

THE PHILIPPINE BRITISH CO., INC. AND THE CIBELES INSURANCE CORPORATION, PETITIONERS, VS. THE HON. WALFRIDO DE LOS ANGELES IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH IV OF THE CO...

G.R. Nos. L-33720-21. March 10, 1975

Ponente: BARREDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6d3300da8a37/>

BARREDO, J.:

Petition for certiorari to annul and set aside the default proceedings, the judgments and the writs of execution of respondent judge in Civil Cases Nos. Q-15377-8 of the Court of First Instance of Quezon City entitled *Multifield Enterprises, et al. vs. Philippine British Assurance Co., Inc. and Multifield Enterprises et al. vs. Cibeles Insurance Corporation*, respectively, and for prohibition to enjoin the execution of said judgments. Upon the filing of the petition, the Court issued the writ of preliminary injunction prayed for. Respondents were required to answer and after issues were joined, the parties filed their respective memoranda in lieu of oral argument.

On June 12, 1970, a fire broke out in the premises of private respondents (Tapia, for short) at No. 245 Roosevelt Avenue, San Francisco del Monte, Quezon City. Being holders of fire insurance policies from different companies, among them the petitioners, and having failed to secure extrajudicial settlement of their claims, they filed corresponding civil actions in the Court of First Instance of Quezon City. All of said cases, dealing as they did with the same facts and issues, were assigned to respondent judge, to whom by raffle the first of them had fallen. Petitioner British (for short) was served summons in Civil Case No. Q-15377 on March 29, 1971 while petitioner Cibeles (for short) was served theirs for Civil Case No. Q-15378 on April 2, 1971, hence their answers were due on April 13 and 17, respectively.

On April 13, 1971, counsel for British filed by mail a motion asking for fifteen (15) days extension of its time to answer, claiming that due to the intervening Holy Week and pressure of other works, he would be unable to prepare his answer within the reglementary period. He was granted only five (5) days ending April 19.^[1] No answer came until April 28, 1971, albeit it was mailed by registered service on April 22, 1971. Cibeles in turn filed its own motion for extension on April 19, 1971, two days after due date. Obviously, the period could not be extended anymore. Just the same, it filed its answer on April 22, 1971, which was joint with that of British.

In the meanwhile, on April 24, 1971, Tapia filed separate motions in the two cases praying that petitioners be declared in default. Not having received by then any answer of petitioners, (Petitioners did file a joint answer, but as will be seen later, the same was actually received by respondent court only on April 28, 1971.) an order of default was issued, directing at the same time that plaintiffs' evidence be received by the clerk of court. This reception of evidence was done on April 26 and 27, and on April 28, 1971, the judgments complained of herein were rendered. After being duly docketed, these judgments were released for service by registered mail on May 17, 1971, addressed to petitioners' counsel, Atty. Alfonso Felix, Jr. at his given address at Room 212 Lopez Building, Aduana Street, Intramuros, Manila.

According to the postman assigned in that area, Alfredo E. Sugatan, the first registry notice of said mail matter, Registered Mail No. 13648, was delivered by him actually to counsel's secretary who was known to him personally, a certain Miss Tuliao, in the morning of May 19, 1971, as he similarly delivered to her subsequently the second and third notices on May 30, 1971 and June 15, 1971.

According to Atty. Felix, Jr., on May 24, 1971, the day he received the order of default in Q-13577 (Par. 12 and Annex C-1 of Petition) he found himself in the respondent court and to his great surprise, in the corresponding expedientes, he found neither (1) his motion for extension of time to file answer in Q-13577 nor (2) the aforementioned joint answer he had filed on behalf of petitioners and that instead he saw therein that orders of default had been issued in both cases and, further, that evidence of the plaintiffs had been received ex-parte on April 26 and 27, 1971.[2] He claims also that on said occasion, when he examined the expedientes of the cases, he did not find therein any copy of any decision. To be noted, however, he does not pretend that he made any inquiry from any of the officials and employees of the court as to what was the exact status of his cases as of that date.

Two days later or on May 26, 1971, he filed a joint motion, dated May 25, 1971, to lift the order of default, unverified and unaccompanied by any affidavit of merit, which he set for hearing on June 1, 1971. According to him, "the motion to set aside the Order of Default could not be heard on June 1 the day on which it was set for hearing for the reason that that day had been declared a public holiday, undersigned counsel went to respondent court the next day, June 2, 1971, consulted the expedientes and seeing respondent Judge de los Angeles showed him a copy of the Joint Motion Annex 'D' to lift the Order of Default. Respondent Judge de los Angeles after reading in the presence of undersigned counsel that Joint Motion Annex 'D' asked him to set it for hearing anew and told him that it was always his practice to give parties a chance to present evidence." (Par. 17 of Petition). And so, counsel did as told.

Thus, on June 10, 1971, a notice was received by Atty. Felix, Jr. advising him that his motion had been set for hearing on June 30, 1971, but on June 22, 1971, respondent judge issued an order cancel-ling this notice for the reason that "for failure of defendants in the above-entitled cases to comply with the requirements imposed by Section 3 of Rule 18, Rules of Court and pursuant to the decisions of the Supreme Court on the matter, this Court can no longer set aside its order dated April 24, 1971." (Annex H of the Petition). And on June 28, 1971, respondent judge issued the following order:

"Acting on the 'motion for immediate execution of judgments filed by the plaintiffs through counsel in the above-entitled cases, this Court finds and the records of these cases bear out and show that the judgments adverted to were rendered by this Court on April 28, 1971 and copies thereof were sent and posted as registered mail No. 13648 to the counsel for defendants on May 17, 1971 by the Clerk of this Court. The copies of the decisions as regis-tered mail No. 13648 were returned to this Court by the Post Office as unclaimed by the addressee, the counsel for the defendants, on June 23, 1971.

"Both the certification (Annex "A" of the motion for immediate execution) and the proof of service of the notices sent by the postmaster stamped on the envelop-cover of the decisions show that the first notice of this registered mail was sent to the counsel for defendants at his office address on May 19, 1971 by the postmaster. Again, on May 30, 1971, a notice was sent to him by the postmaster on these decisions as registered mail No. 13648. The last and third notice by the postmaster was sent to him by the postmaster on June 15, 1971. Still counsel for defendants did not claim from the Post Office his copies of the decisions for which no less than three notices were sent to him by the postmaster.

"Completeness of service of the decisions on defendants' counsel was thus accomplished after the expiration of five days from the date of the first notice which is May 19, 1971, pursuant to Section 8 of Rule 13, Rules of Court and the numerous decisions of the Supreme Court on this particular matter. The period of thirty (30) days within which to interpose an appeal from these decisions rendered by this Court in the above-entitled

cases commenced on May 25, 1971 the day after the fifth day from May 19, 1971 and expired after June 23, 1971, the thirtieth day. From May 25, 1971 to June 23, 1971, no appeal from these decisions was taken by the defendants. Considering that the period of thirty (30) days has already expired and no appeal has been taken by the defendants from the decisions rendered by this Court on April 28, 1971, they are by law now final, unappealable and, as matter of right, the plaintiffs are entitled to their immediate execution.

"WHEREFORE, the immediate execution of the judgments in the above-entitled cases are hereby granted. Let the corresponding writs of execution be issued.

SO ORDERED."

Pursuant to the writs issued under this order, the Hongkong & Shanghai Banking Corporation paid to respondent Sheriff P294, 750.00 for the account of British and the First National City Bank of New York the sum of P75, 000 for the account of Cibeles (Pars. 30 and 31, Petition), but all the amounts thus paid were returned to the respective banks by virtue of the writ of preliminary injunction of this Court of July 9, 1971.

On July 1, 1971, petitioners filed a joint "Petition for Relief from Judgment." But before said petition could be acted upon by the court, the instant petition was filed with this Court on July 2, 1971 and summons, together with the writ of preliminary injunction was served on public respondents on July 10, 1971. (Annex N, Petition). In the meantime, on the same day that the petition for relief was set for hearing, July 7, 1971, respondent judge found it to be "sufficient in form and substance" and ordered the respondents "to answer the same within a period of fifteen (15) days from receipt hereof." (Annex A, Respondents' Motion to Dismiss of September 5, 1972.) Nothing else developed in the trial court later because the injunction of this Court which was served on respondent judge on July 10, 1971 enjoined him from "taking further action" in the two subject cases.

At this juncture, it becomes necessary to discuss and resolve a point of procedure before going any further. As may be noted, We could have refused to give due course to the present petition when it was filed on July 2, 1971, considering that it already avers that a petition for relief from judgment dated June 30, 1971 (Annex N of Petition) had been filed by petitioners with the trial court on July 1, 1971, which, pursuant to the usual practice, We could have deemed as an adequate remedy in the ordinary course of law that constitutes a bar to a certiorari review or any other kind of special civil action. But the petition, on its face, presented the situation that obtained in the trial court in such an alarming manner, to the point of strongly hinting possible irregularities in the actuaciones of the respondent judge and the employees in his sala, which could involve their honesty and good faith as well as the integrity of judicial records and proceedings, that the Court felt it was in the best interest of justice for the Court itself to inquire without further loss of time into what actually happened. Indeed, even after the parties had filed their respective memoranda and the Court had by resolution of October 21, 1971 declared these cases submitted for decision, when the respondents filed their motion to dismiss of September 5, 1972, based precisely on the ground that on July 7, 1971 the trial court had given due course to petitioners' petition for relief, We resolved to defer determination of the dismissal motion until this decision on the merits.

Now, having thus disregarded the existence of an ordinary remedy in the court below at the earlier stages of these cases, it is but proper and logical for Us to pursue such course of action to its ultimate conclusion, since anyway, counsel for petitioners has himself vehemently objected to said motion to dismiss, and, after all, as We see it, there are enough incontrovertible facts in the record, furnished by both parties, on the basis of which the Court can put an end to the litigation between the parties regarding the insurance claims of private respondents against petitioners, the subject matter of the actions in the court below. To now confine Ourselves to holding that the trial court should be accorded the opportunity to resolve the petition for relief of British and Cibeles therein pending would serve no purpose than to proliferate proceedings, only to end in the same inevitable result which even here is already obvious and unavoidable. That would be sacrificing substance to achieve nothing more than perfection

of form and procedure, which is inconsistent with the primordial principle that the courts must always strive for a just, speedy and inexpensive determination of all actions and proceedings. And so, the Court has decided to determine here even the question of whether the petition for relief filed by petitioners with the respondent court should be granted or denied, thereby avoiding any possible doubt that petitioners might entertain as to the impartiality and integrity of future actuaciones of the respondents. Indeed, petitioners have placed before Us by their petition, memorandum and subsequent pleadings, complete with appropriate annexes, consisting of affidavits, letters and other documents, all the facts which they must believe are relevant, whereas respondents have duly joined issued with them as to all said facts in their own answer, memorandum and other papers, complete also with similar corresponding annexes, and there being no serious, much less any credible indication that any of the parties' annexes are not authentic, We deem it unnecessary to prolong further the main controversy between the parties. We will resolve the whole case here.

The contention of petitioners that they were erroneously declared in default has no merit. From the incontrovertible facts in the record, We cannot see how it can be justly said that respondent judge committed a grave abuse of discretion in making such declaration. As regards Cibeles, there can be no question that even its motion for extension to file its answer was filed out of time. It was served summons on April 2, 1971, and it is not disputed that its motion for extension was filed on April 19th, two days late. With respect to British, its answer was admittedly due on April 13, 1971, and although it asked for an extension of fifteen (15) days, it was given only five (5) days ending April 19, 1971[3]; consequently, its answer jointly filed with Cibeles on April 22, 1971 was undoubtedly out of time.

Counsel suggests that he was not given enough time, considering that there was the Holy Week to take into account, but His Honor ruled that precisely, counsel would have more time because of the holidays. Again, We perceive no grave abuse of discretion in such a pragmatic ratiocination. Besides, it is settled that parties and counsel should not assume that courts are bound to grant the time they ask for compliance with the rules, and, therefore, the fact that counsel received the order of extension by mail only on April 26, 1971, is no reason for him to complain. Likewise, that he was not notified of the motion to declare his clients in default is not against the rules, for he had no right to such notice. (*Pielago vs. Generosa*, 73 Phil. 654.)

Anent the motion to lift the orders of default, counsel invites attention to the alleged directive of respondent judge to him to have the hearing of his said motion reset because it is the judge's "practice to give parties a chance to present evidence." We take it, however, that seemingly what happened then must have been that His Honor was just trying to figure out how counsel could be helped out of his self-imposed predicament, but, evidently, upon further reflection, he must have realized the legal obstacles on the way and consequently found no alternative than to rule that the motion to lift did not have to be reset for hearing anymore. Upon perusing the motion when it was filed, he must have noted that it did not comply, as he so stated in his order, with the requirements of Section 3 of Rule 18.

As may be seen, petitioners' joint motion to lift the order of default, Annex D of the Petition, the same is neither under oath nor accompanied by any affidavit of merit. And in *Ong Peng vs. Custodio*, 111 Phil. 382, We held as follows:

"x x x Upon examination of the motion to set aside the order of default, we find it to be lacking in the following substantial requirements: it does not contain an affidavit of merits, the motion to set aside the default order is not under oath and contains only a promise or an assurance, not an affidavit of merits, that defendant has a good defense. The court was, therefore, fully justified in denying the motion to set aside the order of default."

In fact, in view of the omission of petitioners to accompany their motion with any affidavit of merit, the trial court

had no authority to consider the same. It is to be noted that the requirements of Section 3 of Rule 18 are practically identical to those of Section 3 of Rule 38 regarding the need to show the existence of fraud, accident, mistake or excusable negligence that caused the default and to accompany the motion to set aside with affidavits of merit. Consequently, it is but proper to apply to such a motion the same ruling applicable to petitions for relief under Rule 38, which is to the effect that:

"Furthermore, it appears that appellant's petition to set aside the judgment and reopen the case, is grounded on his alleged excusable negligence in failing to appear and testify during the hearing of the case on February 3, 1959, namely, his becoming ill with flu (influenza) on said date. We find, however, that appellant failed to accompany said petition with affidavits of merit showing the excusable negligence relied upon, and the facts constituting his good and substantial cause of action or defense, as expressly required under Section 3, Rule 38 of the Rules of Court. We have repeatedly held that such a defect is fatal (*Abao vs. Virtucio, et al.*, 109 Phil., 821; *Price Stabilization Corporation vs. Court of First Instance of Manila, et al.*, 97 Phil., 153) which warrants the denial of the relief sought (*Abao vs. Virtucio, et al.*, supra, citing *Coombs vs. Santos*, 24 Phil., 446; *McGrath vs. Del Rosario*, 49 Phil., 330; *Villanueva, et al. vs. Alcoba*, 101 Phil., 277). The reason for the rule is that it is the affidavits of merit which serve as jurisdictional basis for a court to entertain a petition for relief (*Abao vs. Virtucio, et al.*, supra; *Omandam vs. Director of Lands*, 95 Phil., 450; *Off. Gaz.*, 4840). Stated differently, where a petition to set aside a judgment or reopen a case pursuant to Rule 38 of the Rules of Court is not accompanied with said affidavits of merit, the court with which it is filed is not called upon to entertain the petition. Applied to the instant case, appellant's petition to set aside the judgment in question and reopen the case acquired no standing in court and, consequently, it was rightly denied." (*Fernandez vs. Tan Tiong Tick*, 111 Phil. 773 at pp. 780-781.)

Indeed, the identity of these two remedies is such that in *Ong Peng*, supra, We already expressed Our "doubt if the same issue raised in the original motion to set aside the order of default, may again be raised in a petition for relief under Rule 38 of the Rules of Court. The general rule is that once a matter in issue has been decided by the court, it may no longer be brought again in the form of another objection, and in the guise of a motion under another provision of the rules" (at p. 387). True it is that as a matter of form, under Section 3 of Rule 18 it is not essential that the affidavit of merit be separate from the motion and may instead be incorporated therein, but in the instant case of petitioners' motion, even if it makes general allegations of merit, these allegations are not supported by oath of anyone who has knowledge of the fact. As already stated, not even Atty. Felix Jr. swore to the truth thereof. Accordingly, We find no error in the subsequent action of respondent judge of cancelling the notice of hearing of the joint motion to lift the order of default.

Besides, the same section expressly provides that motions to lift orders of default may be filed only before judgment, and petitioners' joint motion was filed only on May 26, 1971, whereas the judgments in question were rendered on April 28, 1971.

But counsel would attach importance to another aspect of his motion to lift the default orders, regardless of its legal untenability. He contends that having filed such a motion, he became entitled under Section 9 of Rule 13 to notice "of all further proceedings" and, therefore, the failure of respondents to notify him of the motions for immediate execution of the default judgments fatally vitiated the order granting the same and the writs and levies pursuant thereto.

It is quite obvious that counsel's reliance on the provision cited by him is misplaced. Textually, the said section reads thus:

"SEC. 9. Service upon party in default. — No service of papers other than substantially amended or supplemental pleadings and final orders or judgments shall be necessary on a party in default unless he files a motion to set aside the order of default, in which event he shall be entitled to notice of all further proceedings

regardless of whether the order of default is set aside or not."

We are not prepared to agree with counsel that the right of a party in default to notice of further proceedings which this rule revives as a result of the filing of a motion to set aside the default order is intended by the rule to be so easily reacquired that just by the mere filing of any motion with a prayer to set aside the default, the provision may be deemed as already complied with. Logic and principle dictate that the effects of default may not be treated as lightly as if it were of no juridical essence. While the Court has generally been liberal in giving a party in default a chance to participate in the trial, We cannot sanction any proposition that would so reduce the effect of an order of default that to have it set aside all that has to be done is for the party concerned to file any perfunctory motion therefor. A party who by inaction or negligence allows himself to be declared in default offends the rule requiring him to answer the summons without unnecessary delay to the end that the issues may be duly joined and the litigation be expeditiously terminated. To purge himself of the effects of such offense, it should not be enough for him to just tell the court he has, after all, decided to wake up and take part in the proceedings. It is but proper that he must justify his failure to comply with the rule before he is relieved from the adverse consequences of his omission. Thus, Section 9 of Rule 13 must be read in conjunction with Section 3 of Rule 18. In other words, the motion to set aside default referred to in Section 9 of Rule 13 must be one the contents of which are precisely those provided for in Section 3 of Rule 18. Thus, the filing of such a motion to set aside short of the requirements of this latter provision may not as it cannot produce the revival of the right to notice contemplated in Section 9 of Rule 13. Any other construction in line with the position of petitioners would render the intent and purpose of the pertinent provisions nugatory and ineffective. Considering, therefore, that counsel's joint motion to lift the order of default in the subject cases did not comply with Section 3 of Rule 18, there is no justification at all for his gripe that he was not notified of further proceedings.

The next point raised by petitioners is more basic. They maintain that the circumstances related by their counsel should prove to Us that there were in fact no judgments yet against them on June 2, 1971, the day when said counsel verbally took up with respondent judge the matter of having the orders of default lifted. It is the emphatic charge of counsel that when he examined the records of the subject cases on May 24, 1971 "no decision of any sort appeared" therein. (Par. 11-d, Petition). He also "affirms under oath that on June 2, 1971, no decision of any sort appeared in these expedientes nor did respondent Judge de los Angeles ever aver that any decision had been rendered." (Par. 18, Petition). He further adds that "the clearest evidence that we can furnish the Supreme Court that as late as June 3, 1971, no decision had (yet) been rendered" is that he had received on June 10, 1971 a notice setting his motion to lift the order of default for hearing on June 30, 1971, "for had any decision been rendered, clearly the deputy clerk of court who is under the control and supervision of respondent judge and who is doubtless familiar with the expedientes of these cases would have not set a Motion to Lift the Order of default for hearing had any decision been rendered (already)" (Pars. 20 and 21, Petition). Additionally, he points out that even in the order of June 22nd cancelling the notice of hearing issued by the clerk of court of the motion to lift, His Honor made no hint that he had already decided counsel's cases. Finally, counsel surmises that it is rather strange that respondent judge had the material time to prepare his decisions on April 28, when the reception of the evidence took place only on April 26 and 27.

In plain language, the accusation is that the decisions in question must have been prepared subsequent to June 3, 1971. Undoubtedly, the indictment is serious. It directly implies misfeasance on the part of the officials and employees of the trial court, not excluding respondent judge. Upon the other hand, the rotund denial of the respondents is coupled with their own counter-accusation that counsel is frantically but vainly trying only to make up with his clients for his failure to act on their behalf on time. In the face of these sharply opposite positions, We could do no less than scrutinize the record minutely and carefully, if only to be able to pin proper responsibility on whosoever might be guilty of violating his sacred oath as functionary of the court, either as judge, clerk of court

or mere employee thereof or as counsel.

After a conscientious review of the pertinent facts extant in the record, it is our considered opinion that counsel's suspicion is unfounded. To begin with, respondents have in their favor the presumption heretofore invariably relied upon by the Court in similar situations that official duty has been regularly performed by them and that they have acted in good faith. It has been the constant ruling of this Court that this kind of presumption must stand, even against the most well reasoned allegations seemingly pointing to some possible irregularity or anomaly. "In the absence of a showing to the contrary, a judicial proceeding is presumed to be regular, and all steps required by law to be taken before the Court may validly render judgment, had been so taken." (*El Banco Español-Filipino vs. Palanca*, 37 Phil. 921; *Ongsiako vs. Natividad*, L-1371, Aug. 5, 1947; *People vs. Baco*, L-2633, Feb. 23, 1958; *Go Chi, et al. vs. Go Cho, et al.*, L-5203, Feb. 23, 1955; *People vs. Nazario*, L-7629, Sept. 29, 1955). And so far, We have not seen anything in the record to support the charges of Atty. Felix Jr. beyond his own allegations which, considering they do not necessarily belie the contrary representations of the adverse party, do not appear to Us to have any added weight just because counsel has taken pains to emphasize he has made them "under oath."

As to the disputed existence of the judgments in question prior to June 3, 1971, or for that matter, before May 24, 1971, We are fully convinced that said judgments were entered in the docket on April 28, 1971. We do not feel justified under the circumstances revealed in the record to say that such entry was made days before the judgments were actually prepared and signed. The vital fact of such entry is borne out by the certification to such effect of the respondent Clerk of Court Vicente S. Ocol, Annex 9 of the answer herein, and the affidavit of Branch Clerk of Court Leon D. Paradero, Annex 9-B, attesting to the rendition of said judgments on the same date, the truth of which can easily be checked with the regularity or irregularity of the entries in the docket of the trial court. If the corresponding entries in the docket do not appear to be regular, Atty. Felix Jr. could have completely rebutted these annexes with proof based on what appears in said docket itself. The utter silence of counsel in this respect is eloquent evidence against him.

Besides, the apparent thrust of counsel's theory is that respondents were in such hurry to make the impugned judgments effective that they allegedly overlooked compliance with the rules cited by him, but, to Our mind, the incontrovertible fact that it was not until May 17, 1971, or almost three weeks after April 28, 1971, that Jesus B. Marzan, the Chief of the Civil Cases Section in the court below, released the said judgments, according to his affidavit (Annex 9-A, id.), belies entirely such claim. This somewhat belated release is also proven by the evidence, to be discussed anon, as to when the postal authorities got the decision for delivery to petitioners' counsel. If it were true that respondents were acting in haste, such release would have been immediate.

The reality of the existence of the judgments in controversy prior to the dates when counsel claims he did not see them is corroborated by evidence coming from sources other than the office of respondent court. Annex 11-A of the respondents' answer herein is the certification of Mr. H. G. Guzman, Postmaster of the Port Area Post Office, Manila, to the effect that Registered Letter No. 13648 of sender, "CFI Branch IV, Quezon City" was received by his office on May 19, 1971 "and the corresponding Registry Notice was issued on said date, and sent to addressee on same day," that "the succeeding second and third notices was (sic) issued after about weeks' intervals (sic) the exact date of which was noted on the envelope cover of the said letter" and further "that the Registered Letter was return (sic) to the sender, it being (sic) remain(ed) unclaimed for more than thirty days, on June 22, 1971 under our Registry Bill No. 199 for Quezon City line 1, page 1 as shown by our records." Annex 10 is the affidavit of Alfredo E. Sugatan, the postman assigned to the Port Area Post Office, Manila, entrusted specifically with the delivery of "letters, notices of mails and other mail matters" in the area "composed of Aduana and Arsobispo Streets, Intramuros, City of Manila", stating in detail that in the morning of May 19, 1971 he personally delivered at Room 212 Lopez Building, Aduana, Intramuros, Manila, to Miss Tuliao, known to him to be the secretary of

Atty. Alfonso Felix, Jr., also personally known to him, by reason of the performance of his duties for a "long period of time" in that area, "the FIRST NOTICE on (sic) Registered Mail No. 13648" (the same number referred to in Annex 11-A above) and that he also delivered to her on May 31, 1971 and June 15, 1971, the second and third notices corresponding to the same registered letter, respectively. Annex 11 is the photostat copy of the face and the dorsal portion of the envelope addressed to "Atty. Alfonso Felix Jr., Rm. 212 Lopez Bldg., Intramuros, Manila", with notations such as: the number 13648 enclosed in an oblong figure; "Q-15378-D and Q-15377-D" (which are precisely the numbers of the subject cases); "Reg. Mail w/ return card"; and "Republic of the Philippines, Court of First Instance, Branch IV - Quezon City"; and marked with rubber stamp data as follows: "Registered, Quezon City, Philippines, May 17, 1971", "Port Area, Manila, Philippines received May 19, 1971" as well as "Second Notice, 5-30-71" and "Third Notice, 6-15-71".

Considered in the light of ordinary official practice and experience, all the foregoing prove that mail matter related to Civil Cases Nos. Q-15377-D and Q-15378-D of Branch IV of the Court of First Instance of Quezon City duly addressed to Atty. Alfonso Felix, Jr. was posted by registered mail, No. 13648, at the Quezon City Post Office on May 17, 1971 and received by the Port Area Manila Post Office on May 19, 1971 and received back by the Quezon City Post Office on June 23, 1971, unclaimed after a second notice on May 30, 1971 and a third notice on June 15, 1971. And since it has not been shown that any other notices referring to the same cases had proceeded from the trial court on or about the dates mentioned, it stands to reason that what the envelope, Annex 10, contained were precisely the judgments in question, as attested by the affidavit, Annex 9-A, of the mailing clerk of the respondent court who released the same.

This telling mass of official evidence stands unrebutted in the record by any evidence legally worthy of consideration. Atty. Felix, Jr. has not shown the Court any evidence which can effectively dent the effect thereof other than his own allegations "under oath" and the inconclusive and general assertions in (1) the affidavit of Miss Cleofe V. Tuliao, "in charge of the clerical work in the office including the issuance and receipt of the correspondence" to the effect that "She knows in (sic) of her own knowledge that the (sic) matter of practice which has never been deviated from (is that) the postman gives her the notice cards for registered mail, she then brings these cards to Atty. Alfonso Felix, Jr., who signs them and these cards are then given to Carlos de la Cruz, the office messenger who collects them" and that "on no occasion did she fail to present any of these notice cards to Atty. Alfonso Felix, Jr. nor did she fail to deliver the cards thus signed to Carlos de la Cruz for collection", Annex A of Annex 1 of Respondents' Petition for dissolution of Writ of Preliminary Injunction dated July 13, 1971[4] and (2) the affidavit of said Carlos de la Cruz stating that "he knows that it is the practice of the office which is never deviated from that he receives the notice cards for registered mail from Miss Cleofe Tuliao either in hand or by having them put on his desk and he then picks up all such registered mail at the proper post office" and that "on no occasion whatsoever that he failed to collect registered mail covered by card notices." (Annex B, id.). At a glance, anyone can see that these assertions do not disprove the facts evidenced by the official records just referred to. It is not an exaggeration to say that the regularity of the actuations of the respondents in relation to the declaration of default and rendition and execution of the judgment here in question has been proven by such convincing evidence as to relieve Us from any doubt about it.

Now, very little needs be said as regards the contention that petitioners should have been notified of respondents' motion for execution. Prescinding already from the consideration discussed above that the mere filing of petitioners' motion to set aside did not, because of the fatal defects of the same, have the effect of entitling them to notice of all subsequent proceedings, with the regularity of the rendition of the impugned judgments as well as the fact of their having become final and executory on June 23, 1971[5] being indisputably borne by the record, the action taken by the trial court on June 28, 1971, Annex 12 of the Answer, of granting respondents' motion for immediate execution assumed the character of an order of execution of a final and executory judgment, as so

stated in the order itself, and has, therefore, become a matter of right to the prevailing party and ministerial on the part of the court to grant. In *Pamintuan vs. Muñoz*, 22 SCRA 1109, the Court held:

"Regarding the first point, it is by now axiomatic that a judgment on a compromise — like the one in the case at bar — is at once final and immediately executory. Also of the same stature is the rule that once a judgment becomes final and executory, the prevailing party can have it executed as a matter of right and the granting of execution becomes a ministerial duty of the court. Otherwise stated, once sought by the prevailing party, execution of a final judgment will just follow as a matter of course. Hence, the judgment debtor need not be given advance notice of the application for execution nor be afforded prior hearing. (Rule 39, Sec. 1, Rules of Court; *Luther v. Clay*, 100 Ga. 236, 28 S. E. 46.) This renders of little significance then the fact alleged by petitioners that they received copy of respondent's motion for execution only on the afternoon of the day set for its hearing."

At this point, it should be noted that viewed strictly, petitioners' fundamental pose rests exclusively on a claim of denial of due process in that they have been improperly declared in default and that writs of execution were issued against them without notice. Neither in the petition herein nor even earlier in the motion to lift the order of default, Annex D, or the petition for relief from judgment, Annex N, filed with the court below, is there the adequate showing required by the rules to make the Court inquire into the possible existence of good and valid defenses on the part of petitioners so as to justify granting them an opportunity to prove them. To be sure, in the joint motion, Annex D, counsel does make mention in paragraphs 4 and 9 thereof of "good and valid reasons for the denial of plaintiff's claim by defendant company" (British) and "good and valid defenses" of Cibeles. The trouble however is that to support the same, counsel only makes reference to the joint answer, Annex B, he had filed on behalf of the two petitioners but, neither the motion itself nor the joint answer is supported by any corresponding oath. The same observations may be made with regard to the petition for relief, Annex N. And as to the allegations on the point in question in the petition herein, all that is stated in paragraph 9 thereof is as follows:

"(9) In the meantime, undersigned counsel had on behalf of both petitioners filed a joint answer on April 22, 1971 which was received by the Court on April 28, 1971. This answer signed in behalf of both petitioners alleges meritorious defenses. A copy of the Joint Answer is annexed to the present pleading as Annex "B" hereof."

While the petition appears to be verified by Atty. Felix Jr., it is obvious that said verification may not be deemed sufficient for the purpose of attesting to the truth of the allegations of fact in the joint answer, Annex B, not only because no direct reference is made to them by counsel but also because said counsel cannot pretend he has adequate personal knowledge of said facts.

Fatal as such inadequacies are in the light of establish jurisprudence too well known to need being cited, if only to satisfy Our curiosity which was aroused by the alarming allegations of the petition, We have opted to look into the purported defenses of the petitioners, on the basis of the allegations pertinent thereto in the memoranda of the parties, to which are annexed, as noted earlier above, corresponding documents supposed to evidence the truth of the facts stated in said allegations. After careful and mature consideration and evaluation of their respective allegations, We are convinced that petitioners' alleged defenses cannot stand close scrutiny.

Thus, counsel for petitioners opens his unsworn memorandum with the following "preliminary statement":

"In his memorandum of August 17, 1971 filed in these certiorari proceedings, Moises Tapia avers that we have resorted to these proceedings purely to cause further delays for we have no real defense. This is not true. The truth of the matter is that the evidence clearly shows Moises Tapia to be guilty of arson and fraud. It was because of this respondent Moises Tapia availed himself of every means, even those frowned upon by law, in order to secure judgment in his favor without going to trial. The evidence against Moises Tapia was such that

he had to avoid going to trial. In support of this averment, we now present the following documents:

1. A certification from Lt. Col. Jose Fernandez, former chief of the Philippine Constabulary Crime Laboratory showing that there were gasoline residues in fourteen (14) different places of the burned bodega and that one of these places was the steel cabinet presumably containing the company papers so that even these papers would burn. All these places had been saturated with gasoline. (Annex A).
2. A sketch of the bodega premises showing the widespread distribution of the gasoline. (Annex B).
3. Twenty-two (22) photographs of the burned bodega. (Annexes C, D, E, F, G, H and I).
4. Chromatographic specimens of the fourteen (14) gasoline residues found in the fourteen (14) aforesaid areas. (Annexes J, K, L and M).

"Moises Tapia claims that on occasion of the fire suffered by his bodega, he suffered damages in the amount of five hundred thousand (P500,000.00) pesos. We have annexed twenty-two (22) photographs taken of his bodega after the fire. (Annexes C, D, E, F, G, H and I) showing that his bodega hardly contained anything. Please note that the alleged contents of this bodega were iron and steel spare parts which do not burn. The conclusion to be drawn from all these photographs, chemical analysis and chromato-graphic specimens is obvious. Moises Tapia having withdrawn his merchandise from his bodega saturated fourteen (14) different places in his bodega with gasoline including his steel cabinet so as to make sure that even his papers would burn and then caused his bodega to be burned.

"Under these circumstances, it was imperative for Moises Tapia to avoid having to go to trial. It was imperative for him also, that we, your petitioners herein should not be allowed to present evidence of these acts. That is why Moises Tapia exerted every effort to avoid trial proceeding and that is why we submit to this Supreme Court it is in the interest of justice for trial proceedings to be had.

"The foregoing statements are addressed to the equity of this Supreme Court. They have become particularly necessary since Moises Tapia in his memorandum filed on August 17, 1971, before this Supreme Court has gone so far as to allege that your petitioners are merely seeking to delay for they have no real defense. This Supreme Court may now judge for itself." (Pp. 189-191, Record.)

and closes the same with "final remarks" thus:

"Should this Supreme Court be puzzled as to why all these unbecoming things were done, the answer is as we have said in our opening statement that respondents could not afford the luxury of a trial. A trial with a corresponding presentation of evidence, part of which is annexed to this present memorandum as Annexes A to M would have shown respondent Tapia's case to be baseless so that even a decision had been rendered in his favor in the trial court, it would certainly have been reversed by this Supreme Court. It was necessary to declare your petitioners in default so that your petitioners would not be around to present evidence, to adjudge the case in secrecy so that your petitioners would not learn of the judgment, and to execute in haste so that your petitioners would find themselves deprived of their property without due process of law and before they even knew what was happening to them. Fortunately, this Supreme Court intervened. We rely on its continued intervention." (Pp. 209-210, Record.)

The foregoing allegations are traversed squarely in respondents' Reply Memorandum as follows:

"To give their cause some semblance of cogency, which it does not possess, petitioners would want this Honorable Supreme Court to believe that they have a good defense. The alleged defense consists of a report made by one ex-Lt. Col. Jose Fernandez and related papers attached as Annexes 'A' to 'M' to petitioners' Memorandum. Petitioners' purpose cannot prosper, for the following reasons:

1. The said Lt. Col. Jose Fernandez is a biased and unreliable source. He was hired and paid by petitioners to

conduct an analysis on specimens he himself did not gather. Naturally his findings had to tally with his employer's theory and must serve their purpose and interest. That was what he was paid for.

2. The falsity and baselessness of said findings are irrefutably proven by the fact that no criminal action was instituted against respondent Tapia. Yet petitioners have the effrontery to assert before this Honorable Supreme Court that "the evidence clearly shows Moises Tapia to be guilty of arson and fraud," for which reason he allegedly wanted to avoid going to trial. If that was his intention he would not have filed the cases against petitioners in the lower court.

As a matter of fact, in the two other cases filed by him against two other insurance companies (Civil Case No. 15376 - Multifield, et al vs. Monarch Insurance Co., Inc., and Civil Case No. 15379 - Philippine Home Insurance Corp.) for loss arising from the same conflagration, and involving the same evidence and proof of loss and with which petitioners have a common adjuster and investigator, respondent Tapia has gone to trial. There, the defendant insurance companies were not declared in default because they answered on time.

If petitioners herein were declared in default, it was because their counsel failed to observe the reglementary period for answering and could not or failed to obtain relief from the order of default in accordance with the Rules of Court. Now an attempt is being made to shift the blame to respondent Tapia by falsely attributing to him a desire to avoid going to trial purportedly because the evidence will show he is guilty of arson and fraud'. Such foul tactics are beneath the dignity of the Bench and Bar.

The Worthless Findings of Mr. Jose Fernandez:

3. The said findings were not even believed and accepted by the petitioners' commissioned and employed adjustment company which, after a thorough and careful investigation of respondent Tapia's claim, had recommended that petitioners better pay. The reports and findings of the petitioners' adjuster are attached as Annexes "A" and "B" and form integral parts of this reply. These reports completely refute the petitioners' allegations that respondent Tapia is guilty of arson and that he fraudulently removed the contents from his bodega before it was destroyed by fire.

Petitioners' commissioned and employed investigator and adjuster, the Manila Adjustment Company, in its report dated February 26, 1971 (Annex "A") to the four insurance companies, is very explicit in its findings and recommendation that there is no basis to deny respondent Tapia's claim on the ground of fraud. The petitioners' hired investigator had examined respondent Tapia under the "Examination-under Oath-Clause" of the policies and it was satisfied that no such fraud exists.

The same Adjustment Company to which the much vaunted report of the private chemist, Mr. Jose Fernandez, was submitted, brushed aside the same and concluded, in its report of March 11, 1971, that the said findings are not sufficient basis for denying the claim of respondent Tapia. Even this Honorable Supreme Court, in several cases, has categorically ruled that the existence of traces of gasoline in the burned premises does not necessarily indicate that there was arson. (Ya Hun & Co. vs. British Traders Ins. Co., L-5719-25, May 18, 1954; Hua Chu Gan, vs. Law Union & Rock Ins. Co., Ltd., L-4611, Dec. 17, 1955.)

4. These reports conclusively prove that petitioners' counsel told a brazen lie when he claimed that there were no goods destroyed in the burned bodega. As said reports clearly indicate, the items therein inventoried after the fire had a total value of P367,311.00. Respondent Tapia was able to prove, through the proofs of loss he submitted in the lower court and which proofs were the same ones he submitted to the herein petitioners, that he suffered loss and damage in the amount of P446,781.60.

Incidentally, both Monarch Insurance and Philippine Home Insurance, defendants in Civil Cases Nos. 15376 and 15379, for collection of insurance proceeds in the amounts of P100,000.00 and P50,000.00, respectively, have just recently paid and satisfied respondent Tapia's claim. In paying respondent Tapia, these two defendants also acted upon the findings of the Manila Adjustment Company that there is neither fraud nor

arson involved in the claim of respondent Tapia. Dr. Alberto B. Guevarra, Jr., counsel for Monarch Insurance Company and Philippine Home Insurance Company, was in full accord with the Adjustment Company's findings and recommendation and he did not hesitate to recommend to his clients full settlement of the claim of respondent Tapia. (Photostat copies of joint motions to dismiss and corresponding orders of respondent judge granting said motions are attached as Annexes "C", "C-1" and "D"- "D-1" and form integral parts of this reply).

5. Petitioners stand on quick-sand. Their counsel himself, Mr. Felix, in his letter to his clients, marked as Annex "7" of respondents' Answer to the instant petition, stated that their case is "far from strong." Hence, petitioners' case is not even strong. How can he say now that they have a good defense? And if the evidence did show that respondent Tapia was guilty of arson and fraud, why does Mr. Felix consider petitioners' case as 'far from strong?'[6]

"6. This contention should have been interposed in the lower court through the motion to lift the order of default, by means of affidavits of merits. Had this been done, respondents could have opposed the same with counter affidavits. That would have been the proper procedure. Apparently, petitioners' counsel does not believe in the Rules of Court. He would instead burden this Honorable Supreme Court with the task of hearing and deciding a question which was not even raised in his petition. Respondents submit that this particular point has been raised by petitioners rather too late. In one case, where a similar belated effort was attempted, this Honorable Supreme Court made the following sagacious ruling:

'We believe that this is a last minute attempt to defend a losing case. If defendants really had any valid defense, this should have been brought at the first opportunity, that is, by the first motion to set aside the order of default.' (Ong Peng vs. Custodio, L-14911, March 25, 1961)." (Pp. 227-232, Record.)

Anyone would see from a simple comparison of the foregoing conflicting allegations of the parties in the light of their respective supporting affidavits and documents that it is rather petitioners, not Tapia, who may have more reason to avoid a full-blown trial, contrary to the charge made by Atty. Felix Jr. in all his papers filed with this Tribunal and the court below. The attorney himself must have felt the subject cases of his clients to be weak when he advised them in his letter, Annex 7 of respondents' answer, that the same are "far from being strong." At the time he wrote that letter, he was well aware of the various reports of his clients' adjusters minimizing the significance of the supposed expert opinion of Col. Fernandez regarding the gasoline traces found in Tapia's premises after the fire and referring to them as being innocuously insufficient to indicate arson. The attorney also knew that said adjusters, the ones trusted by insurance companies to give them reliable advice on whether or not insured persons making claims on their policies are more or less guilty of fraud and other improper schemes to collect unjustified claims, had investigated Tapia's claims thoroughly and had found no well-grounded reason to warrant non-payment, and that, in fact, they had recommended out of court settlement. There is no showing at all that Tapia has ever been criminally charged with arson. On the contrary, the record reveals that two other insurance companies serviced by the same adjusting company as that of petitioners have already compromised their cases with Tapia without the latter having them declared in default. In other words, in these cases against the other two companies, Tapia was prepared to proceed to trial, and if he had secured default judgments against petitioners, the cause was none other than counsel's omissions already discussed earlier in this opinion.

We reiterate that these circumstances make it unnecessary for Us to adhere to the technical procedure of returning these cases to the trial court for further proceedings and final determination of the issue of whether or not petitioners' petition for relief from judgment should be granted. We find all the proceedings leading to the rendition of the impugned judgments and to the issuance of all the writs of execution thereunder to have been regular and legal. And as to whether or not petitioners have been able to make the requisite showing that they have good and valid defenses, We likewise hold that they have failed to do so. It would be idle ceremony to still require respondent court to take further action on the petition for relief, Annex N. The order of respondent judge of July 7, 1971, giving due course to said petition has in effect become *functus officio*. We are persuaded that the

respective situations of the parties can no longer be possibly altered, should We prolong this judicial battle in any way.

What has been said so far should suffice to settle once and for all the litigation between petitioners and private respondents. But there is another aspect of these cases which cannot be left unresolved, since it affects matters related to the integrity of judicial proceedings and the attitude and conduct displayed by counsel for petitioners in connection therewith. The Court cannot begrudge any lawyer of his right to be assiduous and zealous, even tenacious, in the prosecution or defense of the cause of his client. But when, as in these cases, counsel makes charges against the actuaciones of a judge and the personnel of his court directly assailing their personal integrity as well as that of the proceedings by alleging irregularities implying bad faith and outright misfeasance, he should be prepared to substantiate the same. This Court will be the last to overlook, much less to tolerate the kind of misconduct alleged by counsel in his instant petition. This is not to say, however, that trial judges may be maligned at random with accusations that cannot be proven. Anyone who deliberately moves this Court to act on such kind of representations may do so only at his peril of being called to account therefor, should his charges turn out to be a mere attempt to hide his own inadequacies and omissions in order to escape criticism of his clients.

We hold that Atty. Felix Jr.'s implied accusation that respondent judge connived with his co-respondents to make it appear that proper judgments by default had been regularly rendered against petitioners on April 28, 1971, when in truth there was no such judgments, has not been proven by him. On the contrary, the official records and the affidavits of the employees of the trial court as well as those of the Bureau of Posts belie conclusively counsel's allegations, and the mere fact that he did not see said judgments and other pertinent pleadings and papers in the corresponding expedientes on May 24, 1971, assuming the same to be true, cannot disprove their existence, particularly, when it is considered that counsel has never pretended that he had actually made inquiries and asked the proper personnel of the court about them, which he would naturally have done, considering that before then he had filed motions for extension followed by the joint answer. It is particularly unfortunate that counsel made positive allegations in his petition in the instant cases purporting to show that his clients have good and valid defenses and that respondent Tapia's insurance claim was fraudulent and maliciously exaggerated, when, as may be readily seen from the communications of the petitioners' own adjusting company, Annexes A and B of respondents' reply memorandum, of which communications counsel must have been, in the ordinary course of client and lawyer relationship, duly informed, and from counsel's own letter to his client, Annex 7 of respondent's answer, it is more than obvious that he knew the truth to be otherwise. It is indeed regrettable that on the basis of such unjustified allegations, the Court had been induced to issue a writ of preliminary mandatory injunction counter-manding the writ of execution issued by the court below, thereby causing undue prejudice to all parties concerned. Such lack of candor bordering on conscious misstatements of fact which has actually misled the Court calls for at least an appropriate explanation from counsel.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered dismissing the petition in these cases and setting aside the writ of preliminary injunction issued on July 8, 1971, with the consequence that the executions enjoined thereby may now proceed in accordance with law and the rules, with costs against petitioner. And for the reasons above-stated, Atty. Alfonso Felix, Jr. is hereby ordered to show cause within ten (10) days from notice hereof why no administrative action should be taken against him as a member of the Philippine Bar.

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

Antonio, J., in the result.

Fernandez, J., concurs and states that he is not related to Col. Jose Fernandez.

[1] Actually it should have been April 18 because March has 31 days, but the trial court, in its order, Annex A of the petition, expressly granted five (5) days from April 14, 1971.

[2] There is no clarification as to whether counsel went to court precisely because he had received earlier Annex C-1 or he received this later in the day.

[3] See footnote (1).

[4] It may be mentioned that the known usual practice in this respect among respectable law offices does not include signing by the lawyer himself of the registry cards. Arrangements are made as to this small detail so that a subordinate may be authorized to do it.

[5] As clearly shown by the record, the first registry notice of the decisions was served on counsel's office on May 19, 1971, hence the service became complete on May 24, 1971 (Sec. 8, Rule 13) and the decision became final on June 23, 1971.

[6] We have examined Annex 7 of Respondents' Answer. It reads in its pertinent portion thus:

"In this case for instance, the fact that you are willing to compromise might be used as an argument to reduce my fees. On the other hand, the fact that to say the least our case is far from strong as well as the fact that adverse counsel is a former fiscal of Quezon City with considerable acquaintance with the trial judge may be used by me as an argument to demand a higher fee. x x x"

Atty. Felix, Jr. has not denied the authenticity of this document much less the truth of the representation made by him in the statement quoted.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.