

43 Phil. 333

[ G. R. No. 18940. April 27, 1922 ]

**S. SHIOJI, PETITIONER, VS. HONORABLE GEO. R. HARVEY, JUDGE OF FIRST INSTANCE OF MANILA, PACIFIC MAIL STEAMSHIP CO. AND TOYO KISEN KAISHA, RESPONDENTS.**

## **D E C I S I O N**

### **MALCOLM, J.:**

Two questions are presented for decision in this original proceeding by prohibition. The first question, pressed by petitioner, relates to the interference on the part of a lower court with a judgment of the Supreme Court. The second question, urged by respondents, relates to the validity of Rule 24 (a) of the Supreme Court. While, in our opinion, a resolution of the first point is decisive of the case, and any discussion of the other point has no more than academic interest, yet, having in mind the position of the court when one of its own rules is assailed as “unconstitutional, null and void,” we have decided to give serious consideration to both questions. In logical sequence, there follows a statement of the case and the facts, an opinion on the two points above stated, and the judgment.

### STATEMENT OF THE CASE AND THE FACTS

In cause No. 19471 of the Court of First Instance of Manila, wherein S. Shioji was plaintiff, and the Toyo Risen Kaisha and the Pacific Mail Steamship Co. were defendants, judgment was rendered on October 31, 1920, by Judge Concepcion presiding in the second branch of the court, in favor of the plaintiff and against the defendants jointly and severally for the sum of P19,533.49, with legal interest and costs. Thereafter, the defendants duly perfected an appeal by way of bill of exceptions, to the Supreme Court of the Philippine Islands, and the case was docketed as R. G. No. 18592.<sup>[1]</sup> The date on which the bill of exceptions was filed in the office of the clerk of the Supreme Court was February 16, 1922, while attorneys for the respective parties received copies of the same on February 17, 1922.

In accordance with Rule 21 of the Supreme Court, the appellants had thirty days from the

receipt of the printed bill of exceptions within which to serve and file copies of their brief. This period expired on March 19, 1922, without appellants either having presented their brief, or asked for an extension of time within which to present it. Accordingly, when on March 22 appellants filed a motion for an additional period, the court, on March 24, 1922, denied the motion because it was filed out of time, and, pursuant to Rule 24 (a), dismissed the appeal. Subsequent orders of the court on motions for reconsideration have reaffirmed the order of dismissal, and have noted the exception of counsel.

The regular fifteen-day period fixed by the order of the court, of March 24, 1922, for the issuance of judgment and the return of the record to the lower court, having expired, on April 12, 1922, the record was transmitted to the Court of First Instance of Manila. Execution was then issued to enforce the judgment, but prior to the levy the defendants in the case R. G. No. 18592, filed an action in the Court of First Instance of Manila, docket No. 21905, based principally on the allegation that the "judgment of the Supreme Court is unconscionable and was rendered without due process of law, and that the rule (Rule 24 [a]) under which the judgment was rendered, is unconstitutional, and being in conflict with law, is null and void/" in which they prayed that a preliminary injunction forthwith issue enjoining the respondents from levying any execution under the aforesaid judgment and that after hearing the injunction be made perpetual. After Judge Concepcion had signed an order for the transference of the case to the judge presiding in Branch III, Judge Harvey issued the preliminary injunction in accordance with the prayer of the complaint.

The countermove of the respondents in the injunction proceedings pending in the Court of First Instance was to file a complaint in prohibition In the Supreme Court, to compel the respondent Judge of First Instance to desist from interfering with the execution of the judgment in case No. 19471 of the Court of First Instance of Manila, and to issue an order revoking the preliminary injunction previously promulgated by him. The preliminary injunction prayed for as an incident to the complaint in prohibition, was immediately issued by the Supreme Court, and has been complied with by the respondents herein. Counsel has made answer to the petition on behalf of respondents. Petitioner herein moves for judgment on the pleadings.

A public hearing has been held and the case has been argued with marked ability by counsel for both parties. The attorney for respondents was in a particularly delicate position, in that he must attack the action of the court, but it is only fair to say that he has maintained toward the court the respectful attitude which the ethics of his profession requires of him. We cannot, however, follow counsel into the supercritical mazes of his argument, and must

perforce confine our opinion to the big issues.

## OPINION

I. As intimated in the beginning of this decision, the primary question raised by petitioner concerns the action of the Judge of First Instance in assuming jurisdiction to interpret and review judgments and orders of the Supreme Court, and to obstruct the enforcement of the decisions of the appellate court.

Lengthy elucidation of the proposition that the only function of a lower court, when the judgment of a higher court is returned to it, is the ministerial one of issuing the order of execution, and that a lower court is without supervisory jurisdiction to interpret or to reverse the judgment of the higher court, would seem to be superfluous. A judge of a lower court cannot enforce different decrees than those rendered by the superior court. If each and every Court of First Instance could enjoy the privilege of overruling decisions of the Supreme Court, there would be no end to litigation, and judicial chaos would result. Appellate jurisdiction would be a farce if the Supreme Court did not have the power of preventing inferior courts from meddling with decisions when sent to them for compliance. Where a cause has been appealed from a Court of First Instance to the Supreme Court of the Philippine Islands, and a judgment rendered by the latter, no interference therewith by the lower court can be tolerated through any proceedings other than such as are directed by the appellate court. Until revoked by the Supreme Court of the United States, the decision of the Supreme Court of the Philippine Islands must stand and be enforced.

“The inferior court is bound by the decree as the law of the case, and must carry it into execution according to the mandate. They cannot vary it, or examine it for any other purpose than execution, or give any other or further relief, or review it upon any matter decided on appeal for error apparent, or intermeddle with it, further than to settle so much as has been remanded.” These are the words of the Supreme Court of the United States in the early case of *Sibbald vs. United States* ([1838], 12 Pet., 488).

When a district court attempted to grant a new trial subsequent to the return of the mandate of the United States Supreme Court, the trite but emphatic rule of the higher court was that “The district court had no power to set aside the judgment of the Supreme Court; its authority extending only to executing the mandate,” (*Ex parte Dubuque & Pacific*

Railroad [1864], 1 Wall., 69. *See, further*, *State ex rel* vs. Superior Court [1894], 8 Wash., 591; *State ex rel*. Heirs of Gee vs. Drew and Thompson [1886], 38 La. Ann., 274; *In re* Alexander [1911], 127 La., 854.)

What has been said is in justification of the preliminary injunction heretofore granted ordering Judge of First Instance Harvey to desist from interfering with the execution of the judgment in the case of S. Shioji vs. Toyo Kisen Kaisha, *et al.*, and requiring him to revoke the injunction order previously issued. We ought properly to stop here, because an attack on the validity of the rules of the Supreme Court should not be initiated by collateral proceedings in a lower court, but, as before explained, we waive this phase of the case so as to do full justice to the complainant and so as to make a definite ruling on the point which he raises.

II. The Supreme Court of the Philippine Islands is expressly authorized by statute to make rules for the regulation of its practice and the conduct of its business. Section 28 of the Judiciary Act (No. 136), grants to the members of the Supreme Court the power to “make all necessary rules for orderly procedure in the Supreme Court \* \* \* in accordance with the provisions of the Code of Civil Procedure, which rules shall be \* \* \* binding upon the several courts.” The Code of Civil Procedure, in turn, provides in its section 6, as follows:

“The judges of the Supreme Court shall prepare rules regulating the conduct of business in the Supreme Court and in the Courts of First Instance. The rules shall be uniform for all Courts of First Instance throughout the Islands. Such rules, when duly made and promulgated and not in conflict with the laws of the United States or of the Philippine Islands, shall be binding and must be observed, but no judgment shall be reversed by reason of a failure of the court to comply with such rules unless the substantial rights of a party have been impaired by such failure.”

The rules of the Supreme Court of the Philippines, drafted principally by Mr. Justice Willard, were promulgated soon after the organization of the court on American occupation of the Philippines. Amendments of the rules were announced from time to time. In 1918, a special committee of three members of the Supreme Court was appointed by the court, to compile and revise the rules of court, and after long study, and after a number of public hearings, a draft was presented, which was adopted by the court on October 2, 1918. These are the rules which, with a few minor amendments, are now in force.

The rules of the Supreme Court and the rules of the Courts of First Instance alike contain provisions intended to facilitate the progress of judicial business. Of this nature, and of particular interest here, are rules 21, 22, 23, and 24 of the Supreme Court. The first mentioned rule, 21, provides in mandatory language that "Within thirty days from the receipt of the printed record on appeal or bill of exceptions the appellant shall serve upon the appellee three printed copies of his brief and of his assignment of errors and file thirty copies thereof with the clerk." The following rule assigns a similar period of time for the serving and filing of the briefs of the appellee. Rule 23, likewise in mandatory language, provides that "Motions for extension of time for the filing of briefs must be presented before the expiration of the time mentioned in rules 21 and 22, or within a time fixed by special order of the court. No such extension will be allowed except on notice to the opposite party in accordance with Rule 13, and for good and sufficient cause shown. Extensions may also be granted upon stipulation of counsel, within reasonable limits." In reality, this was the rule which appellants failed to observe. Then comes Rule 24 (a), specifically challenged in these proceedings, reading as follows: "If the appellant, in any civil case, fails to serve his brief within the time prescribed by these rules the court may, on motion of the appellee and notice to the appellant, or on its own motion, dismiss the bill of exceptions or the appeal." The latter rule, it may be observed, by the use of the word "may," and in language quite similar to Rule 5, under "Briefs," of the Rules of the Supreme Court of the United States, confirms the discretionary power of the court to dismiss actions for want of prosecution.

The practice of the court in the enforcement of its rules has been uniform. The court has gone upon the assumption that although it retains the power of amendment, nevertheless, it is the duty of the court to enforce its rules to the best of its judgment, irrespective of the case, the parties, or the counsel. Extensions of time for the filing of briefs are daily granted. The first extension ordinarily is for fifteen days, the second for ten days, and the third for five days; but an unvarying prerequisite is that motions be presented before the expiration of the period. This means that attorneys can have a full period of sixty days for the preparation of their briefs, and in extraordinary cases, for good and sufficient reason, even this period will be enlarged. But if the brief of the appellant is not filed within the thirty-day period, or if a motion for an extension of time is not filed before the expiration of this period, then such cases are removed from the calendar, either on motion of appellee, or on the court's own motion.

The Supreme Court is, of course, primarily the best judge of its own rules. It is, accordingly, of interest to note what the court has heretofore said of the rules. In *Paterno vs. City of Manila* ([1910], 17 Phil., 26), rules 19 and 20 were held valid and the appeal was dismissed.

In the course of the decision, Mr. Justice Trent, speaking for the court, said that “The rules of this court are few and simple. They are the laws of the court and must be obeyed until repealed, unless it can be shown that they are in conflict with the laws of the United States or of the Philippine Islands. \* \* \* These rules mean something, otherwise they would not have been promulgated.” Mr. Justice Fisher, who drafted the new rules of the Supreme Court, in submitting the rules for consideration, gave as a principal change, “the discouragement of dilatory tactics by imposing upon the moving party the duty of proceeding promptly under penalty of dismissal of the appeal.” In *Salaveria vs. Albindo* ([1919], 39 Phil., 922), it was said:

“The Rules of the Supreme Court of the Philippine Islands effective after the first day of January, nineteen hundred and nineteen, were drafted with the primary object of expediting justice \* \* \*. On the supposition that the Supreme Court was, as it is, a court of appeal, periods of time were fixed within which attorneys must act, not particularly to make these periods arbitrary, but in order to urge on the sluggard and the dilatory. If certain provisions were followed, the appeal would prosper. If certain other provisions of the rules were not followed, automatically the appeal would disappear.”

The interpretation of the Rules of the Supreme Court of the Philippine Islands is in substantial accord with the interpretation of corresponding rules by other courts. Rules of court prescribing the time within which certain acts must be done, or certain proceedings taken, are very familiar, and have oft been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business. The number of instances in which courts have, by rule, filled out the terms of the statutes can be realized on turning to the encyclopedias. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice, and designed to expedite the transaction of business. Such rules are a necessary incident to the proper, efficient, and orderly discharge of judicial functions. (*See* 41 A. S. R., 639, notes.)

In other jurisdictions, there has been no doubt of the validity of such rules, and that failure to comply with them may deprive the appellant of his right to the judgment of the appellate court. For example, where the record was not filed by the appellant within the time prescribed by the Rules of the United States Supreme Court, and the appellee filed a copy of

it, the appeal was dismissed upon his motion. (U. S. vs. Fremont [1855], 18 How., 30.) Again, where a rule of the Supreme Court of Florida limited the time to ten days after the return day of writs of error, within which a motion to strike the records or a part thereof, can be made, and when a motion was made after the lapse of such limited time, the court held that it could not entertain or consider it. (McRae vs. Preston [1907], 54 Fla., 188.)

Rules of court, promulgated by authority of law, have the force and effect of law, if not in conflict with positive law. (Inchausti & Co. vs. De Leon [1913], 24 Phil., 224.) The rule is subordinate to the statute, and, in case of conflict, the statute will prevail. An instance is where Congress expressly enabled the courts to make and establish all necessary rules for the orderly conduct of business, provided such rules were not repugnant to the laws of the United States, and regarding which, Mr. Chief Justice Marshall, in the great case of Wayman vs. Southard ([1825], 10 Wheat., 1), made the remark that “these sections give the court full power over all matters of practice \* \* \*.”

Recurring now to section 28 of the Judiciary Law, and section 6 of the Code of Civil Procedure, which constitute the legislative authority for the promulgation of rules by the Supreme Court of the Philippine Islands, it is to be noted, in the first place, that the court is given the power to make all necessary rules for orderly procedure in the court, and for regulating the conduct of business in the court. We apprehend that within this language would be included regulations having to do with the preparation and filing of briefs. The law also provides that such rules shall be binding and must be observed. The general limitation is, that the rules must not be in conflict with the laws of the United States or of the Philippine Islands. The specific limitation is that no judgment shall be reversed by reason of the failure of the court to comply with such rules, unless the substantial rights of the party have been impaired by such failure.

As the specific limitation in section 6 of the Code of Civil Procedure is not here in question, since the Supreme Court is affirming and not reversing a judgment, the whole case comes down to a determination of whether or not Rule 24 (a) is in conflict with any law of the United States or of the Philippine Islands.

Respondents point out no provision of a federal statute which bears on the issue, and we know of none. In addition to emphasizing that the rules prepared by the Supreme Court shall be “in accordance with the provisions of the Code of Civil Procedure,” counsel specifically relies on sections 2, 500, 502, and 503 of the Code.

A portion of section 2 of the Code of Civil Procedure is quoted by respondents, but we prefer to set forth the entire section. It reads: "The provisions of this Code, and the proceedings under it, shall be liberally construed, in order to promote its object and assist the parties in obtaining speedy justice." We can conceive of no direct applicability of this provision of law, unless it be that rules of court shall be liberally construed, and that the construction shall be such as to assist the parties in obtaining speedy justice. In reality, it was the latter purpose which the court had in mind when it laid down definite periods for the filing of briefs, and held both the parties and the court to a compliance therewith.

Portions of sections 500, 502, and 503 of the Code of Civil Procedure are also quoted by respondents. But it will be noticed in this connection, that these various sections speak of the dismissal of bills of exceptions. There is no such question before us. Respondents undoubtedly have a perfectly good bill of exceptions. Where they failed was in taking the next step seasonably, with the result that the judgment of the trial court stands.

It is our holding that Rule 24 (*a*) is not in conflict with any law of the United States or of the Philippines, but is a necessary rule for orderly procedure and for regulating the conduct of business in the Supreme Court. It is a rule which relates to a matter of practice and procedure over which the Legislature has not exercised its power. It is a rule which does not operate to deprive a party of any statutory right. It is a rule in harmony with judicial practice and procedure and essential to the existence of the courts. And, finally, it is a rule which must be enforced according to the discretion of the court.

Independent of any statutory provision, we assert that every court has inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction.

Any misgivings one might entertain with reference to the justice of this decision must disappear when it is brought to mind that the respondents herein already have had a day in court; that the presumption of the Code on which they place so much reliance is always in favor of the correctness of the judgment of the lower court; that an appeal is neither an inherent right nor a necessary element of due process of law; that both bench and bar must be held to strict accountability for the speedy administration of justice; that the stability of the whole judicial structure would be shaken by the appellate court complacently permitting an inferior court to reverse the judgment of the former; and that for the Supreme Court to purge counsel of his negligence and to reinstate his cause would be merely to invite charges of favoritism and would lead to a never-ending confusion.

Counsel for the respondents speaks incidentally of his desire to have the validity of the Rules of the Supreme Court of the Philippine Islands passed upon by the courts of the Philippine Islands and by the Supreme Court of the United States. Although we are aware of no constitutional question involved, in order again to give counsel all the latitude possible, we will say that, on proper motion, and on presentation of a sufficient supersedeas bond, the instant proceedings will be stayed in order to allow counsel, if he so desires, to take the case to the Supreme Court of the United States.

In corroboration of the foregoing, the writ prayed for is granted, and the preliminary injunction is made permanent, Without special finding as to costs, it is so ordered.

*Araullo, C, J., Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.*

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<sup>[1]</sup>Shioji vs. Toyo Kisen Kaisha and Pacific Mail Steamship Co., resolution of March 24, 1922, not reported.

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