CIVIL PROCEDURE

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It is commonplace to assert that the law is not a fixed set of principles to be treated as final truths. It must be continually retested in the courts of justice. Nowhere is this truism more readily accepted than in the law on procedure.

The revision of the Rules of Court which took effect January 1, 1964 illustrates this. While it did not necessarily relegate to obsolescence the Rules of Court of 1940 and the rich jurisprudence interpreting its provisions, there have been sufficient and substantial changes, nevertheless, to warrant restudy and reappraisal. The mandatory requirement of a pre-trial, the effects of default judgment—these are but a few of the innovations introduced by the revised rules.

This survey of 1963 Supreme Court decisions in civil procedure is based on the old Rules of Court. For comparison, reference is made in the footnotes to the equivalent provisions of the Revised Rules of Court, and where substantial changes in rules occur, the necessary annotations are made.

JURISDICTION AND VENUE

Jurisdiction of inferior courts

The original jurisdiction of inferior courts in civil cases is spelled out in Section 88 of the Judiciary Act [1] which privides:

> In all civil actions, including those mentioned in Rules fifty-nine and sixty-two of the Rules of Court,[2] arising in his municipality or city, and not exclusively cognizable by the Court of First Instance, the justice of the peace and the judge of a municipal court shall have exclusive original jurisdiction where the value of the subject matter or amount of the demand does not exceed five thousand pesos, exclusive of interests and cost[3]. Where there are several claims or causes of action between the same parties embodied in the same complaint, the amount of the demand shall be the totality of the demand in all the causes of action, irrespective of whether the causes of action arose out of the same or dif-

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[1] Rep. Act No. 296, as amended by Rep. Act No. 2613.

[2] Now Rules 57 and 60 of the REVISED RULES OF COURT, referring to Attachmeot and Replevin, respectively.

[3] Now ten thousand pesos, as amended by Rep. Act No. 3828, approved June 22, 1968.

> ferent transactions; but where the claims or causes of action joined in a single complaint are separately owned by or due to different parties, each separate claim shall furnish the jurisdictional test . . .

This provision was applied in the case of *Mirano v. Madrigal & Co.*[4], which involved the recovery of wages due to 25 persons, plaintiffs herein, as members of the crew of three ships owned by the defendant company. The suit was brought in the Court of First Instance of Manila because the aggregate amount sought to be recovered was ₱56,561.24, which was within the jurisdiction of the court. Except for Mirano, none of the plaintiffs had a claim exceeding ₱5,000. In sustaining the dismissal of the case, except as to plaintiff Mirano, the Supreme Court said:

> It was found by the court that each seaman signed with the defendant a contract, or shipping article; each had an individual cause of action, and had to collect different amounts separately owned by them, depending upon the period and length of service of each, and the way each had complied with the terms and conditions of the shipping article; and that the plaintiffs were not all employed in one vessel but in three separate vessels. This being the case, as it is the case, their claims are not of joint nature, and each separate claim furnishes the jurisdictional test . . .
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> While some doubt had arisen in the past as to whether the jurisdiction of a court depends, in cases where claims or causes of action between the same parties are embodied in a single complaint, on the amount of each single claim or upon the totality of the demand in all the causes of action, we have finally held in the cases of Soriano v. Omila, 51 Off. Gaz. No. 7, p. 3465, ond Campos Rueda Corporation v. Sta. Cruz Lumber Co. Inc., 52 O.G. No. 3, p. 1387, that the jurisdiction of the court depends upon the totality of the demand in all the causes of action, irrespective of whether the plural causes constituting the total claim arose out of the same or different transaction. The only exceptions to this rule are (1) where the claims joined under the same complaint are separately owed by, or due to, different parties, in which case each separate claim furnishes the jurisdictional test[5]; and (2) where not all the causes of action joined are demands or claims for money.[6]

The case should have been filed with the justice of the peace court or municipal court,[7] in accordance with Section 88 of the Judiciary Act.

The same ruling was applied in the case of *Abon v. Pablo*[8]. The appellants in the case were tenants occupying different portions

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[4] G.R. No. L-14947, February 28, 1963.

[5] Argonza v. International Colleges, G.R. No. L-3884, November 29, 1951; Soriano y Cia. v. Jose, 47 O.G. No. 12 Supp. p. 156.

[6] Teresa Felix Vda. de Rosario v. Justice of the Peace of Camiling, Tarlac, 52 O.G. 5153.

[7] Justices of the peace are now known as municipal judges and justice of the peace courts as municipal courts. Municipal judges are now known as city judges, and municipal courts as city courts. Rep. Acts Nos. 3820 and 3828, approved June 22, 1963.

[8] G.R. No. L-18096, January 31, 1963.

of a property owned by the appellees. They brought action before the Court of First Instance of Manila to recover the excess amounts paid by them as increased rentals, contending that the increase was contrary to law. The Court held that inasmuch as the biggest individual claim did not exceed ₱5,000, the actions should have been brought in the Municipal Court of Manila which has original jurisdiction.

Interlocutory jurisdiction of JPs of capitals and municipal judges

Under Section 88 of the Juriciary Act as amended, justices of the peace in the capitals of provinces and municipal judges of chartered cities, in the absence of the district judge from the province, may exercise within the province like interlocutory jurisdiction as the court of first instance. Such interlocutory jurisdiction shall include the hearing of all motions for the appointment of a receiver, for temporary injunctions and for all other orders of the court which are not final in character.

In *Bueno v. Patanao*,[9] the Supreme Court upheld the right of the municipal judge of Butuan City to issue a writ of injunction in the absence of the presiding judge of the court, such act being in pursuance of the above-mentioned provision of the Judiciary Act.

Jurisdiction of courts of first instance

Section 4 of the Judiciary Act confers on Courts of First Instance original and exclusive jurisdiction in all civil actions in whch the subject of the litigation is not capable of pecuniary estimation. Thus, in *Rivera v. Halili*,[10] the Court held that where the litigants raised not merely the question of who among them was entitled to the possession of the property, but likewise asked the court to rule on their respective rights under documents upon which they predicated their claims to possession, the case was converted from one of unlawful detainer into one that is incapable of pecuniary estimation, which can only be addressed to the original jurisdiction of the Court of First Instance.

In *Villanueva v. CIR* [11] and *Gallardo v. Corominas*,[12] the Court reiterated its ruling held in a long line of cases that where the proceeding is exclusively for the recovery of unpaid wages and overtime pay, it should be brought before the regular courts. Such claims may be taken cognizance of by the Court of Industrial Relations only if,

[9] G.R. No. L-13882, December 27, 1963.
[10] G.R. No. L-15159, September 30, 1963.
[11] G.R. No. L-17096, December 27, 1s63.
[12] G.R. No. L-17453, December 26, 1963.

at the time of the filing of the claim, the claimants are still in the service of the employer, or having been unlawfully or improperly separated from such service, should ask for reinstatement.

Jurisdiction of court of appeals

The cases of *Tuason & Co. v. Jaramillo*,[13] *Tuason & Co. v. Verzosa*,[14] and *Tuason & Co. v. de la Cruz*,[15] applied Section 30 of the Judiciary Act which 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.

Construing the provision, the Supreme Court held that this jurisdiction of the Court of Appeals must co-exist with and be a complement to its appelate jurisdiction to review by appeal or writ of error, the final orders and decisions of the lower court. Where the judgments and orders of execution complained of could not have been appealed to the Court of Appeals, said judgments having been final and executory, and there being no allegation that the writs of execution varied the tenor of the respective judgments, the Court of Appeals had no jurisdiction to entertain the petition for certiorari and prohibition.

Appellate jurisdiction of the Supreme Court

The appellate jurisdiction of the Supreme Court in all civil actions involving questions of fact is limited only to cases in which the amount in controversy exceeds two hundred thousand pesos, exclusive of interests and costs, or in which the title or possession of real estate exceeding in value the sum of two hundred thousand pesos is involved or brought in question.[16]

In *North Camarines Lumber Co. v. Metropolitan Insurance Co.*[17], *Salas v. Santiago* [18]; and *Taytay Methodist Community Church v. Reyes* [19], the Supreme Court certified the cases brought or appealed before it to the Court of Appeals, pursuant to Sec. 31 [20] of the

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[13] G.R. No. 18932-34, September 30, 1963.
[14] G.R. No. 19034-35, September 30, 1963.
[15] G.R. No. 19036-44, September 30, 1963.
[16] Sec. 17(5), Judiciary Act, as amended.
[17] G.R. No. L-15754, January 31, 1963.
[18] G.R. No. L-17090, March 30, 1963.
[19] G.R. No. L-15731, April 27, 1963.
[20] SEC. 31. *Transfer of cases from Supreme Court and Court of Appeals to proper court.*—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 has originally been brought before it.

Judiciary Act, since the amounts claimed in each of those actions did not reach ₱200,000 that would place the appeals under the exclusive appellate jurisdiction of the Supreme Court.

Venue in inferior courts

Section 2 (a) of Rule 4 [21] which defines venue in inferior courts provides that all personal civil actions shall be brought "in the place specified by the parties by means of a written agreement, whenever the court shall have jurisdiction to try the action by reason of its nature or the amount involved." This rule was applied by the Supreme Court in the case of *Republic v. Cuaycong*.[22] Plaintiff in this case filed an action in the JP court of Victorias, Negros Occidental, for the collection of a loan obtained by the defendant from the former Bank of Taiwan. The loan was evidenced by eight promissory notes of different dates and a chattel mortgage. Defendants filed a motion to dismiss on the ground, among others, of improper venue, alleging that the documents which constitute the cause of action were dated in Bacolod City. Plaintiff contended that since the place of execution of the promissory notes did not appear on said documents, venue was properly laid. On appeal the Supreme Court found that the chattel mortgage which was signed simultaneously with the first promissory note clearly stated on its face that it was executed at the City of Bacolod. The chattel mortgage specifically laid down the terms and conditions of the loan while the promissory notes merely stated the amount taken. It was plain, therefore, that the promissory notes and the chattel mortgage were expressly dated at Bacolod City, and venue for the enforcement of the loan should be at that place.

Venue of actions for recovery of unpaid wages

By express provision of law, civil actions on claims of employees, laborers and other helps may be commenced and tried in the court of competent jurisdiction where the defendants or any of the defendants resides, at the election of the plaintiff.[23] This is one exception to the general rule on venue of civil actions.[24]

In *Moreno v. Judge of the Court of First Instance of Manila* [25], the plaintiffs in the court *a quo* filed a claim for unpaid wages in

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21 Now Sec. 1(b) (1), Rule 4 of the REVISED RULES OF COURT.
22 G.R. No. L-18797, December 27, 1963.
23 Sec. 1, Rep. Act No. 1171.
24 Note that Sec. 5, Rule 4 of the REVISED RULES OF COURT now expressly provides that the rule on venue of actions shall not apply in those cases where a specific rule or law provides otherwise.
25 G.R. No. L-17908, April 23, 1963.

the total amount of ₱21,502.36 in Regional Office No. 3 of the Department of Labor against Sumerariz as contractor for the construction of the National Orthopedic Hospital in Quezon City. After hearing, the claim was approved and as a result of that decision, the Auditor General authorized the release of partial payments of the claim from the 10% retention fund withheld by the Bureau of Public Works precisely to answer for unpaid wages of laborers according to its contract with Sumerariz. Upon recommendation of the Director of the Bureau of Public Works, Secretary of Public Works Florencio Moreno rescinded the construction contract with Sumerariz, and opposed payment to the plaintiff laborers, who were constrained to bring action in the CFI of Manila against the contractor and the Secretary of Public Works for recovery of their wages. The Secretary moved to dismiss the complaint on the ground that it does not state a cause of action and that the CFI of Manila is not the proper court of venue. The motion to dismiss was denied for lack of merit. Secretary Moreno brought this petition for writ of prohibition against the respondent judge.

Held: The order denying such motion is merely interlocutory, and should be corrected by appeal in due time, after trial and judgment on the merits, and not by extra-ordinary writ of prohibition. With respect to the venue, petitioner contends that it should be in Quezon City in view of Section 1 of Act No. 3688 which provides that if no suit should be brought by the Government against the contractor in the construction of Public Works within six months from the completion of said contract, then the person or persons supplying the contractor with labor and materials, shall be authorized to bring suit in the name of the Government in the Court of First Instance in the district in which said contract was to be performed and executed, and not elsewhere. The action of the laborers in this case does not fall under the foregoing provision. They do not seek to recover unpaid wages in the name of the Government but in their own name. Since plaintiff laborers are residents of Manila, the venue of their action is properly laid, pursuant to Section 1 of Republic Act No. 1711.

Venue in action for damages for written defamation

In *Dizon v. Encarnacion*,[26] plaintiff, a resident of Pampanga, filed an action to recover from defendant damages which the former allegedly sustained as a consequence if a pleading filed by defendant in the Court of First Instance of Zambales. The pleading allegedly contained libelous and derogatory statements. Defendant filed a mo-

[26] G.R. No. L-18615, December 24, 1963.

tion to dismiss on the ground that venue was improperly laid, and the action should have been instituted in the Court of First Instance of Zambales where the pleading had been filed. In reversing the lower court's order dismissing the case, the Supreme Court held that Article 360 of the Revised Penal Code specifically provides that civil actions for damages in cases of written defamation *"shall"* be filed with the court of first instance of the province in which "any of the accused or any of the offended parties resides." It is only when the libel is published, circulated, displayed or exhibited in a province or city wherein neither the offender nor the offended party resides, in which case the civil and criminal actions *"may"* be brought in the court of first intance thereof. The verb "may" in this case is merely permissive and its effect is only to broaden the two alternatives set forth therein by giving plaintiff a third choice of venue.

Allegations in complaint determine venue

In the case of *Deudor v. Tuason & Co.*,[27] plaintiffs filed an action seeking the annulment of a compromise agreement entered into by plaintiffs and defendants on the ground of deceit and fraudulent representations perpetrated by defendants in obtaining plaintiffs' consent to the agreement. Defendants moved to dismiss on the ground of improper venue, since the land in question which was the subject of the compromise agreement was located in Quezon City, while the action was instituted in Manila. The Supreme Court held that although the cause of action is one for rescission of contract, nevertheless plaintiffs' complaint contains a prayer that defendants be ordered to return to them the ownership and possession of the land in question. This being so, the action should have been instituted in Quezon City where the property was located.

PARTIES

Joinder of husband in actions against wife

Section 4 of Rule 3 [28] provides, as a general rule, that a married woman may not sue or be sued alone without joining her husband. As explained by the Supreme Court in *Acenas v. Sison*,[29] the requirement of joinder does not make the husband solidarily liable with his wife. The law requires such joinder not because the husband is thereby bound with his wife, but because he is the administrator of the conjugal partnership which might be held liable

[27] G.R. No. L-20105, October 31, 1963.
[28] Now Section 4, Rule 3 of the REVISED RULES OF COURT.
[29] G.R. No. L-17011, August 30, 1963.

in the action. To make the husband solidarily liable with his wife simply because his joinder is required would be to subvert the basic rule that the wife cannot bind the conjugal partnership without the husband's consent.[30]

Real party in interest in actions to enforce collective bargaining agreement

Section 2 of Rule 3[31] provides that "every action must be prosecuted in the name of the real party in interest". A real party in interest is one who would be benefited or injured by the judgment, or the party entitled to the avails of the suit.[32] In actions *ex contractu,* the real parties in interest, either as plaintiff or defendant, must be parties to the contract. This is necessarily so since contracts take effect only between the parties, their heirs and assigns.[33] A collective bargaining agreement, being in the nature of a contract between the labor union and the company, the real party in interest would be the labor union itself and not the members thereof. Moreover, Section 3 of Rule 3[34] provides that a party with whom or in whose name a contract has been made for the benefit of another may sue or be sued without joining the party for whose benefit the action has been instituted, even if the court may, at its discretion, order such beneficiary to be made also a party. Here, the union is the party with whom or in whose name a contract has been made for the benefit of its members.[35]

Taxpayer has sufficient personality to contest illegal importation by the government

In the celebrated case of *Gonzales v. Hechanova,*[36] wherein petitioner Gonzales, a rice planter sought to prohibit the importation

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[30] Article 172, NEW CIVIL CODE.

[31] Also Section 2, Rule 3 of the REVISED RULES OF COURT which now reads as follows: "Every action must be prosecuted and defended in the name of the real party in interest. All persons having an interest in the subject of the action, and in obtaining the relief demanded shall be joined as plaintiffs. All persons who claim an interest in the controversy or subject thereof adverse to the plaintiff, or who are necessary to a complete determination or settlement of the questions involved therein shall be joined as defendants."

[32] Salonga v. Warner Barnes & Co., 88 Phil. 125.

[33] Article 1311, NEW CIVIL CODE.

[34] Also Section 3, Rule 3 of the REVISED RULES OF COURT, but the clause "a party with whom or in whose name a contract has been made for the benefit of another" has been deleted. As explained by Justice Moran in his Comments on the Rules of Court, Vol. I, pp. 136-137 (1963 ed.), the reason for the deletion is perhaps because the provision thus suppressed is embraced in the term "a trustee of an express trust." In several states of the American Union, there is a provision to the effect that a person with whom or in whose name a contract is made for the benefit of another is a trustee of an express trust.

[35] National Brewery & Allied Industries Labor Union v. SMB, Inc., G.R. No. L-19017, December 27, 1963.

[36] G.R. No. L-21897, October 22, 1963.

of 67,000 tons of foreign rice authorized by the Executive Secretary, on the ground that such importation was illegal under Republic Act No. 3452, one of the defenses raised by respondents was petitioner's lack of personality to sue. The Supreme Court ruled that the petitioner had sufficient personality and interest to file the petition. Apart from prohibiting the importation of rice and corn by any government agency, said act declares in section 1 thereof that "the policy of the Government is to engage in the purchase of these basis foods directly from those growers, producers and landowners in the Philippines who wish to dispose of their produce at a price that will afford them a fair and just return for their labor and capital investment . . ." Pursuant to this provision, petitioner, as a planter with a rice land of substantial proportion, is entitled to a chance to sell to the Government the rice it sought to buy abroad. Moreover, the Court held that the purchase will have to be effected with public funds mainly raised by taxation, and as a rice producer and landowner, petitioner must necessarily be a taxpayer.

Suit against Government without its consent

In *Moreno v. Judge of CFI of Manila*,[37] Secretary of Public Works Florencio Moreno moved to dismiss the complaint where he was made party defendant in the trial court on the ground that the action is in effect one against the Government, which cannot be sued without its consent, which motion was denied by the trial court. On a petition by Moreno for writ of prohibition, the Supreme Court rejected petitioner's contention since the action is not a suit against the Government but only to compel said petitioner to release the amount claimed from funds already set aside and retained for that purpose.[38]

CAUSE OF ACTION

Commencement of actions

Section 2, Rules 2 [39] provides: A civil action is commenced by filing a complaint with the court. Applying this provision and reiterating its ruling in Sotelo v. Dizon,[40] the Supreme Court, in *Cabrera v. Tiano* [41] held that civil actions are deemed commenced from the date of the filing and docketing of the complaint with the Clerk

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[37] *Supra*, note 25.

[38] A similar contention as that advanced by petitioners, upon facts analogous to those obtaining in this case, was rejected by the Supreme Court in Ruiz v. Sotero Cabahug, 54 O.G. 351.

[39] Now Sec. 6, Rule 2 of the REVISED RULES OF COURT.

[40] 67 Phil. 573.

[41] G.R. No. L-17299, July 31, 1963.

of Court without taking into account the issuance and service of summons.

Indivisible cause of action

In *Ruiz v. Secretary of National Defense*,[42] the Supreme Court applied the rule on what constitutes an indivisible cause of action. This case involved an action brought by plaintiffs to secure a judicial declaration or recognition that they, together with defendant Panlilio, were the architects of the Veteran's hospital and an injunction restraining appellee government officials from paying Panlilio the sum retained by the Government. The Court held that the allegations in the complaint show an indivisible cause of action whch is primarily to prevent payment exclusively to Panlilio of the amount retained by the Government which said appellants contend should be paid to the Allied Technologists, Inc. The matter of recognizing appellants, together with Panlilio as architects of the hospital was merely incidental thereto. When the Allied Technologists itself asserted in its answer that the amount was paid to it, an assertion which was not at all denied, plaintiffs' cause of action dissipated entirely.

PLEADINGS AND MOTIONS

Test of sufficiency of complaint

In *Raquiza v. Ofilada*,[43] the Supreme Court laid down the following rule for determining the sufficiency of a complaint: Could a competent court render a valid judgment upon the facts alleged in it if admitted or proved? If it could, then the allegations are sufficient.

Third party complaint not proper where mere counterclaim would suffice

In *Del Rosario v. Jimenez*,[44] a complaint for forcible entry was filed in the lower court by respondents against petitioners. In their answer to the complaint, defendants, now petitioners, claimed ownership of the same properties by purchase alleging that they had been in actual physical possession of the same even before purchase from J. M. Tuazon & Co. by respondents. Petitioners, after a second amended complaint had been filed by respondents, submitted their answer therein including a "third-party complaint" against the plaintiffs themselves as well as against J. M. Tuazon & Co. from

[42] G.R. No. L-15526, December 28, 1963.
[43] G.R. No. L-17182, September 30, 1963.
[44] G.R. No. L-17468, July 31, 1963.

both of whom they prayed for an award of damages. *Held:* The third party complaint was improperly brought against respondents since they were themselves the plaintiffs in the forcible entry case, as to whom a mere counterclaim would suffice.

Admission of third-party complaint discretionary with court

In the same case of *Del Rosario v. Jimenez*,[45] the Supreme Court held that the admission of a third-party complaint is discretionary with the court. The Court found no abuse of discretion in denying the third-party complaint against J. M. Tuazon & Co., such denial being based on the ground that such third-party complaint should be the subject of a separate action so that matters extraneous to the issue of possession may not unnecessarily clutter the forcible entry case.

When third party complaint not proper; judgment on the pleadings

The case of *Commercial Bank & Trust Co. v. Republic Armored Car Service Corp.*[46] illustrates when a third-party complaint is not deemed proper. The defendant corporation in this case was given credit accommodations in this form of two overdraft lines and drew regularly upon said credit lines, but failed to pay the amounts upon demand. In its answer, the defendant admitted the opening of the credit line in its favor and that demands for the indebtedness were made upon it, but alleged as special defenses that the amounts drawn by the corporation were received and used by the former directors and officers who deliberately defrauded and mismanaged said corporation in breach of trust. Upon presentation of the answer, the plaintiff presented a motion for judgment on the pleadings which the lower court sustained, holding that the special affirmative defenses of the answer, not being a specific denial, does not controvert the allegation of the plaintiff's complaint, and that the alleged mismanagement and fraud of the former directors and officials of defendant corporation is an internal matter of the defendant corporation in which the plaintiff has no concern or participation whatsoever. On appeal, the Supreme Court held: The obligation of the defendant corporation with the plaintiff company was not in any way qualified. There is no statement that the responsibility of the defendant for the amounts taken on overdraft would cease or be defeated or reduced upon misappropriation or mismanagement of the funds by the directors and employees thereof. The special defense is, therefore, a sham defense, and consequently, the court's

[45] *Supra*, note 44.
[46] G.R. No. L-18224, June 29, 1963.

judgment on the pleadings was properly taken. The argument of the defendant that it contemplated a third party complaint is of no weight, because a third party complaint was not available to it under the facts of the case. A third party complaint is, under Section 1, Rule 12 of the Rules of Court [47] available only if the defendant has a right to demand contribution, indemnity, subrogation or any other relief from the supposed third-party defendant in respect to the plaintiff's claim. The supposed parties defendant or alleged officers of the defendant corporation had nothing to do with the overdraft account of defendant corporation with the plaintiff. Anyway, the filing of a third-party complaint is no hindrance to the issuance of the order of the court declaring that the defendant's answer presented no issue or defense.

Permissive counterclaim not barred if not set up

Under Section 6, Rule 10,[48] a counterclaim not set up shall be barred if it arises out of, or is necessarily connected with the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of when the court cannot acquire jurisdiction. This section has reference to so-called compulsory counterclaims only. When the counterclaim is merely permissive as when it has no necessary connection with the transaction or occurrence that is the subject of the action or when it has matured only after judgment has been rendered, it is not barred if not set up. Thus, where the main issue involved in a previous case was the validity of an ordinance increasing the monthly rental of stalls in a public market, the failure to set up a counterclaim for the payment of increased rent in that case does not bar the plaintiff, in a subsequent case, from collecting the increased rent for the claim was not yet due at the time the prior action was filed, nor was it necessarily connected with the subject matter of defendant's claim which had a hearing on the validity of the ordinance which calls for such increased rent.[49]

Allegation in complaint must be specifically denied

The rule that allegations in the complaint must be specifically denied in the answer was reiterated in *Diñoso v. Court of Appeals*.[50] Appellee Fontillas brought an action to recover four parcels of land by virtue of consolidated ownership under a *pacto de retro* sale executed by the former owner. Appellant Diñoso refused to surrender

[47] Now Sec. 12, Rule 6 of the REVISED RULES OF COURT.
[48] Now Sec. 4, Rule 9 of the REVISED RULES OF COURT.
[49] City of Naga v. Tolentino, G.R. No. L-18975, December 26, 1963.
[50] G.R. No. L-17738, April 22, 1963.

possession thereof claiming that the same parcels of land were likewise sold to him under a *pacto de retro* sale. The lower court made the finding that the estates sold to the party litigants were not the same, which finding was affirmed by the Court of Appeals. Notwithstanding this finding, appellant contends that he acquired title to the land in his possession by prescription, a contention that the Court of Appeals rejected because it was not alleged specifically in his answer to the complaint. Diñoso brought appeal by certiorari to the Supreme Court in this issue and invokes in his behalf the ruling in Recoletos v. Crisostomo, 32 Phil. 248, wherein it was held that adverse possession can be set up by a defendant under a general denial. According to the Supreme Court, this contention does not take into account that general denials have been abolished by the Rules of Court, and a defendant is now required to allege all his defenses, both negative and positive, by specific denials and pleas in avoidance,[51] disclosing the truth in order to prevent surprise and undue advantage.[52] In his answer filed in the court *a quo*, petitioner-appellant Diñoso specifically denied Fontillas' claim of ownership but never pleaded that he had adversely held it for more than ten years as required by the applicable law (Act No. 190, Sec. 41). Appellant should be barred from asserting adverse possession, involving as it does a complete change of theory from that upon which the case was tried.

Admission of genuiness of document not denied under oath may be waived

Under Section 8, Rule 15 of the Rules of Court,[53] failure to deny under oath the genuineness and due execution of a document copied in or attached to the complaint amounts to a technical admission thereof. But the plaintiff may waive the defendant's technical admission by failing to object to the introduction of evidence purporting to controvert the genuiness or due execution of the document.[54] State otherwise, "Where written instrument not forth in answer is not denied by affidavit, yet if evidence in respect to that matter, and tending to show that instrument is not genuine, or was not delivered, is introduced by plaintiff without objection on the part of defendant, or motion to strike out, and is met by counter-evidence on part of defendant, the latter ought not to be permitted

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[51] Rule 9, Secs. 6, 7, and 8. Now Rule 6, Secs. 4 and 5 of the REVISED RULES OF COURT.

[52] Citing I MORAN, RULES OF COURT 158 (1957 ed.).

[53] Now Sec. 8, Rule 9 of the REVISED RULES OF COURT.

[54] Koh v. Ongsiako, 36 Phil. 185; Yu Chuck v. Kong Li Po, 46 Phil. 608, both cited in I MORAN, RULES OF COURT 232-233 (1957 ed.).

to claim that genuiness and due execution of instrument are admitted." [55]

In the case of *Jabalde v. Philippine National Bank*,[56] defendant's answer denying the dates of deposit in the pass-book of the plaintiff as reproduced in the complaint was not made under oath. But the plaintiff introduced evidence purporting to support his allegations of deposit, and offered no objection during the trial to the testimonies of defendant's witnesses and documentary evidence showing the different dates of deposit. By these acts, the plaintiff was deemed to have waived the defendant's technical admission.

Amendment must refer to party's own pleading

The special proceedings in *In Re Testate Estate of R. McCulloch Dick*,[57] presents an issue of disarming simplicity. The executor of the will of R. McCulloch Dick filed a petition for probate of the last will and testament of the deceased wherein it was alleged that the decedent at the time of his death was a British subject domiciled in the Philippines. Once of the heirs filed a "Manifestation and Motion" to correct the petition so that it will state that the decedent was a British subject of Scottish nationality and citizenship. This was granted by the trial judge. On writ of certiorari, the Supreme Court held that while amendments to pleadings are allowed, a party may amend *his own* pleading, but *not* that of his opponent. The heir cannot compel the executor to allege what he is unwilling to allege or believes—even though erroneously—not to be a fact. What the heir can do is to allege in her own pleading the fact of decedent's nationality and urge the court, at the proper time, to declare that said allegation has been established and is a fact.

Order denying amendment of pleading in appealable

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served,[58] but the court may, upon motion at any stage of an action, and upon such terms as may be just, order or give leave to a party to amend his pleading, to the end that the real matter in dispute and all matters in the action in dispute between the parties may, as far as possible, be completely determined in a single proceeding.[59] In *Constantino v.*

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[55] FRANCISCO, RULES OF COURT, Vol. 1, Part 1, 734-735 (Rev. ed.), citing the case of Clark v. Child, 66 Cal. 87.

[56] G.R. No. L-18401, April 27, 1963.

[57] G.R. No. L-18220, April 30, 1963.

[58] Sec. 1, Rule 17, RULES OF COURT. Now Sec. 2, Rule 10, REVISED RULES OF COURT.

[59] Sec. 2, Rule 17, RULES OF COURT. The equivalent provision in the REVISED RULES OF COURT reads: "After the case is set for hearing, substantial amendments may be made only upon leave of court. But such leave may be

Judge of CFI of Rizal,[60] plaintiff amended his complaint after defendant's motion to dismiss was granted by the court. The amendment was denied by the respondent judge, from which order the plaintiff appealed. Respondent judge disapproved the record on appeal on the ground that the appeal was filed more than 30 days after the order dismissing the original complaint, although it was filed within the period from the order denying the amendment. On mandamus, the Supreme Court ordered the trial judge to approve the record on appeal. A motion to dismiss is not a responsive pleading within the meaning of the words used in Section 1 of Rule 17;[61] therefore, plaintiff can amend his complaint as a matter of right even after an order dismissing his complaint is issued.[62] But the motion to amend should be filed before the order of dismissal becomes final and unappealable, because thereafter there would be nothing to amend. If the amendment is denied, the order of denial is appealable and the time within which to appeal is counted from the order of denial, not from the order dismissing the original complaint. Otherwise, the right to take such appeal would be at the mercy of the court, which could frustrate it by the simple expedient of delaying the resolution of the motion to amend the complaint until after the expiration of 30 days from notice to the plaintiff of the order of dismissal. If the appeal is taken from the order of dismissal, the plaintiff stands on the sufficiency of his complaint. But if he decides to amend his pleading, and his motion for leave to do so is denied, an appeal from the order of denial puts in issue the propriety of that amendment. Plaintiff's complaint was therefore filed in time.

Motion for bill of particulars suspends running of period within which to file answer

If the defendant files a motion for bill of particulars before answering and subsequently files a motion to dismiss while the motion for bill of particulars is still unresolved, does the order the court denying the motion to dismiss resume the running of the period within which to file answer?

The Supreme Court said no, in the case of *Agcanas v. Mercado*.[63] Both a motion to dismiss and a motion for a bill of par-

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refused if it appears to the court that the motion was made with intent to delay the action or that the cause of action or defense is substantially altered . . ." Sec. 3, Rule 10.

[60] G.R. No. L-16853, April 29, 1963.

[61] Ong Peng v. Castillo, G.R. No. L-14811, March 25, 1961; Republic v. Ilao, G.R. No. L-16667, January 30, 1962.

[62] Arranz v. Manila Surety & Fidelity Co., G.R. No. L-12844, June 30, 1960.

[63] G.R. No. L-15808, April 23, 1963.

ticulars interrupt the time to file a responsive pleading. In the case of a motion to dismiss, the period starts running again as soon as the movant receives a copy of the order of denial.[64] In the case of a motion for a bill of particulars, the suspended period shall continue to run upon service on the movant of the bill of particulars, if the motion is granted, or of the notice of a denial, but in any event he shall have not less than five days within which to file his responsive pleading.[65] In this case, the period to file an answer remained suspended even after the order denying the motion to dismiss until the motion for a bill of particulars is denied or, if it is granted, until the bill is served on the moving party.

In *Villa-Rey Transit Inc. v. Bello*,[66] the court parenthetically commented that a motion to dismiss is not a responsive pleading, which is just an affirmation of a well-settled rule.[67]

Grounds for motion to dismiss

a. Lack of jurisdiction over the subject matter

Under Section 10, Rule 9,[68] whenever it appears that the court has no jurisdiction over the subject matter, it shall dismiss the action. Thus, where the case is a clear one of unfair labor practice, committed by the employers, cognizance of which, there being in the petition a prayer for reinstatement, is given to the Court of Industrial Relations, the lower court correctly dismissed the case before it.[69]

b. Failure to state a cause of action

In *Lim v. De los Santos*,[70] defendants contracted to sell to each of the several plaintiffs certain subdivision lots payable in installments. The complaint alleged that defendants failed to construct the necessary roads that would serve as outlets in accordance with the requirements of existing laws and regulations, notwithstanding the fact that plaintiffs have complied with their obligations to construct houses. Defendants moved to dismiss on the ground that

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[64] Sec. 4, Rule 8, RULES OF COURT. Now Sec. 4, Rule 16, REVISED RULES OF COURT.

[65] Sec. 2, Rule 16, RULES OF COURT. Now Sec. 1(b), Rule 12, REVISED RULES OF COURT.

[66] G.R. No. L-18957, April 23, 1963.

[67] Paeste v. Juarigue, 50 O.G. 112; Ong Peng v. Castillo, *supra* note 61; Republic v. Ilao, *supra* note 61. In *Constantino v. Judge of CFI of Rizal*, *supra* note 60, the Court categorically ruled that a motion to dismiss is not a responsive pleading within the meaning of the words used in Sec. 1, Rule 17, RULES OF COURT (Now Sec. 2, Rule 10, REVISED RULES OF COURT).

[68] Now Section 2, Rule 9 of the REVISED RULES OF COURS.

[69] Jornales v. Central Azucarera de Bais, G.R. No. L-15287, September 30, 1963.

[70] G.R. No. L-18137, August 31, 1963.

the complaint states no cause of action. On appeal, the Supreme Court held that the complaint stated a cause of action. The Court found out that the lower court ignored the specific allegation of facts in the complaint that prior to and simultaneously with the execution of the contracts to sell, defendant represented to plaintiffs that she would cause to build adequate outlets on or before the expected termination of the construction of their residences. It is elementary, the Court held, that a motion to dismiss based on failure to state a cause of action should be deemed to have admitted the truth of the facts alleged in the complaint and if they are true, then, necessarily, defendant should be required to comply with her obligation.

Where the ground relied upon, however in the motion to dismiss does not appear to be indubitable, the court shall deny said motion. This is illustrated in the case of *Geganto v. Katalbas*.[71] This involved an action for malicious prosecution against appellees who were police officers for allegedly inducing appellant to acknowledge his guilt by threatening him with the filing of accusations for a much graver offense. Appellees moved to dismiss the complaint on the ground of failure to state a cause of action. *Held:* The least that may be said in this connection is that the ground relied upon in the motion to dismiss does not appear to be indubitable. The trial court should have held its resolution in abeyance until after trial on the merits instead of dismissing the complaint. If the facts alleged in the complaint were established with complete evidence it would seem that appellant would be entitled to relief against appellees not necessarily because the latter were guilty of malicious prosecution but because the facts of the case, in the opinion of the court, justify a judgment for attorney's fees and expenses for litigation.[72] The case was remanded to the lower court for further proceedings.

When rule on omnibus motion applicable to motions for reconsideration

The rule on omnibus motion as found in Section 8, Rule 26 [73] requires a motion attacking a pleading or proceeding to "include all objections then available, and all objections not so included shall be deemed waived." In *Luzon Brokerage Co. v. Luzon Labor Union* [74], the question raised was whether the rule on omnibus motion is applicable to motions for reconsideration. The Supreme Court made a distinction between motions for reconsideration that tend to delay

[71] G.R. No. L-17105, July 31, 1963.
[72] Art. 2208(11), NEW CIVIL CODE.
[73] Now Sec. 8, Rule 15, REVISED RULES OF COURT.
[74] G.R. No. L-17085, October 31, 1963.

the perfection of an appeal and those that are addressed to the merits of the case and applied the rule on omnibus motions only to the former. This is so because the court is authorized to amend its judgments and orders at anytime to make them conformable to law and justice. This power of the court cannot be deemed affected or modified by the fact that the questions raised in the second motion for reconsideration have not been previously raised in the first motion for reconsideration.

SERVICE AND FILING OF PLEADINGS

Service must be made to attorney of record

It is now a settled rule that service of orders or notices of hearings should be made to the attorney of record himself or to his employees at his office [75]. Under Sec. 2 of Rule 27 [76], once a party appears of record by attorney, service of pleadings, notices, or other similar papers is to be made upon the attorney and not upon the party [77]. Notice to the party himself, unless ordered by the court, is not notice in law.[78] In *Mata v. Rita Legarda Inc.* [79], considering that notice of the hearing was not served on the attorney as required by the Rules, the proceedings taken against him at the hearing, do not bind him or his client.

But this rule does not apply to the notice of pendency of appeal from inferior courts to the Courts of First Instance, since Section 7 of Rule 40 [80] provides that notice of the pendency of the appeal be given to the parties. As held in the case of *Valenzuela v. Balayo* [81], this provision, being express and specific, can not be interpreted to mean that the notice can be given to the lawyer alone. The reason for this provision lies in the fact that on an appeal from an inferior court, only the complaint in the justice of the peace court is deemed reproduced, and the proceeding immediately following the filing of the complaint is summoning of the defendant. Instead, however, of being summoned, he is only personally notified because he is already within the court's jurisdiction, the notice taking the place of the summons.[82]

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[75] Martinez v. Martinez, G.R. No. L-4075, January 23, 1952.

[76] Now Sec. 2, Rule 13 of the REVISED RULES OF COURT.

[77] Vivero v. Santos, 52 O.G. 1424.

[78] Perez v. Araneta, G.R. No. L-11788, May 16, 1956; Visayan Surety & Insurance Corp. v. Central Bank, G.R. No. L-12129, September 17, 1958.

[79] G.R. No. L-18941, January 31, 1963.

[80] Also Sec. 7, Rule 40 of the REVISED RULES OF COURT, but with a substantial amendment. *Infra*. note 82.

[81] G.R. No. L-18748, March 30, 1963.

[82] Citing the case of Ortiz v. Manila, G.R. No. L-5147, June 22, 1953. Note, however, that under Sec. 7, Rule 40 of the REVISED RULES OF COURT, *all the pleadings, not only the complaint* as in Sec. 7, Rule 40 of the old RULES, filed in the inferior court "shall be considered reproduced in the Court of First In-

Notice to one counsel is notice to all

When a party appears by an attorney or attorneys, service upon him may be made upon his attorneys or *upon one of them.*[83] In *Damasco v. Arrieta,*[84] petitioner Governor Lope Damasco was sued in a special civil action both in his official capacity and as private citizen. He was represented by the provincial fiscal, and by Senator Estanislao Fernandez and Congressman Felicisimo Ocampo. On December 2, 1960, trial court rendered decision against the petitioner. A copy of the decision was received by the provincial fiscal on December 12, while another copy was received by Congressman Ocampo on December 15, who, on January 3, 1961, filed a notice of appeal and appeal bond. The issue in this case was whether the appeal was perfected on time. *Held:* There being no proof on record that the fiscal was withdrawn as counsel for the governor, he was still a counsel for the latter, and notice upon him is equivalent to notice to all the counsel, whether or not said counsel belongs to the same law office or are practising independently of one another. Notice upon one counsel of record is, for all legal purposes, notice to the client, the date of receipt of which is considered the starting point from which the period of appeal shall begin to run.[85] Computed from December 12 when the fiscal received a copy of the judgment, the 15-day period for appeal from special civil actions has already lapsed when the notice of appeal on January 3 was filed.

Proof of service must be filed with motions

Under Section 6 of Rule 26,[86] no motion shall be acted upon by the court without proof of service of the notice thereof.[87] The motion for postponement by plaintiff in *Philippine National Bank v. Donasco,*[88] was denied for lack of proof that a copy of the motion was served upon the defendants. The complaint was dismissed for failure to prosecute upon failure of the plaintiff to appear at the hearing. As held by the Court: "Notice of motion is necessary and without proof of service thereof, a motion is nothing but a useless piece of paper which the clerk should not receive for filing".[89]

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stance." Although this does not necessarily mean that notice of the pendency of the appeal is dispensed with, since notice is expressly required by the new provision, still the reasoning of the Court in this case would no longer hold water under the REVISED RULES.

[83] Sec. 2, Rule 27, RULES OF COURT. Now Sec. 2, Rule 13 of the REVISED RULES OF COURT.

[84] G.R. No. L-18879, January 31, 1963.

[85] Citing Baquiran v. Court of Appeals, G.R. No. L-14551, July 31, 1961.

[86] Now Sec. 6, Rule 15 of the REVISED RULES OF COURT.

[87] Sec. 6, Rule 15 of the REVISED RULES adds: ". . . except when the court is satisfied that the rights of the alverse party or parties are not affected."

[88] G.R. No. L-18638, February 28, 1963.

[89] Citing Manakil v. Revilla, 42 Phil. 81; Roman Catholic Bishop of Lipa v. Municipality of Unisan, 44 Phil. 866; Director of Lands v. Sanz, 45 Phil. 117.

CONTINUANCE

Continuance a matter of judicial discretion

In the case of *Philippine National Bank v. Donasco,*[90] the counsel for plaintiff filed an urgent motion for postponement, and believing that the motion would be granted as he did not receive notice of the action of the court on the motion, he did not appear in the court at the time of the trial, for which the case was dismissed for failure to prosecute. Said the Court: "It is well settled that the approval of motions for postponement cannot be taken for granted, the same being addressed to the discretion of the court." The failure of the attorneys for the plaintiff to appeal is wholly inexcusable.

SUBPOENA

Subpoena duces tecum does not cover privileged matters

In *Tatalon Barrio Council v. Chief Accountant, Bank of PI* [91], a subpoena duces tecum was served on the cashier or treasurer of the Bank of PI in a criminal action for violation of the Anti-Graft Law [92]. Said bank official refused to bring the document asked for, invoking as a ground for refusal the provisions of Republic Act No. 1405 which prohibits any official or employee of a banking institution to disclose to any person, other than those specifically mentioned in said act, any information concerning deposits. A civil case for writ of mandamus was filed against the bank official. Petitioners cite Rule 21 on discovery of documents [93] and Rule 29 on subpoenas [94] in support of their contention. *Held:* Petitioner's position is untenable. Under the very rules invoked by them, the court in which an action is pending may order any party to appear before it or any investigation conducted under the laws and produce and permit the inspection and copying of any designated documents, papers, books, accounts, etc., *not privileged,* which constitute or contain evidence material to any matter involved in the action which are in his possession, custody or control. The documents called for by the petitioners are definitely privileged documents falling within the protection of Republic Act No. 1405.

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[90] *Supra* note 88.
[91] G.R. No. L-18360, January 31, 1963.
[92] Rep. Act No. 3019.
[93] Now Rule 27, REVISED RULES OF COURT.
[94] Now Rule 23, REVISED RULES OF COURT.

JUDGMENTS

Judgment on the pleadings

Section 10 of Rule 36 [95] provides:

> Where an answer fails to tender an issue or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on the pleadings except in actions for annulment of marriage or divorce wherein the material facts alleged in the complaint shall always be proved.

An answer fails to tender an issue when it does not sufficiently controvert the material facts of the adverse party's facts, or where it does not specifically deny them in the manner required by the rules.[96] In *Arroyo v. Caldoza*,[97] the issue involved was whether defendants' answer tendered an issue or not. In this case, appellee Arroyo filed an action in the Court of First Instance of Leyte to recover from appellants a parcel of land. In their answer, appellants stated that they did not occupy any land belonging to the plaintiff but took possession and ownership only of the lands belonging to them which were originally owned and possessed by their predecessors in interest. Appellee moved for a judgment on the pleadings to declare plaintiff the owner and possessor of the land in question. The lower court rendered judgment for the plaintiff. In setting aside the decision of the lower court, the Supreme Court held that said judgment was improperly rendered since appellants' answer sufficiently tendered an issue of ownership and possession over the land described in the complaint. From the allegations thereof, appellants denied appellee's claim of ownership and previous possession and clearly asserted their own claim.

Judgment by default

Section 5, Rule 24 [98] expressly authorizes the court to render a default judgment against a party who falls to serve answers to written interrogatories upon motion of the serving party. This rule was applied in the case of *Cason v. San Pedro* [99]. In declaring defendants in default for failure to answer the written interrogatories, the Court, quoting the lower court said:

> The rules on interrogations are intended to expedite trial, and to relieve parties of the cost of proving facts which can be ascertained with reasonable certainty.

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[95] Now Section 1, Rule 19 of the REVISED RULES OF COURT.
[96] Alemany v. Sweeney, 3 Phil. 114.
[97] G.R. No. L-17454, July 31, 1963.
[98] Now Sec. 5, Rule 28 of the REVISED RULES OF COURT.
[99] G.R. No. L-18928, December 28, 1963.

No default if answer is filed

There is and cannot be default once the defendants has filed his answer to the complaint. In *Rosario v. Alonzo*,[100] defendants filed their answer but failed to appear at the trial, so that plaintiffs were allowed to present evidence *ex parte*. Defendants moved to set aside the judgment which was denied. On appeal, the defendants assigned as error the refusal of the lower court to give due consideration to lift the order of default and set aside the judgment rendered in pursuance thereof. The Court held: Having answered the complaint, defendants were not and could not be in default. The lower court in this case, as a matter of fact, did not pronounce them in default but merely proceeded to receive evidence *ex parte*. Besides, the motion to set aside the judgment although sworn to by the attorney for the defendants were not "accompanied by affidavits showing the fraud, accident, mistake or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be, which he may prove if his petition is granted," as provided for and required in Section 3 of Rule 38, Rules of Court.[101]

Trial court has authority to set aside order of default

Has the trial court still power and authority to act on its order of default, although the motion to set aside the same was presented outside the period provided in the Rules?[102] The Court resolved this question in the affirmative in the case of *Republic v. Perez*.[103] In this case, there was no summons validly served upon the defendant, so that permitting it to refute or answer the allegations in the complaint after having been declared in default, would be giving the defendant a day in court. This did not constitute an abuse of discretion on the part of the respondent court. But even granting that the conclusions reached by it were erroneous, still it did not constitute such abuse of discretion that is the subject of certiorari or mandamus.

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[100] G.R. No. L-17330, June 29, 1963.

[101] Also Sec. 3, Rule 38 of the REVISED RULES OF COURT.

[102] In the inferior courts, a defaulted defendant may apply for the setting aside of the entry of default within one day after notice. See Sec. 13, Rule 5 of the REVISED RULES. In the Court of First Instance, he may file a motion to set aside the order of default unler Rule 38 within 60 days after he learns of the order of default and not more than 6 months after such order was entered. See Secs. 2 and 3, Rule 38 of the REVISED RULES OF COURT. He may also file a motion at any time after discovery but before judgment to set aside the order of default—a new relief granted by Sec. 3, Rule 18 of the REVISED RULES OF COURT.

[103] G.R. No. L-16112, June 29, 1963.

Order of default may be lifted before judgment

In *Comeda v. Cajilog* [104] petitioner Comeda, defendant in an action for recovery of a sum of money before the justice of the peace court, appeared on the date set by summons and asked for time to file his answer; on the date set for trial he appeared 1 hour and 15 minutes after his declaration of default. The justice of the peace refused to grant him new trial, whereupon he filed a petition for certiorari with the Court of First Instance which dismissed the petition on the ground that the relief prayed for cannot be granted by certiorari but by appeal. On appeal to the Supreme Court, defendant's contention was upheld. The Court ruled that the inferior court abused its discretion not only because he actually appeared on the date originally set for hearing but also because on the second hearing he was late for barely one hour. Fairness and justice demand that such hearing be given Comeda considering that when the request was made the court had not yet rendered its decision on the merits, in accordance with Section 14, Rule 4 of the Rules of Court.[105] Certiorari was justified.

Judgment on stipulation of facts binding

A judgment on stipulation of facts is binding on the parties.[106] Where defendants agreed to a stipulation of facts in view of their readiness to acknowledge their indebtedness as well as the willingness of the plaintiff to terminate the case once and for all, they can no longer impugn the judgment rendered in accordance with the stipulation on the ground that the judgment did not pass upon their counterclaim which was not included in the stipulation. Not having made reservation to prove their counterclaim, they cannot now ask for a reopening of the case in order to prove it. This was the ruling in *Lacson v. Lozada.*[107]

Judgment on demurrer to evidence

In the case of *Director of Lands v. Ceniza,*[108] respondent Dumalagan filed a registration case covering a parcel of land in Misamis Occidental. This was opposed by the Director of Lands, claiming that the land applied for is a portion of the public domain. After applicant has presented his evidence, the Director moved for a dismissal of the application on the ground of insufficiency of evidence, which was denied by the respondent judge, and the case was

[104] G.R. No. L-18258, April 27, 1963.
[105] Now Sec. 13. Rule 5 of the REVISED RULES OF COURT.
[106] Tan Sin Pic v. Tan Suico, 5 Phil. 516; Siping v. Cacob, 10 Phil. 717; Perlas v. Ehrman, 53 Phil. 607, cited in II MORAN, RULES OF COURT 170 (1963 ed.).
[107] G.R. No. L-18174, April 30, 1963.
[108] G.R. No. L-18527, June 29, 1963.

considered submitted for decision on the merits. When the Director asked to be allowed to present evidence, respondent judge denied the same on the ground that the Director did not ask reservation to present evidence in his motion for dismissal. On petition for certiorari, the Court set aside the order of the respondent court. Enunciating the doctrine applied in a number of cases,[109] the Court said:

> After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf.[110]

Dismissal with prejudice is a judgment on the merits

Under Section 3 of Rule 30,[111] failure to prosecute an action for an unreasonable length of time is a ground for dismissal of the action, and this dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court. This provision was applied in the case of *Guanzon v. Mapa*,[112] wherein because of repeated postponements on motion of the plaintiffs, the court dismissed the action for lack of interest. Subsequently, plaintiffs filed another complaint which was substantially the same as the former action. Defendant interposed a motion to dismiss, contending that the cause of action is already barred by a prior judgment The court *a quo* dismissed the case. On appeal, the plaintiffs invoked liberal interpretation of the rules in favor of the preservation of their rights. But the Court dismissed plaintiffs' argument, stating that since the order of dismissal was without any condition at all, it is understood to be with prejudice, and under Section 3 of Rule 30, shall have the effect of a judgment on the merits.

NEW TRIAL

Where absence of counsel is satisfactorily explained, motion for new trial should be granted

Section 1 of Rule 37 reads:

> Within thirty days after notice of the judgment in an action, the aggrieved party may move the trial court to set aside the judgment and grant

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[109] Arroyo v. Azur, 76 Phil. 495; Guido v. Castelo, 81 Phil. 81; Ocum v. Nuñez, G.R. No. L-8018, October 26, 1955; Montelibano v. Bacolod Murcia, G.R. No. L-15092, September 30, 1962.

[110] This doctrine is now embodied *verbatim* in Sec. 1, Rule 35 of the REVISED RULES OF COURT.

[111] Now Sec. 3, Rule 17 of the REVISED RULES OF COURT.

[112] G.R. No. L-19249, February 28, 1963.

[113] Also Section 1, Rule 37 of the REVISED RULES OF COURT.

a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights . . .

Courts are given the discretion to grant or deny motions for new trial and as a general rule, appellate courts would not inquire into the reasons for the exercise of such discretion. However, where it was shown that the absence of counsel at the hearing was explained and immediately upon receipt of the decision a motion for new trial, accompanied by an affidavit of merit, and a medical certificate were presented, said motion for new trial could well be considered as a motion to act aside judgment or one for relief, since it contained allegations purporting to show the presence of good defenses. The ends of justice could have been served more appropriately had the lower court given appellant the chance to present his evidence.[114]

RELIEF FROM JUDGMENT

Relief from judgment allowed only in exceptional cases

It is now a well-settled rule that the relief from judgment provided for by Rules 38[115] is of equitable character and is allowed only in exceptional cases, where there is no available or other adequate remedy.[116] This was applied in the case of *Espinosa v. Yatco*,[117] wnich is an action to recover possession of a parcel of land. On the date set for hearing, counsel for defendant verbally moved for continuance which was denied since the defendant had ample time for trial or to make a timely motion for postponement. After plaintiff's evidence was heard, decision was rendered in favor of the plaintiffs. Two months after the decision, defendant filed a petition to set aside the judgment which was denied by the lower court. *Held:* Petition is devoid of merit. Defendant had another remedy available to him which was either a motion for new trial or appeal from the adverse decision, especially since it was not pretended that defendant was prevented by fraud, accident, mistake, or excusable negligence from doing so. The rule is that a relief will not be granted to a party who seeks to be relieved from the effects of a judgment when the loss of the remedy at law was due

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[114] Talavera v. Mangoba, G.R. No. L-18373, August 31, 1963.

[115] Also Rule 38 of the REVISED RULES OF COURT.

[116] Santos v. Manila Electric Co., G.R. No. L-7735, December 29, 1955; Palomares v. Jimenez, G.R. No. L-4513, January 31, 1953.

[117] G.R. No. L-16435, January 31, 1963.

to his own negligence [118] or a mistaken mode of procedure.[119] To sustain defendant's petition for relief would be tantamount to reviving the right of appeal which has already been lost.

Petition for relief must be filed within 60 days

A petition for relief from any judgment of an inferior court or Court of First Instance must be filed within 60 days after the petitioner learns of the judgment, order or other proceeding to be set aside.[120] The relief provided for is an equitable remedy intended to afford the aggrieved party another and last chance. Considering the purpose behind it, the periods fixed are non-extensible and never interrupted nor could it be subjected to a contigency because it is of itself devised to meet a condition or contingency.[121] The Supreme Court had occasion to apply this ruling in the recent case of *Tuazon & Co. v. Aguila* [122] where it denied a petition for relief filed beyond the 60 days from the date counsel received a copy of the decision.

EXECUTION OF JUDGMENTS

Final judgment should be executed in accordance with its express orders

After a final order or judgment has become final, the rule is absolute that no further amendments or corrections can be made except for clerical errors or mistakes. Where a final judgment of an executory character has been rendered in a suit, the mission of the court is limited to the execution and enforcement of the same in all of its parts and in accordance with its express orders. Thus, where a judgment is rendered allowing respondent owner of a parcel of land acquired under the Homestead Law, which was subsequently sold to petitioner, to redeem the same with damages and a writ of execution was issued accordingly, said writ can no longer be amended so as to include therein the income of the property enjoyed by petitioner. The judgment in question is clear and to allow the amendment of the writ of execution would only augment greatly petitioner's liability without the benefit of proper proceedings.[123]

The case of *De Venecia v. Del Rosario*,[124] involved a similar question. Here, defendants admitted having been indebted to plain-

[118] Citing Robles v. San Jose, 52 O.G. 6193; Smith Bell & Co. v. Philippine Milling Co., G.R. No. L-12827, February 29, 1960.

[119] 49 C.J.S. 697; Santos v. Manila Electric Co., *supra* note 116.

[120] Sec. 3, Rule 38. Also Sec. 3, Rule 38 of the REVISED RULES OF COURT.

[121] Palomares v. Jimenez, G.R. No. L-4513, January 31, 1952; Rafanan v. Raganan, 52 O.G. 229; Koppel v. Magallanes, G.R. No. L-12644, April 29, 1960.

[122] G.R. No. L-16757, November 29, 1963.

[123] Samson v. Montejo, et al., G.R. No. L-18605, October 31, 1963.

[124] G.R. No. L-18405, September 30, 1963.

tiffs and confessed judgment thereto. At the instance of plaintiffs, a writ of execution was issued. Upon the expiration of the writ without being served, an alias writ was issued commanding the sheriff to satisfy the judgment out of the three parcels of land given as security and if said real properties were not sufficient, to levy on the other properties of the defendants. Defendants moved to quash the writ on the ground that it varied the decision of the court. *Held:* There is no merit in defendant's contention that before the sheriff may be authorized to levy on other properties, there must first be a showing that the three lots are insufficient. While it is true that the judgment refers to the three parcels of land given as security for its satisfaction, yet the said judgment did not state or limit that if said properties are found insufficient, the other properties of the defendants may not be held liable. Writ of execution substantially conforms to the judgment.

Execution of judgment not proper in administration of estate

The Commissioner of Internal Revenue in the case of *Domingo v. Carlitos*,[125] sought to execute a judgment in favor of the Government against the estate of Walter Scott Price for internal revenue taxes, which was denied by the lower court. On petition for certiorari, the Supreme Court dismissed the contention of the Commissioner. A writ of execution is not the proper procedure allowed by the Rules of Court for the payment of debts and expenses of administration. The ordinary procedure by which to settle claims of indebtedness against the estate of a deceased person, as an inheritance tax, is for the claimant to present a claim before the probate court so that said court may order the administrator to pay the amount thereof. Citing the case of Aldamiz v. Judge of the CFI of Mindoro,[126] the Court said:

> Execution may issue only where the devisees, legatees or heirs have entered into possession of their respective portions in the estate prior to settlement and payment of the debts and expenses of administration and it is later ascertained that there are such debts and expenses to be paid, in which case the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of their several liabilities, and order how much and in what manner each person shall contribute, and may issue execution if circumstances require (Rule 89, section 6; *see also* Rule 74, section 4).
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> The legal basis for such a procedure is the fact that in the estate or intestate proceedings to settle the estate of a deceased person, the properties belonging to the estate are under the jurisdiction of the court and such jurisdiction continues until said properties have been distributed

[125] G.R. No. L-18994, June 29, 1963.
[126] G.R. No. L-2360, December 29, 1949.

among the heirs entitled thereto. During the pendency of the proceedings, all the estate is in *custodia legis* and the proper procedure is not to allow the sheriff, in case of a court judgment, to seize the properties but to ask the court for an order to require the administrator to pay the amount due from the estate and required to be paid.

Execution by motion must be within five years

Under Section 6, Rule 39,[127] a judgment may be executed on motion within five years from the date it becomes final and executory, after which it can only be enforced by action. The computation of this period was applied in the case of *Lancita v. Magbanua*,[128] which is an action for forcible entry. Judgment by default was rendered on July 17, 1951, against defendants who were ordered to vacate the premises and deliver possession to the plaintiffs. On August 21, 1951, the plaintiffs presented a motion for reconsideration which was granted by the justice of the peace court; the court also ordered stay of the decision. On November 27, 1951, the court ordered the stay of the decision. On November 26, 1956, defendants presented with the same court a motion for alias writ if execution on the ground that the provincial sheriff repeatedly failed to eject the defendants from the premises; the writ was issued by the court. On petition by certiorari, defendants claim that the period of five years had already expired since the judgment arose from a forcible entry case and execution thereof issued immediately upon rendition of judgment on July 17, 1951, in accordance with Section 8 of Rule 72.[129] *Held:* The filing of the motion fir an alias writ of execution was well within the prescriptive period, because the judgment became final only on November 27, 1951. While the judgment could have been executed immediately after July 17, 1951, the effects of the same were delayed due to the motion for reconsideration presented by the defendants. Citing 23 Corpus Juris 378, the Court said:

> In computing the time limited for suing out of an execution, although there is authority to the contrary, the general rule is that there should not be included the time when execution is stayed, time, by injunction, by the taking of an appeal or writ of error so as to operate as a supersedeas, by the death of a party or otherwise. Any interruption or delay occasioned by the debtor will extend the time within which the writ may be issued without scire fascias.

Sec. 5, Rule 39 construed

Under Sec. 5 of Rule 39 [130], where a judgment which has been executed pending appeal is reversed totally or partially on appeal,

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127 Also Sec. 6, Rule 39 of the REVISED RULES OF COURT.
128 G.R. No. L-15467, January 31, 1963.
129 Now Sec. 8, Rule 70 of the REVISED RULES OF COURT.
130 Also Sec. 5, Rule 39 of the REVISED RULES OF COURT.

the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances. This provision was construed in the case of *De la Rama v. Villarosa*.[131] Plaintiff in this case obtained a judgment in the lower court for ₱71,533.99, upon which immediate execution was ordered pending appeal to the Court of Appeals. Accordingly, the sheriff garnished the deposit of the defendant with the Philippine Trust Company to the said amount and required the latter not to deliver, transfer or otherwise dispose of the said amount belonging to the defendant to any person except the sheriff. Upon motion of the defendant, the Court of Appeals enjoined the Philippine Trust Company from delivering to the sheriff any portion of the amount garnished pending the disposition of the case on appeal. The appellate court subsequently rendered judgment modifying the award of the lower court to ₱33,002.72, and this sum was satisfied from the amount of deposit garnished. Six months after the judgment of the appellate court, defendant, invoking the provisions of Section 5 of Rule 39, filed with the lower court a motion for restitution of the difference between the amount of ₱71,533.99 which was garnished and the sum of ₱33,002.72 which was the award adjudicated to the plaintiff, plus legal interest. This was denied by the lower court; hence this appeal. *Held:* Petition for interest on the balance of the amount garnished cannot be awarded for the following reasons: (1) The amount garnished was not actually taken possession of by the sheriff, even from the time of the garnishment, because of the preliminary injunction of the Court of Appeals prohibiting execution of judgment; (2) Mere garnishment of funds belonging to a party upon order of the court does not have the effect of delivering the money garnished to the sheriff or to the party in whose favor the attachment is issued since the fund is retained by the garnishee or the persons holding the money for the defendant; (3) The motion by the defendant for the payment of damages or interest was presented when the judgment had already become final. Damages incident to the issuance of an attachment may only be claimed before final judgment; and (4) There is no allegation that the garnishment of the funds caused actual damages to the defendant, for example, that the funds could not be utilized to pay a pending obligation as a result of which interest was paid on such obligation.

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[131] G.R. No. L-17927, June 29, 1963.

EFFECT OF JUDGMENTS

Res Judicata

Section 44, par. (h) of Rule 39 [132] provides:

> The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order may be as follows . . . the judgment or order 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.

The essential requisites for a plea of *res judicata* are thus: (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 the second actions: (a) identity of parties, (b) identity of subject matter and (c) identity of cause of action.

In *Lopez v. Magallanes* [133] these resuirements being present, plaintiff's right to contest defendant's interest in the land was considered barred.

In the case of *Tolentino v. Ongsiako* [134] appellant did not dispute the prior judgment rendered, but claims that the dissenting opinion of one Justice was the correct view, for which reason he prays for the enforcement of the dissenting opinion. The Court, holding that the issue was already *res judicata,* said: "The ridiculous prayer to enforce a dissenting opinion requires no discussion, it being sufficient to state that there is nothing to enforce in a dissenting opinion, since it affirms or overrules no claims, right or obligation, and neither disposes of, nor awards anything; it merely expresses the views of the dissenter."

In the case of *Mina v. Pacson,*[135] plaintiffs, alleging to be illegitimate children of the deceased Joaquin Mina, filed an action in the CFI praying that they be declared recognized illegitimate children and that certain deeds of sale executed by said deceased be declared null and void for being fictitious and fraudulent. Defendants filed a motion to dismiss on the ground of *res judicata* alleging that a similar action had previously been presented by the same parties against the spouses Medina in which the same allegations of plaintiffs' status and fraudulent conveyance were alleged. However, in said case, no prayer was made for the declaration of the filiation of

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[132] Now Sec. 49, Rule 39 of the REVISED RULES OF COURT.
[133] G.R. No. L-14853, April 23, 1963.
[134] G.R. No. L-17938, April 30, 1963.
[135] G.R. No. L-17828, August 31, 1963.

the plaintiffs with the deceased. This case was dismissed for failure of the plaintiffs to amend their complaint so as to include as party defendants the widow and other necessary parties. The issue before the court was whether the previous order of dismissal barred the present action. The Supreme Court held that no complete identity existed between the parties in the two cases because in the previous case defendant Pacson was not included as party-defendant. As to the latter therefore, the previous order of dismissal does not bar the present complaint, not only because she was not made a party defendant but also because the issue of filiation was not raised in the previous case.

Doctrine of res judicata applicable to administrative cases

In the case of *Ipekdjian Merchandising Co. v. Court of Tax Appeals*,[136] the Supreme Court ruled that the doctrine of *res judicata* is applicable to decisions of administrative bodies. To apply the doctrine exclusively to decisions rendered by courts would have the effect of unreasonably circumscribing the scope thereof. The more equitable attitude, according to the court is to allow extension of the defense to decisions of bodies upon whom judicial powers have been conferred. Thus the Court held that the decisions of the Board of Tax Appeals which, pursuant to Section 11 of Rep. Act No. 1125 have the character of decisions of regular courts are covered by the doctrine of *res judicata*.

Merely changing form of action will not remove case from application of rule

Where all the requisites of *res judicata* are present, a party cannot, by merely changing the form of his action plead the non-application of the rule of bar by prior judgment. In the abovementioned case of *Ipekdjian v. Court of Tax Appeals*,[137] a case was filed with the Board of Tax Appeals wherein appellant sought therein the review of the decision of the Commissioner of Internal Revenue holding it liable for compensating tax. The Board affirmed the Commissioner's decision and dismissed the case without prejudice. Subsequently, petitioner made a partial payment on its tax liability but afterwards filed a claim for refund of the same requesting at the same time for a cancellation of the assessment. This was denied on the ground that the decision of the Board of Tax Appeals was already final and executory. Petitioner then filed a petition for review in the Court of Tax Appeals. The Court held that the alleged cause of action in both cases the same: appellant's claim to non-liability for compensating taxes. All the requisites for the defense of *res*

[136] G.R. No. L-15430, September 30, 1963.
[137] *Supra* note 132.

judicata being present, respondent court properly dismissed the petition in the Tax Court.

Dismissal for lack of jurisdiction does not constitute res judicata

A dismissal on the ground of lack of jurisdiction does not constitute *res judicata* which would bar a subsequent action in the proper court.[138] This ruling was applied in the case of *Gracella v. Colegio del Hospicio de San Jose* [139].

Judgment conclusive between parties and successors by title subsequent

A judgment in respect to the matter directly adjudged is conclusive between the parties and their successors in interest by *title subsequent to the commencement of the action* or special proceeding, litigating for the same thing and under the same title and in the same capacity.[140] Therefore, a successor in interest who acquired his title before the commencement of the action cannot be bound by a judgment against the predecessor in interest. This provision was applied in the case of *Hanopol v. Pilapil,*[141] which involved a double sale of the same parcel of unregistered land. Appellant claims ownership by virtue of a series of purchases effected in 1938 by means of private instruments and a decision rendered in his favor in 1948; while appellee claims title by a deed of sale executed in a public instrument by the same owners in 1945, which deed of sale was registered under the provisions of Act No. 3344. Appellant contends that inasmuch as appellee is the successor in interest of the vendors, he is bound by the judgment rendered against the latter. *Held:* This contention is without merit. Appellee cannot be bound by the judgment against the vendors in 1948 because he acquired his right to the land long before the filing of the complaint against the vendirs.

APPEALS

Interlocutory order not appealable

Pursuant to Section 2, Rule 41 [142], no interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.

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[138] Montinola v. Barrido, G.R. No. L-14438, March 24, 1962; Bañas v. Phil. Veterans Board, G.R. No. L-13398, October 20, 1959; Bayot v. Zubirte, 39 Phil. 650.

[139] G.R. No. L-15152, January 31, 1963.

[140] Sec. 44(b), Rule 39. Now Sec. 49(b), Rule 40 of the REVISED RULES OF COURT, with the modification that the judgment is also conclusive in respect "to any other matter that could have been raised in relation thereto."

[141] G.R. No. L-19248, February 28, 1963.

[142] Also Section 2, Rule 41 of the REVISED RULES OF COURT.

An order or judgment is merely interlocutory when it does not dispose of the case completely but leaves something to be done upon the merits.

In *Ocampo v. Republic* [143], plaintiff filed an application for the registration of two parcels of land in which he staated that the Bureau of Public Schools was claiming said land. For failure to file an answer and in the absence of any reasonable excuse, the court issued an order declaring the Bureu of Public Schools as having waived its right to the property and *motu propio* set the case for hearing. Before the hearing the Solicitor General filed the requisite opposition and the court set aside its previous order. *Held:* The order in question is merely interlocutory since it was issued as an incident of the main case and the same point can still be raised after the case has been decided on the merits.

In *Bautista v. De la Cruz*[144], the Supreme Court reiterated its ruling that an order denying a motion to dismiss is merely interlocutory and cannot be the subject of appeal or a petition for certiorari. The procedure would be to continue with the trial on the merits and if the decision is adverse, to reiterate the issue on appeal.

Approval of appeal bond by JP not valid where presiding judge not absent from his district

The Court ruled in *Alkuino v. Arrieta* [145] that the approval of the requisite appeal bond by the Justice of the Peace cannot be considered valid where it appeared that the judge presiding over the court *a quo* was not absent from his district when the alleged approval was made.

Trial court cannot dismiss appeal for being manifestly dilatory

In *Dasalla v. Caluag*,[146] the issue raised was whether the trial court had jurisdiction to dismiss an appeal mainly on the ground of defendants' objection that it was manifestly dilatory and that the substantial rights of the defendants would greatly be prejudiced. In granting plaintiffs' petition for mandamus, the Court held that once the appeal has been perfected the trial court loses jurisdiction over the case with certain exceptions. In the instant case, plaintiffs did precisely what the rule required. The lower court cannot prevent a party from appealing no matter how frivolous the grounds

[143] G.R. No. L-19433, October 31, 1963.
[144] G.R. No. L-21107, December 24, 1963.
[145] G.R. No. L-21538-40, October 31, 1963.
[146] G.R. No. L-18765, July 31, 1963.

may be because such prerogative is given to the latter. The Court further ruled that this situation is taken care of by Section 3, Rule 131 [147] which provides that where an appeal is found to be frivolous, double or treble costs may be imposed on the appellant.

Mere filing of notice of appeal and cash bond does not deprive the trial court of jurisdiction over the case

Section 9, Rule 41 [148] provides:

> Upon the filing of the notice of appeal and the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses its jurisdiction over the case . . .

In *Alkuino v. Arrieta,*[149] the Supreme Court had opportunity to interpret this rule. In this case three petitions for *quo warranto* were separately filed in the CFI of Bukidnon wherein petitioners disputed the right of respondents to hold certain positions. After joint trial, the trial court upheld the right of petitioners to the positions in a decision rendered on June 7, 1963. On June 10, copies of the decision were served on the parties. On the same date, petitioners filed an urgent motion for execution of the decision and hearing was set for June 13. However, on June 11, respondents filed their notice of appeal and their cash bonds and opposed the motion for execution because of their appeal. The trial court ordered the immediate execution of the decision. Respondents thereupon filed a petition for certiorari. The issue thus raised was whether the court a *quo* had jurisdiction over the case when it granted the motion for execution. The Supreme Court found devoid of merit petitioner's contention that upon the filing of the notice of appeal and the bond, the appeal was perfected. The Court explained that to sanction such a contention would practically nullify the discretionary power granted the court to order, upon good reason, the execution of its judgment before the expiration of the time to appeal.

As against party who did not appeal, the decision of the inferior court is final and executory

Section 9, Rule 40 [150] provides:

> A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly docketed in the Court of First Instance shall stand for trial *de novo* upon its merits in accordance with the regular procedure in that court as though the same had never been tried before and had been originally there commenced . . .

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[147] Now Section 3, Rule 142 of the REVISED RULES OF COURT.
[148] Also Section 9, Rule 41 of the REVISED RULES OF COURT.
[149] *Supra* note 145.
[150] Also Section 9, Rule 40 of the REVISED RULES OF COURT.

Where, however, not all defendants appealed to the Court of First Instance, would the appeal taken by the other defendants inure to the benefit of those who did not? In *Singh v. Liberty Insurance Corp.*[151] the Court settled all doubts on this point. In this case only the third party defendants appealed the decision of the inferior court to the Court of First Instance. Defendant, notwithstanding his failure to appeal, filed, within the reglamentary period, an answer to the complaint. Plaintiff thereupon moved to strike out said answer on the ground that the defendant, not having perfected his appeal, the decision of the municipal court had become final and executory with respect to him. The Supreme Court, on appeal, affirmed the trial court's order sustaining plaintiff's motion. The Court held that while it was true that an appeal from the decision of an inferior court operates to vacate said decision and thereafter the case to stand trial *de novo* in the Court of First Instance, it seems obvious that this applies only to the party who had taken the appeal. As against other parties adversely affected who did not appeal, the decision must be deemed to have become final and executory.

Substantial compliance of record on appeal deemed sufficient

In *Grearte v. London Insurance,*[152] *Grearte v. Tabacalera Insurance Co.,* [153] and *Grearte v. Northern Assurance Co.,*[154] which were consolidated and jointly heard, the issue involved was whether the appeal by the defendant insurance companies were seasonably perfected. It appears that the defendant insurance companies filed notice of appeal, appeal bond and record on appeal on time, but the court ordered the deletion of a paragraph and inclusion of an order of the court in the record on appeal, granting defendants 10 days within which to comply. Within said period, defendants submitted a pleading entitled "Compliance" which stated that they annexed thereto two pages to be included in the record on appeal originally submitted. The record on appeal was approved by the lower court, over the objection of the plaintiff that the appeal was not seasonably perfected since the amendment thereof was not made in the manner provided by the Rules of Court. According to plaintiff, the defendants, instead of filing an entirely new, although amended record on appeal, introduced two pages by way of annexes to their pleading entitled "compliance"; therefore, not having filed said record on appeal, the decision became final and executory. *Held:* There was substantial compliance with the order of the court. The flaws

[151] G.R. No. L-16860, July 31, 1963.
[152] G.R. No. L-18742, January 31, 1963.
[153] G.R. No. L-18743, January 31, 1963.
[154] G.R. No. L-18744, January 31, 1963.

of said "compliance" referred purely to matters of form and were due to defendants' erroneous, but honest, belief on the proper interpretation of the pertinent provision of the Rules of Court. The provisions of the Rules of Court should be liberally construed to the end that the object thereof be promoted.

Amendment of record on appeal relates back to date if original

In the case of *Oyzon v. Vinzon*,[155] the Supreme Court held that the fact that the amended record on appeal was submitted after the reglamentary 30-day period did not render the perfection thereof untimely, because the amended record on appeal was deemed to have been fixed on the date of presentation of the original. Quoting its ruling in the earlier case of Philippine Independent Church v. Mateo & Ilano,[156] the Court said:

> Amendments in pleadings do not necessarily expunge those previously filed. Amendments made, more so when ordered by the Court, relate back to the date of the original complaint if, as in the case at bar, the claim asserted in the amended pleadings arose out of the same conduct, transaction or occurence. Amendment presupposes the existence of something to be amended and, therefore, the tolling of the period should relate back to the filing of the pleading sought to be amended.

Order to amend record on appeal should be complied with within reasonable time

Section 7, Rule 41 [157] provides:

> If the trial judge orders the amendment of the record, the appellant, within the time limited in the order, or such extension thereof as may be granted, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redrafted record for approval, upon notice to the appellee in like manner as the original draft.

When the order of the court states the period within which the amendment should be made, compliance should be within such period. The difficulty arises when the order fails to fix the period within the record may be amended.[158] This point was squarely raised before the Supreme Court in *Oyzon v. Vinzon*.[159] The or-

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[155] G.R. No. L-19360, July 26, 1963.

[156] G.R. No. L-14793, April 22, 1961.

[157] Also Sec. 7, Rule 41 of the REVISED RULES OF COURT, with modifications. *Infra* note 158.

[158] Under Sec. 7, Rule 41 of the REVISED RULES OF COURT, this difficulty would be obviated since this section specifically provides that "if no time is fixed by the order," compliance should be made "within ten (10) days from receipt thereof."

[159] *Supra* note 155.

der of the lower court in this case merely stated that the "record on appeal as amended, will be approved *ipso facto* after compliance thereof". The Supreme Court held this to simply mean that the amendment must be made within a reasonable time and compliance within 14 days was held to be within a reasonable time.

Jurisdiction of trial court pending appeal

It is a truism that the cumbersome procedure of court litigation particularly in the appellate courts oftentimes renders moot the issues raised therein. This is illustrated in the case of *Estrada v. Santiago*.[160] In a civil case filed before the CFI of Pangasinan, the plaintiff Pindangan Agricultural Corporation was declared by the trial court to be entitled to the possession as lessee of a big tract of land. The defendants appealed from that judgment; meanwhile, the corpiration requested for the immediate execution of the decision, which was granted. While the case was on appeal, the corporation instituted the present contempt proceedings against the petitioners Estrada *et al.* for unlawfully entering and invading some portions of the premises in question in violation of the order of the trial court. The lower court issued an order requiring the petitioners to explain why they should not be punished for contempt. Petitioners in this case contested the order on the ground that the lower court had lost jurisdiction over the case because of the appeal therefrom, and for the other reason that they were not parties in the original case. The issues therefore are: (1) Does the lower court retain jurisdiction to pass on a motion for contempt after an appeal has been perfected from its decision? (2) May the said court, assuming *arguendo* that it retains jurisdiction, punish as contumacious acts committed by persons who were not parties to the action? Petitioners rely on Section 9 of Rule 41 [161] to support their contention that upon the filing of the notice of appeal, the approval of the appeal bond and the record on appeal, the appeal is deemed perfected and the trial court loses jurisdiction over the case. They aver that although the trial court may "issue orders for the protection and preservation of the rights of the parties," it is necessary that the orders issued do not involve any matter litigated by the appeal, and that the remedy is to file a motion for contempt before the appellate court before which the appeal is actually pending. These questions were not resolved by the Supreme Court, unfortunately, because while the case was pending appeal, the Supreme Court in the original case decreed that the Pindangan corporation had no legal right to the possession of the land, and therefore, the pro-

[160] G.R. No. L-15655, March 29, 1963.
[161] Also Sec. 9, Rule 41, REVISED RULES OF COURT.

ceedings for contempt may no longer continue because the petitioners could not be punished for disobeying orders found to be without legal foundation. Thus, what could have been a ruling that may clarify doubts on the issues raised was frustrated because lapse of time had rendered the issues academic.

Certiorari cannot be treated as appeal

The issue in the case of *Dacanay v. Pabalan* [162] is whether or not the respondent judge exceeded his jurisdiction in ordering that the petition for certiorari and mandamus be considered as an appeal against the decision rendered by the justice of the peace. The Supreme Court answered this in the affirmative. Section 2 of Rule 40 [163] requires for the perfection of an appeal, among other things, notice of appeal and appeal bond. Since no notice of appeal and appeal bond was filed with the petition for certiorari and mandamus, the appeal was not deemed perfected.

Appellate jurisdiction of CFI requires previous legitimate jurisdiction by the court of origin

In *Rivera v. Halili,*[164] the Supreme Court held that where the Justice of the Peace Court had no jurisdiction over the case, the Court of First Instance could not have acted thereon in the exercise of its appellate jurisdiction for the exercise of such jurisdiction demands a previous legitimate jurisdiction by the court of origin.

Direct appeal to the Supreme Court is a waiver of findings of fact

In *Cabrera v. Tiano* [165] and *Savellano v. Diaz,*[166] the Supreme Court reiterated its ruling held in a long line of cases [167] that where the appeal is taken directly to the Supreme Court, appellants are deemed to have waived the right to dispute any findings of fact made by the trial court, which are binding on the appellate court. The only question that they may be raised is that of law.

PROVISIONAL REMEDIES

Preliminary Injunction

In *Butuan Lumber Mfg. Co. v. Ortiz,*[168] a boundary dispute arose between one Aquino and the lumber company. Upon due in-

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[162] G.R. No. L-18263, April 23, 1963.
[163] Also Sec. 2, Rule 40 of the REVISED RULES OF COURT.
[164] G.R. No. L-15159, September 30, 1963.
[165] G.R. No. L-17299, July 31, 1963.
[166] G.R. No. L-17944, July 31, 1963.
[167] Monteiibano v. Bacolod Murcia Milling Co., Inc., G.R. No. L-15092, September 29, 1962; Millar v. Nadres, 74 Phil. 367; Postea v. Pabellion, 84 Phil. 298.
[168] G.R. No. L-15760, October 31, 1963.

vestigation by the Forestry Director, the disputed area was found to fall within the license issued in favor of Aquino and such license was amended accordingly. Upon resumption, however, of operations, petitioner entered the disputed area and stopped the logging operations. Aquino then filed a petition for preliminary injunction in the lower court to prohibit petitioner from molesting him. Instead of answering petitioner the lumber company filed a motion to dismiss alleging that the petition stated no cause of action because the decision of the Forestry Director was appealed to the Secretary of Agriculture and Natural Resources. *Held:* Petitioner was well within his rights in bringing his action to the lumber company from operating in the disputed area. The disputed area was awarded to Aquino and the appeal taken to the Secretary of Agriculture did not *per se,* operate to render the decision of the Forestry Director inoperative. Aquino, in the case below, was entitled in the insurance of the writ to preserve his right to the disputed area.

Injunction a possessory action

It has been held as a general rule that the writ of preliminary injunction is not proper where its purpose is to take property out of the possession and control of one person and place the same in the hands of another.[169] However, where petitioner's act may, at most, be considered as a mere interference with, or disturbance of respondents' possession, a preliminary injunction to restore respondents in possession, is proper.[170] This rule was applied in *Bueno v. Patanao.*[171] Here, petitioner and respondents were concessionaires of adjacent forest lands. Patanao filed an action against Bueno and one Merin for injunction and damages alleging that they disturbed him in his concession by illegally entering the same and cutting and hauling logs and when he tried to stop them, he was met with guns. In upholding the issuance of the writ of preliminary injunction by the lower court, the Supreme Court invoked its previous ruling in Pitargue v. Sevilla [172] where it held that the right of a *bona fide* occupant of public land may be protected by the possessory action of forcible entry or by any other suitable remedy that the rules provide. Injunction, whether temporary or perpetual, is a suitable remedy. The Court recognized that the petition for injunction filed in the lower court was practically a possessory action for it had no other purpose than to restore petitioner in the area which he claims to be in his actual physical possession.

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[169] Devesa v. Arbes, 13 Phil. 273; Liongson v. Martinez, 36 Phil. 948.
[170] De Garcia v. Santos, 79 Phil. 365.
[171] G.R. No. L-13882, December 27, 1963.
[172] 48 O.G. 3849.

Receivership

It has been held that the appointment of a receiver is not a matter of absolute right or an imperative requirement even when stipulated for by the parties. The power to appoint a receiver pending litigation is discretionary with the court. However, such discretion is neither absolute nor arbitrary and should be exercised only for the promotion of justice and where there exists no other adequate remedy.[173] Thus, in *Alcantara v. Abbas*,[174] where the defendant was appointed receiver without the plaintiff's consent and was exempted from filing a bond, the effect of such proceeding was to discharge the receivership at the request of the defendant without so much as a bond contrary to Section 4, Rule 41.[175] The Supreme Court held that such mistakes caused prejudice to petitioner and called for interference with that discretion which usually was vested in trial courts in the matter of receivership.

Attachment

One of the instances provided for by Section 1, Rule 59[176] which would justify the issuance of a writ of attachment is "an action against a party who has removed or disposed of his property, or is about to do so, with intent to defraud his creditors." In order to justify preliminary attachment, the removal or disposal must be with intent to defraud creditors. Thus, in *Carpio v. Macadaeg*,[177] the order of the lower court for the issuance of a writ of preliminary attachment on the simple allegation of plaintiff that petitioner was about to dispose of his property, thereby leaving no security for the satisfaction of any judgment, is null and void. Mere removal or disposal without any intention to defraud creditors would not justify the issuance of preliminary attachment.

SPECIAL CIVIL ACTIONS

Certiorari

Pursuant to Section 1, Rule 67,[178] a petition for certiorari may be filed by an aggrieved party "when any tribunal, board or officer exercising judicial functions, has acted without, or in excess of its or his jurisdicton, or with grave abuse of discretion and there is no

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[173] Samson v. Barrios, 63 Phil. 198; Calderon v. Aquino, G.R. No. L-4118, January 31, 1952; Teal Motor Co. v. CFI, 51 Phil. 549.
[174] G.R. No. L-14890, September 30, 1963.
[175] Now Sec. 5, Rule 59 of the REVISED RULES OF COURT.
[176] Now Sec. 1, Rule 57 of the REVISED RULES OF COURT.
[177] G.R. No. L-17797, November 29, 1963.
[178] Now Sec. 1, Rule 65 of the REVISED RULES OF COURT.

appeal, nor any plain, speedy and adequate remedy in the ordinary course of law."

By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.[179] In *Sotto v. Reyes*,[180] the Supreme Court held that where petitioner consented to a compromise agreement to the effect that the reconveyance of the property in her favor was to be subject to the mortgage, should the mortgage debt be unpaid after the judgment on the compromise agreement had become final, petitioner cannot complain if the respondent court should enforce the compromise agreement. The refusal of the respondent court to re-open the case for the purpose of determining whether the mortgagee is a real or fictitious person does not constitute a grave abuse of discretion amounting to excess of jurisdiction.

Mistakes of law cannot be corrected by certiorari

The issue raised in *Villa-Rey Transit Inc. v. Bello* [181] was whether certiorari would lie against the respondent court in declaring petitioner in default and in rendering default judgment for failure to file responsive pleading within the period granted to it. The high tribunal answered this in the negative. Since the trial court had jurisdiction over the case, the impugned order was issued in the exercise of such jurisdiction. If the court has jurisdiction of the subject matter of the person, orders or decisions upon all questions pertaining to the cause are orders or decisions within its jurisdiction and, however irregular or erroneous they may be, they cannot be corrected by certiorari.[182] Judicial errors or mistakes of law, are proper subjects if appeal.[183] The court also affirmed the rule that not every error in proceeding, or every erroneous conclusion of law or fact, is abuse of discretion.[184]

The same ruling was subsequently reiterated in *Republic v. Judge Perez*,[185] citing the Villa-Rey case.

Petition for certiorari should contain specific allegations of errors

In *Roldan v. Monsanto*,[186] a petition for certiorari was brought before the Supreme Court on the allegation that the Court of Ap-

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[179] Abad Santos v. Province of Tarlac, 67 Phil. 480.
[180] G.R. No. L-18439, August 21, 1963.
[181] G.R. No. L-18957, April 23, 1963.
[182] Citing Gala v. Cui and Rodriguez, 25 Phil. 522.
[183] Citing Sison v. CFI of Pangasinan, 34 Phil. 404; Galang v. Endencia, 73 Phil. 399.
[184] Government v. Judge of First Instance, 34 Phil. 157.
[185] G.R. No. L-16112, June 29, 1963.
[186] G.R. No. L-21578, November 8, 1963.

peals erred in considering 22 ballots for appellee which were rejected by the lower court notwithstanding the fact that protestee did not appeal. Petitioner questioned the ballots supposedly erroneously counted by the Court of Appeals in favor of appellee but failed to indicate his objection to each and every one thereof. The Supreme Court, in denying the petition, ruled that the general objection stated in the petition was not a sufficient ground for rejecting the ballots. Since the ballots were not expressly pointed out, the findings of the Court of Appeals with respect thereto could not be distributed. The proceeding for certiorari does not have the effect of authorizing the review of all the ballots contained in the contested precincts without specific allegations of the supposed errors committed by the Court of Appeals.

Dismissal of petition for certiorari for lack of supporting papers erroneous

The requisites in order that a petition for certiorari may be given due course under Secton 1, Rule 67 are: (1) a verified petition, (2) allegation if the facts with certainty, and (3) a prayer that judgment be rendered annulling or modifying the proceedings of the tribunal, board or officer as the law requires. Thus, in *Quibuyan v. Court of Appeals*,[187] the Supreme Court held that a petition for certiorari cannot be dismissed for lack of supporting papers among which was the order sought to be reviewed where all the requisites provided for by the rules have been met.[188]

Prohibition

According to Section 2, Rule 67,[189] a petition for prohibition is proper when the proceedings of any tribunal, corporation, board or person, whether exercising functions judicial or ministerial, are without or in excess of jurisdiction, or with grave abuse of discretion and there is no appeal, or any other plain, speedy and adequate remedy in the ordinary course of law.

In *Gonzales v. Hechanova*,[190] a petition for prohibition with preliminary injunction was filed to prevent respondent Executive Secretary from importing 67,000 tons of foreign rice. It was contended by petitioners that in so authorizing said importation, the Executive Secretary was acting without jurisdiction or in excess of juris-

[187] G.R. No. L-16854, December 26, 1963.

[188] This ruling no longer holds true in the light of the mandatory provisions of Section 1, Rule 65 of the REVISED RULES OF COURT requiring that a petition for certiorari "shall be accompanied by a certified true copy of the judgment or order subject thereof, together with copies of all pleadings and documents relevant and pertinent thereto."

[189] Now Section 2, Rule 65 of the REVISED RULES OF COURT.

[190] *Supra* note 36.

diction because Rep. Act No. 3452 which amended Rep. Act No. 2207, explicitly prohibited the importation of rice and corn by any government agency. The main issue raised was whether the Executive Secretary had power to authorize the importation in question. In granting the petition, the Supreme Court held that Rep. Act Nos. 2207 and 3452 were applicable to the proposed importation because the language of said laws was such as to include within the purview thereof all importations of rice and corn into Philippines. The theory that the term "government agency" does not include the Government itself was held to be devoid of merit since the Department of National Defence and the Armed Forces of the Philippines, as well as respondent officials were government agencies and/or agents. The further attempt to justify the proposed importation for reasons of national security and the alleged powers of the President as Commander-in-Chief of the Armed Forces was ruled out by Section 3 of Act No. 3452 which expressly authorized the Rice and Corn Administration to accumulate stocks as a national reserve and may be released only upon the occurrence of calamities or emergencies, that is, during wartime or when the President has placed the country under martial law, neither of which conditions obtained in the present case.

Quo warranto

Quo warranto is a proceeding to determine the right to the use or exercise of a franchise or office and to oust the holder from its enjoyment if his claim is not well founded, or if he has forfeited his right to enjoy the privilege.[191]

In quo warranto proceedings, the person suing must show that he has a clear right to the office or to the use or exercise of the office allegedly usurped or unlawfully held by respondent.[192] Thus, where, at the time of the appointment of petitioner to the position of Justice of the Peace, he was merely 2 years, 7 months and 4 days in the legal profession, it is obvious that he did not have the necessary qualifications. Under Rep. Act No. 2613, no person shall be eligible for appointment as Justice of the Peace unless he has been admitted by the Supreme Court to the practice of law, and has practiced law in the Philippines for a period of not less than 3 years or has held during a like period, an office requiring admission to the practice of law as an indispensable requisite. Petitioner, not having been able to show that he had these requirements, the petition for quo warranto was rightly denied.[193]

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[191] State v. Columbus, etc., Elec. Co., 140 Oh. St. 120, 135, N.E. 2971.
[192] Dante v. Dagpin, G.R. No. L-7784, April 13, 1957.
[193] Batario, Jr. v. Parentela, Jr., G.R. No. L-20485, November 29, 1963.

Eminent domain

The Supreme Court held in *Coloso v. De Jesus*,[194] that in expropriation proceedings, the owner of the land sought to be expropriated has the right to demand the price she wants. If the failure of the negotiations for the purchase was due to the refusal of said owner to agree to the price fixed by the Land Tenure Administration, refusal could not have caused any damage subject to be repaired.

Foreclosure of mortgage

Section 2, Rule 70 [195] regarding judgment on foreclosure for payment or sale provides:

> If upon the trial in such action the court shall find the facts set forth in the complaint to be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interests and costs, and shall render judgment for the sum so found due and order that the same be paid into court within a period of not less than ninety (90) days from the date of the service of such order, and that in default of such payment, the property be sold to realize the mortgage debt and costs.

The procedure provided for in this rule should be strictly adhered to. Every proceeding had in executing a judgment for foreclosure of mortgage in the manner prescribed for the execution of ordinary judgments will be null and void even if the procedure followed comes to be more beneficial to the defeated party. The parties to an action are not authorized to change the procedure prescribed by law.[196] This rule was applied by the Supreme Court in *Constantino v. Aquino*.[197] In this case, the judgment of foreclosure of mortgage rendered by the lower court against the mortgagee did not contain the 90-day order required by the rules. Nevertheless, after the decision had become final and executory, the court issued the writ of execution and the property was sold on auction to plaintiff. The Sheriff then issued a certificate of sale in favor of plaintiff and the sale was subsequently confirmed by the court. On motion for reconsideration filed by defendant, the court reconsidered its orders on the ground that the foreclosure of the property was improvidently made and the 90-day period had not commenced to run. On appeal, the Supreme Court affirmed the lower court's ruling and held that the 90-day period was not merely a procedural requirement but a substantive right granted to the mortgage debtor as his last op-

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[194] G.R. No. L-16411, August 31, 1963.
[195] Now Sectio n2, Rule 68 of the REVISED RULES OF COURT.
[196] Diaz v. Mendezona, 43 Phil. 472.
[197] G.R. No. L-16216, December 28, 1963.

portunity to pay the debt and save his mortgaged property from final disposition.

Forcible entry

In the case of *Vivar v. Vivar*,[198] the Court reiterated the ruling that what determines the nature of an action are the allegations made in the complaint. Where such allegations make out a simple case of forcible entry, the mere fact that in his answer, defendant claims to be the exclusive owner of the property from which plaintiff seeks to eject him is not sufficient to divest the Justice of the Peace court of its jurisdiction over the summary action of forcible entry.

Unlawful detainer

Unlawful detainer consists in the withholding by a person from another for not more than one year, of the possession of land, or building to which the latter is entitled after the expiration or termination of the former's right to hold possession by virtue of a contract, express or implied.[199] The proceding in an unlawful detainer case, being summary in nature, a judgment rendered against defendant is immediately executory. To stay execution, defendant must: (a) perfect his appeal to the Court of First Instance and file a supersedeas bond and (b) deposit from time to time with the Court of First Instance during the pendency of the appeal, the amount of rents or the reasonable value of the use and occupation of the property as fixed by the justice of the peace or municipal court in its judgment.[200] If the amount of the monthly rental is fixed in the judgment, defendant should deposit with the Court of First Instance on or before the tenth day of each calendar month the amount corresponding to the preceding month. Failure to comply with this condition is a ground for execution of the judgment. Where the judgment appealed from ordered petitioner to vacate the premises and to pay respondents the sum of ₱2,000 *per annum* from March 1, 1955 up to the restitution of the premises, the yearly deposit need not be made within the first 10 days of the month of March. The Justice of the Peace Court, in ordering that petitioner should pay the respondents annual dues from March 1, 1955, intended such order to be merely the starting point of petitioner's liability to pay. The Court further took into account the fact that the premises in question, being fishponds, by its very nature, is operated on a yearly

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[198] G.R. No. L-18667, August 31, 1963.
[199] Tenerio v. Gumba, 81 Phil. 55.
[200] Romero v. Pecson, 83 Phil. 308; Villaroman v. Abaya, G.R. No. L-4833, March 21, 1952.

basis and the rental thereof is generally computed on a yearly basis.[201]

In *Ora-a v. Angustia*,[202] the Supreme Court held that whether title is necessarily involved in an action fir forcible entry and detainer is a question of fact to be determined from the evidence presented by both parties at the trial and that question can be reviewed only on appeal and not by certiorari proceedings in the Court of First Instance.

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[201] Avendaño v. Pasicolan, et al., G.R. No. L-18860, November 30, 1963.
[202] G.R. No. L-16711, December 24, 1963.