SPECIAL PROCEEDINGS

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After a thorough perusal of the 1961 decisions rendered by the Supreme Court in Special Proceedings, we can readily observe that there has been more adherence to established rules than radical deviations in the modes of procedure. It may well be said that a great portion of the Court's efforts has been channeled through the vast, intricate field of interpretation, elucidation and application of rules and principles which would have been otherwise obscure and isolated. Analysis and harmonious interrelation of rules and principles, therefore, accentuate the decisions under review.

Ever mindful, however, of the legal truism espoused by Justice Cardozo that ". . . the whole subject of procedure supply fields where change may properly be made with a freedom even greater" and ". . . that adherence to existing rules . . . apply with diminished force when it is a question of the law of remedies," [1] we cannot but speculate future decisions. Nevertheless, the speculation must not be vulnerable and shaky, but incontrovertible and rooted on solid foundation. Thus, this 1961 survey of Supreme Court decisions was conceived and prepared to fortify *that* speculation and thereby meet the exacting future we spoke of.

SETTLEMENT OF ESTATE OF DECEASED PERSONS

Effectivity of Lien; when two-year period does not apply

Rule 74, Sec. 4 of the Rules of Court provides:

> If it shall appear at anywhere within two years after the settlement and distribution of an estate in accordance with the provisions of either of the first two sections of this rule, that an heir or other person has been unduly deprived of his lawful participation in the estate, such lien or such other person may compel the settlement of the estate in the courts in the manner hereinafter provided for the purpose of satisfying such lawful participatioin. And if within the same time of two years, it shall appear that there are debts outstanding against the estate which have not been paid, or that an heir or other person has been unduly deprived of his lawful participation payable in money, the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of such debts or lawful participation and order how much

* Recent Legislation Editor, Student Editorial Board, *Philippine Law Journal*, 1961-62.
** Member, Student Editorial Board, *Philippine Law Journal*, 1961-62.
[1] Cardozo, The Nature of the Judicial Process, New Haven: Yale University Press (1957), p. 136

> and in what manner each distributee shall contribute in the payment thereof, and may issue execution, if circumstances require, against the bond provided in the preceding section or against the real estate belonging to the deceased, or both. Such bond and such real estate shall remain charged with a liability to creditors, heirs, or other persons for the full period of two years after such distribution, notwithstanding any transfers of the real estate that may have been made."

The Court in construing this provision stated that the above lien is effective only for a period of two years.[2]

In a later case,[3] the court held that although the above-quoted provision fixes a period of two (2) years for the filing of claims of heirs or other persons who had been unduly deprived of their lawful participation therein, in consequence of the summary settlement of the estate of a deceased person, said period does not apply when the settlement has been effected extrajudicially, in which case the ordinary period of limitations applies.[4]

Jurisdiction of the Probate Court

In *Timbol v. Cano*,[5] the intestate Mercedes Cano died leaving as her only heir her 11-year old son Florante. A year thereafter, Jose Cano, brother of the intestate, was appointed administrator. Later, Jose Cano filed a petition proposing that the agricultural lands of the intestate be leased to him for an annual rental of ₱4,000, this rental to be used for the maintenance of the minor and the payment of land taxes and dues. This motion was approved. Sometime in 1956, the Court, upon motion of Jose Cano and with the conformity of Florante, approved the reduction of the annual rental and the conversion of 30 hectares of the agricultural lands into a subdivision. In 1957, Florante was appointed administrator, in place of Jose and while acting as such moved that the area destined for the projected subdivision be increased from 30 hectares to 41.9233 hectares. This motion was approved notwithstanding objections of Jose. Hence this appeal, assigning several errors committed by the lower court.

In the second and third assignments of error appellant argued that the court below, as a probate court, has no jurisdiction to deprive the appellant of his rights under the lease, because these rights may be annulled or modified only by a court of general jurisdiction. In brushing aside this contention, the court ruled that "in probate

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[2] *Carreon et al. v. Agcaoili et al.*, G.R. No. L-11156, February 28, 1961.
[3] *Mañacop v. Cannino*, G.R. No. L-13971, February 27, 1961.
[4] See Moran, Comments on the Rules of Court (1957), pp. 339-340.
[5] G.R. No. L-15445, April 29, 1961.

proceedings the court orders the probate of the will of the decendent; [6] grants letters of administration to the party best entitled thereto or to any qualified applicant; [7] supervises and controls all acts of administration; hears and approves claims against the estate of the deceased; [8] orders payment of lawful debts; [9] authorizes sale, mortgage or any encumbrance of real estate; [10] directs the delivery of the estate to those entitled thereto." [11] The court is even considered as acting in the capacity of a trustee, and as such, should jealously guard the estate and see that it is wisely and economically administered, not dissipated.[12]

Besides, if the probate court has the right to approve the lease, so may it order its revocation, or the reduction of the subject of the lease. The act of giving the property to a lessee is an act of administration, subject to the approval of the court. Of course, if the court abuses its discretion in the approval of the contracts or acts of the administrator, its orders may be subject to appeal and may be reversed on appeal; but not because the court may make an error may it be said that it lacks jurisdiction to control acts of administration of the administrator.

In the seventh assignment of error, appellant argues that since the project of partition had already been approved and had become final, the lower court has lost jurisdiction to appoint a new adminis-

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[6] Rule 80, Sec. 5 provides: At the hearing of the petition, it must first be shown that notice has been given as hereinabove required, and thereafter the court shall hear the proofs of the parties in support of their respective allegations, and if satisfied that the decedent left no will, or that there is no competent and willing executor, it shall order the issuance of letters of administration to the party best entitled thereto.

[7] Id., Sec. 6 provides: Letters of administration may be granted to any qualified applicant though it appears that there are other competent persons having better right to the administration, if such persons fail to appear when notified and claim the issuance of letters to themselves.

[8] Rule 87, Sec. 13 provides: The judgment of the court approving or disapproving a claim, shall be filed with the records of the administration proceedings with notice to both parties, and is appealable. A judgment against the executor or administrator shall be that he pay, in due course of administration, the amount ascertained to be due, and it shall not create any lien upon the property of the estate, or give to the judgment creditor any priority of payment.

[9] Rule 89, Sec. 11 provides: Before the expiration of the time limited for the payment of the debts, the court shall order the payment thereof, and the distribution of the assets received by the executor or administrator for that purpose among the creditors, as the circumstances of the estate require and in accordance with the provisions of this rule.

[10] Rule 90, Sec. 1 provides: Upon the application of the executor or administrator, the court may order the whole or a part of the personal estate to be sold, if it appears necessary for the purpose of paying debts, expenses of administration, or legacies or for the the preservation of the property.

[11] Rule 91, Sec. 1—When order for distribution of residue made testimony taken on controversy preserved—When the debts, funeral charges, and expenses of administration, the allowances to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive share to which each person is entitled under the law, the testimony as to such controversy shall be taken in writing by the judge, under oath.

No distribution shall be allowed until the payment of the obligations abovementioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court conditioned for the payment of said obligations within such time as the court directs.

[12] Tambunting v. Hon. San Jose, G.R. No. L-8162, August 30, 1955; Dariano v. Fidalgo, 14 Phil. 62, 67 (1909).

trator or to authorize the enlargement of the land to be converted into a subdivision. Finding no merit in this argument the court ruled that "the probate court loses jurisdiction of an estate under administration only after the payment of all the debts the remaining estate delivered to the heirs entitled to receive the same." In the case at bar, the debts had not yet been paid, and the estate had not yet been delivered to the heir as such heir.

In *Uy v. Republic*,[13] Jose Uy was appointed as Special Administrator of the intestate estate of his mother, Maria Lim Vda. de Uy. With the leave of the probate court, granted over the opposition of the Special Administrator, the Republic of the Philippines filed a complaint in intervention for the collection of transfer taxes and penalties based on the allegation that, a few weeks before the intestate's death, Maria Lim Vda. de Uy had disposed of her properties by making fictitious or simulated sales in favor of her children. The special administrator denied that the sales therein mentioned were fictitious or simulated and alleged, inter alia, that the deceased had left no properties; that the proceedings for the settlement of her estate "should never have been commenced." On December 29, 1958, intervenor filed a motion that, inasmuch as its claims have been contested and liability therefor denied, the case therefore involves disputed assessments of internal revenue taxes and a specific tax, hence the pertinent records should be remanded to the Court of Tax Appeals, pursuant to section 22 of Act No. 1125. Over appellant's objection, the motion was, after due hearing, granted. Held: Despite the order appealed from, this special proceeding will continue as such under the jurisdiction of the probate court. The nature of such special proceeding will not be altered. However, the issue on the nature of the sales or transfers made by deceased in favor of her children and on the obligation to pay the taxes claimed by the government, will be taken out of this special proceeding and submitted to the Court of Tax Appeals, for determination pursuant to R.A. No. 1125. In other words, the probate court has no jurisdiction to settle the issue between the parties herein in the special proceeding for the settlement of the estate of the deceased. Upon the other hand, since the determination of the question whether the deceased had really or fictitiously transferred properties to her children, and whether in contemplation of death, as provided in Section 88(B) of the Tax Code, are merely incidental to the issue on the validity or legality of the disputed assessments, which is within the jurisdiction of the Court of Tax Appeals, it follows that the latter—not the CFI, not even as a regular court—is, likewise, competent

[13] G.R. No. L-16386, April 29, 1961.

to hear and decide said questions concerning the nature of the transfers aforementioned.

Powers of the Probate Court

The issue at once presented in the case of the *Philippine Trust Co. v. Luzon Surety Co.*,[14] is whether a probate court can, *ex proprio motu,* confiscate or forfeit the probate bond.

Deciding the issue in the affirmative, the court categorically stated:

> "Whatever may be the rule prevailing in other jurisdictions, in ours a probate court is possessed with an all-embracing power not only in requiring but also in fixing the amount, and executing or forfeiting an administrator's bond. The execution of forfeiture of an administrator's bond, is deemed to be a necessary part and incident of the administration proceedings inasmuch as its filing and fixing of its amount. The rule, therefore, is that probate court may have said bond executed in the same probate proceeding."

The facts of the case are as follows: Francis Picard, Sr. was appointed administrator of the Intestate Estate of the deceased James Bart upon a bond of ₱1,000.00 with appellant Luzon Surety Co., Inc., as his surety. Picard, however, disbursed the funds of the estate without authority. Hence, the court dismissed Picard as administrator and appointed the Philippine Trust Co., in his place. Subsequently, the court issued an order requiring the Luzon Surety Co., Inc. to show cause why the administrator's bond filed by it on behalf of Picard should not be confiscated. Luzon Surety Co., Inc. filed a motion to set aside said order on the ground, among other things, that "a probate court cannot, *ex proprio motu,* prosecute the probate bond." Obtaining an unfavorable judgment, Luzon Surety Co., Inc. appealed to the Supreme Court which sustained the decision of the trial court.

Interest of an heir in the estate may be attached pending settlement

In *Juan de Borja v. Jose de Borja*,[15] the sheriff complying with the writ of execution issued by the CFI of Rizal, levied on the rights, interests or participation of Crisanto de Borja as the prospective heir of the decedents Josefa Tangco and Francisco de Borja in certain specified real estate in the province of Rizal.

Thereafter, Jose de Borja, as administrator of the estate of Josefa Tangco filed with the sheriff a third party claim asserting

[14] G.R. No. L-13031, May 13, 1961.
[15] G.R. No. L-14851. August 31, 1961.

that the properties belonged to the estate of deceased Tangco under liquidation in special proceedings No. 7866 of the court, and that, consequently, they were in *custodia legis*. Acting upon this opposition, the sheriff required the judgment creditors to post a bond of ₱2,500.00. The latter resorted to the court contending it was unnecessary to do so. On the other hand, the administrator contended that the levy was improper.

The issues thus raised were decided by the lower court as follows: the levy was proper, and as the oppositors did not submit to the court a copy of their third party claim, the sheriff went beyond his powers in requiring submission of a bond. The administrator appealed.

Held: There is no doubt that the interest of an heir in the estate of a deceased person may be attached for purposes of execution, even if the estate is in process of settlement before the courts. This is quite clear from a reading of Section 14, Rule 39, in connection with section 7(f), Rule 59, which permits the attachment of "the interest of the defendant in property belonging to the estate of a decedent, whether as heir, legatee, etc." As stated in Cook v. Escobar: [16]

> "When a person dies and his properties are placed under judicial administration, during the pendency of such administration, the right, title, and interest which the heirs, devises or legatees may have in the properties may be attached subject to the administratiion of the estate. The administrator retains control over the properties and will still have the power to sell them, if necessary, for the payment of the debts of the deceased."

As to the bond, we also think the judgment-creditors are not required to file a bond, because this is not really a third-party claim, since the administrator does not dispute that Crisanto is an heir, or at least a "prospective" heir. In other words, there is actually no conflict between the interest of Crisanto de Borja (which is attached) and the interest of Josefa Tangco (or of the administrator).

Special Administrator

Sec. 2, Rule 81 of the Rules construed—

The said section provides:

> "POWERS AND DUTIES OF SPECIAL ADMINISTRATOR—Such special administrator shall collect and take charge of the goods, chattels, rights, credits, and estate of the deceased and preserve the same for the

[16] G.R. No. L-27909, November 9, 1927, cited in Moran, Rules of Court, Vol. II (1957), p. 313.

executor or administrator afterwards appointed, and for that purpose may commence and maintain suits as administrator, and *may sell such perishable and other property as the court orders sold.* . . ." [17]

It has been held that the function of a special administrator is only to collect and preserve the property of the deceased until a regular administrator is appointed.[18] But it is not alone the specific property of the estate which is to be preserved, but its value as well, as shown by the legal provision for the sale by a special administrator of perishable property.[19]

In the case of *Perkins Anderson v. Slade Perkins,*[20] the Supreme Court held that the special administrator's power to sell is not limited to "perishable" property only in view of the phrase "and other property as the court orders sold" found in Sec. 2 of Rule 81. That it is in line with the general power of the special administrator to preserve not only the property of the estate but its value as well, that said section also empowers such administrator to sell "other properties as the court orders sold."

In this case, Alfonso Ponce Enrile was appointed as special administrator of the estate of Eugene Arthur Perkins. Pending the proceedings for the probate of the will, Enrile submitted to the court a petition seeking authority to sell or give away to some charitable, educational institution or institutions, certain personal effects left by the deceased which were deteriorating both physically and in value in order to avoid their further deterioration. Jdonah Slade Perkins, the surviving spouse appealed on the grounds that the sale is contrary to Sec. 2, Rule 81 of the Rules; and that most of the properties sold were conjugal properties.

The Supreme Court denied the first and sustained the second ground. The court said:

"As the records show, up to the time the proposed sale was asked for and judicially approved, no proceedings had as yet been taken or even started to segregate the alleged exclusive property of the oppositor from the mass of the estate supposedly left by the deceased, or to liquidate the conjugal partnership property of the oppositor and the deceased. Until, therefore, the issue of the ownership of the properties sought to be sold is heard and decided and the conjugal partnership liquidated; or at least an agreement be reached with appellant as to which properties of the conjugal partnership she would not mind being sold to preserve their value, the proposed sale is clearly premature."

[17] Emphasis supplied.
[18] De Gala v. Gonzales, 53 Phil. 104; Collins v. Henry, 118 S.E. 729, 155 Ga. 886; Saydelke v. Smith's Estate. 244 N.W. 149, 259 Mich. 519.
[19] Gao v. Cascade Silver Mines & Mills et al., 213 p. 1092; 66 Mont. 488.
[20] G.R. No. L-15388, January 31, 1961.

General powers and duties of executors and administrators

Administrator not estopped to question validity of his own deed.

The rule is that a decedent's representative is not estopped to question the validity of his own void deed purporting to convey land; and if this be true of the administrator as to his own acts, *a fortiori*, his successor can not be estopped to question the acts of his predecessor that are not conformable to law.[21]

The lease of estate under administration by the administrator to himself is void

The lease of the agricultural lands of the estate to the appellant, who was the administrator at the time the lease was granted, is null and void not only because it is immoral but also because the lease by the administrator to himself is prohibited by law.[22]

Accountability and compensation of executors and administrators

Accountability of Administrators

In the case of *Joson v. Joson*,[23] Felicisimo was appointed administrator of the estate of his deceased father. He filed his accountings but were never approved by the court. In 1914, Eduardo, one of the heirs, filed an opposition to all the accounts filed by Felicisimo when he alleged that Felicisimo diminished the shares of the heirs and had padded his expenses of administration. In the meantime, the heirs were able to compromise their differences and entered into an extra-judicial settlement and partition of the entire estate under Rule 74, Sec. 1 of the Rules of Court, the heirs expressly manifested that they are entering into it because of their desire to put an end to the judicial proceeding and administration. But, as the Court was never informed of this extrajudicial settlement, it issued an order requiring Felicisimo to file an accounting of his administration from 1949-1954 which Felicisimo complied with accordingly.

However, without said accounts having been heard or approved, Felicisimo filed a motion to declare the proceedings closed and terminated and to relieve him of the duties as such. Eduardo filed an opposition thereto. The court, after hearing, issued an order declaring the proceedings terminated and relieving Felicisimo not only of

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[21] Bonaga v. Soler, G.R. No. L-15717, June 30, 1961, citing the following American cases. Chase v. Cartwright, 22 Am. St. Reps. 207; Meeks v. Alpherts, 25 L. Ed. (U.S.) 735; 21 Am. Jur. 756. s. 667; C.F. Walker v. Portland Savings Bank, LRA. 915 E., p. 840, 21 Am. Jur. p. 820, s. 785.

[22] Timbol v. Cano, supra, see also Arts. 1646 & 1491 of the NCC.

[23] G.R. No. L-9686, May 30, 1961.

his duties as administrator but also of his accounts. Hence this appeal.

The issues presented are, to wit:

(1) Is the duty of an administrator to make an accounting of his administration a mere incident which can be avoided once the estate has been settled?

(2) Are the proceedings deemed terminated by the mere execution of an extrajudicial partition of the estate without the necessity of having the accounts of the administrator heard and approved by the court?

(3) Is the administrator *ipso facto* relieved of his duty of proving his account from the moment said partition has been executed?

The Court in resolving the issues took into account the fact that: Sec. 1 of Rule 86 categorically charges an administrator "with the whole of the estate of the deceased which has come into his possession at the value of appraisement contained in the inventory; with all the interest, profit, and income of such an estate; and with the proceeds of so much of the estate as is sold by him, at the price at which sold." Sec. 8 of the same rule imposes upon him the duty to render an account of his administration within one year from his appointment, unless the court otherwise directs, as well as to render such further accounts as the court may require until the estate is fully settled. Sec. 10 likewise provides that before an account of the administrator is allowed notice shall be given to all persons interested of the time and place of examining and allowing the same, and finally, Sec. 9 expressly directs that the court shall examine the administrator upon oath with respect to every matter relating to his account except when the objection is made to the allowance of the account and its correctness is satisfactorily established by competent authority.

It thus appears that the duty of an administrator to render an account is not a mere incident of an administration proceeding which can be waived or disregarded when the same is terminated, but that it is a duty that has to be performed and duly acted upon by the court before the administration is finally ordered closed and terminated.

The fact that all the heirs of the estate have entered into an extrajudicial settlement and partition in order to put an end to their differences cannot in any way be interpreted as a waiver of the objections of the heirs to the accounts submitted by the adminis-

trator not only because to so hold would be a derogation of the pertinent provisions of our rules but also because there is nothing provided in said partition that the aforesaid accounts shall be deemed waived or condoned.

While the attitude of the heirs in concluding said etxrajudicial settlement is plausible and has contributed to the early settlement of he estate, the same cannot however be considered as a release of the obligation of the administrator to prove his accounts. This is more so when, according to the oppositors, the administrator has committed in his accounts a shortage in the amount of ₱132,600.00 which certainly cannot just be brushed aside by a mere technicality.

Surety on bond may be party to accounting

According to Sec. 11, Rule 86 of the Rules of Court, "upon the settlement of the account of an executor or administrator, a person liable as surety in respect to such account may, upon application, be admitted as a party to such accounting." The import of this provision is that the sureties are not entitled to notice but may be allowed to intervene in the settlement of the accounts of the executor or administrator if they ask for leave to do so in due time.[24]

Claims against estate

When opposition to claims barred

If pursuant to a "notice of creditors" given by the clerk of the CFI, acting as a probate court in an intestate proceedings, creditors filed their claims against the estate, and administratrix filed no answer or opposition to said claims, as required by sec. 10, Rule 87 of the Rules of Court,[25] the motion to file written opposition to said claims after almost 2 years had elapsed should be denied.[26]

Sales, mortgages, and other encumbrances of property of decedents

Notice Mandatory in cases of conveyance of realty which deceased contracted to convey.

In *Leon de Jesus et al. v. Eusebia de Jesus, et al.*,[27] *X* who replaced his mother *Y* as administrator of the estate, filed an action

[24] Phil. Trust Co. v. Luzon Surety Co., Inc., G.R. No. L-13031, May 30, 1961.
[25] Rule 87, Sec. 10—Within five days after service of a copy of the claim on the executor or administrator, he shall file his answer admitting or denying the claim specifically, and setting forth the substance of the matters which are relied upon to support the admission or denial. If he has no knowledge sufficient to enable him to admit or deny specifically; he shall state such want of knowledge. The executor or administrator in his answer shall allege in offset any claim which the decedent before death had against the claimant and his failure to do so shall bar the claim forever. A copy of the answer shall be served by the executor or administrator on the claimant. The court in its discretion may extend the time for filing such answer.
[26] Neibert v. Montejo, G.R. No. L-17114. April 29, 1961.
[27] G.R. No. L-16553, November 29, 1961.

seeking to annul the stipulation entered by the former administratrix with *A* and *B*.

The stipulation of facts was to the effect that *Y* recognized that *A* and *B* are co-owners with the deceased of a lot and that said lot was registered in the sole name of deceased in trust for all the co-owners. The agreement was approved by the probate court.

The issue presented was whether or not the stipulation is void and ineffective either for lack of jurisdiction on the part of the probate court to approve or for lack of notice of their approval to the heiress of the deceased.

Held: The probate court had jurisdiction to act on and approve the stipulation in question not only as an incident to its power to exclude any property from the inventory of the estate but also under Sec. 9, Rule 90 of the Rules.[28]

There being no controversy between the former administratrix and the defendants there was no need to file a separate ordinary action in court to establish the common ownership of the property in question.

Sec. 9 of Rule 90 however provides that authority can be given by the probate court to the administrator to convey the property held in trust by the deceased to the beneficiary only "after notice given as required in the last preceding section." i.e. that "no such conveyance shall be authorized until notice of the application for that purpose has been given personally or by mail to all persons interested, and such further notice has been given, by publication or otherwise as the court deems proper." [29]

This rule makes it mandatory that notice be served on the heirs and other interested persons of the application for approval of any conveyance of property held in trust by the deceased and where such notice is given, the order authorizing the conveyance as well as the conveyance itself is completely VOID.

Requisites of sales under Secs. 4 & 7 of Rule 90 are mandatory—

In *Boñaga v. Soler*,[30] Garza the appointed administrator, pursuant to an authority granted by the probate court, sold certain parcels of land pertaining to the estate in favor of Soler which sale

[28] Rule 90, Sec. 9—When colrt may authorize conveyance of lands which deceased held in trust. Where the deceased in his lifetime held real property in trust for another person, the court may, after notice given as required in the last preceding section, authorize the executor or administrator to deed such property to the person, or his executor or administrator, for whose use and benefit it was so held; and the court may order the execution of such trust, whether created by deed or by law.

[29] G.R. No. L-15388, January 31, 1961.

[30] G.R. No. L-15717, June 30, 1961

was subsequently approved. The sale made comprised almost the whole estate. The record does not show whether as required by Rule 90, Secs. 4 and 7, the application for authority to sell was set for hearing, or that the court ever caused notice to be issued to the heirs.

The instant action was filed by Boñaga who replaced Garza as administrator after the war. This action seeks to avoid the sale on the ground that said transaction were fraudulent, made without notice to the heirs and that the sale was not beneficial to the heirs.

After Soler sought a resolution of his third motion to dismiss, the court ordered the dismissal of the action.

Held: The lower court erred in dismissing the action without a hearing on the merits.

A sale of properties of an estate as beneficial to the interested parties, under Secs. 4 and 7, Rule 90 [31] must comply with the requisites therein provided, which are mandatory. Among these requisites, the fixing of the time and place of hearing for an application to sell, and the notice thereof to theirs, are essential; and without them, the authority to sell, the sale itself, and the order approving it, would be null and void *ab initio*.[32] Rule 90, Sec. 4 does not distinguish between heirs residing in and those residing outside the Philippines. Therefore, its requirements should apply regardless of the place of residence of those required to be notified under said rule.

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[31] Rule 90, Sec. 4 provides: "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."

Sec. 7 provides.

"The Court having jurisdiction of the estate of the deceased may authorize the executor or administrator to sell personal estate or to sell, mortgage, or otherwise encumber real estate, in cases provided by these rules and when it appears necessary or beneficial, under the following regulations:

(a) The executor or administrator shall file a written petition setting forth the debts due from the deceased, the expenses of administration, the legacies, the value of the personal estate, the situation of the estate to be sold, mortgaged, or otherwise encumbered, and such other facts as shown that the sale, mortgage, or other encumbrance is necessary or beneficial;

(b) The court shall thereupon fix a time and place for hearing such petition, and cause notice stating the nature of the petition, the reason for the same, and the time and place of hearing, to be given personally or by mail to the persons interested, and may cause such further notice to be given, by publication or otherwise, as it shall deem proper;

(c) If the court requires it, the executor or administrator shall give an additional bond, in such sum as the court directs, conditioned that such executor or administrator will account for the proceeds of the sale, mortgage, or other encumbrance;

(d) If the requirements in the preceding subdivisions of this section have been complied with, the court, by order stating such compliance, may authorize the executor or administrator to sell, mortgage, or otherwise encumber, in proper cases, such part of the estate as is deemed necessary, and in case of sale the court may authorize it to be public or private, as would be most beneficial to all parties concerned. The executor or administrator shall be furnished with a certified copy of such order;

(e) If the estate is to be sold at auction, the mode of giving notice fo the time and place shall be governed by the provisions concerning notice of execution sale;

(f) There shall be recorded in the registry of deeds of the province in which the real estate thus sold, mortgaged, or otherwise encumbered is situated, a certified copy of the order of the court, together with the deed of the executor or administrator for such real estate, which shall be as valid as if the deed had been executed by the deceased in his lifetime."

[32] Arcilla v. David, 77 Phil. 718. Gabriel et al. v. Encarnacion, et al., G.R. No. L-6786,

In answer to the contention that the sale was made under Sec. 2, Rule 90 [33] the court pointed out that there was no showing that the sale was made for the purpose of paying debts or expenses of administration, a condition which circumscribes the applicability of that section.

Distribution and partition of the estate

No partition until claims paid

In the case of *Lacson v. Delgado*,[34] the proceeding was commenced upon joint petition of Emiliano Lacson, father and heir of the intestate, and Jacinto Delgado, reservee of the properties left by the intestate, who had inherited the properties object of the proceedings from his mother, Consolacion Delgado. The joint petition also declares that the funeral expenses of intestate be furnished by them and said amounts "se pagaran proporcionalmente y annualmente por el opositor en su concepto de administrador judicial, con las dos terceras partes del producto anual de los terrenos bajo administracion a partir de la cosecha de 1952-1953 y asi sucesivamente sin interrupcion hasta su completo pago."

However, pursuant to a court order, Emiliano filed a project of partition, adjudicating all the property of the deceased to himself, subject to the claim of Delgado equal to the amount furnished for funeral expenses. Delgado objected to the project of partition on the ground that the debts have not been paid. The lower court then ordered the sale of any property of the intestate to pay the debts. *Held:* The administrator should have been required to comply strictly with the agreement entered into by him with appellant upon the initiation of these proceedings, namely, dividing the net income between himself and appellant in proportion to their claims. This agreement is a sort of a judicial compromise, which has the effect of a judgment of the Court.[35] Conformably to the agreement no partition should be decreed until the claims of appellant shall have been paid, and no sale of any property of the estate should be ordered.

GUARDIANSHIP

When petition for appointment of special guardian becomes moot

When on the very same date that the petition for certiorari with preliminary injunction contesting the appointment by the Juve-

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May 4, 1954.

[33] Wherein notice is required only those heirs, etc. residing in the Philippines.

[34] G.R. No. L-15739, April 29, 1961.

[35] Art. 2067 of NCC—"The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor he can not demand of the debtor more than what he has really paid."

nile and Domestic Relations Court of a special or temporary guardian was filed in the Supreme Court, the former court appointed a *regular guardian* who thereby qualified and entered in the performance of his duties as such, the petition should be dismissed as it had become moot.[36]

Mother may sue in behalf of her minor childrenn

In *Angelina Araneta Vda. de Liboon v. Luzon Stevedoring Co., Inc.*,[37] the mother sues in behalf of her minor children although her request that she be appointed as their guardian *ad litem* has not been acted upon. The Supreme Court stated that the "lack of a formal appointment of the minors' mother as guardian *ad litem* may be overlooked" considering that both the Rules of Court and the New Civil Code contain provisions authorizing the same.[38] Besides, her capacity to sue in their behalf has not been questioned and the court has impliedly allowed her to sue in behalf of the minors.

Termination of guardianship

Guardian can not be legally removed except for cause enumerated by the Rules

Sec. 2 of Rule 98 of the Rules of Court provides the grounds for the removal of a guardian:

> "When a guardian becomes insane or otherwise incapable of discharging his trust or unsuitable therefore, or has wasted or mismanaged the estate, or failed for thirty days after it is due to renher an account or make a return, the court may, upon reasonable notice to the guardian, remove him, and compel him to surrender the estate of the ward to the person found to be lawfully entitled thereto."

It has been held also that where there is a conflict of interest between the ward and the guardian, the latter must be relieved.[39]

This provision was again applied in *Padilla Vda. de Bengson v. PNB* [40] where the Supreme Court reiterated the ruling in a previous case [41] that a guardian can not be legally removed from office except for the cause mentioned in the Rules. This is also the American Law.[42]

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[36] Santos v. Hon. Natividad Almeda Lopez, G.R. No. L-16422, April 29, 1961 (Resolution).
[37] G.R. No. L-14893, May 31, 1961.
[38] Rule 3, Sec. 5: Infants or incompetent persons.—A minor, insane, or person declared judicially to be incompetent, may sue or be sued through his guardian, or if he has none, through a guardian ad litem appointed by court.
Art. 317 of the N.C.C.: "The courts may appoint a guardian of the child's property, or a guardian ad litem when the best interest of the child so requires."
[39] Moran, Comments on the Rules of Court, 515 (1957) citing the case of Alemany v. Moreno, 5 Phil. 172
[40] G.R. No. L-17066, December 28, 1961.
[41] Alemany v. Moreno, supra.
[42] See 39 C.J.S., p. 657.

In this case, *Y*, as the mother of a veteran who died in World War II became entitled to certain accrued insurance benefits and to a monthly death compensation for the rest of her life. *Y*, being an incompetent, the Veterans Administration filed a Special Proceeding in the CFI of La Union where in due course an order was entered adjudging *Y* to be an incompetent and appointed the P.N.B. as guardian of her estate. On March 5, 1960, the ward by counsel filed a petition asking for an order terminating the guardianship which was opposed by the Veterans Administration.

On March 30, 1960, *X*, son of *Y*, filed a "manifestation" praying that he be appointed guardian of his mother's estate. The lower court granted the prayer. *Held:* There was no legal ground for the removal of the P.N.B. All throughout, it appears incontestable that the P.N.B. has discharged its trust satisfactorily. That it has received commission allowed by law for its services is no ground to remove it. Neither is it sufficient to base removal on the unsubstantiated opinion that it would be more beneficial to the interests of the ward and more convenient for the administration of the estate.

The Supreme Court also observed that conflict of interest [43] has been held sufficient ground for removal premised on the logic that antagonistic interest would render a guardian unsuitable for the trust.

On the question of whether removal is discretionary the Court said: "To the extent that a court uses its discretion in appraising whether a person is unsuitable or incapable of discharging his trust, that much it can be said that removal is discretionary. But the discretion must be exercised within the law, and when the latter has laid down the grounds for removal of a guardian, discretion is limited to inquiring as to the existence of any of those grounds."

HABEAS CORPUS

The writ of habeas corpus is a writ directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his caption and detention, to do, submit to, and receive whatsoever the court or judge shall consider in that behalf.[44]

Habeas Corpus not a writ of error or a writ for the purpose of review

The Supreme Court has repeatedly held that a writ of habeas corpus is not a writ of error, or a writ for the purpose of review.[45]

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[43] Ribaya v. Ribaya, 74 Phil. 254; Gabriel v. Sotelo, 74 Phil. 25.
[44] Moran, Comments on the Rules of Court, 539 (1957) citing Bouviers Law Dictionary.
[45] See the cases of Felipe v. Director, 27 Phil. 378; Pomeroy v. Director, G.R. Nos. L-14284-14285, February 24, 1960; Talabon v. Provincial Warden, 78 Phil. 599; Perkins v. Director, 58

This principle was again applied in *Cuenca v. Superintendent.*[46] In this case, petitioner after having served 5 years, 7 months and 12 days of her sentence filed a petition for habeas corpus with the CFI of Rizal alleging among others, that the allegations of habitual delinquency in the information are insufficient, as they do not contain an averment of the date of commission of the previous crimes, thus the imposition of the additional penalty for habitual delinquency is void; and that even granting that said allegations regarding habitual delinquency are sufficient, the penalty imposed by the municipal judge is excessive, considering that said allegations only show that she should have been imposed an additional penalty for a fourth conviction in accordance with the decision in *People v. Kaw Liong.*[47]

The information runs thus:

> . . .; that the said accused Epifania Cuenca y Mendoza and Ariston Cuevas y Baldveza are habitual delinquents according to Art. 62, Sec. 5(a), they having previously been convicted several times of the crime of theft by virtue of final judgment rendered by competent court, as follows:
>
> EPIFANIA CUENCA Y MENDOZA

Date	*Date of Conviction*	*Charge*	*Disposition*
2-22-48	2-28-49	Theft	x x x
2-22-48	2-28-49	Theft	x x x
3-31-49	7-21-49	Theft	x x x
6-17-49	7-21-49	Theft	x x x
10-25-51	12-17-51	Theft	x x x

The Supreme Court in denying the petition quoted with approval the decision of the lower court:

> "The court (CFI of Rizal) believes that, considering that the rest of the allegations are substantially complete, said designation (referring to the date) may be reasonably presumed to refer to the date of commission, because the above preliminary paragraph before the tabulation, clearly stated 'habitual delinquents' and therefore, whatever may appear in the tabulation must be deemed to cover only those necessary to constitute a sufficient allegation of the habitual delinquency one of which is the date of commission."

Then the Supreme Court continued discussing the assigned errors:

> "The first assigned error is grounded on the alleged insufficiency of the allegations of the information and the lack of evidence to sustain

Phil. 271; Paguntalan v. Director, 57 Phil. 140; Trono Felipe v. Director, 24 Phil. 121; U.S. v. Jayme, 24 Phil. 90; McMicking v. Schields, 41 Phil. 971.

[46] G.R. No. L-17400, December 30, 1961.

[47] 57 Phil. 889 (1933).

the charge of habitual delinquency. But these alleged defects in the information even if true which are not are mere errors of fact or law which do not nullify the proceedings taken by said Court in the exercise of its functions, considering that it had jurisdiction over the offense charged (theft) and the person of appellant.

"The second error attacks the municipal court's appreciation of the number of appellant's previous convictions for theft. Again this is merely an error of judgment by said court, which did not in anyway affect its jurisdiction, or could nullify its proceedings, but was correctible only by seasonal appeal."

The Court also distinguished their ruling in the cases of *Cruz v. Director*[48] and *Caluag v. Pecson*[49] in that these cases involved penalties not provided by law and, therefore, beyond the power or jurisdiction of the trial court to impose.

In the case of *Co Ke Tong v. The Director of Prisons*,[50] Co Ke Tong presented before the Supreme Court a petition for Habeas Corpus questioning the jurisdiction of the CFI of Manila on the ground that "the information filed by the fiscal was defective and insufficient as it failed to allege in the body thereof the elements of 'deceit' or 'misrepresentation' and the 'intent to gain' to the prejudice of another which must necessarily be the efficient causes of defraudation to constitute the crime of estafa."

This petition was dismissed by the Supreme Court in a minute resolution in 1958.[51] Likewise a motion for reconsideration of said resolution was denied.

On September 9, 1958, petitioner again instituted the present proceedings in the CFI of Rizal on the same grounds. The trial court denied the petition on the ground among others, "that inasmuch as a similar petition had been denied by the Supreme Court for lack of merit, to grant the petition would in effect, be renewing, modifying or revoking the order of a superior court on the matter."

Not satisfied, the petitioner has again elevated the case to the Supreme Court by way of appeal.

The Supreme Court in disposing of the appeal simply invoked their previous resolution dismissing the petition for lack of merit inasmuch as the issues raised there are substantially the same as those presented in the subsequent proceeding.

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[48] 17 Phil. 269 (1910).
[49] 82 Phil. 8 (1948).
[50] G.R. No. L-14957, October 19, 1961.
[51] G.R. No. L-13471, February 15, 1958.

Who may grant the writ

The authority to order the release on bail of one accused of a crime before a court of justice springs from the jurisdiction of the latter (1) over the accused, acquired by virtue of his arrest, and (2) over the party detaining him, by authority of the warrants of arrest issued by said Court, and consequently, as agent of the latter. When the detaining officer holds the accused in pursuance of a warrant issued by another court, in connection with another case, whether the latter be criminal or civil—as, for instance, in proceedings for civil contempt of court or of Congress—said detaining officer is *not* bound to release said accused by order of the court first mentioned, and defendant's continued deprivation of liberty, despite such order, upon the authority of the warrant issued by the latter court or by Congress, will not be illegal and would not justify the issuance of a writ of *habeas corpus*.[52]

Aggregate Principal penalties considered in applying Article 39 of the Revised Penal

In *Pura Toledo v. Superintendent*,[53] Toledo, prior to July 1949, had been sentenced in 9 criminal cases, to a total imprisonment of 10 years, 11 months ad 5 days. She was also sentenced to pay cer tain indemnities, which if not paid would normally entail subsidiary imprisonment of 3 years and 7 months. Although she had served her sentence (wth good conduct time allowance), the superintendent detained her to undergo subsidiary imprisonment for non-payment of indemnities.

Toledo filed a petition of *habeas corpus* contending that she was not required to suffer subsidiary detention in view of Article 39, R.P.C.[54]

The lower court in granting the petition said:

> "Inasmuch as the aggregate principal penalty imposed on petitioner exceeded the maximum of *prision correccional* (6 years), the prisoner should no longer undergo additional imprisonment for failure to the monetary indemnities."

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[52] Galang v. Court of Appeals, G.R. No. L-15569, May 30, 1961; see also Moran, Comments on the Rules of Court. pp. 548-552.

[53] G.R. No. L-16377, January 28, 1961.

[54] Art. 39 of the R.P.C.: Subsidiary penalty.—If the convict has no property with which to meet the pecuniary liabilities mentioned in paragraphs 1st, 2nd and 3rd of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each two pesos and fifty centavos, subject to the following rules:

x x x x.

3. When the principal penalty imposed is higher than prision correccional, no subsidiary imprisonment shall be imposed upon the culprit.

x x x x

The superintendent appealed maintaining that since none of the 9 separate convictions and sentences imposed on the prisoner had exceeded *prision correccional*, Section 39 should not apply.

Held: The apparent theory of the law is that no prisoner shall be held in jail for more than 6 years by reason of insolvency. Therefore, the aggregate penalties should be considered in bulk, not separately.

The Court cited the case of *Bagtas v. Director*,[55] where it was held:

> "We hold that the correct rule is to multiply the highest principal penalty by 3 and the result will be the aggregate principal penalty which the prisoner has to serve, plus the payment of all the indemnities which he has been sentenced to pay, with or without subsidiary imprisonment depending upon whether or not the principal penalty exceeds 6 years."

CHANGE OF NAME

When petition for change of name not proper remedy

In *Amada Lourdes Lerma Garcia etc. v. Republic of the Philippines* [56] a petition for change of name was filed before the CFI of Quezon City under Rule 103 of the Rules. Petitioner desires to change her name from Amada Lourdes Lerma Garcia to that of Amada Lourdes S. Lugue because her natural father has recognized her as his child and she desires to adopt his surname.

The Solicitor General opposed the petition on 2 grounds: (1) the basis of the petition is the fact that petitioner is the recognized child of her alleged father and under Article 282 of the New Civil Code she has already the right to bear the surname of the father who has recognized her as his natural child; and (2) since judicial approval is needed for such recognition under Article 281 of the same Code, the step she should take is not to file a petition for change of name but to institute an action to obtain such judicial approval. The trial court sustained the contention of the Solicitor General.

The facts are as follows: Petitioner was born out of wedlock. In her birth certificate, her natural parents declared therein fictitious names to conceal their dishonor. The testimony of her mother and the sworn statement of her father were presented to show that petitioner is their acknowledged natural child. She has been recognized by Amado Lugue although there is no document nor judicial proceed-

[55] 84 Phil. 692 (1949).
[56] G.R. No. L-16085, November 29, 1961.

ing to that effect. Amado Lugue gave permission to petitioner, to adopt his family name.

Held: Considering the foregoing facts, we are inclined to uphold the opposition of the government to the effect that the appropriate remedy that petitioner should pursue is not to present a petition for change of name but to bring an action for recognition since it is a fact established by her own evidence that her natural father has already recognized her as his natural child in the light of the provisions of Articles 278 and 218 of the New Civil Code.[57]

The Supreme Court observed that:

> "Rule 103 of the Rules of Court has been adopted for purposes other than the one sought for by petitioner in the present proceeding. The procedure set by law for certain purposes should be delimited. One should not confuse or misapply one procedure for another lest we create a confusion in the application of the proper remedy."

An illegitimate child cannot employ the surname of his putative father

In the case of *Juan Manuel v. Republic of the Philippines*,[58] a petition for change of name was filed by Juan Manuel and his children in the CFI of Pangasinan alleging, among others, that several persons residing in the Municipality of Lingayen bear names identical to his, thus causing confusion, particularly whenever a letter is addressed simply as "Juan Manuel." Another reason for the desire to change his name is that being a child born outside of wedlock of one John Eaton, an American, and Maria Manuel, a Filipina, now both deceased, he was baptized under the family name of his mother; now, however, he desires to follow the name and surname of his father. The Solicitor General filed an opposition thereto on certain procedural grounds. The trial court granted the petition, hence, this appeal.

In overruling the trial court, the Supreme Court held that it is observable that the plea for change of name, from Juan Manuel to Juan M. Eaton, is prompted not only by the inconveniences his present name brings to petitioner but also by his desire to carry and use the surname of his putative father. Actually, therefore, the grant-

[57] Article 278 of the Civil Code provides
Recognition shall be made in the record of birth, a will, a statement before a court of record, or in any authentic writing.
Article 281 provides
A child who is of age cannot be recognized without his consent.
When the recognition of a minor does not take place in a record of birth or in a will, judicial approval shall be necessary. A minor can in any case impugn the recognition within four years following the attainment of his majority.

[58] G.R. No. L-15811, March 27, 1961.

ing of the petition would not only result in the change of name by which he is customarily known, but would also give judicial sanction to the use by petitioner who, admittedly, was born out of wedlock to Maria Arachea Manuel and one John Eaton, of his alleged father's surname.

Under the Civil Code, a natural child may use the father's surname if he is acknowledged by both parents. Should he be recognized by only one of the parents, the natural child shall employ the surname of such recognizing parent.[59] There is no evidence on record that petitioner Juan Manuel was duly recognized by the alleged father.

Subsequently, a motion for reconsideration was filed claiming that following the ruling in the case of *Valencia v. Rodriguez*,[60] an unacknowledged natural child may also use the surname of the natural father. However, the Court in a resolution promulgated on June 30, 1961,[61] stated that the *Valencia v. Rodriguez* case is not applicable to the one at bar, on the following reasons: *Firstly*, the Valencia case was decided before the effectivity of the New Civil Code when there was no specific legal provision regulating the use of surnames, whereas under the prevailing law, a natural child may only use the father's surname if he is acknowledged by both parents. Otherwise, he shall employ only the surname of the recognizing parent.[62] *Secondly*, unlike in the Valencia case where the father was found to have acquiesced to the use by the illegitimate children of his surname, there is no evidence in the instant case that petitioner Juan Manuel has previously used the surname, Eaton, with the consent or acquiescence of the putative father.

INSOLVENCY PROCEEDINGS

Approval of the "Composition Agreement" terminates the Insolvency Proceedings

Section 63 of the Insolvency Law[63] which provides in part:

> ". . . Upon the confirmation of a composition, the consideration shall be distributed as the Judge shall direct, and the case dismissed, and the title to the insolvent's property shall revert in him. . . ."

was applied in *Ng Cho Cio v. Ng Diong & C. N. Hodges*.[64] In this case Ng Diong and 6 other Chinese entered into a contract of general

[59] See Arts. 366 and 282 of the Civil Code.
[60] 47 O.G. No. 1, p. 180
[61] Juan Manuel v. Republic of the Philippines, G.R. No. L-15811, March 27, 1961 (Resolution).
[62] See footnote No. 59.
[63] Act No. 1950, as amended.
[64] G.R. No. L-14832, January 28, 1961.

co-partnership under the name Ng Ching Beng Hermanos with Ng Diong as the managing partner.

On January 5, 1958, the partnership obtained an ₱80,000 loan from the National Loan and Investment Board executing therefor mortgages on its 7 lots. Sometime in the same year the partnership was declared insolvent upon petition of its creditors in Special Proceeding No. 2419 of the CFI of Iloilo. As a consequence, the titles to the 7 lots mortgaged were issued in the name of Crispino Melocoton, the elected assignee of the insolvent.

On August 9, 1940 a majority of the creditors and partners of the firm entered into a composition agreement whereby it was agreed that said creditors would receive 20% of the amount of their claims in full payment thereof. This agreement was approved by the Insolvency Court.

On January 30, 1941, the Agricultural and Industrial Bank which succeeded the National Loan & Investment Board assigned its rights and interests in the loan obtained from it by the partnership in favor of Hodges together with the right and interest in the mortgage executed to secure the loans. Since said loans became due and no payment was forthcoming the Insolvency Court granted permission to Hodges to file a complaint against the assignee to foreclose the mortgage in a separate proceeding. Meanwhile, war broke out and nothing appears to have been done in the Insolvency proceedings.

On August 15, 1945, the partners and Julian Go (who acquired most of the claims of the creditors) filed a petition with the Insolvency Court to have the proceedings terminated because the composition agreement had already been approved on October 10, 1940. On October 6, 1945, the court granted the petition and directed the assignee to reconvey all the properties of the firm back to the latter.

In order to pay off the debt to Hodges and raise necessary funds to pay the other obligations of the partnership, Ng Diong who continued to be the manager, sold all its properties to Hodges for the sum of ₱124,580 on April 2, 1946. The Insolvency Court approved the sale.

The creditors appealed contending that the sale made by Ng Diong is null and void because at the time of the sale, the said properties were still in the custody of the assignee of the insolvency proceedings or in *custodia legis*.

The Supreme Court held that the composition agreement submitted by the majority of the creditors and the partners was ap-

proved on October 10, 1940 which in the contemplation of the law has the effect of putting an end to the Insolvency Proceedings. The court observed:

> "However, no further step was taken thereon because of the outbreak of the war. Later the parties filed a petition to terminate the Special Proceeding and on October 6, 1945, the court terminated the same. The assignee then reconveyed the properties to the partnership."

It would appear therefore that for legal and practical purposes the Insolvency Proceedings ended on said date. Since then the partnership became restored to its *status quo*. It again reacquired its personality as such with Ng Diong as its general manager. From that date on, its properties ceased to be in *custodia legis*. Such being the case, it is obvious that when Ng Diong sold the 7 parcels of land to Hodges, the properties were already free from the custody of the Insolvency Court as to which the partnership was at liberty to do what it may deem convenient and proper to protect its interest.

Involuntary Dissolution

Irregularities affecting the financial soundness of insurance companies suffice the liquidation and dissolution thereof—

In the case of the *Insurance Commissioner v. Globe Assurance Co., Inc.*[65] a representative of the Insurance Commissioner, acting upon the latter's orders, examined the records of the respondent herein, a surety and insurance corporation, to ascertain its financial condition and determine its method of doing business as an insurance firm. The examination showed that respondent had committed several irregularities. Hence, the Insurance Commissioner demanded of the respondent that the impaired capital be covered up. This demand not having been heeded, respondent's certificate of authority to transact insurance business was suspended. Subsequently, the Insurance Commissioner filed the petition for respondent's liquidation. The lower court granted the petition. Hence this appeal, maintaining that the lower court should not have ordered its liquidation, and instead should have granted the period of time requested for respondent's rehabilitation. At any rate, respondent's certificate of authority to transact business had been suspended and, therefore, no danger to the public could possibly result from the granting of the period requested.

The Supreme Court, in sustaining lower court's decision, ruled that ". . . the irregularities committed by respondent were such as

[65] G.R. No. L-13236, February 16, 1961.

to affect the faith and trust that insurance companies must command. And there being no reasonable assurance of success discernible from its plan for rehabilitation, public interest demands the liquidation and dissolution of the respondent."

The Court, in the same breath, distinguished the case at bar from that of the *Government of the Philippine Islands v. El Hogar Filipino* [66] and that of *Government v. Phil. Sugar Estates* [67] in this manner: the latter cases involved technical violations of the law, not affecting their financial soundness, whereas those committed by respondent herein affected adversely the interest of the parties dealing with it, as well as the stability of the firm.

[66] Phil. 399 (1927).
[67] 38 Phil. 15 (1918)