SPECIAL PROCEEDINGS

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As in the past year, this year's survey of cases in special proceedings reveals no precedent setting decisions. The rulings laid down by the highest court of the land are but reiterations of principles that have become accepted in our jurisprudence. Though they may not be milestones in the development of our law, these cases are significant in that they strengthen our jurisprudence by the very uniformity which they lend to it.

I. SETTLEMENT OF ESTATE OF DECEASED PERSONS

1. EXTRAJUDICIAL PARTITION

Section 1, Rule 74 of the Rules of Court gives the heirs of a deceased the right to extrajudicially partition the estate of the deceased if the decedent left no debts and the heirs and legatees are all of age, or the minors are represented by their judicial guardians. Section 4 of the same rule provides:

> If it shall appear at any time 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 heir 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 participation. 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 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 Supreme Court had again the occasion to interpret these two sections in the case of *Beltran v. Ayson, et al.*[1] where the Court

* Member, Student Editorial Board, *Philippine Law Journal*, 1962-63.
** Member, Student Editorial Board, *Philippine Law Journal*, 1962-63.
[1] G.R. No. L-14662, January 30, 1962.

held that the provisions of Rule 74, Section 4 barring distributees or heirs from objecting to an extrajudicial partition is applicable only (1) to persons who have participated or had notice of extrajudicial partition and in addition (2) when the provisions of Rule 74, Section 1 have been strictly complied with, i.e. all the persons or heirs of decedent have taken part in the partition or are represented by their guardians In this case, both were not complied with because not all the heirs participated, it being admitted that the plaintiffs knew of the partition only shortly before the filing of their complaint. It further stated that the case is not barred by the statute of limitations. The origin of Section 4, Rule 74 fails to lead to the conclusion that it is so barred because there is nothing therein which shows clearly a statute of limitations and a bar of action against third persons. It is a bar only against parties who have taken part in extrajudicial partition. Thus, the Supreme Court in effect reiterated the decisions in the cases of *Lajom v. Viola* [2] and *Mañacop v. Cansino* [3] where the Court held that the two-year period is not a prescriptive period.

2. PARTIES TO TESTATE OR INTESTATE PROCEEDINGS

According to Section 2, Rule 80, a petition for letters of administration must be filed by an "interested person." An interested person has been defined as one who would be benefited by the estate such as an heir, or one who has a claim against the estate such as a creditor.[4] It is well settled in this jurisdiction that in civil actions as well as in special proceedings the interest required in order that a person may be a party thereto must be material, direct and not merely indirect or contingent.[5] Thus, where the deceased was survived by her husband and three legally adopted children, a sister of the decedent is not an heir and therefore has no material and direct interest in her estate.[6]

3. INDISPENSABLE PARTY

In the case of *Villegas v. Villegas*,[7] where one of the intestate heirs allegedly executed a deed of assignment wherein she renounced her right of participation in the estate in favor of the other, but which was later sought to be annulled on the ground that it was

[2] 73 Phil. 563 (1942).
[3] G.R. No. L-13971, February 27, 1961.
[4] Intestate Estate of Julio Magbanua, 40 O.G. 1171.
[5] Trillana v. Crisostomo, G.R. No. L-3378, August 22, 1951; Espinosa v. Barrios, 70 Phil. 311 (1940).
[6] Saguinsin v. Lindayag, G.R. No. L-17759, December 17, 1962.
[7] G.R. No. L-11848, May 31, 1962.

obtained through fraud, the Court held that the heir who allegedly executed such deed of conveyance is an indispensable party to the proceedings. Her interest in the estate is not inchoate; it was established at the time of death of the decedent. The Court further said that assuming the due execution of the deed of assignment, the transaction is in the nature of extrajudicial partition and court approval is imperative. Heirs cannot divest the court of its jurisdiction over estates and persons by the mere act of assignment and desistance. Even if the partition had been judicially approved on the basis of the alleged deed of assignment, an aggrieved heir does not lose her standing in the probate court.

4. EFFECT OF PREVIOUS DISMISSAL OF PETITION FOR PROBATE OF WILL

The probate of a will may be the concern of several persons. Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed.[8] Where a petition for probate of a will was dismissed because of failure of petitioner to appear at the hearing, without stating that it was a dismissal with prejudice, such previous dismissal will not bar a subsequent petition for the probate of the same will by another interested person. The fault of one may be imputed to him alone who must suffer the consequences of his act. Parties interested in the transmission of property rights to them should not be prejudiced by the act or fault of another. It is the state's policy to have such wills submitted to the court for probate.[9]

5. JURISDICTION OF PROBATE COURTS

The law confers on Courts of First Instance jurisdiction and authority to entertain the special hearings in connection with wills and intestate estates.[10] The absence or existence of a previous judicial declaration of nullity of a deed of extrajudicial partition or judicial order approving it cannot affect the court's jurisdiction over the subject matter, the same being conferred by law.[11]

(a) *Jurisdiction to increase or decrease attorney's fees*

As a general rule, the probate court retains control and jurisdiction over incidents connected with it, including its orders not

[8] Section 1, Rule 77, Rules of Court.
[9] Arroyo v. Abay, G.R. No. L-15814, February 28, 1962.
[10] Section 44, subsection e, Judiciary Act as amended.
[11] Bacani v. Galura *et al.*, G.R. No. L-16066, April 25, 1962.

affecting third persons who may have acquired vested rights. This control and jurisdiction is particularly extensive to and effective against its own officers, such as administrators appointed by it and attorneys representing them or representing the parties in the proceedings. Just as the probate court may increase the fees of attorneys, it could equally decrease such fees when so warranted as when it is found that the value of the estate is much less than what was originally assessed, and on which erroneous assessment the original fees are awarded.[12]

(b) *Jurisdiction to annul approval of partition obtained through fraud*

It is generally admitted that probate courts are authorized to vacate any decree or judgment procured by fraud, not only while the proceedings in the course of which it was issued are pending, but even within a reasonable time thereafter.[13] Thus, the Court that approved the partition and the agreement in ratification thereof may annul both whenever, as it is here alleged, the approval was obtained by deceit or fraud, and the petition must be filed in the courts of the intestate proceedings.[14]

6. EXECUTORS AND ADMINISTRATORS

(a) *Nature of Position*

When a will has been proved and allowed, the court shall issue letters testamentary thereon to the person named as executor therein, if he is competent, accepts the trust, and gives bond as required by the rules.[15] An administrator thus appointed is not a mere alter ego of the heirs but is an officer of the probate court entrusted with the management and settlement of estate until he has distributed and delivered to the heirs their shares, with the court's approval. For this reason, where the administrator of the estate of the deceased filed a motion for writ of execution of a decision of the Court of Appeals, which writ of execution was issued notwithstanding opposition of petitioner on the ground that the other heirs of deceased had executed a deed whereby they agreed to withdraw the appeal taken by the administrator, the Court held that the Court of Appeals did not err in legalizing the execution thereof, said decision having been rendered in favor not of said heirs, but of the administrator of estate of deceased who is not a party to the agree-

[12] Candelario v. Cañizares, G.R. No. L-17688, March 30, 1962.
[13] *Supra*, note 5.
[14] Villegas v. Villegas, *supra*, note 7.
[15] Section 4, Rule 79, Rules of Court.

ment of withdrawal. As such administrator he could not have validly renounced his right under said decision without the approval of the probate court aside from the fact that the heirs who signed the deed of withdrawal of appeal were not parties in said case and hence had no authority to settle the same. Even if the administrator made a verbal promise to withdraw appeal, the same would not bind the estate.[16]

(b) *Duties*

(1) In General

An executor or administrator occupies a position of the highest trust and confidence and is required to use reasonable diligence and act in entire good faith in performing the duties of his trust.[17] To insure the faithful performance of his duties, the Rules of Court provides:

> Rule 82, Sec. 1. *Bond to be given before issuance of letters. Amount. Conditions.*—Before an executor or administrator enters upon the execution of his trust and letters testamentary or of administration issue, he shall give a bond, in such sum as the court directs, conditioned as follows:
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> (a) To make and return to the court, within three months, a true and complete inventory of all goods, chattels, rights, credits, and estate of the deceased which shall come to his possession or knowledge or to the possession of any other person for him;
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> (b) To administer according to these rules and, if an executor, according to the will of the testator, all goods, chattels, rights, credits, and estate which shall at any time come to his possession or to the possession of any other person for him, and from the proceeds to pay and discharge all debts, legacies, and charges on the same, or such dividends thereon, as shall be decreed by the court;
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> (c) To render a true and just account of his administration to the court within one year, and at any other time when required by the court; and
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> (d) To perform all orders of the court by him to be performed.

Because of the bond that the administrator or executor furnishes before assuming his duties, no further swearing is necessary as to reports that he submits in the course of administration.[18]

(2) Duty to keep accounts; opposition must be filed on time

An executor or administrator is bound to keep clear, distinct and accurate accounts of his management of the estate. Rule 86, Section 9 of the Rules of Court provides "that the court may examine

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[16] Lat v. Court of Appeals, G.R. No. L-17591, May 30, 1962.
[17] Wheeler v. Bolton, 28 P 558 (1891).
[18] Royo v. Deen, G.R. No. L-48922, October 30, 1962.

the executor or administrator upon oath with respect to every matter relating to any account rendered by him and shall so examine him as to the correctness of his account before the same is allowed, except when no objection is made to the allowance of the account and its correctness is satisfactorily established by competent testimony. The heirs, legatees, distributees and creditors of the estate shall have the same privilege as the executor or administrator of being examined on oath on any matter relating to an administration's account." Where there is no opposition to an administrator's report, examination under oath is not necessary.[19] Where there is an opposition, such must be filed on time. Thus, in the case of *Royo v. Deen*,[20] the Court held that absence of any opposition to the "Manifestaciones" filed by the administrator shows that the heirs acquiesced therein. Any action to contest the correctness of said report or its contents should have been presented promptly by the heirs. Such silence or acquiescence is a patent denial of the existence of any malfeasance on the part of the administrator.

(3) Duty to comply with court orders; substantial compliance sufficient

One of the conditions of the bond filed by an executor or administrator is that he shall perform all orders required of him by the court. It is the administrator himself who must comply with the orders. Counsel cannot be cited for contempt because of an administrator's failure to comply with court orders.[21] Substantial compliance with such court orders, however, is sufficient, as can be gleaned from the case of *Go v. Mendoza*.[22] In this case, the administrator of the estate of the deceased was ordered to deposit ₱1,500 and ₱9,000, the proceeds of the sale of a piece of land and sugar quota belonging to the estate. The heirs filed a motion to hold the administrator in contempt for having failed to make the deposit required by the court. The administrator filed an opposition explaining disbursements of the amounts which the court found satisfactory. The Court ruled that it might be true that the administrator did not follow strictly the terms of the court order, but since the sums received are duly accounted for, the administrator's liability on that charge if any, should await the result of the hearing for the approval of the said accounts. The Court added that in any case, his exoneration from the charge did not carry with it an implied approval of those accounts concerning which proper punitive

[19] *Ibid.*
[20] *Ibid.*
[21] Consulta v. Yatco, G.R. No. L-15964, January 30, 1962.
[22] G.R. No. L-14329, November 30, 1962.

or corrective action might still be taken after the hearing and reception of evidence.

(c) *Liabilities; Administrator not personally liable for attorney's fees*

An administrator cannot be made to pay personally for attorney's fees. The expenses of administration incurred by the administrator have to be borne out of the property under administration or the income derived therefrom. The administrator can be made personally responsible only for any malfeasance, mal-administration or violation of any of her duties as administrator.[23] On motion for reconsideration, however, the Court modified its decision by holding that considering that said attorney's fees were due because the administrator had contracted the services of the lawyer and is therefore indirectly responsible to the heirs for the payment of fees, the administrator, therefore, is responsible in her capacity as administrator to the heirs of deceased for payment of fees with the corresponding duty and right on the part of the administrator to secure the sums needed from the heirs who have been declared responsible in proportion to the shares received.[24]

7. CLAIMS AGAINST THE ESTATE

Immediately after granting letters testamentary or of administration, the court shall issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of said court.[25] 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.[26]

(a) *Meaning of one-month period*

The one-month period specified in Section 2, Rule 87 is the time granted claimants and the same is to begin from the order authorizing the filing of the claims. It does not mean that the extension

[23] Montemayor v. Heirs of Gutierrez, G.R. No. L-16959, January 30, 1962.
[24] Montemayor v. Heirs of Gutierrez, G.R. No. L-16959, July 24, 1962.
[25] Section 10, Rule 87, Rules of Court.
[26] Section 2, Rule 87, Rules of Court.

of one month starts from the expiration of the original period fixed by the court for the presentation of claims.[27] The case of *Howard Edmands* [28] wherein the court stated that the one-month period should be counted from the expiration of the regular six-month period is not controlling because this was but an *obiter dictum* in that case.

The probate court's discretion in allowing a claim after the regular period for filing claims but before entry of an order of distribution presupposes not only a claim of apparent merit but also that cause existed to justify the tardiness in filing the claim. Thus, where petitioners alleged as excuse the recent recovery of papers of the estate of a decedent from the possession of his lawyer and negotiations with an heir, the order of the trial court allowing the late claim is without justification, due to the availability and knowledge by the petitioners of the annotation at the back of the certificate of title.[29]

(b) *Claims which are barred forever when not filed under notice*

Rule 87 of the Rules of Court provides:

> Sec. 5. *Claims which must be filed under the notice. If not filed, barred; exception.*—All claims for money against the decedent, arising from contract, express or implied, whether the same be due, or contingent, all claims for funeral expenses and expenses of the last sickness of the decedent and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value.

Under this section, it is not enough that the claim against a deceased party be for money, but it must arise from contract, express or implied, i.e. all purely personal obligations other than those which have their source in delict or tort.[30] An ordinary civil ac-

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[27] Barredo *et al.* v. Court of Appeals, G.R. No. L-17863, November 28, 1962 citing Paulin v. Aquino, G.R. No. L-11267, March 20, 1958.

[28] 87 Phil. 405 (1950).

[29] *Supra*, note 27.

[30] Aguas *et al.* v. Llemos, G.R. No. L-18107, August 30, 1962.

tion by a lessor for damages for breach of warranty in a lease contract, in the concept of unearned profits falls squarely under Section 5, Rule 87. The term "claims" as used in statutes requiring the presentation of claims against a decedent's estate is generally construed to mean debts or demands of a pecuniary nature which could have been enforced against the deceased in his lifetime and could have been reduced to simple money judgments. Among these are those founded upon contract. The above-mentioned claim is based upon contract, specifically on a breach thereof.[31]

In the case of *Bank of New York v. Cheng Tan,*[32] a deficiency judgment was rendered in favor of the plaintiffs. Writ of execution was issued and after the sale of two parcels of land, ₱38,000 still remained. As the other defendants had died or could not be found and the five-year period for enforcement of a deficiency judgment by mere motion had elapsed without the same having been satisfied, the Bank of New York instituted an action to review the judgment. *Held:* The action should have been filed in the probate court. It is true that a judgment rendered in a civil action remaining unsatisfied after five years from the date of entry, is reduced to the condition of a mere right of action, but this does not argue against the proposition that it should be filed with the probate court for the corresponding action. On the contrary, reduced as it has been to the condition of a mere right of action, it can be likened to a promissory note. Like the latter it should be submitted as a claim to the probate court. A deficiency judgment is a contingent claim and must be filed with the probate court where the settlement of the estate of the mortgagor is pending.

8. ACTIONS AGAINST EXECUTORS AND ADMINISTRATORS

Rule 88, Section 1 of the Rules mentions the actions which may be brought against the executor or administrator, among which are actions to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal.

A charging lien on property in litigation to secure payment of attorney's fees is in the nature of a collateral security or lien in real or personal property which falls under Rule 88, Section 1.[33] Since the lien referred to in Section 1, Rule 88 is not among those

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[31] Gutierrez v. Datu, G.R. No. L-17175, July 31, 1962.
[32] G.R. No. L-14234, February 28, 1962.
[33] Testamentaria de Don Amadeo Olave v. Canlas, G.R. No. L-12709, February 28, 1962.

mentioned in Section 5, Rule 87, it is reasonable to assume that all money claims secured with a lien on specific property are outside the jurisdiction of the probate court.[34]

An action to recover damages for maliciously causing the petitioners to incur unnecessary expenses falls under Section 1, Rule 88 it having been held that injury to property is not limited to injuries to specific property but extends to other wrongs by which the personal estate is injured or diminished. To maliciously cause a party to incur unnecessary expenses is injury to that party's property. Such actions should not be filed against the estate but against the executor or administrator.[35]

Similarly, an action, the principal purpose of which is to rescind the lease contract and to recover the possession of the real property subject of the lease and secondarily to recover the rentals due and unpaid falls under the last clause of Rule 88, Section 1 and can be commenced against the administrator.[36]

9. Actions by Executor or Administrator

For the recovery or protection of the property or rights of the deceased, an executor or administrator may bring or defend in the right of the deceased, actions for causes which survive.[37] This right, however, does not include the right of legal redemption of an undivided share sold to defendant where this right came to existence only eight years after the death of the decedent and therefore formed no part of his estate.[38]

II. TRUSTEESHIP

In this year's survey of cases in trusteeship, there was only one trusteeship which came up before the courts but this same trusteeship became the subject of litigation three times.[39]

In 1948 Angela Tuason died leaving a will in which she left a portion of her estate under trust for the minors Benigno, Angela and Antonio Perez y Tuason, appointing J. Antonio Araneta as trustee. The above-mentioned cases arose in the course of his ad-

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[34] *Ibid.*
[35] Aguas *et al.* v. Llemos, *supra*, note 30.
[36] Malicsi v. Carpizo, G.R. No. L-17493, June 30, 1962.
[37] Section 2, Rule 88, Rules of Court.
[38] Butte v. Uy and Sons Inc., G.R. No. L-15490, February 28, 1962.
[39] Trusteeship of the Minors Benigno, Angela and Antonio Perez y Tuason, G.R. No. L-16962, February 17, 1962; G.R. No. L-16185-86, May 31, 1962; G.R. No. L-16708, Oct. 31, 1962.

ministration over the trust property and for the purpose of clarity we shall deal with them according to the principles laid down in each case.

1. PROCEEDS FROM SALE OF TRUST PROPERTY NOT INCOME TO THE CESTUI QUE TRUST

In 1956, 1957 and 1958 Araneta sold certain portions of the trust property. On September 28, 1959 Antonio Perez, the judicial guardian and father of the minors for whom the trust was created filed a motion in the trusteeship proceedings alleging that the ₱98,000 realized from the above sale of portions of the trust property represented income of the trusteeship to which the minors were entitled.

The provisions of the will explicitly authorizing the trustee to sell the property and acquire, with the proceeds of the sale, other property, leaves no room for doubt about the testatrix' intent to keep, as part of the trust, said proceeds of the sale and not to turn them over to the beneficiaries as net rentals.[40]

Under the principles of the general law of trust, a provision in the instrument to the effect that the beneficiary shall be entitled to the "income and profits" of the trust estate is not ordinarily sufficient to indicate the intention that he should be entitled to receive the gains from the sale of trust property.

2. SECTION 7, RULE 86 DOES NOT APPLY TO TRUSTEES

Antonio Perez in a subsequent case attacked the validity of the act of the trustee in paying a sum of money to the law firm Araneta and Araneta Law office of which he was a member, for services rendered to him as trustee. Perez based his arguments on Section 7, Rule 86 the last paragraph of which reads: "When the executor or administrator is an attorney, he shall not charge against the estate any professional fees for legal services rendered by him."

The Supreme Court in upholding the validity of the act of the trustee stated that Section 7, Rule 86 applies only to executors or administrators and not to trustees. It is true that the functions of executors and administrators bear a close analogy with those of trustees and both hold offices of trust. However, the duties of the former are fixed and/or limited by law whereas those of the latter are governed by the intention of the trustor and the parties. Moreover, the application of Section 7, Rule 86 to all trusteeships without distinction may dissuade deserving persons from accepting the posi-

[40] G.R. No. L-16962, February 7, 1962.

tion of trustee. It would be a better policy to acknowledge the authority of the courts of justice to exercise a sound judgment in determining in the light of the peculiar circumstances of any given case whether or not a trustee shall be allowed to pay attorney's fees and charge the same against the trust estate. In this case,[41] the fact that Araneta was a member of the law firm engaged did not warrant disapproval of the payment of attorney's fees because it may have been more costly for the trust estate to engage the services of another law firm.

3. Sale Upheld in Absence of Fraud, Bad Faith or Manifest Prejudice to Cestui Que Trust

J. Antonio Araneta, as trustee wrote to Antonio Perez as judicial guardian of the *cestui que trust*, about a proposed sale of certain lots to Ortigas and Company. Perez objected to the sale and filed a motion for preliminary injunction in the trusteeship proceedings to restrain Araneta from proceeding with the sale. The lower court denied Perez' motion and so Araneta effected the sale. Perez then filed an action for the revocation of the sale on the ground of possible devaluation and high income taxes.

The Supreme Court upheld the sale. The mere allegation that the sale would be injurious to the beneficiaries because of possible devaluation and high income taxes is not sufficient to declare the sale invalid. Except upon clear proof of fraud or bad faith or unless the transaction in question is manifestly prejudicial to the interest of the minors, the sale should be upheld and the exercise by the trustee of the discretion which the trustor vested in him should not be disturbed.[42]

III. HABEAS CORPUS

1. Writ Can Only Issue for Want of Jurisdiction

Following a long line of decisions,[43] the Supreme Court this year again held in the cases of *Sotto v. Director of Prisons* [44] and *Republic of the Philippines v. Yatco* [45] that the writ of habeas corpus can issue only for want of jurisdiction of the sentencing court and can-

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[41] G.R. No. L-16185, May 31, 1962.
[42] G.R. No. L-16708, October 31, 1962.
[43] Pomeroy v. Director of Prisons, G.R. No. L-14284-14285, February 24, 1960; Felipe v. Director of Prisons, 27 Phil. 378 (1914); Talabon v. Provincial Warden, 78 Phil. 599 (1947); Perkins v. Director of Prisons, 58 Phil. 271 (1933); Cuenca v. Superintendent, G.R. No. L-17400, December 30, 1961.
[44] G.R. No. L-18871, May 30, 1962.
[45] G.R. No. L-17924, October 30, 1962.

not function as a writ of error. The writ will not lie to correct mere mistakes of fact or of law which do not nullify the proceedings taken by a court in the exercise of its functions, if the court has jurisdiction over the crime and person of the defendant.

In the *Sotto* case, Sotto was convicted by the Court of First Instance of Zamboanga for robbery and sentenced to imprisonment for twelve years and one day to 18 years, 2 months and 21 days. He alleged in a petition for habeas corpus that the penalty imposed was excessive and not in accordance with law for the offense charged should have been under Article 302 of the Revised Penal Code punishable by *prision correccional* in its medium and maximum periods and that inasmuch as he was then a minor 16 years of age the penalty next lower in degree (that is 4 months and one day to 2 years and 4 months) should have been imposed. Having already served four years, 11 months and 21 days at the time he filed the petition, he asked that he be released.

The Supreme Court held that when a court has jurisdiction over the offense charged and the person of the accused its judgment, order or decree is valid and is not subject to collateral attack by habeas corpus for this cannot be made to perform the function of a writ of error. This holds true even if the judgment, order or decree was erroneous.

2. COURT OF FIRST INSTANCE HAS NO JURISDICTION TO ISSUE WRIT IN CASES PENDING APPEAL BEFORE THE SUPREME COURT

In the case of *Republic v. Yatco* [46] Jose Lava and others were charged in the Court of First Instance of Manila with rebellion and other crimes. They were convicted, some to death and others to *reclusion perpetua*. On October 20, 1961 they filed a petition for habeas corpus before the Court of First Instance of Rizal praying that, being illegally detained, they be released from confinement and granted provisional liberty while their case was pending appeal before the Supreme Court.

According to the Court, the Court of First Instance of Rizal had no jurisdiction over the case it appearing that the criminal cases in which Jose Lava *et al.* were convicted and ordered confined are presently on appeal before the Supreme Court. In contemplation of law said accused are under the custody of the Supreme Court and hence no other court, much less of a lower category, can make any disposition of custody of their persons without interfering with

[46] *Ibid.*

the authority of the Supreme Court. And this is so because only the Supreme Court has the authority and jurisdiction to review, affirm, reverse, or modify the decision appealed from.

3. GRANT OF HABEAS CORPUS BY LOWER COURT AFTER DENIAL BY THE SUPREME COURT IMPROPER

The Supreme Court is the final arbiter of all legal questions properly brought before it and its decision in any given case constitutes the law of that particular case. Once its judgment becomes final it is binding on all inferior courts and hence beyond their power and authority to alter and modify.

In *Kabigting v. Director of Prisons*,[47] Kabigting filed a petition for habeas corpus on July 26, 1956 which petition was denied by the Court of First Instance. He filed a petition for the second time and his petition was again denied. He appealed to the Supreme Court which however affirmed the decision of the lower court. Petitioner then filed a petition for the third time in the Court of First Instance on the same grounds as those stated in the second petition. The lower court granted the petition in disregard of the final judgment of the Supreme Court in the former case. Upon reaching the highest court, such order of the lower court was reversed, the Court holding that a new petition before an inferior court on the same grounds as a petition which had already been finally decided against the same petitioner was unjustified and improper. The Court likewise stated:

> "In connection with its laudable concern with the individual's right to personal liberty, it should be clear that it cannot outweigh legal considerations and principles of procedure nor the people's duty to enforce criminal laws designed for the protection of other individuals in the nation. Otherwise accused persons will seldom, if ever, be sent to jail; and prisoners may as often as they wish to waste the court's time to the prejudice of other litigants with repeated habeas corpus petitions rehashing points already decided, and/or presenting arguments never adduced or inadequately developed . . ."

4. FILING OF PETITION FOR HABEAS CORPUS DOES NOT ENLARGE RIGHTS OF ALIENS

In a case[48] falling under the Immigration Act of 1940 which expressly vests in the Commissioner of Immigration the exclusive and sole discretion to determine whether an alien subject to deportation should or should not be granted bail, the petitioners filed a peti-

[47] G.R. No. L-15548, October 30, 1962.
[48] Hee Sang v. Commissioner, G.R. No. L-9700, February 28, 1962.

tion for habeas corpus in the Court of First Instance of Manila. The Court of First Instance denied their petition for habeas corpus but allowed their provisional releases on bail. On appeal the Supreme Court held that the granting of bail was improper. The fact that the petitioners instituted habeas corpus proceedings before the Manila Court of First Instance did not place them in the custody of said court so as to deprive the Commissioner of Immigration of his supervision over them and his power to grant bail. The courts cannot enlarge the rights of the Chinese aliens simply because they have presented a writ of habeas corpus.

IV. CHANGE OF NAME

1. WHAT CONSTITUTES REASONABLE CAUSE FOR CHANGE OF NAME

(a) *Fact of legal separation not a sufficient basis for change of name*

In *Laperal v. Republic of the Philippines*,[49] Laperal filed a petition for change of name giving as reason the fact that she has been legally separated from her husband Enrique Santamaria and that she therefore be allowed to resume her maiden name. In denying the petition the Court held that the fact of legal separation alone—which was the only basis of the petition—is not a sufficient ground to justify a change of name. To hold otherwise would be to provide an easy circumvention of Article 372 of the Civil Code.[50]

(b) *Use of certain name for a long time does not furnish reasonable cause for change of name*

The mere fact that the petitioner has been using a certain name for a long time and has been known by it does not *per se* alone constitute "proper and reasonable cause" to legally authorize a change of name.[51]

(c) *Duplication of names must be prejudicial to petitioner to justify change of name*

In denying the petition for a change of name in the above case of *Ong Te* [52] the Court rejected as valid reason the testimony of petitioner that when he was securing a visa to Hongkong he was

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[49] G.R. No. L-18008, October 30, 1962.

[50] When legal separation has been granted, the wife shall continue using the name and surname employed before the legal separation.

[51] In the Matter of the Petition of Ong Te to Change his Name, G.R. No. L-15549, June 30, 1962.

[52] *Ibid.*

told that there are over thirty persons who bear the name Ong Te, stating that the petitioner has not sufficiently shown that this alleged duplication of names would prejudice him one way or another.

2. NAME APPLIED FOR NEED NOT BE NAME GIVEN AT BAPTISM

In the above case of *Ong Te,* the Court also had occasion to rule that the lower court erred in denying the petition because the petitioner was not given the name "Antonio" when baptized. Baptism is not a *sine qua non* to a change of name. To hold otherwise would result in a virtual impossibility of persons changing their names because most, if not all the applicants have not been baptized with the names which they want to adopt subsequently.

3. STRICT COMPLIANCE WITH REQUIREMENTS OF PUBLICATION ESSENTIAL IN PETITIONS FOR CHANGE OF NAME

A petition for change of name was denied in a case [53] where a discrepancy in the spelling of the petitioner's name existed in the petition and the published order. Whereas in the published order the petitioner's name was spelled Jaime S. Tan the verified petition spelled it as Jayme S. Tan. Even in the affidavit of publisher of "La Prensa" the name appearing was Jaime S. Tan.

The Court held that petitions for change of name, being proceedings *in rem,* strict compliance with the requirements of publication is essential for it is by this means that the court acquires jurisdiction. The defect is considered substantial because the party to the proceedings was not correctly identified. Not only was it misleading to the courts but also prejudicial to the interests of the general public. The petitioner made it difficult, if not virtually impossible, for anyone who might have had an adverse interest to oppose his petition

V. VOLUNTARY DISSOLUTION OF CORPORATIONS

CERTIFICATE OF LIQUIDATION IS ONE IN THE NATURE OF A TRANSFER OR CONVEYANCE

A corporation is a juridical person separate and distinct from that of its members. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members. The act of liquidation made by stockholders cannot be considered a partition of community property but rather a trans-

[53] In the Matter of Petition for a Change of Name of Go Chang to Jayme S. Tan, G.R. No. L-16384, April 26, 1962.

fer or conveyance of its assets to its individual stockholders. That transfer cannot be effected without a corresponding deed of conveyance from the corporation to the stockholders. Being a deed of conveyance, the Court held that a statement of the number of parcels of land involved in the distribution must appear in the acknowledgment; that the amount of documentary stamps to be affixed should be ₱940.45 and not only ₱.30 as contented by the plaintiff; and that the registration fee of ₱430.50 be paid.[54]

[54] Stockholders of F. Guzman and Sons, Inc. v. Register of Deeds, G.R. No. L-18216, October 30, 1962.