

**JUAN A. GOCHANGCO, HON. FELINO GARCIA, AS PRESIDING JUDGE
OF THE CITY COURT OF BACOLOD, BRANCH I, AND DEPUTY
PROVINCIAL SHERIFF JOSUE DE JOSE, PETITIONERS, VS. THE
COURT OF FIRS...**

G.R. No. L-49396. January 15, 1988

Ponente: NARVASA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9e12c57121dc/>

NARVASA, J.:

Application of no more than quite elementary principles governing the modes of acquisition of jurisdiction by a court over the person of a defendant, default, substitution of parties plaintiff, judgment on the pleadings, and execution pending appeal in ejectment cases, is what is chiefly caused for in this appeal by certiorari.

These appellate proceedings had their origin in an action of unlawful detainer filed by C.N. Hodges in the City Court of Bacolod, Branch I, docketed as Civil Case No. 2838. Hodges sought the ejectment from certain parcels of land in Bacolod City titled in his name, of several persons, namely: Basilicio Macanan, Gertrude Nolan, Alejandro Santiago, Jr., Sy Ho, and Milagros Minoria.[1]

Macanan, Nolan and Santiago were duly served with summons. Macanan died afterwards, and since his heirs could not be located, and hence could not be substituted in his place, the case against him was eventually dismissed without prejudice.[2] Santiago and Nolan voluntarily vacated the premises; so, the case was also dismissed as against them.[3]

Summons was also duly served on Minoria. Although she refused to acknowledge such service, she subsequently filed an answer to the complaint, thru counsel.[4]

Sy Ho also appears to have been served with summons, service being evidenced, it is claimed, by the return to this effect of the Provincial Sheriff.[5] But, as will shortly be recounted, Sy Ho would later deny such service.

Plaintiff Hodges died during the pendency of the ejectment suit; and on August 20, 1964, the court-appointed Administrator of his estate, the Philippine Commercial and Industrial Bank (PCIB), was substituted as party-plaintiff.[6] PCIB thereafter filed a motion to declare Sy Ho in default for failure to answer the complaint. This was granted, by Order of the City Court dated February 18, 1967. Sy Ho filed on March 2, 1967, a verified "Opposition to the Motion for Default." He alleged that he had never received summons; apparently the summons had been served at the place where he maintained his scrap iron business, which was not his residence and at which he had no representative authorized to receive court processes and notices; and he prayed that "he be allowed to present his answer within ten (10) days and that if ever he has been already declared in default without due service of the notice to him, the said order be lifted." [7] The City Court overruled his opposition and refused to lift the order of default against him, these dispositions being contained in an Order dated April 8, 1967.[8] And in a separate Order issued on the same date, the City Court granted PCIB's motion to require Sy Ho to pay monthly rentals corresponding to the premises occupied by him directly to it, instead of to his co-defendant,

Minoria, who apparently had theretofore been acting as caretaker of the property.[9]

At this point all proceedings in this ejectment suit, and in other cases involving the late C. H. Hodges, were for the most part suspended for all intents and purposes by reason of controversies as regards the administration and hereditary rights over his not inconsiderable estate. Settlement of these controversies did not come until some 16 or 17 years later when, in the decisions of this Court in two (2) cases, dated March 29, 1974,[10] the heirs of C.N. Hodges and their respective counsel were directed “to work together and conjointly in order to sell and dispose of, for adequate consideration, the real properties composing the inter-mixed assets of the said estate in favor of Filipinos ***.” Among the estate assets sold pursuant to those decisions were the lots subject of the ejectment suit at bar. They were sold to Juan A. Gochangco for P440,000.00 on December 17, 1975, and he obtained titles over them in his name in due course.[11]

Gochangco lost no time in advising Minoria and Sy Ho of his acquisition of the property and demanding their vacation thereof.[12] He also filed an “Ex-Parte Motion for Substitution of Plaintiff and Reception of Evidence” dated March 26, 1976, which the City Court granted by Order dated March 26, 1976.[13] Accordingly, Gochangco presented evidence ex-parte on March 30, 1976; this, as regards Sy Ho, who had been declared in default.[14]

As regards defendant Minoria, Gochangco filed on March 29, 1976 a motion for judgment on the pleadings.[15] He contended that Minoria's answer failed to tender any issue because it admitted the material allegations of the complaint; that her answer also failed to disclose any privity between her and the late Manuel Moreno, whom she claimed to be co-owner of the house found on the premises in question, or any relationship whatever between Moreno, Hodges and herself so as to substantiate her theory that she had been properly designated caretaker of the house; that her occupation of the house was thus by tolerance merely, and she was bound by an implied promise to vacate the same upon demand, and her failure to do so despite demand rendered her amenable to summary ejectment.

In his turn, Sy Ho filed a motion to set aside order of default on April 5, 1976 in which he also prayed “to be allowed to present a written answer to the complaint.”[16] To this motion he attached an “Affidavit of Merits” in which he claimed that his failure to file answer to the complaint was due to the fault of his counsel who, according to him, failed to make the “proper follow-up” of the case; and he asked to be excused for his mistake or negligence for “depending too much to his lawyer who formerly handled his case.”[17] What the City Court did was to issue subpoenae for the appearance of Minoria and Sy on May 13, 1976, so that “they might have their day in Court.”[18] But one day before his scheduled appearance, or on May 12, 1976, Sy Ho filed a 15-page Motion to Dismiss the complaint stating in substance that the complaint stated no cause of action; the case against him had not been prosecuted for an unreasonably long span of time; and the cause of action was barred by the statute of limitations under PD No. 20 promulgated on October 12, 1972 and G.O. No. 53 promulgated on August 21, 1975.[19] In the same motion he reiterated that in compliance with the Order of April 8, 1967, he had been paying rentals regularly and faithfully.[20]

There followed various attempts by the parties, mostly on the court's initiative, to arrive at an amicable settlement. All failed. Thereafter the City Court finally rendered judgment dated February 18, 1977 ordering Sy Ho and Minoria to vacate the premises within thirty (30) days, and to pay rentals to Gochangco at the rate of P600.00 and P50.00 a month, respectively, from date of the decision until they shall have left the property.[21] Motions for reconsideration separately filed by Sy Ho and Minoria were denied, as were also, their second motions for reconsideration.[22]

On August 29, 1977, Gochangco moved for execution pending appeal. He asserted that the judgment had become final as against Minoria, no appeal having been perfected by her within the period therefor prescribed by law. And

as regards Sy Ho, whose second motion for reconsideration was still pending, immediate execution was proper since the judgment was against, a defendant, declared by Section 8, Rule 70 of the Rules of Court to be immediately executory.[23] Over the joint opposition of Sy Ho and Minoria, the Court granted the motion and issued the writ of execution on October 19, 1977.[24] In a “Manifestation” dated October 25, 1975, Sy Ho stated that he had been “paying a monthly rental of P110.00 monthly directly to the Clerk of Court” and that “pending the final decision *** all (such payments should be) properly kept by the Clerk of Court.”[25]

Sy Ho and Minoria thereupon filed a joint petition for certiorari and prohibition with application for preliminary injunction with the Court of First Instance of Negros Occidental. This was docketed as Civil Case No. 13484. The petition imputed grave abuse of discretion to the City Court in denying Sy Ho’s motion to set aside order of default and motion to dismiss; in granting Gochangco’s ex-parte motion to be substituted as party-plaintiff; in receiving Gochangco’s evidence ex parte despite his having filed a motion for judgment on the pleadings; in authorizing immediate execution, and in not declaring itself to be without jurisdiction in view of PD No. 20 and G.O. No. 53.[26] In the answer filed by him on requirement of the Court, Gochangco averred that the immediate execution of the judgment was justified by Section 8, Rule 70 of the Rules of Court and settled jurisprudence; that any defect in the service of summons on Sy Ho had been cured by his voluntary appearance through submission of various pleadings; that the motion for judgment on the pleadings was entirely correct because Minoria’s answer stated no affirmative defense or otherwise tendered no issue; the declaration of default against Sy Ho was also correct under the circumstances; that the action for certiorari could not result in an adjudication for the payment of damages since it is simply meant to cure jurisdictional defects, which are non-existent in the case; and Sy Ho’s situation is not covered by PD No. 20 or G.O. No. 53 because he was occupying the premises in question not as a dwelling but for purposes of his scrap iron business.[27]

At the pre-trial held on February 23, 1978, Sy Ho admitted, thru counsel, that he had indeed voluntarily appeared before the City Court and had thereby submitted himself to its jurisdiction.[28]

On August 29, 1978, judgment was rendered by the Court of First Instance granting the writ of certiorari and annulling all the proceedings in Civil Case No. 2838 of the City Court of Bacolod.[29] The Court said:

“A fundamental tenet of procedural due process has been violated in the case under review. Was the petitioner Sy Ho properly served with summons and complaint in Civil Case No. 2838? The 2nd Indorsement dated June 3, 1961 signed by Pat. R. Bravo of the Bacolod Police Department reads as follows:

‘Respectfully returned to the Mun. Court copy with all summons and complaint has delivered personally to Milagros Minoria but however she refused to sign dated 6-2-61 - 8:30 a.m.’

At the bottom of this indorsement a 3rd Indorsement dated June 16, 1961 was made by Deputy Sheriff Esmalia, which reads:

‘Respectfully returned to the Municipal Court, Bacolod City, the within summons duly served as per return of service of the Chief of Police of Bacolod City.’

Now, on the basis of this indorsement this Court is not convinced that proper service was made upon defendant Sy Ho in Civil Case No. 2838. The return of the deputy sheriff to the effect that summons was duly served is contradicted by the return made by Pat. R. Bravo which is the basis of the 3rd Indorsement to the effect that ‘summons and complaint has (sic) delivered personally to Milagros Minoria but however she refused to sign.’ There is no showing at all in these indorsements that petitioner Sy Ho himself was properly served with summons.

‘If petitioner Sy Ho was not properly served with summons there was no basis at all for respondent court to declare him in default. By declaring Sy Ho in default under the circumstances, the court acted with grave abuse of

discretion. This is elementary law too obvious to need any citation of authorities. If the declaration of default was null and void all proceedings thereafter would be null and void. Triggered by this illegal declaration of default, the reception of evidence ex parte before a deputy clerk of court was null and void, not only because of the previous nullity of the declaration of default but also because under the doctrinal rule laid down in the recent case of *Lim Tan Hu vs. Ramolete*, 66 SCRA 430, promulgated on August 29, 1975, a Clerk of Court is not legally authorized to receive evidence ex-parte. The decision rendered on the basis of the evidence received ex parte would logically be a nullity. Hence, if only upon this ground alone the proceedings in the court below would be fatally flawed ***.”

The Trial Court erred. Whatever defect might have existed in the return of the service of summons on Sy Ho was rendered inconsequential by subsequent events, duly entered in the record, demonstrating that service of summons had indeed been effected and Sy Ho had voluntarily submitted himself to the jurisdiction of the City Court.

Assuming it to be true, as claimed, that summons addressed to Sy Ho had been served not at his residence but at the place where he maintained his scrap iron business, and at which he had no representative authorized to receive court processes and notices, this would be of no moment. This is valid service. It is expressly authorized by the Rules. It is substituted service, allowed when the defendant cannot be served personally within a reasonable time, in which event, service may be effected by leaving copies of the summons at defendants dwelling house or residence with some person of suitable age and discretion then residing therein, or at his office or regular place of business with some competent person in charge thereof [30] Nor is it necessary that the person in charge of the defendant's regular place of business be specially authorized to receive the summons. It is enough that he appears to be in charge.

Sy Ho's contention that "substituted service is not allowed in ejectment cases,"[31] is absolutely without foundation. Implicit in that contention however is the acknowledgment that there had in truth been substituted service of summons on him.

Moreover, in the Affidavit of Merits attached to his motion to set aside order of default filed on April 5, 1976,[32] Sy Ho attributed his failure to file answer seasonably to the fault of his counsel — who he said had failed to make the 'proper follow- up' — and asked to be excused for "depending too much on his lawyer." Here is another clear admission, no less cogent because merely implied, that the reason for his omission to answer the complaint was not really the failure of service of summons on him but his lawyer's negligence.

The record also demonstrates that he was indeed correctly declared in default, and he failed to adduce any tenable grounds for the setting aside of that declaration. He did fail to answer the complaint within the regfementary period therefor prescribed, and proof of such failure had in due course been adduced.[33] And even if that failure may in truth be blamed on his lawyer, there is nothing in the record excusing that negligence, or showing fraud, accident or mistake warranting the Court's setting aside of the order of default.[34]

In any case, Sy Ho never really pressed the issue of the efficacy of service of summons on him with vigor or persistence. Instead, he submitted himself to the Court's jurisdiction. His submission to the Court's jurisdiction is necessarily inferred from his act of requesting for leave to present his answer to the complaint,[35] of voluntarily complying with the City Court's Order for the payment of rentals, and filing various other motions and pleadings.[36] There is, too, his counsel's admission already adverted to, that Sy Ho had really submitted himself to the City Court's jurisdiction.[37] There can thus be no debate about the proposition that jurisdiction of his person had been acquired by the City Court by his voluntary appearance and acquiescence.[38]

The record furthermore discloses that the prejudice to Sy Ho occasioned by the declaration of default against him was nominal and minimal. For his default notwithstanding, he was in fact able fully and exhaustively to present

his side to the Court. He submitted his defenses to the action to the Court. This he did by filing a motion to dismiss setting up said defenses,[39] and presenting two (2) motions for reconsideration of the City Court's decision, urging and arguing those same defenses.[40] And the record shows that these defenses were duly considered and dealt with in the judgment of the City Court.[41]

Withal, an analysis of those defenses reveals their lack of merit. The assertion, for instance, that the complaint fails to state a cause of action is incorrect; an examination of the complaint shows that it does set out the ultimate facts constituting causes of action for ejectment.[42] The assertion that the action had not been prosecuted for an unreasonably long period of time is without merit since as shown by the record, the delay was not due to the fault or negligence of the plaintiff, but to circumstances beyond control. The claim that the action for ejectment is barred under PD 20 and GO 53 is also untenable, since it is not disputed that Sy Ho is being ejected, not from his residence but from his place of business. In the light of these considerations, it would be inutile to set aside the order of default against Sy Ho, assuming there were basis therefor, to give him opportunity to appropriately plead and present evidence on his aforesaid defenses which cannot be sustained anyway and are on their face unmeritorious.[43]

The substitution of parties plaintiff effected in this case was also proper. Here, the original plaintiff died pending trial. He was substituted by the administrator of his estate, duly appointed by competent judicial authority. This substitution was entirely correct, mandated in fact by Section 17, in relation to Section 3, Rule 3 of the Rules of Court.[44] On the other hand, Gochangco's substitution as party-plaintiff in place of the administrator was also appropriate. Gochangco had purchased the property of the decedent involved in the ejectment suit. He therefore became a real party-in-interest in that action, replacing the estate, or the heirs, and his replacement of the latter was fully justified by Section 2, Rule 3 requiring actions to be prosecuted in the name of the real party-in-interest, and defining a party-plaintiff as one "having an interest in the subject of the action and in obtaining the relief demanded,"[45] as well as Section 20, of the same rule providing that in case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.[46]

Also correct was the rendition of judgment on the pleadings as against Minoria. Minoria's answer admitted the material averments of the complaint and failed to include allegations establishing her claim for compensation as being, supposedly, the authorized caretaker of the house. Judgment on the pleadings was therefore properly rendered on plaintiff's motion. It is sanctioned by Section 1, Rule 19 of the Rules of Court, which provides that "(w)here an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading."[47]

The propriety of the order authorizing execution of the ejectment judgment against the defendants also cannot be gainsaid. The order is squarely within the provisions of Section 8, Rule 70 which declares that "(i)f judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant, to stay execution, files a sufficient bond approved by the justice of the peace or municipal court and executed to the plaintiff to enter the action in the Court of First Instance and to pay the rents, damages, and costs accruing down to the time of the judgment appealed from, and unless, during the pendency of the appeal, he deposits with the appellate court the amount of rent due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist ***.[48] There is no showing that Sy Ho had taken these requisite steps to stay execution of the judgment.

The respondent Court also declared null and void "the reception of evidence ex parte before *** (the) deputy clerk of court." It invoked what it termed "the doctrinal rule laid down in the recent case of Lim Tan Hu vs. Ramolete, 66 SCRA 430, promulgated on August 29, 1975 (inter alia declaring that) a Clerk of Court is not

legally authorized to receive evidence ex- parte.”[49]

Now, that declaration does not reflect long observed and established judicial practice with respect to default cases. It is not quite consistent, too, with the several explicitly authorized instances under the Rules where the function of receiving evidence and even of making recommendatory findings of facts on the basis thereof may be delegated to commissioners, inclusive of the Clerk of Court. These instances are set out in Rule 33, treating of presentation of evidence before commissioners, etc., in particular situations, such as when the trial of an issue of fact requires the examination of a long account, or when the taking of an account is necessary for the information of the court, or when issues of fact arise otherwise than upon the pleadings or while carrying a judgment or order into effect;[50] Rules 67 and 69, dealing with submission of evidence also before commissioners in special civil actions of eminent domain and partition, respectively; Rule 86 regarding trials of contested claims in judicial proceedings for the settlement of a decedent's estate; Rule 136 empowering the clerk of court, when directed by the judge inter alia to receive evidence relating to the accounts of executors, administrators, guardians, trustees and receivers, or relative to the settlement of the estates of deceased persons, or to guardianships, trusteeships, or receiverships. In all these instances, the competence of the clerk of court is assumed. Indeed, there would seem, to be sure, nothing intrinsically wrong in allowing presentation of evidence ex parte before a Clerk of Court.[51] Such a procedure certainly does not foreclose relief to the party adversely affected who, for valid cause and upon appropriate and seasonable application, may bring about the undoing thereof or the elimination of prejudice thereby caused to him; and it is, after all, the Court itself which is duty-bound and has the ultimate responsibility to pass upon the evidence received in this manner, discarding in the process such proofs as are incompetent and then declare what facts have thereby been established. In considering and analyzing the evidence preparatory to rendition of judgment on the merits, it may not unreasonably be assumed that any serious error in the ex-parte presentation of evidence, prejudicial to any absent party, will be detected and duly remedied by the Court, and/or may always, in any event, be drawn to its attention by any interested party. As observed by the late Chief Justice Fred Ruiz Castro ----[52]

“No provision of law or principle of public policy prohibits a court from authorizing its clerk of court to receive the evidence of a party-litigant. After all, the reception of evidence by the clerk of court constitutes but a ministerial task — the taking down of the testimony of the witnesses and the marking of the pieces of documentary evidence, if any, adduced by the party present. This task of receiving evidence precludes, on the part of the clerk of court, the exercise of judicial discretion usually called for when the other party who is present objects to questions propounded and to the admission of the documentary evidence proffered (*Wack Wack Golf and Country-Club, Inc. vs. Court of Appeals*, 106 Phil. 501). More importantly, the duty to render judgment on the merits of the case still rests with the judge who is obliged to personally and directly prepare the decision based upon the evidence reported. (*Province of Pangasinan vs. Palisoc*, 6 SCRA 299)”

The underlying philosophy of the doctrine of default is that the defendant's failure to answer the complaint despite receiving copy thereof together with summons, is attributable to one of two causes: either (a) to his realization that he has no defenses to the plaintiff's cause and hence resolves not to oppose the complaint, or, (b) having good defenses to the suit, to fraud, accident, mistake or excusable negligence which prevented him from seasonably filing an answer setting forth those defenses.[53] It does make sense for a defendant without defenses, and who accepts the correctness of the specific relief prayed for in the complaint, to forego the filing of the answer or any sort of intervention in the action at all. For even if he did intervene, the result would be the same: since he would be unable to establish any good defense, having none in fact, judgment would inevitably go against him. And this would be an acceptable result, it not being in his power to alter or prevent it, provided that the judgment did not go beyond or differ from the specific relief stated in the complaint.[54] It would moreover spare him from the embarrassment of openly appearing to defend the indefensible. On the other hand, if he did have good defenses, it would be unnatural for him not to set them up properly and timely; and if he did not in fact set them up, it must be

presumed that some insuperable cause prevented him from doing so: fraud, accident, mistake, excusable negligence. In this event, the law will grant him relief; and the law is in truth quite liberal in the reliefs made available to him: a motion to set aside the order of default prior to judgment;^[55] a motion for new trial to set aside the default judgment;^[56] an appeal from the judgment by default even if no motion to set aside the order of default or motion for new trial had been previously presented;^[57] a special civil action for certiorari impugning the court's jurisdiction.^[58]

A defendant in default is not and should not be placed in a situation more favorable than a defendant who has answered but who fails to appear for trial despite notice. In the latter case, as in the former, the trial may proceed ex parte^[59] but is not invalidated by the fact merely that reception of evidence had been undertaken by the clerk of court on the Court's instructions; this, despite the fact that the judgment that may be rendered on the basis of such an ex parte trial may award reliefs exceeding the amount or different from that, prayed for in the complaint, unlike a judgment by default which cannot differ from or go beyond what is set down in the prayer of the complaint.

It was therefore error for the Court a quo to have declared the judgment by default to be fatally flawed by the fact that the plaintiffs evidence had been received not by the Judge himself but by the clerk of court.

One last word. The City Court and City Sheriff were impleaded as parties petitioners in the petition at bar. This is incorrect. They are not proper parties. They do not have — and should not have — any interest in the subject of the instant proceedings, either in obtaining any relief in respect thereto of any nature whatsoever, or in the success of the petitioner. Only Gochangco is the proper party petitioner.

WHEREFORE, the judgment of the Court of First Instance of August 29, 1978 is reversed and set aside, and that of the City Court dated February 18, 1977 reinstated and affirmed in toto. Costs against private respondents.

Teehankee, C.J., Yap, Fernan, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Rollo, pp. 34. et seq.

[2] Id., pp. 101. 158.

[3] Id., p. 157.

[4] Id., pp. 96. 101. 97-98.

[5] Id., pp. 101. 106.

[6] Id., pp. 99-100; see Sec. 17. Rule 3. Rules of Court.

[7] Id., pp. 104-105.

[8] Id., p. 109.

[9] Id., p. 97-98.

[10] PCIB v. Carles, et al., and PCIB v. Hon. Escolin, et al.. 56 SCRA 266. and Resolution dated September 8. 1972.

[11] Rollo, pp. 112-113.

[12] By letters dated January 8. 1976: Rollo, pp. 157-158.

[13]Rollo,, pp. 112-113.

[14] Id., pp. 125-131.

[15] Id., pp. 132-134.

[16] Id.,pp. 135-137.

[17] Id., p. 137.

[18]Id., p. 138. Id.,

[19] Id., PP. 139-153.

[20]See footnote 7. p.2. supra.

[21] Rollo, pp. 156-159.

[22] Id., pp. 197. 240-243.

[23] Citing: Laurel v. Abalsos, 30 SCRA 285, 286; Romero v. Pecson. 83 Phil. 308; Villaroman v. Abuya, 91 Phil..20.

[24] Id., pp. 240-244.

[25] Id., p. 316.

[26] Id., p. 89.

[27] Id., pp. 247-260.

[28] Id., p. 472; TSN. Feb. 21, 1978, pp. 27-28.

[29] Id., pp. 49-60.

[30] Sec. 8, Rule 14, Rules of Court. :

[31] Rollo, p. 142.

[32] See footnotes 6 and 7. page 3. supra.

[33] Sec. 1. Rule 18, Rules of Court.

[34] Sec. 3. Rule 18.

[35] See footnote 6, page 3. supra.

[36] See footnote 9. page 9, supra,

[37] See footnote 2. page 5. supra.

[38] Republic v. Ker & Co., Ltd., 18 SCRA 207; A/garbe vs. C.A.. 28 SCRA 1130; Aguilos vs. Sepuheda, 53 SCRA 269; J.M. Tuason & Co., Inc. v. Estabillo. 62 SCRA 10.

[39] See footnote 9, page 3.

[40]See footnote 3. page 4.

[41] Rollo. page 159.

[42] See footnote 1. page 1, supra; also. Sees. 1 and 2. Rule 70". Rules of Court.

[43] See *City of Cebu v. Mendoza*. 62 SCRA 446; *Phil. Bank of Commerce v. Aruego*, 102 SCRA 530; *Claridad v. Santos*, 120 SCRA 148; *Development Insurance Corp. v. IAC*. 143 SCRA 62.

[44] *Casenas v. Rosales*, 19 SCRA 462; *Boniila v. Barcera*, 71 SCRA 491; *Vda, de dela Cruz v. CA*, 88 SCRA 695.

[45] See *Salonga v. Warnes & Co., Ltd.*, 88 Phil. 1 25; *Subido v. Sarmiento*, 108 Phil. 462; *American Express Co., Inc. v. Santiago*. 49 SCRA 74; *Rivera v. Tirona*. 109 Phil. 510; *NARIC v. Fojas, et al.*. G.R. No. L-1 1517. April 30.1958.

[46] It is relevant to mention that on March 1. 1976. Sy Ho instituted a separate suit against Gochangco, docketed as Civil Case No. 12327 for specific performance to compel the latter to lease to him the very property in question, a clear though implicit acknowledgment by him of Gochangco's status as owner of the property with right to give it in lease.

[47] *Lim Giok v. Bataan Cigar & Cigarette Factory, Inc.*, I SCRA 978; *Apeiano v. Ines Chavez A Co.*, 3 SCRA 226; *Dee v. Masloff*. 6 SCRA 98; *Raagas v. Traya*, 22 SCRA 839; *Manufacturers Bank & Trust Co., v. Woodworks*, 36 SCRA 562; *Philippine Reconstruction Corporation, Inc. v. Aparente*. 45 SCRA 217. 225-226.

[48] Italics supplied; See. e.g., *Geromimo Realty Co. v. CA*. 83 SCRA 542; *Lit v. Llamas*. 118 SCRA 216.

[49] 66 SCRA 425, per Barredo. J.

[50] See *Cruz v. Malabayabas*. 105 Phil. 708; *Province, of Pangasinan v. Palisoc*, 6 SCRA 299; *CCC Insurance Corp. v. C.A.*.3 SCRA 264; *Chanco v. Madrikjos*. 5 Phil. 319; *Villones v. Nable and Penson*, 85 Phil. 43.

[51] See. e.g., *Cruz v. Malabayabas*, 105 Phil. 708, supra, and *CCC Insurance Corp. v. C.A.*, 31 SCRA 264.

[52] In his ponencia in *Laluan v. Malpaya*, 65 SCRA 494. 499-500.

[53] *Lim Toco v. Go Fay*, 80 Phil. 166; 31 Am. Jur. 137. cited in *Moran, Comments on the Rules of Court*, 1979 ed.. Vol. 1, p. 528.

[54] A restriction expressly imposed on judgments by default in Sec. 5. Rule 18 of the Rules of Court. SEE ALSO, Section 1, Rule 9 which states that "Material averment in the complaint, other than those as to the amount of damage shall be deemed admitted when not specifically denied, " a situation which undoubtedly obtains when no answer is filed.

[55] Sec. 3. Rule 18, Rules of Court.

[56] Rule 37.

[57] Sec. 2 (third par.). Rule 41.

[58] Rule 65.

[59] *Go changjo v. Roldan Sy-Changco*, 18 Phil. 405; *Cahuban v. Weissenhagen and Camara*. 38 Phil. 804; *Makabenta v. Bakar, et al.*. 50 O.G. 3549. cited in *Moran, op. cit.*, p, 527.

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.