SPECIAL PROCEEDINGS

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INTRODUCTION:

After a survey of the decisions rendered by the Supreme Court in Special Proceedings, one can generalize and summarize the 1959 decisions as routinary. Routinary in the sense that the Court merely applied the various provisions of the Rules of Court pertinent to the issues and reiterated prior decisions. However, when one makes such sweeping statement, one must take into consideration that exceptions exist And there is such an exceptional case. In the case of *Macazo v. Nunez, infra*, the Supreme Court granted the writ of habeas corpus in "order to prevent an immoral situation from continuing."

APPLICABILITY OF GENERAL RULES

Rule I, sec. 30 was held applicable pursuant to Rule 73, sec. 1.[1]

The issue which presented itself in the case of *Antonio Ventura v. Maura Ventura*,[2] et. al. was the applicability of Rule 30, sec. I of the Rules of Court in the special proceedings for the probate of a will which was "terminated and closed" by an order of the lower court. No appeal from said order having been taken, the oppositors contended that the order of dismissal of Special Proceeding No. 912 was final and executory.

It appears that on May 19, 1955 Antonia Ventura, widow of the deceased Del Valle, filed a petition for probate of the alleged last will and testament of her deceased husband. In a subsequent motion filed by the plaintiff which stated that the heirs, instituted in the will had agreed to partition among themselves, therefore it prayed that an order be issued "terminating and closing" the aforementioned proceedings. The said motion was granted. However, on May 9, 1956 the plaintiff filed another petition for the probate of the same will. The oppositors moved for dismissal of the petition on the ground that it was an attempt to reopen the special proceeding. The lower court granted the petition for dismissal.

Upon appeal the Supreme Court reversed the dismissal order. It pointed out that the applicable rule which should have been applied by the lower court was Rule 30, sec. I which provides:

> "An action may be dismissed by plaintiff without order of court by filing a notice of dismissal at any time before the service of answer. Unless otherwise stated in the notice, the dismissal is *without prejudice*, except that a notice operates as an adjudication upon the merits when filed by plaintiff, who has once dismissed in a competent court an action based on or including the same claim."

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** Recent Decisions Editor, Student Editorial Board, Phil. Law Journal, 1959-60.

1 Rules of Court, Rule 73, sec. 2. "In the absence of special provisions, the rules provided for in ordinary actions shall be as far as practicable, applicable in special proceedings."
2 G.R. No. L-11609, Sept. 24, 1959

Although found in Part I of the Rules of Court which refers to civil actions, this rule is applicable to special proceedings because of Rule 73, sec. 2. The order issued in Special Proceeding No. 912 before any of the parties in interest, other than plaintiff, had filed a pleading or raised an issue, is deemed, therefore, to be "without prejudice" the contrary not being stated in said order or in the order that prompted its issuance.

The Court also cited the case of *Guevara v. Guevara*[3] declaring that the provision on the probate of the will is mandatory. "xxx If the decedent left a will and debts and in the heirs and legatees and devisees agree to make an extra-judicial partition of the estate, they must first present that will to the court for probate and divide the estate in accordance with the will. xxxxx Even if the decedent left no debts and nobody raises any question as to the authenticity and due execution of the will none of the heirs may sue for the partition of the estate in accordance with the will without first securing its allowance or probate of the court."

SUMMARY SETTLEMENT OF ESTATE

Remedy on ground of fraud. — When regular administrative proceedings had been had and a judicial partition made, it may be annulled on the ground of fraud either by motion under Rule 38 or by action, within four years from discovery of the fraud.[4]

In the Intestate Estate of the Late Matias Yusay[5] the heirs, namely, appellant Jose Yusay, a legitimate son, and Lilia Yusay Gonzales, an acknowledged natural child, effected a project of partition which was judicially approved on April 16, 1954. Prior to the partition, a document was executed between Jose and Lilia wherein she acknowledged having received from Jose eighteen parcels of land with a total area of twenty-four hectares, as her just and legal share in the estate of her father. In the same document she reliquished "the right to claim, demand or ask for any other right inclusive, the right to rescind this agreement by virtue of lesion and such other right that the law grants me under the circumstances." Subsequently, on May 13, 1954, Lilia filed a motion for reconsideration of the order of partition alleging that her signature to the document had been obtained through fraud, undue influence and false representation; that the partition was unjust and prejuidical to her because it deprived her of about 9/10 of her legal share in the inheritance. The court allowed her motion.

The appellant questioned the probate court's jurisdiction to set aside its order contending that the court has lost its jurisdiction upon the approval of the project of partition and the apportionment of the properties among the heirs. The Supreme Court held: In our opinion, the court which possessed jurisdiction to approve said agreement of partition may disapprove or annul it. An agreement of partition made by heirs who are all of age certainly binds all of them, especially when judicially approved. xxxx But, this does not mean that none of the participants may thereafter ask for the annulment or rescission of the agreement upon discovery that fraud, deceit, mistake or some other mistake has vitiated the consent given, provided that action is brought within the statutory period.

3 74 Phil. 479, 487-488
4 The court cited the case of Arroyo v. Gerona, 54 Phil. 909
5 G R. No. L-11378, April 17, 1959

In an earlier case[6] the power of the probate court to set aside its judgment was passed upon by the Supreme Court. Tomas Tagle, executor of the estate of the deceased Maria Consuelo Ignacio, filed a petition in the probate court asking that the sale to Pastor Manalo of Lot. No. I, T.C.T. No. 1223 be declared null and void He alleged that by reason of undue influence exerted upon him he was induced to sell the land to Pastor Manalo, respondent, who actually paid only a total of ₱10,000.00. Futhermore, in the project of partition approved by the Court this property was included as one of the property subject for distribution among the testamentary heirs. Manalo knew this fact.

The probate court ordered the cancellation of the certificate of title and the issuance of another in the name of the executor. From this order Manalo appealed to the Supreme Court. Said court rendered judgment in favor of appellant. The reasons given for the order was stated by the Court as follows: First, it appears that the probate proceeding had already terminated upon the approval by the probate court of the project of partition submitted by the executor.[7] Secondly, even assuming that in view of lack of proper compliance by the executor of the order of distribution of the properties, the proceedings might still be consdered as open, the remedy being sought by the executor i.e., the declaration of nullity of the deed of sale and the consequent cancellation of the certificate of title issued in favor of Manalo, cannot be obtained through a mere motion in the probate proceedings over the objection of a third party adversely affected and over whom the probate court had no jurisdiction. The rule is already well settled that "when the demand is in favor of the administrator and the party against whom it is enforced is a third party under the court's jurisdiction, the demand cannot be by mere motion by the administrator against the third person."[8]

ALLOWANCE OR DISALLOWANCE OF A WILL

The Court acquires jurisdiction over all persons interested in the estate through publication

In the *Petition for the Summary Settlement of the Estate left by the Deceased Caridad Perez*,[9] Conrada and Alfonso Perez, oppositors-appellants appealed directly to the Supreme Court alleging that the lower court did not "acquire jurisdiction to receive the evidence for the allowance of the alleged will" because the two heirs had not been notified in advance of the hearing. The Court held that the appeal was improperly brought before said court. The jurisdictional question appealable to this Court refers to jurisdiction over the subject-matter, not mere jurisdiction over the persons.[10]

The Court further ruled that the lower court had acquired jurisdiction pursuant to Rule 77, sec. 3[11] which provides that the court shall set a date for proving the will when a petition therefore is filed, or even without such

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6 G R. No. L-12657, July 14, 1959

7 Citing the case of Santiesteban v. Santiesteban 68 Phil. 367

8 Citing the case of De Paula v. Escay G.R. No. L-8559 Sept. 28, 1955

9 G.R. No. L-12359, July 15, 1959

10 The court in the course of its decision aptly cited the following: Reyes v. Diaz, 73 Phil. 484; Bernabe v. Vergara 73 Phil. 676; Sy Oa v. Co Ho 74 Phil. 239.

11 Rules of Court. Rule 77, sec. 3. When a will is delivered to, or a petition for the allowance of a will is filed in, the court having jurisdiction, such court shall fix a time and place for proving the will when all concerned may appear to contest the allowance thereof, and shall cause notice of such time and place to be published three weeks successively, previous to the time appointed, in a newspaper of general circulation in the province, or in the Official Gazette, as the court shall deem best.

petition, if the will is delivered to the court. Notice of the hearing shall be published as provided in this section, and through such publication, the court acquires jurisdiction over all persons interested, and the judgment rendered is binding on all the world, including heirs living in distant countries.[12]

Citing the previous rulings enunciated in the cases of *In re Johnson*[13] and *Joson v. Nable*[14] that the court *acquires jurisdiction over all persons interested* in the estate through publication, the Court held that since such publication admittedly took place, the court had acquired jurisdiction. Therefore, service of notice on individual heirs legatees or devisees is a matter of procedural convenience, not a jurisdictional requisite.[15] So much so that even if the names of some legatees or heirs had been omitted from the petition for the allowance of the will — and therefore were not advised — the decree does not ipso facto become void for want of jurisdiction.[16]

In a latter case,[17] the Court had the occasion to pass upon the following questions: 1) Whether or not Bernabe Mirasol has the right to intervene in the said estate proceeding on the strength of the alleged contract to sell; 2) And whether or not he had still the right to intervene considering the fact that Desiderio Miraflores whom Mirasol was to substitute had withdrawn from the proceeding.

It appears that on June 17, 1955 Desiderio filed a petition in the Court of First Instance for the probate of the last will and testament of his grandmother, Asuncion Miraflores. Under the will Desiderio and his two sisters were designated the only heirs to all her properties including Lot No. 2275. Subsequently, Bernabe Mirasol filed a motion to interevene, alleging that he has an interest in the estate of the deceased, because on June 16, 1955 the above heirs sold the Lot No. 2275 to him. Opposition was entered by the appellants to the motion. On the other hand Desiderio withdrew from the proceeding.

With regards to the first issue raised the Supreme Court upheld the right of Mirasol to intervene. It is a well established principle that the proceeding for the probate of a will is one *in rem* and the court acquires jurisdiction over all the persons interested in the estate of a deceased person, whether or not he filed the petition for the probate of a will. Citing the case of *Salazar v. CFI of Laguna*, whereby it was held, thus: ". . . it is the inevitable duty of the court when a will is presented to it, to appoint hearing for its allowance and to cause notices thereof to be given by publication. The duty imposed by said sec.3, Rule 77 is imperative and noncompliance therewith would be a mockery of the law and of the last will and testament of the testator." In this case, Mirasol has an interest sufficient to support his petition.

As to the second question, the court said: "Moreover, the fact that Desiderio Miraflores has withdrawn from the case does not affect the jurisdiction of the court over the proceeding and over all the persons therein. It cannot, therefore, be said that such withdrawal caused the severance of

12 Moran, Comments on the Rules of Court, 364-365 (1952) citing the cases of Manalo v. Paredes and In re Estate of Johnson
13 39 Phil. 159
14 48 O.G. 90
15 Joson v. Nable, note 14, supra
16 Nicholson v. Leathan, 153 Pacific Reports, 965; Moran, Comments on the Rules of Court, 355 (1957)
17 In the Testate Estate of the Late Asuncion Miraflores G.R. No. L-12166, April 29, 1959

Mirasol's tie to the estate. The probate of the will must continue, for the law expressly requires that no will shall pass either real or personal estate, unless it is proved and allowed in the court."

Rule 77, sec. 9 enumerates the grounds for disallowing a will which provision has been substantially reproduced in Art. 839 of the Civil Code. One of the grounds enumerated is: "(a) if not executed and attested as required by law. Applying the cited provision the Supreme Court affirmed the decision of the trial court disallowing the probate of the will of the deceased Vicente G. Alberto[18] on the ground that the same did not conform with the requirement of the law to the effect that a will must be acknowledged before a notary public by the testator and the witnesses.[19] The petitioner-appellant, Paz Maningas vda. de Alberto, contended that legalistic formalities should not be permitted to obscure the use of good, sound common sense in the consideration of wills, and that where there has been substantial compliance with the requirements of law, a will should be allowed to probate. The Supreme Court brushed aside the appellant's contention and pronounced that the formal requirement provided for in Art. 806 of the Civil Code is an indispensable requisite for the validity of the will.[20]

GENERAL POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS

The administratrix is accountable for the funds of the estate under administration.[21]

The power of the administratrix, Annie Harris, to invest a loan which she obtained by mortgaging the house and lot under administration contrary to the authority given by the court was put in issue in the *Intestate Estate of Felisa Harris.*[22] A petition was filed by Annie Harris for authority to mortgage the house and lot under administration for the purpose of securing funds to be used in finishing the construction of the house erected on said lot with the express consent of petitioner-appellees, Wiliam and Rose Harris. Petition granted. She secured an agricultural and/or commercial loan for ₱19,000.00 but contrary to the authority given, she made payments of some debts and invested the balance in the Moll Enterprises allegedly for the purpose of deriving profits with which to pay all the obligations of the intestacy. The court held that it was beyond the authority given and ordered her to re-imburse the sum so spent.

The Supreme Court has previously held[23] that the administrator has no authority to speculate with funds in his custody, or to place them where they may not be withdrawn at once by order of the court.

In an earlier decision the accountability of the administratrix for the properties under the administration was ruled upon in the *Testate Estate of the Deceased Eligio Naval.*[24] Isabel Gabriel, administratrix, was ques-

18 In the Testate Estate of the Deceased Vicente Alberto G.R No. L-11948, April 29, 1959
19 Art. 806 of the Civil Code, R A. 386
20 Note 20, supra
21 Rules of Court, Rule 85, sec. 3. An executor or administrator shall have the right to the possession of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and the expenses of administration, and shall administer the estate of the deceased not disposed of by his will.
22 G R No. L-13926, Dec. 29, 1959
23 Moran, Comments on the Rules of Court, 412-13 (1952) citing the case of Phil. Trust Co. v. Webber
24 G R No. L-9589, March 23, 1959

tioned regarding one particular account rendered on the ground that the income declared on the fishpond was less than the value and probable produce of the properties. The Court gave the following reasons in approving the particular account: "It must be stated in general a woman could not have administered the properties of herself and of her husband with the same efficiency as her husband himself when alive. Moreover, the periods which the accounts cover were, first, periods before the war, when the prices of foodstuffs were still very low in comparison to those in 1948; second, the period of Japanese occupation; third, the years thereafter up to the capture of the Politburo in 1951, which were periods of trouble, which circumstances must have prevented the efficient administration of the fishponds."

GENERAL POWERS AND DUTIES OF GUARDIANS

Republic Act No. 39 governs the guardianship of incompetent veterans, other incompetents and minor beneficiaries of the United States Veterans Administration

In an action by petitioner, Rosita Porcuna, for the sum of ₱3,710, against the estate of the minors Elena and Dominador Coca, her claim for said sum was disallowed by the Supreme Court. This action[25] arose from the transaction which petitioner and the mother of the two minors had entered into. A loan was made to the mother, as administratrix of the children's estate, during the period from December 20, 1951 to April 30, 1953 which was disbursed for the maintenance, support and education of the minors. And that the said sum was lent by the petitioner on the condition that it would be paid out of the money due the wards from the United States Veterans Administration. Thus, this action was brought about by the refusal of the United States Veterans Administration to recognize the claim on the ground that the loan contracted was without previous approval by the Court.

The allegations to support plaintiff's claim were: that pursuant to Articles 320 and 326 of the Civil Code the mother is the administratrix and guardian of the child's properties; that the incurring of debts for the purchase of necessaries and for the maintenance, support and education of the child is a pure act of administration which may be exercised without previous authority of the court; and that pursuant to sec. 2, Rule 97 such debts must be paid out of the ward's personal estate and the income of his real estate.

In disallowing the claim the Supreme Court held that R.A. No. 39 governed. Being a special law limited in operation to money benefits received from the United States Veterans Administration, it prevailed over the provisions of the Civil Code. The pertinent provision cited was sec. 17 which provides: "xxx and shall not apply any portion of the income or the estate for the support or maintentance of any person other than the ward, the spouse and the minor children of the ward except upon petition to and prior order of the Court after hearing. xxx"

A previous decision[26] in consonance with this ruling was cited "that only a judicial guardian of the ward's property may validly incur such expenses and even then only with the court's prior approval secured in accordance with with the proceedings set forth by the Rules."

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25 Rosita Porcuna v. Veterans Administration, G.R. No. L-11563, May 29, 1959

HABEAS CORPUS

Distinction between the writ granted by Appelate Court and that by Court of First Instance

The conspicuous difference between a writ granted by the appelate courts or any member thereof and that granted by the Court of First Instance or any judge thereof, is that the first may be made returnable before said appellate courts or any judge thereof and shall be enforceable anywhere in the Philippines, while the second may be made returnable only before the judge and shall be enforceable only within his judicial district.[27]

However, prior to this latest decision the provision itself[28] was relied upon to maintain the distinction. Therefore, the case of *Saulo v. Brig. Gen. Pelagio Cruz*[29] can be cited as authority to support such a distinction. In this instant case, Saulo filed with the Supreme Court a petition for a writ of habeas corpus. The Supreme Court granted said writ and ordered respondent, en. Cruz, to file within five days from notice an answer returnable to the Court of First Instance of Manila.

The respondent contested the jurisdiction of the Court of First Instance of Manila and maintained that further proceedings be conducted by the Supreme Court. It alleged that the Court of First Instance alluded to in sec. 2, Rule 102 was "the Court of First Instance within whose jurisdiction the petitioner is confined," under the theory that the decision of such court would be "enforceable only within his judicial district."

The Supreme Court held that such contention is "borne out, neither by said sec. 2, nor by the language of the law pertinent thereto or the established practice thereon." Although the last sentence of sec. 2 declares that the writ of habeas corpus granted by the Court of First Instance shall be enforceable only witsin his junicial oistrict, tois limitation is not in point, the writ in this case having been granted by the Supreme Court and "it shall be enforceable anywhere in the Philippines."

Therefore, the Court of First Instance of Manila has the jurisdiction of the proceeding. From sec. 12 to 15 of Rule 102, the court or judge to whom the writ is returned shall have authority and duty to enquire into the facts and law pertinent to the legality or illegality of petitioner's detention and to order his discharge from confinement should it appear satisfactorily "that he is unlawfully imprisoned or restrained."

Rule 102, sec. 1[30] enumerates the only two grounds when the writ of habeas corpus will lie. However, in the case of *Macazo v. Nunez*[31] the Supreme Court granted the writ on a ground other than those enumerated. This case is then noteworthy but can by no means be cited as a precedent for the grant of habeas corpus on grounds other than those specified. The grant of the writ was based on the particular and peculiar facts existing.

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26 U.S. Veterans Administration v. Bustos 48 O.G. 5240, 5242

27 Moran, comments on the Rules of Court, 558 (1952)

28 The court citing sec. 2 of Rule 102 "The writ of habeas corpus may be granted by the Supreme Court or any member thereof, and if so granted it shall be enforceable anywhere in the Philippines and may be made returnable before the court or any member thereof, or before the Court of First Instance or any judge thereof."

29 G R No. L-14819, March 19, 1959

30 Rules of Court, Rule 102, sec. 1. 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.

31 G.R. No. L-12772, Jan. 24, 1959

The petitioner, Guillermo Macazo, the sound oldest brother of Susana filed on August 29, 1957 a petition for a writ of habeas corpus for her release from the custody of respondents, Benildo and Eugenia Nunez. Included in the writ was a child named Pacita Nunez. It appears that when Susana was eighteen years of age, single, deaf-mute, and without parents she was engaged by respondents as a laundrywoman. For service rendered to the couple she received an average wage of ₱1.00 daily and free quarters and food. During the time she was living with respondent she gave birth to Pacita Nunez, the paternity having been admitted in open court by Benildo Nunez himself to be his.

The trial court denied the petition citing the case of *Consorcio Ortiz v. Gonzalez del Villar*[32] which enumerated the only two grounds when the writ of habeas corpus will lie: (1) When someone is deprived of his liberty; or (2) is wrongfully prevented from exercising the legal custody to which he is entitled, over another person. Therefore, the refusal was based on the finding that it does not appear that Susana and her child were deprived of their liberty and that petitioner was not the proper party because Art. 349 of the Civile Code[33] explicitly enumerates the persons who could exercise "substitute parental authority" and the petitioner is not one among those mentioned. *Inclusio unius est exclusio alterius.*

In overruling the lower court the Supreme Court categorically stated: "The minor's welfare being the paramount consideration, the Court below should not allow the technicality, that petitioner was not originally made a party, to stand in the way of giving the child full protection. Even in a habeas corpus proceeding the Court had power to award temporary custody to the petitioner herein, or some other suitable person, after summoning and hearing all parties concerned. *What matters is that the immoral situation disclosed by the records be not allowed to continue.*"[34]

APPEALS IN SPECIAL PROCEEDINGS

A motion to dismiss on the ground of lack of jurisdiction is not appealable.

In the Matter of the Intestate Estate of Raymunda Soriano,[35] Ponciano Reyes, petitioned for administration of the estate left by his deceased mother, Raymunda, a resident of Arayat, Pampanga. Simplicia Reyes Berenguer moved for dismissal due to improper venue, since the deceased had become a resident of Quezon City at the time of her death. The court denied the motion to dismiss. The oppositors appealed to the Supreme Court. It held: The Rules do not allow this appeal. Sec. 1 of Rule 105, enumerates the instances wherein an appeal may be taken in special proceedings. This is not one of them.

"Lest it be argued that this is a 'final order or judgment' or a 'final determination' of the rights of the person appealing, under subsec. (e) and (f) of the above section, it may be explained that we have held in previous rulings that a decree denying a motion to dismiss on the ground of lack of jurisdiction—not venue only as in this case—is not appealable, because it is interlocutory and not a final order in the litigation.

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32 57 Phil. 19-20

33 Art. 349 of the Civil Code: The following persons shall exercise substitute parental authority:
(1) Guardians;
(2) Teachers and professors;
(3) Heads of children's home, orphanages, and similar institutions;
(4) Directors of trade establishments, with regard to apprentices;
(5) Grandparents;
(6) The oldest brother or sister.

34 Underlining supplied

35 G.R. No. L-12830, July 31, 1959