

**QUASHA ASPERILLA ANCHETA VALMONTE PENA & MARCOS,
PETITIONER, VS. THE HONORABLE CELESTINO P. JUAN, FILIPINAS
CARRIERS INC., REPRESENTED BY ITS PRESIDENT, FEDERICO
TABORA, JR., AP...**

G.R. No. L-49140. November 19, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

In this petition for certiorari and prohibition with preliminary injunction, petitioner seeks the annulment of the order of respondent Judge of the Court of First Instance of Manila in Civil Case No. 105048 dated August 25, 1978 which approved the sale of the subject cargo and prays instead that the writ of preliminary attachment over the same property issued by Hon. Gregorio Pineda of the Court of First Instance of Rizal in Civil Case No. 28710 be allowed to remain in force.

It appears that on October 22, 1976, respondent Filipinas Carriers, hereinafter referred to as Filcar, filed a complaint for sum of money, enforcement of lien and damages with the Court sold privately, so that the vessel may immediately be sent for drydock, subject to the following conditions:

"1. That the negotiations for the sale of the cargo shall be the sole responsibility of plaintiff Filcar subject to the supervision by this Court and the intervention of plainiiff-intervenor, the Sierra Madre Wood Industries, Inc.;

"2. That the Court and the plaintiff-intevenor be fully informed regarding the progress of the negotiations and that the sale shall not be finalized without first securing the approval of this Court as to the selling price;

"3. The proceeds of the sale shall be deposited with a banking institution as approved by this Court and shall be disposed of only upon order of this Court, subject to the first lien of plaintiff-intervenor; and

"4. Defendant AB Charles Thorburn & Co., etc. shall be notified of the Order of this Court together with a copy of the amended complaint and the complaint in intervention, thru the Department of Foreign Affairs, and the Philippine Embassy at Jeddah, Saudi Arabia. Proof of Service shall be submitted to this Court. After such time afforded the defendant, in order to enable them to answer or appear in this Court or make any claim whatsoever, and still they fail to make any manifestation, hearing of (his case shall resume regarding the final disposition of the proceeds to all concerned."

On June 27, 1977, respondent Judge approved tentatively the sale of the cargo lo Bcngzon's Industries. This Order was followed by another dated July 19, 1977, approving the Deed of Absolute Sale of the cargo.[1]

On August 15, 1977, petitioner law firm filed with respondent Judge a special appearance for defendant Ahmed Baroom contesting the Court's jurisdiction over Baroom's person and property and a Motion to Dismiss on the ground that the Court had not acquired jurisdiction over Baroom's "person or properly aboard the MV San Vicente." [2]

On August 29, 1977, respondent Judge issued an Order directing petitioner law firm to show on or before September 20, 1977 a written authorization signed by its client, Baroom, "since the latter is a foreigner." [3]

On November 15, 1977, petitioner, as Baroom's counsel, filed an answer with compulsory counterclaim, claiming that defendant Baroom is not an agent of Charles Thorburn since the cargoes belong to him, and denying the validity of plaintiff's lien over the cargo. Petitioner reiterates the defense that plaintiff's action being in personam, involving defendant who is not a resident within the territorial jurisdiction of the Court, and there is no showing in the records that the provisions of Section 17, Rule 14 in relation to Section 1, Rule 57, of the Rules of Court have been complied with to convert the action in rem, the Court had no jurisdiction over the case. Baroom, through petitioner, prayed that plaintiff be directed to deliver the cargoes to Jeddah, pay damages corresponding to the full value of the goods and to the lost income and profits he could have realized had plaintiff delivered the cargo to him. Baroom, likewise, filed a cross-claim against Sierra Madre, plaintiff-intervenor.

On January 23, 1978, petitioner filed with respondent Judge a manifestation and motion that it be "allowed to withdraw from this case and charging lien be recorded against the properties of Mr. Baroom now aboard MV San Vicente for unpaid professional fees and reimbursement expenses." [4]

Thereafter, on February 17, 1978, petitioner filed before the Court of First Instance of Rizal a complaint with a prayer for a writ of preliminary attachment for the recovery of professional fees and reimbursement of expenses against Baroom whom it alleged to have represented in Civil Case No. 105048, CFI, Manila. The case was docketed as Civil Case No. 28710 and the same was assigned to Branch XXI presided over by Judge Gregorio C. Pineda.

By virtue of the order dated February 28, 1978 issued by Judge Pineda in the new case, petitioner obtained a writ of preliminary attachment against Baroom's alleged cargoes which is the subject matter in Civil Case No. 105048.

Meanwhile, in Civil Case No. 105048, on August 2, 1978, respondent Judge gave Attys. Quasha and Valmonie ten (10) days from receipt of order within which to explain why they should not be held in contempt of court for filing a case entitled "Quasha Asperilla Anehta Valmonte Pena and Marcos vs. Al-Sayed Abdulla Mohammed Baroom" docketed as Civil Case No. 28710 in the Court of First Instance of Rizal, Branch XXI, where they obtained a writ of preliminary attachment over the cargoes, which they knew to be subject matter of Civil Case No. 105048 pending before his sala." A compliance with said order was filed on August 24, 1978, with petitioner alleging that their cause of action against Baroom was for payment of professional fees and reimbursement of expenses while Case No. 105048 before Judge Juan was for alleged unpaid charter hire fees.

On August 25, 1978, respondent Judge issued an order approving the sale of the cargo in question to Apollo Kokin Trading Co., Ltd. In accordance with the earlier order of April 28, 1977, respondent Judge directed the deposit of the sale proceeds with a banking institution to be approved by the Court and its disposition only on orders of the Court. [6]

On September 8, 1978, Filcar filed with the Court of First Instance of Rizal an urgent omnibus motion to be allowed to appear and to dismiss the case and to lift the writ of preliminary attachment and set aside the order to auction the cargo, attaching thereto the order of respondent Judge dated August 25, 1978, approving the sale in favor of Apollo Kokin Trading Co., Ltd. of the subject cargo, the proceeds of which after deducting all expenses shall be deposited with the court.

Thus, petitioner, on October 23, 1978, filed before this Court the instant petition. Petitioner assails the order of August 25, 1978, not the earlier order of April 28, 1977 approving the sale in favor of Apollo Kokin Trading Co., Ltd. of the questioned cargo for having been issued in grave abuse of discretion considering that subject cargo

was allegedly earlier attached by the Court of First Instance of Rizal.

Without giving due course to the petition and pending the filing of comments by respondents, this Court issued on October 24, 1978 a temporary restraining order,

"enjoining respondents to immediately cease and desist from taking, unloading, transferring, conveying, transporting or disposing of the cargoes or any part thereof aboard the MV San Vicente and Dong Myung,* or from taking the cargoes away, subject matter of Civil Case No. 105048 entitled "Filipinas Carriers, Inc. vs. AB Charles Thorburn & Co., et al." of the Court of First Instance of Manila, Branch X."

On October 30, 1978, petitioner filed a manifestation and motion informing this Court that notwithstanding the restraining order, the MV Dong Myung, with the cargo aboard left surreptitiously at midnight of October 24, 1978 without the assistance of any pilot in violation of Harbor rules. The goods were then allegedly sold for US \$220,200.43 under irrevocable letters of credit issued by the Fuji Bank of Osaka, Japan. Petitioner, thus, prayed that several persons, namely, Mr. Federico Tabora, Jr., President of Filipinas Carriers, Inc., Mr. Gregorio Gatchalian, allegedly operations manager of the American Steamship Agencies, Inc. being the agent representing the MV Dong Myung, Lt. JG Godofredo Orcullo of the Operations Center and Seaman 1st Class Avelino Lontoc of the Philippine Coast Guard be cited for contempt.

In the meanwhile, a compromise agreement dated October 16, 1978 and filed on November 2, 1978 wherein Filcar assigned its interests and rights in the proceeds of the sale of the subject cargoes to Sierra Madre which the latter accepted was approved by the respondent court in its decision of November 3, 1978. An amended petition was thus filed in this Court impleading Sierra Madre as party respondent in this case with prayer that a writ of garnishment be issued on the proceeds of the sale of the cargoes which are in the possession of Sierra Madre, and an order be issued directing Sierra Madre and all those to whom such proceeds may subsequently be reassigned to deliver to petitioner such portion of the proceeds of the sale as would satisfy the attorney's fee in the interest of justice.

Coming back to the omnibus motion of Filcar for the lifting of the preliminary attachment issued by the Court of First Instance of Rizal, the said court on December 7, 1978 dismissed petitioner's case and lifted the preliminary attachment issued therein. Upon motion for reconsideration dated April 7, 1979, the said preliminary attachment was reinstated by the Court of First Instance of Rizal in its order dated July 5, 1979.[8]

After several pleadings were filed in this Court, We gave due course to the petition.[9]

Petitioner contends that respondent court did not acquire jurisdiction neither over any of the defendants as they have not voluntarily submitted themselves to the jurisdiction of respondent court, nor over the res, since there had been no seizure of the property under a legal process, as by a writ of attachment or other process of similar effect. The instant case is allegedly neither a proceeding in rem as would place the property under its potential power citing the leading case of *Banco Espanol v. Palanca*,[10] which held:

"Jurisdiction over the property which is the subject of litigation may result either from a seizure of the property under legal process, whereby it is brought into (the actual custody of the law, or it may result from the institution of legal proceedings wherein under special provisions of law, the power of the court over the property is recognized and made effective. In the latter case the property, though at all times within the potential power of the court, may never be taken into actual custody at all. An illustration of the jurisdiction acquired by actual seizure is found in attachment proceedings, where the property is seized at the beginning of the action, or some subsequent stage of its progress and held to abide the final event of the litigation. An illustration of what we term potential jurisdiction over the res is found in the proceeding to register the title of land under our system for the registration of land. Here the court, without taking actual physical control over the property assumes, at the instance of some person claiming to be the owner, to exercise a jurisdiction in rem

over the property and to adjudicate the title in favor of the petitioner against all the world."

Claiming that it was the Court of First Instance of Pasig that first acquired jurisdiction over the res to the exclusion of respondent court, petitioner insists that the latter court's act is undue interference which cannot be countenanced.

There is no pretense that respondent court has jurisdiction over the cause of action. It is much too obvious to merit a fuller discussion. Suffice it to say that an action based upon an oral contract of transportation of goods by water is an action in admiralty which comes under the original and exclusive jurisdiction of the Court of First Instance irrespective of the value of the cargo.[11]

As to the person of Baroom, it is to be conceded that at the initial stage of the proceeding in the Court of First Instance of Manila prior to the issuance of the order of April 28, 1977 directing the sale of the property and petitioner's filing of various pleadings, said court did not have jurisdiction over Baroom. Baroom was a non-resident alien and he was beyond the reach of the court's legal processes. But since the action is brought principally for the enforcement of maritime lien against the property of defendants who failed to pay the charter hire fee, and therefore the same is in the nature and character of a proceeding quasi in rem, jurisdiction over defendant Baroom is not essential. An action quasi in rem has been defined as "an action between parties where the direct object is to reach and dispose of property owned by them or of some interest therein," As such the properties allegedly owned by him are primarily made liable. In elucidating the characteristic of a proceeding where a non-resident defendant fails to appear, this Court in the aforecited leading case of *Banco Espanol Filipino v. Palanca* said:

"If however, the defendant is a non-resident and, remaining beyond the range of the personal process of the court, refuses to come in voluntarily, the court never acquires jurisdiction over the person at all. Here the property itself is in fact the sole thing which is impleaded and is the responsible object which is the subject of the exercise of judicial power. It follows that the jurisdiction of the court in such case is based exclusively on the power which, under the law, it possesses over the property; and any discussion relative to the jurisdiction of the court over the person of the defendant is entirely apart from the case."

The foregoing ruling was applied in *Mabanag vs. Gal Li* more:[12]

"As a general rule, when the defendant is not residing and is not found in the Philippines, the Philippine courts cannot try any case against him because of impossibility of acquiring jurisdiction over his person, unless he voluntarily appears in court. But when the action ... is intended to seize or dispose of any property, real or personal, of the defendant, located in the Philippines, it may validly be tried by the Philippine courts, for then, they have jurisdiction over the res, i.e. . . . the property of the defendant, and their jurisdiction over the person of the non-resident is not essential . . ." (Citing *I Moran's Comments on the Rules of Court*, 2d Ed., 105).

At any rate, defendant Baroom filed later, aside from a motion to dismiss, an answer with counterclaim praying that plaintiff be directed to deliver the cargoes of defendant Baroom to Jeddah and to pay damages, etc. and a crossclaim against Sierra Madre, thereby abandoning any question on jurisdiction over the person and submitting himself to the jurisdiction of the court. In *Tenchavez vs. Escailo*,[13] this Court quoted with approval the ruling in *Merchant's Heat and Light Co. vs. Clow & Sons*, 204 U.S. 286, 51 Law Ed. 488:

"We assume that the defendant lost no rights by pleading to the merits, as required, after saving its rights. *Harkness vs. Hyde*, 98 U.S. 476, 25 L. ed. 237; *Southern P. Co. vs. Denton*, 146 U.S. 202, 36 L. ed. 943, 13 Sup. Ct. Rep. 44. But by setting up its counterclaim the defendant became a plaintiff in its turn, invoked the jurisdiction of the court in same action, and, by invoking submitted to it. It is true that the counterclaim seems to have arisen wholly out of the same transaction that the plaintiff sued upon, and so to have been in recoupment rather than in set-off proper. But, even at common law, since the doctrine has been developed, as

demand in recoupment is recognized as a cross demand, as distinguished from a defense. Therefore, although there has been a difference of opinion as to whether a defendant, by pleading it, is concluded by the judgment from bringing a subsequent suit for the residue of his claim, a judgment in his favor being impossible at common law, the authorities agree that he is not concluded by the judgment if he does not plead his cross demand, and that whether he shall do so or not is left wholly to his choice. *Davis vs. Hedges*, L.R. 6Q.B. 687; *Mondel vs. Steel*, 8 Mees & W. 858, 872; *O'Connor vs. Varney*, 10 Gray, 231. This single fact shows that the defendant, if he elects to sue upon his claim in the action against him, assumes the position of an actor and must take the consequence. The right to do so is of modern growth, and is merely a convenience that saves bringing another suit, not a necessity of the defense."

In the aforecited case, the Court explains that the rule is such because "it cannot look with favor upon a party adopting not merely inconsistent, but actually contradictory, positions in one and the same suit, claiming that a court has no jurisdiction to render judgment against it, but has such jurisdiction to give a decision its favor." [14]

It may be noted that if the defendant voluntarily appears, the action becomes as to him a personal action and is conducted as such. Even then, the court does not lose its jurisdiction over the res, assuming that it has indeed jurisdiction over the res. The res still remains under its control and disposition.

As regards jurisdiction over the res, We hold that respondent acquires jurisdiction over it. Where a property is burdened by a lien, a writ of attachment is no longer necessary in order that jurisdiction over the property may be obtained by the court. In the same cited case by petitioner, in the *Banco Español* case, it was clarified:

"In an ordinary attachment proceeding, if the defendant is not personally served the preliminary seizure is to be considered necessary in order to confer jurisdiction upon the court. In this case the lien on the property is acquired by seizure; and the purpose of the proceeding is to subject the property to that lien. If a lien already exists, whether created by mortgage, contract, or statute, the preliminary seizure is not necessary, and the court proceeds to enforce such lien in the manner provided by law precisely as though the property had been seized upon attachment. (*Roller v. Holly*, 176 U.S. 398, 405; 44 L. ed. 520)."

The reason for the rule is obvious. An attachment proceeding is for the purpose of creating a lien on the property to serve as security for the payment of the creditors' claim. Hence, where a lien already exists, as in this case a maritime lien, the same is already equivalent to an attachment. Moreover, since the property subject of the action for the enforcement of the maritime liens was already in the possession of private respondent, there is no need for seizure for the court to obtain jurisdiction over the res.

"Where a party in actual possession of the res subject to the lien before the court, the res is within the jurisdiction of the court for the enforcement of the lien. A suit may be maintained to foreclose a lien on property within the jurisdiction of the court, although some interest or claim therein is held by a non-resident." [15]

The other argument posed by petitioner to challenge respondents' right over the property is that there is no privity of contract between Baroom and respondents. It avers that Baroom is not merely the agent of Thorburn but himself the owner of some of the cargoes and whose contract to ship the same is with sub-charterer Thorburn. It avers further that neither Thorburn could attach a lien on the property since Baroomi had allegedly paid fully for the shipment even before the vessel sailed, as evidenced by the clean freight pre-paid bills of lading.

Claiming right over the cargo to answer for the unpaid professional fees, petitioner submits to this Court the required written authority from Baroom claiming that due to snag in communication and unreliability of the mailing system, it did not receive the documents from its client on time.

The foregoing entails determination of facts. It would be highly irregular if this Court would have to resolve those

questions, this Court not being a trier of facts. The several documents mentioned by petitioner and attached to its pleadings before this Court were never presented before the lower court. After Baroom had abandoned his defense which created the presumption that he had no defense, that he is not the owner of the cargo, petitioner should have pursued the same argument before respondent court in claiming the alleged professional fee. This is in accordance with Article 1177 of the New Civil Code which provides:

"Art. 1177. The creditors having pursued the property in possession of the debtor to satisfy their claims may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them."

Indeed, petitioner should have maintained its action in respondent's court. After all, a court which has in its possession, control or equivalent dominion, property or funds involved in litigation may exercise exclusive jurisdiction over such property or funds to determine the rights therein, such as questions respecting the title, possession or control, management and disposition thereof and another court of concurrent or coordinate jurisdiction cannot interfere with such possession or control.[16] The rights to be determined by said court necessarily include the attorney's fees due to the lawyers who represented the parties.

Significantly, the lower court which undoubtedly has in its favor the presumption of regularity and which was never restrained by this Court from proceeding with the case issued an order dated January 25, 1979¹⁷ making the following findings of fact:

1. Thorburn fails to pay the freight so that respondent Fikar had the right to impose i(s) lien on the cargo including sub-freights.

Paragraph 16 of the time charter contract provides:

"That the owners shall have a lien upon all cargoes and all sub-freights for any amounts due under (his) Charter including General Average contributions and the charterers to have a lien on the ship for all monies paid in advance and not earned, and any overpaid hire or excess deposit to be returned at once. Charterers will not suffer nor permit to be continued, any lien or encumbrance incurred by them or their agents, which may have priority over the title and interest of the owners of" the vessel.""

2. Thorburn executed a liner term contract with Baroom who was playing the double role of agent of said Thorburn and agent of three consignee banks in Jeddah.

3. Baroom applied to Filcar to be its agent, but when it was discovered that he was the agent of Charles Thorburn and the three (3) consignee banks, the application was rejected due to conflict of interest.

4. The pre-paid freight representation of Baroom is false because the condition of the L/C issued by the 3 consignee banks provides a C/F arrangement which means payment of the goods, insurance and freight can only be made upon physical delivery of the goods in Jeddah.

5. Baroom intervened in the case (before respondent court) using the Quasha law office. He later withdrew upon knowing he has no defense. In fact, he did not even give Quasha written authority to appear for him as his lawyer.

6. The court of respondent Judge "has jurisdiction over the person of defendant and subject cargo of the vessel."

7. The Quasha law office is not entitled to any claim for attorney's lien.

Prescinding from the foregoing, We find no abuse of discretion in issuing the questioned order of August 25, 1978, and therefore the instant petition should be dismissed. It could not be claimed that the act of respondent Judge in issuing the said order amounts to interference with the writ of attachment dated February 28, 1978 issued by Judge Pineda, for by the time the said writ was issued, respondent Judge Pineda had already control and

disposition of the case. The order of August 25, 1978 was but an implementation of the earlier order of April 28, 1977 directing the sale of the cargoes on the ground of extreme necessity as the cargoes as found by respondent Judge upon ocular inspection were in danger of deteriorating and losing their market value and the vessel was also in danger of sinking. By then, respondent Judge had also issued the order dated July 19, 1977 approving a Deed of Sale of subject cargoes.

It should be noted that at the time petitioner filed the action before Judge Pineda, it has already submitted itself to the jurisdiction of respondent court and in fact its "charging lien" which is the same cause of action before Judge Pineda was still pending before respondent court. Pending also before respondent Judge were petitioner's answer with counterclaim, cross claim, motion to dismiss and motion to withdraw from the case.

Petitioner may not enforce its attorney's Hen, which accordingly is based on Section 37 of Rule 138 which provides:

"Sec. 37. Attorney's lien. — An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his just fees and disbursements."

Based on the foregoing provision, the liens for attorney's fees and expenses apply only on the funds or documents of clients which lawfully come to the possession of the counsel (called retaining lien) and to all judgments secured by the counsel (called charging lien). In his manifestation and motion before respondent Judge, petitioner is claiming for his charging lien. But it should be noted that at the time of its filing, the orders of April 27, 1977 ordering the sale of the cargoes and July 19, 1977 approving the Deed of Sale of cargoes were already in existence and both were in fact in favor of private respondent. It is curious to note that petitioner never questioned said orders on appeal or by a special civil action. Petitioner's client in fact even abandoned its case. Hence, having no favorable judgment that could be anticipated, the charging lien has no leg to stand on. Perhaps because it was aware of its predicament that petitioner filed an independent action for recovery of its professional fees and for reimbursement of expenses which would have been proper, except that the ownership of the property sought to be attached was questionable and the same was already sold by respondent court. But just as we had said before, petitioner should have filed its claim for professional fees in respondent's court for said court has the exclusive jurisdiction to determine the real owner of the cargoes. We hasten to add, however, that the action should not be for a charging lien, but a simple complaint in intervention for recovery of professional services and reimbursement of expenses, thus avoiding multiplicity of suits.

On October 24, 1978, we issued a temporary restraining order enjoining the disposition or unloading of the cargoes. It turned out, however, that before the said order could be served upon the private respondents, all the cargoes subject of the petition had been loaded into the M.V. Dong Myung, of which this Court has no jurisdiction being a foreign vessel. When the vessel sailed and the cargoes eventually sold, everything became fait accompli and the case before us moot and academic.

Petitioner prays for the garnishment of the proceeds, but to allow the same, there must first be a determination of the ownership of the cargo. Again, we say we are not in a position to do so. Petitioner failed to file motion for reconsideration of the order of August 25, 1978 approving the sale of the cargo, and it abandoned its own case

before respondent Judge. The result of its negligence in allowing considerable period to lapse before claiming right over the cargo, and resorting to injunctive relief must be borne by it. Petitioner is not entitled to any relief and the instant petition must be dismissed. We shall also dismiss petitioner's charge of contempt against respondents since as Wo said before, before the temporary restraining order could be served everything was already fait accompli.

Likewise, We also dismiss the respondents' charge against petitioner for direct contempt for allegedly omitting material facts vital to the full appreciation of this Court. In *De Midgely vs. Ferandos*,^[18] this Court ruled that such tactic is generally tolerated because understandably lawyers are apt to slant the presentation of their clients' case so that they would have favorable judgments. "Courts are not deceived by the exaggerations and distortions in a counsel's lopsided submission of his client's case especially where, as in this case, the alert opposing counsel calls the court's attention to that fact."

Indeed, "contempt of court presupposes a contumacious attitude, a flouting of arrogant belligerence, a defiance of the court.^[19] It is an offense against the authority and dignity of the court.

WHEREFORE, the petition is hereby dismissed.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., and Guerrero, JJ.r concur
Abad Santos and Escolin, JJ., concur in the result.

[1]p. 117, Rollo.

[2]p. 78 Rollo.

[3] p. 118, Rollo.

[4] pp. 119-121, Rollo..

[5] p. 123, Rollo.

[6] pp. 133-134, Rollo

* Pending the issuance of the temporary restraining order, the properties were being discharged from the MV San Vicente into MV Dong Myung.

[7] p. 36, Rollo.

[8] p. 403, Rollo.

[9]p. 416, Rollo.

[10] 37 Phil. 921.

[11] *Negro v. Oibahug Shipping & Co.*, 16 SCRA 655.

[12] 81 Phil. 254.

[13]17 SCRA 685.

[15] 53 C.J.S. 875.

[16] 21 C.J.S. 755-757.

[17] p. 421, Rollo.

[18] 64 SCRA 31.

[19] citing *Matutina vs. Judge Buston, et al.*, 109 Phil. 140, 142.

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