

**INOCENCIA DELUAO AND FELIPE DELUAO, PLAINTIFFS-APPELLEES,
VS. NICANOR CASTEEL AND JUAN DEPRA, DEFENDANTS, NICANOR
CASTEEL, DEFENDANT-APPELLANT.**

G.R. No. L-21906. December 24, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from the order of May 2, 1956, the decision of May 4, 1956 and the order of May 21, 1956, all of the Court of First Instance of Davao, in civil case 629. The basic action is for specific performance, and damages resulting from an alleged breach of contract.

In 1940 Nicanor Casteel filed a fishpond application for a big tract of swampy land in the then sitio of Malalag (now the municipality of Malalag), municipality of Padada, Davao. No action was taken thereon by the authorities concerned. During the Japan-ese occupation, he filed another fishpond application for the same area, but because of the conditions then prevailing, it was not acted upon either. On December 12, 1945 he filed a third fishpond application for the same area, which, after a survey, was found to contain 178.76 hectares. Upon investigation conducted by a re-presentative of the Bureau of Forestry, it was discovered that the area applied for was still needed for firewood production. Hence, on May 13, 1946 this third application was disapproved.

Despite the said rejection, Casteel did not lose interest. He filed a motion for reconsideration. While this motion was pending resolution, he was advised by the district forester of Davao City that no further action would be taken on his motion, unless he filed a new application for the area concerned. So he filed on May 27, 1947 his fishpond application 1717.

Meanwhile, several applications were submitted by other persons for portions of the area covered by Casteel's application.

On May 20, 1946 Leoncio Aradillos filed his fishpond application 1202 covering 10 hectares of land found inside the area applied for by Casteel; he was later granted fishpond permit F-289-C covering 9.3 hectares certified as available for fishpond purposes by the Bureau of Forestry.

Victor D. Carpio filed on August 8, 1946 his fishpond application 762 over a portion of the land applied for by Casteel. Alejandro Cacam's fishpond application 1276, filed on December 26, 1946, was given due course on December 9, 1947 with the issuance to him of fishpond permit F-539-C to develop 30 hectares of land comprising a portion of the area applied for by Casteel, upon certification of the Bureau of Forestry that the area was likewise available for fishpond purposes. On November 17, 1948 Felipe Deluao filed his own fishpond application for the area covered by Casteel's application.

Because of the threat poised upon his position by the above applicants who entered upon and spread themselves within the area, Casteel realized the urgent necessity of expanding his occupation thereof by constructing dikes and cultivating marketable fishes, in order to prevent old and new squatters from usurping the land. But lacking

financial resources at that time, he sought financial aid from his uncle Felipe Deluao who then extended loans totaling more or less P27,000 with which to finance the needed improvements on the fishpond. Hence, a wide productive fishpond was built.

Moreover, upon learning that portions of the area applied for by him were already occupied by rival applicants, Casteel immediately filed the corresponding protests. Consequently, two administrative cases ensued involving the area in question, to wit: DANR Case 353, entitled "Fp. Ap. No. 661 (now Fp. A. No. 1717), Nicanor Casteel, applicant-appellant versus Fp. A. No. 763, Vic-torio D. Carpio, applicant-appellant"; and DANR Case 353-B, en-titled "Fp. A. No. 661 (now Fp. A. No. 1717), Nicanor Casteel, applicant-protestant versus Fp. Permit No. 289-C, Leoncio Ara-dillos, Fp. Permit No. 539-C, Alejandro Cacam, Permittees-Respondents. "

However, despite the finding made in the investigation of the above administrative cases that Casteel had already intro-duced improvements on portions of the area applied for by him in the form of dikes, fishpond gates, clearings, etc., the Direc-tor of Fisheries nevertheless rejected Casteel's application on October 25, 1949, required him to remove all the improvements which he had introduced on the land, and ordered that the land be leased through public auction. Failing to secure a favorable reso-lution of his motion for reconsideration of the Director's order, Casteel appealed to the Secretary of Agriculture and Natural Re-sources.

In the interregnum, some more incidents occurred. To avoid repetition, they will be taken up in our discussion of the ap-pellant's third assignment of error.

On November 25, 1949 Inocencia Deluao (wife of Felipe De-luao) as party of the first part, and Nicanor Casteel as party of the second part, executed a contract - denominated a "contract of service" - the salient provisions of which are as follows:

"That the Party of the First Part in consi-deration of the mutual covenants and agreements made herein to the Party of the Second Part, here-by enter into a contract of service, whereby the Party of the First Part hires and employs the Par-ty of the Second Part on the following terms and conditions, to wit:

"That the Party of the First Part will finance as she has hereby financed the sum of TWENTY SEV-EN THOUSAND PESOS (P27,000.00), Philippine Cur-ency, to the Party of the Second Part who renders only his services for the construction and improvements of a fishpond at barrio Malalag, Municipality of Padada, Province of Davao, Philippines;

"That the Party of the Second Part will be the Manager and sole buyer of all the produce of the fish that will he produced from said fishpond;

"That the Party of the First Part will be the administrator of the same she having financed the construction and improvement of said fishpond;

"That this contract was the result of a verbal agreement entered into between the Parties sometime in the month of November, 1947, with all the abovementioned conditions enumerated; x x x"

On the same date the above contract was entered into, Inocencia Deluao executed a special power of attorney in favor of Jesus Donesa, extending to the latter the authority "To represent me in the administration of the fishpond at Malalag, Municipality of Padada, Province of Davao, Philippines, which has been ap-plied for fishpond permit by Nicanor Casteel, but rejected by the Bureau of Fisheries, and to supervise, demand, receive, and collect the value of the fish that is being periodically realized from it x x x."

On November 29, 1949 the Director of Fisheries rejected the application filed by Felipe Deluao on November 17, 1948. Un-fazed by this rejection, Deluao reiterated his claim over the same area in the two administrative cases (DANR Cases 353 and 353-B) and asked for reinvestigation of the application of Nicanor Cas-teel over the

subject fishpond. However, by letter dated March 15, 1950 sent to the Secretary of Commerce and Agriculture and Natural Resources (now Secretary of Agriculture and Natural Resources), Deluao withdrew his petition for reinvestigation.

On September 15, 1950 the Secretary of Agriculture and Natural Resources issued a decision in DANR Case 353, the dispositive portion of which reads as follows:

"In view of all the foregoing considerations, Fp. A. No. 661 (now Fp. A. No. 1717) of Nicanor Casteel should be, as hereby it is, reinstated and given due course for the area indicated in the sketch drawn at the back of the last page hereof; and Fp. A. No. 762 of Victorio D. Carpio shall remain rejected."

On the same date, the same official issued a decision in DANR Case 353-B, the dispositive portion stating as follows:

"WHEREFORE, Fishpond Permit No. F-289-C of Leoncio Aradillos and Fishpond Permit No. F-539-C of Alejandro Cacam, should be, as they are hereby cancelled and revoked; Nicanor Casteel is required to pay the improvements introduced there on by said permittees in accordance with the terms and dispositions contained elsewhere in this decision. x x x"

Sometime in January 1951 Nicanor Casteel forbade Inocencia Deluao from further administering the fishpond, and ejected the latter's representative, (encargado), Jesus Dones, from the premises.

Alleging violation of the contract of service (exhibit A) entered into between Inocencia Deluao and Nicanor Casteel, Fe-lipe Deluao and Inocencia Deluao on April 3, 1951 filed an action in the Court of First instance of Davao for specific performance and damages against Nicanor Casteel and Juan Depra (who, they alleged, instigated Casteel to violate his contract), praying, inter alia, (a) that Casteel be ordered to respect and abide by the terms and conditions of said contract and that Inocencia Deluao be allowed to continue administering the said fishpond and collecting the proceeds from the sale of the fishes caught from time to time; and (b) that the defendants be ordered to pay jointly and severally to plaintiffs the sum of P20,000 in damages.

On April 18, 1951 the plaintiffs filed an ex parte motion for the issuance of a preliminary injunction, praying among other things, that during the pendency of the case and upon their filing the requisite bond as may be fixed by the court, a preliminary injunction be issued to restrain Casteel from doing the acts complained of, and that after trial the said injunction be made permanent. The lower court on April 26, 1951 granted the motion, and, two days later, it issued a preliminary mandatory injunction addressed to Casteel, the dispositive portion of which reads as follows:

"POR EL PRESENTE, queda usted ordenado que, hasta nueva orden, usted, el demandado y todos sus abogados, agentes, mandatarios y demas personas que obren en su ayuda, desista de impedir a la demandante Inocencia R. Deluao que continúe administrando personalmente la pesquería objeto de esta causa y que la misma continúe recibiendo los productos de la venta de los pescados provenientes de dicha pesquería, y que, asimismo, se prohíba a dicho demandado Nicanor Casteel a desahuciar mediante fuerza al encargado de los demandantes llamado Jesus Dones de la pesquería objeto de la demanda de autos."

On May 10, 1951 Casteel filed a motion to dissolve the injunction, alleging among others, that he was the owner, lawful applicant and occupant of the fishpond in question. This motion, opposed by the plaintiffs on June 15, 1951, was denied by the lower court in its order of June 26, 1951.

The defendants on May 14, 1951 filed their answer with counterclaim, amended on January 8, 1952, denying the material averments of the plaintiffs' complaint. A reply to the defendants' amended answer was filed by the plaintiffs on January 31, 1952.

The defendant Juan Depra moved on May 22, 1951 to dis-miss the complaint as to him. On June 4, 1951 the plaintiffs op-posed his motion.

The defendants filed on October 3, 1951 a joint motion to dismiss on the ground that the plaintiffs' complaint failed to state a claim upon which relief may be granted. The motion, opposed by the plaintiffs on October 12, 1951, was denied for lack of merit by the lower court in its order of October 22, 1951. The defen-dants' motion for reconsideration filed on October 31, 1951 suf-fered the same fate when it was likewise denied by the lower court in its order of November 12, 1951.

After the issues were joined, the case was set for trial. Then came a series of postponements. The lower court (Branch I, presided by Judge Enrique A. Fernandez) finally issued on March 21, 1956 an order in open court, reading as follows:

"Upon petition of plaintiffs, without any ob-jection on the part of defendants, the hearing of this case is hereby transferred to May 2 and 3, 1956 at 8:30 o'clock in the morning.

"This case was filed on April 3, 1951 and under any circumstance this Court will not entertain any other transfer of hearing of this case and if the parties will not be ready on that day set for hearing, the court will take the necessary steps for the final determination of this case." (empha-sis supplied)

On April 25, 1956 the defendants' counsel received a notice of hearing dated April 21, 1956, issued by the office of the Clerk of Court (thru the special deputy Clerk of Court) of the Court of First Instance of Davao, setting the hearing of the case for May 2 and 3, 1956 before Judge Amador Gomez of Branch II. The de-fendants, thru counsel, on April 26, 1956 filed a motion for post-ponement. Acting on this motion, the lower court (Branch II, pre-sided by Judge Gomez) issued an order dated April 27, 1956, quoted as follows:

"This is a motion for postponement of the hearing of this case set for May 2 and 3, 1956. The motion is filed by the counsel for the defen-dants and has the conformity of the counsel for the plaintiffs.

"An examination of the records of this case shows that this case was initiated as early as April 1951 and that the same has been under advisement of the Honorable Enrique A. Fernandez, Presiding Judge of Branch No. I, since September 24, 1953, and that various incidents have already been con-sidered and resolved by Judge Fernandez on various occasions. The last order issued by Judge Fernandez on this case was issued on March 21, 1956, wherein he definitely states that the Court will not entertain any further postponement of the hearing of this case.

"CONSIDERING ALL THE FOREGOING, the Court believes that the consideration and termination of any incident referring to this case should be refer-red back to Branch I, so that the same may be dis-posed of therein." (underlining supplied)

A copy of the abovequoted order was served on the defendants' counsel on May 4, 1956.

On the scheduled date of hearing, that is, on May 2, 1956, the lower court (Branch I, with Judge Fernandez presiding), when informed about the defendants' motion for postponement filed on April 26, 1956, issued an order reiterating its previous order handed down in open court on March 21, 1956 and directing the plaintiffs to introduce their evidence ex parte, there being no ap-pearance on the part of the defendants or their counsel. On the basis of the plaintiffs' evidence, a decision was rendered on May 4, 1956 the dispositive portion of with reads as follows:

"EN SU VIRTUD, el Juzgado dicta de deci-sion a favor de los demandantes y en contra del demandado Nicanor Casteel:

"(a) Declara permanentes el interdicto pro-hibitorio expedido contra el demandado;

"(b) Ordena al demandado entregue la de-mandante la posesion y administracion de la mitad (1/2) del 'fishpond' en cuestion con todas las mejoras existentes dentro de la misma;

"(c) Condena al demandado a pagar a la de-mandante la suma de P200.00 mensualmente en concepto de daños a contar de la fecha de la expi-racion de los 30 dias de la promulgacion de esta decision hasta que entregue la posesion y adminis-tracion de la porcion del 'fishpond' en conflicto;

"(d) Condena al demandado a pagar a la de-mandante la suma de P2,000.00 valor de los pes-eado beneficiados mas los intereses legales de la fecha de la incoacion de la demanda de autos hasta el completo pago de la obligacion principal;

"(e) Condena al demandado a pagar a la de-mandante la suma de P2,000.00, por gastos incurridos por aquella durante la pendencia de esta causa;

"(f) Condena al demandado a pagar a la de-mandante, en concepto de honorarios, la suma de P2,000.00;

"(g) Ordena el sobreseimiento de esta demanda, por insuficiencia de pruebas, en tanto en cuanto se refiere al demandado Juan Depra;

"(h) Ordena el sobreseimiento de la recon-vencion de los demandados por falta de pruebas.

"(i) Con las costas contra del demandado, Casteel."

The defendant Casteel filed a petition for relief from the foregoing decision, alleging, inter alia, lack of knowledge of the order of the court a quo setting the case for trial. The petition, however, was denied by the lower court in its order of May 21, 1956, the pertinent portion of which reads as follows:

"The duty of Atty. Ruiz, was not to inquire from the Clerk of Court whether the trial of this case has been transferred or not, but to inquire from the presiding Judge, particularly because his motion asking the transfer of this case was not set for hearing and was not also acted upon.

"Atty. Ruiz knows the nature of the order of this Court dated March 21, 1956, which reads as follows:

'Upon petition of the plaintiff without any objection on the part of the defendants, the hearing of this case is hereby transfer-red to May 2 and 3, 1956, at 8:30 o'clock in the morning.

'This case was filed on April 3, 1951, and under any circumstance this Court will not entertain any other transfer of the hear-ing of this case, and if the parties will not be ready on the day set for hearing, the Court will take necessary steps for the final dispo-sition of this case.'

"In view of the order above-quoted, the Court will not accede to any transfer of this case and the duty of Atty. Ruiz is no other than to be present in the Sala of this Court and to call the attention of the same to the existence of his motion for transfer.

"Petition for relief from judgment filed by Atty. Ruiz in behalf of the defendant, not well taken, the same is hereby denied."

Dissatisfied with the said ruling, Casteel appealed to the Court of Appeals which certified the case to us for final determi-nation on the ground that it involves only questions of law.

Casteel raises the following issues:

"(1) Whether the lower court committed gross abuse of discretion when it ordered reception of the appellees' evidence in the absence of the appellant at the trial on May 2, 1956, thus depriving the appellant of his day in court and of his property without due process of law;

"(2) Whether the lower court committed grave abuse of discretion when it denied the verified petition for relief from judgment filed by the appellant on May 11, 1956 in accordance with Rule 38, Rules of Court; and

"(3) Whether the lower court erred in ordering the issuance ex parte of a writ of preliminary injunction against defendant-appellant, and in not dismissing appellees' complaint."

1. The first and second issues must be resolved against the appellant.

The record indisputably shows that in the order given in open court on March 21, 1956, the lower court set the case for hearing on May 2 and 3, 1956 at 8:30 o'clock in the morning and emphatically stated that, since the case had been pending since April 3, 1951, it would not entertain any further motion for transfer of the scheduled hearing.

An order given in open court is presumed received by the parties on the very date and time of promulgations,[1] and amounts to a legal notification for all legal purposes.[2] The order of March 21, 1956, given in open court, was a valid notice to the parties, and the notice of hearing dated April 21, 1956, or one month thereafter, was a superfluity. Moreover, as between the order of March 21, 1956, duly promulgated by the lower court, thru Judge Fernandez, and the notice of hearing signed by a "special deputy clerk of court" setting the hearing in another branch of the same court, the former's order was the one legally binding. This is because the incidents of postponements and adjournments are controlled by the court and not by the clerk of court, pursuant to section 4, Rule 31 (now sec. 3, Rule 22) of the Rules of Court.

Much less had the clerk of court the authority to interfere with the order of the court or to transfer the case from one sala to another without authority or order from the court where the case originated and was being tried. He had neither the duty nor prerogative to re-assign the trial of the case to a different branch of the same court. His duty as such clerk of court, in so far as the incident in question was concerned, was simply to prepare the trial calendar. And this duty devolved upon the clerk of court and not upon the "special deputy clerk of court" who purportedly signed the notice of hearing.

It is of no moment that the motion for postponement had the conformity of the appellees' counsel. The postponement of hearings does not depend upon agreement of the parties, but upon the court's discretion.[3]

The record further discloses that Casteel was represented by a total of 12 lawyers, none of whom had ever withdrawn as counsel. Notice to Atty. Ruiz of the order dated March 21, 1956 intransferably setting the case for hearing for May 2 and 3, 1956, was sufficient notice to all the appellant's eleven other counsel of record. This is a well-settled rule in our jurisdiction.[4]

It was the duty of Atty. Ruiz, or of the other lawyers of record, not excluding the appellant himself, to appear before Judge Fernandez on the scheduled dates of hearing. Parties and their lawyers have no right to presume that their motions for postponement will be granted.[5] For indeed, the appellant and his 12 lawyers cannot pretend ignorance of the recorded fact that since September 24, 1953 until the trial held on May 2, 1956, the case was under the advisement of Judge Fernandez who presided over Branch I. There was, therefore, no necessity to "re-assign" the same to Branch II because Judge Fernandez had exclusive control of said case, unless he was legally inhibited to try the case - and he was not.

There is truth in the appellant's contention that it is the duty of the clerk of court - not of the Court - to prepare the trial calendar. But the assignment or reassignment of cases already pending in one sala to another sala, and the setting of the date of trial after the trial calendar has been prepared, fall within the exclusive control of the presiding judge.

The appellant does not deny the appellees' claim that on May 2 and 3, 1956, the office of the clerk of court of the

Court of First Instance of Davao was located directly below Branch I. If the appellant and his counsel had exercised due diligence, there was no impediment to their going upstairs to the second storey of the Court of First Instance building in Davao on May 2, 1956 and checking if the case was scheduled for hearing in the said sala. The appellant after all admits that on May 2, 1956 his coun-sel went to the office of the clerk of court.

The appellant's statement that parties as a matter of right are entitled to notice of trial, is correct. But he was pro-perly accorded this right. He was notified in open court on March 21, 1956 that the case was definitely and intransferably set for hearing on May 2 and 3, 1956 before Branch I. He cannot argue that, pursuant to the doctrine in *Siochi vs. Tirona*,^[6] his counsel was entitled to a timely notice of the denial of his motion for post-ponement. In the cited case the motion for postponement was the first one filed by the defendant; in the case at bar, there had al-ready been a series of postponements. Unlike the case at bar, the *Siochi* case was not intransferably set for hearing. Finally, where-as the cited case did not pend for a long time, the case at bar was only finally and intransferably set for hearing on March 21, 1956 - after almost five years had elapsed from the filing of the complaint on April 3, 1951.

The pretension of the appellant and his 12 counsel of record that they lacked ample time to prepare for trial is unacceptable because between March 21, 1956 and May 2, 1956, they had one month and ten days to do so. In effect, the appellant had waived his right to appear at the trial and therefore he cannot be heard to complain that he has been deprived of his property without due process of law.^[7] Verily, the constitutional requirements of due process have been fulfilled in this case: the lower court is a com-petent court; it lawfully acquired jurisdiction over the person of the defendant (appellant) and the subject matter of the action; the defendant (appellant) was given an opportunity to be heard; and judgment was rendered upon lawful hearing.^[8]

2. Finally, the appellant contends that the lower court incurred in error in ordering the issuance ex parte of a writ of preliminary injunction against him, and in not dismissing the appellee's complaint. We find this contention meritorious.

Apparently, the court a quo relied on exhibit A - the so-called "contract of service" - and the appellees' contention that it created a contract of co-ownership and partnership between Inocencia Deluao and the appellant over the fishpond in question.

Too well-settled to require any citation of authority is the rule that everyone is conclusively presumed to know the law. It must be assumed, conformably to such rule, that the parties entered into the so-called "contract of service" cognizant of the mandatory and prohibitory laws governing the filing of applica-tions for fishpond permits. And since they were aware of the said laws, it must likewise be assumed - in fairness to the parties - that they did not intend to violate them. This view must perforce negate the appellees' allegation that exhibit A created a contract of co-ownership between the parties over the disputed fishpond. Were we to admit the establishment of a co-ownership violative of the prohibitory laws which will hereafter be discussed, we shall be compelled to declare altogether the nullity of the con-tract. This would certainly not serve the cause of equity and jus-tice, considering that rights and obligations have already arisen between the parties. We shall therefore construe the contract as one of partnership, divided into two parts - namely, a contract of partnership, to exploit the fishpond pending its award to either Felipe Deluao or Nicanor Casteel, and a contract of partnership to divide the fishpond between them after such award. The first is valid, the second illegal.

It is well to note that when the appellee Inocencia Deluao and the appellant entered into the so-called "contract of service" on November 25, 1949, there were two pending applications over the fishpond. One was Casteel's which was appealed by him to the Secretary of Agriculture and Natural Resources after it was disallowed by the Director of Fisheries on October 25, 1949. The other was Felipe Deluao's application over the same area which was

likewise rejected by the Director of Fisheries on November 29, 1949, refiled by Deluao and later on withdrawn by him by letter dated March 15, 1950 to the Secretary of Agriculture and Natural Resources. Clearly, although the fishpond was then in the possession of Casteel, neither he nor Felipe Deluao was the holder of a fishpond permit over the area. But be that as it may, they were not however precluded from exploiting the fishpond pending resolution of Casteel's appeal or the approval of Deluao's application over the same area - whichever event happened first. No law, rule or regulation prohibited them from doing so. Thus, rather than let the fishpond remain idle, they cultivated it.

The evidence preponderates in favor of the view that the initial intention of the parties was not to form a co-ownership but to establish a partnership - Inocencia Deluao as capitalist partner and Casteel as industrial partner - the ultimate undertaking of which was to divide into two equal parts such portion of the fish-pond as might have been developed by the amount extended by the plaintiffs-appellees, with the further provision that Casteel should reimburse the expenses incurred by the appellees over one-half of the fishpond that would pertain to him. This can be gleaned, among others, from the letter of Casteel to Felipe Deluao on November 15, 1949, which states, *inter alia*:

"* * * [W]ith respect to your allowing me to use your money, same will redound to your benefit because you are the ones interested in half of the work we have done so far, besides I did not insist on our being partners in my fishpond permit, but it was you 'Tatay' Eping the one who wanted that we be partners and it so happened that we became partners because I am poor, but in the midst of my poverty it never occurred to me to be unfair to you. Therefore so that each of us may be secured, let us have a document prepared to the effect that we are partners in the fishpond that we caused to be made here in Balasino, but it does not mean that you will treat me as one of your 'Bantay' (caretaker) on wage basis but not earning wages at all, while the truth is that we are partners. In the event that you are not amenable to my proposition and consider me as 'Bantay' (caretaker) instead, do not blame me if I withdraw all my cases and be left without even a little and you likewise." (underscoring supplied)[9]

Pursuant to the foregoing suggestion of the appellant that a document be drawn evidencing their partnership, the appellee Inocencia Deluao and the appellant executed exhibit A which, although denominated a "contract of service," was actually the memorandum of their partnership agreement. That it was not a contract of the services of the appellant, was admitted by the appellees themselves in their letter[10] to Casteel dated December 19, 1949 wherein they stated that they did not employ him in his (Casteel's) claim but because he used their money in developing and improving the fishpond, his right must be divided between them. Of course, although exhibit A did not specify any wage or share appertaining to the appellant as industrial partner, he was so entitled - this being one of the conditions he specified for the execution of the document of partnership.[11]

Further exchanges of letters between the parties reveal the continuing intent to divide the fishpond. In a letter[12] dated March 24, 1950, the appellant suggested that they divide the fish-pond and the remaining capital, and offered to pay the Deluaos a yearly installment of P3,000 - presumably as reimbursement for the expenses of the appellees for the development and improvement of the one-half that would pertain to the appellant. Two days later, the appellee Felipe Deluao replied,[13] expressing his concurrence in the appellant's suggestion and advising the latter to ask for a reconsideration of the order of the Director of Fisheries disapproving his (appellant's) application, so that if a favorable decision was secured, then they would divide the area.

Apparently relying on the partnership agreement, the appellee Felipe Deluao saw no further need to maintain his petition for the reinvestigation of Casteel's application. Thus by letter[14] dated March 15, 1950 addressed to the Secretary of Agriculture and Natural Resources, he withdrew his petition on the alleged ground that he was no longer interested in the area, but stated however that he wanted his interest to be protected and his capital to be reimbursed by the highest bidder.

The arrangement under the so-called "contract of service" continued until the decisions both dated September 15, 1950 were issued by the Secretary of Agriculture and Natural Resources in DANR Cases 353 and 353-B. This development, by itself, brought about the dissolution of the partnership. Moreover, subsequent events likewise reveal the intent of both parties to terminate the partnership because each refused to share the fishpond with the other.

Art. 1830(3) of the Civil Code enumerates, as one of the causes for the dissolution of a partnership, "... any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership." The approval of the appellant's fishpond application by the decisions in DANR Cases 353 and 353-B brought to the fore several provisions of law which made the continuation of the partnership unlawful and therefore caused its ipso facto dissolution.

Act 4003, known as the Fisheries Act, prohibits the holder of a fishpond permit (the permittee) from transferring or subletting the fishpond granted to him, without the previous consent or approval of the Secretary of Agriculture and Natural Resources.[15] To the same effect is Condition No. 3 of the fishpond permit which states that "The permittee shall not transfer or sublet all or any area herein granted or any rights acquired therein without the previous consent and approval of this Office." Parenthetically, we must observe that in DANR Case 353-B, the permit granted to one of the parties therein, Leoncio Aradillos, was cancelled not solely for the reason that his permit covered a portion of the area included in the appellant's prior fishpond application, but also because, upon investigation, it was ascertained thru the admission of Aradillos himself that due to lack of capital, he allowed one Lino Estepa to develop with the latter's capital the area covered by his fishpond permit F-289-C with the understanding that he (Aradillos) would be given a share in the produce thereof.[16]

Sec. 40 of Commonwealth Act 141, otherwise known as the Public Land Act, likewise provides that

"The lessee shall not assign, encumber, or sublet his rights without the consent of the Secretary of Agriculture and Commerce, and the violation of this condition shall avoid the contract; Provided, That assignment, encumbrance, or subletting for purposes of speculation shall not be permitted in any case: Provided, further, That nothing contained in this section shall be understood or construed to permit the assignment, encumbrance, or subletting of lands leased under this Act, or under any previous Act, to persons, corporations, or associations which under this Act, are not authorized to lease public lands."

Finally, section 37 of Administrative Order No. 14 of the Secretary of Agriculture and Natural Resources issued in August 1937, prohibits a transfer or sublease unless first approved by the Director of Lands and under such terms and conditions as he may prescribe. Thus, it states:

"When a transfer or sub-lease of area and improvement may be allowed. - If the permittee or lessee had, unless otherwise specifically provided, held the permit or lease and actually operated and made improvements on the area for at least one year, he/she may request permission to sub-lease or transfer the area and improvements under certain conditions.

"(a) Transfer subject to approval. - A sub-lease or transfer shall only be valid when first approved by the Director under such terms and conditions as may be prescribed, otherwise it shall be null and void. A transfer not previously approved or reported shall be considered sufficient cause for the cancellation of the permit or lease and forfeiture of the bond and for granting the area to a qualified applicant or bidder, as provided in subsection (r) of Sec. 33 of this Order."

Since the partnership had for its object the division into two equal parts of the fishpond between the appellees and the appellant after it shall have been awarded to the latter, and therefore it envisaged the unauthorized transfer of one-half thereof to parties other than the applicant Casteel, it was dissolved by the approval of his application and the award to him of the fishpond. The approval was an event which made it unlawful for the business of the

partnership to be carried on or for the members to carry it on in partnership.

The appellees, however, argue that in approving the appellant's application, the Secretary of Agriculture and Natural Resources likewise recognized and/or confirmed their property right to one-half of the fishpond by virtue of the contract of service, exhibit A. But the untenability of this argument would readily surface if one were to consider that the Secretary of Agriculture and Natural Resources did not do so for the simple reason that he does not possess the authority to violate the aforementioned prohibitory laws nor to exempt anyone from their operation.

However, assuming in *gratis argumenti* that the approval of Casteel's application, coupled with the foregoing prohibitory laws, was not enough to cause the dissolution *ipso facto* of their partnership, succeeding events reveal the intent of both parties to terminate the partnership by refusing to share the fishpond with the other.

On December 27, 1950 Casteel wrote^[17] the appellee Inocencia Deluao, expressing his desire to divide the fishpond so that he could administer his own share, such division to be subject to the approval of the Secretary of Agriculture and Natural Resources. By letter dated December 29, 1950,^[18] the appellee Felipe Deluao demurred to Casteel's proposition because there were allegedly no appropriate grounds to support the same and, moreover, the conflict over the fishpond had not been finally resolved.

The appellant wrote on January 4, 1951 a last letter^[19] to the appellee Felipe Deluao wherein the former expressed his determination to administer the fishpond himself because the decision of the Government was in his favor and the only reason why administration had been granted to the Deluas was because he was indebted to them. In the same letter, the appellant forbade Felipe Deluao from sending the couple's *encargado*, Jesus Donesa, to the fishpond. In reply thereto, Felipe Deluao wrote a letter^[20] dated January 5, 1951 in which he reiterated his refusal to grant the administration of the fishpond to the appellant, stating as a ground his belief "that only the competent agencies of the government are in a better position to render any equitable arrangement relative to the present case; hence, any action we may privately take may not meet the procedure of legal order."

Inasmuch as the erstwhile partners articulated in the *aforecited* letters their respective resolutions not to share the fishpond with each other - in direct violation of the undertaking for which they have established their partnership - each must be deemed to have expressly withdrawn from the partnership, thereby causing its dissolution pursuant to art. 1830(2) of the Civil Code which provides, *inter alia*, that dissolution is caused "by the express will of any partner at any time."

In this jurisdiction, the Secretary of Agriculture and Natural Resources possesses executive and administrative powers with regard to the survey, classification, lease, sale or any other form of concession or disposition and management of the lands of the public domain, and, more specifically, with regard to the grant or withholding of licenses, permits, leases and contracts over portions of the public domain to be utilized as fishponds.^[21] Thus, we held in *Pajo, et al. vs. Ago, et al.* (L-15414, June 30, 1960), and reiterated in *Ganitanao vs. Secretary of Agriculture and Natural Resources, et al.* (L-21167, March 31, 1966), that

"* * * [T]he powers granted to the Secretary of Agriculture and Commerce (Natural Resources) by law regarding the disposition of public lands such as granting of licenses, permits, leases, and contracts, or approving, rejecting, reinstating, or cancelling applications, or deciding conflicting applications, are all executive and administrative in nature. It is a well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts (*Coloso v. Board of Accountancy*, G.R. No. L-5750, April 20, 1953). In general, courts have no supervising power over the proceedings and actions of the administrative departments of the government. This is generally true with respect to acts involving the exercise of judgment or discretion, and findings of fact. (54 Am. Jur. 558-559) Findings of fact by an administrative board or official, following a hearing, are binding upon the courts and will not be disturbed

except where the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion. * * * (emphasis supplied)

In the case at bar, the Secretary of Agriculture and Natural Resources gave due course to the appellant's fishpond application 1717 and awarded to him the possession of the area in question. In view of the finality of the Secretary's decision in DANR Cases 353 and 353-B, and considering the absence of any proof that the said official exceeded his statutory authority, exercised unconstitutional powers, or acted with arbitrariness and in disregard of his duty, or with grave abuse of discretion, we can do no less than respect and maintain unfettered his official acts in the premises. It is a salutary rule that the judicial department should not dictate to the executive department what to do with regard to the administration and disposition of the public domain which the law has entrusted to its care and administration. Indeed, courts cannot superimpose their discretion on that of the land department and compel the latter to do an act which involves the exercise or judgment and discretion.[22]

Therefore, with the view that we take of this case, and even assuming that the injunction was properly issued because present all the requisite grounds for its issuance, its continuation, and, worse, its declaration as permanent, was improper in the face of the knowledge later acquired by the lower court that it was the appellant's application over the fishpond which was given due course. After the Secretary of Agriculture and Natural Resources approved the appellant's application, he became to all intents and purposes the legal permittee of the area with the corresponding right to possess, occupy and enjoy the same. Consequently, the lower court erred in issuing the preliminary mandatory injunction. We cannot overemphasize that an injunction should not be granted to take property out of the possession and control of one party and place it in the hand of another whose title has not been clearly established by law.[23]

However, pursuant to our holding that there was a partnership between the parties for the exploitation of the fishpond before it was awarded to Casteel, this case should be remanded to the lower court for the reception of evidence relative to an accounting from November 25, 1949 to September 15, 1950, in order for the court to determine (a) the profits realized by the partnership, (b) the share (in the profits) of Casteel as industrial partner, (c) the share (in the profits) of Deluao as capitalist partner, and (d) whether the amounts totaling about P27,000 advanced by Deluao to Casteel for the development and improvement of the fishpond have already been liquidated. Besides, since the appellee Inocencia Deluao continued in possession and enjoyment of the fishpond even after it was awarded to Casteel, she did so no longer in the concept of a capitalist partner but merely as creditor of the appellant, and therefore, she must likewise submit in the lower court an accounting of the proceeds of the sales of all the fishes harvested from the fishpond from September 16, 1950 until Casteel shall have been finally given the possession and enjoyment of the same. In the event that the appellee Deluao has received more than her lawful credit of P27,000 (or whatever amounts have been advanced to Casteel), plus 6% interest thereon per annum, then she should reimburse the excess to the appellant.

ACCORDINGLY, the judgment of the lower court is set aside. Another judgment is hereby rendered: (1) dissolving the injunction issued against the appellant, (2) placing the latter back in possession of the fishpond in litigation, and (3) remanding this case to the court of origin for the reception of evidence relative to the accounting that the parties must perforce render in the premises, at the termination of which the court shall render judgment accordingly. The appellant's counterclaim is dismissed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.

[1] Landicho vs. Tan, 87 Phil. 601.

- [2] *Venturina vs. Court of First Instance of Nueva Ecija, et al.*, 75 Phil. 804.
- [3] *Philippine Air Lines, Inc. vs. Ceniza, et al.*, 93 Phil. 1011.
- [4] *Ortega, et al. vs. Pachon*, 98 Phil. 618.
- [5] *Bautista vs. Municipal Council of Mandaluyong, et al.*, 98 Phil. 409; *Fenis, et al. vs. Cordero, et al.*, 98 Phil. 335; *Pa-rina vs. Cobangcobang, et al.*, L-8398, March 21, 1956.
- [6] 99 Phil. 462.
- [7] *Siojo vs. Tecson*, 88 Phil. 531; *Sandejas vs. Robles*, 81 Phil. 421; *Pajarillo vs. Manahan*, 99 Phil. 1000.
- [8] *Banco Español vs. Palanca*, 37 Phil. 921.
- [9] Quoted in full in the Record on Appeal, pp. 444-445.
- [10] Quoted in full in the Record on Appeal, pp. 168-169.
- [11] See Casteel's letter to the Deluaos dated November 15, 1949, *supra*.
- [12] Quoted in full in the Record on Appeal, pp. 445-446.
- [13] Quoted in full in the Record on Appeal, pp. 169-170.
- [14] Quoted in full in the Record on Appeal, pp. 170-171.
- [15] Memorandum Order No. 4, January 24, 1933, Department of Agriculture and Commerce.
- [16] See the full text of the decision in the Record on Appeal, pp. 27-34.
- [17] Quoted in full in the Record on Appeal, pp. 457-458.
- [18] Quoted in full in the Record on Appeal, pp. 458-459.
- [19] Quoted in full in the Record on Appeal, pp. 459-460.
- [20] Quoted in full in the Record on Appeal, pp. 460-461.
- [21] See Sec. 3 and 4 of C.A. 141, the Public Land Act; and Sec. 3 and 4 of Public Act 4003, the Fisheries Act.
- [22] *Gonzales vs. Director of Lands*, 43 Phil. 227.
- [23] *Devesa vs. Arbes*, 13 Phil. 273; *Palafox vs. Madamba*, 19 Phil. 444; *Evangelista vs. Pedreños*, 27 Phil. 648; *Gilchrist vs. Cuddy*, 29 Phil. 542; *Asombra vs. Dorado & Gesmundo*, 36 Phil. 883; *Golding vs. Balatbat*, 36 Phil. 942; *Lacassagne vs. Chapuis*, 144 U.S. 119, 12 Sup. Ct. 659, 36 L. Ed. 368; *Roy vs. Moore*, 85 Conn. 159, 82 Atl. 233.

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