

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

MAXIMO H. GREGORIO,
Petitioner,

-versus-

**G.R. No. L-22802
November 29, 1968**

**COURT OF APPEALS (4th Division) and
LORENZO G. VALENTIN,**
Respondents.

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DECISION

FERNANDO, J.:

In this Special Action for *Certiorari* and *Mandamus*, petitioners, invoking the applicable procedural rule,^[1] assail the validity of two resolutions of respondent Court of Appeals. The first, rendered on March 13, 1964, denied a petition of the deceased father of petitioners, then appellant, who sought to have elevated to such court the evidence presented in the two cases then on appeal. The reason for denial is set forth thus: "It is evident that counsel for the appellant intends to convert the appeal from the denial of relief into an appeal from the decision itself, which is error. The motion to elevate is therefore [denied] and counsel for appellant is [given] 10 days from receipt of this resolution to file brief."^[2]

The aforesaid order was affirmed in another resolution of April 8, 1964, denying a motion for reconsideration, the respondent court explaining why: “Considering that the case of Samia vs. Medina, 50(56) Phil. 613 cited by counsel has no relation to the situation at bar; considering that the provisions of Section 2, Rule 41 of the Revised Rules of Court are not applicable because to grant the motion of counsel is not to take `further proceedings’ but would actually set the case back and delay its disposition (see Rule 144); and considering that Section 2 of Rule 41, which allows appellant to assail the decision on the merits in an appeal from a denial of petition for relief, creates a new right for appellant in derogation of appellee’s right, and this appeal was perfected before the Revised Rules took effect; the Court [resolved] to [deny] said motion for reconsideration, and to [require] counsel for the appellant to file brief within [ten] 10 [days] from receipt of this resolution.”^[3]

Hence, this petition for certiorari and mandamus dated April 21, 1964. At first, it was dismissed for being premature, according to our resolution of April 29, 1964, but thereafter, on July 6, 1964, we reconsidered, respondent Court of Appeals as well as the other respondent Lorenzo G. Valentin being required to file an answer within ten days from notice thereof.

In its answer seeking the dismissal of the above petition, respondent Valentin sought to justify what was done by respondent Court and consequently the dismissal of the petition. Petitioner is entitled to the writ prayed for. It is undeniable, as respondent Court stated in the aforesaid resolution, that the rule of court applicable as of January 1, 1964,^[4] which would enable a party appealing from a judgment denying relief under Rule 38 likewise to “assail the judgment on the merits” for lack of support in the evidence, gave rise to a new procedural right. Nonetheless, under the doctrine uninterruptedly adhered to by this Court, the retroactive application of a procedural law is not violative of any right of a party who may feel that he is adversely affected.

As early as 1917, in *Enrile vs. Court of First Instance of Bulacan*,^[5] it was held: “We are of the opinion that Act No. 2588 is applicable to the present case for the reason that it affects procedure rather than the substantive rights of the parties and tends to remedy a condition

arising in appeals from judgments of justice's courts rendered in actions of forcible entry and detainer which, it is well known, has produced considerable hardship to appellants. Whether the motion to dismiss is the correct proceeding or not is immaterial as the action has been submitted to us on the merits and, in dealing with it thus, Act No. 2588 may be applied."

The above decision was quoted with approval in a case decided ten years later.^[6] So was Black on Interpretation of Laws. Thus: "Statutes regulating the procedure of the courts will be construed as applicable to causes of action accrued, and actions pending and undetermined, at the time of their passage, unless such actions are expressly excepted or unless vested rights would be disturbed by giving them a retrospective operation." Respondent Valentin, in this case, cannot allege any vested right which would preclude the application of the above principle.

Through the same Justice Villa-Real, this Court again had occasion in 1937, after a lapse of another ten years, and with a citation of the two above cases and the presence of an even more relevant fact, namely the enactment of a later procedural law while the case was pending decision, to reaffirm the principle that a later law procedural in nature must be given a retroactive effect.^[7]

This Court has, since then, adhered consistently to the above view.^[8] In Tolentino vs. Angeles, a 1956 decision,^[9] it reiterated that "retroactivity of laws that are remedial in nature is not prohibited." Moreover, in the latest case in point,^[10] it was categorically stated: "The amendment being procedural in character, no vested rights could attach."

This is not to say that under appropriate circumstances, a court of justice would not be justified to deny a retroactive application in the event that to do so "would not be feasible or would work injustice,"^[11] This is not such a case. As a matter of fact, further reflection would have induced the conclusion that the failure to elevate the evidence considering the new procedural rule, enabling a party to appeal from a judgment denying relief under Rule 38 to dispute likewise the merits of such decision for lack of evidentiary support, might be rendered nugatory, if retroactivity is not imparted to it. Not only then

is it feasible, but also, instead of working injustice, it will have precisely the opposite effect.

WHEREFORE, the writ of certiorari is granted annulling the resolution of respondent Court of March 14, 1964 as well as its resolution of April 8, 1964, denying the motion for reconsideration. The writ of mandamus is likewise granted to compel respondent Court to elevate to it the evidence presented during the hearing of the two cases on appeal, CA-G.R. Nos. 33051-R and 33052-R, at the trial before the Court of First Instance of Bulacan. Pending the notification to petitioners that such evidence is before it, the period for submitting their brief as appellants is held in abeyance. With costs against respondents Lorenzo G. Valentin.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar and Sanchez, JJ., concur Ruiz Castro and Capistrano, JJ., did not take part.

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- [1] Par. 2, Section 2, Rule 41 of the Revised Rules of Court provides: “A judgment denying relief under Rule 38 is subject to appeal, and in the course thereof, a party may also assail the judgment on the merits, upon the ground that is not supported by the evidence or it is contrary to law.”
- [2] Annex A, Petition, Record on Appeal.
- [3] Annex B, Ibid.
- [4] Section 2, Rule 41, Revised Rules of Court.
- [5] 36 Phil. 574, 576-577.
- [6] *Hosana vs. Diomano*, 56 Phil. 741, 745 (1927).
- [7] *Guevara vs. Laico*, 64 Phil. 144. Cf. *Sevilla vs. Tolentino*, 66 Phil. 196 (1938)
- [8] *Camacho vs. Court*, 80 Phil. 848 (1948); *People vs. Young*, 83 Phil. 702 (1949); *Ongsiako vs. Gamboa*, 86 Phil. 50 (1950); *Salcedo vs. Carpio*, 89 Phil. 254 (1951); *Castro vs. Sagales*, 94 Phil. 208 (1953)
- [9] 99 Phil. 309.
- [10] *Billones vs. CIR*, L-17566, July 30, 1965.
- [11] Rule 144, Revised Rules of Court.