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Malcolm. "a court cannot permit itself to enter into a joint debate with counsel for the losing side who is naturally supercritical," otherwise it could even result in allowing litigation "so stretch out to infinity."[11] That we should not allow to happen - especially so in a labor case with its gross disparity as to the staying power of the contending parties.

WHEREFORE, the motion for reconsideration filed by petitioners is denied.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Teehankee, Barredo, Makasiar, Antonio, and *Esguerra, JJ.*, concur.

[G.R. No. L-35702. May 29, 1973]

DOMINGO D. RUBIAS, *plaintiff-appellant, vs.* ISAIAS BATILLER, *defendant-appellee.*

SYLLABUS

1. **REMEDIAL LAW; PROCEDURE; PRE-TRIAL; PRE-TRIAL IN INSTANT CASE AMOUNTS TO A FULL-DRESS TRIAL.**— The pre-trial conference held by the trial court at which the parties with their counsel agreed and stipulated on the material and relevant facts and submitted their respective documentary exhibits as referred to in the pre-trial order practically amounted to a full-dress trial which placed of record all the facts and exhibits necessary for adjudication of the case.

2. **ID.; ID.; ID.; ID.; COMPLAINTS; DISMISSAL THEREOF FOR LACK OF CAUSE OF ACTION; INSTANT CASE.**— Where the plaintiff's claim of ownership to the land in question was predicated on the sale thereof in his favor for P2,000 in 1956 by his father-in-law, Francisco Militante, at a time when Militante's application for registration thereof had already been dismissed by the Iloilo land registration court and was pending appeal in the Court of Appeals, and the latter Court in 1958

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[11] United States *vs.* Aztigarraga, 36 Phil. 886, 891 (1917).

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affirming the dismissal of Militante's application for registration, the lack of any rightful claim or title of Militante to the land having been conclusively and decisively determined, dismissal by the lower court of plaintiff's complaint upon defendant's motion based upon plaintiff's lack of cause of action after the pre-trial is proper.

3. **CIVIL LAW; SPECIAL CONTRACTS; SALE; PERSONS PROHIBITED FROM ACQUIRING PROPERTY IN THEIR TRUST.**— Article 1491 of our Civil Code (like Article 1459 of the Spanish Civil Code) prohibits in its six paragraphs certain persons by reasons of the relation of trust or their peculiar control over the property, from acquiring such property in their trust or control either directly or indirectly and "even at a public or judicial auction," as follows: (1) guardians; (2) agents; (3) administrators; (4) public officers and employees; (5) judicial officers and employees, prosecuting attorneys, and lawyers; and (6) others specially disqualified by law.

4. **ID.; ID.; ID.; SALE TO LAWYER IN INSTANT CASE IN VIOLATION OF ARTICLE 1491 OF CIVIL CODE.**— No error could be attributed to the lower court's holding that the purchase by a lawyer of the property in litigation from his client is categorically prohibited by Article 1491, paragraph (5) of the Philippine Civil Code, and that consequently, plaintiff's purchase of the property in litigation from his client (assuming that his client could sell the same) was void and could produce no legal effect, by virtue of Article 1409, paragraph (7) of our Civil Code which provides that contracts "expressly prohibited or declared void by law" are "inexistent and void from the beginning" and that "(t)hese contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived."

5. **ID.; ID.; ID.; ID.; WOLFSON CASE RELIED BY PLAINTIFF SUPERSEDED BY THE CASE OF DIRECTOR OF LANDS *VS.* ABAGAT.** — The 1911 case of Wolfson *vs.* Estate of Martinez relied upon by plaintiff as holding that a sale of property in litigation to the party litigant's lawyer "is not void but voidable at the election of the vendor" was correctly held by the lower court to have been superseded by the 1929 case of Director of Lands *vs.* Abagat. In this later case of Abagat, the Court expressly cited two antecedent cases involving the same transaction of purchase of property in litigation by the lawyer which was

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expressly declared invalid under Article 1459 of the Civil Code of Spain (of which Article 1491 of our Civil Code of the Philippines is the counterpart) upon challenge thereof not by the vendor-client but by the adverse parties against whom the lawyer was seeking to enforce his rights as vendee thus acquired.

6. **ID.; ID.; ID.; ID.; NULLITY IS DEFINITE AND PERMANENT.**— The nullity of such prohibited contracts is definite and permanent and cannot be cured by ratification. The public interest and public policy remain paramount and do not permit of compromise or ratification. In this aspect, the permanent disqualification of public and judicial officers and lawyers grounded on *public policy* differs from the first three cases of guardians, agents and administrators (Article 1491, Civil Code), as to whose transactions, it has been opined that they may be "ratified" by means of and in "the form of a *new contract*, in which case its validity shall be determined only by the circumstances at the time of the execution of such new contract. The causes of nullity which have ceased to exist cannot impair the validity of the new contract. Thus, the object which was illegal at the time of the first contract, may have already become lawful at the time of the ratification or second contract; or the service which was impossible may have become possible; or the intention which could not be ascertained may have been clarified by the parties. The ratification or second contract would then be *valid from its execution*. However, it does *not* retroact to the date of the first contract."

APPEARANCES OF COUNSEL

Gregorio M. Rubias for plaintiff-appellant.

Vicente R. Acsay for defendant-appellee.

DECISION

TEEHANKEE, *J.*:

In this appeal certified by the Court of Appeals to this Court as involving purely legal questions, we affirm the dismissal order rendered by the Iloilo Court of First Instance after pre-trial and submittal of the pertinent documentary exhibits.

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Such dismissal was proper, plaintiff having no cause of action, since it was duly established in the record that the application for registration of the land in question filed by Francisco Militante, plaintiff's vendor and predecessor-in-interest, had been dismissed by decision of 1952 of the land registration court as affirmed by final judgment in 1958 of the Court of Appeals and hence, there was no title or right to the land that could be transmitted by the purported sale to plaintiff.

As late as 1964, the Iloilo Court of First Instance had in another case of ejectment likewise upheld by final judgment defendant's "better right to possess the land in question x x x having been in the actual possession thereof under a claim of title many years before Francisco Militante sold the land to the plaintiff."

Furthermore, even assuming that Militante had anything to sell, the deed of sale executed in 1956 by him in favor of plaintiff at a time when plaintiff was concededly his counsel of record in the land registration case involving the very land in dispute (ultimately decided adversely against Militante by the Court of Appeals' 1958 judgment affirming the lower court's dismissal of Militante's application for registration) was properly declared inexistent and void by the lower court, as decreed by Article 1409 in relation to Article 1491 of the Civil Code.

The appellate court, in its resolution of certification of 25 July 1972, gave the following backgrounder of the appeal at bar:

"On August 31, 1964, plaintiff Domingo D. Rubias, a lawyer, filed a suit to recover the ownership and possession of certain portions of lot under Psu-99791 located in Barrio General Luna, Barotac Viejo, Iloilo which he bought from his father-in-law, Francisco Militante in 1956 against its present occupant defendant, Isaias Batiller, who allegedly entered said portions of the lot on two occasions - in 1945 and in 1959. Plaintiff prayed also for damages and attorney's fees. (pp. 1-7, Record on Appeal). In his answer with counter-claim defendant claims the complaint of the plaintiff does not state a cause of action, the truth of the matter being that he and his predecessors-in-interest have always been in actual, open and continuous possession since time immemorial under claim of ownership of the portions of the lot in question and for the alleged malicious institution of the complaint

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he claims he has suffered moral damages in the amount of P 2,000.00, as well as the sum of P500.00 for attorney's fees. x x x

"On December 9, 1964, the trial court issued a pre-trial order, after a pre-trial conference between the parties and their counsel which order reads as follows:

'When this case was called for a pre-trial conference today, the plaintiff appeared assisted by himself and Atty. Gregorio M. Rubias. The defendant also appeared, assisted by his counsel Atty. Vicente R. Acsay.

A. During the pre-trial conference, the parties have agreed that the *following facts are attendant in this case* and that they will no longer introduce any evidence, testimonial or documentary to prove them:

1. That Francisco Militante claimed ownership of a parcel of land located in the Barrio of General Luna, municipality of Barotac Viejo, province of Iloilo, which he caused to be surveyed on July 18-31, 1934, whereby he was issued a plan Psu-99791 (Exhibit 'B'). (The land claimed contained an area of 171.3561 hectares.)

2. Before the war with Japan, Francisco Militante filed with the Court of First Instance of Iloilo an application for the registration of title of the land technically described in Psu-99791 (Exh. 'B') *opposed by the Director of Lands, the Director of Forestry and other oppositors.* However, during the war with Japan, the record of the case was lost before it was heard, so after the war Francisco Militante petitioned this Court to reconstitute the record of the case. The *record was reconstituted* in the Court of First Instance of Iloilo and docketed as *Land Case No. R-695, GLRO Rec. No. 54852.* The Court of First Instance heard the land registration case on November 14, 1952, and *after trial this Court dismissed the application for registration.* The applicant, Francisco Militante, *appealed* from the decision of this Court to the Court of Appeals where the case was docketed as *CA-G.R. No. 13497-R.*

3. *Pending the disposal of the appeal* in CA-G.R. No. 13497-R and more particularly on *June 18, 1956, Francisco Militante sold to the plaintiff, Domingo Rubias, the land* technically described in Psu-99791 (Exh. 'A'). The sale was duly recorded

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in the Office of the Register of Deeds for the Province of Iloilo as Entry No. 13609 on July 14, 1960 (Exh. 'A-1').

(NOTE: As per the deed of sale, Exh. A, what Militante purportedly sold to plaintiff-appellant, his son-in-law, *for the sum of P2,000.00* was "a parcel of *untitled* land having an area of 144.9072 hectares. x x x surveyed under Psu-99791 x x x (and) subject to the exclusions made by me, under (case) *CA-13497, Land Registration Case No. R-695, G.L.R.O. No. 54852*, Court of First Instance of the province of Iloilo. These exclusions referred to portions of the original area of over 171 hectares originally claimed by Militante as applicant, but which he expressly recognized during the trial to pertain to some oppositors, such as the Bureau of Public Works and Bureau of Forestry and several other individual occupants and accordingly withdrew his application over the same. This is expressly made of record in Exh. A, which is the *Court of Appeals' decision of 22 September 1958 confirming* the land registration court's *dismissal* of Militante's application for registration.)

4. On *September 22, 1958* the *Court of Appeals* in *CA-G.R. No. 13497-R* promulgated its *judgment confirming the decision of this Court in Land Case No. R-695, G.L.R.O. Rec. No. 54852* which *dismissed the application for Registration* filed by Francisco Militante (Exh. 'I').

5. Domingo Rubias declared the land described in Exh. 'B' for taxation purposes under Tax Dec. No. 8585 (Exh. 'C') for 1957; Tax Dec. Nos. 9533 (Exh. 'C-1') and 10019 (Exh. 'C-3') for the year 1961; Tax Dec. No. 9868 (Exh. 'C-2') for the year 1964, paying the land taxes under Tax Dec. No. 8585 and 9533 (Exh. 'D', 'D-1' and 'G-6').

6. Francisco Militante immediate predecessor-in-interest of the plaintiff, has also declared the land for taxation purposes under Tax Dec. No. 5172 in 1940 (Exh. 'E') for 1945; under Tax Dec. No. T-86 (Exh. 'E-1') for 1948; under Tax Dec. No. 7122 (Exh. '2'), and paid the land taxes for 1940 (Exhs. 'G' and 'G-7'), for 1945-46 (Exh. 'G-1') for 1947 (Exh. 'G-2'), for 1947 & 1948 (Exh. 'G-3'), for 1948 (Exh. 'G-4'), and for 1948 and 1949 (Exh. 'G-5').

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7. Tax Declaration No. 2434 in the name of Liberato Demontaño for the land described therein (Exh. 'F') was cancelled by Tax Dec. No. 5172 of Francisco Militante (Exh. 'E'). Liberato Demontaño paid the land tax under Tax Dec. No. 2434 on Dec. 20, 1939 for the years 1938 (50%) and 1959 (Exh. 'H').

8. The defendant had declared for taxation purposes Lot No. 2 of the Psu-155241 under Tax Dec. No. 8583 for 1957 and a portion of Lot No. 2, Psu-155241, for 1945 under Tax Dec. No. 8584 (Exh. '2-A'). Tax No. 8583 (Exh. '2') was revised by Tax Dec. No. 9498 in the name of the defendant (Exh. '2-B'), and Tax Dec. No. 8584 (Exh. '2-A') was cancelled by Tax Dec. No. 9584 also in the name of the defendant (Exh. '2-C'). The defendant paid the land taxes for Lot 2, Psu-155241, on Nov. 9, 1960 for the years 1945 and 1946, for the year 1950, and for the year 1960 as shown by the certificate of the treasurer (Exh. '3'). The defendant may present to the Court other land taxes receipts for the payment of taxes for this lot.

9. The *land claimed by the defendant* as his own was surveyed on June 6 and 7, 1956, and a plan *approved by Director of Lands* on *November 15, 1956* was issued, identified as *Psu-155241* (Exh. '5').

10. On *April 22, 1960*, the *plaintiff* filed a *forcible Entry and Detainer case* against Isaias Batiller in the Justice of the Peace Court of Barotac Viejo, Province of Iloilo (Exh. '4') to which the defendant Isaias Batiller filed his answer on August 29, 1960 (Exh. '4-A'). The *Municipal Court* of Barotac Viejo after trial, *decided the case on May 10, 1961 in favor of the defendant and against the plaintiff* (Exh. '4-B'). The plaintiff *appealed* from the decision of the Municipal Court of Barotac Viejo which was docketed in this Court as *Civil Case No. 5750* on June 3, 1961, to which the defendant, Isaias Batiller, on June 13, 1961 filed his answer (Exh. '4-C'). And *this Court* after the trial, *decided the case on November 26, 1964, in favor of the defendant, Isaias Batiller* and against the plaintiff (Exh. '4-D').

(NOTE: As per Exh. 4-B, which is the Iloilo Court of First Instance decision of 26 November 1964 *dismissing* plaintiff's therein complaint for ejectment against defendant, the Iloilo

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court expressly found "that plaintiff's complaint is *unjustified, intended to harass the defendant*" and "that the defendant, Isaias Batiller, has a *better right* to possess the land in question described in Psu-155241 (Exh. '3'), Isaias Batiller having been in the *actual physical possession* thereof *under a claim of title many years before Francisco Militante sold the land to the plaintiff*, hereby dismissing plaintiff's complaint and ordering the plaintiff to pay the defendant attorney's fees x x x.")

B. During the trial of this case on the merit, the plaintiff will prove by competent evidence the following:

'1. That the land he purchased from Francisco Militante under Exh. 'A' was formerly owned and possessed by Liberato Demontaño, but that on September 6, 1919 the land was sold at public auction by virtue of a judgment in a Civil Case entitled 'Edw. J. Pflieder, plaintiff *vs.* Liberato Demontaño, Francisco Balladeros and Gregorio Yulo, defendants', of which Yap Pongco was the purchaser (Exh. '1-2'). The sale was registered in the Office of the Register of Deeds of Iloilo on August 4, 1920, under Primary Entry No. 69 (Exh. '1-3') and a definite Deed of Sale was executed by Constantino A. Canto, provincial Sheriff of Iloilo, on Jan. 19, 1934 in favor of Yap Pongco (Exh. '1'), the sale having been registered in the Office of the Register of Deeds of Iloilo on February 10, 1934 (Exh. '1-1').

2. On September 22, 1934, Yap Pongco sold this land to Francisco Militante as evidenced by a notarial deed (Exh. 'J') which was registered in the Registry of Deeds on May 13, 1940 (Exh. 'J-1').

3. That plaintiff suffered damages alleged in his complaint.

C. Defendants, on the other hand will prove by competent evidence during the trial of this case the following facts:

1. That Lot No. 2 of the Psu-155241 (Exh. '5') was originally owned and possessed by Felipe Batiller, grandfather of the defendant, who was succeeded by Basilio Batiller, on the death of the former in 1920, as his sole heir. Isaias Batiller succeeded his father, Basilio Batiller, in the ownership and possession of the land in the year 1930, and since then up to

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the present, the land remains in the possession of the defendant, his possession being actual, open, public, peaceful and continuous in the concept of an owner, exclusive of any other rights and adverse to all other claimants.

2. That the alleged predecessors-in-interest of the plaintiff have never been in the actual possession of the land and that they never had any title thereto.

3. That Lot No. 2, Psu-155241, the subject of *Free Patent application of the defendant* has been *approved.*

4. The damages suffered by the defendant as alleged in his counterclaim.'"[1]

The appellate court further related the developments of the case, as follows:

"On August 17, 1965, defendant's counsel manifested in open court that before any trial on the merit of the case could proceed he would file a *motion to dismiss* plaintiff's complaint which he did, alleging that *plaintiff does not have a cause of action against him* because the property in dispute which he (plaintiff) allegedly bought from his father-in-law, Francisco Militante was the subject matter of LRC No. 695 filed in the CFI of Iloilo, which case was brought on appeal to this Court and docketed as CA-G.R. No. 13497-R in which aforesaid case *plaintiff was the counsel on record of his father-in-law, Francisco Militante.* Invoking Arts. 1409 and 1491 of the Civil Code which reads:

'ART. 1409. The following contracts are inexistent and void from the beginning:

xxx xxx xxx

(7) Those expressly prohibited or declared void by law.

'ART. 1491. The following persons cannot acquire any purchase, even at a public or judicial auction, either in person or through the mediation of another:

xxx xxx xxx

(5) *Justices, judges, prosecuting attorneys, clerks of superior and inferior courts,* and *other officers and employees connected*

[1] Notes in parentheses and italics added.

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> *with the administration of justice*, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to *lawyers*, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.'

defendant claims that plaintiff could not have acquired any interest in the property in dispute as the contract he (plaintiff) had with Francisco Militante was inexistent and void. (See pp. 22-31, Record on Appeal). Plaintiff strongly opposed defendant's motion to dismiss claiming that defendant can not invoke Articles 1409 and 1491 of the Civil Code as Article 1422 of the same Code provides that 'The defense of illegality of contracts is not available to third persons whose interests are not directly affected' (See pp. 32-35, Record on Appeal).

"*On October 18, 1965*, the lower court issued an *order dismissing plaintiff's complaint* (pp. 42-49, Record on Appeal.) In the aforesaid order of dismissal, the lower court practically agreed with defendant's contention that the contract (Exh. A) between plaintiff and Francisco Militante was null and void. In due season plaintiff filed a motion for reconsideration (pp. 50-56, Record on Appeal) which was denied by the lower court on January 14, 1966 (p. 57, Record on Appeal).

"Hence, this appeal by plaintiff from the orders of October 18, 1965 and January 14, 1966.

"Plaintiff-appellant imputes to the lower court the following errors:

> '1. The lower court erred in holding that the contract of sale between the plaintiff-appellant and his father-in-law, Francisco Militante, Sr., now deceased, of the property covered by Plan Psu-99791, (Exh. 'A') was void, not voidable because it was made when plaintiff-appellant was the counsel of the latter in the Land Registration case.
>
> '2. The lower court erred in holding that the defendant-appellee is an interested person to question the validity of the contract of sale between plaintiff-appellant and the deceased, Francisco Militante, Sr.
>
> '3. The lower court erred in entertaining the motion to dismiss of the defendant-appellee after he had already filed his answer, and after the termination of the pre-trial, when the said motion to dismiss raised a collateral question.

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'4. The lower court erred in dismissing the complaint of the plaintiff-appellant.'"

The appellate court concluded that plaintiff's "assignment of errors gives rise to two (2) legal posers — (1) whether or not the contract of sale between appellant and his father-in-law, the late Francisco Militante over the property subject of Plan Psu-99791 was void because it was made when plaintiff was counsel of his father-in-law in a land registration case involving the property in dispute; and (2) whether or not the lower court was correct in entertaining defendant-appellee's motion to dismiss after the latter had already filed his answer and after he (defendant) and plaintiff-appellant had agreed on some matters in a pre-trial conference. Hence, its elevation of the appeal to this Court as involving pure questions of law.

It is at once evident from the foregoing narration that the pre-trial conference held by the trial court at which the parties with their counsel agreed and stipulated on the material and relevant facts and submitted their respective documentary exhibits as referred to in the pre-trial order, *supra*,[2] practically amounted to a full-dress trial which placed of record all the facts and exhibits necessary for adjudication of the case.

The three points on which plaintiff reserved the presentation of evidence at the trial dealing with the source of the alleged right and title of Francisco Militante's predecessors, *supra*,[3] actually are already made of record in the *stipulated facts* and *admitted exhibits*. The chain of Militante's alleged title and right to the land as supposedly traced back to Liberato Demontaño was *actually asserted* by Militante (and his vendee, lawyer and son-in-law, herein plaintiff) in the land registration case and *rejected* by the Iloilo land registration court which *dismissed* Militante's application for registration of the land. Such dismissal, as already stated, was affirmed by the final judgment in 1958 of the Court of Appeals.[4]

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[2] At pages 2 to 5; sub-paragraphs 1 to 10 of Par. A.

[3] At pages 5 to 6; sub-paragraphs 1 to 3 of Par. B.

[4] Exhibit "1".

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The four points on which defendant on his part reserved the presentation of evidence at the trial dealing with his and his ancestors' continuous, open, public and peaceful possession in the concept of owner of the land and the Director of Lands' approval of his survey plan thereof, *supra*,[5] are likewise already duly established facts of record, in the land registration case as well as in the ejectment case wherein the Iloilo Court of First Instance recognized the superiority of defendant's right to the land as against plaintiff.

No error was therefore committed by the lower court in dismissing plaintiff's complaint upon defendant's motion after the pre-trial.

1. The stipulated facts and exhibits of record indisputably established plaintiff's lack of cause of action and justified the outright dismissal of the complaint. Plaintiff's claim of ownership to the land in question was predicated on the sale thereof for P2,000.00 made in 1956 by his father-in-law, Francisco Militante, in his favor, at a time when Militante's application for registration thereof had already been *dismissed* by the Iloilo land registration court and was *pending appeal* in the Court of Appeals.

With the Court of Appeals' 1958 final judgment affirming the *dismissal* of Militante's application for registration, the lack of any rightful claim or title of Militante to the land was conclusively and decisively judicially determined. Hence, there was *no right or title* to the land that could be transferred or sold by Militante's purported sale in 1956 in favor of plaintiff.

Manifestly, then plaintiff's complaint against defendant, to be declared absolute owner of the land and to be restored to possession thereof with damages was bereft of any factual or legal basis.

2. No error could be attributed either to the lower court's holding that the purchase by a lawyer of the property in litigation from his client is categorically prohibited by Article 1491, paragraph (5) of the Philippine Civil Code, reproduced *supra*;[6] and that

[5] At page 6; sub-paragraphs 1 to 4 of Par. C.

[6] At page 7.

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consequently, plaintiff's purchase of the property in litigation from his client (assuming that his client could sell the same, since as already shown above, his client's claim to the property was defeated and rejected) was void and could produce no legal effect, by virtue of Article 1409, paragraph (7) of our Civil Code which provides that contracts "expressly prohibited or declared void by law" are "inexistent and void from the beginning" and that "(T)hese contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived."

The 1911 case of *Wolfson vs. Estate of Martinez*[7] relied upon by plaintiff as holding that a sale of property in litigation to the party litigant's lawyer "is not void but voidable at the election of the vendor" was correctly held by the lower court to have been superseded by the later 1929 case of *Director of Lands vs. Abagat*.[8] In this later case of *Abagat*, the Court expressly cited two antecedent cases involving the same transaction of purchase of property in litigation by the lawyer which was expressly declared invalid under Article 1459 of the Civil Code of Spain (of which Article 1491 of our Civil Code of the Philippines is the counterpart) upon challenge thereof not by the vendor-client but by the adverse parties against whom the lawyer was seeking to enforce his rights as vendee thus acquired.

These two antecedent cases thus cited in *Abagat* clearly superseded (without so expressly stating) the previous ruling in *Wolfson*:

"The spouses, Juan Soriano and Vicenta Macaraeg, were the owners of twelve parcels of land. Vicenta Macaraeg died in November, 1909, leaving a large number of collateral heirs but no descendants. Litigation between the surviving husband, Juan Soriano, and the heirs of Vicenta Macaraeg immediately arose, and the herein appellant Sisenando Palarca acted as Soriano's lawyer. On May 2, 1918, Soriano executed a deed for the aforesaid twelve parcels of land in favor of Sisenando Palarca, and on the following day, May 3, 1918, Palarca filed an application for the registration of the land described in the deed. *After hearing,*

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[7] 20 Phil. 340, 342-343 (Oct. 13, 1911).

[8] 53 Phil. 147 (March 27, 1929).

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the Court of First Instance declared that the deed was invalid by virtue of the provisions of Article 1459 of the Civil Code, which prohibits lawyers and solicitors from purchasing property rights involved in any litigation in which they may take part by virtue of their profession. The application for registration was consequently denied, and upon appeal by Palarca to the Supreme Court, the judgment of the lower court was affirmed by a decision promulgated November 16, 1925. (G.R. No. 24329, Palarca *vs.* Director of Lands, not reported.)

"In the meantime Cadastral Case No. 30 of the Province of Tarlac was instituted, and on August 21, 1923, Eleuteria Macaraeg, as administratrix of the estate of Vicenta Macaraeg, filed claims for the parcels in question. Buenaventura Lavitoria, administrator of the estate of Juan Soriano, did likewise and so did Sisenando Palarca. In a decision dated June 21, 1927, the Court of First Instance, Judge Carballo presiding, rendered judgment in favor of Palarca and ordered the registration of the land in his name. *Upon appeal to this court by the administrators of the estates of Juan Soriano and Vicenta Macaraeg, the judgment of the court below was reversed and the land adjudicated to the two estates as conjugal property of the deceased spouses.* (G.R. No. 28226, Director of Lands *vs.* Abagat, promulgated May 21, 1928, not reported.)"[9]

In the very case of *Abagat* itself, the Court, again affirming the invalidity and nullity of the lawyer's purchase of the land in litigation from his client, ordered the issuance of a writ of possession for the return of the land by the lawyer to the adverse parties without reimbursement of the price paid by him and other expenses, and ruled that "the appellant Palarca is a lawyer and is presumed to know the law. He must, therefore, from the beginning, have been well aware of the defect in his title and is, consequently, a possessor in bad faith."

As already stated, *Wolfson* and *Abagat* were decided with relation to Article 1459 of the Civil Code of Spain then adopted here, until it was superseded on August 30, 1950 by the Civil Code of the Philippines whose counterpart provision is Article 1491.

Article 1491 of our Civil Code (like Article 1459 of the Spanish Civil Code) prohibits in its six paragraphs certain persons, by

[9] 53 Phil. at pp. 147-148; italics added.

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reason of the relation of trust or their peculiar control over the property, from acquiring such property in their trust or control either directly or indirectly and "even at a public or judicial auction," as follows: (1) guardians; (2) agents; (3) administrators; (4) public officers and employees; (5) judicial officers and employees, prosecuting attorneys, and lawyers; and (6) others specially disqualified by law.

In *Wolfson*, which involved the sale and assignment of a money judgment by the client to the lawyer, Wolfson, whose right to so purchase the judgment was being challenged by the judgment debtor, the Court, through Justice Moreland, then expressly reserved decision on "whether or not the judgment in question actually falls within the prohibition of the article" and held only that the sale's "voidability can not be asserted by one not a party to the transaction or his representative," citing from Manresa[10] that "(C)onsidering the question from the point of view of the civil law, the view taken by the code, we must limit ourselves to classifying as void all acts done contrary to the express prohibition of the statute. Now then: As the code does not recognize such nullity by the mere operation of law, the nullity of the acts hereinbefore referred to must be asserted by the person having the necessary legal capacity to do so and decreed by a competent court."[11]

The reason thus given by Manresa in considering such prohibited acquisitions under Article 1459 of the Spanish Civil Code as merely voidable at the instance and option of the vendor and not void — "that the Code does *not* recognize such nullity *de pleno derecho*" — is no longer true and applicable to our own Philippine Civil Code which *does* recognize the absolute nullity of contracts "whose cause, object, or purpose is contrary to law, morals, good customs, *public order or public policy*" or which are "*expressly prohibited or declared void by law*" and declares such contracts "*inexistent and void from the beginning.*"[12]

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[10] Vol. 10, p. 108.

[11] 20 Phil. at p. 343.

[12] Article 1409, pars. (1) and (7), Philippine Civil Code.

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The Supreme Court of Spain and modern authors have likewise veered from Manresa's view of the Spanish codal provision itself. In its *sentencia* of 11 June 1966, the Supreme Court of Spain ruled that the prohibition of Article 1459 of the Spanish Civil Code is based on public policy, that violation of the prohibition renders the infringing contract totally void, and that such prohibited contract cannot be validated by confirmation or ratification, holding that:

"x x x la prohibicion que el articulo 1459 del C.C. establece respecto a los administradores y apoderados, la cual tiene conforme a la doctrina de esta Sala, contenida entre otras, en S. de 27-5-1959, un fundamento de *orden moral, dando lugar la violación de esta regla a la nulidad de pleno derecho* del acto o negocio celebrado, x x x y porque al realizarse el acto juridico en contravención con una prohibicion legal, afectante al *orden publico*, no cabe con efecto alguno la aludida *ratification* x x x"[13]

The criterion of nullity of such prohibited contracts under Article 1459 of the Spanish Civil Code (Article 1491 of our Civil Code) as a matter of public order and policy as applied by the Supreme Court of Spain to administrators and agents in its above-cited decision should certainly apply with greater reason to judges, judicial officers, fiscals and lawyers under paragraph 5 of the codal article.

Citing the same decision of the Supreme Court of Spain, Gullon Ballesteros, in his "Curso de Derecho Civil, (Contratos Especiales)" (Madrid, 1968) p. 18, affirms that, with respect to Article 1459, Spanish Civil Code:

"Que caracter tendrà la compra que se realice por estas personas? Por supuesto no cabe duda de que en el caso del (art.) 1459, -4° y 5°, *la nulidad es absoluta* porque el motivo de la prohibicion es de *orden publico*."[14]

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[13] Rodriguez Navarro, Doctrina Civil del Tribunal Supremo, Appendice de 1961-1966, pp. 693-694; italics added.

[14] Italics added.

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Perez Gonzales concurs in such view, stating that "Dado el caracter prohibitivo del precepto, la consequencia de la infraccion es la nulidad radical y *ex lege*."[15]

Castan, quoting Manresa's own observation that

"El fundamento de esta prohibicion es clarisimo. No se trata con este precepto tan solo de quitar la ocasion al fraude; persiguese, ademas, el proposito *de rodear a las personas que intervienen en la administracion de justicia de todos los pretigios que necesitan para ejercer su ministerio, librandolos* de toda *sospecha*, que aunque fuere *infundada, redundaria* en *descredito* de la *institucion*."[16]

arrives at the contrary and now accepted view that "Puede considerarce en nuestro derecho *inexistente ó radicalmente nulo* el contrato en los siguientes casos: a) x x x; b) cuando el contrato se ha celebrado *en violacion* de una *prescripcion ó prohibicion legal, fundada sobre motivos de orden publico* (hipotesis del Art. 4 del Codigo) x x x"[17]

It is noteworthy that Castan's rationale for his conclusion that fundamental considerations of public policy render void and inexistent such expressly prohibited purchases (e.g. by public officers and employees of government property entrusted to them and by justices, judges, fiscals and lawyers of property and rights in litigation submitted to or handled by them, under Article 1491, paragraphs (4) and (5) of our Civil Code) has been adopted in a new article of our Civil Code, *viz*, Article 1409 declaring such prohibited contracts as "*inexistent and void from the beginning*."[18]

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[15] Perez Gonzales & Alguer: Enneccerus, Derecho Civil, Tomo II - 2º, p. 26.

[16] Castan, Derecho Civil, Tomo 4, p. 73 (9ª Ed.), citing 10 Manresa 107; italics added.

[17] Castan, Derecho Civil, Tomo 3, p. 437 (8ª Ed.); italics added.

[18] Tolentino in Vol. IV, p. 575, states as to the "Source of Article (that) This provision is new but merely groups together contracts which have already been considered as void *ab initio* under the old Civil Code, as interpreted by jurisprudence and commentators."

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Indeed, the nullity of such prohibited contracts is definite and permanent and cannot be cured by ratification. The public interest and public policy remain paramount and do not permit of compromise or ratification. In his aspect, the permanent disqualification of public and judicial officers and lawyers grounded on *public policy* differs from the first three cases of guardians, agents and administrators (Article 1491, Civil Code), as to whose transactions, it has been opined that they may be "ratified" by means of and in "the form of a *new contract*, in which case its validity shall be determined only by the circumstances at the time of execution of such new contract. The causes of nullity which have ceased to exist cannot impair the validity of the new contract. Thus, the object which was illegal at the time of the first contract, may have already become lawful at the time of the ratification or second contract; or the service which was impossible may have become possible, or the intention which could not be ascertained may have been clarified by the parties. The ratification or second contract would then be *valid from its execution*; however, it does *not* retroact to the date of the first contract."[19]

As applied to the case at bar, the lower court therefore properly acted upon defendant-appellant's motion to dismiss on the ground of nullity of plaintiff's alleged purchase of the land, since its juridical effects and plaintiff's alleged cause of action founded thereon were being asserted against defendant-appellant. The principles governing the nullity of such prohibited contracts and judicial declaration of their nullity have been well restated by Tolentino in his treatise on our Civil Code, as follows:

"Parties Affected. - *Any* person may invoke the *inexistence* of the contract whenever juridical effects founded thereon are asserted against him. Thus, if there has been a void transfer of property, the transferor can recover it by the *accion reivindicatoria*; and any prossessor may refuse to deliver it to the transferee, who cannot enforce the contract. Creditors may attach property of the debtor which has been alienated by the latter under a void contract; a mortgagee can allege the inexistence of a prior encumbrance; a debtor can assert the nullity of an assignment of credit as a defense to an action by the assignee.

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[19] *Idem.*, at pp. 578-579.

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"Action On Contract. - Even when the contract is void or inexistent, an action is necessary to declare its inexistence, when it has already been fulfilled. Nobody can take the law into his own hands; hence, the intervention of the competent court is necessary to declare the absolute nullity of the contract and to decree the restitution of what has been given under it. The judgment, however, will retroact to the very day when the contract was entered into.

"If the void contract is still fully executory, no party need bring an action to declare its nullity; but if any party should bring an action to enforce it, the other party can simply set up the nullity as a defense."[20]

ACCORDINGLY, the order of dismissal appealed from is hereby affirmed, with costs in all instances against plaintiff-appellant. SO ORDERED.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, and *Esguerra, JJ.*, concur.

[G.R. No. L-31727. May 30, 1973]

ASSOCIATED LABOR UNION, *petitioners, vs.* COURT OF INDUSTRIAL RELATIONS and GOODYEAR TEXTILE MFG. CO., *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; INDUSTRIAL PEACE ACT; POLICY OF NON-INTERFERENCE BY INDUSTRIAL COURT; QUESTION OF MINIMUM WAGES; EXCEPTION.**— Section 16 (c) of Republic Act No. 602 regarding the demands of minimum wages involved in actual strike, should be viewed in the light of the provision of the Industrial Peace Act. Section 7 of the Industrial Peace Act enunciates a policy of encouraging free enterprise and collective bargaining in the relations of labor and management. Court intervention in the fixing of conditions of employment is held

[20] *Idem.*, at p. 578.