CIVIL PROCEDURE

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This survey year will be noted neither for judicial departure from precedents nor for any startling discovery of new paths. In fact, the Supreme Court has trodden the well-worn path of previous decisions, solidifying dogma by reiteration and amplification. This is as it should be. The method of the law is inductive; its rules and principles have never been treated as final truths, but as working hypotheses, being continually retested in those great laboratories of the law, the courts of justice.[1]

A few of the decisions, however, invite attention because the novel facts upon which they arose were confronted by the Supreme Court for the first time.

CONSTRUCTION

Rules liberally construed

Section 2, Rule 1 of the Rules of Court provides:

> These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding.

The Supreme Court in the case of *Ronquillo v. Marasigan*[2] relaxed strict adherence to the principle of *res judicata* where its application would amount to a denial of justice and a bar to a vindication of a legitimate grievance. Technicalities, according to the Court, should not be resorted to in derogation of the intent and purpose of the rules—which is the proper and just determination of a litigation. It is always within the power of the court to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it.[3]

The need for liberal construction of the rules of civil procedure in order to promote their object was reiterated in *Uy Chao v.*

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[1] Munro Smith, "Jurisprudence," Columbia University Press (1909), p. 21.
[2] G.R. No. L-11357, May 31, 1962.
[3] Ordoveza v. Raymundo, 63 Phil. 275.

De la Rama Steamship Co.[4] where the Supreme Court directed the court *a quo* to give due course to appellant's request for admission of facts despite the fact that at the time it was presented, no answer to the complaint had as yet been submitted, contrary to the procedure prescribed under Section 1, Rule 23 of the Rules of Court.[5] The Court held that the purpose of the rule governing requests for admission of facts and genuineness of documents is to expedite trial and to relieve parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry.[6] The reason for the requirement that such request must be made after the pleadings are closed is that the questions of fact involved in a case are inquired only when it reaches the stage of proof. But where this stage, as to any particular relevant fact, is accelerated by a motion to dismiss which cannot be fairly resolved without evidence thereon being received, it was proper to allow appellant's request for admission of facts and consider the issues insofar as that fact is concerned as already joined and the pleadings closed within the meaning of Rule 23. The Court said that to hold otherwise would be to substitute technicality for substance and hamper an expeditious inquiry into the facts, contrary to the principle of liberal construction of the rule "in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding."

JURISDICTION AND VENUE

Allegations in the complaint determine jurisdiction

In *Valderama Lumber Manufacturers Co. v. Sarmiento Co.*,[7] the Supreme Court reiterated the ruling that the allegations in the complaint are determinative of whether the court has or has no jurisdiction over a case. The complaint for ejectment filed with the Justice of the Peace court in that case alleged only the prior possession by the plaintiff but did not allege its deprivation of possession by any of the means mentioned in Section 1 of Rule 72, *viz.*, force intimidation, threats, strategy and stealth, that would have made out a case of forcible entry. Neither was it alleged that the right of possession of defendant had terminated nor that the occupancy

[4] G.R. No. L-14498, September 29, 1962.

[5] Section 1. *Request for Admission.*—At any time after the pleadings are closed, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in and exhibited with the request or of the truth of any relevant matter of fact set forth therein.

[6] Federal Rules of Civil Procedure, USCA Title 28, Sec. 723 C, p. 24.

[7] G.R. No. L-18535, May 30, 1962.

was being unlawfully withheld from plaintiff so as to constitute unlawful detainer. The Justice of the Peace court, therefore, did not acquire jurisdiction over the case.

Jurisdiction and cause of action distinguished

The Court drew a clear distinction between jurisdiction and cause of action in *Florentin v. Galera.*[8] Appellant here contended that the court acted without jurisdiction in recognizing and enforcing appellee's title to the controverted land because under the Public Land Law, the sale by which appellee claims title was void *ab initio.* The Court held that the Court of First Instance had jurisdiction over the case since under Sec. 44(b) of the Judiciary Act,[9] the Court of First Instance has original jurisdiction over cases involving reivindication of title to real property. The void conveyance, even if true, did not affect the court's jurisdiction but only the plaintiff's cause of action, i.e., her right to the remedy sought. Assuming that plaintiff's title was really void, the lower court's decision was at most tainted by error of law or fact that was curable by appeal and did not constitute lack of jurisdiction.

Jurisdiction cannot be conferred by laches

In *Otibar v. Vinson,*[10] it was held that by filing motions notwithstanding the dismissal of their appeal, petitioners were not guilty of laches nor estopped from seeking the remedy of certiorari and mandamus, because jurisdiction cannot be conferred by laches or even with the consent of the parties.

Amount of each claim determines jurisdiction

It is already settled in this jurisdiction that where several plaintiffs having separate and distinct claims against a common defendant arising out of the same transaction or series of transactions and involving the same questions of law or fact, jointly sue said defendant as allowed by Section 6 of Rule 3, it is the amount of each separate claim and not the sum total of all the claims that furnishes the test for determining the court which has jurisdiction.[11] This ruling was applied in *Augusto v. Abing,*[12] where nine plaintiffs brought an action in the inferior court against the barrio council of Mactan, Opon, Cebu

[8] G.R. No. L-1749, June 30, 1962.
[9] Republic Act No. 296, as amended. The pertinent provision reads: Section 44. Courts of First Instance shall have original jurisdiction: (b) in all civil actions which involve the title to or possession of real property, or any interest therein . . .
[10] G.R. No. L-18023, May 30, 1962.
[11] Cajilig v. Co, G.R. No. L-12800, August 5, 1960.
[12] G.R. No. L-16732, May 29, 1962.

for recovery of actual and moral damages plus attorney's fees. The Supreme Court upheld the lower court's jurisdiction although the aggregate claim of the plaintiffs amounted to ₱11,347.30, since each individual claim was less than ₱2,000.[13]

Jurisdiction of inferior courts

Under Section 86 of the Judiciary Act, as amended by Republic Act No. 3090 which took effect June 17, 1961, the Justice of the Peace and municipal courts have jurisdiction to appoint a guardian. But the Court in *Largado v. Masaganda* [14] where this issue was involved held that the Justice of the Peace court had no jurisdiction, the case having been filed before the effectivity of the amendment. Prior to the amendment, the Judiciary Act as amended by Rep. Act No. 2613 provided that the jurisdiction of the Justice of the Peace courts shall not extend, among others, to the appointment of guardians. Since Republic Act No. 3090 vesting jurisdiction in Justice of the Peace courts to appoint guardians contains no saving clause, its provisions cannot be given retroactive effect.

The delegation of jurisdiction to Justice of the Peace courts of provincial capitals was discussed in the case of *Mijares v. Adique.*[15] This was an action for forcible entry brought on appeal by the defendants to the Court of First Instance of Masbate. The Court of First Instance, by administrative order, referred the case to the Justice of the Peace court of Masbate, Masbate for trial on the merits and for judgment therein, over the objection of the plaintiffs. The Supreme Court ordered the case returned to the Court of First Instance because under Section 88 of the Judiciary Act, forcible entry is not one of the actions that can be delegated to the Justice of the Peace court of the provincial capital. Moreover, the administrative order delegating the action was not approved by the Secretary of Justice, as required by said section.

Jurisdiction of Courts of First Instance

An interesting issue was involved in *Asuncion v. Aquino* [16]— whether the enactment of Republic Act No. 772 creating the Workmen's Compensation Commission divested the Court of First Instance of jurisdiction to act on compensation claims filed before the effectivity of the Act. The appellee in this case filed her claim for compensation for the death of her husband both with the former Workmen's

[13] Now ₱5,000 under the Judiciary Act, as amended by Republic Act No. 2613.
[14] G.R. No. L-17624, June 30, 1962.
[15] G.R. No. L-14241, February 26, 1962.
[16] G.R. No. L-13704, April 18, 1962.

Compensation Division and the Court of First Instance, as allowed by Act No. 3428 as amended by Act No. 3812. The enactment of Republic Act No. 772 while the cases were pending transferred the claim filed with the Workmen's Compensation Division to the newly created Workmen's Compensation Commission. The act also divested the regular courts of jurisdiction over compensation claims. The Court held that notwithstanding the fact that the present claim was filed before the enactment of Republic Act No. 772, the fact remains that the Court of First Instance has been divested of its power to hear and decide it, and so it can no longer continue acting on said claim. The Court ruled that jurisdiction over a pending case may be taken away by valid repeal of the statute on which it wholly depends, unless the repealing act contains a clause saving pending action from the operation of the repeal. Republic Act No. 772 did not have this clause.

A dissenting opinion argued that once a court has acquired jurisdiction, it shall continue to exercise jurisdiction over the action unless the legislature in a subsequent law transfers the jurisdiction to another court or body. In the case at bar, the dissenting opinion pointed out that there is no provision in Republic Act No. 772 transferring to the Workmen's Compensation Commission jurisdiction over actions already pending before the Court of First Instance.

Another jurisdictional question under the same act was brought up in a later case, *Mallari v. National Development Co.*[17] Appellant in this case sought to recover compensation for the death of her daughter in the Court of First Instance under Art. 711 of the new Civil Code, not under the Workmen's Compensation Act as amended by Republic Act No. 772, on the theory that her cause of action was not covered by the provisions of the act, since the death of her daughter occurred while she was no longer in appellee's employment, although the pulmonary tuberculosis which was the cause of the death was contracted in the course of her employment. The Court held that the claim is covered by the provisions of the act, and so appellant's claim falls within the exclusive jurisdiction of the Workmen's Compensation Commission. The Court cited previous rulings holding that all claims for compensation of a laborer, employee or his dependents filed on or after June 20, 1952—the date of effectivity of Republic Act No. 772—shall be decided exclusively by the Workmen's Compensation Commissioner subject to appeal to the Supreme Court, even if the accident out of which the right to compensation arose

[17] G.R. No. L-17914, October 30, 1962.

occurred before that date.[15]. Republic Act No. 772 provides that the claimant may recover compensation if the disease contracted or injury received by the employee causes his death within two years from the date of such sickness or injury. According to the alleged facts of the case, the employee died within two years after she contracted pulmonary tuberculosis.

The ruling held in a long line of cases [19] that an action to recover from operators of arrastre service for damages and short delivery of goods in consignment involves no admiralty and maritime jurisdiction was reaffirmed in *Atlantic Mutual Insurance Co. v. Manila Port Terminal.*[20] The subject-matter of the action not relating to admiralty and maritime commerce, the Court of First Instance before which the case was filed had no jurisdiction since the amount involved did not exceed ₱2,000.[21]

In *Republic v. Yatco,*[22] the Court held that the Court of First Instance lacks jurisdiction to issue writ of habeas corpus if the accused has been convicted and ordered confined in a criminal case now on appeal before the Supreme Court. In contemplation of law, the accused was under the custody of the Supreme Court, and no other court, much less of lower category, can make any disposition of the custody of his person without interfering with the authority of the Supreme Court.

Jurisdiction of the Court of Appeals

The Judiciary Act provides that the Court of Appeals shall have exclusive appellate jurisdiction over all cases, actions and proceedings properly brought to it from the Courts of First Instance and not belonging to the appellate jurisdiction of the Supreme Court.[23] In *Bank of P.I. v. Butte,*[24] the Supreme Court certified the case to the Court of Appeals, it appearing that the total claim of the appellant amounted to ₱87,940, which is not within the exclusive appellate jurisdiction of the Supreme Court [25] and therefore properly pertains to the Court of Appeals. But in a subsequent case, *Pindangan*

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[18] Castro v. Sagariz, 50 O.G. 94; Capulong v. LVN Pictures, Inc., G.R. No. L-9897, November 29, 1960.

[19] Atlantic Mutual Insurance Co. v. Manila Port Service, G.R. Nos. L-15618 and L-16116, November 29, 1960; Insurance Co. of North America v. Manila Port Service, G.R. No. L-16000, November 29, 1960; Delgado Brothers Inc. v. Home Insurance Co., G.R. No. L-16567, March 27, 1961.

[20] G.R. No. L-17047, April 28, 1962.

[21] Now ₱5,000 under the Judiciary Act, as amended by Republic Act No. 2613.

[22] G.R. No. L-17924, October 30, 1962.

[23] G.R. No. L-15566, June 29, 1962.

[24] G.R. No. L-15566, June 29, 1962.

[25] Section 29 of the Judiciary Act, in connection with Section 17(5).

Agricultural Co. v. Dans,[26] the Court refused to remand the case to the Court of Appeals although the jurisdictional amount properly falls within the latter's appellate jurisdiction, because the jurisdiction of the Supreme Court was never impugned in the proceedings until after an adverse judgment was rendered. Citinig a previous case,[27] the Court said:

> An appellant who files his brief and submits his case to the Court of Appeals for decision without questioning the latter's jurisdiction until a decision is rendered therein, should be considered as having voluntarily waived so much of his claim as would exceed the jurisdiction of said appellate court for the reason that a contrary rule would encourage the undesirable practice of appellants submitting their cases to the Court of Appeals in expectation of favorable judgment but with intent of attacking its jurisdiction should its decision be unfavorable.

Section 30 of the Judiciary Act defines the pertinent jurisdiction of the Court of Appeals thus:

> The Court of Appeals has original jurisdiction to issue writs of mandamus, prohibition, injunction, certiorari, habeas corpus, and all other auxiliary writs and processes in aid of its appellate jurisdiction.

As interpreted in a number of cases,[28] any of the writs aforesaid is in aid of the appellate jurisdiction of the court within the meaning of the law if the court has jurisdiction to review by appeal or writ of error the final decision that might be rendered in the principal case on the court against which the writ is sought. For the Court of Appeals to have jurisdiction in said special civil cases, it is not necessary that a party has actually appealed or will take an appeal against decisions or resolutions of the Court of First Instance; it is enough if it appears from the plaintiff's petition that the petitioner has a right to appeal according to law from the order or decision of the Court of First Instance to the Court of Appeals.[29] But if the appellate jurisdiction of the Court of Appeals has already been exhausted or exercised, then its jurisdiction to issue a writ of certiorari in aid of its appellate jurisdiction can no longer be exercised. Thus, in *Albar v. Carandang*,[30] it was held that the Court of Appeals had no jurisdiction to entertain the petition for certiorari on the ground that the main case had already been decided, first by the Court of First Instance, then by the Court of Appeals,

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[26] G.R. No. L-14591, September 26, 1962.
[27] Tan v. Filipinas Cia. de Seguros, G.R. No. L-10096, March 23, 1956 (Minute Resolution).
[28] Breslin v. Luzon Stevedoring Co., 47 O.G. 1170; Roldan v. Villaroman, 69 Phil. 12.
[29] Breslin v. Luzon Stevedoring Co., *supra*.
[30] G.R. No. L-13361, December 29, 1958.

and finally by the Supreme Court. The appellate jurisdiction of the Court of Appeals had already been exercised and exhausted with the rendition of its decision.

The nature and extent of the Court's jurisdiction to issue writs and processes in aid of its appellate jurisdiction was further construed in *Caneda v. Court of Appeals.*[31] The petitioner in this case petitioned the Court of Appeals to issue a writ of preliminary injunction to restrain the lower court in executing judgments rendered in three civil cases, contending that said judgments were entered without jurisdiction because the petitioner was not served with summons in all the cases. The Court of Appeals denied the petition on the ground that the decisions in the three civil cases had already become final and hence can no longer be appealed, for which reason the remedy sought is not in aid of its appellate jurisdiction. The Supreme Court overruled this contention and held that the petition can be filed in the Court of Appeals because it is a civil remedy in aid of its appellate jurisdiction. The Court said:

> There is no doubt in the case at bar that had petitioner been notified of the proceedings taken against him in the manner provided by the Rules, he could have brought timely appeal against the judgments subject to his petition for annulment, it appearing that the amounts involved fall within the appellate jurisdiction of the Court of Appeals.

The Court went on further to explain the nature of this jurisdiction:

> The Court of Appeals has what may be known as supervisory power over the courts of first instance, because ordinarily decisions or orders of these lower courts are appealable thereto. The case at bar is an example where the supervisory power should be exercised by the Court of Appeals to correct apparent errors affecting the validity of the proceedings before the lower court.

Where the appeal raises mainly questions of fact, the case should be determined by the Court of Appeals, pursuant to Section 31 of the Judiciary Act.[32] This was illustrated in the case of *Roque v. San Miguel Brewery.*[33]

Plaintiff's allegation prima facie sufficient for venue

The rule on venue of actions in the Court of First Instance is stated in Section 1 of Rule 5, thus:

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[31] G.R. No. L-18076, August 31, 1962.

[32] Section 31. All cases which may be erroneously brought to the Supreme Court or to the Court of Appeals shall be sent to the proper court, which shall hear the same as if it had originally been brought before it.

[33] G.R. No. L-15498, July 31, 1962.

> Civil actions in Court of First Instance may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.

In *Manila Railroad Co. v. Hilario*,[34] the Court held that an allegation that one of the plaintiffs is a resident of the province in which the Court of First Instance is located is prima facie sufficient for purposes of denying defendant's motion to dismiss on ground of improper venue. The Court said that papers proving that he is not a resident should be exhibited to the trial court as evidence, if and when the defendants present their side of the controversy.

Under Section 3 of Rule 5, actions affecting title to, or for recovery of possession of, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies. At this point, the law is clear. But the difficulty that has always confronted litigants is whether an action is real or personal where it partakes of the elements of both actions. This was illustrated in two cases: *Abao v. Tuazon & Co.*[35] and *Lizares v. Caluag*.[36] In the *Abao* case, the lower court granted defendant's motion to dismiss on the ground of improper venue because the action was not commenced in the province where the real property was situated. The plaintiffs contended that this was a personal action for specific performance—the complaint praying among other things that the defendant corporation be ordered to execute corresponding deeds of sale over lots respectively occupied by them. The Supreme Court held that since the defendant corporation was the registered owner of the lands in dispute, and since it denied plaintiffs' right to hold them, the action affects the possession of real property and the title thereto. Accordingly, it should have been instituted in the Court of First Instance in which the property was situated.

The same ruling was reaffirmed in the *Lizares* case. Although the immediate remedy sought by the appellee in this case was to compel appellant to accept the tender of payment for land allegedly sold to the former, the Court said that this relief was merely the first step to establish the title to the real property in dispute. His complaint was a means resorted to by him in order that he could retain the possession of said property. The action, therefore, was not an action in personam but one affecting title to or possession

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[34] G.R. No. L-14913, January 30, 1962.
[35] G.R. No. L-16796, January 30, 1962.
[36] G.R. No. L-17699, March 30, 1962.

of real estate which must be filed with the Court of First Instance of the province in which the property was situated.

PARTIES, ACTION AND TRIAL

Action prosecuted in name of real party in interest

Only natural and juridical persons can be parties to an action.[36a] In *UST Press v. National Labor Union*,[37] the Court held that the UST Press being neither a natural nor a juridical person but a printing press mainly operated, administered and owned by the University of Santo Tomas, had no personality to be a party in the case in its own right, the real party in interest being the UST to which it belongs.

In *City of Legaspi v. Alcasid*,[38] the Court upheld the right of the Republic of the Philippines to intervene as party defendant in an action for illegal detainer although it was not impleaded therein, on the ground that it was the real property in interest. The land in controversy claimed by plaintiff belonged to the Republic although they were placed in the possession of the Bureau of Public Schools under the supervision of Alcasid, the superintendent of the school. In effect, therefore, the party sued was not Alcasid but the Republic of the Philippines.

Heir who assigned share still an indispensable party

Does mere assignment of her rights and interest and participation in the estate deprive the heir of any legal standing in court? The Supreme Court answered in the negative in the case of *Gutierrez v. Villegas*.[39] The heir was an indispensable party to the probate proceedings and therefore entitled to be furnished with all pleadings. The Court said that although she filed a manifestation dropping herself from the proceedings and presenting therewith the supposed deed of assignment, the record failed to show that action thereon had been taken by the probate court; the transaction was in the nature of an extra-judicial partition and court approval was imperative. The heirs cannot just divest the Court of its jurisdiction over the estate and over their persons by a mere act of assignment and desistance. But even if the partition had been judicially approved on the basis of the alleged deed of assignment, the Court

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[36a] Section 1, Rule 3, Rules of Court.
[37] G.R. Nos. L-17207 and L-17372, October 30, 1962.
[38] G.R. No. L-17936, January 30, 1962.
[39] G.R. No. L-11848, May 31, 1962.

held that an aggrieved heir does not lose her standing in the probate court thereby.

Class suits

The case of *Valencia v. City of Dumaguete*[40] sheds new light to the still ill-defined subject of class suits. Ever since the case of *Borlasa v. Polistico*,[41] there has been no jurisprudence added to the meager case-law on class suits. The Rules of Court in Section 12 of Rule 3 provides:

> *Class suit.*—When the subject matter of the controversy is one of common or general interest to many persons, and the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. But in such case the court shall make sure that the parties before it are sufficiently numerous and representative so that all interests concerned are fully protected. Any party in interest shall have a right to intervene in protection of his individual interest.

In the *Valencia* case, 29 plaintiffs brought a class suit to recover surcharges collected by the proprietors of four moviehouses from moviegoers in Dumaguete pursuant to a municipal ordinance which had subsequently been admitted by all parties as void, in the light of Supreme Court decisions on ordinances of the kind. The defendant proprietors filed a motion for bill of particulars which plaintiffs opposed on the ground that the case is a class suit, that they represent 30,000 persons residing in different municipalities of Negros Oriental, that the case is of common or general interest to them, and that it would be impracticable to bring 30,000 persons residing in different municipalities of Negros Oriental before the Court to give out in detail the names and personal circumstances of each and every individual plaintiff or the exact date or dates of payment and amounts collected individually from them by the defendants. For failure to comply with the order for bill of particulars, the Court dismissed the case. On appeal, the Supreme Court said:

> We have held heretofore that in an action where numerous defendants, individually occupying different portions of a big parcel of land, were sued as a class represented only by some of them, a class suit would not lie because each of the defendants had an interest only in the particular portion of the land he was actually occupying, which was completely different from the other portions individually occupied by the other defendants (Berces v. Villanueva, 25 Phil. 473).

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[40] G.R. No. L-17799, August 31, 1962.
[41] 47 Phil. 345.

> Prior to this ruling we have also held that a class suit does not lie in actions for the recovery of real property where separate portions of the same parcel are occcupied and claimed individually by diffrent parties, to the exclusion of each other (Rallonza v. Evangelista, 15 Phil. 531).
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> The case now before us is analogous to the two mentioned above in the sense that each of the more than 30,000 other parties in interest referred to in the amended complaint, has an interest exclusively in the amounts allegedly collected from each of them by the defendants. Under the facts alleged in the amended complaint it is clear that no one plaintiff has any right to, or any share in the amount individually claimed by the others, each of them being entitled if at all, only to the return of what he had previously paid.
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> Moreover, assuming that the case is allowed to proceed as filed, and that judgment is rendered sentencing defendants to pay the amounts claimed in the amended complaint, it is obvious that the plaintiffs whether individually or as a group would not be so adjudged. And yet, while the amended complaint avers that numerous other parties have an interest in the issue, it does not allege or specify the amounts claimed by, and payable to each of them nor to each of the plaintiiffs named in the pleading.

The Supreme Court affirmed the dismissal of the action for failure to comply with the order of the lower court for bill of particulars, under Section 3 of Rule 30.

Substitution of parties

When one of the parties die, substitution of parties is proper in actions which survive.[42] In a previous case,[43] the Supreme Court said it is the duty of the attorney for the deceased defendant to inform the Court of his client's death and to furnish it with the name and residence of the legal representative of the deceased. This duty should not be shifted to the plaintiff or his attorney. This procedure was again emphasized in *Republic v. Bagtas*,[44] an action to recover the return of three bulls loaned to the defendant who died during the pendency of the case. Judgment was rendered and a writ of execution issued ex parte on motion filed by plaintiff. It was contended by defendant's successor in interest that the trial court lost jurisdiction of the case because the civil personality of the defendant ceased to exist. This contention is untenable, according to the Supreme Court, because under Section 17 of Rule 3 of the Rules of Court, when a party dies and the claim is not thereby extinglished, the Court shall order the substitution of his legal representative for the deceased, and under Section 16 of the same rule, it is the duty of the attorney for the deceased to inform the Court promptly of such

[42] Guevara *et al.* v. Del Rosario, 77 Phil. 615.
[43] Barrameda *et al.* v. Barbara *et al.*, G.R. No. L-4227, January 28, 1952.
[44] G.R. No. L-17474, October 25, 1962.

death and to give the name and residence of the legal representative. The counsel of the deceased in this case failed to comply with this procedure. The Court further said that the notice by the probate court and its publication in the *Voz de Manila* that letters of administration had been issued and that all persons having claims for money against the deceased should file their claims with the clerk of the probate court is not a notice to the trial court and the appellee who were to be notified of the defendant's death in accordance with the above-mentioned rules.

No single cause of action where there are different transactions

The Supreme Court in *Quiogue v. Bautista*[45] added another bead to its long string of cases which make up the law on what constitutes a single cause of action within the meaning of Section 3 of Rule 2. The defendants in this case invoked the prohibition against splitting a cause of action and pleaded the judgment of a previous case in abatement of the present suit.[46] It appears that prior to the filing of the present complaint, plaintiffs instituted a previous action to foreclose a first mortgage on real property to secure a loan, and judgment was rendered in their favor. At the date said action was filed, the second loan for which a second mortgage on the same property was constituted had already matured. It was contended by the defendants that the present action to foreclose the second mortgage was already barred by the previous action since the two loans herein involved could have been included therein. The Court ruled that there was no splitting of cause of action in these two cases because the first case refers to a transaction different from that covered by the present action. There were here several causes referring to different transactions.

Motion to intervene

One of the issues involved in *Gutierrez v. Villegas* cited above was the nature of a motion of intervention as contempated by Rule 13.[47] The movant in this case prayed that she be furnished all

[45] G.R. No. L-13159, February 28, 1962.

[46] Section 3. *Splitting a cause of action, forbidden.*—A single cause of action cannot be split up into two or more parts so as to be made the subject of different complaints.

Section 4. *Effect of splitting.*—If separate complaints are brought for different parts of a single cause of action, the filing of the first may be pleaded in abatement of the others and a judgment upon the merits in either is available as a bar in the others.

[47] Section 1, Rule 13 defines the scope of intervention: A person may, at any period of trial, be permitted by the court, in its discretion to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof.

pleadings connected with the probate proceedings. The Court said that the motion in question is not one of intervention but solely a plea to enforce a right, and that is, to receive pleadings and orders related to the case. The use of the word "intervention" in the pleadings presented by the movant was, according to the Court, resorted to for want of another appropriate word. In effect, all she wanted to ask was that she should participate or continue taking part in the case for being an original party therein. The Court sharply distinguished this motion from a motion in intervention under Rule 13, which is a proceeding in a suit or action by which a *third person* is permitted by the Court to make himself a party, either joining plaintiff in claiming what is sought by the complaint or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending legal proceedings, which such person becomes a party thereto for the protection of some right or interest alleged by him to be affected by such proceedings.[48]

In *Gocheco v. Estacio*,[49] the motion of intervention filed by the oppositors was denied by the Court on the ground that they had no personality to intervene in the proceedings. This was a petition to require the Register of Deeds for Zamboanga del Sur to issue a duplicate copy of the owner's Torrens title. Oppositors moved to intervene, claiming that they had been in continuous, peaceful, lawful, public and adverse possession of the property. In denying their right to intervene, the Court said that their claim of ownership or possession can be properly instituted in a separate, independent and ordinary civil action, not in the present petition.

Amendment of pleadings

Amendment of the pleadings as may be necessary to cause them to conform to the evidence is authorized even after judgment by Section 4 of Rule 17. This was illustrated in the case of *US Rubber Co. v. Medina*.[50] Plaintiff here brought action in the municipal court against defendant for the payment of ₱500 representing defendant's unpaid account on the purchase price of tires and inner tubes. Judgment was rendered against defendant. On appeal to the Court of First Instance, plaintiff filed an amended complaint after a pre-trial conference in order to insert the clause "under an open ac-

[48] Citing Judge of Camarines v. David, G.R. No. L-45454, April 12, 1939, cited in Francisco's Rules of Court, Vol. I, Part I, p. 639 (emphasis supplied).
[49] G.R. No. L-15783, October 30, 1962.
[50] G.R. No. L-17153, May 18, 1962.

count with the plaintiff." Defendant did not object to the admission of the amended complaint but left its admission to the sound discretion of the Court. During the hearing, defendant objected to the introduction of any evidence showing that he had an outstanding balance on his open account on the ground that no allegations with respect thereto were made in the amended complaint. Plaintiff then moved for the admission of a second amended complaint to include this allegation. Despite the opposition of defendant, the lower court admitted the same and thereafter rendered judgment against defendant. Did the Court err in admitting the second amended complaint? *Held:* Whether or not the second amended complaint was admitted, the matter of the unpaid balance on defendant's open account with plaintiff was well within the material allegations and theory of the first amended complaint. The evidence presented did not change plaintiff's theory. But even if it did, the lower court did not abuse its discretion in allowing the further amendment of the complaint after the termination of the trial in order to make its allegations conform to plaintiff's evidence in view of the provisions of Section 4 of Rule 17.

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within ten days after it is served.[51] An amended pleading filed after a motion to dismiss is interposed by defendant is authorized under this rule, the Court said in *Republic v. Ilao*,[52] because a motion to dismiss is not a responsive pleading within the meaning of Section 1 of Rule 17, as held in the case of *People v. Jaurigue*.[53] The amended petition was filed before the answer, therefore petitioner could amend his petition as a matter of right. After the answer has been filed, leave to amend must be obtained from the Court.[54]

Grounds for motion to dismiss

(a) *Prescription; moratorium law*

In *Rio y Cia. v. Court of Appeals*,[55] the petitioner contended that since respondent set up in his favor the defense of prescription, he had the burden of proof to establish that he was not a war sufferer and has not filed any war damage claim, in order that peti-

[51] Section 1, Rule 17.
[52] G.R. No. L-16667, January 30, 1962.
[53] 50 O.G. 121, 114.
[54] Section 2, Rule 17.
[55] G.R. No. L-15666, June 30, 1962.

tioner may be prevented from claiming the benefit of the long moratorium period. Citing the case of *Rio y Cia. v. Datu Jolipli*[56] which held that it was incumbent upon the defendant to plead and prove that he was not covered by the Moratorium Law[57] in order to establish that plaintiff's action was barred by prescription, the Court held that the failure of the defendant to do so stopped the period of prescription until May 18, 1953 when the Moratorium Law was declared unconstitutional. Petitioner's action to foreclose the mortgage, which accrued in 1939, had not yet prescribed.

In *Stevens & Co. v. Lloyd*,[58] the defendant moved to dismiss the action to recover damages for short delivery of goods shipped from Hamburg to plaintiff because it was filed more than one year from the date plaintiff was notified of the delivery of the goods so that the liability of the carrier can no longer be enforced by suit, in accordance with the Carriage of Goods by Sea Act. The action did not prescribe, the Court said, the plaintiff having filed a previous action within one year in the municipal court which was dismissed for lack of jurisdiction, thus suspending the prescriptive period under Article 1155 of the Civil Code. The Court also invoked Section 49 of Act No. 190 which provided that if, in an action commenced in due time, a judgment for plaintiff be reversed, or if the plaintiff fail otherwise than upon the merits, and the time limited for the commencement of such action has, at the date of such reversal or failure, expired, the plaintiff may commence a new action within one year after such date. Plaintiff in this case filed the action within one year after the dismissal in the municipal court.

(b) *Pendency of action between the same parties for the same cause*

In a motion to dismiss, the ground of pendency of another suit between the same parties must have the following requisites: (1) identity of parties, or at least such as representing the same interests in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity in the two cases should be such that the judgment rendered in one would, regardless of which party is successful, amount to res judicata in the other.[59] In *Matela v. Chua Tay*,[60] the defendant filed a previous petition for injunction with damages. Matela set up a counterclaim for damages on the ground that the allegations in said

[56] G.R. No. L-12301, April 13, 1959.
[57] Act No. 342.
[58] G.R. No. L-17730, September 29, 1962.
[59] Olayvar v. Olayvar, G.R. No. L-8033, November 20, 1955.
[60] G.R. No. L-16407, May 30, 1962.

petition were libelous and malicious. During the pendency of the case, Matela instituted the present action for damages against defendant based on the same defamatory allegations in the latter's petition for injunction. *Held:* Motion to dismiss sustained on the ground of pendency of another suit between the same parties for the same cause. In the former case, the claim of Matela was contained in a counterclaim, while in the latter case his claim was in a formal complaint. The basis for both claims were the allegations in the former case. A counterclaim partakes of the nature of a complaint and/or a cause of action against the plaintiff in a case.

Under Section 1 of Rule 8, a motion to dismiss for any of the grounds therein enumerated—pendency of another action is one of them—must be filed "within the time for pleading", that is, within the time to answer. But in the *Matela* case, the Court allowed the motion to dismiss although it was filed after the defendant's answer since both the answer and the motion to dismiss contained the same defense of pendency of another suit.

But in *Tuazon & Co. v. Rafor*,[61] the Court adhered to the time for filing prescribed under Rule 8, disallowing the motion to dismiss on the ground that it was filed 25 days after the answer was filed. The defense of pendency of another action was also involved in this case. Defendant's predecessor-in-interest in this case filed a previous complaint against plaintiff asking for reconveyance to her of a piece of land previously belonging to the Tatalon estate. While the case was pending, plaintiff instituted this action for damages suffered as a result of defendant having unlawfully entered into the possession of a portion of said land. The Court, in denying defendant's motion to dismiss on the ground of pendency of another suit held that even granting that (1) the parties in the two cases represent the same interest, (2) assert the same rights or pray for the same relief, and (3) the relief is founded on the same facts, the fourth requisite—that judgment to be rendered in the first case regardless of which party is successful, will amount to *res judicata* against the second action—is not present here. For if Tuazon & Co. wins the first case, the present action should still proceed to judgment to determine the liability of the defendant for his unlawful detention of property.

The same Tatalon estate involved in the above-mentioned case was the subject of litigation in *Tuazon & Co. v. Magdangal*.[62] The Court held that the pendency of another action for recovery of owner-

[61] G.R. No. L-15537, June 30, 1962.
[62] G.R. No. L-15539, January 30, 1962

ship cannot be pleaded to dismiss an action for recovery of possession filed by the plaintiff as registered owner, the issues being different.

In *Syquia v. Antonio,*[63] the Court in denying plaintiff's motion to dismiss on the ground of pendency of another action held that there was no identity of causes of action between the previous case and the present save with respect to some of the parties. The original complaint alleges but one cause of action and only for one purpose, that of injunction, while the instant case introduces new issues, including the validity of a certain transaction.

(c) *Vagueness of complaint not ground for dismissal*

Mere imperfection in drafting the complaint is no ground for granting a motion to dismiss, according to the Supreme Court in *Amaro v. Sumanguit.*[64] All that the Rules require is that there be a showing by a statement of ultimate facts, that the plaintiff has a right and that such right has been violated by the defendant. An action should not be dismissed upon the ambiguity, indefiniteness or uncertainty of the complaint for these are not grounds for a motion to dismiss under Rule 8 but rather for a motion for bill of particulars in accordance with Rule 16.

(d) *Failure to state a cause of action*

The case of *Reinares v. Arrastia*[65] reiterates the principle that where the complaint is dismissed not as a result of trial on the merits but merely on a motion to dismiss filed by the defendant for failure to state a cause of action, the sufficiency of the motion should be tested on the strength of the allegations of facts contained in the complaint, and no other. Where, as in this case, the allegations in the complaint sufficiently point out the right of action of the plaintiff, the complaint should not be dismissed regardless of the defenses that may be averred by the defendant.

Pre-trial conference; trial by commissioners

In *Province of Pangasinan v. Palisoc,*[66] the trial court allowed the plaintiffs to present their evidence during a pre-trial conference in view of the non-appearance of the defendants and their counsel. Defendants claimed that Section 1 of Rule 25 of the Rules of Court which governs pre-trial conference does not authorize the reception

[63] G.R. No. L-18262, March 31, 1962.
[64] G.R. No. L-14986, July 31, 1962.
[65] G.R. No. L-17083, July 31, 1962.
[66] G.R. No. L-16519, October 30, 1962.

of evidence on the merits upon failure of the defendants to appear at a pre-trial conference. The Supreme Court held that it is a recognized right of the trial court that where a plaintiff failed to appear at a pre-trial conference, the case could or might be dismissed.[67] Conversely, where a defendant and his counsel refuse without justifiable reasons, to appear in the pre-trial hearing, the court, as a matter of equity and impartiality, may or can also order the plaintiff to present his evidence on the merits of the case. Once jurisdiction has been acquired over the person and subject of the case, the trial court has the full control and disposition thereof, the Court said. To allow a defendant to appear or not in a pre-trial hearing "would submit a pre-trial conference to the whim and caprice of the defendant without any corresponding sanction and action against him in Court."

The Supreme Court also held that the procedure of designating the clerk of court as commissioner to receive and report evidence to the court is sanctioned by Sections 2 and 3 of Rule 34. When the parties do not consent, the court may, upon application of either or on its own motion, direct a reference to a commissioner when a question of fact other than upon the pleadings, arises upon motion or otherwise, in any stage of a case or of carrying a judgment or order into effect.[68] Among other powers and duties, the commissioner may be directed to report only upon particular issues, or to do or perform particular acts or to receive and report evidence only and the trial or hearing before him shall proceed in all respects as though the same had been before the court.[69] The duty to decide the case on the merits rests on the judge who shall write personally and directly prepare and sign the decision, based upon the evidence reported by the commissioner.[70] This, the Supreme Court said, was what has been done in the present case.

Continuance and postponement within discretion of the court

The granting and denial of a motion for continuance is a matter within the sound discretion of the judge. Where it is filed merely to delay the trial and termination of the case, it will not be allowed. The ruling was applied in the case of *Cardenas v. Camus.*[71]

Continuance and postponement are granted for good cause alleged and proved, and not merely at the will of either or both

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[67] Wisdom v. Texas Co., IFRS 278, 27 F. Supp. 992.
[68] Rule 34, Sec. 2 (c).
[69] Rule 34, Sec. 3.
[70] Rule 35.
[71] G.R. No. L-17191, July 30, 1962.

parties,[72] so that parties have no right to make an assumption that they will be granted. In *Gutierrez v. Medel*,[73] the Supreme Court said that the defendants could not be heard to say that because trial was not postponed, they were deprived of their day in court. The Court held that since the defendants preferred not to come to the hearing on the day set on the presumptuous assumption that their motion for continuance would be granted, the lower court did not err in continuing the hearing of the case despite the absence of defendants and their counsel.

Computation of time

The rule in computing any period of time prescribed or allowed by the Rules of Court is embodied in Section 1 of Rule 28 which may be summed up, thus: exclude the day of service and include the day on which the act is to be done "unless it is a Sunday or a legal holiday, in which event the time shall run until the end of the next day which is neither a Sunday nor a holiday." For an illustration of this rule, the case of *Lloren v. Veyra*[74] is in point. Lloren received the copy of the adverse decision in a petition for certiorari on March 18. On April 2, he filed a motion for reconsideration, which was denied on April 14. Copy of the order of denial was received by Lloren before the close of office hours in the afternoon of April 16. Immediately thereafter, he notified the clerk of court of his intention to appeal, but because it was no longer within office hours, he filed his appeal bond and written notice of appeal on April 17. The issue is whether the appeal was perfected within the reglamentary period of 15 days provided for appeals in certiorari cases under Section 17 of Rule 41. *Held:* The appeal interposed was still within the reglamentary period, in accordance with the rule of computation in Rule 28. Since Lloren filed his motion for reconsideration on the 15th day of the period within which to perfect his appeal, that day should be excluded, so that when he received the copy of the order denying his motion for reconsideration, he had still one day within which to perfect his appeal. The period of one day should be computed again in accordance with the rule above cited by excluding the day of receipt and including the next day, which in this case is April 17. Thus, the appeal was still filed within the prescribed period.

SERVICE AND FILING OF PLEADINGS

Section 2 of Rule 27 of the Rules of Court requires, among others, that every pleading shall be filed with the court and served up-

[72] Cruz v. Malabayabas, G.R. No. L-11334, May 15, 1959.
[73] G.R. No. L-14455, April 26, 1962.
[74] G.R. No. L-13929, March 28, 1962.

on the parties affected thereby. Where a party appears by attorney in an action or proceeding in a court of record, all notices thereafter required to be given therein must be given to the attorney and not to the client, unless service upon the party himself is ordered by the court It .has been held in a long line of cases that notice given to the attorney as a general rule is suffficient notice to the party, and a notice given to the client and not to his attorney is not a notice in law. Five cases on the subject of notice were decided during the year.

In *Elli v. Ditan,*[75] the Court held that there was no legal service of notice of appeal although notice was served on the parties. Under the Rules of Court, service, notice and the like should be made on the party if not represented by counsel, but the moment a party appears by counsel, notice and other processes should be made upon said counsel, service upon the party himself not being considered service in law. It is true, according to the Court, that under Section 7 of Rule 40, notification of the parties may be made by registered mail. The word "parties" as used in said provision, the Court said, should not be interpreted to mean the parties themselves. The word "parties" is used because, more often than not, in the Justice of the Peace court, the parties are not represented by a lawyer. A party can appear in his behalf, and notice to him would be sufficient, but the moment an attorney appears for any party, notice should be given to the former.

The case of *Cabili v. Badelles* [76] elucidates further this ruling. In this case, judgment was rendered by the Court of First Instance of Lanao del Norte dismissing the petition for quo warranto of Badelles. Copy of the decision was sent by registered air mail on December 24, 1959 to the law firm of counsel for Badelles, and the same was received on January 4, 1960. On December 28, 1959, Badelles requested the judge for a copy of the decision; he was given a copy but he refused to sign a receipt therefor. The judge ordered the court interpreter to record the fact of said delivery and wired the counsel of Badelles that a copy of the decision had been sent to them on December 24, and that Badelles was personally furnished with a copy of the decision. The telegram was received by the law firm on December 29. On receipt of the decision on January 4, the counsel of Badelles sent a notice of appeal by registered mail on the same date, and on January 5, Badelles filed his notice of appeal and appeal bond. The appeal was dismissed by the court on the ground that the same was filed beyond the five-day statutory period for appeal provided under

[75] G.R. No. L-17444, June 30, 1962.
[76] G.R. No. L-17786, September 29, 1962.

the Revised Election Code. It was argued that under the Revised Election Code, as the aggrieved party is authorized to appeal he should also be considered as having the authority in his capacity as the aggrieved party to receive a copy of the decision. *Held:* As there is no provision of law in the Revised Election Code about the manner in which parties should be notified of the proceeding or decisions in election cases, the Rules of Court should be followed in such matters. In accordance with Rule 27, Section 2, service should be made to the lawyers and not to the parties. Personal information by a party of the rendition of a decision does not satisfy the right of counsel to receive a copy of the decision.[77]

In *Ago v. Court of Appeals,*[78] the Supreme Court declared void writs of execution issued by the lower court before the petitioner received a copy of the judgment given in open court. The Court held that the mere fact that a party heard the judge dictating the judgment in open court is not a valid notice of said judgment because at the time, no judgment is deemed to have been rendered, for it is the filing of the signed decision with the clerk of court that constituted the rendition of the judgment.

In *Tampico v. Lozada,*[79] the Court denied a petition for relief of judgment on the ground of excusable negligence based on the failure of counsel to inform petitioner of the decision. The Court reiterated the ruling that notice given to the attorney is sufficient notice, unless service upon the party himself is ordered by the court.

The case of *Viacrucis v. Estenzo*[80] laid down the ruling that because of the failure of the petitioner to claim the registered mail containing the order of the trial court within the five days from the date he was notified by the postmaster, service thereof was deemed completed at the expiration of said period, pursuant to Section 8 of Rule 27.

Section 4 of Rule 26 provides:

> Notice of a motion shall be served by the movant to all parties concerned, at least three days before the hearing thereof, but the court for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

The purpose of this three-day notice was discussed in the case of *Tuazon & Co. v. Magdangal,* cited above under motion to dismiss.

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[77] Jacinto v. Jacinto, 52 O.G. 2582, citing Acro Taxicab Co. v. Melendres, 45 O.G. 3915; Vivero v. Santos *et al.*, 52 O.G. 1424.

[78] G.R. No. L-17898, October 31, 1962.

[79] G.R. No. L-17436, January 30, 1962.

[80] G.R. No. L-17457, June 30, 1962.

In that case, the defendant filed a motion to dismiss on March 17 on the ground that there was another action pending between the parties for the same cause. The motion was called for hearing on March 21, but was reset to March 19, the movant having been duly notified. One of the errors assigned by defendant on appeal was that the hearing was held before the three-day intervening period prescribed by Section 4 of Rule 26 had elapsed, so that he was not prepared when the trial was called. The Court held: "The three-day notice required by law is intended not for movant's benefit but to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the motion. Thus, where the opposing party himself is willing to have the motion heard on shorter notice, there is nothing that precludes the court from hearing and disposing of it earlier than the regular motion day, or in less than three days from notice of filing of the motion."

DISMISSAL OF ACTIONS

The rule on dismissal of action for failure to prosecute or to comply with the rules or orders of the court is provided for in Section 3 of Rule 30, thus:

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

In *Julian v. Gonzales*,[81] the plaintiffs commenced an action against defendants for partition of a lot. The case was dismissed for failure to prosecute. Two years later, the same parties filed a new action against the same defendants. The court dismissed the present claim on the ground of *res judicata*. On appeal, the Supreme Court held that the order of dismissal because of failure to prosecute had the effect of an adjudication upon the merits, no provision to the contrary having been made by the court in its order of dismissal, so that the dismissal operated as *res judicata* on the second action. It will be noted, however, that where the non-appearance of the plaintiff is due to improper service of notice, the dismissal of the action will not operate as a bar to another action on the same cause.[82]

[81] G.R. No. L-14715, January 30, 1962.
[82] G.R. No. L-12960, January 31, 1962.

The dismissal of an action for failure to prosecute depends upon the sound discretion of the judge, to be exercised with a view to the circumstances surrounding each particular case. *In Sanciano v. Sanciano,*[83] the Supreme Court upheld the lower court's decision dismissing the case for failure to prosecute, it appearing from the records that the suit had been pending for about four years, that five prior postponements had already been granted to the counsel on the ground of inability to contact the plaintiffs.

For failure to prosecute the action for an unreasonable length of time, the court may on its motion dismiss a case, it was held in *Ventura v. Baysa.*[83]

The rule on dismissal of actions also empowers the court to dismiss the suit when plaintiff fails to comply with its lawful order. In *Garchitorena v. Santos,*[84] the action was dismissed for failure of the plaintiff to implead an indispensable party as defendant, as ordered by the court. And in *Valencia v. Dumaguete,* cited above, the failure of the plaintiffs to file a bill of particulars as ordered by the court was sufficient ground for dismissal of the complaint.

SUMMARY JUDGMENT

Summary judgment under Rule 36 is one of the methods devised by the Rules of Court for a prompt disposition of civil actions wherein there exists no genuine controversy.[85] But summary judgment should not be granted unless the facts are clear and undisputed and if there is a controversy upon any question of fact there should be a trial of the action upon the merits.[86] Thus, in *Gatchalian v. Pavilin,*[87] the Supreme Court set aside the summary judgment rendered by the lower court because the conflicting claims of the parties as to the exact delimitation of the area covered by the title of the lots in dispute plainly require a trial.

NEW TRIAL

Under Section 4 of Rule 37, a second motion for new trial may be allowed if based on a ground not existing when the first motion was made and may be filed within the period of appeal, excluding the time during which the first motion has been pending. The

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[83] G.R. No. L-16219, April 28, 1962.
[84] G.R. No. L-17322, June 30, 1962.
[85] I MORAN, Comments on the Rules of Court, p. 498, 1957 ed.
[86] Kissick Construction Co. v. First National Bank of Wahoo, Nebraska, 6 Fed. Rules Service, 56c. 41, December 3, 1940, cited in I MORAN, Comments on the Rules of Court, p. 600, 2nd ed.
[87] G.R. No. L-17619, October 31, 1962.

grounds for which a new trial may be granted are provided in Section 1 of the same rule.

In *Fabian v. Mencias*,[88] the second motion for new trial filed by plaintiff was ruled out of order by the court because it was based on exactly the same grounds relied upon in the previous petition which was denied, and was a mere reiteration of the latter. Its filing, therefore, did not suspend the running of the period of appeal. Consequently, the plaintiff could no longer file a motion for reconsideration since the period of appeal had already expired.

The Court in *Rivera v. Litam* [89] denied defendant's right to a new trial because there was no showing that defendant's had valid defenses to the complaint as shown by supporting affidavits.

JUDGMENTS, ORDERS AND ENTRY THEREOF

Section 1 of Rule 35 of the Rules of Court provides:

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

In *Manuel Griñen v. Filemon Consolacion*,[90] the Court of First Instance dismissed Griñen's petition for prohibition with preliminary injunction to restrain the City Fiscal from proceeding with a preliminary inquiry against him on the basis of a letter of the Auditor of the Philippine Charity Sweepstakes Office charging him with complicity in the issuance of rubber checks. Griñen attacked the sufficiency of the judgment on the ground that it did not state clearly and distinctly the facts and the law on which the decision was based. The Court said that the only issue on which the trial of the case could proceed was whether there was a complaint filed with the fiscal as the basis of conducting a preliminary investigation, and the very admission of petitioner that there was such a letter complaint lodged with the City Fiscal which the lower court considered as legal basis for the said official to conduct his preliminary investigation was sufficient to support the judgment. The decision of the lower court stating the facts on which the decision was based, i.e., the Auditor's letter to the City Fiscal, satisfies the requirements of Section 12 of Article VIII of the Constitution, and Section 1, Rule 35. The

[88] G.R. No. L-25714, April 23, 1962.
[89] G.R. No. L-16954, April 25, 1962.
[90] G.R. No. L-16050, July 31, 1962.

Court further held that the ultimate test as to the sufficiency of the trial court's findings of facts is whether they are comprehensive enough and pertinent to the issue to provide a basis for decision. When the issue is simple, the trial court is not required to make a finding upon all the evidence adduced.

In *Pastor Ago v. Court of Appeals et al.*,[91] the Supreme Court held that the Court of First Instance being a court of record, in order that a judgment may be considered as rendered it must not only be in writing, signed by the judge, but must also be filed with the clerk of court. The mere pronouncement of the judgment in open court with the stenographer taking note thereof does not constitute a rendition of the judgment. It is the filing of the signed decision with the clerk of court that constitutes the rendition. Prior thereto, it could still be subject to amendment and change and may not, therefore, constitute the real judgment of the Court.

Judgment by default

Pursuant to Section 6 of Rule 35, if the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff, order judgment against the defendant by default, and thereupon the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. In *Guillermo Viacrucis et al. v. Hon. Numeriano Estenzo et al.*,[92] the lower court granted defendants ten days from receipt of a copy of the deed of sale of plaintiffs within which to file their answer. The first notice of the registered mail containing the order and copy of the deed of sale was sent to defendant's counsel on January 24, 1961. On January 31, 1961, defendants were declared in default. The Court then received plaintiff's evidence *ex parte* and rendered a decision in the latter's favor. The Supreme Court ruled that since the registered mail containing the order was sent to defendants on January 24, their failure to claim it within five days from said date, rendered the service completed at the expiration of said period (January 29). But defendant had until February 8, 1961 (ten days from January 29) within which to file their answer. The order of default was therefore premature, hence, null and void. It was contended that the remedy from an order denying the motion to set aside the order of default should have been appeal, not certiorari as held in *Madrigal Shipping Co. v. Ogilvie et al.*[93] The contention

[91] G.R. No. L-17898, October 30, 1962.
[92] G.R. No. L-18457, June 30, 1962.
[93] G.R. No. L-8431, October 30, 1958.

is untenable. In the *Madrigal* case, the motion to set aside the default order, being predicated on the movant's own alleged mistake and excusable neglect was treated as one for relief under Rule 38. The order therein was not assailed as inherently defective and upon denial of the motion to set aside the order, appeal is in order. On the other hand, the Court has held that the declaration of default or the rendering of judgment before the expiration of the time for the filing of an answer deprives the defendant of his day in court and the judgment rendered may consequently be vacated. Such error is correctible by certiorari.[94] The Court further held that the claim that petitioners' failure to file their answer on time cured the previous premature declaration of default cannot be sustained because: (1) a defendant who fails to file his answer on time can only be declared in default upon motion of the plaintiff (not *motu proprio* by the court); (2) a null and void order cannot be revived or ratified; (3) the reception of plaintiff's evidence and the decision rendered thereon, having been predicated on a void order of default is by itself also a nullity which is reviewable by certiorari.

Summary judgment

A summary judgment should not be granted unless the facts are clear and undisputed, and if there is a controversy upon any question of fact, there should be a trial of the action upon its merits.[95] In *Wenceslao Urmaneta v. Martin Manzano*,[96] the Supreme Court affirmed the lower court's decision granting summary judgment upon finding that there was no genuine issue as to any material fact between the parties. In that case, defendant averred, in answer to a complaint for ejectment that he had no interest over the land in question except for being a tenant of Teodora Manzano, whom he alleged as owner hereof. The documentary evidence belied his claim, for in an affidavit submitted by the plaintiff, Teodora Manzano admitted having transferred her rights and interests over the land to plaintiff and denied that defendant had been a tenant long before the complaint was filed. There was therefore no genuine issue of fact. If there was, the same was easily determinable from the pleadings and documents attached thereto. In *Francisca Gatchalian v. G. Pavilin*,[97] the summary judgment granted by the lower court was held not proper because a trial was indispensable. In

[94] Luna v. Abaya et al., 47 O.G. No. 12, Supp. 126.

[95] Kissick Const. Co. v. First National Bank of Wahoo, Nebraska, 6 Fed. Rules Service 56 c. 41, Dec. 3, 1940, cited in I Moran, Comments on the Rules of Court, 2nd Ed. p. 600.

[96] G.R. No. L-17478, Feb. 28, 1962.

[97] G.R. No. L-17619, Oct. 31, 1962.

plaintiff's complaint it was alleged that she was the owner of a tract of land, portions of which were unlawfully entered into by defendants. Defendants claimed as alternative defenses that their landholdings lay outside the title of plaintiff and that if her title did cover their landholding, it was acquired illegally and therefore void. The Court said that the conflicting claims of the parties plainly require the exact delimitation of the area covered by the title of the plaintiff and those occupied by the defendants in order to find out if they overlap. To do so, a trial is indispensable.

Motion for new trial

A motion for new trial may be granted within the time provided for perfecting an appeal from a judgment rendered by an inferior court (fifteen days from notice of the judgment).[98] In *Sy It v. Arsenio Tiangco*,[99] the Court ruled that the lower court was correct in denying appellant's motion for reconsideration because the motion was filed twenty-three days from receipt of notice. The decision of the trial court had therefore become final and executory when said motion for reconsideration was filed.

In proceedings before the Court of First Instance, a motion for new trial should be presented within 30 days after notice of judgment.[100] In *Geronimo Suva v. Cecilio Corpus et al.*,[101] the Supreme Court denied a petition to enjoin the enforcement of a writ of execution on the grounds provided for in Rule 37, Section 1, because the decision had already long become final and executory when the motion was presented.

In *Ildefonso Suzara v. Hon. Hermogenes Caluag et al.*,[102] the Court considered a motion to set aside an order and judgment of default filed before the reglamentary period for appeal had expired as a motion for new trial, rather than a petition for relief under Section 2, Rule 38 of the Rules of Court. In that case, the lower court declared defendant in default on October 13, 1958. When defendant learned of the order of default, he filed a motion for reconsideration which was verified although not accompanied by affidavits of merit. The Court ruled that in order that said motion may be considered as a petition for relief, the following requisites must be present: (1) it must be verified; (2) it must be filed within sixty days from the time petitioner learns of the decision but not more

[98] See Section 16, Rule 4, and Section 2, Rule 40.
[99] G.R. No. L-18376, Feb. 27, 1962.
[100] Section 1, Rule 37 of the Rules of Court.
[101] G.R. No. L-18397, Nov. 29, 1962.
[102] G.R. No. L-15404, April 25, 1962.

than six months after such judgment or order was entered; and (3) the petition must be accompanied by affidavits of merits showing the fraud, accident, mistake or excusable negligence relied upon and the facts constituting the petitioner's cause of action or defense. Since the motion was filed before the reglamentary period for appeal had expired or before the decision became final or executory, it cannot be considered a petition for relief, but a motion for new trial under Section 1, Rule 37. But said rule requires that the motion be accompanied by affidavits of merit, which was not done in the present case, therefore the motion was dismissed.

PETITION FOR RELIEF

In *Mercedes Casilan v. J. C. V. Chavez, et al.*[103] appellant assigned as error the lower court's denial of his petition for relief. He contended that the petition being sufficient in form and substance, and filed on time, the court committed an error and grave abuse of discretion when it dismissed the petition. The Supreme Court denied the petition for relief because appellant's brief failed to point out his reasons for claiming that the petition for relief was sufficient in substance. It also failed to show the merits of the appeal, the errors committed, the merits of appellant's case, and the justice of the remedy prayed for. The Court said that the appellant is required to help the Court in the examination of the alleged errors and to point out where and in what respect said errors are committed.

In *Meno Pe Benito v. Zosimo Montemayor et al.*,[104] judgment was rendered against President Montemayor of the Mindanao Agricultural College ordering him to refrain from excluding petitioner, an instructor of said College, from the use and enjoyment of his office, and to assign him to some appropriate work. The Solicitor General filed a petition for relief alleging that as the case involved a government official, the State should have been given a chance to represent Montemayor and that the failure of respondent to notify the Office of the Solicitor General of the pendency of the case and his personal appearance in his own behalf, constituted excusable negligence and mistake which warrant a new trial. The Court said that respondent Montemayor did not know of his own knowledge that the Solicitor General should represent him in the case. Not being a lawyer, he is not conversant with the technicalities of procedure and could not have known the implications of his acts (like

[103] G.R. No. L-17334, Feb. 28, 1962.
[104] G.R. No. L-17437, May 31, 1962.

submitting the case only on the pleadings). Under these circumstances, the ends of justice will be better served, and the rights of the parties protected, if the relief prayed for be granted. There was manifestly a mistake and excusable negligence on the part of the respondent.

In *J. M. Tuason & Co. v. Bienvenido de Leon*,[105] defendants moved for postponement of the case on the same date scheduled for hearing, on the ground that one of the attorneys had become voiceless due to a severe cold. No medical certificate was attached to said motion, nor a copy thereof served on the plaintiff. Judgment was rendered against defendants. Almost three months later, they filed separate petitions to set aside the judgment on the ground that their failure to be present at the hearing was due to mistake and excusable negligence. The Court held that their contention was untenable because the fact of illness must be established by some satisfactory sworn statement either in the shape of an affidavit or certificate of a physician that satisfied the court of the inability of the party to be present.[106] Further, defendants were represented by two sets of lawyers. The alleged indisposition of one could not have prevented at least a member of the other law firm from appearing on behalf of said defendant.

In *Soledad Tan v. Carlos Dimayuga*,[107] the facts revealed that in a civil action between Soledad Tan and Carlos Dimayuga, the latter filed a third party complaint against appellant Mason. Mason filed a motion to dismiss the third party complaint on January 3, 1958. Unaware of this motion, the trial court, upon motion of Dimayuga declared Mason in default on January 14, 1958. On October 28, 1958, Mason filed his answer to the amended complaint of plaintiff Tan including therein a counterclaim against the plaintiff, a cross-claim against Dimayuga and a third-party complaint against a certain Escalona, all of which the court dismissed. The Court held that the claims of Mason were properly dismissed because for the setting aside of the lower court's order of default on January 14, appellant's remedy should have been a petition for relief under Rule 38, filed within sixty days after he learned of the order and not more than six months after such order was entered. There was no such petition here and the first time Mason made a prayer to set aside the default order was on Dec. 16, 1958, in his "Petition and Motion for Reconsideration" which was filed eleven months after entry of said order, clearly beyond the reglamentary period provided for

[105] G.R. No. L-16668, Jan. 31, 1962.
[106] Natividad v. Marquez, 38 Phil. 608.
[107] G.R. No. L-15241, July 31, 1962.

under Section 3 of Rule 38. Consequently, having been declared in default he lost his standing in court and his cross-claim, counter-claim and third party claim were properly dismissed.

In *Jose Neri v. Librado Lim*,[108] the Supreme Court affirmed the lower court's decision denying defendant's motion to set aside the judgment on the ground that the failure of the defendant to receive the notices sent to him was due to his own failure to observe the ordinary prudence required of every man. As the evidence showed, long before his illness, he consistently failed to receive the registered letters of plaintiff's counsel and that while confined in the hospital, he did not authorize any person to receive his mail. The record also did not indicate that defendant had a good defense and that if his motion were granted, there were reasonable grounds to believe that the result of the case may be different.

EXECUTION, SATISFACTION OF JUDGMENTS

Section 2, Rule 39 of the Rules of Court provides:

> *Execution discretionary.*—Before the expiration of the time for appeal, execution may issue, in the discretion of the court on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order."

In *NAMARCO v. Hon. Bienvenido Tan*,[109] the Court held that the lower court did not commit grave abuse of discretion in granting the special order of execution pending appeal, because under Section 2 of Rule 39, it is quite clear that prior to the expiration of the time to appeal, it is within the court's discretion to grant or deny a motion for execution. Accordingly, the appellate court will not interfere to modify, control or inquire into the exercise of this discretion, unless it be shown that there has been abuse thereof. In the case at bar, the respondent judge stated good reasons namely: (1) consumers will be benefited by the marketing of the goods; (2) the public service required of NAMARCO will be accomplished; (3) the goods subject matter of the judgment will deteriorate during the pendency of the appeal; (4) a slight deterioration of said goods will be sufficient to impair their market value hence rendering the judgment in favor of the respondents ineffective; (5) the appeal in said civil case is frivolous and is being taken only for the purpose of delay.

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[108] G.R. No. L-17529, July 31, 1962.
[109] G.R. No. L-17768, March 31, 1962.

In *Ludovico Estrada et al. v. Hon. Amado Santiago et al.*,[110] the Court held that the trial court committed a grave abuse of discretion in issuing an order for the execution pending appeal of a portion of the decision. The Court said that there could possibly have been no special reason to justify the execution pending appeal of the decision, which resulted in prematurely depriving petitioners of their lawful possession of the land in dispute, and transferring it to the corporation which was not entitled to the same.

Execution by motion or by independent action

A judgment may be executed on motion within 5 years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.[111]

In *Victoriana Sagucio v. Adriano Bulos*,[112] judgment was rendered on July 29, 1954, holding that plaintiff was entitled to repurchase the disputed land covered by Homestead Patent. This was affirmed by the Court of Appeals, and a petition for certiorari for the review of said judgment was dismissed by the Supreme Court. This decision was entered on October 25, 1959. On July 10, 1959, Sagucio asked for the execution of the judgment in said civil case, but this motion was denied. Issue: Was the motion for the issuance of the writ of execution filed on time? *Held:* By virtue of Section 6, Rule 39, the judgment in said case could be executed on motion within 5 years from the date of its finality which was Oct. 26, 1956. The motion for execution filed on July 10, 1959 was within said period. As the Public Land Act does not provide the procedure for the execution of judgments arising from its provisions—by express provision of Rule 32 of the Rules of Court, the rules contained therein apply to land registration cases in a suppletory character and whenever practicable and convenient.

In *Salvacion Feria Vda. de Potenciano v. William Gruenberg*,[113] in an action to enforce a judgment in *PNB v. Gruenberg*, defendant interposed the defense of lack of valid notice of hearing and decision and prescription. The Court held that his claim that the judgment is null and void for lack of notice to defendant or his counsel is without foundation in fact because the facts stated in the decision of the case showed that appellant's counsel was notified and appeared at the hearing of the case and that appellant himself received a copy of the decision. As to the claim of prescription, it

[110] G.R. No. L-14180, May 31, 1962.
[111] Section 6, Rule 39 of the Rules of Court.
[112] G.R. Nos. L-17608-09, July 31, 1962.
[113] G.R. No. L-16956, Jan. 30, 1962.

appears that the judgment of the lower court on Aug. 12, 1949 was served on defendant Gruenberg on Aug. 21, 1949. From this date up to the date of the presentation of the complaint to enforce the judgment (Sept. 21, 1959) 9 years and 11 months had passed. The date of the decision is not the effective date from which the period of 10 years is to be counted, because said decision cannot be considered as binding on the defendant or any party for that matter until after defendant or any party for that matter is furnished a copy thereof.

In *Mercedes Raffiñan v. Felipe Abel*,[114] appellant Rosillosa sold the disputed land which he acquired by homestead to de la Cruz and Tolentino who in turn sold it to the spouses Abel and Sandoval. Abel mortgaged said land to appellee Raffiñan. Subsequently judgment was rendered in Civil Case No. 4945 upholding the right of Rosillosa to repurchase said land from Abel. This decision was affirmed by the Court of Appeals on July 18, 1951. On Jan. 18, 1951 however, Raffiñan brought a foreclosure suit against Abel, who defaulted in his mortgage obligations, impleading Rosillosa as party defendant. The trial court decided for Abel and held that Rosillosa had lost his right to repurchase the controverted land because the five years within which he should have exercised his right to repurchase had elapsed on Feb. 1, 1962. The Court held that upon the rendition of the judgment in Civil Case No. 4945 which became final on July 18, 1951 (well within the 5-year period) the right to repurchase was no longer secured and guaranteed by the provisions of the Land Registration Act but by the court decision. This judgment which contains no term, may be executed under Section 6, Rule 29, by mere motion within 5 years from the date of its entry, or by means of an action after five years but within 10 years from such entry.

Final judgment set aside if circumstances affect or change rights of parties

In *Anunciacion Candelario v. Hon. Antonio Canizares*,[115] the Supreme Court, citing the case of *City of Butuan v. Judge Montano Ortiz*[116] held that after a judgment has become final, if there is evidence of any event or circumstance which would affect or change the rights of the parties thereto, the Court should be allowed to admit evidence of such new facts and circumstances and thereafter suspend its execution and grant relief as the new facts and circumstances warrant.

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[114] G.R. No. L-17082, April 30, 1962.
[115] G.R. No. L-17688, March 30, 1962.
[116] G.R. No. L-18054, Dec. 22, 1961.

Annulment of final judgment

In *Ignacio Santiago v. Eulogio Ceniza et al.*,[117] appellant sought to annul the decision of the lower court on the ground that it was contrary to law. The Court said that aside from the reliefs provided in Sections 1 and 2 of Rule 38, there is no other means whereby a final judgment may be set aside with a view to the renewal of the litigation unless (a) the judgment is void for want of jurisdiction or for lack of due process of law or (b) it has been obtained by fraud.[118] In the present case, there is no allegation that the judgment in the former case was secured through fraud. The decision is being impugned only on the ground that it is contrary to law. This question however was passed upon definitely by the trial court and the Court of Appeals. Annulment of said judgment is therefore not justified. Execution should not issue if there has been a change in the situation of parties which makes execution inequitable.

In *Cesar Robles et al. v. Donata Timario et al.*,[118a] pending appeal of Civil Case No. 3015, in which the spouses Robles were ordered to pay the spouses Timario the sum of ₱9,218.00, the spouses Robles sold their properties which were attached in said case to one Roco. It was stipulated that Roco would assume payment to the Timarios of whatever amount may finally be adjudged in their favor. Roco, however ceded a strip of land to the Timarios, upon their request. Later, the latter moved for execution for the full amount of the judgment without deducting the value of the land ceded to them. The lower court granted the issuance of an alias writ of execution. Issue: Whether the lower court erred in issuing the alias writ of execution. The Supreme Court agreed with the petitioner's theory that there has been a change in the situation of the parties which made the execution inequitable. The Court said that the value of the property ceded to the Timarios as part payment of their judgment credit should be determined and deducted from the judgment. Such determination can not be properly made in an independent case, because the judgment debtor is entitled to the benefit of it, and to have the exact balance fixed.

"Accruing Costs" include expenses of publication

In *Victoria B. Mialhe v. Rufino Halili*,[119] petitioners obtained a writ of execution pending appeal of the lower court's judgment. The Supreme Court modified the judgment by reducing the judg-

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[117] G.R. No. L-17322, June 30, 1962.
[118] I MORAN, Comments on the Rules of Court, 1950 ed., p. 697.
[118a] G.R. No. L-18239, Oct. 30, 1962.
[119] G.R. No. L-16587, Oct. 30, 1962.

ment amount. Pursuant to such modified decision petitioners returned to Halili the difference between the sum already collected thru execution and the amount allowed by the Court after deducting the sheriff's fees, costs of publication and the sum of ₱2,004.32, which petitioners had secured in another judgment against Halili, which judgment is still pending appeal. Issues: Whether the sheriff's fees and expenses of publication are included in the costs incurred in the execution of the judgment and whether compensation can take place in this case. *Held:* The writ of execution issued pending appeal expressly commanded the sheriff to collect from Halili the amount of the judgment "together with your (sheriff's) fees for service of this execution." Halili in the modified decision remained the judgment debtor, therefore, he should pay the sheriff's fees. As to the expenses of publication, Section 14 of Rule 39, provides that after the judgment has been satisfied, any excess in the proceeds of the sale of the property levied upon over the judgment and *accruing costs* must be delivered to the judgment debtor unless otherwise directed by the Court. Section 16 of Rule 39 imposes upon the sheriff the duty to publish in a newspaper the notice of sale of property levied upon. The publication being a requirement, the expenditure in relation thereto may be deemed a necessary incident of the execution. It is reasonable to hold that they form part of the accruing costs. On the other hand, petitioners have no right to retain the sum of ₱2,004.28 on the theory of compensation. Compensation cannot take place in this case because petitioner's claim against Halili is still being the subject of court litigation. It is a requirement for compensation to take place, that the amount involved be certain and liquidated.

In *Franco Altamonte v. Philippine American Drug Co.*,[120] judgment was rendered ordering the defendant to pay plaintiff accrued 1% commission on his gross sales in the sum of ₱3,283.87 with legal interest thereon from the filing of his complaint until the commission was fully paid, ₱2,000.00 as attorneys' fees, and costs. On a motion for reconsideration, the trial court awarded additional sums of ₱758.60, ₱258.06 as plaintiff's salary from March 16 to 23, 1953 and ₱500 as 15-day vacation leave pay for 1952. On appeal, the Supreme Court affirmed the judgment but modified it partly by striking off the award, the additional sums allowed by the Court. No mention was made of legal interest. Subsequently, the trial court issued a writ of execution which included "interest at the legal rate on the sum of ₱5,042.37." Should legal interest be included? The Court held that the judgment rendered by the trial court was not

[120] G.R. No. L-16804, April 28, 1962.

only modified but was also affirmed by the Supreme Court on appeal. What the Court did not expressly reverse, alter or modify stood affirmed. It did not state that the legal interest was excluded from the judgment under review. Hence that point is considered affirmed.

Court has ministered duty to order execution of final judgment

In *Gil San Diego et al. v. Hon. Agustin Montesa et al.*,[121] defendants filed a petition for mandamus to compel the lower court to issue a writ of execution of a decision ordering them to vacate the land upon payment by the plaintiffs to said defendants of the sum of ₱3,500. They contended that plaintiffs should first pay them the sum stated in the decision before they vacate the land and they are entitled on the payment through a writ of execution. Plaintiffs however claim that defendants had no right to a writ of execution because as absolute owners of the land plaintiffs have the right, under Art. 448 of the Civil Code, to exercise the option to either pay the value of the improvements or demand reasonable rent if defendants do not choose to appropriate the building. *Held:* The option is no longer open to the plaintiff landowners, because the decision limits them to the first alternative by requiring the defendants to vacate the land upon payment of ₱3,500. Evidently, the lower court opined that the plaintiffs' suit to recover the property was an exercise of their right to choose to appropriate the improvements and pay the indemnity fixed by law. They acquiesced in this view since they did not ask for a modification of the judgment and allowed it to become final. The judgment having become final, the Court has the ministerial duty to order its execution.

Electric fan used by dentist in clinic exempt from execution

Under par. (b), Section 12, Rule 39, "tools and implements necessarily used by the judgment debtor in his trade or employment" are exempt from execution. In *Ernesto Belen v. Conrado de Leon*,[122] it was held that an electric fan used by the appellant, a dentist, is exempt from execution. The Court took judicial notice of the fact that most dental clinics are not spacious nor air-conditioned and that the work of a dentist is of a delicate nature. The weight of authority is for the liberal construction of statutes or rules providing for exemption from execution in order to give effect to their beneficent human purpose, and any reasonable doubt should be resolved in favor of exemption.

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[121] G.R. No. L-17985, Sept. 29, 1962.
[122] G.R. No. L-16412, Nov. 30, 1962.

Redemption period for registered property counted from registration of certificate of sale

In *Jose Agbulos v. Jose Alberto*,[123] the execution sale was held on June 15, 1959 and the certificate of sale issued on July 8, 1959. Said certificate was registered in the Office of the Register of Deeds on July 18, 1959. On June 23, 1960, the judgment debtor paid the sheriff the sum for the redemption of the property for which payment the corresponding certificate of redemption was issued in his favor. On the same date, appellant-purchaser filed a verified request for the execution and delivery to him of the final deed of sale on the ground that the judgment debtor did not redeem the property within the period of one year. *Issue:* When should the period of one year commence to run? *Held:* Section 26, Rule 39 does not specify. The property involved in the present case is registered land. It is the law in this jurisdiction that when property brought under the operation of the Land Registration Act is sold, the operative act is the registration of the deed of conveyance. The deed of sale does not "take effect as a conveyance, or bind the land" until it is registered. Undoubtedly, to be in consonance with this well-settled rule, Section 24, Rule 39 of the Rules of Court provides that a duplicate of the certificate of sale given by the sheriff who made the auction sale to the purchaser must be filed (registered) in the Office of the Register of Deeds of the province where the property is situated. The period should commence then from the registration of the sale inasmuch as only then has the sale the effect of a conveyance.

Contempt not proper if judgment debtor has sufficient properties to pay deficiency judgment

Pursuant to Section 38 of Rule 39, the Court may upon investigation of the current income and expense of a judgment debtor, order that he pay the judgment in fixed monthly installments, and upon his failure to pay any installment without good excuse, may punish him for contempt if it appears that his earnings are more than necessary for the support of his family. In *Conrado Victorino et al. v. Primitivo Espiritu*,[124] the Court of Agrarian Relations held the appellant in contempt upon his failure to obey an order of the court to pay the appellee the deficiency judgment of ₱320.53 in monthly installments of ₱50. The order was issued upon petition of the plaintiff for the examination of the defendant to determine whether he had other properties to satisfy the deficiency judgment after an execution sale of appellant's properties were enjoined by a third person

[123] G.R. No. L-17483, July 31, 1962.
[124] G.R. No. L-17735, July 30, 1962.

having a claim over said properties. The Supreme Court held that the order of contempt was not proper upon finding that the remaining properties of appellant were more than sufficient to pay the deficiency judgment and there was reason to believe that an alias writ of execution could still be issued for its satisfaction.[125] Only in cases of clear and contumacious refusal to obey should the power of contempt be exercised.[126]

RES JUDICATA

Section 44, par. h, Rule 39 provides:

> Effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce judgment or order may be as follows: . . . the judgment so ordered is in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceedings, litigating for the same thing and under the same title and in the same capacity.

In several recent cases,[127] the Supreme Court again enumerated the essential requisites of a plea of res judicata, to wit: (1) the former judgment should be final; (2) it must have been rendered by a court having jurisdiction of the subject matter and of the parties; (3) it must be a judgment on the merits; and (4) there must be between the first and second actions, (a) identity of parties, (b) identity of subject matter and (c) identity of cause of action.

In Pichay V. Kairuz,[128] it appeared that the plaintiff filed Civil Case No. 454 for the annulment of a special power of attorney and a deed of mortgage, on the ground that the same were fictitious because their consent thereto had been obtained through fraud. Prior to the institution of this action however, the defendants had instituted Civil Case No. 423 before the same court against the plaintiffs, who in their answer set up the defense of fraud and intimidation in the execution of the said documents. While the second action was pending trial, the court rendered judgment in the first case dismissing the complaint based on the finding that the said documents are null and void. The Supreme Court held that there was, between the first and second actions, identity of parties, of subject matter,

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[125] See Alagar v. Roda, 29 Phil. 129.
[126] See People v. Rivera, G.R. No. L-3646, May 26, 1952.
[127] Pomposa Vda. de Nator V. CIR, G.R. No. L-16671, March 30, 1962; Navarro v. Director of Lands, G.R. No. L-18814, July 31, 1962; Canite V. Madrigal, G.R. No. L-17836, August 30, 1962.
[128] G.R. No. L-12658, May 18, 1962.

and of causes of action. The same parties were the plaintiffs in one case and the defendants in the other. Both actions have as subject matter, the special power of attorney and the deed of mortgage. And in both cases, the parties brought to the fore the validity of the same documents.

Identity of causes of action

In the case of *Navarro v. Director of Lands,*[129] a petition was filed before the Court of First Instance of Manila, to register lots Nos. 1 & 2 of Plan Psu.-117149. It appeared however that sometime in 1950, the Director of Lands instituted cadastral proceedings in the Court of First Instance of Manila to settle and adjudicate the same lots now in question. The court rendered judgment declaring the lots public lands which decision was affirmed by the Court of Appeals. Navarro elevated the case to the Supreme Court for review by certiorari but which petition was dismissed.

It was contended that the basis for the declaration in the cadastral proceedings that the lots in question are public lands was the insufficiency of appellant's evidence in the former case to prove continuous possession by him and by his predecessors in interest, as required by the Public Land Law before its amendment by Republic Act No. 1942, and that since in the present case his claim is based upon possession only for a period of thirty years immediately preceding the filing of his new application in accordance with the amendatory law, the issue has entirely changed and consequently he should have been allowed to prove such claim. *Held:* Both in the decision of the Court of First Instance in the Cadastral case and in the decision rendered by the Court of Appeals, that fact was placed in issue and duly passed upon. Moreover, in the appellant's petition for review before the Supreme Court, he invoked the provision of the new law. Thus, the dismissal of the petition constituted an adjudication of the appellant's claim in the light of such new legislation.

Where there is identity of parties but there is no identity of rights asserted and relief prayed for, the subsequent action is not barred. Thus in *Piccio v. de Yusay,*[130] it was contended that the present action to annul an order of the court declaring the defendant Lilia Yusay Gonzales an acknowledged natural child of the late Matias Yusay is barred by the previous case of Yusay v. Yusay Gonzales involving the same and identical parties. The court held that there is identity of parties but there is no identity of rights as-

[129] *Supra.*
[130] G.R. No. L-14990, July 31, 1962.

serted and relief prayed for. The issue in the present case is whether or not the order of the court, declaring Lilia Yusay as an acknowledged natural child of the late Matias Yusay should be annulled on the ground of fraud, while the issue in the case pending before the Supreme Court is whether or not the defendant Lilia Yusay should receive only fifty (50) hectares as her share in the inheritance or more. And in the case of *Pfleider v. Hodges*,[131] it appeared that the plaintiff borrowed from the defendant the sum of ₱10,000 and to secure payment thereof mortgaged two parcels of land valued at ₱150,000.00. Pursuant to an agreement between the plaintiff and the defendant a simulated sale was executed conveying said parcels of land to herein defendants. When the account of the plaintiff had reached the sum of ₱105,000, the defendant filed Civil Case No. 2850 for the recovery of possession. Since the defendant had really no intention to own the properties mortgaged, he agreed to settle the case with the plaintiff whereby he signed on February 23, 1954, a contract of sale to the plaintiff. The prayer is that the Court declare the transaction between the plaintiff and the defendant as an equitable mortgage and compel the parties to execute the necessary documents to carry out the transaction of mortgage and in the alternative, to renew the contract to sell. Defendant contended that the present case is barred by the decision in the former case where the plaintiff submitted a confession of judgment, as a result of which the Court rendered judgment ordering the defendant therein to deliver or surrender possession of the lands to the plaintiff. *Held:* The present action is not barred. The original sale entered into between the parties, upon which Hodges based his action to recover possession of the property sold in Civil Case No. 2860 was superseded by the contract to sell executed on February 23, 1954 by Hodges in favor of Pfleider. Assuming for the sake of argument that the original action of the plaintiff to declare that the original sale of his properties in 1941 was a simulated contract to hide a usurious loan had lapsed or is barred by the judgment rendered in Civil Case No. 2860, the right of the plaintiff to demand the enforcement of the contract to sell alleged to have been executed by Hodges on February 23, 1954 is not barred by the previous judgment rendered in Civil Case No. 2860. The amended complaint filed by the plaintiff in the case at bar asks that the original sale made in 1941 be declared to be a usurious contract of sale, or in case the same cannot be granted, that the alternative cause of action, praying for the renewal of the contract to sell executed by the defendant Hodges on February 23, 1954, be enforced. The alternative cause of action is clearly not barred

[131] G.R. No. L-17683, July 31, 1962.

by the judgment in Civil Case No. 2860 for it is a new cause of action that arose as a consideration for the confession of judgment in said previous case.

Identity of parties

In *Laperal v. Katigbak*,[132] husband Ramon Katigbak borrowed and received sums of money from plaintiffs amounting to ₱14,000.00 and jewelry valued at ₱97,500.00. The receipts for the amount and for the jewelry borrowed were signed by him alone. For his failure to pay, plaintiffs instituted an action against the spouses to collect the aforesaid amounts. Defendant wife filed a motion to dismiss alleging that she did not take part in the execution of the documents sued upon. The case was dismissed as against the wife. Thereafter, plaintiffs filed another action against the same spouses to secure a judgment making the conjugal partnership properties, as well as the fruits of the paraphernal properties of defendant wife liable to the obligation subject of the complaint. *Held:* The second action is barred by former judgment. In the previous case, the demand was to make defendant liable in any capacity whatsoever. If she cannot be responsible in any manner under the cause of action, there is no reason why she could still be made responsible for the supposed fruits of her paraphernal property. The judgment in the previous case estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented. The reason for the rule is because the demand on the obligations having been passed into judgment, the said claim cannot again be brought into litigation between the parties in the proceedings at law upon any ground whatever. Assuming that there is a difference between an action to make the wife personally responsible and one to make her paraphernal property subject to the same obligation, the rule prohibiting multiplicity of suits prohibits said wife from being sued personally in one suit and then making the fruits of her paraphernal property responsible subsequently in another.

In *Agricultural Credit and Cooperative Financing Corporation v. Goyena Lumber Co.*,[133] it was contended that the present action was not barred by the res judicata rule because there was no identity of parties litigant. It was argued that the plaintiff in the first case acted in its capacity as mortgagee of the warehouse, whereas in the present, it filed the complaint in its capacity as owner. The Court held that this difference is of no consequence for it cannot be denied that the parties are the same and the subject matter litigated also

[132] G.R. No. L-16951, February 28, 1962.
[133] G.R. No. L-18078, October 31, 1962.

refers to the same property. It has been held in a long line of decisions that where a party, though appearing in different capacities, is in fact litigating the same right, there is in effect the requisite identity of parties, and the former adjudication is res judicata. The fact that the appellant added another cause of action, that is, the foreclosure of defendant's alleged equity of redemption, is immaterial, it appearing that the same has as its basis the alleged ownership of the warehouse which has conclusively been passed upon in the former case.

Where the prior decision is not a judgment on the merits, the subsequent action is not barred by the res judicata rule. This was illustrated in the case of *Pomposa Vda. de Nator v. Court of Industrial Relations*.[134] In this case, Abenaza and others filed an action for the recovery of various sums of money due them as underpayment, overtime pay, and separation pay against Pomposa Vda. de Nator and Alfredo Talon. The Court of First Instance of Cebu, rendered judgment finding itself without jurisdiction. This order was subject of a petition for mandamus and prohibition which the Supreme Court dismissed saying "appeal in due time being the proper remedy." Subsequently, the same plaintiffs perfected their claims with the CIR. The respondents interposed as defense, bar by former judgment. The Court held that the action is not barred. The dismissal by the Supreme Court of the Mandamus and Prohibition case was not on the merits. This is clear from the resolution which said: "Appeal on due time being the proper remedy." Before a judgment can be a bar to a subsequent action said judgment must be on the merits.

A subsequent action which merely seeks to implement a judgment in a previous case is not barred by the res judicata rule. In the case of *Ronquillo v. Marasigan*,[135] a judgment was rendered ordering the defendant to execute in favor of the plaintiff a contract of lease for ten (10) years. Subsequently, the plaintiff filed this action for the continuation of the lease, based upon the observation made by the Court that the acceptance by the defendant of the full amount of the rentals of the land for ten (10) years was an acquiescence that the lease should be for the whole period of ten (10) years, which right should be enforced by a new suit. The Court held that the present action is not barred by the judgment in the previous case because it merely seeks the implementation of the judgment in that former case.

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[134] G.R. Ni. L-16671, March 30, 1962.
[135] G.R. No. L-11621, May 31, 1962.

APPEALS

Appeal operates to vacate judgment regardless of whoever appeals

In *Arambulo v. Court of Appeals*,[136] it appeared that the mayor of Calamba, Laguna dismissed 13 policemen from the service. The Court of First Instance of Laguna found the removal illegal and ordered the policemen's reinstatement but without stating who will pay their back salaries during their temporary separation from the service. The patrolmen tried to collect their salaries from the municipality but the provincial auditor refused to pass in audit the payment thereof. They therefore brought an action against the mayor to collect from him in his personal capacity their back salaries. The defendant mayor filed an answer and a third party complaint against the municipality averring that the latter and not he, should pay the back salaries. The municipality admitted its liability for the back salaries. The Justice of the Peace Court rendered judgment ordering the municipality to pay the patrolmen's back salaries and absolving the mayor from any responsibility. The patrolmen appealed to the Court of First Instance insofar as it held Mayor Arambulo not liable. Before the expiration of the period for appeal, the Justice of the Peace Court issued a writ for the execution of the judgment which was not satisfied. During the pendency of the appeal, the Court of First Instance issued an alias writ of execution. The municipality filed a motion to set aside the writ of execution but before the Court could act on it, the municipality filed a motion to intervene. The lower court denied both motions, so that municipality filed in the Court of Appeals a petition for mandamus with injunction which the Court granted and thereafter rendered the judgment appealed from.

It was contended that the appeal operated to vacate the judgment of the Justice of the Peace only as between the patrolmen and the defendant mayor and not as regards the third party defendant municipality that has not appealed from the judgment rendered against it. *Held:* Section 9, Rule 40, of the Rules of Court considers an appealed case from an inferior court as though the same had never been tried before and had been originally there commenced. In effect, it considers all the proceedings in the inferior court, including the judgment inexistent. Only the complaint is not vacated, which is deemed reproduced in the Court of First Instance. Such being the case, the appeal reopens the issues already passed upon by the inferior court, regardless of whoever appeals.

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[136] G.R. No. L-15669, February 23, 1962.

Motion for reconsideration, if not pro-forma, stops running of period of appeal

Section 2, Rule 37 provides that when a motion for new trial is made on the ground that "the evidence was insufficient to justify the decision or it is against the law," it must point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to the law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions. In *Alcantara v. Yap*,[137] a perusal of petitioners motion for reconsideration and new trial showed that said provision had been complied with if not strictly, at least substantially. In said motion, the petitioner pointed out the findings and conclusions of respondent judge not supported by evidence or against the law and made express reference to the testimonial or documentary evidence contrary to such findings or conclusions. The Court ruled that said motion was not pro-forma, hence it suspended the running of the period of appeal.

Motion to extend period of appeal does not suspend running of period

In the case of *Bello v. Fernando*,[138] a certain Ferrer filed an action for damages against the respondent. Upon motion of the plaintiff, the trial court rendered a summary judgment. Before the expiration of the period for appeal, the respondent filed a motion to extend the period for appeal. He received the notice denying his motion for extention one day after the period of appeal has expired. Still he waited seven days before he filed his record on appeal and appeal bond. *Held:* The appeal is not a natural right nor a part of due process, it is merely a statutory privilege. Compliance with the period of appeal provided by law is considered absolutely indispensable for the prevention of needless delays and to the orderly and speedy discharge of judicial business, so that if said period is not complied with, the judgment becomes final and executory and the appellate court does not acquire jurisdiction over the appeal. The motion to extend the period for filing the appeal filed by the respondent did not suspend the running of the period for appeal since the only purpose of such motion is to ask the court to grant the enlargement of the time fixed by law. The movant therefore, has no right to assume that his motion would be granted, and should check with the court as to the outcome of his motion, so that if the same is denied, he can still perfect it in the remaining period.

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[137] G.R. No. L-18530, May 30, 1962.
[138] G.R. No. L-16970, January 30, 1962.

Appeal deemed abandoned for failure to appear

In *Acierto v. Laperal*,[139] the Supreme Court upheld the lower court's decision declaring the petitioner's appeal abandoned for their failure to appear on the date set for hearing. It appeared that after petitioners perfected their appeal from the municipal court, the Court of First Instance set the case for hearing on June 2, 1959. On May 29, 1959, the petitioners moved for postponement but they failed to appear at the hearing. The Court ruled that the appeal was abandoned saying that the motion for postponement aside from the fact that it was not under oath, had no supporting papers and was a mere dilatory expedient to prolong the tenant's possession of the premises.

Party submitting case solely on issues of law deemed to have waived all factual defenses

In *Alfredo Montelibano et al., v. Bacolod-Murcia Milling* Co., Inc.[140] appellee company in two motions for reconsideration urged the Supreme Court to set aside its decision to give way for the consideration of the issues of fact raised in its original answer to appellants' complaints and for their resolution either by the court *a quo* or by the Court of Appeals. It appeared that appellee had submitted the case for decision exclusively on issues of law and had called attention to the issues of fact only when the decision went against it despite ample opportunity to do so. *Held:* Motion denied. Appellee in the case at bar, having submitted the case on its legal issue without adverting to its factual defenses until the case was decided, despite ample opportunity to do so, must be regarded as having waived all such defenses. Its inaction, in fact, is evidence of its intention to waive.

Final order is appealable

Is an order denying a petition for relief appealable, notwithstanding the expiration of the period for appeal from the original decision? The Supreme Court in the case of *Pfleider v. Hodges*,[141] answered this question in the affirmative. The court held that while it is true that the judgment rendered by the court upon default had already become final because the thirty day period for appeal had already expired, Rule 38, of the Rules of Court, however, allows the filing of a motion for relief, and the denial of such motion is appealable because it is a final order. As the order denying the mo-

[139] G.R. No. L-15983, October 30, 1962.
[140] G.R. No. L-15092, September 29, 1962.
[141] G.R. No. L-17683, September 26, 1962.

tion for relief has been set aside, the judgment becomes open to review.

But an order directing the reopening of the case on the ground that the evidence presented therein was insufficient is merely interlocutory and therefore not appealable. In *Cruz v. Dollete*,[142] it was contended that this order had become final after 15 days because neither party appealed nor presented a motion for reconsideration. The Supreme Court held that the order directing the reopening of the case is not a decision on the merits but an interlocutory order from which no appeal could be had until a decision on the merits is rendered. Being merely interlocutory and therefore not final, the order could be modified, disregarded or set aside by the court which issued it, before a judgment on the merits of the case is rendered, and a judge of a court is not prohibited from setting aside an interlocutory order of the same court rendered by a different judge.

Record on appeal.

When an appellant fails to amend his record on appeal as ordered by the court not only within the time ordered by the court but also within the subsequent extentions granted to him, the decision becomes final and the issuance of the writ of execution is in order. Thus, in *Parsons Hardware Co. v. Medina*,[143] it appeared that the plaintiff filed an action against the defendant for a sum of money. After trial, judgment was rendered against the defendant. In due time, defendant filed his notice of appeal bond and record on appeal. Defendant failed to submit his amended record on appeal notwithstanding the several extentions granted to him within which to do so. It was only after he was notified of the motion for execution filed by the plaintiff that he filed his amended record on appeal. *Held:* The appeal was not perfected. The rule in this jurisdiction is to the effect that if the record on appeal is filed outside the reglamentary period, it is discretionary upon the trial judge to approve or disapprove the same, and mandamus will lie only when he manifestly and grossly abused his discretion. Here, the disapproval of the record on appeal was correct and proper, it appearing that the appellant failed to file his amended record on appeal not only within the time ordered by the trial judge, but also within the subsequent extensions granted to him. On the account of the disapproval, the appeal was never perfected, hence the decision became final, and the issuance of the writ of execution was in order.

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[142] G.R. No. L-17932, May 30, 1962.
[143] G.R. No. L-14206, February 28, 1962.

Extension of time to file record on appeal directed to discretion of court

In *Miguel R. Socco et al. v. Salvador Garcia et al.*,[144] the lower court gave due course to the appeal conditioned that appellants amend their record on appeal. Appellants instead submitted a pleading containing amendments and annexes not in its final form and requested for extention of seven days within which to submit the complete record on appeal. Said motion was denied and thereafter the court directed the execution of the judgment. *Held:* It is elementary that petitions for extentions are directed to the discretion of the court and favorable action thereon can not be taken for granted by the parties. A party who relies on or anticipates such action does so at its own risk. Hence, the denial of appellant's motion for extention can not be considered an abuse of discretion to warrant the issuance of a writ of mandamus to compel approval and certification of the record on appeal.

When the petitioner's motion to extend the period for the filing of the record on appeal sets the same for hearing on a day beyond the 30-day period for the perfection of an appeal but which is actually filed before the lapse of that period, the appeal will still prosper. In the case of *Prepotente v. Surtida*,[145] the facts showed that the action for the recovery of overtime pay, differential and separation pay was dismissed on the ground that it fell within the exclusive jurisdiction of the Court of Industrial Relations. Notice of said decision was received by petitioner on October 23, 1960. On October 27, 1960, he filed a motion for reconsideration. This motion was denied and a copy of the denial was received by him on February 15, 1961. On February 21, 1961, petitioner filed a notice of appeal, at the same time asking for the extention of the period for the filing of his record on appeal and setting the motion for hearing on March 14, 1961, one day after the reglamentary period. But before said motion could be heard, the petitioner filed his record on appeal and appeal bond on March 10, 1961. The Court held that the appeal was perfected because the motion to extend the period for filing the record on appeal setting the same for hearing on a day beyond the reglamentary period, had become unnecessary when on March 10, 1962, the petitioner filed his record on appeal and appeal bond. Having thus complied with all the legal requirements for the perfection of his appeal before the statutory period expired, there was no need for the lower court to hear or act upon his motion to extend

[144] G.R. No. L-18235, October 31, 1962.
[145] G.R. No. L-18420, May 24, 1962.

said period, and all that was left for it to do was to approve the record and thereafter give due course to the appeal.

Appeal from special courts

When the law provides for the manner of perfecting an appeal, such procedure must be followed and non-compliance therewith is fatal to the appeal. In the case of appeals from the Court of Industrial Relations (and the Court of Agrarian Relations), Section 1, Rule 44 provides that an appeal from an order, decision or award of the Court of Industrial Relations (or the Court of Agrarian Relations) shall be perfected by filing with said court a notice of appeal and with the Supreme Court a petition for certiorari against the adverse party within 15 days from notice of the award order or decision appealed from. In one case, where the petitioner filed no notice of appeal with the Court of Agrarian Relations, as required by the above-mentioned provision of the Rules of Court, in order to perfect an appeal, but immediately and directly presented his petition for review in the Supreme Court, the court ruled that no appeal has been perfected and his failure to do so rendered said decision final and executory.

Appeal in habeas corpus

An appeal in habeas corpus is perfected by filing with the court within 24 hours from notice of said judgment a statement that the person making it appeals from the judgment rendered.[146] In *Jose Katigbak v. Acting Director of Prisons*,[147] the Court ruled that the appeal was perfected on time. Respondent, thru the office of the Sol. Gen. received a copy of the court's decision granting a writ of habeas corpus at 12:25 p.m., Saturday. The appeal interposed at 9:45 a.m. of the following Monday was timely since the preceeding day Sunday, was not included in the computation of time. The Court also held that the release of the petitioner was premature and contrary to law because according to Section 20 of Rule 41, "a judgment demanding the person detained to the custody of the officer or person detaining him shall not be stayed by appeal; but a judgment releasing the person detained shall not be effective until the officer or person detaining has been given opportunity to appeal; (and) an appeal taken by such officer or person shall stay the order of release, unless the person detained shall furnish a satisfactory bond in an amount fixed by the court or judge rendering the judgment."

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[146] Section 18, Rule 14, Rules of Court.
[147] G.R. No. L-15548, October 30, 1962.

Appeal must be perfected on time

In *Hilario v. Bautista,*[148] the defendant, as Undersecretary of Public Works and Communications rendered a decision granting plaintiff thirty days from receipt thereof within which to demolish and remove the dam illegally constructed by him in Mayantoc, Tarlac, and stating that otherwise the Director of Public Works and Communications or his authorized agents would effect its demolition at plaintiff's expense. Plaintiff received notice of said decision on March 6, 1958 and on March 28, 1958 he filed a motion for reconsideration. On September 24, 1958, he was notified of the denial of his motion for reconsideration. He filed the present action on October 8, 1958. Section 4 of Act No. 2152 (Irrigation Act), provides:

> Any controversy between persons claiming right to the use of water of any stream shall be submitted to the Secretary of Public Works and Communications through the Director of Public Works, and the decision thereon shall be final unless appeal therefrom be taken to the proper court within thirty days after date of the notification of the parties of said decision.

The plaintiff contended that the 30-day period has not yet elapsed when he filed his complaint. He argued that, although copy of said decision was served upon him on March 16, 1958, he had not been notified by the denial of his motion for reconsideration of said decision until September 24, 1958 and that from that date to October 8, 1958, when case was commenced, only 14 days elapsed. The plaintiff's contention, said the Court, is untenable. Said period of 30 days, pursuant to Section 4 of Act No. 2152, is computed from receipt of copy of the decision of the Department of Public Works and Communications on March 6, 1958. Although the filing of the plaintiff's motion for reconsideration on March 28, 1958, or 22 days later, suspended the running of the period of appeal, the same continued to run upon the receipt of notice of denial of the motion on September 24, 1958. Said period did not begin to run once more, the 22 days that had elapsed from notice of the decision to the filing of the motion for reconsideration must be added to the 14 days that had run from notice of the denial of the motion for reconsideration to the institution of this case. In short, the same was filed 36 days after notice of said decision and hence, beyond the statutory period.

And in *Roska v. Ramolete,*[149] the copy of the order of the respondent judge was received by petitioners on December 24, 1960 and

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[148] G.R. No. L-18400, November 29, 1962.
[149] G.R. No. L-18366, June 30, 1962.

on the same date, they filed their motion for reconsideration. On January 9, 1961, said motion was denied and this order of denial was received by them on January 11, 1961. On February 7, 1961, they filed their cash appeal bond and on February 10, 1961, their record on appeal. The Court held that the appeal was perfected on time. The order of denial having been received only on January 11, 1961, the thirty-day period to appeal commenced to run on January 12, 1961. Computing the statutory period of 30 days from January 12, 1961, the same would expire only on February 10, 1961, the very date when the petitioners filed their record on appeal.

When the subsequent letter is only a reiteration of the assessment previously contained in the first letter, the period for appeal should be counted from the date of receipt of the latter.

In the case of *Ker & Co. v. Court of Tax Appeals*,[150] the facts showed that the Collector of Internal Revenue demanded from petitioner payment of his tax liabilities. Upon request of petitioner, a revision of the previous assessment was made. On January 5, 1954, the collector sent to petitioner his reduced tax liabilities. This assessment has remained unaltered up to the present inspite of the repeated request for reconsideration by the petitioner. On Janaury 23, 1956 the collector reiterated the assessment of January 5, 1954. The petitioner received this letter on February 1, 1956. On February 9, the collector issued a warrant of destraint and levy against the petitioner. The latter filed a petition for review with preliminary injunction on March 1, 1956. It is argued by the petitioner that the decision of the collector which should be appealed is the letter dated January 5, 1954 and that the 30-day period provided in Section 11 of Republic Act No. 1125 commenced to run only on February 1, 1956 when appellant received letter dated January 23, 1956 and thus, the appeal was within the reglamentary period. The Court held that the letter of January 23, 1956 was only a reiteration of the assessment contained in the letter of January 5, 1954 which had remained unaltered. No appeal having been taken from this decision, the same became final and executory.

Lower court lacks jurisdiction to declare appeal frivolous

Where an appeal is presented on time, attended by the requirements of law, the same should be given due course. In one recent case,[151] the Court held that it is not within the province of the lower court at that stage of the proceedings, to determine whether the ap-

[150] G.R. No. L-12396, January 31, 1962.
[151] Republic of the Philippines v. Gomez, G.R. No. L-17852, May 31, 1962.

peal is frivolous or not. Such duty devolves upon the appellate courts. An appeal being an essential part of our judicial system, courts are enjoined to facilitate its taking due course.

Appeal bond

In appeals from the Court of First Instance to an appellate court, does the law require the personal bond to be subscribed by two sureties? Granting that two sureties are needed to complete an appeal, is the fact that the appeal bond was subscribed by only one surety sufficient to deprive the court of jurisdiction, it appearing that the same has been filed within the reglamentary period? The Supreme Court, in the case of *Ramirez v. Arrieta,*[152] answered both questions in the negative. The facts of this case showed that a decision was rendered against the plaintiffs and notice of said decision was served upon them on June 16, 1961. On July 14, 1961, the plaintiff filed a notice of appeal. Counting from June 17, 1961, the 30-day period for appeal should have ended on July 16, 1961, but the date falling on a Sunday, the record on appeal and appeal bond were filed on the next day, July 17, 1961. However, since on the last date, the appeal bond was only signed by one of the bondsmen because the other was out of town, it was suggested by the clerk of court that it be first completed before filing it, which suggestion was followed and the bond was signed and filed the next day, July 18, 1961. The Court held that the appeal was perfected on time. Section 5, Rule 4, which governs the filing of appeal bond in appeals from the Court of First Instance to an appellate court, does not expressly provide that a personal appeal bond should be subscribed by two sureties, it being sufficient that it be approved by that court. Moreover, under Section 3, Rule 40, the appeal bond required for appeal from the Justice of the Peace Court of or Municipal Court to the Court of First Instance needs only to be subscribed by one surety, which requirement in the opinion of the court, should also be deemed sufficient in appeals from the Court of First Instance to an appellate court as long as the surety is found to be solvent and acceptable to the court.

And even if two sureties are needed to complete an appeal, the defect found in the instant case is not sufficient to deprive the court of jurisdiction, it appearing that the same has been filed within the reglamentary period. "A defective appeal bond which is not a nullity, given in good faith and not merely for purpose of delay, is sufficient, at least, to confer jurisdiction upon the Court of First Ins-

[152] G.R. No. L-19183, November 29, 1962.

tance to order its amendment and the appeal should not be dismissed without giving the appellant an opportunity, upon reasonable terms, to perfect the bond wherein it is defective or to file a new bond, such as is required by the Rules."

PROVISIONAL REMEDIES

Attachment

Under Section 20, Rule 59, damages sustained by reason of the issuance of a writ of attachment may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial, or, in the discretion of the court, before entry of the final judgment, with due notice to the plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the moment thereof. Thus, in the case of *Ty Tión v. Marsman & Co. Inc.*[153] the Supreme Court disallowed a separate action for the recovery of damages sustained by reason of the preliminary attachment and held that "regardless of the provisions of Section 20 of Rule 59, considering that the damages involved were allegedly sustained by appellants in consequence of the writ of preliminary attachment issued in civil case No. 2543, it is obvious that their alleged cause of action therefore arose out of the proceedings in that case, and must be litigated therein. The cause of action of the plaintiffs herein must be set up in said civil case No. 2543, not only because it is in the nature of compulsory counterclaim (Section 6, Rule 10, Rules of Court), but, also, in order to avoid multiplicity of suits." However, in affirming the dismissal of said separate action, the Supreme Court added that such is without prejudice to the right of the plaintiff therein to revive or reinstate their counterclaim in said civil case No. 2543.

Injunction

(a) *Writ of injunction in disputes over ownership of property*

The purpose of a writ of preliminary injunction is to maintain or preserve the status quo of the parties in relation to the subject matter litigated by them during the pendency of the action or case. Where legal title over a property is in dispute, the writ of injunction, as a general rule should not issue for the purpose of taking the property out of the possession or control of one person and placing

[153] G.R. No. L-17229, July 31, 1962.

the same in the hands of another whose title has not clearly been established by law.[154] Thus where it appears that the person against whom the writ sought to be issued has been in possession of the litigated lot; that before him his parents had been in possession of the same; and that the petitioners have never been in possession thereof, the petition should be denied.[155]

With more reason, if the issue of ownership over said property has already been decided in favor of the person in possession thereof, the writ of preliminary injunction should not be granted in favor of the person disputing said ownership and against the other declared to be its owner.[156] In the case of *Balbecino v. Ortega,*[157] Paulino Acosta filed a complaint to quiet title and for recovery of possession (civil case No. 758) against Justo Balbecino before the Court of First Instance of Ilocos Norte over a parcel of land. He alleged that he acquired said parcel of land from Estafania Guerrero; that defendant Justo Balbecino, his tenant, taking advantage of the confusion prevailing during the Japanese occupation refused to give him his share and alleged ownership over said land. The trial court rendered judgment holding Acosta the owner of the land and a writ of execution was issued upon the request of Acosta placing him in the possession of the land. Afterwards, the brothers and sisters of Justo Balbecino commenced this case before the same court praying that they be declared owners of the land. They likewise prayed for preliminary injunction to restrain Acosta from occupying and enjoying the land. Herein defendants alleged that their ownership and possession thereof have been settled, recognized and adjudged by the same court in its decision in civil case No. 758 which was affirmed by the Court of Appeals. They also prayed for a writ of preliminary injunition against the plaintiffs. *Held:* In this petition for certiorari the Supreme Court affirmed the trial court's decision granting the defendants the writ of preliminary injunction and denyng that of the plaintiffs. In civil case No. 758 between Paulino Acosta and Justo Balbecino, the latter in his answer did not state the interest he had in the land although later he executed an affidavit stating that he is absolute owner thereof in connection with his motion for reconsideration. Furthermore, this action was filed by the brothers and sisters of Justo Balbecino only after the attempts of Justo to defy the writ of possession granted in favor of Acosta which clearly shows that the same is but an eleventh hour attempt to circumvent the decision rendered in civil case No. 758.

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[154] Rodulfa v. Alfonso, et al., 76 Phil. 225.
[155] Lasala v. Fernandez, G.R. No. L-16628, May 23, 1962.
[156] Calo v. Ortega, et al., G.R. Nos. L-4673 & L-4675, January 25, 1962.
[157] G.R. No. L-14231, April 28, 1962.

Under the facts there is no other alternative for the court *a quo* than to grant the petition for preliminary injunction filed by respondents, the latter being the one in actual possession of the land.

However, in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation, a mandatory injunction may be issued to do more than to maintain the status quo.[158] In *Gregorio v. Mencias*,[159] Relucio leased the fishponds in question to Pilar Gregorio ending on August 5, 1956. As Gregorio refused to vacate the premises after the termination of the lease, Relucio filed civil case No. 1340 for unlawful detainer and damages against Pilar Gregorio and her husband. Defendants admitted the existence of the lease contract and the termination thereof but claimed as a special defense that they continue in possession of said lots with the sanction of the Land Tenure Administration. Judgment was rendered against the defendants. Defendants appealed. After the perfection of the appeal, Relucio filed a petition for the issuance of a writ of preliminary mandatory injunction. After hearing the petition for preliminary mandatory injunction, the court granted the petition. Hence this petition by Gregorio for certiorari and mandamus with preliminary injunction. *Held:* Respondent Relucio's evidence discloses that she and her predecessors-in-interest have been in possession of the leased properties for many years and that she had introduced substantial improvements thereon. Petitioners' only claim for damages consisted in the improvements allegedly made in the fishponds during the period of the lease contract. But petitioner Gregorio had agreed to turn over said improvements to respondent Relucio upon the expiration of the lease. Under the facts herein obtaining, the respondent Judge did not act without or in excess of his jurisdiction in promulgating the orders complained of. The petitioners have not also established any clear right, so as to render the refusal of respondent Judge to order the restoration of the properties in litigation to them, an unlawful exclusion from the use and enjoyment of such right. Petition dismissed.

Preliminary injunction may likewise be issued where irreparable injury may be caused to the plaintiff's right if the acts of the

[158] Manila Electric Co. v. Del Rosario, 22 Phil.
[159] G.R. No. L-16227, September 29, 1962.

defendant are not restrained. In the case of *Social Security Commission v. Bayona* [160] the Supreme Court had opportunity to reiterate its definition of irreparable injury. Citing several American cases [161] it held:

> Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement. An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof.

(b) *Action for forcible entry is proper remedy where usurpation is continuing*

In the case of *Caseñas v. Jandayas*,[162] plaintiff Caseñas filed a complaint alleging: that she is in actual and material possession of a parcel of land; that on July, 1957, she filed a free patent application with the Bureau of Lands for the said parcel; that while said petition was pending, defendant through threat, intimidation, strategy and stealth, entered upon a small portion of the land and built a house thereon; that because of this entry, plaintiffs filed an action of forcible entry against the defendant which case is still pending; that in July, 1959, defendant employing again force, threat, intimidation, strategy and stealth entered upon another area of about two hectares of the land in question and is committing, threatens or is about to commit a new incursion and usurpation by entering by the same illegal means upon the remainder of the land. She prayed for a writ of preliminary injunction to prevent defendant from building another house on the land, or from performing any work thereon. Defendant filed a motion to dismiss alleging that assuming without admitting that plaintiffs' had a valid cause of action the same is barred by the pendency of another action and that the court has no jurisdiction over the subject-matter. After trial, the court dismissed the complaint. *Held:* According to plaintiffs' complaint, defendant is committing a continuing usurpation or occupation and

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[160] G.R. No. L-13555, May 30, 1962.

[161] Crone v. Central Labor Council, 83 ALR 193; Phipps v. Rogue River Valley Canal Co., 7 ALR, 741; Dunker v. Field 92 P 502.

[162] G.R. No. L-17593, May 24, 1962.

not an isolated act of usurpation or entry in June, 1959 and another at a later date. The remedy of the plaintiff is clearly an action of forcible entry and detainer under Rule 72. In connection with the continuance of the acts of usurpation and entry, these need not be the subject of another action but may be remedied under Section 5 of Rule 72 of the Rules of Court which reads:

> Sec. 8. *Preliminary Injunction.*—The Court may grant preliminary injunction, in accordance with the provisions of Rule 60 hereof, to prevent the defendant from committing further acts of dispossession against plaintiff.

It is therefore clear that the remedy of the plaintiffs is an action of forcible entry and detainer, and in the said action he may secure the writ of preliminary injunction that he prays for in the complaint. Another reason for dismissing the complaint is the fact that there is a pending action for forcible entry and detainer filed by the plaintiffs.

(c) *Power of court to recall or modify writ of preliminary injunction*

Whether a court has power to recall or modify a writ of preliminary injunction previously issued by it is squarely answered by section 7 of Rule 60 of the Rules of Court which provides:

> After hearing the court may grant or refuse, continue, modify or dissolve the injunction as justice require.

And as held by the Supreme Court in *Lasala v. Fernandez*,[163] citing the case of *Aquino v. Alvendia:*[164] "The issuance or recall of a preliminary writ of injunction is, as we have said, an interlocutory matter that remains at all times within the control of the Court."

However the Supreme Court in the case of *Boix v. Ilao* [165] held that the respondent judge committed a grave abuse of discretion in reviving the mandatory injunction. It may be observed that the order granting the writ of preliminary injunction was based on the allegation in the complaint of the existence of plaintiff's right to the use of the road. In the order dissolving the writ of injunction, the lower court found otherwise and declared the said road as "belonging to defendants and that plaintiff has not acquired any right to use the same for her logging purposes." Later however, the lower

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[163] *Supra.*
[164] G.R. No. L-13861, Aug. 8, 1958.
[165] G.R. No. L-20010, Oct. 30, 1962.

court, without setting aside this order expressly declaring the road as belonging to defendants and that plaintiff has not acquired any right to use the same, revived the injunction on the mere representation of plaintiff that she had to load and ship her lumber on July 18, 1962.

(d) *Extent of liability upon bond*

Pursuant to Rule 60, Section 9, the amount of damages to be awarded upon the bond filed for the issuance of a writ of preliminary injunction shall be claimed, ascertained, and awarded under the same procedure as prescribed in section 20 of Rule 59 under which the award is conditioned upon damages being sustained by reason of the issuance of said writ if the court finally decides that the plaintiff is not entitled thereto. So that in the case of *Vet Bros. and Co. v. Movido,*[166] the Supreme Court determined the liability of the appellant upon its bond on the basis of section 20 of Rule 59 of the Rules of Court and held that inasmuch as there is neither claim nor evidence of damages sustained by Movido as a result of the issuance of the injunction and as there is nothing in the judgment of dismissal sentencing the plaintiff or its surety to pay damages, consequently there can be no execution against the bonds. In its bond, the appellant undertook to pay the defendant only such damages that they may sustain by reason of the issuance of the writ of preliminary injunction. And such bond can not be extended beyond the bounds of its contents. The Supreme Court differentiated this case from that of *Bautista v. Joaquin* [167] cited by the lower court in its order in that "in the latter case this court held that the bond filed for the dissolution of a writ of attachment answers for the amount of judgment, in accordance with Section 12 of Rule 59 of the Rules of Court, and stands in the place of property released. Consequently, the surety directly answers for whatever judgment the plaintiff may recover in the action."

In conjunction with this principle, the Supreme Court in the case of *Jao v. Royal Financing Corporation,*[168] maintained that the purpose of the bond is to secure the defendants-appellees for any such damages they may sustain by reason of the injunction if the court should finally decide that the plaintiffs-appellees were not entitled thereto, and refused to hold it liable as security for the mortgage credit of the defendants-appellees. The Supreme Court likewise passed upon the requisites of the award for damages in holding thus:

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[166] G.R. No. L-16662, Jan. 31, 1962.
[167] 46 Phil. 885.
[168] G.R. No. L-16716, April 28, 1962.

"Granting that the bond covers the mortgage credit, however the execution of the judgement was not effected in accordance with law (section 9, of Rule 60, in connection with section 20 of Rule 59). Pursuant thereto, in order that a surety may be bound under the bond for damages, the following requisites must be fulfilled, to wit: (1) the application for damages must be filed in the same case where the bond was issued; (2) such application for damages must be filed before the entry of the final judgement; and (3) after a hearing with notice to the surety." Thus if the plaintiff's claim for damages has already been awarded in the main decision without notice to the surety and decision has become final, the surety is relieved from liability upon the bond.[169]

(e) *Permanent injunction*

Under Section 10 of Rule 60 of the Rules of Court, the court is given the power to grant a final injunction if it appears upon trial that the plaintiff is entitled to have the act complained of permanently enjoined. In the case of *Casilan v. Ibañez*,[170] Casilan applied for certiorari, on the ground that the injunction issued by the Court of First Instance of Leyte constituted unlawful interference with the judgments and orders of a coordinate court (that of Quezon City). *Held:* Petition without merit. The court can no longer interfere with the preliminary injunctions issued by the Leyte Court because such preliminary writs have already been vacated being superseded and replaced by the permanent injunction ordered in the decision on the merits rendered on March 21, 1962. And as to the permanent injunction, no action can be taken thereon without reviewing the judgment on the merits, such injunction being a consequence of the pronouncement that the credits of Tiongzon and Montilla are entitled to priority over that of Casilan. Since the court below had the power and right to determine such question of preference, its judgment is not without, nor in excess of jurisdiction; and even assuming that its findings are not correct, they would, at most, constitute errors of law, and not abuses of discretion, correctible by certiorari. The obvious remedy for petitioner Casilan was a timely appeal. But the judgment has become final and unappealable, and cannot be set aside through certiorari proceedings.

Contempt

Constructive contempt of court is committed by disobedience of or resistance to a lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge (Section

[169] Sy v. Ceniza, G.R. No. L-16961, June 29, 1962.
[170] G.R. Nos. L-19968-69, Oct. 31, 1962.

3(b) of Rule 64). In *Palomique v. Palacio*,[171] Palomique filed with the Supreme Court a verified petition with supporting documents, some of them consisting of sworn statements, to declare Woodworks Inc., its officers, agents and contractors in contempt of court for having committed gross violations of the writ of preliminary injunction issued against them by the Supreme Court on November 18, 1961. The parties charged filed a verified answer similarly supported by several sworn statements, denying the violation of aforesaid writ. The questions of fact arising from the petition and the answer abovementioned and documents submitted in support thereof, being of importance, the Supreme Court through resolution forwarded the case to the Court of First Instance of Camarines Sur for the reception of evidence and submission to the Supreme Court of the corresponding report.

(a) *Writ or order must be lawful*

However, in order that the resistance or disobedience may be punished as constructive contempt, the order or writ of the Court must be lawful and must have been issued within its jurisdiction.[172] In consonance with this rule is the case of *In Re Petition For Contempt Against Francisco Gonzales IV*,[173] wherein in connection with criminal case No. 47152, the City Fiscal pursuant to section 38 (b) of Republic Act No. 409 as amended by Republic Act No. 1201, issued a subpoena duces tecum to Francisco Gonzales IV as Secretary of "Avegon Inc." to appear before him, on March 24, 1959 and to bring the books and documents specified in said order. Gonzales failed to appear, wherefore pursuant to a petition of the City Fiscal, the Court of First Instance ordered Gonzales to show cause why he should not be punished for contempt of Court. After hearing the lower court rendered judgment finding Gonzales guilty of contempt. *Held:* Pursuant to Section 38(b), Republic Act No. 409 as amended by Republic Act No. 1201, the power of the City Fiscal to issue subpoena extends only to cases pending investigations before him or his assistants. After a criminal charge has been investigated by him and the corresponding complaint or information filed in court, the investigation ceases to be that of the Fiscal's Office, but of the court which then has the sole power to issue processes in connection therewith. In the case under consideration, the information has been filed and it not appearing that a re-investigation was requested by the accused, the City Fiscal has no authority to issue said subpoena

[171] G.R. No. L-19022, March 30, 1962.
[172] Chanci v. Madrilejos, 9 Phil. 356; Angel Jose Realty Corp. v. Galao, et al., 76 Phil. 201.
[173] Concepcion v. Gonzales IV, G.R. No. L-15638, April 26, 1962.

duces tecum and consequently Gonzales is not guilty of contempt in not following the order.

(b) *Persons cited for contempt must be parties to action or proceedings*

In the case of *Ferrer v. Rodriguez* [174] the Supreme Court signified the importance of the participation in the action or the proceeding wherein the order or writ was issued. So much so that as a general rule, persons who are not parties to an action or proceeding are not subject to the jurisdiction of a court trying a case, are not supposed to be aware of the court's order and cannot, therefore, be declared guilty of contempt for violating its orders. In order that a person may be declared guilty of contempt for violating a court's order within the meaning of Section 3 (b), Rule 64 of the Rules of Court, the disobedience or resistance must be willful, and there cannot be willfulness without knowledge of the existence of the order and its provisions.[175]

In the same case, the Supreme Court posited an exception to the rule, to wit: "Nevertheless persons who are not parties in a proceeding may be declared guilty of contempt for willful violation of an order issued in the case if said persons are guilty of conspiracy with any of the parties in violating the court's order. In a proceeding to punish for criminal contempt for willful disobedience of an injunction, the fact that those disobeying the injunction were not parties *eo nomine* to the action in which it was granted, and were not personally served, is no defense, where the injunction restrains not only the parties but those who act in connection with the parties accused, with knowledge of the order and its terms, acting as the employees of a party willfully violated it." [176] In the case at bar, the motion alleges no facts to show that defendants not parties knowingly conspired and had knowledge of the prohibition. Hence they could not be held guilty of contempt.

(c) *Disobedience of or resistance to judgment of court not contempt when judgment is not special judgment*

In the case of *Chinese Commercial Property Co. v. Martinez*,[177] plaintiff filed a complaint against defendant for illegal detainer of a building belonging to plaintiff. After trial, municipal court ren-

[174] G.R. No. L-17507, Aug. 6, 1962.
[175] Citing the cases of Narcida v. Bowen, 22 Phil. 365; and People v. Rivera, G.R. No. L-3646, May 26, 1952.
[176] Quoted from People *ex rel.* Stearns, et al. v. Marr, et al., 74 NE 437.
[177] G.R. No. L-18565, Nov. 30, 1962.

dered a decision ordering defendants to vacate the commercial store subject of the action and to restore the possession thereof to plaintiff. On appeal, the decision was affirmed and the Court of First Instance issued an order for the immediate execution of the decision. Writ of execution was returned unserved by the Sheriff. Said Sheriff in his report said that he commanded defendants to vacate and deliver the said building to the plaintiff and to pay the amount of accrued rentals as stated in the execution but said defendants received a copy of the writ of execution and refused to sign it. On the strength of said return, plaintiff filed motion to declare defendant in contempt of court. Court of First Instance found them guilty of contempt for disobedience of, or resistance to a lawful writ provided for in paragraph (b) of Section 3 of Rule 64, and sentenced them to suffer imprisonment for one month each. Hence this appeal. *Held:* The Supreme Court in reversing the judgment of the lower court reiterated its decision in the case of *Quizon v. Philippine National Bank*,[178] the facts of which are practically in all fours with those of the case at bar. Under Section 8 (d) of Rule 39, if the judgment be for the delivery of the possession of real propty, the writ of execution must require the Sheriff or other officer to whom it must be directed to deliver the possession of the property, describing it to the party entitled thereto. This means that the Sheriff dispossesses or ejects the losing party from the premises and delivers the possession thereof to the winning party. If subsequent to such dispossession or ejectment, the losing party enters or attempts to enter into or upon the real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession of the person adjudged to be entitled thereto, then and only then may the loser be charged with and punished for contempt under paragraph (h) of Section 3 of Rule 64, but not under paragraph (b) thereof. In *United States v. Ramayrat*,[179] the Court held: "According to these sections, it is exclusively incumbent upon the sheriff to execute, to carry out the mandates of the judgment in question and in fact, it was he himself and he alone, who was ordered by the Justice of the Peace to place the plaintiff in possession of the land. The defendant in this case had nothing to do with the delivery of possession and consequently his statement expressing his refusal or unwillingness to effect the same are entirely officious and impertinent and therefore could not hinder and much less prevent the delivery being made, had the Sheriff know how to comply with his duty. It was solely due to the latter's fault

[178] G.R. No. L-2850, January 31, 1950.
[179] 22 Phil. 183.

and not the disobedience of the defendant, that the judgment was not duly executed. For that purpose the Sheriff could even have availed himself of the public force had it been necessary to resort." Appellant cannot be punished for contempt under paragraph (b) of Section 3, Rule 64 for disobedience of or resistance to the judgment of the trial court because such judgment is not a special judgment enforceable under Section 9 of Rule 39. In other words, when as in this case, the judgment requires delivery of real property, it must be executed not in accordance with Section 9 of Rule 39 but in accordance with paragraph (d) of Section 8, Rule 39 and any contempt proceedings arising therefrom must be based on paragraph (h) of Section 3, Rule 64 and not on paragraph (b) of the same section in relation to Section 9 of Rule 39. Conformably with these decisions, the order appealed from was reversed and appellants acquitted of contempt of court.

(d) *Power to punish for contempt exercised on preservative and not on vindicative principle*

Courts should be slow in jailing people for non-compliance with their orders. Only in cases of clear and contumacious refusal to obey should the power be exercised. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter and fail. Such power being drastic and extraordinary in its nature should not be resorted to unless necessary in the interest of justice.[180] Thus, the publication of a news item in good faith for the public interest, wanting in any criticisms of the court, and which in no way obstructed the administration of justice can not be considered contempt of court.[181]

(e) *Power of Commission on Elections to punish for contempt*

Under the law and the Constitution the Commission on Elections has not only the duty to enforce and administer all laws relative to the conduct of elections, but also the power to try, hear and decide any controversy that may be submitted to it in connection with the elections. In this sense, the Commission, although it cannot be classified as a court of justice within the meaning of the Constitution for it is merely an administrative body, may however exercise quasi-judicial functions insofar as controversies that by express provision of the law come under its jurisdiction are concerned. However when the Commission exercises a ministerial function it

[180] II Moran, Comments on the Rules of Court, 1957 ed. p. 129.
[181] People v. Oscar Castelo, G.R. No. L-11816, April 23, 1962.

cannot exercise the power to punish for contempt because such power is inherently judicial in nature.[182] In *Masangcay v. Commission on Elections*,[183] the resolutions which the Commission tried to enforce and for whose violations the charge for contempt was filed against Masangcay merely called for the exercise of an administrative or ministerial function for they merely concern the procedure to be followed in the distribution of ballots and other election supplies among the different municipalities. The Commission therefore exceeded its jurisdiction in punishing the provincial treasurer Masangcay for contempt, for opening the boxes containing official and sample ballots.

SPECIAL CIVIL ACTIONS

Declaratory Relief

(a) *Who may institute action for declaratory relief*

Under Section 1 of Rule 66, any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute or ordinance, may bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder; and under Section 6 of the same Rule, the court may refuse to exercise the power to declare rights and to construe instruments in any case where a decision under it would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration, or construction is not necessary and proper at the time under all circumstances. The policy embodied in these provisions was applied by the Supreme Court in the case of *Tadeo v. Provincial Fiscal*[184] where it held that the appellant not being one of the contracting parties to the deed of sale executed by the appellees spouses but took part only as notary public before whom they acknowledged the execution thereof is not entitled to file an action for declaratory judgment. None of his rights or duties thereunder need be declared. Moreover, appellant has a plain, speedy and adequate remedy in the ordinary course of law. He could have appealed from the adverse judgment.

(b) *Complaint for declaratory relief will not prosper after contract or statute has been breached*

Section 2 of Rule 66 of the Rules of Court, is explicit that a contract or statute may be construed before there has been a breach

[182] Guevara v. Commission on Elections, G.R. No. L-12596, July 31, 1958.
[183] G.R. No. L-13827, Sept. 28, 1962.
[184] G.R. No. L-16474, Jan. 31, 1962.

thereof. In the case of *Sarmiento v. Capapas*,[185] the Supreme Court overruled the decisions of the lower court "allowing the action for declaratory relief on the ground that although there has been a breach of the law, as the breach continued and could continue up to January 21, 1960, when the barter permit would expire, the breach is not yet complete." The petitioner in his petition for declaratory relief alleged that on May 1-6, 1958, shipments of 666 hogsheads of Virginia Leaf Tobacco were imported by the Philippine Tobacco Flue-Curing and Redrying Corporation under Barter Permit No. BT-1380 (SP); that the said shipments form part of several other shipments which are due to arrive at the Port of Manila under the same Barter Permit; that some 60 hogsheads have already been released by herein respondent in violation of th Barter Law. Respondents filed a joint motion asking the court to set a preliminary hearing on the special defense that the petition does not state a cause of action for declaratory relief, but the motion was denied. *Held:* The above ruling of the court is an express violation of Section 2 of Rule 66. If an action for declaratory relief were to be allowed in this case, after a breach of the statute, the decision of the lower court in the action for declaratory relief would prejudge the action for violation of the barter law. The institution of an action for declaratory relief after a breach of statute or contract is objectionable on various grounds, ,among which is that it violates the rule on multiplicity of suits. In the case at bar, the judgment for declaratory relief notwithstanding, another action would lie for the violation of the barter law. As a final reason for dismissing the action, there is the undeniable fact that as of this date (March, 1962) the permit had expired two years before (its life extended to January 21, 1960), and all the shipments under the permit had already been delivered and used; as a result aside from the complete violation of the barter law, the importation have already been used up in the manufacture of tobacco during the pendency of the proceedings, thus making the issue moot and academic. The Supreme Court further set aside the order of confiscation of the lower court being clearly beyond the scope and nature of the action for declaratory relief. In the light of this ruling, the court likewise dismissed the action in the case of *Ollada v. Central Bank* [186] where as vigorously claimed by petitioner himself, respondent had already invaded or violated his rights and caused him injury—all these giving him a complete cause of action enforceable in an appropriate ordinary civil action or proceeding.

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[185] G.R. No. L-15509, March 31, 1962.
[186] G.R. No. L-11357, May 31, 1962.

The law does not even require that there shall be an actual pending case. It is sufficient that there is a breach of the law, or an actionable violation to bar a complaint for declaratory judgment. However in the case of *King v. Hernaez*,[187] the Supreme Court affirmed the petitioiner's right to a declaratory judgment it appearing that the petitioner had not yet breached the law when he filed the action for declaratory relief. Respondents alleged that the employment of aliens in the petitioner's business constituted a violation of Retail Trade Act and the Anti-Dummy Law. However, it appears that alien petitioners were already in the employ of the establishment known as "Import Meat and Produce" previously owned by the Philippine Cold Stores Inc. when petitioner Macario King acquired the ownership of said establishment and because of the doubt he entertained as regards the scope of the prohibition of the law, King wrote the President of the Philippines to request permission to continue said plaintifffs in his employment, and immediately after the request was denied, he instituted the present petition for declaratory relief. It cannot therefore be said that King has already breached the law when he filed the present action.

Certiorari

A petition for certiorari is premised on lack or excess of jurisdiction, or grave abuse of discretion of the respondent. Thus where the petition does not allege lack or excess of jurisdiction, or grave abuse of discretion, certiorari does not lie.[188]

Section 1 of Rule 67 further requires that before a writ of certiorari will issue it should be shown not only that the tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdictioin, or with grave abuse of discretion but also that there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law available to the aggrieved party. And the Supreme Court ruled in the case of *Santos v. Cerdenola* [189] that failure to comply with the requirements of this section is fatal and on that ground alone, the petition for certiorari may justifiably be dismissed. In dismissing the present special civil action of certiorari the Supreme Court observed that there is nothing in the petition for certiorari filed as a special civil action, or in the annexes submitted in lieu of oral argument which indicates that petitioner Santos asked for the reconsideration of any of these two decisions or orders of the court *a quo* subject of the action, in order to give

[187] G.R. No. L-14875, March 31, 1962.
[188] Castillo v. Javeloni, G.R. No. L-16742, Sept. 29, 1962.
[189] G.R. No. L-18412, July 31, 1962.

it an opportunity to correct its own errors. Appeal would have been the proper remedy. The decisions or orders complained of could have been appealed in due time, and if the same became final and executory, it was through petitioner's fault. Similarly, in the case of *Plaza v. Mencias*,[190] the Supreme Court ruled that the adequate remedy was the motion for reconsideration of the petitioner which was still pending at the time this petition was filed. Nevertheless, the court granted the petition on the ground that if the present petition would be dismissed and the case remanded to the lower court to give it opportunity to decide the motion for reconsideration, considerable time and expense will be wasted on the part of the parties and the court.

Quo warranto

(a) *Who may bring action for quo warranto*

In the case of *Lacson v. Villafrancia*,[191] it appeared that in March, 1958, the Secretary of Justice appointed respondent Santos Villafrancia to the position of deputy Clerk of Court of the Municipal Court of Manila. Months after, the mayor of Manila appointed Conrado Aquino to the same position. When Aquino and the Mayor of Manila instituted a quo warranto and mandamus for the purpose of ousting Villafrancia from offfice and securing a declaration that Aquino is the person legally entitled to hold said office, judgment was rendered for petitioners. *Held:* An action for quo warranto against an appointive officer may be brought only by the Solicitor General or Fiscal, or by person who claims to be entitled to the office in question (Rule 68, Sections 3 and 6, Rules of Court). The mayor of Manila should not have been included, therefore, as petitioner in this case.

On the other hand, where the office in question is an elective one, the complaint must show that the plaintiff was duly elected thereto; so much so that the petitioners having been candidates and elected for the office of councilors and not for the office of mayor and vice-mayor to which they claim themselves to be entitled in the present action, they are not the proper parties to institute the same.[192]

(b) *Exhaustion of administrative remedies not applicable to quo warranto proceedings concerning public office*

Demands of public interest require that the right to a public office should be determined as speedily as practicable. In the case of

[190] G.R. No. L-18253, Oct. 31, 1962.
[191] G.R. No. L-17398, Jan. 30, 1962.
[192] Campos v. Degamo, G.R. No. L-181315, Sept. 29, 1962.

Corpus v. Cuaderno,[193] the lower court dismissed the petition for quo warranto concerning the office of the Special Assistant to the Governor of the Central Bank on the ground that the petitioner did not exhaust all administrative remedies available in laws such as appeal to the Commissioner of Civil Service pursuant to Republic Act No. 2260, or to the President of the Philippines. *Held*: In the first place, the resort to these administrative appeals is voluntary or permissive, considering that there is no law requiring an appeal to the President in a case like the case at bar; and considering also that the provisions of Civil Service regarding appeal to the Civil Service Board of Appeals is not binding on the petitioner considering his status and the charter of the Central Bank. In the second place, this is a petition for quo warranto. Section 9 of Rule 68 provides that the time for pleadings and proceedings may be shortened and the action may be given precedence over any other civil business. Section 16 of the same Rule requires the filing of the action against an officer for his ouster within one year after the cause of such ouster. These judicial rules underscore the need for speed in the determination of controversies to public offices. So, the pendency of an administrative remedy did not suspend the period within which a petition for quo warranto should be filed. The reason being:

> . . . While it may be desirable that administrative remedies be first resorted to, no one is compelled or bound to do so; and as said remedies neither are prerequisite to nor bar the institution of quo warranto proceedings, it follows that he who claims the right to hold a public office allegedly usurped by another and who desires to seek redress in the courts, should file the proper judicial action within the reglamentary period. As emphasized in *Bautista v. Fajardo* [194] and *Tumulak v. Egay* [195] public interest requires that the rights to a public office should be determined as speedily as practicable.[196]

Forcible entry and detainer

(a) *Suspension of ejectment cases in estates under expropriation*

In a line of cases,[197] the Court interpreted the statutes providing for the suspension of ejectment cases in landed estates under expropriation, so as to make it square with the constitutional requirement of due process of law. It ruled that the law should provide for a

[193] G.R. No. L-17860, March 30, 1962.
[194] 38 Phil. 624.
[195] 46 O.G. 2683.
[196] Abeto v. Rodas, 46 O.G. 930.
[197] Teresa Realty v. Preysler, G.R. No. L-14717, July 31, 1962; Teresa

definite period of suspension; so much so that it declared the amendment to Republic Act No. 2716 unenforceable the same being confiscatory in nature. The said amendment allows the continuance of the occupation of the land on the part of the tenant indefinitely even if no expropriation proceedings are taken or contemplated. The effect of this amendment, according to the Court, is clearly confiscatory for its result is to eventually take from the owner his property without compensation or to deprive him of his dominical right of ownership over it in violation of the Constitution.[198]

(b) *Mode of payment of rents during pendency of appeal in detainer cases*

In the case of *Bernardo v. Jose*,[199] the Supreme Court had occasion to interpret Section 8 of Rule 72 regarding the modes of payment of the rents during the pendency of an appeal in detainer cases. The provision prescribes two modes of payment, to wit: (1) payment of the rent as stipulated in the lease contract; or (2) in the absence of a contract, payment of the reasonable value of the use and occupation of the premises on or before the tenth day of each calendar month, for the preceding month at the rate determined by the judgment. In this particular case, the respondent had apparently followed the second mode of payment, having deposited the rentals before the tenth day of the next month. But this is not applicable in this case because the provision allowing payment or deposit of rental within such period applies only "in the absence of a contract." There is no dispute as to the existence of a lease agreement between the parties; even the respondent does not deny this. But in denying the motion for execution, the lower court relied on the phrase "as found by a judgment of the justice of the peace or municipal court to exist." This phrase applies only when there is a doubt as to the presence of a contract and the inferior court declared its existence. It would be unnecessary for the justice of the peace or municipal court to make such a finding, if, as in the present case, it is quite clear from the pleadings of the parties that there is a lease agreement.

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[198] Cuatico v. Court of Appeals, G.R. No. L-20141, Oct. 31, 1962.
[199] G.R. No. L-15022, Aug. 31, 1962.