

CARMELITA PELAEZ SAHAGUN, PETITIONER, VS. COURT OF APPEALS, JUDGE JOB B. MADAYAG, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 145, REGIONAL TRIAL COURT OF MAKATI, AND FILINVEST...*G.R. No. 78328. June 03, 1991*

Ponente: REGALADO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-78328/>**REGALADO, J.:**

The case at bar commenced on June 25, 1982 when Civil Case No. 46556[1] was filed in the defunct Court of First Instance of Rizal, Branch XXIV,[2] by private respondent Filinvest Credit Corporation (hereinafter, Filinvest) against petitioner's spouse, Abel (alias Abelardo) Sahagun, manager of Rallye Motor Co., Inc. (Rallye, for brevity). It was alleged that Abel Sahagun made it appear that his company had sold a motor vehicle to one Ernesto Salazar who issued a promissory note for the price and executed as security for the payment of the note a chattel mortgage on the motor vehicle in favor of Rallye. Subsequently, Rallye, through said Abel Sahagun, assigned the note and the chattel mortgage to Filinvest for valuable consideration. When the note matured, Salazar failed to pay the value thereof to the assignee, respondent Filinvest, compelling it to sue. However, Filinvest discovered later that the mortgaged car had not been delivered to Salazar by Sahagun.[3]

After Filinvest brought suit against Abel Sahagun, a writ of attachment was issued and subsequently levied on the house and lot[4] registered in his name, located at No. 16 Mangga Chupoy St., Pilar Village Subdivision, Las Piñas, Metro Manila. Petitioner and her children have been residing continuously in that house since then and up to now and she claims that house as her own, having allegedly paid for it with her own earnings.

On June 2, 1983, the trial court issued an order denying private respondent's motion to declare defendant Abel Sahagun in default but directed it to "take steps to effect service of the summons and complaint upon defendant, who is out of this country and his whereabouts in the United States of America is unknown, as per information from his wife contained in her motion for intervention, pursuant to Sec. 17, Rule 14, Rules of Court." [5] However, on June 23, 1983, the trial court dismissed without prejudice the complaint of Filinvest for its failure to serve summons extraterritorially upon defendant Abel Sahagun despite the aforesaid order.[6]

Filinvest filed a motion for reconsideration,[7] dated June 23, 1983, praying that the order of June 2, 1983 be reconsidered and set aside and that defendant Abel Sahagun be declared in default. It also prayed that the order granting petitioner's motion for leave to intervene be denied, and that said motion be expunged from the records.

On July 7, 1983, the trial court issued an order granting petitioner time to file a complaint in intervention and denying reconsideration of the denial of private respondent's motion to declare defendant Abel Sahagun in default.[8]

Petitioner Carmelita Sahagun, intervened[9] on July 27, 1983, questioning the jurisdiction of the trial court. However, for failure to appear at the pre-trial conference held on November 25, 1983, she was declared "in

default." Abel Sahagun was also declared in default for failing to answer the complaint.[10] Subsequently, on February 20, 1984 the court a quo rendered judgment against Abel Sahagun, with the following decretal portion:

"WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendant Abel Sahagun, ordering the latter to pay the former the sum of NINETY-SEVEN THOUSAND SIXTY-SIX PESOS AND FIFTY-NINE CENTAVOS (P97,066.59), Philippine Currency, with interest at the rate of 14% per annum from July 27, 1977 until fully paid; the sum equivalent to 25% of the principal obligation due as and for liquidated damages; the further sum equivalent to 25% of the obligation due as and for attorney's fees; and to pay the costs of this suit.

"SO ORDERED."[11]

Thereupon, petitioner Carmelita Sahagun, elevated the case to the then Intermediate Appellate Court in AC-G.R. SP No. 05044 which, in a decision[12] promulgated on February 27, 1985, granted her petition for certiorari with prohibition and set aside the trial court's aforesaid decision and the order, dated November 28, 1984, granting execution. The appellate court ruled that petitioner was deprived of the opportunity to present evidence in support of her complaint in intervention including evidence to support her claim that since 1970 she and her husband had been living separately.

In turn, Filinvest filed with the Court in G.R. No. 70357 a petition for review of the Intermediate Appellate Court's decision, but said petition was denied in our resolution of July 8, 1985.[13]

On September 26, 1985, Filinvest filed a motion for leave to serve summons by publication on defendant Abel Sahagun. The court below granted the motion, stating in its order dated November 15, 1985, as follows:

"x x x pursuant to Sec. 17, Rule 14 of the Revised Rules of Court, let service of the summons upon defendant Abel (Abelardo) Sahagun be effected out of the Philippines by publication in a newspaper of general circulation in the Philippines, to which this matter may be assigned after due raffle in accordance with existing law, for three successive days; and said defendant is hereby ordered to file his answer in Court within a reasonable time, which shall not be less than sixty (60) days after notice.

"The Clerk of Court is hereby directed to send copies of the summons and this Order by registered mail with registry return card to the last known address of said defendant at No. 16 Mangga Chupoy Street, Pilar Village Subdivision, Las Piñas, Metro Manila.

"Plaintiff is hereby ordered to implead Rallye Motors Co., Inc. as co-defendant, within one (1) month from notice hereof.

"SO ORDERED."[14]

On December 11, 1985, Filinvest filed an amended complaint for the same sum of money against Abel Sahagun, this time impleading Carmelita Pelaez Sahagun and Rallye as additional defendants.[15]

On January 10, 1986, the respondent trial court issued an order admitting the amended complaint and directing service of summons and the amended complaint upon defendant Abel Sahagun at a different address -- "at his last known address at 1228-A Antipolo Street, Makati, Metro Manila."[16]

Afterwards, summons was supposedly served on Abel Sahagun through publication in the Manila Evening Post on March 7, 14, and 21, 1986, according to the affidavit of publication of its president,[17] with a confusing entry in the notice of order[18] that his last known address was at "No. 16 Mangga Chupoy, Pilar Village Subdivision, Las Piñas, Metro Manila" and to which address said notice was directed, thus clearly contradicting the address stated in the January 10, 1986 order of the trial court, which was "No. 1228-A Antipolo Street, Makati, Metro Manila."

On March 11, 1986, petitioner filed her answer to the amended complaint.[19] Since no answer was filed by the two other defendants Abel Sahagun and Rallye, Filinvest filed an omnibus motion[20] on June 26, 1986 that they be declared in default.

On July 18, 1986, Judge Job Madayag of Branch 145, Regional Trial Court of Makati, issued an order granting in part the omnibus motion of Filinvest dated June 26, 1986, and denying it in part.[21] Apparently, since only defendants Abel and Carmelita Sahagun were allegedly served with summons, the former through publication and the latter by personal service as in fact she had filed her answer, only defendant Abel Sahagun was declared in default for failure to file his answer. Defendant Rallye, on the other hand, was not declared in default because summons had not been served upon it.

Petitioner went on certiorari to the Court of Appeals, in a petition docketed as CA-G.R. SP. No. 09909, assailing as grave abuse of discretion the declaration of default of defendant Abel Sahagun. On February 6, 1987, respondent Court of Appeals promulgated a decision dismissing the petition, and on April 22, 1987, it denied the subsequent motion for reconsideration for lack of merit.[22] Hence, the present recourse.

Petitioner assails the appellate court's decision and resolution, raising the basic issue as to whether or not respondent trial court acquired jurisdiction over defendant Abelardo Sahagun, by the publication of summons in the Manila Evening Post (Annexes "G" and "G-1" thereof), so as to empower it to declare him in default for failure to file his answer (Annex "H" thereof).[23]

There is no question that the facts of the present case warrant extraterritorial service of summons as authorized by Section 17, Rule 14 of the Rules of Court. Admittedly, one of the defendants, Abel Sahagun, has left the Philippines and has been residing somewhere in the United States. Per the certification of the Commission on Immigration and Deportation dated July 22, 1983. Abel Sahagun left on April 23, 1978,[24] hence he was a nonresident defendant at the time private respondent brought suit in the court below. Also, since the suit involves real property wherein said defendant ostensibly has an interest and which property has in fact been attached at the instance of private respondent, the court a quo correctly ordered service of summons on said defendant out of the Philippines, adopting for such service one of the modes authorized by the aforesaid provision of the Rules, that is, "by publication in a newspaper of general circulation in such places and for such time as the court may order."

It was posited during the deliberations on this case that such publication of summons in a local newspaper, as sanctioned by the trial court, was wrong and that the publication should have been made in a newspaper published in the state and county of the United States where Abel Sahagun now allegedly resides. Such publication in a foreign newspaper, it is claimed, would most likely give notice to the person to be served, although it is also conceded that such condition has not been incorporated in Section 17 of Rule 14. We believe, however, that such a sweeping doctrine would virtually unsettle a long standing interpretation of the aforesaid rule on extraterritorial service of summons by publication, as well as its implementation sanctioned by the practice followed in this jurisdiction.

True it is that there is no specific proscription against resorting to publication of summons in a foreign publication circulating in the place where the defendant resides. To illustrate, in *Tolaram Menghra vs. Bulchand Tarachand, et al.*[25] it is reported that the summons therein was served by publication in the territory of Hawaii where the defendant resided. However, as early as the case of *El Banco Español-Filipino vs. Palanca, etc.*[26] where the defendant mortgagor had returned to the City of Amoy, China and was residing therein when the foreclosure suit was instituted against him, the lower court ordered the publication of summons in a newspaper in the City of Manila, and the service of a copy thereof to the last known address of defendant in accordance with the provisions of Sections 398 and 399 of the Code of Civil Procedure, which provisions have been reproduced in the aforesaid

Section 17, Rule 14 of the 1964 Rules of Court.

While what was involved in the aforesaid case was a foreclosure proceeding and the present case is based on the attachment of defendant's property here, the difference is inconsequential. In both cases, the actions are quasi in rem[27] since, in the language of *El Banco Español-Filipino*, there is an instructive analogy between foreclosure and attachment proceedings. In both instances, summons by publication is allowed and the rationale for that is explained in said case thus:

"Passing at once to the requisite that the defendant shall have an opportunity to be heard, we observe that in a foreclosure case some notification of the proceedings to the non-resident owner, prescribing the time within which appearance must be made, is everywhere recognized as essential. To answer this necessity the statutes generally provide for publication, and usually in addition thereto, for the mailing of notice to the defendant, if his residence is known. Though commonly called constructive, or substituted service, such notification does not constitute a service of process in any true sense. It is merely a means provided by law whereby the owner may be admonished that his property is the subject of judicial proceedings and that it is incumbent upon him to take such steps as he sees fit to protect it. x x x

x x x

"It will be observed that this mode of notification does not involve any absolute assurance that the absent owner shall thereby receive actual notice. The periodical containing the publication may never come to his hands, and the chances that he should discover the notice may often be very slight. Even where notice is sent by mail the probability of his receiving it, though much increased, is dependent upon the correctness of the address to which it is forwarded as well as upon the regularity and security of the mail service. It will be noted, furthermore, that the provision of our law relative to the mailing of notice does not absolutely require the mailing of notice unconditionally and in every event, but only in the case where the defendant's residence is known. In the light of all these facts, it is evident that actual notice to the defendant in cases of this kind is not, under the law, to be considered absolutely necessary."

In *De Midgely vs. Ferandos, etc., et al.*, [28] we adverted to the disquisition in *Perkins vs. Dizon, etc., et al.* [29] in this wise:

"This Court clarified that in a quasi in rem action jurisdiction over the person of a nonresident defendant is not essential. The service of summons by publication is required 'merely to satisfy the constitutional requirement of due process'. The judgment of the court in the case would settle the title to the shares of stock and to that extent it partakes of the nature of a judgment in rem. Consequently, the lower court had jurisdiction to try the case even if it had not acquired jurisdiction over the person of *Idonah Slade Perkins*. The judgment would be confined to the res. No personal judgment could be rendered against the nonresident."

What further compounds the difficulty in the proposed requirement for foreign publication of the summons in the case at bar is the fact that it does not appear in what state or county of the United States the defendant *Abel Sahagun* presently resides. Necessarily, if the trial court should be required to resort to publication in a foreign newspaper it must have at hand not only the name and availability of such newspaper or periodical but also the laws and rules governing the publication of judicial processes and notices in said place. Here, we only have a defendant in the United States to contend with, but we can very well anticipate the plethora of problems that would arise if the same question on nonresident defendants is replicated in the other countries of the world. In this jurisdiction, at least, we have the corresponding regulatory guidelines in Presidential Decree No. 1079.

In fine, while there is no prohibition against availing of a foreign newspaper in extraterritorial service of summons, neither should such publication in a local newspaper of general circulation be altogether interdicted since, after all, the rule specifically authorizes the same to be made in such places and for such time as the court

concerned may order. If it is felt that adjective policy would be better served by denying such discretion to the trial court, then the corresponding amendment of the present rule would be indicated but subject to empirical proof of the necessity for and the wisdom of such a change.

Accordingly, for the nonce, the matter should continue to be addressed to the sound discretion of the trial court in each particular case since it has the facts before it, and we should interfere only in the exercise of our corrective power over an error or abuse in its actuations in a specific case. Undeniably, some controversies may present factual features which would justify resort to local publication of summons. There is the possibility of debtors escaping the jurisdiction of our courts through the simple expedient of seeking a foreign refuge, probably with their unknown subsequent whereabouts unknown or unascertainable. For that matter, it is on that very rationale that summons by publication is authorized whenever the address of a defendant is unknown and cannot be ascertained by diligent inquiry even if he is in the Philippines.

We repeat, service of summons on a nonresident defendant who is not found in the country is required, not for purposes of physically acquiring jurisdiction over his person but simply in pursuance of the requirements of fair play, so that he may be informed of the pendency of the action against him and the possibility that property in the Philippines belonging to him or in which he has an interest may be subjected to a judgment in favor of a resident, and that he may thereby be accorded an opportunity to defend in the action, if he be so minded. The only relief that may be granted in such an action against such a nonresident defendant, who does not choose to submit himself to the jurisdiction of the Philippine court, is limited to the res.

However, despite our holding that publication in the Philippines is sufficient, the service of summons in this case is still defective, there being no showing that copies of the summons and the amended complaint were duly served at the defendant's last known correct address by registered mail, as a complement to the publication^[30] and in compliance with the order of the lower court dated January 10, 1986,^[31] as hereinbefore noted. The failure to strictly comply correctly with the requirements of the rules regarding the mailing of copies of the summons and the order for its publication is a fatal defect in the service of summons.^[32] As held by this Court:

"It is the duty of the court to require the fullest compliance with all the requirements of the statute permitting service by publication. Where service is obtained by publication, the entire proceeding should be closely scrutinized by the courts and a strict compliance with every condition of law should be exacted. Otherwise great abuses may occur, and the rights of persons and property may be made to depend upon the elastic conscience of interested parties rather than enlightened judgment of the court or judge."^[33]

The foregoing notwithstanding, we are not inclined to order the dismissal of the case below for non-compliance by private respondent of the trial court's order of January 10, 1986. The attachment of property registered in the name of defendant Abel Sahagun justifies summons by publication and, although that ownership appears to be disputed and should precisely be a priority concern of the trial court to resolve, nonetheless a prima facie justification for extraterritorial service of summons on said nonresident defendant clearly exists. The erroneous transmission of copies of the summons and the complaint to what appears as an incorrect last known address of said defendant is a matter which the trial court can more readily ascertain and remedy.

It also bears mention that even if said nonresident defendant should ultimately be declared in default, his interest can be duly represented by the non-defaulting defendant since a common cause of action appears to be involved, which fact may be more adequately determined at the trial, and the success of the latter in the suit shall inure to the benefit of the former.^[34]

WHEREFORE, the petition is GRANTED and the decision, dated February 6, 1987, and the resolution, dated April 22, 1987, of respondent Court of Appeals are SET ASIDE. The case is, however, REMANDED to the lower

court for proper extraterritorial service of summons to defendant Abel Sahagun in accordance with the provisions of Section 17, Rule 14 of the Rules of Court consonant with our above pronouncements, and for appropriate proceedings in accordance with our observations in this decision and the courses of action indicated therein.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Bidin, Griño-Aquino, Medialdea, and Davide, Jr., JJ., concur.

Sarmiento, J., see concurring and dissenting opinion.

Paras and Padilla, JJ., no part.

[1] Petition, Annex A; Rollo, 25.

[2] This case was later given a new docket number, Civil Case No. 3161, and assigned to Branch 145. Regional Trial Court of Makati, Metro Manila (Original Record, 56).

[3] Petition, Annex A; Rollo, 25-26.

[4] Id.; ibid., 43.

[5] Id., Annex B; ibid., 39.

[6] Id., Annex B-1; ibid., 40.

[7] Original Record, 66.

[8] Id., Annex B-2; ibid., 41.

[9] Id., Annex C; ibid., 42.

[10] Original Record, 120.

[11] Ibid., 138.

[12] Penned by Associate Justice Vicente V. Mendoza, and concurred in by Associate Justices Edgardo L. Paras and Luis A. Javellana.

[13] Petition, Annex D-2; Rollo, 53.

[14] Id., Annex E; ibid., 54.

[15] Id., 6; ibid., 8.

[16] Id., Annex F; ibid., 55; Original Record, 299.

[17] Id., Annexes G and G-1; ibid., 56.

[18] Id., Annex G-1; ibid., id.

[19] Rollo, 8; Original Record, 311-317

[20] Ibid., 9; Original Record, 349-350.

[21] Original Record, 358.

[22] Both penned by Justice Felipe B. Kalalo, with the concurrence of Associate Justices Floreliana

Castro-Bartolome and Esteban M. Lising.

[23] Petition, 2-3; *ibid.*, 4-5.

[24] *Id.*, Annex C-1; Rollo, 44.

[25] 67 Phil. 286 (1939).

[26] 37 Phil. 921 (1918).

[27] See *Citizens' Surety & Insurance Company, Inc. vs. Melencio-Herrera, et al.*, 38 SCRA 369 (1971).

[28] 64 SCRA 23 (1975).

[29] 69 Phil. 186 (1939).

[30] Sec. 17, Rule 14, Rules of Court.

[31] Rollo, 55.

[32] See *Dy Reyes, et al. vs. Ortega, et al.*, 16 SCRA 903 (1966).

[33] *Dulap, et al. vs. Court of Appeals, et al.* 42 SCRA 537 (1971), citing *Bachrach Garage and Taxicab Co. vs. Hotchkiss & Co.*, 34 Phil. 506 (1916).

[34] Sec. 4, Rule 18, Rules of Court; *Bringas, etc. vs. Hernando, et al.*, 144 SCRA 346 (1986).

6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING AND DISSENTING OPINION

SARMIENTO, J.:

I concur, but only in the result. I am agreed that the failure of the trial court to serve, by registered mail, copies of the summons and complaint to the defendant's last known correct address^[1] is a defect which can not justify an order of default. I am also agreed that at any rate, assuming that default were proper, it will not preclude the non-defaulting party (the petitioner) from presenting evidence to defeat the private respondent's claims.

I dissent, however, insofar as the majority would sustain the correctness of extrajudicial service of summons by publication in a newspaper of general circulation in the Philippines, ordered by the court. I hold that extrajudicial service of summons by publication, to be valid, must be effected in the territory in which the absent defendant may be found. I believe that the Rules support this view.

Under the Rules of Court:

SEC. 17. Extraterritorial service. - When the defendant does not reside and is not found in the Philippines and the action affects the personal status of the plaintiff or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 7; or by publication in a newspaper of general circulation in

such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient. Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer.[2]

a non-resident defendant may be served with summons by extraterritorial service in four cases: (1) when the action affects the personal status of the plaintiff; (2) when the action relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded consists, wholly or in part in excluding the defendant from any interest in property located in the Philippines; or (4) when the property of the defendant has been attached within the Philippines. Extraterritorial service itself is done in three modes: (1) by personal service; or (2) by publication and sending a copy of the summons and order of the court by registered mail to the defendant's last known (and correct) address; or (3) by any other means the judge may consider sufficient.

Personal service under the first mode is accomplished by having the sheriff[3] serve it personally on the defendant as in Section 7, of Rule 14. Service by any other means satisfactory to the court mentioned as the third mode, on the other hand, pertains to the sound discretion of the judge. Service through the Philippine chancery in the forum concerned has been sustained as a valid service,[4] as was service through the Philippine Consul, assisted by the Solicitor General.[5]

With respect to service by publication, the Rule, it is to be noted, does not specify which newspaper the summons shall be published, that is, whether in the Philippines or in the forum of which the defendant is actually a resident. In one case,[6] the Court suggested that publication in a newspaper of general circulation in the Philippines was compliance enough with the Rule, provided that the corresponding order was sent by registered mail to the last known address of the defendant.

I have, however, taken a harder look at the provisions in question and I am not inclined to say anymore that publication within the Philippines is substantial compliance with these provisions.

At the heart of the matter is the question of due process. Summons, by definition, is a writ by which a defendant is notified of a pending action against him.[7] The notice, of course, need not be personally made in all cases because precisely, it may be by publication, and second, because due process is not as exacting, considering especially the State's own inability, through no fault of the State, to reach defendants who have travelled beyond its borders. Whether personal or constructive, however, notice is indispensable, without which, and unless the defendant has meanwhile voluntarily submitted to the court's jurisdiction, the court acquires no jurisdiction over his person.

A bit of legal history: Section 17, *supra*, was "taken substantially from section 17 of former Rule 7, [which] was taken mostly from Article 7, section 22 of the Rules of Civil Procedure by the American Judicature Society and is in substantial conformity with sections 398 and 399 of Act No. 190 as construed and applied by our Supreme Court." [8] Sections 398 and 399 of Act No. 190, on the other hand, were an adoption of Part II, of Title V, of the Code of Civil Procedure of the State of California, which reads, in part as follows:

413. [Publication: Manner: Mailing copy: personal service outside state: When service complete: What "post office" includes.] The order must direct the publication to be made in a newspaper, to be named and designated as most likely to give notice to the person to be served...[9]

Note that the newspaper in which publication has to be made must be one "most likely to give notice to the person to be served." For obvious reasons, publication in a newspaper circulating in the Philippines is not "likely" to provide notice to a U.S. resident, and while publication in a newspaper in the United States is no assurance either

that the defendant actually residing there will be actually notified, it is more "likely", than where the publication was done here, to give the notice in question.

I therefore hold that extraterritorial service of summons by publication to be an effective and valid service; must be done in a newspaper of general circulation in the state in which the absent defendant is found and, conformably with the Rule, "for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known [and correct] address of the defendant..."[10] Publication in the Philippines, so I hold, can not operate to confer on the court the jurisdiction over the defendant's person.

I am aware that in two early cases, *Banco Español-Filipino v. Palanca*[11] and *Perkins v. Dizon*,[12] and in a fairly recent one, *De Midgely v. Ferandos*,[13] it was held that in actions quasi in rem, jurisdiction over the person of the defendant is not "necessary",[14] jurisdiction over the res having been in any event acquired (in the case at bar, by virtue of a prior attachment). It is to be noted, however, that in so holding, neither *Palanca* nor *Perkins* dispensed with the necessity of service of summons (by any of the three modes of extraterritorial service), precisely, "to satisfy the constitutional requirement of due process." [15]

At any rate, I can not allow the lower court to act on the case in the absence of a valid extraterritorial service of summons, in spite of the existing attachment. As *Palanca*, *Perkins*, and *Ferandos* indicated, service of summons is nonetheless essential for due process purposes, and insofar as *Palanca*, *Perkins*, and *Ferandos* paid but lip service to due process (insofar as they permitted the court to act nonetheless), I think that a reexamination is in order.

Justice Malcolm himself differed with the majority in *Palanca*, and he said:

xxx xxx xxx

I dissent. It will not take me long to state my reasons. An immutable attribute--the fundamental idea--of due process of law is that no man shall be condemned in his person or property without notice and an opportunity of being heard in his defense. Protection of the parties demands a strict and an exact compliance with this constitutional provision in our organic law and of the statutory provisions in amplification. Literally hundreds of precedents could be cited in support of the axiomatic principles. Whereas in the instant case the defendant received no notice and had no opportunity to be heard, certainly we cannot say that there is due process of law. Resultantly, "A judgment which is void upon its face, and which requires only an inspection of the judgment roll to demonstrate its want of vitality is a dead limb upon the judicial tree, which, should be lopped off, if the power so to do exists. It can bear no fruit to the plaintiff, but is a constant menace to the defendant." [16]

In his classic formulation, Webster put due process as "a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." [17]

The Constitution likewise decrees:

Section 1. No person shall be deprived of life, liberty or property without due process of law... [18]

I find the rationalization underlying *Palanca*, *Perkins*, and *Ferandos*, that is, that the court may act since it has jurisdiction over the res, to be an effort to glorify form over substance. The truth is that although the court has acquired jurisdiction over the res, the res belongs to the defendant and we believe that a defendant has the right, as a matter of fair play, to be heard whenever his possessions are imperilled.

The fact that judgment over the absent defendant shall be confined to the res seems to me to be more apparent than real, because although the court can not grant any money award by way of relief, the judgment condemning the res will invariably yield the same result, i.e., liability against the defendant.

The above ruling would also have, if they have not, set to naught Section 17 of Rule 14, which requires

extraterritorial service notwithstanding the in rem nature of the proceedings. After all, if the court has already jurisdiction over the thing, it need not serve summons on the defendant. It was never the contemplation of the Rules to stipulate a useless provision.

I am not to be understood as condoning sheer acts of embezzlement by indebted defendants, in order to escape the jurisdiction of our courts, and neither am I precluding our courts from entertaining complaints of creditors. I am concerned, rather, with the fundamental injustice of a trial in absentia, if it were to permit the courts to dispose of the res without reasonable notice to the owner, especially considering the wave upon wave of migrations of Filipinos, whether workers, professionals or travellers, to distant lands, which necessity, rather than choice, has forced on them. Compliance with the Rules is not asking too much.

[1] RULES OF COURT, Rule 14. sec. 17.

[2] Supra.

[3] "... or other proper court officer... or by any person especially authorized by the judge..." See RULES OF COURT, Rule 14, supra. sec. 15.

[4] In *De Midgely v. Ferandos*, No. L-34314, May 13, 1975, 64 SCRA 23, the summons was served through the Philippine Embassy in Madrid, where the same was mailed.

[5] As was done in *Marcos v. Garchitorena*, G.R. Nos. 90110-43, February 22, 1990.

[6] *Banco Español-Filipino v. Palanca*, 37 Phil. 921 (1918).

[7] 1 MORAN, COMMENTS ON THE RULES OF COURT 435. (1979 ed.)

[8] *Id.*, 456.

[9] DEERING'S CALIFORNIA CODES, 91.

[10] RULES OF COURT, Rule 14 sec. 17, supra.

[11] Supra, fn. 30.

[12] 69 Phil. 186 (1939).

[13] Supra, fn. 28.

[14] Supra, 32.

[15] Supra, 35.

[16] *Banco Español-Filipino v. Palanca*, supra, 950-951.

[17] See *U.S. v. Ling Su Fan*, 10 Phil- 104. 111 (1908).

[18] CONST., art. III, sec. 1.

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.