SPECIAL PROCEEDINGS

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In special proceedings, no less than in the wider field of actions in general,[1] the rules of procedure provide sufficiently adequate means for the sharing of the basic values of wealth, respect, well-being, affection, enlightenment, and by interaction, possibly skill, rectitude and power.[2] Specifically, the rules on the settlement of estates of deceased persons provide access to wealth; the same may be said of the rules on escheat and on trustees; those on guardianship, to wealth, well-being and enlightenment; adoption and custody of children, to affection, well-being, enlightenment and wealth; hospitalization of insanes, to well-being; change of name, to respect; habeas corpus, likewise to respect; and voluntary dissolution of corporations, to wealth.[3]

An examination of the decisions of our Supreme Court on special proceedings cases in the year 1953 shows no notable doctrinal change. The rulings have been, on the whole, merely echoes of past pronouncements. The apparent undertow, if at all, are consistent with the general direction of the flow. Much more interesting than the doctrines announced, however, are the conditioning factors in each particular case, which have influenced the Court in the choice of how the values involved should be shared, out of possible alternatives. In one case, at least, it candidly brushed aside the refinements of legal technicalities and considered solely "reasons of equity" to curb an "unchristian" act.[4]

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[1] "Action means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong. Every other remedy is a special proceeding." Sec. 1, Rule 2, Rules of Court. For a more detailed distinction, see *Hagans v. Wislizenus*, 42 Phil. 880.

[2] "One mode of describing the social process is in terms of interdependent value-variables, which we conveniently characterize by the following eight terms: power, respect, enlightenment, wealth, well-being (including safety, health, character, comfort) rectitude, skill, and affection." Lasswell and McDougall, *Law Science and Policy*, pp. 1, 2.

[3] The values shared in each proceeding are not limited to those correspondingly mentioned. For "in interpersonal situations, people may use any one or all of these values to affect a shaping and sharing of any one or all of the values." *Ibid.*

[4] *Lam Shee v. Bengson*, G. R. No. L-5300, prom. October 30, 1953, discussed in the latter part of this work.

I. SETTLEMENT OF ESTATE OF DECEASED PERSON

A. LETTERS TESTAMENTARY ISSUED WHEN WILL ALLOWED

After the allowance of a will, letters testamentary issue to whomever is appointed executor in the will, subject to the condition, among others, that he is competent.[5]

In the case of *de Borja et al. v. Tan*,[6] the authority of the probate court to appoint a co-administrator—and one other than the one proposed by the heirs—was questioned. The petitioner, husband of the deceased, admittedly "weak due to his old age, for many months cannot see nor recognize persons, cannot read nor write, cannot rise up and move about, nor do his personal necessities alone without the aid or help of someone," was appointed executor of his wife's will. Subsequently, his son, Crisanto, was appointed co-administrator, upon petition of the heirs. The executor presented his accounts for 1946-51 which showed a balance in favor of the administration. Thereupon, the court appointed Jose de Borja co-administrator, expressly directing him to examine the accounts. The executor objected to this appointment on the ground that it was contrary to the provisions of the will under which Crisanto was designated substitute executor; that the appointment was made without previous notice; and that the appointee held an interest adverse to the estate.

In upholding the validity of the trial court's order overruling petitioner's objections, the Supreme Court observed that:

> "The choice of a co-administrator is not the absolute right or privilege of the majority of the heirs. If the administration of the estate of a deceased person were not a judicial proceeding, the majority of the heirs would have the right to determine who would manage the estate. But as the proceeding is judicial, the law places discretion in the choice of the administrator upon the judges, and said discretion may not be interfered with unless abused. (*Navas L. Sioca v. Garcia*, 44 Phil. 711.)"

The court found no abuse of discretion, pointing out that the administrator, due to old age, could not personally perform his duties. In fact, the administration of one of the estates was entrusted by him to an ***encargado***, over whom the court had no power or control. Furthermore, the appointment was necessary for the court to determine the real status of the estate, made impossible by the refusal of the administrator and his son, Crisanto, to render a complete

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[5] "Sec. 4. *Letters testamentary issued when will allowed.*—When a will has been proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trust, and gives bond as required by these rules." Rule 79, Rules of Court.

[6] G. R. No. L-6108, prom. May 25, 1953.

account and to present the required vouchers and receipts to support the claims for expenses. In a justifying tone, the Supreme Court added that the trial court

> "could have removed him (the administrator) because of his physical inability and his consequent unsuitability to manage the big estate under his administration. This the court did not do, but limited itself to appointing a co-administrator in the person of Jose de Borja * * *."

With respect to petitioner's contention that the lack of previous notice relative to the appointment of the co-administrator invalidated the appointment, the Court considered the reason which impelled the trial court to make the appointment *ex parte*: to have the accounts promptly acted upon with a view of terminating the administration as soon as possible. While admittedly there was no previous notice, the Court ruled that:

> "this procedural defect was cured when the said interested parties presented their motions to reconsider the appointment. When the court, therefore, overruled their objection and confirmed the appointment, the interested parties were given their day in court, and the previous objection of lack of notice and opportunity to be heard fully met."

Clarifying, the Court said:

> "What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard."

The policy basis of Section 4 of Rule 79 of the Rules of Court [7] is lengthily explained in the case of *Ozaeta v. Pecson*.[8] While the *lis mota* of the case involved the question of judicial discretion in the appointment of a special administrator, the *ratio decidendi* clearly explains the practical considerations behind the reglamentary provision. The testator is ordinarily the best judge of the peculiar fitness or the want of ability of the executor of his will. The element of confidence existing between the testator and his named executor explains further why the testaor's wish should generally be given effect. While judicial discretion in the choice of an administrator is recognized, its exercise must be reasonable. In support of the right of a testator to appoint an executor, the Court cited an American case [9] which apparently goes even further. There it was held that:

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[7] See note 5.

[8] G. R. No. L-5436, prom. June 30, 1953.

[9] *Holbrook v. Head*, 6 S.W. 592, 593, 9 Ky. 755. Other American cases cited are *In re Shout's Estate*, 178 N.Y.S. 762; *In re Erlanger's Estate*, 242 N.Y.S. 249.

> "It is the testator that appoints his executor, as the question of his peculiar fitness for such a position or his want of ability to manage the estate cannot be addressed to the discretion of the county judge."

Underscoring the importance of this precious prerogative, the Court established the close legal relationship between the right to choose an executor and the right to dispose of one's property, pointing out that the former is included in the latter. It might follow, therefore, that a curtailment of the right to choose may correspondingly involve a curtailment of the *jus disponendi*. The effect of this pronouncement seems to be that where there is an unjustified restriction of the right of choice, the same would amount not only to an abuse of discretion but to an excess of jurisdiction, if not outright lack thereof. For it means no less than a deprivation of property—which includes the *jus disponendi*—without due process of law.

B. WHEN AND TO WHOM LETTERS OF ADMINISTRATION GRANTED

The Rules provide for the order of preference in the appointment of an administrator in the event that a person dies intestate, or when a will fails to name an executor, or when the executor or executors named are incompetent, unwilling, or fail to file the required bond.[10]

> "The order of preference provided in this section is founded on the assumption that the persons preferred are suitable. If they are not, the court may entirely disregard the preference thus provided. This is the reason for the rule that in the selection of an administrator courts may exercise discretion.

Thus,

> "• • • a person appearing in the order of preference may not be appointed where he appears to be unsuitable for the trust, he having an adverse interest or is hostile to the interested parties to such an extent as to make his selection inadvisable."

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[10] "Sec. 6. *When and to whom letters of administration granted.*—If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or the person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, neglect for thirty days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there be no such creditor competent and willing to serve, it may be granted to such other person as the court may select." Rule 79, Rules of Court.

This is the doctrine announced in the case of *Torres and de Jesus v. Sicat Vda. de Morales.*[11] In that case, the facts are as follows: Torres, alleging to be a creditor of the conjugal partnership, petitioned for the issuance of letters of administration in favor of de Jesus. The decedent's widow opposed the petition and claimed preference to the appointment. The lower court, claiming that the widow was hostile to the creditors, disregarded the preference established in the Rules in favor of the surviving spouse and appointed de Jesus administrator. The widow appealed.

The Supreme Court, through Justice Bengzon, upheld the widow's claim to preference. While it recognized the legal principle that the administrator should not adopt attitudes nor take steps prejudicial to the interests of the creditors, it found the conduct of the widow insufficient to impress upon her the stamp of unsuitability. The basis of the trial court's decision was the widow's alleged hostility to the estate's creditors manifested by her statement to the creditors, "Prove your claims before I honor it." And since the credits allegedly exceeded the value of the estate, the interests of the creditors were, in the opinion of the lower court, the paramount consideration in the choice of the administrator. With this, the Supreme Court disagreed. For

> "The administration of the estate is undertaken for the benefit of both the heirs and the creditors."

Elaborating on the meaning of "creditors", the Court continued:

> "But by creditors we mean *those declared to be so* in appropriate proceedings. Before their credits are fully established they are not 'creditors' within the purview of the above principle."

The action of the widow in demanding competent proof of creditors' claims was considered "proper." For had she acknowledged all claims regardless of merits, she would not only be useless but even harmful to the heirs and true creditors of the estate. Other considerations justified the application of the rule on preference established in the Rules of Court. It was not true, as alleged, that the widow indiscriminately opposed *all* claims. She acknowledged the indebtedness of the estate to the Bank of the Philippines Islands. Even the appealed order conceded that the widow was fully competent "in a high degree" to administer the estate and that she was suitable for the trust. No presumption of bad faith or misconduct may be made against the administrator or whomsoever he proposes

[11] G. R. No. L-5236, prom. May 25, 1953.

for appointment as such. The propriety of contesting particular claims must frequently be left to his discretion. And considering that under the Rules [12] creditors' claims may be filed only *after* the regular administrator has been appointed, the court cannot normally accord priority treatment to the interests of those whose credits are in dispute.

Parenthetically, it might here be stated that the meaning which this case gives to "creditors," if applied rigorously, might lead to absurd results. For it may happen—and this is not improbable—that all persons having claims against a decedent's estate may not have had their claims previously established in "appropriate proceedings." Under this situation, it may be legally impossible for them to initiate proceedings for the appointment of an administrator notwithstanding the failure of the persons having preference in the appointment to claim their preferential right. It might then be suggested that a doctrinaire application should be avoided.

C. APPOINTMENT OF SPECIAL ADMINISTRATOR

When there is a delay in granting letters testamentary or administration occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the court may appoint a special administrator to collect debts and take charge of the estate of the deceased in the meanwhile.[13] No provision is made as to who may be appointed special administrator. The question of whether a probate court commits an abuse of discretion if, pending an appeal against its order or judgment admitting a will to probate and appointing as judicial administrator the person named therein, it appoints as special administrator any person other than the executor named in the will, arose in the case of *Ozaeta v. Pecson*.[14] This question came about in the course of the proceedings for the settlement of the estate of Carlos Palanca who died leaving a will naming the late President Roxas as executor and former Justice Ozaeta as substitute executor upon Roxas' failure to qualify. Roxas prede-

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[12] Section 1 of Rule 87 provides that "Immediately *after granting letters* testamentary or of administration, the court shall issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of said court." (Italics ours.)

[13] "Sec. 1. *Appointment of special administrator.*—When there is delay in granting letters testamentary or of administration occasioned by an appeal from the allowance or disallowance of a will, or from any other cause, the court may appoint a special administrator to collect and take charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators thereupon appointed." Rule 81, Rules of Court.

[14] See note 8.

ceased the testator and upon the latter's death, Ozaeta petitioned for the probate of the decedent's will, coupled with a prayer for an appointment as special administrator. Some of the heirs opposed the petition and on October 6, 1950, the court appointed the Philippine Trust Co., a non-applicant and stranger to the proceedings, special administrator. On April 20, 1951, the Philippine Trust Co. offered to resign as administrator on the ground of incompatibility of interest with the estate. Thereupon, petitioner Ozaeta reiterated his previous petition but the court appointed Sebastian Palanca, one of the heirs, to take the place of the Philippine Trust Co. On October 23, 1951, the will was admitted to probate and petitioner Ozaeta was appointed regular administrator.

An appeal from the allowance of the will was made, for which reason the lower court appointed the Bank of the Philippine Islands as special administrator. In justifying the appointment, the court alleged that Ozaeta was partial to a group of heirs and that the Bank of the Philippine Islands was more competent in view of its experience along administration lines. Ozaeta questioned the propriety of the exercise of discretion by the court in appointing as special administrator, pending an appeal, a person other than the one appointed as administrator in the course of the probate proceedings. He claimed that the only reason behind the court's order was the personal dislike of the judge for him.

In the determination of the question presented before it, the Supreme Court skirted away from the personal grounds given by the parties. Viewing the same from a purely legal point of view, the Court noted that

> "• • • Rule 81 of the Rules of Court, • • • grants discretion to the probate Court to appoint or not to appoint a special administrator. It is silent as to the person that may be appointed as special administrator, unlike section 6 of Rule 79, which expressly gives the order of preference of the persons that may be appointed regular administrator."

As to what principles should guide the court in the appointment of special administrators, the Court referred to its ruling in the case of *Roxas v. Pecson* [15] to the effect that the appointment of special administrators is governed by the rules relative to the appointment of regular administrators. And in the appointment of the latter, it is recognized that

[15] 46 O. G. 5, 2058.

"* * * the choice of the person lies within the court's discretion * * *."

But judicial discretion is not absolute. It is subject to the limitation of reasonableness. In the language of the Court,

> "* * * such discretion should not be a whimsical one, but one that is reasonable and logical and in accord with fundamental legal principles and justice. The fact that a judge is granted discretion does not authorize him to become partial, or to make his personal likes and dislikes prevail over, or his passions to rule, his judgment. Such discretion must be based on reason or legal principle, and it must be exercised within the limit thereof."

Thus, in setting aside the order of the probate court, and in ordering the appointment of petitioner as special administrator, the Court took into account the wishes of the testator expressed in his will appointing petitioner Ozaeta executor thereof; the fact that said will had already been probated and allowed, respondent judge himself having appointed petitioner as regular administrator; and the fact that the suspension of petitioner's appointment and the appointment of a special administrator were based on a very technical ground.[16] The Supreme Court expressed fear of the probability that with the appointment of a person other than petitioner as special administrator, the estate would be burdened with additional unnecessary expenses, for it observed that upon the resignation of the Philippine Trust Co. as special administrator for a period of only a few months, it submitted a bill for ₱90,000.00.

Concluding, the Court found it

> "* * * unreasonable to refuse to appoint petitioner (Ozaeta) as special administrator. To do so would be delaying the fulfillment of the wishes of the testator and subjecting the estate to unnecessary expense."

D. POWERS AND DUTIES OF SPECIAL ADMINISTRATOR

Generally, the powers of a special administrator is limited to the collection and preservation of the property of the estate. The rule is that the special administrator is not liable to pay the debts of the estate.[17]

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[16] The appointment was predicated from the mere fact of an appeal having been taken from the allowance of the will of Carlos Palanca.

[17] "Sec. 2. *Powers and duties of special administrator.*—Such special administrator shall collect and take charge of the goods, chattels, rights, credits and estate of the deceased and preserve the same for the executor or administrator afterwards appointed, and for that purpose may commence and maintain suits as administrator, and may sell such perishable and other property as the court orders sold. A special administrator shall not be liable to pay any debts of the deceased." Rule 81, Rules of Court.

In the case of *Pabilonia v. Santiago*,[18] the Supreme Court declared valid a sale of real property made by a special administrator for the purpose of paying a debt of the decedent.

The special administrator petitioned for authority to sell the only property of the estate. In his petition, he not only named the price but also the prospective vendee. He alleged that the land sought to be sold was mortgaged to the Philippine National Bank and that the mortgage debt having been overdue, the PNB was threatening to foreclose. And in view of the financial depression then prevailing, it was impossible to pay the obligation out of the income of the property. The lower court authorized the sale thinking that the petitioner was a regular and not a special administrator. Upon presentation for confirmation, the court found out for the first time that the sale was made by a special administrator. It thus withheld confirmation pending the "conversion" of the special administrator into a regular one.

In the meantime, the special administrator delivered possession of the property to the buyer who assumed the payment of the mortgage debt to the PNB. Since possession was already transferred and the contract novated, together with the fact that the estate had no other property left to be administered or obligations to be settled, the parties lost interest in the appointment of a regular administrator. In 1939, the court dismissed the proceedings because of inaction. About eight years thereafter, for some undisclosed reason, the parties to the sale regained interest in the case and a motion for the reinstatement of the *expediente* was made. In that proceeding, a certain Nagar was appointed regular administrator. The latter petitioned for the confirmation of the sale executed years before, or, in the alternative, for authority to execute the necessary document. Petitioner herein opposed the petition. The opposition was denied on the ground that the sale made by the special administrator was final and that the execution of the deed was ministerial.

In sustaining the judgment of the lower court, the Supreme Court held that the conveyance made by the special administrator was valid and effective and that as a matter of law there was no necessity of appointing a regular administrator to ratify it and execute a new deed. Invoking the Rules, Justice Tuason, in his characteristic common sense approach, stated:

> "While Sections 1 and 2 of Rule 81 and Section 8 of Rule 87 specify the cases in which a special administrator shall be appointed and the duties which they in general are to perform, Section 2 of Rule 81 expressly

[18] G. R. No. L-5110, prom. June 30, 1953.

> authorizes him to sell 'such perishable and other property as the court orders sold.' Further, debts which a special administrator may not be sued for may be settled by him if 'expressly ordered by the court to do so.' (*Golingco v. Calleja, et al.*, 69 Phil. 446)."

While the lower court erroneously believed, at the time it issued the authority, that the sale was to be made by a regular administrator, said sale, after its execution by the special administrator, was never disapproved, set aside, or modified. On the contrary, it was assumed to be valid in every respect except that it was deemed that a regular administrator should have made the sale. As Justice Tuason correctly noted,

> "• • • only want of any of the essential elements of a contract can give the petitioners the right to stop the court's confirmation of the transaction."

The Court, however, was not informed of the exact basis of the objection to the sale.

Since a court may validly authorize a special administrator to pay debts, it seems logical that

> "• • • it may authorize him to sell property to raise the money to pay the debts."

In this case, there was a monetary obligation due the PNB and there was a court order to sell the only property of the estate for the purpose of paying that obligation.

The reasoning employed by the Supreme Court in this case should be no cause for alarm even to those who maintain a literal adherence to the Rules. For, clearly, the appointment of a regular administrator in this case would, from the practical standpoint, be entirely useless. It would be no more than an unnecessary formality. The estate had no more property. The sale was declared to be valid. And considering that about eight years had elapsed since the sale was consummated, the declaration of validity merely satisfied the buyer's expectation of security and stability. The petitioners in the case could have no reason to complain since he was the very same person who executed the contract on behalf of the estate. Thus, faced with the choice between the preservation of order involving substantial rights and a strict observance of mere formalities for observance's sake, it is not surprising that the Court chose the former.

E. CLAIMS AGAINST THE ESTATE

The Rules of Court prescribes the character of claims against a decedent which must be filed in the proceedings relative to the settlement of the decedent's estate.[19]

Should allowances to a person entitled to be supported by the decedent furnished after the decedent's death be allowed in the testate or intestate proceedings? This question was presented before the Supreme Court in the case of *Hermoso v. Longara*.[20] The facts which gave rise to this case are as follows: In the intestate proceedings of Fernando Hermosa, Sr., respondent Longara presented his claims. Among these were credit advances made by him to Hermosa's grandson from 1945 to 1947, after the intestate's death in 1944. The claims having been allowed in the lower court, appeal was made.

In disallowing the claims, the Supreme Court, through Justice Labrador, said:

> "Even if authorization to furnish necessaries to his grandson may have been given, this authorization could not be made to extend after his death for two obvious reasons. First because the obligation to furnish support is personal and is extinguished upon the death of the person obliged to give support * * * and second because upon the death of the principal (the intestate in this case), his agent's authority and authorization is deemed terminated."

The claims were, therefore, disallowed.

Javier v. Araneta[21] presents the question: Should claims for damages against the deceased be filed in the proceeding for settlement of the estate of the decedent? In a capsule, the facts are: In a previous litigation between the same parties, while the trial court was receiving evidence on damages incident to the issuance of a writ of preliminary injunction, the defendant Javier died. Because of this supervening event, the trial court entertained the view that the claim for damages should be denied because the claim should be filed against the estate of the deceased.

That the trial court's legal conclusion was erroneous was explained by Justice Angelo Bautista, speaking for the Supreme Court.

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[19] "Sec. 5. *Claims which must be filed under the notice.* * * *.—All claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses of the last sickness of the decedent, and judgment for money against the decedent must be filed within the time limited in the notice; * * *." Rule 87, Rules of Court.

[20] G. R. No. L-5267, prom. October 27, 1953.

[21] G. R. No. L-4369, August 31, 1953.

He pointed out that the requirement for the filing of claims obtains only when the claim is for the recovery of money, debt or interest thereon, and if the defendant dies before final judgment in the Court of First Instance [22] but not when the claim is for damages for an injury to person or property.[23] In this proceeding, the claim for damages arose not while the action was pending but after the case had been decided by the Supreme Court. The claim was not merely for money, debt or interest thereon, but for damages. Construing the scope of the Rule on filing of claims,[24] Justice Angelo Bautista, citing Moran's *Comments*, stated:

> "The above section (referring to section 5, Rule 87) has now removed all doubts by expressly providing that the action should be discontinued upon defendant's death if it is for the recovery of money, debt, or interest thereon, while on the other hand, in Rule 88, section 1, it is provided that *actions to recover damages to person or property*, real or personal, may be maintained against the executor or administrator of the deceased."

II. ADOPTION

A. CONSENT TO ADOPTION

A petition for adoption must be accompanied with the written consent of each of the known living parents of the child sought to be adopted, who is not insane or hopelessly intemperate or has not abandoned such child; but if the child is illegitimate and has not been recognized, the consent of its father to the adoption shall not be required.[25]

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[22] Citing section 21 of Rule 3 which provides: "When the action is for the recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules."

[23] "Sec. 1. *Actions which may and which may not be brought against executor or administrator.*—No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him." Rule 88, Rules of Court.

[24] See note 19.

[25] "Sec. 3. *Consent to adoption.*—There shall be filed with the petition a written consent to the adoption signed by the child, if over fourteen years of age and not incompetent, and by each of its known living parents who is not insane or hopelessly intemperate or has not abandoned such child, or if there are no such parents by the general guardian or guardian *ad litem* of the child, or if the child is in the custody of an orphan asylum, children's home, or benevolent society or person, by the proper officer or officers of such asylum, home, or society, or by such person; but if the child is illegitimate and has not been recognized, the consent of its father to the adoption shall not be required." Rule 100, Rules of Court.

The *Dayrit v. Piccio* [26] case illustrates the application of this rule. The spouses Norberto Dayrit and Flora Reguer petitioned for the adoption of five-year old Lydia Duran. The petition was accompanied by the sworn written consent of the child's natural mother. On January 27, 1951, the court decreed the adoption. On February 3, 1952, Francisco Dayrit, claiming to be the child's natural father, together with the natural mother, filed a motion for reconsideration alleging that the adoption was without the consent of the natural father. The lower court granted the motion and revoked the decree of adoption.

Upon certiorari, Justice Pablo spoke for the Supreme Court thus:

> *"Es un expediente de adopcion se una hija no es indispensable el consentimiento del padre natural cuando este abandona a su hija, dejandole al cuidado de la caridad de personas estrañas, y no la reconoce de acuerdo con las prescripciones de la Ley No. 3753."*

The Court found that Francisco Dayrit had abandoned his child and that the natural mother was obliged to request petitioners for employment. Petitioners assumed the child's care because the mother's salary was insufficient to maintain both. In fact, petitioners sent the child to kindergarten and to a piano school. During all this time the natural father did nothing for the child. The Court seemed surprised that it was only about a year after the adoption that the father claimed the right to give consent thereto. Not only was the father guilty of abandonment; he did not recognize the child in accordance with the procedure laid down by the law then in force.

B. PROCEEDING AS TO CHILD WHOSE PARENTS ARE SEPARATED.

When the parents of a child live separately, it is not surprising that the question of custody should arise. In awarding the care, custody and control of the child, his interest is the paramount consideration.[27] Reduced to lower-level abstractions, this includes his well-being, his demands for affection, and the ability of each of parents to satisfy these demands, among others.

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[26] G. R. No. L-5627, prom. February 27, 1953.

[27] "Sec. 6. *Proceedings as to child whose parents are separated.* * * *.—When husband and wife are divorced or living separately and apart from each other, and the question as to the care, custody, and control of a child or children of their marriage is brought before a Court of First Instance by petition or as an incident to any other proceeding, the court, * * *, shall award the care, custody, and control of each such child as will be for its best interest, * * *." Rule 100, Rules of Court.

The case of *Villasor v. Villasor*,[28] while involving a civil action for support, enumerates some factors which should guide the courts in determining contests relative to the custody of children:

> "* * * the marriage of the father with his present wife, who is not the mother of the minor for whose guardianship this case was instituted; the intention of the father to make illusory the support judicially granted to the minor; the determination of the former to have the latter at his side, only when pressed to pay the allowances overdue; and, above all, the treatment the father had accorded his child, aside from the existence of a moral cause that would prevent the mother of the minor to visit her child in the house of his father were among the factors that would become the cause of disturbance in the said home, and an obstacle to the satisfaction and enjoyment springing from love and affection so necessary for his unhampered development and for the assurance of his future."

III. HABEAS CORPUS

A. TO WHAT HABEAS CORPUS EXTENDS

The writ of habeas corpus extends to all of illegal confinement or detention by which any person is deprived of his liberty.[29] Thus, where an accused has been deprived of his constitutional right to a speedy trial[30] he may avail himself of the writ to secure his liberty.[31] But the writ may be denied where the delay is caused by the accused himself. The case of *Manabat v. Provincial Warden*[32] of Nueva Ecija makes this clear.

The petitioner in this case petitioned for a writ of habeas corpus on the ground that he was deprived of his right to a speedy trial, his case not having been terminated despite the lapse of some eight years. The Supreme Court denied the petition. What at first blush appears to be departure from the *Conde* case should be no cause for alarm. For even a cursory review of the facts involved in the two cases shows a wide disparity.

In denying the petition, the Supreme Court underscored the fact that the delay in the trial of petitioner's cases:

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[28] G. R. No. L-4647, prom. April 20, 1953.

[29] "Sec. 1. *To what habeas corpus extends.*—Except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto." Rule 102, Rules of Court.

[30] "In all criminal prosecutions, the accused * * * shall enjoy the right * * * to have a speedy and public trial, * * *." Art. 3, sec. 1, clause 17, Constitution of the Philippines.

[31] *Conde v. Rivera*, 45 Phil. 650.

[32] G. R. No. L-6483, prom. November 27, 1953.

> "* * * may in some if not great measure be laid at petitioner's door. After his arrest in 1945, he escaped and remained at large for about four years. A number of postponements of trial were not only agreed to by him but were in fact granted at his request." [33]

These circumstances justified the Court's refusal to admit a dogmatic application of the *Conde* case doctrine. Petitioner's application, however, was not entirely useless. While the writ was denied, the Supreme Court enjoined the lower court and the provincial fiscal to have his case tried and terminated at the earliest possible time.

Where the rightful custody of any person is withheld from the person entitled thereto, habeas corpus is available.[34] In the *Lam Shee v. Bengson case*,[35] a petition for habeas corpus was filed for the liberty and the custody of Mah Shu Fong, a Chinese citizen, by his mother. The facts which gave rise to the petition are as follows: In 1936, the petitioner was admitted into the Philippines on the strength of her allegation that she was the lawfully wedded wife of a resident Chinese merchant. In 1947, Mah Shu Fong, who had therefore been left in China, came to the Philippine as an immigrant. Two years after his entry, he was arrested for deportation on the ground that he was not lawfully admissible at the time of his entry. The basis of this was that since his mother, petitioner herein, was erroneously admitted on her misrepresentation that she was the lawful wife of a Chinese resident when in fact she was not, her son was likewise inadmissible.

The Supreme Court, while admitting that under the provisions of the law, Mah Shu Fong was not lawfully admissible when he came to the Philippines, in a humanitarian gesture, granted the writ prayed for.

Justice Angelo Bautista reasoned out thus:

> "There is another important circumstance which places this case beyond the reach of the resultant consequence of the fraudulent act committed by the mother of the minor when she admitted that she gained entrance into the Philippines by making use of the name of a Chinese resident merchant other than that of her lawful husband, and that is, that the mother can no longer be subject to deportation proceedings for the simple reason that more than five years had elapsed from the date of her admission. Note that the above irregularity was divulged by the mother herself, who in a gesture of sincerity, made an spontaneous admission be-

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[33] The Court found that the hearings set for February 15-16, 1951, March 16, 1951 and June 5, 1951 were postponed with the agreement of petitioner and those set for May 22, 1951, July 11-12, 1951, August 31, 1951, October 17-18, 1951, and November 23, 1951 were postponed upon his request.

[34] See note 29.

[35] G. R. No. L-5300, prom. October 30, 1953.

> fore the immigration officials in the investigation conducted in connection with the landing of the minor on September 24, 1947, and not through any effort on the part of the immigration officials. And considering this frank admission, plus the fact that the mother was found to be married to another Chinese resident merchant, now deceased, who owned a restaurant in the Philippines valued at ₱15,000 and which gives a net profit of ₱500 a month, the immigration officials then must have considered the irregularity not serious enough when in spite of that finding, they decided to land said minor 'as a properly documented preference quota immigrant.'"

Implying that if there was a violation, immediate steps should have been taken, the Court expressed:

> "• • • wonder why two years later the immigration officials would reverse their attitude and would take steps to institute deportation proceeding against the minor."

While chastising the petitioner for her improper conduct, it was considered:

> "• • • now too late, not to say unchristian, to deport the minor after having allowed the mother to remain even illegally to the extent of validating her residence by inaction, thus allowing the period of prescription to set in and to elapse in her favor. To permit his deportation at this late hour would be to condemn him to live separately from his mother through no fault of his thereby leaving him to a life of insecurity resulting from lack of support and protection of his family. This inaction or oversight on the part of the immigration officials has created an anomalous situation which, for reasons of equity, should be resolved in favor of the minor herein involved.

If for anything, this case shows that the Supreme Court would unhesitatingly skirt around technicalities to avoid injustice. After all, we might ask, is that not its ultimate function?