RECENT DECISIONS

Administrative Law; Labor Law—*The jurisdiction of the Court of Industrial Relations is confined to industrial employment, covering organizations and entities organized, operated, and maintained for profit and gain.*

UNIVERSITY OF SAN AGUSTIN v. CIR, et al.

G.R. No. L-12222, May 28, 1958

The question of jurisdiction of the Court of Industrial Relations is not new.[1] Although the Supreme Court has time and again vacillated as to the inclusion or exclusion of violations of labor internal procedures, basically, its definition of the jurisdiction of this Court has remained faithful to its early pronouncement that its power is confined to the following cases, namely: "(1) when the labor dispute affects an industry which is indispensable to the national interest and is so certified by the President to the industrial court; (2) when the controversy refers to minimum wages under the Minimum Wage Law; (3) when it involves hours of employment under the Eight-Hour Labor Law; and (4) when it involves an unfair labor practice under Section 5(a) of Republic Act 875."[2] But in all these cases, there should be an employer-employee relationship *as defined by Republic Act 875.* The above qualification to the industrial court's jurisdiction was made clear in thise case where the Supreme Court applied a previous ruling *in toto.*

The Philippine Association of College and University Professors filed an unfair labor practice complain against the University of San Agustin on the ground that since the former's "organization two years ago, the University has adopted a hostile attitude to its formation and has tried to discriminate, harass, and intimidate its members . . ." The University however, denied the jurisdiction of the industrial court for the reason that the Association is composed of persons engaged in the teaching profession and therefor was not a legitimate labor organization, nor the University, an industrial enterprise.

It appears that the University is an educational institution conducted by a religious non-stock corporation, organized not for profit or gain or division of the dividends among its stockholders, but solely for religious and educational purposes. The Association, on its part, was composed of professors and teachers in different colleges and universities. In view of these facts, the Court sustained the University's contention, citing a recent pronouncement[3] to the effect that:

> ". . . there is every reason to believe that our labor legislation from Commonwealth Act No. 103, creating the Court of Industrial Relations, down through the Eight Hour Labor Law, to the Industrial Peace Act, was intended to the Legislature to apply only to industrial employment and to govern the relations between employers engaged in industry and occupations for purposes of profit and gain, and their industrial employees, but not to organizations and entities which are organized, operated, and maintained not for profit or gain, but for elevated and lofty purposes such as, charity, social service, education and instruction,

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[1] *See* 33 PHIL L. J. 1 (1958).
[2] Philippine Association of Free Labor Unions et al. v. Tan et al., 52 O.G. 5856.
[3] Boy Scouts of the Philippines v. Julian V. Araos, G.R. No. L-10091, January 29, 1958.

hospital and medical service, the encouragement and promotion of character, patriotism and kindred virtues in the youth of the nation, ..."

In effect, the Supreme Court took out from the jurisdiction of the industrial court entities with purposes included, or similar to, the above enumeration.

Remedios M. Catungal

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Civil Law—*In case of maladministration of the conjugal partnership property by the wife, the remedy of the husband does not lie in a judicial separation of property but in revoking the power granted to the wife and resume the administration of the community property.*

GARCIA v. MANZANO

G.R. No. L-8190, May 28, 1958

The new Civil Code, like the old, specifically provides that the husband is the administrator of the conjugal partnership.[1] However, inasmuch as the husband's management of the conjugal estate is a mere privilege or preference given him by the law on the assumption that he is better able to handle the administration,[2] it results that when his supposed superiority over the woman in this regard [3] disappears, the *raison d'etre* of the privilege vanishes, and it is only just and proper that the wife take control.[4] Thus, the law envisages certain cases when the wife may ask the courts for a transfer of the administration of the conjugal partnership property or for a judicial declaration of separation of property.[5]

Suppose, however, there is mismanagement and maladministration by the wife administering the property, may the husband be entitled to the same remedies granted to the wife if he were the one managing the property? It would seem not, according to the instant case.

Gonzalo Garcia and his wife, Consolacion Manzano, are husband and wife but they have been living separately from each other since 1948, all attempts at reconciliation between them having failed. As a result of their joint efforts, plaintiff and defendant acquired and accumulated real and personal properties. Upon the separation of spouses, defendant wife assumed the complete management and administration of the conjugal partnership property, and, according to the plaintiff husband, has been enjoying said property as well as its accessions and fruits to the exclusion and prejudice of plaintiff, and has even fictitiously transferred or alienated a majority of said property in favor of third persons.

Plaintiff therefore filed this action, praying for the judicial declaration of the separation of their conjugal partnership property. Plaintiff contended that

[1] Art. 165, new Civil Code; article 1412, old Code.

[2] As administrator, the husband's powers are not confined to management of the conjugal partnership. He may dispose of the conjugal property for the purposes mentioned in Arts. 161 and 162 (Art. 17). *See also* Art. 172, N.C.C.

[3] According to Manresa, the law designates the husband as administrator because he is stronger than the wife, more energetic, more in contact with society and the external world and less tied to family cares and domestic duties. The rights of the spouses are not equal. The wife occupies a passive and secondary role 9 CODIGO CIVIL, 5th ed. 633, 635, cited in AQUINO, LAW OF PERSONS AND FAMILY RELATIONS 351 (1958 ed.).

[4] Peyer v. Martinez, G.R. No. L-3500, Jan. 12, 1951.

[5] For the instances when the wife may ask for judicial separation of property, *see* Arts. 167, 178(3), and 191.

Article 191 of the Civl Code[6] may also be availed of by the husband where the administration of the conjugal partnership property has been forcibly taken from him by his wife and she abuses the management thereof. Nevertheless, the trial court dismissed plaintiff's complaint without prejudice; hence, the present appeal.

The Supreme Court agreed with the lower court that the complaint failed to establish a case for separation of property. Speaking through Justice J. B. L. Reyes, it declared:

> "Consistent with its policy of discouraging a regime of separation as not in harmony with the unity of the family and the mutual affection and help expected of the spouses, the Civil Code (both old and new) require that separation of property shall not prevail unless expressly stipulated in marriage settlements before the union is solemnized or by formal judicial decree during the existence of the marriage;[7] and in the latter case, it may only be ordered by the court for causes specified in Art. 191 of the new Civil Code."

The enumeration in Article 191 must be regarded as limitative, in view of the Code's restrictive policy. As to appellant's contention that the provisions of the second paragraph of the aforementioned article, like those of Articles 167 and 178, should be interpreted as applicable *mutatis mutandis*, even if the letter of the statute refers to the wife exclusively, the Court emphasized that such a thesis ignores the philosophy underlying the provisions in question. The wife is granted a remedy because by express provision of law, it is the husband who has the administration of the conjugal partnership.

In the system established by the Code the wife does not administer the conjugal partnership unless with the consent of the husband, or by decree of court and under its supervision "with such limitations as they (the courts) may deem advisable." Legally, therefore, according to the Court, the wife can not mismanage the conjugal partnership property or affairs, unless the husband or the courts tolerate it.

What, then, is the remedy afforded the husband, when his wife is maladministering the conjugal partnership? The remedy does not lie in a judicial separation of property but in revoking the power granted to the wife and resume the administration of the conjugal partnership property and the conduct of the affairs of the partnership. Furthermore, he may enforce his right of possession and control of the conjugal property against his wife[8] and seek such ancillary remedies as may be required by the circumstances, even to the

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[6] Art. 191 provides: "The husband or the wife may ask for the separation of property, and it shall be decreed when the spouse of the petitioner has been sentenced to a penalty which carries with it civil interdiction, or has been declared absent, or when legal separation has been granted.

In case of abuse of powers of administration of the conjugal partnership property by the husband, or in case of abandonment by the husband, separation of property may also be ordered by the court, according to the provisions of Articles 167 and 178, No. 3.

In all these cases, it is sufficient to present the final judgment which had been entered against the guilty or absent spouse.

The husband and the wife may agree upon the dissolution of the conjugal partnership during the marriage, subject to judicial approval. All the creditors of the husband and of the wife, as well as of the conjugal partnership, shall be notified of any petition for judicial approval of the voluntary dissolution of the conjugal partnership, so that any such creditors may appear at the hearing to safeguard his interests. Upon approval of the petition for dissolution of the conjugal partnership, the court shall take such measures as may protect the creditors and other third persons.

After dissolution of the conjugal partnership, the provisions of Arts 214 and 215 shall apply. The provisions of this Code concerning the effect of partition stated in Arts 498 to 501 shall be applicable."

[7] Art. 190 of the new Civil Code, formerly Article 1432, provides: "In the absence of an express declaration in the marriage settlements, the separation of property between spouses during the marriage shall not take place save in virtue of a judicial order."

[8] Perkins v. Perkins, 57 Phil. 205 (1932)

extent of annulling or rescinding any unauthorized alienations or incumbrances, upon proper action filed for that purpose.

It cannot therefore be claimed, as is being done by the husband here, that there is a void in the law when it is held that the codal provisions referred to contemplate exclusively the remedies available *to the wife* against the abuses of her husband because generally only the latter can commit such abuse.

Teodoro D. Regala

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Civil Law—*Support; where marital infidelity is mutual or where there is reconciliation between the spouses, the wife may still claim support from the husband.*

ALMACEN v. BALTAZAR

G.R. No. L-10028, May 23, 1958

Support is everything that is indispensable for sustenance, dwelling, clothing and medical attendance.[1] Although our law ordains mutual support between the spouses,[2] the legal and natural duty of providing subsistence for the wife and the family rests on the husband.[3] The enforcement of this obligation is of such vital concern to the State itself that the husband shall not be permitted to terminate it unless the termination is fully justified by one or more of the grounds provided by law. In this jurisdiction, one of such grounds is when the recipient of the support has committed some act which gives rise to disinheritance.[4] Thus, adultery, which is a cause for disinheritance [5] has been held to be a good and valid defense against the wife's action for support.[6] But in a situation where both spouses are guilty of marital infidelity, as when the husband commits concubinage and the wife, adultery, is the husband's obligation to support the wife deemed terminated? Confronted with this very same question, the Supreme Court, in the present case, gave a negative answer.

Plaintiff Hipolita Almacen and defendant Teodoro Baltazar were legally married on March 24, 1923. In 1937, plaintiff committed adultery with one Jose Navarro. Prior to the infidelity of the wife, the defendant himself has not been loyal to her, he having been once confined at a hospital suffering from venereal diseases. Moreover, the defendant separated from the plaintiff after the latter's infidelity and while so estranged from her, he lived with another woman by the name of Lourdes Alvarez. However, during their separation, the defendant has been sending plaintiff money for her support. In the present case, plaintiff is trying to enforce defendant's obligation to give her support. Defendant interposed the defense of the plaintiff's adulterous infidelity. But plaintiff countered that there has been a reconciliation between her and defendant or, at least, defendant has already pardoned her as shown by the fact that he has been giving her money for her support prior to the institution of the present action. The trial court sustained the contentions of the plaintiff; hence, this appeal.

[1] Art. 290, Civil Code.
[2] Art. 291(1), *id.*
[3] Art. 111, *id.*
[4] Art. 303(4), *id.*
[5] Art. 921, *id.*
[6] Quintana v. Lerma, 24 Phil. 285 (1913); Sanchez v. Zulueta, 68 Phil. 110 (1939).

The Supreme Court, speaking through Justice Endencia, affirmed the decision of the trial court, saying:

> "We find that by the provisions of Art. 303 of the New Civil Code, the obligation to support shall cease when the recipient has committed some act which gives rise to disinheritance; that under Art. 921(4) of the same Code, a spouse may be disinherited when she has given cause for legal separation, and under Art. 97, one of the causes for legal separation is adultery on the part of the wife and concubinage on the part of the husband. Accordingly, if the plaintiff were the only one who committed adultery, defendant's theory would seem to be correct; but, in the present case, we agree with the lower court's ruling that defendant is still bound to support his wife."

The Court then proceeded to support the above conclusion with the following reasons:

First. Plaintiff and defendant were both guilty of infidelity and before the filing of the action they had a reconciliation or, at least, defendant had pardoned plaintiff's unfaithfulness, for which reason we may apply Art. 922 of the Civil Code which provides that "a subsequent reconciliation between the offender and the offended party deprives the latter of the right to disinherit, and renders ineffectual any disinheritance that may have been made."

Second. The law on support contains no provision squarely applicable to the present case in which both parties had committed infidelity, neither is there any provision to the effect that when both spouses committed marital offenses against one another, one can no longer ask support from the other.[7]

And third. There is the general principle that when two persons acted in bad faith they should be considered as having acted in good faith, which principle may be applied to the instant case to the effect that plaintiff and defendant being in *pari delicto*, the latter cannot claim the adultery of the former as a defense to evade the obligation to give her support.

Elaborating on the point of reconciliation or condonation, the Court observed that the fact that the defendant had been giving the wife money for the latter's support is sufficient to show condonation or reconciliation, for had there been no condonation or reconciliation, defendant would not certainly have given any amount for the plaintiff's support.

Salvador J. Valdez, Jr.

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Civil Law—*Prescription of actions; civil action arising from libel prescribes in one year; Art. 1147, Civil Code, construed.*

TAN v. E. R. SQUIBB & SON PHIL. CORP.

G.R. No. L-11052, April 30, 1958

Article 90 of the Revised Penal Code provides: "The crime of libel or other similar offenses shall prescribe in two years. The offenses of oral defamation and slander by deed shall prescribe in six months." On the other hand, Article 1147 of the Civil Code provides: "The following actions must be filed within on year: . . . (2) For defamation." Bearing in mind these provisions of law, what is the prescriptive period of a civil action arising from the crime of libel?

[7] In legal separation, the law specifically and expressly provides that mutual marital infidelity or recrimination is a valid defense. Art. 100, *id.* *See also* Benedicto v. De la Rama, 3 Phil. 34 (1903); Brown v. Yambao, G.R. No. L-10699, October 18, 1957.

The Supreme Court, in the instant case, held that it is one year, applying the provision of Article 1147 of the Civil Code and construing the word "defamation" used therein to include libel.

A civil complaint was filed in the Court of First Instance of Manila by Tejuco alleging that the defendants, her former employers, wrote her a libelous letter of separation, a copy of which was posted in the company's bulletin board. In her complaint she prayed that judgment be rendered sentencing the defendants to pay her damages [1] in the amount of ₱50,000 with interest and to retract the contents of the letter and to give said retraction due and requisite publicity.

The trial court dismissed the complaint on the ground of prescription, it having been filed one year and six months after the publication of the libelous letter. Tejuco filed a motion for reconsideration, but it was denied; hence, this appeal.

After a consideration of the merits of the case, the Supreme Court arrived at the conclusion that the prescriptive period is one year, and hence the decision of the trial court is correct. The Court pursued the following line of reasoning.

Art. 1161 of the Civil Code provides that civil obligations resulting from criminal offenses shall be governed by the penal laws. But a perusal of the rules restricting the application of the penal laws yields no solution to the issue raised by the plaintiff. Te Revised Penal Code in Art. 112, however, states that "civil liability established in Arts. 100, 101, 102 and 103 of this Code shall be extinguished in the same manner as other obligations in accordance with the provisions of the Civil Law." Art. 1231 of the Civil Code is to the effect that "other causes of extinguishment of obligations such as annulment, rescission, fulfillment of a resolutory condition, and prescription are governed elsewhere in this Code." On the matter of prescription, the applicable provision is Art. 1139 of the Civil Code which says that "actions prescribe by mere lapse of time fixed by law." This necessarily points to Art. 1147 of the Civil Code which says that an action for defamation must be filed within one year, otherwise it is barred forever. To clinch the whole matter, the Court finally ruled that the broad term "defamation" used in Art. 1147, in the absence of any other specific provision, includes libel.[2]

Salvador J. Valdez, Jr.

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Civil Procedure—*The Court of First Instance has the power to set aside its order for the execution of a judgment of the justice of the peace court in an unlawful detainer case if it finds that the question raised in said case is one of ownership.*

JOSE GARCIA v. Hon. EMMANUEL MUÑOZ, et als.
G.R. No. L-11617, April 30, 1058

The petitioner in this case, Jose Garcia, brought an action before the justice of the peace court to eject the defendants, Mrs. Roman Peña and Leonides Peña, from a piece of land and to collect from them supposedly unpaid rentals

[1] Under Art. 33 of the Civil Code in case of defamation, a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the offended party and such civil action shall proceed independently of the criminal prosecution.

[2] In Carandang v. Santiago, et al., 51 O.G. 2878 (1955) the terms "defamation," "fraud," and "physical injuries," as used in Art. 33 of the Civil Code were held to have been used in their generic and ordinary meaning.

amounting to ₱170 and a monthly rental of ₱5.[1] Garcia testified that the defendants occupied the land for a nominal rent of ₱5 a month and that defendants had been paying rentals regularly until April 1952 when they became irregular in their payment. Defendants denied that they ever rented the premises or that they were paying rents to him until he brought this action.[2] They alleged that they had constructed their house on the land for 10 years before without having been molested by the plaintiff. They also presented a representative of the Bureau of Lands who testified that the questioned lot is covered by a sales application in the name of the husband of Mrs. Peña; that an opposition to this application was filed by Garcia.[3]

The justice of the peace believed the plaintiff and a judgment was rendered against the defendants. The latter appealed to the CFI of Dagupan, Hon. Muñoz presiding.

Since the defendants did not file a supersedeas bond[4] nor pay the monthly rental[5] of ₱5 ordained by the justice of the peace, the plaintiff moved for the execution of the judgment. Order of execution was issued on October 19, 1956; then on November 2 a writ of possession was issued. Thereupon the sheriff was commanded to place the plaintiff in possession of the land in question. The defendants were given 15 days to remove their house.

On November 3, 1956 defendants moved to reconsider the order of the judge on October 19 alleging that the action that had been instituted is in fact not an unlawful detainer but one involving ownership or the right to the possession of the land.[6] Strong evidence were presented to bolster their claim.[7]

Upon hearing of the motion the respondent judge on November 16, 1956 set aside the order of execution on October 19 for the reason that the defend-

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[1] The justice of the peace has exclusive jurisdiction over forcible entry and detainer cases brought within one year after the unlawful deprivation or withholding of possession has taken place. RULES OF COURT, Rule 72, sec. 1; Secs. 44(b) and 88, Republic Act No. 296 (The Judiciary Act of 1948, June 17, 1948).

[2] Before any such action could be brought there must be a demand. RULES OF COURT, Rule 72, sec. 2. Mere failure to pay rent does not *ipso facto* make unlawful the tenant's possession. Zobel v. Abreu, G.R. No. L-7663, Jan. 31, 1956. A demand is a prerequisite to an action for unlawful detainer when the action is for failure to pay rents due or to comply with the condition of his lease. Santos v. Rivas, et al., G.R. No. L-5910, Feb. 8, 1955. Such a demand is jurisdictional and if none is made, the case falls within the jurisdiction of the court of first instance. 2 MORAN, COMMENTS ON THE RULES OF COURT, 299 (1957) citing a good number of cases. However, where the action is to terminate a lease because of the expiration of the term, demand is not necessary. Thus, in the case of Co Tiamco v. Diaz, et al., 75 Phil. 672 (146), the Supreme Court held that when the lease had been made for a fixed period the lease ceases upon the expiration of its term without the necessity of any notice to the tenant who thenceforth becomes a deforciant withholding the property unlawfully after the 'expiration or termination of the right to hold possession by virtue of any contract, express or implied.' "

[3] Apparently the defendants interpose in their answer the claim of ownership or the right to possession. This fact however, will not divest the justice of the peace of jurisdiction. Supia v. Quintero, 59 Phil. 312, 321 (1933). An exception may be made when the evidence shows that the question of ownership is so necessarily involved that it would be impossible to decide the question of physical possession without first deciding the question of ownership. In this case the justice of the peace court will lose its jurisdiction over the case. Torres v. Peña, et al. 78 Phil. 231 (1947); Cruz v. Garcia, 79 Phil. 1 (1947).

[4] Ordinarily, the supersedeas bond should be filed with the justice of the peace court. However, the same may be allowed to be filed in the Court of First Instance. Tolentino v. CFI, 75 Phil. 282 (1945).

[5] RULES OF COURTS, Rule 72, sec. 8.

[6] In unlawful detainer case the only issue involved is the physical possession of real property—possession *de facto* and not *de jure*. II MORAN, *op. cit.* 289. Evidence of title is admissible only for the purpose of determining the character and extent of possession and damages for detention. RULES OF COURT, Rule 72, sec. 4; Sec. 88, Rep. Act No. 296.

[7] It was argued that the land now in question was formerly a part of the U.S. military reservation which was turned over to the Philippine Government after the declaration of independence and that it was thereafter placed in the possession of the Bureau of Lands for disposition and administration; and that defendants were in actual possessions of the portion questioned by reason of a sales application filed by them.

ants raised question of ownership of the land[8] and since they have filed a supersedeas bond to pay a certain amount pending appeal.[9]

Dissatisfied, Garcia brought this original action to compel the court of first instance to immediately order the execution of the judgment of the justice of the peace court.[10]

The petitioner did not convince the Supreme Court on the face of its finding that "from the records of the case there are grounds to believe that the judge below must have found that the real question presented in the case was one of ownership, as he was satisfied that the land that defendants were occupying is a portion of a public land for which they had applied for sale from the Bureau and Lands . . . and that the case did not involve the failure of a tenant to pay rents as the justice of the peace court had found." The lower court was therefore justified in setting aside the order of execution under its general power to amend its order to make them conform to law and justice.[11]

Hilario G. Davide, Jr.

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Civil Procedure—*The court may, upon application of one party or of its own motion, direct a commissioner to examine accounts involved in a counterclaim and such examination may be conducted even without notice and hearing.*

FERNANDO FROILAN v. PAN ORIENTAL SHIPPING CO., COMPAÑIA MARITIMA, LOURDES REYES CAGUIAT

G.R. No. L-9791, April 29, 1958

Ordinarily, it is only with the written consent of both parties, filed with the clerk, that the court may order any or all of the issues to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court.[1] However, when the parties do not consent, the court may, upon application of either or of its own motion, still appoint a commissioner in the following cases: (1) when the trial of an issue of fact requires the examination of a long account on either side, (2) when the taking of an account is necessary for the information of the court, and (3) when a question of fact other than upon the pleadings arises in any stage of a case.[2] The court had occasion to apply the latter provision in the present case.

On February 3, 1950, a plaintiff Fernando Froilan filed a complaint in the CFI of Manila against Pan Oriental Shipping Co. for the delivery of a ship. On August 6, 1952, Compania Maritima filed a complaint in intervention, alleging that it is in possession of and the one operating the ship, having purchased it from the plaintiff. Defendant filed an amended answer to the complaint and to the complaint in intervention, setting up certain counterclaims against the plaintiff and intervener, and on April 7, 1954 he filed a motion for reference

[8] Notes 3 and 6, *supra*.

[9] RULES OF COURT, Rule 72, sec. 8. In their motion for reconsideration defendants stated that they would be willing to deposit the sum of P30 and P5 monthly to respond for such damages as plaintiff may be able to recover.

[10] Petitioner bases his claim on Rule 72, sec. 8 and upon a line of decisions to the effect that it is a ministerial duty of the pudge of the court of first instance to order the return of the possession of the land subject of the action for forcible entry and detainer if defendant fails to file a supersedeas bond and pay from time to time the amount of rent the justice of the peace had found to be due in the judgment.

[11] RULES OF COURT, Rule 124, sec. 5(g).

[1] Rule 34, Sec. 1, RULES OF COURT.

[2] Rule 34, Sec. 2, RULES OF COURT

to a commissioner of the issues of fact involved in its counterclaim. This was denied after plaintiff and intervener filed an opposition to it. However, upon *exparte* motion of the defendant, the lower court appointed Enrique Caguiat as commissioner to examine the accounts involved in the counterclaims. The commissioner did not notify the plaintiff and intervener or their attorneys about the meeting of the parties and the place as regards the examination of accounts. On December 1, 1954, the commissioner filed a motion for approval of his fees to which plaintiff and intervener filed their answer alleging that there was no showing whatsoever as to the time, nature and extent of the commissioner's services; that the fee charged is excessive and that as the compensation of the commissioner shall be taxed as costs against the defeated party[3] and the court not having as yet decided the case, the motion is premature. The motion was accordingly held in abeyance but after a motion for reconsideration filed without notice of hearing, the court granted it *exparte* and ordered that ₱4670 be paid by plaintiff and intervener.

Appellant assails validity of the commissioner's proceedings in the examination of the accounts for lack of notice and absence of appellant and intervener. The Supreme Court, however, upheld such proceedings. It noted that the order of the lower court appointing the commissioner solely directed the latter to examine the long accounts involved in the counterclaims. For such purpose and in the absence of a judicial direction to hold hearings, the commissioner, the Court ruled, did not need the presence of the parties.

Speaking of the authority that may be granted to a commissioner, the Rules of Court provides, "the order may specify or limit the powers of the commissioner, and may direct him to report only upon particular acts, or to receive and report evidence only and may fix date for beginning and closing the hearings and for the filing of the report."[4] Under the reglamentary provision, the commissioner may be required to perform only particular task, such as an examination of records of accounts without hearing, especially when such is not necessary. Another point raised by appellant is that Caguiat did not personally make examination of the accounts and prepare corresponding reports and that his services consisted only of reviewing somebody else's work. To this, the Court said that while personal attention is perhaps preferable or even desirable, the same is not essential or required. The paramount consideration is that the commissioner assumes full responsibility for whatever is submitted to the court.

In granting the appellee's motion for reconsideration, however, without notice and hearing, the lower court acted irregularly. Hearing becomes indispensable because of previous registration of opposition. So, the case was remanded for hearing.

Amado A. Bulaong, Jr.

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Civil Procedure—*The dismissal of an action for failure to prosecute is without prejudice where plaintiff's delay or failure to pursue his case is due to a compromise he entered into with the defendant.*

[3] Rule 34, Sec. 13, RULES OF COURT
[4] Rule 34, Sec. 8, RULES OF COURT.

REPUBLIC OF THE PHILIPPINES represented by PHILIPPINE NATIONAL BANK as TRUSTEE v. ISIDRO VILLAROSA

G.R. No. L-11782, April 30, 1958

When plaintiff fails to appear at the time of trial, or to prosecute his action for an unreasonable length of time, the action may be dismissed upon motion of the defendant or upon court's own motion.[1] This dismissal has the effect of an adjudication upon the merits, unless otherwise provided by the court.[2] Hence, it will bar subsequent action on the same subject matter except when the court has declared that the judgment is without prejudice.

On February 15, 1956 a suit for recovery of money was called for hearing before the C.F.I. of Negros Occidental and no one appeared for plaintiff. Having noted that three months before this case came up, on November 9, 1955, plaintiff had also failed to show up and the hearing had to be postponed, the trial judge concluded that plaintiff's repeated absence evinced lack of interest to prosecute its claim. Wherefore, the case was dismissed immediately.

Within thirty days after notice of dismissal, plaintiff's attorney moved for reconsideration explaining that defendant had on February 15, 1956 approached plaintiff for amicable settlement and had deposited ₱800.00 as earnest of good faith and that consequently, plaintiff and defendant had agreed to ask for postponement of the hearing, that in fact, defendant pleaded at the hearing for continuance but was overruled; and that plaintiff's actuation stemmed from no desire to delay judicial proceedings. Movant prayed that at least the order of dismissal be amended by making it "without prejudice". The motion was not opposed by defendant who never contradicted the factual allegations therein made. Nevertheless, it was denied and plaintiff appealed.

The Supreme Court, while emphasizing and upholding the lower court's discretion on the matter of postponements and reiterating the rule that even if the adverse party should agree to a postponement the court is not bound to postpone, nevertheless made exception of the present case. Considering the courts' policy to expedite disposal of litigations and prevent clogging of their dockets, the outright dismissal could not be criticized. But subsequent disclosures, however, should have modified the judge's strictly legal attitude.

Efforts at compromise are favored by law. In one case,[3] it was held that—

> "An action should not be dismissed on a non-suit for want of prosecution when the delay was caused by an arrangement between the parties looking towards a settlement."
>
> "The court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise."

Under the New Civil Code, an article[4] provides:

For this purpose a civil action is suspended if willingness to discuss a possible compromise is expressed by one or both parties.[5]

Observing that plaintiff's action had been pending less than a year; that it was based on written promissory note the execution of which defendant expressly admitted; that his defense rested not on payment, but on the allega-

[1] Rule 30, Sec. 30, RULES OF COURT.
[2] Rule 30, Sec. 30, RULES OF COURT.
[3] Brandt v. Behn Meyer & Co., 38 Phil. 355.
[4] Article 2029, CIVIL CODE OF THE PHILIPPINES.
[5] Article 2030, CIVIL CODE OF THE PHILIPPINES.

tion that although he signed as maker thereof he was in fact a mere guarantor; and considering that defendant's attorney was amenable to or had moved for continuance, the Court ruled that it is equitable to apply its view in *Torrefiel v. Toriano*,[6] which is expressed in the following words:

> "Where it did not appear that the motion for postponement of the trial was due to any deliberate desire on the part of the plaintiffs and intervenors to delay the proceedings or that the action was frivolous and as defendant's attorney had expressly agreed to plaintiff's motion (to postpone), the interest of justice and of the court could have been served with a dismissal of the case without prejudice."

Thus the appealed order is affirmed with the modification that the dismissal will not bar another action on the same subject matter.

Amado A. Bulaong, Jr.

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Civil Procedure—*Substitution of parties; Transfer of interest pendente lite.*

NARIC v. JOSE A. FOJAS, et als.

G.R. No. L-11517, April 30, 1958

Under the Rules of Court substitution of parties to an action is proper in four instances.[1] The fourth instance, transfer of interest pendente lite,[2] is treated in this case.

About the early part of October 1948 defendant Fojas applied to the plaintiff, NARRIC (the old NARIC), for appointment as bonded rice distributor in order to be able to purchase rice on credit from the plaintiff. On October 8, 1948 plaintiff and defendant entered into an agreement wherein the former agreed to allow the latter to obtain rice on credit to the amount of ₱10,000. On October 28 and November 10 of the same year defendant was granted additional credit of ₱10,000 and ₱1,000 respectively. The Alto Surety and Insurance Co., Inc. acted as surety. Until December 23, 1948 Fojas obtained rice on credit with a total value of ₱151,426.46 for which he paid various amounts totalling ₱131,572.40, leaving a balance of ₱20,914.06. On December 29, 1948 plaintiff made formal demand on the defendant to settle his obligation, informing the Alto Surety of said demand. Said balance has never been paid; so plaintiff instituted this action for its recovery. The lower court rendered judgment ordering Fojas and the Alto to pay plaintiff jointly and severally the amount sought with legal interest. Fojas appealed to the Court of Appeals and inasmuch as the value of his counterclaim,[3] which was dismissed by the lower court, exceeds ₱50,000 exclusive of interest and costs, the Court of Appeals certified the case to the Supreme Court.[4]

One of the errors assigned by Fojas is that the lower court "did not acquire or had lost jurisdiction over the person of the present NARIC which

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[6] G.R. No. L-4367, May 2, 1952.

[1] Rule 3, secs. 17, 18, 19, and 20.

[2] Sec. 20 reads: "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

[3] RULES OF COURT, Rule 10, sec. 1. Where a counterclaim is properly interposed, the defendant becomes, in respect of the matter he pleaded, an actor. There will be then two simultaneous action pending between the same parties wherein each is at the same time both a plaintiff and a defendant. Golden Ribbon Lumber Co., Inc. v. Santos, et al. 52 O.G., 1477 cited in FERIA, CIVIL PROCEDURE ANNOTATED, 267 (1956).

[4] Sec. 17(5), Rep. Act No. 296 (The Judiciary Act of 1948, June 17, 1948).

was previously dissolved and substituted by the PRISCO in the case before the decision was rendered by the court below."

This case was originally instituted by the NARIC created in April 1936 Under the Corporation Law, as amended. This body was later merged with the Price Stabilization Corporation (PRISCO) which was created by Executive Order No. 350,[5] which took effect on October 3, 1950. Accordingly, the PRISCO was substituted as party plaintiff in an order of the lower court on November 11, 1950 upon motion of the government corporate counsel.[6]

Subsequently, there was another transfer of interest pursuant to Rep. Act No. 663.[7] Under this Act "all assets and liabilities of the defunct NARIC which were turned over to the PRISCO are hereby transferred to this Corporation" (the new NARIC).[8] No substitution of party-plaintiff was effected after this transfer.

Appellants now argue that since there was no substitution after such transfer, the case should necessarily be dismissed. To support their contention they cite authorities to the effect that when an officer, in whose relation the action is brought, ceases to hold office, his successor must be substituted or else the action will fail.

The Supreme Court ruled that the authorities cited are not relevant in the case for they pertain to situations covered under section 18 of Rules of Court regarding death or reparation of a party who is a government officer.[9] They have no application to mere transfer of interest pendente lite which is governed specifically by Sec. 20 of Rule 3.[10] According to the Court, under this section the present case could be, as it was, prosecuted in the name of the PRISCO as the party plaintiff.[11] "And" the Court stressed, "while the PRISCO subsequently gave way to the new NARIC, the former's continuance as plaintiff merely has the effect, following the doctrine enunciated in *Oria Hermanos y Compañia v. Gutierrez Hmos.*,[12] that said transferor of interest shall act only as sort of trustee for the new NARIC, as its transferee, for any accruing benefit it might derive in the case."[13]

The Supreme Court gives its second reason against the contention of the appellants: "Furthermore, any reference made to the NARIC as merged with the PRISCO could as well be deemed to be a reference to the new NARIC. It is well to mark, in this connection a provision of Rep. Act No. 663 that 'all reference made to the NARIC referred to above (former NARIC merged with the PRISCO) in any act or in any Executive order or proclamation of the President of the Philippines which is still in force shall be deemed a reference to the NARIC created in this Act.'"[14]

Hilario G. Davide, Jr.

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[5] 46 O.G. 10, 4660 (Oct. 1950). Section 12 of said order provides: "The . . . rights, choses in action, obligations, liabilities, and contracts of the NARIC are hereby transferred to, vested in, and assumed by the Price Stabilization Corporation and all their business and affairs shall be liquidated, assumed, and continued by the Price Stabilization Corporation; . . ."

[6] RULES OF COURT, Rule 3, sec. 20.

[7] Approved June 16, 1951. It took effect one month after its approval.

[8] Sec. 1.

[9] See I MORAN, COMMENTS ON THE RULES OF COURT, 78 (1957).

[10] Note 2, *supra*.

[11] It should be noted that the PRISCO was substituted as party plaintiff on November 11, 1950.

[12] 52 Phil. 157 (1928).

[13] This argument would hold water only if the PRISCO continued as such party plaintiff. However, the real situation in this case is different. The assignment of error under consideration and the statement by the Court itself, after analyzing the particular error assigned, that "the first contention of the appellants bears on the alleged lack of jurisdiction of the lower court over the present NARIC," clearly bear out the difference. In other words, the heart of the question is whether the lower court has jurisdiction over the new NARIC in spite of the fact that it was not substituted for the PRISCO.

[14] When the old NARIC was substituted by the PRISCO as plaintiff by order of the lower court on November 11, 1950, what was the effect of such substitution on the old NARIC? Would it not lose its standing in the court? It is worthwhile to note that the case is not one where

Civil Procedure—*Appeal, not certiorari, is the proper remedy when the court has jurisdiction and it commits errors of judgment in the exercise of such jurisdiction; a court cannot interfere by induction with the judgments or decrees of another court of concurrent or coordinate jurisdiction having equal power to grant the relief sought by injunction.*

MANUEL ARANETA and JOSE UY v. COMMONWEALTH INSURANCE CO., et al.

G.R. No. L-11584, April 28, 1958

When any tribunal has acted without or in excess of its jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a petition for certiorari praying that judgment be rendered annulling or modifying the proceedings of such tribunal.[1] It should be noted that for certiorari to be availed of, the error should be jurisdictional and that there is no appeal or other remedy provided by law.

In the instant case both requisites were not present, yet a petition for certiorari was filed and having been denied, petitioners sought to enjoin the execution of the original judgment by injunction.

The Commonwealth Insurance Co., being engaged in insurance and bonding business, issued a surety bond with Manuel Araneta and Jose Uy as principals and the insurance company as surety in favor of De la Rama Steamship Co., Inc., to secure payment of certain freight charges of a shipment of scrap steel, in an amount not exceeding ₱20,000.00. Araneta and Uy executed in turn together with Cathay Co. and Ang Lam & Sons Co. an indemnity agreement in favor of the Commonwealth Insurance Co. binding themselves to indemnify the latter for any such sums as it might be made to pay the De la Rama Steamship Co. under the surety bond.

Araneta and Uy failed to pay the freight charges and upon demand by De la Rama Steamship Co., the surety paid to it the sum of ₱15,000.00. After such payment, guarantors Cathay Co. and Ang Lam & Sons Co. indemnified the surety company the sum of ₱12,000.00 on condition that the guarantors would not be liable anymore for the payment of the balance of ₱3,000.00. Having thus released the guarantors from such balance, the Commonwealth Insurance Co. filed suit against Araneta and Uy for the payment of ₱3,000. Judge Tan of the CFI of Manila with whom the civil case was filed rendered judgment in favor of the surety company and against Araneta and Uy. The latter did not appeal from such decision and instead filed a special civil action in the Court of Appeals for issuance of certiorari to annul the judgment but it was dismissed on the ground that appeal was the proper remedy. The judgment in the original civil case became final and executory and a writ of execution was

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the transferee was *joined with* the original plaintiff upon order of the court as allowed by Sec. 20 of Rule 3 (see note 2, supra.); the situation is one where there is *substitution*. (Emphasis supplied)

Bearing in mind this substitution of party plaintiff and the subsequent transfer of interest from the PRISCO to the new NARIC without the latter being substituted for the former as party plaintiff, we will be forced to repeat the question raised by appellants: Has the lower court jurisdiction over the present NARIC.

The decision of the court does not answer this question. The first reason is based on the assumption that the PRISCO continued as party plaintiff. It therefore failed to meet the issue raised by defendants. (See note 13, *supra*.). The second reason disregards the substitution of party plaintiff by order of the court.

[1] Rule 67, Sec. 1, RULES OF COURT.

[2] Cabigao v. Del Rosario, 44 Phil. 182. See also PNB v. Javellana, G.R. No. L-5270, January

issued. To restrain such execution Araneta and Uy filed the present complaint for injunction, also in the C.F.I. of Manila but with Judge Ysip, alleging that Judge Tan's decision is a nullity the execution of which should be enjoined. It was dismissed on the ground of *res judicata.* Araneta and Uy appealed.

The Supreme Court upheld the decision and dismissed the appeal as clearly without merit. It sustained Judge Ysip in refusing to enjoin the merit of execution issued by a judge of the same court. Quoting from several cases previously decided,[2] the high tribunal reiterated the principle, as follows:

> "It is settled by an overwhelming weight of authority that no court has power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction having equal power to grant the relief sought by injunction. The various branches of CFI of Manila are in a sense coordinate courts and to interfere with each other's judgments or decrees by injunction would obviously lead to confusion and might seriously hinder the administration of justice.

Appellants based their claim on the alleged nullity of the decision of Judge Tan in that he committed error in ordering them to pay the appellee corporation the amount of ₱3,000 knowing that said corporation had released appellants' guarantors, and a release made by the creditor in favor of one guarantor without the consent of the others benefits all to the extent of the share of the guarantor to whom it has been granted.[3] This supposed error, however, is not an error of jurisdiction but if at all, an error of judgment.[4] Not being jurisdictional, such error even if committed does not render the decision void.

When the court has jurisdiction over the parties and the subject-matter and the court commits errors of judgment in the exercise of its jurisdiction, said errors are errors of judgment, correctible and reviewable only by appeal, and if no appeal is taken, the decision, erroneous or not, becomes final and executory and is valid and binding upon the parties.[5]

Judge Tan unquestionably had jurisdiction in this case and if appellants believed his judgment was erroneous, they should have sought its review by appeal. They did not appeal from the decision, hence it became final and executory and is now binding. It is already too late to have such judgment corrected and modified, and present complaint is barred by *res judicata.*

Amado A. Bulaong, Jr.

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Civil Procedure—*Original jurisdiction of the Court of Appeals: If the Court of Appeals has no jurisdiction over the judgment in the main case, it can have no jurisdiction to issue writ of certiorari or writ of injunction to enjoin execution thereof pending appeal.*

VICTORIA D. MIAILHE, et als. v. RUFINO HALILI, et als.
G.R. No. L-12646, April 30, 1958

28, 1953; Montesa v. Manila Cordage Co., G.R. No. L-4559, September 19, 1952; Ongsingco v. Tan, G.R. No. L-7635, July 25, 1955.

[3] Article 2078, Civil Code of the Philippines.

[4] Because appellants were the principal debtors whose obligation was guaranteed by the appellee and were liable to it by virtue of its payment to the creditor. They are, therefore within the application of the law.

[5] Vicente v. Lucas, G.R. No. L-2745, August 31, 1954; Daquis v. Bustos, 50 O.G. No. 5, 1964.

The Court of Appeals shall have original jurisdiction to issue writs of mandamus, prohibition, injunction, certiorari, habeas corpus, and other auxiliary writs and processes in aid of its appellate jurisdiction.[1]

The meaning of the phrase "in aid of its appellate jurisdiction" has already been laid down by our Supreme Court in two cases.[2]

The case under consideration neatly presents the question of whether or not the Court of Appeals has jurisdiction to give due course to a petition for certiorari.

In Civil Case No. 22152 of the Court of First Instance of Manila, Halili was plaintiff and Miailhe, et als. were defendants. The issue raised in his complaint is limited to the question of the just and reasonable monthly rental for the premises he is leasing from defendants. The latter, however, in their counterclaim[3] asked for the payment of all rentals due and unpaid by plaintiff, which, as found by the lower court, amounted to ₱77,400. This amount represents the monthly rentals for more than two years at ₱3,100 per month. Halili was ordered to pay this amount to defendants. He appealed to the Court of Appeals, but inasmuch as the amount involved was more than ₱50,000 (specifically ₱77,400) excluding damages and interest, the appeal was certified to the Supreme Court.[4] In the meantime Miailhe applied for the issuance of a writ of execution pending appeal unless Halili should furnish a supersedeas bond.[5] The trial court granted the application and as Halili failed to furnish the bond, writ of execution was issued on October 22, 1955.

Claiming that the trial court acted without or in excess of its jurisdiction or with grave abuse of discretion in issuing the execution order, plaintiff filed a petition for certiorari[6] with prohibition[7] and preliminary injunction[8] with the Court of Appeals for the nullification of said writ of execution. The petition was given due course and a writ of preliminary injunction was issued, Respondent asked for the dismissal of the petition on the ground that the Court of Appeals has no jurisdiction of the subject matter thereof. The Court refused to dismiss the same, holding that although the main case involves an amount beyond its jurisdiction the issue in the petition for certiorari is simply the alleged grave abuse of discretion committed by the lower court in issuing the writ of execution pending appeal. Having failed to obtain reconsideration[9]

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[1] Sec. 30, Rep. Act No. 296, as amended (The Judiciary Act of 1948, June 17, 1948); RULES OF COURT, Rule 67, sec. 4.

[2] Breslin v. Luzon Stevedoring Co., 47 O.G. 8, 1170 (March 1951); Roldan v. Villaroman, 69 Phil. 12 (1939). In the former case the Supreme Court stated that "A writ of mandamus, prohibition, or certiorari against a lower court is said to be in aid of the appellate jurisdiction of the Court of Appeals within the meaning of Sec. 30 of the Judiciary Act of 1948 if the latter has jurisdiction to review, by appeal or writ of error the final order or decision of the former and said writs are issued by the Court of Appeals in the exercise of its supervisory power or jurisdiction over wrongful acts or omissions of the lower court that are not appealable."

Therefore, if the Court of Appeals has no appellate jurisdiction it could not issue writ of mandamus, prohibition, or certiorari in aid of an appellate jurisdiction which it does not have. In other words, the supervisory jurisdiction of the Court to issue mandamus, prohibition, or certiorari in aid of its appellate jurisdiction must co-exist with and be a complement to its appellate jurisdiction to review, by appeal or writ of error the final order or decision of the lower court in order to have complete supervision over the acts of the latter. II MORAN, COMMENTS ON THE RULES OF COURT, 192-193 (1957).

[3] RULES OF COURT, Rule 10, sec. 1: Where a counterclaim is properly interposed ,the defendant becomes, in respect of the matter he pleaded, an actor. There will be then two simultaneous actions pending between the same partis wherein each is at the same time both a plaintiff and a defendant. Golden Ribbon Lumber Co., Inc. v. Santos, et al., 52 O.G. 1477, cited in FERIA, VIVIL PROCEDURE ANNOTATED, 267 (1956).

[4] See Sec. 17(5) of the Judiciary Act of 1948.

[5] RULES OF COURT, Rule 72, sec. 8.

[6] RULES OF COURT, Rule 67, sec. 1.

[7] RULES OF COURT, Rule 67, sec. 2.

[8] RULES OF COURT, Rule 60.

[9] RULES OF COURT, Rule 54.

of the ruling, respondent filed the present petition for certiorari with the Supreme Court.

The Supreme Court fully agreed with the petitioners that the Court of Appeals erred in holding that it has jurisdiction to entertain the petition in question. Citing Moran and the Breslin and Roldan cases,[10] the Court, through Justice J.B.L. Reyes, concluded that since the amount involved in the main judgment (₱77,400) is beyond the jurisdiction of the Court of Appeals and the appeal therefrom cognizable by, and is in fact pending before, the Supreme Court, so it can have no jurisdiction to issue a writ of certiorari to enjoin execution thereof pending appeal. Otherwise, issuance thereof by said court would be in "aid of an appellate jurisdiction that does not exist."

Hilario G. Davide, Jr.

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Civil Procedure—*A party declared in default does not lose the right to apply for relief, and if such application is denied, to appeal from the order of denial; having filed petition for relief, he is entitled to notice of all further proceedings.*

FILOMENO DIZON v. NICASIO YATCO, JUDGE OF CFI OF RIZAL, PROVINCIAL SHERIFF OF RIZAL and SAMSON YUTAN

G.R. No. L-12202, April 28, 1958

Under the rules of procedure in Courts of First Instance, if the defendant fails to answer within fifteen days after service of summons,[1] the court shall, upon motion of the plaintiff, order judgment against the defendant by default, and thereupon the court shall proceed to receive plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant.[2] This judgment, however, does not preclude the defendant to avail of the ordinary remedy of petition for relief for the correction or modification of the decision. Such is the ruling in this case.

In a civil case filed with the CFI of Rizal, for the recovery of a sum of money, the defendant Filomeno Dizon was declared in default for failure to file an answer and after proof was received in support of the complaint, judgment was rendered against him on November 13, 1956. Learning of this judgment, he filed on January 4, 1957 a petition for relief asking that the order of default be lifted, the judgment set aside and the case allowed to proceed the trial with the admission of the answer and counterclaim attached to the petition. Such petition was denied on the ground that, to quote the lower court's language, "up to the present such order of default has not yet been lifted and therefore defendant has no personality in this case as yet." An amended petition for relief filed before notice of the denial of original petition was also denied. The court having moreover granted plaintiff's motion for execution filed without notice to the defendant durin gthe pendency of the amended petition for relief, the defendant perfected an appeal, but this was also disallowed.

[10] *Supra*, note 2

[1] Rule 9, Sec. 1, RULES OF COURT.
[2] Rule 35, Sec. 6, RULES OF COURT.

A motion for reconsideration was to have been filed but the sheriff was already trying to execute judgment by default, so defendant filed with the Supreme Court a petition for certiorari, praying that the order of execution be set aside and preliminary injunction be issued, *pendente lite*, to restrain its enforcement.

The petition was granted. Although admitting that a party who has been declared in default loses his standing in court, the high tribunal, nevertheless, ruled that such party has the right to apply for relief from default in accordance with rule 38 of the Rules of Court, and if the application is denied, to appeal from the order of denial. The decision states in part:

> "Petitioner did avail of that right by filing his application for relief on time. But the application was denied on the ground that the applicant has as yet no standing in the case as the order of default had not been lifted. Needless to say, the proferred relief under Rule 38 would be but a mockery and a delusion if it could be denied on that ground."

It should not also be overlooked that once a petition for relief provided for in Rule 38 has been filed by the party in default, such party is entitled to notice of all further proceedings.[3] This should be borne in mind in connection with the motion for execution which was granted without notice to the adverse party who, though already in default, had filed his petition for relief. That petition, though denied, was appealed.

In the case of *Monteverde et a lv. Jaranilla et al.*[4] it was announced as a principle "that the court which orders the execution of a judgment by default during the pendency of the perfecting of the appeal taken against the order denying the motion in which it is prayed that said judgment by default beamended, acts in excess of jurisdiction," and also "that the court abuses its discretion in ordering the execution of a judgment from which an appeal is pending, without previous notice to the adverse party and there being no special ground therefore."

These announcements apply to the present case and certiorari was granted.

Amado A. Bulaong, Jr.

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Criminal Law—*Possession of firearm by civilian confidential agent.*

PEOPLE v. LUCERO

G.R. No. L-10845, April 28, 1958

Under the Revised Penal Code a person who acts in obedience to an order issued by a superior for some lawful purpose does not incur any criminal liability.[1] The act to be justified, the order of the superior which is obeyed by the accused must be for "lawful purpose",[2] that is, both the person who gives the order and the person who executes it must be acting within the limits of the law.[3]

In the present case the accused Lucero was commissioned by Lt. Severino de Jesus, assistant intelligence officer of the 20th BCT as a confidential agent

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[3] MORAN, COMMENTS ON THE RULES OF COURT, Vol. 1, 1957 ed., p. 484.
[4] 60 Phil. 297.

[1] Art. 11, par. 6, Revised Penal Code
[2] PADILLA, CRIMINAL LAW, REVISED PENAL CODE, ANNOTATED 160 (1957 ed.)
[3] People v. Wilson, et al., 52 Phil. 919 19).

to make a surveillance and effect the killing or capture of Angel Aviso, alias Commander MORI. In the performance of this mission he was authorized to use temporarily revolver caliber 38. Later he was caught on the municipality of Navotas, Rizal in possession of said revolver and soon, an information was filed against him for illegal possession of firearm. The trial court found him guilty. On appeal the defendant claimed exemption from criminal liability because of his appointment as civilian confidential agent to make a surveillance and effect the killing or capture of Commander MORI and that the firearm was given to him for a lawful purpose and within the limits of the law.

The Supreme Court upheld the contention of the accused. It ruled that under the circumstances of the case, the granting of the temporary use of the revolver to the accused which was a necessary means to carry out the lawful purpose of the commander, must be deemed incident in the duty and power of the batallion commander to effect the capture of a Huk chief. As stated by Justice Labrador:

> "This court can take judicial notice of the fact that the practice of appointing civilians in the apprehension and arrest of Huks has been resorted to many times with success. If a police officer in effecting arrest or in complying with his official duty can enlist the aid of civilians, so should officers of the army entrusted with the capture or apprehension of Huks. The designation and appointment of the defend-appellant as informer by the battalion commander was therefore within the latter's lawful authority . . . the right of the military commander entrusted with the duty of effecting the arrest or capture of a Huk commander should necessarily include, besides the appointment of the civilian informer the power to provide the latter with such weapons as are necessary to protect the informer and help him carry out the mission entrusted to him." [4]

Efren C. Gutierrez

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Criminal Law—*Oral defamation; complaint not necessary.*

PEOPLE v. FLORES

G.R. No. L-11022, April 28, 1958

In ordinary criminal action, the complaint by the offended party is indispensable and the information by the prosecuting officer is enough to confer jurisdiction upon the court to try the defendant charged with the crime. The Revised Penal Code, however, contains certain exceptions to this rule. The last paragraph of Art. 360 provides: "No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio shall be brought except at the instance of and upon complaint expressly filed by the offended party." [1]

Therefore, an oral defamation imputing the commission of a crime that may be prosecuted de oficio, the complaint of the offended party is not necessary. The Supreme Court in one of its decisions also ruled that a libel imputing a defect or vice real or imaginary which does not constitute a crime but

[4] Justice Reyes with whom Chief Justice Paras concurred, dissented from the majority opinion, stating that the mission "to effect the killing" of Angel Aviso is patently illegal and cannot constitute valid authority for bearing firearms. While Commander Mori may be a rebel, no one may validly authorize another to procure his killing without due process. It would be authority to commit murder.

brings disrepute, scorn, or ridicule or tends to cause him dishonor discredit or contempt does not come under the last paragraph of Art. 360.[2]

In the present case, the defendant Flores was charged in the CFI, of Leyte with grave oral defamation for having uttered the following words: "Ikaw, ma-o gayod: Tikasan ka' kwatan ka' Lupigon ka' Mangi-ngilang ka' Nahigam ka na gayud ug panikas. panlupig, pangilag! (English: You are like this: You are a cheater! You are a thief! You are an oppressor! You are a land grabber! You have accustomed to cheating, stealing, oppressing, grabbing!).

The trial court acquitted the accused upon the ground that although he had made the slanderous imputations it had not been established that the action was instituted upon a complaint filed by the offended party.

The prosecuting officer appealed contending that a complaint by the offended party is not indispensable to the prosecution for crime of oral defamation, when the defamatory words uttered, by the accused constitute an imputation either of a crime that may be prosecuted de oficio (such as that of stealing)[3] or of a vice or defect, not constituting a crime (such as that of being an oppressor, a land grabber or a cheater) tending to cast dishonor upon the offended party.[4]

The Supreme Court ruled that this contention is well-taken. However, since the lower court had jurisdiction over the accused who has been once in jeopardy of punishment, then the appeal by the prosecution placed the defendant twice in jeopardy of punishment for the same offense.[5]

Efren C. Gutierrez

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Criminal Law—*Lack of instruction is not a mitigating circumstance in case of robbery: Uncontrollable fear or compulsion of an irresistible force to be a valid defense should be based on real, imminent fear for one's life or limb: Voluntary surrender to the authority or its agent must be by reason of the commission of the crime for which one is prosecuted.*

PEOPLE v. SEMAÑADA

G.R. No. L-11361, May 26, 1958

This is an appeal[1] from a judgment finding defendant-appellant Semañada guilty of the crime of robbery with homicide,[2] with the attendance of three aggravating circumstances and no mitigating circumstance to offset the same and therefore sentenced to die in the electric chair.

In the instant case, it appears that on or about 6:00 o'clock in the evening of June 12, 1952, Felix Semañada, then 19 years of age with two other Huks, Commander Wennie and Heling, all armed went to the house of the spouses Serapio Villate and Nieves Magtibay at Barrio Sastre, Gumaca, Quezon. Villate was brought down to a distance of about an arm's length from the

[1] The crimes which cannot be prosecuted de oficio are those enumerated in Art. 344, Revised Penal Code.
[2] People v. Santos, et al., G.R. Nos. L-7316 & 7317, December 19, 1955.
[3] Gorostiza v. The People of the Phil., G.R. No. L-909k, August 28, 1956.
[4] People v. Anil, G.R. No. L-8993, April 27, 1956.
[5] People v. Pomeroy, G.R. No. L-8229, November 28, 1955.

[1] See Rule 118, section 9 of the Rules of Court.
[2] As defined and punished under Article 294 par. I of the Revised Penal Code.

house and hogtied by Wennie and Heling with a string used for fishing. While they held Villate, Semañada stabbed him several times with a sharp pointed bolo measuring about a palm's length. The torture lasted for about thirty minutes causing the victim to cry in agony. Nieves, the wife of the victim, actually saw the stabbing from the opening of an upstair window but when she ran to assist her husband, she was hit by the butt of a gun. After the killing, Semañada and his companions ransacked the couple's wardrobe, and took the shotgun of the deceased valued at ₱250.00 and other merchandise in their store and money of a total value of ₱900.00. Villate had fifty-one wounds in all but only one was fatal.

The widow kept silent as to the identity of Semañada until he surrendered to the authorities in Nagcarlang, Laguna on December 5, 1955 and explained that the reason for her long silence was fear of liquidation by Semañada if the latter would learn of her charge against him.

Since defendant did not appeal, the Court of First Instance of Quezon brought it for review. Among the grounds for review raised were the following: That Semañada acted under the influence of uncontrollable fear or compulsion of an irresistable force,[3] that the accused should have been extended the benefit of the mitigating circumstance of lack of instruction, also for having acted under the influence of grave fear not entirely uncontrollable under paragraph I. Article 13,[4] that of the voluntary surrender of the accused to the authorities on December 5, 1955.[5]

The Court held that as to the circustance of lack of instruction, there is evidence to show that Semañada has intelligence worthy of a lawyer considering his ability, for one unschooled, to distinguish between implication and innuendos. But this is not material to the instant case, because, lack of instruction is not mitigating in cases of robbbery,[6] although it might be under certain situations in cases of murder and homicide.[7]

As to the circumstance of uncontrollable fear, the Court found out that there is no evidence on record showing the presence of such. As was held in *People v. Quilloy*,[8] uncontrollable fear should not be inspired by speculative, faciful or remote fear. A person should not commit a serious crime on account of a flimsy fear.

The surrender of Semañada was not by reason of the crime but was motivated by his desire to change his way of life from that of a Huk to a peaceful citizen.[9]

The aggravating circumstances of treachery, dwelling and cruelty, by deliberately and inhumanly increasing the suffering of the victim, were present but the penalty imposed was life imprisonment.[10]

Nelly A. Favis

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[3] See Article 12 pars. 5 and 6 of the Revised Penal Code.
[4] Article 13, par. 1 of the Revised Penal Code.
[5] Article 13, par. 10 of the Revised Penal Code.
[6] See U.S. v. Pascual, 9 Phil. 491 (1908; People v. Melendrez, 59 hil. 154 (1933); People v. De la Cruz et al., 77 Phil. 44 (19)
[7] People v. Taluk et al., 60 Phil. 696 (19). People v. Hubero, 61 Phil. 64 (1934).
[8] G.R. No. L-2313, January 10, 1951.
[9] People v. Sakam, 61 Phil. 27, 33-34 (1934).
[10] R.A. 296, section 9.

Criminal Law—*In case of error of the trial court in the imposition of penalty to the benefit of the accused, error may be minimized upon refusal of the Department of Justice and the prison authorities to release the person until the power penalty is served.*

PEOPLE v. ORTIZ

G.R. No. L-12287, May 29, 1958

Suppose the trial court erred in imposing the proper penalty and such penalty imposed is favorable to the accused and the latter does not appeal, is there a remedy to correct the mistake? [1]

Such question was answered in the instant case.

The facts of the case are as follows: On the night of April 8, 1950, the residents of the two houses in barrio Batal, Santiago, Isabela were the victims of the wrongful acts of the accused. In one house while Victorio Manuel and his wife, Matea and their minor children were asleep, two armed men broke into their home and by force and intimidation, took Victorio down the house and at some distance therefrom, tied him to a post, where other malefactors guarded him. Then one of the intruders returned to the house, demanded money from Matea who answered that they had none. After asking her if she had just given birth, and upon answering in the affirmative, he brazenly expressed his desire to have sexual intercouse with her. She pleaded with him, asking him to spare her, specially because of her condition but in answer to her pleas, he snatched the infant she held in her arms, and violently pushed her. She fell on her back and thereafter, he satisfied his lust. Thereafter another male factor came up when the first one went downstairs. He opened the couple's trunk and took therefrom a woolen blanket and two pairs of pants, which he proceeded to deliver to another companion, who stood on the stairway and whom he addressed as "Segeant". After doing this, he returned to the room and attempted to rape Matea but "Sergeant" ordered him out of the house. "Sergeant" had sexual intercourse with Matea also. Then, later another malefactor came up the house and took a blanket, a khaki cloth, a flashlight and a necklace and again intimidated his desire to have carnal knowledge with Matea but because of her pleas he desisted and went away with the loot.

The malefactors next entered the neighboring house of the spouses Ricardo Doctolero and Gregoria where they did the same thing. Four of the robbers raped Gregoria in spite of the fact that she told them that she was already eight months in the family way. They took from the house a pair of sharkskin pants and another pair of khaki pants, two cavans of rice and two packages of safety matches and four cavans of palay.

The trial court sentenced both to an indeterminate sentence of not less than 10 year, 2 months and 21 days of prision mayor nor more than 18 years, 8 months and 1 day of reclusion temporal. The two accused appealed the decision to the Court of Appeals. Pending appeal therein, Ortiz moved for the withdrawal of his appeal and his motion was granted, thereby leaving Lopez as the lone appellant. The Court of Appeals found that the crime of robbery with rape had been committed by Lopez and Ortiz with the attendance of the aggravating circumstances of nighttime dwelling and with the aid of armed men, as against Lopez, with the additional aggravating circumstance of reci-

[1] Such situation arises when there are more than one accused, in a particular case punished by the same penalty and while the others appeal, one of the accused does not.

divism, without any mitigating circumstances to offset the same, concluding that the imposable penalty was reclusion perpetua.[2] Hence, the case was certified to the Supreme Court.[3]

The Supreme Court affirmed the findings of the Court of Appeals so that the penalty should have been imposed by the trial court in its maximum degree, namely reclusion perpetua.

As to the erroneous application of the penalty to Ortiz, which can no longer be changed by virtue of the withdrawal of his appeal, the Court said:

> ". . . But the consequences of the error and the miscarriage of justice may be minimized if the Department of Justice and the prison authorities refuse to release him upon his service of the minimum prison sentence of ten years, but require him to serve the maximum, subject of course to regulations about allowance for good conduct."

Nelly A. Favis

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Criminal Law—*The circumstance of evident premeditation, although not applied in simple robbery, is taken into consideration in robbery with homicide: Conspiracy may be shown even if one of the co-accused is not present at the killing.*

PEOPLE v. CRUZ, et als.
G.R. No. L-8776, May 19, 1958

Premeditation, in its legal sense implies a deliberate planning of the act before executing it. It involves cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[1]

In the case of *People v. Yturriaga*[2] the rule was reiterated that the circumstance of evident premeditation[3] must be evident and not merely suspected, by which is meant "a period sufficient in a judicial sense to afford opportunity for meditation and reflection and sufficient to allow the conscience of the actor to overcome the resolution of his will if he desires to harken to its warnings."

As a general rule, the presence of the circumstance of evident premeditation is not considered in crimes against property like in robbery and theft since it is inherent in the commission of said crimes.[4]

Is evident premeditation considered in robbery with homicide? Yes, when there has actually been previously concerted among the culprits a deliberate and heartless intention to cause death.[5]

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[2] Article 294, par. 2 of the Revised Penal Code states: Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
. . . 2. The penalty of reclusion temporal in its medium period to reclusion perpetua, when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of article 263 shall have been inflicted.
[3] See the Judiciary Act of 1948.

[1] People v. Durante, 53 Phil. 363 1929.
[2] 47 O.G. (Sup. 12) 166.
[3] See Article 14, par. 13, Revised Penal Code.
[4] U.S. v. Castroverde, 4 Phil. 246 (1905); U.S. v. Herman, 4 Phil. 306 (1905).
[5] U.S. v. Landasan, 35 Phil. 359 (1916).

This rule has been reaffirmed in the above-mentioned case.[6] Here, Antonio Cruz, one of the appellants is the nephew of the deceased, Mariano de Guzman. In April, 1954, Antonio was sent by his uncle, De Guzman to Leyte to buy second-hand jeeps, spare parts and old materials considered as "junk". He arrived in Tacloban on April 23 and he stayed in the house of Epifania Moldes, a sister of the other appellant, the latter becoming a close friend of Antonio. On April 28, Cruz sent a telegram in Quezon City to his uncle asking the latter to send or bring with him ₱1,800.00. De Guzman arrived on May 6 by plane. Both De Guzman and Cruz stayed at the Leyte Hotel until May 9. Thereafter, uncle and nephew transferred to the boarding house of Froilan Creer at Veteranos Street. Moldes asked Cruz who was the man with him and the latter told him that he was his uncle but that he hated him because he had treated him unfairly and Moldes said to him in Tagalog: "Bakit hindi mo tirahin?" Cruz said that he could not do it himself and asked Moldes if the latter knows of someone who would do it, Cruz was ready to pay ₱200.00. Rubillos, another appelant was the person willing to kill De Guzman. Moldes was the one who chose the place of the killing.[7]

So that in the afternoon of May 11, 1954, Cruz invited his uncle for a ride to a place outside of Tacloban City where he said they could eat chicken and young coconuts and that there was supposed to be a second-hand weapons carrier there for sale. De Guzman accepted the invitation and he, and Cruz, Moldes, Rubillos and Saldivia, the latter being a nephew of Rubillos, took a passenger bus bound for Bagahupi where Rubillos' uncle lived. At a place between kilometers 15 and 16, within the sitio of Tagpuro, Cruz, De Guzman and Rubillos got down and ate in the house of the brother-in-law of Rubillos while Moldes and Saldivia continued the trip to Bagahupi. Between 7:00 and 8:00 o'clock that evening, the trio left Moldes and Saldivia in the house of Rubillos' uncle. After supper Cruz suggested that they return to Tacloban City and he, De Guzman, Rubillos and Saldivia walked along the highway.[8]

According to the testimony of Saldivia, who was utilized as a State witness, at a place between kilometers 15 and 16 where there were no houses Cruz made signs to Saldivia. The latter with a wooden club hit their unsuspecting victim a blow on the head and on the arm. Cruz wrestled the club from Saldivia and struck his uncle at least twice. De Guzman fell to the ground face downward. Then Rubillos with a bolo stabbed De Guzman at the back when Cruz called Rubillos to do his part. Cruz then removed the victim's wrist watch and extracted from his pants De Guzman's wallet. The next day, May 12, the body covered with palawan leaves was discovered by a barrio lieutenant.

The Court said that there is no doubt that the crime was robbery with homicide. The telegram sent by Cruz, his admission in court that his uncle had with him at least ₱1,200.00, the fact that his companions were made to understand that De Guzman went to Tacloban to buy second-hand jeeps, spare parts, etc. and the act of Cruz in taking the wrist watch and money from the person of the victim immediately upon being killed all lead to the conclusion that the crime was robbery with homicide.

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[6] The requisites of evident premeditation as mentioned in People v. Leaño et al. (C.A.), 36 O.G. No. 53, p. 1120 are: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has lung to his determination; (3) a sufficient lapse of time between the determination and the execution, to allow him to reflect upon the consequences of his act.

[7] Presumably the three men met prior to the killing to plan the details.

[8] It is presumed that De Guzman was assured that there was still available transportation by bus at that hour for said city.

The following aggravating circumstances were present: evident premeditation, nighttime, superior strength, reward or price and craft.[9]

Was there conspiracy? The Court held that, although Moldes was not himself present at the time of the killing, he is liable as the other conspirators. This is shown by the circumstances prior to the killing: the fact that Cruz stayed in the house of Moldes' sister, the fact that the two men became friends and were always seen together eating in restaurants and elsewhere, the secret conversations among the four appellants in a resaurant apparently on confidential matters relative to their plan, transferring from one table to another whenever the waitresses approached or were near them. Also the fact that Moldes was the one who suggested Rubillos to Cruz and further that he was the one who selected the place for the crime. He received also ₱50.00 for his efforts.

Rubillos, Moldes and the mastermined Cruz were, therefore, sentenced to death, there being no mitigating circumstance to offset the mentioned aggravating circumstances.

Nelly A. Favis

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Criminal Procedure—*Information; when designation of offense not necessary.*

PEOPLE v. AGITO

G.R. No. L-12120, April 28, 1958

The Rules of Court require that a complaint or information should, whenever possible, state the designation given by the statute to the offense in addition to the statement of the acts or omissions constitutive of the offense, and if there is no such designation, reference should be made to the section or subsection of the statute punishing it.[1] However, it has been established in a long line of cases that, where the facts pleaded are clearly constitutive of a specific offense, noncompliance with the above requirement of the Rules is merely a defect of form which does not prejudice the substantial rights of the defendant, since "the real nature of the crime charged is determined not by the title of the complaint, nor by the specification of the provision of the law alleged to have been violated, but by the facts recited in the complaint or information."[2] This is but just, as the designation of the crime by its technical name in the caption of the complaint or information is merely the fiscal's conclusion of law and in no way necessary for the protection of the substantive right of the accused nor for the effective preparation of his defense.[3]

The present case is a reiteration of this well-settled rule.

Charged with triple homicide and serious physical injuries through reckless imprudence before the Court of First Instance of Occidental Mindoro,

[9] Craft involves intellectual trickery or cunning on the part of the accused.

[1] Sec. 7, Rule 106

[2] MORAN, COMMENTS ON THE RULES OF COURT, 597-598 (1957), citing the following cases: People v. Macadaeg, G.R. No. L-4316, May 28, 1952; People v. Oliveria, 67 Phil. 427 (1939); U.S. v. Burns, 41 Phil. 418 (1921); U.S. v. Ondaro, 39 Phil. 70 (1918); U.S. v. Cabe, 86 Phil. 728 (1917); U.S. v. Vega, 31 Phil. 450 (1915); Davis v. Director of Prisons, 17 Phil. 168 (1910); U.S. v. Tryes, 14 Phil. 270 (1909); U.S. v. Supila, 13 Phil. 671 (1909); U.S. v. Peralta, 8 Phil. 200 (1907); U.S. v. Li-Dao, 2 Phil. 458 (1903).

[3] People v. Cosare, G.R. No. L-6444, Aug. 25, 1954.

Simplicio Agito pleaded guilty. Whereupon, the court found him guilty as charged, applying the Revised Penal Code[4] on violation of the Automobile Law.[5] Accused appealed questioning the propriety of the penalty imposed by the trial court, contending, *inter alia*, that as the information does not allege in so many words that he committed a violation of the Automobile Law, the court erred in imposing upon him the penalty prescribed in the Revised Penal Code on the matter.[6]

The information filed against the accused reads:

> "That on or about the 7th day of January, 1954, at about 8:30 o'clock in the morning on the national road between Magurao and Abra Ilong . . . within the jurisdiction of this Honorable Court, the above-mentioned accused, did then and there unlawfully and/or acting carelessly without taking the necessary precaution to life, while driving Baby Bus Jeniffer bearing plate No. T-4820 and while bypassing another truck in full speed, hit a coconut tree thereby completely smashing the bus he was driving and causing the instantaneous death of . . . (three named persons) . . . causing serious physical injuries to . . (three named persons) . . ."

Affirming the penalty imposed by the trial court, the Supreme Court, Mr. Justice Felix Bautista Angelo penning the decision, made the following observation on the information above set forth:

> "While it is true that the information does not designate the specific provision of the law which has been violated, or does not actually allege that the accused has committed a violation of the Motor Vehicle Law, yet it is clear that the facts as described therein are such that one cannot be mistaken that they constitute a violation of that law for actually it alleges that because of the reckless or unreasonable fast driving of appellant an accident occurred resulting in the death of the victims therein mentioned. The information states the facts and circumstances constituting the crime charged in such a way that a person of ordinary understanding may comprehend their import and meaning."

Nicodemo T. Ferrer

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Criminal Procedure—*Effect of motion to quash on ground that no offense is charged; No double jeopardy on appeal by Government from dismissal of case by the Court of First Instance on motion to quash interposed by accused before arraignment or plea therein but after trial and conviction in the Municipal Court.*

PEOPLE v. SEGOVIA

G.R. No. L-1174, May 28, 1958

Upon the perfection of an appeal, the proceedings and judgment of the justice of the peace or municipal court are vacated. The case is then tried *de novo* in the Court of First Instance as if it were originally instituted there-

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[4] Art. 365, par. 6, sec. 2, which provides: "When, by imprudence or negligence and *with violation of the Automobile Law*, the death of a person shall be caused, in which case the defendant shall be punished by *prision correccional* in its medium and maximum periods."

[5] Act No. 3992 (Motor Vehicle Law), sec. 67 (d), as amended by Rep. Act No. 587, sec. 16(d), which provides: "Sec. 16. Section sixty-seven, article one, Chapter four, of Act Number thirty-nine hundred and ninety-two, is hereby amended to read as follows: . . . '(d) If, as the result of negligence or reckless or unreasonably fast driving any accident occurs resulting in death or serious bodily injury to any person, the motor driver at fault, shall, upon conviction be punished under the provisions of the Penal Code.' "

[6] Accused was sentenced to suffer an indeterminate penalty of one year and one day to three years and six months and twenty-one days, with costs.

in.[1] The question arises as to what extent the appealed judgment and proceedings are actually vacated, in view of the fact that the Supreme Court has invariably held that the proceedings in the inferior courts were not considered wiped out.[2]

Where the accused appeals from the pudgment of conviction in the justice of the peace or municipal court and reiterates his motion to quash before arraignment or plea in the Court of First Instance, on the ground that it does not allege the necessary elements to constitute the crime charged in the information, may the Government appeal from the judgment of the Court of First Instance sustaining the motion and dismissing the case?

This was the issue involved in the present case, and the Supreme Court answered in the affirmative. Here, the facts involved are a little different from those of the previous cases decided by the Supreme Court on the same point. Charged with malicious mischief in an information filed before the Municipal Court of Legaspi, to which he pleaded not guilty, the accused, Liborio Segovia, after the prosecution has presented its evidence, moved to quash the information on the ground that the prosecution failed to prove all the elements of the crime charged. The motion was denied, the accused presented his evidence, and the court convicted him of the crime charged. On appeal from this decision to the Court of First Instance, the accused reiterated his motion to quash on the same ground, and this time the court sustained the motion, dismissed the case, and cancelled the bond for his provisional release. The Government appealed.

Analyzing the information, the Supreme Court decided the case by holding that the trial court erred in sustaining the defendant's motion to quash the information, taking cognizance of the rule that "the above ground imports a hypothetical admission of the facts alleged in the information but challenges their sufficiency for failure to meet the essential requisites of the offense as specified by substantive law."[3] The Court, thus, upheld the right of the Government to appeal the case without thereby placing the accused in double jeopardy.

Mr. Justice Felix Bautista Angelo, speaking for the majority, said:

> "This claim (of double jeopardy) ignores the fact that he appealed from the judgment of conviction by the Municipal Court of Legaspi. The rule is that when an appeal has been perfected, the judgment of the justice of the peace or municipal court is vacated and the case is tried *de novo* in the court of first instance *as if it were originally instituted therein.*[4] No new information need be filed in the latter court in order that it may acquire jurisdiction to try the case.[5] If the case, on appeal by the accused, is as originally instituted, and the motion was filed *before arraignment or plea,* it is obvious that the dismissal of the case was no bar to appeal because it does not place the accused in jeopardy under Section 9, Rule 113, of the Rules of Court. The claim is therefore without merit."

Mr. Justice Alfonso Felix, with whom Chief Justice Paras concurred, wrote a strong dissenting opinion, citing the cases of *People v. Doyle*,[6] *People v. Fa-*

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[1] RULES OF COURT, Rule 119, sec. 8.
[2] NAVARRO, CRIMINAL PROCEDURE 867 (1952, citing hte following cases: People v. Fortuno, 73 Phil. 597, 598 (1942); People v. Salapare, 69 Phil. 162, 164-165 (1939); People v. Javier, 64 Phil. 414, 417-418 (1937); People v. Bawasanta, 64 Phil. 409, 411-412 (1937); People v. Herminio, 64 Phil. 405, 407 (1937)
2 MORAN, COMMENTS ON THE RULES OF COURS 872 (1957).
[3] 2 *Id.* at 762
[4] RULES OF COURT, Rule 119, sec. 8
[5] People v. Cu Hiok, 62 Phil. 501 (1935); Crisostomo v. Director of Prisons, 41 Phil. 868 (1921).
[6] 54 Phil. 862 (1930).
[7] 49 Phil. 206 (1926).
[8] 64 Phil. 403 (1937)
[9] 64 Phil. 409 (1937)

jardo,[7] *People v. Herminio,*[8] *People v. Bawasanta,*[9] and also the cases of *People v. Sy Chay*[10] and *People v. de la Peña.*[11] Said Justice Felix:

> ". . . It cannot be denied that the defendant was prosecuted and convicted of the offense charged in a Court of competent jurisdiction and that his conviction therein after he had pleaded not guilty to the charge and after evidence was submitted in the case, constitutes, *in the language of the Rules of Court*, a bar to another prosecution for the same offense even though he may have been latter acquitted thereof on appeal to the proper Court of First Instance. It is true that the defendant appealed from the decision to the lower Court; that, for procedural purposes, the decision convicting the defendant of such offense was vacated; and that the elevation of the case to the Court of First Instance for trial *de novo* was upon the instance and on appeal of the very defendant, but all this succession of events cannot by any means obliterate nor wipe out facts that have already existed and brought to life, a *metaphysical* impossibility that even our Creator cannot accomplish, so that once the defendant is acquitted or the case dismissed in the upper Court under the circumstances of the case at bar, he is exonerated forever and the prosecution of his case cannot be subject to further proceedings."

Nicodemo T. Ferrer

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Labor Law—*The Court of Industrial Relations has no jurisdiction over a petition filed by former employees and workers for the recovery of unpaid salaries and wages.*

ROMAN CATHOLIC ARCHBISHOP OF MANILA v. HON. JIMENEZ YANSON, ET ALS.

G.R. No. L-12341, April 30, 1958

ELIZALDE & CO., INC. v. HON JIMENEZ YANSON, ET ALS.

G.R. No. L-12345, April 30, 1958

On April 6, 1954 Graciano Diaresco and 32 other persons, former employees and laborers in Hda. San Jose and the Philippine Milling Co., administered by the Elizalde and Co., Inc. for the owner, the Roman Catholic Archbishop of Manila, filed a petition with the Court of Industrial Relations against these three entities for the recovery of alleged unpaid salaries and wages for various periods between 1942 and 1947. The Roman Catholic Archbishop and the Elizalde and Co. each filed a motion to dismiss the petition on the ground that, among others, the Court has no jurisdiction over the case. The judfie who was assigned to hear it denied the motion; and the court in banc, with two judges dissenting, affirmed the denial. The court said that it has jurisdiction since the claim of back salaries a ndwages "grow out from employer and employee relationship."

Petitioners filed the present petitions, each of which seeks for the annulment of the order denying their motion to dismiss. They further ask for a writ of prohibition to enjoin the CIR from taking cognizance of the same.

The question raised is whether the CIR has jurisdiction to entertain the petition.

In the precedent-setting case of *Phil. Association of Free Labor Unions (PAFLU), et al. v. Tan, et al.*[1] our Supreme Court held that after the approval

[10] 44 Phil. 900 (1937).
[11] 66 Phil. 451 (1938).

[1] 52 O.G. 13, 5836 (Oct. 1956)

of the Industrial Peace Act [2] on June 17, 1953, the jurisdiction of the CIR is confined to the following cases: (1) when the labor dispute affects an industry which is indispensable to the national interest and is so certified by the President to the Industrial Court;[3] (2) when the controversy refers to minimum wage under the Minimum Wage Law;[4] (3) when it involves hours of employment under the Eight-Hour Labor Law; and (4) when it involves an unfair labor practice.[6] In all other cases , even if they grow out of a labor dispute, the CIR does not have jurisdiction.[7]

The present case does not fall under any of the above cases, so held the Supreme Court through Justice A. Reyes. In the words of the Court, "In the present case it is apparent that the petition below is simply for the collection of unpaid salaries and wages alleged to be due for services rendered years ago. No labor dispute appears to be presently involved since the petition itself indicates that the employment has long terminated and petitioners are not asking that they be reinstated."

Hilario G. Davide, Jr.

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Land Registration Law—*The annotation of a notice of lis pendens does not invalidate an adverse claim previously annotated on the same certificate of title where both notices refer to and are designed to protect the same interest. But, if any of the registrations should be considered unnecessary or superfluous, it would be the notice of lis pendens and not the annotation of the adverse claim which is more permanent and cannot be cancelled without adequate hearing and proper disposition of the claim.*

PAZ TY SIN TEI v. JOSE LEE DY PIAO

G.R. No. L-11271, May 28, 1958

Query: Whether the annotation of a notice of *lis pendens* invalidates an adverse claim previously annotated in the same title where both notices refer to and are designed to protect the same interest.

Our Supreme Court answered this query in the negative in the instant case.

It appears that Dy Lac, a Chinese national, donated to his paramour Paz Ty Sin Tei and his minor son by her the parcels of land covered by T.C.T. Nos. 53825, 53826 and 26580. Dy Lac also purchased from the Monte de Piedad & Savings Bank, houses and lot and caused the title thereof to be placed in the name of Paz Ty Sin Tei. It further appears, that as his second marriage (his first wife having died) was not blessed with any issue, upon Dy Lac's death on May 14, 1948, he was survived by his second wife, Uy Cho and his son by the first Marriage, Jose Lee Dy Piao. In his will, however, he named Paz Ty Sin Tei as executrix thereof; thus, the latter instituted Special Proceedings No.

[2] Rep. Act No. 875.
[3] Rep. Act No. 875, Sec. 10.
[4] Rep. Act No. 602 (approved April 6, 1951).
[5] Com. Act No. 444 (approved June 3, 1939).
[6] Rep. Act No. 875, Sec. 5()a.
[7] See also the following cases: Reyes et al. v. Tan et al., 52 O.G. 14, 6187 (1956); PaAFLU v. Barot, 52 O.G. 15, 6544 (1956); Allied Free Workers Union v. Apostol, G.R. No. L-8876, Oct. 31, 1957. All of these cases are cited in the opinion of the court in this case.
For a very enlightening discussion on the cases bearing upon the problem o f jurisdiction of the Court of Industrial Relations, refer to the annual survey of 1957 decisions on Labor Law, 33 PHIL. L.J. 1 (1958).

5541 with the Court of First Instance of Manila for the probate of the same. Pending her qualification as such executrix, the Court appointed the Equitable Banking Corporation as special administrator of the testate estate of Dy Lac. Upon entering its appointment, the Equitable Banking Corporation filed Civil Case No. 14697, seeking to annul the donations consisting of real and personal properties made by the deceased to Paz Ty Sin Tei on the ground that the latter was an alien disqualified to acquire lands in the Philippines. In the same proceedings Jose Lee Dy Piao, together with the widow Uy Cho, tried to intervene and pursuant to the provisions of Section 110 of the Land Registration Act [1] on August 22, 1951, they caused as heirs of Dy Lac the annotation at the back of T.C.T. No. 58652, an adverse claim for the protection of their alleged rights, pending the determination thereof in Special Proceedings No. 5541. The Court dismissed the main complaint on the ground that it is only the State who could question the validity of the conveyance. The dismissal was, however, without prejudice to the intervenor's right to secure relief in an independent action.

Therefore, on March 21, 1955, Jose Lee Dy Piao instituted Civil Case No. 25736, and on the same day, caused the annotation of a notice of *lis pendens* at the back of T.C.T. No. 58652.

Paz Ty Tei filed a petition for the cancellation of the adverse claim appearing on T.C.T. No. 58652 on the ground that Civil Case No. 14697, had already been dismissed. The respondents opposed. To this opposition, petitioner filed a reply asserting that at the instance of the claimant, as plaintiff, in Civil Case No. 25736 of the CFI of Manila, a notice of *lis pandens* was already annotated at the back of T.C.T. No. 58652, and as the object of the aforesaid case referred to the claim of the adverse claimant, the latter had in his favor 2 annotations, i.e., the adverse claim and the notice of *lis pendens*. Petitioner further argued that as either of the two protects the claim of Jose Lee Dy Piao, at least one must be ordered cancelled for he could not avail of the two remedies at the same time, for if both were allowed to stand, they would overburden the title in question.

On June 25, 1955, the lower Court issued an order holding that an adverse claim could not be made to stand for an indefinite time and where the Land Registration Act afford no relief for the protection of his right or interest, the adverse claimant should institute the proper action with a reasonable period and cause the annotation of a notice of *lis pendence*, in which case the adverse claim would lose its validity. And as oppositor Jose Lee Dy Piao had already instituted Civil Case No. 25736, and had caused the annotation of a notice of *lis pendens* on the same title, the Court ordered the Register of Deeds of Manila to cancel the annotation of adverse claim at the back of T.C.T. No. 58652. The oppositor appealed to the Court of Appeals, but said Tribunal elevated the case to the Supreme Court for proper disposition on the ground that the issues raised are purely of law.

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[1] Sec. 110 of Act No. 496 (Land Registration Act), provides:
"Whoever claims any right or interest in registered land adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claim. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the court, upon a petition of any party in interest shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. If the claim is adjudged to be invalid, the registration shall be cancelled. If in any case the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble cost in its discretion.

Our Supreme Court, speaking through Justice Felix, reversed the lower Court. The Supreme Court opined:

> "But we have to give certain consideration to the implication created by the lower court's ruling that the institution of a court action for the purpose of securing or preserving the right which is also the object of an adverse claim invalidates the latter, irrespective of whether a notice of *lis pendens* has been annotated or not, for such a doctrine gives the impression that the 2 remedies are contradictory or repugnant to one another, the existence of one automatically nullifying the other. We are inclined to believe otherwise, for while both registrations have their own characteristics and requisites, it cannot be denied that they are both intended to protest the interest of a claimant by posing as notices and caution to those dealing with the property that the same is subject o a ctlaim. . . ."

The Court, further, said that a registered adverse claim may be cancelled only in one instance, i.e., after the claim is adjudged invalid or unmeritorious by the Court, acting either as a land registration court or one of general jurisdiction while passing upon a case before it where the subject of the litigation is the same interest or right which is being secured by the adverse claim. The possibility therefore, that parties claiming an interest in a registered property desired, for any other pupose, to have their cause ventilated in a court of general jurisdiction, may result in giving them two ways of making the registration of their claimed rights. In such instances, it would not be only unreasonable but also oppressive to hold that the subsequent institution of an ordinary civil action would work to divest the adverse claim of its validity, for as we (the Supreme Court) have pointed out, a notice of *lis pendens* may be cancelled even before the action is finally terminated for causes which may not be attributable to the claimant. And it would similarly be beyond reason to confine a claimant to the remedy afforded by Section 110 of Act 496 if there are other recourse in law which such claimant may avail of. But, if any of the registrations should be considered unnecessary or superfluous, it would be the notice of *lis pendens* and not the annotation of the adverse claim which is more permanent and cannot be cancelled without adequate hearing and proper disposition of the claim.

Aurelio V. Cabral, Jr.

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Land Registration Law—*An action for reconveyance of a land is available even after the expiration of the one-year period provided for in the Land Registration Act whenever the land is registered through fraud or mistake in the name of one who is not the true owner, provided, that the property has not been transferred to an innocent purchaser for value.*

ABAN, ET AL. v. CENDAÑA

G.R. No. L-11989, May 23, 1958

It is a supreme principle in vogue in this jurisdiction that an action for reconveyance is available whenever land is registered through fraud or mistake in the name of one who is not the true owner, the registrant is regarded in the eyes of the law as a mere trustee,[1] not in the technical sense, but for want of

[1] This principle is found in the New Civil Code. Article 1456 of which, provides: "If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes."

a better term. In such capacity he is under obligation to execute the deed of transfer in favor of the true owner in keeping with the primary principle of law and equity that "one should not unjustly enrich himself at the expense of another." The one year limitation provided in Section 38 of the Land Registration Act [2] for the review of a decree does not bind this remedy. It can be resorted to even after the expiration of this period, the only condition being that the property concerned not passed to an innocent purchaser for value. This principle was applied in the instant case.

The relevant facts are: The plaintiffs Cesareo, Antonio and Maxima, all surnamed Aban, inherited a small parcel of land situated in San Miguel, Pangasinan, which is covered by Original Certificate of Title No. 20578. All the while, since time immemorial, the plaintiffs are in the possession of the western side of the said land in question. And all the while also, since time immemorial, the defendant and his predecessor are in possession of six thousand square meters more or less on the eastern side of the land in question and has been paying the taxes thereon up to the present time. And during all this, the defendant was never disturbed in his possession by the predecessors of the plaintiffs until 1953 when the plaintiffs discovered that the land occupied by the defendant is covered in the title issued to them. The defendant came to know that the land occupied by him is covered by said title only on July 3, 1955 when said land was relocated by surveyor Silvestre Quinto. The trial court gave judgment in favor of the defendant to the effect that the lot in dispute belonging to the defendant had been erroneously included in the Torrens title of plaintiffs, who had consequently the duty, in accordance with decisions of this Court, to recover it to the defendant, as the latter had seasonably demanded. From this judgment, the plaintiffs appealed invoking the one-year period to challenge a Torrens title on the ground of fraud.

Our Supreme Court, speaking through Justice Bengzon, affirmed the decision of the trial court. It held that, admittedly, pursuant to the agreed stipulation of facts, plaintiffs' title covered the lot occupied by defendant as owner since *time immemorial,* and their parents in whose name such title had been obtained, never disturbed nor questioned such possession. The only conclusion then is that *through error* the title extended to defendant's land. Hence, the order requiring plaintiffs to relinquish this land to defendant is legally correct.

Aurelio V. Cabral, Jr.

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Land Registration Law—*The action of reconveyance of a property, that is already covered by a Torrens Title, under the Land Registration Act, may only be maintained by the owner of the property who has been prejudiced by the actual fraud imputed to one, who succeeded in securing the registration of the said property in his name.*

[2] Section 38 of the Land Registration Act provides: "If the court after hearing finds that the applicant or adverse claimant has title as stated in his application or adverse claim and proper for registration, a decree of confirmation and registration shall be entered. Every decree of registration shall bind the land, and quiet title thereto, subject only to the exception stated in the following section. It shall be conclusive upon and against all persons including the Insular Government and all branches thereof, whether mentioned by name in the application, notice or citation, or included in the general description "To all whom it may concern." Such decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding in any court for reversing judgment or decrees: *subject, however, to the right of any person deprived of land or of any estate or interest therein by decree of registration obtained by fraud to file in the competent Court of First Instance a petition for review within one year after entry of the decree provided no innocent purchaser for value has acquired an interest . . .*" (Italics supplied).

[3] Angeles v. Samia, 66 Phil. 444 (1938); Guzman v. Vera, G.R. No. L-1717, April 17, 1950; Director of Lands v. Register of Deeds, G.R. No. L-4463, March 24, 1953.

NEBRADA v. HEIRS OF ALIVIO, ET AL.

G.R. No. L-11650, June 30, 1958

It is recognized in this jurisdiction that in all cases of registration procured by fraud the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title.[1] This principle was affirmed by our Supreme Court in the instant case.

It appears that on September 9, 1920, one Cobalan (Bagaba) was in possession of a portion of agricultural land situated at Dansalan, Davao; that he applied for the acquisition of said land as homestead from the Bureau of Lands, and after complying with the requirements regarding possession and cultivation, said Bureau issued an order on June 22, 1940 directing the issuance of a patent for said land in favor of Cobalan; that Cobalan died intestate in April, 1946, leaving as heirs three minor children; that sometime in 1949 intestate proceedings were instituted for the settlement of the estate of Cobalan wherein plaintiff was appointed as judicial administrator; that after the death of the spouses, one Perfecto Diray, taking advantage of the minority of Cobalan's heirs, illegally occupied the land in question and wrote a letter to the Director of Lands wherein he fraudulently misrepresented that Cobalan and his entire family were killed during the Japanese occupation after the former had sold his homestead rights over the controverted land to one Mexima Guilaran and praying that the order granting to Cobalan the said property as homestead be set aside and the same be adjudicated to the heirs of one Felix Alivio who has also filed an application for homesetad with regard to the same property; that by reason of said misrepresentation, defendants succeeded in having the application of Cobalan cancelled, and intead were able to secure the approval of the application of Felix Alivio and the consequent issuance of a patent in their favor and of the corresponding certificate of title from the Register of Deeds of Davao; and that by reason of the fraud practised upon them by defendants, they pray that the latter be ordered to reconvey to the heirs of the deceased Cobalan the property in question and to pay damages in the amount of ₱18,536.00.

The lower court dismissed the complaint on the ground that it does not state a sufficient cause of action, because the plaintiff nowhere in the complaint states that he is the owner of the property involved in this litigation, pursuant to section 55 of the Land Registration Act.[2]

On appeal to the Supreme Court, the decision of the lower court was upheld. Our Supreme Court, speaking through Justice Angelo Bautista, opined:

> "We find no error in the above findings of the trial court. Indeed, in order that the heirs of Cobalan may claim reconveyance of the property in their favor there is need for them to show *that they are the owners thereof* but that they had been deprived of its ownership and possession through fraud practised by defendants. The complaint does not show nor claim that they are the owners of the property, for it merely alleges that their father Cobalan applied for the property as homestead from the Bureau of Lands and that after complying with the requirements of the law an order was issued directing the issuance of patent to Cobalan. But the complaint also shows that this order was later set aside by the Bureau of Lands in view of an alleged misrepresentation made by one Perfecto Diray in behalf of the heirs

[1] Sec. 55 of the Land Registration Act.

[2] Sec. 55 of the Land Registration Act in its pertinent provisions reads as follows:
"That in all cases of registration procured by fraud the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title."

> of Felix Alivio, and that said order became final when plaintiff withdrew the motion for reconsideration he had filed when he learned of the existence of such order. . . "

Therefore, the Supreme Court ordered that the order appealed from is affirmed, without prejudice to whatever administrative action the heirs of Cabalan may desire to take under the law in the Office of the Bureau of Lands in view of their claim of fraud allegedly practised by defendants. No pronouncement as to costs.

Aurelio V. Cabral, Jr.

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Land Registration Law—*The decree of registration is conclusive upon and against all persons and that upon the expiration of one year after its issuance it becomes incontrovertible.*

MISTICA, ET AL. v. CALDITO, ET AL.

G.R. No. L-11213, May 26, 1958

It is settled law that a decree of registration is conclusive upon and against all persons and that upon the expiration of one year after its issuance it becomes incontrovertible.[1] This doctrine was applied in the instant case.

The instant case is an action for reconveyance. Plaintiffs complaint avers in effect that they were owners of a parcel of land by inheritance from their deceased father Marcelo Mistica and that they were unjustly deprived thereof when defendants succeeded in having it registered in their names without conclusive or satisfactory proof of ownership, for which plaintiffs pray that the land be reconveyed to them. The defendants controvert plaintiffs' claim and invoked the conclusiveness and incontrovertibility of registration in defendants' favor.

It appears that the defendants filed an application for registration of the land in dispute in 1930, in the Court of First Instance of Pangasinan. During the hearing, no one appeared to oppose it, so that a general order of default was entered and the clerk of court was commissioned to receive applicant's proof. On the basis of the facts found, the court decreed the registration of the land in applicant's name and for which Original Certificate of Title No. 464993 was issued. Up to 1954, when the present action for reconveyance was instituted, the decree of registration had never been challenged.

The lower court rendered judgment dismissing the complaint. It held that plaintiffs' had slept on their rights because though the land was registered in 1931 they did not file their action until 1954; and that, on the other hand, the court had to uphold the indefeasibility of defendants' Torrens title and there was no evidence of fraud or breach of trust to warrant a reconveyance. From this judgment, the plaintiffs appealed.

Speaking through Justice Alex Reyes, our Supreme Court affirmed the judgment of dismissal. Said the Court:

> "It is settled law that a decree of registration is conclusive upon and against all persons and that upon the expiration of one year after its issuance it becomes incontrovertible. . . . But while an action for reconveyance is viable in certain

[1] Section 38, Act No. 496; Reyes et al. v. Borbon et al., 50 Phil. 791 (1927); Azurin et al. v. Quitoriano et al., 46 O.G. (Supp.) No. 1, 44 (1950).

cases where registration has been obtained through fraud or in violation of trust, the trial court found, and we think rightly, that no such fraud or breach of trust was proved in the present case. The claim that the registration was decreed without conclusive or sufficient proof of ownership is but an imputation of judicial error which it is now too late to correct. On the other hand, there is a legal presumption of regularity in favor of a judicial proceeding, and that presumption is not rebutted by the appellants."

Aurelio V. Cabral, Jr.

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Land Registration Law—*In all cases of registration procured by fraud, the remedy of the persons prejudiced thereby is to bring an action for damages against the persons responsible therefor, within four years after discovery of the deception, without prejudice to the rights of an innocent purchaser for value; registration of a document in the registry office operates, not only to the parties to the same but also against the whole world.*

AVECILLA v. YATCO ET AL.

G.R. No. L-11578, May 14, 1958

This case reiterates the two settled principles in Land Registration, which may be stated, thus: (1) In all cases of registration procured by fraud, the remedy of the persons prejudiced thereby is to bring an action for damages against the persons responsible therefor, within four years after discovery of the deception, without prejudice to the rights of an innocent purchaser for value; [1] and, (2) Registration of a document in the registry office operates, not only to the parties to the same but also against the whole world.[2]

It is alleged in the amended complaint that the spouses Placido Alfonso and Agueda Santos owned a parcel of land covered by Transfer Certificate of Title No. 21913 which was conjugal in nature; that Placido died in 1947 without any issue; that Agueda, alleging fraudulently that she was the sole heir of her deceased husband, executed an extrajudicial deed of settlement and secured Transfer Certificate of Title No. 3585 in her name; that thereafter she sold the land to Santiago Cruz who fraudulently secured Transfer Certificate of Title No. 3586; that Santiago in turn conveyed the property to Susana Realty, Incorporated in June, 1956. Plaintiffs prayed for the annulment of the extrajudicial settlement and the deed of sale in favor of Santiago Cruz and Susana Realty, Inc. and for the reconveyance of the property to them. Agueda Santos and Santiago Cruz filed their answers, but Susana Realty, Inc. filed a motion to dismiss, which was granted by the lower court. Plaintiffs therefor prayed for a reconsideration which was denied; hence, this action by certiorari.

Our Supreme Court affirmed in *toto* the decision of the lower court.

(1) The first ground on which the lower court dismissed the complaint is that it does not allege a cause of action against Susana Realty, Inc. for the reason that while it alleges that Agueda Santos and Santiago Cruz acted fruadulently in effecting the sale of the land by the former to the latter, there is however nothing alleged therein that in the transfer of the land by Cruz to Susana

[1] Sec. 55, Act No. 496; Raymundo et al. v. Afable et al., G.R. No. L-7651, February 28, 1955; see also, Sec. 43 of Act No. 190.
[2] Sec. 51, Act No. 496; De Guinoo v. The Court of Appeals, G.R. No. L-5541, June 25, 1955.

Realty, Inc., the latter acted with knowledge of the fraud or of the defect vitiating the title of Santiago Cruz. It is further inferred from the complaint that the land is covered by a Torrens title on the back of which no encumbrance appears. It is for this reason that the trial court found Susana Realty, Inc. to have acted in good faith in purchasing the land and held that the action cannot prosper against it under Section 55 of Act No. 496 which provides: "That in all cases of registration procured by fraud, the owner may pursue all his legal and equitable remedies against the parties to such fraud, without prejudice, however, to the rights of any innocent holder for value of a certificate of title." In affirming the lower court on this point, the Supreme Court, speaking through Justice Angelo Bautista, said: "Indeed, there is nothing alleged therein which may implicate Susana Realty, Inc. in the commission of the alleged fraud in the transfer made by Agueda Santos of the land to Santiago Cruz although the allegation therein is clear that both Santos and Cruz have acted fraudulent. Being an innocent purchaser for value of the land, its right is protected by law and the remedy of the persons prejudiced is to bring an action for damages against the persons responsible therefor. To further strengthen its point, the Supreme Court quotes the ruling in the case of Raymundo et al. v. Afable et al.,[3] thus:

> "In fact, in view of the issuance of certificates of title, another line of approach conclusive against plaintiffs' side suggests itself. There being no allegation of bad faith against Santos, his purchase of the duly registered title of Afable may not be revoked even if Afable, as alleged in the complaint, obtained it thru fraud. Consequently plaintiffs' action for annulment of the deed of sale will necessarily fail. *Plaintiffs' remedy, if any, is an action for damages against Afable by reason of fraud and that remedy may* only be demanded *judicially within four years after discovery of the deception.*[4]

(2) The second ground on which the order dismissing the complaint is predicated is that, even if plaintiff has a cause of action against defendant Susana Realty, Inc., the same has already prescribed. The trial court said: "It is very clear that said prescriptive period commences to run from the discovery of the fraud, which, in the instant case, is from April 11, 1947, the date of registration of the alleged fraudulent document, the affidavit of extrajudicial settlement by the defendant Agueda Santos. It is a well-settled rule in land registration that registration of a document in the registry office operates, not only to the parties to the same, but also against the whole world. It is obvious that the four-year period has long expired from aforesaid date of registration."

Again, the Supreme Court upheld the trial court on this point. Under Section 51 of Act No. 496, every conveyance affecting registered lands if recorded, filed or entered in the office of the register of deds, shall "be notice to all persons from the time of such registration, filing, or entering." And it has been held [5] that the period of prescription in relation to an action to annul a sale of land bought by third persons should be counted from the date of registration of the same, which is notice to the whole world.

But petitioner maintains that his cause of action has not yet prescribed because when Agueda Santos, through fraudulent misrepresentation, secured a certificate of title in her name ,a constructive trust in favor of the defrauded heirs of her late husband was created which grants to said heirs the right to

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[3] G.R. No. L-7651, February 28, 1955.
[4] *Ibid.*; italics supplied.
[5] De Guinoo v. The Court of Appeals, G.R. No. L-5541, June 25, 1955.
[6] *Supra*, at note 1

vindicate the property regardless of the lapse of time. But the right of action in this constructive trust should be exercised against the trustee, who caused the fraud, and not against an innocent purchaser for value, as the Susana Realty, Inc. This right may also be exercised against Santiago Cruz who also obtained title to the land with knowledge of the fraud, but not with regard to Susana Realty, Inc. which, as already stated, has bought the property in good faith. The remedy in this case of the defrauded heirs is to bring an action for damages against those who caused the fraud or were instrumental in depriving them of the property. Their action cannot reach an innocent purchaser for value who is protected by law.[6]

Aurelio V. Cabral, Jr.

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Legal Ethics—*An attorney should be careful in the performance of his duties as lawyer and notary public to the end that he may not, even though unwittingly, make himself an easy tool for illegal purposes.*

EMERITA CAILING v. ATTY. JOSE VID. F. ESPINOSA

Adm. Case No. 238, May 30, 1958

One of the cardinal duties of a lawyer towards his client is the exercise of warm zeal in the maintenance and defense of the latter's rights. Lack of due care is considered a breach of the attorney's undertaking with his client and is indicative of a disregard of the attorney's duties to the court.[1] But courts not wishing to assume a harsh and uncompromising attitude towards attorneys-at-law have relaxed the rule a little in cases of mistakes made in *Pitt v. Yalden:*[2] "That part of the profession which is carried on by attorneys good faith."

Lord Mansfield, in trying to justify this attitude of the courts said it is liberal and reputable as well as useful to the public, when they conduct themselves with honor and integrity; and they ought to be protected when they act to the best of their skill and knowledge. But every man is liable to error and I hould be very sorry that it should be taken for granted that an attorney is answerable for every error or mistake. * * * A counsel may commit a mistake as well as an attorney. * * * Yet no one will say that a counsel who has been mistaken shall be charged. * * * Not only counsel but judges may differ, or doubt, or take time to consider. Therefore, an attorney ought not to be liable in case of reasonable doubt."

Our own Supreme Court in *Cailing v. Espinosa* echoed this wise statement of Lord Mansfield. In that case, Atty. Espinosa was charged with notarizing a forged document. While admitting that the document was ratified by him, respondent claimed that he did not know of the forgery, having no reason to believe that the one who signed the document was not the alleged vendor himself.

The facts are as follows: Complainant brought from her brother-inllaw, Jose Balicao, a piece of land for ₱600 but for which no deed of sale was executed. In 1955, complainant having need of reselling the land she had bought but

[1] In re Filart, 40 Phil. 205 (1919).
[2] 4 Burr 2060 (1767) as cited in the case of In re Filart.

having no documentary proof of the sale sought the help of Francisco Bonilla, then a municipal counsilor of Dasol and a cousin of her deceased husband, to secure the necessary deed of sale in her favor. Since Balicao couldn't come to sign the document personally, he authorized Bonila, through a letter in which was enclosed his residence certificate, to sign for him. Respondent found Balicao's letter of authorization insufficient for the purpose so he told the complainant that Balicao had to either execute a regular power of attorney or come to sign the document himself. Confronted with the need of having to sell the land, complainant and Bonilla agreed on a scheme to have someone impersonate Balicao and sign the latter's name on the deed. It so happened, however, that the impostor didn't know how to write. So Bonilla signed the deed himself and wrote in the acknowledgment clause the date and number of his own residence certificate. Respondent without knowing what had transpired and noting that the vendor's signature was already written on the deed, asked the impostor if the signature was his. He then asked for the latter's residence certificate. The date and number was ready by Bonilla and they having tallied with those written in the acknowledgment clause, respondent didn't bother to look at the residence certificate anymore. After the formalities had been fulfilled, the document was notarized by respondent. The forgery was discovered only when Emerita Cailing offered to sell the land to her uncle, Simeon Cailing who knew that Jose Balicao was not in Dasol and couldn't have possibly signed it.

The court concluded that the respondent, in notarizing the deed, has merely been the victim of an imposition. However, since he was negligent in not taking pains to ascertain that the person ratifying the deed before him was the vendor himself and not a mere impostor, the court admonished him to be more careful in the performance of his duties as lawyer and notary public.

The duty of due care towards a client's interest should be faithfully performed by an attorney to the end that the high trust and confidence which the client must repose in the attorney would be maintained and will not falter. And this can be attained only if the attorney observes the utmost good faith towards the client.[3]

Cherry-Lyn M. Sunico

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Public Administration—*The fundamental protection afforded to civil service employees against removal except for cause does not apply where the office itself is abolished by resolution of the provincial board; approval by the Secretary of Finance.*

CASTILLO v. PAJO

G.R. No. L-11262, April 28, 1958

Carmen R. Castillo, the petitioner-appellant in this case, was appointed correspondence clerk in the office of the Provincial Fiscal of Bohol in November, 1951, by the Governor of that province. She rendered service as such until June 12, 1954, when she stopped working by reason of the Provincial Board's resolutions Nos. 161 and 300 abolishing her position effective June 9, 1954.

[3] Hernandez v. Villanueva, 40 Phil. 775 (1920).

She protested to the corresponding authorities; and having obtained no relief, she instituted the instant proceeding to compel reinstatement, payment of back salaries, damages and attorney's fees. Her action rested on the proposition that her separation was unlawful in view of her civil service status, and that the Secretary of Finance had disapproved the resolutions.

It is not disputed that the position of clerk in the Fiscal's Office occupied by petitioner was created by the Provincial Board in virtue of its power expressly given by Section 2081 of the Revised Administrative Code to "fix the number of assistants, deputies, clerks and other employees for the various branches of the provincial government" and to fix their salaries. There is no statute expressly empowering the Board to abolish the offices or positions it has created; however, it is a well-established principle in the law of public administration that the power to establish an office includes the authority to abolish it—unless there are Constitutional or statutory rules expressly or impliedly providing otherwise.[1] And the abolition of the office terminates the right of the incumbent to exercise the rights and duties thereof.[2]

In disposing the first issue raised in this case, the Supreme Court stated that the fundamental protection afforded to civil service employees against removal "except for cause as provided by law" does not govern in this case because there has been no removal of petitioner but an abolition of her position, which was within the power of the provincial board, in the same way that Congress has the power to abolish offices created by it or by its authority.[3]

The other issue raised in this case is that the resolution did not become effective because it was disapproved by the Department of Finance in its indorsement of December 28, 1954, in connection with the Board's Resolution No. 161.

As to this question, the Court cited the leading case of *Rodriguez v. Montemayor*,[4] to the effect that the Secretary of Finance had no power to disapprove resolutions of provincial boards abolishing positions in the provincial service created by them. In the light of said decision, the indorsement mentioned must be considered as a mere suggestion for the retention in the local plantilla of petitioner's item—a recommendation which said Board chose not to follow for reasons of its own.

However, the legal situation changed with the passage of Republic Act No. 1063 [5] on June 12, 1954, directing that abolitions of positions (in the provincial service) shall not take effect except upon approval by the Secretary of Finance. Congress, therefore, by this law, amplified the powers of said Department head and enunciated a new legislative policy.

Ruben G. Bala

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Public Administration—*The appointment of temporary employees expires every three months after which they can be replaced by the appointing authority; action for rainstatement to an office should be filed within one year from removal.*

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[1] Rodriguez v. Montemayor, 50 O.G. No. 10, 4820 (1954); 67 Corpus Juris Secundum 121.
[2] Brillo v. Enage (CA), 50 O.G. No. 7, 3102 (1954); 67 Corpus Juris Secundum 121.
[3] Manalang v. Quitoriano, 50 O.G. No. 6, 2515 (1954).
[4] *Supra*
[5] Amending Sec. 2120 of the Revised Administrative Code.

ERAUDA ET AL. v. DEL ROSARIO ET AL.

G.R. No. L-10552, April 28, 1958

Petitioner-appellants Paulino Cramen and Alfredo Erauda were both temporary employees, without civil service qualifications, in the Office of the City Veterinarian in Cebu City, the first having been appointed on March 31, 1953, as abattoir cleaner, and the second, on December 16, 1951, as cleaner. On July 22, 1953, without any investigation or hearing, they were summarily removed by respondent Vicente S. del Rosario, Acting Mayor of the City of Cebu "in order to insure more efficiency in the service." They filed a petition for reinstatement which was denied. They filed then, in the CFI of Cebu an action for Mandamus with Damages. After due trial the complaint was dismissed, hence, the present appeal.

The questions involved are mainly whether the removal of petitioners was lawful or otherwise, and whether the action was brought in due time in view of the fact that the removal took place in July 22, 1953 and the present action was brought on February 17, 1955.

There is no dispute that the petitioners were non-Civil Service Eligibles and their appointment as abattoir cleaners was temporary in character. The provision of law regarding temporary emergency employees is Section 682 of the Revised Administrative Code, which provides—

"Temporary appointment without examination and certification by the Commissioner of Civil Service or his local representative shall not be made to a competitive position in any case, except when the public interests so require, and then only upon the prior authorization of the Commissioner of Civil Service; and any temporary appointment so authorized shall continue only for such period not exceeding three (3) months as may be necessary to make appointment through certification of eligibles, and in no case shall extend beyond thirty (30) days from receipt by the chief of the bureau or office of the Commissioner's certification of eligibles; . . ."

Under this provision of law, the appointment of the petitioners expires every three (3) months, after which they could be replaced if the corresponding appointing authority believes it convenient. Accordingly, on July 22, 1953, respondent Vicente S. del Rosario, as Acting Mayor, could remove them lawfully and replace them with others; therefore, petitioners' removal by respondent Mayor Del Rosaio was lawful.[1]

The Court also found that petitioners filed their complaint for reinstatement on February 17, 1955, or after a delay of one (1) year, six (6) months and twenty-five (25) days, counted from July 22, 1953, the date of their removal, for which reason they may be considered as having abandoned their office for such a long delay in filing their action, for—

> "the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office, although illegally, and another for one not actually rendering service although entitled to do so. We hold that in view of the policy of the State contained in the law fixing the period of one year within which actions for quo warranto may be instituted, any

[1] Orais et al. v. Ribo, G.R. L-4945, October 28, 1953.
[2] Abeto v. Rodas, 46 O.G. No. 3, 930, 932 (1948); Unabia v. City Mayor et al., G.R. L-8759, May 25, 1956.

considered as having abandoned his office.
person claiming right to a position in the civil srevice should also be required to file his petition for reinstatement within the period of one year, otherwse he is thereby
. . . .
We would go further by holding that the period fixed in the rule is a condition precedent to the existence of the cause of action, with the result that, if a complaint is not filed within one year, it cannot prosper although the matter is not set up in the answer or motion to dismiss." [2]

Ruben G. Bala

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Special Proceedings—*It does not appear that the Supreme Court has ever held that the absence of a statement in the will or in the attestation clause to the effect that the will is signed by mark is a fatal defect.*

MATIAS v. SALUD

G.R. No. L-10751, June 23, 1958

This is an appeal from an order of the Court of First Instance of Cavite denying probate of the purported will of the late Gabina Raquel.

It appears that the deceased, who left no ascendants or descendants bequeathed most of her properties (appraised over ₱160,000.00) to her niece Aurea Matias, in recompense for the services rendered by the latter to the former for more than thirty years. Some legacies were made to her other nephews and nieces. Aurea Matias was appointed executrix without bond.[1]

The probate of deceased's alleged will was opposed by Basilia Salud, another niece of the deceased.[2] After hearing, the trial court denied the document's admission to probate, principally on the grounds that the will was not executed and witnessed as required by law; the non-production of witness, and fraud in the execution of the will.[3] Hence this appeal.

The issue raised is whether the will should be admitted to probate.

The trial court refused to give credence to the evidence for the proponents on the basis of the expert testimony of Capt. Jose Fernandez of the Philippine Constabulary's criminal laboratory, whose testimony was contradicted by the expert for the defense and proponent's witnesses.

The Supreme Court restated the rule that "the positive testimony of the three attesting witnesses ought to prevail over the expert opinions which cannot be mathematically precise but which, on the contrary, are subject to inherent infirmities." [4]

The legal requisite that the will should be signed by the testator is satisfied by a thumbprint or other mark affixed by him.[5] Where such mark is affixed by the decedent, it is unnecessary to state in the attestation clause that

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[1] Appointment of an executrix without bond is provided for in Rule 82, sec. 2 of the Rules of Court.
[2] Rule 77, sec. 10, Rules of Court.
[3] The grounds for disallowing a will are given in Rule 77, sec. 9 of the Rules of Court and art. 839 of the Civil Code.
[4] Roxas v. Roxas, 48 O.G. 2177; c.f. Galvez v. Galvez, 26 Phil. 243; Samson v. Tan Quintin, 44 Phil. 573.
[5] De Gala v. Ona, 53 Phil. 105; Dolor v. Diancin, 55 Phil. 479; Neyra v. Neyra, 42 O.G. 2817; Lopez v. Liboro, 46 O.G. (Supp. to No. 1, 211).

another person wrote the testator's name at his request.[6] While in some wills the signing by mark was described in the will or in the attestation clause, it does not appear that the court ever held that the absence of such description is a fatal defect. The will having been executed and witnessed as required by law, the same should be admitted to probate. Judgment reversed.

Maria Asuncion Sy-Quia

———oOo———

Special Proceedings—*Support not having been demanded, the expenses for the education and clothing during minority are not part of the support the minors are entitled to receive from their father; the disbursements made from the guardianship funds for such education and clothing are valid and the guardian's bond should not be made to answer therefor.*

JOCSON v. EMPIRE INSURANCE CO. and THE INTESTATE ESTATE OF JOCSON

G.R. No. L-10792, April 30, 1958

This is an appeal from an order terminating the guardianship.

Agustin A. Jocson was appointed guardian of the persons and properties of his then minor children—Carlos, Rodolfo, Perla, Enrique and Jesus. As such guardian he had a bond filed with the Empire Insurance Co. as surety.[1]

In the course of the guardianship, Jocson submitted periodic accounts to the court, among them those for expenses incurred for the education and clothing of the wards.[2] The amounts were approved by the court.[3]

After Jocson died, his daughter Perla, who together with her brothers Carlos and Rodolfo, had already attained majority, was appointed guardian of the minors Enrique and Jesus. She filed a petition in the guardianship proceedings to have the accounts of the deceased guardian reopened, claiming that the disbursements for the education and clothing of said minors were illegal. Upon coming of age, Enrique and Jesus adopted the petition as their own.

The motion was opposed by the Empire Insurance Co. and the administratrix of the intestate estate of Jocson. The court rendered an order denying the motion and declaring the bond cancelled and the guardianship terminated. The movants appealed.

The issue is whether expenses for education and clothing during minority are part of the support the minors are entitled to receive from their father.

The Supreme Court held that support does include what is necessary for the education and clothing of the person entitled thereto.[4] But support must be demanded and the right to it established before it becomes payable.[5]

The right to support does not arise from the mere fact of relationship, even from the relationship of parents and children, but from "the imperative

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[6] Payad v. Tolentino, 62 Phil. 849.

[1] R. 95, sec. 1, Rules of Court.
[2] R. 97, sec. 4, Rules of Court.
[3] R. 97, secs. 7 and 8, Rules of Court
[4] Art. 290, Civil Code
[5] Art. 298, Civil Code; Marcelo v. Estacio, 70 Phil. 215.

necessity without which it cannot be demanded, and the law presumes that such necessity does not exist unless support is demanded." [6]

In the present case, it does not appear that support for the minors, be it only for their education and clothing was ever demanded and the need for it duly established. Hence the disbursement made by the guardian cannot be said to be illegal, so that the lower court did not err in holding the guardian's bond not liable for the same. Furthermore, the claim for support should be enforced in a separate action and not in a guardianship proceeding. Order affirmed.

Maria Asuncion Sy-Quia

———oOo———

Special Proceedings—*Upon failure of the executor or administrator to render the accounts required of him, the bond may be held liable for such failure and accordingly ordered confiscated and executed.*

PACIFIC UNION INSURANCE CO. v. NARVASA

G.R. No. L-10696, May 28, 1958

This is a petition for certiorari, injunction and mandamus.

In the testate estate of Vicente Sotto, deceased, petitioner posted a bond in behalf of the executor and for the benefit of the heirs, legatees or creditors of the deceased.[1]

The executor failed to perform his duties as such, and by court order, was relieved of his trust.[2] Prior to his removal, he was ordered to render his account, but failed to do so even after repeated demands. The court then ordered the confiscation of the bond.[3]

Before execution of the order, petitioner was given an opportunity to cause the submission of the accounting called for in the order but failed to do so.[4] The bond was confiscated by virtue of a court order.

Petitioner, instead of filing a notice of appeal, asked for the lifting or suspension of the order and for another extension of time to finally cause the submission of the executor's account, but the court denied the same for not being well taken. Subsequently, petitioner filed a motion to annul the orders of the lower court, alleging that the orders had been issued without jurisdiction and without basis in law, for without an action previously filed against the executor wherein his liability and that of the petitioner under the bond has been determined, the bond cannot be confiscated or executed. This motion was denied.

Meanwhile, the period prescribed by law for perfecting an appeal elapsed. When petitioner filed its notice of appeal, record on appeal and appeal bond, the respondent judge dismissed the appeal on the ground that the same had not been filed within the reglamentary period allowed by law. Hence this appeal.

The issue raised is whether the confiscation and execution of the bond is null and void.

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[6] I TOLENTINO 181, Civil Code of the Philippines, Annotated, citing 8 Manresa 685.

[1] Rule 82, sec. 1, Rules of Court.
[2] Rule 83, sec. 2, Rules of Court.
[3] Rule 82, sec. 1(c), Rules of Court.
[4] Rule 86, sec. 11, Rules of Court.

The Supreme Court held that it is undeniable that a bond posted in behalf of an executor or administrator "is conditioned on the latter's rendering a true and just amount of his administration to the court within one year and at any other time when required by the court." [5] Consequently, upon failure of the executor or administrator to render the accounts required, the bond may be held liable for such failure, and accordingly ordered confiscated and executed.

The lower court ordered the confiscation and execution of the bond in question after the herein petitioner had been given an opportunity to cause the submission by the executor of his accounting and upon failure of the latter to submit, so that it cannot be said that the lower court issued the order of confiscation without giving the herein petitioner its day in court.

Petition denied.

Maria Asuncion Sy-Quia

———oOo———

Special Proceedings—*Where collateral relatives of the deceased extra judicially partition the intestate estate of said decreased, excluding an illegitimate son, the latter may bring an action to recover the estate.*

BAGOBA ET AL. v. FERNANDEZ ET AL.

G.R. No. L-11539, May 19, 1958

This is a petition for certiorari and mandamus to set aside the order of execution of the decision rendered against petitioners.

It appears that Obot, a non-Christian, cohabited with a Japanese subject, named Hasuhiro Nakamura, without benefit of clergy, and from their union Jose (Nakamura) Original was born.

Obot died in 1928 leaving two parcels of land. Her husband took charge of her properties until his death in 1945.

In 1946, Obot's brother and sisters executed affidavits to the effect that Obot died without issue and that they were her only heirs. An extrajudicial partition of the two lots left by Obot was made by the petitioners who are brother, sister, nephews and niece of Obot, and all took possession of the lots.[1]

After liberation, Jose (Nakamura) Original was taken to Japan by the U.S. Army to act as an interpreter. While in Japan in 1951, he executed a general power of attorney in favor of Brigido R. Valencia, authorizing him to take charge of his properties, even to bring court action in connection therewith.[2] On the basis of said authority, the present case was filed in the Court of First Instance of Davao in behalf of Jose to recover the two lots in question and for damages.[3]

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[5] Rule 82, sec. 1(c), Rules of Court.

[1] Rule 74, sec. 1 of the Rules of Court provides for the extrajudicial settlement by agreement between heirs.

[2] Articles 1877 and 1878 of the Civil Code provide for general and special powers of attorney.

[3] Art. 988 of the Civil Code provides that in intestate succession "in the absence of legitimate descendants or ascendants, the illegitimate children shall succeed to the entire estate of the deceased."

Art. 429 of the Civil Code provides "The owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof."

Note that this action, which is one for recovery of land, was brought after the expiration of the two year period provided for in Rule 74, sec. 4 of the Rules of Court.

After trial, respondent judge rendered a decision ordering the defendants, petitioners herein, to deliver to plaintiff the two lots in question, with the improvements thereon; the court having found that petitioners were possessors in bad faith, not only because they knew that Jose was the son of Obot and therefore inherited the two lots, but also because said improvements were made after the demand had been made on them to leave said properties.[4] Hence this petition to stop execution of the judgment.

The Supreme Court held that on the basis of the foregoing facts ,the order for the issuance of a writ of execution of the judgment was properly and correctly issued.

The other cause of action of the present petition is that at the instance of plaintiff, respondent judge required petitioners to amend the record on appeal by adding certain pleadings and documents which they consider to be unnecessary, to which the Supreme Court agreed.

The petition as regards the annulment of the order for immediate execution is denied and granted as to the amendment of the record on appeal.

Maria Asuncion Sy-Quia

———oOo———

Special Proceedings—*As the order approving the partition adjudicated the properties in question to appellants who are not entitled to the inheritance in view of the existence of plain-subject to readjustment within two years after the settlement and distribution of the estate, and thus cannot have the effect of barring a subsequent action by the rightful heir for the recovery of the properties belonging to the intestate.*

MARBELLA v. KILAYKO ET AL.

G.R. No. L11141, June 27, 1958

This is an appeal from a decision of the Court of First Instance of Negros Occidental ordering defendant-appellants to reconvey and deliver to plaintiff the properties which they may have received under the intestacy.

Matias Morin ,a resident of Talisay, Negros Occidental, died intestate on October 7, 1950. As he had neither ascendants nor descendants, Concepcion Kilayko and 17 others, relatives of the deceased in the fifth degree and claiming to be his only heirs, filed a petition for judicial administration of the estate of said deceased.[1] In virtue thereof, Concepcion Kilayko was appointed administratrix of the estate. Thereafter, a project of partition dividing and distributing the properties among the claimants was submitted. This agreement was duly approved by the court. The proceedings were finally terminated on November 14, 1953.

On October 1, 1954, Fidela Morin Vda. de Marbella, half-sister of Matias Morin, instituted a civil action against the Kilaykos, praying that the partition

[4] Art. 526 of the Civil Code provides in part: "He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it. He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing. . . ."

[1] Rule 75, sec. 1, Rules of Court

of the properties be declared null and void, or at least voidable, and to declare her as the rightful heir.

Defendants moved to dismiss the complaint on the ground of res judicata, the order approving the project of partition having become final, and therefore could no longer be reopened. The court, finding the motion to dismiss well-founded, dismissed the complaint.

A motion for recosideration was filed by the plaintiff wherein it was contended that the order approving the partition did not constitute res judicata against one who was not notified thereof; the court reconsidered its previous ruling and required the defendants to file their answer to the complaint.

After the hearing, the lower court rendered judgment declaring plaintiff to be the rightful heir to the properties left by the deceasd, and accordingly, defendants were ordered to reconvey and deliver to plaintiff the properties which they might have received, together with the fruits thereof, computed from the date they took possession over the same up to the time of actual delivery. Defendants appealed.

The issue is whether or not the order approving the project of partition which had become final bars a subsequent action for recovery brought by a preterited relative.

It is a cardinal principle in intestate succession that the existence of a nearer relation excludes the farther, saving the right of representation when it properly takes place.[2] Plaintiff, as half-sister of the deceased, is more entitled to the inheritance than defendants, as children of cousins of the deceased.

The appellants argue that an intestate proceeding being one in rem, the publication of notices in connection therewith has the effect of notifying the whole world that such a proceeding existed and plaintiff-appellee is therefore charged with knowledge thereof; in which case, appellants conclude, any ruling of the court rendered therein shall be binding on all interested persons.

It cannot be denied that as the nearest relative of the deceased, plaintiff's dominion over the estate was transmitted to her upon her brother's death, by operation of law.[3] The Civil Code also provides that a partition which includes a person believed to be an heir, but who is not, shall be void with respect to such person.[4]

As the order of the lower court adjudicated the properties in question to appellants who are not entitled to the inheritance in view of the existence of plaintiff's superior right, the aforesaid order is reviewable and subject to readjustment within two years after the settlement and distribution of the estate,[5] and thus cannot have the effect of barring a subsequent action by the rightful heir for the recovery of the properties belonging to the intestate.

However, as there was no clear-cut indication of appellants' bad faith in taking over and dividing the estate among themselves, they could be considered as possessors in good faith up to the time they were notified of plaintiff's right by the institution of the action for recovery of the properties. The fruits

[2] Art. 962, Civil Code
[3] Art. 777, Civil Code
[4] Art. 1105, Civil Code
[5] The Supreme Court in this case has applied Rule 74, sec. 4 of the Rules of Court. It is significant to note, however, that Rule 74, sec. 4 refers to the settlement and distribution of an estate through an extrajudicial settlement by agreement between heirs or summary settlement of an estate of small value. In these two cases, the Rule provides for a two year period. In the case at bar, there was a judicial settlement of the estate.

accruing to the properties constituting the estate previous to that date are not, therefore, recoverable.

Plaintiff shall reimburse defendants for whatever amounts they may have paid as inheritance tax, if they have paid any, for having received the estate of the deceased. Decision modified.

Maria Asuncion Sy-Quia

———oOo———

Taxation—*Three-year prescriptive period runs against the government with respect to the summary collection of taxes but does not bar collection by proper judicial action; Net worth method of computing net taxable income held valid; 50% surcharges held proper where income returns were fraudulently filed.*

PEREZ v. COURT OF TAX APPEALS

G.R. No. L-10507, May 30, 1958

It appears from the records that the petitioner, Eugenio Perez, filed his income tax returns for 1947, 1948, 1949 and 1950 on March 1, 1948, May 10, 1949, February 23, 1950 and February 28, 1951 and paid taxes thereon as follows:

Year	*Net Income*	*Income Tax Paid*
1947	₱9,012.10	₱361.57
1948	6,921.01	145.26
1949	6,396.24	113.77
1950	7,643.51	167.00

The Collector of Internal Revenue was not satisfied with the above-mentioned reports of the petitioner and assessed against him deficiency assessments by employing what is known as Net Worth Technique.[1] With this method, the Collector found for the years 1947, 1948, 1949 and 1950 the total deficiency of ₱41,547.77 together with the surcharges.

The action of the Collector was sustained by the Court of Tax Appeals on the basis of two provisions of the National Internal Revenue Code, to wit:

> Sec. 15. When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or regulation, or when there is reason to believe that any such report is false, incomplete or erroneous, the Collector of Internal Revenue shall assess the proper tax on the *best evidence obtainable.*
>
> Sec. 38. The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year as the case may be) in accordance with the method of accounting regularly employed in keeping the books of such taxpayer but if no such method of accounting as has been employed or if the method does not clearly reflect the income, *the computation shall be made in accordance with such method as in the opinion of the Collector of Internal Revenue does clearly reflect the income.* (Italics supplied).

[1] The Court of Tax Appeals fully explained this method of proving unreported income in its decision: "The net worth technique for determining income may be expressed in the following formula: Increase in Net Worth plus Non-Deductible Expenditures Minus Non-Taxable Receipts equals Taxable Net Income (Samuel Byer, 'Net Worth Technique for Determining Income').

By virtue of these two provisions, the Collector proceeded to adopt the Net Worth Technique against the petitioner. The latter contested the validity of the method used. Hence this appeal.

The three major issues in this appeal, are: (1) Whether the appellee Collector of Internal Revenue is empowered by law to investigate the appellant's income tax returns for 1947, 1948 and 1949 and to enforce collection of the alleged deficiency and levy more than three years by summary proceedings of distraint after the income tax returns covering them were filed; (2) Whether the use of the Net Worth Method by the respondent in computing the appellant's net income is valid; (3) Whether the 50% surcharge imposed upon the appellant is legal and justified.

In resolving the three questions, the Supreme Court, speaking through Justice J. B. L. Reyes, ruled:

> "The first question has been settled in various rulings of this Court to the effect that the three-year prescriptive period under section 51(d)[2] of the NIRC constituted a limitation to the right of the government to enforce the collection of income taxes by summary proceedings of distraint and levy, though it could proceed to recover the taxes due by the institution of the corresponding civil action."[2a]
>
> "On the second question, respecting the power of the Collector of Internal Revenue to adopt the Net Worth Method of computing the net taxable income—There is no question that the application of the net worth method of determining the taxable income of a taxpayer has been an accepted practice under the United States Internal Revenue Code.

Inasmuch as the second issue involved a legal question of first impression, the Court felt it necessary to cite several United States decisions to support its stand, thus:

> "The Supreme Court of the United States in an opinion by Justice Clark in the cited case of Holland v. United States . . . although recognizing the danger to a taxpayer where the government seeks to prove the evasion by the use of the Net Worth Theory, and declaring that such danger requires that each net worth case be given close judicial scrutiny, unanimously affirmed its use.
>
> "The proposition that the commissioner's authority to use the net worth method in determining income, is rooted in, or stems from section 41 (equivalent to Sec. 38 NIRC) of the Internal Revenue of 1939 has been supported by the court so frequently that the mere mention of the indirect technique for determining income calls for a recitation of the provisions of that section and no cogent reason is shown for deviating from it."
>
> "There are two requisites for the application of the net worth theory, citing the decisions of the U.S. Supreme Court in the cases of Holland v. U.S. and David Friedberb v. U.S.:[3]
>
> First: The establishment with reasonable certainty, of an opening net worth to serve as a starting point from which to calculate future increases in the taxpayer's assets;
>
> Second: The net worth increases must be attributable to taxable income."

Petitioner claims that no evidence was introduced to prove that he was engaged in an income-producing business to which his increases in net worth may be

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[2] Sec. 51(d) Provides: In cases of refusal or neglect to make a return and in case of erroneous, false or fraudulent returns, the Collector of Internal Revenue shall, upon discovery thereof, *at any time within* three years after said return is due, or has been made, make a return upon information obtained as provided for in this code or any existing law, or require the necessary corrections to be made, and the assessment made by the Collector of Internal Revenue thereon shall be paid by such person or corporation immediately upon notification of the amount of such assessment.

[2a] The first question has been settled in the following cases: Collector of Internal Revenue v. A. P. Reyes, G.R. L-8685, Jan. 31, 1957 and Collector of Internal Revenue v. Jose Avelino, G.R. L-9202, Nov. 15, 1956 reiterating a long line of decisions.

[3] Holland v. U.S. 348 U.S. 121; David Friedberb v. U.S. 207 F 2d 777.

attributed. Respondent, on the other hand, states that the petitioner failed to show that his bank balances, acquisition of assets and investments in various enterprises came from non-taxable income. The question arises as to who has the burden of showing that the net worth increases were derived from taxable or non-taxable income? Is it the government or the taxpayer?

Citing the decision contained in the case of *Thomas v. Commissioner* [4] the Court declared:

> "Direct proof of the source of the income is not essential. The application of the net worth method does not require the identification of the sources of the alleged unreported income and that the determination of the tax deficiency by the Government is prima facie correct."

The Supreme Court intimated that normally acquisitions of property are made from accumulations of taxable income, and where not so made, it lies within the peculiar province of the taxpayer to explain how such acquisitions were made with non-taxable resources, and in the absence of such explanations the increase in net worth should be conclusively held undeclared taxable income.

As to the last issue of the legality of the imposition of 50% surcharge provided under section 72 of the National Internal Revenue Code, the Court found the imposition justified under the circumstances proved by the Court of Tax Appeals, namely that the petitioner made substantial under-declaration of the income in the income tax returns of the appellant for four consecutive years, coupled with the intentional overstatement of deductions.

Purita L. Hontanosas

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Tenancy Law—*Grounds for ejectment of tenants under the Agricultural Tenancy Act; Grounds for ejectment exclusive; "Crime against . . . landlord . . . his immediate family" construed.*

LAO OH KIM v. REYES (JUDGE, CAR), GARCELIAN and BUTARDO

G.R. No. L-11391, May 14, 1958

The law governing the relationship between landholders and tenants is Republic Act 1199, otherwise known as the Agricultural Tenancy Act of the Philippines. Under this law, "once a tenancy relationship is established, the tenant is entitled to security of tenure with the right to continue working on, and cultivating the land until he is dispossessed of his holdings for just cause provided by law, or the tenancy relationship is terminated legally." [1] This security of tenure is afforded by law to tenants in view of the restlessness and discontent engendered by the abuses committed by landholders in the course of the agricultural tenancy relationship. And the causes referred to are found in section 50 of the same law.

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[4] 223 F 2d p. 83

[5] The petitioner in this case failed to give any explanation as to the nature of the money used in acquiring his assets—a failure perhaps built on the supposition that the Collector had no power to adopt the Net Worth Method. He cannot claim that he was not afforded sufficient opportunity of proving the non-taxability of the funds used in the purchase of his assets. Under the present Rules of Court, Sec. 9 of Rule 15: A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses. Hence, the petitioner could have made use of this provision and at least attempt to prove the non-taxability of the sources of his assets.

[1] Primero v. CAR and Quion, G.R. L-10594, May 29, 1957.

In this case,[2] landholder Oh Kim sought the ejectment of two of his tenants on the basis of their conviction by the Justice of the Peace for light threat on the part of Garcelian for having threatened to harm or kill with a bolo petitioner's farm manager; and for malicious mischief on the part of Butardo, for having caused damage to petitioner's estate by deliberately opening the earthen dike of its water deposit without any need for it.

The petition was brought under section 50(g) of Republic Act 1199 which provides:

> "Any of the following shall be a sufficient cause for the dispossession of a tenant from his holdings:
>
> . . . .
>
> (g) Conviction by a competent court of a tenant or any member of his immediate family or farm household of a *crime against the landholder or a member of his immediate family.*" (Emphasis supplied).

The Supreme Court dismissed the case against Garcelian on the ground that a crime against the petitioner's farm manager does not fall within the purview of the above provision. Farm family, which includes the farm manager and other persons who usually help operate the farm enterprise, is not embraced by the phrase "immediate family." Had the "law intended that crimes committed against members of the landlord's farm household are justifiable grounds for ejectment, it would have so provided in the same way that it provided that a crime committed by a member of tenant's farm household is a ground for the tenant's ejectment."[3] This interpretation becomes more certain in the light of the provision of the old Tenancy Act (Act 4054) which expressly provides for the dismissal of a tenant "for a crime committed against the person of the landlord *or his representative.* The Court also held that the conviction of Garcelian in this case cannot be made a ground for his dismissal, in addition to the grounds provided by the law, which is exclusive, in conformity with the legislative policy of assuring to the tenant security of tenure.

With respect to the other tenant (Butardo) however, the Court sustained his dismissal on the ground that his act of draining the dike of its water, without cause, is contrary to, and inconsistent with the duty enjoined upon tenants by Republic Act 1199, which is to ". . . take care of the farm, the growing crops, and other improvements entrusted to him as a good father of a family, by doing all the work necessary in accordance with proven farming practices,"[4] taken in conjunction with section 50(b) which authorizes ejectment "when the tenant violates or fails to comply with . . . any of the provisions of this Act."

Remedios M. Catungal

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Transportation Law—*Under a contract for the carriage of goods by sea, the action for loss or damage must be brought within one year after the delivery of the goods or the date when the goods should have been delivered; otherwise, it is barred.*

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[2] This is an appeal from the Court of Agrarian Relations which is vested with jurisdiction over questions and controversies of tenancy, pursuant to Republic Act 1267, as amended by Republic Act 1409.

[3] This is evident from section 50(g) which uses the phrase "conviction . . . of a tenant or any member of his immediate family or farm household. . . ."

[4] Section 23, par. 1, Republic Act 1199. See also section 38, par. 3 of the same Act.

YEK TONG LIN FIRE & MARINE INSURANCE CO. v. AMERICAN PRESIDENT LINES, INC.

G.R. No. L-11081, April 30, 1958

The Yek Tong Lin Fire & Marine Insurance Co. issued a marine insurance policy upon a cargo covering 27 crates of G.I. sheets consigned to the Pacific Exchange Corp. in Manila. The cargo was shipped on board the SS "President Jefferson" from Tokyo, Japan, for which the American President Lines, Inc., issued a bill of lading. When the said shipment was unloaded in Manila on or about July 17, 1952, it was found out that the same was badly damaged in an amount valued at ₱2,079.00. Upon demand of the insured, the Yek Tong Lin Fire & Marine Insurance Co. paid the aforementioned sum in discharge of its liability under the insurance policy. The consignee then assigned to the insurance company all its rights to claim reimbursement of the amount paid upon the insurance. Thereafter, on August 22, 1952, the insurance company as subrogee made an extrajudicial demand upon the shipping company.

On November 22, 1954, the action to claim reimbursement was brought by the Yek Tong Lin Fire & Marine Insurance Co. against the American President Lines, Inc. The defendant moved to dismiss the complaint on the ground of prescription. It was alleged in the motion to discuss that the action was filed more than two years and four months after the receipt of the cargo and, therefore, the action was not brought within one year as provided by the Carriage of Goods by Sea Act.[1] The plaintiff did not answer the motion to dismiss or deny the alleged date of arrival of the goods in Manila.[2] On December 21, 1954, the court entered an order dismissing the case on the ground that the action has already prescribed. A motion for reconsideration having been denied, the plaintiff appealed to the Supreme Court.

The plaintiff-appellant argued that it was error for the court *a quo* not to have considered the running of the prescriptive period as suspended by the extrajudicial demand which took place on August 22, 1952. It invoked for this purpose the provisions of Art. 1155 of the Civil Code of the Philippines.[3]

The Supreme Court held that the general provisions of the new Civil Code cannot be made to apply because such application would have the effect of extending the one-year period of prescription fixed in the Carriage of Goods by Sea Act for such a case.[4] Justice Labrador, who penned the decision, stated:

> It is desirable that matters affecting transportation of goods by sea be decided in as short a time as possible; the application of the provisions of Art. 1155 of the new Civil Code would unnecessarily extend the period and permit delays in the

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[1] Sec. 3 of the U.S. Carriage of Goods Act provides: "In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered . . ."

By the provisions of Com. Act No. 65 (Oct. 22, 1936), the U.S. Carriage of Goods by Sea Act (April 16, 1936) was accepted and made applicable to the Philippines. For a very interesting discussion on the applicability of the U.S. Carriage of Goods by Sea Act in the Philippines, *see* Chua Kuy v. Everett Steamship Corp., G.R. No. L-5554, May 27, 1953.

[2] The complaint in this case "studiously avoided making a statement" on the date of arrival of the goods in Manila "with the evident purpose of avoiding a fatal objection." Fortunately, the motion to dismiss alleged that the goods arrived in Manila on or about July 17, 1952. In the Supreme Court, one of the plaintiff's contentions was that no evidence was submitted to support the allegation that the goods arrived in Manila on that date. The Court held that this was the date of arrival. In the first place, the plaintiff did not deny this allegation in the motion to dismiss. In the second place, the date of arrival can be taken judicial notice of by the Court.

[3] Art. 1155 provides: "The prescription of actions is interrupted . . . when there is a written extrajudicial demand by the creditors. . . ."

settlement of questions affecting transportation, contrary to the clear intent and purpose of the law.[6]

The decision of the lower court was affirmed.

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[4] Actually, it would not have mattered whether or not art. 1155 of the new Civil Code is applicable. The period from Aug. 22, 1952, the date of the extrajudicial demand, to Nov. 22, 1954, the date of the filing of the action, is undoubtedly more than one year.

[5] In the case of Chua Kuy v. Everett Steamship Corp., *supra* note 1, the Supreme Court has already decided that the provisions of the Code of Civil Procedure on prescription, being general provisions, do not apply to cases covered by a special act such as the U.S. Carriage of Goods by Sea Act.

ERRATA

Page 733 line 4 "until the power penalty is served" should read "until the proper penalty is served."

Page 755 line 15 "decreased" should read "deceased."

Page 756 line 20 "in view of the existence of plain-subject" should read "in view of the existence of plaintiff's superior right, the aforesaid order is reviewable and subject"