1954 CASES ON SPECIAL PROCEEDINGS

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As a general rule, laws operate prospectively.[1] But in the case of laws procedural in nature, the object of which is to expedite and facilitate proceedings, such laws apply to all proceedings and actions pending at the time of its enactment, provided it does not create new rights nor affect those already acquired by the parties.[2] Thus in the case of *Suntay v. Suntay*,[3] the Supreme Court, citing Rule 133 of the Rules of Court,[4] held that the evidence necessary to prove the contents and due execution of a will and the fact of its unauthorized destruction, cancellation, or obliteration shall be that required by Rule 77 of the Rules of Court[5] and not that required by Sec. 623 of the Code of Civil Procedure.

SETTLEMENT OF ESTATES

Applicability of Rules on Ordinary Civil Actions to Settlement of Estates. Sec. 2 of Rule 73 of the Rules of Court provides that "in the absence of special provisions, the rules provided for in ordinary actions

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[1] "Laws shall have no retroactive effect, unless the contrary is provided." Art. 4, Civil Code.

All statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them retroactive effect is expressly declared or is necessarily implied from the language used. In every case of doubt, the doubt must be resolved against the retrospective effect. *In re Will of Riosa*, 39 Phil. 23 (1918).

As a general rule, laws do not have retroactive effect unless expressly given such effect. *La Paz Ice Plant & Cold Storage Co. v. Bordman and Iloilo Commercial & Ice Co.*, 65 Phil. 401 (1938); *La Previsora Filipina v. Ledda*, 66 Phil. 573 (1938).

The general rule is that substantive as well as remedial laws have no retroactive effect, unless there is an express provision therefor. *Enrile v. CFI of Bulacan*, 35 Phil. 574 (1917).

[2] *Enrile v. CFI of Bulacan, supra*, see note 1.

A procedural law has retroactive effect so as to apply even to an execution issued prior to its enactment. *Guevarra v. Laico*, 64 Phil. 144 (1937).

Statutes regulating the right of appeal are remedial in nature, and a statutory change as to jurisdiction of an appellate court, in the absence of any restrictions, applies to cases pending when the change takes effect. *Sevilla v. Tolentino*, 66 Phil. 196 (1938).

[3] G.R. No. L-3087, Nov. 5, 1954.

[4] Said Rule provides: "These rules shall take effect on July 1, 1940. They shall govern all cases brought after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the court their application would not be feasible or would work injustice, in which event the former procedure shall apply."

[5] Sec. 6, which requires that the contents thereof be "clearly and distinctly proved by at least two credible witnesses." At any rate, the Court held that Sec. 623 of the Code of Civil Procedure, which requires "full evidence to the satisfaction of the court," may even be more strict and exacting than the two witness rule provided for in Sec. 6 of Rule 77 of the Rules of Court.

shall be, as far as practicable, applicable in special proceedings." When, therefore, the rules on ordinary civil actions are not inconsistent with, or when they may serve to supplement, the provisions relating to special proceedings, the former are applicable to the latter. Thus rules regarding preparation, filing and service of applications, motions and other papers, are the same in civil actions as in special proceedings. The provisions regarding omnibus motion, subpoena, computation of time, motion for new trial, discovery, trial before commissioners also apply in special proceedings.[6]

In the case of *Dayo and Dayo v. Dayo*,[7] it was held that though the Rules of Court do not expressly provide for the application of Rule 30[8] in special proceedings, the same general considerations should apply to their dismissal, with the added consideration that since they are not contentious suits depending upon the will of an actor but upon a state or condition of things or persons not entirely within the control of the parties interested, dismissal should be ordered not as a penalty for the neglect of the parties but only in extreme cases where the termination of the proceedings by dismissal is the only remedy consistent with equity and justice.[9] The Court further held that every opportunity should be afforded to parties who seek to have the decedent's will carried out and to have the will admitted to probate before the oppositor's claim can be given consideration.

Summary Settlement of Estates. When a person dies intestate, or, if testate, he failed to name an executor in his will, or that the executor so named therein is incompetent, or refuses the trust, or fails to give bond as required by the Rules of Court, his property shall be judicially administered and the competent court shall appoint a qualified administrator in the order established in section 6 of Rule 74.[10] However, where the decedent left no debts and the heirs are all of age, or the minors are represented by their guardians, the estate may be extrajudicially settled by agreement between the heirs.[11] In such instance, the heirs are not bound to submit the property to a judicial administration,

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[6] II MORAN 303 (1950).

[7] G.R. No. L-6428, Aug. 31, 1954.

[8] Dismissal of Actions.

[9] *In Santosidad, et al. v. Director of Prisons*, G.R. No. L-2977, October 31, 1949, it has been held that the provisions of Rule 38 (Relief from Judgments) are applicable in habeas corpus cases pending in the Supreme Court.

[10] *Utulo v. Pasion Vda. de Garcia*, 66 Phil. 302 (1938).

[11] Sec. 1, Rule 74, of the Rules of Court, providing as follows: "If the decedent left no debts and the heirs and legatees are all of age, or the minors are represented by their judicial guardians, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action. If there is only one heir or one legatee, he may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. It shall be presumed that the decedent left no debts if no creditor filed a petition for letters of administration within two years after the death of the decedent."

which is long and costly, or to apply for the appointment of an administrator by the court;[12] judicial administration and the appointment of an administrator would be superfluous and unnecessary.[13]

Thus in the case of *Javier v. Magtibay*,[14] the Supreme Court held that the heirs cannot be compelled to submit to administration proceedings. In that case the decedent left no debts and the heirs were all of age with the exception of one, who, however was represented by a guardian. The Supreme Court stated that where administration proceedings are unnecessary because the estate has no debts and the more expeditious remedy by partition is available, the heirs or majority of them may not be compelled to submit the estate to such proceeding. Withholding the inheritance from the heirs by subjecting it to an administration proceeding for no useful purpose, would, according to the Court, only unnecessarily expose it to the risk of being wasted or squandered as not infrequently happens.

If an estate has been summarily settled as in the above, there can be no readjustment or reopening after two years;[15] but where the interest of a minor is prejudiced, a reopening or readjustment may be had up to and within one year from the time the minor becomes of age.[16] These provisions of the Rules of Court[17] are sufficient notice to all persons who take property summarily distributed and such persons do so subject to the said provisions, even if, as was held in *Francisco v. Carreon*,[18] the adjudication in the summary settlement merely states that

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[12] *Utulo v. Pasion Vda. de Garcia, supra.*, see note 10.

[13] *Utulo v. Pasion Vda. de Garcia, supra.*, see note 10; *Ilustre v. Alaras Frondosa*, 17 Phil. 321 (1910); *Malahacan v. Ignacio*, 19 Phil. 434 (1911); *Bondad v. Bondad*, 34 Phil. 232 (1916); *Baldemor v. Malangyaon*, 34 Phil. 367 (1916); *Fule v. Fule*, 46 Phil. 317 (1924).

[14] G.R. No. L-6829, Dec. 29, 1954.

[15] Sec. 4, Rule 74, Rules of Court, providing as follows: "If it shall appear at any time within two years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participation. And if within the same time of two years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two years after such distribution, notwithstanding any transfers of the real estate that may have be made."

[16] Sec. 5, Rule 74, Rules of Court, providing as follows: "If on the date of the expiration of the period of two years prescribed in the preceding section the person authorized to file a claim is a minor or mentally incapacitated, or is in prison or outside the Philippines, he may present his claim within one year after such disability is removed."

[17] Secs. 4 & 5, Rule 74, Rules of Court, *supra.*, see notes 15 & 16.

[18] G.R. No. L-5033, June 28, 1954.

it shall be subject to the provisions of Sec. 4, Rule 74 of the Rules of Court, without mentioning Sec. 5 of the same rule.

Wills. Where a will is sought to be probated as a lost or destroyed will, among other things, its provisions must be clearly and distinctly proved by at least two credible witnesses.[19] Credible witnesses, according to the Supreme Court in the case of *In re Testate Estate of Suntay*,[20] mean competent witnesses and those who testify to facts from or upon hearsay are neither competent nor credible witnesses.

In an action for the probate of a will, the Rules of Court determine the matters which the proponent must prove and by what means he is to prove them.[21] Likewise, it determines the matters which the opponent is to prove if the will is to be disallowed.[22] It may therefore be said, as it was held in *Vaño v. Vaño*,[23] that the law itself fixes or determines the issues in a proceeding for the probate of a will. Consequently, although the law requires that the grounds for disallowance be specified in writing and copy thereof be served upon the parties interested, an oppositor objecting to the probate of the will on one or two specific grounds, may during the hearing add to the grounds and submit evidence in support of the same. The only effect of this, according to the Court in the above case, would be the inference that the oppositor was not sure of his ground; that he was in doubt as to the basis of his opposition, a fact which naturally and not inconsiderably weakens his stand.[24]

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[19] "No will shall be proved as a lost or destroyed will unless the execution and validity of the same be established, and the will is proved to have been in existence at the time of the death of the testator, or is shown to have been fraudulently or accidentally destroyed in the lifetime of the testator without his knowledge, nor unless its provisions are clearly and distinctly proved by at least two credible witnesses. When a lost will is proved, the provisions thereof must be distinctly stated and certified by the judge, under the seal of the court, and the certificate must be filed and recorded."

[20] G.R. Nos. L-3087 & 3088, July 31, 1954.

[21] See Secs. 5, 6, 7, 8, 11, Rule 77, Rules of Court.

[22] Under Art. 839 of the Civil Code the grounds for the disallowance of a will are:

(1) If the formalities required by law have not been complied with;

(2) If the testator was insane, or otherwise mentally incapable of making a will, at the time of its execution;

(3) If it was executed through force or under duress, or the influence of fear or threats;

(4) If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person;

(5) If the signature of the testator was procured by fraud;

(6) If the testator acted by mistake or did not intend that the instrument he signed should be his will at the time of affixing his signature thereto.

[23] G.R. No. L-6303, June 30, 1954.

[24] In this case the first ground relied upon was that the will was procured by undue and improper pressure and influence, whereas during the trial evidence was sought to be introduced tending to prove that the signature of the testator was forged, a ground clearly inconsistent with the first ground. It is therefore submitted that under the above ruling, if the additional ground or grounds would not be inconsistent with the ground first relied upon, no inference as was drawn by the court in the above case would be warranted.

If the testator is deaf or deafmute and unable to read, or if he be blind, the law requires that the will be read to him.[25] Where no such disability exists and the testator is otherwise capacitated to make a will, there is no necessity for the will to be read to him. This was the holding in the case of *Barrera v. Tampoco*.[26]

Wills proved and allowed in a foreign country, according to the laws of such country, may be allowed, filed, and recorded by the proper Court of First Instance in the Philippines.[27] In such a case, the fact that the foreign court is a probate court and the law on procedure in the probate or allowance of wills in the foreign country must be proved. The legal requirements for the execution of a valid will in the foreign country should also be established by competent evidence, and in the absence thereof, said legal requisites shall be presumed to be the same as those in the Philippines. Under these circumstances, it was held in the case of *In re Testate Estate of Suntay*,[28] that where the requisites of Philippine law are not proven to have been complied with, the will shall not be allowed in the Philippines.

Administrators. The appointment of a person as administrator may be refused by the court on the ground of incompetency.[29] Such incompetency or unsuitableness may proceed from the fact that the nominee has an adverse interest or is hostile to those immediately interested in the estate to such an extent as to render his appointment inadvisable.[30] However, the adverse interest of the nominee will not be presumed from allegations alone. Thus in the case of *Tam v. Espiritu*[31] the mere allegation that the nominee married the deceased while a prior marriage was subsisting does not render her hostile to the interests of the supposed children of the alleged prior marriage, who have yet to prove their interest in the estate.

The Rules of Court provides for the amount which may be recovered by administrators for their services.[32] Likewise, it provides for a greater amount of compensation in special cases.[33] Such compensation in special cases is a matter largely in the discretion of the court;[34] and in such special cases, it is always the better practice to itemize the

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[25] See Arts. 807 & 808, Civil Code.
[26] G.R. No. L-5263, Feb. 17, 1954.
[27] Sec. 1, Rule 78, Rules of Court.
[28] G.R. Nos. L-3087 & 3088, July 31, 1954.
[29] Sec. 4, Rule 80, Rules of Court.
[30] *Sioca v. Garcia*, 44 Phil. 711 (1923); *Arevalo v. Bustamante*, 40 O.G. 7th Supp. No. 11, p. 50 (1940).
[31] G.R. No. L-6297, Aug. 26, 1954.
[32] Sec. 7, Rule 86, Rules of Court.
[33] "But in any special case, where the estate is large and the settlement has been attended with great difficulty and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed." Sec. 7, Rule 88, Rules of Court.
[34] *Decanay v. Hernandez*, 53 Phil. 824 (1928); *Cabrera v. Quiogue*, 61 Phil. 855 (1935); *Rosentock v. Elser*, 48 Phil. 708 (1926).

account and explain fully in what particulars the services are extraordinary or unusual.[35] In order to obtain a greater compensation, the administrator must show that the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on his part.[36] In the case of *Prieto vs. Valdez*,[37] though the estate was large, it was not proved that the settlement of the estate was greatly difficult or required a high degree of capacity on the part of the administrator. Therefore, in spite of the fact that there were fourteen heirs and the settlement took fourteen months to settle, the administrator was not entitled to additional compensation.

Sale of Property Under Administration. When real property under administration is to be sold, it is necessary that an application therefor be filed by the administrator and that notice thereof be given to the parties interested.[38] Likewise, it is necessary that a hearing on the application be had, and it has been held in the case of *Gabriel v. Encarnacion*,[39] that if there is no such hearing, the order and the sale pursuant thereto is void.[40] However, in such cases, the purchased who acted in good faith may rest on the presumption of the legality of the court's order.[41]

The sale of property under administration may be by public or private sale.[42] In the case of *Garcia v. Rivera*,[43] the Supreme Court held that the court has ample discretion on the matter and may order that the sale be made by means of sealed bids submitted in open court. This is so, specially if the party seeking to annul the sale on the ground that it was thus conducted, herself took part therein and submitted her own sealed bid.

Claims Against the Estate. Claims against the estate of the deceased must be filed within the time fixed by the court, otherwise they shall be barred forever.[44] In the case of *Umipig v. Degala*,[45] it was held that a claim of attorney's fees for the probate of the will of the deceased does not come under the category of such claims so barred. The Supreme Court held that the claims barred means those arising from contract with the decedent, that is, claims upon a liability contracted

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[35] *Chung Muy Co's Admr. v. Lim Quioc*, 23 Phil. 518 (1912).

[36] Sec. 7, Rule 88, Rules of Court; *Rodrigues v. Silva*, G.R. No. L-4090, Jan. 31, 1952.

[37] G.R. No. L-6485, May 26, 1954.

[38] Sec. 7, Rule 90, Rules of Court. Without notice, the sale is void. *Estate of Gamboa v. Florenza*, 12 Phil. 191 (1908).

[39] G.R. No. L-6736, May 6, 1954.

[40] *Estate of Gamboa v. Florenza*, 12 Phil. 191 (1908); *Ortalis v. Register of Deeds*, 55 Phil. 33 (1930); *Hashim v. Bautista Vda. de Nolasco*, 56 Phil. 788 (1931); see Sec. 7, Rule 90, Rules of Court.

[41] *Esguerra v. De Leon*, 40 O.G. 6th Supp., p. 191 (1940).

[42] Sec. 7, Rule 90, Rules of Court.

[43] G.R. No. L-6760, Sept. 22, 1954.

[44] See Sec. 5, Rule 87, Rules of Court.

[45] G.R. No. L-5767, Oct. 30, 1954.

by the decedent before his death. At any rate, the court stated, that the judge may, in his discretion, permit a creditor to prove his claim even after the expiration of the period originally fixed.[46]

HABEAS CORPUS

In the case of *Tan v. Nin & Seng*,[47] it was held, pursuant to the provisions of Sec. 13, Rule 102 of the Rules of Court, that if the restraint is by private authority, the return of the writ of habeas corpus is merely a plea of what is alleged therein. The party claiming custody must have to prove his allegations in the return. The reason for the presumption of legality of restraint if the same is by public authority is the presumption that official duty has been regularly performed.[48]

Where the petitioner is held upon a judicial order, the writ of habeas corpus will lie if the court, for any reason, has no jurisdiction.[49] However, in the case of *Miranda v. Deportation Board*,[50] it has been held that the mere allegation of Filipino citizenship cannot divest the Deportation Board of its jurisdiction such that the writ of habeas corpus would lie.

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[46] Sec. 2, Rule 87, Rules of Court.

[47] G.R. No. L-7507, Aug. 25, 1954.

[48] Sec. 69 (m), Rule 123, Rules of Court; II MORAN 532 (1950).

[49] *Banayo v. San Pablo*, 2 Phil. 413 (1903); *Collins v. Wolfe*, 4 Phil. 534 (1905); *Carrington v. Peterson*, 4 Phil. 134 (1905); *Davis v. Director of Prisons*, 17 Phil. 168 (1910); *Makapagal v. Santamaria*, 55 Phil. 418 (1930).

[50] G.R. No. L-6784, March 12, 1954.