

## **GREGORIO ARANETA, INC. FRANCISCO JAVIER DE PITARQUE Y ELIO, ISABEL MARIA DE YNCHAUSTI, AND ANA MARIA DE PITARQUE Y DE YNCHAUSTI, PETITIONERS VS. SOTERO RODAS, JUDGE OF FIRST INS...**

*G.R. No. L-2363. September 23, 1948*

Ponente: FERIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/bdf3fb3d1723/>

---

### **FERIA, J.:**

This is a Motion for reconsideration of the resolution of this Court dismissing the special civil action of certiorari and mandamus filed by the petitioners against the respondents, which asked that the order of the respondent Judge denying the petitioner's motion to compel the other respondents to answer certain interrogatories submitted by the former to the latter be set aside, and that the respondents be ordered to issue an order compelling the respondent corporation to said interrogatories.

According to section 1, Rule 67, certiorari lies when the respondent court or judge has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion. There is no doubt or question 'that the respondent judge or court had and did not exceed the court's jurisdiction, but it is alleged that said judge has acted with grave abuse of discretion in denying the petition of the petitioners.

It is obvious that discretion, is the power exercised by courts to determine questions arising in the trial of a cause to which no rule of law is applicable, but which from their nature and the circumstances of the case, are controlled by the personal judgment of the court, or the judgment of the court uncontrolled by fixed rules of law (See Bouvier's Law Dictionary, Third Revision, Vol. I, p. 884). When the law does not provide a rule or norm for the court to follow in deciding a question submitted to it, but leaves it to the court to determine it in one way or another at his discretion, the judge is nob absolutely free to act at his pleasure or will or arbitrarily. He must decide the question, not in accordance with law for there is none, but in conformity with justice, reason ana equity, in view of the circumstances of the case. Otherwise the court or judge would abuse his discretion (See Hodges vs. Conrado Barrios, and Redfern, L-1904, [1] promulgated April 16,1948, concurred in by the dissenter from the resolution sought to be reconsidered in the present case).

Therefore, the question to be determined in the present case is whether or -not there is a rule of law which controls or guides the respondent judge in deciding whether an interrogatory should be allowed or not.

It is well settled, and admitted in paragraphs 11 and 14 of the petition for certiorari, that the scope of discovery by means of written interrogatories under Rule 20 literally copied from Rule 35 of the Federal Rules of Civil Procedure like the scope of discovery by deposition, is governed by Sec. 2, Rule 18 of the Rules of Court, which was taken from Rule 26 of said Federal Rules of Civil Procedure promulgated by the Supreme Court of the United States. Under the provisions of said Sec . 2, Rule 18 "the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether relating to the claim or defense of the examining party, or to the claim or defense of any other party" (Dixon vs. Phifer, D.C. S. C. 1939,

30 F. Supp., 627; Coca Cola Co. vs. Dixi Cola Laboratories, D. C. Md. 1939, 30 F. Supp., 275; Landry vs. O'hara Vessels, D. C. Md. 1939, 29 F. Supp., 423; Lanova Corporation vs. National Supply Co., D.C. Pac., 1939, 29 F. Supp., 119; Aner vs. Hershey Cremexy Co. D. C. Va. 1940, 1 F. R. D., 286.)

Since the scope of depositions and written interrogatories is limited to matters which are not privileged and relevant to the subject matter which are not privileged and relevant to the subject matter involved in a pending action, and the determination of whether or not an interrogatory is privileged or material is not an interrogatory is privileged or material is not left to the discretion of the court or judge, for there is a law applicable which serves as norm or guide for the court or judge to follow, the respondent judge could not commit a grave abuse of discretion which it did not have deciding whether or not the interrogatories in question are immaterial to the subject matter involved in the pending action, and therefore they can not be allowed. If the respondent judge has acted contrary to law in deciding that the written interrogatories propounded by the petitioners to the other respondents are immaterial, he would have committed an error of law which the court can not correct in the present case; but not a grave abuse of discretion.

In our resolution of July 27, 1948, we dismissed the petition for certiorari and mandamus on the ground that appeal at the proper time is the proper remedy; and relying on the dissenting opinion of one member of this Court, that "appeal can not be the proper remedy for petitioners' complaint," all the arguments in the petitioners' motion for reconsideration tend to show that appeal is not the speedy and adequate remedy, because it would entail unnecessary expenses and unnecessary delay and waste of time.

The resolution, in stating that appeal at the proper time is the proper remedy, did not mean to say that certiorari may lie, that is, that the respondent judge has acted without or in excess of his jurisdiction, or with grave abuse of discretion, but there is appeal or appeal is the proper remedy. The order complained of is interlocutory and hence not forthwith appealable; it may only be assigned as erroneous if appeal is taken from the final judgment. Two scope of subjects which interrogatories may be asked under Rule 20 of the Rules of Court is as broad as the field of inquiry which a person interrogated is called to testify orally in actual trial, (Landry vs. O'hara Vessels, sup. sq.); and in the same way that neither appeal nor certiorari lie against a ruling; of the court which reject an immaterial question during the trial no such remedies may be resorted to against a court's order that does not allow a written interrogatory which is not material.

What the resolution means to say, and we now expressly so hold, is that certiorari does not lie at all for the reasons above stated, and the proper remedy is to raise the question of admissibility of such interrogatories on appeal from the final judgment of the respondent court or judge. It is obvious that the question whether certiorari or appeal is the proper and adequate remedy may only come up when the court has acted without or in excess jurisdiction and the act complained of is appealable.

In view of all the foregoing, motion for reconsideration is denied. So ordered.

Moran, C.J., Paras, Pablo, Briones, and Tuason, JJ., concur.

---

[1] 80 Phil., 751.

---

## DISSENTING

**PERFECTO, J.:**

On July 27, 1948, we voted to give due course to the petition, stating as follows:

"Contrary to the contention in the majority resolution, appeal cannot be the proper remedy for petitioner's complaint. The proceeding of interrogatories provided by Rule 20 has to be undertaken before the final trial of a case. The rule has been drafted as one of the means to avoid the possibility of cases being fought through a strategy of surprises and concealment of truth. If petitioners are entitled to have their interrogatories answered under Rule 20, It is unjust and contrary to law to compel them to proceed with the final trial of the case without said interrogatories being answered first. If the lower court erred and violated the rule in refusing to have petitioner's interrogatories answered, appeal will be inadequate to remedy the situation, as the case will be decided by the lower court without the petitioner's being given the opportunity of making use of the answers that the other party may give. Reversal on appeal of the denial will entail retrial in the lower court and the unnecessary delay which the law abhors."

There is no reason why we should reverse the stand thus taken. The majority resolution, denying the motion for Reconsideration., is a belated answer to our above opinion. The answer is unconvincing.

We vote to grant the motion for reconsideration and to give due course to the petition.

**BENGZON, J.:**

I concur in the above dissent.

**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.