Note :

PRELIMINARY INJUNCTIONS: LAW AND PRACTICE

*Antonio R. Bautista**

The preliminary injunction is perhaps one of the most dynamic reliefs which a court can grant. If for this reason alone, the law governing this remedy deserves close study and better understanding. In any event, the subject of preliminary injunctions is definitely bedeviled by more controversy and grey areas than the subject of *final* injunctions.

I. Essential Characteristics of the Remedy

Perhaps one good way to approach the study of the law on preliminary injunctions is to look at the concept and the device in broad adjectival terms. Most that has to be learned on the subject can be derived from the basic characteristics of a preliminary injunctions. These fundamental characteristics are:

1. A preliminary injunction is, as the name implies, *preliminary*. In other words, *provisional*.

2. It is an *equitable* remedy.

3. It is an *auxiliary* or *ancillary* remedy.

4. It is *prohibitory* or *mandatory*.

5. It operates *in personam*.

This article is built around these five (5) essential characteristics of a preliminary injunction.

II. The Preliminary Injunction as a Provisional Remedy

A preliminary injunction is provisional because its lifetime cannot extend beyond the duration of the litigation from whence it issued. If it becomes permanent, then it is a final, and no longer a mere preliminary, injunction.

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*Senior partner, Bautista Picazo Buyco Tan and Fider; *Professor*, U.P. College of Law and Ateneo de Manila College of Law.

Otherwise characterized, the writ of preliminary injunction is an interlocutory order. As such, it cannot survive the main case of which it is a part or an incident.[1]

If it is issued without hearing and without bond, it is generally known as a *temporary restraining order*. Under B.P. 224 which became effective on 16 August 1982, a temporary restraining order has a lifetime of only twenty days from the date of its issuance. In other words, the temporary restraining order, or TRO, automatically expires on the twentieth day by the sheer force of the law, no judicial declaration to that effect being necessary.[2] The real intendment of a TRO is to serve as a restraint on the defendant until the propriety of granting an injunction *pendente lite* can be determined.[3] The twenty-day limitation was imposed by statute as a reaction against the long inaction of judges on motions to lift restraining orders.[4] A TRO is nothing less than a preliminary injunction without a bond.

True to its provisional character, a preliminary injunction may be dissolved even before final judgment. The Rules of Court is silent on whether a preliminary injunction may be dissolved *ex-parte* or only after notice and hearing. It has already been ruled, however, over a strong dissent, that even though a preliminary injunction was granted after a hearing, it may be dissolved on an *ex-parte* application.[5]

Suppose, however, the main case is dismissed by judgment after trial and this judgment is appealed. What then happens to the preliminary injunction pending appeal? The rule is: If the judgment of dismissal is silent on the matter, the preliminary injunction is not *ipso facto* dissolved in case of an appeal from the judgment of dismissal. The reason for this result is that, otherwise, the case would become moot despite the appeal. So, the preliminary injunction is dissolved only if the court expressly says so.[6] The rule is different in case of a permanent injunction in which case, by express provision of the Rules,[7] the judgment granting, dissolving or denying the injunction is immediately operative.

Still and all, if the judgment decrees the dissolution of a preliminary injunction, an appeal from this judgment does not reinstate the preliminary injunction. A distinction is clearly drawn between an

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1 Roldan, Jr. v Arca, 65 SCRA 336, 344 (1975).
2 Anglo-Fil Trading Corp. v Lazaro, 124 SCRA 495, 512 (1983).
3 124 SCRA at 512.
4 Board of Transportation v Castro, 125 SCRA 410, 417-418 (1983).
5 Farrales v Fuentecilla, 95 Phil. 417, 420-421(1954).
6 Dimaunahan v Aranas, 74 Phil. 455, 460 (1943).
7 RULES OF COURT, Rule 39, sec. 4.

order dissolving a writ of preliminary injunction issued before decision and one decreed in the decision itself.[8]

> An order dissolving a writ of preliminary injunction issued before decision, we must say, stands on a footing different from that decreed in the decision itself. In the former, the possibility of irreparable injury which could visit petitioner pending hearing would be a potent deterrent against dissolution. The court at that time did not yet have a full grasp of the situation. But after the facts are known and the decision is rendered, a strong presumption of the correctness and validity of the judge's directive arises. So that when the court in its decision orders dissolution of the preliminary injunction, weighty reasons must be advanced to overturn such order. Because discretion exercised by the trial court should normally be upheld. That court is at home, so to speak, with the record of the proceedings.[9]

III. The Equitable Character of the Remedy

Conventional wisdom regards the preliminary injunction, like the final injunction, as a device of equity. As such, it is not supposed to issue except when there is no other speedy and adequate remedy available to repair the damage done or avoid that which may be done by new violation of the plaintiff's rights. Following this theory, a preliminary injunction should never issue where an action for damages would adequately compensate the injuries caused.[10]

This original conception of a preliminary injunction as an equitable remedy such that it would not be available where the applicant's grievance could well be compensated, does not seem to have endured or to have been deeply implanted in Philippine practice. Recent Supreme Court decisions rarely make reference to such a precondition to the issuance of a preliminary injunction. The Rules of Court is no more demanding. It simply requires that the applicant be entitled to the principal relief he seeks or that the acts he complains of would probably work injustice to him or that the defendant's acts or threatened acts would probably violate applicant's rights respecting the subject of the application.[11]

The mere fact therefore that plaintiff's damages are compensable will not disentitle him to a preliminary injunction. More determinative of the availability of this relief is the sufficiency of the allegations of the complaint. That plaintiff may be fully compensated for such

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8 Aguilar v Tan, 31 SCRA 205 (1970).

9 31 SCRA at 213.

10 Golding v. Balatbat, 36 Phil. 941, 946 (1954).

11 RULES OF COURT, Rule 58, sec 3.

damages as he may suffer is a consideration which must merely be balanced against the damage which may be caused the defendant by the continuance of the writ.[12] Nor is the defendant's willingness or capacity to fully compensate plaintiff for his damages a ground by itself for the dissolution of the writ of preliminary injunction. So, the mere offer of a counterbond does not suffice to warrant the dissolution of the writ. A threatened destruction of property will not be tolerated even if the party against whom the writ is directed is willing to pay for all damages he may cause thereby.[13]

IV. The Ancilliary Nature of the Remedy

One can file an independent action for the sole purpose of securing an injunction. But this is what is known as a *final* injunction - one which is decreed in the final judgment of a court. A preliminary injunction, upon the other hand, is granted after the commencement of a main action but before judgment.[14] Given this ancilliary character of a preliminary injunction, an independent action will not lie merely to obtain it.[15] There must be a principal action to which the writ must relate.

Where the preliminary injunction seeks to restrain acts unrelated to the main cause of action, it loses its ancilliary character. This is well illustrated by the early case of *Rodriguez v. Rovira.*[16] In that case, the petitioner filed an action for mandamus to compel the trial judge to approve his bill of exceptions which he filed, and he applied in the same petition for a writ of preliminary injunction to restrain the trial judge from passing upon and deciding the amended application for a writ of possession filed by the other parties. In denying the petition for a preliminary injunction, the Supreme Court reasoned:

> The remedy prayed for herein has no bearing upon the extraordinary legal remedy of mandamus inasmuch as it is not addressed to the respondent judge to restrain him from disapproving the bill of exceptions which is the subject matter of this petition.

V. The Maintenance of the "Status Quo"

The power to grant a writ of preliminary injunction can be considered as inherent in all courts. By this power the court is enabled to

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12 RULES OF COURT, Rule 58, sec 6.
13 Dela Cruz v. Torres, 107 Phil. 1163, 1168 (1960).
14 Rosauro v. Cuneta, 151 SCRA 570, 575 (1987).
15 Panay Municipal Cadastre v. Garduno, 55 Phil. 574, 578 (1931).
16 63 Phil. 476, 479-480 (1936).

secure the rights of the litigants *pendente lite* or to preserve the *status quo* of the parties or of the subject matter in litigation.[17] The function of preserving the *status quo* reinforces the character of the writ of preliminary injunction as an ancilliary remedy.

There is need to preserve the *status quo* in order not to render ineffective any decision or relief that may be subsequently rendered in the principal case.[18]

The term *status quo* is a term of art. It is actually a shorthand for *status quo ante* the litigation. In other words, the *status quo* to be preserved is the status of the parties or property in litigation as it existed immediately before the controversy which led to the litigation. In what is now classic language, the *status quo* is the "last actual peaceable uncontested *status* which preceded the pending controversy."[19] Note that it is not the status of the parties or the property immediately *before the litigation* but their status *before the controversy* which gave rise to the litigation.

A definition of the *status quo* to refer to the status immediately preceding the litigation would be a dangerous test. It would encourage the parties to take the law into their own hands by unilaterally altering the situation between them in the expectation that a preliminary injunction will preserve the situation or status as altered shortly before the litigation.

VI. The Preliminary Mandatory Injunction

The Rules of Court expressly recognizes two kinds of preliminary injunction: prohibitory or preventive, when it requires a person to refrain from a particular act, and mandatory, when it requires the performance of a particular act.[20]

A preliminary mandatory injunction is an extraordinary and drastic remedy. This writ is acknowledged as doing more than merely maintaining the *status quo*. For that reason, this writ is generally understood as being available only "in cases of extreme urgency; where the right is very clear; where considerations of the relative inconvenience bear strongly in complainant's favor; where there is willful and unlawful invasion of plaintiff's right against his protests and remonstrance, the injury being a continuing one; and where the effect

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17 Meralco v. del Rosario, 22 Phil. 433, 437 (1912).
18 Deportation Board v. Santos, 10 SCRA 451, 454 (1964).
19 Rodulfa v. Alfonso, 76 Phil. 225, 231-232 (1946).
20 RULES OF COURT, Rule 58, sec 1.

of the mandatory injunction is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."[21]

There is one special instance where a writ of preliminary mandatory injunction is expressly made available by statute. This is in forcible entry cases by virtue of the following provision in the second paragraph of Article 539 of the Civil Code:

> A possessor deprived of his possession through forcible entry may within ten days from the filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from filing thereof.

The foregoing statutory provision was adopted as a palliative against prolonged litigation where the owner is frequently deprived of his possession even if he has immediate right thereto.[22]

Article 539 of the Civil Code is, however, not an exclusionary rule by any means. It is not intended to exclude other cases where for compelling reasons the court may, in the proper exercise of discretion, grant a preliminary mandatory injunction to place plaintiff *pendente lite* in possession of real property sought to be recovered.[23]

But it is generally understood that where the complaint alleges an action of unlawful detainer and not of forcible entry, a preliminary mandatory injunction may not properly be issued.[24]

VII. A Preliminary Injunction Operates "In Personam"

When it is considered that a court's injunctive power is backed up by its contempt power, it becomes important to appreciate that a court cannot enjoin the whole world. A writ of preliminary injunction is *in personam* only and as such it can bind only the parties to the litigation, those represented by such parties or those who are in privity with them, or both.[25] No matter how broadly a court may word the writ, it cannot bind non-parties without offending due process. Any attempt to enjoin the world at large may amount to legislation.

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21 Integrated Construction Services, Inc. v. Relova, 65 SCRA 638, 649 (1975).
22 Torre v. Querubin, 101 Phil. 53, 56 (1957).
23 Sahim v. Montejo, 8 SCRA 333, 335-336 (1963).
24 Dikit v. Ycasiano, 89 Phil. 44, 46 (1951).
25 Kean v. Hurley, 179 F.2d 888, 891-892 (8th Cir. 1950).

While a violation of a preliminary injunction may constitute contempt of court, the violation will not invalidate the act done. This is precisely because an injunction has no *in rem* effect. So, even where a preliminary injunction prohibits a defendant from transferring a property, any transfer of the property in violation of an injunction to an innocent third person will not affect the latter's rights.[26]

VIII. The Requirement of a Clear and Present Right

To be entitled to a preliminary injunction, the plaintiff must make a *prima facie* showing that he is entitled to the relief demanded.[27] A preliminary injunction is issued to protect a clear and present right, a right in *esse* - not a contingent or future right.[28] Plaintiff must show equity. Even the possibility of irreparable damage without proof of violation of an actual existing right will not support the grant of preliminary injunctive writ.

> Injunction, like other equitable remedies, will issue only at the instance of a suitor who has sufficient interest or title in the right or property sought to be protected x x x. For the court to act, there must be an existing basis of facts affording a *present right* which is directly threatened by the act sought to be enjoined. An impending or threatened invasion of *some legal right of the complainant*, and some interest in preventing the wrong sought to be perpetrated must be shown. *It is always a ground for denying injunction that the party seeking it has insufficient title or interest to sustain it*, and no claim to the ultimate relief sought - in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use the injunctive process of the court to enforce a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. *The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of suits to establish title, and will not lend its preventive aid by injunction where the complainant's title or right is doubtful or disputed.* He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary.
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> The possibility of irreparable damage without proof of violation of an actual existing right, is no ground for an injunction, being a mere *damnum absque injuria*.[29]

IX. "Irreparable Injury"

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26 Auyong Hian v. Court of Tax Appeals, 59 SCRA 110, 129 (1976).

27 RULES OF COURT, Rule 58, secs. 3 (a) and 4 (a).

28 Bacolod-Murcia Milling Co., Inc. v. Capitol Subdivision, Inc., 17 SCRA 731, 737 (1966).

29 Angela Estate v. CFI of Negros Occidental, 24 SCRA 500, 509-510 (1968).

So drastic and violent is a preliminary injunction that the Rules proscribed its issuance *ex-parte*. The exception is where "it shall appear from facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice."[30]

When is an injury "irreparable"? The term "irreparable injury" is, like the term *status quo*, a term of art. It need not be injury which is beyond compensation. The test is more in the difficulty of measurement than in the quantity of the damage. The most common definition reads as follows:

> By "irreparable injury" is not meant such injury as is beyond the possibility of repair or beyond possible compensation in damages nor necessarily great injury or great damage, but that species of injury, whether great or small, that ought not to be submitted to on the one hand or inflicted on the other; and, because it is so large on the one hand, or so small on the other, is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law.[31]

Another formulation is as follows:

> Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy (Crouc v. Central Labor Council, 83 ALR 193). "An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produced hurt, inconvenience or damage that can be estimated only by conjecture, and not by any accurate standard of measurement" (Phipps v. Rogue River Valley Canal Co., 7 ALR 741). An irreparable injury to authorize an injunction consists of a "serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof" (Dunker v. Field and Tub Club, 92 P. 502)."[32]

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30 RULES OF COURT, Rule 58, sec. 5.

31 Ollendorff v. Abrahamson, 38 Phil. 585, 595 (1918).

32 Social Security Commission v. Bayona, 5 SCRA 126, 130 (1962).

X. Some Established Proscriptions

A preliminary injunction may seriously destabilize the parties, or one or some of them, especially if the litigation becomes protracted. For, the longer the litigation, the longer is the preliminary injunction. A litigant's ultimate stake in the litigation may even be less crucial and decisive than the temporary leverage that he may gain from a preliminary injunction. Given this impact of a preliminary injunctive writ, the law has from time to time been carving out special exemptions from the reach of the injunctive process. This has been accomplished by statute or by doctrinal pronouncements.

Statutory proscriptions abound. One of the most familiar is the law prohibiting injunctions in labor disputes.[33] Other examples are statutes prohibiting the issuance of a preliminary injunction in cases involving government concessions, licenses and other permits,[34] in cases involving infrastructures and natural resource development projects and public utilities operated by the government,[35] against mortgage foreclosures by government financial institutions,[36] and against collection of taxes.[37] The ban on injunctions against tax collections is sought to be justified by the availability to the taxpayers of other remedies such as a suit for the refund of the tax.[38]

There has, of course, long been in our statute books a limitation on the territorial reach of injunctions. An injunction can operate only within the region of the issuing RTC judge.[39] In consequence of this statutory limitation, the RTC-Rizal, for instance, cannot enjoin the City Fiscal of Davao from conducting a preliminary investigation.[40] Various refinements have developed over these restrictions. For instance, the RTC-Davao can enjoin the Secretary of Public Works and Communications who holds office in Manila from demolishing dams in Davao. This is because the acts so enjoined are theorized as being committed or about to be committed in Davao.[41] An exception to this rule pegging the territorial reach of an injunction to the *situs* of the act to

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33 LABOR CODE, art. 254.

34 Pres. Dec. No. 605 (1974).

35 Pres. Dec. No. 1818 (1981).

36 Pres. Dec. No. 385 (1974), sec. 2.

37 TAX CODE, Sec. 219.

38 Sarasola v. Trinidad, 40 Phil. 252, 264 (1919).

39 Rep. Act. No. 296 (1948), sec. 44 (h) in relation to *Batas Pambansa Blg.* 129, sec. 21 (1). *See also* RULES OF COURT, Rule 58, sec. 2.

40 *See* People v. Mencias, 18 SCRA 807 (1966).

41 Gonzales v. Secretary of Public Works and Communications, 18 SCRA 296, 299 (1966).

be enjoined is where the sole issue is the legality of the decision of the administrative officials.[42]

Among the better known acts which case law has well put beyond the reach of the preliminary injunctive process are the following:

1. Consummated acts;

2. Criminal prosecution;

3. Interference with coordinate courts; and

4. Transfer of possession.

These well-known exceptions deserve a little extended comment.

1. Consummated acts

Generally, an injunction is understood to operate upon unperformed and unexecuted acts. Where therefore the act complained of has already been consummated it can no longer be undone except perhaps through a preliminary mandatory injunction.[43] Therefore, a preliminary injunction is not available to effect the removal of an officer or reinstatement of one without cause.[44]

2. Criminal prosecution

The exception is said to be dictated by public interest because criminal acts are supposed to be immediately investigated and prosecuted for the protection of society.[45] The concern is that investigation or prosecution of a crime may at every turn be halted by a court order.[46] There are however traditional exceptions to the rule that a criminal prosecution may not be enjoined, these exceptions being the following:

1. For the orderly administration of justice;

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42 Lianga Bay Logging Co., Inc. v. Lopez Enage, 152 SCRA 80, 94 (1987).

43 Romulo v. Yniguez, 141 SCRA 263, 279 (1986); Remonte v. Bonto, 16 SCRA 257, 263 (1966).

44 Acain v. Board of Canvassers, 108 Phil. 165, 170 (1960).

45 Asutilla v. PNB, 141 SCRA 40, 44 (1986); Nicomedes v. Chief of Constabulary, 110 Phil. 52, 56 (1960).

46 Hernandez v. Albano, 19 SCRA 95, 98 (1967).

2. To prevent the use of the strong arm of the law in an oppressive and vindictive manner;

3. To avoid multiplicity of actions;

4. To afford adequate protection to constitutional rights; and

5. In proper cases, because the statute relied upon is unconstitutional or was held invalid.[47]

3. Interference with coordinate court

This exception is borne of the need to avoid conflict of power between different courts of coordinate jurisdiction. The wisdom of the exception is dramatically exemplified in the case of *National Power Corporation v. De Veyra*.[48] In that case, the Sheriff of Baguio City, acting on a writ of execution issued by the CFI of Manila garnished cash deposits of defendant in a bank in Baguio City. A new complaint having been filed in CFI-Baguio by the defendant in the Manila case, CFI-Baguio issued a writ of preliminary mandatory injunction restraining the Sheriff from proceeding further with the garnishment. The preliminary mandatory injunction was struck down as an undue interference with a coordinate court. The property garnished is in *custodia legis* of CFI-Manila which therefore has exclusive jurisdiction over it. The Supreme Court explained:

> Needless to say, an effective ordering of legal relationships in civil society is possible only when each court is granted exclusive jurisdiction over the property brought to it. To allow coordinate courts to interfere with each other's judgments or decrees by injunctions, would obviously lead to confusion and might seriously hinder the proper administration of justice.

So, a CFI cannot enjoin the execution of a final judgment of a Court of Agrarian Relations, which, although a court of special jurisdiction, is a court of coordinate rank.[49] The rule applies as well to the CIR which has a similar rank with the CFI.[50] Nor may a CFI interfere by injunction with the acts of the City Court which has taken cognizance of a case in its concurrent jurisdiction with the CFI because the City Court in such a case is a court of concurrent jurisdiction.[51]

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47 Guingona, Jr. v. City Fiscal of Manila, 128 SCRA 577, 589 (1984).

48 3 SCRA 646, 649 (1961).

49 Belleza v. Dimson Farms, Inc., 44 SCRA 385 (1972).

50 Kaisahan ng mga Manggagawa sa La Campana v. Caluag, 2 SCRA 806, 808 (1961).

51 Templo v. de la Cruz, 60 SCRA 295, 299 (1974).

Removed however from the doctrine of non-interference by injunction with the processes of a coordinate court is the case where a third-party claimant in an execution proceeding brings an action in another court and obtains a preliminary injunction from that court restraining the execution on his property.[52] This doctrine is rationalized thus:

> Under Section 17 of Rule 39 a third person who claims property levied upon on execution may vindicate such claim by action. Obviously, a judgment rendered in his favor, that is, declaring him to be the owner of the property, would not constitute interference with the powers or processes of the court which rendered the judgment to enforce which the execution was levied. If that be so - and it is so because the property, being that of a stranger, is not subject to levy - then an interlocutory order such as injunction, upon a claim and prima facie showing of ownership by the claimant cannot be considered as such interference either.[53]

4. Transfer of possession

It is generally held that a preliminary injunction is not available to transfer possession of the property in controversy from one person to another before the right is determined, there being a dispute as to ownership. One rationale for this rule is that the party in possession is presumed to have a better right until the contrary is adjudged.[54] Another rationale is that there is another available adequate and speedy remedy in the form of a suit for forcible entry or unlawful detainer.[55]

XI. Recovery Against the Injunction Bond

If it be adjudged that the applicant was not entitled to the preliminary injunction, then the injunction bond should answer for the damages which may have been caused by the writ to the party enjoined. Malice or lack of good faith is not an element of recovery against the bond. Proof of malice or bad faith is required only if the suit against the bond were for damages founded on malicious prosecution in which case the law governing malicious prosecution would apply. If proof of malice

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52 Abiera v. Court of Appeals, 45 SCRA 314 (1972).
53 45 SCRA at 320-321.
54 Gordillo v. del Rosario, 39 Phil. 829, 836 (1919).
55 Golding v. Balatbat, 36 Phil. 941, 946 (1917).

or bad faith were required for recovery against the bond, then the filing of the bond would become useless.[56]

The requirement that the claim against the bond be made before final judgment[57] is a sensible requirement. It is intended to prevent more than one action or proceeding between the parties arising out of the facts stated in the complaint however many may have been the incidents resulting from its course through the courts. Duplicative presentation of evidence and re-litigation of issues is also thereby avoided.[58]

56 Aquino v. Socorro, 35 SCRA 373, 377 (1970).
57 RULES OF COURT, Rule 58, sec. 9.
58 Santos v. Moir, 36 Phil. 350, 353 (1917).