CIVIL PROCEDURE: 1952

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This year, as in the past years, our Supreme Court has rendered numerous decisions on civil procedure. It would hardly seem necessary to state that only through correct procedure may cases be properly brought to the attention of the courts. What otherwise may be a meritorious case may be dismissed because of improper or incorrect procedure. Realizing the importance of this branch of the law, the writer of this article therefore, has attempted to consolidate this year's decisions on civil procedure, hoping that thereby this may help to shed light on provisions and doctrines which are not altogether clear or definite.

JURISDICTION AND VENUE

Effect of the division of a province on the jurisdiction of the courts. Duldulao v. Ramos [1] presents an interesting case on jurisdiction. What originally was known as the province of Mindoro was divided into the provinces of Occidental Mindoro and Oriental Mindoro by Rep. Act No. 505. What was the effect of this division on the jurisdiction of the judge of the Court of First Instance of the former province of Mindoro? The question arose as follows: the parcel of land in question is located in what is now known as the province of Occidental Mindoro. One of the respondents filed a petition in the Court of First Instance of Mindoro praying for the issuance of a new duplicate certificate over the land in question. The respondent judge issued the certificate prayed for, and petitioner now contends that the respondent judge acted without his jurisdiction. Ruling against this contention, the Supreme Court held that in the absence of any provision to the contrary, the respondent judge and the register of deeds of the province of Mindoro continued after its division to be the judge and register of deeds for Occidental as well as for Oriental Mindoro. It being conceded that these officials continued to be the judge of the First Instance and the register of deeds of Oriental Mindoro after the passage of Rep. Act 505, there is no valid ground for the proposition that they had ceased to be the same officials for Occidental Mindoro. Occidental Mindoro is not inferior to Oriental Mindoro in category and one had been as much a part of the abolished province as the other. Further, the court

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[1] G. R. L.-4615, prom. May 12, 1952.

held that if the above contention were sustained, its effect would be no less than a complete paralyzation of judicial functions in one of the two new provinces. Obviously, the situation presented to the court all the elements which called for the application of the principle of hold-over, to preserve the continuity in the transaction of official business and the operation of the machinery of justice.

Extent of judicial power. In *Felipe v. Leuterio,*[2] the question was raised as to whether courts have authority to reverse the award of a board of judges of an oratorical competition. The Supreme Court decided the question in the negative thus:

> "We observe that in assuming jurisdiction over the matter, the respondent judge reasoned out that where there is a wrong there is a remedy and that courts of first instance are courts of general jurisdiction.
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> "The flaw in his reasoning lies in the assumption that Imperial suffered some wrong at the hands of the board of judges. If at all, there was error on the part of one judge at most. Error and wrong do not mean the same thing. 'Wrong' as used in the aforesaid legal principle, is the deprivation or violation of a right. As stated before, a contestant has no right to the price unless and until he or she is declared winner by the board of referees or judges."

Judiciary Act of 1948. The Judiciary Act[3] introduces an innovation consisting in amplifying the original jurisdiction over civil cases of justice of the peace and municipal courts by raising the value of the subject matter in litigation to ₱2000.00. What effect has this on the territorial jurisdiction of the justice of the peace and municipal courts, as provided in Rule 4 of the Rules of Court? The answer is supplied in *Mendoza v. Batangas Trans. Co.,*[4] which held that jurisdiction over the subject matter in litigation is distinct from territorial jurisdiction, more properly called venue. A justice of the peace, in accordance with this new law, has jurisdiction to decide a civil case where the value of the subject matter does not exceed ₱2000.00. But from this it cannot necessarily be deduced that any justice of the peace may decide any class of cases, provided the value of the subject matter does not exceed two thousand pesos. In detainer cases for example, the situs of the immovable determines the place where the action is to be brought. The Supreme Court therefore held that these two laws are not inconsistent. The first law refers to the subject matter in litigation and Rule 4 determines the place where the action may be brought. Plainly stated, the Judiciary Act confers jurisdiction but does not alter the rules on venue of actions.

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[2] G. R. L-4606, prom. May 30, 1952.
[3] Rep. Act 296.
[4] G. R. L-4803, prom. Feb. 20, 1952.

As to the amount of the subject matter involved in the litigation, it was held in the case of *Compostela Lumber Co. v. Datu* [5] that an action to recover ₱2000 as damages for the death of a person must be brought in the justice of the peace court as the matter falls within the original exclusive jurisdiction of said court, pursuant to sections 86 to 88 of the Judiciary Act. Where such an action is brought before a Court of First Instance, all proceedings in said court will be null and of no effect.

Limited Jurisdiction in special cases. *Caro v. Gumpal* [6] involved the special jurisdiction of Courts of First Instance over election cases. It was here held that while courts of first instance exercise general jurisdiction, yet in election cases their jurisdiction is special and limited, as such jurisdiction is conferred by special law, which in this case is the Revised Election Code. When therefore the Election Law [7] requires that protests must be filed within a period of two weeks from the date of the proclamation of the protestee, a protest filed outside of this period may not be heard by a court of first instance, because the jurisdiction is limited to that conferred upon it by the Election Law.

The jurisdiction of courts of first instance may not only be limited by special law; jurisdiction in special cases may also be taken away from such courts and vested in some other entities. Thus the Tenancy Law (C.A. 461) which deprived the courts of first instance of their jurisdiction over tenancy cases and vested such jurisdiction in the Department of Justice was held to be constitutional, because "there is no doubt that Congress has the power to diminish jurisdiction of the Court of First Instance and confer the jurisdiction in question upon the Department of Justice and the Court of Industrial Relations. Section 3, Article VII of the Constitution empowers Congress to define, prescribe and apportion the jurisdiction of the various courts with the only limitation that it can not deprive the Supreme Court of its appellate jurisdiction over cases therein specified." So held the court in *Cruz v. Capudungan*,[8] citing *Ojo v. Jamito*.[9]

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[5] G. R. L-4768, prom. Feb. 27, 1952.

[6] G. R. L-5422, prom. Mar. 31, 1952.

[7] Sec. 174 of the Revised Election Code provides that "A petition contesting the election of a provincial or municipal officer-elect shall be filed with the Court of First Instance of the province by any candidate voted for in said election and who has presented a certificate of candidacy, within two weeks after the proclamation of the result of the election. . . ."

[8] G. R. L-4206, prom. Jan. 31, 1952.

[9] 46 O. G. No. 11, 216.

Venue. Under section 1 of Rule 5 of the Rules of Court, "civil actions in the courts of first instance may be commenced and tried where the defendants or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff." This rule was applied in the case of *Casilan v. Tomasi.*[10] This was a complaint for the recovery of damages filed with the Court of First Instance of Samar. According to the allegations of the complaint, one of the plaintiffs had his residence at Manila, the other at Leyte; while one of the defendants also resided in Manila, and the other in Leyte, although both defendants were "often found in Samar." The complaint having been filed in a province where neither any of the defendants nor any of the plaintiffs resided, the complaint was dismissed for improper venue.

ACTIONS, PARTIES AND TRIALS

Cause of action. Marquez and Marquez v. Varela [11] points out the distinction between cause of action and right of action. While these terms have been held to be synonymous to each other, yet in the law of pleading one is distinguished from the other in that a right of action is a remedial right belonging to some person, while a cause of action is a formal statement of operative facts that give rise to such remedial right. The one is a matter of right and depends on substantive law, while the other is a matter of statement and is governed by the law of procedure.

The case of *Amedo v. Rio de Olabarieta, Inc.*[12] reiterates the rule that the test of the sufficiency of cause of action is whether upon the facts alleged in the complaint a judgment may be rendered against the defendant. This test was applied in *Dimson v. Rural Progress Administration.*[13] Claiming that he was in "actual and peaceful possession" of a certain parcel of land, plaintiff in this case prayed for a preliminary injunction to restrain defendants from disturbing his occupation by putting in persons who did not have a right thereto. In the motion to dismiss the petition, defendant alleged that it was the owner thereof and that it had leased the same to other persons. The Supreme Court held that it is not enough to allege in a complaint that plaintiff is in actual physical possession of a certain parcel of land and that his possession has been or is being disturbed by the defendant to entitle the former to be protected by the court. It is an essential allegation that he is lawfully

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[10] G. R. L-4294, prom. Jan. 31, 1952.
[11] G. R. L-4845, prom. Dec. 24, 1952.
[12] G. R. L-4466, prom. Oct. 30, 1952.
[13] G. R. L-3783, prom. Jan. 28, 1952.

in possession of such land. It appearing from the answer of the defendant that he was the owner thereof, it is obvious that no person can have possession of the lands included therein, except by virtue of a contract express or implied, transferring the possession of said lots. Such transfer of possession must be averred. Mere material or physical possession by one other than the registered owner who did not transfer the possession of the lots to the one claiming to be in possession thereof does not entitle the latter to be protected.

To the same effect, *Rone v. Claro* [14] held that the purpose of an action or suit and the law to govern it, including the period of prescription, is to be determined not by the claim of the party filing the action, but rather by the complaint itself, its allegations and the prayer for relief. Where a complaint therefore alleges fraud as the basis of the action, a party cannot thereafter be heard that the action was not based on fraud but to recover title and possession of land.

The well known rule that parties in cases appealed from an inferior court to a court of first instance cannot change the cause of action or defenses which they have pleaded in the inferior court nor add new ones in their pleadings was again reiterated in the case of *Malinao v. Bocar.*[15]

Permissive joinder of parties. Under Rule 3, section 6 of the Rules of Court, "all persons in whom x x x any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, may, except as otherwise provided in these rules, join as plaintiffs x x x in one complaint, where any question of law or fact common to all such plaintiffs x x x may arise in the action; x x x." This was construed in *Marquez v. Varela.*[16] A certain Lora there was authorized to negotiate the sale of a parcel of land. Lora, in turn, asked the aid of the plaintiff Marquez. In an action to recover their commission, Marquez joined Lora in the suit. Defendants objected to his joining the suit as they contended that they never dealt with him therefore he had no sufficient cause of action. In holding that plaintiff had sufficient cause of action, the court declared that Marquez clearly falls under the above quoted section. The rules do not require the existence of privity of contract between Marquez and the defendants; all that the rules require is that Marquez has a material interest in the subject matter of the action, the right to share in the broker's commission to be paid Lora under the

[14] G. R. L-4472, prom. May 8, 1952.
[15] G. R. L-4708, prom. June 30, 1952.
[16] G. R. L-4845, prom. Dec. 24, 1952.

latter's contract. The interest of Marquez here satisfied the requirement of the rules.

Death of party. Under section 16 of Rule 3, when a party to a pending case dies, his attorney shall inform the court of such death and furnish the court the name and residence of the legal representative of the deceased. Under section 17 of the same rule, if the claim is not extinguished by such death, the court shall order the legal representative of the deceased to appear for and be substituted for the deceased, or in case of failure, the opposing party may procure the appointment of a legal representative of the deceased party. It will be seen under these provisions that the court must first require the legal representative of the deceased to appear for and substitute the deceased in the action, and only in case of failure to comply with such order may the opposing party procure the appointment of another person to represent the deceased. In *Barrameda v. Barbara*[17] however, the court upon being informed of the death of the defendant, immediately required the plaintiff to amend his complaint to substitute the legal representative of the deceased, without first requiring defendants to appear for and substitute the deceased. What is the effect of this order?

In holding that the order is void, the court reasoned out that under section 16 of Rule 3, it is the duty of the attorney for the deceased to inform the court of his death and furnish it with the name and residence of the executor or other legal representative of the deceased, which the attorney for the deceased failed to do in this case. This is so because the attorney for the deceased is in a better position to know who are the legal representatives or heirs of the deceased than the attorney for the adverse party. The duty therefore should not be shifted to the plaintiff or his attorney. As a consequence, the legal representative shall be ordered to appear and only in case of failure of the latter is the opposing party ordered to procure the appointment of another person to represent the deceased. In the present case, although the attorney for the deceased did not furnish the court the name of his legal representative, the court directly ordered the plaintiffs to make the substitution without first requiring the defendants to do so. Consequently this order was a violation of Rule 3, sections 16 and 17, and non-compliance with that order cannot be considered failure to prosecute.

Postponements and adjournments. Torrefiel v. Soriano[18] reiterates the well settled rule that the matter of adjournments and

[17] G. R. L-4227, prom. Jan. 28, 1952.

[18] G. R. L-4367, prom. May 2, 1952. To the same effect are the cases of *Camacho vs. Liquete*, 6 Phil. 50; *Olsen v. Fressel & Co.*, 37 Phil 121; *Samson v. Naval*, 41 Phil. 838.

postponements of trials lies within the sound discretion of the court, and such discretion will not be interfered with unless a grave abuse thereof is shown. The same principle was previously observed in the case of *Salva v. Palacio.*[19]

PLEADINGS, MOTIONS AND OTHER PAPERS; SERVICE THEREOF

When issue joined. Rule 31, section 1 of the Rules of Court provides that upon the filing of the last pleading the case shall be included in the trial calendar of the court." The issue is joined therefore only after all the parties have pleaded their respective theories and the terms of the dispute are plain before the court. If the last pleading has not yet been filed, the case cannot be tried because the issue has not yet been joined. This was applied in the case of *Principe v. Eria et al.*[20], where the Supreme Court held that a trial made before a third party defendant has answered is premature for the case is not yet ready for trial, the last pleading not having been filed.

Amendment to conform to evidence. In *Mendoza v. Court of Appeals,*[21] petitioner instituted an action to obtain judicial declaration of her right to occupy Stall No. 571. In the answer of the defendant, it was alleged that she had been in lawful possession as lessee of Stalls 570 and 571. From a judgment declaring that the defendant, now respondent, was entitled to the possession of both stalls, petitioner appealed, contending that the issue as to stall No. 570 was not raised in the pleadings. The Supreme Court held that as the evidence adduced by the parties in the trial had also put in issue the conflicting claims of the petitioner and the respondent to both stalls, such a decision was valid, because "when issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." (Sec. 4, Rule 17, Rules of Court)

Counterclaim. By specific provision of the Rules of Court, a counterclaim not set up shall be barred if it arises out of or is necessarily connected with, the transaction or occurrence that is the subject matter of the opposing party's claim, and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Following this rule, the court held in the case of *Pascual v. Lesaca* [22] that failure on the part of the de-

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[19] G. R. L-4247, prom. Jan. 30, 1952.
[20] G. R. L-3788, prom. Jan. 22, 1952.
[21] G. R. L-3894, prom. Sept. 17, 1952.
[22] G. R. L-4536, prom. May 30, 1952.

fendant to set up the improvements he had made in the ejectment proceedings bars such counterclaim.

Third Party Complaint. In *Karaan v. Soriano*,[23] plaintiffs in the lower court claimed that they were heirs of the deceased and sought to recover from petitioner Karaan three parcels of land. The petitioner as defendant filed an answer with a counterclaim, alleging the fact that plaintiffs sold the said parcels of land to spouses Maulion when they could not have had the right to sell the lands as he, Karaan, had bought them from the deceased before his death. Karaan now seeks to include the spouses Maulion as third party defendants. The Supreme Court allowed the third party complaint, on the ground that the decision on the counterclaim for damages would depend upon whether the plaintiffs had any title to said lands, for the reason that if plaintiffs as vendors had none, the spouses Maulion could not have acquired any. Under this aspect of the case, the majority of the court held that one can readily see that plaintiffs and the spouses sought to be impleaded have a common interest in the property.

The dissenting opinion of Justice Feria seems to be more in keeping with the language of the rules.[24] Under his view, the spouses Maulion may not be impleaded as third party defendants because the defendant Karaan does not claim to be entitled against them to contribution, indemnity, subrogation or any other relief related to or connected with the original subject matter of the plaintiff's action, or that they would be liable to the plaintiff or to the defendant Karaan for all or part of the plaintiff's claim against the defendant.

Intervention. Rule 13, section 1 provides that a person may, "at any period of the trial" be permitted by the court, in its discretion, to intervene in an action, if he has the requisite interest prescribe by that section. May a party intervene even after a case has been submitted for decision by the parties? *Falcasantos v. Falcasantos* [25] held that a person may so intervene. While the court admitted that the motion for intervention was filed rather late, on the day when the case was already submitted for decision by the parties, nevertheless the court held that it was not so late that it

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[23] G. R. L-4819, prom. July 22, 1952.

[24] Under Sec. 1 of Rule 12 of the Rules of Court, "when a defendant claims to be entitled against a person not a party to the action, hereinafter called the third-party defendant, to contribution, indemnity, subrogation or any other relief in respect of the plaintiff's claim, he may file, with leave of court, against such person a pleading which shall state the nature of his claim and shall be called the third-party complaint."

[25] G. R. L-4627, prom. May 13, 1952.

would have unduly delayed the disposition of the case and substantially impaired the rights of the original parties.[26]

Waiver of defenses. Subject to the exceptions provided in Rule 9, section 10 on Answers, defenses and objections not pleaded either in a motion to dismiss or in the answer, are deemed waived. Thus, in *Arizabal and Bueno v. Abaya,*[27] petitioners were not allowed to plead the moratorium order as a ground for enjoining the execution of judgment rendered against them because they had failed to set up such defense at any time during the two-year period during which the case was pending. Following the same lines, the Supreme Court in *Alonso v. Phil. National Bank* [28] reiterated the principle that the unconstitutionality of a law cannot be raised for the first time on appeal.

Special defense. Where a counterclaim set up by a defendant is in reality a special defense, a plaintiff may not be declared in default for failure to answer such "counterclaim" because under Rule 11, section 1 of the Rules of Court, a special defense if not specifically challenged by the plaintiff in a reply is deemed controverted. Such was the holding in the case of *Rosario and Gomez v. Martinez.*[29]

Service of papers; to whom made. Rule 27, section 2 requires that if any of the parties has appeared by attorney or attorneys, service upon him shall be made upon his attorneys or any one of them, unless service upon himself shall be ordered by the court. The provision in Rule 31 that "upon entry of a case in the corresponding trial calendar the clerk shall fix a date for trial and shall cause notice thereof to be served upon the *parties*" is not inconsistent with the aforecited section 2 of Rule 27 because the term "parties" as used in section 3 of Rule 31 is in a general sense, and does not exclude the application of section 2 of Rule 27 to a situation where a party is represented by an attorney. This was the holding in *Martinez v. Martinez.*[30] The rule being so, the thirty-day period for filing a motion for a new trial must be computed from the date the attorney received a copy of the decision and not from the day the

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[26] Sec. 3 of Rule 13 of the Rules of Court provides that, "In allowing or disallowing a motion for intervention, the court, in the exercise of discretion, 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 intervenor's rights may be fully protected in a separate proceeding."

[27] G. R. L-5076, prom. Jan. 30, 1952. *Valenzuela v. Court of First Instance of La Union,* G. R. L-4808, prom. March 18, 1952 decided the same point.

[28] G. R. L-4132, prom. May 23, 1952. An earlier case decided on the same point was *De Leon v. Syjuco,* G. R. L-3316, prom. Oct. 31, 1951.

[29] G. R. L-4773, prom. Sept. 30, 1952.

[30] G. R. L-4075, prom. Jan. 23, 1952.

party himself personally received a copy of the same. The main purpose of this rule, according to *Chainani v. Tancioco* [31] is obviously to maintain a uniform procedure calculated to place in competent hands the orderly prosecution of a party's cause. Thus, as party may be validly declared in default notwithstanding the fact that his attorney did not receive the mailed notices due to his absence from the province. Such service to the attorney is binding upon the party represented. By way of counsel to lawyers, the court in *Martinez v. Martinez* [32] said that the attorney owes it to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from the record. However, the court may cause notice to be served upon the party himself, although such party has been represented by counsel in the lower court, since this action is authorized under section 2 of Rule 27.[33]

Proof of service. In *de Guzman v. Rilloraza,*[34] a note signed by one said to be mailing clerk at the foot of the original notice of hearing to the effect that a copy was sent by registered mail, and which note did not even state to whom the copy was sent by registered mail, was held not to constitute sufficient proof of service.[35]

JUDGMENTS AND ORDERS

Nature of final judgment. In *Rovero v. Amparo,*[36] petitioner was found guilty of smuggling jewels into the Philippines and was fined for thrice the appraised value of the jewelry. Later the Commissioner of Customs reappraised such jewels. Holding that the reappraisal was improper, the Supreme Court held that while the Commissioner of Customs may supervise and control the filing of pleadings, the conduct of the hearing, the presentation of evidence, and even the taking of an appeal from a decision of the court of first instance adverse to the government to the Supreme Court, yet he cannot, under the guise of supervision and control of judicial proceedings, modify or alter a final judgment of a court, including

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[31] G. R. L-4782, prom. Feb. 29, 1952.

[32] G. R. L-4075, prom. Jan 23, 1952.

[33] *Dujon v. Villaro,* G. R. L-5183, prom. Dec. 29, 1952.

[34] G. R. L-4931, prom. May 29, 1952.

[35] Under Sec. 10 of Rule 27 of the Rules of Court, "If the service is by mail, proof thereof shall consist of an affidavit of the person mailing, together with the registry receipt issued by the mailing office if the letter has been registered. The registry return card shall be filed immediately upon receipt thereof by the sender, or in lieu thereof the letter unclaimed together with the certified or sworn copy of the notice given by the postmaster to addressee."

[36] G. R. L-5482, prom. May 5, 1952.

an appellate court or stay execution of a final judgment in favor of the government by receiving for said government anything less than what the judgment calls for.

Completeness of Judgment. In a case,[37] a pronouncement was made that the mortgage in question was in full force and effect. Question was raised as to whether or not there was a complete judgment. The court declared that the judgment did not adjudicate the foreclosure of the mortgage nor did it fix the amount due on the mortgage. The pronouncement that the mortgage was in full force and effect was a conclusion which the mortgagor did not and does not now question. There was therefore virtually no decision that could be executed.

Judgment on the pleadings. What is the effect of a judgment on the pleadings? In *Falcasantos v. How Suy Ching*,[38] the court held that it is already a rule in this jurisdiction that one who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. This was a reiteration of the rulings laid down in *Evangelista v. De la Rosa*,[39] *Aquino v. Blanco*,[40] and *Bauerman v. Casas*.[41] In this *Falcasantos* case, the answer of the defendant alleged knowledge on the part of the plaintiff of the date of the sale in question. In a judgment rendered on the pleadings, the lower court nevertheless held that there was nothing in the record to show that plaintiff had any knowledge of such sale. This was error on the part of the court because the parties having submitted the case on the pleadings, the plaintiff must be considered as having admitted the material allegations in the answer that he had known the date of the sale in question.

Execution of judgments. Execution of a final judgment is a matter of right when the time to appeal has expired and no appeal has been perfected.[42] But where the execution is sought before the expiration of the period for appeal, the issuance of an order of execution must rest upon the discretion of the court, if there are "good

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[37] *Araneta Inc. vs. de Paterno and Vidal*, G. R. L-2884, prom. Dec. 22, 1952.
[38] G. R. L-4229, prom. May 29, 1952.
[39] 42 O. G. 2100.
[40] 45 O. G. 2080.
[41] 10 Phil. 386.
[42] Rule 39, Sec. 1 of the Rules of Court.

reasons" therefor.[43] What may be good reasons? In *de la Rosa v. City of Baguio*,[44] the fact that the defendants were insincere in that they made the court believe that they deposited with the bank various amounts claimed by the city when the truth was that they did not, was considered good reason for the execution of the judgment before the expiration of the period to appeal. Likewise, in *Scottish Union and Nat. Insurance Co. v. Judge Macadaeg*,[45] the fact that the petitioner who was the defendant in the lower court was withdrawing from business in this country was good reason for the issuance of an advance execution. According to the directive issued by the respondent judge which the Supreme Court affirmed, "when there is danger for the judgment to be ineffective if and when it becomes final, there is good cause to issue an advance writ of execution." The first case of *de la Rosa* likewise held that while the good reasons are required by the Rules of Court to be stated in the special order, a statement of the reasons by reference is sufficient, as when such reasons appear in a motion for execution and reference thereto is made in the special order as the ground therefor. The element that gives validity to an order of execution is the existence of the good reasons if they may be found distinctly somewhere in the record.

Under section 2 of Rule 39, execution pending appeal may be stayed by filing a supersedeas bond with the approval of the court. Since this stay is discretionary with the court, what circumstances must control its discretion? In *Caracao v. Macerен*,[46] it was held that the circumstances justifying execution inspite of a supersedeas bond must be paramount; they should outweigh the security offered by the supersedeas bond. Only compelling reasons of urgency or justice can justify execution. In the absence of such special reasons, the discretion of the court must lean toward the stay of execution.

When part of a judgment needs no further proceedings, that part of the judgment may be executed. Such was the holding in the case of *Arive v. Hon. Ibañez and Crisostomo*.[47]

Third Party Claim. When must a third party claim to property levied upon be filed? In *Mangaoang v. Prov. Sheriff*,[48] a third party claim filed three days before the sale was not considered too

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[43] Rule 39, Sec. 2 of the Rules of Court.
[44] G. R. L-4955, prom. Aug. 1, 1952.
[45] G. R. L-5717, 5751, 5756, prom. Aug. 30, 1952.
[46] G. R. L-4665, prom. Oct. 17, 1952.
[47] G. R. L-4809, prom. Nov. 19, 1952.
[48] G. R. L-4869, prom. May 26, 1952.

late, considering that "under Rule 39, it is clear that any person other than the judgment debtor or his agent may file with the sheriff making the levy a third party claim at any time, as long as the sheriff has possession of the property or before the property shall have been sold under execution." The same rule obtains in attachment.[49]

Conclusiveness of judgment. Whether a judgment which has become final and executory more than a year ago can still be amended by adding thereto a relief not originally included, such as delivery of possession of the land and ejectment therefrom of the defendants, was decided in the case of *Jabon v. Hon. Alo.*[50] Rule 39, section 45 on conclusiveness of judgment provides that "that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto." Applying this rule to the present case, the final judgment in question contained only a declaration of ownership. No other relief was awarded to the plaintiff. In the absence of any other declaration, can we consider a mere declaration of ownership as necessarily including the possession of the property adjudicated. The court held that it could not. For a person may be declared owner, but he may not be entitled to possession. The possession may be in the hands of another either as a lessee or a tenant. A person may have improvements thereon which he may not be deprived of without due hearing. He may have other valid defenses to resist surrender of possession. As a consequence, a writ of execution cannot be issued for the delivery of possession of the land.

Res judicata. Oberiano v. Sobremesana,[51] quoting from the Ruling Case Law,[52] gives us the underlying principle of the *res judicata* doctrine in this wise:

> "The foundation principle upon which the doctrine of res judicata rests is that parties ought not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties, and those in privity with them in law or estate. It is considered that a judgment presents evidence of the facts of so high a nature that nothing which could be proved by evidence *aliunde* would be sufficient to overcome it, and therefore it would be useless for a party against whom it can be properly applied to adduce any such evidence, and accordingly he is estopped or

[49] See Rule 59, Sec. 14 of the Rules of Court.
[50] G. R. L-5094, prom. Aug. 7, 1952.
[51] G. R. L-4622, prom. May 30, 1952.
[52] 15 R. C. L. 953, 954.

precluded by law from doing so. Such is the character of an estoppel by matter of record, as in case of an issue on a question of fact, judicially tried and decided."

The recent cases of *Lao v. Dee* and *Lao*,[53] *Reyes v. Reyes*,[54] *Menchaca v. Guanzon and Hinojales*,[55] *People v. Macadaeg*,[56] and *Caridad v. Novella*[57] have consistently applied the requisites of *res judicata*, to wit:

(1) The judgment must be a final judgment or order;

(2) The court rendering the same must have jurisdiction over the parties and over the subject matter;

(3) It must be a judgment or order on the merits; and

(4) There must be between the two cases identity of parties, identity of subject matter, and identity of cause of action.[58]

New Trial. Where the parties to a case have agreed to submit the case for decision, and after such decision one of the parties files a motion to set aside the same, and be allowed to introduce evidence, such motion must be considered a motion for a new trial, and it must therefore contain favorable showing to derive favorable action.[59] What facts must be shown in the motion to derive favorable action? If the motion for a new trial is based on fraud, accident, mistake or excusable negligence, the motion must be accompanied with affidavit or affidavits of merits.[60] If not so accompanied, the motion for a new trial will not be granted.[61] *Miranda v. Legaspi*[62] applied the well settled rule that the granting or denial of a motion for a new trial is, as a general rule, discretionary with the courts, whose judgment should not be disturbed unless there is a clear showing of abuse of discretion. Where therefore the lower court deemed it wise to deny the motion because it considered futile and unsubstantial the defenses set up by the defendants which even if proven could not have the effect of altering the nature of the decision, such denial should not be disturbed.[63]

Costs. Section 4 of Rule 131 imposes upon a party making an averment in a pleading without reasonable cause and found untrue

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[53] G. R. L-3890, prom. Jan. 23, 1952.
[54] G. R. L-4761, prom. Feb. 27, 1952.
[55] G. R. L-4016, prom. March 25, 1952.
[56] G. R. L-4316, prom. May 28, 1952.
[57] G. R. L-4207, prom. Oct. 24, 1952.
[58] *San Diego v. Cardona*, 40 O. G. (8th S) 116.
[59] *Enderes v. Encomienda et al.*, G. R. L-4506, prom. March 17, 1952.
[60] Sec. 1(a) of Rule 37 of the Rules of Court and Sec. 2 of the same Rule.
[61] *Gaerlan et al. v. Bernal et al.*, G. R. L-4039, prom. Jan. 28, 1952.
[62] G. R. L-4917, prom. Nov. 26, 1952.
[63] *Enderes v. Encomienda, supra.*

the punishment of paying such reasonable expenses as may have been necessarily incurred by the other party by reason of such untrue pleading. To be entitled to costs under this section, the Supreme Court has held that there must be a finding by the trial court in the main action that the allegation of a pleading is not true, and that by reason of such untruthfulness the adverse party had incurred expenses, the amount of which must also be proven in the trial court. The above requirements are not mere defenses which the adverse party may not take advantage of; they are essential elements constituting or giving rise to the right to have said expenses taxed as costs. This is so because costs under the above rule are of a special nature, requiring judicial investigation and determination. So held the case of *Bautista v. Reyes.*[64]

Whether or not the court may tax costs is a matter that lies within the discretion of such courts. This is a principle settled in numerous cases, and reiterated by the cases of *Jesswani v. Dialdas* [65] and *Alegre v. Ibarra.*[66] The first case also held, in conformity with section 6 of Rule 131, that counsel fees other than those fixed in the rules as costs, are not an element of recoverable damages.[67]

Relief from judgment. Rule 38 prescribes the period within which the petition for relief from a final judgment may be filed.[68] Is this period extendible? In *Palomares v. Jimenez,*[69] the Supreme Court held that it was not. According to the court, the relief provided for by Rule 38 is of equitable character, and is allowed only in exceptional cases: where there is no other available remedy. It is not regarded with favor and the judgment would not be voided where the party complaining has, or by exercising due diligence would have had, an adequate remedy at law, or by proceedings in the original action, by motion, petition, or the like, to open, vacate, modify, or otherwise obtain relief against judgment. Considering this purpose behind it, the court declared that the period fixed by Rule 38 is non-extendible and is never interrupted. It is not subject to any condition or contingency because it is itself designed to meet a condition or contingency. "It is an act of grace, as it were,

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[64] G. R. L-4373, prom. May 29, 1952.

[65] G. R. L-4651, prom. May 12, 1952.

[66] G. R. L-3933, prom. May 28, 1952.

[67] *Jesswani vs. Dialdas,* G. R. L-4651, prom. May 12, 1952, cited the case of *Tan Ti vs. Alvear,* 26 Phil. 566.

[68] Sec. 3 of Rule 38 of the Rules of Court provides that such a petition must be "filed within 60 days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six months after such judgment or order was entered or such proceeding was taken."

[69] G. R. L-4513, prom. Jan. 31, 1952.

designed to give the aggrieved party another and last chance. Being in the position of one who begs, such party's privilege is not to impose a condition, haggle or dilly-dally, but to grab what is offered him."

APPEALS

Perfection and dismissal of appeals. In appeals from judgments of the court of first instance to the Court of Appeals, the appeal is taken by serving upon the adverse party and filing with the trial court within thirty days from notice of the order or judgment a notice of appeal, appeal bond, and record on appeal.[70] Failure to file notice of appeal, appeal bond and record on appeal will cause the dismissal of such appeal.[71] Thus, where the petitioner filed a record on appeal within the reglamentary period but did not give notice of appeal or file an appeal bond, the appeal was properly dismissed.[72] In *Salva v. Palacio,*[73] failure to file an appeal bond within the reglamentary period was fatal, and failure of the lower court to allow petitioner to amend record on appeal was not held to be an abuse of discretion, since the extension to be granted to amend the record on appeal would not carry with it the extention of the period for filing appeal bond.

The right to ask for a dismissal for failure to perfect appeal on time cannot be waived. So held the case of *Miranda v. Guanzon,*[74] which declared that failure of the appellee to file motion to dismiss the appeal in the lower court did not constitute waiver, as dismissal by be effected even after the case has been elevated to the Court of Appeals.

What appealable. Rule 40 speaks only of an appeal from a judgment rendered by an inferior court.[75] May an appeal be made from a final order? The court held in *Reyes v. De Leon*[76] that "this court has already held that an appeal may lie not only from a final judgment of an inferior court but also from an order thereof if it is final in character. (*Monte de Piedad v. Dangoy,* 40 OG 1456.)" Here an order of the municipal court denying the motion of the defendant to quash the execution of the decision rendered in this case was held to be final inasmuch as it leaves nothing to be done in said

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[70] Sec. 3 of Rule 41 of the Rules of Court.
[71] Sec. 13 of Rule 41 of the Rules of Court.
[72] *Bracamonte vs. Court of Appeals,* G. R. L-4441, prom. Oct. 29, 1952.
[73] G. R. L-4247, prom. Jan. 30, 1952.
[74] G. R. L-4992, prom. Oct. 27, 1952.
[75] See Sec. 1 of Rule 40, Rules of Court.
[76] G. R. L-3720, prom. June 24, 1952.

court with respect to the merits of the case. As such it was appealable.

PROVISIONAL REMEDIES

Attachment; nature. An attachment is in the nature of a proceeding *in rem.* It is against a particular property, and the attaching creditor thereby acquires a specific lien upon the attached property which ripens into a judgment against the *res* when the order of sale is made. Such a proceeding, therefore, is in effect a finding that the property attached is an indebted thing, a virtual condemnation of it to pay the owner's debts.[77] How it is a lien is illustrated in *Cunaco v. Alano.*[78] In 1929, Alano sold to Tria 12 parcels of land with a right to repurchase within four years. After the expiration of the four-year period without Alano repurchasing the same, the court issued an order of attachment in favor of Cunaco who was a creditor of Tria, including these 12 parcels. In 1938, however, Alano repurchased the property. In 1948 the court issued an execution of final judgment in favor of Cunaco and against Tria, and the sheriff sold these parcels of land to Cunaco. When the sheriff attempted to put Cunaco in possession thereof, Alano objected.

The Supreme Court held that when the sheriff attached the property in question, the four-year period of redemption had already expired. While Tria, the vendee a retro, was free to allow redemption even after the period for the same had already expired, yet the attachment had already created a lien on the property superior to all other subsequent liens. The resale, therefore, or any other disposition of the attached property made by the vendee subsequent to the attachment cannot affect the lien created by the attachment. Furthermore, the court held it to be elementary that an attached property cannot be disposed of by the defendant, for that is the very purpose for which attachments are made—to prevent the disposal of the property during the pendency of the case, the plaintiff filing a bond to respond for any damages that may be caused to the defendant by reason of the attachment. Therefore, when Tria resold the property after the expiration of the period for redemption, the sale was null and void and could have had no effect whatsoever against the rights of the judgment creditor who had previously attached the property.

1. *Discharge.* Section 13, Rule 59 of the Rules of Court authorizes the discharge of an attachment on the ground that the same was improperly or irregularly issued, and it has been held that

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[77] II MORAN, COMMENTS ON THE RULES OF COURT, p. 12.
[78] G. R. L-4046, prom. Jan. 23, 1952.

when the facts, or some of them, stated in the plaintiff's affidavit are shown by the defendant to be untrue, the writ of attachment may be considered as improperly and irregularly issued.[79] In *National Coconut Corporation v. Pecson and Sycip*,[80] an attachment was obtained on the ground that the defendant has disposed or in the process of disposing of its properties with intent to defraud its creditors, and plaintiff set forth the fact that the defendant corporation had advertised the sale of one complete oil mill. A motion to discharge the attachment was denied by the court below without hearing. The Supreme Court however found that the alleged intent to defraud was not true at all because it appeared that the only property which the corporation intended to sell or to dispose of was advertised for sale not to defraud its creditors but merely to save it from deterioration. The mere fact that the sale was advertised is proof of the absence of intention to defraud. The Supreme Court therefore held that the lower court abused its discretion in denying petitioner's motion without allowing the same to present its evidence. "When a motion is made to dissolve an attachment on the ground that the affidavit upon which the writ was granted is false, the defendant is entitled to introduce evidence of such falsity." (*Miller, Sloss & Scott v. Jones*, 9 Phil. 648)

Injunction. The purpose of the provisional remedy of injunction is to preserve the *status quo* of the things subject of the action or the relation between the parties, in order to protect the rights of the plaintiff respecting the subject of the action during the pendency of the suit.[81] As a rule, injunction is not proper when its purpose is to take property out of the possession or control of one person and place the same in the hands of another, whose title has not been established by law.[82] The reason for this doctrine, according to *Calo v. Ortega*,[83] is that justice and equity demand that the parties may be maintained in their *status quo* so that no advantage may be given to one to the prejudice of another. According to the same case, this rule is applicable only to cases where ownership as well as the possession of the land in dispute are the main issue and that the relief was prayed for before the issue had been decided. But where the court had already made a pronouncement that the respondents were the owners of the properties in question as in this *Calo*, case, and that they were entitled to possession, this rule does

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[79] *Hijos de la Rama vs. Sajo*, 45 Phil. 703; *Baron v. David*, 51 Phil. 1.

[80] G. R. L-4296, prom. Feb. 25, 1952.

[81] *Rosario & Gomez v. Martinez*, G. R. L-4473, prom. Sep. 30, 1952, *citing Calo et al. vs. Roldan, et al.*, 42 O. G. 3179.

[82] II MORAN, COMMENTS ON THE RULES OF COURT, 64-65.

[83] G. R. L-4673, prom. Jan. 25, 1952.

not apply because the pronouncement of the court until overruled, carries much weight and must be respected. This fact, therefore, took this case out of the rulings above adverted to.

Receivership. Qualifications. A receiver has been defined to be an indifferent person between the parties litigant, appointed by the court, and on behalf of all the parties, and not of the plaintiff or defendant only, to receive the rents, issues or profits of the land or thing in question, to hold possession and control of the property subject of the litigation, and to dispose of it in such a manner as may be directed by the court.[84] As such, a receiver should be impartial and in such a position as to be able to protect the interests of all the parties to the case. In this connection, the Supreme Court held in *Calderon and Calma v. Aquino* [85] that the appointment of a lessee as receiver was quite improper because according to the court, such lessee was "sort of partisan or subordinate to the plaintiff." Consequently, he is not the proper person to be appointed receiver.

1. *Powers.* In *Cruz et. al v. Encarnacion,*[86] the Supreme Court dealt on the importance of the court's approval in all acts performed by the receiver. Citing section 8 of Rule 61, which makes all the powers of a receiver "subject to the approval of the court in which the action is pending," the court said that a receiver does not work independently of the court. His contracts are under the control of the same. Without its authorization or express approval, the receiver cannot enter into any contract. A receiver therefore cannot enter into compromise without the approval of the court. The judgment of the court below to the effect that notwithstanding the lack of approval of the court, such compromise is binding upon the parties because they signed it, was therefore held to be erroneous, because a receiver cannot bind himself to the prejudice of the parties.

Nevertheless this rule is not absolute since it has been held that a receiver may incur an expense without the approval of the court when it is necessary to preserve the property and the authority of the court cannot be secured immediately.[87]

The court in one case [88] has held that when the appointment of a receiver has been revoked, it is proper for a court to require plaintiff to file a bond to answer for damages that might be sustained by the other party.

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[84] II MORAN, COMMENTS ON THE RULES OF COURT, 76
[85] G. R. L-4118, prom. Jan 31, 1952.
[86] G. R. L-4709, prom. Aug. 29, 1952.
[87] *Cia. Gen. de Tabacos vs. Gauzon,* 20 Phil. 261.
[88] *Lui v. Judge Gatmaitan,* G. R. L-4574, prom. May 23, 1952.

SPECIAL CIVIL ACTIONS

Mandamus. Mandamus does not lie to compel the Rehabilitation Finance Corporation to accept payment with a backpay certificate by a debtor of said corporation, since the duty imposed upon it regarding the acceptance or discount of backpay certificates by section 2 of Rep. Act 204 "is neither clear nor ministerial but discretionary, and that mandamus does not issue to control the exercise of discretion of a public officer." This was decided in *Diokno v. Rehabilitation Finance Corporation.*[89] Exceptions to this rule may, however, be found in cases of gross abuse of discretion, manifest injustice, or palpable excess of authority, because the discretion must be exercised under the law, and not contrary to law.[90]

In *Assoc. of Beverage Employees v. Figueras,*[91] it was held that mandamus may issue against the Secretary of Labor to compel him to permit a union to operate. In the course of its judgment, the Supreme Court cited Corpus Juris[92] on the availability of the remedy:

> "If by reason of a mistaken view of the law or otherwise there has been in fact no actual and bona fide exercise of judgment and discretion, as for instance, where the discretion is made to turn upon matters which under the law should be considered, or where the action is based upon reasons outside the discretion imposed, mandamus will lie. So where the discretion is as to the existence of the facts entitling the relator to the thing demanded, if the facts are admitted or clearly proved, mandamus will issue to compel action according to law. Nevertheless, the abuse of discretion must appear very clearly before the courts will interfere by mandamus."

Applied to this case, the action for mandamus would then involve the sufficiency of the grounds advanced by the Secretary of Labor in refusing to grant the petitioner labor union a permit to operate. Mandamus may likewise lie to compel a judge to grant execution of a judgment which has already become final.[93]

The requirement in mandamus that the complaint must be under oath may be dispensed with if the facts alleged therein are admitted by the defendants. This was held in the case of *Antiquera v. Baluyot.*[94]

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[89] G. R. L-4712, prom. July 11, 1952.
[90] *Antiquera vs. Baluyot,* G. R. L-3318, prom. May 5, 1952.
[91] G. R. L-4813, prom. May 28, 1952.
[92] 38 C. J. 598, 600.
[93] *Deliva vs. Surtida and Ronquillo,* G. R. L-4614, prom. Oct. 24, 1952.
[94] G. R. L-3318, prom. May 5, 1952, citing *Go Bon Chiat vs. Gonzales,* G. R. L-4063, prom. Nov. 29, 1950.

Eminent Domain. It is a rule in condemnation proceedings that in case a complaint in condemnation is filed, the defendant, in lieu of an answer, shall present in a single motion to dismiss or other appropriate relief, all his objections and defenses to the right of the plaintiff to take his property for the use specified in the complaint.[95] Suppose, notwithstanding this rule, defendant files an answer with a counterclaim and the plaintiff fails to answer the counterclaim. May the plaintiff be declared in default? The answer is supplied by the case of *Phil. Oil Dev. Co. v. Go.*[96] Here the court held that a defendant's counterclaim in this case is a pleading not contemplated by law and therefore plaintiff is not bound to answer such counterclaim. The counterclaim in this case was for just compensation and damages. This being so, the court held that for all these claims the defendant need not file any answer or counterclaim. Even without such answer or counterclaim, he is always free to prove them before the commissioners. That is what Rule 69, section 4 provides.

As to the issue of damages incurred before the filing of the complaint in condemnation, the court held that the better view and wise rule is that all claims for compensation based on damages caused before the commencement of the suit for condemnation may be included in the condemnation proceedings themselves, otherwise the filing of separate suits for such past damages, especially by numerous real property owners, would result in a great multiplicity of suits.

1. *Report of commissioners.* Commissioners, it is to be recalled, are appointed to ascertain and report to the court the just compensation for the property sought to be taken.[97] What is the weight of such reports? While such reports are not final,[98] yet the court to which the report is submitted may, as a general rule, set it aside only for errors or irregularities in the procedure or where it is against the decided weight of evidence. Such report is regarded with as much or even greater respect than the verdict of a jury rendered in an ordinary action at law. So observed the Supreme Court in the case of *Republic of the Philippines v. Garcia.*[99]

In a motion to confirm or reject a commissioner's report, neither the trial court nor the appellate court can take cognizance of a fact outside the record of the case. When there are special reasons or

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[95] Sec. 4 of Rule 69, Rules of Court.
[96] G. R. L-4007, prom. Jan 23, 1952.
[97] Sec. 6 of Rule 69, Rules of Court.
[98] Sec. 8, Rule 69, Rules of Court.
[99] G. R. L-3526, prom. March 27, 1952.

circumstances surrounding the case, these new or special circumstances must be introduced in the hearing; otherwise they may not be taken into consideration for the purpose of determining whether or not the commissioners made a correct appraisal of the value of the property.[100] In *Davao v. Dacudao* [101] however, the court modified the report of the commissioners because their findings were contrary to the weight of evidence. In the first place, the commissioners made an obvious mistake in giving weight to the testimony on alleged offers of purchase as evidence of value, for as repeatedly held, testimony as to mere offers for the property desired or contiguous property is not admissible for the purpose of determining the value of the property.[102] In the second place, the commissioners assessed the land in question on the erroneous hypothesis that said land was wholly located in the commercial zone.

Forcible entry and detainer. Applicability of rules on ordinary civil actions. Under Rule 65 of the Rules of Court, the rules on ordinary civil actions are applicable to special civil actions, insofar as they are not inconsistent with or may serve to supplement the provisions of the rules relating to such special civil actions. The applicability of these rules is illustrated in *Evangelista v. Soriano.*[103] In a detainer action, judgment was rendered for the plaintiff. Defendant appealed, filing a supersedeas bond. At the hearing of the appeal, however, defendant failed to appear. What was the effect of defendant's failure to appeal? In disposing of this action, the court applied the rule of appeals in ordinary civil actions from justice of the peace courts to courts of first instance under Rule 40, section 9, to the effect that "a perfected appeal shall operate to vacate the judgment of the justice of the peace or municipal court, and the action when duly entered in the Court of First Instance shall stand for trial *de novo* upon its merits in accordance with the regular procedure in that court, as though same had never been tried before and had been there originally commenced." According to the court, section 8 of Rule 72 does not in any way alter the aforecited section 9 of Rule 40. As proof of this, the court cited the provision in section 8 of Rule 72 that "such execution shall not be a bar to the appeal taking its due course until the final disposition thereof on its merits." When, therefore, the defendant failed to appear at the resumption of the trial, the court could not dismiss the appeal because it was not authorized to do so, but it was duty bound to

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[100] G. R. L-3526, prom. March 27, 1952.

[101] G. R. L-4731, prom. May 28, 1952.

[102] *City of Manila vs. Estrada,* 25 Phil. 208; *Manila Railroad Co. vs. Aguilar,* 35 Phil. 118.

[103] G. R. L-4625, prom. Oct. 29, 1952.

hear evidence of the plaintiffs and render judgment thereon. Nor could the court dismiss the appeal and grant the remedy prayed for, for a dismissal of the case, if granted would leave the prevailing parties in the municipal court, bereft of or without a judgment. In accordance with section 9 of Rule 40, the party who could withdraw the appeal was the appellant, because such withdrawal would revive the judgment against her in the municipal court. Obviously, the appellees for whom the judgment was rendered could not ask for the withdrawal of the appeal. They would not ask for a dismissal of the case because the judgment secured by them would not be revived, thereby, and they would be left without judgment which was vacated upon the perfection of the appeal.

1. *Nature.* Proceedings in forcible entry and detainer are wholly summary in nature. The question of ownership is most invariably ignored. The purpose of the action is merely to restore possession to the one from whom it was taken by force, intimidation, threat, strategy, or stealth, or from whom it is being withheld after the right of possession had ended. Said proceedings are required to be initiated within one year. The jurisdiction over the case is vested in the justice of the peace or municipal court. Any action, therefore, that is not of such a nature will not be considered a forcible entry or detainer action.[104] Where therefore, the plaintiff has been allowed to keep possession of the property since 1946 without paying any rentals and the defendants never initiated any proceedings to transfer possession from the plaintiff to them, and defendants filed their claim to possession only when plaintiff sued them, this cannot be considered a case of forcible entry or detainer. This was held in *Feldman v. Hon. Encarnacion.*[105] One fact more determinative of the action here was that the claim of the defendants was filed in the court of first instance and not in the municipal court which has exclusive jurisdiction over forcible entry and detainer cases.

2. *Jurisdiction. Pitargue v. Sorilla* [106] posed the following question: are courts without jurisdiction to take cognizance of possessory actions involving public lands before final award is made by the Bureau of Lands, and before title is given to any of the conflicting claimants? The Supreme Court held that such fact did not deprive the courts of jurisdiction. The purpose of a forcible entry action is to prevent breach of the peace and the disorder which would ensue from the withdrawal of such remedy, and the hope that such withdrawal would create that some advantage will accrue to those

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[104] *Feldman vs. Hon. Demetrio Encarnacion,* G. R. L-4494, prom. Sept. 24, 1952.
[105] G. R. L-4494, prom. Sept. 24, 1952.
[106] G. R. L-4302, prom. Sept. 17, 1952.

persons who, believing themselves to be entitled to the possession of property, resort to force to gain possession rather than to some appropriate action in the courts to assert their claims. With this in mind, the Court held that the vesting, therefore, of the Lands Department with authority to administer, dispose and alienate public lands, must be understood as not depriving the other branches of the government of the exercise of their respective functions or powers thereon, such as the authority to stop disorders and quell breaches of the peace by police, and the authority on the part of the courts to take jurisdiction over possessory actions arising therefrom not involving, directly or indirectly, alienation and disposition. Moreover, the court considered "compelling reasons of policy." Recognition of the right encourages actual settlement; it discourages occupation and land-grabbing. And by the priority of his application and the record of his entry, an applicant acquires a right to possession of the public land he applied for, against any other public claimant.

3. *Execution of judgment.* In *Villaroman v. Abaya,*[107] the respondent judge issued an order to the effect that the writ of execution issued in favor of the petitioner for a judgment against defendant referred to the possession only, and not to the collection of rentals in arrears, on the ground that under section 7 of Rule 72, judgment rendered refers to possession only and since physical possession is the only issue in forcible entry and detainer cases, the judgment rendered therein can dispose of no other issue than possession. This was held to be error on the part of the respondent judge. The Supreme Court held that section 7 does not refer at all to the alleged distinction between judgment for possession and judgment for delinquent rentals, but to the distinction between judgment as to the right of possession and judgment as to the title of ownership. Section 7 was thus held to be irrelevant to the question involved. And since section 8 of Rule 72 does not limit the execution of possession of property in question because it refers to the whole judgment, both for the possession and collection of the money judgment, the respondent judge was ordered to issue a writ of execution for the entire judgment.

The foregoing case is also authority for the rule that in order to stay execution of the judgment, the appellant must not only perfect an appeal and file an appeal bond but he must also file a supersedeas bond. *Gotauco v. Macadaeg* [108] held the same.

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[107] G. R. L-4853, prom. March 21, 1952.
[108] G. R. L-4512, prom. Sept. 30, 1952.

In connection with stay of execution, the Rules of Court require,[109] among other things, that in the absence of a contract, the defendant must pay to the plaintiff or to the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premise for the preceding month at the rate determined by the judgment. The term "in the absence of a contract" has been construed to cover not only the situation where there is no contract actually, but also where the judgment does not make findings as to the existence and/or the terms of a contract.[110]

Not unlawful detainer. When there is an allegation in the answer that the plaintiff is already in possession of the property in question, the defendants cannot assert that the nature of the action is unlawful detainer, because possession or detention is a requisite for a detainer action.[111]

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[109] Sec. 8, Rule 72, Rules of Court.

[110] *Khim vs. Yan and Ibañez*, G. R. L-5441, prom. Nov. 29, 1952.

[111] *Batangas vs. Cantos*, G. R. L-4012, prom. June 30, 1952.