THE RULE ON SUMMARY PROCEDURE: PROBLEM AREAS

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INTRODUCTION

Under the provisions of Article X, section 5, paragraph (5) of the 1973 Constitution (Article VIII, section 13 of the 1935 Constitution), the Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts which, however, may be repealed, altered, or supplemented by the Legislature. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights.

Section 36 of Batas Pambansa Blg. 129 (otherwise known as the Judiciary Reorganization Act of 1980) provides that "In Metropolitan Trial Courts and Municipal Trial Courts with at least two branches, the Supreme Court may designate one or more branches thereof to try exclusively forcible entry and unlawful detainer cases, those involving violations of traffic laws, rules and regulations, violations of the rental law, and such other cases requiring summary disposition as the Supreme Court may determine. The Supreme Court shall adopt special rules or procedures applicable to such cases in order to achieve an expeditious and inexpensive determination thereof without regard to technical rules. Such simplified procedures may provide that affidavits and counter-affidavits may be admitted in lieu of oral testimony and that the period for filing pleadings shall be non-extendible."

On 1 August 1983, within seven months from the implementation of a major judicial reorganization on 17 January 1983, the Supreme Court, in the exercise of its rule-making power under the Constitution and pursuant to Section 36 of Batas Pambansa Blg. 129, promulgated the Rule on Summary Procedure in Special Cases before Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts.[1] This new Rule on Summary Procedure is the subject matter of this paper.

The Rule on Summary Procedure ushers in a novelty in trial practice in Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit

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[1] GUPIT, THE RULE ON SUMMARY PROCEDURE v (1984).

Trial Courts. In Section 5 thereof, should the defendant in a civil case fail to answer the complaint, crossclaim or permissive counterclaim within the reglementary period provided therein, the court, *motu proprio,* or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein except as to the amount of damages which the court may reduce in its discretion. There is no necessity for the defendant to be declared in default nor for the plaintiff to substantiate the allegations of his complaint. Judgment is rendered without requiring the plaintiff to introduce evidence to prove his cause. The situation is entirely different if it is principally under the Revised Rules of Court, and not the Rule on Summary Procedure, where the defendant fails to file an answer within the reglementary period. In this latter situation, the plaintiff must move for the declaration of the defendant in default, and thereafter, the defendant having been declared in default, introduce evidence, if *ex-parte,* to substantiate the allegations of the complaint. Judgment is rendered only as the facts proven may warrant.[2]

The Rule on Summary Procedure also vests the court with discretion, under Section 8 thereof, to determine the necessity or dispensability of holding a formal hearing in a civil case. It is allowable to render a decision either after a formal hearing or even without any hearing at all, depending upon the discretion of the judge. Where the court chooses to forego a formal hearing, the decision is rendered upon the pleadings, the affidavits, the position statements and other evidence submitted by the parties. Such rendition of judgment is allowed even if the affiants of the affidavits are not presented in court and cross-examined.

Section 15 of the Rule on Summary Procedure prohibits in both civil and criminal cases a number of pleadings, motions, or petitions which lawyers have grown accustomed to employ and avail themselves of under the Revised Rules of Court. The prohibition includes even such pleadings, motions and petitions as have, in numerous instances, substantially affected the rights of the litigating parties, like motion to dismiss or to quash, motion for reconsideration, petition for relief from judgment, petition for certiorari, mandamus or prohibition against interlocutory orders, etc.

The novelty that the Rule on Summary Procedure ushers in cannot but raise questions on its legal consequences. Is the rendition of judgment, under Section 5 thereof, based solely on the allegations of the complaint and unsupported by evidence, compatible with due process of law? The same question may be raised concerning the vesting upon the court, under Section 8 thereof, of discretion to determine the necessity or dispensability of holding a hearing before judgment is rendered. Is judgment without hearing consonant with due process of law? Does the prohibition, under

[2] RULES OF COURT, Rule 18, sec. 1.

Section 15 thereof, of motion to dismiss or to quash, motion for reconstruction, petition for relief from judgment and other prohibited pleadings, motions and petitions, involve a curtailment of the substantive rights of the litigating parties? This paper seeks to explore the legal answers to the foregoing questions as well as to other questions propounded in the course of the discussion.

SECTION 5. EFFECT OF FAILURE TO ANSWER —

> SHOULD THE DEFENDANT FAIL TO ANSWER THE COMPLAINT, CROSSCLAIM OR PERMISSIVE COUNTERCLAIM WITHIN THE REGLEMENTARY 10-DAY PERIOD HEREIN PROVIDED, THE COURT, *MOTU PROPRIO*, OR ON MOTION OF THE PLAINTIFF, SHALL RENDER JUDGMENT AS MAY BE WARRANTED BY THE FACTS ALLEGED IN THE COMPLAINT AND LIMITED TO WHAT IS PRAYED FOR THEREIN EXCEPT AS TO THE AMOUNT OF DAMAGES WHICH THE COURT MAY REDUCE IN ITS DISCRETION.

Under the provisions of the Rule on Summary Procedure with reference to civil cases, the only pleadings allowed to be filed are the complaint and the answer (to the complaint, counterclaim or cross-claim). If the defendant has a crossclaim or a compulsory counterclaim, the same must be asserted in the answer, or be considered barred.[3] All pleadings must be verified.[4] Upon the filing of the complaint, the court, from a consideration of the allegations thereof, may dismiss the case outright due to lack of jurisdiction, improper venue, failure to state a cause of action, or for any other valid ground for the dismissal of a civil action, or, if a dismissal is not ordered, the court shall make a determination whether the case falls under the Summary Procedure. If the court has affirmatively determined that the case falls under the Summary Procedure, the summons must state that the Rule on Summary Procedure shall apply.[5]

Upon being served with summons the defendant must answer the complaint within ten (10) days from service thereof.[6] Should the defendant fail to answer the complaint, crossclaim or permissive counterclaim within the reglementary 10-day period herein provided, the court, *motu proprio*, or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein except as to the amount of damages which the court may reduce in its discretion.[7]

It is clear under the Rule on Summary Procedure that the effect of the defendant's failure to answer within the reglementary period is that

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[3] RULE ON SUMMARY PROCEDURE, Sec. 2, par. (A).
[4] RULE ON SUMMARY PROCEDURE, Sec. 2, par. (B).
[5] RULE ON SUMMARY PROCEDURE, Sec. 3, pars. (A) and (B).
[6] RULE ON SUMMARY PROCEDURE, Sec. 4.
[7] RULE ON SUMMARY PROCEDURE, Sec. 5.

such failure allows the court to render judgment "as may be warranted by the facts alleged in the complaint." In other words, a decision may be rendered against the defendant on the basis of *pure allegations in the complaint unsupported by any evidence whatsoever.* This raises a constitutional issue.

Under Article IV, section 1 of the 1973 Constitution (Article III, section 1, par. (1) of the 1935 Constitution), which enshrines the cornerstone of all our liberties, "no person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." In the case of *Ang Tibay v. Court of Industrial Relations,* Justice Laurel laid down "the fundamental and essential requirements of due process in trials and investigations of an administrative character". These are "cardinal primary rights which must be respected even in proceedings of this character:

"(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof....

"(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented....

"(3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having *something to support its decision....*
(Emphasis supplied).

"(4) *Not only must there be some evidence to support a finding or conclusion..., but the evidence must be substantial....*
(Emphasis supplied).

"(5) The decision must be rendered on the evidence *presented at the hearing, or at least contained in the record and disclosed to the parties affected....* (Emphasis supplied).

'(6) x x x.

"(7) x x x."[8]

While Justice Laurel specified "trials and investigations of an administrative character" as the kind of proceeding bound to respect the foregoing cardinal primary rights, it does not necessarily follow that courts dealing with cases other than administrative ones, such as civil and criminal cases, are not bound to comply with the foregoing "fundamental and essential requirements of due process". Justice Laurel prefaced the enumeration of the foregoing cardinal primary rights, which are constitutive of due process, with the following statement:

[8] 69 Phil. 635, 641-643 (1940).

> "In the case of *Goseco v. Court of Industrial Relations*..., we had occasion to find out that the Court of Industrial Relations is not narrowly constrained by technical rules of procedure, and the Act requires it to 'act according to justice and equity and substantial merits of the case, without regard to technicalities or legal forms and shall not be bound by any technical rules of legal evidence but may inform its mind in such manner as it may deem just and equitable.' (Section 20, Commonwealth Act No. 103).... The fact, however, that the Court of Industrial Relations may be said to be free from the rigidity of certain procedural requirements does not mean that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirements of due process in trials and investigations of an administrative character. There are cardinal primary rights which must be respected even in proceedings of this character. . . ."[9]

If administrative tribunals which are free from the rigidity of technical rules of legal evidence and certain procedural requirements are peremptorily bound to observe the fundamental and essential requirements of due process as listed above, *a fortiori* should civil and criminal courts be required mandatorily to respect the same inasmuch as these latter courts are, as a general rule, mandated by law to follow strictly the technical rules of evidence and procedure, although there are exceptional instances where these courts have opted to relax strict compliance with these technical rules. The law and jurisprudence cannot be presumed to have automated the civil and criminal courts to toe the line of procedural technicality without regard to the observance of due process. For that would be a virtual sacrifice of substantial justice at the altar of procedural technicality. Justice Laurel's enumeration of the cardinal primary rights constitutive of due process, that "even proceedings of [an administrative] character" must respect, must be taken to mean as prescribing the minimum requirements of due process which ALL COURTS are duty bound to observe. Observance of due process of law is a constitutional mandate that commands all courts. Therefore, the courts which are vested by law with jurisdiction to try cases under the Rule on Summary Procedure, namely, the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, are bound to observe the aforesaid cardinal primary rights.

Proceeding from the foregoing, under the Rule on Summary Procedure, where the defendant fails to answer the complaint within the reglementary 10-day period and the court, owing to such failure by the defendant, renders judgment against him based on pure allegations of the complaint unsupported by any evidence whatsoever, the court thereby violates the defendant's right to due process, following the *Ang Tibay* doctrine of cardinal primary rights which ordains that a decision must have something to support it, that finding or conclusion must be supported by substantial evidence, and that the decision must be rendered on the evidence presented

[9] *Ibid.*

at the hearing, or at last contained in the record and disclosed to the parties affected. Thirty-five years later in the case of *American Tobacco Company v. Director of Patents,* the existence of evidence to support a decision as being constitutive of due process was echoed with the following pronouncement by the Court, through Justice Antonio:

> "As long as a party is not deprived of his right to present his own case and submit evidence in support thereof AND *the decision is supported by evidence in the record,* the requirements of due process and fair trial are fully met."[10] (Emphasis supplied).

In other words, under the *American Tobacco* case, two elements must concur in order to satisfy the requirements of due process, namely:

1. That a party must not be deprived of his right to present his own case and submit evidence in support thereof, and

2. *The decision must be supported by evidence in the record.*

The point is that the court, under the Rule on Summary Procedure, by rendering judgment against the defendant, when he fails to file his answer to the complaint within the reglementary 10-day period, based on pure allegations in the complaint unsupported by any evidence whatsoever, commits a violation of the defendant's right to due process. That judgment is void because "a verdict or decision with absolutely nothing to support it is a nullity."[11]

It may be asked — is it not possible to consider the allegations in the verified complaint as evidence in themselves sufficient to form the basis for a decision? The answer is in the negative. Naked allegations can never be considered as sufficient evidence on which to found a decision. It was so held in the case of *Yangco v. Court of First Instance of Manila.*[12]

In that *Yangco* case, Teodoro Yangco (respondent in the Supreme Court) filed with the Court of First Instance of Manila a petition to declare Luis Yangco (petitioner in the Supreme Court) a spendthrift and to appoint a guardian for his property. Luis Yangco was travelling abroad at that time. No personal notice was served upon him. In the continued absence of Luis Yangco the Court of First Instance required that the notice of the guardianship proceedings be served upon his mother-in-law and brother-in-law. The mother-in-law and the brother-in-law filed an answer consisting of the following statement:

> "That we have read the petition signed by Teodoro Yangco in which he prays the appointment of a guardian for the said Luis R. Yangco; that according to our information and belief the facts stated in said petition

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[10] G.R. No. 26803. October 14, 1975. 67 SCRA 287, 295.

[11] Edwards v. McCoy, 22 Phil. 598, 601 (1912); Air France v. Carrascoso, G.R. No. 21438, September 28, 1966, 18 SCRA 155, 157.

[12] 29 Phil. 183 (1915).

> are true, and we do not oppose the petition [in the Court of First Instance] made by the said Teodoro R. Yangco."

Although no personal notice was given to the alleged spendthrift, the only notice being solely that served on the mother-in-law and the brother-in-law, the Court of First Instance, nevertheless, granted the decree declaring him a spendthrift and appointing a guardian of his property without taking any evidence and with absolutely nothing before it to justify the decree except the petition and the answer thereto quoted above.

The Supreme Court noted that no evidence of any kind was taken in the case so far as appears of record, and the Court of First Instance, in making the order of prodigality and decreeing the appointment of a guardian, had no more knowledge of the alleged spendthrift's incompetence to manage his affairs than he had before the petition was presented. The High Court further stated that "It would be a strange condition of affairs indeed if a citizen and resident of the Philippine Islands could be declared to be an incompetent and his property taken from his management and control by the naked allegation of one stranger admitted by the naked concession of another stranger. If Teodoro R. Yangco can allege the incompetency of Luis R. Yangco and that incompetency be admitted by [the latter's mother-in-law and brother-in-law], and such allegation and admission be sufficient of themselves to declare the person concerned incompetent and deprive him of his right to manage and control his property, then surely property in the Philippine Islands is held by very precarious tenure."[13]

The trial court, according to the Supreme Court, before it can make the decree, "must have before it *competent evidence demonstrating the facts necessary to sustain the decree, and that evidence must be clear and definite.*"[14] (Emphasis supplied). The Supreme Court further held that this should not be understood as holding that "a decision of a court of record which has not sufficient evidence to sustain it is void. A judgment with *any* evidence to sustain it is a valid judgment and not subject to attack as void. It may be appealed from and, if founded on insufficient evidence, reversed, but it is not void. Our remarks relative to the lack of evidence to sustain the decree in this case are founded upon the fact that there is a lack of *any evidence* whatsoever to sustain the decree; and we have said in the case of Edwards v. McCoy (22 Phil. 598), 'a verdict or decision with absolutely nothing to support it is a nullity, at least when directly attacked.' "[15] Under Section 5 of the Rule of Summary Procedure, the same situation as in the *Yangco* case obtains, that is, any decision rendered against the defendant, who fails to answer the complaint within the reglementary 10-day period, will not be supported by any evidence whatsoever. That decision, not being supported by any evidence at all and therefore

[13] *Id.* at 190.
[14] *Ibid.*
[15] *Id.* at 191.

violative of due process must be void. "Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction."[16]

Admittedly, though, the procedure provided by the Summary Procedure, under Section 5, in case the defendant fails to answer the complaint within the reglementary period, is expeditious and inexpensive. If the plaintiff files a complaint on June 29, and the court serves summons on the defendant on June 30, but the defendant fails to file his answer on or before July 10, then by July 11, the court, *motu proprio,* or on motion of the plaintiff, may immediately render judgment. The net result is that in less than 15 days (from June 29 up to July 11) a judicial controversy is resolved and a case disposed of. However, this is predicated on the validity of the provision (Section 5) involved. Where a violation of the fundamental right of due process is committed in the course of the summary process, justice dictates that paramount adherence to the basic precepts of due process must take precedence over any interest in an abbreviated judicial proceeding for expeditious adjudication. In other words, in case of conflict between the principles of due process and the desirability of an expeditious judicial proceeding, the resolution of the conflict must hold paramount the principles of due process.

In a previous case involving a similar balancing between the desirability of a summary judicial procedure and the "demands of a fair, impartial, and wise administration of justice," the Supreme Court said:

> "While this Court desires to give full encouragement to trial courts to take advantage of and apply the provisions of the Rules of Court on summary judgment as valuable aids to an expeditious disposition of cases, We cannot but reiterate what was said and held in *Constantino vs. Hon. Estenzo, et al.,* L-40403, July 31, 1975, and reiterated in *Auman, et al. vs. Hon. Estenzo, et al.,* L-40500, February 27, 1976, to wit:
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> > " 'The demands of a fair, impartial, and wise administration of justice call for a faithful adherence to legal precepts on procedure which ensure to litigants the opportunity to present their evidence and secure a ruling on all the issues presented in the respective pleadings. "Short-cuts" in judicial processes are to be avoided where they impede rather than promote a judicious dispensation of justice.' "[17]

It may be contended that under the Rule on Summary Procedure, the defendant is not deprived of an opportunity to present his evidence in as much as he is served summons and given a chance to answer and that if judgment is rendered against him under Section 5 for his failure to answer, he himself is to blame. However, it may be counter-argued that while the contention in favor of the Rule on Summary Procedure in the next preced-

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[16] People v. Bocar, G.R. No. 27935, August 16, 1985, 138 SCRA 166, 170.

[17] Faja v. Court of Appeals, G.R. No. 45045, February 28, 1977, 75 SCRA 441, 448.

ing statement is well-taken, yet the violation of due process that Section 5 entails does not promote a judicious dispensation of justice because, as earlier stated, the desirability of expeditious adjudication must give way to the paramount importance of adhering to the fundamental tenets of due process, and any method of dispensing justice in disregard of due process cannot be considered to be judicious. Moreover, the shade of unconstitutionality of Section 5 impedes a judicious dispensation of justice because any decision rendered on the strength of said section, since it is void for lack of due process,[18] will imprescriptibly be open to challenge and will never attain finality, thus:

> "It has been held that a final and executory judgment may be set aside with a view to the renewal of the litigation when the judgment is void for lack of due process. . . . Being null and void from its inception, the decision sought to be set aside does not exist in the eyes of the law because it is 'as though it had not been done.' In legal contemplation, it is no judgment at all. 'By it, no rights are divested. From it, no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars anyone. All acts performed under it and all claims flowing out of it are void. . . .' It may be attacked directly or collaterally, and the action therefor may be brought even after the time for appeal or review has lapsed. The judgment is vulnerable to attack even when no appeal has been taken. Hence, such judgment does not become final in the sense of depriving a party of his right to question its validity."[19]

Section 5 being unconstitutional, how does it affect the rest of the provisions under Summary Procedure in case the defendant fails to answer the complaint within the reglementary 10-day period?

It is apparent that the purpose of Section 5 is to abbreviate the procedure when the defendant fails to file his answer within the required time. It is intended only to cover the contingency when the defendant fails to answer the complaint. Other than that contingency, there is no occasion for Section 5 to come into play while the rest of the provisions may continue to proceed. Therefore, its unconstitutionality will not infect the entirety of the Summary Procedure.

That being the case, if the defendant fails to answer the complaint within the reglementary 10-day period, what should happen depends on Section 19 of the Summary Procedure, which reads:

> "Section 19. *Applicability of the regular rules.* — The regular procedure prescribed in the Rules of Court shall apply to the special cases herein provided for in a suppletory capacity insofar as they are not inconsistent herewith."

Following this, "if the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff and proof

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[18] People v. Bocar, G.R. No. 27935, August 16, 1985.
[19] David v. Aquilizan, G.R. No. 49360, December 14, 1979, 94 SCRA 707, 714.

of such failure, declare the defendant in default. Thereupon *the court shall proceeds to receive the plaintiff's evidence* and render judgment granting him such relief as the complaint *and the facts proven* may warrant. This provision applies where no answer is made to a counterclaim, crossclaim, or third party complaint within the period provided in this rule."[20] (Emphasis supplied).

There is a problem though. Under Section 15 of the Rule on Summary Procedure, a motion to declare the defendant in default is prohibited. If this prohibition is followed, the defendant can never be declared in default even if he fails to file an answer within the time provided by law. On the other hand, considering the unconstitutionality of Section 5, neither can the court render judgment on the basis of pure allegations of the complaint, which said Section 5 otherwise allows, in case the defendant fails to file an answer within the time provided by law. The net result is that there is a standstill when the defendant fails to file an answer.

To resolve this impasse, it is humbly submitted herein that it is erroneous, under the Rule on Summary Procedure, to prohibit a motion to declare the defendant in default, inasmuch as the allowance of this motion will contribute to the achievement of an expeditious and inexpensive determination of the cases falling within its scope, which achievement is mandated by Batas Pambansa Blg. 129, Section 36, the very source of authority for the promulgation of the Rule on Summary Procedure.

In fine, in view of the opinion expressed hereinabove that Section 5 of the Summary Procedure is unconstitutional for being violative of due process, in lieu thereof where the defendant fails to answer the complaint within the reglementary 10-day period, the plaintiff should be allowed, pursuant to Section 19 of the Summary Procedure in relation to Rule 18, Section 1 of the Revised Rules of Court, to file a motion to declare the defendant in default and thereafter, the defendant having been declared in default, to introduce *evidence to substantiate the allegations of the complaint.* The allowance of such motion promotes the very *raison d'etre* of the Summary Procedure as enunciated in Batas Pambansa Blg. 129, Section 36 which is to achieve an expeditious and inexpensive determination, and fills up the void created by the unconstitutionality of Section 5 of the Summary Procedure. This clearly suggests the exclusion of the motion to declare the defendant in default from the list of prohibited pleadings, motions and petitions under Section 15 of the same Rule on Summary Procedure.

SECTION 8. JUDGMENT; HEARINGS; WHEN ORDERED —

> SHOULD THE COURT FIND, UPON A CONSIDERATION OF THE PLEADINGS, THE AFFIDAVITS AND OTHER EVIDENCE, AND POSITION STATEMENTS SUBMITTED BY THE PARTIES, THAT A JUDGMENT MAY BE RENDERED THEREON WITHOUT NEED

[20] RULES OF COURT, Rule 18, sec. 1.

OF A FORMAL HEARING, IT MAY PROCEED TO RENDER JUDGMENT NOT LATER THAN FIFTEEN (15) DAYS FROM THE SUBMISSION OF THE POSITION STATEMENTS OF THE PARTIES.

IN CASES WHERE THE JUDGE DEEMS IT NECESSARY TO HOLD A HEARING TO CLARIFY SPECIFIC FACTUAL MATTERS BEFORE RENDERING JUDGMENT, HE SHALL SET THE CASE FOR HEARING FOR THE PURPOSE. AT SUCH HEARING, WITNESSES WHOSE AFFIDAVITS WERE PREVIOUSLY SUBMITTED MAY BE ASKED CLARIFICATORY QUESTIONS BY THE PROPONENT AND BY THE COURT AND MAY BE CROSS-EXAMINED BY THE ADVERSE PARTY.

THE ORDER SETTING THE CASE FOR HEARING SHALL SPECIFY THE WITNESSES WHO WILL BE CALLED TO TESTIFY, AND THE MATTERS ON WHICH THEIR EXAMINATION WILL DEAL.

Under the abovequoted provision, it depends on the discretion of the judge whether or not a formal hearing in a civil case will be held. If the judge decides not to hold a hearing, is there a deprivation of the parties' day in court and, therefore, a violation of due process?

> "By 'due process of law,' as Mr. Daniel Webster said in his argument before the Supreme Court of the United States in the famous Dartmouth College case, is 'by the law of the land . . . a law which *hears* before it condemns; which proceeds upon inquiry, and renders judgment *only after trial*. The meaning is, that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society.' (4 Wheaton, U.S., 518, 581.) 'Due process of law' contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property. . . ."[21] (Emphasis supplied).

By the clause "a law which *hears* before it condemns . . . and renders judgment *only after trial*" from the aforequoted case, it seems that the actual holding of a hearing is indispensable in order that the requirements of due process of law may be fully observed. This proposition appears to find support in the case of *Cornejo v. Gabriel* where the Supreme Court stated that, in ordinary cases, to condemn without a *hearing* violates the due process of law clause of the American Constitution and of the Philippine Bill of Rights. (Emphasis supplied). Citing Judge Cooley, the leading American writer on Constitutional Law, the High Court further said:

> "Due process of law is not necessarily judicial process; much of the process by means of which the Government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law, as is judicial process. While *a day in court is a matter of right in judicial proceedings*, in administrative proceedings it is otherwise since they rest upon different principles."[22] (Emphasis supplied).

Does the phrase "a day in court is a matter of right in judicial proceedings" mean that under the Rule on Summary Procedure, which is a

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[21] Lopez v. Director of Lands, 47 Phil. 23, 32 (1924).
[22] 41 Phil. 188, 193 (1920).

judicial proceeding, the due process of law requires the actual holding of a hearing, in which case where the court decides not to hold a hearing, under the provisions of Section 8, and just to render judgment upon the pleadings, affidavits, position statements and other evdience submitted by the parties, the court thereby violates the parties' right to due process?

A more meticulous perusal of the doctrine of due process reveals that the discretion conferred upon the court, under Section 8, to decide whether or not to hold a formal hearing in a civil case, does not entail a violation of the litigants' right to due process. The leading case of *El Banco Español-Filipino v. Palanca* provides the requirements of due process in judicial proceedings, *viz.*:

> "As applied to a judicial proceeding, however, it may be laid down with certainty that the requirement of due process is satisfied if the following conditions are present, namely: (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property, which is the subject of the proceeding; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon lawful hearing."[23]

The categorical pronouncement made by the court in the foregoing case has, since its promulgation in 1918, served as the springboard for the development of the doctrine of due process through the years. Insofar as Section 8 of the Summary Procedure is concerned, it is the third and fourth requirements given above which are relevant: opportunity to be heard and hearing.

Is it indispensable in every judicial proceeding, in general, and under the Rule on Summary Procedure, in particular, that there be a hearing? Or is there sufficient compliance with due process if there is an opportunity to be heard?

The prevailing trend in recent jurisprudence states that the essence of due process is the requirement of notice and hearing, that the presence of a party at a trial is not always of the essence of due process, and that *all that due process requires is an opportunity to be heard.* There is no denial of due process if the decision was rendered on the evidence presented at the hearing, or *at least contained in the record and disclosed to the parties affected.*[24] (Emphasis supplied).

Judging by the standards of due process stated in the paragraph immediately preceding, the discretion conferred upon the court, under Section 8, to determine the necessity or dispensability of holding a formal hearing in a civil case steers clear of any violation of due process, even if the court

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[23] 37 Phil. 921, 934 (1918).

[24] Provincial Chapter of Laguna, Nacionalista Party v. Comelec, G.R. No. 53460, May 27, 1983, 122 SCRA 423, 432.

opts to dispense with a formal hearing so long as the following requirements are complied with:

1. That the parties are provided an opportunity to be heard, and

2. That the decision is rendered on the evidence presented at the hearing (if any has been held) or at least contained in the record and disclosed to the parties affected.

So long as these requisites are satisfied, the parties have had their day in court.

> "It is well-settled that 'no one shall be personally bound until he *has had a day in court*', by which is meant, until he has been duly cited to appear, *and has been afforded an opportunity to be heard.*"[25]

With the judicial interpretation that "day in court" means due notice and opportunity to be heard, then the earlier decision of *Cornejo v. Gabriel*,[26] citing Judge Cooley, stating that "a day in court is a matter of right in judicial proceedings," simply means that due notice and opportunity to be heard is a matter of right in judicial proceedings. Actual hearing is not.

To dispense with a hearing *per se* does not necessarily imply an unlawful deprivation of the right to have a day in court. The High Court itself has already had an occasion to sustain a lower court order where, in the exercise of discretion, the lower court opted to merely require the parties to submit memoranda or affidavits, instead of setting the case for a formal hearing. The Supreme Court sustained the lower court on the ground that "the very nature of the petition dictates its expeditious determination."[27] In the same vein, since the very nature of the Rule on Summary Procedure requires the expeditious and inexpensive determination of the cases falling within its scope, the holding of a formal hearing may be dispensed with depending upon the just exercise of the sound discretion of the court, so long as the parties have been provided with due notice and opportunity to be heard.

It may be asked — is there due notice and opportunity to be heard under the Summary Procedure? The answer is in the affirmative. Due notice is taken care of by the service of summons on the defendant under Section 3.[28] He is provided with opportunity to be heard through his answer

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[25] David v. Aquilizan, *supra* note 19, at 713-14.

[26] 41 Phil. 188, 193 (1920).

[27] Tangonan v. Paño, G.R. No. 45157, June 27, 1985, 137 SCRA 245, 258.

[28] Sec. 3. *Duty of court upon filing of complaint.*—Upon the filing of the complaint, the court, from a consideration of the allegations thereof

A. may dismiss the case outright due to lack of jurisdiction, improper venue, failure to state a cause of action, or or any other valid ground for the dismissal of a civil action, or

B. if a dismissal is not ordered, shall make a determination whether the case falls under summary procedure. In the affirmative case, the summons must state that the summary procedure under this Rule shall apply.

under Section 4.[29] In addition, both parties are further given other opportunities to be heard at the preliminary conference under Section 6[30] and through the affidavits, position statements and other evidence submitted by them, under Section 7[31] and 8.

An objection to Section 8 though is that it accords an affidavit the character of admissible evidence, despite the well-settled principle that an affidavit is hearsay evidence where the affiant did not testify in court and has not been subjected to cross-examination, and that an affidavit taken *ex-parte* is often incomplete and inaccurate.[32] The undesirability of admitting an affidavit as evidence is even compounded where the court exercises its discretion not to hold a formal hearing because in that case, aside from the fact that the affiant cannot, by the very nature of the situation, testify in open court nor be subjected to cross-examination, the adverse party does not even have an opportunity to object to the affidavit from being admitted into evidence. To give probative value to such affidavit runs counter to the ruling in *Salonga v. Paño* where the Supreme Court ruled that "hearsay evidence, whether objected to or not, has no probative value as the affiant could not have been cross-examined on the facts stated therein."[33]

Admittedly, the use of an affidavit in lieu of oral testimony saves time and effort and, therefore, contributes to an expeditious and inexpensive adjudication. It is an obstacle, however, that the affidavit of an affiant not presented in court and subjected to cross-examination is hearsay and has no probative value. The objectionableness arising from the hearsay character of the affidavit is not sufficiently guarded against by the Rule on Summary Procedure, notwithstanding its Section 16 which reads as follows:

> "Sec. 16. *Affidavits.* — The affidavits required to be submitted under this Rule shall state only facts of direct personal knowledge of the affiants which are admissible in evidence, and shall show their competence to testify to the matters stated therein.
>
> "A violation of this requirement may subject the party or the counsel who submits the same, to disciplinary action, and shall be cause to expunge the inadmissible affidavit or portion thereof from the record."

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[29] Sec. 4. *Answer.*—Upon being served with summons, the defendant must answer the complaint within ten (10) days from service thereof. The answer to a counterclaim or crossclaim must be filed within ten (10) days from service thereof.

[30] Sec. 6. *Preliminary conference.*—Not later than thirty (30) days after the last answer is filed, the case shall be calendared for a preliminary conference. Among other matters, should the parties fail to arrive at an amicable settlement, the court must clarify and define the issues of the case, which must be clearly and distinctly set forth in the order to be issued immediately after preliminary conference, together with other matters taken up during the same.

[31] Sec. 7. *Submission of affidavits.*—Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the affidavits of witnesses and other evidence on the factual issues defined therein, together with a brief statement of their positions setting forth the law and the facts relied upon by them.

[32] People v. Labinia, G.R. No. 38140, July 20, 1982, 115 SCRA 223, 233; People v. Hecto, G.R. No. 52787, February 28, 1985, 135 SCRA 113, 117; People v. Ramos, G.R. No. 59318, May 16, 1983, 122 SCRA 312, 318.

[33] G.R. No. 59524, February 18, 1985, 134 SCRA 438, 451.

It may be observed that while the aforequoted provision confines the affidavit only to facts of direct personal knowledge of the affiants which are admissible in evidence and further requires that the affiant's competence to testify to the matters stated in the affidavit be shown, it nevertheless retains and does not alter the *ex-parte* nature of the affidavit, notwithstanding the intended effect of the second paragraph of deterring any violation of the requirements prescribed by the first paragraph of the provision. It does not provide the adverse party an opportunity to register its objections to the admissibility of the entire affidavit or to such portions thereof as are inadmissible under the law. It provides no remedy to the incompleteness and inaccuracy of an affidavit taken *ex-parte*.[34]

In order that an affidavit may be acceptable in lieu of the affiant's direct testimony in open court and be fairly admissible in evidence under the Rule on Summary Procedure, its hearsay character and defect must be cured. The remedy towards this end may be derived from the concurring opinion penned by Justice Barredo in the case of *People v. Estenzo*.[35]

The basic premise is that the affidavit must be subjected to the possible legitimate objections of the adverse party to any portion thereof. The affidavit must first be "pasteurized" or "sanitized" so as to limit the same only to evidence that is material and competent. This preliminary step, insofar as the Summary Procedure is concerned, may be done at the preliminary conference under its Section 6,[36] if possible, or at any preliminary stage of the trial proper, where the court may require all affidavits to be used for the purpose to be submitted. Thus, the affidavit, which takes the place of direct testimony, will not be polluted with inadmissible evidence and the cross-examination, if a hearing is held, will be confined to what is material and competent. In the event that the court, pursuant to its authority under Section 8, opts to dispense with a formal hearing, thereby pre-empting any opportunity for the adverse party to subject the affiant to cross-examination, at least the affidavit has previously been subjected in the preliminary stages to a "pasteurizing" or "sanitizing" process where the adverse party was given an occasion to register its objections to the affidavit and, in the process, limit the affidavit only to those matters which are competent and material. Considering the object of the Summary Procedure, which is to achieve an expeditious, inexpensive and simplified determination of the cases falling within its scope, an affidavit that has undergone the process delineated above has somehow mitigated its hearsay character and may now be fairly acceptable to be considered part of the evidence under Section 8.[37]

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[34] See note 32.

[35] G.R. No. 41166, August 25, 1976, 72 SCRA 428, 436-37.

[36] See note 30.

[37] This remedy is adapted, in the context of the Rule on Summary Procedure, from the concurring opinion of Justice Barredo in the case of People v. Estenzo, *supra* note 35 at 436-37.

It has been explained earlier that the court does not commit a transgression of due process if it decides to forego formal hearing in a civil case. It must be pointed out, however, that where the court exercises its discretion, under Section 8 of the Summary Procedure, to render judgment upon a consideration of the pleadings, the affidavits, position papers and other evidence, and to dispense with formal hearing, it deprives itself of the benefits and advantages arising had the parties and their witnesses testified orally in open court. The High Tribunal once had an occasion to expound on these advantages if the parties and their witnesses were to testify orally in open court, thus:

> "The main and essential purpose of requiring a witness to appear and testify orally at a trial is to secure for the adverse party the opportunity for cross-examination. . . . There is also the advantage to be obtained by the personal appearance of the witness before the judge, and it is this — it enables the judge as the trier of facts 'to obtain *the elusive and incommunicable evidence of a witness' deportment while testifying,* and a certain subjective moral effect is produced upon the witness.' It is only when the witness testifies orally that the judge may have a true idea of his countenance, manner and expression, which may confirm or detract from the weight of his testimony. Certainly, the physical condition of the witness will reveal his capacity for accurate observation and memory, and his deportment and physiognomy will reveal clues to his character. These can only be observed by the judge if the witness testifies orally in court. Indeed, the great weight given the findings of fact of the trial judge in the appellate court is based upon his having had just that opportunity and the assumption that he took advantage of it to ascertain the credibility of the witnesses. . . . If a trial judge prepares his opinion immediately after the conclusion of the trial, with the evidence and his impressions of the witnesses fresh in his mind, it is obvious that he is much more likely to reach a correct result than if he simply reviews the evidence from a typewritten transcript, without having had an opportunity to see, hear and observe the actions and utterances of the witnesses."[38]

In view of the advantage that the court obtains from the personal appearance of the parties and their witnesses, it is advisable that before a court exercises its discretion to dispense with a formal hearing, it must weigh and examine with circumspect care and deliberation the advantages arising from the personal appearance of the parties and their witnesses if a hearing is held, and the desirability of an expeditious and inexpensive adjudication of a case without a hearing.

SECTION 15. PROHIBITED PLEADINGS AND MOTIONS —

> THE FOLLOWING PLEADINGS, MOTIONS. OR PETITIONS SHALL NOT BE ALLOWED IN THE CASES COVERED BY THIS RULE:
>
> (A) MOTION TO DISMISS OR QUASH
>
> (B) MOTION FOR A BILL OF PARTICULARS

[38] People v. Estenzo, G.R. No. 41166, August 25, 1976, 72 SCRA 428, 432-34.

(C) MOTION FOR NEW TRIAL, OR FOR RECONSIDERATION, OR FOR REOPENING OF TRIAL
(D) PETITION FOR RELIEF FROM JUDGMENT
(E) MOTION FOR EXTENSION OF TIME TO FILE PLEADINGS, AFFIDAVITS OR ANY OTHER PAPER
(F) MEMORANDA
(G) PETITION FOR CERTIORARI, MANDAMUS, OR PROHIBITION AGAINST ANY INTERLOCUTORY ORDER ISSUED BY THE COURT
(H) MOTION TO DECLARE THE DEFENDANT IN DEFAULT
(I) DILATORY MOTIONS FOR POSTPONEMENT
(J) REPLY
(K) THIRD PARTY COMPLAINTS
(L) INTERVENTIONS.

This section enumerates a long list of pleadings, motions and petitions which are barred and cannot be filed under the Rule on Summary Procedure. Although it lists these prohibited items in ten subparagraphs, there actually exist more than this number since each subparagraph is a classification of pleadings, motions, or petitions which are closely related or are similar in character and purpose. Thus, there really are at least seventeen separate subjects listed therein.

What is the purpose of their prohibition? The preamble of the Rule on Summary Procedure provides the first reason, and that is to achieve an expeditious and inexpensive determination of the cases that are mentioned therein, since the prohibited items tend to unduly prolong the proceedings. They give rise to numerous side issues that need to be preliminarily so that the question that is the very crux of the controversy is momentarily placed in a pigeon hole, and in not a few instances, unnecessarily delayed in its adjudication.

The second justification for such a prohibition lies in the fact that, in each and every one of the pleadings, motions, and petitions found in Section 15, there exists the common element of judicial discretion. Their grant or denial depends on the discretion of the court. Discretion has been defined to be that power or right conferred upon public functionaries by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others.[39] In a much later decision of the Supreme Court, discretion was explained to be the authority to choose between several alternatives and be *right,* whichever alternative is chosen.[40]

All of the matters which are prohibited in Section 15 require that a party in a case first apply with the court for the granting of a motion, pleading, or petition, stating the grounds therefor. The court then is required

[39] Sanson v. Barrios, 63 Phil. 198, 203 (1936); Meralco Securities Corp. v. Savellano, G.R. No. 36181, October 23, 1982, 117 SCRA 804, 810-11.
[40] Supreme Investment Corp. v. Engineering Equipment, Inc., G.R. No. 25755, April 11, 1972, 44 SCRA 244, 252.

to exercise its sound judicial discretion in deciding on whether or not such application should be granted. The applicant cannot compel the court to decide in one way or another. For this reason, the framers of the Summary Procedure decided to do away with such pleadings, motions, or petitions altogether.

Section 2 of the Rule on Summary Procedure expressly mentions the kinds of pleadings that can be filed. These are the complaint, and the answer to the complaint, counterclaim, or crossclaim. All of the other pleadings, as enumerated in Section 15, are prohibited. On the other hand, the Rule treats motions in a different manner. There is no provision in the Rule which deals with motions, except Section 15. While this section enumerates the motions which are not allowed, an inspection of the whole Rule reveals that no mention is made as to which kinds can be filed. The conclusion then is that all types of motions are allowed so long as they are not expressly prohibited, unless they produce the effect of allowing the circumvention of what is directly prohibited.[41]

Motion to Dismiss or to Quash

A motion to dismiss and a motion to quash are interim motions which usually open up interminable preliminary skirmishes,[42] even before the case can be tried on the merits. They result in the undue prolongation of the resolution of the controversy, the very situation which the Rule on Summary Procedure abhors. Consequently, these motions cannot be filed.

Furthermore, there is no need for motions to dismiss or to quash because the Summary Procedure, in Section 3, paragraph (A)[43] and in Section 10,[44] empowers Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts to dismiss the case outright on the basis of valid grounds therefor in both civil[45] and criminal[46] cases, after a con-

[41] GUPIT, *supra* note 1, at 60.

[42] *Ibid.*

[43] See note 28.

[44] Sec. 10. *Duty of court.*—On the basis of the complaint or information and the affidavits accompanying the same, the court shall make a preliminary determination whether to dismiss the case outright for being patently without basis or merit, or to require further proceedings to be taken. In the latter case, the court may set the case for immediate arraignment of an accused under custody, and if he pleads guilty, may render judgment forthwith. If he pleads not guilty, and in all other cases, the court shall issue an order, accompanied by copies of all the affidavits submitted by the complainant, directing the defendant(s) to appear and submit his counter-affidavit and those of his witnesses at a specified date not later than ten (10) days from receipt thereof.

Failure on the part of the defendant to appear whenever required, shall cause the issuance of a warrant for his arrest if the court shall find that a probable cause exists after an examination in writing and under oath or affirmation of the complainant and his witnesses.

[45] RULES OF COURT, Rule 16, Sec. 1. *Grounds.*—Within the time for pleading a motion to dismiss the action may be made on any of the following grounds: ..

(a) That the court has no jurisdiction over the person of the defendant or over the subject of the action or suit;

(b) That the court has no jurisdiction over the nature of the action or suit;

sideration of the allegations contained in the complaint or, in the proper instances, in the information and its accompanying affidavits.[47]

Is it not possible that, with the prohibition, injustice may be worked against a defendant since he cannot now file such motions? Does this not unduly deprive him of a procedural right by reducing the number of ways by which he can challenge the validity of a complaint or information that has been filed against him?

At first blush, there appears to be a valid basis for questioning the legality of this provision. A closer inspection would reveal a conclusion to the contrary. At this point, it is useful to recall the very essence of this Rule: the speedy and inexpensive disposition of cases. If a comparison between this procedure and that provided by the Rules of Court is undertaken, it becomes clear that there is actually no substantial change in the position of a defendant under either. The same effects and conclusions are reached. A hypothetical situation best illustrates this.

"Y" is in possession of a parcel of land. He sues "E" for forcible entry in the municipal trial court. "E" wants to raise the defense of failure to state a cause of action. What procedural steps can "E" take wherein he can raise such a defense?

(c) That venue is improperly laid;
(d) That the plaintiff has no legal capacity to sue;
(e) That there is another action pending between the same parties for the same cause;
(f) That the cause of action is barred by prior judgment or by statute of limitations;
(g) That the complaint states no cause of action;
(h) That the claim or demand set forth in the plaintiff's pleading has been paid, waived, abandoned, or otherwise extinguished;
(i) That the claim on which the action or suit is founded is unenforceable under the provision of the statute of frauds;
(j) The suit is between members of the same family and no earnest efforts towards a compromise have been made.

[46] 1985 RULES ON CRIMINAL PROCEDURE, Rule 117, Sec. 3. *Grounds.*—The accused may move to quash the complaint or information on any of the following grounds:
(a) That the facts charged do not constitute an offense;
(b) That the court trying the case has no jurisdiction over the offense charged or the person of the accused;
(c) That the officer who filed the information had no authority to do so;
(d) That it does not conform substantially to the prescribed form;
(e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;
(f) That the criminal action or liability has been extinguished;
(g) That it contains averments which, if true, would constitute a legal excuse or justification; and
(h) That the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

[47] Sec. 3, par. (A) of the Rule on Summary Procedure specifies the grounds for the outright dismissal of civil cases and further adverts to "any other valid ground for the dismissal of a civil action", which logically refers to those grounds under Rule 16, sec. 1 of the Rules of Court for the dismissal of civil cases. On the other hand, sec. 10 of the Summary Procedure does not make the same specification and reference with respect to criminal cases. It merely states that the court may "dismiss the case outright for being patently without basis or merit." It is reasonable to say

Under the Rules of Court, "E" can file a motion to dismiss[48] within fifteen days from the time he is served with summons, that is, within the time to answer, but before the filing of such pleading.[49] The Court can either grant the motion or deny it. If the motion is granted, the case is dismissed. If, however, the court denies the motion, "E" can still raise the ground of failure to state a cause of action as an affirmative defense in his answer[50] and then proceed with the trial of the case and in case of an unfavorable decision, appeal therefrom in due time.[51]

In exceptional instances, under the Rules of Court, another remedy is available in case of a denial of a motion to dismiss. An order denying a motion to dismiss is interlocutory in nature, and, hence, not appealable until after the rendition of judgment on the merits.[52] However, such interlocutory order can be reviewed by the special civil action of certiorari, prohibition or mandamus where there is an abuse of discretion that can be considered grave as when there is such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or where the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility, amounting to an evasion of positive duty or to virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[53]

On the other hand, under the Rule on Summary Procedure, "E" is barred from filing a motion to dismiss.[54] Nevertheless, this does not affect the defenses available to him. Should the court *motu proprio* dismiss the complaint outright under the provisions of Section 3, par. (A).[55] there will be an order to that effect, stating the basis therefor. But if the dismissal is not so ordered and the defendant is served with summons, he has the following remedies available to him:

First, while he cannot file a motion to dismiss on the ground of failure to state a cause of action, he can raise the same ground in his answer and then proceed with the trial of the case.

Second, the defendant has the alternative of filing a special civil action for certiorari an/or prohibition as soon as summons is received

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that this clause is broad and general enough to encompass the grounds for the quashal of criminal cases under Rule 117, sec. 3 of the 1985 Rules on Criminal Procedure.

[48] RULES OF COURT, Rule 16, sec. 1, par. (g).

[49] J. M. Tuason & Co., Inc. v. Rafor, G.R. No. 15537, June 30, 1962, 5 SCRA 478, 483.

[50] RULES OF COURT, Rule 16, sec. 5.

[51] Harrison Foundry & Machinery v. Harrison Foundry Workers' Assn., G.R. No. 18432, June 29, 1963, 8 SCRA 430, 434.

[52] Ramos v. Ardani Trading Corp., G.R. No. 21975, June 13, 1968, 23 SCRA 974, 975-976.

[53] People v. Marave, G.R. No. 19023, July 31, 1964, 11 SCRA 618, 622; Maritime Co. of the Phils. v. Paredes, G.R. No. 24811, March 3, 1967, 19 SCRA 569, 580; Espiritu v. Solidum, G.R. No. 27672, July 25, 1973, 52 SCRA 131, 135.

[54] Sec. 15, par. (A).

[55] See note 28.

in order to prohibit the court from taking cognizance of the case where it is indubitably and patently clear that the complaint does not state a cause of action.[56]

The first remedy is allowed under the provisions of the Summary Procedure. On the other hand, the second alternative cannot be considered to fall within the prohibition under Section 15, paragraph (G) of the Summary Procedure because what the cited section prohibits is a "petition for certiorari, mandamus, or prohibition against any *interlocutory order*". (Emphasis supplied). In the instant case, there is no interlocutory order to speak of because only the summons has been issued and no interlocutory order has yet been made.

From this example, it can be observed that the exclusion of motions to dismiss does not affect the defenses available to a defendant. As a matter of fact, the Summary Procedure has the advantage of promoting the quick settlement of the case by abbreviating the procedural steps while at the same time preserving the defenses available to the defendant.

These observations are likewise applicable to motions that seek the quashal of criminal cases. Again, an illustration will be helpful.

"C" is charged with the crime of slight physical injuries. He wants to raise the defense that the facts charged do not constitute an offense. What are the remedies available to him?

Under the 1985 Rules on Criminal Procedure, such a defense may be raised as a ground in a motion to quash[57] at any time before entering his plea.[58] If the court sustains the motion and does not order that another information be filed, or, if such order is made but another information is not filed within the time specified by the court in the order, the case will be dismissed.[59] However, if the court denies the motion, "C" can still use the same ground as a defense during the trial,[60] and in case of a decision adverse to him, make an appeal after the trial on the merits.[61]

In exceptional cases, under the regular Rules of Court, another remedy is available should the court deny the motion to quash. An order denying a motion to quash is interlocutory in nature and hence not appealable until after the rendition of judgment on the merits. However, if there was grave abuse of discretion in the denial of the motion, the order of denial may be reviewed by the special civil action of certiorari and/or prohibition.[62]

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56 This will be discussed under the topic "Petition for Certiorari, Mandamus, or Prohibition Against Any Interlocutory Order Issued by the Court", *infra*.

57 1985 RULES ON CRIMINAL PROCEDURE, Rule 117, sec. 3, par. (a).

58 1985 RULES ON CRIMINAL PROCEDURE, Rule 117, sec. 1.

59 1985 RULES ON CRIMINAL PROCEDURE, Rule 117, sec. 5.

60 *See* 1985 RULES ON CRIMINAL PROCEDURE, Rule 117, sec. 8.

61 Acharon v. Purisima, G.R. No. 23731, February 26, 1965, 13 SCRA 309, 311.

62 Mead v. Argel, G.R. No. 41958, July 20, 1982, 115 SCRA 256.

On the other hand, under the Rule of Summary Procedure, though "C" cannot file a motion to quash,[63] there is no impairment of his rights. They remain substantially the same as those under the regular Rules of Court. Why so?

If the court dismisses the case outright based on the complaint or information and its accompanying affidavits, it will issue an order for that purpose, stating the basis therefor.[64] If the court does not order the outright dismissal of the case, the accused can resort to two alternative remedies:

First, after the court has issued an order, accompanied by copies of all the affidavits submitted by the complainant, directing the defendant to appear and submit his counter-affidavit and those of his witnesses, he may submit such counter-affidavits in support of his defense that the facts charged do not constitute an offense.[65] "Should the court, upon a consideration of the complaint or information and the affidavits submitted by both parties, find no cause or ground to hold the defendant for trial, it shall order the dismissal of the case; otherwise, the court shall set the case for arraignment and trial"[66] where the defendant can raise the same ground that the facts charged do not constitute an offense.

Second, "C" can, in the proper cases, file a special civil action for certiorari and/or prohibition where the court committed grave abuse of discretion in not ordering the outright dismissal of the case.

The first remedy is allowed under the provisions of the Rule on Summary Procedure. On the other hand, the second alternative, though falling within the prohibition of Section 15, paragraph (G), finds justification in the doctrine laid down by the Supreme Court in exceptional cases allowing the filing of the special civil action of certiorari, mandamus, or prohibition, even against interlocutory orders, if tainted with grave abuse of judicial discretion, so that where it may be indubitably and patently clear that the court should have dismissed the case outright pursuant to its powers under Sections 10 and 11 of the Summary Procedure but did not so dismiss it, then the special civil action of certiorari, mandamus, or prohibition can be filed.[67]

It will be noted that the exclusion of motions to quash does not affect the defenses available to the accused. While he is not allowed to file a motion to quash, he is not deprived of the opportunity to raise the defenses which he could have averred in the motion to quash, were he permitted to file one. All of his defenses are kept intact in a different

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[63] Sec. 15, par. (A).
[64] Sec. 10, first paragraph, note 44.
[65] *Ibid.*
[66] Sec. 11.
[67] This will be discussed under the topic "Petition for Certiorari, Mandamus, or Prohibition Against Any Interlocutory Order Issued by the Court", *infra.*

procedure which is consistent with the Summary Procedure's object of achieving a speedy disposition of cases.

Petition for Certiorari, Mandamus, or Prohibition Against Any Interlocutory Order Issued by the Court

As a general rule, the special civil actions of certiorari, prohibition and mandamus cannot be resorted to if an appeal or any other plain, speedy and adequate remedy in the ordinary course of law is available.[68] There are Supreme Court decisions, however, that give exceptions to the aforesaid rule, and allow a party to resort to such special civil actions in spite of the availability of the remedy of appeal, as in the following:

1. The granting of the writs of certiorari, prohibition and mandamus is within the sound discretion of the courts, to be exercised on equitable grounds where necessary to prevent substantial wrong, or to do substantial justice;[69]

2. Certiorari is proper when appeal is a mere technicality and which may accomplish nothing substantial;[70]

3. A petition for certiorari and prohibition is available where it *clearly* appears that the trial court is proceeding in excess or outside its jurisdiction;[71]

4. Certiorari is available where public welfare and the advancement of public policy so dictate, or the broader interests of justice so require, or the orders complained of are completely null and void, or appeal is not considered the appropriate remedy;[72]

5. Certiorari is available where appeal is not an adequate remedy of equally beneficial, speedy and sufficient;[73]

6. Certiorari is allowed when the questioned order is an oppressive exercise of judicial authority;[74]

Does the prohibition on petitions for certiorari, mandamus, or prohibition against any interlocutory order, under Section 15, paragraph (G) of the Rule on Summary Procedure, affect the aforesaid doctrines? Based on the wording of said section alone, the answer cannot but be in the affirmative — that the prohibition prevails. It must be recalled that the object of the Summary Procedure is to bring about a quick and inexpensive determination of cases. If such petitions are allowed, "cases would go up and down the

[68] RULES OF COURT, Rule 65, secs. 1-3.
[69] De Jesus v. Domingo, G.R. No. 30006-07, August 31, 1970, 34 SCRA 647, 654.
[70] Rubio v. Mariano, G.R. No. 30404, August 30, 1973, 52 SCRA 338, 343.
[71] Moscoso v. Quitco, G.R. No. 29486 & 30248, December 16, 1970, 37 SCRA 256, 265.
[72] Fernando v. Vasquez, G.R. No. 36417, January 30, 1970, 31 SCRA 288.294.
[73] Jaca v. Davao Lumber Co., G.R. No. 25771, March 29, 1982, 113 SCRA 107, 129.
[74] Bautista v. Sarmiento, G.R. No. 45137, September 23, 1985, 138 SCRA 587, 592.

different court levels in our judicial system."[75] This would result in numerous delays which would prejudice either or both of the parties. If every act or ruling of an inferior tribunal were to be subjected to the scrutiny and re-examination of a superior tribunal, and in every instance reconciled with the views of the receiving tribunal, the administration of justice would be greatly hampered.[76] Under the Summary Procedure, the proper remedy is appeal.[77]

It is suggested, however, that there are instances when the prohibition may be disregarded and the filing of a special civil action of certiorari, prohibition or mandamus should be allowed. If the general rule, which prohibits special civil actions when appeal is available, itself admits of exceptions, then perhaps the prohibition in the Summary Procedure should, by analogy at the very least, also be disregarded in similarly exceptional cases.

A related matter must be pointed out. Ordinarily, a court must act upon a motion to dismiss by issuing an order that either grants or denies such motion. A denial is merely interlocutory and unappealable, but could be the subject of a special civil action in the appropriate cases, as has been discussed earlier. Meanwhile, the only order issued at this stage under the Summary Procedure is that which dismisses the case when the court acts under the authority of Section 3, paragraph (A).[78] If the court is not dismissing the case, it does not issue any order. Instead, summons is sent to the defendant requiring him to file his answer within the reglementary period. The question that could crop up is: what if the court refuses to dismiss the case outright even though the complaint clearly shows a valid ground for the dismissal of the case? Should the defendant have to wait for the final judgment and then file an appeal?

It is proposed that the defendant can seek a writ of certiorari and prohibition to prevent the court from hearing the case. What Section 15, paragraph (G) of the Summary Procedure prohibits are petitions for certiorari and prohibition against interlocutory orders only. Such is not the case here. In this situation, there is no interlocutory order to speak of. Consequently, the above-stated prohibition does not apply.

Bill of Particulars

Article IV, section 19 of the 1973 Constitution (Article III, section 1, paragraph (17) of the 1935 Constitution) states that in all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation against him. It is one of the most fundamental rights accorded the accused. It requires that the charges against a person should

[75] GUPIT, *supra* note 1, at 61.
[76] Solidum v. Hernandez, G.R. No. 16570, February 28, 1963, 7 SCRA 320, 325.
[77] RULE ON SUMMARY PROCEDURE, Sec. 18.
[78] See note 28.

be stated in such a way as to enable him to know the meaning and nature of the accusation against him. This right cannot be waived for reasons of public policy. It is a fundamental right of the accused not to be deprived of his life or liberty without due process of law.[79] The public has an interest in his life and liberty. Neither can be taken lawfully except in the mode prescribed by law. That which the law makes essential in proceedings involving the deprivation of life or liberty, such as the right to be informed of the nature and cause of the accusation, cannot be dispensed with or affected by the consent of the accused.[80]

It is strongly exhorted that the accusation, whether by complaint or information, must be sufficiently specific and must fairly apprise the defendant of the nature of the charge against him, so that he may know what he is to answer, and so that the record may show, so far as may be, for what he is put in jeopardy.[81] On the basis of his constitutional right to be informed of the nature and cause of the accusation against him, the accused may file a motion for bill of particulars[82] if he needs to be more completely and particularly informed in order to be able to prepare intelligently whatever defense or defenses he might have. Inasmuch as in criminal cases not only the liberty but even the life of the accused may be at stake, it is always wise and proper that the accused should be fully apprised of the true charges against him and thus avoid all and any possible surprise, which might be detrimental to his rights and interests; and ambiguous phrases should not, therefore, be permitted in criminal complaints or informations. If any such phrase has been included therein, on motion of the defense, before the commencement of the trial, the court should order either its elimination as surplusage or the filing of the necessary specification, which is but an amendment in mere matters of form.[83]

Under Section 15, paragraph (B) of the Rule on Summary Procedure, the filing of a motion for a bill of particulars is prohibited. The prohibition may be laudable in view of the Rule's object of achieving an expeditious and inexpensive determination of the cases falling within its scope because it obviates at the outset any unnecessary or undue prolongation or delay of the case which a motion for a bill of particulars may cause in the process of adjudication. However, the relentless application of the prohibition in all situations, without any exception, may lead to the infringement of the constitutional right of an accused in a criminal case to be informed of the nature and cause of the accusation against him.

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[79] People v. Geverola, 14 C.A. Rep. 2d 561, 566 (1969).

[80] 4 MORAN, COMMENTS ON THE RULES OF COURT 181 & 187 (1970 ed.), citing Hopt v. Utah, 110 U.S. 574, 28 Law. ed. 262, 265.

[81] 6 FRANCISCO, THE REVISED RULES OF COURT, IN THE PHILS. 465 (2d ed., 1969), citing 1 Cooley's Constitutional Limitations, 8th ed., 637 (f.n.).

[82] CUI, TRIAL LAWYER'S HANDBOOK OF THE RULES OF COURT, 432 (1st ed., 1974).

[83] People v. Abad Santos, 76 Phil. 744, 747 (1946).

For instance, if the complaint or information does not sufficiently state the acts or omissions complained of as constituting the offense, which is otherwise required by Rule 110, section 6 of the 1985 Rules on Criminal Procedure, and the prohibition on the filing of a motion for a bill of particulars under the Rule on Summary Procedure is strictly enforced, then the constitutional right of the accused to be informed of the nature and cause of the accusation against him is rendered nugatory. It is violated. It may also happen that the description of the acts or omissions complained of as constituting the offense is not sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment, which is otherwise required by Rule 110, section 9 of the 1985 Rules on Criminal Procedure, and if the accused is prohibited from moving for a bill of particulars that may enable him to know what he is actually charged of and to prepare an intelligent defense, then his constitutional right to be informed of the nature and cause of the accusation against him is undoubtedly infringed.

The designation of the offense in the complaint or information cannot be considered to be sufficient to inform the accused of the crime with which he is being charged, because it is the facts alleged in the complaint or information that actually determine the crime with which defendant stands accused. The characterization of the crime by the fiscal in the caption of the information is immaterial and purposeless. It is the facts stated in the body of the pleading which must determine the crime with which the defendant stands charged and for which he must be tried. From a legal point of view, and in a very real sense, the technical name of the crime with which he stands charged is of no concern to the accused. It in no way aids him in a defense on the merits. The real question is not "did he commit a crime given in the law some technical and specific name," but "did he perform the acts alleged in the body of the information in the manner therein set forth."[84]

The strict enforcement of the prohibition on the filing of a motion for a bill of particulars even in the face of a manifestly clear violation of the constitutional right of an accused in a criminal case to be informed of the nature and cause of the accusation against him, creates an abhorrent situation wherein a procedural rule takes undue precedence over a constitutional precept which has long prevailed in our judicial history. It violates the constitutional provision that the rules promulgated by the Supreme Court shall not diminish, increase, or modify substantive rights.[85]

In order to remedy this problem, it is suggested that the prohibition be enforced only where it will not infringe the constitutional right of an accused in a criminal case to be informed of the nature and cause of the accusation against him. In other words, under the Rule on Summary Pro-

[84] U.S. v. Lim San, 17 Phil. 273, 278-79 (1910).
[85] CONST., Art. X, sec. 5, par. (5); CONST. (1935), Art. VIII, sec. 13.

cedure, the general rule should be that the filing of a motion for a bill of particulars is prohibited. The exception is that the defendant has the right to file such motion if it is in pursuance of his constitutional right to be informed of the nature and cause of the accusation against him.

Interpretation of the Prohibition under Section 15

The Rule on Summary Procedure was adopted to achieve an expeditious and inexpensive determination of the cases falling within its scope without regard to technical rules.[86] Presumably, the prohibition on the filing of the pleadings, motions and petitions under Section 15 is designed to achieve the same object. In view thereof, whether the prohibition should be strictly or liberally construed depends on which kind of construction conduces to an expeditious and inexpensive adjudication. For instance, the filing of a third party complaint is prohibited under Section 15, paragraph (K). Should the prohibition be strictly or liberally construed?

If it appears to the court that the filing of the third party complaint is intended to unnecessarily and deliberately delay the proceeding, the prohibition should be complied with strictly. The third party complaint should be denied.

However, where the allowance of the third party complaint will prevent multiplicity of suits and serve to expedite and settle in one litigation all the controversies raised in the original complaint, the prohibition on the filing of the third party complaint may be waived and such filing be allowed. After all, "well-known is the rule that departures from procedure may be forgiven where they do not appear to have impaired the substantial rights of the parties."[87] "Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities."[88]

Effect of the Prohibition under Section 15 on Substantive Rights

Except for the erroneous inclusion of the motion to declare the defendant in default in the list of prohibited motions, which should be excluded therefrom in order to fill up the void created by the unconstitutionality of Section 5 of the Summary Procedure, as earlier explained, and except for the possible violation of the constitutional right of an accused in a criminal case to be informed of the nature and cause of the accusation against him if he were prohibited from filing a motion for a bill of particulars, as earlier explained as well, by and large, the prohibition on the filing of the rest of the other pleadings, motions and petitions enumerated in Section 15 does

[86] Batas Pambansa Blg. 129 (1981), sec. 36.
[87] Co Tiamco v. Diaz, 75 Phil. 672, 680 (1946).
[88] Alonso v. Villamor, 16 Phil. 315, 322 (1910).

not involve a curtailment of the substantive rights of the parties, because the right to file them is one *procedural* in nature that takes its root in the Rules of Court, which were adopted and promulgated by the Supreme Court pursuant to its rule-making power under Article X, section 5, paragraph (5) of the 1973 Constitution (Article VIII, section 13 of the 1935 Constitution). The prohibition under Section 15 of the Summary Procedure on the right to file them is in pursuance of the same rule-making power of the Supreme Court.