RECENT CASES

CERTIORARI—WHERE IT MAY PROSPER EVEN IF APPEAL LIES.

In an action for ejectment brought by the respondent against the petitioner, the municipal court rendered judgment for the respondent without resolving the motion to dismiss filed by the petitioner and without holding a trial on the merits. The petitioner presented a motion for reconsideration and a new trial, and while this was pending, said court, upon motion of the respondent, ordered the execution of the judgment. A petition for certiorari was brought before the Court of First Instance to annul said judgment. The respondent judge denied the writ, holding that the proper remedy was by appeal. The Supreme Court granted the writ, holding the judgment thus rendered in the ejectment case a patent nullity and that an appeal under the circumstances was not an adequate remedy, there being an order of execution issued by the court. (Saludes v. Pajarillo & Bautista, G. R. No. L-1121, July 29, 1947)

This holding dovetails with the well-settled rule that "the availability of the ordinary recourse of appeal does not constitute a sufficient ground to prevent a party from making use of the extraordinary remedy of certiorari; but it is necessary, besides, that the ordinary appeal be an adequate remedy, . . ." (Silvestre v. Torres, 57 Phil. 885)

An adequate remedy is "a remedy which is equally beneficial, speedy, and sufficient, not merely a remedy which at sometime in the future will bring about a revival of the judgment of the lower court complained of in the certiorari proceeding, but a remedy which will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal." (11 C.J. 113; Silvestre v. Torres, 57 Phil. 890, 893)

The Supreme Court has had many occasions to apply this rule:

"Where the excess in jurisdiction consists in having ordered a person who has not been a party to a case in his personal capacity, to execute a deed of cancellation of a mortgage existing in his favor, which has not been the subject-matter of the litigation, the speedy and adequate remedy is the extraordinary writ of certiorari, and not the ordinary recourse of appeal, which is slow and more expensive." (Id. pages 892-893)

"Where a Court of First Instance issues an attachment for which there is no statutory authority, it is acting irregularly and in excess of its jurisdiction in the sense necessary to justify the Supreme Court in entertaining an application for a writ of cer-

tiorari and quashing the attachment. In such a case, the remedy of appeal is not sufficiently speedy to meet the exigencies of the case. An attachment is extremely violent, and its abuse may often result in the infliction of damage which could never be repaired by any pecuniary award at the final hearing. To postpone the granting of the writ in such a case until the final hearing and to compel the petitioner to bring the case here upon appeal merely to correct the action of the lower court in the matter of allowing the attachment would seem both unjust and unnecessary." (Leung Ben v. O'Brien, 38 Phil. 182)

In the case of Director of Commerce and Industry v. Concepcion, 43 Phil. 385, the writ of certiorari was issued to annul a writ of attachment which had authorized the sheriff to attach the salary due from the Government to a public officer before it was paid to him. Such an attachment was not authorized by law. The remedy of appeal was held to be inadequate. The court cited the case of Leung Ben v. O'Brien, (supra).

In the case of Orbeta v. Sotto, 58 Phil. 505, the court held that the writ of certiorari will lie to annul an attachment issued in a civil proceeding instituted contrary to law. The remedy of appeal was declared not adequate.

A writ of attachment was improvidently issued, the debt sought to be collected in the action being within the terms of the decree of moratorium. The debt too had not yet matured. The date of maturity was six months after peace had been declared. *Held,* The writ of certiorari will lie to vacate such writ of attachment. "Although it is the general principle that certiorari is not available to correct judicial errors that could be straightened out in an appeal, we have adopted the course that where an attachment has been wrongly levied, the writ may be applied for, because the remedy by appeal is either unavailable or inadequate." (General v. De Venecia, G.R. No. L-894, July 30, 1947)

The writ of certiorari was granted to annul an appointment of a receiver made without authority of law, notwithstanding the fact that the order appointing the receiver could be reviewed on appeal from the final judgment in the action. (Rocha & Co. v. Crossfield, 6 Phil. 355; Sellner v. Jugo, 57 Phil. 1010)

A writ of attachment was issued by the lower court against the property of the respondent, a foreign corporation duly licensed to do business in the Philippines, relying on paragraph 2 of section 424 of the Code of Civil Procedure, which provided that a plaintiff may have the property of the defendant attached "in an action against a defendant not residing in the Philippines." A receiver was appointed for the attached property. The Supreme Court granted a writ of certiorari to annul the writ of attachment and the order appointing a receiver, holding that the above-quoted provision of the law should not be held applicable to foreign corporations duly licensed to do business in the Philippines, because both the language and the reason of the stat-

ute limit it to natural persons. The writ of certiorari was issued even before the rendition of the final judgment in the main action. (Claude Neon Lights, Fed. Inc. v. Phil. Advertising Corp., 57 Phil. 607)

The writ of certiorari, therefore, will lie to vacate an interlocutory order, such as an order granting a writ of attachment or one appointing a receiver, for an appeal from the final judgment in the action would not be adequate. Irreparable damage would otherwise result. However, the Supreme Court has refused to apply this rule to another interlocutory order, an interlocutory mandatory injunction: "Upon application for certiorari, the court will not dissolve an interlocutory mandatory injunction that has been issued in a Court of First Instance as an incident to an action of mandamus. The issuance of an interlocutory injunction depends upon conditions essentially different from those involved in the issuance of an attachment." (Herrera v. Barreto, 25 Phil. 245)

In all the above-cited cases, the petition for certiorari was presented before the expiration of the period for filing an appeal. The petitioners resorted to certiorari proceedings instead of appeal. The Supreme Court went one step further in the case of Silvestre v. Torres, supra, when it held that one who has already begun an appeal is not barred from applying for the extraordinary remedy of certiorari, if the latter proves to be the adequate remedy. It would appear, therefore, that certiorari can be sought even if an appeal has been begun or even if no appeal has been made and the period for making an appeal has not expired, provided that certiorari is the adequate remedy.

The Supreme Court has also issued the writ of certiorari even after the expiration of the time to appeal and even if the appeal that could have been made was adequate. The court has adopted this liberal attitude in those cases when the order complained of has been found clearly and completely null and void. In the case of Director of Lands v. David, 50 Phil. 797, the lower court on August 3, 1918 rendered a judgment ordering that 200 of 400 hectares applied for be registered in the name of the applicants and declaring that the other 200 hectares were public lands. Nearly five years later after the judgment had become final, the court, without notice to the homesteaders occupying the public land, upon motion of the same applicants, amended its judgment, ordering the registration of the 200 hectares declared public in its earlier judgment and some other 292 hectares in the name of the applicants. The court issued a writ of possession against the homesteaders, who moved for a reconsideration of the amended judgment and for its annulment. The court denied the motion. The homesteaders applied for certiorari. The Supreme Court granted it. The homesteaders could have appealed from the order denying their motion for reconsideration within the period provided for appealing. In the case of Government v. Judge of First Instance, 57 Phil. 500, the lower court decreed

that a certain lot was public land subject to the homestead application of Anselmo Lagarto. In 1926, title was issued to Lagarto under his homestead patent. More than six years later, another judge, without notice to Lagarto, changed the former decree and declared the same lot to be the private property of one, Franco. Certiorari was granted by the Supreme Court, although Lagarto could have appealed from the second decree. In the case of Director of Lands v. Santa Maria, 44 Phil. 594, the lower court exceeded its jurisdiction in setting aside the order of default and in reopening the cadastral case in question over five years after the decision rendered therein had become final. It was held that this order setting aside the order of default and the decision rendered after the reopening of the case were null and void *ab initio;* they could not become final in the sense of depriving the petitioner of his right to question their validity. Certiorari was therefore granted, even if an appeal could have been made from the said decision. The Supreme Court even went to the extent of declaring that even a motion for reconsideration in the lower court in such a case was not necessary.

In the case of Perlas v. Concepcion, 34 Phil. 559, certiorari was granted to correct a judgment of the lower court in a criminal action which required the accused to perform an affirmative act, even though the accused could have appealed therefrom.

In the case of Bellis v. Imperial, 52 Phil. 530, certiorari was granted to annul a judgment of the lower court modifying a final judgment of the Supreme Court, notwithstanding the fact that the petitioner could have appealed from the judgment of the lower court.

In a certiorari proceeding, the respondents should invoke the availability of an adequate appeal as a bar to the issuance of the writ of certiorari. Otherwise the court will disregard that fact. The Supreme Court thus held: "Although it seems that neither certiorari nor mandamus lies and that the proper remedy is appeal, inasmuch as the respondents have not questioned the propriety of the remedy, the court, in the interest of justice, will decide the question raised therein once and for all instead of dismissing the petition on procedural grounds." (Maiñgat v. Castillo, No. L-74, Dec. 8, 1945)

Our jurisprudence is suffused with cases in which our courts have denied the writ of certiorari because of the availability of an adequate appeal.

In a cadastral case, the court determined the priority or relative weight of two or more certificates of title for the same land. The aggrieved party excepted to the decision and filed a motion for a new trial but failed to bring the motion to the attention of the court and did not appeal. On September 6, 1922, the court, on motion of the prevailing party, declared the decision final and ordered that a final decree for the lot be issued and that thereafter a writ of possession be issued in favor of Liongson. At the hearing of the motion, the aggrieved

party appeared thru counsel, but failed to appeal from the ruling. Later, he applied for a writ of certiorari. Held: Petition denied. The petitioner appeared in the cadastral case and had an adequate remedy by appeal. (Timbol v. Diaz, 44 Phil. 587)

In the case of Villados v. San Pedro, 49 Phil. 596, the Supreme Court denied a petition for certiorari to review the order of the lower court granting a petition for review under section 38 of Act 496 Held: "The petitioners having taken due exception, there is nothing to prevent them from raising the question of the illegality of the order for review on appeal from a possibly adverse decision rendered upon the termination of the new trial ordered by the court below. Such appeal being an adequate remedy and the petitioners not having lost their right thereto, certiorari will not lie."

In the case of Cu Unjieng v. Goddard, 58 Phil. 626, the lower court in the course of the testimony of the petitioner as a witness in a criminal case for estafa against him issued a letter to the fiscal to investigate a probable violation of the law by certain brokers, which appeared to the judge to have been committed, judging from the testimony of the petitioner. The petitioner moved to include that letter in the certified transcript of the proceedings of the case, which motion the lower court denied. Certiorari was applied for. The Supreme Court denied it, holding thus, "It requires no citation of authorities to reinforce the statement of the elementary rule that certiorari does not lie if the petitioner has or may have an adequate remedy by way of appeal from any ruling of the court to which he has made a proper objection and taken the proper exception."

In the case of Bataclan v. Court of First Instance of Cavite, 61 Phil. 428, the lower court in its judgment in a civil case between Bernardo, plaintiff, and Bataclan, defendant, declared that the land belonged to the plaintiff, but that the defendant was entitled to reimbursement for the useful expenses he had spent thereon in good faith. The plaintiff was given the option within thirty days to pay the value of the improvements to the defendant or to require the defendant to pay him the value of the land within a period to be fixed by the parties or by the court. On appeal, the judgment was affirmed with the only change in valuation of the improvements and of the land. This judgment became final. The plaintiff chose to make the defendant pay him the value of the land. The defendant did not have the money to do so, and he wanted fifteen years within which to pay the value of the land. Instead, the court ordered the land to be sold at public auction to raise the money with which to pay the value of the land and that of the improvements also if there be any balance. The defendant sought to have this order annuled in a certiorari proceeding. The Supreme Court denied it and held that the petitioner could have appealed from the order in question and that his right to appeal was an adequate remedy.

In the case of Arevalo v. Rovira, 59 Phil. 839, the Supreme Court held that an order of the Court of First Instance appointing an administrator of the estate of the deceased, pursuant to section 783 of the Code of Civil Procedure constituted a final determination of the rights of the parties thereunder and was appealable. Certiorari proceedings to annul such appointment was therefor deemed improper. In effect, the court held that the appeal that could have been made was adequate.

In the case of Vicencio v. Sison, 62 Phil. 300, certiorari proceedings were instituted to annul two orders of the Court of First Instance on the ground that they in fact alter and modify the decisions of the same court, which were affirmed by the Supreme Court, because they impose new conditions not found in said decisions. The petitioner appealed however from said orders, but for his failure to pay the corresponding fees and to make the deposit required by section 500 of Act No. 190 and Rule 14, subsection (b), of the Rules of Court held that the remedy applied for by the petitioner was not well-founded and hence untenable, being contrary to law, because there was a remedy by appeal. Hence, the appeal was deemed adequate.

In the case of In Re Prautch, 1 Phil. 133, the petitioner was held by the Sheriff of Manila by an order made by the Court of First Instance in a civil case pending in that court, under Article 412, Code of Civil Procedure (1901), which provided for the arrest of a defendant in certain civil cases. The petitioner applied for a writ of habeas corpus and a writ of certiorari. The Supreme Court held: "That the affidavit for the arrest is based upon insufficient grounds or that the claim upon which the suit is based is without foundation in law are questions to be determined by the Court of First Instance and should error be committed, the defendant may appeal from the decision of the court. Appeal from the interlocutory order can be made after the rendition of the final judgment disposing of the action."

The court one day before the date set for the hearing of a motion for new trial, issued an order modifying its decision, and the aggrieved party therein brought an action for certiorari wherein the Supreme Court held that the trial court had jurisdiction to issue the order. and further, that there was an appeal therefrom. (Suntay v. Tirona, G.R. No. 47214; Moran, Comments on the Rules of Court, 2nd Ed.. Vol. 2, p. 132)

The judge of the Court of First Instance, while the record on appeal was still before him for approval, ordered the execution of the judgment. The aggrieved party instituted certiorari proceedings to annul or temporarily suspend the order of execution on the ground that the judge, without good reasons and with manifest abuse of discretion, ordered the execution. Petition for certiorari was filed. Two days later the judgment was satisfied. The Supreme Court declared that the lower court did not abuse its discretion when it issued an advance execution of the judgment

for good reasons. Rule 39, section 2, of the Rules of Court authorized it. The court held too that appeal in such a case was the easy, expeditious, and adequate remedy. (Ong Sit v. Piccio, G.R. No. L-1287, July 30, 1947) This is to be distinguished from the case of Saludes v. Pajarillo, *supra,* wherein the judgment for which the order of execution was issued was a patent nullity.

An application for the writ of certiorari may prosper therefore, even if appeal lies in the following cases:

1. Where the appeal is inadequate;

2. Where the order or judgment complained of is a patent nullity, and this even though the certiorari proceeding is brought after the expiration of the time to appeal and even though the appeal that could have been interposed was adequate; and

3. Where the respondents in the certiorari proceeding have failed to question the propriety of the remedy, the court, in this case, acting in the interest of justice. The court may, of course, *motu propio* dismiss the petition.

CELSO ED. F. UNSON