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for the view that the period for prescription of actions to recover municipal license taxes is six years under Article 1145(2) of the Civil Code. Thus, plaintiff's action brought within six years from the time the right of action first accrued in 1958 has not yet prescribed.

WHEREFORE, affirming the judgment appealed from, we sustain the validity of Ordinance No. 4, Series of 1957, of defendant Municipality of Jagna, Bohol, under the laws then prevailing.

Costs against plaintiff-appellant.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *De Castro, JJ .*, concur.

FIRST DIVISION

[G.R. No. L-25966. December 28, 1979]

FERMIN A. BAGADIONG, *petitioner, vs.* **HON. FELICIANO S. GONZALES, Judge of the Court of First Instance of Catanduanes, CLEMENTE ABUNDO, RAFAEL VILLALUNA and FRANCISCO A. PERFECTO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WITNESSES; A PARTY MAY CALL THE ADVERSE PARTY TO BE HIS WITNESS.— There is no legal impediment for a party to call any of the adverse parties to be his witness, as clearly provided in Section 6, Rule 132 of the Rules of Court.

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2. ID.; ID.; PROPER TIME TO INVOKE THE PRIVILEGE AGAINST SELF-INCRIMINATION IS WHEN A QUESTION CALLING FOR AN INCRIMINATING ANSWER IS PROPOUNDED; CASE AT BAR.— Petitioner invoked the privilege even prior to any question being propounded, and simply declined to take the witness stand. In the above-cited Gonzales case, it will be noted that the privilege against self-incrimination must be invoked when a question calling for an incriminating answer is propounded, because before a question is asked, there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. Moreover, the herein petitioner was being directed to take the stand, not in a criminal case where he is an accused but in civil action.

D E C I S I O N

DE CASTRO, *J.*:

This is a special civil action for *certiorari* instituted on April 27, 1966 by the petitioner to annul the order[1] dated April 18, 1966 of respondent Judge of the Court of First Instance of Catanduanes in Civil Case No. 546, entitled "*Clemente Abundo and Rafael Villaluna, plaintiffs, versus Jorge V. Almojuela, Dominador Monjardin, Fermin A. Bagadiong and Armando Ala, defendants, Francisco A. Perfecto, intervenor.*" Alleged as ground for the petition is that the order was issued with grave abuse of discretion, amounting to lack of jurisdiction.

The facts are as follows:

On January 12, 1966, the herein plaintiffs-respondents filed the aforementioned Civil Case No. 546 for prohibition with preliminary prohibitory and mandatory injunction with the Court of First Instance of Catanduanes against defendants Jorge V. Almojuela, Dominador Monjardin, Fermin A. Bagadiong (the herein petitioner) and Armando Ala who are the Governor, Vice Governor, Provincial Treasurer and Provincial Auditor of the Province of Catanduanes, respectively. In the said petition,

[1] Annex "G" to the petition, p. 41, *Rollo*.

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it is alleged that defendants, including the herein petitioner, are authorizing, approving and effecting the disbursements of public funds of the province for purposes stated in the alleged annual Provincial Budget of the Province for the Fiscal Year 1965-1966 purporting on its face to have been approved by the Provincial Board on August 23, 1965 under Resolution No. 62-A; that the aforesaid budget is a falsified document because the Provincial Board never approved the same, the alleged Provincial Board Resolution No. 62-A which is claimed to have approved the said Budget does not exist; that upon discovery of the anomaly, plaintiffs Clemente Abundo and Rafael Villaluna made representations with the Secretary of Finance on November 17, 1965, to have the alleged Board Resolution No. 62-A approving the budget, considered null and void because the said plaintiffs never took part in the deliberation approving the said Resolution; that for the defendants to continue making disbursements of public funds under the falsified budget, the people and the government of the Province of Catanduanes will suffer irreparable damage and injury from which there is no other plain, speedy and adequate remedy in the ordinary course of law except the instant petition. Plaintiffs pray that pending resolution of the petition on the merits, a preliminary injunction be issued restraining the defendants from authorizing, approving and effecting the disbursements of public funds on the basis of the said budget.[2]

On January 14, 1966, a writ of preliminary injunction was issued by the respondent Judge against the defendants commanding them to desist from authorizing and making any further disbursements of funds from the budget in question. On January 17, 1966, the defendants filed a motion for reconsideration and to dissolve the writ of preliminary injunction.[3] A complaint in intervention[4] was filed on January 21, 1966 by

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[2] Annex "B", p. 14, *Rollo*.

[3] Annex "C", p. 16, *Rollo*.

[4] Annex "E", p. 22, *Rollo*.

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herein respondent Francisco A. Perfecto praying, among others, that the annual budget of the Province of Catanduanes for the fiscal year 1965-1966 be declared null and void *ab initio*, the same being falsification that all original parties to the case be ordered to refund the province all moneys purportedly appropriated under the falsified budget and disbursed and collected by them, respectively; and that all the said original parties be condemned, jointly and severally, to pay the Province of Catanduanes an amount equal to all disbursements under the falsified budget, by way of exemplary damages.

On January 31, 1966, the respondent judge denied the motion to vacate and lift the writ of preliminary injunction in an order[5] dated January 31, 1966.

When the Civil Case No. 546 was called for trial on April 18, 1966, counsel for plaintiffs called one of the defendants, the herein petitioner, Fermin A. Bagadiong, to the witness stand as one of the witnesses for the plaintiffs. Counsel for the defendants raised the objection that the said party cannot be called as a witness for the plaintiffs because it would violate his constitutional right against self-incrimination. On the other hand, counsel for the plaintiffs contended that this being purely a civil action, the right against self-incrimination is not involved, and if any testimony elicited from the herein petitioner would tend to incriminate himself, there would be ample time for the herein petitioner to raise the proper objection.

The respondent Judge in his order[6] held that the position taken by the counsel for the plaintiffs is legally correct, thereby, ruling that the petitioner may testify as a witness for the plaintiffs.

After a verbal motion to reconsider the aforesaid order was denied by the respondent Judge, the herein petitioner filed with this Court the instant petition, claiming as earlier stated, that the respondent Judge acted in excess of his jurisdiction and/

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[5] Annex "D", p. 19, *Rollo*.

[6] Annex "G", p. 41, *Rollo*.

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or with grave abuse of discretion in allowing the herein petitioner to testify for the respondents in Civil Case No. 546, and that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.

After the respondents have filed their answer to the instant petition, as required by this Court, both parties submitted their respective memoranda in lieu of oral argument, after which the case was considered submitted for decision.

The principal issue raised in the instant case is whether or not respondent Judge acted in excess of his jurisdiction and 'with grave abuse of discretion in allowing the herein petitioner to testify as a witness for the herein respondents, despite his claim of violating his right against self-incrimination.

The petitioner contends that the provision of the Rules of Court which authorizes a party to call the adverse party to the witness stand applies only to purely civil actions where the defendant does not run the risk of being prosecuted for any offense. Likewise, the petitioner asserts that the right against self-incrimination can only be claimed when the incriminatory question is being propounded and not before, by a mere witness, but not by a party defendant, as in the case at bar. We find no merit to these contentions.

There is no legal impediment for a party to call any of the adverse parties to be his witness, as clearly provided in Section 6, Rule 132 of the Rules of Court which expressly provides:

"A party may interrogate any unwilling or hostile witness by leading questions. A party may call on adverse party or an officer, director, or managing agent of a public or private corporation or of a partnership or association which is an adverse party, and interrogate him by leading questions and contradict and impeach him in all respects as if he had been called by the adverse party, and the witness thus called may be contradicted and impeached by or on behalf of the adverse party also, and may be cross-examined by the adverse party only upon the subject-matter of his examination in chief."

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It is in a criminal case, when the accused may not be compelled to testify, or to so much as utter a word, even for his own defense.[7] But while the constitutional guaranty against self-incrimination protects a person in all types of cases, be they criminal, civil or administrative,[8] said privilege, in proceedings other than a criminal case against him who invokes it, is considered an option to refuse to answer incriminating question, and not a prohibition of inquiry.

As aptly stated by this Court in the case of *Gonzales vs. Secretary of Labor, et al*:[9]

"Except in criminal cases, there is no rule prohibiting a party litigant from utilizing his adversary as a witness. As a matter of fact, Section 83 of Rule 123, Rules of Court, expressly authorizes a party to call an adverse party to the witness stand and interrogate him. This rule is, of course, subject to the constitutional injunction not to compel any person to testify against himself. *But it is established that the privilege against self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for a criminating answer is propounded.* This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in Jones on Evidence (Vol. 6, pp. 4926-4927), a person who has been summoned to testify 'cannot decline to appear, nor can he decline to be sworn as a witness' and 'no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and generally speaking, at that time only, the claim of privilege may properly be imposed.'" (*Emphasis supplied*).

In the instant case, petitioner invoked the privilege even prior to any question being propounded, and simply declined to take the witness stand. In the above-cited Gonzales case, it will be noted that the privilege against self-incrimination must be invoked

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[7] *U.S. vs. Junio*, 1 Phil. 50; *U.S. vs. Luzon*, 4 Phil. 344; *U.S. vs. Binayoh*, 35 Phil. 23.

[8] Article IV, Section 20, *Philippine Constitution*; *Bermudez vs. Castillo*. 64 Phil. 483.

[9] L-6409, February 5, 1954, 94 Phil. 325.

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when a question calling for an incriminating answer is propounded, because before a question is asked, there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. Moreover, the herein petitioner was being directed to take the stand, not in a criminal case where he is an accused but in civil action. This is expressly permitted by Section 6, Rule 132 of the Rules of Court which authorizes a party to call any adverse party as his witness.

In the later case of *Suarez v. Tengco*, 2 SCRA 71, 73-74, the following was stated:

"Here, petitioner invoked the privilege even prior to any question, and simple declined to take the witness stand. Note that in the Gonzales case, above-cited, the adverse party was directed to take the witness stand in proceedings to investigate an alleged failure to pay overtime compensation, which, under the corresponding special laws, carries a penal sanction. Here, petitioner was being directed to take the stand, not in a criminal case where he is an accused, but in an independent civil action which, although arising from the same facts involved in a criminal case pending before the same court, is still regarded by law as an entirely 'separate and distinct' action, governed by a corresponding different set of rules (Civil Code of the Phil., Art. 2177)."

The almost exact similarity of the instant case and the case just cited leaves no room for doubt, and there is complete justification therefore that the same ruling must be applied here.

WHEREFORE, the instant petition to prohibit the respondent judge from directing petitioner to take the witness stand and testify is denied, without prejudice to petitioner's properly invoking the guaranty against self-incrimination when questions are propounded to him on the stand. Costs against the petitioner.

SO ORDERED.

Teehankee (Chairman), Fernandez, Guerrero, and *Melencio-Herrera, JJ.*, concur.

Makasiar, J., concurs in the result.