

ARTEMIO RECTO, PLAINTIFF AND APPELLANT, VS. BRIGIDA A. BARDOS, ET AL., DEFENDANTS AND APPELLEES.

G.R. No. L-19459. October 21, 1965

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/f9c999cada21/>

MAKALINTAL, J.:

This is an appeal by Artemio Recto from the order of the Court of First Instance of Quezon dismissing his complaint against Brigida A. Bardos and the Secretary of Public Works and Communications.

On February 26, 1958 Bardos filed with the Bureau of Public Works a letter-complaint against Recto charging the latter with appropriation and obstruction of an unnamed public creek in Sitio Sampaga, Barrio Puri, San Antonio, Quezon, which creek was situated between their respective properties. Recto answered the complaint on May 17, 1958. After hearings were conducted before an investigator of the Bureau, the Undersecretary of Public Works and Communications rendered on August 26, 1958 a decision, the dispositive part of which is as follows:

"Premises considered, it is hereby ordered that the respondent remove whatever filling and/or obstruction he has illegally placed within the bed or channel of the creek above-referred to and restore the same to its original condition within thirty (30) days from the date of receipt hereof; otherwise, judicial action shall be instituted against him under the provisions of Section 8 of Act 3208, Commonwealth Act No. 383 and Section 1926 of the Revised Administrative Code."

Recto received a copy of the decision on October 25, 1958. The following November 20 he petitioned for review and Consideration, which was opposed by Bardos. On December 8, 1958 the Secretary of Public Works and Communications endorsed Recto's petition to the Director of Public Works "for appropriate action, comment and/or recommendation." On February 27, 1959 the Secretary denied the petition for review. Copy of his resolution of denial was received by appellant on April 13, 1959. On April 16, 1959 he filed this action by way of appeal, praying, among other things, that enforcement of the decision of the Secretary be enjoined. Bardos moved to dismiss the complaint on the grounds that the court had no jurisdiction to try the case; that the cause of action, if any, was barred by prior judgment; and that the complaint did not state a cause of action against the defendants. The Secretary filed a similar motion, alleging lack of jurisdiction and prescription.

The court deferred action on the motion until the hearing on the merits, and on April 7, 1960, after such hearing, dismissed the complaint. The ground for the dismissal was that the action was filed after the lapse of thirty days from notice of the decision appealed from.

The lower court relied on the rule enunciated in *Enriquez v. People of the Philippines*, 68 Phil. 8, applying Section 25-A of Act 2152, as amended by Section 8 of Act 3208. This section provides:

"The Secretary of Commerce and Communications, in addition to the powers vested in him by the irrigation law, shall also have authority to order the removal of any obstacle to the free course of public waters, canals, ditches, or irrigation system which may redound to the detriment of public or private rights recognized by the Irrigation Law and its amendments, and shall give the party concerned a period not to exceed thirty days for

the removal of such obstacle, which period may be extended if the nature of the construction or some fortuitous cause requires it."

This Court said in that case that a motion for reconsideration of the Secretary's decision ordering removal of the obstruction does not *ex proprio vigore* suspend the running of the period stated in the legal provision and that any extension of said period must be given expressly and for the reason that the nature of the construction or some fortuitous cause requires it.

It is clear that the rule thus enunciated does not apply to the situation before us. The extension contemplated in Section 25-A of Act 2152 refers to the period for the removal of the construction complained of pursuant to a decision of the Secretary which presumably is no longer being challenged and has become final and executory, but which removal cannot be carried out within the thirty-day period because of the nature of the construction or of some fortuitous cause.

In the instant case it is the period within which to appeal to the Court of First Instance from the decision of the Secretary that is in issue, that is, whether or not such period should be deemed suspended by reason of the motion for reconsideration filed by appellant. The parties are agreed that such an appeal may be taken within thirty days from receipt of a copy of the decision.[*] Copy of the Secretary's decision was received by appellant on October 25, 1958. His motion for reconsideration was filed on the following November 20. The law (section 4) does not prevent an aggrieved party from moving for reconsideration. Such motion is standard procedure, especially where exhaustion of administrative remedies is required before judicial action is resorted to. It is only logical that where a motion for reconsideration is filed, as in this case, the period for appeal should be deemed suspended. The Secretary himself must have so deemed it when on December 8, 1958 he indorsed the motion to the Director of Public Works for "action, comment and/or recommendation." Otherwise the indorsement would have been a meaningless gesture, since on that date the thirty day period had already expired.

We hold that the action below was filed on time, and the order appealed from is set aside and the case remanded to the lower court for further proceedings, with costs against appellee Bardos.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

[*] Section 4, Act 2152, as amended by Section 2, Act No. 3208, provides that any controversy between the persons claiming rights to the use of water of any stream shall be submitted to the Secretary of Commerce (now Public Works) and Communications through the Director of Public Works and his decision thereon shall be final unless appeal therefrom be taken to the proper court within thirty days after date of notification of the parties of said decision. In those instances (see Sections 15 and 33) where the Irrigation Law (Act 2125, as amended) provides for an appeal to the courts from the decision of the Secretary, reference is always made to Section 4 for the manner of appeal. While it is true that Section 25-A does not provide for an appeal from the decision of the Secretary ordering a party to remove obstacles to the free course of public waters, etc., it cannot be gainsaid that such appeal may be made by the proper party if he believes the decision is erroneous. This is especially so, considering the fact that failure to comply with the decision of the Secretary in a case gives rise to criminal liability.

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.