CIVIL PROCEDURE

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The year 1960 witnessed as usual several decisions on civil procedure. Although most are merely reiteration of the past, or an amplification or clear application of the rules, nevertheless, the reading of them in the original may still prove profitable if only to keep us informed of the most recent position of our Supreme Court on certain obscure points in our civil procedure. It is the hope of the writers of this survey to inspire any reads of this article to make further readings on the subject.

I. JURISDICTION AND VENUE

Allegations of the complaint determine jurisdiction.

In the case of *Elvira Vidal Tuason de Rickards v. Andres F. Gonzales* [1] the Supreme Court reiterated the basic principle in procedural law that the allegations of the complaint determine the jurisdiction of the court entitled to entertain the same. In that case, the complaint with the CFI alleged that at least 15 days prior to the filing of the complaint, plaintiff had demanded defendant to vacate the premises. This shows an action for unlawful detainer which is within the jurisdiction of the JP and not the CFI.

When amount of each claim furnishes jurisdictional test.

Section 88 of the Judiciary Act provides:

> "x x x where there are several claims or causes of action between the parties embodied in the same complaint, the amount of the demand shall be the totality of the demand in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions; but where the claims or causes of action joined in a single complaint are separately owned or due to different parties, each separate claim shall furnish the jurisdictional test."

This was applied by the Supreme Court in the case of *Melecio Cajilig et al. v. Flora Roberson Co.*[2] In that case 33 crew members filed an action with the CFI for sums allegedly due them. The total amount asked was ₱15,142.40 but each individual claim did not exceed ₱534.

The Court, saying that where several plaintiffs have separate and distinct claims against a common defendant arising out of the same transaction or series of transaction, the amount of each separate claim determines jurisdiction, ruled that the JP and not the CFI has jurisdiction over the case.

Jurisdiction is conferred by law, not by agreement.

As to the nature of jurisdiction and how it is acquired, the Court in a case [3] said that jurisdiction is conferred by law and may not be fixed by agreement

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[1] G.R. No. L-14939, September 26, 1959.
[2] G.R. No. L-12800, August 5, 1960
[3] Carmen Fuentes v. Hon. Munoz-Palma, G.R. No. L-15074, May 31, 1960.

or the will of the parties. In that case, there was an agreement that in case defendant failed to pay rentals within 90 days, then he may be considered a mere intruder. Upon breach by defendant, plaintiff filed an action for forcible entry. The Court said that in agreements such as this many questions have to be decided, like the interpretation of the agreement, the rights and obligations of the parties, and those questions are beyond the jurisdiction of the JP.

Supreme Court has no jurisdiction over Special Committee of the House.

In the case of *Osmeña v. Pendatun et al.*[4] the Supreme Court refused to take jurisdiction over a petition for declaratory judgment and for certiorari and prohibition against respondent which is a special fact finding committee created by House Resolution No. 122.

Jurisdiction of Court of Appeals.

In three cases[5] the Supreme Court remanded them back to the Court of Appeals because they concerned, in whole or in part, only question of facts. In two other cases[6] both were sent back to the Court of Appeals because the value of the subject matter was less than ₱200,000.

CFI jurisdiction over matters not capable of pecuniary estimation.

In *Canaden v. Pelayo*[7] the CFI was held to have jurisdiction over an action for the annulment of a judgment, which, according to the Supreme Court, is not capable of pecuniary estimation.[8] The same principle was applied in a case[9] involving an action for support though the amount concerned was only ₱720, since it involved the determination of the relation of the parties, the right to support, the needs of the claimant, and financial means of the person to support, all of which are matters that are not capable of pecuniary estimation.

CFI's jurisdiction over labor disputes and the exceptions.

An enumeration of the exceptions to the jurisdiction of the CFI over labor disputes was made in the case of *Cueto v. Ortiz.*[10] The Court said that generally the CFI has jurisdiction over labor disputes except where it affects an industry indispensable to the national interest or it relates to minimum wages under the Minimum Wage Law or to hours of employment under the Eight-Hour Labor Law or where it involves an unfair labor practice.[11]

No JP jurisdiction over real actions.

The Court through the case of *Maria Salud Angeles v. Guevara*[12] said that the JP Court has no jurisdiction over the action for it clearly appears in the pleadings that the main issue raised therein relates to the plaintiff-appellee's ownership of the property in dispute and that the question as to who is entitled to the possession thereof depends upon the result of the inquiry into the latter's title.

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[4] G.R. No. L-17144, October 28, 1960.
[5] Perez v. Mendoza, G.R. No. L-15744, October 31, 1960; Trejano v. Gadicho, G.R. No. L-16679, October 25, 1960; Dizon v. Ocampo, G.R. No. L-14182, June 30, 1960.
[6] Poblete Construction Co. v. Lasam, G.R. No. L-14420, June 30, 1960; Ramos v. People's Surety, G.R. No. L-7607. August 31, 1960.
[7] G.R. No. L-13285, April 18, 1960.
[8] See section 44(a) Judiciary Act of 1948.
[9] Baito v. Sarmiento, G.R. No. L-13105, August 25, 1960.
[10] G.R. No. L-11555, May 31, 1960.
[11] Citing PAFLU v. Tan, 52 O.G. 5836.
[12] G.R. No. L-15697, October 31, 1960.

Venue of Real Actions.

Where the principal claim relates to a right over an immovable, the action must be brought in the province where the land is situated. In *LTA v. Macadaeg* [13] Lim filed an action with the CFI of Manila against the LTA to restrain the latter from preventing his entry into the land in Nueva Ecija for the purpose of gathering crops therein. Therefore the principal claim was to establish title and to recover a piece of land for the purpose of enabling him to gather the crops, and so the action must be commenced in Nueva Ecija where the land is located. It is thus immaterial and irrelevant to decide whether the growing crops in the land are movable or immovable property.

II. PARTIES, ACTION AND TRIAL

Only parties in interest must be included.

In *Dizon v. Mendoza*,[14] Dizon was the lessee with Jose T. Garcia and Juan Rivera as the lessors. In an action by the lessor for ejectment, Garcia was not included as a plaintiff. The Court, however, found that his participation in the lease contract was merely to facilitate the transaction. Consequently he is not a party in interest and his alleged non-inclusion will not deprive the court of jurisdiction.

In a case [15] against the GSIS to obtain retirement benefits, the Court said that the Municipality of San Isidro being the former employer of petitioner must be included as party-defendant to determine whether the municipality has deducted premiums from the salary of the petitioner and whether it has turned this amount over to the GSIS together with its share as required by sec. 5 CA 186.

The question in the case of *Sabido v. City of Manila* [16] was whether the petitioner has the personality to maintain a suit questioning the validity of an ordinance of the City of Manila containing the approved budget. Although petitioner has a claim for gratuity against the City, such claim is still pending approval and it is not pretended that the City would have no more funds with which to pay it. Rule 3 requires that action must be prosecuted for or against the real party in interest, and to be considered as such he must be one to be benefited or injured by the judgment or that he is entitled to the avails of the suit.[17] Here it has not been sufficiently shown that the passage of the ordinance would be prejudicial to the interest of the petitioner who is just one of the tax paying public. It further quoetd:

> "Public wrongs or neglect or breach of public duty cannot be redressed at a suit in the name of the individual or individuals whose interest in the right asserted does not differ from that of the public generally.
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> To entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action, he must show that he has sustained or is in immediate danger of sustaining a direct injury as a result of that action and it is not sufficient that he has merely a general interest common to all members of the public." [18]

Similarly, in the case of *Teves v. Court of Appeals*,[19] the Court gave another example of a real party in interest. The case was an action for the

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[13] G.R. No. L-13280, February 25, 1960
[14] G.R. No. L-15158, September 30, 1960.
[15] Cese v. GSIS, G.R. No. L-13581, August 31, 1960.
[16] G.R. No. L-14800, May 30, 1960.
[17] Citing Salonga v. Warner Barnes and Co. Ltd., G.R. No. L-2246, January 31, 1951.
[18] Citing Exparte Levitt 302 US 633; 58 S. Ct. 1.
[19] G.R. No. L-14691, May 30, 1960.

recovery of back salaries. The defendant was the Mayor of the City. The Court said that it is the City and not the Mayor that is the proper party since it would be the former which would have to make the necessary appropriation. It however said that if the action were brought against the mayor, treasurer auditor and city council, represented by the city attorney, there would be substantial compliance with the law since it is the council which appropriates and the treasurer and the auditor who releases the funds.

Indispensable and necessary parties: Example of joinder of parties.

Indispensable parties are those without whom the action cannot be finally determined. Necessary parties are those without whom the case may be finally determined between the parties in court, but they should be included in order that a final determination may be had in a single action of the whole controversy.[20]

However, the Supreme Court in the case of *Groma v. Court of Appeals* [21] relaxed a little the rule regarding the joinder of indispensable parties. It held that though the mother of petitioners was an indispensable party, the petitioners are estopped from so alleging because they had beforehand clearly asserted ownership over the land in dispute which they now claim to be owned by their mother.

The Court, through the case of *RFC v. Alto Surety and Ins. Co.*[21a] said that in an action for foreclosure of mortgage, though the junior encumbrancer is not a necessary party, it is proper to join him.

Petitioners, 12 in all sought to recover the possession and ownership of certain lands alleging that defendant unlawfully fenced them off and took possession of the properties from the plaintiffs. Since there was a question of fact and law common to all the plaintiffs and since their right to relief arose out of the same transaction or series of transactions and there was a common prayer, the joinder of plaintiffs in one action is proper. This is the case of *Baldo v. Guerrero.*[22]

Procedure in Inferior Courts as to default.

Section 13 of Rule 4 of the Rules of Court provides that:

> "If the defendant does not appear at the time and place designated in the summons, *he may be declared in default*, and the court shall thereupon proceed to hear the testimony of the plaintiff and his witnesses, and shall render judgment for the plaintiff in accordance with the facts alleged and proved." (Underlining supplied)

In *People's Surety and Insurance Co. v. Paz Perez,*[23] the Court had occasion to discuss the nature of this provision. It said that this provision is not mandatory and merely authorizes the court to declare defendant in default unlike the provision for the CFI whereby "If the defendant fails to answer within the time specified in there rules, the Court shall upon motion of the plaintiff, order judgment against the defendant by default." [24]

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[20] Moran, Rules of Court, Vol. I, 1957 ed. pp. 54-55.
[21] G.R. No. L-12486, August 31, 1960.
[21a] G.R. No. L-14303. March 24, 1960.
[22] G.R. No. L-15593, November 29, 1960.
[23] G.R. No. L-12170, April 29, 1960.
[24] Sec. 6, Rule 35, Rules of Court.

Legality of lis pendens.

The case of *Biglangawa v. Constantino* [25] was a claim by an agent for money judgment consisting of 20% of the gross sales and a fee of 10% of the collections made by him. It was not "an action affecting the title or the right of possession of real property or one to recover possession of real estate or to quiet title thereto or to remove clouds upon the title thereof or for partition or other proceedings of any kind in court affecting the title to real estate or the use or occupation thereof or the buildings thereon"—hence there is no basis for a notice of lis pendens.

Motion to dismiss—Its nature.

The nature of the motion to dismiss was dealt with in the case of *Arranz v. Manila Surety and Fidelity Co. Inc.*[26] There the appellant contended that he may still amend his complaint after the motion to dismiss had already been granted because the motion to dismiss is not a responsive pleading and under sec. 1 Rule 17, there may be amendment before the responsive pleading. The Court said that the motion to dismiss is not a responsive pleading and an order of dismissal upon motion is an adjudication on the merits. After such order, a party may amend his pleading. However if he appeals from the order of dismissal, he is no longer entitled to amend.

In *De Jesus v. dela Cruz* [27] defendants after being defeated in an action for forcible entry, reentered the premises. A petition to declare them in contempt was filed. While this petition was pending, another action was filed to enjoin defendants from taking possession of property. *Held:* Action should be dismissed on the ground that there is pending another case involving the same cause of action.

In the case of *Dela Peña v. Zaldarriaga,*[28] there were 2 actions; the 1st was for partition and accounting with respect to the 1/8 share of a certain Jose Zaldarriaga in an inheritance while the second was for declaration of status of acknowledged natural child and for the segregation of the portion belonging to Julio Zaldarriaga, the father of plaintiff. The Court held that the CFI erred in dismissing the case on the ground that there is already pending an action based on the same subject- matter.

Intervention—Example of insufficient interest.

The case of *Hacienda Sapang Palay Tenants League Inc. v. Yatco and PSDC* [29] illustrates an example of an interest that is insufficient to warrant intervention. Respondent corporation filed with the CFI a complaint to compel the management of the PHHC to execute a deed of sale of one-half of the Hacienda Sapang Palay allegedly in accordance with a perfected contract between them. The tenant-farmers of the hacienda who were represented by the League moved to intervene on the ground that they had already petitioned the Land Tenure Administration to purchase the land for resale to them and that by virtue of this petition, they acquired a legal right in the property under Act 1400, the Land Reform Act. *Held:* Mere filing in the LTA of a petition for the acquisition of the land by the LTA is not enough to bind the owner and affect his right of dominion. It is necessary and essential that some other steps

[25] G.R. No. L-9965, August 1960.
[26] G.R. No. L-12844, June 30, 1960.
[27] G.R. No. L-13313, March 28, 1960.
[28] G.R. No. L-14632, June 30, 1960.
[29] G.R. No. L-14651, February 29, 1960.

be taken for the exercise of the right of eminent domain. It is only then and not before that the resulting legal interest with the tenants comes into being.

Form of Pleadings—Requisite of verification.

The Court said in the case of *Cajefe v. Hon. Fidel Fernandez* [30] that it is only when the person verifying is other than the attorney who signs the pleading that the affiant must state that the allegations thereof are true of his own knowledge, but when the complaint is signed by the attorney the latter's oath couched in the usual form "subscribed and sworn to before me, etc." is substantial compliance with the Rules.

Necessity of amendment to pleadings.

In the former complaint it was not stated that the minor was validly represented by his father, so the court dismissed the case as to him. Can there be amendment to show that the minor ratified the acts of the father although there was no representation? *Held:* Yes, there can be amendment under sec. 2 Rule 17, to the end that all matters in dispute between the parties may as far as possible be completely determined in a single proceeding. Here, if amendment is not allowed, there would be a multiplicity of suits. This is the ruling in the case of *Heirs of Marciano Rojas v. Florencio Galindo.*[31]

Failure to appear at Pre-trial is a ground for dismissal.

The case of *Peralta Vda. de Caina v. Hon. Andres Reyes* [32] concerned an order for pre-trial issued by the respondent judge. Neither petitioner nor counsel appeared at the pre-trial so the Court dismissed the case. Is this proper? *Held:* Failure to appear at a pre-trial is a ground for dismissal nder sec. 3, Rule 30:

> "Sec. 3. *Failure to prosecute*—When plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, *or to comply with* these rules or *any order of the court*, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by the court."

Even though failure of petitioner to appear was excusable his motion to set aside the order of dismissal must be accompanied by an affidavit of merit. As formerly held by the Supreme Court: "Even supposing that the failure of the plaintiff and his attorney to appear at the hearing was really due as they alleged to 'excusable error or accident, still plaintiff would not be entitled to reopening of the case in the absence of a reasonable assurance supported by proper affidavit that he has a just and valid cause." [33]

Motions.

In *S.V.S. Pictures Inc. v. Court of Appeals* [34] petitioners filed a motion to submit additional documentary evidence to prove damages. The Court said that as the motions were filed after the case was submitted for decision, their granting or denial was purely discretionary upon the court.

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[30] G.R. No. L-15709, October 19, 1960.
[31] G.R. No. L-13578, May 31, 1960.
[32] G.R. No. L-15792, May 30, 1960.
[33] Remedios M. Vda. de Miranda v. Urbano Legaspi, G.R. No. L-4917, November 26, 1952.
[34] G.R. No. L-9075, January 29, 1960.

In *Permanent Concrete Products Inc. v. Juan Frivaldo*,[35] the question involved was whether the lower court erred in not setting the motion for reconsideration for oral argument. The Court said that whether or not the lower court would allow oral argument on the motion depends on the discretion of that court because as held in *Manansala v. Heras*[36] the movant is presumed to have set forth all his arguments in his motion for reconsideration thus obviating the necessity of further hearing the parties in oral argument.

Service of Pleadings—Necessity of service.

In the case of *Bautista v. Dacanay*[37] the case was set for hearing at a certain date at which time, defendant failed to appear so the court dismissed the case. Defendant filed a motion to set aside the dismissal on the ground that he did not receive a copy of the order setting the case for hearing. Attached to the motion was, a certified statement issued by the acting postmaster to the effect that the registered letter sent by the court to defendant's counsel was still in his office undelivered. The court denied this motion. *Held:* The order should have been set aside and the refusal to set it aside amounts to a denial of the right of the defendant to be heard. The post office was chosen by the court as the agency through which the defendant's counsel was to be notified. Responsibility for failure of such agent to make delivery of the letter containing the order setting the case for hearing may not be imputed to defendant's counsel.

When a case is remanded by a higher court to the lower court for further proceedings, the parties must be notified on the date that the lower court receives the records of the case, notwithstanding the silence of the Rules of Court on the point. So much was declared in the case of *Insurance Co. of North America v. Phil. Ports Terminal Inc.*[38] The Court further stated: "Reason and justice ordain that the parties be notified; otherwise they would not know when to proceed or resume proceedings and file other necessary pleadings, in order to continue the case until its termination. Notification of the decision of the appellate court to the parties is neither adequate nor sufficient for this purpose because the parties are not in a position to know when the case is actually returned to and received by the court of origin. The remanding of the case is bound to take time because the same can not be done until the decision of the appellate tribunal becomes final. It would be too much to expect the parties or their counsel to go to the trial court everyday to find out if the case has already been returned. Only from the date of notification by the court of origin will the different periods for filing pleadings, such as answer to the complaint, answer to the counterclaim, etc. begin to run or continue to run."

Sufficiency of notice.

In *Rueda v. Juan*,[39] the Supreme Court said that while in the ordinary course of business notice sent be registered mail to the correct address of a lawyer may be considered as a constructive notice that may bind him even if he fails to receive the mail within a reasonable time from notice,[40] the rule can-

[35] G.R. No. L-14179, September 15, 1960.
[36] G.R. No. L-10582, April 30, 1958.
[37] G.R. No. L-13801, August 31, 1960.
[38] G.R. No. L-14133, April 18, 1960.
[39] G.R. No. L-13764, January 30, 1960.
[40] Sec. 8. Rule 27

not apply when the addressee is already dead and there is no showing that the notice was received by a person of sufficient discretion to receive the same in behalf of the counsel.[41] In the present case, the mail was unclaimed. The party did not know of the death of his counsel who was residing in Manila while he was residing in Nueva Ecija. It is a well settled rule that "no one shall be personally bound until he has had a day in court", by which is meant, until he has been duly cited to appear and has been afforded an opportunity to be heard.

Rule as to oral notice.

Generally, oral notice is insufficient. This was held once more in *Centenesa v. Yatco.*[42] The petitioner received a notice of the lower court's decision on Oct. 14, 1957. On the other hand, the adverse party claims that petitioner received oral notice of the decision on Oct. 7, 1957. *Held:* Notice given in open court is not sufficient.[43] To be effective, service of a final order should be made either personally or by registered mail [44] and personal service is made by delivering personally a copy to the party or his attorney or by leaving it in his office with his clerk or with a person having charge thereof.

This rule was qualified in *National Lumber and Hardware Co. v. Pedro Velasco.*[45] The facts are: When the case was set for hearing, the defendant on four occasions asked for postponement. On June 21, 1956, defendant filed again a "Very Urgent Ex-Parte Petition for Postponement of Hearing," so the hearing was postponed to August 9, which order was issued in open court in the presence of defendant. On August 7, defendant filed another "Very Urgent Ex-Parte Petition" for continuance for the reason that he had not received any formal notice of the hearing set for August 9. The motion was denied and judgment was rendered against defendant. Issue :Was the oral notice in open court sufficient? The court answered in the affirmative. It said that there was no abuse of discretion on the part of the lower court in having proceeded with the trial on August 9, 1956 even without a copy of the notice of the trial set on August 9, having been sent to counsel for defendant. The further postponement of the trial to August 9 was at the defendant's request so it is difficult to see how defendant's counsel could not have known the result of his motion. While it is true that a notice to a party is not sufficient notice in law, the objection to that defect may be waived. In the instant case, the act of defendant in filing his last petition for continuance shows that he has been informed of the order of the court setting the case for trial to August 9.

Completion of Service.

In *Roxas v. Papa* [46] the defendant after having been granted a 15 day extension to answer, filed again another motion asking that this period to answer be extended to April 15. Acting on the motion, the court issued on February 24 an order granting an extension of only 20 days. From what date should the 20 days be counted? *Held:* The period should run from the date of receipt of a copy of the order. Here, the order was sent by ordinary mail. The rule is that service by mail is complete upon expiration of 5 days after mailing unless the court otherwise provides.[47] In the present case, copy of the order was mailed on February 26, and there is no showing that said copy was

[41] Sec. 4, Rule 27.
[42] G.R. No. L-13564, January 30, 1960.
[43] Melgar v. Delgado, 53 Phil. 223; 1 Moran, Rules of Court, 1957 ed., p. 411.
[44] Sec. 4, Rule 27.
[45] G.R. No. L-14109, January 30, 1960.
[46] G.R. No. L-13459, April 29, 1960.
[47] Sec. 8, Rule 27.

returned to the court. Therefore the appellants received it at the latest on March 2, 1956 and the 20 days extension should be counted therefrom. The 20-day period therefore expired on March 22, 1956. Having failed to answer within that period, they were properly declared in default.

Dismissal of actions upon failure to amend complaint.

The court applied sec. 3 of Rule 30 which empowers the court to dismiss the action when plaintiff fails to comply with its lawful orders. This was held in *Dizon v. Garcia.*[48] The Court said that failure of the plaintiff to amend his complaint as ordered by the court is a ground for dismissal under this provision.

In another case [49] the Supreme Court admonished the lower court for dismissing a case because of a few minutes delay of plaintiff to arrive which delay was unavoidable in Manila due to the traffic.

Postponement and continuance.

Matters of postponement are discretionary with the court. In the case of *Martir v. Jalandoni,*[50] the reason behind the petition for postponement was that the attorney could not proceed with the case because all his efforts were concentrated in a criminal case. The court denied the motion saying that the matter is within the discretion of the court and that the attorney should have advised the court at least three days before trial.

Where lack of notice of hearing in motion for reconsideration was excused.

The case of *Mesin v. Canonoy* [51] dealt with a motion for reconsideration filed by a party in a case. The motion was granted although it was opposed on the ground that it contained no notice of hearing and should thus be considered a mere scrap of paper which did not afford the running of the period for the judgment to become final. The Supreme Court upheld this decision saying that in the court in question, sessions are held only once a year on the dates to be fixed by the district judge. As the sessions were not continuous throughout the year and since it was not shown that, at the time the motion was presented, the judge had already set a date for the next term, the attorney for the movant could not set the motion for hearing.

Trial by Commissioner—Effect of lack of notice to parties of filing of report by commissioner.

The case of *Bay View Hotel Employee's Union v. Bay View Hotel Inc.*[52] was tried by a commissioner in the lower court. It is contended that there was irregularity in the proceedings before the trial examiner due to non-observance of sections 10 and 11 of Rule 34—as to notice to parties of filing of report of the commissioner and setting such report for hearing. Citing *Manila Trading and Supply Co. v. FLU* [53] the Court said: "When a case is referred to a commissioner and at the investigation, the parties are duly represented by counsel, heard or at least given an opportunity to be heard, requisites of due process have been satisfied even if the Court failed to set the report for hearing. A

[48] G.R. No. L-14690, November 27, 1960.
[49] PNB v. Phil. Recording System, G.R. No. L-11310, March 29, 1960.
[50] G.R. No. L-12870, March 25, 1960.
[51] G.R. No. L-13231, February 1960.
[52] G.R. No. L-10393, March 30, 1960.
[53] 1 Phil. 539

decision based on such report with other evidence is a decision which meets the requirements of fair and open hearing.

III. JUDGMENT, EFFECT OF JUDGMENT, AND EXECUTION

Judgment refusing to grant relief is final and appealable.

The case of *Formoso v. Flores* [54] reiterated the rule that refusal by a court to grant relief under Rule 38 of the Rules of Court in an appropriate case, is not merely an interlocutory order, but a final one which can be appealed.[55] Whether or not the petition for relief was sufficient in form or substance is a matter extraneous to the determination of the appealability of the order of denial.[56]

The Court in *Quetulio v. Flores* [57] defined when a judgment is final, that is, when it does not order further proceedings to be done by the lower court before the judgment can be executed.

In the case of *Liberty Supply Construction Co. v. Pecson*,[58] the petitioning surety not having been notified in the manner required by the Rules of Court before judgment has become final, it should not be made liable under its bond.

Decision must be supported by facts.

The judgment must be based on findings of fact and conclusions of law as found out by the Court. Similarly, no damages may be awarded in the absence of proof as to how much petitioners have been prejudiced. And even the failure of the plaintiff to deny does not excuse lack of proof. In the absence of definite and satisfactory proof, no damages may be awarded. This was held in the case of *Tanjangco v. Jovellanos*.[59]

Compromise judgment need not contain findings of fact.

Though under sec. 1 Rule 35:

> "How judgment rendered.—All judgments determining the merits of cases shall be in writing personally and directly prepared by the judge and signed by him, *stating clearly and distinctly the facts and law on which it is based* and filed with the clerk of court." (Italics supplied).

there is an exception to this rule in the case of compromise judgments. The validity of compromise judgments cannot be assailed on the ground that they contain no findings of fact. In contemplation of law the court is deemed to have adopted the same statement of facts and conclusion of law made and resolved by the parties themselves in their compromise agreement; and their consent has rendered it both unnecessary and improper for the court to still make preliminary adjudication of the matters thereunder covered. This is the holding in *Palanca v. Anzon*.[60]

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[54] G.R. No. L-14016, January 30, 1960.
[55] Citing Paner v. Yatco, 48 O.G. 61. PMC v. Cabangis, 49 Phil. 113.
[56] Citing Tambunting v. San Jose, G.R. No. L-8162, August 30, 1955.
[57] G.R. No. L-16406, November 26, 1960.
[58] G.R. No. L-3694, May 23, 1960.
[59] G.R. No. L-12332, June 30, 1960.
[60] G.R. No. L-14780, November 29, 1960.

Dispositive portion of judgment is controlling.

As held in the case of *Robles v. Timario*:[61] The only portion of the decision that becomes subject of execution is that ordained or decreed in the dispositive part. Whatever may be found in the body of the decision can only be considered as part of the reasons or conclusions of the Court and while they may serve as guide or enlightenment to determine the *ratio decidendi*, what is controlling is what appears in the dispositive part of the decision.[62] In the present case, the dispositive portion contains no provision on the interest to be paid on the judgment, so it is beyond the power of the respondent court to issue a writ of execution for the payment of the principal obligation with the interest thereon.

Interest is counted from date of decision of lower court and not date of confirmatory decisions.

The judgment in question in the case of *Caselan v. Galagnara*[63] contained the phrase "with legal interests on all sums". The judgment was rendered by the CFI on Sept. 5, which was later affirmed by the Supreme Court. The issue is: From what time should interest be computed? *Held:* The answer of defendant which contained the counterclaim under which judgment was rendered contained a judicial demand. Interest on judgment should have started then.

Under sec. 510 of Act 190 "When the Supreme Court affirms a judgment of a court below and awards a sum of money as debt or damage, it shall direct that interest be added to the original judgment until the date of final judgment at the rate of 6% per annum." The Rules of Court did not expressly repeal this provision. Neither are they inconsistent with it.[64]

Appeal did not stop the running of the interest. Plaintiff could have deposited the amount of the judgment when the same was first rendered and stopped the running of interest thereafter.

Party in default is not entitled to notice.

A reiteration of the basic and primary rule regarding default was made in the case of *Pimentel v. Gomez*[65] by the Supreme Court wherein it said that a defendant in default loses his standing in court and consequently cannot appear therein to adduce evidence or be heard. He is, for that reason, not entitled to notice, because it would be useless and of no purpose to do so, since he cannot appeal and be heard in the suit, anyway.

Effect of default when there are several defendants.

The case of *M. B. Florentino and Co., Ltd. v. Johnlo Trading & Lipsett Pacific Corporation*[66] dealt with an action filed by plaintiff for (1) the recovery of stevedoring charges from Johnlo Co. and for (2) fraud on plaintiff by transfer by Johnlo to Lipsett of its assets. Lipsett answered but Johnlo failed to answer and so was declared in default. Judgment was rendered against defendant. Lipsett appealed. In the appeal, the Court reduced Johnlo's liability. Hence, this certiorari by Florentino. *Issue:* Could the appellate court reduce

[61] G.R. No. L-13911, April 28, 1960.
[62] Citing Edwards v. Jose, 52 O.G. 537.
[63] G.R. No. L-15208, September 30, 1960.
[64] Citing Lim Tuico v. Cu Unjieng, 21 Phil. 493; Keeler v. Ellerman, 38 Phil. 514.
[65] G.R. No. L-15234, October 31, 1960.
[66] G.R. No. L-8388, June 30, 1960.

the liability of the party in default? *Held:* A party in default has no right to appeal and the decision as to him becomes final, except if the judgment can only be sustained upon the liability of the one who appeals and the decision as to him becomes final, and when the liability of the other co-judgment debtors depends solely upon the question of whether or not the appellant is liable and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all.[67] This is not the case here. Lipsett had no interest in Johnlo's contract.

Party in default may apply for relief.

In the case of *Villanueva v. Ortega*[68] the Supreme Court citing the case of *Prudential Bank & Trust Co. v. Macadaeg*[69] ruled that one who has defaulted may apply for relief under Rule 38. Petition must be within 6 months but since order of default is interlocutory it must be before final judgment. Hence petition may be made at any time before final judgment provided it is made within 6 months after entry of the order.

As to the ground for lifting the order of default, the Supreme Court,[70] said that the failure of counsel's secretary to call the former's attention as to time within which the answer should be filed cannot constitute excusable neglect as would justify the lifting of the order of default and the reopening of the case. Counsel was charged by law into knowledge of the reglamentary period within which to answer.

Court has no power to amend after judgment becomes final.

A final judgment can no longer be altered or amended and the court loses its jurisdiction thereover save to order its execution and to correct clerical errors. In an action to recover an automobile[71] after judgment for plaintiff had become final, plaintiff filed a motion to prove damages. *Held:* the court, after the judgment became final no longer had any power to add to the judgment. The award for damages for the deterioration of the car affects the merits of the judgment. The relief is entirely a new one and not merely a correction of clerical mistakes.

In the case of *Salonga v. Natividad*[72] a complaint was filed by plaintiff against defendants (husband being in joint suit against wife). Judgment was rendered against "defendant". After judgment became final and execution was returned unsatisfied plaintiff moved to correct the judgment to replace the word "defendant" with "defendants". *Held:* The rule is absolute that after a judgment becomes final, no further amendment or correction can be made by the court except for clerical error. Taking into account the circumstances of the present case, it is apparent that the amendment of the judgment by making plural the word "defendant" in the dispositive portion thereof would not really be a correction of a mere clerical error. For to allow such an amendment would make the defendant husband who was not included in the judgment or the conjugal partnership liable for an obligation for which the wife alone was held answerable.

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[67] Mun. of Orion v. Concha, 50 Phil. 679.
[68] G.R. No. L-13476, March 24, 1960.
[69] G.R. No. L-10454, March 25, 1959.
[70] Pimentel v. Gomez, G.R. No. L-15234, October 31, 1960.
[71] Ablaza v. Sycip, G.R. No. L-12175, November 23, 1960.
[72] G.R. No. L-13927, February 29, 1960.

Although the judgment of the lower court is erroneous insofar as it ordered the payment of an amount exceeding the lawful liability of the surety, however, the same can no longer be modified after it has become final and executory.[73]

In an action[74] for the cancellation of certificates of title over a piece of land, the parties reached an amicable settlement wherein plaintiffs bound themselves to pay the defendant ₱131,000 and the latter agreed to recovering the land in question. The court rendered a decision enjoining the parties to comply with the terms of the agreement. Plaintiff defaulted and upon petition of defendant, the court fixed 30 days as the period within which plaintiff should pay, failing in which their right over the properties would be deemed forfeited. The issue was whether this last order is an amendment to the decision in question. The Court said that the order was justified being necessary to give force and effect to the decision. The judgment being based on a compromise is immediately executory and the obligations of the parties demandable at once, so that what the court did was merely to implement its decision.

Confession of judgment in legal separation

In the case of *Ocampo v. Florenciano*[75] plaintiff caught his wife, the defendant with another man, so he filed a petition for legal separation. Defendant did not answer. The Court dismissed the action, saying that as there was confession of judgment, no decision can be had due to Article 101 NCC. The Supreme Court said that the article does not exclude, as evidence, any admission or confession made by the defendant outside of the court. It merely prohibits a decree of separation upon a confession of judgment. Confession of judgment usually happens when the defendant appears in court and admits plaintiff's right. This did not exist in the case. Yet even though it occurred, inasmuch as there is evidence of the adultery independent of such statement, the decree should be granted.

Res judicata—Jurisprudence on the subject.

The requisites of *res judicata* are:

1) There must be a final judgment or order.
2) The Court rendering the same must have jurisdiction of the subject matter and of the parties.
3) It must be a judgment or order on the merits.
4) There must be between the two cases identity of parties, of subject matter and of cause of action.[76]

Where the claim was an issue in the trial court and could have been passed upon by the court had the party pressed action thereon, the inaction of the party is equivalent to a waiver of the right to such claims and the former decision is as to that point a bar to a subsequent action for the same claim.[77]

In the case of *Padron Vda. de Valenzuela v. CA, Jara*[78] petitioner brought the case No. 340 against Jara for the reconveyance of land and/or cancellation of homestead patent issued to Jara due to fraud in securing the patent. Summons was served on J's mother who lived with him. J failed to answer and

[73] Reliance Surety v. La Campana, G.R. No. L-15573, October 28, 1960.
[74] Alano v. Cortes, G.R. No. L-15276, November 28, 1960.
[75] G.R. No. L-13553, February 23, 1960.
[76] Moran, Rules of Court, Vol. I, 1957 ed., p. 609-610.
[77] Pua v. Lapitan, G.R. No. L-14148, February 28, 1960.
[78] G.R. No. L-12645, September 15, 1960.

so was declared in default. Judgment was rendered against him. J thereupon filed case no. 398 for annulment of the judgment. Is this proper? The second case should be dismissed. Though the first case is for reconveyance and/or cancellation of patent, and the second one is for the annulment of a judgment, there is identity of issues. Though they ask for different reliefs, they rest on the same ground.

The Court further said that the CFI had no authority to order cancellation after 1 year had already elapsed from the issuance of the patent and certificate of title. Only reconveyance was allowable. On this point, the judgment is erroneous, but the judgment is not void for lack of jurisdiction. Remedy should have been appeal and not certiorari.

The decision in the case of *Roa v. de la Cruz*[79] is that the right of the offended party to intervene in a criminal suit is for the sole purpose of enforcing the civil liability born of the criminal act and not of demanding punishment of the accused. Plaintiff, having elected to claim damages by her appearance or intervention through a private prosecutor in the criminal case itself and the court did not make any pronouncement as to such damages, the Court held that the final judgment in the criminal case constitutes a bar to the present civil action for damages based upon the same cause.

As to the effect of a compromise judgment, the Court in the case of *Palarca v. Anzon*[80] said: Whether it be judicial or extra-judicial, a compromise has, with respect to the parties, the same authority as *res judicata* with the sole difference that only a compromise made in court may be enforced by execution.

The question involved in the case of *Yulo v. Yang*[81] was whether there was an identity of issues between a former case and the present case such as to constitute res judicata. The issue in the former case was the rental value of the property rented. The cause of action was the ejectment of Yulo and Yang. The parties were different. Sta. Marina was the plaintiff while Yulo and Yang were the defendants. In the present case the issue is whether or not Yulo and Yang were partners. So even though the court in the former case held that the two were partners, there is still no *res judicata*.

As to the parties, although new parties are joined in the second action there is still *res judicata* of the party against whom the judgment is offered in evidence who was a party in the first action. Otherwise a case can always be renewed by the mere expedient of joining new parties in the second suit.[82]

The 2 kinds of res judicata was discussed in the case of heirs of *Mariano Rojas v. Galindo*.[83] That was an action by the heirs of Rojas to compel heirs of Galindo to execute a deed of sale. Court dismissed the complaint insofar as defendant Federico de Guzman was concerned, saying that the latter was not validly represented by his father. A petition for certiorari to reinstate Guzman as party was denied. Later, a motion was filed to admit an amended complaint seeking to include facts that would make de Guzman a proper party. Was there *res judicata? Held:* The principle of *res judicata* embraces two concepts, each of which is distinct and separate from the other. The first is known as *bar by former judgment* and the other as *conclusiveness of judgment*. As to the

[79] G.R. No. L-13134, February 13, 1960.
[80] G.R. No. L-14780, November 29, 1960.
[81] G.R. No. L-12541, March 30, 1960.
[82] Lasala v. Sarnate, G.R. No. L-15929, November 29, 1960.
[83] G.R. No. L-13578, May 31, 1960.

first, there is identity of parties, subject-matter and cause of action. Judgment in the first case absolutely bars the second. It is final as to the claim or demand in controversy including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. x x x

Where there is no identity of cause of action the first is conclusive only as to those matters actually and directly controverted and determined, not as to matters merely involved therein. The rule as to *bar by former judgment* is found in Sec. 44(f) Rule 39 while the rule as to *conclusiveness of judgment* is in Sec. 45.

In this case, we have the second class—conclusiveness of judgment so that what was concluded in the order is that in the execution of the deed of sale. The allegations in the amendment that Guzman has not sought nullity of the contract entered into by his father and had ratified it was not involved previously. These are new issues which may still be decided.

Summary judgments are not limited to money claims.

In the case of *De Leon v. Faustino*,[84] appellant contended that a summary judgment under sec. 1 Rule 36 contemplates actions which are in the nature of money claims. The Court refused to follow this contention, saying that the summary judgment procedure is a method for promptly disposing of action in which there is no genuine issue as to any material fact. Under this definition and from the provisions of Sec. 1 Rule 26, there would seem to be no limitation as to the type of action in which the remedy is available, except where the material facts alleged in the complaint are required to be proved.

Rule 39 applies to land registration cases.

The decision in the case of *Marcelo v. Mencias*[85] is to the effect that Sec. 13 Rule 39 does not only apply to ordinary actions but also to land registration cases in a supplementary character. To require a successful litigant in a land registration case to institute another action for the purpose of obtaining possession of the land adjudged to him would be a cumbersome process. It would foster unnecessary and expensive litigation and result in multiplicity of suits which our judicial system abhors.

An action upon a judgment must be filed within 10 years from the date judgment becomes final. This was applied by the Supreme Court in two cases: *Lazaro v. Gomez*, G.R. Nos. L-12664 & 12665, Sept. 30, 1960 and *Levy Hermanos v. Perez*, G.R. No. L-14487, April 29, 1960.

Writ of execution must conform to Judgment

Judgment in the court made no adjudication as to Portion A of the land, only as to Portion B, but the writ of execution ordered the delivery of portion A to defendant. *Held:* such writ is invalid.[86]

Lawyer's lien must be respected

In the case of *Bacolod-Murcia Milling Co. v. Henares*,[86a] plaintiff obtained a decision against defendant. Nolan filed a notice of lawyer's lien of 10%. Execution was carried on and sale was confirmed. Nolan then filed a petition

[84] G.R. No. L-15804, November 29, 1960.
[85] G.R. No. L-15609, April 29, 1960.
[86] Segarra v. Maravilla, G.R. No. L-14428, July 26, 1960.
[86a] G.R. No. L-13505, March 30, 1960.

for payment of the amount of his lawyer's lien. *Issue:* Did the satisfaction of the judgment by the judgment creditor extinguish the lawyer's lien? *Held:* No. If a satisfaction of the judgment has been in disregard of the attorney's rights, notice having been previously given to the judgment debtor, the Court may vacate such satisfaction and enforce the lien.

During what period, execution may be ordered

The case of *Quinto v. Lacson*[87] was a petition for prohibition to stop demolition of houses on the Estero de Tutuban as nuisances by order of the respondent Mayor and City Engineer. Petitioner now claims that defendant cannot enforce the demolition orders because the authorities did not for 2 years since 1956 enforce the orders. The Court saying that execution may be had within 5 years after the judgment, further said that though the estero has outlived its use as drainage due to the construction of some streets, this does not alter the fact that they were ordered to get out and this order is final. The change does not *ipso facto* give them an excuse.

Period of execution of judgment for alimony.

A money decree for alimony is not a judgment in the full legal meaning of the term and does not become stale simply because of a failure to issue execution to issue execution thereon within the period limited by statute. The decree continues in force until it expires or is changed which is within the authority of the court to effectuate. The fact that decision in Civil Case No. 20952 (for alimony) was rendered on Aug. 12, 1954 and more than five years had elapsed since then, said decision can be enforced by way of execution without first taking an action for its renewal.[88]

Requisites for validity of levy.

Under sec. 14, Rule 29, real property shall be levied on in like manner and with like effect as under an order of attachment. The provision on attechment is that it shall be made by "filing with the Register of Deeds a copy of the order together with the description of the property attached, and *a notice* that it is attached and by leaving a copy of said order, description and notice with the occupant of the property, if any there be. And "where the property has been brought under the operation of the Land Registration Act, the notice shall contain a reference to the number of the certificate of title and the volume and page in the registration book where the certificate is registered.[89] Here, although the land was registered, there was no notice required. Hence the levy is invalid.

Necessity for notice of levy.

"Levy" includes a constructive as well as an actual taking into possession of property under execution process. In the case of *Philippine Bank of Commerce v. Macadaeg et al.*,[90] respondents 3 days prior to the scheduled execution sale, received copy of the sheriff's notice of sale which informed them that by virtue of an execution levy was made upon the properties of the defendant and that the sheriff would sell said rights and interest. This notice while not

[87] G.R. No. L-14700, May 30, 1960.
[88] San Pedro v. Almeda-Lopez, G.R. No. L-16655, July 26, 1960.
[89] Sec. 7(a) Rule 59.
[90] G.R. No. L-14174, October 31, 1960.

a literal compliance with Sec. 14 Rule 39 (which requires formal notice of levy apart from the notice of sale) is substantial compliance therewith. Respondent had therefore the opportunity to either pay off the judgment before the execution sale or the designate to the sheriff other properties that might be levied upon. Not only did they fail to do so, but they made no objection to the holding of the sale on the ground that no proper levy was made. While the rules give the judgment debtor the right to point out which of his properties should be levied upon, such right is required to be exercised at the time of the sale by being present thereat and directing the order of sale to the sheriff.[91] The authorities even require that the debtor not only indicate such properties but also place them at the sheriff's disposal. The debtor cannot defeat a levy by neglect to exercise this statutory right, which is personal to him and may be waived.

Extent of exemptions from execution.

In the case of *Canonizado v. Almeda-Lopez*[92] *et al.*, defendant sought to exempt his car from execution on the ground that plaintiff is using it in the exercise of plaintiff's possession. *Held:* not exempt.. The law enumerates only what properties are exempt. Courts cannot provide for others.

IV. RELIEF FROM JUDGMENT AND PETITION FOR RELIEF

Pro forma motion for new trial does not suspend running of period to appeal.

In the case of *Interior v. Munsayac*,[93] notice of the decision of the lower court was received Sept. 8, 1955, a motion for new trial was filed. This was granted and hearing was set for October 15, 1955. On October 14, 1955, a motion for postponement was filed. Motion was dismissed and notice of dismissal was received on Oct. 18, 1955. Oct. 19, notice of appeal was filed. *Held:* Since the motion for new trial was merely *pro forma* and one interposed for delay, the period to appeal was not suspended and so the order of Oct. 15 already became final. Similarly a second motion for reconsideration which is based on a ground already existing at the time of the filing of the first motion for reconsideration, does not suspend the running of the period to appeal.[94]

Motion for new trial must be accompanied by affidavit of merit.

A motion for reconsideration invoking excusable neglect is in effect a motion for new trial under Rule 37 or for relief under Rule 18, which must therefore be accompanied by affidavits of merit, otherwise the Court could decline to entertain them.[95]

New evidence as a ground for a motion for new trial.

In the case *of Republic v. Alto Surety & Insurance Co., Inc.*,[96] defendant assured the return of one Lewin who went abroad. Lewin failed to return within the period stipulated in the bond. So the Government proceeded against defendant. Meanwhile, Lewin arrived but was detained in the boat. Defendant appealed from the decision against it, alleging that were the testimony of Lewin taken, it would probably change the decision. Defendant filed a motion

[91] Sec. 19, Rule 39.
[92] G.R. No. L-13805, September 30, 1960.
[93] G.R. No. L-12143. June 30, 1960.
[94] Marquez v. Panganiban, G.R. No. L-15842, October 31, 1960.
[95] Flores v. Phil. Alien Property Administration, G.R. No. L-12741, April 28, 1960.
[96] G.R. No. L-14303, March 24. 1960.

for new trial. It was denied. Was the denial proper? *Held:* One of the requirements for the granting of a motion for new trial is a satisfactory showing that even with the exercise of reasonable diligence, the new matter sought to be admitted could not have been discovered and produced at the trial.[97] From the motion, it would appear that Ted Lewin's presence in the country was already known by the appellant. His intended testimony could have been upon reasonable effort, be made available to the courts had appellant simply made use of the means provided under Rule 18 of the Rules of Court. It is not alleged that appellant tried to do so and failed. Accordingly, the motion for new trial was denied.

Petition for relief—Rule 38

Pursuant to Sec. 3 of Rule 38 of the Rules of Court, a petition for relief from a judgment or order of a court of first instance must be filed within 60 days after the petitioner learns of the judgment, order or other proceeding to be set aside, and not more than 6 months after such judgment or order was entered or such proceeding was taken. In the case of *Koppel (Phil.) v. Mallanes* [98] the petition for relief was filed almost 2 years after entry of the judgment, so the defendant may not avail himself of Rule 38. The remedy to annul judgment which may be obtained within 4 years from the fraud is the period within which the annulment of a judgment may be prayed for in an *independent* and *separate* action from that in which it was rendered.[99] The period of 4 years does not apply to a petition filed in the original or main action to secure relief from said judgment. However, in this case, even the action within 4 years cannot be brought since the case concerns intrinsic fraud and not extrinsic fraud to which the law refers.

The Supreme Court considered as sufficient to warrant relief under Rule 38 the fact that petitioner was sick,[100] and that the notice of hearing was inadvertently misplaced with the papers of one of the many cases bearing same title still pending with the CIR, such that the party was unable to attend.[101] It did not however consider the negligence excusable in the case where the plaintiff failed to appeal due to the erroneous computation by the counsel's clerk of the period within which appeal may be made [102] or in the case where notice was sent to the attorney, and the attorney thought that he had already been discharged and so he did not do anything about the notice when in fact he had not been validly discharged as provided in Sec.24, Rule 127.[103]

Requirement of affidavit of merit is jurisdictional.

A petition for relief under Sec. 3 of Rule 17 of the Rules of Court which was not accompanied by "affidavits of merit wherein are stated the fraud, accident, mistake, or excusable negligence, and the facts relied upon by the petitioner to constitute his valid defense in the original case is fatal and justified the denial of the relief sought, for it is the affidavit of merit that serves as jurisdictional basis for a court to entertain a petition for relief.[104]

[97] Sec. 1(6), Rule 37.
[98] G.R. No. L-12644, April 29, 1960.
[99] Anuran v. Aquino, 38 Phil. 29; Banco Español Filipino v, Palanca, 37 Phil. 921.
[100] Ty v. Filipinas Cia de Seguros, G.R. Nos. L-15921-33 September 30, 1960.
[101] Brito v. CIR, G.R. No. L-....., May 31, 1960.
[102] Eco v. Rodriguez, G.R. No. L-16731, March 30, 1961.
[103] Guanzon v. Aragon, G.R. No. L-14436, March 21, 1960.
[104] Abao v. Virtucio, G.R. No. L-16429, October 25, 1960.

V APPEAL

Appeal from the JP to the CFI; Requisites.

Under sec. 2 of Rule 40, to perfect an appeal from the judgment of the JP, an appellant, must, within 15 days from notice of the judgment 1) file with the justice of the peace or the municipal judge a notice of appeal, 2) deliver a certificate of the municipal treasurer or the clerk of the court in chartered cities showing that he has deposited the appellate court docket fee and 3) give a bond. These requisites were not followed by the defendant in the case of *Valdez v. Acumen*[104a] since the appellate court docket fee was not paid within 15 days.

However in *Tagulaw v. Mundok*,[105] the Supreme Court qualified this rule. In that case, defendant paid ₱50 as asked by the municipal treasurer as appeal bond when he should have paid ₱25 as cash appeal bond and ₱10 as docketing fee. When he realized his deficiency defendant paid ₱5 more. The Court said that petitioner substantially complied with the provision. The mistake was on the part of the treasurer. "Every citizen has the right to assume and trust that a public officer charged by law with certain knows his duties and performs them in accordance with law. To penalize such citizen for relying upon said officer in all good faith is repugnant to justice."[106] "Where an appellant was from the beginning ready and willing to pay into court the correct amount of docketing fee and the correct amount was not paid because of error of the clerk of the JP court, who believing ₱8 to be the correct fee required petitioner to pay that amount only, it would be unjust to dismiss the appeal, just for that mistake of the government clerk.

Appeal operates to vacate judgment; Exception.

The rule is that in an ordinary action, a perfected appeal shall operate to vacate the judgment of the JP or the municipal court, and the case shall stand *de novo* in the CFI upon its merits as if it had never been tried before and had been originally there commenced.[108]

This rule however applies only to ordinary actions and not to cases of ejectment which are governed by sec. 8, Rule 72 which sets out a particular procedure to be followed.[109]

According to sec. 10, Rule 40, when a JP court disposes of a case not on its merits but on a question of law, as when it dismisses it and it is appealed to the CFI, the latter may either affirm or reverse the ruling or order of dismissal. In *Mun. Treasurer of Pili v. Palacio*[110] the CFI reversed the order and instead of trying the case on the merits as it did, it should have returned the same to the JP court for further proceedings.

However, the rule as to lack of jurisdiction is that "a case tried by an inferior court without jurisdiction over the subject matter shall be dismissed on appeal by the CFI. But instead of dismissing the case, the court in the exercise of its original jurisdiction may try the case on the merits if the parties therein file their pleadings and go to trial without any objection to

[104a] G.R. No. L-13536, January 29, 1960.
[105] G.R. No. L--5550, May 30, 1960 .
[106] Segorra v. Barrios, 75 Phil. 764.
[107] Marasigan v. Palacio, 87 Phil. 839.
[108] Sec. 9, Rule 40.
[109] Acierto v. Laperal, G.R. No. L-15966, April 29, 1960.
[110] G.R. No. L-13653, April 27, 1960.

such jurisdiction.[111] The party relying on his objection must urge it on his defense; otherwise if he filed his pleadings and presented evidence, such action is equivalent to waiver. In the case of *Angeles v. Guevara*[112] while the appellant upon perfecting his appeal, impliedly moved for dismissal of the case, his objection was predicated on the theory that if the Justice of the Peace court has no jurisdiction, the CFI as an appellate court has likewise no authority to try on the merits. The objection therefore was directed against the appellate jurisdiction of the CFI and not to its original jurisdiction. So the objection was not sufficient.

Appeal from CFI to CA.

Under Rule 41, to perfect an appeal from the CFI to the CA, it is necessary for the appellant to file within 30 days from notice of the judgment 1) a notice of appeal, 2) appeal bond and 3) record on appeal.

As to the appeal bond, the provision of law does not prescribe a special form. It only requires that the same be for the amount of ₱60 conditioned for the payment of costs which the appellate court may award against the appellant. The appeal bond involved in the case of *Vicencio v. Trinidad*[113] was a mere promissory note. The court disallowed the appeal on this ground. Later appellant moved to set aside this order and offered a new bond with surety. The court said that the appeal was already late. *Held:* When the judge approved the record on appeal there had been an implied approval of the original bond. Granting that the first bond is defective, justice demands that petitioners be given opportunity to correct the defect.

As to the amount of the appeal bond, the Court in *Reñosa v. Yatco*[114] said that the Rules fixed the bond at ₱60 and the court cannot require the appellant to file within the period of appeal a commission fee. In that case, the clerk refused to admit ₱60 on the ground that it lacked ₱.30 commission fee. The next day when the appellant returned with the ₱.30 the period had already expired. The court said that the appeal was already perfected and that the clerk should have retained the ₱60 and asked for the ₱.30 later. At any rate, petitioner had substantially complied with the requirement.

In the matter of the record on appeal, such record must be a correct copy, complete and accurate and that if the court allows a line or a dot to be omitted leaving it to the appellant to fill the blanks, there is nothing to prevent the appellant in other cases from furnishing appellees with copies omitting material portions of the pleadings.[115]

In *Conlu v. CA*,[116] petitioner received the copy of the CFI decision on Oct. 11, 1957. A motion for reconsideration and a new trial was filed both of which were denied on Jan. 11, 1958, notice of which was received by petitioner on Jan. 15, 1958. Upon petition the trial court granted 30 days from Jan. 14 within which petitioner may submit her record on appeal. On Feb. 1, 1958, 12 days after Jan. 20, when the original reglamentary period to appeal had expired, petitioner filed notice of appeal and appeal bond and on Feb. 8, 5 days before the expiration of the 30 days extension, petitioner filed the record on appeal. *Issue:* Was appeal perfected on time? The language of

[111] Sec. 11, Rule 40.
[112] G.R. No. L-15697, January 29, 1960.
[113] G.R. No. L-13399, January 30, 1960.
[114] G.R. No. L-16226, September 30, 1960
[115] Lechayco v. Reyes, G.R. No. L-15096, February 23, 1960.
[116] G.R. No. L-14027, January 29, 1960.

the order of extension says: "x x x he is hereby given thirty days from today within which to submit his record on appeal."

Obviously, the extension referred only to the record on appeal for the reason that the records of the case were voluminous. The notice of appeal and appeal bond should then have been filed within the original period. Extension of the time granted for filing of the record on appeal does not also carry with it an extension for the filing of the notice of appeal and appeal bond. If such had been the intention, the court would have so stated with words such as "an additional 30 days within which to perfect the appeal."

Centenera v. Yatco [117] dealt with the relief from the order disapproving the appeal. Said the court: "Sec. 15, Rule 41 does not specify the period for the filing of mandamus proceedings against an order disapproving an appeal, which implies that the period is variable as the ends of justice may demand. In this case it was filed four months after the denial of the petitioner's motion to reconsider the disapproval of his appeal. The court denied the writ saying further that when petition was filed execution had already issued.

In *Chavez v. Ganzon and CA* [118] the court did not consider sufficient excuse for failure to file a brief on time the fact that the work was entrusted to another attorney since counsel was busy as campaign manager in the 1957 elections and the attorney to whom the work was given failed to comply.

Millasin v. Seven Up Bottling Co.[119] concerned an order of dismissal of defendants counterclaim on the ground of lack of jurisdiction. The order being interlocutory, it cannot be appealed from. As such it is not immediately appealable because, prior to the rendition the final judgment, the order is, at any time subject to correction or amendment as the court may deem proper.[120] The propriety or wisdom of said order may not be reviewed until after the CFI has passed judgment upon the merits of the cause of action set up in said complaint. As provided by the Rules of Court,[120] "No interlocutory or incidental judgment shall be the subject of appeal until final judgment or order is rendered for one party or the other."

Appeal from the PSC to the SC.

In reviewing a decision of the PSC, the SC is not required to examine the proof *de novo* and determine to itself whether or not the preponderance of evidence really justifies that decision. The only function of the SC is to determine whether or not there is evidence before the Commission upon which its decision might reasonably be based. The Court will not substitute its discretion for that of the commission on questions of fact and will not interfer in the latter's decision unless it clearly appears that there is no evidence to support it. *In Pineda v. Carandang* [121] the PSC granted to Carandang a certificate of public convenience to operate an ice plant over the objection of Pineda. The SC said that there is evidence on which the decision might be based and so it will not disturb the exercise of discretion by the PSC.

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[117] G.R. No. L-13501, April 26, 1960.
[118] G.R. No. L-135764, January 30, 1960.
[119] G.R. No. L-13501, April 26, 1960.
[120] Sec. 2, Rule 41.
[121] G.R. Nos. L-13270-71, March 24, 1960.

Appeal from CIR to SC—Requisites are mandatory and jurisdictional.

The case of *Cuisip v. Cabungon* [122] held that the requisites under sec. 1 of Rule 44 for appealing from the CIR to the SC are not only mandatory but jurisdictional and failure to perfect an appeal as legally required has the effect of rendering final and executory the judgment of the CIR and deprives the appellate court of jurisdiction to entertain the appeal. Although relief may be obtained by certiorari without following the requirements of Rule 44, there must be allegation of lack or excess of jurisdiction or abuse of discretion. No such circumstances were present in the case.

Appeal from WCC to SC.

Under sec. 46 Art. no 3428, as amended, decisions of the Workmen's Compensation Commission are appealable to the SC in the same manner and in the same period as provided by the Rules for appeal from the CIR to SC. Only questions of law may be raised in the petition for review. Therefore, the findings of fact of the WCC are binding upon the SC and will not be disturbed on appeal except when the decision appealed from is not supported by substantial evidence. In the case of *LTB Co. v. Casunto* [123] the finding of the WCC that Estiva bumped his head while performing his duties as section inspector which resulted in a cerebral hemorrhage and in his death thereafter is not unsupported by evidence.

PROVISIONAL REMEDIES

ATTACHMENT

Under Rule 59, sec. 26 Rules of Court, the defendant may recover upon the bond given by the plaintiff for damages resulting from the illegal attachment. These damages may be awarded only upon application and proper hearing and shall be included in the final judgment. The application must be filed before the trial or in the discretion of the court before entry of final judgment *with due notice to the plaintiff and his surety* setting forth the facts showing his right to damages and the amount thereof.

In case no notice is given to the surety, the judgment may not bind him. So in such case, upon application of the prevailing party, the court must order the surety to show cause why he should not be bound. The hearing may be summary and limited to new defenses not previously set up by the principal. The oral proof formerly obtained may be reproduced but the surety must be given a chance to cross-examine the witnesses if he so desires. Only then may he be considered bound by the judgment against the principal.[124]

Injunction

Under sec. 2, Rule 60, a preliminary injunction may be granted by the CFI in any action pending in his district. These provisions clearly show that the jurisdiction or authority of the CFI to control or restrain acts by means of the writ of injunction is limited to acts which are being committed within the territorial boundaries of their respective provinces and districts.[125]

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[122] Miranda v. Guanzon, 48 O.G. No. 10, p. 4359.
[123] —
[124] Manila Underwriters Insurance Co. v. Tan, G.R. No. L-12256, April 29, 1960.
[125] Acosta v. Alvendia, G.R. No. L-...., October, 1960.

In the case of *Cruz v. Tan Torres*[126] plaintiff alleged ownership over the property and that the defendant committed acts of dispossession and distruction and will continue doing it. Hence the lower court after discussing the nature of the writ of injunction and preliminary injunction, issued a writ of injunction. The Supreme Court upheld this decision. It further stated that failure to serve the defendant with the plaintiff's bond is a formal defect which may be cured by subsequent notice to or knowledge of the defendant.[127] Indeed it may be considered waived, as where in this case, the defendant seeks to file a counterbond.

RECEIVERSHIP

In the case of *Delos Reyes v. Bayona,* and Castro,[128] petitioner alleged that it obtained a loan from Castro and that to guarantee payment it executed a document purporting to be a deed of sale with right of repurchase. Castro then allegely leased the land to Reyes. Claiming that Castro refused to accept his payment and that the contract is really a mortgage, Reyes filed an action for unlawful detainer and won. Pending appeal, the JP issued execution. On certiorari to SC, the SC decided that the writ was improper and that there was reason to believe Reyes and that even assuming that it was a sale, Reyes being the vendee a retro was entitled to possession until the case is determined. Castro then filed a petition for receivership. It was denied at first but later granted. Is the receivership proper? *Held:* The SC in the former case considered possession in Reyes more just than in Castro. Hence no receiver may be appointed. Otherwise Castro will be permitted to obtain indirectly what he could not obtain directly, namely deprive Reyes of the property until the case is settled.

An interpretation of sec. 9 Rule 61 in conjunction with sec. 20, Rule 59 was involved in *Luzon Surety Co. v. Marbella.*[129] It appears that in a former civil case entitled *Marbelia v. Kilayco,* the CFI found Marbella as the rightful heir of Matias Morin. Kilayco appealed. A receiver was appointed, (Leopoldo Anache), who duly filed a bond with the Luzon Surety as the surety. Judgment was affirmed and became final. In the execution it was found that some money and titles in the custody of Anoche were missing. The lower court ordered a writ of execution on the bond of the receiver. The sheriff served the writ on the surety co. and to enforce this, he garnished the account of the surety co. with the Phil Trust Co. Claiming there was a violation of sec. 20 Rule 59 in conjunction with sec. 9, Rule 61, the petitioner appealed by certiorari. *Held:* Sec. 20 Rule 59 refers to the bond filed by the applicant for receivership which answers damages to the other party due to the appointment of the receiver or the counterbond of the opposing party to oppose the appointment.

Here it is a bond filed by the receiver under sec. 5 Rule 61 "executed to such person in such sum as the court or judge may direct, to the effect that he will faithfully discharge the duties of receiver in the action and obey the orders of the court therein." Where the damages arose from misconduct or negligence of the receiver in relation to his official duties, no one as responsible but the receiver and his sureties. But this does not mean that execution may issue without prior notice of the action to hold the surety liable. Though the liability is solidary there must be a hearing. A solidary debtor

[126] G.R. No. L-14925, April 30, 1960.
[127] Rodolfo v. Alfonso, 75 Phil. 1960.
[128] G.R. No. L-13832, March 29, 1960.
[129] G.R. No. L-16088, September 30, 1960.

as a surety is not concluded by judgment against the other co-debtors because he would be deprived of a chance to set up the defenses derived from the nature of the obligation, those personal to him or pertain to his share or those personal to the others as regards their share.

Alimony.

In the case of *Canonizado v. Almeda-Lopez*,[130] the husband opposed the petition for alimony by the wife on the ground that she is *gainfully employed.* The wife was earning ₱220 a month. The court considered this as insufficient saying that as to whether one is entitled to support, the important thing is whether the spouse is in need of support from the other for her subsistence and not that she is gainfully employed.

CONTEMPT

In order for a person to be guilty of contempt for resistance to an order of a court, it is necessary that the order be lawful. But where as in the case of *Legarra v. Maronilla*,[131] the order of execution was not in accordance with the judgment, then resistance to it is not contempt.

The court in the case of *Murillo v. Superable* [132] considered as contempt the publication of accusations against a lawyer who was at the time being subjected to disbarment proceedings. The Court said that such proceedings must be private and confidential to enable the SC to make its investigation free from any extraneous influence or interference as well as to protect the personal and professional reputation of attorneys and judges from the baseless charges of disgruntled, vindictive and irresponsible cliente and litigants.[133]

SPECIAL CIVIL ACTIONS

Declaratory Relief.

The case of *Mun. of Hinabangan v. Mun. of Wright* [134] was a petition for declaratory relief filed by petitioner municipality for the fixing of its boundaries which it alleged were being encroached upon by defendant municipality. The Supreme Court held that declaratory relief is not the proper remedy. The right to settle boundary disputes between municipalities which is in fact the main issue in the case is vested by law on the provincial board of the province.[135] Since the provincial board has not been able to grant relief, action, if at all would be against it.

In *Rodriguez v. Blaquera*,[136] a petition to annul a circular of the Collector of Internal Revenue, seeking to implement a tax provision, was filed. The question involved was whether the lower court had jurisdiction over the case. The Court said that as the main purpose of plaintiff is to determine the validity of the circular and to secure a declaration of rights and duties of persons affected thereby, then this is an action for declaratory relief which is expressly prohibited in tax cases by Act. 3736, as amended by R.A. 55 and held in *Nat. Dental Supply Co. v. Meer*.[137]

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[130] G.R. No. L-13805, September 30, 1960.
[131] G.R. No. L-14428, July 26, 1960.
[132] Adm. Case No. 341, March 23, 1960.
[133] In Re Abistado, 57 Phil. 668; Santiago v. Calvo, 44 Phil. 919.
[134] G.R. No. L-12603, March 25, 1960.
[135] Sec. 2167 R.A.C.
[136] —
[137] G.R. No. L-4183, October 26, 1957.

The case of *GSISEA & GSISU v. Alvendia* [138] was a petition for declaratory relief to determine whether or not the GSIS is a government agency performing governmental functions, a question which had already been determined by the SC in the case of *GSIS v. Castillo*.[139] The Supreme Court said that if declaratory relief is not necessary or not proper where there is already an action pending in another court involving the same issue or where the plaintiff has another effective relief,[140] with more reason should it be improper or unnecessary when, as in the instant case it appears to be a moot case where the issue had previously been decided. It should furthermore be observed that the petitioner below was seeking a judirial declaration on whether members of the respondent union as government employees can declare a strike, after the latter had already gone on strike. Under sec. 2 Rule 66, a complaint for declaratory relief will not prosper if filed after a contract or statute the construction of which is sought has already been breached. The rule otherwise would be to prejudge a pending case and to encourage multiplicity of suits.[141]

Certiorari.

The remedy of certiorari lies only against a "tribunal, board or officer exercising judicial functions." [142] It is therefore not available against the Commissioner of Immigration for confiscating a cash bond executed by a party on behalf of an alien temporary visitor.[143]

While it is true that Rule 67 sec. 1 of the Rules of Court require that the petition for certiorari be verified, the apparent object thereof being to insure good faith in the averments of the petition, where however the pleadings filed or proceedings taken therein and the questions raised are mainly of law, a verification is not an absolute necessity and may be waived. In fact, many authorities consider the absence of verification a mere formal not jurisdictional defect, the absence of which does not of itself justify a court in refusing to allow and act in the case.[144]

Necessity for a motion for reconsideration.

The Supreme Court excused the lack of a motion for reconsideration on the ground that the judgment sought to be annulled is a patent nullity as where defendant is deprived of due process [145] or where there is urgency of petitioner's predicament as where he is arrested due to respondent's uncompromising attitude.[146]

Mandamus.

Only specific legal rights may be enforced by mandamus if they are clear and certain. Thus, mandamus will not lie to compel the municipal treasurer to pay the back salaries of the dismissed policemen if there is no ordinance appropriating the amount to cover the back salaries of said policemen.[147]

A purely ministerial act or duty as distinguished from a discretionary one, is one which an officer or tribunal performs in a given state of facts in a

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[138] G.R. No. L-15164, May 30, 1960.
[139] G.R. No. L-7175, April 27. 1956.
[140] Moran, Rules of Court, Vol. II, 1957 ed. p. 150.
[141] —
[142] Sec. 1, Rule 67.
[143] Soriano v. Galang, G.R. No. 14323, April 29, 1960.
[144] Phil. Bank of Commerce v. Macadaeg, G.R .No. L-14174, October 31, 1960.
[145] Luzon Surety Co. v. Marbella, G.R. No. L-16088, September 30, 1960.
[146] Matutina v. Buslon, G.R. No. L—
[147] Discanso v. Gatmaytan, G.R. No. L-12226. October 31, 1960.

prescribed manner in obedience to the mandate of legal authority without regard to the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. In the case of *Symaco v. Aquino* [148] the moment the petitioner complied with the requirements under Ordinance No. 20 series of 1941 of the Municipal Council of Malabon, Rizal, for the issuance of a building permit, he became entitled to it and the respondent's duty is to issue the same. No discretion was given to the respondent. Nor is there any plain, speedy and adequate remedy in the ordinary course of law, such remedy being not only adequate in the general sense of the term but also specific and appropriate to the circumstances of the cases. Such remedy must be a remedy that will be efficacious to afford relief upon the very subject matter involved, and to enforce the right or performance of the duty in question.

QUO WARRANTO

Sec. 6, Rule 38 provides: "When an individual may commence such an action—A person claiming to be entitled to a public office usurped or unlawfully held or exercised by another may bring an action therefore in his own name. In a case decided,[149] the SC said that one who does not claim to be entitled to the office allegedly usurped or unlawfully held or exercised by another cannot question his title thereto by quo warranto. In that case petitioners did not claim to be entitled to the office held by the respondent. None of them had been appointed thereto and none of them may therefore be placed in said office regardless of the alleged flaws in respondent's title thereto. They merely assert a right to be appointed to said office. There are 7 petitioners and only one office. None of the petitioners can give assurance that he will be the one appointed by the President should the office be declared vacant.

The special civil action of quo warranto lies to try a title to office in a private corporation. The cause of action accrues from the time the petitioner is deprived of his position—in one case,[150] from the time Resolution No. 422 was passed on Dec. 3, 1955, removing the position of Asst. Manager of the Sweepstakes office with an increased salary but appointing another to said position.

Eminent Domain

The question in the case of *Republic v. Yaptinchay* [150a] was as to the factors which are competent in the determination of the price of tre property to be expropriated. Said the Court: In order that purchase and sales of other property may be considered competent proof of the market value of an expropriated property, the former must be shown to be adjoining the latter or at least, within the zone of commercial activity with which the condemned property is identified. The owner's valuation of the property may not in law be binding on the government or the courts, but it should at least set a ceiling price for the compensation to be awarded. The price of the condemned property should not be higher than what the owner demanded. Neither the senti-

[148] G.R. No. L-14535, January 30, 1960.
[149] Cuyegkeng v. Cruz, G.R. No. L-16263, July 26, 1960.
[150] —
[150a] G.R. No. L-13684, July 26, 1960.

mental value of the property to its owner nor the inconvenience resulting from the loss thereof is an eelment of the determination of damages.

In the case of *Republic v. Baylosis*,[151] the Supreme Court ordered the dismissal of the proceedings. Upon returning the records to the lower court, the petitioner moved for the withdrawal of the deposit. *Issue:* Is the withdrawal proper? *Held:* Withdrawal is improper. The deposit protects the defendant from any danger of loss resulting from the temporary occupation of the land by the Government. It serves a double purpose as prepayment of the property if expropriation is continued and indemnity for damages if not. Defendant is not barred by *res judicata* as to his right to recover damages because even in the lower court, he asked for it but the court did not decide the issue.

Foreclosure of Mortgage

Rule 90 Sec. 2 of the rules provides for a 90-day period within which the equity of redemption may be exercised by the mortgagor to redeem the property. Can this period be ignored? This was the issue in the case of *Reyes v. Victoriano*.[152] The court in that case found that when the respondent filed their motion for a writ of execution for the sale of the property, the reglamentary period had not yet expired. Such premature petition tends to deprive the petitioners of their right to the period but the petitioners themselves are to be blamed since they made no opposition to it. Besides, the sale itself took place after the 90-day period had expired.

Forcible Entry and Detainer

The issue in the case of *Lopez v. Santiago* [153] was whether the action for forcible entry and detainer is applicable to both private and public lands. The Court ruled that Rule 72 applies to both equally. "The purpose of forcible entry and detainer, *regardless of actual condition of the title to the property* is that the party in peaceable and quiet possession shall not be turned out by strong hand, violence or terror. The object is to prevent breaches of the peace and criminal disorder which would ensue from the removal of the remedy . . .

A judgment of the court ordering restitution of the possession of a parecl of land to the actual occupant who has been deprived thereof by another through the use of force or in any illegal manner can never be "prejudicial interference" with the disposition or alienation of public lands. On the contrary, if courts were deprived of jurisdiction over the cases involving conflicts of possession, the threat of judicial action against breaches of the peace committed in public lands would be eliminated and a state of lawlessness would probably be produced between applicants, occupants or squatters." [154]

In the case of *Evangelista v. CAR*,[155] petitioner filed a complaint for unlawful detainer in the JP Court. Gutilo filed a motion to dismiss on the ground that a tenancy relation exists and so jurisdiction is with CAR. Which Court has jurisdiction? *Held:* The averment of respondent that there was a tenancy relationship does not deprive the inferior court of jurisdiction over the case. When the jurisdiction of the Court depends upon a question of fact, it must be raised and determined in the court whose jurisdiction is questioned.

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[151] G.R. No. L-13582. September 30, 1960.
[152] G.R. No. L-15435, April 26, 1960.
[153] G.R. No. L-14889, April 25, 1960.
[154] Moran, Rules of Court, Vol. II, 1957 ed. pp. 284-285.
[155] G.R. No. L-13875, October 31, 1960.

Where the jurisdiction of the court once attaches, it is exclusive and the other courts must abide by the determination of that court which is reviewable only upon appeal. The question of jurisdiction of the JP in the instant case which is dependent upon the factual question of whether or not there is tenancy relationship between the parties, having actually been raised and overruled in the unlawful detainer case now on appeal in the CFI, the parties should await the decision of that court and abide by it subject to any appeal by either of them. Where it clearly appears that the court is proceeding in excess or outside of its jurisdiction, the remedy of prohibition would lie since it would be useless and a waste of time to go ahead with the proceedings.

A question of jurisdiction was likewise involved in the case of *Uichanco v. Laurilla.*[156] In that case U leased a house to L at ₱45 a month. Since 1952, L failed to pay rentals in full, the amounts paid being less. The last payment was made on Aug. 7, 1955 but U had made demands to vacate in September 1952. Does CFI or JP have jurisdiction? *Held:* Since defendant violated the contract in 1952 when defenlant failed to pay in full and since at that time plaintiff had already made demands to vacate on defendant, the period of breach starts at that time. There being more than one year of breach, the proper action is with the CFI for *accion publicana* and not with the JP for unlawful detainer. It was only wise and prudent for plaintiff to receive this part payment, until he became fully satisfied that defendant could not pay. Hence these receipts of payment were not equivalent to an abandonment of demand. Also, the fact that the amount of damages involved is only ₱200 does not place the case within the jurisdiction of JP since in detainer cases it is not the amount of damages that is determinative of jurisdiction.

In the case of *Rickards v. Gonzales* [157] the Court found that although demands were made in 1953 by the owner on the lessee, such demands were demands for payment of back rentals and not demands to vacate. Period should therefore not be counted from this time. It is the tenant's refusal to vacate where there is a demand *to vacate* that makes the withholding unlawful. The complaint alleged that at least 15 days prior to the filing of the complaint, plaintiff had demanded defendant to vacate. Since allegations determine jurisdiction and since the allegations in these case make out a case of unlawful detainer then the JP has jurisdiction. Furthermore the amount involved is only ₱810, though of course such amount of damages is not determinative of jurisdiction in detainer cases.[158]

In a case of unlawful detainer,[159] where the defendant claimed ownership of the land involved by virtue of his long possession thereof and by virtue of a homestead application concerning the property with the Bureau of Lands, the Court said that as the issue of possession is directly interwoven with the claim of ownership, the case is beyond the jurisdiction of the JP. Also in another case of unlawful detainer [160] the question arose as to whether the agreement between plaintiff and defendant was a contract of sale or a contract to sell. The Court said that since there are many questions to be solved like the interpretation of the agreement, the rights of the parties, the case would be beyond the jurisdiction of the JP.

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[156] G.R. No. L-13935, June 30, 1960.
[157] G.R .No. L-14939, September 26, 1960.
[158] Canaynay v. Sarmiento, 79 Phil. 36.
[159] Sangahid v. Cinco, G.R. No. L-14341, January 29, 1960.
[160] Fuentes v. Muñoz-Palma, G.R. No. L-15074, May 31, 1960.

Appeal from forcible entry cases

Under sec. 8, Rule 72, when the judgment is in favor of the plaintiff, it is required that it be executed immediately in order to prevent further damage to him caused by the loss of his possession. The defendant may however, stay the execution by (a) perfecting an appeal and filing a supersedeas bond; and (b) by paying from time to time either to the plaintiff or to the CFI, during the pendency of the appeal, the amounts of rents or the reasonable value of the use and occupation of the property as fixed by the JP or the Municipal court in its judgment.

These requirements are mandatory, so where plaintiff not only failed to put up a supersede as bond but also to deposit the rentals that had become due, immediate execution may issue.[161] So also, where defendant failed to put up a supersedeas bond and there was no allegation of fraud accident, mistake or excusable negligence to excuse such failure, then immediate execution is proper.[162]

In the case of *Paulino v. Surtida*,[163] the defendant appealed from a detainer case where judgment was against him. He however failed to file a supersedeas bond though he was able to deposit the amount of the current rentals. Plaintiff moved for execution. *Issue:* Can there be execution on the amount deposited as current rentals? *Held:* If defendant filed a supersedeas bond to stay execution and paid the rentals regularly, plaintiff may not withdraw the deposit. But, if he fails to file the supersedeas bond, plaintiff may ask execution both as to possession of the land and so to the money deposited. Judgment must be executed in its entirety, for sec. 8 Rule 72 does not state any limitation.

In the case of *Republic Savings Bank v. Far Eastern Surety*:[164] Judgment was rendered against a certain Villareal in an ejectment case. Judgment was on June 8 and became final on June 24 since there was no appeal. On July 10, 1957, defendant V submitted a bond for purposes of his appeal. A writ of execution was issued on July 16, 1957. Can this bond be levied upon? No, said the Court. The function of a supersedeas bond is to stay execution. In this case, the bond did not stay execution. The actual stay was due not to the filing of the bond but, to plaintiff's failure to demand execution at once. Since it was not in reality a supersedeas bond, then execution cannot issue against it.

Suspension of detainer cases in case of expropriation

Sec. 5 of RA 1599 provides:

"From the approval of this Act and even before the commencement herein provided, ejectment proceedings against any tenant or occupant x x x shall be suspended for a period of two years x x x Provided, however ,that if any tenant or occupant is in arrears in the payment of rentals x x x the amount legally due shall be liquidated and shall be payable in 18 equal monthly installments from the time of liquidation, but this payment of rentals in arrears shall not be a condition precedent to the suspension of ejectment proceedings. x x x"

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[161] Acierto v. Laperal, G.R. No. L-15966, April 29, 1960.
[162] Sison v. Bayona, G.R. No. L-13446, September 30, 1960.
[163] G.R. No. L-14497, September 30, 1960.
[164] G.R. No. L-14959, August 31, 1960.

In one case [165] where the tenants were in arrears in th epayment of monthly rentals and the lower court though suspending the ejectment case did not give petitioners the right to be paid immediately the rentals in arrears, the Court said that that would be a denial of a property right of petitioner and consequently constituted a clear abuse of discretion on the part of the judge.

In the case of *Sison v. Bayona*,[166] the Court said that this right of suspension in case of expropriation exists only in favor of a defendant who pays his current rentals, not to one who is delinquent.

General Provisions

Pursuant to Sec. 6, Rule 124, the Court has the power to issue all auxiliary writs, processes and other means necessary to carry into effect the jurisdiction conferred upon it by law. Therefore in a land registration case, the court has the power to issue a writ of possession to effectively carry its judgment. The winning party need not file an independent action to execute the judgment.

In the case of *People v. Mitra* [167] Judge Dollete after presiding over a case in another province decided the case when he was already in his permanent station in Bataan Is the act lawful? Under Sec. 51, Judiciary Act. Detail of Judges to another province x x x Provided however, x x x the judge who has partly heard the case to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction.

And Also under Sec. 9 Rule 124.

Signing judgments out o fthe province. x x x it shall be lawful for him x x x to prepare and sign his decision anywhere within the Philippines x x x.

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[165] Prieto v. Macadaeg, G.R. No. L-13488, January, 1960.
[166] G.R. No. L-13446, September 30, 1960 .
[167] G.R. No. L-13339, June 30, 1960.