated on October 30, 1963, in CA-G.R. No. 25227-R. Consequently, pursuant to a writ of Execution issued on February 8, 1964, the City Sheriff of Caloocan sold on March 23, 1964 at a public auction to Pedro Cardenas, the highest and only bidder, all the rights, interests, claims and title' of the judgment-debtor Associated Insurance & Surety Co. Inc., over the property plus the improvements thereon covered by Transfer Certificate of Title No. 39685 (one of the properties acquired from Antonio Banzon). The property not having been redeemed within the one year period, a Deed of Absolute Sale was issued in favor of Pedro Cardenas on April 2, 1965. On April 23, 1965, Pedro Cardenas filed a petition with the Court of First Instance of Rizal, Branch XII, Caloocan City, in Registration Case No. C-211 (LRC Rec. No. 11267), entitled 'Pedro Cardenas, Petitioner,' for the issuance of a new transfer certificate of title over the property in question and to declare null and void the one previously issued. On May 5, 1965, a Transfer Certificate of Title was issued by the Register of Deeds of Caloocan City in the name of Pedro Cardenas pursuant to the order of the court in aforesaid Registration Case No. C-211; dated May 3, 1965, as amended." [25]

It is obvious that since what Cardenas acquired in his execution for his P5,100 judgment against Associated was only 'all the rights, interests, claims and titles of the judgment-debtor (Associated) over the property * * * (one of the properties acquired from Antonio Banzon)' and Associated's rights, if they could be so denominated, over Banzon's properties were merely those of a trustee, *supra* and Cardenas thereby acquired no absolute rights, interests, claim and title" at all but Associated's obligation as trustee to restore Banzon's lawful properties to him.

3. As a point of law, even though under Associated's suretyship agreement guaranteeing Sta. Maria's crop loans with the bank, it was permitted, supposedly for its protection, to proceed judicially against the principal debtor and indemnitors even prior to the surety's making payment to the creditor bank, Article 2071 of the Civil Code regulates such relations' and provides that in such cases, the surety's right is against the principal debtor and that "in all these cases, the action of the guarantor is to obtain release from the guaranty, or to demand a security that shall protect him from any proceedings by the creditor and from the danger of insolvency of the debtor."

Associated thus did not even have any valid cause of action against Banzon as its indemnitor, but could proceed only against Sta. Maria as the principal debtor. And even as against such principal debtor, it could not prematurely demand payment even before it had paid the creditor, its action being limited only for the purpose of obtaining release from the guaranty or a security against an eventual insolvency of the debtor. As was emphasized by Mr. Justice Reyes for the Court in *General Indemnity Co. Inc. vs. Alvarez*, [26] while a guarantor may under Article 2071 of the Civil Code proceed against the principal debtor, even before having paid, when the debt has become demandable, "(T)he last paragraph of this same article, however, provides that in such instance, the only action the guarantor can file against the debtor is 'to obtain release from the guaranty, or to demand a security that shall protect him from any proceeding by the creditor and from the danger of insolvency of the debtor.' An action by the guarantor against the principal, debtor for payment, before the former has paid the creditor, is premature."

4. The realization of the Banzons' rightful objectives in law and equity as thus restated has somewhat been

hampered and beclouded by the ineptitude and sorry neglect with which they and/or their counsel have pursued their remedies in the various suits brought by them. To cite the latest instance, the pending suit filed by them in the Manila court of first instance, Civil Case No. 79244, is from the record the first real case that they have properly filed for reconveyance of their two Caloocan City lots based on their new cause of action that with the debtor's direct payment to the bank, Associated had been released as surety and Banzon consequently likewise released as Associated's indemnitor, and therefore Associated in discharge of the implied trust under which it executed the basic 1957 judgment "for the benefit of the Philippine National Bank" against Banzon was now called upon to discharge such trust and reconvey and restore Banzon's properties to him.

Yet Banzon filed no appeal from the Manila Court's dismissal of his complaint against the Cardenas spouses for reconveyance of the lot wrongfully titled by the latter on the lower court's mistaken concept that this Court's decision of November 29, 1968 in *Associated vs. Banzon*; supra, constituted *res judicata* and apparently allowed such dismissal to become final. In reality, since Associated never had to pay the bank, Banzon's two lots, which had been levied upon prematurely under Associated's judgment against Banzon and were therefore held by it in implied trust for Banzon by force of law, "deserve to be reconveyed to them" – in the very words of the insurance commissioner, who alone and officially represents and acts for Associated as liquidator.

As manifested by Associated's former counsel even when Associated was acting on its own unauthorizedly and in violation of law, since an order for its liquidation and dissolution had already been issued by the Manila court since December 31, 1965, he, as Associated's counsel, never attempted to transfer Banzon's titles to Associated since the question sub-judice, before this Court and resolved only per its decision in *Associated vs. Banzon* of November 29, 1968, as of which time, this Court had already previously affirmed on June 20, 1968 in G.R. No. L-28934, the Manila court's dissolution and liquidation order against Associated thus removing all doubt that only the Insurance Commissioner as liquidator could act in any and all matters for Associated.[27]

5. Under Sec. 175-C, paragraph 3 of the Insurance Act as amended,[28] the Insurance Commissioner as liquidator of Associated was vested by authority of law with the title to all of the property, contracts and rights of action of Associated as of the date of the judicial order of liquidation, and any sale or disposition of Associated's properties or rights without the knowledge and consent of the insurance commissioner as liquidator and without the approval by the liquidation court is contrary to law and null and void.

Accordingly, petitioners Banzons are, as against their and their counsel's neglect and inattention, nevertheless saved from the otherwise fatal consequences of the invoked final dismissal of their complaint against the Cardenas in Civil Case No. 79244 of the Manila court for recovery of the lot wrongfully titled in the Cardenas' name per T.C.T. No. 8567. Since in all the litigations subsequent to Associated's prematurely obtaining in the Manila court of first instance in Civil Case 31237 the basic 1957 judgment as surety against Banzon as a mere indemnitor to cover the principal debtor Sta. Maria's demandable loans to the bank and thereafter levying in execution on Banzon's two Caloocan City lots, notwithstanding that such judgment was expressly held to be in trust and for the benefit of the bank, the insurance commissioner as liquidator of Associated and therefore an indispensable party was never impleaded and therefore there could be no final determination of said actions. Under Rule 3, section 7, indispensable parties must always be joined either as plaintiffs or defendants, for the court cannot proceed without them, and hence all judgments and proceedings held after the liquidation and dissolution order against Associated became void for lack of an indispensable party in the person of the insurance commissioner-liquidator. The insurance commissioner as liquidator of Associated by authority of law was indisputably an indispensable party with such an interest in the controversies affecting the judgment for Associated (against Banzon) and against Associated (in favor of Cardenas) that a final decree would necessarily affect its rights (administered by the Commissioner in the public interest and for the public's protection) so that

the courts could not proceed therein without the commissioner-liquidator's official presence.

6. The wrongful dismissal by the Manila court of the Banzons' reconveyance suit, Civil Case No. 79244, as against the Cardenases thus does not produce what would otherwise have been fatal consequences due to the Banzons' failure to appeal from such dismissal.

Their reconveyance case as against Associated as principal defendant remains pending in court. And the insurance commissioner us liquidator of Associated, now that she is fully aware of the status of these antecedent cases after she finally received on March 11, 1971 the voluminous records thereof which had hitherto not been surrendered to her office despite demands therefor, is called upon to appear for Associated in the said case, if she has not as yet been duly impleaded as such liquidator. With the insurance commissioner, as liquidator of Associated and an indispensable party now in the case, the said reconveyance suit may now proceed anew and the Cardenas spouses caused by the liquidator to be duly impleaded anew for they are also indispensable parties insofar as the insurance commissioner-liquidator's claim on behalf of Associated to the lot covered by T.C.T. No. 8567 issued in their name is concerned. Herein petitioners seek principally in the said case the reconveyance to them by Associated of their two parcels of land covered by T.C.T. No. 8567 and T.C.T. No. 53759, as acquired in execution by Associated, and thereafter, with respect to the lot covered by T.C.T. No. 8567, by the Cardenases, by virtue of the trust character impressed upon them and Associated's duty as implied trustee to restore said properties to the Banzons.

Considering that the insurance commissioner herself, who now legally can alone represent Associated as liquidator, has herein recognized such trust character and has expressed the belief that the said lot, no less than the other lot covered by T.C.T. No. 8567, should, in Justice to petitioners, be reconveyed to them on account, among others, of petitioner Banzon's release from his obligation as indemnitor by virtue of the principal debtor's subsequent payment of his obligation with the Philippine National Bank which likewise released Associated from any liability as surety, the present petition should therefore be granted in the interests of justice and equity so as to enable the insurance commissioner-liquidator in due course to discharge the trust of reconveying Banzons' properties to them.

7. The circumstances that respondents Cardenases, insofar as the lot wrongfully claimed by them, caused the Caloocan City special deputy sheriff to enforce on March 23, 1970 respondent court's challenged order of demolition and writ of possession on the very day that this Court ordered the issuance of a restraining order against the enforcement of said challenged order and writ, and notwithstanding that said sheriff was duly advised by Banzon of the petition at bar having been filed on March 20, 1970, does not make the restraining order in any manner moot. The Court does not look with favor upon parties "racing to beat an injunction or restraining order" which they have reason to believe might be forthcoming from the Court by virtue of the filing and pendency of the appropriate petition therefor. Where the restraining order or preliminary injunction are found to have been properly issued, as in the case at bar, mandatory writs shall be issued by the Court to restore matters to the status quo ante.[29]

In the case at bar, with the insurance commissioner as liquidator of Associated, recognizing through the Solicitor General that the Banzons' two lots wrongfully taken from them by Associated's premature actions should be reconveyed to them, there is established a clear and indubitable showing on the record that the petitioners are entitled to a writ restoring the status quo ante. A mandatory writ shall therefore issue commanding respondent court to forthwith restore petitioners to their possession of Lot 6, Block 176, covered by T.C.T. 8567 from which they have been removed by enforcement of said respondent court's enjoined order of demolition and writ of possession dated March 13, 1970, Annex "F" of the petition. As to petitioners' building thereon claimed to be worth P10,000.00 (but countered by Cardenas to be a "mere barong-barong"[30]), respondent court shall at

Banzon's petition cause respondents Cardenas to restore the demolished building or pay Banzon the determined value thereof. As to the fruits of possession of the land, with Cardenas acknowledging that he has been leasing the same to a third person at P200.00 a month,[31] respondents Cardenas shall forthwith pay to petitioners Banzons the whole amount of rentals so received by them to the time that possession of the lot is effectively restored to petitioners. By the very nature of this mandatory writ, the same shall be immediately executory upon promulgation of this decision.

WHEREFORE, the petition for a permanent injunction, during the pendency of Civil Case No. 79244 of the Court of First Instance of Manila against the disposition in any manner of the two parcels of land subject of said case other than their reconveyance to petitioners as the true and rightful owners thereof as expressly recognized by the insurance commissioner as liquidator of Associated is hereby granted. In lieu of the permanent injunction against enforcement of respondent court's order dated March 13, 1970 in Case No. C-211 thereof ordering the delivery of possession of the property covered by T.C.T. No. 8567 to respondents Cardenas and demolition of petitioners Banzons' improvements thereon, (which were prematurely carried out by respondent court's sheriff on March 23, 1970) a writ of mandatory injunction commanding respondent court to forthwith restore the status ante quo and to restore petitioners Banzons to full possession of the property and enjoyment of the fruits and rentals thereof under the terms and conditions stated in the next preceding paragraph is hereby issued, which shall be immediately executory upon promulgation of this decision. With costs against respondents Pedro Cardenas and Leonila Baluyot.

This decision is without prejudice to such civil and criminal liability as the officers of the defunct Associated Insurance & Surety Co. Inc. may have incurred by virtue of their acts of commission and omission which have resulted in grave prejudice and damage to petitioners as well as to the public interest, as in the suppression from and non-surrender to the Insurance Commissioner as liquidator of the records of the relevant antecedent cases, and in the possible misrepresentation to the courts therein that Associated had duly discharged to the bank its liability as surety and could therefore lawfully levy on the properties of Banzon as indemnitor, which would have resulted in respondents' unjust enrichment at Banzon's expense. The insurance commissioner is directed to conduct the corresponding investigation for the purpose of filing such criminal and other appropriate actions as may be warranted against the responsible parties. So ordered.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Ruiz Castro, and Fernando, JJ., concur.

Makalintal, Makasiar, and Antonio, JJ., did not take part.

Barredo, J., dissents in a separate opinion.

[1] Civil Case No. 31237 thereof, entitled "*Associated Surety & Ins. Co. Inc., plaintiff vs. Maximo R. Sta. Maria, Antonio R. Banzon and Emilio R. Naval, defendants*"; italics supplied.

[2] Reported in 26 SCRA 268.

[3] This refers to Civil Case No. 31237 of the Manila CFI, *supra*, wherein Associated obtained a money judgment against Banzon et al. "for the benefit of the Philippine National Bank."

[4] Italics supplied.

[5] *Idem*.

[6] Case G. R. No. L-24765, entitled "*PNB, plaintiff-appellee vs. Maximo Sta. Maria et al. defendants. Valeriana, Emeteria, Teofilo, Quintin, Rosario and Leonila, all surnamed Sta. Maria, defendants-appellants*," being the

appeal from the Pampanga CFI's decision in Civil Case 1907 thereof. Reported in 29 SCRA 303.

[7] Annex D, petition.

[8] Cardenas' judgment was as judgment creditor-plaintiff against Victoria Vda. de Tengco and Pablo Tuazon, judgment debtors-defendants in Civil Case No. 36194, CFI of Manila, and Associated issued a counterbond on behalf of said defendants to cover Cardenas' judgment.

[9] Petition, par. X; notes and italics supplied.

[10] CA-G. R. No. 44391-R of the Court of Appeals, entitled "Antonio Banzon and Rosa Balmaceda, petitioners vs. Hon. Fernando Cruz and spouses Pedro Cardenas and Leonila Baluyot, respondents."

[11] Annex "F", petition.

[12] Civil Case No. 79244 of the Manila court of first instance, entitled "Antonio R. Banzon and Rosa Balmaceda, plaintiffs, vs. Associated Ins. & Surety Co., Inc., Pedro Cardenas and Leonila Baluyot, defendants."

[12a] *Supra*, at p. 175.

[12b] *Supra*, at pp. 178-179.

[13] Cardenas' answer, par. 5.

[14] *Idem*, par. 14.

[15] *Idem*, par. 2 of special defenses.

[16] Petitioners' memorandum, pp. 10-11.

[17] Italics supplied.

[18] Note in parentheses supplied.

[19] Italics supplied.

[20] At page 170.

[21] Rollo, pp. 181-182.

[21a] The correct date of the decision is November 29, 1968, *supra*, p. 170.

[22] Italics copied.

[23] Italics supplied, except that on material dates which is copied.

[23] See *Gayondato vs. Treasurer*, 49 Phil. 244, and *Sevilla vs. de los Angeles*, 97 Phil. 875, where legal title to property obtained by fraud or concealment is deemed held in "constructive trust" in favor of the defrauded party who is granted the right to vindicate the property regardless of the lapse of time.

[23b] See *Laureano vs. Stevenson*, 45 Phil. 252, where adjoining property mistakenly included in the neighbor's title was deemed held in implied trust by the neighbor for the real owner.

[23c] Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes." (Civil Code)

[23d] As noted in the early case of *Gaskell & Co. vs. Tan Sit*, 43 Phil. 810, 813-814 (Sept. 23, 1922), Associated's claim against Banzon as indemnitor, without its having paid anything as surety, should not even have been

reduced to judgment: "The most common example of the contingent claim is that which arises when a person is bound as surety or guarantor for a principal who is insolvent or dead. Under the ordinary contract of suretyship the surety has no claim whatever against his principal until he himself pays something by way of satisfaction upon the obligation which is secured. When he does this, there instantly arises in favor of the surety the right to compel the principal to exonerate the surety. But until the surety has contributed something to the payment of the debt, or has performed the secured obligation in whole or in part, he has no right of action against anybody – no claim that could be reduced to judgment.

[23e] In *PNB vs. Sta. Maria, et al.*, G. R. No. L-24765, decided August 29, 1969; see pp. 176-178, and fn. 6.

[23f] *Supra*, at page 6.

[24] *Rollo*, at pp. 84-85.

[25] *Rollo*, at pp. 87-88, emphasis supplied.

[26] 100 Phil. 1059, 1062; italics in last sentence supplied.

[27] *Supra*, at pp. 186-187.

[28] C. A. No. 697, amending sec. 175 of Act 2427 as amended by Act 3152.

[29] See *Comm. of Public Highways vs. San Diego*, 31 SCRA 616, 623 (Feb. 18, 1970).

[30] *Cardenas' Answer*, par. 12.

[31] *Idem*.

DISSENTING OPINION

BARREDO, J.:

To be in the unenviable position of fully agreeing that herein petitioners, the Banzon spouses, are entitled to the reconveyance of their two lots herein involved but at the same time being unable to see my way clear to giving my conformity to the reliefs granted to them in the dispositive portion of the decision penned for the majority by Mr. Justice Teehankee, in his usual meticulous and forceful, almost passionate, style, for which reason I am constrained to submit this dissent, is something that pains me as a man. My feeling as a member of the Court, however, is one of grave concern that in their eagerness to render substantial justice, my brethren have deemed it necessary to indulge in the luxury of premising their conclusions on purported legal propositions which in my humble view are, at least, controversial, going as they do beyond the necessities of the case. The majority apparently considers it excusable to do so on the theory that the "peculiar" circumstances of this case justify ad hoc considerations and disposition. For my part, I feel very strongly that there is no need at all to go that far, because I am fully convinced that actually, the seeming peculiarity of the said circumstances do not demand the radical unusual treatment given to them by my colleagues, and rather than lend my hand in possibly creating erroneous impressions as to the correct rules of procedure and practice which should be observed in situations more or less similar to those herein obtaining and thereby place in doubt the validity and efficacy of the existing normal rules to adequately meet the problems in this case, I prefer to be alone; if alone I have to be, in the views hereunder expressed, believing firmly as I do that no case can be worth risking doing violence to any rule for so long as substantial justice can anyway be adequately extended to and achieved by the parties concerned within the same time as they would otherwise by simply adhering to the orthodox approach already understood and practiced

by the bench and bar. I consider it but proper, if there must be evidence of judiciousness and absolute impartiality in the decisions of the Court, that We avoid as much as possible hueing Our judgment with perceptible tinge of over-excitedness that can be suspected as having blurred Our vision of the true justice in any case We decide.

As I will explain later in this opinion, there are passages and observations in the majority opinion which I cannot share because they extend to areas beyond my limited knowledge of remedial law which naturally I should fear to tread. Withal, they do not square with my sense of justice and propriety. Worse, I believe that the dispositive portion of the decision of the majority is beyond what is warranted in the premises.

For a more accurate and appropriate orientation, and so that the whole case may be reviewed in proper perspective, I believe it is best to restate first the fundamental and relevant facts appearing in the records.

1. The Philippine National Bank (PNB for short) extended credit by way of crop-loans to one Maximino R. Sta. Maria (Sta. Maria for short) sometime in 1952, for which Associated Insurance & Surety Co., Inc. (Associated for short) executed in favor of PNB a number of surety bonds, on the basis in turn of an indemnity agreement in its favor executed by three parties, one of whom was petitioner Antonio R. Banzon, (Petitioners, whether meant to be referred to individually or together, will hereafter be referred to merely as Banzon, since petitioner Rosa Balmaceda does not appear to have had any active role in all the transactions herein involved.) in which agreement there was an express stipulation expressly authorizing the surety to proceed against the indemnitors as soon as demand is made by PNB. (Pars. 1-3, Annex E of Petition.)

2. Because of demands made by the PNB upon Associated, this in turn made demands upon the principal debtor Sta. Maria, and when the latter failed to pay PNB, a suit, Civil Case No. 31237 of the Court of First Instance of Manila, was instituted by Associated against Sta. Maria and the indemnitors, including petitioner Banzon which, after trial allegedly held against Sta. Maria and the other indemnitors only, since Banzon according to him, was not served with summons, ended nevertheless in a judgment against all the defendants, including Banzon, sentencing all of them to pay Associated jointly and severally the amount therein stated. (Pars. 4-7, Id.)

3. Exactly, this judgment read as follows:

"IN VIEW WHEREOF, the Court renders judgment condemning defendants to pay jointly and severally unto plaintiff but for the benefit of the Philippine National Bank the amounts of P6,100.00, P9,346.44 and P14,811.42, all with interest at the rate of 12% per annum from date of the filing of the complaint until fully paid, (b) to pay the amount of P593.76 representing premiums and documentary stamps due on the renewal of the bonds Annexes 'E' and 'C-1'; (c) plus 15% as attorney's fees, and costs. This 15% and the interest to be paid for the benefit of the plaintiff, and no pronouncement as to costs."

4. Upon the said judgment becoming final and executory, Associated caused to be levied upon and sold at public auction the two subject parcels of land covered respectively by T.C.T. Nos. 39685 and 53759 of the Office of the Register of Deeds of Rizal. The purchaser was Associated and no redemption was ever exercised by Banzon. (See Annex '2', Id.)

5. Subsequently, without the said titles having been transferred actually in the name of Associated, since what was done was merely to annotate in the meantime at the back of Banzon's title the execution sale in favor of Associated pursuant to the judgment, and in fact, Associated's petition for the consolidation of the titles in question in its name was still pending in the Supreme Court in G.R. No. L-23971 which was decided only later on December 29, 1968, the Sheriff of Caloocan City levied upon TCT 39685 by virtue of a writ of execution issued against Associated in another case, Civil Case No. 36194 of the Court of First Instance of Manila pursuant to a judgment therein, (affirmed by the Court of Appeals in CA-G.R. No. 25227-R, Pedro Cardenas vs. Victoria Vda. de Tengco, et al.) and on March 23, 1964, said Sheriff sold to herein respondent Pedro Cardenas and Leonila

Baluyot, (hereinafter to be referred to merely as Cardenas irrespective of whether what is meant to be referred to is only the husband, the wife or both of them, since Leonila Baluyot does not appear to have had any active role in any of the transactions herein involved) as the highest and only bidder at the public auction, the rights, interest, claims and title" of Associated over the land in question and, after one year without any redemption being made by Associated, issued to said Cardenas, a Deed of Absolute Sale on April 2, 1965. (See p. 6 Memorandum of Cardenas, Annex 6 of their Answer; and p. 5, Opposition of Insurance Commissioner dated March 24, 1971.)

6. On April 23, 1963, Cardenas filed a petition with the Court of First Instance of Rizal, Caloocan Branch XII, in Reg. Case No. C-211 (LRC Rec. No. 11267) for the issuance of a new certificate of title in his name. On May 3, 1965 an order was issued granting the petition, and on May 5, 1965, TCT 39685 was cancelled and TCT 8567 was issued in the name of the respondents. Pedro Cardenas and his wife. (Par. 9, p. 5, Reply to Cardenas to Explanation and Manifestation of Atty. Feliberto Castillo.)

7. It also appears that subsequently, on May 21, 1965 a writ of possession was issued in said case, C-211, but enforcement thereof was held in abeyance in view of the filing before Branch XII, Court of First Instance of Rizal, Caloocan City, of Civil Case No. 531[32] by Banzon against Cardenas as well as Associated and the Sheriff questioning the validity not only of the judgment in aforementioned Civil Case No. 31237 on the ground that Banzon had not been summoned therein but also of the levy and sale because allegedly the properties sold were conjugal properties of the Banzons. In addition, it was also alleged in the complaint that Associated was not the owner of TCT 39685 but only the holder thereof as trustee of PNB. This case was, however, dismissed on August 6, 1969 and no appeal was taken by Banzon on time, although, later, on October 17, 1969, he filed a petition for relief, but this was denied on October 21, 1969 on the ground that it was several days late, and it does not appear that any appeal was taken, from this denial. (pp. 7-8, Memorandum of Cardenas.)

8. Strangely, however, as already indicated earlier, the record also bears out that after June 20, 1960, the date when the period of Banzon to redeem the two titles, TCT 39685 and 53759, which were sold at auction as stated in paragraph 4 above expired, Associated "obtained in due time the corresponding final certificate of sale, which was likewise duly registered" in view of which, Associated "made demands upon (Banzon) to deliver to it the owner's duplicate of Certificates of Title Nos. 39685 and 53759 * * * but the latter refused. As a result, it filed in the Court of First Instance of Rizal in Case No. 3885, GLRO Record No. 11267, a petition for an order directing (Banzon) to present his owner's duplicate(s) * * * for cancellation, and for another order directing the Register of Deeds to cancel said duplicate(s) and to issue new transfer certificates of title covering the properties in the name of (Associated). * * * Banzon filed his opposition claiming mainly that (1) the decision * * * in Civil Case No. 31237 was void as far as he was concerned because he had never been summoned in connection therewith, and that (2) the levy and sale of the properties * * * were likewise void because they were conjugal properties * * *." (Decision of the Supreme Court, Annex 2, Id.) The trial court overruled these objections and issued the order prayed for, and on appeal to the Supreme Court, this order was affirmed in toto. This was on November 29, 1968. (Id.) In other words, it appears that the proceedings referred to in paragraphs 5 and 6 above leading to transfer, by order of the court, of Banzon's title to Cardenas took place even before the said title had been placed in the name of Associated.

9. On the basis of the same decision of the Supreme Court of November 29, 1968, a motion to dismiss Civil Case No. 531, referred to in paragraph 7 above was filed and the same was granted on August 6, 1969. Accordingly, on October 13, 1969, Cardenas applied for an alias writ of possession (the original one was held in abeyance as stated in paragraph 7 above), and this alias writ was issued on October 23, 1969. Due to the refusal of Banzon to vacate, an order of demolition was sought and granted on December 9, 1969, but again the enforcement thereof was enjoined by a writ of preliminary injunction issued by the Court of Appeals in CA-G.R. No. 44391-R, entitled

"Antonio Banzon, et al. vs. Hon. Fernando Cruz, et al." This writ of preliminary injunction was, however, dissolved in a final judgment of February 28, 1970, the Court of Appeals holding that:

"Hence, the petition for injunction prayed for being merely a device to prevent the execution of a final judgment by the filing of a new suit based upon the same grounds which have already been interposed and passed upon in the case where the final judgment had already been rendered, this petition should be as it is hereby denied, with cost against petitioners."

10. Accordingly, on March 11, 1970, Cardenas sought enforcement of the suspended writ of possession, and on March 13, 1970, the corresponding order was issued. This is the order, inter alia, that this Court has enjoined temporarily in this action, by resolution of March 23, 1970.

11. In the meantime, while all the above proceedings were going on, it appears undisputed that Associated was ordered liquidated and dissolved by the courts. The decision to this effect was rendered by the Court of First Instance of Manila in Civil Case No. 56995, Republic vs. Associated etc., affirmed by the Court of Appeals in CA-G.R. No. 37985-R on January 3, 1968, certiorari was denied by the Supreme Court on June 20, 1968, and this denial became final on July 9, 1968. Neither the trial courts nor this Court were ever informed of this liquidation in any of the proceedings already mentioned.

12. In the meantime also and, importantly, because of the failure of the principal, Sta. Maria, as well as the surety, Associated, to pay PNB, notwithstanding that Associated had, in fact, already executed upon the properties of Banzon, evidently without advising PNB thereof, PNB filed suit in the Court of First Instance of Pampanga, Civil Case No. 1907, against said parties, which ended in the Supreme Court as G.R. No. L- 24765 on August 29, 1969 with a judgment favorable to PNB. (29 SCRA) This judgment was satisfied out of Sta. Maria's properties sold on execution on February 16, 1970 and a corresponding release of Associated was issued by PNB on February 20, 1970 (See allegations on, p. 6 of Complaint, Annex E, Petition and also Annex E).

13. Having in view these developments, on March 13, 1970, Civil Case No. 72944 was filed by Banzon in the Court of First Instance of Manila basing the same mainly on the trust theory, that is, that Associated and later Cardenas, the latter as the former's virtual successor-in-interest in TCT 39685, acquired the lots in question only as trustees for the PNB, but this case was dismissed as against Cardenas on October 28, 1970 after a preliminary hearing upon the ground of res adjudicata, and this dismissal is now final, no appeal having been taken therefrom by Banzon. In this connection, it is to be noted that in Civil Case No. 531, which, as already noted above, had been dismissed earlier, Banzon already raised the same issue that Associated never became owner of said lots but was only the trustee thereof for PNB. (See p. 7, Memo of Cardenas.)

14. While evidently still in daze because of all these developments, under date of February 27, 1971, Banzon filed with the Court of First Instance of Rizal, Caloocan Branch XXII, Civil Case No. 2052 another action against Maximo R. Sta. Maria and Valeriano R. Sta. Maria alleging among other things, in his verified complaint that:

"4. That defendant failed to pay his aforementioned obligation with the Philippine National Bank, and accordingly upon demand being made by the latter on the Associated Insurance Surety Co., Inc., to pay said defendant's outstanding obligation, said surety company filed an action for damages against herein plaintiff and his co-indemnitors. True copy of said complaint dated November 19, 1956 is hereto attached and made an integral part hereof as Annex 'A';

"5. That as a result of the case alleged in the preceding paragraph 4, a decision was rendered in said case against the defendants therein, among them the present plaintiff. A true copy of said decision dated Dec. 11, 1957 is hereto attached and made integral part of this complaint as Annex 'B'

"6. That said decision (Annex 'B') having become final and executory, execution was made on the properties of

the herein plaintiff particularly, on his two residential lots situated at Caloocan City and embraced by TCT Nos. 39685 and 53759, of the Registry of Deeds of Rizal Province (now Registry of Deeds of Caloocan City), the total worth of said lots based on the present market value being P300,000.00; that eventually said lots were sold at public auction with the Associated Insurance & Surety Co., Inc., as the highest bidder. True copies of the Sheriff's Certificate of sale dated June 27, 1960 and the Officer's deed of absolute sale dated July 8, 1960 in favor of said surety are hereto attached as Annexes 'C' and D, 'respectively.

"7. That subsequently thereafter, one of said lots, particularly that covered and described under TCT No. 39685, was executed upon by a third party to satisfy the said surety's obligation to the latter, leaving only one lot in the name of the Associated Insurance & Surety Co., Inc., thereby damaging plaintiff in the amount of P150,000.00' which is the worth of the lot at its present market value. A true copy of the corresponding Sheriff's Final Deed of Sale dated April 2, 1965 in favor of said third party is hereto attached and made an integral part of this complaint as Annex 'E';

"8. That through a recent negotiation with the aforementioned insurance company, the latter has agreed to reconvey the remaining lot covered by TCT No. 53759 to the herein plaintiff under the condition that the latter will pay unto said surety company damages in attorney's fees equivalent to 15% of what the present defendant owes the Philippine National Bank or the sum of P6,750.00 and likewise relieving said surety company of its undertaking and liability as surety for said defendant Maximo R. Sta. Maria, with the Philippine National Bank; that plaintiff has agreed to do so but up to the present time of filing this case no reconveyance has yet been made;

"9. That plaintiff in pursuance of the arrangement made with the aforementioned surety company has in fact assumed all of defendant's obligation with the Philippine National Bank, in the amount of P45,000.00, thereby actually releasing said surety from any further obligation as such in relation to its undertakings with said bank, and likewise, releasing said defendant from his accountability on the crop loans he secured thereat as mentioned in paragraph 2 hereof;

"10. That due to defendants' deliberate failure and refusal to pay their plainly, valid and just obligation with the Philippine National Bank, resulting in the unfortunate happenings above enumerated, all of which are prejudicial and damaging to plaintiff's interest as the latter has suffered the following damages:

'(a) P150,000.00, as value of his one residential lot embraced by TCT No. 39685, Registry of Deeds of Caloocan City, and which has been irretrievably lost to a third party, and P10,000.00 fair value of the demolished house of strong materials on the lot having a monthly rental of P200.00 beginning April, 1970 and months thereafter.

'(b) P6,750.00, reimbursement to be made by plaintiff as attorney's fees suffered by the Associated Insurance & Surety Co., Inc., by reason of the suit occasioned by defendants' failure to pay the Philippine National Bank of his crop loans;

'(c) P10,000.00 representing damages suffered by the plaintiff by way of attorney's fees in all litigations previous to the present one incident to defendants' obligation with the PNB.' "

and praying, therefore, specifically that:

"2. That after due hearing on the merits on the principal cause of this action, judgment be rendered against the defendants jointly and severally as follows:

'(a) Ordering the defendants to pay the sum of P150,000.00 as value of plaintiff's one residential lot embraced by TCT No. 39685, Registry of Deeds of Caloocan City, which has been irretrievably lost to a third party directly caused by defendants' failure and refusal to pay their just and, lawful obligation with the PNB, besides ordering defendant Maximo R. Sta. Maria to pay P10,000.00 the fair value of the house of strong materials built on the lot, which was ordered demolished having a monthly rental of P200.00 beginning April 1970 and

monthly thereafter.'

Upon these facts, and in the light of the opposing contentions of the parties as to whether or not Banzon is entitled to the reconveyance of the lots in question, there is no doubt in my mind that he is entitled to the recovery thereof. My fundamental disagreement with the majority refers only to the manner or procedure as to how this can be accomplished in the context of the facts and judicial proceedings related above, and, of course, with the legal reasoning to be pursued in arriving at Our respective conclusions. Withal, I do not see sufficient basis for the dispositive portion of their decision.

As I have stated at the outset of this opinion. I am afraid that the majority approach unnecessarily cuts corners which remedial law considers as essential, if the administration of justice is to be carried out, as, in my view, it must be, along basic standard procedures contemplated to keep judicial proceedings from being a riotous confusion of impromptu and improvised steps readily to be taken to suit the judge's concept of substantial justice in any given case reiterate that I am for giving Banzon what is due him, but I cannot subscribe to many legal propositions in the majority opinion which in my considered opinion deviate from the established and accepted concepts regarding the points touched and referred to therein. To deal with first things first, however, I will discuss these differences later. In the meanwhile, my solutions of the legal problems before the Court are as follows:

I.

DESPITE ALL THE PREVIOUS RELATED PROCEEDINGS AMONG THE SAME PARTIES" HEREIN APPARENTLY FURNISHING LEGAL BASIS FOR THE ISSUANCE OF TRANSFER CERTIFICATE OF TITLE No. 8567 IN THE NAMES OF RESPONDENTS CARDENAS AND BALUYOT, THERE SEEM TO BE ENOUGH REASONS TO HOLD THAT THE SAID TITLE IS ABSOLUTELY VOID AND NEITHER SAID TITLE NOR THE JUDICIAL PROCEEDINGS REFERRED TO MAY SERVE AS BASES FOR THE WRIT OF DEMOLITION HEREIN COMPLAINED OF, ALTHOUGH, IN THE CASE AT BAR, WE CANNOT RULE ON THE VALIDITY OF SAID TITLE, THE ONLY PURPOSE OF THIS PETITION BEING TO HAVE THE SAID ORDER OF DEMOLITION SUSPENDED PENDING FINAL DECISION OF CIVIL CASE No. 79244 WHEREIN SUCH ISSUE OF VALIDITY IS TO BE FULLY THRESHED OUT.

At the outset, it may be stated incidentally, that it is not due to any fault of Banzon but evidently to the inexperience and inadequate preparation of counsel, that this case has turned out to be more complicated than it should have been, but that cannot deter this Court from straightening out matters and rendering justice accordingly. Indeed, as also observed in the majority opinion, generally, the incompetence of counsel should be overlooked when, anyway, full opportunity has been given to every interested party as regards all the matters upon which the Court is to act. I am satisfied that, considering how extensively and ably counsel for Cardenas has discussed every conceivable aspect of his case, no substantial prejudice can be caused to him, if the Court should now render judgment as the circumstances revealed in the record demand and not exactly in accordance with the theory formulated in the petition. As I see it, the main relief being sought by Banzon is merely the suspension of the order of demolition or dispossession issued by respondent Judge Cruz during the pendency of Civil Case No. 79244, on the ground that it was a grave abuse of discretion on the part of said judge not to order such suspension, considering the nature of said case, hence the ultimate inquiry in this case should be whether or not Banzon's complaint on said case presents a sufficient prima facie basis for such suspension.

Accordingly, the first question that may be asked in connection with the basic problem before Us is, what was acquired by Cardenas at the auction sale in connection with the execution of the judgment in his favor in Civil Case No. 36194 of the Court of First Instance of Manila? The plain answer is, only "the rights, interests, claims and title" of Associated in TCT No. 39685,[33] which, according to the said respondent himself on p. 7 of his

memorandum, were what were sold to him in that public auction of March 23, 1964. Indeed, it cannot be disputed that on that date of said auction and even on the date of the execution of the deed of absolute sale after the period of redemption expired, on April 2, 1965, Associated was not in law and in fact the absolute owner of the land covered by TCT 39685. To be precise, all that Associated had in said title was the right to hold the same in trust for the PNB. By no means and under no concept could Associated have had any right more than that indeed, no other conclusion can be drawn from the facts just narrated.

In the aforequoted judgment against Banzon which served as basis of the writ of execution by virtue of which his two titles were sold at auction, it is necessarily implied that the same, although nominally in favor of Associated, was actually for the benefit of PNB. Anything Associated could get from it was not intended to enrich it, but only to save it, if fully, from the effects of the eventual enforcement of the rights of the PNB in the premises. Conversely, it is also the inescapably implied sense of said judgment that in the event Associated is relieved or released by PNB without its having to resort to said judgment or making use of the proceeds thereof, then Banzon would be entitled not only to be correspondingly relieved or released from the effects of the judgment but also to the reconveyance of whatever may have been acquired by Associated under the same. Again, the situation lends to no other view. Stated otherwise, the judgment in favor of Associated was not for it to be paid with money or property by Banzon for its own benefit or for the satisfaction of any claim of its own, much less for its own enrichment — the judgment was for Banzon to pay Associated so that Associated may pay PNB. Consequently, there can be no doubt that under said judgment, the rights of Associated derived therefrom are not for it to dispose of for its own exclusive benefit, and, accordingly, they could not be subject to the claim of any third party in any manner, either prejudicial to the interests of PNB or disadvantageous to Banzon, beyond what had to be paid to PNB. Briefly, Associated was made trustee of the judgment against Banzon with the PNB as beneficiary. So, when the Sheriff sold to Cardenas "the rights, interests, claims and title" of Associated in TCT 39685, these carried impressed upon them the trust in favor of PNB (and alternatively, of Banzon) and consequently, Cardenas was under notice that Associated had no dominical title in the property covered thereby, in the sense that what it had was nothing more than the title of a trustee holding the same, for the benefit of PNB with the inseparable obligation to return the same to Banzon should PNB release Associated without the latter paying anything and without the former using the proceeds of the judgment. Factually, Cardenas cannot claim ignorance of these facts because the record is clear that when he caused the transfer of TCT 39685 to his name, this title was still in the name of Banzon, for the simple reason that the petition of Associated to have it consolidated in its name was still pending in the Supreme Court and a cursory examination of the expediente of the case in said Court would have revealed to him the true nature and extent of Associated's interest in said title.

It is of no moment, in this regard, that in the indemnity agreement signed by Banzon, Associated had the right to sue Banzon even before it has been made to pay and has actually paid PNB. That stipulation, if it could justify the filing of the action against Banzon as indemnitor, could not be construed to enable Associated to take advantage, for its own benefit, of the judgment it secured against Banzon without its actually and priorly paying PNB, for such a construction would certainly be unconscionable, and being patently iniquitous could not pass the fundamental and all important test that contractual terms and conditions must not be contrary to morals or public policy. Incidentally, under the present Civil Code, Article 2071, the only anticipatory remedy of a surety is either "to obtain release from the guarantee or to demand a security that shall protect him against any proceedings by the creditor and from danger of insolvency", hence, according to our Acting Chief Justice, Mr. Justice J. B. L., Reyes, speaking for the Court in *General Indemnity Co., Inc. vs. Alvarez*, 100 Phil. 1059, 1062, "an action by the guarantor against the principal debtor for payment, before the former has paid the creditor, is premature." It is quite true that these observations about the right of Associated to sue Banzon ahead of PNB suing it do not necessarily render, by their own force, null and void, the title of Cardenas, but they certainly clarify the true

nature and character of his rights in the lot in question. And it is very clear that under the circumstances, even if it were to be held that the transfer of TCT 39685 in their names was validly done, still he would be no more than a mere trustee like Associated into whose shoes he has stepped — trustee for the benefit of the Bank and, in the other contemplated contingency, of Banzon, for which reason even if procedurally speaking it can be assumed that the said title could be considered as properly transferred to him, still he cannot escape the obligation to reconvey the same to Banzon, in the fashion of a trustee who secures the registration of land in his name in breach of the trust, albeit it is not for this Court to render judgment of that tenor in this case, since such reconveyance is precisely the object of the Manila suit, Civil Case No. 79244 and not of the case at bar by election of the petitioners themselves who have not prayed for such a relief here.

Looking at the matter from another point of view, however, it is obvious that the procedure leading to such transfer, of TCT 39685 to the name of Cardenas cannot stand legal scrutiny. How he secured TCT 8567 has no satisfactory explanation in the record. What is more, I do not believe any such explanation can be found elsewhere. It is indisputable that Associated was still in the process of trying to secure delivery to it of the duplicate certificates of the two titles in question when this Court rendered its judgment in G. R. No. L-23971 on November 29, 1968. While it may be true that even before that, or on May 3, 1965, an order was issued, by the Court of First Instance of Rizal, Caloocan Branch in C-211 (LRC Rec. 11267), upon motion of Cardenas, for the issuance of a new certificate of title to him, absent any showing that PNB and Banzon were properly notified thereof, because of their interest as beneficiaries of the trust imposed upon Associated as above explained, of which he had actual knowledge or ought to have known, the said order must be held to be void ab initio due to the absence of the indispensable parties — PNB and Banzon. The in rem character of land registration proceedings does not extend to incidents of which no notice by publication is required. In such instances, actual notice to the interested parties is what confers jurisdiction upon the court and gives validity to what is done under its orders; hence, in issuing the order for the issuance of TCT 8657, by transfer from TCT 39685, the Court of First Instance of Rizal acted without jurisdiction, and such want of jurisdiction being patent even on the face of the record, such order is null and void ab initio.

It would not avail Cardenas to invoke the subsequent dismissal of Civil Case No. 72944 in Manila insofar as he and his wife are concerned, even if it were granted that such dismissal is already final. It should be borne in mind that in said action, the Banzons have alleged causes of action jointly against Associated and Cardenas, but when the same was filed on March 13, 1970, Associated had already been ordered liquidated and dissolved. Under Section 175(c) of the Insurance Act:

"Sec. 175(c). Order of rehabilitation or liquidation. - 1. An order to rehabilitate or liquidate a domestic insurer shall direct the Commissioner and his successors in office forthwith to take possession of the property of such insurer and to conduct the business thereof, and to take such steps toward the removal of the causes and conditions which have made such proceedings necessary as the court shall direct.

"2. The Commissioner may submit any plan he may deem advisable to protect the public interest for the rehabilitation or liquidation of such insurer to the court for approval and if approved such plan shall be binding upon the insurer, stockholders, and creditors.

"3. The Commissioner and his successors shall be vested by operation of law with the title to all of the property, contrasts, and rights of action of such insurer as of the date of the order so directing them to rehabilitate or liquidate. The filing or recording of such order in any record office of the Philippines shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such insurer would have imparted. The rights and liabilities of any such insurer and of its creditors, policy holders, stockholders, members and all other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date of the entry of the order directing the rehabilitation or liquidation of such insurer

in the office of the clerk of court where such insurer had its principal office for the transaction of business upon the date of the institution of proceedings under this Act: Provided, however, That the right of claimants holding contingent claims on said date to share in insolvent estate shall be determined by section one hundred and seventy-five (a) of this Act."

Consequently, Associated, as such, could no longer be sued on March 13, 1970 and in its place the party that should have been joined was the Insurance Commissioner. What is more, this joinder is indispensable, considering that the Insurance Commissioner is the liquidator of the Corporation. Absent such an indispensable party, naturally, all the proceedings in said case are likewise void and together with them the order of dismissal relied upon by Cardenas.

Anent the claim of Cardenas that because of the allegations aforequoted in the complaint filed by Banzon against Sta. Maria in Civil Case No. 2052 of the Court of First Instance of Rizal, petitioners are in estoppel to claim that TCT 8567 is invalid, Cardenas is apparently forgetting the fact that said complaint was filed only on February 27, 1971 and, certainly, none of the allegations contained therein could have been the inducement for his claim to said title which was made by him as early as 1965. Estoppel presupposes that the party invoking it must have been misled by the other party. (Tolentino, Civil Code of the Philippines, Vol. IV, p. 600, 1956 ed.) Then also, the allegations alluded to as basis for estoppel involve legal conclusions which as discussed above are erroneous. Errors of law of a party do not create, estoppel, for the simple reason that estoppel cannot be founded on ignorance, and since the other party is conclusively presumed to know the law, it cannot be misled thereby. (Eugenio vs. Perdido, 97 Phil. 41, 64)

It thus appears that these are actually more than prima facie reasons why the pendency of Civil Case No. 79244 should have induced respondent Judge to suspend the enforcement of his order of demolition or dispossession of March 13, 1970. While, as I have already stated, it is not for the Court to go into the actual merits of Banzon's pose in claiming the right to the reconveyance of the lots in controversy, the above discussion is necessary because they constitute at least the legal possibilities that have to be considered in determining whether or not the failure of respondent Judge to suspend the enforcement of his questioned order constitutes a grave abuse of discretion. Incidentally, if not strictly binding upon the court taking cognizance of Civil Case No. 79244, they should give him enough light in resolving the issues before him.

II

IT BEING CLEAR FROM THE ABOVE DISCUSSION THAT ASSOCIATED WAS ONLY A TRUSTEE FOR THE BENEFIT OF THE PNB OF THE TWO LOTS OF BANZON ACQUIRED BY IT AT THE AUCTION SALE AND AS A MATTER OF FACT PNB HAS ALREADY RELEASED ASSOCIATED, ALL THAT REMAINS NOW TO BE DONE TO RESTORE BANZON'S FULL OWNERSHIP THEREOF IS FOR THE INSURANCE COMMISSIONER WHO HAS STEPPED INTO THE SHOES OF ASSOCIATED AND WHO HERE ADMITS THE CORRECTNESS OF THE CLAIM OF BANZON THERETO TO EITHER CONFESS JUDGMENT IN CIVIL CASE NO. 79244 OR TAKE ANY OTHER APPROPRIATE STEP IN SAID CASE LEADING TO THE CANCELLATION OF THE ANNOTATION IN TCT 53759 OF THE AUCTION SALE IN FAVOR OF ASSOCIATED.

Considering that no rights of third parties are involved in the matter of the retention by or reconveyance to Banzon of the other lot covered by T.C.T. 53759, as desired by him, the same presents no difficulty. Another treatment may be, given this aspect of the case inasmuch as what I am about to state should be done as regards TCT 53759 cannot constitute a preemption of the jurisdiction of the court in Civil Case No. 79244, for the simple reason that, in respect to this title, there are admissions of the Insurance Commissioner which make it unnecessary for the said court to go into a trial on the merits.

As earlier noted, notwithstanding the decision of the Supreme Court in G. R. No. L-23971 of December 29, 1968, purportedly affirming the order of the Court of First Instance of Rizal in Case No. 3885, GLRO Record No. 11267 requiring Banzon to surrender the said title (together with TCT 39685) to the Register of Deeds of Rizal for cancellation and authorizing the issuance of a new one in the name of Associated, actually, the latter has not taken any steps to that end. Evidently, this must be due to the fact that it was well aware that the order for its liquidation and dissolution by the Court of First Instance of Manila, affirmed by the Supreme Court, had in the meanwhile become final on June 9, 1968, and, therefore, since then, it had already lost personality as a corporation, to pursue the desired transfer. Consequently, TCT 53759 in the name of Banzon remains uncanceled and the only apparent encumbrance thereon, material herein, is the annotation of the purchase thereof by Associated by virtue of the sale at public auction consequent to the execution of the judgment in its favor and against Banzon in Civil Case No. 31237.

As already discussed above, in the first place, all that Associated acquired of Banzon's two lots herein involved by virtue of the said execution was nothing more than the right to be trustee thereof for PNB, with the obligation to return the same to Banzon should it ultimately become unnecessary for it to use the same in settling the obligation of Sta. Maria to the PNB, for which it stood as surety and in regard to which Banzon was bound to it as its indemnitor in accordance with the very terms of the final judgment itself that it (Associated) had secured against Banzon in said case. Inasmuch as it is also undisputable that PNB has as a matter of fact already released Associated from its obligations under the surety agreement, according to the said bank's letter to Associated of February 20, 1970, there can be no question that pursuant to the real sense and intent of the trust created by the aforementioned judgment, Associated has no alternative but to have the annotation on TCT 53759 of the auction sale in its favor cancelled by an appropriate instrument. In this connection, however, whereas it is now the Insurance Commissioner that has sole authority to act for Associated and in the pleadings filed by her in this case, she admits the correctness of the foregoing observations and, on the other hand, there is that pending case of Banzon against Associated for the reconveyance to him of the title in question, Civil Case No. 79244, all that has to be done by the Commissioner is to make the proper appearance in said case and thereafter either file a corresponding confession of judgment therein or take any other appropriate step in the same case to the end that Banzon's title may be freed of the annotation thereon in favor of Associated.

It cannot be an obstacle to this arrangement that there is that judgment of this Court in G. R. NO. L-23971 purportedly upholding Associated's claim over TCT 53759 (and TCT 39685). I have already explained in my discussion of the case against Cardenas that because there was no substitution of the Insurance Commissioner in the place of Associated after the latter was ordered dissolved and liquidated by this Court's decision which became final on June 9, 1968 the said judgment must be considered as null and void. After the order for the liquidation and dissolution of a surety corporation has become final, the insurance Commissioner must indispensably be substituted for said corporation in any pending action wherein it is a party, such that if no such substitution is made, any judgment in said action cannot have any force and effect as to any of the parties. This is a logical rule which no insurance or surety company can ignore. In any event, with the admissions made in the pleadings of the Commissioner in the present case that Banzon is entitled to be relieved from the claim of Associated, it is almost of secondary importance to elucidate on the effects of the judgment of the Court in G. R. No. L-23971.

III

THE BASES FOR MY DISSENT

A. Coming now to my dissent, I find it difficult to agree with the dispositive portion of the majority decision.

(1) I regard the permanent injunction, obviously directed against Associated, enjoining the disposition of the two lots in question except to reconvey them to Banzon as virtually pointless, both from the legal and practical standpoint. Insofar as the lot covered by TCT 53759, there is nothing in the record indicating that after June 9, 1968 the date the order for Associated's liquidation and dissolution became final, Associated has ever taken any move to transfer said title to its name, much less to perform any dominical act regarding the same. Now that the Insurance Commissioner has already stepped into the shoes of Associated and is apparently in full control of its assets and records, at least, for the purposes of the matters herein involved, much less could Associated be expected to move towards these ends. On the other hand, inasmuch as the Insurance Commissioner has practically committed herself to reconvey the disputed lots to Banzon, of what use is there to issue an injunction against either Associated or the Commissioner? Is it not elementary that injunction issue only when it is indispensable to do so?

(2) With particular reference to the lot covered by TCT 39685 now in the name of Cardenas as TCT 8657, the only prayer in the present petition is for this Court to enjoin respondent Judge Cruz from enforcing his order of demolition of March 13, 1970 during the pendency Civil Case No. 79244. This is plain not only from the remedy stated in the title of the said petition, "Petition for Injunction" but also from the following allegations in paragraph XVI thereof: "That petitioners are entitled to the relief demanded in their complaint in Civil Case No. 79244, Court of First Instance of Manila, which part of such relief consist in restraining respondents from taking possession of the land object of said case and demolishing the buildings found thereon; ". All these are odd, for they give the impression that the only purpose of this case now before Us is to secure the issuance of a preliminary injunction ancillary to the remedies prayed for in Civil Case No. 79244. Now, without actually declaring in this judgment that TCT 8657 and all proceedings leading to its issuance are null and void and that the only right of Cardenas therein in the lot covered thereby is that of a trustee of the PNB which he acquired when he purchased the rights of Associated therein, the majority grants such ancillary remedy. I have very grave doubts if We can do so legally.

(3) I can understand Banzon's dilemma. As already observed above, he submitted the matter of the legal validity of his claim for the reconveyance to him of the lots in dispute, including, of course, the nullity of all the proceedings related to such claim, to the Manila court, that is, in Civil Case No. 79244, but he is not sure whether or not, as a coordinate court, the Court of First Instance of Manila is in a position to enjoin respondent Judge Cruz from enforcing his order of March 13, 1970. Without necessarily committing myself as to whether or not such an injunction can issue, it is my considered view that Banzon's less controversial remedy should be to insist that Judge Cruz suspend his order of demolition because of the pendency of Civil Case No. 79244 and then charge his refusal to do so as a grave abuse of discretion in the appropriate certiorari proceeding, seeking at the same time, as an added remedy, the corresponding injunction.

I am not losing sight, in this connection, of the fate that befell Banzon's attempt of a similar nature in CA-G. R. No. 44391-R in which the Court of Appeals upheld the writ of possession issued by Judge Cruz notwithstanding Banzon's submittal that the same should have been suspended in view of the pendency of Civil Case No. 531. It is to be observed, however, that no appeal was taken to this Court from that decision of the appellate court and it is an open question whether or not We would have affirmed it. In any event, the thrust of Civil Case No. 79244 appears to be on the more plausible theory of trusteeship above referred to which varies somehow from the main posture of Banzon in his previous cases.

It is, therefore, from this point of view that I consider it proper to look at the petition at bar as an action of certiorari based on the grave abuse of discretion committed by the respondent Judge in refusing to withhold, as evidently submitted by Banzon in opposing Cardenas' motion, the enforcement of his impugned order of demolition during the pendency of Civil Case No. 79244, and correspondingly, injunction should issue against such enforcement. In this manner it is not really necessary for Us to preempt the jurisdiction of the Manila court to resolve the issues therein and grant Banzon's prayer for reconveyance in said action, but nonetheless, We are able to prevent further acts of dispossession on the part of Cardenas.

(4) In this connection, I fail to see the necessity for the mandatory injunction, being ordered immediately executory by the majority, which to me only betrays considerable over-excitedness, if for no other reason than that Banzon himself insists that he has never lost complete possession of the lots in question despite the demolition by the Sheriff of his residential building found on the lot now in the name of Cardenas. Indeed, not even in his memorandum dated May 19, 1970 wherein Banzon first informed this Court of the demolition of the said building does he make any specific prayer for a mandatory injunction. It is to my mind obvious that, anyway, the restoration of said building need not be the subject of a mandatory injunction inasmuch as the same can be taken care of in Civil Case No. 79244 together with all the other damages claimed by Banzon.

B. I find it difficult, as I have indicated earlier, to share some of the views contained in the majority opinion.

(1) I am afraid the majority has given undue importance to the "Explanation and Manifestation" dated April 25, 1970 filed by Atty. Feliberto Castillo not only by calling it a pleading but by even relying on it for many of its findings of fact, more or less adverse to Associated. My position in this respect is that such reliance is uncalled for and possibly unfair to Associated. I would even consider Atty. Castillo's posture as something very close, to put it mildly, to a breach of professional ethics.

It should be recalled that Atty. Castillo has been counsel of Associated and, in fact, was the one that secured in its favor the judgment in Civil Case No. 31237 as well as the decision of this Court in G. R. No. L-23971 also favorable to said corporation and, consequently, under the rules of ethics, he is bound to hold in confidence any information related thereto or the ultimate developments thereof that might adversely affect his client and which have come to him by reason of their attorney-client relationship. Implicit also is his obligation never to give aid and comfort to any party adverse to his client, except in the instances allowed by law, which, I believe, do not include the situation on hand.

For reasons which do not appear in the record, or perhaps due to what I consider an erroneous practice on the part of the personnel in the office of our clerk of court, instead of serving summons on the present petition upon Associated itself at its address clearly given in Paragraph I thereof as "Room C, Astoria Building, No. 1170 A. Mabini, Ermita, Manila, c/o Mr. Leopoldo C. Sta. Maria", the said service was apparently made upon the law office of Atty. Castillo just because he has appeared in the related cases as counsel for Associated. At least, Atty. Castillo does not state in his "Explanation and Manifestation" how it happened that his "law office was in receipt", to use his own expression, thereof on April 16, 1970, and his statement in Paragraph 3 of said "Explanation and Manifestation" that "he is entertaining a serious doubt whether he could still represent the Associated Insurance & Surety Co., Inc. in view" of its liquidation and dissolution by order of the court, as above related, is to me a revelation that he is aware that his authority to speak for Associated is not as it ought to be. And yet, he makes denials and admissions therein affecting Associated, and its successor-in-interest, Cardenas, after suggesting that summons should be made upon the Insurance Commissioner. As far as I am concerned, I can give my vote of appreciation for Atty. Castillo's having informed Us that as of June 9, 1968 Associated was already without legal personality, as the insurance and surety corporation that it used to be, to become a party or continue as a party in any action or proceeding and should have been indispensably substituted by the Insurance Commissioner, but to

consider his "Explanation and Manifestation" as a pleading and to take into account his admissions and denials therein affecting Associated, as the majority do, are to me without basis or justification in any part of our rules of procedure, and to give credit to such admissions and denials as being made "in the interest of justice and in the name of truth and as an Officer of the Court" does not square with my concept of the fidelity that a lawyer owes his client. I doubt very much if the Insurance Commissioner or any court, for that matter, can compel the lawyer of a corporation, without the consent of such client, to give out information adverse to it, just because the corporation is under liquidation. If a lawyer cannot be so compelled, much less would I consider it proper for him to furnish such information voluntarily without the client's permission. In any event, insofar as the need for the facts stated by him in this case is concerned, I would rather rely on the statements regarding the same matters appearing in the respective pleadings of the Insurance Commissioner, Banzon and Cardenas, which I consider sufficient for the purposes of this decision. In brief, what Atty. Castillo should have done in fairness to Associated and in strict adherence to the applicable rules of ethics was to simply inform the court of the liquidation of Associated and return the summons to the sheriff or the court for proper service, as suggested by him, to the Insurance Commissioner.

(2) The majority attempt to distinguish what they have characterized as "immediate objectives" from the "real and substantive objectives" of the petition at bar, to justify their direct resolution in this case of the question of validity of TCT 8567, as if such a distinction can ever exist in any pleading, as, in fact, nowhere in the petition do I find any intention on the part of Banzon to forego or disregard that it is in Civil Case No. 79244 that he is seeking the "real and substantive objectives" referred to by the majority. For the rest, I refer to my discussion above of the dispositive portion of the majority decision.

(3) It is not very clear to me that when Associated filed Civil Case No. 31237 it had no cause of action against Banzon, as indemnitor. I am aware of Article 2071 of the Civil Code, as, in fact, I have referred to it above, but I am not prepared to hold in this case, particularly because I do not recall that this particular point was discussed in the deliberations, that such a cause of action cannot exist on the basis of the express stipulation in the indemnity agreement giving Associated the right to file an action upon PNB's making a demand upon it and even before it has complied with such demands although I am in full agreement with the view that should such an action be prosecuted to judgment as it happened in this case, Associated or the surety and all its successors-in-interest become no more than trustees of the creditor.

(4) Among their considerations, the majority state:

"Considering that the insurance commissioner herself, who now legally can alone represent Associated as liquidator, has herein recognized such trust character and has expressed the belief that the said lot, no less than the other lot covered by T.C.T. No. 8567, should, in justice to petitioners, be reconveyed to them on account, among others, of petitioner Banzon's release from his obligation as indemnitor by virtue of the principal debtor's subsequent payment of his obligation with the Philippine National Bank which likewise released Associated from any liability as surety, the present petition should therefore be granted in the interests of justice and equity so as to enable the insurance commissioner-liquidator in due course to discharge the trust of reconveying Banzons' properties to them."

My observation in this regard is that the invocation of the "interests of justice and equity" does not warrant the granting of a relief not prayed for by the party concerned. When the majority say "the present petition should be granted * * * so as to enable the insurance commissioner — liquidator in due course to discharge the trust of reconveying Banzon's properties to him", they have in mind the so-called "real and substantive objectives", per their interpretation, of the petition and not what exactly petitioners are expressly asking for, which is no more than what the majority call "the immediate objectives".

There are other loose statements of legal principles in the majority opinion, but they are minor ones and any further discussion of all of them will unduly extend this opinion.

Incidentally, as I close, I am tempted to ask this question: With the way the majority has disposed of this case in their opinion, is it not rather ambiguous now what has become of Civil Case No. 79244 in the Manila court and how specifically We expect the said court to dispose of the same?

IV.

MY VOTE

IN VIEW OF ALL THE FOREGOING, and differently from the majority, I vote to set aside the order of Judge Cruz of March 13, 1970 for having been issued with grave abuse of discretion and to permanently enjoin said respondent from enforcing the same, until it happens, which appears to be very remote that Civil Case No. 79244 is decided in favor of Cardenas, after the case against them therein is revised by a corresponding supplemental pleading of Banzon based on the patent nullity on the face of the record of the order of dismissal of October 28, 1970 because the Insurance Commissioner was not substituted for Associated therein.

As regards the prayer for another injunction against any disposition of the lot covered by TCT 53759, my vote is to deny the same, without prejudice to the Insurance Commissioner following the course of action I have indicated earlier above.

Anent the civil and criminal cases which the majority reserve to be instituted against the officers of Associated, I feel that it should be in Civil Case No. 79244 that such reservation should be done inasmuch as it is there where the more appropriate judgment regarding all the substantive aspects of the claim of Banzon will be rendered, even if quite inevitably the tenor of said judgment might have to be along the lines hereinabove set forth.

[32] Filed on September 23, 1965, (Memo of Petitioners, p. 6.)

[33] The decision of the Court of Appeals in CA-G. R. No. 44391-R. Annex 6 of the answer of respondent Cardenases says “all the rights and interests of Associated in the land covered by TCT 39685.”

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