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Exhibit C, executed by the appellants in favor of Francisco Guballa and wife, although the said appellants had no more rights to the said property. Under the circumstances, the rejoinder of the appellants as party-defendants cannot be said to have been motivated by malice or spite to warrant the payment of the damages claimed by the appellants.

IN VIEW OF ALL THE FOREGOING, the judgment appealed from should be affirmed, with costs against the appellants.

SO ORDERED.

Fernando, Antonio, and *Santos, JJ.*, concur.

Barredo, J., concurs in the result.

Aquino, J., did not take part.

SECOND DIVISION

[G.R. No. L-46117. February 22, 1978]

FRANCISCO M. BAUTISTA, *petitioner, vs.* **HON. ALFREDO S. REBUENO, JUDGE OF THE COURT OF FIRST INSTANCE OF NAGA CITY, BRANCH IV and IRENE P. MARIANO**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; CANNOT BE GROUNDED ON MERE DOUBT. — An order of a trial judge inhibiting himself from further proceeding in a case pending before him on grounds that the defendant therein

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had been doubting actuations of the judge as biased on the relief that he is related to the plaintiff in the case, while the plaintiff had also been doubting his actuations because of the alleged utterances of the defendant that he would surely win the case, is in accordance with law and cannot be the object of a *mandamus* proceeding.

2. **JUDICIAL ETHICS; JUDGES; VALIDITY OF VOLUNTARY INHIBITION ON GROUND NOT PROVIDED UNDER THE RULES.** — Rule 137 providing for disqualification does not include nor preclude cases and circumstances for voluntary inhibition which depends upon the discretion of the judicial officers concerned.

3. **ID.; ID.; ID.; RATIONALE.** — In construing and applying the legal provision on disqualification, the Court cannot disregard its true intention nor the real ground for the disqualification of a judge or judicial officer, which is the impossibility of rendering an impartial judgment upon the matter before him. It has been said, in fact due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge. Moreover, second only to the duty of rendering a just decision, is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the judge. Consequently, the Court take it to be the true intention of the law-stated in general terms — that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent.

4. **LEGAL ETHICS; ATTORNEYS; MEMBER OF THE BAR, HELD TO BE ABREAST OF TREND OF AUTHORITATIVE PRECEDENTS, ENJOINED.** — A counsel must be aware of the controlling doctrines. The law, it is not to be forgotten, is a progressive science. There is then less than full compliance with the demands of professional competence if a member of the bar does not keepthimself abreast of the trend of authoritative pronouncements.

APPEARANCES OF COUNSEL

Pico, Borja & Fernandez for petitioner.

Emilio S. Samson & Balderama-Samson for private respondent.

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DECISION

FERNANDO, *J.*:

This *mandamus* proceeding seeks to compel respondent Judge Alfredo S. Rebueno of the Court of First Instance of Naga City, Branch IV, to continue trying a civil case assigned to his sala,[1] the issue raised being that his Order disqualifying himself amounted to a grave abuse of discretion based as it was on a ground other than that provided for in the Rules of Court.[2] To state the proposition is to indicate the weakness of the stand taken by petitioner, the defendant in such civil case for he would ignore the second paragraph of Rule 137: "A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons, other than those mentioned above."[3] It is by virtue thereof that respondent Judge in the exercise of sound discretion disqualified himself, granting a motion to that effect of private respondent, a defendant in such a case. In such motion to that effect of private respondent, a defendant in such a case. In such motion reference was made to certain "attendant circumstances, particularly the fact that he [respondent Judge] is a townmate and distant relative of plaintiff, [giving rise to the] strong possibility that whatever his actuations are in the instant case and any of its incidents, [he] might be suspected of

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[1] Civil Case No. 7926.

[2] The first paragraph of Rule 137, Section 1 on disqualification of judges reads as follows: "No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties-in-interest signed by them and entered upon the record."

[3] *Ibid.*, Rule 137, par. 2. This paragraph was added in the 1964 amendments to the Rules of Court.

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being partial to plaintiff; * * *."[4] Notwithstanding an opposition filed by petitioner on the ground that the reason alleged is not one of those provided for by law respondent Judge issued an Order disqualifying himself and thereafter denied a motion for its reconsideration.

The Order in question reads as follows: "This refers to the motion for inhibition filed by the plaintiff and the opposition thereto by the defendant. The Court knows from reliable sources that the defendant has been doubting the actuations of this Court as biased on the belief that the Presiding Judge is related to the plaintiff. Similarly, however, from reliable sources the Court also knows that the plaintiff is doubting his actuations because of the defendant's alleged utterances that he will surely win this case. These circumstances have placed the Court in a very unpleasant and untenable position, because either way he acts in this case, whether in favor or against the plaintiff or vice-versa, his actuation will always be tainted and beset with doubt and misgivings which is highly detrimental to the good name and integrity of the Court. The Judge must maintain and preserve the trust and faith of the parties-litigants. He must hold himself above reproach and suspicion. At the very first sign of lack of faith and trust to his actions, whether well grounded or not, the Judge has no other alternative but inhibit himself from the case. A judge may not be legally prohibited from sitting in a litigation, but when circumstances appear that will induce doubt to his honest actuations and probity in favor of either party, or incite such state of mind, he should conduct a careful self- examination. He should exercise his discretion in a way that the people's faith in the Courts of Justice is not impaired. The better course for the Judge under such circumstances is to disqualify himself. That way, he avoids being misunderstood, his reputation for probity and objectivity is preserved. What is more important, the ideal of impartial administration of justice is lived up to."[5] The conclusion set forth in such Order concluded with this paragraph: "In view of

[4] Petition. Annex A. Motion for Inhibition with Suspension of Proceedings, par. 2.

[5] Order of respondent Judge. Annex C. 1-2.

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the foregoing considerations, this Court hereby inhibits himself from further proceedings in this case. Let the record of this case be forwarded to the Honorable Executive Judge for proper disposition."[6]

That is the order assailed in this proceeding as being contrary to law. Such is not the case. It is in accordance with the aforesaid rule as well as the doctrines enunciated by this Court. *Mandamus* does not lie. What was done by respondent Judge is free from the taint of any legal infirmity.

1. Respondent Judge, in inhibit himself, lived up to the ideal of a judiciary striving ever to preserve public faith in its fairness and objectivity. What better way was there to allay suspicion and distrust as to a possible bias and prejudice in favor of a party coming into play? That was to manifest fealty to a recent pronouncement in *Villapando v. Quitain*:[7] "The commitment of this Court to a strict application of the procedural due process mandate of every litigant being entitled, to follow the language of Gutierrez, to 'nothing less than the cold neutrality of an impartial judge' is firm and deep-seated."[8] It has found explicit affirmation in the Rule set forth above. Respondent Judge clearly acted in accordance with its terms. He exercised a discretion conferred on him. This Tribunal in three cases at least, *People v. Gomes*,[9] *Umale v. Villaluz*,[10] and *Palang v. Zosa*[11] gave its approval to lower court judges voluntarily disqualifying themselves as therein provided. We do so again.

2. There is an even more impressive reinforcement to the conclusion thus reached. It is undeniable that even before the 1964 amendments to the Rules of Court providing for voluntary disqualification, this Tribunal on at least two occasions sustained

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[6] *Ibid.*, 2.

[7] L-41333, January 20, 1977, 75 SCRA 24.

[8] *Ibid.*, 29-30.

[9] L-22345, May 29, 1967, 20 SCRA 293.

[10] L-33508, May 25, 1973, 51 SCRA 84.

[11] L-38229, August 30, 1974, 58 SCRA 776.

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the actuation of lower court judges, who, of their own free will, decided to refrain from trying cases for reasons that did not call for their inhibition. The first decision of that nature, still by far the most-often quoted, is *Gutierrez v. Santos*,[12] referred to in *Villapando v. Quitain*. The then Judge Arsenio Santos, now deceased, disqualified himself from a case. He issued such an order not because he had to do so under the Rules of Court but because as a former private practitioner he had sent a communication long before to the then Secretary of Interior expressing an opinion favorable to the contention pressed by one of the parties in the suit pending before him, although not on his behalf as there never was between them a lawyer-client relationship. A *mandamus* proceeding brought against him, similar to this petition, to compel him to try the case failed. A unanimous Court, speaking through Justice Dizon, could not be any clearer in sanctioning his voluntary inhibition. Thus: "Petitioner, invoking the provisions of Section 1, Rule 126 of the Rules of Court, argues that the case of the respondent Judge does not fall under any one of the grounds for the disqualification of judicial officers stated therein. Assuming *arguendo* that a literal interpretation of the legal provision relied upon justifies petitioner's contention to a certain degree, it should not be forgotten that, in construing and applying said legal provision, we cannot disregard its true intention nor the real ground for the disqualification of a judge or judicial officer, which is the impossibility of rendering an impartial judgment upon the matter before him. It has been said, in fact, that due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality of an impartial judge * * *. Moreover, second only to the duty of rendering a just decision, is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the Judge. Consequently, we take it to be the true intention of the law — stated in general terms — that no judge shall preside in a case in which he is not wholly free, disinterested, impartial and independent * * *."[13] That

[12] 112 Phil. 184 (1961).

[13] *Ibid.*, 189. Rule 126 is now Rule 137.

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was in 1961, three years before the amended Rules of Court. A year later came *Del Castillo v. Javelona.*[14] The voluntary inhibition of respondent Judge, then a justice of the peace, was due to the fact that a lawyer of one of the parties was his first-degree cousin. In dismissing a *certiorari* and *mandamus* petition assailing such order, this Court with Justice Paredes as *ponente* held that the Gutierrez doctrine was applicable. Then came this portion of the opinion: "Little need be commented on the salutary ruling, just quoted, except to add that if in the instant case, counsel for respondent company, will win the case, the petitioner could not be prevented from applying the saying that 'Blood is thicker than water,' and from thinking and suspecting that respondent Javelona was biased and prejudiced. The courts should administer justice free from suspicion of bias and prejudice; otherwise, parties-litigants might lose confidence in the judiciary and destroy its nobleness and decorum."[15] The principle was further stressed in this wise: "In other words, while Rule 126 provides for disqualification, it does not include nor preclude cases and circumstances for voluntary inhibition which depends upon the discretion of the officers concerned."[16] To repeat, what was implicit before is now an explicit provision recognizing the discretion of a judge to disqualify himself from sitting in a case, "for just and valid reasons" other than those mentioned in the first paragraph of Rule 137.

3. The lack of awareness on the part of counsel of controlling doctrines is thus evident. There is reference to decisions of this Tribunal, none of which is applicable; one of them, *Joaquin v. Baretto,* was promulgated way back in 1913, almost 65 years ago.[17] The law, it is not to be forgotten, is a progressive science. There is then less than full compliance with the demands of professional competence if a member of the bar does not keep himself abreast of the trend of authoritative pronouncements. There is need in this particular case, it would

[14] 116 Phil. 451.

[15] *Ibid.*, 456.

[16] *Ibid.*

[17] 25 Phil. 281.

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seem, to impress on counsel of record what was said in the afore-cited case of *Palang v. Zosa*: "This voluntary inhibition by respondent Judge is to be commended. He has lived up to what is expected of occupants of the bench. The public faith in the impartial administration of justice is thus reinforced. It is not enough that they decide cases without bias and favoritism. It does not suffice that they in fact rid themselves of prepossessions. Their actuation must inspire that belief. This is an instance where appearance is just as important as the reality. Like Caesar's wife, a judge must not only be pure but beyond suspicion. At least, that is an ideal worth striving for. What is more, there is deference to the due process mandate."[18]

WHEREFORE, petition for *mandamus* is dismissed. No costs.

Antonio, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.

Barredo, J., concurs in a separate opinion.

BARREDO, *J., concurring*:

I concur in the result. Under the facts herein obtaining, the petition has no legal basis, considering that respondent judge, as explained in the main opinion of our Chairman of the Second Division, Mr. Justice Fernando, acted clearly within the ambit of discretion granted to him by the rules. I am writing this separate concurrence only to make it clear that as far as I am concerned, the complexities of modern society and the changing values regarding matters of "*delicadeza*" which nowadays seemingly place more reliance on the personal sense of justice and obvious integrity of a judge as reflected in the tenor and substance of his decision than on possible circumstances that could breed suspicion as to his motivations, make it a vain luxury to insist on any kind of meticulous insulation against such possible suspicion. In my particular case, I feel it is but fair that the people should not impute any personal reason to any of my actuations as a judge which on their faces appear to be

[18] 58 SCRA 776, 778.

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conformable to law, justice and equity. I consider it to be pure hypocrisy on my part to do my best trying to avoid suspicion instead of being actually upright and technically correct or basically just and fair, as God has given me the light to see, in anything I do as a member of the highest court of the land. I have absolute faith that nothing has, can and will ever influence my judgment in any case other than my honest conviction of how it should be according to law and justice. The moment I should feel I no longer possess the capacity and integrity needed to properly and duly decide any case that might be brought to this Court, I shall unhesitatingly do my God-ordained and sacred duty to irrevocably resign from my position and leave immediately the company of my more deserving colleagues.

SECOND DIVISION

[G.R. No. L-29096. February 23, 1978].

AMADO DEHESA and ISABEL IRADIER DEHESA, *petitioners, vs.* **HON. FELIX V. MACALALAG, Judge of the Court of First Instance of Aklan, ILUMINADA P. RAMPOLA, EUSTAQUIO P. RAMPOLA and QUERUBIN B. CORTES, Provincial Sheriff of Aklan**, *respondents*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; JUDGMENT OF THE MUNICIPAL COURT; REQUISITES TO STAY EXECUTION THEREOF.** — Section 8, Rule 70 of the Rules of Court provides that the execution of the municipal is stayed by (1) perfecting an appeal and filing of a supersedeas bond