SOME REFLECTIONS ON THE RULE OF ATTACHMENT AS A MODE OF SECURING JURISDICTION OVER NON-RESIDENT DEFENDANTS

*Eduardo P. Lizares**

Under the Rules of Court, when a defendant "does not reside and is not found in the Philippines" and cannot be personally served with summons within the Philippines, its courts may nevertheless exercise jurisdiction if the action filed against the non-resident defendant: (1) affects their personal status; or (2) relates to, or the subject of which is, property within the Philippines, in which the defendant claims or has an interest; or (3) where the property of the defendant has been attached within the Philippines.

In actions against non-resident defendants who cannot be served with summons within the Philippines, the validity of the exercise by Philippine courts of jurisdiction, or the question of "whether or not said court may validly try the case"[1] turns upon the issue of whether the action instituted against them is one *in rem, quasi-in-rem* or *in personam*. For as the Supreme Court has held:

> [d]ue process of law requires personal service to support a personal judgment, and when the proceeding is strictly *in personam*, brought to determine the personal rights and obligations of the parties, personal service within the state or voluntary appearance in the case is essential to the acquisition of jurisdiction so as to constitute compliance with the constitutional requirement of due process.[2]

Thus, in actions strictly *in personam*, personal service of summons within the forum is essential to the court's acquisition of jurisdiction over the person of the defendant if he does not voluntarily enter his appearance in the case. Summons by publication (or extra-territorial personal service, as the case may be) as provided in Section 17 of Rule 14 of the Rules of Court cannot be availed of because such mode of service will not satisfy the requirement of due process.[3]

Summons by publication would, however, be valid if the action is *in rem* or *quasi-in-rem*, as summons by publication in these cases is required "merely to satisfy the constitutional requirement of due process."[4] In these cases, the

---

*LL.B., University of the Philippines, College of Law, 1982.

[1]Perkins v. Dizon, 69 Phil. 186, 188 (1939).

[2]Pantaleon v. Asuncion, 105 Phil. 761, 766 (1959).

[3]Pantaleon, *supra* at 765.

[4]Perkins, *supra* at 190.

jurisdiction of the court is "based exclusively on the power, which under the law, it possesses over the property; and any discussion relative to the jurisdiction of the court over the person of the defendant is entirely apart from the case."[5]

Actions *in rem* are proceedings directly against the property, the purpose of which is "the disposition of the property without reference to the title of the individual claimants"; it fixes and settles the title to the property in controversy.[6] An example of this type of action is one for the foreclosure of a mortgage on real property located within the forum. But an action *in rem* also includes, in a broader sense, all actions between parties, "where the direct object is to reach and dispose of property owned by them, or of some interest therein."[7]

An action *quasi-in-rem* differs from the true action *in rem* only in the circumstance that in the former, an individual is named as a defendant, but is similar in result to an action *in rem* in that it subjects his interest in the property involved to the obligation or lien burdening such property. Thus, an action *quasi-in-rem* refers to "[a]ll proceedings having for their sole object the sale or other disposition of the property of the defendant, whether by attachment, foreclosure, or other form of remedy" and "the judgment entered in these proceedings is conclusive only between the parties."[8]

The issue of whether personal service of summons within the forum may be dispensed with hinges on a determination of whether or not the action is one strictly *in personam*. An action *in personam* is one that seeks the delineation of the personal rights and obligations of parties to a suit.[9]

An action for the recovery of a sum of money, for instance, is ordinarily an action *in personam*. So is an action for damages arising from quasi-delict or a crime. But if in these types of actions that are normally classified as actions *in personam*, plaintiff has secured an attachment against the property of the non-resident defendant located in the Philippines, the action would, to the extent of the value of the attached property, no longer be an action strictly *in personam*.

As early as 1948, in Mabanag v. Gallemore[10], the Supreme Court had already characterized an action for the recovery of a sum of money against a non-resident defendant (whose property in the forum had been attached by plaintiff) as an action *quasi-in-rem* over which a proper court could exercise

---

[5] *Banco Español-Filipino* v. Palanca, 37 Phil. 921, 930 (1918).

[6] Perkins, *supra* at 192-193.

[7] Perkins, *supra* at 193.

[8] *Banco Español-Filipino*, *supra* at 928.

[9] Pantaleon v. Asuncion, *supra* at Note 2.

[10] 81 Phil. 254 (1948).

jurisdiction and "proceed to judgment"[11] despite a clear absence of jurisdiction over the person of the defendant who had not been personally served with summons within the forum or had not voluntarily entered his appearance in the action.

In Mabanag, the action:

> [was] to recover P735.18, an amount said to have been paid by the plaintiff to the defendant for two parcels of land whose sale was afterward annulled. The defendant [was] said to be residing in Los Angeles, California, U.S.A He [had] no property in the Philippines except an alleged debt owing him by a resident of the municipality of Occidental Misamis. This debt, after the filing of the complaint... was attached to the extent of the plaintiff's claim for the payment of which the action was brought.[12]

The trial court held that since it had not acquired jurisdiction over the person of the defendant, it had no authority nor jurisdiction to render judgment against him.

The Supreme Court held that the trial court erred in dismissing the case. Relying on the authority of **Banco Español-Filipino**[13] and **Perkins**[14], the Supreme Court held that the attachment or garnishment of the property of a non-resident defendant "confer[red] jurisdiction on the court in an otherwise personal action."[15]

The theory under which the Court came to this holding is derived from **Perkins**, that:

> [w]hen, however, the action relates to property located in the Philippines, the Philippine courts may validly try the case upon the principle that a State, through its tribunals, may subject property situated within its limits owned by non-residents to the payment of the demand of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens; and when non-residents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens. If the non-resident has no property in the State, there is nothing upon which the tribunals can adjudicate.[16]

The Supreme Court then concluded that:

> [t]hose authorities and decisions, so plain and comprehensive so as to make any discussion unnecessary, are in agreement that though no jurisdiction is obtained over the debtor's person, the case may proceed to judgment if there is property in the custody of the court that can be applied to its satisfaction.[17]

---

[11]Mabanag v. Gallemore, *supra* at 258.

[12]Mabanag, *supra* at 255.

[13]37 Phil. 921 (1918).

[14]69 Phil. 186 (1939).

[15]Mabanag, *supra* Note 10 at 257.

[16]Mabanag, *supra* at 257, citing *Perkins*.

[17]Mabanag, *supra* at 258.

The Supreme Court has recognized that Mabanag involved an action *quasi-in-rem*.[18] In *quasi-in-rem* actions similar to Mabanag, "jurisdiction over the person of the non-resident is not necessary"[19] and "though no jurisdiction is obtained over the debtor's person, the case may proceed to judgment if there is property in the custody of the courts that can be applied to its satisfaction."[20]

In actions *quasi-in-rem*, service of summons by publication is required "merely to satisfy the constitutional requirements of due process," and not as a means of acquiring jurisdiction over the person of the non-resident which, anyway, is not required.[21]

Clearly then, it is the fact that plaintiff has secured an attachment over properties of the non-resident defendant (which can be applied to the satisfaction of the judgement that he may secure against the non-resident defendant) that classifies the action as one *quasi-in-rem*, thereby authorizing the plaintiff to serve summons by publication upon the non-resident defendant. This rule is made even more explicit in Citizens' Surety v. Melencio-Herrera.[22] There, plaintiff instituted an action against resident defendants for the collection of a debt. No assets of the defendants were attached or in the custody of the court. Defendants were summoned by publication, and since they did not appear, plaintiffs asked the court to have them declared in default. The trial court, however, refused to do so. It held that the action was one *in personam*. Summons by publication was therefore not sufficient so as to validly confer upon the court jurisdiction over the persons of the defendants. On appeal, the Supreme Court affirmed the trial court on the basis of its ruling in Pantaleon that "without personal service, any judgement on a non-appearing defendant would be violative of due process."[23]

The Supreme Court, speaking through Justice J.B.L. Reyes, however, made the observation that although the action was *in personam* and that no jurisdiction over their persons could be bestowed upon the court on a mere summons by publication, the plaintiff was not left without a remedy. The issue of due process, according to the court, would be avoided if the plaintiff could locate properties of the defendant, real and personal, that could be attached under Section 1 of Rule 57 of the Rules of Court. If the attachment were secured, the same "converts the action [originally one *in personam*] into a proceeding *in rem* or *quasi-in-rem* and the summons by publication may then accordingly be deemed valid and effective."[24]

---

[18] See De Midgely v. Ferandos, 64 SCRA 23, 32-33 (1975).

[19] De Midgely, *supra* at 32.

[20] *Supra* at Note 17 (emphasis supplied).

[21] De Midgely, *supra* at 35, citing *Perkins*.

[22] 38 SCRA 369 (1971).

[23] Citizens' Surety, *supra* at 371.

[24] *Supra* at 371-372.

Citizens' Surety in effect holds that if a court does not have jurisdiction over the person of the defendant in an action *in personam* because he has neither appeared voluntarily nor been served personally with summons within the forum, such jurisdictional defect may be cured by attachment or garnishment pursuant to Section 1 of Rule 57 which, by itself, converts the action into one *quasi-in-rem* and would authorize the court to "proceed to judgment" at least to the extent of the value of the attached property of the defendant who had not been personally served with summons.

Although Citizens' Surety involved an action against a resident defendant, it also serves as a valid precedent in actions involving non-resident defendants. If this remedy of "conversion" is available in an action against a resident to protect a court's assumption of jurisdiction in the case, and its power to validly "try the case" or "proceed to judgment" therein, there is no reason why the same prescription cannot be utilized in actions against non-resident defendants. In this regard, it may be worth noticing that prior to Pantaleon (which invalidates courts' assumption of jurisdiction over defendants who have not been personally summoned in actions strictly *in personam* as violative of due process), the rule recognized by the Supreme Court in interpreting the provisions of the Rules of Court then existing, which are similar to Sections 16 and 17 (on summons) of the present Rules of Court, was that:

> a distinction is made between a resident and a non-resident defendant: as to the former, service of summons by publication may be made even in a personal action; but as to the latter, the action must be one *in rem* or *quasi-in-rem* in order that service of summons by publication may be authorized.[25]

Pantaleon eliminated the distinction in Fontanilla that while service of summons by publication may validly be availed of in a personal action against a resident, the same type of service of summons is not good as to non-residents[26] except in actions against them that are *in rem* or *quasi-in-rem*. As held in Pantaleon, service of summons by publication in a personal action against defendants who do not voluntarily appear in the action "cannot—consistent with the due process clause of the Bill of Rights—confer upon the court jurisdiction over said defendants."[27] If "conversion" can cure the constitutional defect as to the exercise of the court's jurisdiction in a case involving a resident, the same remedy can perforce be applied as to a non-resident defendant.

The judgment of the court, exercising *in rem* or *quasi-in-rem* jurisdiction over non-resident defendants cannot, of course, impose a personal liability on

---

[25]Fontanilla v. Dominguez, 73 Phil. 579, 582 (1942).

[26]As established in the earlier cases of *Banco Español-Filipino* and *Perkins*, *supra*. Notes 5 and 1 respectively.

[27]Pantaleon v. Asuncion, 105 Phil. 761, 765 (1959).

them. The judgment against them can only operate to dispose of their rights and interests in the properties owned by them that have been attached at the commencement, or in the course of, the suit.

In the seminal case of **Pennoyer v. Neff**[28], the United States Supreme Court underscored that the only effect of proceedings *in rem* or *quasi-in-rem:*

> is to subject the property attached to the payment of the demand which the court may find to be due to the plaintiff. That such is the nature of this proceeding in this latter class of cases is clearly evidenced by two well established propositions: first, the judgement of the court, though in form a personal judgment against the defendant, has no effect beyond the property attached in that suit. No general execution can be issued for any balance unpaid after the attached property is exhausted. No suit can be maintained on such a judgment in the same court, or in any other: nor can it be used as evidence in any other proceeding not affecting the attached property... second, the court, in such a suit, cannot proceed, unless the officer finds some property of the defendant on which to levy the writ of attachment...[29]

Thus, in actions *in rem* or *quasi-in-rem*, the court may even render, pursuant to the plaintiff's prayer, "in form a personal judgment" against a non-resident defendant. The judgment, however, will have no effect beyond the disposition of the non-resident defendant's property already in the custody of the court. The form of the relief or the judgment sought may even be one appropriate in actions *in personam* in the same manner that the court's judgment may "in form" even be personal in nature (i.e. impose a judgment that delineates the personal rights and obligations of the parties) but judgments in actions (*in rem* or *quasi-in-rem)* will not have any effect beyond the disposition of the property of the non-resident defendant in the custody of the court pursuant to the above-quoted principle in **Pennoyer.**

It will be noted that the doctrines in **Banco Español-Filipino** and **Perkins** are derived from **Pennoyer.** The latter case itself merely echoes what was then considered an established rule in the United States that when a plaintiff could not obtain personal jurisdiction over a defendant, he could seek out property of the defendant located within the forum, have it seized and satisfy his judgment out of the property, **even though the claim against the defendant was unrelated to the property.**[30]

But the force of **Cooper** and **Pennoyer** has already been significantly reduced in the United States with the advent of **Shaffer v. Heitner.**[31]

In **Shaffer,** the United States Supreme Court established the rule that "all assertions of state-court jurisdiction must be evaluated according to the

---

[28]95 U.S. 714 (1878).

[29]Pennoyer v. Neff, *supra* at 725-726.

[30]Cooper v. Reynolds, 77 U.S. 308, 318 (1870), cited in *Pennoyer, supra* Note 28. (Emphasis supplied.)

[31]433 U.S. 186 (1976).

standards set forth in *International Shoe* and its progeny."[32] Shaffer etched the contours of state-court jurisdiction *in rem* (as distinguished from jurisdiction *in personam)* and directly limited the scope of Pennoyer by imposing the standards set in the earlier case of International Shoe Co. v. Washington[33] on assertions of state-court jurisdiction in actions *in rem.* Thus, the mere presence of the property of the non-resident defendant in the forum would not support a State's jurisdiction over such non-resident unless the presence of the property suggests the existence of other ties among the defendant, the State and the litigation.[34]

In International Shoe, the United States Supreme Court laid down the rule that a state-court's jurisdiction over the person of a defendant (or its jurisdiction *in personam)* could no longer be based upon the court's power over the defendant's person (i.e. his physical presence in the forum) but that it must be based upon an evaluation of whether he has certain "minimum contacts" with it such that the maintenance of the suit does not offend "traditional notions of fair play and substantial justice."[35] Thus, the test as to a State's personal jurisdiction over a defendant is no longer his mere presence in the State (which previously afforded the state-court the right to exercise its coercive processes against him) but whether the defendant had "such contacts" to require him to defend the particular suit which was instituted in that State.

International Shoe eliminated the rule applicable in actions *in personam* which had also been established under Pennoyer, that if a court had jurisdiction over the defendant's person merely because the defendant was "present" within the forum, then it had the authority to render a personal judgment upon him. While this *in personam* wing of Pennoyer was eliminated, the *in rem* wing was left mainly unaltered until the advent of Shaffer.

Under the regime of Pennoyer, a state could proceed to judgment in proceedings *in rem* because of its exclusive sovereignty over properties located within its territory; such jurisdiction exists regardless of the presence or absence of the owner of the owner of the property within the forum, and regardless of the relation of the property with the claims being asserted in the action.

It was implicit in Pennoyer that a proceeding against the "property" was not against the "owner" and American courts had in fact gone so far as to hold that because of this, "due process did not require any effort to give a property owner personal notice that his property was involved in an *in rem* proceeding."[36]

---

[32]Shaffer v. Heitner, *supra* at 212.

[33]326 U.S. 310 (1945).

[34]Shaffer, *supra* Note 31 at 209.

[35]International Shoe Co., *supra* Note 33 at 316.

[36]Shaffer, *supra* Note 31 at 200.

But this rationale had been questioned on the ground that "traditional notions of fair play and substantial justice" that apply in actions *in personam* equally apply to actions *in rem*.[37] And the United States Supreme Court expressly noted that:

> [a]lthough this court has not addressed this argument directly, we have held that property cannot be subjected to a court's judgment unless reasonable and appropriate efforts have been made to give the property owners actual notice of the action... This conclusion recognizes, contrary to Pennoyer, that an adverse judgment *in rem* directly affects the property owner by divesting him of his rights in the property before the court.[38]

The Court then concluded that:

> [T]raditional notions of fair play and substantial justice can be as readily offended by the perpetuation of ancient forms that are no longer justified as by the adoption of new procedures that are inconsistent with the basic values of our constitutional heritage... The fiction that an assertion of jurisdiction over property is anything but an assertion of jurisdiction over the owner of the property supports an ancient form without substantial modern justification. Its continued acceptance would serve only to allow state-court jurisdiction that is fundamentally unfair to the defendant.[39]

International Shoe and Shaffer provide an opportunity for re-examining our prevailing rule as to jurisdiction *in rem* over non-resident defendants (derived as it is from Pennoyer). Will the mere presence of defendant's property be enough to sustain the exercise of a court's jurisdiction *in rem* in light of the dictates of due process? What contacts would be sufficient to warrant *in rem* jurisdiction, assuming that the non-resident defendant's properties located in the Philippines have been attached?

In this regard the following thoughts may be offered:

1. The "minimum contacts" required to authorize *in rem* or *quasi-in-rem* jurisdiction over a non-resident defendant need not be such as to warrant a finding that the non-resident defendant (including a non-resident corporation) is "doing business" in the Philippines, a term which properly implies a "continuity" of business dealings. It may be remembered that if a foreign corporation is doing business in the Philippines, it is deemed in law to be present in the Philippines and thus subject to the *in personam* jurisdiction of its courts.

2. The emphasis, as in the application of the "doing business" test, should be on the quality or nature of the "contact" and not its quantity. Thus, a tort or a criminal offense committed or producing its harmful effects in the Philippines (especially to resident plaintiffs) may provide the required contact with the forum so as to authorize jurisdiction *in rem* or *quasi-in-rem*.

---

[37]Shaffer, *supra* at 205.

[38]Shaffer, *supra* at 206 [citations omitted].

[39]Shaffer, *supra* at 212 [citations omitted].

And in this regard, it may be worth noting that a tortious act, even if perpetrated abroad, if intended to produce its harmful effects in the Philippines, may warrant the proper exercise of the *in rem* or *quasi-in-rem* jurisdiction of Philippine courts. Thus, it has been observed that:

> [w]hen the defendant acts tortiously outside the forum causing, not physical injury but, economic harm to the plaintiff in the forum, the forum should have jurisdiction when the defendant intended or should have foreseen that the primary impact of his acts would be in the forum, or where there is some other nexus between forum and defendant that makes the exercise of jurisdiction reasonable.[40]

3. Although the mere presence of a non-resident defendant's properties within the Philippines may not, of itself, if the rationale in Shaffer is to be adopted, be sufficient to warrant the exercise of *in rem* or *quasi-in-rem* jurisdiction by Philippine courts in disposing of the non-resident defendant's properties, the presence of his properties within the forum might suggest "the existence of other ties"[41] among said non-resident defendant, the resident plaintiff and the cause of action or litigation such as to make the exercise of jurisdiction of Philippine courts over the case reasonable.

And as a necessary corollary to the foregoing, there need not be a direct tie between the property of the non-resident defendant located in the forum and the plaintiff's cause of action. Such a direct link is not required under the guidelines of Shaffer. The existence of certain "minimum contacts" would provide the authorization, under the due process clause, for the exercise of the court's *in rem* or *quasi-in-rem* jurisdiction over the case involving the non-resident defendant.

---

[40]WEINTRAUB, THE CONFLICT OF LAWS 157 (1980).

[41]Shaffer, *supra* Note 31 at 209.