REMEDIAL LAW: CIVIL PROCEDURE, SPECIAL CIVIL ACTIONS, SPECIAL PROCEEDINGS, AND EVIDENCE

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Law, Cardozo once said,[1] is something more than a succession of isolated judgments which spend their force as law when they have settled the controversies that led to them. To him, the study of the law is the study of principles of order revealing themselves in uniformities of antecedents and consequents. These "uniformities" reveal themselves in judgments handed down by courts of justice. Thus judgments are in that sense law. In harmony with this view, our own Civil Code[2] explicitly declares that judicial decisions form a part of our legal system.

With the above thoughts in mind, an expository review of decisional rules announced by our Supreme Court during the year just passed on civil procedure, special civil actions, special proceedings, and evidence will be essayed.

JURISDICTION, POWERS AND DUTIES OF COURTS

Justice of the Peace.—The New Judiciary Act[3] defines the jurisdiction of all Philippine Courts. Although classified as original, the jurisdiction of Justice of the Peace courts over the specific offenses mentioned in Section 87(c) of the Act was held in *People v. Colicio*[4] to be concurrent with the Courts of First Instance when the penalty to be imposed exceeds six months imprisonment or a fine of more than two hundred pesos. A 1950 decision laid down the same ruling.[5] In the Colicio case, the crime was qualified theft of ₱33 the penalty of which is 6 years, 1 day to 12 years imprisonment. Such offense was held to fall under the classification in Section 87(c) of "larceny of property not exceeding ₱200," and, therefore, falling within the concurrent jurisdiction of the Justice of the Peace and the Court of First Instance.[6]

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[1] *Growth of the Law*, pp. 36-37 (CARDOZO'S SELECTED WRITINGS, pp. 201-202).

[2] Article 8, CIVIL CODE OF THE PHILIPPINES.

[3] Republic Act No. 296, approved June 17, 1948.

[4] G. R. No. L-2885, prom. Feb. 26, 1951.

[5] *Natividad et al. v. Robles*, G. R. No. L-3612, prom. Dec. 29, 1950.

[6] The original jurisdiction of courts of first instance in criminal cases is provided for in Section 44(h) of the Judiciary Act.

Court of Appeals.—Under Section 29 of the Judiciary Act, the Court of Appeals exercises exclusive appellate jurisdiction over all cases, actions and proceedings not enumerated in Section 17 of the same Act. Among the civil cases not so enumerated are those in which the value in controversy does not exceed ₱50,000 exclusive of interests and costs, and cases and special proceedings in which errors or questions of fact and law are involved. This was stressed by the Supreme Court in the special proceeding of *Fernandez v. Fernandez et al* [7] which was remanded to the Court of Appeals for proper action. The Supreme Court ruled that the Court of Appeals had the exclusive appellate jurisdiction over the case, considering that the appellants, while concluding in a joint motion with appellee that the "questions raised in the present case are purely legal," actually raised questions of fact in their brief.

Court Sessions.—Although Section 58 of the Judiciary Act provides that "the hours for the daily session of Courts of First Instance shall be from nine to twelve in the morning, and from three to five in the afternoon," the same section, in the following sentence, also provides that "the judge holding any court may also, in his discretion, order that but one session per day shall be held instead of two, at such hours as he may deem expedient for the convenience both of the court and the public."

The first clause is, according to the Supreme Court in *Cortes v. Bun Kim,*[8] merely directory and has for its sole object the fixing of the minimum number of hours which judges should devote to the transaction of business. This is implied from the last clause of the same section, which enjoins that the court shall be in session not less than five hours a day. The good of the service demands more toil and less idleness, and the limitations imposed by the above-quoted statutory provision are aimed at indolence and not the other way around.

Speedy Administration of Justice.—The Rules of Court command that justice shall be impartially administered without unnecessary delay.[9] This mandate was construed in the case of *Semira et al v. Enriquez et al* [10] to imply that although litigants are not justified in taking for granted that their motions would be granted,[11] the courts are bound to act, in proper cases, on all motions with suffi-

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[7] G. R. No. L-2667, prom. Feb. 13, 1951.
[8] G. R. No. L-3926, prom. Oct. 10, 1951.
[9] Section 1, Rule 124, Rules of Court.
[10] G. R. No. L-2582, prom. Feb. 27, 1951.
[11] See *Boncan and Yabut v. Ventura et al.*, 43 O. G. 4602.

cient dispatch necessary to allow the parties to avail themselves of proper remedies.[12]

Inherent Powers of Courts.—Among the inherent powers of every court conferred by the Rules are the powers "to amend and control its process and orders so as to make them conformable to law and justice" [13] and "to authorize a copy of a lost or destroyed pleading or other paper to be filed and used instead of the original, and to restore and supply deficiencies in its records and proceedings." [14] These powers are essential to the existence and survival of courts.[15] The above-cited Semira case declared that the first power described carries with it the concomitant duty to correct its orders on its own initiative or upon motion of the parties. And this duty, the Court added, is not affected by the nature of the error sought to be corrected.

The second power above referred to provided legal authorization in *People v. Dagatan* [16] for the move to reconstitute judicial records destroyed during the war.

ACTIONS AND TRIAL

Parties to Civil Actions.—It is clear under the law [17] that every action must be prosecuted in the name of the real party in interest. A corollary proposition to this rule was announced in the case of *Salonga v. Warner, Barnes and Co., Ltd.*,[18] to wit: An action must be brought against the real party in interest, or against a party which may be bound by the judgment to be rendered therein. The real party in interest, the Court said, is the party who would be benefited or injured by the judgment, or, borrowing the words of Sutherland,[19] the "party entitled to the avails of the suit." The Salonga case was an action on a contract of insurance. The defendant was sued in its capacity as agent of the insurer, a New York insurance company, notwithstanding that the contract had not been signed by it (defendant). It was established further that said defendant did not assume any obligation under the contract either as

[12] For an elucidative discourse on this matter, see concurring opinion of Mr. Justice Tuason in *People v. Lopez et al.*, 44 O. G. 3213.

[13] Sec. 5(g), Rule 124.

[14] Sec. 5(h), *Id.*

[15] II Moran, COMMENTS ON THE RULES OF COURT, 2d ed., p. 765.

[16] G. R. No. L-4396, prom. Oct. 30, 1951.

[17] Sec. 2, Rule 3.

[18] G. R. No. L-2246, prom. Jan. 31, 1951.

[19] I CODE PLEADING, PRACTICE AND FORMS, p. 11.

agent or as a principal. Not being the real party in interest, it was absolved from liability on the contract sued upon.

A logical consequence of the above ruling was noted in the same case of Salonga when the Supreme Court sustained the defendant's claim that a judgment for or against an agent in no way binds the real party in interest. The reason, according to the Court, is that an action is brought for a practical purpose, nay, to obtain actual and positive relief, and if the party sued is not the proper party, any decision that may be rendered against him would be futile, for it can not be enforced or executed, the real party not being involved. The defendant can not be made to pay for something it is not responsible for.

Married Women's Suits.—It is the general rule that the husband must be joined in all suits by or against the wife.[20] The law enumerates several exceptions, one of which authorizes a married woman to sue alone without joining her husband when she is living separately and apart from him for just cause.[21] The case of *Peyer v. Martinez*[22] falls exactly under said exception. There, the plaintiff and her husband were not only living apart but the husband has deserted and abandoned his wife (plaintiff) and child. The suit was not one against the husband but one to preserve the property in which he and the plaintiff had a common interest and to use it to meet common responsibilities. The husband was held not to be an indispensable party. Hence, the wife could sue alone to protect her natural right and manage the property during her husband's absence. The Court observed that the husband could not expect to be made a party when it was precisely from his inability to act and from the exigencies of the case that the wife derived her cause of action. To include him and require that he be served with process by publication or any other mode would, to a large measure, be a contradiction and would defeat the purpose of the law.

On the question of whether or not a declaration of the husband's absence must precede the transfer of the management of the conjugal property to the wife, i. e., whether or not such declaration must be sought in a separate action in which the absent husband or his representative is given an opportunity to be heard, the Court in the Peyer case opined that by Section 4 of Rule 3, applications to pronounce the husband an absentee and to place the management of the conjugal assets in the hands of the wife may be combined and

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[20] Sec. 4, Rule 3; also, Art. 113, Civil Code.
[21] Sec. 4(c), Rule 3.
[22] G. R. No. L-3500, prom. Jan. 12, 1951.

adjudicated in one and the same proceeding. The opinion was based on the theory that declaration of absence is eminently remedial in character and any provision in the Spanish Civil Code [23] in respect thereto must be deemed superseded by the Rules of Court.

Joinder of Parties.—The rule on permissive joinder of parties [24] makes possible the joining in one complaint of several plaintiffs. It is only necessary that a right to relief exists in favor of all of them in respect to the same transaction or series of transactions, whether jointly, severally or in the alternative, and that there be a question of fact or law common to all such plaintiffs. An example of this joinder is typified lately by the case of *International Colleges, Inc. v. Argonza et al* [25] where 25 dismissed teachers joined in one complaint for the collection of unpaid salaries. Their right to relief arose out of the same transaction consisting in the mass dismissal of the plaintiffs from the defendant's employ. Also, there was a question of law common to all of them.[26]

The case of *Gacula v. Martinez et al* [27] presented a different situation. Plaintiff there sought to recover from each defendant a piece of jewelry said to be in the latter's possession. These different pieces of jewelry were alleged to have been delivered to each of the defendants by a commission agent of the plaintiff. Said agent received the jewelry from the plaintiff on different dates. The Supreme Court found that the transaction between the agent and each defendant was separate and distinct from that of the rest, and effected on a different occasion. Therefore, the plaintiff's claims against the defendants did not arise from the same transaction or series of transactions. Each claim was in fact a separate cause of action. The defense of each defendant was likewise held to be separate and distinct from those of her co-defendants. It was not, therefore, permissible, according to the Court, to include the separate and distinct claims or causes of action and the several defendants in one single complaint.

Such permissive joinder of plaintiffs in a single complaint where each has a separate and distinct demand generated the view of which the International Colleges case is further authority,[28] that the demand of each of the joined plaintiffs furnishes the jurisdictional

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[23] Art. 1441.

[24] Sec. 6, Rule 3.

[25] G. R. No. L-3884, prom. Nov. 29, 1951.

[26] An earlier case on permissive joinder of parties is *Soriano y Cia v. Jose et al.*, G. R. No. L-3211, prom. May 30, 1950.

[27] G. R. No. L-3038, prom. Jan. 31, 1951.

[28] The ruling in the Soriano case, *supra*, is of similar tenor.

test, i. e., must be of the requisite jurisdictional amount. This is so notwithstanding the aggregate amount of the demands of all the plaintiffs is beyond the jurisdiction of the court trying the case. The action in the International Colleges case was brought in the Municipal Court where ₱2000 is the maximum jurisdictional amount in civil cases.[29] Although the total amount claimed by the plaintiffs reached some ₱14,000, yet, since the highest individual claim did not exceed ₱1300, the Municipal Court was held to have jurisdiction over the case.

Dismissal of Actions.—Rule 30, providing for the cases in which an action may be dismissed, was held to be exclusive of any other case not included therein, under the familiar maxim *inclusio unius est exclusio alterius.*[30]

Adjournments of Trial.—It has been the constant doctrine in this jurisdiction [31] that the matter of adjournments and postponements of trials lies generally within the discretion of courts, and such discretion will not be interfered with unless there is a grave abuse thereof.[32] The same doctrine was reiterated in *Siojo v. Tecson* [33] where defendants' counsel unsuccessfully sought postponement of the trial in the lower court because he was engaged in another trial. The Supreme Court's advice was that if a lawyer is engaged in another trial, he should inform the client of the situation so that the latter can retain another lawyer. A party has no right to presume that the court will necessarily grant him continuance.[34]

Costs of Trial.—The Rules empower the court to order for equitable reasons that the costs of an action be divided between the parties.[35] This provision was held applicable to election cases in *Tabanda v. Court of Appeals and Rosal,*[36] in spite of Section 180 of the Revised Election Code since there is no inconsistency between the two provisions. Section 180 in stating that the court shall assess.

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[29] See Sec. 88, Judiciary Act of 1948.

[30] *Manila Herald Publishing Co. v. Ramos et al.*, G. R. No. L-4268, prom. Jan. 18, 1951.

[31] As enunciated and adhered to in a respectable line of decisions: *Lichauco v. Lim*, 6 Phil. 271; *Go Changjo v. Roldan Sy Changjo*, 18 Phil. 405; *Lino Luna v. Arcenas*, 34 Phil. 80; *Rivera v. Ong Che*, 37 Phil 355; *Fabillo v. Tiongco et al.*, 43 Phil. 317; *Phil. Guaranty Co. v. Belando*, 53 Phil. 410; *Corp. de PP. Agustinos v. Del Rey*, 55 Phil. 163; *Linis v. Rovira*, 61 Phil. 137.

[32] See in this connection *Pellicena Camacho v. Gonzalez Liquete*, 6 Phil. 50, *Olsen* v. *Fressel & Co.*, 37 Phil. 121, and *Samson v. Naval*, 41 Phil. 838.

[33] G. R. No. L-2807, prom. April 23, 1951.

[34] See *Linis v. Rovira*, 61 Phil. 137

[35] Sec. 1, Rule 131.

[36] G. R. No. L-2695, prom. May 28, 1951.

levy and collect the expenses and costs paid by the winning party as costs from the losing party, merely authorizes the court to tax the expenses of an election protest against the losing party.[37] And without said statutory provision, the court would have no power to include such expenses in the costs provided in the Rules of Court. The Supreme Court opined that Section 180 of the Revised Election Code was not intended to deprive the court of its discretion under Section 1 of Rule 131.[38] Said discretion, unless expressly taken away in specific cases, undoubtedly has salutary and equitable effects, in that the court may determine the propriety and justness of imposing the costs authorized in the Revised Election Code against one or both parties, depending upon the circumstances of each election case.

PLEADINGS, MOTIONS AND OTHER PAPERS

Service of Summons.—The procedure indicated in Section 14 of Rule 7 concerning litigations involving foreign corporations found application in the case of *Salonga v. Warner, Barnes & Co., Ltd.*[39] where the Court suggested the same as the only way by which the plaintiff could bring the principal of the defendant into the case or make it come under the courts in this jurisdiction. The rule says that if the defendant is a foreign corporation and it has not designated an agent in the Philippines on whom service may be made in case of litigation, such service may be made on any agent it may have in the Philippines. In the Salonga case, the foreign insurance company, plaintiff's insurer, was said to come within the import of said rule for even if it had not designated an agent as required by law, it had a settling agent in the person of the defendant who may serve the purpose. In other words, an action may be brought against said insurance company in the Philippines and the process may be served upon the defendant therein to give our courts the necessary jurisdiction.

Suppose, however, the service of summons or other process is made on an attorney or counsel of a foreign corporation in the Philippines. There is a conflict of authority as to the validity of such service. But, the Supreme Court, by unanimous vote, in *Johnlo Trading Co. v. Flores and Florentino & Co.*,[40] laid down the following proposition which may well be the prevailing doctrine in this

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[37] Cf. *Mandac v. Samonte*, 49 Phil. 284 where similar provisions of the Code of Civil Procedure and the old Election Law were involved.

[38] See in this regard *Roque et al. v. Vda. de Cogan*, 40 O. G. (10 S) 55, wherein payment of costs was held to rest entirely upon the discretion of courts.

[39] *Supra*, note 18.

[40] G. R. No. L-3787, prom. May 18, 1951.

jurisdiction: Where there is proof to show that the attorney of the foreign corporation acts not merely as counsel but also in a representative capacity in and outside of court, so much so that he undertakes to settle claims filed against the corporation, service of process upon him is sufficient to confer jurisdiction upon the corporation. And granting that the attorney merely acted as counsel, still the service upon him of process intended for the corporation can be deemed sufficient in contemplation of law [41] to bind his client, upon the theory that, as the only person in the Philippines charged with the duty of settling claims against it, he must be presumed to communicate to his client the service made upon him of any process that may result in a judgment and execution that may deprive it of its property; and the probabilities are, under such circumstances, that the corporation will be duly informed of the pendency of the suit. The same doctrine was adhered to in the identical case of *Johnlo Trading Co. v. Zulueta and Northern Luzon Stevedoring Union.*[42]

Motion to Dismiss and Answer.—Section 1 of Rule 8 enumerates the grounds upon which an action may be dismissed, and it specifically ordains that a motion to this end be filed. So that in the absence of such requisite motion duly presented, the court has no power to dismiss a case. This was the belief expressed by our Supreme Court in the case of *Manila Herald Publishing Co., Inc. v. Ramos et al.*[43] It was there held that memoranda filed by the parties upon the court's order, although such memoranda discussed the proposition that the action before the court was unnecessary and improperly brought, did not supply the deficiency. Hence, the lower court was said to have acted with grave abuse of discretion, if not in excess of its jurisdiction, in dismissing the case without any formal motion to dismiss. Such a holding is a strict application of the rule and it can very well be gathered therefrom that dismissal of an action may be availed of only by motion.

When must the motion be filed? Suppose it is filed eighteen days after defendant was summoned to answer, may the motion be still admitted? The Supreme Court on one occasion [44] ruled that it may still be validly admitted by the trial court on the theory that the court has discretion to permit an answer or other writings to be

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[41] Sec. 14, Rule 7.
[42] G. R. No. L-4459, prom. May 18, 1951.
[43] G. R. No. L-4268, prom. Jan. 18, 1951.
[44] *Pindancan Agric. Co. v. Estrada,* G. R. No. L-2841, prom. May 28, 1951.

filed even after the time fixed for its presentation, and the defendant may, within the time for pleading, file a motion to dismiss.[45]

Now, may the defendant still file such motion even after he had filed his answer? There is no rule or law prohibiting him to do so when the motion is based upon plaintiff's failure to state a cause of action, pursuant to Section 10, Rule 9, which expressly authorizes the filing of such motion at any stage of the proceeding. The same section provides that the defense of failure to state a cause of action may be alleged in a later pleading. Said legal provision was applied in *Community Investment and Finance Corp. v. Garcia*[46] where plaintiff sought to recover from the defendant the balance of the price of certain shares of stock bought by defendant from the former. Defendant filed two motions to dismiss, one before and the other after answer. Failure to state a cause of action, not raised in the first motion, was the sole ground for the second. The Court held that the second motion was well taken.

Section 10 of Rule 9 was again involved in *Community Investment & Finance Corp. v. Court of Appeals*,[47] one of several moratorium cases decided by the Supreme Court in the year 1951.[48] It was there held that moratorium is a defense that, requiring or raising no issue of fact, does not have to be alleged in the answer. The failure, therefore, to mention it in such responsive pleading does not constitute a waiver under the section mentioned for it is obvious

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[45] See Sec. 1, Rule 8.

[46] G. R. No. L-2338, prom. Feb. 27, 1951.

[47] G. R. No. L-3680, prom. April 25, 1951.

[48] To wit: *Berg. v. Teus*, G. R. No. L-2987, prom. Feb. 20, 1951, where the Moratorium Law was held not applicable to actions which have for their object remedies aside from the enforcement of monetary obligations; *Comm. Investment & Finance Corp. v. Garcia, supra*, note 46 (see text); *Phil. National Bank v. Jacinto*, G. R. No. L-3477, prom. March 19, 1951, holding that the Phil. National Bank is bound by the Moratorium Law, the debt moratorium being general in scope; *Timbol v. Martin*, G. R. No. L-3460, prom. April 20, 1951, to the effect that the moratorium was not a period fixed by the contracting parties as contemplated by Art. 1129 of the Civil Code, and, therefore, can not be waived by the debtor's insolvency; *Abanzando v. Martinez*, G. R. No. L-3468, prom. April 25, 1951, ruling that the Moratorium Law stopped the filing of suits to enforce payment of obligations; *Barraca v. Zayco*, G. R. No. L-3325, prom. May 21, 1951, to the effect that the Moratorium Law applies to a claim for money against estate of deceased debtor, notwithstanding it might delay its settlement and distribution, especially where the impediment is caused by the administratrix or heirs of the deceased; *De Guzman v. Fernando et al.*, G. R. No. L-4120, prom. Oct. 25, 1951, holding that interests on monetary obligations were not condoned by the Moratorium Law; and *Vda. de Santos v. Bayquen*, G. R. No. L-3365, prom. Nov. 29, 1951, where the term "pre-war debts" with respect to which only the moratorium has been lifted, was construed to be equivalent to "debts or obligations contracted before Dec. 8, 1941."

that the waiver therein provided refers only to those defenses that are required by the Rules to be specifically mentioned in the answer.

By specific provision in the Rules of Court,[49] the allegations of the main cause of action of the plaintiff are deemed admitted if not specifically denied. And a denial is not specific simply because it is so qualified by the defendant. A general denial does not become specific by the use of the word "specifically." Thus observed again the Supreme Court in *Cortes v. Bun Kim* [50] where defendant's answer was characterized by vagueness and generalities. Although traversing some of the allegations in the complaint defendant therein did not point out what allegations he referred to. Such an answer, the Court said, was not only not a defense but operated as an admission of the plaintiff's averments.

Where in an appeal from the Justice of the Peace to the Court of First Instance there are included in the answer of appellant deemed reproduced in the Court of First Instance, special defenses not pleaded in the Justice of the Peace as well as counterclaims, such inclusion does not nullify the parts of the pleading which are in reality special denials. The fact that the pleader qualifies them as special or affirmative defenses does not make them so. The Supreme Court thus held in *Quizan v. Arellano and Garrido.*[51] A remedy for such situation was there suggested which is that the court should eliminate from the pleading the special defenses and counterclaims and allow the special denials to remain. Such special denials are deemed to have been interposed in the court of origin (Justice of the Peace) since written answer is not required in the inferior courts,[52] and especially if the pleader was not in default in the Justice of the Peace court, as in the Quizan case.

Counterclaims and Crossclaims.—One of the pleadings recognized in our precedural law is the counterclaim.[53] The Supreme Court in *Florendo v. Organo* [54] observed that the Rules are liberal in the allowance of counterclaims, and even discourage separate actions which make for multiplicity of suits; and that wherever pos-

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[49] Secs. 7 and 8, Rule 9.

[50] G. R. No. L-3926, prom. Oct. 10, 1951; *El Hogar Filipino v. Santos,* G. R. No. L-48244 and *Dacanay et al. v. Lucero,* G. R. No. L-114, prom. Feb. 15, 1946, already so declared.

[51] G. R. No. L-4461, prom. Dec. 28, 1951.

[52] See Sec. 6, Rule 4.

[53] See Sec. 1, Rule 15, and Rule 10.

[54] G. R. No. L-4037, prom. Nov. 29, 1951.

sible they permit, and sometimes require combining in one litigation all the cross-claims of the parties.

Intervention.—The propriety of intervention in an action is regulated by specific provision in the Rules.[55] Not being a matter of right, its allowance rests in the sound discretion of the court where the proposed intervenor is not an indispensable party. In the exercise of that discretion, the court "shall consider whether or not the intervention will unduly delay or prejudice the adjudication of the rights of the original parties and whether or not the interventor's rights may be fully protected in a separate proceeding," pursuant to Section 8, Rule 18. This ruling, laid down in *Peyer v. Martinez*,[56] was re-emphasized and explained in a decision rendered six days later in the case of *Manila Herald Publishing Co. v. Ramos*.[57]

JUDGMENTS AND ORDERS

Judgment by Default in Inferior Courts.—The case of *Quizan v. Arellano and Garrido* [58] made it clear that in inferior courts, failure to appear, not failure to answer, is the sole ground for judgment by default.[59] The result is that if the defendant puts in an appearance in an inferior court, even if he fails to answer, he is not in default.

Findings of Fact and Law in Judgments.—It is explicitly required by the Rules that a judgment should state clearly and distinctly the findings of fact and of law on which it is based.[60] The Supreme Court in this connection made the following observations in *Zari v. Santos*.[61] "It is true that the question for a court to decide is only of law if the ultimate facts alleged by one party are admitted or not denied by the other. But it is not less true that the fact that evidentiary matters have been introduced without contradiction does not make said ultimate facts undisputed and the question for the appellate courts to decide one only of law, for the court may not give any credit or weight to the evidence presented. The appellate courts in such case can not just assume the ultimate facts as proven or admitted and decide only the questions of law and state in its judgment its conclusion derived from the law applicable as major premise and the ultimate facts as minor premise of the syl-

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[55] Sec. 1, Rule 13.
[56] *Supra*, note 22.
[57] *Supra*, note 43.
[58] *Supra*, note 51.
[59] See Sec. 13, Rule 4.
[60] Sec. 1, Rule 35; also, Sec. 12, Art. VIII, Constitution of the Philippines.
[61] G.R. No. L-5608-R, prom. Sept. 29, 1951.

logism. The court should first decide or make its findings of fact or conclusion whether or not the ultimate facts in issue have been established. And such conclusion is drawn from a syllogism the minor premise of which is the direct and indirect or circumstantial evidence presented, and the major premise is reason or logic and everyday experience according to which the truth or existence of a fact in issue may be or may not be logically inferred from the evidence presented."

Relief from Judgments.—Under Section 3 of Rule 38, a petition for relief from judgment must be filed within sixty days after the petitioner learns of the judgment sought to be set aside, and not more than six months after the entry of such judgment. So that in the case of *Reyes v. Roman Catholic Archbishop of Manila,*[62] where petitioner was declared in default and received notice of the judgment to that effect on January 4, 1949, and the petition for relief from such judgment was filed on May 17, 1949, the Court denied the petition on the ground that it was filed well beyond the reglementary period of sixty days counted from January 4, 1949, notwithstanding the perfection of an appeal from the judgment which did not suspend the running of the period. The appeal was held ineffectual by the Supreme Court, relying on the well-settled doctrine[63] that a defendant in default has no right to appeal from the judgment on the merits.[64] The same ruling was laid down in the subsequent case of *Isaac v. Mendoza.*[65]

An explanation for the above pronouncement is offered in *Tecson v. Melendres et al.*[66] The Supreme Court therein stated that there can be no appeal from a judgment by default if the party against whom it is rendered purposely did not appear and answer the complaint, counterclaim or cross-claim because he had no valid defense to set up against it. An appeal from such judgment in such case would be futile and purposeless because the appellant would have nothing to rely upon to secure a reversal of the judgment by default rendered against him. But there might be instances, the Court went on, in which the defaulting party had been unjustly deprived of his opportunity to plead in due time. Such instances are provided for by Rule 38 which prescribes the remedy in the form of a petition or motion to set aside the judgment to be filed within

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[62] G.R. No. L-3507, prom. April 20, 1951.

[63] Announced in *Lim Toco v. Go Fay,* 46 O.G. 3352.

[64] For other effects of judgment by default on defendant, see *Velez v. Ramas,* 40 Phil. 787, 791-792.

[65] G.R. No. L-2820, prom. June 21, 1951.

[66] G.R. No. L-3824, prom. May 16, 1951.

the time prescribed,[67] predicated upon either fraud, accident, mistake or excusable negligence [68] and based upon the fact that the petitioner has a meritorious and valid defense, usually shown by means of an affidavit of merit attached to the petition. If this is denied, the aggrieved party may appeal from the order denying it and at the same time apply for a writ of preliminary injunction,[69] or he may also move for a stay of execution of the judgment by default by filing a bond;[70] and if the motion for a stay of execution be denied, such party may renew his motion on appeal.[71]

Applying squarely the resolution in *Zari v. Santos*,[72] the Supreme Court opined in *Santos v. Rustia* [73] that a motion for new trial on the ground of fraud, accident, mistake or excusable negligence, is substantially similar to the motion for relief on the same grounds under Section 2 of Rule 38. The only difference, according to the Court, is that the petition is called a motion for new trial if filed before a judgment or order has become final and the petitioner has not been declared in default, and a motion for relief if filed within sixty days after the petitioner learns of the judgment and not more than six months after the judgment was entered.

Attack Against Judgments.—The Supreme Court has consistently adhered to the rule that a judgment, which on its face is valid and regular, can only be attacked in a separate action brought principally for the purpose. Thus, in the case of *Ramos et al v. Mañalac and Lopez* [74] petitioners sought by certiorari to annul a lower court order placing respondent Lopez in possession of the lands in question and the decision of the same court foreclosing the mortgage executed on said property. Petitioners had executed a power of attorney in favor of a brother of theirs giving the latter authority to mortgage the land. The brother, pursuant to such authority, mortgaged the property, but upon failure to pay the obligation, the mortgage was foreclosed. In the foreclosure proceedings, all the petitioners, while made defendants, were not served with summons. The brother, on whom the summons was served, however, acknowledged the service in behalf of the petitioners and engaged the services of a lawyer who entered appearance for all of them. Judgment was

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[67] Sec. 3, Rule 38.
[68] Secs. 1 and 2, Rule 38.
[69] Sec. 5, *Id.*
[70] *Ibid.*
[71] See *Sanchez v. Serrano et al*, G.R. No. L-2130, prom. May 30, 1949.
[72] *Supra*, note 61.
[73] G.R. No. L-4917-R, prom. Oct. 31, 1951.
[74] G. R. No. L-2610, prom. June 16, 1951.

later rendered against defendants and the sale to the mortgagee was confirmed. The mortgagee then sold the lands to respondent Lopez. Petitioners refused to deliver the property to respondent and so were held in contempt. Petitioners claimed that the decision foreclosing the mortgage was void as they were not duly summoned. The Supreme Court, reiterating the rule above stated, declared that petitioners' claim was a collateral attack against a judgment which on its face was valid and regular and has become final.

Final Judgments.—The question as to the effect, status, revival and enforceability of a final judgment after the lapse of five years from its entry [75] was taken up in the case of *Salvante et al v. Ubi Cruz.*[76] A judgment was rendered on September 30, 1936 by the Court of First Instance ordering defendant to deliver a parcel of land to plaintiffs upon payment of a certain sum as repurchase price by the latter to the former. For a period of five years after entry of said judgment, no motion for execution thereof was filed. On April 20, 1944, however, plaintiffs, heirs of the plaintiff who had obtained the judgment, brought action against defendant based upon said judgment, depositing at the same time with the clerk of court the sum due to defendant in Japanese military notes. The lower court after trial rendered decision declaring re-established the judgment above-mentioned, and accordingly ordered defendant to deliver the land in question to plaintiffs without the latter paying anything therefor, on the theory that the Japanese notes deposited by the plaintiff were legal tender and lost for the defendant.

Regarding the effect of the rendition of the 1936 judgment, the Court held that after said judgment had been rendered and become final, the rights to be exercised and obligations to be performed by the parties were those arising from the judgment and not from the contract of *pacto de retro* sale which had already been merged into said judgment. The doctrine was then laid down that after the rendition of the judgment the contract on which it is based must be regarded as *functus officio,* for all its power to sustain rights and enforce liabilities has terminated in the judgment. The plaintiff in the case, therefore, had no right to compel the defendant to accept the tender of payment made by the plaintiffs on the strength of the contract of sale *a retro.*

Why the defendant had good legal reason to refuse to accept the tender of payment based on the 1936 judgment was explained by the Court in this wise:

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[75] Sec. 5, Rule 39.

[76] G.R. No. L-2531, prom. Feb. 28, 1951.

> "After the lapse of five years from its entry, the plaintiffs could not rely on it to compel the defendant to accept the tender of payment, for the judgment was no longer executory or enforceable by motion or writ of execution. After the lapse of five years said judgment became dormant and could not be enforced until it has been revived by an action on the judgment instituted in regular form by complaint, as other actions are instituted. * * * And after the action to enforce a dormant judgment has been filed and during the pendency thereof, the plaintiffs could not invoke said judgment to compel the defendant to accept their tender of payment, because such judgment is not revived by the mere filing of a complaint to enforce it but by the rendition therein of a final judgment reviving it. Section 6 of Rule 39, * * *, does not mean to say that, by the institution of an action based on said judgment, this or the first judgment becomes *ipso facto* enforceable or may be executed. No, but the judgment to be rendered therein reviving totally or partially the first judgment will be the one to be enforceable or executed. * * * "

In this connection, the later case of *Philippine National Bank v. Silo* [77] is authority for the view that adverse possession of the property in litigation for more than one year after entry of judgment does not have the effect of shortening or accelerating the prescriptive period of ten years within which to bring an action to revive and enforce a dormant judgment.[78]

And what is the object of the action to enforce a dormant judgment? First, the Court in the Salvante case said, to revive it and then, execute the second judgment reviving it if it grants the plaintiff any relief: that is, the new judgment rendered in the action to enforce a dormant judgment, and not the old one, is to be executed in the terms in which the second revives the first judgment.[79]

Admitting that the 1936 judgment became due and payable or executory since the day it became final, the Court, however, pointed out that said judgment, after the lapse of five years, ceased to be operative and was reduced to a mere right of action until its revival by a second judgment.

That a judgment must conform to the issues involved in the case was intimated in the Court's decision. Hence, in an action instituted by the vendor *a retro* to compel the vendee, who had refused to accept the tender of payment of the repurchase price within the period agreed upon or fixed by law, to accept the payment, the point in issue is whether or not the plaintiff had the right to repurchase the property at the time he offered to pay the repurchase

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[77] G.R. No. L-3498, prom. March 19, 1951.

[78] See Sec. 2, Rule 39, and Arts. 1144 and 1152, Civil Code.

[79] See in this connection *Cia Gen de Tabacos v. Martinez* and Nolan, 29 Phil. 515.

price to the defendant, and not whether the plaintiff is entitled to an extension of the period within which he may repurchase the property. The judgment of the court, therefore, must not fix any such period for then it would be outside the issues and will not be a "mere irregularity" but becomes "extrajudicial and invalid" as adjudicating "matters beyond the issues and upon which the parties were not heard." [80]

It was there also observed that the execution of a final judgment may be made not only upon motion of the judgment creditor but also of the judgment debtor, especially in cases in which reciprocal rights and obligations are imposed in the judgment as in the Salvante case. Generally, the Court opined, it is true that it is the judgment creditor who compels the judgment debtor to satisfy the judgment, but it is not less true that the judgment debtor has also the right to compel the former to accept the satisfaction of the judgment by him, and acknowledge admission of such satisfaction in accordance with Section 43, Rule 39; and after satisfying his obligation under the judgment, the judgment debtor may compel the judgment creditor to perform his reciprocal obligation.[81]

Execution of Judgments.—It is clear under Section 14 of Rule 39 that an execution against property must be enforced by levying on and selling the same. Hence, mere levy without sale of the property does not accomplish the execution. Such was the ruling in *Ansaldo v. Fidelity and Surety Co.*[82] where a judgment creditor after levying upon the property of the judgment debtor allowed fourteen years to lapse from the entry of the judgment without having the property sold on execution.

Well settled is the doctrine that property in *custodia legis* can not be reached by execution in the absence of legal or statutory authority.[83] A recognized exception to this rule is found in Section 7(c) of Rule 39 with respect to property of the deceased placed under administration by the probate court. This provision authorizes the sale of the deceased's property for the satisfaction of a judgment entered against him but only if he dies after execution has been actually levied upon any of his property. The exception will not ap-

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[80] Quoting Freeman on Judgments, Vol. I, 5th ed., pp. 739-740.

[81] A vigorous and elaborate dissent was registered in the Salvante case by the then Chief Justice Moran whose view was that a judgment may be dormant after five years but it ceases to be so after the filing of an action to enforce it; a judgment of revivor retroacts to the time the action was commenced.

[82] G.R. No. L-2378, prom. April 27, 1951.

[83] *Pilin v. Jocson*, 41 Phil. 26; *Espino v. Rovira*, 50 Phil. 152; *Asia Banking Corp. v. Elser*, 54 Phil. 994.

ply, therefore, where the deceased judgment debtor died not after the order of execution but before a judgment was rendered. This was the strict construction of the rule adopted in *Verhomal v. Tan and Azaola.*[84] To the same effect is the ruling in *Verhomal et al v. Sanchez et al.*[85]

Res Adjudicata.—The case of *Valdez et al v. Mendoza et al*[86] posed a question of first impression in this jurisdiction, as to whether or not the judgment in a prior case involving several defendants is conclusive in a subsequent litigation between said co-defendants; or whether or not *res adjudicata* can be invoked by one defendant against a co-defendant in such subsequent litigation between themselves.[87] The Supreme Court adhered to the theory of numerous American decisions that the previous judgment "merely adjudicates the rights of the plaintiffs as against each defendant, and leaves unadjudicated the rights of the defendants as among themselves." While a judgment in favor of two or more defendants is conclusive on the plaintiff as among them, the estoppel "is raised only between those who were adverse parties in the former suit, and the judgment therein ordinarily settles nothing as to the relative rights or liabilities of the co-plaintiffs or co-defendants *inter sese,* unless their hostile or conflicting claims were actually brought in issue by cross petition or separate and adverse answer." No plea of *res adjudicata,* therefore, will generally lie. The decision of the Court, which is in conformity with the established doctrine in American law, appears to be the first well-defined rule in the Philippines on the subject.[88]

Interest on Money Judgments.—In the execution of judgments for money, legal interests do not attach automatically. There is no law directing that legal interest shall necessarily be collected. Thus announced the Supreme Court in *Zamora and Diones v. Medran*[89] where American doctrines prohibiting collection of interest when the judgment does not give it were adapted into our procedural system. The reason, according to the Court, is that the writ of execution, as is the practice in this jurisdiction, must conform to the

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[84] G.R. No. L-3781, prom. March 19, 1951.

[85] G.R. No. L-3823, prom. April 27, 1951.

[86] G.R. No. L-2847, prom. May 28, 1951.

[87] For an elaborate discussion on *res adjudicata,* see I Moran, *op. cit.,* p. 706 *et seq.*

[88] The Court had to draw solely upon American jurisprudence, for our theories on *res adjudicata,* as it observed, have their origin in the United States.

[89] G.R. No. L-3777, prom. Oct. 31, 1951.

judgment which is to be executed [90] with the dispositive part furnishing guidance to the sheriff.

Section 6 of Rule 53,[91] the Court said, is obviously a principle of adjudication to be followed by the Court of Appeals and the Supreme Court in rendering judgments on appeal, and is not a self-executing regulation. So also, Section 8 of Rule 39, requiring the sheriff "to satisfy the judgment *with interest* out of the personal property of the debtor, and if sufficient personal property can not be found, then out of his real property," was held not to be a directive for collection of interest on all judgments.

APPEALS

Record on Appeal.—Appeal under the Rules is taken by serving upon the adverse party and filing with the trial court within thirty days from notice of judgment a notice of appeal, an appeal bond and a record on appeal.[92] There is nothing in the Rules which requires the appellant to set for hearing the record on appeal as is required in the case of a motion under Rule 26. The only thing required of the appellant is that he must serve the adverse party with a copy of the record on appeal, together with those of the appeal bond and notice of appeal. There is no need for him to set the record for hearing. Upon its filing, it is deemed submitted for approval, modification, or disapproval as the case may be. These were the observations of the Supreme Court in *Olvido et al v. Ferraris et al*,[93] where the trial judge was held in error in dismissing the appeal of petitioners for their failure to set the record on appeal for hearing within the reglementary period of thirty days.

Court's Powers After Perfection of Appeal.—The case of *Valdez et al v. Court of First Instance et al* [94] dealt with the powers of the trial court after the perfection of an appeal, conferred by Sections 9 and 22 of Rule 41, namely: 1) to issue orders for the protection and preservation of the rights of the litigants which do not involve any matter debated in the appeal; [95] 2) to approve compromises

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[90] Citing *Velez v. Martinez*, 63 Phil. 231.

[91] Sec. 6, Rule 53 reads: "When the judgment rendered by the Court of Appeals is upon an interest-bearing claim, it shall bear the same rate of interest; when upon a non-interest-bearing claim, it shall bear the legal rate of interest."

[92] Sec. 3, Rule 41.

[93] G.R. No. L-4276, prom. Dec. 17, 1951.

[94] G.R. No. L-3366, prom. April 27, 1951.

[95] See in this connection early cases of *Velasco & Co. v. Gochuico*, 28 Phil. 39, *Government v. De Asis*, 40 O.G. (3S) 40, *Galang v. Endencia*, 40 O.G. 4600, *Dizon v. Moir*, 36 Phil. 759, 760-761, and *Mercader v. Wislizenus*, 34 Phil. 846.

offered by the parties; and 3) to permit withdrawal of the appeal. The particular question involved there was: After approving the record on appeal, may the Court of First Instance compel the appellant to insert other pleadings at the request of the appellee? Appellee in that case sought to be included in the approved record on appeal certain pleadings "in the interests of justice," contending that said pleadings did not involve any matter litigated in the appeal. The Supreme Court in rejecting appellee's contention opined that the power retained by the court after the perfection of the appeal is not so extensive as to permit any order in the interest of justice, and that if the additional pleadings do not concern any matter discussed in the appeal, it is unnecessary to require their inclusion in the record on appeal.

Interlocutory Orders Unappealable.—The well-settled rule that interlocutory orders are unappealable [96] and the reasons therefor again found expression in the case of *Hodges v. Villanueva.*[97] The Supreme Court therein properly warned that if appeals are allowed from interlocutory orders, appeals will be taken from incidental matters and the undesirable consequence is to unduly prolong the case, much to the prejudice of the parties. Indeed, unduly prolonged litigations do not promote the speedy administration of justice. In the Hodges case, defendant's appeal from the lower court's order denying his motion to dismiss was held premature as such order is interlocutory in nature since it does not dispose of the case finally and, therefore, is unappealable.

Appeal on Questions of Law.—Under Section 3, Rule 42, the only case in which the appeal may be taken directly to the Supreme Court is "when the appellant shall state in his notice of appeal that the appeal is based purely on questions of law, and then no other questions or questions of fact shall be allowed and the evidence need not be elevated." The Supreme Court thus observed in the special proceeding of *Fernandez v. Fernandez et al* [98] where said rule, although not involved, was alluded to by the Court to explain why the appeal therein should have been taken directly to the Court of Appeals. It was there further observed that in the case contemplated under the section hereinabove mentioned, although questions of fact and law are involved or passed upon by the lower court in its judgment, the appellant is considered as admitting as correct the findings

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[96] Sec. 2, Rule 41.

[97] G.R. No. L-4134, prom. Oct. 25, 1951; see I Moran, *op cit.*, 729-730 and *Manila Elect. Co. v. Artiaga*, 50 Phil. 147. *Olsen & Co. v. Olsen*, 48 Phil. 238, 240, and *Go Quico v. Mun. Board of Manila et al*, 1 Phil. 502, 508.

[98] *Supra*, note 7.

of fact of the lower court, and, therefore, he can not be allowed to attack or impugn said findings of fact.

Appeal from Public Service Commission.—The Rules empower the Supreme Court to review orders or decisions of the Public Service Commission [99] and in the exercise of such power, the Court is not required to examine the evidence *de novo* and determine for itself whether or not the preponderance thereof justifies the order or decision rendered. So also, the Court will not substitute its discretion for that of the Public Service Commission on questions of fact and interferes only when it appears clearly that there is no evidence to support the order or decision appealed from. This was the doctrine announced in the case of *Interprovincial Autobus Co., Inc. v. Mabanag* [100] echoing the Supreme Court in two early cases.[101] This Mabanag case involved an application to the Public Service Commission to continue an auto-truck service. Opposition was grounded on the claim, among others, that there was no traffic to warrant the granting of the application. The Public Service Commission, finding that traffic on the lines in question warranted the services applied for, granted the application. The Supreme Court, on appeal, did not disturb this decision of the Commission, finding that there was evidence to support it. Of similar tenor was the doctrine in the later case of *Halili v. De la Cruz.*[102]

A perusal of Section 1 of Rule 43 [103] yields the observation that only aggrieved parties can appeal from a decision of the Public Service Commission. Therefore, persons who are not parties for not having intervened in the hearing before the Commission have no right to appeal to the Supreme Court.[104]

Appeal from the Court of Industrial Relations.—The law prescribes the reglementary period of ten days within which an appeal by certiorari may be taken from a decision of the Court of Industrial Relations.[105] The question from what time said period should be counted when a motion for reconsideration has been filed against

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[99] Sec. 1, Rule 43 reads: "Within thirty (30) days from notice of an order or decision issued by the Public Service Commission or the Securities and Exchange Commission, any party aggrieved thereby may file, in the Supreme Court, a written petition for the review of such order or decision."

[100] G. R. No. L-3302, prom. Jan. 11, 1951.

[101] *San Miguel Brewery v. Lapid,* 53 Phil., 542; *Manila Yellow Taxicab Co. v. Danon,* 58 Phil. 75.

[102] G.R. No. L-3321, prom. May 16, 1951.

[103] *Supra,* note 99.

[104] *Lirio et al v. Phil. Power & Dev. Co. et al,* G.R. No. L-2654, prom. July 24, 1951.

[105] Sec. 1, Rule 44, as amended by C.A. No. 559.

a "ruling or decision of any of the judges" was resolved by the Supreme Court in *Manila Terminal Relief and Mutual Aid Association v. Manila Terminal Co. and Court of Industrial Relations.*[106] It was there declared that the period of ten days should be counted from the date the aggrieved party receives notice of the decision or order of the Court of Industrial Relations, sitting *in banc*, i. e., from notice of the denial of the motion for reconsideration. In the words of the Supreme Court, "There is sound foundation for this pronouncement. In the very nature of things, a motion for reconsideration against a ruling or decision by one Judge is in effect an appeal to the Court of Industrial Relations *in banc;* and there can, therefore, be no appealable decision of said court until it shall have acted as a body on the motion for reconsideration. The mere fact that the Court of Industrial Relations, sitting *in banc,* denies a motion for reconsideration, is of no moment, because in such case it can rightly be said to have affirmed or adopted the one-judge decision. Upon the other hand, if the court *in banc* reverses or modifies a ruling or decision sought to be reconsidered, the decision *in banc* logically becomes the decision from which any aggrieved party may appeal."

Questions Raised on Appeal.—The provisions of Section 19 of Rule 48[107] in connection with Section 1, Rule 58[108] were held applicable to naturalization proceedings by analogy and in a supplettory character, for they are not inconsistent with the provisions of the Naturalization Law.[109] In the case holding thus, *Chausintek v. Republic of the Philippines,*[110] the Government appealed from a lower court decision granting the petition for naturalization as citizen of the Philippines filed by petitioner, contending, among other things, that the appellee-petitioner was not in a position to renounce effectively and, therefore, never renounced his Chinese nationality as required by the Chinese Law of Nationality. Said contention was rejected by the Supreme Court on the ground that it was not raised in the lower court and could not be raised on appeal for the first time. The Court declared that the evidence and contents of a foreign law is a fact that must be alleged in time and proved if material and

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[106] G.R. No. L-4150, prom. March 20, 1951.

[107] Sec. 19, Rule 48, reads as follows: "Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or of fact that has been raised in the court below and which is within the issues made by the parties in their pleadings."

[108] Sec. 1, Rule 58 is as follows: "Unless otherwise provided by the Constitution or by law, the procedure in the Supreme Court in original as well as in appealed cases, shall be the same as in the Court of Appeals, except as hereafter provided."

[109] See Rule 132.

[110] G.R. No. L-2755, prom. May 18, 1951.

no evidence thereof may be presented and admitted in the Supreme Court on appeal.

PROVISIONAL REMEDIES.

Attachment; "Proper Action" by Third-Party Claimant.—Under Section 14 of Rule 59 [111] the third person is not prevented from vindicating his claim to the property attached by any proper action. The word "action" is used in a restricted sense; i. e., with a well-defined technical meaning as set forth in Section 1 of Rule 2.[112] And in order to be a "proper action," it must be commenced by filing a complaint with the Court pursuant to Section 2 of Rule 2.[113]

It would be strange, indeed, if the framers of the Rules of Court or the legislature should have employed the term "proper action" instead of "intervention" or equivalent expression if the intention had been just that. It was all the easier, simpler and the more natural to say intervention if that had been the purpose, since the asserted right of the third-party claimant necessarily grows out of a pending suit, the suit in which the order of attachment was issued.[114]

The right of a third person claiming to be the owner of the property attached to intervene in the action for the quashal of the writ of attachment, and not only to file a third-party claim, was recognized in the Manila Herald Publishing Co. case in view of Section 1 of Rule 13 on Intervention. It was pointed out, however, that intervention by the third-party claimant is a new remedy introduced by the Rules of Court as an addition to but not in substitution of the proper and separate action recognized as the correct and only procedure under Act No. 190. The right to intervene now vouchsafed the third-party claimant was moreover distinguished from the right to bring a new action in the sense that the former is not absolute but left to the sound discretion of the court to allow. It was observed, therefore, that such a qualification makes intervention less preferable to an independent action from the standpoint of the claimants at least.

And why is intervention subject to the discretion of the court? This was answered by the Supreme Court in the same case of Ma-

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[111] Sec. 14, Rule 59, reads in part: "But nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action."

[112] Sec. 1, Rule 2: "Action means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong. Every other remedy is a special proceeding."

[113] *Manila Herald Pub. Co. v. Ramos et al, supra*, note 43.

[114] *Ibid.*

nila Herald Publishing Co. when it discredited the assumption that an independent action creates a multiplicity of suits. In the words of the Court: "There can be no multiplicity of suits when the parties in the suit where the attachment was levied are different from the parties in the new action, and so are the issues in the two cases entirely different. In the circumstances, separate action might, indeed, be the more convenient of the two competing modes of redress, in that intervention is more likely to inject confusion into the issues between the parties in the case for debt or damages with which the third-party claimant has nothing to do and thereby retard instead of facilitate the prompt dispatch of the controversy which is the underlying objective of the rules of pleading and practice."

Inasmuch as a separate action by the third-party claimant is appropriate, it must be admitted, according to the Court, that the judge trying such action may render judgment ordering the sheriff or whoever has in possession the attached property to deliver it to the plaintiff-claimant or desist from seizing it. It follows further that the court trying the new action may make an interlocutory order, upon the filing of such bond as may be necessary, to release the property pending final adjudication of the title. This on the theory that jurisdiction over an action includes jurisdiction over an interlocutory matter incidental to the cause and deemed necessary to preserve the subject matter of the suit or protect the parties' interests.

Same; Property Attached in Custodia Legis.—Property legally attached being property in *custodia legis* can not be interfered with without the permission of the proper court. This rule, however, is confined to cases where the property belongs to the defendant or one in which the defendant has proprietary interest. Hence, a sheriff acts beyond the bounds of his office and authority and upon his personal responsibility when he seizes a stranger's property. In such a case the rule just stated does not apply and interference with the sheriff's custody is not interference with another court's order of attachment.

Injunction; Dissolution of Preliminary Injunction.—It may be asked whether or not a writ of preliminary injunction granted the plaintiff by the trial court after hearing may be dissolved upon an *ex parte* application by the defendant, and whether or not a writ of preliminary injunction issued after hearing in a case where it is the principal relief demanded by the plaintiff may be dissolved *ex parte* without trial of the case on the merits. Both questions were involved in *Clarke v. Philippine Ready Mix Concrete Co., Inc. and*

Montesa.[115] The Supreme Court answered the first in the affirmative, quoting with approval excerpts from earlier decisions involving the same question.[116] In resolving the second question, the Supreme Court again relied upon a previous case [117] where it was pointed out that the relief of preliminary injunction where it is the principal remedy sought should be granted after it has been established not only that the right sought to be protected exists, but also that the acts against which the injunction is to be directed are violative of said right, and that a permanent injunction should be awarded only in a clear case and to prevent irreparable injury.

Same; Injunction Unavailable to Enjoin Tax-Collection.—It is the settled doctrine in this jurisdiction that injunction is not the proper remedy to enjoin the collection of taxes.[118] The case of *David v. Ramos and Castro* [119] is the 1951 application of the rule stated; but there the Supreme Court intimated that the collection of taxes may be restrained if extraordinary and exceptional circumstances so warrant.[120]

Receivership Pendente Lite.—The settled doctrine that the power to appoint a receiver *pendente lite* is discretionary with the judge of the Court of First Instance [121] was adhered to again in *Tecson et al v. Macadaeg et al.*[122] The Supreme Court there found that the lower court did not abuse its discretion in appointing a receiver for the hereditary estate of which plaintiff co-heirs were fraudulently deprived through maladministration or diversion of funds.

Replevin; Levy on Replevin Bond.—In a replevin case, *Aguasin v. Velasquez,*[123] the question as to the propriety of a levy of execution on the replevin bond was brought up. Plaintiff there sought to recover the possession of two trucks from the defendant and obtained an order for the seizure of the property as a provisional remedy upon his filing a bond, with the Luzon Surety Co. as surety, to secure the return of the trucks to the defendant, if their return be adjudged,

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[115] G.R. No. L-4036, prom. April 13, 1951.

[116] Notably, *Caluya v. Ramos,* 45 O.G. 2075, *Cine Ligaya v. Court of First Instance et al,* 66 Phil Phil. 659, *Jaramillo v. Jacinto et al,* 43 Phil. 588, and *So Chu et al v. Nepomuceno,* 29 Phil. 208.

[117] *North Negros Sugar Co. v. Hidalgo,* 63 Phil. 664.

[118] *Churchill and Tait v. Rafferty,* 32 Phil. 580; *Sarasola v. Trinidad,* 40 Phil. 252.

[119] G. R. No. L-4300, prom. Oct. 31, 1951.

[120] See the writer's note on the subject in XXVI Phil. Law Journal, p. 90.

[121] Already enunciated in *Teal Motor Co. v. Court of First Instance,* 51 Phil. 549, and *Sabado v. Gonzales,* 53 Phil. 770.

[122] G.R. No. L-3937, prom. April 27, 1951.

[123] G.R. No. L-3399, prom. March 16, 1951.

and/or the payment of damages that might be occasioned by the seizure. Defendant, however, obtained a money judgment on a counterclaim against plaintiff who failed to appear at the trial. No appeal having been taken from that judgment, execution was issued against plaintiff and, as plaintiff turned out to be insolvent, the court on motion of the execution creditor (defendant) and against the objection of the surety, ordered "that a writ of execution issue against the Luzon Surety Co., Inc. for the amount of the judgment and costs." The surety company on appeal questioned the propriety of the order of execution. The Supreme Court ruled that the levy of execution on the bond was wrong and so reversed the order of execution.

Relying on American authorities,[124] the Court explained its decision by first pointing out that a replevin bond is conditioned simply to indemnify the defendant against any loss that he may suffer by being compelled to surrender the possession of the property pending the trial of the action, and hence he can not recover on the bond as for a reconversion when he has failed to have the judgment entered for the return of the property. Nor is the surety, the Court continued, liable for payment of the judgment or damages rendered against the plaintiff on a counterclaim, or punitive damages for fraudulent or wrongful acts committed by the plaintiffs and unconnected with the defendant's deprivation of possession by the plaintiff. Furthermore, the Court observed, the defendant did not question the right of the plaintiff to the possession of the trucks, and the lower court's decision contained no finding or judgment that the defendant was entitled to such possession, let alone redelivery of the trucks. The rule finally laid down and which is in harmony with uniform rulings on the subject is that an order to return the property is, under the terms of the bond, a condition precedent to the recovery of damages from the surety; or, that damages must result from the refusal or inability of the plaintiff to redeliver the property in pursuance of a judgment. So that unless there is such adjudication there is no duty to return, and there being no duty to return, there can be no damages for the non-restitution of the property, damages being accessory to and never independent of the obligation to return.

Alimony Pendente Lite.—Inserted as a new provisional remedy in the Rules of Court is the application for alimony *pendente lite.*[125] Its name is at once indicative of the nature of an order granting the same, i. e., that it is essentially interlocutory. But while being

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[124] *Apgar v. Great Am. Indemnity Co.*, 87 ALR 291.
[125] Rule 63.

so it is at the same time executory and thus becomes the only exception to the well-known rule that only a final judgment or order may be ordered executed.[126] In fact it remains executory and does not prescribe or become dormant. In the apt phrases of the Supreme Court in *Florendo v. Organo,*[127] "both by law and authority as well as by its very nature, a judgment for alimony does not become dormant, much less does it prescribe except as to installments not recovered within the period fixed by the statute of limitations. The authorities are in harmony that a money decree for alimony is not a judgment in the full legal meaning of the term and does not become stale simply because of a failure to issue execution thereon within the periods limited by statute. The decree continues in force until it expires or is changed which is within the authority of the court to effectuate. The court which awarded the alimony, it has been held, has the parties before it as long as the award has operative force, and may modify or terminate the decree as the changed or changing circumstances make modification or termination just or necessary."

Contempt.—Disobedience of a lawful order of the court constitutes contempt under the law.[128] Hence, where the purchaser of mortgaged property sold at public auction flagrantly disobeys an order of the court to deliver to the judgment debtor a surplus amount of the proceeds of the sale, said purchaser incurs in contempt of court.[129]

SPECIAL CIVIL ACTIONS

Declaratory Relief; Requisites of Justiciability.—Classified as a special civil action in our procedural law,[130] declaratory relief must exhibit all the usual conditions and elements of an ordinary action. In order, therefore, that it may be entertained, certain requisites have been laid down by the authorities. The case of *Tolentino v. Board of Accountancy et al* [131] outlined these requisites thus: 1) there must be a justifiable controversy; 2) the controversy must be between persons whose interests are adverse; 3) the party seeking declaratory relief must have a legal interest in the controversy and 4) the issue involved must be ripe for a judicial determination. These requisite facts and conditions were wanting in the Tolentino

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[126] See Sec. 6, Rule 63.
[127] G.R. No. L-4037, prom. Nov. 29, 1951.
[128] Sec. 3(b), Rule 64.
[129] *Caparas v. Yatco and Alvela,* G. R. No. L-2834, prom. May 23, 1951.
[130] Rule 66.
[131] G.R. No. L-3062, prom. Sept. 28, 1951.

case. That was a petition for declaratory relief for the purpose of testing the constitutionality of the Philippine Accountancy Law [132] grounded on the claim that it is a class legislation as excluding persons engaged in other callings from adopting or using a trade name in connection with their professions. The Supreme Court observed that plaintiff's main objection centered on the exclusive character of the law which extends its benefits only to accountants; that he sought relief not for his personal benefit [133] but for the benefit of other professionals not parties to the case; and that he did not claim any prejudice to himself or to his rights. The plaintiff, therefore, had no actual justifiable controversy against defendants to warrant the granting of the relief sought.

Same; Not Available to Taxpayer.—A question arose in the case of *National Dental Supply Co. v. Meer* [134] as to whether or not declaratory relief is now available to a taxpayer who questions his liability for tax payment. The Supreme Court ruled that the prohibition in the original law on declaratory relief, as amended,[135] against the filing of such action by taxpayers to question their tax liabilities, while not incorporated in the present Rules of Court,[136] still stands. The Court explained that the failure to incorporate said statutory prohibition in the Rules is not due to an intention to repeal it but rather to the desire to leave its application to the sound discretion of the court.[137] And even if it be desired to so incorporate it, the Court doubted if it could be done under the rule-making power of the Supreme Court considering that the nature of the prohibitory proviso in the original law on declaratory relief is substantive and not adjective, its purpose being to lay down a policy as to the right of a taxpayer to contest the collection of taxes on the part of a revenue officer of the Government. The remedy of a complaining taxpayer under the present set-up of the law is to pay first, then sue for recovery afterwards.

Certiorari.—The Rules clearly set forth the circumstances under which certiorari is available.[138] It is the long-established doctrine that certiorari lies only where there is a clear showing that the respondent judge acted without or in excess of his jurisdiction, or with grave abuse of discretion, and is not available to correct

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[132] C.A. No. 3105.
[133] Plaintiff was a Certified Public Accountant.
[134] G.R. No. L-4183, prom. Oct. 29, 1951.
[135] Act 3736, as amended by C.A. No. 55.
[136] See in this regard II Moran, *op cit.*, p. 117.
[137] See Sec. 6, Rule 66.
[138] Sec. 1, Rule 67.

procedural errors or errors of fact or of law.[139] The case of *Verhomal v. Tan and Azaola* [140] is a re-affirmation of this doctrine. Not every error, therefore, committed by the trial court is subject to review by certiorari, for otherwise, trials would be interminable. Hence, mere denial of defendant's motion to dismiss in an inferior court, as held in *Arvisu v. Vergara,*[141] could not be taken to a higher court for review by certiorari before final judgment is rendered in the same. And any petition for this purpose may properly be dismissed by the higher court even without hearing, for it is not mandatory upon the court, as observed in the same case, to order the elevation of the proceeding in a petition for certiorari if from the answer it finds that the petition should be dismissed in the interest of justice.

In the case of *Gandicela v. Lutero* [142] where the respondent judge ordered the dismissal of the criminal case against petitioner without prejudice in accordance with the petition of the petitioner's counsel, certiorari was held not to lie against said respondent for the simple reason that the Municipal Court presided over by the respondent had jurisdiction to dismiss or not to dismiss the case and postpone the trial thereof to another date. If the Municipal Court had jurisdiction to dismiss the case definitely as contended by petitioner, it had also jurisdiction to dismiss the case "without prejudice on the part of the city fiscal to file another information." The doctrine announced was that a court having jurisdiction to decide a legal question correctly or in conformity with the law, does not lose its jurisdiction if the court decides erroneously against or not in accordance with law. The existence and subsistence of the court's jurisdiction does not depend upon the correctness of the court's resolution.[143]

Mandamus.—Mandamus, according to the Rules,[144] is available against an officer who unlawfully neglects the performance of a ministerial act or an act which the law specifically enjoins him to do as a duty resulting from his office. Thus it was held not to lie against the respondent judge in the above-cited Gandicela case since the respondent could either grant or refuse to grant the petition of the attorneys for the petitioner to have the case dismissed.

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[139] See *So Chu et al v. Nepomuceno,* 29 Phil. 208, *De los Santos v. Mapa,* 46 Phil. 791, *Santos v. Court of First Instance,* 49 Phil. 398, *Ello v. Judge of First Instance,* 49 Phil. 152, and *Gonzalez v. Salas,* 49 Phil. 1.

[140] *Supra,* note 84.

[141] G.R. No. L-3934, prom. Dec. 28, 1951.

[142] G.R. No. L-4069, prom. March 5, 1951.

[143] A motion for reconsideration of the Gandicela decision was denied on May 21, 1951.

[144] Sec. 3, Rule 67.

Quo Warranto.—The Rules fix the period of one year within which to institute quo warranto proceedings against an officer for his ouster, said period to run from the time the cause of such ouster, or the right of the plaintiff to hold office, arose.[145] An interesting question on this matter arose in *Torres v. Quintos.*[146] Petitioner in that case sought to be reinstated as Manila's chief of police. He held this position from 1936 until liberation when he served as assistant to the then American chief of police. After leaving the post at his own request on March 15, 1945, petitioner was indicted for treason but was acquitted on January 16, 1948. The respondent was appointed chief of police on January 12, 1948, four days before petitioner's acquittal. On February 8, 1948, after his acquittal, petitioner in two separate letters addressed to the Mayor of Manila and the President of the Philippines, asserted his right to be reinstated as chief of police. While the mayor turned down petitioner's claim, the Secretary of Justice advised him to bring his case before the courts. So on January 26, 1949, petitioner filed in the Supreme Court a petition for quo warranto against respondent but the same was dismissed without prejudice to its filing in the Court of First Instance. The latter court, however, dismissed the case on the sole ground that the same was not commenced within a year after the cause of the respondent's ouster arose. Petitioner's principal contention was that the reglementary period of one year was suspended during the pendency of his request for reinstatement addressed to the Mayor and the President. Holding that the petitioner's right to occupy the disputed office arose in 1945, the Supreme Court concluded that more than one year had elapsed before the petition was filed, relying on the proposition already announced in *Casin v. Caluag* [147] that a quo warranto may be tried and decided independently of a pending criminal case for treason. And even assuming that the one-year period should be counted from the time respondent qualified for the position (January 12, 1948) or when the petitioner was acquitted (January 16, 1948), the quo warranto petition was still beyond the one-year period. The Court reasoned out that administrative remedies need not be resorted to as a prerequisite to quo warranto proceedings. It follows, the Court concluded, that he who claims the right to hold a public office allegedly usurped by another and who desires to seek redress in the courts should file the proper judicial action within the reglementary period.[148]

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[145] Sec. 16, Rule 68.
[146] G.R. No. L-3304, prom. April 5, 1951
[147] 45 O.G., Supp. to No. 9, p. 379.
[148] *Cf. Bautista v. Fajardo,* 38 Phil. 124 and *Tumulak v. Egay,* 46 O.G. 3683

Foreclosure of Mortgage; Writ of Possession.—The case of *Ramos et al v. Mañalac and Lopez* [149] is authority for the view that the issuance of a writ of possession in foreclosure proceedings is not an execution of judgment within the purview of Section 6, Rule 39, but is merely a ministerial and complementary duty of the court to put an end to the litigation which the court can undertake even after the lapse of five years, provided the statute of limitations and the rights of third persons have not intervened in the meantime.[150] The general rule, the Court therein declared, is that after a sale has been made under a decree in a foreclosure suit, the court has the power to give possession to the purchaser, and the latter will not be driven to an action at law to obtain possession. The power of the court to issue a process and place the purchaser in possession is said to rest upon the ground that it has power to enforce its own decrees and thus avoid circuitous actions and vexations in litigation.[151]

Same; Confirmation of Execution Sale.—The Rules require an execution sale in a foreclosure of mortgage proceeding to be confirmed by an order of the court [152] and it is clearly provided therein that such sale, when so confirmed, shall operate to divest the rights of all the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law.[153]The fact that confirmation is so required implies, according to the Supreme Court in *Tiglao v. Botones,*[154] the power of the court to either confirm the sale or not when asked. And the court may properly exercise its judgment on the matter only after hearing both parties. It is thus that, according to the Court in the same case, notice and hearing of a motion for confirmation are essential to the validity of the order of confirmation, not only to enable the interested parties to resist the motion but also to inform them of the time when the right of redemption is cut off. Nowhere in the Rules, however, is such notice and hearing expressly required, but in the light of the Tiglao decision, which is but a restatement of previous rulings on the same point,[155] it may be supposed that any provision to that effect would be a mere superfluity.

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[149] *Supra,* note 74.

[150] See *Rivera v. Rupac,* 61 Phil. 201 and Sec. 3, Rule 70.

[151] Citing *Rovero de Ortega v. Judge,* 40 O.G. (13S) 136.

[152] *Cf. Raymundo v. Sunico,* 25 Phil. 365.

[153] Sec. 3, Rule 70; for an extended discussion of the effect of confirmation, see *Raymundo v. Sunico, supra.*

[154] G.R. No. L-3619, prom. Oct. 29, 1951.

[155] *Raymundo v. Sunico, supra; Grimalt v. Velasquez,* 36 Phil. 936, 938; *La Urbana v. Belando,* 54 Phil. 930; but cf. *Commonwealth of the Philippines v. Ching Yap,* 70 Phil. 116, *Jaramillo v. Jacinto,* 43 Phil. 588, *So Chu v. Nepomuceno,* 29 Phil. 208, and *Price v. Sontua,* 60 Phil. 410.

Forcible Entry and Detainer; Deposits Pending Appeal.—In forcible entry and detainer proceedings, the payment of deposits pending appeal from a judgment against defendant to stay execution thereof is not excused or dispensed with by such circumstances as the filing of two separate ejectment cases against the defendant-appellant and a revindicatory action against the plaintiff-appellee. It was so held in *Zabaljaregui v. Pecson et al* [156] where the Supreme Court, applying Section 8, Rule 72,[157] dismissed as untenable and invalid under the law the reasons so advanced by appellant for his refusal to pay the required deposits. The money so deposited will have to be disposed of at any rate, subject to the final outcome of the separate ejectment and revindicatory actions involving the same property, and will be paid to whomever is adjudged entitled thereto.

Similarly, illness of defendant was held in *Pangilinan v. Peña and Manansala et al* [158] not to excuse him from depositing the rents on time pending appeal of the ejectment case to the Court of First Instance. The Supreme Court in this case reiterated its pronouncements in previous decisions [159] to the effect that execution of the inferior court's judgment is mandatory when the rents are not paid on time, the duty of the court to order such execution being ministerial and imperative.

Same; Jurisdictional Requisite.—Where an inferior court had no original jurisdiction over a case tried by it, the Court of First Instance likewise has no appellate jurisdiction to try the same case *de novo*, the only power it has being to dismiss the appeal after declaring the inferior court to have acted without jurisdiction.[160] This rule was applied in an ejectment case, *Falek v. Gandiongco de Singson et al*,[161] where the municipal court was held to have had no original jurisdiction over the action for forcible entry which was brought beyond the one-year period after the alleged unlawful entry [162] and the Court of First Instance, accordingly, did not acquire any appellate jurisdiction.[163]

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[156] G.R. No. L-3642, prom. April 28, 1951.

[157] This section, taken in relation to Sec. 9 of the same Rule, has already been held to be mandatory in *Arcilla v. Del Rosario*, G.R. No. L-49038, cited in II Moran, *op. cit.*, p. 257.

[158] G.R. No. L-4143, prom. May 28, 1951.

[159] Notably, *Silos v. Court of Appeals*, G.R. No. L-3749, prom. June 23, 1950, *Galesky v. De la Rama*, 45 O.G. 2033; and *Basilio v. Natividad*, 45 O.G. 2888.

[160] Sec. 11, Rule 40.

[161] G.R. No. L-3495, prom. May 23, 1951.

[162] Sec. 1, Rule 70.

[163] The Court of First Instance in such case has original jurisdiction. See *Lucido v. Vita*, 25 Phil. 414, *Quiñones v. Padrigon*, 40 O. G. (10S) 85, and *Baguioro v. Barrios*, 43 O.G. 2031.

Same; Forcible Entry and Unlawful Detainer Distinguished.—In *Dikit v. Ycasiano*,[164] the Supreme Court had occasion to distinguish between forcible entry and unlawful detainer.[165] The statutory distinction set forth in the Rules [166] was first reiterated by the Court. Then it went on to say that the possession of the intruder in forcible entry is illegal from the beginning because his entry is made against the will or without the consent of the former possessor; while in unlawful detainer, the possession is originally legal or lawful but it becomes illegal only after the expiration or termination of the right to hold possession of the property by virtue of a contract. This particular case of *Dikit v. Ycasiano* was one of unlawful detainer because the petitioner took possession with express consent of the owner thereof pursuant to a lease contract between them, which possession, being legal from the beginning, became illegal only after the termination of petitioner's right to continue in possession of the premises for having failed to pay rents. And the fact that petitioner obtained lessor's consent through misrepresentation did not make petitioner's possession illegal from the beginning. The various ways mentioned in Section 1 of Rule 72 [167] whereby one is deprived of his possession of property are the means employed by the intruder to take possession of the property, without the consent or knowledge of the lawful possessor. An additional distinction is that in forcible entry, no previous demand to vacate is required by law before filing of the action, while in an action of unlawful detainer by a landlord against his tenant, such demand is required.[168]

Same; Preliminary Injunction Allowed in Forcible Entry Only.—In the above-mentioned case, the respondent judge was held to have acted in excess of his jurisdiction in issuing a writ of preliminary injunction, the case being one of unlawful detainer and not forcible entry. This holding is in harmony with the well-settled rule [169] that preliminary injunction to prevent the commission of further acts of dispossession may be issued in forcible entry proceedings only, but not in an action of unlawful detainer.

Same; Only Possession De Facto Involved.—It is the well-settled doctrine that in forcible entry and detainer cases the only issue is

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[164] G.R. No. L-3621, prom. May 23, 1951.

[165] Similar occasions arose in the earlier cases in *Medel v. Militante*, 41 Phil. 526 and *Co Tiamco v. Diaz et al*, 42 O.G. 1169.

[166] Sec. 1, Rule 72.

[167] Force, intimidation, threat, strategy, or stealth.

[168] Sec. 2, Rule 72; see leading case of *Co Tiamco v. Diaz et al, supra*, note 165.

[169] Previously laid down in *Piit v. de Lara and Velez*, 58 Phil. 765, 767; now incorporated in Sec. 88, Judiciary Act of 1948.

the physical possession of the land—possession *de facto* and not possession *de jure*.[170] The case of *Loo Soo et al v. Osorio et al* [171] is a reaffirmation of this doctrine. It was there further ruled that plaintiffs' title to the land can not be collaterally attacked in an ejectment case, and that the vendor who sold the land to the plaintiffs is the proper party who can challenge the titles of said plaintiffs. As long as plaintiffs remain to be the owners of the land and their titles thereto have not been finally determined in a proper action, the defendants can not confuse the issue by raising the question of title in an effort to defeat the right of the plaintiffs to eject them from the premises. The rule was reiterated [172] that "in an action of forcible entry and detainer, the mere filing of an answer, claiming title to the premises involved or raising the question of ownership, will not divest a Justice of the Peace of jurisdiction."

Same; Nature of Damages Recoverable.—The plaintiff is entitled to damages in an action of forcible entry and detainer.[173] In *Vasquez v. Garcia,*[174] the Supreme Court said that while this may be so, the damages which plaintiff may claim are such as he may have sustained as a mere possessor, or only those which are caused by his loss of the use and occupation of the property, and not those he may suffer which have no direct relation with such use and occupation.

SPECIAL PROCEEDINGS

Settlement and Administration of Estates of Deceased Persons; Jurisdictional Limits of Administration.—It is the general rule universally recognized that administration does not *ex propio vigore* have any effect beyond the limits of the country in which it is granted and, therefore, extends only to the assets of a decedent found within such country. It follows that an administrator appointed in one state or country has no power or authority over property in another state or country.[175] This rule was squarely applied in *Leon and Ghezzi v. Manufacturers Life Insurance Co.,*[176] where

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[170] As enunciated and adhered to the cases of *Mediran v. Villanueva,* 37 Phil. 752 and *Caballero v. Abellana,* 15 Phil. 534.

[171] G.R. No. L-1364, prom. May 30, 1951.

[172] Announced in *Supia et al v. Quintero et al,* 59 Phil. 312, 321, *Escover v. Escover,* G.R. No. L-44148, *Vasquez v. Diva,* G.R. No. L-1370.

[173] See Secs. 1 and 6, Rule 72; for an able portrayal of the law regarding damages that may be awarded in forcible entry and detainer cases, see II Moran, *op. cit.,* pp. 248-249.

[174] G.R. No. L-2100, prom. May 30, 1951.

[175] See II Moran, *op cit.,* p. 313.

[176] G.R. No. L-3677, prom. Nov. 29, 1951.

the decedent, a former Philippine resident and who died in New York City, provided in his will duly probated in New York for the purchase of an annuity for a Manila resident. This the trustee carried out by buying an annuity from the head office of the insurance company, payable in monthly sums to the beneficiary by the Manila branch. Such funds were held to be outside the jurisdiction of the probate court of Manila. No ancillary administrator, therefore, could validly be appointed for the funds. Even if the money were in the hands of the Manila branch, it is no longer part of the estate of the decedent and is beyond the control of the court.

The administratrix, desiring to cite the manager of the Manila branch for the accounting of the funds, can not, according to the Supreme Court, invoke Section 7 of Rule 88 [177] for said provision contemplates only the situation where the administrator has entrusted any part of the estate of deceased with the person sought to be cited and, therefore, will not apply in a case where said person is a total stranger to the subject of the action.

Same; Liquidation of Community Property.—Under the provisions of the Rules of Court,[178] upon the dissolution of the marriage by the death of the husband or wife, the partnership affairs must be liquidated in the testate or intestate proceedings of the deceased husband or the deceased wife; and if both have died before the community property has been liquidated, such liquidation may be made in the testate or intestate proceedings of either.

In this connection it was held in *Ocampo v. Potenciano,*[179] where spouses were vendees in a *pacto de retro* sale, that the husband had no authority to novate the contract after the death of the wife inasmuch as it was his duty to liquidate the affairs of the conjugal partnership in the intestate or testate proceeding of the deceased wife.[180]

Same; Administrator's Bond.—That an administrator or executor may be required by the court to file a new or further bond in case of a change in his circumstances, or for other sufficient cause,

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[177] Sec. 7, Rule 88, reads in part: "The court, on complaint of an executor or administrator, may cite a person entrusted by an executor or administrator with any part of the estate of the deceased to appear before it, and may require such person to render a full account, on oath, of the money, goods, chattels, bonds, accounts, * * * belonging to such estate as came to his possession in trust for such executor or administrator, * * *"

[178] Sec. 2, Rule 75.

[179] G.R. No. L-2263, prom. May 30, 1951.

[180] See also *Calma v. Tañedo,* 66 Phil. 594.

is clearly provided in the Rules.[181] An order to this effect is interlocutory in nature and is solely addressed to the sound discretion of the court. Such was the pronouncement in *Dinglasan et al v. Ang Chia et al.*[182].

Same; Intestate Proceedings Held in Abeyance.—The same *Dinglasan* case is authority for the following proposition: When at the time intestate proceedings are taking place, there is also a pending civil case involving the ownership of land of the deceased, the probate court can take cognizance of said civil case when it appears that any determination therein will necessarily reflect and have a far-reaching consequence in the determination and distribution of the estate and where the property in the litigation is the only property of the estate left subject of administration and distribution. The probate court, by holding in abeyance the closing of the intestate proceeding pending determination of the civil action, does not assume general jurisdiction over the case but merely makes of record its existence because of the close interrelation of the two cases.[183] A contrary holding would render nugatory Section 1 of Rule 88 [184] for there would be no practical value if the action against the administrator can not be prosecuted to its termination simply because the heirs desire to close the intestate proceeding without taking any step to settle the ordinary civil case. Besides, it is implied under Section 17 of Rule 3 [185] that a probate case may be held in abeyance pending determination of an ordinary case wherein an administrator is made a party. The judgment in the civil case against the administrator binds not only himself but also all the heirs of the estate. The Supreme Court thus held in *Valdez et al v. Pineda et al* [186] on

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[181] Sec. 2, Rule 82.

[182] G.R. No. L-3342, prom. April 18, 1951.

[183] *Cf. Guzman v. Anog and Anog*, 17 Phil. 61.

[184] Sec. 1, Rule 88, reads: "No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him."

[185] Sec. 17, Rule 3 reads: "After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal representative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. * * * The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs."

[186] G.R. No. L-3467, prom. July 30, 1951.

the theory that the administration represents the heirs and any decision in favor or against the administrator will naturally favor or bind said heirs.

Same; Administrator's Account.—In *Dizon v. Santos et al*,[187] the proposition announced was that the failure of children of the deceased by a first marriage to demand an accounting of the products of the estate of their deceased mother from their father who administered the same in his lifetime does not estop the children from demanding an accounting from the present administratrix, second wife of their deceased father. This pronouncement is based on the theory that the administratrix is the legal representative of the estate of the deceased whose obligations are obligations of the judicial administration of the intestate estate. The children's claim was against the estate, not against the administratrix, and satisfaction thereof is but a corollary to the payment of the debts of the estate prior to its final settlement.

Same; Minors' Guardian as Administrator.—It was held in the case of *Fernando v. Crisostomo* [188] that the guardian of minors has no right to administer the property of the latter's father who died after the guardian had been appointed until said property has been adjudicated or awarded to them either by extrajudicial or judicial partition.[189]

Same; Jurisdictional Facts.—The Supreme Court in the same case held that the name or competency of the person or persons for whom letters of administration are prayed is not a jurisdictional fact but is another additional fact to be alleged in the petition filed under Section 2 of Rule 80. The jurisdictional facts referred to therein are the death of the decedent, his residence at the time of his death in the province where the probate court is sitting, or if he is an inhabitant of a foreign country, his having left his estate in such province.[190]

Same; Setting Aside Final Adjudication.—When may a final adjudication of the deceased's estate be set aside by a party interested in a probate proceeding? The case of *Ramos et al v. Ortuzar et al* [191] expressed the only instance when this may be done, and that is when said interested party is left out by reason of circumstances beyond

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[187] G.R. No. L-2901, prom. April 27, 1951.

[188] G.R. No. L-2693, prom. Dec. 27, 1951.

[189] See in this connection II Moran, *op cit.*, p. 310 *et seq.*

[190] *Diez v. Serra*, 51 Phil. 283; *Santos v. Castillo*, 64 Phil. 211; Cf. *Selazar v. Court of First Instance*, 64 Phil. 785, 790.

[191] G.R. No. L-3299, prom. Aug. 29, 1951.

his control or through mistake or inadvertence not imputable to negligence. "Even then the better practice to secure relief is reopening of the same case by proper motion within the reglementary period, instead of an independent action the effect of which, if successful, would be for another court or judge to throw out a decision or order already final and executed and reshuffle properties long ago distributed and disposed of."

Adoption; Custody of Natural Child.—Section 6 of Rule 100 [192] while referring to legitimate minor children whose parents are divorced or living separately and apart from each other, was held applicable by analogy to the case of *Garcia v. Pongan.*[193] This was a petition for habeas corpus filed by the father against the respondent to recover the custody of a minor over ten years of age. Said minor was the natural child of the petitioner and respondent and was recognized by both parents. At the hearing the child expressed preference to live with respondent, its mother, and the lower court accordingly awarded to the respondent the care, custody and control of the child, there being no showing that said respondent was unfit to take charge of the child by reason of moral depravity, habitual drunkenness, incapacity or poverty in accordance with Section 6, Rule 100. The Supreme Court, in justifying the lower court's action, declared that the law confers upon the courts the power to award the care, custody and control of the minor child to either of the parents whom the child prefers to live with if it is over ten years unless the parent so chosen is unfit, because either the father or mother has a preferred right to such care, custody and control in the exercise of parental authority they have over the person of their unemancipated legitimate children. And in the instant case, the minor having been legally recognized by both petitioner and respondent as their natural child, either one of them had the right to have the care, custody and control of said minor by virtue of their parental authority over it.

EVIDENCE

Conclusive Presumptions; Legitimacy.—One of the conclusive presumptions established by the Rules on Evidence is that of legitimacy in favor of an "issue" of a wife cohabiting with her husband,

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[192] Sec. 6, Rule 100 reads in part: "When husband and wife are divorced or living separately and apart from each other, and the question as to the care, custody and control of a child or children of their marriage is brought before a Court of First Instance * * *, the court * * *, shall award the care, custody, and control of each such child as will be for its best interest, * * *"

[193] G. R. No. L-4362, prom. Aug. 31, 1951.

who is not impotent, if not born within the 180 days immediately succeeding the marriage, or after the expiration of 300 days following its dissolution.[194] This legal provision found clear application in *Menciano et al v. Neri San Jose et al*,[195] where a child born 208 days after the marriage of its parents but less than 300 days after the death of its father, was conclusively presumed to be legitimate, there being no question that before and after marriage, the deceased and surviving spouse cohabited. The only doubt raised in the case was as to the potency of the deceased husband during his cohabitation with the surviving spouse. The Supreme Court in this regard declared that impotency being an abnormal condition should not be presumed. The presumption rather should be in favor of potency. Consequently, the requisite of potency also existed. And in the case of *Andal v. Macaraig* [196] it was stated that the presumption of legitimacy established under Section 68(c) of Rule 123 can only be rebutted by clear proof that it was physically or naturally impossible for the husband and wife to indulge in carnal intercourse. Even the fact that the wife committed adultery was held insufficient to overcome the presumption.

ATTORNEYS AND CLIENTS

When, how, and to what extent an attorney can bind his client is specially and carefully provided for in Section 21 of Rule 127.[197] The Supreme Court had occasion again [198] to apply this rule in *Rodriguez et al v. Court of First Instance of Rizal et al*.[199] Plaintiffs (respondents) were adjudicated a ¼ undivided share in a small saltland. A writ of execution was issued thereon. Plaintiffs later moved to amend the order of execution so as to state that the ¼ part to be allotted to them was certain plots indicated by numbers

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[194] Sec. 68(c), Rule 123.

[195] G.R. No. L-1967, prom. May 28, 1951.

[196] G.R. No. L-2474, prom. May 30, 1951.

[197] Sec. 21, Rule 127 reads: "Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they can not, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash."

[198] Sec. 21, Rule 127, reproduced from Sec. 27, Act 190, had been applied in in several pre-war cases in which the powers of an attorney to compromise a cause or to allow judgment to be entered without his client's consent were denied, to wit: *Sons of I. de la Rama v. Estate of Benedicto*, 5 Phil. 512; *Natividad v. Natividad*, 51 Phil. 613; *Tan Chua v. O'Brien*, 55 Phil. 53; *Rodriguez v. Santos*, 55 Phil. 721; *Monte de Piedad v. Rodrigo*, 56 Phil. 310; and *Alviar v. Court of First Instance*, 64 Phil. 301.

[199] G.R. No. L-3762, prcm. March 29, 1951.

in a sketch attached to the motion for execution. It was explained that the judgment "was difficult to execute" and that it was necessary that their ¼ share be determined with certainty. At the hearing of the motion, the lower court informed the parties that the proceeding was for "an amendment to the order of execution in order to make it clear. They (referring to plaintiffs) want clarification of the order," to which defendants' (petitioners') counsel answered "No objection." Thereupon, the motion was granted. Petitioners (defendants) challenged the execution which admittedly departed materially and radically from the tenor of the judgment. Respondents (plaintiffs), however, claimed that the petitioners' counsel had given his assent. The decisive question, according to the Supreme Court, was whether or not the attorney's consent operated to prejudice his clients.

Upon the facts of the case, the Court was of the view that the attorney's conformity, whether express or implied, to the motion for execution was ineffective to obligate the defendants. It was not shown that the attorney was empowered to enter into any agreement for his clients beyond "matters of ordinary judicial procedure." By virtue of his bare retainer or employment, he was authorized to do on behalf of his clients, in or out of court, only such acts as were necessary or incidental to the prosecution or management of the suit, or the accomplishment of its purpose, for which he was retained. And the sole test by which the validity of an attorney's commitment on substantial matters may be judged is a written agreement or authority by his client. This, according to the Court, is the prevailing rule of practice and procedure.

The same statutory provision dealt with above was relied upon by the Supreme Court in the case of *Isaac v. Mendoza*[200] to explain that the client is bound by the acts, even mistakes, of his counsel in the realm of procedure technique, in answer to the argument that a party should not suffer for his lawyer's shortcomings; but, the Court pointed out, if the client is prejudiced by the attorney's negligence or misconduct he may recover damages.[201]

RESUMÉ

It may well be said as a resumé that in nine cases out of ten the judicial attitude has been one of faithful adherence to precedents, more of reaffirmation and reiteration than of departure. Our Supreme Court more often than not felt bound by well-settled and long-

[200] G.R. No. L-2820, prom. June 21, 1951 .
[201] Citing *In re Filart*, 40 Phil. 205

established principles, by rules it had previously laid down. New doctrines are practically nil. Where precedents are wanting, clear legal provisions have been applied, squarely or by analogy.

It is worthy of note, finally, that the Rules of Court have on the main been observed with diligence. Indeed, it is compliance with these rules which, in general, gives the court jurisdiction to act. The effort is laudable in that it makes for an orderly conduct of litigation and judicial business and ultimately for a proper and speedy administration of justice, which after all is the reason for the existence of courts.