SPECIAL PROCEEDINGS

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INTRODUCTION

After a survey of the decisions rendered by the Supreme Court, one can readily observe that the decisions and rulings are but reiterations of prior doctrines and some applications of the provisions of the Rules of Court. However, it could be noted that the Court has enunciated some important rulings in this year's cases which should be noted and appreciated.

SETTLEMENT OF ESTATE OF DECEASED PERSONS

Extrajudicial settlement by agreement of heirs

The law allows the extrajudicial partition of the estate of deceased persons by agreement of the heirs only if the decedent left no debts and the heirs and legatees are all of age or the minors are represented by their judicial guardians.[1] Where the deceased left pending obliagtions, the same must be first paid before the estate can be divided; and unless the heirs can reach an amicable settlement as to how such obligations shall be settled, the estate would inevitably be submitted to administration for the payment of such debts.[2]

Ordinary action for partition cannot be converted into a proceeding for the settlement of estate

In the case of *Guico, et al. v. Bautista, et al.*,[3] an ordinary action for partition was instituted by one of the heirs. It appears however, that the deceased left pending obligations and the heirs could not agree as to how said obligations will be settled. It was asked in the proceedings that the Court determine the different liabilities and rights of the heirs to the estate. The Court declined jurisdiction. The Supreme Court held that an ordinary action for partition cannot be converted into proceedings for the settlement of the estate of the deceased without compliance with the procedures outlined in the Rules of Court, especially the provisions on publication and notice to the creditors.

When partial distribution of intestate estate is unwarranted

In *Gatmaitan v. Medina*,[4] after the institution of the proceedings for the settlement of the estate of the decedent, the heirs asked for a partial distribution of the estate. The Court stated that where the inventory of the properties of the deceased was still under consideraion by the Court, and when the period

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* Recent Documents Editor, PHILIPPINE LAW JOURNAL, 1960-61.
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[1] Rules of Court, Rule 74, sec. 1. "If the decedent left no debts and the heirs and legatees are all of age, or the minors are represented by the judicial guardians, the parties may, without securing letters of administration, divide the estate among themselves as they see fit by means of a public instrument filed in the office of the register of deeds, and should they disagree, they may do so in an ordinary action of partition. . . ."
[2] Guico, et al. v. Bautista, et al., G.R. No. L-14921, Dec. 31, 1960.
[3] *Ibid.*
[4] G.R. No. L-14400, Aug. 31, 1960.

fixed for the presentation of the claims has not yet elapsed, the partial distribution of the estate is premature, considering also that no bond was fixed by the court as a condition precedent to the partial distribution ordered by it.

Estate must be settled speedily

In *Castillo v. Enriquez*,[5] it appears that the only claim due the estate was that owed to the Bachrach Motors Co. One of the heirs offered to pay the reduced amount as well as the shares of the other heirs. But when he took steps to secure reimbursement of what he had advanced, he was met with reluctance by the co-heirs. He filed a motion to require the administratrix to liquidate her account, which was approved by the Court without opposition. The order became final. But when he filed a motion for execution, the same was disapproved by the court. The heir appealed to the Supreme Court.

The Court held that the motion for execution was denied by the lower court without plausible reason and far from taking steps necessary to have the claim paid, it had entertained dilatory moves taken by the administratrix. Apparently, the trial court had overlooked the primordial purpose of the law to have the estate settled in a speedy manner so that the benefits that may flow therefrom may be immediately enjoyed by the heirs and beneficiaries.

Can paternity and filiation be investigated in the proceedings for the settlement of the estate of deceased father?

The Supreme Court answered it in the affirmative in the case of *Pactor v. Pestaño*.[6] It appears that Miguel Pactor filed a petition for the issuance of letters of administration in his favor stating that the surviving heirs of the deceased were his widow and the petitioner, an illegitimate child. Lucrecia Pestaño, niece of the deceased, opposed the petition and moved for the exclusion of the petitioner in the proceedings, which motion was granted by the lower court on the ground that since the petitioner had not been recognized by the deceased in a will or by an order of the court during his lifetime, he has no right at all and cannot be allowed to intervene in the proceedings.

The Supreme Court set aside the order of the lower court, holding that it is not in a will alone or in an order of the court alone that petitioner's status as an illegitimate child may be recognized. That the law[7] allows the investigation of the paternity of an illegitimate child had been in continuous possession of the status of a child of the alleged father by the latter's own acts. That since it is not denied that petitioner has been in continuous possession of the status during the lifetime of the deceased, the investigation is justified. Whether or not the child shall be recognized as having such a status and entitled to the hereditary rights of an illegitimate is to be determined after the results of the investigation has been disclosed.

When property of the deceased considered in custodia legis

In the case of *Tamisin, et al. v. Adejar, et al.*,[8] the Court had occasion to determine when the properties of the deceased come under the custody of the court. It appears that pending an interpleader suit, the plaintiff herein, died and proceedings were filed for the settlement of the estate of the deceased Cecilio Tamisin. Meanwhile, judgment was rendered in the interpleader suit in favor of the defendants. Judgment became final and pursuant to a writ of

[5] G.R. No. L-11440, Sept. 30, 1950.
[6] G.R. No. L-12410, April 27, 1960.
[7] New Civil Code, Art. 289.
[8] G.R. No. L-12068, May 31, 1960.

execution issued therein, five parcels of land of the estate were levied upon and sold to the Adejar spouses in full satisfaction of the judgment. The administratrix filed the present action to annul the public sale on the ground that the properties in question were in *custodia legis* at the time of the levy and execution sale.

The Court ruled that the property of the deceased takes the character of property in *custodia legis* when the same is placed under the custody of a properly appointed administrator or executor. The mere filing of the special proceedings for the settlement of the decedent's estate does not subject the property to the jurisdiction of the court. For one thing, an inventory has yet to be made by an administrator or executor.[9] In the absence of such administrator or executor, no property sought to be the subject of administration proceedings can be said to have been subjected to the jurisdiction of the court, the same not being under the custody of a properly appointed custodian or court officer.

ALLOWANCE OR DISALLOWANCE OF A WILL

A will, in order to be admitted to probate, must conform with the formalities prescribed by law

In the case of *Balonan v. Abellana*,[10] it appears that at the end of the will, the name of the testator was typewritten and above the typewritten words appeared the signature of a person alleged to have been instructed by the testator to sign for him. It did not appear in the will that the name of the testator was signed for him except that part which was typewritten and a signature of a person underneath of which appeared the words "For the testator".

The Court in disallowing the probate of the will ruled that a will signed in a manner different from that prescribed by law shall not be valid and will not be admitted to probate. When the name of the testator does not appear written under the will by the said testator or by the person directed by him, it fails to comply with the express requirement of the law.

The law requires that the testator sign the will and each and every page thereof in the presence of the testator, the witnesses and of each other.[11] This requirement is mandatory. A will must be executed in accordance with the statutory requirements; otherwise it is entirely void.[12]

In the case of *Testate Estate of Petronila Tampoy v. Diosdada Alberastine*,[13] it appears that while the first page of the will was signed by the three witnesses on the left-hand margin thereof, it did not have the imprint of the thumbmark of the testatrix as appeared in the second page of the same will.

The Court ruled that since the will in question suffers from a fatal defect in that it did not bear the thumbmark of the testatrix on its first page, the same fails to comply with the law and, therefore, cannot be admitted to probate.

On the other hand, it seems that the Court relaxed the requirements of the law in the probate of a holographic will. In the case of *Azaola v. Singson*,[14]

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[9] Rules of Court, Rule 84, sec. 1. "Within three months after his appointment every executor or administrator shall return to the court a true inventory and appraisal of all the real and personal estate of the deceased which has come into his possession or knowledge. In the appraisement of such estate, the court may order one or more of the inheritance tax appraisers to give his or their assistance."

[10] G.R. No. L-15153, Aug. 31, 1960.

[11] New Civil Code. Art. 805.

[12] The court cited 40 Cyc. p. 1097.

[13] G.R. No. L-14322, Feb. 25, 1960.

[14] G.R. No. L-14003, Aug. 5, 1960.

in construing the requirements in the probate of a contested holographic will, the Court stated that the requirement of at least three witnesses who know the signature of the testator and who could declare that the handwriting and the signature are that of the testator,[15] is merely directory, and when it appears that the testimony of a single witness could definitely establish the handwriting and signature of the testator, the holographic will may be admitted to probate. The Court believes that if this were not the case the probate of a holographic will might be nearly impossible.

Termination of the jurisdiction of the probate court

The law gives the probate court continued jurisdiction to pass upon and decide any claim or demand of any interested person for the recovery of the share of the estate that may be adjudicated to him.[16] Until all this is done, its jurisdiction is not deemed terminated.

In the case of *Roman Catholic Archbishop of Manila v. Agustines*,[17] the Catholic Church of Polo, Bulacan was named as legatee of nine hectares of land involved in this case. The will was properly probated. An agreement was entered into whereby the heir and the oppositors agreed to respect the provisions of the will, which agreement was approved by the Court. The Court, in its order closing the estate, said that the proceedings be considered terminated once it is proven that the legacies had been delivered to the beneficiaries thereof.

The heir failed to deliver the legacy, so that the oppositors brought an action to declare themselves owner of the lands in question, considering the failure of the trustee to deliver and the inaction of the legatee to receive it. The heir filed a motion to authorize him to deliver the legacy, which motion was granted over the objection of the oppositors, who objected on the ground of lack of jurisdiction, the proceedings having been terminated.

The Court ruled that the order in question shows that the court did not close the proceedings entirely but held the same open until it is proven in the record that the legacies had been delivered to the beneficiary thereof. Until it is done, its jurisdiction is not deemed terminated.

GENERAL POWERS AND DUTIES OF EXECUTORS AND ADMINISTRATORS

When administrator is entitled to possession of property

An executor or administrator shall have the right to the possession of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and the expenses of administration, and shall administer the estate of the deceased not disposed of by his will.[18]

But where there are no debts to be paid, there is no reason for the executor's taking possession of the estate which should pass to the heirs. It is the policy of the law to close up the estate promptly. Thus, in the case of *Layague, et al. v. Ulgasan, et al.*,[19] it appears that the estate of the deceased has been under administration for quite a long time. The heirs made an extrajudicial partition among themselves and sold certain portions of the real property under

[15] New Civil Code, Art. 811.
[16] Rules of Court, Rule 91.
[17] G.R. No. L-14710, March 29, 1960.
[18] Rules of Court, Rule 85, sec. 3.
[19] G.R. No. L-13666. Oct. 31, 1960.

administration to the plaintiffs. When the plaintiffs sought to have the deeds of sale be declared legal and valid, the administratrix assailed the validity of the extrajudicial partition, as well as the sales, made by the heirs, and as counterclaim prayed that plaintiffs be ordered to pay the value of the coconut fruits they had gathered from the lands. The lower court declared the sale valid but failed to render decision on the counterclaim.

On appeal, the Supreme Court affirmed the decision and further held that there being not even an intimation that the estate is indebted, there is no reason for administration and the payment for the value of the fruits gathered by the plaintiffs as purchasers to the defendant-administratrix is not necessary and might even prove cumbersome.

When court should disallow compensation to administrator

In the case of *Layague*,[20] the Court also declared that all Courts of First Instance should exert themselves to close up the estate within twelve months from the time they are presented, and may refuse to allow any compensation to executors and administrators who do not actively labor to that end, and they may even adopt harsher measures.[21]

When sale of estate may be authorized

In *Del Castillo, et al. v. de Samonte*,[22] the widow as administratrix, sold to the defendant 2,000 shares of stock belonging to the estate of the deceased husband and delivered the corresponding certificates. The probate court confirmed the sale, finding that it was absolutely necessary for the subsistence of the surviving spouse and the family of the deceased during the Japanese occupation. The order was affirmed by the Court of Appeals on appeal by Sergio del Castillo, one of the heirs. Sergio brought an action to recover one-half interest in the shares sold. The action was dismissed on the ground of *res judicata*.

The Court held that under section 4, Rule 90 of the Rules of Court,[23] the probate court may authorize the sale of the estate, upon application of the executor or administrator and on notice to all persons interested in the estate, if the sale will be beneficial to said persons. Where, as in this case, the sale was absolutely necessary for the subsistence of the family, the court has jurisdiction to authorize or approve the sale.[24] And since an order relating to the sale of property of the decedent is of final character and appealable,[25] the failure of the other heirs to appeal therefrom makes the order final and conclusive as to them also.

In the case of *Fernandez, et al. v. Montejo*,[26] a certain lot no. 5 in Zamboanga City was ordered sold in the order of partition, and the proceeds thereof to be distributed among the heirs. The highest bidder was the Phil. Interna-

[20] *Ibid.*
[21] The court cited the case of Lizarraga Hnos. v. Abada, 40 Phil. 124.
[22] G.R. No. L-12880, April 30, 1960.
[23] Rules of Court, Rule 90, sec. 4. "When it appears that the sale of the whole or a part of the real or personal estate, will be beneficial to the heirs, devisees, legatees, and other interested persons, the court may, upon application of the executor or administrator and on written notice to the heirs, devisees, and legatees who are interested in the estate to be sold, authorize the executor or administrator to sell the whole or a part of said estate, although not necessary to pay debts, legacies, or expenses of administration; but such authority shall not be granted if inconsistent with the provisions of a will. In case of such sale, the proceeds shall be assigned to the persons entitled to the estate in the proper proportions."
[24] Citing Roa v. de la Cruz, G.R. No. L-10877, Feb. 28, 1959.
[25] Citing Dais v. Garduño, 49 Phil. 165.
[26] G.R. No. L-15327, Sept. 30, 1960.

tional Development Co. The other heirs asked permission to buy the lot and the court granted the petition on condition that they deposit with the court an amount equal to the highest bid within 15 days. Upon failure of the heirs to comply with the condition, the court ordered it sold to the company. The heirs appealed the order alleging that the court erred in not deducting from the amount to be deposited their corresponding shares in the said lot.

The Supreme Court held that where there are still obligations unpaid and due from the estate, the propriety of the sale should be determined by the interests not only of the heirs but also of the creditors, and a probate court should enjoy ample discretion in determining under what conditions a particular sale would be most beneficial to all parties interested, which discretion should not be interfered with unless exercised with clear abuse.

EXPENSES CHARGEABLE AGAINST THE ESTATE

An executor or administrator shall be allowed the necessary expenses in the care, management and settlement of the estate.[27]

In the case of *Bank of P.I. v. Gonzales*,[28] two items in a statement of accounts submitted by the Bank as executor were disallowed on the ground that they were not chargeable against the estate. One of these items refers to the cost of the transcript of stenographic notes taken at the hearing in connection with a case against Gonzales to annul a certain deed of donation *inter vivos* executed by the deceased in favor of Gonzales, it appearing that said lands have been previously devised by the deceased to one Augusta Jimenez. The second item was for the cost of printing of the brief filed by the Bank-executor in the appeal it interposed from a resolution of the Land Registration Commission regarding a *consulta* requested from said Commission in connection with the annotation of *lis pendens* involving the same property.

The Court ruled that an executor is charged with the particular duty of carrying out the provisions of the will. Since one of the mandates of the will which was duly probated, is to devise the properties in question to Augusta Jimenez, it would appear to be its clear duty to take all the necessary steps, legal or otherwise, to take possession thereof and turn them over to whom they belong. The two items were spent in the performance of the duty of the Bank to gather all the assets of the estate in order that they may be dealt with in accordance with the provisions of the will, and they may be considered as administration expenses chargeable against the estate.

Services rendered to heir, not chargeable against the estate

But where the expenses for legal services were contracted by the heiress for the purpose of declaring herself the only heir and all the services were rendered in the furtherance of her interest although they indirectly redounded to the benefit of the estate, they should be charged not against the estate but against said heiress personally.[29]

Value of services must be determined first before payment may be made.

In the *Intestate Estate of the Decreased Patricia Malonzo de Malapitan*,[30] it appears that the deceased left nine children, of whom four were oppositors

[27] Rules of Court, Rule 86, sec. 7.
[28] G.R. No. L-13489, Jan. 29, 1960.
[29] Laurente v. Caunca, G.R. No. L-14677, April 29, 1960.
[30] G.R. No. L-14334, April 29, 1960.

herein. The administrator hired the services of a lawyer to defend the estate against the claim of the oppositors to exclude therefrom certain properties. The court authorized the administrator to withdraw from the estate, the sum of ₱300 as advance payment of attorney's fees and ₱250 to be paid to the stenographers.

The oppositors appealed from the order alleging that much of the services rendered were really not for the benefit of the estate, but rather in the instance of and for the benefit of some of the heirs in their legal fight with the oppositors, and so payment should be borne partly by the said heirs and in part by the administrator in his personal capacity.

The Supreme Court stated that in order to determine the value of the legal services of counsel and for whose interest they were rendered, a hearing should be held at which both parties should be present. It would be premature to authorize payment of said services before their propriety have been determined in such hearing.

When administrator may be held personally liable

Where the court does not believe that the papers required by it to be submitted by the removed administrator were sufficient, it could not order his confinement if he has sworn that thore were the only papers he kept. The alternative would be to disallow or disapprove the particular items or accounts which in the opinion of the court had not been explained or clarified for lack of evidence and make the administrator personally responsible therefor.[31]

CLAIMS AGAINST THE ESTATE

Time for filing claims

Claims against the estate of the deceased shall be filed not more than twelve nor less than six months after the date of the first publication of the notice.[32]

Requisites before a claim filed after the period fixed by law may be entertained.

In the case of *Afan v. de Guzman*,[33] Apolinario de Guzman filed a claim for ₱10,000 in the proceedings for the settlement of the intestate estate of Arsenio Afan. The administrix objected on the ground that the claim was not filed on time. The lower court refused to entertain the claim.

In affirming the stand taken by the lower court, the Supreme Court stated that before a claim filed after the period fixed may be entertained, it must satisfy the following requirements: (1) there is an application therefor; (2) a cause must be shown why the permission should be granted; (3) the extension of time granted shall not exceed one month. In the present case, de Guzman has not sought permission to file his claim; nor has he alleged any reason why he should be excused for his failure to file the claim on time. It reiterated the

[31] Palma v. Palina, G.R. No. L-13369, July 28, 1960.

[32] Rules of Court, Rule 87, sec. 2. "In the notice provided in the preceding section, the court shall state the time for the filing of claims against the estate, which shall not be more than twelve nor less than six months after the date of the first publication of the notice. However, at any time before an order of distribution is entered, on application of a creditor who has failed to file his claim within the time previously limited, the court may, for cause shown and on such terms as are equitable, allow such claim to be filed within a time not exceeding one month."

[33] G.R. No. L-14713, April 28, 1960.

doctrine that failure to file a claim within the time provided therefor upon the sole ground that the claimant was negotiating with one of the heirs for payment is not sufficient to justify extension,[34] and that where a claimant knew of the death of the decedent, and for four or five months thereafter he did nothing to present his claim, this can hardly be considered as a good excuse for such neglect.[35]

Claim arising from indemity agreement

In the case of *Security Bank and Trust Co. v. Globe Assurance Co.*,[36] the deceased Legarda had bound himself with three others to act as surety for a note, to pay the Assurance Co. "for any damages it may sustain on the note, said indemnity to be paid to the company as soon as demand is received from the creditor, or as soon as it becomes liable to make payment under the bond whether the said sum has been actually paid or not." The bond became payable so that the company filed a claim in the testate proceedings of the deceased Legarda, although payment has not yet been made to the creditor.

The Court allowed the claim since under the indemnity agreement, Legarda and companions had agreed to pay the company "as soon as it becomes liable to make payment of any sum under the bond whether the sum has been actually paid or not." In one case,[37] the same court held similar stipulations enforceable and that in accordance therewith, the surety may demand from the indemnitors even before paying the creditors.

Suppose no claim was filed in the proceedings for the settlement of the estate of the deceased co-indemnitor, can the company file an ordinary action for the enforcement of the bond, making as defendants the surviving indemnitors only, without filing a claim in the settlement proceedings of the estate of the deceased co-indemnitor?

The Supreme Court, in the case of *Manila Surety and Fidelity Co., Inc. v. Villarama*,[38] answered it in the affirmative. It held that Section 6, Rule 87 of the Rules of Court, provides the procedure should the creditors desire to go against the deceased debtor where the obligation of the decedent is joint and several with others. In such a case, the creditor may institute proceedings for the settlement of the estate of the deceased debtor wherein his claim can be filed. But if the creditor chooses to demand payment from the surviving solidary debtors, compliance with the said procedure is not a condition precedent before an ordinary action could be entertained.

ESCHEATS

When a person dies intestate, seized or real or personal property in the Philippines, leaving no heir or person by law entitled to the same, the municipality or city where the deceased last resided in the Philippines, or the municipality or city in which he had estate if he resides out of the Philippines, may

[34] In re. Estate of de Dios. 24 Phil. 573; Santos v. Manarang, 27 Phil. 209.
[35] In re: Estate of Tiangco, 39 Phil. 967.
[36] G.R. No. L-13708, April 27, 1960.
[37] Alto Surety v. Aguilar, G.R. No. L-5625, March 16, 1954.
[38] G.R. No. L-12165. April 29, 1960.
[39] Rules of Court, Rule 87, sec. 6. "Where the obligation of the decedent is joint and several with another debtor, the claim shall be filed against the decedent as if he were the only debtor, without prejudice to the right of the estate to recover contribution from the other debtor. In a joint obligation of the decedent, the claim shall be confined to the portion belonging to him."

file a petition in the Court of First Instance of the province setting forth the facts, and praying that the estate of the deceased be declared escheated.[40]

Estate cannot be settled in escheat proceedings

In the case of *Municipality of Magallon, et al. v. Bezore,*[41] a petition was filed praying that the estate left by the deceased in Negros Occidental be escheated in favor of petitioner-municipality. It appeared, however, that the decedent left a will executed in California and duly admitted to probate. After the court had declared that escheat proceedings will not proceed if there is a will left by the decedent covering said properties, the oppositors herein, moved that the properties be settled and distributed in the same proceedings.

The Supreme Court held that where the court acquired jurisdiction by virtue of an escheat proceedings, it cannot proceed to distribute the estate to those claiming as heirs, because the jurisdiction it has acquired cannot be converted into one for the distribution of the decedent's properties. For the latter proceedings to be instituted, the proper parties must be presented and the proceedings should comply with the Rules of Court.

GUARDIANSHIP

Jurisdiction of the Juvenile and Domestic Relations Court

In the case of *Perez v. Tuazon de Perez,*[42] the Supreme Court held that jurisdiction over guardianship proceedings in the City of Manila is exclusively vested in the Juvenile and Domestic Relations Court.[43]

It appears that the complaint alleged the following facts, namely, (1) that the defendant is squandering all her estate on a young man because of which her son, Benigno, thru his father as guardian *ad litem*, prays that his mother be declared a prodigal and placed under guardianship; (2) that by virtue of the said alleged acts of prodigality committed by the defendant, the conjugal partnership of gains is being dissipated to the prejudice of both spouses. Defendant filed a motion to dismiss on the ground of lack of jurisdiction of the C.F.I. of Manila over the case which is vested with the Juvenile and Domestic Relations Court. Pending the motion, a compromise agreement was submitted to the court for approval, but which was opposed by the defendant. The action was dismissed by the C.F.I. of Manila for lack of jurisdiction.

The Supreme Court ruled that R.A| No. 1401 creating the Juvenile and Domestic Relations Court and defining its jurisdiction, provides among other things that said court shall have exclusive original jurisdiction over cases involving custody and guardianship of minors and incompetents. A compromise agreement submitted to the court for approval does not constitute estoppel on the part of the defendant. And assuming that it does, it could not operate against the court, which, at any time could *motu propio* inquire and determine whether it has jurisdiction over the subject-matter, and could dismiss, if it has no power to act therein.

When jurisdiction of court ceases

In the case of *Senen v. de Pichay,*[44] the Supreme Court stated that the jurisdiction of the court in a guardianship proceedings and all incidents thereof

[40] Rules of Court, Rule 92, sec. 1.
[41] G.R. No. L-14157, Oct. 26, 1960.
[42] G.R. No. L-14874, Sept. 30, 1960.
[43] Rep. Act No. 1401.
[44] G.R. No. L-14391, May 30, 1960.

exists as long as the case is pending in that court. But when the case is terminated, by dismissal or otherwise, the court ceases to exercise the powers and authority to try said case and any incidental matters thereof. A petition for accounting etc., which is an incident of guardianship proceedings should be filed in the court where guardianship proceedings are pending. But once the guardianship proceedings are terminated, as in this case, said petition can no longer be filed in the same case, but must be filed as a separate case in the same court or in any other court of competent jurisdiction.

TRUSTS

The trust continues to exist until after its accomplishment or fulfillment is effected according to the testator's will.[45]

In the case of *Robles v. Santiago*,[46] a trust was created in the will of the decedent in favor of the legatees to continue for ten years, after which period, the trust estate was to be sold and the proceeds thereof distributed to the legatees. During the existence of the trust, rentals were to be delivered to the beneficiaries monthly. Some of these monthly rentals were not delivered. After the period has elapsed, the trustee filed a petition in court to sell the trust estate which petition was approved. At the same time, the legatees petitioned the court to order the trustee to deliver to them the rentals in arrears. The trustee opposed the petition contending that the claim was not filed during the period allowed for the filing of claims against the estate, and on the ground that the court has no more jurisdiction over the claim since the trust had already terminated upon the approval of the petition to sell the trust estate.

The Supreme Court in answer to the contentions, ruled that when the testator intended the enjoyment by the legatees of their respective legacies for the entire duration of the trust estate, the legacies should be viewed as one whole, continuing obligation, to be carried out by the trustee. The fact that rentals are to be delivered monthly did not make its delivery a separate, distinct presentation, or render the obligation divisible for to treat it as such, would destroy or alter the essence of legacy. The legacy contained in the probated will is an obligation based upon a judgment and prescribes after ten years.

The Supreme Court further declared that the approval of the petition to sell the trust estate did not automatically terminate the trusteeship, nor did it constitute full accomplishment of the trust. It is considered terminated after the sale and distribution is made according to the testator's will.

HABEAS CORPUS

Except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.[47]

Writ can issue only for want of jurisdiction

In the case of *William Pomeroy and Celia Mariano Pomeroy v. The Director of Prisons and the Superintendent of Correctional Institution for Women*,[48]

[45] Robles v. Santiago, G.R. No. L-10111, Aug. 31, 1960.
[46] *Ibid.*
[47] Rules of Court, Rule 102, sec. 1.
[48] G.R. Nos. L-14284, and 14285, Feb. 24. 1960.

the Pomeroys pleaded guilty on a charge of rebellion complexed with murder, arson, etc. and were sentenced to the penalty of *reclusion perpetua* and begun serving their sentence. Meanwhile, the Court promulgated the decisions in the cases of *People v. Hernandez and People v. Dugonon*,[49] wherein it was declared that there was no such crime as rebellion complexed with murder, etc., and that the different acts merely constituted and were absorbed in the crime of simple rebellion.

On August 18, 1958, the petitioner spouses asked for a writ of *habeas corpus* invoking the decisions in the *Hernandez and Dugonon cases*. They contended that since rebellion cannot be complexed with common crimes, the penalty of *reclusion perpetua* meted out to them is excessive and void in so far as it goes beyond the *prision mayor* prescribed by law. That in view of their plea for guilty, they could at most be sentenced to *prision mayor* in its minimum degree and that since they already served the minimum of *prision mayor*, after deductions for good conduct provided by law, they should be released.

The Supreme Court held that where a person is in custody pursuant to a final judgment the writ of habeas corpus can issue only for want of jurisdiction of the sentencing court, and cannot fuhction as a writ of error. Hence, the writ will not lie to correct mere mistakes of fact or of law which do not nullify the proceedings taken by the court in the exercise of its functions, if the court has jurisdiction over the crime and over the person.[50]

Whether or not the offenses are so related as to constitute one single punishable violation depends upon the court's appreciation of the facts and the application of the law and upon its jurisdiction, since it is not contested that the various component crimes were within the court's power to try and adjudicate. Granting that the sentencing court's estimate of the facts and its conclusions as to the governing law were erroneous, the mistake did not render it powerless to act upon the premises nor deprive it of its authority to impose the penalty that in its view of the case was appropriate. The view it had taken was not such capricious and whimsical exercise of judgment or grave abuse of discretion as would amount to lack of or excess of jurisdiction, since at that time the Supreme Court had affirmed convictions for the complex crime of treason with murder and other offenses.[51] Hence, the error committed was corrective only by reasonable appeal, not by attack on the jurisdiction of the sentencing court.

The general rule that when the court has no jurisdiction to impose the sentence, the writ of habeas corpus will lie, was applied by the Supreme Court in the case of *Malinao v. Raveles*.[52] It stated that when an order of commitment proceeded from want of jurisdiction, the order is void, and the writ will be granted.

Writ is proper when preliminary investigation is invalidly conducted

In criminal cases, the Justice of the Peace of the municipality where the crime was committed may conduct preliminary investigations thereon. But when one is concurrently performing as Justice of the Peace in two municipalities, he has no jurisdiction to conduct preliminary investigation while in the other municipality, not the place of the commission of the crime, and an

[49] G.R. No. L-6025, July 18, 1956 and G.R. No. L-8926, June 29, 1957, respectively.
[50] Talabon v. Prov. Warden, 78 Phil. 599; Perkins v. Director of Prisons, 58 Phil. 271.
[51] People v. Hardinico, 85 Phil. 410; People v. Albano. 82 Phil. 767.
[52] G.R. No. L-16464, July 26, 1960.

arrest made upon such investigation may be the subject of habeas corpus proceedings.[53]

Excessive sentence that can be corrected by habeas corpus

The Court in the case of *Pomeroy*,[54] further held that while that court has ruled that an excessive sentence or penalty imposed by final judgment may be corrected by habeas corpus, the cases where such ruling was applied involved penalties that could not be imposed under any circumstances for the crime for which the prisoner was convicted: subsidiary imprisonment for violation of special acts;[55] imprisonment for contempt by refusal to execute a conveyance instead of having the conveyance executed as provided by section 10 of Rule 39, Rules of Court.[56] In the present case, there is no question that the sentence meted out was the one provided by law for the complex crime of which herein petitioners were indicted and convicted.

Habeas Corpus to prevent deportation, when premature

In *Tang Seng Pao v. Commissioner of Immigration*,[57] the writ was denied because the administrative remedies have not yet been exhausted. It appears that an order of deportation was issued by the Board of Immigration against the petitioner herein, but the said order was not carried out because of a motion for reconsideration filed by the petitioner. In his petition for issuance of a writ of habeas corpus, he alleged that the non-execution of the order for 8 years had rendered it *functus oficio*.

The Court held that although a decision has already been rendered by the Board of Immigration ordering the deportation, the proceedings may still be considered pending because petitioner himself has filed a motion for reconsideration, and therefore, the petition was premature as the board has yet to act on said decision. That before a deportee may file a petition for a writ of habeas corpus to prevent his deportation, he must first exhaust all administrative remedies available.

When petition for writ becomes moot

Where at the hearing of the petition for a writ of habeas corpus, the subject of the writ prayed for had already been transferred to and placed under the custody of the duly appointed regular guardian of the person of said incompetent, the petition should be dismissed as it had become moot.[58]

Findings of C.F.I. where writ was made returnable is binding

A writ of habeas corpus issued by the Supreme Court may be made returnable to a Court of First Instance.[59] A writ when so made returnable, does not make the Court of First Instance merely a recommendatory body whose findings and conclusions are devoid of effect. The Court takes the case for

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[53] Ragpala v. Justice of the Peace of Tubod, Lanao, G.R. No. L-15375, Aug. 31, 1960.
[54] G.R. Nos. L-14284 and 14285, Feb. 24, 1960, *supra*.
[55] Citing Cruz v. Dir. of Prisons. 17 Phil. 269.
[56] Citing Caluag v. Pecson, 82 Phil. 8.
[57] G.R. No. L-14246, April 27, 1960
[58] Santos v. Faustino, G.R. No. L-16432, Nov. 29, 1960
[59] Rules of Court, Rule 102, sec. 2. "The writ of habeas corpus may be granted by the Supreme Court, or any member thereof, on any day at any time, or by the Court of Appeals or any member thereof in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines, and may be made returnable before the court or any member thereof, or before a Court of First Instance, or any judge thereof. . . ."

determination on the merits, and its findings, if not appealed within 24 hours from notice of judgment, becomes final as in ordinary cases.[60]

INSOLVENCY PROCEEDINGS

Who may bring action to set aside fraudulent transfer of properties.

In the case of *Board of Liquidators v. Floro, et al.*,[61] the Board entered into an agreement with a certain Malabanan, whereby the latter was authorized to salvage sunken suplus properties at a stipulated price. Four months before the submission of his report to the Board, Malabanan borrowed money from Exequiel Floro giving as security therefor, quantities of salvaged steel mattings. When Malabanan defaulted in the payment of his debt, Floro sold the security, pursuant to an agreement between them whereby Floro was authorized to sell the security in the event of non-payment, to a certain Legaspi. Thereafter, Malabanan filed a petition for voluntary insolvency. The Board sought to exclude the steel mattings in question from the inventory of property attached to the petition, claiming to be the owner thereof. The lower court declared Malabanan as the owner of the disputed property and upheld the validity of the sale to Legaspi.

The Supreme Court affirmed the decision in so far as it declared the insolvent as the owner of the disputed property, saying that an examination of the contract between the Board and Malabanan shows that ownership of the goods passed to Malabanan as soon as they were salvaged or recovered. With respect to the sale, the Court held that all proceedings to set aside fraudulent transfer should be brought and prosecuted by the assignee in insolvency, who can legally represent all the creditors of the insolvent.[62] In the absence of such proceedings it was premature for the court below to decide whether the sale within 30 days prior to the petition for insolvency was valid or fraulent, especially when the action was brought by only one of the creditors, such judgment having no binding effect upon the other creditors.

APPEALABLE ORDERS

Rule 105, section 1 of the Rules of Court enumerates the orders and judgments which may be appealed to the higher courts. An order constituting a final determination of the rights of an interested party is appealable.[63] An order removing a guardian and appointing another in his stead is an order constituting a final determination of his rights and consequently said guardian may appeal therefrom.[64] An order of the probate court approving the sale of the property of the decedent is of final character and appealable.[65]

An interlocutory order for partial distribution may be appealed if the oppositor fails to object to the approval of the record on appeal.[66]

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[60] Saulo v. Brig. Gen. Pelagio Cruz, G.R. No. L-15474, Aug. 31, 1960.
[61] G.R. No. L-15155, Dec. 29, 1960.
[62] Maceda v. Hernandez, 70 Phil. 261; Insolvency Law, section 36(8). "The said assignee shall have power:
8. To recover from any person receiving a conveyance, gift, transfer, payment, or assignment. made contrary to any provision of this Act, the property thereby transferred or assigned; or in case a redelivery of the property cannot be had, to recover the value thereof, with damages for the detention."
[63] Rules of Court, Rule 105, sec. 1(e).
[64] Olarte v. Enriquez, G.R. No. L-16098, Oct. 31, 1960.
[65] Del Castillo v. de Samonte, *supra*.
[66] Gatmaitan v. Medina. *supra*.