

WILLIAM B. BORTHWICK, PETITIONER, VS. HON. FLORELIANA CASTRO-BARTOLOME, PRESIDING JUDGE, BR. XV, MAKATI, OF THE COURT OF FIRST INSTANCE OF RIZAL; JOSEPH E. SCALLON, AND JEWELL C...

G.R. No. 57338. July 23, 1987

Ponente: NARVASA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-57338/>

NARVASA, J.:

By action commenced in the Circuit Court of the First Circuit, State of Hawaii, U.S.A.,[1] Joseph E. Scallon sought to compel payment by William B. Borthwick on four (4) promissory notes[2] in the amounts of \$32,408.95, \$29,584.94, \$2,832.59 and \$40,000.00, plus stipulated interest. Scallon's complaint alleged, inter alia, that Borthwick, an American citizen living in the Philippines, owned real property interests in Hawaii where he last resided and transacted business therein; that business dealings which transpired in Honolulu, Hawaii had given rise to the promissory notes sued upon, and Borthwick had failed to pay the sums thereunder owing upon maturity and despite demand.[3] Attached to the complaint were the promissory notes, which although uniformly specifying the city of Palos Verdes, Los Angeles, California as the place of payment, also provided that —

"in the event that payment * * * shall not have been made in full on or before the maturity date * * * at * * * (such) place * * *, payee may select, at his option, Manila, Philippines, or Honolulu, Hawaii as additional places for payment * * * and * * * any court in any of said places having jurisdiction over the subject matter shall be a proper Court for the trial of any action brought to enforce payment of this note and the law of the place in which said action is brought shall apply."[4]

Borthwick being then in Monterey, California, summons[5] was served upon him personally in that place, pursuant to Hawaiian law allowing service of process on a person outside the territorial confines of the State, if he had otherwise submitted himself to the jurisdiction of its courts as to causes of action arising from, among others, the act of transacting any business within Hawaii[6] — alleged to consist as to Borthwick in the negotiation and dealings regarding the promissory notes. Borthwick ignored the summons. Default was entered against him, and in due course a default judgment was rendered as follows:

"DEFAULT JUDGMENT

"That Defendant WILLIAM B. BORTHWICK having failed to plead or otherwise defend in the above-entitled action and his default having been duly entered herein;

"Now, upon the application of the Plaintiff JOSEPH E. SCALLON and upon the affidavit that the Defendant WILLIAM B. BORTHWICK is indebted to said Plaintiff in the sum of \$104,817.48.

"IT IS HEREBY ORDERED, ADJUDGED, and decreed that Plaintiff JOSEPH E. SCALLON recover from Defendant WILLIAM B. BORTHWICK the sum of \$104,817.48 together with interest in the sum of \$41,807.93, costs of Court in the sum of \$37.00 and attorney's fees in the sum of \$4,290.64 for a total sum of \$150,953.05.

DATED: Honolulu, Hawaii, APR. 30, 1987.

"(Sgd.)

V. CHING

Clerk of the above-entitled Court"[7]

However, Scallon's attempts to have the judgment executed in Hawaii and California failed, because no assets of Borthwick could be found in those states.[8] Scallon and his wife, Jewell, then came to the Philippines and on March 15, 1980 brought suit against Borthwick in the Court of First Instance of Makati,[9] seeking enforcement of the default judgment of the Hawaii Court and asserting two other alternative causes of action.[10]

The sheriff's initial efforts to serve summons on Borthwick personally at his address at 861 Richmond St., Greenhills, Mandaluyong, Metro Manila having been unsuccessful — Borthwick was "always out on official business" — the sheriff effected substituted service by leaving a copy of the summons and the complaint with Borthwick's "house caretaker," a man named Fred Daniel.[11]

Borthwick filed no answer to the Scallons' complaint. He was declared in default. After due proceedings judgment by default was rendered against him, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered as follows:

1. The decision of the Court of Hawaii in Civil Case No. 56660 reading: 'IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff JOSEPH E. SCALLON recover from Defendant WILLIAM B. BORTHWICK the sum of \$104,817.48 together with interest in the sum of \$41,807.93, costs of Court in the sum of \$37.00 and attorney's fees in the sum of \$4,290.64 for a total sum of \$150,53.05.'

may be, as it is hereby ordered, enforced in the Philippines.

2. The second alternative cause of action in the event that the satisfaction of the said judgment becomes impossible, the rescission of the agreement (Exh. L) of the parties is hereby granted. Defendant Borthwick is hereby ordered:

"(a)

To return and deliver to plaintiffs Joseph and Jewell Scallon their 800 shares of stock of Manila Memorial Park Cemetery, Inc. and 180 shares of stock of Trans-Pacific Development Management Corporation, together with any and/or all stock dividends, cash dividends and similar corporate distributions accruing to said shares of stock from and after December 3, 1973 (the date of the Agreement, Exh. L);

"(b)

In the event that such shares cannot be returned and delivered, to pay to plaintiff Scallon the value of the same from the execution of the Agreement, Exh. L, together with any increase in value from the said date to the finality of this judgment.

"SO ORDERED.[12]

Again, it was with Fred Daniel, identifying himself as Borthwick's "houseboy," that a copy of the decision was left.[13]

No response from Borthwick was forthcoming until after the Court subsequently amended its judgment so as to make the sums due under the Hawaii Court decision payable in their equivalent in Philippine currency.[14] Notice of this amendatory order was somehow personally accepted by Borthwick at this time. Borthwick then moved for a new trial, claiming that it was by accident, mistake and excusable negligence that his "off and on itinerant gardener," Daniel, failed to transmit the summons to him, which omission consequently prevented Borthwick from knowing of the judicial proceedings against him. Alleging too that "the promissory notes did not arise from business dealings in Hawaii," nor "did (he) own real estate" therein,[15] Borthwick contended that the judgment sought to be enforced was invalid for want of jurisdiction of the Hawaii Court over the cause of action and over his person.

The motion for new trial was denied by the Trial Court upon the factual finding that "Fred Daniel is a responsible person" "of suitable age and discretion" "resident of the address * * * (of the) defendant" on whom substituted service of summons had been duly made.[16] As to Borthwick's attack on the validity of the foreign judgment, the Trial Court ruled that "under the * * * (Hawaii Revised Statute) cited by the defendant the Hawaii Court has jurisdiction" because the factual premises upon which the exercise of such jurisdiction was based "had not been refuted by the defendant" although he "appears to be a lawyer, and the summons in the Hawaii case was served personally on him." [17] Finally, the Trial Court disposed of Borthwick's other defenses[18] saying that the present action "is (for) the enforcement of a foreign judgment" where the validity of his defenses to the original action is immaterial.[19]

Borthwick proceeded directly to this Court and filed a petition for review,[20] raising issues of law, framed as follows:

"1. Is a foreign judgment against a person rendered without jurisdiction over the cause of action and without proper summons to the defendant enforceable in the Philippines?

"2. Has the respondent Judge acquired jurisdiction over the person of defendant when summons was served on an itinerant gardener who did not reside in defendant's house?

"3. Where a motion for new trial was filed on time, duly supported with affidavits to prove the grounds relied upon, should not the Court grant the same?[21]

It is true that a foreign judgment against a person is merely "presumptive evidence of a right as between the parties," and rejection thereof may be justified, among others, by "evidence of a want of jurisdiction" of the issuing authority, under Rule 39 of the Rules of Court.[22] In the case at bar, the jurisdiction of the Circuit Court of Hawaii hinged entirely on the existence of either of two facts in accordance with its State laws, i.e., either Borthwick owned real property in Hawaii, or the promissory notes sued upon resulted from his business transactions therein. Scallon's complaint clearly alleged both facts. Borthwick was accorded opportunity to answer the complaint and impugn those facts, but he failed to appear and was in consequence declared in default. There thus exists no evidence in the record of the Hawaii case upon which to lay a conclusion of lack of jurisdiction, as Borthwick now urges.

The opportunity to negate the foreign court's competence by proving the non-existence of said jurisdictional facts established in the original action, was again afforded to Borthwick in the Court of First Instance of Makati, where enforcement of the Hawaii judgment was sought. This time it was the summons of the domestic court which Borthwick chose to ignore, but with the same result: he was declared in default. And in the default judgment subsequently promulgated, the Court a quo decreed enforcement of the judgment affirming among others the jurisdictional facts, that Borthwick owned real property in Hawaii and transacted business therein.

In the light of these antecedents, it is plain that what Borthwick seeks in essence is one more opportunity, a third, to challenge the jurisdiction of the Hawaii Court and the merits of the cause of action which that Court had adjudged to have been established against him. This he may obtain only if he succeed in showing that the declaration of his default was incorrect. He has unfortunately not been able to do that; hence, the verdict must go against him.

It is not for this Court to disturb the express finding of the Court of First Instance that Daniel was Borthwick's resident domestic houseboy, and of sufficient age and discretion to accept substituted service of summons for Borthwick. Under Rule 42 of the Rules of Court, a party appealing from the Courts of First Instance (now the Regional Trial Courts) to the Supreme Court may "raise only questions of law (and) no other question * * *,"[23] and is thus precluded from impugning the factual findings of the trial court, being deemed to have admitted the correctness of such findings[24] and waived his right to open them to question.[25]

In any case, a review of the records shows that the Trial Court was correct in refusing to believe Borthwick's representation that "Daniel gardens at the residence of Borthwick, then goes home to La Union after gardening itinerantly." As said Court observed, that situation is "ridiculous," it being "queer and hardly coincidental why on all papers served on the defendant, it was Fred Daniel who signed and acknowledged receipt." [26]

There was therefore no error committed by the Trial Court when it denied Borthwick's motion to lift the order of default (which is what the motion for new trial actually is) because Borthwick had failed to establish any proper ground therefor.

WHEREFORE, the petition for review is denied, with costs against petitioner.

SO ORDERED.

Teehankee, C.J., Cruz, Paras, and Gancayco, JJ., concur.

[1] Docketed therein as Civil Case No. 56660.

[2] Three bearing the date of November 1, 1973 and the last, January 15, 1974.

[3] Complaint, Rollo, pp. 38 et seq., and 214.

[4] Rollo, pp. 42, 44, 46 and 47.

[5] Together with a copy of the complaint and notice of prior receipt by the Director of Regulatory Agencies of Hawaii of a copy of the summons; Rollo, pp. 48-58.

[6] The Hawaii Revised Statute provides:

"[§364-35] Acts submitting to jurisdiction.

(a)

Any person, whether or not a citizen or resident of this State, who * * * does any of the acts herein enumerated, thereby submits such person . . . to the jurisdiction of the courts of this State as to any cause of action arising from the doing of any of the acts:

"(1) The transaction of any business within the State;

x x x x x x x x

"(3) The ownership, use or possession of any real estate situated in this State;

x x x x x x x x

(b) Service of process upon any person who is subject to the jurisprudence of the courts of this State, as provided in this section, may be made as provided by Sections 634-36, if he cannot be found in the State, with the same force and effect as though summons had been personally served within this State.

"[§634-36] Manner of service under Sections 634-33 to 35.

When service of summons is provided for by Sections 634-33, 634-34, or 634-35, service shall be made by leaving a certified copy thereof with the director of regulatory agencies or his deputy, * * * provided that notice of the service and a certified copy of the summons are served upon the defendant personally by any person authorized to serve process in the place which he may be found or appointed by the court for that purpose, or sent by certified or registered mail * * *. The service shall be deemed complete upon delivery of the required papers to the defendant outside the State, personally or by mail as provided"; Rollo, pp. 143-144.

[7] Rollo, p. 68; also p. 63.

[8] Rollo, p. 30.

[9] Docketed therein as Civil Case No. 36503.

[10] Joseph Scallon alternatively sued upon the same promissory notes subject of the foreign judgment "in the remote possibility that the Hawaiian Decision * * * will not be * * * enforced." Under the second alternative cause of action, the Spouses Scallon prayed for the return of 800 shares of stock in the Manila Memorial Park and 180 shares in the Trans-Pacific Development Management Corporation — capital stock the Scallons assigned to Borthwick on December 3, 1973 in consideration for his assumption of their liability for the purchase price thereof to Nathan Ira Tinkham, but which indebtedness the Spouses were eventually compelled to settle anyway, hence the issuance by Borthwick of two of the four unpaid promissory notes.

[11] Rollo, p. 81.

[12] Rollo, pp. 104-105.

[13] Rollo, p. 245.

[14] Rollo, p. 107.

[15] Rollo, pp. 9-10.

[16] Rollo, pp. 173-174.

[17] Rollo, p. 175.

[18] That "the promissory note for \$32,408.95 * * * was not genuine * * *; that he has * * * valid counterclaims against plaintiff"; that the clause "whereby (Borthwick) agreed to save Scallon harmless from all claims by Tinkham was cancelled"; that "the stocks were really transferred to (Borthwick's) wife and the * * * notes, consideration of said transfer, have prescribed; that the stocks have already been conveyed * * * to third persons; that the action for rescission has already prescribed"; Rollo, p. 120.

[19] Rollo, p. 176.

[20] Rollo, p. 13.

[21] Section 50(b) of Rule 39, Rules of Court.

[22] Sec. 2, Rule 42, Rules of Court.

[23] *Fernandez v. Femandez, et al.*, 88 Phil. 162; *Comilang v. Delenela, et al.*, 10 SCRA 598 citing *Jacinto v. Jacinto*, L-12313, July 31, 1959; *Abuyo v. De Suazo*, 18 SCRA 600, citing *Aballo v. Santino*, L-16307, April 30, 1963, *Cabrera, et al. v. Tiano*, L-17299, July 31, 1963; *DBP v. Ozarraga*, L-16631, July 20, 1965; *Cason v. San Pedro*, 9 SCRA 925.

[24] *Descutido v. Baltazar*, 1 SCRA 1171; *Flores v. Plasina*, 94 Phil. 327.

[25] *Wilson v. Berkenkotter*, 92 Phil. 918; *Flores v. Plasina*, *supra*; *J.M. Tuason & Co., Inc. v. Macalindong*, 6 SCRA 938.

[26] *Rollo*, pp. 173-174.

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.