

# THE RULE-MAKING POWER OF THE SUPREME COURT

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Unknown to many members of the bench and bar and students of law is the fact that the Supreme Court of the Philippines is presently in the process of revising the Rules of Court.<sup>1</sup> As a matter of fact, the first draft of the revision has already been issued by its Committee on the Revision of the Rules of Court.<sup>2</sup> The main features of the revision consist of: (a) amendments, in form and/or substance, of some rules; (b) addition of new rules; (c) integration and correlation of rules under proper topic headings; and (d) abolition of some rules. To re-examine, therefore, the scope of the power of the Supreme Court to promulgate rules of procedure is timely.

The rule-making power of the Supreme Court is based on a constitutional provision, to wit:

"The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines."<sup>3</sup>

The Supreme Court, speaking of the extent of its power under the above-quoted constitutional provision through Mr. Justice Tuason, declared:

"... For the Court's power is not merely to compile, revise or codify the rules of procedure existing at the time of the Constitution's approval. This power is 'to promulgate rules concerning pleading, practice, and procedure in all courts', which is a power to adopt a general, complete and comprehensive system of procedure, adding new and different rules without regard to their source and discarding old ones."<sup>4</sup>

Like all other grants of power such authority is not absolute and by the very nature of things must be subject to certain limitations,

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<sup>1</sup> The present Rules of Court took effect on July 1, 1940.

<sup>2</sup> The Dean, College of Law, University of the Philippines, has been furnished two sets of two volumes each of the "Proposed Revised Rules of Court" by the committee with the request for comments and suggestions within 60 days from October 1, 1958. The Dean and some members of the faculty have already submitted their respective comments and suggestions.

<sup>3</sup> Section 13, Article VIII, Constitution of the Philippines.

<sup>4</sup> *Bustos v. Lucero*, 81 Phil. 640, 652.

namely: (a) that the "rules shall be uniform for all courts of the same grade"; (b) that they "shall not diminish, increase, or modify substantive rights"; and (c) that "Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice of law in the Philippines". The first limitation does not require elucidation, but the others are fraught with problems.

In the study of law, one invariably finds it usual to distinguish between substantive law and adjective law, and between substantive right and procedural right. But where one ends and the other begins, cannot be definitely established with mathematical precision.

"The distinction between 'remedy' and 'substantive' rights is incapable of exact definition. The difference is somewhat a question of degree. (*Dexter vs. Edwards*, 89 F., 467; *Beazell vs. Ohio*, *supra*.) It is difficult to draw a line in any particular case beyond which legislative power over remedy and procedure can pass without touching upon the substantive rights of parties affected as it is impossible to fix that boundary by general condition (*State vs. Pavelick*, 279 P., 1102). This being so, it is inevitable that the Supreme Court in making rules should step on substantive rights, and the Constitution must be presumed to tolerate if not to expect such incursion as does not affect the accused in a harsh and arbitrary manner or deprive him of a defense, but operates only in a limited and unsubstantial manner to his disadvantage."

In the final analysis, therefore, no precise standard or definite guide can be devised in the proper application of the distinction; but each particular case must be decided on its own merits.

Because of the second limitation to its rule-making power, the Supreme Court in promulgating the present Rules of Court intentionally refrained from incorporating therein a rule on the limitation of actions. Again in the draft of the proposed revised Rules of Court it deleted the rule embodying the Statute of Frauds. Trial by assessors as authorized in the old Code of Civil Procedure<sup>6</sup> has been declared to be still in force and the Supreme Court ruled that the silence of the Rules of Court on the matter is not an indication of the intention on its part to do away with it, but on the contrary is a recognition of its lack of authority to touch upon matters substantive in nature.<sup>7</sup>

The constitutional grant of concurrent power to the legislative and judicial departments of the government over rules of pleading, practice and procedure, and the admission to the practice of law, renders the clash of powers inevitable. Thus, when in 1953 Congress attempted to integrate for the second time hundreds of "attorneys-by-law" into the Philippine Bar by passing the now notorious "Bar Flunkers' Act"<sup>8</sup> the Supreme Court virtually stood on the way and

<sup>5</sup> *Bustos v. Lucero*, *supra*. See dissenting opinions.

<sup>6</sup> Act No. 190

<sup>7</sup> *Primitias v. Ocampo*, 49 O.G. 2230.

<sup>8</sup> Republic Act No. 872. This act became a law without the President's signature. It embodies substantially the provisions of a vetoed bill in 1951.

declared the law unconstitutional in part.<sup>9</sup> The Committee on Revision of the Rules of Court of the Supreme Court commenting on its draft of the proposed Rule 130, paragraph (c), said: "Paragraph (c) is taken from Article 257 of the New Civil Code with the modification that whereas under the New Civil Code the presumption is for *illegitimacy* under the present rules the presumption is for legitimacy.<sup>10</sup> This certainly is not a mere "modification" of a law, but is a positive averment of diametrically opposed basic philosophy.

Could all these mean an assertion of supremacy by the Supreme Court over Congress on matters of procedure? To answer this question in the affirmative is to subordinate the law-making power of Congress to the rule-making power of the Supreme Court. Laws are repealed only by subsequent ones<sup>11</sup> and the Constitution, to preserve and not do violence to this fundamental principle, had to reduce the laws on pleading, practice, and procedure then existing at the time of its promulgation, into the category of mere Rules of Court before allowing the Supreme Court to alter and modify the same. Obviously, this power of the Supreme Court to alter and modify was never intended by the framers of the Constitution to extend to procedural or remedial laws passed by Congress after its promulgation. This must be so, otherwise endless embarrassment may result and there will be no finality in the rules.

"The Constitution, however, reserves to Congress the power to repeal or supplement the rules of court, procedure as well as the regulations for the admission of persons into the practice of law adopted by the Supreme Court. So in the final analysis, there are now two governmental agencies, the Supreme Court and Congress, empowered to formulate these rules. The Supreme Court is given a general authority to initiate; but Congress may freely exercise a power to repeal, alter, or supplement the Court's work. Congressional power in this respect seems so broad that it may even go to the extent of changing all the rules adopted by the Court. In theory, therefore, the Constitution has made Congress still superior in a way to the Supreme Court as to the final nature of procedural rules and bar requirements. If Congress should, therefore, enact a law providing entirely new and independent rules, the grant of authority to the Supreme Court would be stultified."<sup>12</sup>

Of course, this supremacy of the rule-making power of Congress is subject to basic constitutional limitations. Congress, for example, could not under its constitutional "power to repeal, alter, or supplement the rules" pass laws of procedure, retroactive in effect, so as to correct or nullify a decision or order of a court of justice.<sup>13</sup> This is the exercise of a judicial rather than a legislative power, an encroachment by Congress of the power of a coordinate branch of the

<sup>9</sup> In re Cunanan et al., 50 O.G. (No. 4) 1802. The U.P. College of Law thru Dean V. Abad Santee and Profs. E. M. Fernando & C. A. Barrios, as amici curiae, argued against the constitutionality of R.A. 972.

<sup>10</sup> Proposed Revised Rules of Court, Parts II-IV, page 481.

<sup>11</sup> Art. 7, Civil Code of the Philippines.

<sup>12</sup> Sinco, Philippine Political Law, page 343 (10th Ed.).

<sup>13</sup> See State v. Cannon (1932) 240 N.W. 451.

government and a violation of the theory of separation of powers. In other words, the power exercised was not to repeal, alter or supplement the rules, which continue. What was done was to stop or suspend them. However, if a law of this nature is to be applied prospectively, the constitutional objection cannot be successfully invoked.<sup>14</sup>

It is evident that while the constitutional prerogative of the Supreme Court is restricted, Congress on the other hand enjoys almost unlimited powers and possesses the ultimate prerogative over rules of procedure.

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<sup>14</sup> In re Cunanan et al., 50 O.G. (No. 4) 1602, 1622.