CIVIL PROCEDURE

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I. JURISDICTION AND VENUE

Test of jurisdiction where there is plurality of cause of action.

The question is now settled that the jurisdiction of inferior courts [1] depends upon the totality of the demand in all causes of action, *irrespective* of whether the plural causes constituting the claim *arose out of the same or different transactions.* The definite statement of the rule is embodied in the case of *Vda. del Rosario v. Justice of the Peace,*[2] which affirmed the ruling in *Campos Rueda Corporation v. Sta. Cruz Timber Co. Inc.,*[3] reitreating those of *Soriano v. Omila,*[4] and *Gutierrez v. Ruiz,*[5] and abandoning the ruling in *Go v. Go* [6] which distinguished between (1) a claim composed of accounts each distinct from the other and arising out of different transactions, and, (2) a claim which is composed of several accounts arising out of the same transaction. The case of *Go v. Go* [7] was cited with approval in *Despo v. Hon. Sta Maria* [8] which held that the total demand in all causes of action arising out of the *same* transaction determines jurisdiction of the court. This was overruled by the subsequent cases.[9]

In the case of *Vda. Del Rosario v. Justice of the Peace,*[10] the justice of the peace court did not have jurisdiction over the case because the totality of the demands exceeds the jurisdictional amount of ₱2000, to wit: ₱949.25 under the first cause of action; ₱860.23, the second cause of action; and as a third cause of action, damages of ₱1000 for each of the first two causes of action, and ₱300 as attorney's fees. In the case of *Campos Rueda Corporation v. Sta. Cruz Timber Co. Inc.,*[11] the action is based on two promissory notes for the amounts of ₱1,125 and ₱1,075 executed solidarily by the

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* Notes and Comments Editor, Student Editorial Board, 1956-57.

1 The term "inferior courts" is used in this article as defined in Sec. 1 of Rule 4 of the Rules of Court.

2 G.R. No. L-9284, July 31, 1956; 52 O.G. 5157 (1956); cited in Carlos v. Kiener Construction, G.R. No. L-9516, Sept. 29, 1956; 52 O.G. 6554, see note 17 *infra.*

3 G.R. No. L-6884, March 21, 1956; 52 O.G. 1387 (1956).

4 51 O.G. 3465 (1955).

5 50 O.G. 2480 (1954).

6 G.R. No. L-7020, June 30, 1954.

7 *Ibid.*

8 G.R. No. L-6903, Jan. 31, 1956.

9 Campos Rueda Corporation v. Sta. Cruz Timber Co., see note 3 *supra;* Vda. Del Rosario v. Justice of the Peace, see note 2 *supra;* Soriano v. Omila, see note 4 *supra;* Gutierrez v. Ruiz, see note 5 *supra.*

10 See note 2 *supra.*

11 See note 3 *supra.*

defendants in favor of the plaintiff. The Court said, the term "the amount of the demand" in sec. 44(c) and sec. 88 of the Judiciary Act of 1948 [12] means the total or aggregate amount demanded in the complaint, irrespective of whether the plural causes of action constituting the total claim arose out of the same or different transactions.

Exceptions to the rule that jurisdiction depends upon the totality of demand.

The case of *Vda. Del Rosario v. Justice of the Peace*[13] is authority for the rule that the only exceptions to the general rule that the jurisdiction of the courts depends upon the totality of demand in all causes of action are (1) where the claims joined under the same complaint are separately owed by, or due to, different parties, in which case, each separate claim furnishes the jurisdictional test, and (2) where not all the causes of action joined are demands or claims for money.

CFI has jurisdiction to award ₱2000 or less for damage in action to recover land.

The case of *Pajarillo v. Manahan* [14] held that where the recovery of a sum of money is a part of the complaint for the recovery of a parcel of land, the Court of First Instance has jurisdiction, although the amount of the demand falls within the exclusive jurisdiction of the inferior courts. The Court further held that this rule would still hold true even if the complaint was dismissed as to the recovery of the land because parol evidence could not be admitted to prove express trust. Where, however, the cause of action may fall within the jurisdiction of either the justice of the peace court or the court of first instance depending on the amount of damages which the plaintiff seeks to recover, the inferior court could not award more than ₱2000 although greater amount could be recovered had the case been filed in the CFI. To avoid splitting of a single cause of action, which is fatal to complete relief under the Rules of Court,[15] the remedy is for the plaintiff to ask for the dismissal of the case, if it is filed with the inferior court, without prejudice to the filing of the proper action with the CFI. In the case of *Reyes v. De la Rosa,*[16] the plaintiff sued the defendants in the municipal court to recover damages in the amount of ₱45,000 for physical injuries and defamation. The case was dismissed and

[12] Republic Act No. 296, as amended.
[13] See note 2 *supra.*
[14] G.R. No. L-8949, Sept. 28, 1956; 52 O.G. 6538 (1956).
[15] §§3 and 4, Rule 2.
[16] 52 O.G. 6548 (1956).

the proper action was filed with the CFI. The Court held that Article 33 of the new Civil Code authorizes the filing of civil action for physical injuries, fraud, and defamation independently of the criminal action that might be instituted.

Jurisdiction of court, how determined in ejectment cases.

In the case of *Carlos v. Kiener Construction, Ltd.*,[17] it was held that in forcible entry cases the jurisdiction of the courts is determined by the nature of the action and not by the amount of money sought to be recovered which may exceed ₱2000. The Court cited the cases of *Tuason v. Crossfield*[18] and *Lao Seng v. Almeda.*[19]

This case of *Carlos v. Kiener Construction, Ltd.*, also holds that attorney's fees, unlike "interest and cost" in sections 44 and 88 of the Judiciary Act of 1948, affect jurisdiction.

Jurisdiction once acquired, court cannot be deprived thereof by mere averment in the answer.

The case of *Basilio v. David*[20] holds that where the complaint for forcible entry does not show landlord-tenant relationship, upon the filing thereof the justice of the peace court acquired jurisdiction of the case and could not be deprived thereof by the averment in the answer that such relationship existed. Of the same tenor is the holding in the case of *Argenio v. Marino*[21] where the defendant's assertion of possession and ownership over the land in question did not alter the nature of the action for forcible entry properly brought within the jurisdiction of the inferior court by the complaint filed therefor.

When court should dismiss a case over which it originally had jurisdiction.

In the case of *Basilio v. David*,[22] the Court further ruled that where, however, the evidence presented at the trial showed that the case involved the relationship of landlord and tenant, the justice of the peace court should have concluded that there was such relationship by preponderance of evidence and dismissed the case without prejudice to the filing of the proper action with the Court of Industrial Relations which has the exclusive and original jurisdiction over cases involving tenancy disputes.

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[17] G.R. No. L-9516, Sept. 29, 1956; 52 O.G. 6554.
[18] 30 Phil. 543 (1916).
[19] 46 O.G. Supp. 11, p. 70 (1950).
[20] G.R. No. L-8702, April 28, 1956; 52 O.G. 3586 (1956).
[21] G.R. No. L-9299, Dec. 18, 1956.
[22] See note 20 *supra.*

Other rulings on jurisdiction.

1. The Court of Industrial Relations, Court of Agrarian Relations and the Public Service Commission have no criminal jurisdiction. Their jurisdiction is exclusively confined to civil matters. The power to impose the penalties provided for in the statutes creating them and conferring upon them powers is lodged in the ordinary courts of justice.[23] The same is true with the Court of Tax Appeal.[24]

2. Where the justice of the peace of a town or municipality is disqualified to act in a case and there is no auxiliary justice to take over his duties, it is the district judge who should designate the nearest justice of the peace of the province to act in the municipality or town of the disqualified justice. The appointment, therefore, of the substitute justice by the disqualified justice is null and void, and the proceedings taken by the former in his own court are not only illegal but highly irregular, for the defendant had the right to have the case tried in the court of proper venue.[25]

3. The Supreme Court has exclusive appellate jurisdiction over all cases involving the legality of any tax, assessment, or toll, or any penalty in relation thereto. Thus, as the legality or validity of the documentary stamp tax was involved on appeal, the Court of Appeals has no jurisdiction over the case and the judgment rendered therein is null and void.[26]

4. The Court of Industrial Relations has no jurisdiction over labor disputes except (1) when it involves industries indispensable to the national interest under sec. 10 of Rep. Act No. 875; (2) when it refers to minimum wage under Rep. Act No. 602; (3) when it involves hours of employment under Com. Act No. 444; and (4) when it involves an unfair labor practice under sec. 5(a) of Rep. Act No. 875. In all other labor disputes, it is the ordinary courts of justice which have the power to issue injunctions.[27]

Venue of action "in rem" and "quasi in rem".

The case of *Navarro v. Hon. Lucero* [28] is an action instituted in the CFI of Manila and commenced upon a complaint praying

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[23] Scoty's Dept. Store v. Micalla, 52 O.G. 5119 (1956).
[24] Ollada v. Court of Appeals, 52 O.G. 4667 (1956).
[25] Beysa v. C.F.I., 52 O.G. 3571 (1956) applying §73, Rep. Act No. 296 as amended.
[26] International Autobus v. Collector, G.R. No. L-6741, Jan. 31, 1956; 52 O.G. 791 (1956).
[27] Reyes v. Tan, G.R. No. L-9137, Aug. 31, 1956; PAFLU v. Barot, 52 O.G. 6544 (1956).
[28] G.R. No. L-9340, Oct. 24, 1956; 52 O.G. 7246 (1956).

in the alternative that a certain transfer certificate of title be declared null and void and complaint's certificate of title as valid over a parcel of land situated in Pasay City, or that the defendants be adjudged solidarily liable for ₱6000 in the event that plaintiff is deprived of the land in question by virtue of the operation of Act No. 496. The question of venue was raised. *Held:* Pursuant to Sections 1 and 2 of Rule 5 of the Rules of Court, actions *in personam* are transitory. However, if, besides said actions, the complaint sets up a real action or even an action *quasi in rem*, such as foreclosure of a real estate mortgage, the case "shall be commenced and tried in the province where the property or any part thereof lies." The alternative prayer for ₱6,000 cannot affect the application of sec. 3 of Rule 5 of the Rules of Court. The proper venue is Pasay City.

Court has power to set case for trial where it found provisionally that defendant is resident of its jurisdiction.

In *Pacquing v. Municipal Court of Manila*,[29] an action upon a *vale* for a sum of money, the petitioner moved to dismiss the case on ground of improper venue. The municipal judge of Manila in denying the motion found provisionally that defendant is a resident of Manila, and set the case for trial. The defendant filed a petition for prohibition. *Held:* Where the court in a motion to dismiss provisionally found that defendant was a resident of Manila and therefore, venue is properly laid, it did not act in excess of or without jurisdiction or with grave abuse of discretion in setting the case for trial. The remedy of the defendant is to prove at the trial of the case that he is not a resident of Manila, and if he so proved but the court does not dismiss the case, that would be the time for him to institute the action for prohibition or to appeal.

II. ACTIONS, PARTIES AND TRIALS.

Sufficiency of cause of action, how determined in a motion to dismiss.

The rule is that to determine the sufficiency of a cause of action in a motion to dismiss, only the facts alleged in the complaint should be considered.[30] Thus, in the case of *Marabiles v. Quito* [31] it appears in the complaint that *G. S.* is the wife of *A. Q.*, the defendant, and as said *G. S.* has already died, under the law the husband and the daughter are the legal heirs of the deceased. We have already

[29] G.R. No. L-8826, May 18, 1956; 53 O.G. 102 (1957).
[30] Pamintuan v. Costales, 28 Phil. 487 (1914).
[31] G.R. No. L-10408, Oct. 18, 1956; 52 O.G. 6507 (1956).

said, the Court held, that in order that an heir may assert his right to the property of a deceased, no previous judicial declaration of heirship is necessary. It was therefore a mistake to dismiss the complaint on this ground.

Action on judgment; debt moratorium interrupts statute of limitations.

In *Manila Motor Co. v. Fernandez*,[32] the plaintiff sold to the defendant a second-hand car for ₱1,125 of which ₱100 had been paid in cash, and the balance payable in 34 installments with interest, with a chattel mortgage on the car. The defendant defaulted and was adjudged to pay the sum of ₱775.17 in March, 1941. The judgment was never executed due to the outbreak of the last war and the debt moratorium orders. In 1954 the plaintiff sued on the judgment to collect the amount but the lower court dismissed the case on the ground that plaintiff's cause of action has already prescribed. *Held:* The debt moratorium, lasting from Nov. 18, 1944 when Executive Order No. 25 was promulgated, to July 26, 1948 when it was partially lifted by Rep. Act No. 342, or 3 years, 8 months and 8 days, interrupted the running of the statute of limitations.[32a]

Laches fatal to cause of action.

In *Unabia v. Hon. City Mayor*[33] the plaintiff, a civil service employee, instituted an action for his reinstatement to office on the ground of removal without investigation after the lapse of one year and fifteen days from such removal. The Court held that laches or delay for more than one year from the date of unlawful removal in bringing the action for reinstatement is not a mere defense which could be raised for the first time only in the trial court, but essential to plaintiff's cause of action and may be raised for the first time and considered even on appeal. It is not waived for failure to raise it in the lower court. The Court applied section 16 of Rule 68 and section 10 of Rule 9 of the Rules of Court.

Defrauded party may vindicate property regardless of lapse of time from the issuance of registered title certificate.

It is a rule well settled, said the Court in the case of *Marabiles v. Quito*,[34] that the defense of prescription cannot be availed of

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[32] G.R. No. L-8377, Aug. 28, 1956; 520 O.G. 6883 (1956).

[32a] However a slight difference in computation appears in the case of Bartolome v. Ampil, G.R. No. L-8436, Aug. 28, 1956.

[33] G.R. No. L-8759, May 25, 1956; 53 O.G. 132 (1957).

[34] See note 31 *supra*.

when the purpose of the action is to compel a trustee to convey the property registered in his name for the benefit of the *cestui que* trust. And when a person through fraud or concealment succeeds in registering in his name the property, the law (The Court might have in mind Art. 1456 of the new Civil Code) creates what is called 'constructive trust' in favor of the defrauded party and grants to the latter a right to vindicate the property regardless of he lapse of time from the issuance of the certificate of title. This ruling affirmed those of the cases of *Bancairen v. Diones* [35] and *Sevilla v. De los Angeles.*[36] But see the holding in *Claridad v. Benares,*[37] an earlier decision, that constructive or implied trusts, as distinguished from express ones, are barred by laches or prescription without need of repudiation.

Proper parties in interest.

The case of *Tan Tiong Bio v. Bureau of Internal Revenue* [38] holds that the Government cannot insist on making a tax assessment against a corporation that no longer exists and then turns around and opposes the appeal questioning the legality of the assessment precisely on the ground that the corporation is non-existent and has no longer capacity to sue. The officers and directors of the defunct corporation are proper parties in interest in so far as they may be held personally liable for the unpaid deficiency assessments made against the defunct corporation.

Necessary parties; personal action, not one for foreclosure.

In *Butte v. Ramirez*[39] it was held that if a judgment will prejudice third persons, such persons must be included as necessary parties so that complete relief may be accorded. In June 1946 a document entitled "Loan with a Chattel Mortgage" was executed between the plaintiff and the defendant with a third person as the mortgagor encumbering his 149 shares of stock in a milling company to guarantee the debt of his son, the defendant. In this section the defendant admitted his debt of ₱12,000 to the plaintiff and paid accordingly, and demanded the return of the shares covered by the certificate transfered by the mortgagor to the plaintiff, but the lower court denied such return on the ground that such return was not covered by the pleadings and the plaintiff is asserting ownership over the shares by virtue of an alleged sale. The Supreme Court affirmed the lower court and held further that the

[35] G.R. No. L-8013, Dec. 20, 1955.
[36] G.R. No. L-7745, Nov. 1955; 51 O.G. 5596 (1955).
[37] G.R. No. L-6438, June 30, 1955.
[38] G.R. No. L-8800, Oct. 23, 1956; 52 O.G. 6117 (1956).
[39] G.R. No. L-6604, Jan. 31, 1956.

action instituted by the plaintiff was merely for the collection of a loan, the document named above and made part of the complaint being merely an evidence of the obligation; and that the deceased mortgagor, being the owner of the shares, he or his legal representatives should have been included as necessary parties in the case.

Designation of parties.

The case of *Unabia v. Hon. City Mayor* [40] was an action filed against certain city officials of Manila. The complaint failed to state the names of the persons holding the offices of City Mayor, City Treasurer, City Auditor and City Engineer, they being designated only be their official positions. *Held:* Such failure is no ground for a reversal of the proceedings and of the judgment against said officials. As said persons were sued in their official capacity, it is sufficient that they be designated by their official positions.

Failure to join husband; prohibition improper.

In *Pacquing v. Municipal Court* [41] the plaintiff filed a complaint against Carmen Pacquing on a *vale* for a sum of money without joining her husband. From an order denying a motion for reconsideration of the motion to dismiss on the ground of failure to join the husband as party defendant, the defendant filed a petition for a prohibition with the CFI which denied the same. *Held:* Where the husband was not joined in the action, the prohibition does not lie because failure to join the husband is not a jurisdictional objection. The remedy is for the husband to be joined as a party defendant, and not for the wife to ask that the case be thrown out of court.

Taking of deposition discretionary on court; notice therefor.

In the case of *Villalon v. Hon. Jose,*[42] the defendants in a civil case pending trial before the Manila CFI served upon plaintiff, respondent herein, a writing notice for the taking of the deposition of a witness before the municipal court of Davao City. The plaintiff agreed that the deposition be taken in Barili, Cebu on July 28 or 29, 1954. The witness did not appear on the day and at the place agreed upon. However, another attempt was made to take deposition of the deposition in Davao City without proper notice to the plaintiff. Upon motion, the respondent court stopped the taking of the deposition. Held: The taking of the deposition

[40] See note 33 *supra.*
[41] See note 29 *supra.*
[42] G.R. No. L-8976, April 27, 1956.

of a witness is a matter within the discretion of the trial court. In stopping the deposition, respondent court found that same was only aimed at harassing the respondent-plaintiff, especially since petitioners had not even shown the nature of the testimony expected from said witness. The finding of the trial court is supported by the almost four-month delay in attacking the order stopping the taking of deposition. Even granting that the order complained of was erroneous, petitioners can not insist on the taking of the deposition without a new notice.

While parties should strictly comply with the law in asking for postponement, court should be liberal in granting it.

The Court in *Bautista v. Municipal Council*[43] reminded court litigants that motions for postponement should be made with the three days' advance notice required by Rule 26, sec. 4, and the lower court has discretion to refuse to hear a motion on shorter notice. Where the party concerned is represented by a law firm, the absence of one member did not excuse the failure of another to appear on the day of hearing, and even granting that there is only one attorney, the appellant had no right to assume that his motion to postpone would be granted and should have sent a representative at the hearing in his behalf to argue the merits of his motion for continuance.

In *Capitol Subdivision, Inc. v. Province of Negros Occidental*,[44] trial courts were admonished to be liberal in granting postponements of trial to obtain presence of material evidence and to prevent miscarriage of justice. The plaintiff sued to recover the possession of a lot occupied by the provincial hospital of the defendant, claiming title thereto by virtue of a sale from PNB in 1949. The defendant opposed the recovery, claiming better right to the lot by virtue of an expropriation proceeding, the records of which, it is alleged were destroyed. Because the two important witnesses for the defendant did not appear at the trial, the provincial fiscal asked for a postponement of the trial, but petition was denied. Held: Considering the amount of public funds and the public interest involved, the court should have granted the fiscal sufficient time to produce the said witnesses, one, the alleged former owner of the lot, and the other, the former treasurer of the province. A delay of two or three days for that purpose would not amount to an undue delay of the case. The expenses incurred by delay should be taxed against that party that caused them. Liberality should be exercised in

[43] G.R. No. L-7200, Feb. 11, 1956; 52 O.G. 759 (1956).
[44] G.R. No. L-6204, July 31, 1956.

granting postponements of trial to obtain presence of material evidence and to prevent miscarriage of justice.

Time requirement for adjournments and postponements not jurisdictional but merely directory.

In the cases of *Galagnara v. Tamassi*[45] and *Galagnara v. Gancayco*,[46] the Court ruled that the justice of the peace is not divested of his jurisdiction to try a case on the merits simply because he has postponed trial thereof for periods exceeding those prescribed in sec. 9 of Rule 4 which is merely directory. The CFI, therefore, is not wanting of appellate jurisdiction to try the case on the merits and erred in dismissing the case elevated from the justice of the peace court. This ruling is not inconsistent with those in *Alejandro v. CFI*[47] and *Barrueco v. Abeto*[48] that a wilful disregard or reckless violation of said directive of the Rules of Court on the part of judges would constitute breach or neglect of duty which may subject them to corresponding administrative action.

Setting two cases for trial without counsel's fault is ground for new trial.

In *Arcache v. Chanani*[49] the plaintiff filed an action for illegal detainer against the defendant who set up a counterclaim. From judgment for plaintiff the defendant appealed to the CFI of Manila where the case was set for trial on May 7, 1953. Notice thereof was received by plaintiff's counsel on April 26, 1953. But on May 6, 1953 plaintiff's counsel received by registered mail an order of CFI of Batangas enjoining him to appear at the trial of a criminal case, also set for trial on May 7, 1953, and further requiring him to show cause why he should not be punished for contempt as a consequence of his failure to appear at the hearing of the case on April 10, 1953. (His failure to appear was due to his illness). Due to misunderstanding, it was only on the day of trial of the case in Manila that the assistant of plaintiff's counsel appeared to ask for the postponement of the trial of the case. The CFI of Manila denied the motion therefor and received the evidence of the defendant for his counterclaim, awarding thereupon the amount of ₱25,125 to defendant against plaintiff. *Held.* On the basis of these facts it is but fair to have granted the plaintiff postponement of the trial of the case. The failure of the plaintiff's counsel to appear at the trial is due to

[45] G.R. No. L-9320, Jan. 31, 1956.
[46] G.R. No. L-9321, Jan. 31, 1956.
[47] 70 Phil. 749 (1940).
[48] 71 Phil. 7 (1940).
[49] G.R. No. L-8041, May 23, 1956; 53 O.G. 105 (1957).

excusable negligence and it is but fair that his client be given another opportunity to present his evidence to prevent miscarriage of justice.

Other rulings on new trials.

1. Where, on Oct. 8, 1941, the CFI of Batangas rendered judgment against defendant who took the necessary steps to perfect an appeal, but the record of the case was destroyed during the war and therefore defendant could not prosecute the appeal, and furthermore, where the remedy of reconstitution of the record of the case is available to and more encumbent upon the prevailing party, it is not an error not to dismiss the appeal but the trial court acted correctly when it granted the motion for new trial.[50]

2. The *pro forma* rule which does not suspend or interrupt the running of the period for perfecting the appeal, should not be extended to a motion for new trial or reconsideration, the ground of which has already been raised previously in motion before judgment, even if it may cause some delay.[51]

Commissioner's fee, payable after termination of case.

The payment of compensation or fee that a commissioner may be allowed for his services under Rule 34 of the Rules of Court, should be paid by the defeated party after the final termination of the case and cannot be ordered before the outcome of the case, as when the defeated party appeals from the decision to a superior court. Section 13 of Rule 34 was construed.[52]

III. PLEADINGS, MOTIONS AND OTHER PAPERS.

Date of mailing is the date of filing.

It is the practice in the courts of justice to consider mails as an agent of the Government, and the date of mailing is always considered as the date of filing any petition, motion, or other papers. In the case of *Caltex (Phil.) Inc. v. Katipunan Labor Union*[53] the petiton was mailed to the CFI before the approval of Rep. Act No. 875. The case should fall under the jurisdiction of the Court of Industrial Relations exclusively under Rep. Act No. 875 had it been filed after the Act became effective. But since petition was mailed before the date of effectivity the case remains under the jurisdiction of the CFI where it has been filed.

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50 Gonzales v. Datu, G.R. No. L-8771, Sept. 28, 1956.
51 Villalon v. Ysip, G.R. No. L-8546, April 20, 1956.
52 Paredes v. Bayona, G.R. No. L-10004, Oct. 8, 1956.
53 G.R. No. L-7496, Jan. 31, 1956; 52 O.G. 6209 (1956).

Service of pleadings and notices.

In *Ortega v. Pacho*[54] the Court said that where a party is represented by two attorneys, the rule is that the notice of hearing may be made either upon both attorneys or upon one of them, regardless of whether they belong to the same law firm or are practising independently of each other. Section 2 of Rule 27 of the Rules of Court was construed. In *Vivero v. Santos*,[55] in response to the claim that had the defendants been notified of the hearing or decision by the court or counsel, they could have taken appropriate action in due time, the Court, construing and applying the same section of Rule 27, said, if a party appears by an attorney who makes of record his appearance, service of the pleadings and notices is required to be made upon the attorney, and not upon the party. And in such a case notice given to the client and not to his attorney is not a notice in law. This is true even where a copy of the decision is received by the client himself unless service to the client himself is ordered by the court, so that the period of appeal does not begin to run unless notice of the decision is properly served upon the attorney of record.

Court without jurisdiction cannot order amendment of pleading.

In the case of *Rosario v. Justice of the Peace*,[56] the Court also held that where the court did not acquire jurisdiction over the original complaint, it did not have power to order its amendment and admit the amended complaint after the defendant had filed a motion to dismiss, "since it is elementary that a court must first acquire jurisdiction over the case in order to act validly therein."[57]

Amendment of pleadings after a responsive pleading is served may be made only by leave of court.

In *Bascos v. Court*[58] where the defendants in their answer made merely a general denial of the allegations in the complaint filed against them, and thereupon the plaintiff filed a motion for judgment on the pleadings, the defendants could not validly amend their answer without leave of court and the trial court did not err in refusing to accept the amended answer.

Amendment which introduces new cause of action; effect on prescription.

In the case of *Barbosa v. Mallari*,[59] the following questions were asked: When a new cause of action is included in an amended com-

[54] G.R. No. L-8588, March 14, 1956.
[55] G.R. No. L-8105, Feb. 28, 1956.
[56] See note 2 *supra*.
[57] Rosario v. Carandang, 51 O.G. 2387 (1955).
[58] G.R. No. L-8400, Jan. 30, 1956.
[59] G.R. No. L-8012, Aug. 30, 1956; 52 O.G. 6180 (1956).

plaint, and at the time such amended complaint is filed, the period of limitation for such cause of action has already expired, is the action barred? Or does the amendment relate back to the date of the original complaint? The Court, citing Moran, said: The rule is well established that an amendment to a complaint which introduces a new cause of action is equivalent to a fresh suit upon a new cause of action and the statute of limitations continues to run until the amendment is filed. (Article 1155 of the new Civil Code provides that the prescription of actions is interrupted when they are filed before the court.) However, an amendment to a complaint which merely supplements and amplifies the facts originally alleged relates back to the date of commencement of the action and is not barred by the statute of limitations, the period of which expires after service of the original complaint but before service of the amendment. Thus, where the original complaint, seeking to annul deed of sale on ground of fraud, was amended as to allow the complainant to exercise the right of repurchase, the Court held that the complainant has no more cause of action to repurchase because by the time the amendment was filed the statute of limitations has already supervened, barring such new cause of action forever.

Dismissal upon motion improper if factual issues raised.

In the case of *Carreon v. Province of Pampanga*,[60] the plaintiff instituted an action for damages on the basis that he donated ₱10,000 for construction of a bridge to connect certain lands including that of the plaintiff but the provincial board of the defendant diverted part of the money appropriated for the bridge to the construction of another bridge. The trial court upon motion of the respondents dismissed the complaint on the theory that the respondents had acted in good faith and within the scope of their authority. *Held*: This is clearly a reversible error. A motion to dismiss generally partakes of the nature of a demurrer, and such, it hypothetically admits the truth of the allegations of facts made in the complaint. If said motion assails, directly or indirectly, the veracity of said allegations, it is improper to grant the motion upon the assumption that the averments therein are true and that those of the complaint are not. The court should either deny the motion without prejudice to defendant's right to plead, as a special defense, in his answer, the very issue upon which said motion is predicated, or proceed to the reception of evidence on the issue of fact thus raised, before settling the same.

[60] G.R. No. L-8136, Aug. 30, 1956; 52 O.G. 6557 (1956).

Only facts alleged in complaint can be considered in acting upon motion to dismiss.

In the consideration of the motion to dismiss, which supplanted the former demurer under the Code of Civil Procedure, the facts alleged in the complaint must be taken into account, without modification and without unreasonable inference therefrom, and it is improper to inject in the allegations thereof facts not alleged or proved, and use them as basis for said motion. Under Rule 8, section 3 the respondent court should not have dismissed the complaint but should have waited until the trial, or asked the parties to submit evidence on the motion to dismiss.[61]

Allegation of damages must be proved; when.

In the cases of *Rili v. Chunaco*[62] and *Valencia v. Tantoco*,[63] the Court held that under section 8 of Rule 9 allegations regarding the amount of damages are not deemed admitted even if not specifically denied and must be proved, because courts cannot predicate a finding of substantial damages upon conjecture or guesswork. The amount of damages must be duly proved at the time when the claimants asked for judgment on the pleadings; otherwise they are deemed to have waived their claim for damages. Assuming that appellants could still prove their damages even after asking for judgment on the pleadings, they could do so only before said judgment becomes final and executory, because thereafter the lower court lost jurisdiction and control over its judgment save to order its execution.

IV. JUDGMENTS, ORDERS AND EXECUTION.

Dismissal for lack of jurisdiction; effect of.

In *Campos Rueda Corporation v. Sta. Cruz Timber Co.*[64] it was also held that where the court of first instance had jurisdiction to try the case, its dismissal of the action for lack of jurisdiction was an error of law which could have been corrected on appeal had any of the parties taken an appeal. Where, however, the court never acquired jurisdiction over the case, no relief could be granted to the parties on appeal.

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[61] G.R. No. L-7663, Jan. 31, 1956; 52 O.G. 3592 (1956).
[62] G.R. No. L-6630, Feb. 29, 1956; 52 O.G. 1428 (1956).
[63] G.R. No. L-7267, Aug. 31, 1956; 52 O.G. 6567 (1956).
[64] See note 3 *supra*.

Dismissal by implied consent is res judicata *where order therefor is silent.*

Where counsel for both sides signed a joint motion for dismissal alleging that the parties were willing to settle amicably their dispute, and the plaintiff herein appeared at the hearing of said motion and filed no objection thereto, dismissal of the previous action thereupon is a bar to the present case involving the same parties and same subject-matter, there being an implied consent to the dismissal of the previous action and the order therefor was silent as to whether it is with or without prejudice, the fact that plaintiff did not sign the motion was of no consequence. This was the ruling in the case of *Campo v. Camilon.*[65]

Affidavit of merits.

In the case of *Gonzales v. Amon,*[66] an action for the rocevery of two parcels of land, the trial court dismissed the complaint and authorized the clerk of court to receive defendant's evidence, for failure of plaintiff or his attorney to appear at the trial notwithstanding due notice thereof. The Court found no merit in this appeal because the motion for reconsideration, though supported by the affidavit of the clerk of court to the effect that through inadvertence she forgot to bring to the knowledge of plaintiff and his attorney the notice of hearing that she received, was not accompanied by an affidavit of merits, *i.e.* is a sworn statement that plaintiff had a good and valid cause of action against the defendant, notwithstanding the latter's defense that he had already redeemed the land in question.

Judgment by default.

In *Taguinod v. Mangantulao,*[67] where the defendant was properly served with summons but failed to file his answer within the reglamentary period, and therefore judgment by default was rendered against him, his failure to find his former lawyer in time to defend his case is not an excusable negligence as to warrant a reconsideration or new trial because he could have retained the service of another lawyer and proceeded with his case as soon as possible instead of allowing 23 days to pass without making an effort to get another lawyer.

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[65] G.R. No. L-7903, Feb. 28, 1956.
[66] G.R. No. L-8963, Feb. 29, 1956.
[67] G.R. No. L-7970, Feb. 28, 1956.

Judgment on the pleadings; when proper and who should ask for it.

In *Aurelio v. Baquiran*,[68] an action upon written instrument to recover a sum of money, where the defendant's verified answer to the plaintiff's sworn complaint tendered an issue and did not admit the material allegations thereof, a judgment on the pleadings was improper and unauthorized under section 10 of Rule 35 of the Rules of Court. After tendering an issue by his answer *the defendant* should not have moved for judgment on the pleadings. If the answer did not tender an issue or it admitted the material allegations of the complaint, *then the plaintiff and not the defendant* should have moved for judgment on the pleadings.

Summary judgment; purpose and when may be granted.

In *Singleton v. Phil. Trust Co.*,[69] the Court observed that relief by summary judgment is intended to expediate or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, deposition, admissions and affidavits. If, however, there be a doubt as to such facts and there be an issue or issues of facts joined by the parties neither one of them can pray for a summary judgment, but the trial court should set the case for trial. Rule 36 is construed.

In *Miranda v. Malate Garage* & Taxicab,[70] the defendant's driver was sentenced upon a plea of guilty to indemnify the offended party in the sum of ₱2,318.40. On being sued for its subsidiary liability, the defendant admitted having the driver in its employ but denied it subsidiary liability on the ground that it had no knowledge or information sufficient to form a belief as to the truth thereof. On this basis will summary judgment lie? *Held*: Defendant merely denied the allegations of the complaint. Denials unaccompanied by any fact which would be admissible in evidence at a hearing are not sufficient to raise a genuine issue of fact sufficient to defeat a motion for summary judgment. The issue tendered by defendant is not genuine because it merely refers to the amount, for which it is made subsidiarily liable, which already appears in the decision rendered against its employee in the criminal case. That decision is binding and conclusive upon defendant not only with regard to its civil liability but also with regard to its amount because the liability of an employer cannot be separated but follows that of his employee.

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[68] G.R. No. L-9316, Oct. 31, 1956.
[69] G.R. No. L-7555, May 18, 1956.
[70] G.R. No. L-8943, July 31, 1956.

Summary judgment may be vailade of if defense is sham.

In the case of *Candelario v. Hon. Gatmaitan*,[71] where in an action to recover possession of several parcels of land and the value of the fruits and rentals collected by the defendant, the defendant alleged as a special defense a contract of lease with the deceased husband of the plaintiff, the latter and her children are not entitled to immediate possession and administration of the lots in question without a hearing. If petitioners believed that the special defense of the respondent-defendant was sham, the remedy would be for a summary judgment under Rule 36 of the Rules of Court.

Effect of withdrawal of motion for reconsideration.

San Antonio v. Espinola[72] is a tenancy case between a tenant and the widow of a landlord wherein the latter seeks to recover possession of land on the ground that she and her two sons want to cultivate the land themselves which ground was branded by defendant as false. The CIR rendered judgment granting plaintiff authority to eject defendant on the condition that upon her failure to cultivate the land themselves, the defendant may be reinstated in a proper action. Both sides being dissatisfied with the judgment, they separately moved for reconsideration. Defendant's motion was denied but plaintiff's was submitted for withdrawal at a time when the Court of Agrarian Relations has been created and functioning so that defendant brought this appeal contending that CIR lost jurisdiction over the case and to grant the motion for dismissal of the motion for reconsideration. *Held*: The name given to the motion seems to be incorrect. It is called a motion for dismissal of the motion for reconsideration. It was in fact and in law a withdrawal of the motion for reconsideration which signifies conformity to the judgment of the CIR and which does not need the approval of the court, and therefore, the objection that the CIR had no jurisdiction on the matter after the approval of Rep. Act 1267 avails appellant nothing. The period of appeal having lapsed, without perfecting an appeal, the judgment in the main case became final and executory.

Award of damages cannot exceed what is prayed for unless complaint amended to conform to evidence.

Where the plaintiff failed to amend the prayer of his or its complaint on the amount of damages so as to make it conform to the evidence, the amount demanded in the complaint; not the one proved,

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[71] G.R. No. L-9898, Aug. 29, 1956.
[72] G.R. No. L-9414, Sept. 7, 1956; 52 O.G. 6137 (1956).

should be the basis of award. Thus, in the *Tuason & Co. v. Santiago*,[73] it was an error for the trial court to allow the plaintiff to recover ₱40,000 a year as damages until possession of the land is restored to the plaintiff where the plaintiff prayed in the complaint that defendants be adjudged to pay to it ₱10,000 jointly and severally, as damages, for unlawful possession of registered land of the plaintiff.

Parties must comply strictly with dispositive part of decision to entitle them to remedy.

In *Go Guioc Sian v. Judge*,[74] where the defendants filed a motion with the trial court to secure an order for the removal of the house belonging to the plaintiffs without any indemnity on their part contrary to the terms of the dispositive part of the decision which expressly decreed, among others, that defendants, who won the case below, can only appropriate the house after paying the corresponding indemnity to the plaintiffs, such motion tends to subvert the purpose of the decision for which reason an appeal from an order denying the same would serve no useful purpose.

Relief from the effect of judgment under Rule 38; when available.

The remedy under Rule 38 is to be availed of only in exceptional cases, and where there are other remedies at law, it should not be allowed to be used. Thus, in *Fajardo v. Hon. Bayona*,[75] where the defeated party already had the opportunity to prosecute or compel the allowance of his appeal from the judgment, when he instituted the action for certiorari and mandamus against the judge who had refused to approve his record on appeal, his petition for relief was not granted.

Petition for relief will not be granted to a party who seeks to be relieved from the effects of a judgment where the loss of the remedy at law was due to the negligence or fault of his attorney or the latter's erroneous interpretation or application of the law, as these are not excusable errors; thus, in *Robles v. San Jose*,[76] where a new practitioner, instead of perfecting an appeal in an ejectment case, filed a petition for certiorari but which was dismissed, after the period of appeal, he cannot petition for relief under Rule 38 because his failure to perfect an appeal on time was not excusable negligence.

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[73] G.R. No. L-5079, July 31, 1956; 52 O.G. 5127 (1956).
[74] G.R. No. L-8384, June 25, 1956; 52 O.G. 3563 (1956).
[75] G.R. No. L-8314, March 23, 1956; 52 O.G. 1937 (1956).
[76] G.R. No. L-8627, July 31, 1956; 52 O.G. 6193 (1956).

Fraud to be ground for annulment of judgment must be extrinsic or collateral.

In *Tanca v. Vda. de Carretero*,[77] the plaintiffs sought to annul a judgment rendered in registration proceedings on the ground of fraud consisting in (1) the concealment by defendant of the true traces of two markers, (2) the refusal of the trial judge to conduct an ocular inspection of the other side of the Cabatuan creek to see for himself the location of the true traces of the two markers, and (3) the mysterious disappearance of some records of the proceedings. *Held*: Where the facts which allegedly constitute the fraud on which the action of the plaintiff is predicated, have not only been raised but were the subject of adjudication by both the trial court and the Court of Appeals in a former case, the fraud, even if committed, is not extrinsic or collateral but intrinsic which cannot be considered as sufficient basis for annulling the judgment rendered in said case. Concerning the alleged mysterious disappearance of the record, the plaintiffs should have asked for its location or reconstitution and it is preposterous to contend that such disappearance is the result of a conspiracy between the trial judge and the defendant.

Lack of verification not jurisdictional defect so court order cannot be collaterally attacked.

In the case of *Tavera v. El Hogar*,[78] the plaintiff co-owners, of age, of a parcel of land agreed to organize a corporation for the purpose of building a modern structure on the land and of accepting shares of stock in the corporation in exchange of their shares in the land. Later, the guardian of plaintiff, a minor co-owner, filed a petition with the court asking for the confirmation of the agreement and for authority to receive the shares stock for the minor. The petition was granted. The plaintiff after becoming of age sued to annul the transfer made by his guardian attacking indirectly the order of the court which confirmed the said transfer on the ground that the petition therefor was not verified. *Held*: The failure to verify the petition is not jurisdictional so the order of the court cannot be collaterally attacked as the court had jurisdiction over the case. Such irregularity, not being jurisdictional, although it might invalidate the court order, should be corrected only in an appeal.

Utility of unenforced judgment.

In *Heirs of Acuesta v. Lozanto*,[79] plaintiffs filed an action to recover ownership over a parcel of land against the defendant's fa-

[77] G.R. No. L-8222, June 25, 1956; 52 O.G. 3558 (1956).
[78] G.R. No. L-5893, Feb. 28, 1956.
[79] G.R. No. L-7249, March 6, 1956.

ther. Five years from the entry of judgment in favor of the plaintiffs, the latter filed another action against the same defendant. A judgment was again rendered in their favor, whereby defendants' father accepted a certain amount upon actual delivery of the land to plaintiffs. However, the defendants refused to deliver the land to plaintiff so the latter filed this case to recover possession of the land wherein the defendants alleged that the decision in the second action in 1937 had lapsed and that they had acquired ownership by 40 years of continuous possession. Trial court gave judgment for defendants. *Held*: The trial court erroneously assumed that the present action was one for the enforcement of the judgment in case No. 854. The purpose of mentioning the decision in case No. 854 in the complaint was not to enforce it but merely to set it forth as a basis for plaintiffs' claim of ownership. There is no need for any action to enforce the said decision because defendants' father had voluntarily accepted the payment ordered therein. If defendants' claim of ownership by adverse possession is true, they might defeat plaintiffs' claim of ownership over the same parcel of land.

Revival of judgment; destruction of records interrupts statute of limitations.

All terms or periods fixed by law or regulations shall cease to run from the date of destruction of the records and shall begin to run again on the date when parties or counsel shall have received from the clerk of court notice to the effect that the records have been reconstituted. In the present case, *Francisco v. Borja*,[80] the judgment became final on Aug. 7, 1942, and the records were destroyed on around Feb. 21, 1945, 2 years, 9 months and 17 days from the former. And the plaintiff received notice of reconstitution on March 31, 1951. The fact that plaintiff brought action on the judgment 2 years, 2 months and 16 days from such notice only a total of 5 years and 3 days ofthe prescriptive period of 10 years under the law had legally lapsed.

A judgment sought to be revived after the lapse of 5 years from its rendition must necessarily be final and executory. Consequently, it cannot be reopened, much less, the facts found therein modified or changed. The only question presented in a revival of a judgment is whether the party asking for it is still entitled to it.

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[80] G.R. No. L-7593, Feb. 27, 1956; 52 O.G. 6890 (1956).

Execution of judgment before expiration of time to appeal or pending appeal.

Section 2 of Rule 39 provides that prior to the expiration of the time to appeal, the court may issue execution on motion of the prevailing party and with notice to the adverse party, upon good reasons to be stated in a special order regardless of whether such order is issued before or after the filing of the record on appeal.[81] The reasons are required to be stated in the special order but it had been held that statement by reference is sufficient as when such reasons appear in a motion for execution, and reference thereto is made in the special order as grounds therefor.[82] In the case of *Asturias v. Victoriano*,[83] the Court, in granting the writ of certiorari prayed for, found that not only that the trial court failed to state in the special order the reasons for allowing execution before the expiration of the period of appeal but did not make any statement in said order of the reasons therefor by reference to the motion asking for such execution.

The Court in *Ledesma v. Hon. Teodoro*,[84] ruled that the lower court committed an abuse of discretion in granting the motion for execution on the mere ground that defendant's appeal was taken for purpose of delay in disregard of the special defenses that (1) the plaintiffs claim for reinstatement as chief of police has already prescribed under section 16 of Rule 68, (2) he has abandoned his former office by accepting other positions in the Government service, and of the offer made by defendant to file a supersedeas bond to forestall the plea for execution.

House no chattel for purpose of execution sale.

In the case of *Manarang v. Ofilada*,[85] it was held that the mere fact that a house was the subject of a chattel mortgage and was considered as personal property by the parties does not make said house personal property for purposes of notice to be given for its sale at public auction. It is a real property within the purview of Rule 39, section 16 of the Rules of Court as it has become a permanent fixture on the land which is real property.

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[81] I MORAN, COMMENTS ON THE RULES OF COURT 792 (1952) citing the case of Phil. Alien Property Administration v. Castelo, G.R. No. L-3891, July 30, 1951.

[82] Heiman v. Cabrera, 73 Phil. 707 (1942); Joven v. Boncan, 67 Phil. 252 (1939).

[83] G.R. No. L-8817, Feb. 29, 1956.

[84] G.R. No. L-9174, Jan. 25, 1956.

[85] G.R. No. L-8133, May 18, 1956.

Judgment debtor under execution law not entitled to substitute another property as "homestead" exempt from execution.

In *Felipe v. De la Cruz*,[86] the judgment debtor was sentenced to pay a certain amount to the judgment creditor. For failure to pay and after the proper proceedings, the sheriff advertised judgment debtor's four parcels of land for public sale, but judgment debtor asked the court to declare 3 of the said parcels of land with a total assessed value of ₱290 to be exempt from execution contending that as her house was in the very land that, under the judgment, she must deliver to appellee, she is entitled to substitute the three parcels "in lieu of her homestead". *Held*: It is to observed that the rules on execution, Rule 39, in fact contemplate the possibility that property, otherwise exempt, may nevertheless be subject to execution under specified circumstances, and yet no substitution is provided for under section 12 of Rule 39 of the Rules of Court. The right to exemption being substantive in character as it was reproduced from section 445 of Act 190, and the Legislature not having provided for a substitute homestead in case the home of the debtor is levied upon, courts are powerless to institute the replacement of such homestead with another property of the debtor.

Meaning of "homestead" under execution law; actual occupancy necessary.

In the same case of *Felipe v. De la Cruz*[87] the Court said: The rule is well established that unless otherwise expressly provided, actual occupancy is necessary to acquire a homestead exemption, and the homestead character cannot be impressed upon the property only after its levy and seizure. The rule is recognized in the words "in which he resides" of Rule 39, section 12.

Since the term "homestead" is limited to the house, land necessarily used in connection with it must refer to the land upon which the house stands, and the lot needed for its dependencies (gardens, orchards, garages, driveway) but does not include land devoted to produce for the support of the debtor considering the fact that the law on execution already exempts, by express provisions, his means of livelihood.

Right of purchaser in execution sale.

The case of *Bellaza v. Zandaga*[88] is an action to declare the plaintiff the rightful owner of a parcel of land purchased by him at an

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[86] G.R. No. L-9145, Sept. 25, 1956; 52 O.G. 6163 (1956).
[87] *Ibid.*
[88] G.R. No. L-8080, March 26, 1956; 52 O.G. 2542 (1956).

execution sale filed against the defendant who claimed to be the successor in interest of the judgment debtor. *Held*: Where the purchaser in the execution sale has already received the definitive deed of sale executed in accordance with sction 31 of Rule 39, he becomes the owner of the property bought and, as absolute owner, he is entitled to its possession and cannot be excluded therefrom by one who merely claims to be a "successor in interest of the judgment debtor", unless it is adjudged that this alleged successor has a better right to the property than the purchaser.

While section 32 of the Rule 39 gives the purchaser of real property sold on execution who fails to recover possession thereof, or is evicted therefrom, recourse against the judgment creditor or the judgment debtor, it does not bar him from his right to recover possession where that right has not been yet denied by the courts.

To be effective, redemption must follow mode prescribed by the Rules of Court.

In *Mateo v. Court of Appeals*[89] a parcel of land of the judgment debtor was sold at an execution sale. The purchasers sold their right to petitioner and the latter took possession of the land. On Oct. 7, 1943, that is, 2 years, 6 months and 15 days after the auction sale, the judgment debtor offered to redeem the land but was denied the period for redemption having expired. In an action to have the sale annulled the Court of Appeals reversed the judgement of the trial court dismissing the action, on the theory (adopted by Court of Appeals) that redemption should be deemed to have taken place *ipso facto* because it appeared that petitioner to whom the purchasers had transfered their rights as such purchasers, was, during the time allowed for redemption, in possession of the land and gathered products therefrom of the total value of ₱950, which was more than what the judgment debtor would have had to pay to redeem the land. *Held*: The view taken by the Court of Appeals is not correct. The right of redemption in execution sales being statutory, it must, to make it effective, be exercised in the mode prescribed by the statute. After the expiration of 12 months from the date of sale within which to redeem, redemption may be made only by redemptioners from other redemptioners who made redemptions within said period. In the present case, the last day for the exercise of the judgment debtor's right of redemption was March 22, 1942. It was only on Oct. 7, 1943 that respondent attempted to exercise such right.

[89] G.R. No. L-7056, May 31, 1956.

Petition for writ of possession may not be granted ex parte.

In *Lampa v. Guila*[90] the appellees, all surnamed Lampa, filed in a Cadastral case a petition for a writ of possession over a parcel of land praying the exclusion of the appellants. The CFI heard and granted the petition on June 11, 1954 and issued the writ on June 14, 1954; the oppositors-appellants having received notice of the petition only after the lower court has acted upon it. *Held*: The order granting the writ of possession is set aside. The oppositors had not been properly notified of the petition in accordance with section 4 of Rule 26; therefore, the lower court acted in violation thereof, for on June 11, 1954 there was no service of said petition unto the appellants nor proof therof.

Res judicata; *Successors in interest and privies are bound by judgment.*

In order that a judgment or order rendered in a case may be conclusive in a subsequent case, the following requisites must be present: (1) It must be a final judgment or order; (2) The court rendering the same must have jurisdiction over the subject-matter and over the parties; (3) It must be a judgment or order on the merits; and (4) there must be between the two cases identity of cause of action, identity of subject-matter, and identity of parties.[91] The parties in the second case must be the same as the parties in the first case, or at least, must be successors in interest by title acquired subsequent to the commencement of the former action or proceeding, as when the parties in the subsequent case are heirs or purchasers who acquired title after the commencement of the former action or proceeding.[92]

In *Catalina de Leon v. Rosario de Leon*,[93] the plaintiff sued her vendors asking for the formal execution of a transfer deed over one-half of a parcel of land, as well as the registration thereof. The trial court dismissed the case for lack of sufficient cause of action, in that in a decision rendered by the CFI of Quezon City a previous transfer of the same land made by certain Roque and Bautista to the vendors of the plaintiff herein was declared rescinded and without effect, and since, the plaintiff was merely a successor in interest of the said vendors, the judgment against them was binding upon her. *Held:* To be successor in interest a purchaser must acquire title *subsequent to the commencement of the*

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[90] G.R. No. L-8688, Oct. 31, 1956; 53 O.G. 94 (1957).
[91] San Diego v. Cardona, 70 Phil. 281 (1940).
[92] I MORAN, COMMENTS ON THE RULES OF COURT 870 (1952) citing a good number of cases decided by the Supreme Court of the Philippines.
[93] G.R. No. L-8965, Feb. 29, 1956.

former action, and not before as in the present case. If action is filed against the vendor after he had parted with his title in favor of a third person, the latter is not bound by any judgment which may be rendered against the former. In such a case the principle of *res judicata* does not apply. Sec. 44(b) of Rule 39 was construed.

In *Correa v. Pascual,*[94] in 1943, plaintiff sued the defendant to recover title of several parcels of lands including that under the possession of the present occupants. A notice of *lis pendens* was properly recorded, but the case was dismissed for failure to prosecute in 1947. In 1948, plaintiff filed another case against the same defendant for the same cause of action, and the trial court entertained the action upon showing that the failure to prosecute the first action was due to the erroneously addressed notice sent by the clerk of court. A decision was rendered based on a compromise agreement, but when plaintiff attempted, with the aid of the sheriff, to take possession of one of the parcels of land, the present occupants resisted and filed a motion to stop their immediate ejectment therefrom on the ground that they had purchased the lot in question from defendant in 1946. *Held:* The land in question was conveyed to movants by defendant in June, 1946 while the notice of *lis pendens* remained uncancelled in the office of the register of deeds. Moreover, the plaintiff stated that he had warned the movants of the pendancy of the litigation involving the land and advise them not to acquire it. Movants are therefore privies of the defendant, and though not made parties in the instant case, they are bound by the decision against the defendant.

Res judicata *attaches even if decision reversable had an appeal been taken; dispositive part controlling.*

In the case of *Edwards v. Arce,*[95] the plaintiffs filed an action to compel the defedants to execute a deed of conveyance of the whole of a parcel of land. The trial court, finding that plaintiffs are entitled to only a portion of the land, rendered judgment absolving the defendants from the complaint, which became final and executory after the period of appeal. Subsequently, in a separate action the defendants sought to recover the land in question but the plaintiffs in the former action claimed that they are entitled to that portion of the land which the trial court declared in its finding. *Held:* The decision in the previous case absolved the defendants but did not conclusively confer upon the plaintiffs the right over the portion of the lot with an area of 137 sq. meters. The plaintiffs could have moved for reconsideration, or appealed from

[94] G.R. No. L-9317, July 31, 1956.
[95] G.R. No. L-6932, March 26, 1956; 52 O.G. 2537 (1956).

the decision to correct the error. The principle of *res judicata* attaches even if the decision might have been reversed had an appeal been taken therefrom. Relief cannot be granted in a second action either by the trial court or by the Supreme Court, when relief sought might have been secured by an appeal in the former action. Therefore, the defendants are entitled to the possession of the land in question.

The same case of *Edwards v. Arce* [96] is an authority for the rule that whatever may be found in the body of the decision can only be considered as part of the reasons or conclusions of the court, and while they may serve as guide or enlightenment to determine the *ratio decidendi,* what is controlling is what appears in the dispositive part of the decision. Thus, in the instant case of Arce, where the trial court merely declared in its finding that plaintiffs are entitled to only a portion of the land contrary to the prayer of the complaint which covered the whole parcel of land and such declaration is not stated in the dispositive part of the decision which absolved the defendants from the complaint, the plaintiffs cannot ask execution on that portion of land so declared in the finding of the court.

Other rulings on res judicata.

1. Where, in the second action not all parties of the first action on one side are included, and all other requisites of *res judicata* are present, the Court said, in *Namarco v. Macadaeg,*[97] that there is still *res judicata,* apparently following the converse of the rule that although in the second action there are joined parties who are not so in the first action, there is still *res judicata* if the party against whom the judgment is offered in evidence was a party in the first action.[98]

2. In the case of *Vasquez v. Porta,*[99] where the mortgagor and the mortgagee executed a fictitious contract of mortgage, the judgment and sale by virtue of foreclosure proceedings are void *ab initio* and does not constitute *res judicata* nor defense to action to set aside the judgment, instituted by the widow of the fictitious mortgagor, and the principle of *pari delicto* does not apply.

3. Where the court approved the compromise agreement of the parties to an action and in a subsequent motion to set aside decision approving the compromise the question of fraud was squarely

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[96] *Ibid.*
[97] G.R. No. L-10030, Jan. 18, 1956.
[98] Peñalosa v. Tuason, 22 Phil. 303 (1912).
[99] G.R. No. L-6767, Feb. 28, 1956; 52 O.G. 7615 (1956).

passed upon and the court found its non-existence, the denial of such motion is a bar to an action between the same parties for the reformation of the compromise agreement on the same ground of fraud, although the denial was stated merely in a final order, not judgment, in a proceeding disposing of a motion.[100]

V. APPEALS.

Failure to appeal may make a possessor in bad faith one in good faith.

In the case of *Llanos v. Simborio*,[101] the petitioner herein entered, as evacuee, the land of the respondent in 1942. Because petitioner claimed later on some title on the land, respondent brought action where he was declared to be the owner thereof. On appeal, the Court of Appeals found that both the petitioner and respondent acted in baid faith in that respondent owner allowed the defendant possessor to introduce improvements on the land; consequently the rights of both parties must be determined as if both acted in good faith. *Held:* The conclusion of the appellate court on the question of good and bad faith is not entirely correct considering the fact that the improvements were introduced during the war. However, such finding and conclusion was not appealed by the owner and became final. The result is that the possessor in bad faith may now be regarded as a possessor in good faith as to the improvements introduced by him and so may hold the land until he receives reimbursement for the value of the improvements.

Filing of the record on appeal implies and is equivalent to the filing of the notice of appeal.

In the case of *Galo v. CFI*,[102] the last day for filing the appeal was Oct. 5, 1954, but it was only on Oct. 7, 1954 that the trial court received the envelope, sent by registered mail and special delivery, containing the notice of appeal, record on appeal and the appeal bond. The trial court held that the record on appeal was filed on Oct. 2, the date of mailing, but the notice of appeal and appeal bond were not filed on time. Hence, this petition to compel the lower court to give due course to the appeal taken. *Held:* The appeal was made on time, the fact that all the record on appeal, the notice of appeal and the appeal bond were in the same envelope. At any rate, the filing of the record on appeal, which is admittedly made on time, implies the filing of the notice of appeal and is equivalent thereto.

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100 Planas v. Castelo, G.R. No. L-7909, Nov. 27, 1956.
101 G.R. No. L-9704, Jan. 18, 1957.
102 G.R. No. L-8491, Feb. 17, 1956.

Appeal may not be dismissed if records have not been reconstituted.

In *Gonzales v. Datu*,[103] the plaintiffs filed an ejectment suit and judgment was rendered for. Such judgment was affirmed by the CFI in a decision dated Oct. 8, 1941. Before the defendants' record on appeal could be approved by the court, the plaintiffs moved for the immediate execution of the judgment, but thereafter nothing more was done or heard about the case until April 23, 1947, when plaintiffs petitioned for the reconstitution of the records. Later on the court, upon motion of defendants, allowed them to perfect their appeal, so the plaintiffs appealed contending that the lower court should have dismissed the appeal for the failure of the defendants to take any step to perfect it during more than 11 years. *Held:* In view of the loss and destruction of the transcripts, it necessarily follows that defendants could not have prosecuted their appeal in the Court of Appeal, even if duly perfected. Where the remedy of reconstitution was also available to plaintiffs, who were more called upon to reconstitute the records, they being the winning party, failure on the part of the defendants to initiate the reconstitution of the records of the case is not a ground for dismissal, and therefore Rep. Act 441 does not apply.

Other rulings on appeal.

1. Under Rule 41, sec. 5 in cases of appeal from the CFI the amount of appeal bond is ₱60, unless the court fixes a different amount. In the case of *Corpus v. Corpus*,[104] there is no justification for the trial court to fix an appeal bond in the amount of ₱10,000, even where the parties during the hearing below stipulated that they had spent ₱10,000 in connection with the case as there is nothing that can show that the parties have agreed that such amount should be charged against the defeated party. At most this amount may be awarded as damages but not as costs.

2. In *Peoples Bank and Trust Co. v. Sophie Seifert*,[105] the Supreme Court confirmed an order of the CFI of Manila dated Oct. 2, 1940 granting the payment of monthly allowance of ₱500 to Sophie Seifert. Payment thereof was stopped on May 3, 1952 upon motion of the administrator but was resumed later on at the instance of Seifert upon her filing a bond in favor of the administrator for the payment of whatever sum that might be paid to her. The administrator now argued that the order discontinuing the

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[103] G.R. No. L-8771, Sept. 28, 1956.
[104] G.R. No. L-9672, Dec. 21, 1956.
[105] G.R. No. L-9635, Sept. 11, 1956.

payment of the monthly allowance had become final because Seifert did not appeal from it. *Held:* The order of May 3, 1952 was on its face interlocutory and intended to operate provisionally; hence the probate court could set the same aside at any time. It could not be a final order because the Supreme Court had decreed that the allowances be paid and the probate court had no authority to discontinue the payments without first making a finding that the conditions of the estate had altered for the worse subsequent to the Court's decision.

3. In *Abesamis v. Garcia,*[106] where the defendant, in an action for forcible entry, failed to file his answer on time in the CFI on appeal and was therefore declared in default upon plaintiff's motion, the order declaring defendant in default is interlocutory in nature, and the fact that the adverse party failed to object to the appeal from such order is not a ground for allowing such appeal.

4. In *Helen Smith v. Hon. Kapunan,*[107] the Court held that the proper procedure in case of failure to answer is to declare the appealing defendant in default, hear the evidence for the plaintiff, and render judgment in accordance therewith, and the dismissal of the appeal on the ground that defendant failed to serve copy of his answer within the reglamentary period (sec. 7, Rule 40) was clearly erroneous. However, after the order of dismissal has become final and executory, the CFI had no jurisdiction left over the case but to remand the same to the inferior court for execution.

5. In the same case of *Helen Smith v. Hon. Kapunan,*[108] the Court observed further that while it is true that a perfected appeal operates to vacate the judgment of the inferior court (sec. 9, Rule 40) and such judgment can be revived only by withdrawal of the appeal by the appellant,[109] the failure, however, of the defendant to appeal from the order of dismissal of the appeal (on the ground that defendant failed to served upon plaintiff a copy of his answer) or to seasonably ask for relief therefrom under Rule 38, is equivalent to an implied withdrawal of the appeal and assent to the revival of the judgment of the municipal court.

6. The Court in *Singbengco v. Hon. Arellano* [110] ruled that the requirements of the Rules of Court relative to the perfection of an appeal in an ordinary case, pursuant to Rule 132 of the Rules of Court and sec. 14 of Act No. 496 and sec. 11 of Act No. 2259,

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[106] G.R. No. L-8020, April 11, 1956; O.G. 2506 (1956).
[107] G.R. No. L-9307, Feb. 9, 1956; 52 O.G. 757 (1956).
[108] *Ibid.*
[109] Evangelista v. Soriano, 48 O.G. 4372 (1952).
[110] G.R. No. L-9334, Sept. 25, 1956; 52 O.G. 6167 (1956).

apply in the same manner and with equal force and effect to appeals from decisions of court of first instance in registration and cadastral proceedings. Consequently, an appeal bond not having been filed on time, the petitioners in this registration proceeding have lost their right to appeal.

7. In an action to exercise the right of redemption under sec. 119 of the Public Land Law, the appellants, submitting the case for decision without objection, cannot claim, and for the first time on appeal, that they were deprived of the opportunity to submit additional evidence, because they are guilty of estoppel.[111]

8. Only question of law, which must be distinctly set forth, may be raised in an appeal taken by certiorari from a decision, order, or award of the Court of Industrial Relations. Findings of facts of the CIR are final and not reviewable by the Supreme Court.[112]

VI. PROVISIONAL REMEDIES.

Under Rep. Act No. 875 the Court of Industrial Relations has power to issue injunction only in certain cases; in all other cases the ordinary courts of justice only have such power.

In the cases of *Reyes v. Tan*,[113] and *PAFLU v. Barot*,[114] cases involving labor disputes, brought before the CFI, the Supreme Court ruled that under Rep. Act No. 875 the jurisdiction of the CIR over labor disputes has been limited to the following cases: (1) when the labor dispute involves industries indispensable to the national interest under sec. 10 of Rep. Act No. 875; (2) when it involves minimum wage under Rep. Act No. 602; (3) when it involves hours of employment under Com. Act No. 444; and (4) when it involves an unfair labor practice under sec. 5(a) of Rep. Act No. 875. In all other cases involving labor disputes not falling within the foregoing enumeration, the ordinary courts of justice have the power to issue injunctions.

Writ of preliminary injunction under Rule 60; when dissolved.

A writ of preliminary injunction is an interlocutory order and is under the control of the issuing court before final judgment in the case. The writ issued may be dissolved for reasons stated in

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111 G.R. No. L-8324, Jan. 19, 1956; 52 O.G. 5172 (1956).
112 G.R. No. L-9182, Sept. 12, 1956; 52 O.G. 7268 (1956).
113 See note 27 *supra*.
114 See note 27 *supra*.

sec. 6 of Rule 60. In the case of *Villarosa v. Hon. Teodoro*,[115] the action is for the recovery of two parcels of land. The CFI issued a writ of preliminary injunction restraining defendant from continuing with the construction of a house on one of the lots during the pendency of the case. But the court later on dissolved the writ and so plaintiffs petition for certiorari against CFI. *Held:* The respondent court did not abuse its discretion in dissolving the writ of preliimnary injunction considering that the bond filed by petitioners is merely a character bond and does not state and describe the property that will answer for the judgment of all damages that defendant may suffer by reason of the issuance of the writ, and considering further that defendant was willing and ready to file a bond with sufficient sureties to answer and pay for all damages that petitioners may suffer by reason of the continuance during the action of acts complained of.

In *Parina v. Cabangbang*,[116] in an ejectment suit a judgment was rendered against the petitioner herein for failure to appear at the hearing of the case. Later, in an action filed with the CFI praying for relief under Rule 38, petitioner secured *ex parte* a preliminary injunction to enjoin the execution of the judgment in the ejection suit. Subsequently, the respondent filed a motion to dissolve the injunction but petitioner objected to the motion on the ground that he was not given the three-day advance notice of the hearing. This last motion in effect questioned the sufficiency of petitioner's petition for relief. The lower court granted it. *Held:* A party cannot assume that his petition for relief would be granted by the court. Petitioner's absence based on expectation that his motion for postponement of the trial of the ejectment case would be granted, is not an excusable negligence. Petitioner was given sufficient notice of the motion to dissolve the injunction. And as a matter of fact he appeared at the hearing to present his objection and subsequently he even filed a motion for reconsideration.

Policy behind one year period within which quo warranto proceeding for reinstatement should be filed.

In the case of *Unabia v. Hon. City Mayor*,[117] where the plaintiff instituted *quo warranto* proceeding to have himself reinstated to office on ground of unjust removal, only after one year and 15 days, and therefore guilty of laches the Court observed that there must be stability in civil service so that public business may not be unduly retarded; delays in the settlement of the rights to

[115] G.R. No. L-9204, Sept. 29, 1956; 52 O.G. 6879 (1956).
[116] G.R. No. L-8398, March 21, 1956.
[117] See note 33 *supra*.

positions in the service must be discouraged. It is not proper that the title to public office should be subjected to continued uncertainty, and the people's interest requires that such right should be determined as speedily as practicable.

Direct contempt upon derogatory statements.

Derogatory statements to constitute basis of direct contempt of court need not be actually signed by the accused but it is sufficient that they urged approval of the motion containing them during the hearing thereof. This was the ruling in the case of De Joya, et al., v. CFI of Rizal.[118] In the murder case filed against Oscar Castelo, one of the accused therein, the accused Castelo assisted by his attorneys filed a motion for the disqualification of Judge Rilloraza of the CFI of Rizal containing statements accusing the judge of conspiracy or connivance with the prosecution of concocting a plan with a view to securing the conviction of the accused Castelo, and implicating said judge in a supposed attempt to extort money from the accused on a promise or assurance of his acquittal. The motion was not actually signed by Castelo's attorneys but their names were signed by one of them on the notice of hearing, and at the hearing said attorneys urged the approval of said motion. *Held:* The aforementioned contemptuous statements, having been made in a pleading submitted to the court for action, constitute direct contempt within the meaning of sec. 1 of Rule 64 of the Rules of Court for it is tantamount to a misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice.

The institution of charges by the prosecuting officer is not necessary to hold persons guilty of civil or criminal contempt amenable to trial and punishment by the court, for all the sec. 3 of Rule 64 of the Rules of Court requires is that there be a charge in writing, made by the fiscal, the judge, or even a private person, duly filed in court and an opportunity to the person charged to be heard by himself or counsel. This was the holding in *People v. Torres*,[119] where the respondent was found guilty of contempt in the first case for charging the judge with arbitrariness, inducing and encouraging his client not to appear in court for trial and to disobey its orders, and in the second case, for sending a telegram to the judge containing derogatory statements against the latter's person and dignity.

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[118] G.R. No. L-9785, Sept. 19, 1956; 52 O.G. 6150 (1956).
[119] G.R. No. L-7974, Jan. 20, 1956; 52 O.G. 769 (1956).

VI. Special Civil Action

Irregularity which cannot be corrected by special civil action but by appeal.

In *Dizon v. Hon. Bayona*,[120] where the court has jurisdiction of the case and in the belief that it has all the facts necessary for a judgment renders a judgment without holding any trial or hearing where the parties are allowed to present their respective evidence in support of their cause of action or defense, such judgment is not rendered by the court without or in excess of its jurisdiction, nor rendered with grave abuse of discretion; but it constitutes an irregularity which cannot be corrected by means of the special civil actions of certiorari and mandamus but by an appeal which is the plain, speedy and adequate remedy in the ordinary course of law.

Action to determine hereditary rights and to establish status of child not within the purview of declaratory relief.

The action for declaratory relief under Rule 66 of the Rules of Court should be predicated on the following conditions: (1) there must be a justiciable controversy, (2) the controversy must be between persons whose interests are adverse, (3) the party seeking relief must have legal interest in the controversy, and (4) the issue involved must be ripe for judicial determination. In *Edades v. Edades*,[121] the plaintiff's action seeking to determine his hereditary rights in the property of his alleged father and incidentally the recognition of his status as an illegitimate son, cannot be maintained as one for declaratory relief because it neither concerns a deed, will, contract or other written instruments, nor does it affect a statute or ordinance, the construction or validity of which is involved, nor is it predicated on any justiciable controversy, for the alleged right of inheritance which plaintiff alleged has not yet accrued for the simple reason that his alleged father has not yet died.

In the same case of Edades the court made an *obiter dictum* that the proper remedy of the plaintiff is an action to establish his status as illegitimate child other than natural, although the law is silent on this point, an action similar to that provided for in article 268 of the new Civil Code to claim legitimacy to be brought by the child during his lifetime.

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[120] G.R. No. L-8654, April 28, 1956; 52 O.G. 3961 (1956).
[121] G.R. No. L-8964, July 31, 1956; 52 O.G. 5149 (1956).

Court decision cannot be subject of declaratory relief.

In *Bascos v. Court of Appeals*,[122] where the plaintiff filed an action for declaratory relief in CFI to obtain a clarification of a decision of the Supreme Court in a previous case, alleging that the decision was in his opinion vague and susceptible of double interpretation, the Court said, a court decision cannot be interpreted as included within the purview of the words "other written instrument" of sec. 1 of Rule 66 for the reason that the Rules of Court already provided for the ways by which an ambiguous or doubtful decision may be corrected or clarified without need of resorting to a declaratory relief. If a party is not agreeable to a decision, he may file with the court a motion for reconsideration. A party may even seek relief from the effect of judgment of a trial court under Rule 38. The principle of *res judicata* stamps the mark of finality on the previous case between the parties, which has been fully and definitely litigated in court.

Certiorari may interrupt time to answer.

In *Cruz v. Gonzales*,[123] the petitioner was served with summons on April 27, 1955. May 12, 1955 is the last day for filing an answer. On May 10 she filed a motion to dismiss on the ground of lack of jurisdiction thus leaving her two more days within which to answer. Motion was denied and notice thereof was served on her June 14. On June 15, she asked for an extension of ten days which was granted, the ten-day period expiring on June 26, but it being Sunday it expired on June 27. On this date she filed a petition for certiorari with the Supreme Court. The denial thereof came to her knowledge on July 22, and early the following morning she filed an answer with the trial court which declared her in default. *Held:* While as a general rule petitions for certiorari do not interrupt the time for appeal a deviation from this stringent rule is proper in the instant case considering the issue involved and the steps taken by petitioner to obtain her objective. As the present case concerns the operation of motorboats as a ferry service thus petitioner believing to fall under the jurisdiction of the PSC, the issue therefore is fundamental and has the character of a prejudicial question. Because of this belief petitioner thought it wise to come to the Supreme Court for redress. Taking into account the time

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122 G.R. No. L-8400, Jan. 30, 1956. See Tanda v. Aldaya, 52 O.G. 5175 (1956) holding in the same tenor that the remedy of a party, the judgment having become final and executory, is to file a motion for reconsideration or new trial in order that defect of law or of fact may be corrected under §1, Rule 37; §1 Rule 54 and §1, Rule 55 in connection with §1, Rule 58; or to seek relief from a judgment or order under Rule 38.

123 G.R. No. L-9708, Dec. 27, 1956.

spent for the petition for certiorari petitioner can still be considered as having submitted her answer on time.

Prohibition does not lie in case of failure to join husband.

In *Pacquing v. Municipal Court*,[124] where, in a suit for money claim, the husband of the defendant was not joined as party defendant, the Court held that prohibition to restrain the court from further proceeding with the case does not lie because such defect is not jurisdictional in character. The remedy is for the husband to be joined as a party defendant, and not for the wife to ask that the case be thrown out of court.

Prohibition does not lie where court has power to set the case for trial.

In the same case of *Pacquing*,[125] the Court also held that where the court in a motion to dismiss found provisionally that defendant is a resident of Manila and therefore venue was properly laid, it did not act in excess of or without jurisdiction or with grave abuse of discretion in setting the case for trial. The remedy of defendant is to prove at the trial of the case that he is not a resident of Manila and if so proved but the court does not dismiss the case, that would be the time for him to institute that action for prohibition or to appeal.

Eminent domain.

In *Republic v. Estacio*,[126] the rule that owners of expropriated land are entitled to recover interest from the date the Government takes possession of the condemned land, and the amounts determined and awarded by the court shall cease to earn interest only from the moment they are paid to the owners or deposited in court; and that the value of the land includes also that of the crops, was applied. The appellants deposited the provisional value of ₱10,199.17 with the court, and destroyed the standing crops on appellees' land valued at ₱2,020 of which only ₱1,616 was paid leaving a balance of ₱404 on which appellants should pay an interest.

In *Bureau of Lands v. Samia*,[127] where the trial court awarded damages to the owners of land for unrealized rentals and attorney's fees, on the ground of abandonement of expropriation proceedings

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[124] See note 29 *supra*.
[125] *Ibid.*
[126] G.R. No. L-7260, Jan. 21, 1956; 52 O.G. 773 (1956).
[127] G.R. No. L-8086, Aug. 25, 1956.

previously instituted by the Rural Progress Administration, the Court held that the indemnity due from the government should not exceed the average rental charged by the owners from their tenants at the time of the institution of the condemnation proceedings; and that attorney's fees may be recovered in abandoned or dismissed condemnation proceedings where the statutes so provide. Philippine jurisprudence does not favor the inclusion of attorney's fees as an element of damages in expropriation.

Rulings on forcible entry and illegal detainer.

1. In *De la Cruz v. Guison,*[128] where the action to recover the possession of the land was properly filed with the CFI, the illegal possession having lasted for more than one year, and the court rendered judgment to vacate, in case of execution before the period of appeal expires or during the pendency of appeal, Rule 72 of the Rules of Court does not apply but it is sec. 2 of Rule 39 that applies. Rule 72 applies only in cases of forcible entry and detainer suits filed in inferior courts.

2. In *Tumbaga v. Vasquez,*[129] where a tenant erected a house for him and his family on a piece of agricultural land and constructed another, without the landlord's consent, on a parcel of land distinct and separate from that cultivated by him, he is a mere intruder with respect to the latter house and lot, and his ejectment therefrom comes within the jurisdiction of ordinary courts, and not under that of the Court of Industrial Relations. Section 26 of Republic Act No. 1199 was construed.

3. In *Zobel v. Abreu,*[130] the Court held that the mere failure to pay rents or breach of contract to pay rents, does not render the possession of the lessee *per se* illegal, nor may the action for his ejectment from the land accrue from such failure or breach. In accordance with sec. 2, Rule 72 of the Rules of Court, the right to bring the action of ejectment or unlawful detainer must be counted from the time the defendant has failed to pay rent after demand therefor. It is not the failure to pay rents as agreed upon in a contract, but failure to pay rents after a demand therefor is made that entitles the lessor to bring an action of unlawful detainer.

4. In *Salvador v. Caluag,*[131] the Court ruled that in cases of monthly rentals which could be paid from a given day of a month

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128 G.R. No. L-9296, Dec. 27, 1956.
129 G.R. No. L-8719, July 17, 1956.
130 G.R. No. L-7663, Jan. 31, 1956.
131 G.R. No. L-7458, Feb. 29, 1956.

up to a given day of the following month, the calendar month within which the rent could be deposited or paid should be that following the month in which the rent matured, that is, if the rent matures on any day of the month of October, the calendar month referred to in sec. 8 of Rule 72 within which the rent should be paid to avoid execution of the decision shall be the month of November, and so on.

5. In *Perez v. Hon.*,[132] the Court held that where the appellant in unlawful detainer suit failed to pay rents for Sept. and Oct. of 1954 which under Rule 72, sec. 8 became due and payable on or before Oct. and Nov. respectively, it becomes the ministerial duty of the CFI to order the execution of the judgment of the justice of the peace.

6. In *Alvarez v. Lacson*,[133] it was held that the immediate execution, under sec. 8, Rule 72, should not extend to the sureties of the supersedeas bond which only answer for rents or damages down to the time of perfection of appeal taken from the final judgment rendered in the justice of the peace or municipal court and not for future rents or damages that may accrue during the pendency of the appeal.

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[132] G.R. No. L-898, May 23, 1956; 53 O.G. 109 (1957).
[133] G.R. No. L-8657, July 31, 1956.