SPECIAL PROCEEDINGS

AMELIA R. CUSTODIO *

I. NATURE OF SPECIAL PROCEEDINGS

A special proceeding is an application or proceeding to establish the status or right of a party or a particular fact.[1] Is a special proceeding proper in order that a person may be declared a widow? In the interesting case of *Lukban v. Republic*,[2] the petitioner, Lourdes Lukban filed a petition in court for a declaration that she was a widow of Francisco Chuidian. It appeared that she was married to Chuidian on December 10, 1933 but that on the 27th of the same month her husband left their home because of a violent quarrel and despite diligent search he could not be found. She believed that he was dead for he had not returned for the past twenty years and she now wanted to remarry. She therefore, sought this declaration of status in order that she might not incur any criminal liability.[3] She claimed that since in a special proceeding *status* is involved then the declaration that she was a widow was proper. In denying the petition, the Court held that a petition for judicial declaration that a person is *presumed to be dead* cannot be entertained because it is not authorized by law [4] and if such declaration can not be made in a special proceeding similar to the present, much less can the court determine the status of petitioner as a widow since this mater must of necessity depend upon the fact of death of the husband. This is so because "a judicial declaration to the effect even if final and executory would still be prima facie presumption only; a special proceeding to establish status can be invoked if the purpose is to seek the declaration of death of the husband and not as in the present case to establish a presumption of death." If it can be satisfactorily proved that the husband is dead, the court would not certainly deny a declaration to the effect as has been intimated in the *Szatraw* case.[5]

---

* Book Review Editor, Student Editorial Board, 1956-57. The aid of Lucio Saavedra is acknowledged.

1 Hagans v. Wislizenus, 42 Phil. 880 (1920).

2 G.R. No. L-8492, Feb. 29, 1956.

3 Article 349 of the Revised Penal Code in defining bigamy provides that a person commits that crime if he contracts a subsequent marriage "before the absent spouse has been declared presumptively dead by means of judgment rendered in proper proceeding" and this petition, according to petitioner's claim comes within the purview of the present provision.

4 46 O.G. 1st Supp. 243 (1948).

5 The proper proceeding referred to in article 349 can only refer to those proceedings for the administration or settlement of the estate of the deceased person. (Arts. 390 and 391, new Civil Code), Jones v. Hortiguela 64 Phil. 179 (1937).

II. SETTLEMENT OF ESTATE OF DECEASED PERSONS

A. VENUE

The venue of the institution of testate or intestate proceedings is provided for in section 1 of Rule 75 as follows:

> "Where estate of deceased persons settled.—If the decedent is an inhabitant of the Philippines at the time of his death, whether a citizen or an alien his will shall be proved, or letters of administration granted, and his estate settled, in the Court of First Instance in the province in which he resides at the time of his death, and if he is an inhabitant of a foreign country, the Court of First Instance of any province in which he had estate. The court first taking cognizance of the settlement of the estate of a decedent shall exercise jurisdiction to the exclusion of all other courts. The jurisdiction assumed by a court, so far as it depends on the place of residence of the decedent, or of the location of his estate shall not be contested in a suit or proceeding, except in an appeal from that court, in the original case, or when the want of jurisdiction appears on the record."

If a deceased left his residence in the province with intention to return and established one in Manila solely for the purpose of medical attendance, although he purchased a lot and house in said place, he is not deemed to have changed his domicile; hence, the proper venue for the institution of intestate proceedings is the Court of First Instance of the province of his domicile.[6]

Where an intestate proceeding instituted in the court of proper venue was dismissed due to the pendency of another proceeding in another court of improper venue, and the question of the residence of the deceased was not determined in the former case, a new proceeding in the court of proper venue may be instituted after the dismissal in the court of wrong venue. Section 1 of Rule 77 does not deprive *a competent court of the authority vested therein by law* merely because a similar case had been previously filed before a court *which jurisdiction is denied by law*, for the same would then be defeated by the will of one of the parties. The provisions in the Rules of Court to the effect that "the court of first instance taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the exclusion of other courts," refer mainly to non-resident decedents who have properties in several provinces in the Philippines, for the settlement of their respective estate maybe undertaken before the court of first instance of either one of said provinces not only because said courts then have jurisdiction and, hence, the one first taking cognizance of the case shall exclude the other courts but also because the statement to this effect in said Section

[6] Eusebio v. Eusebio G.R. No. L-8409, Dec. 28, 1956.

1 of Rule 75 immediately follows the last part of the next preceding sentence which deals with non-resident decedents, whose estate may be settled before the court of first instance of any province in which they have properties.[7]

B. PROBATE OF A WILL

Does the action to present a will for probate prescribe? In the case of *Guevarra v. Guevarra*,[8] the court answered this question in the negative, holding that the application of the statute of limitations to the probate of a will would be destructive of the right of testamentary disposition and violative of the owner's right to control his property within legal limits; that if prescription would be applied, the will would be left at the mercy and whims of the custodians and heirs interested in their suppression. It was not without purpose that the Rules of Court in Section 1 of Rule 77 prescribes that "any person interested in the estate may, at any time after death of the testator, petition the Court having jurisdiction to have the will allowed."

C. ALLOWANCE AND DISALLOWANCE OF A WILL

If a will is not executed and attested as required by law, it shall be disallowed.[9] In order that a will may be valid, it must aside from other formalities be "attested and subscribed by three or more credible witnesses." The relation of employer and employee between the beneficiary under a will and a witness does not constitute a legal disqualification on the part of the witness as to make her "not credible." [10] A witness is credible if her testimony is entitled to some credence.

The exercise of undue influence by the beneficiary on the testator is sufficient cause for the disallowance of a will.[11] The precise nature of undue influence in its legal sense has been aptly stated thus:

> "It is not enough to establish undue influence by the fact that the testator has been persuaded to make his will; it must be shown that he made his will under coercion, compulsion, or restraint, so that in fact the instrument does not represent his own wishes....Moderate and reasonable solicitation and entreaty addressed to the testator do not constitute undue influence even though they induced the testator to make the kind of will requested, if he yields intelligently and from a conviction of duty. Even earnest entreaty and persuasion may be employed upon the testator

---

[7] *Ibid.*
[8] G.R. No. L-5405, Jan. 31, 1956.
[9] Rule 77, §9.
[10] Pecson and Nable v. Tandino and Gomez, G.R. No. L-8774, Nov. 26, 1956.
[11] Rule 77, section 9.

without affecting the validity of the will as long as they are not irresistable." [12]

Thus, where a legitimate child of the testator persuaded her mother by fair arguments not to leave anything to an adopted child, such arguments and persuasion do not constitute undue influence and a will executed under such circumstances may be admitted to probate.[13]

In the case of *Maxima Sta. Ana v. Segundo Cruz*,[14] the Court ruled that in the probate of a will where the question involved is whether the will has been executed in accordance with law and that no undue pressure or influence has been exercised on the testatrix, it is improper to raise the issue of whether or not certain amounts desposed of by the widower belonged to the deceased. This question should be discussed and considered after a final order allowing or declaring the probate of the alleged will in the process of accounting and liquidation of the assets of the deceased.

An attestation clause is essential to a valid will.[15] If on the line intended for the date of the execution of the will the sign "&" is instead found, is the attestation clause defective? In the case of *De Castro v. De Castro*,[16] it was held that such flaw is not sufficient to render an attestation clause invalid, because a few lines over the space and at the end of the will over the thumbmark of the testator, the date of the execution of the will was written.

In the acknowledgement of the will,[17] the witness need not through a ceremony such as the raising of their right hands. When a persons affixes his signature to an instrument in the presence of a notary public, he undoubtedly, acknowledges it to be his own and there is no need or provision that requires the hand raising ceremony as a prerequisitie to the validity of an acknowledgment.[18]

Although the law requires that three attesting witnesses must attest to the due execution of the will,[19] the Rules do not require the united support of the will by all of the witnesses.[20] The Court had occasion to apply this rule in the case of *De la Cavada v. Butte*,[21]

---

[12] Citing 57 AM. JUR. WILLS 361.
[13] Barreto v. Reyes, G.R. No. L-5830, Jan. 31, 1956.
[14] G.R. No. L-9734, Feb. 28, 1956.
[15] Article 805, new Civil Code.
[16] G.R. No. L-8996, Oct. 31, 1956.
[17] Article 806 of the Civil Code provides: "Every will must be acknowledged before a notary public by the testator and the witness..."
[18] *Supra* note 16.
[19] Art. 805, Civil Code.
[20] Rule 77, §1. This is the ruling in Florentino v. Francisco 57 Phil. 742 (1932).
[21] G.R. No. L-6601, Dec. 29, 1956.

where the Court admitted a will to probate notwithstanding the failure of the attesting witnesses to affirm the due execution of the will. It was proved that the witnesses were by reason of relationships to the oppositors of the will, partial to the latter and biased against the proponent of the will. The proponent, a total stranger to the oppositors and not related by blood with the testator, was given a legacy consisting of the entire free portion of the estate of the testator. The Court noted that even if the witnesses might have regarded this legacy as quite immoral, the decedent had a perfect right to dispose of the free portion of his estate in favor of whoever he chose, subject to the limitation prescribed by law, none of which was applicable to this case.

D. ADMINISTRATOR

Before an executor or administrator enters upon the execution of his trust, he must give a bond in an amount to be fixed by the court.[22] The bond of a special administrator is conditioned upon the following: (1) that he will make and return a true inventory of the goods, chattels, rights, credits, and estate of the deceased which come to his possession or knowledge; (2) that he will truly account for such as are received by him when required by the Court, and (3) that he will deliver the same to the person appointed executor or administrator, or such other persons as maybe authorized to receive them.[23] Although no period is fixed in the Rules as to the time within which a special administrator must submit his inventory, it cannot be denied that such duty has to be performed within a reasonable period, if not as soon as practicable, in order to preserve the estate and protect the heirs of the deceased. Such is inferred from section 2 of Rule 81 wherein it is provided that a "special administrator shall collect and take charge of the goods, chattels, rights and credits of the estate of the deceased and preserve the same for the executor or administrator afterwards to be appointed", for only in that manner can we satisfy the real purpose for which the office of the administrator is provided for. If such were not the case we would be opening the door to the commission of irregularities or mischiefs which may redound to the detriment of the estate and the heirs entitled to distribution. It is for this reason that the law provides for his removal in case he fails to perform "a duty expressly provided by these rules" or "becomes insane, or *otherwise incapable or unsuitable to discharge the trust.*" Where, therefore, a special administrator had not taken any step to determine the real or personal property belonging to the estate and had not submitted any

22 Rule 82, §1.
23 *Id.*, §2.

inventory of the property, after seven months had elapsed since his appointment, he could be validly removed by the court from his office.[24]

Is the filing of an inventory by the administrator mandatory in all instances? In *Austria v. The Heirs of the late Antonio Ventanilla*,[25] it was ruled that where the administrator is the residuary legatee, he is exempt from filing an inventory. Austria, was appointed administratrix of the testate estate of Ventanilla. Her accounts showed that after deducting all the expenses of the estate all that remained for distribution was the sum of ₱87.60 to be distributed to the other heirs who were oppositors-appellants herein, and that the rest of the estate was left to her as the sole universal heir. The lower court approved the accounts; the opposition of the other heirs was denied. On appeal, the Supreme Court affirmed the decision of the lower court. Thirty-eight years later, the same oppositors filed a motion stating that the administratrix was a mere usufructuary of the estate; that they were the naked owners; that the administratrix failed to file an inventory of the estate; that she was disposing of the property in violation of her trust and that she should therefore be removed from such trust. The Court ruled that the settlement of the estate of Antonio Ventenilla had long been terminated and closed and settled by a court's order in October, 1910 approving the final accounts of the administratrix declaring her residuary legatee of all the property of the estate.[26] She was likewise declared exempt from filing an inventory. Appellant's claim that the proceedings could not have been closed because they had not yet received their respective shares from the administratrix was not given merit "for if they failed to receive their shares, they were barred either by their own laches in not demanding payment for 38 years or by the waiver implied in their neglect to put up the bond which they were required to post before their shares could be delivered to them."

E. CLAIMS AGAINST THE ESTATE

Rule 87, Section 1 provides: "Immediately after granting letters testamentary or of administration, the court shall issue a notice requiring all persons having money claims against the decedent to

---

[24] Junquera v. Borromeo, G.R. No. L-9314, May 28, 1956. The Court added: "It is true that Junquera is the one named by the testator executor of his will but such designation cannot give him preference or advantage until the will is admitted to probate."

[25] G.R. No. L-10018, Sept. 19, 1956.

[26] What brings an intestate proceeding to a close is the order of distribution directing the delivery of the residue to persons entitled thereto after paying indebtedness, if any, left by the deceased. Santiesteban v. Santiesteban 68 Phil. 367 (1939), Ramos v. Ortuzua, G.R. No. L-3299, August 29, 1951.

file them in the office of the clerk of said court." Thus, claims other than for money, debt, or interest thereon, cannot be presented in the testate or intestate proceedings. Claims for title to, or right of possession of, personal or real property, made by the heirs themselves, by title adverse to that of the deceased, or made by third persons, cannot be entertained by the probate court.[27] It has been held, however, that for the purpose merely of inclusion in or exclusion from the inventory, the probate court may pass upon a question of title to real property, without prejudice to a final determination of the same question in a separate action.[28] In an action for the recovery of the possession and ownership of several parcels of land forming part of the estate of the deceased, plaintiffs who also appeared in the intestate proceedings as claimants of said lands may nevertheless maintain the action for recovery of possession because their appearance in the intestate proceedings was merely a precautionary measure. It is but an assertion of their right to the property which was included in the inventory. It is therefore not proper to dismiss the action for recovery of the same parcels of land on the ground that said property formed part of the estate of the deceased and that an intestate proceedings is pending in another court. This is so because the jurisdiction of the probate court is limited in character for it cannot definitely pass upon a question of title or ownership even if the property has been included in the inventory.[29]

F. PAYMENTS OF THE DEBTS OF THE ESTATE

In the payment of the debts of the estate the personal estate of the deceased shall be first chargeable with such payment.[30] If the personal estate is not sufficient for that purpose, or its sale would redound to the detriment of the participants in the estate, the whole of the real estate, or so much thereof as is necessary, may be sold, mortgaged, or otherwise encumbered for that purpose by the executor or administrator, after obtaining the authority

---

[27] De Los Santos v. Jarra, 15 Phil. 147 (1910); Bauermann v. Casas, 10 Phil. 386 (1908); Devesa v. Arves, 13 Phil. 237 (1909); Franco v. O'brien, 13 Phil. 359, (1909); Lunsod v. Ortega, 46 Phil. 664; Santiago v. CFI, 55 Phil. 62 (1930); Adapon v. Maralit, 69 Phil. 383 (1940).

[28] It has been held lastly that the general rule is that questions of title to property cannot be passed upon in testate or instate proceedings, except when the parties interested are all heirs to the deceased, in which event, it is optional upon them to submit to the probate court the question as to title to property when submitted, said probate court may definitely pass judgement thereon. The reason is that questions of colation or advancement are generally inevitably involved therein which are proper matter to be passed upon in the due course of administration. Pascual v. Pascual, 73 Phil. 661 (1942).

[29] Maria Mondoñedo Vda. de Paz v. Asuncion Buñag Vda. de Madrigal, G.R. No. L-18781, Oct. 23, 1956.

[30] Rule 89, §1.

of the court therefor.[31] Is this rule applicable to the residuary cash in the hands of the heiresses, which though forming part of the estate of the deceased never reached the hands of the administrator, or must real property be sold for the satisfaction of the claim against the estate? In the case of *Sideco et al. v. Teodoro*,[32] it was held that such residuary cash are liable for the claims against the estate and the court can validly order the delivery of the residuary cash to the administrator for the satisfaction of such claims. It is more advantageous to use for payment the cash on hand than to order the sale of real property of the estate. Besides, under Rule 89, Section 6 the Court has authority to fix the contributive shares of the devisees, legatees, and heirs for the payment of a claim if they have entered into possession of portions of the estate before the debts and expenses thereof have been settled and paid.

G. ACTIONS BY AND AGAINST EXECUTORS AND ADMINISTRATORS

Except actions against the decedent's estate for the recovery of money or debt or interest thereon, which shall be presented in the form of claims in the estate or intestate proceedings, all other actions affecting the property or rights of the deceased may be commenced and prosecuted by or against the executor or administrator of the deceased.[33] However, if the deceased had no more right to the property because there had been a sale which was validly made, action against the administrator would be useless. In *Samal v. Gil*,[34] it appeared that Gregoria Gil brought an action to recover possession and ownership of a parcel of land against Palinkud Samal, widow of Pascual Libudan, said property was bought at a public auction held in consequence of a civil case between Gil and Libudan. In 1943 possession was delivered to Gil and the final deed of sale was duly recorded in the Registry of Property. Samal illegally entered possession over said land and in the present action his widow tried to prove that the land was covered by a free patent issued by the Director of Lands. The lower court dismissed the claim of Gil on the ground that it should have been filed against the judicial administratrix of Libudan. It was held that it was not necessary for the widow of Gil to file an action against the judicial administrator because of the commencement of the action in 1950 the estate of Libudan had no interest or right in the property. The sale to Gil was not contested as being irregular or invalid in any way.

---

31 *Ibid.*
32 G.R. No. L-6704, March 26, 1956.
33 II MORAN, COMMENTS OF THE RULES OF COURT 450 (1952).
34 G.R. No. L-8579, May 28, 1956.

III. GUARDIANSHIP

A. WHO MAY BE APPOINTED GUARDIAN

Where a woman leaves her five-year old child of a void marriage in order to live with another man, she cannot, three years later claim custody of the child over the opposition of the child's grandfather who had shown much affection and care for the child. The grandfather had been shown to be capable of taking good care of the child and the mother who had not lived long with the child cannot against the will of her child "seek to uproot and separate her from the only home and loving parents she has ever known."[35]

B. SELLING AND ENCUMBERING THE PROPERTY OF THE WARD

Under our law, the authority of the court is necessary for a guardian to be able to invest validly the proceeds of the estate of the ward. In the case of *Carmen Pardo de Tavera v. El Hogar and Magdalena Estate*,[36] the court laid down important rulings as to the selling and encumbering of the property of the ward. The facts showed that the plaintiff, her uncles and her aunts decided to form a corporation for the purpose of building a modern structure to be rented; the shares of stock were to be paid in the form of their shares in a parcel of land which they owned in common. The plaintiff was represented by her mother, who was the duly appointed guardian. Said guardian had secured the approval of the court before entering into such agreement; the land owned in common was mortgaged to El Hogar which foreclosed the same and later transferred it to the Magdalena Estate. Upon attaining the age of majority, this action was instituted by the plaintiff for the purpose of annuling the transfer of her right and share in the property made by her guardian to the corporation and alleged that the transfer was void because Section 569 of Act 190[37] was not complied with; that the court had thus, no jurisdiction to order the transfer of her share in the property; that the petition filed by the guardian was not verified; that it did not set forth the condition of the estate of the ward and the facts and circumstances upon which the petition was founded tending to show the necessity or expediency of the transfer and that the court did not direct the next of kin of the ward to appear and show cause why the petition should not be granted. It was held: (1) It is not necessary for a grant of authority to the guardian to sell the estate of the ward

[35] G.R. No. L-7783, 34, Feb. 23, 1956.
[36] 52 O.G. No. 3, 1416 (1956).
[37] Rule 96, §1.

to state that the income from the property is insufficient to maintain the ward. It is enough that it appears "that it is for the benefit of the ward that his real estate or some part thereof be sold, or mortgaged or otherwise encumbered, and the proceeds thereof put out at interest, or invested in some productive security, or in the improvement or security of the real estate of the ward; (2) the requirement that the probate court enter an order directing the next of kin to the ward to appear before the court was unnecessary in the case because the next of kin to the ward and all persons interested in the estate were her mother and guardian, uncles and aunts who agreed to make a transfer of their respective shares in the property to the corporation to be organized. Moreover the next of kin are those whose relation is such that they are entitled to share in the estate as distributees; (3) the hearing required in Section 3 does not necessarily mean that witnesses testify or documents be produced or exhibited. If the court be satisfied that the allegation of the petition are true and interested persons or close relatives of the ward did not object because they themselves were interested in the scheme to organize a corporation to which all their shares in the property were to be transfered the provisions of law were compiled with.

While authority to invest the funds of the ward must be secured from the court by the guardian, such authority need not be expressly given.[38] In the *Philippine Trust v. Ballesteros*,[39] the petitioner was the guardian of the respondent's property which consisted of pensions. The guardian extended loans which were paid during the Japanese occupation but these payments were later invalidated. In the accounting presented by the guardian an amount was deducted which represented the loans. Previous accountings by the guardian which included the loans were approved by the court. In the account in question the lower court disallowed the deduction aforementioned on the ground that this was not binding on the ward because of the failure of the guardian to secure judicial authority to make such investments. The Supreme Court ruled that Section 5 of Rule 96 is applicable because Section 1 and 2 thereof apply only to encumbrance of the property of the ward or investments of the proceeds thereof; that while Section 5 requires prior judicial authority in order that a guardian may invest the ward's money, it does not provide that said authority must always be express. The approval by the lower court of the accounting made before the war

[38] G.R. No. L-8261, April 10, 1956.
[39] *Ibid.*

had the effect of impliedly validating appellant's accounts and will therefore bind the ward.[40]

B. EXPENSES IN THE INTEREST OF THE WARD

A lawyer employed by the guardian of an incompentent is entitled to a reasonable compensation where his services were rendered in the interest of the ward; these services consisting of: (1) motion requiring the production of a will, (2) opposition to the claim that certain property were paraphernal, which property were later proved to be conjugal, and (3) opposition to a statement of accounts which did not include an amount spent without authority by the person presenting the account.These services redound to the benefit of the ward.[41]

C. TERMINATION OF GUARDIANSHIP

Republic Act 390 provides that guardianship may be terminated only upon the attainment of the age of majority. In *Baga v. PNB*,[42] the Court held that this Act prevails over all other laws because section 23 of said Act provides that its provisions should apply notwithstanding any other provisions of law relating to judicial restoration and discharge of guardians, so that the marriage of the minor would not be a sufficient cause for terminating guardianship over the property of the minor which consisted of monetary benefits.[43] The purpose of this Act is to safeguard funds of the minor from faulty and fraudulent disbursements and actual embezzlements.

IV. HABEAS CORPUS

Where the parents of two children aged 4 and 2 died in a fire, and the children had since then been living with their maternal grandparents, a writ of habeas corpus will not issue in favor of the paternal grandparents who are residents of the United States and had never come to the Philippines. The best interest of the children would be served if the maternal grandparents would continue to have custody of the children.[44]

Will the writ of habeas corpus lie when a minor voluntarily stays with another person other than the one entitled to her custody and

---

[40] It should be noted that under the facts of this case, previous judicial authority is not indispensable. Act No. 3854 dealing with the guardianship of incompetent veterans does not expressly provide for a previous judicial authority. It was only since June 18, 1949, upon effectivity of Republic Act 390 which repealed Act No. 3854 on that judicial authority has been required. 31 PHIL. L.J. No. 5, 759 (1956).

[41] Villadeja v. Ilada G.R. No. L-6458, Jan. 23, 1956.

[42] G.R. No. L-9693, Sept. 10, 1956.

[43] Rule 9 provides for termination of guardianship.

[44] Murdock v. Chuidian, G.R. No. L-10544, Aug. 30, 1956.

the minor refuses to live with the latter? The Supreme Court answered this in the affirmative in the case of *Flores v. Cruz*.[45] Here the mother of the minor child (born out of wedlock) sent her child to the latter's paternal grandparents because the former worked as a maid in the house of a Dr. Silva. A month later, the mother bade her child to return but respondent grandparent did not permit it. It was proved that there was no restraint of liberty of the minor. In granting the writ, the Court cited with favor prior rulings[46] and held; "where a right to the possession of the minor is claimed, the right to retain such possession by such force as may be necessary is assumed and that if necessary it would be exercised. Proceedings in habeas corpus have so frequently been resorted to, to determine the right to possession of a minor that the question of physical restraint need be given little or no consideration where a lawful right is asserted to return possession of the child."[47]

V. Petition for Change of Name

In *Chomi v. Local Civil Registrar of Manila*,[48] the petitioner instituted this proceeding for the purpose of making changes alleged to be correction in the birth certificate of the petitioner. He claimed that he was the son of Celerino Arellano Chomi and Sotera Tan; that he was baptized and given the name Alberto and since then had been known by Alberto Chomi; that his birth certificate in the Civil Registrar of Manila gives his name as Apolinario Arellano and his father's name as Celerino Arellano instead of Alberto Arellano Chomi and Celerino Arellano Chomi, respectively. The Solicitor General opposed the petition on the ground that the changes sought to be made were substantial in nature and that only clerical mistakes may be corrected pursuant to article 412 of the New Civil Code and that the proper remedy of the petitioner is to file a petition for change of name. The Court sustained the latter's contention that the remedy of the petitioner is that provided for in Rule 103 and Act 1386.

VI. Appeals

In *People's Bank and Trust Co., v. Seifert*[49] the Supreme Court ordered the administrator of the Estate of Bachrach to pay allowances to the residuary beneficiary Seifert. Twelve years later, the administrator filed a motion for discontinuance of payment because

---

[45] G.R. No. L-8622, August 15, 1956.
[46] Salvaña v. Gaela, 55 Phil. 680 (1931); Reyes v. Alvarez, 8 Phil. 723, (1907); Celis v. Cufuir, 47 O.G. 12, (Sup.) 179 (1950); Chui Tian v. Tan Niu, G.R. No. L-7509, Aug. 29, 1954.
[47] Citing *In re* Swall Ann. Cass. 1915-B, 1015-1016.
[48] G.R. No. L-9203, Sept. 28, 1956.
[49] G.R. No. L-9635, Sept. 11, 1956.

the funds of the Estate was depleted. Four months later, Seifert moved for the resumption of payment to be paid from the accumulated allowances of one Skundian who was not paid her share because she was dead. The court granted the motion but the administrator appealed claiming that the order was contrary to the Court's order suspending the payment of allowances; that said order had become final without Seifert having appealed from such order. It was held that the order suspending the payment of allowances was interlocutory and intended to operate provisionally; hence the Court could set it aside at any time.

Where an extrajudicial settlement has been duly approved by the court, it can not be set aside on a mere motion after six months had elapsed since such approval. The remedy of the aggrieved party is to file a separate action for annulment or to appeal from the order approving the extrajudicial settlement.[50]

This is different from a case where the compromise agreement has not yet been consummated by the distribution and disposition of the share pertaining to each heir.[51] In the former case the settlement has been consummated when the heirs received their respective shares and they disposed of the same.

[50] Alafriz v. Gonzales, G.R. No. L-8340, May 18, 1956.
[51] Samaniada v. Mata, 49 O.G. 1, 77 (1953).