SPECIAL PROCEEDINGS

ALFREDO VILLAVERT, JR.*

Special proceeding is the act by which one seeks to establish the status or right of a party, or a particular fact. Action is distinguished from special proceeding in that the former is a formal demand of a right by one against another, while the latter is but a petition for a declaration of a tatus, right or fact.[1] Where a party litigant seeks to recover property from another, his remedy is to file an action. Where his purpos is to seek the appointment of a guardian for an insane his remedy is a special proceeding to establish the fact or status of insanity calling for an appointment of guardianship.[2]

Under the former Rules of Court, the rules on special proceedings cover nine specific cases: (1) settlement of estate of deceased persons; (2) escheat; (3) guardianship and custody of children; (4) trustees; (5) adoption; (6) hospitalization of insane persons; (7) haveas corpus; (8) change of name; (9) voluntary dissolution of corporations.

In addition to the foregoing, the Revised Rules of Court which took effect January 1, 1964, now include the following: (10) rescission and revocation of adoption; (11) judicial approval of voluntary recognition of minor natural children; (12) constitution of family home; (13) declaration of absence and death; and (14) cancellation or correction of entries in the civil registry.

I. SETTLEMENT OF ESTATE OF DECEASED PERSONS

1. EXTRAJUDICIAL PARTITION

Section 1, Rule 74 of the Rules of Court provides for an extrajudicial settlement of the estate of the deceased by agreement between heirs, if the decedent left no debts and the heirs and legatees are all of age, or the minors are represented by their judicial guardians.

Section 4 of the same rule prescribe the procedure to be followed if within two years after an extrajudicial partition or sum-

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* Member, Student Editorial Board, *Philippine Law Journal*, 1963-64.

[1] Hagans v. Wislizenus, 42 Phil. 880, 882 quoted in Moran, M. Comments on the Rules of Court, Vol. 1, p. 86 (1963).

[2] Moran, M., Comments on the Rules of Court, Vol. 1, p. 87 (1963).

mary distribution is made, an heir or other person appears to have been deprived of his lawful participation in the estate.[3]

The Supreme Court decided the case of *Villaluz v. Neme*[4] in the light of the foregoin provisions. In that case, an extrajudicial partition was consummated without the knowledge and consent of some of the co-heirs. Subsequently, the properties in question were sold to third persons. Almost fourteen years had elapsed before the co-heirs who were excluded from the partition knew of the fraud that was perpetrated on them. Whereupon, they brought an action for partition of the land and recovery of their respective shares on the property and accounting of the fruits thereof.

It was held that the deed of extrajudicial partition was fraudulent and vicious, the same having been executed among the three sisters without including their co-heirs who had no knowledge of and consent to the same. Under the time-honored principle of *Nemo dat quod non habet,* the three sisters could not have sold what did not belong to them.

Dismissing the trial court's contentioin that the plaintiff's cause of action had already prescribed, the court further held that Section 4, Rule 74 refers only to the settlement and distribution of the estate of the deceased by the heirs who make such partition among themselves in good faith, believing that they are the only heirs with the right to succeed. The heirs who participated in the extrajudicial settlement were possessing the property as trustees for and in behalf of the other co-heirs who were excluded. Such co-heirs have the right to vindicate their inheritance regardless of the lapse of time.[5] Thus, the two-year limitation is not applicable to those who had not taken part in the settlement or who had no knowledge of the same.

Under the Revised Rules of Court effective January 1, 1964, Section 1, Rule 74 has been injected with several important amendments. One of them provides that no extrajudicial settlement shall be binding upon any person who has not participated therein or had no notice thereof. Actually, this is a reiteration of what had been decided in the Villaluz case[6] and other similar cases[7] decided before it.

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[3] Moran, M. Comments on the Rules of Court, Vol. 3, p. 353 (1963).
[4] G.R. No. L-14676, January 31, 1963.
[5] Villaluz v. Neme, *supra.*
[6] *Ibid.*
[7] Beltran v. Ayson, et al., G.R. No. L-14662, January 30, 1962; Sampilo and Salacup v. CA, 55 O.G. p. 5772.

The main reason for the new amendments is that experience has shown that there were altogether too many fraudulent partitions and adjudications being registered, and the very facility in complying with the former provision seemed to have induced conniving individuals to take advantage of it to oust legitimate interests. Thus, with the new requirements, fraudulent partitions and adjudications will be discouraged by the increased chance of speedy discovery by the parties affected.[8]

2. JURISDICTION OF PROBATE COURTS TO DETERMINE TITLE TO PROPERTY IN TESTATE OR INTESTATE PROCEEDINGS

(a) General Rule.

As a general rule, question as to title cannot be passed upon on testate or intestate proceedings.[9]

(b) Exceptions.

1. Where one of the parties prays merely for the inclusion or exclusion from the inventory of the property in which case the probate court may pass provisionally upon the question without prejudice to its final determination in a separate action.[10]

2. When the parties interested are all heirs of the deceased it is optional to them to submit to the probate court a question as to title to property, and when so submitted said probate court may definitely pass judgment thereon.[11]

3. With the consent of the parties, matters affecting property under judicial administration may be taken cognizance of by the court in the course of intestate proceedings provided interests of third persons are not prejudiced.[12]

Strictly speaking, it is more a question of jurisdiction over the person, not over the subject matter, for the jurisdiction to try controversies between heirs of a deceased person regarding the ownership of properties alleged to belong to his estate, has been recognized to be vested in probate courts. This is so because the purpose of an administration proceeding is the liquidation of the estate and distribution of the residue among the heirs and legatees. Liquidation means determination of all the assets of the estate and payment of all the debts and expenses. Thereafter, distribution is made of the

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[8] Moran, M., Comments on the Rules of Court, Vol. 3, p. 341 (1963).
[9] *Ibid.*
[10] *Ibid.*
[11] *Ibid.*
[12] *Ibid.*

decedent's liquidated estate among the persons entitled to succeed him. The proceeding is in the nature of an action of partition, in which each party is required to bring into the mass whatever community property he has in his possession. To this end, and as a necessary corollary, the interested parties may introduce proofs relative to the ownership of the properties in dispute. All the heirs who take part in the distribution of the decedent's estate are before the court, and subject to the jurisdiction thereof, in all matters and incidents necessary to the complete settlement of such estate, so long as no interests of third parties are affected.[13]

3. PARTIES TO ADMINISTRATION PROCEEDINGS.

Section 2, Rule 80 of the Rules of Court provides that a petition for letters of administration must be filed by an interested person.

It is well-settled that for a person to be able to intervene in an administration proceeding concerning the estate of a deceased, it is necessary for him to have interest in such estate. An interested party has been defined in this connection as one who would be benefited by the estate such as an heir or one who has a certain claim against the estate such as a creditor.[14]

Chung Kiat Kang does not claim to be a creditor of the deceased's estate. Neither is he an heir. Not having any interest in the estate of the deceased, either as heir or creditor, the appellant cannot be appointed as co-administrator of the estate as he now prays.[15]

4. APPOINTMENT OF ADMINISTRATOR.

(a) Order of Preference.

Section 6, Rule 79 of the Rules of Court establishes the order of preference in the appointment of an administrator. It provides:

> If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:
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> (a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;
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> (b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or

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[13] Bernardo, et al. v. CA, et al., G.R. No. L-18148, February 28, 1963.

[14] Ngo The Hua v. Chung Kiat Hua, et al., G.R. No. L-17091, September 30, 1963.

[15] *Ibid.*

if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

Thus, where several parties petition for letters of administration, each claiming the right to be appointed administrator of the decedent's estate, the court will apply the foregoing provision to determine who is entitled to the administration. Said order of preference was reiterated in the Ngo Hua case.[16]

5. DUTY OF ADMINISTRATRIX TO SAFEGUARD CASH IN HER POSSESSION.

The court made it clear in the case of De Gala v. Manalo [17] that cash in the possession of the administratrix should be properly secured and withdrawn only upon order of the court.

It is a trust fund which the administratrix cannot use for her own personal purposes. It is the duty of the administratrix to safeguard it.

6. CLAIMS AGAINST ESTATE.

Time Within Which Claims Shall Be Filed.

In a case [18] involving a creditor's claim, a petition for extension of time within which to file the claim was denied as there was no justifiable reason to grant the extension.

As gleaned from the facts of the case, it appears that the Philippine National Bank filed a creditor's claim outside of the period provided for in the notice to creditors. The period fixed in the notice lapsed on November 16, 1951, and the claim was filed July 20, 1953, or about one year and eight months late.

The petitioner alleged that Section 2, Rule 87 of the Rules allows the filing of claims even if the period stated in the notice to creditors had elapsed, upon cause shown and on such terms as are equitable; that he lacked knowledge of administration proceedings and that the notice to creditors was published in a newspaper of very limited circulation.

It is quite true that the courts can extend the period within which to present claims against the estate even after the period

[16] G.R. No. L-17091, September 30, 1963.
[17] G.R. No. L-18181, July 31, 1963.
[18] Villanueva v. PNB, G.R. No. L-18403, September 30, 1963.

limited has elapsed, but such extension should only be granted under special circumstances.[19] There is no hard and fast rule as to what is just and equitable under the circumstances. This is for the courts to decide and will depend on circumstances of each particular case.

It was also held that there was substantial compliance with the requirements of the rules regarding notices as the petition for letters of administration was duly published in the Manila Daily Bulletin while the notice to creditors appeared in the Morning Times of Cebu City.

7. DISTRIBUTION AND PARTITION OF THE ESTATE.

Section 1, Rule 91 speaks of the assignment or distribution of the residue of the deceased's estate only after payment of debts, funeral charges, expenses of administration, allowance to the widow and inheritance tax, if any, all of which are chargeable to the estate.

On December 7, 1957, Ngo The Hua claiming to be the surviving spouse of the deceased Chung Liu filed a petition to be appointed administratrix of the estate of the afore-mentioned deceased. Her petition was opposed by Chung Kiat Hua, and several others all claiming to be children of the deceased by his first wife, Tan Hua. The oppositors' prayer was in turn opposed by Ngo who claimed that the oppositors are not children of the deceased.

On January 31, 1957 Chung Kiat Kang, claiming to be the nephew of the deceased filed an opposition to the appointment of either Ngo or Chung on the ground that to be appointed, they must first prove their respective relationships to the deceased and prayed that he be appointed administrator instead.

The trial court found for the children of the deceased and issued an order appointing one of the children as administrator. Both the alleged surviving spouse and the nephew appealed. The former later on withdrew her appeal after having entered into an amicable settlement with the children. Only the appeal of the nephew remained for consideration of the court.

The appellant contended that the lower court erred in passing upon the validity of the divorce obtained by the surviving spouse and the deceased and upon the filiation of the children, such being a prejudgment, relying upon Section 1, Rule 91 of the Rules which provides that the declaration of heirs shall only take place after all debts, expenses, and taxes have been paid.

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[19] *Ibid.*

In dismissing the appellant's contention, the Supreme Court proceeded with caution.

A cursory reading of Section 1, Rule 91 discloses that what the court is enjoined from doing is the assignment or distribution of the residue of the deceased's estate before the above-mentioned obligations chargeable to the estate are first paid. Nowhere from said section may it be inferred that the court cannot make a declaration of heirs prior to the satisfaction of these obligations. It is to be noted, however, that the court in making the appointment of the administrator did not purport to make a declaration of heirs.[20]

Let it be made clear that what the lower court actually decided and what we also decide is the relationship between the deceased and the parties claiming the right to be appointed his administrator, to determine who among them is entitled to the administration, not who are his heirs who are entitled to share in his estate.[21]

In another case [22] it was held that the court was still without authority to proceed with the distribution of the estate, there being no one as yet with authority to look for and take possession of the properties of the decedent, administer the same, pay the outstanding obligations of the deceased and collect all debts due to him, and see to it that the interest of all parties concerned be duly protected. It had no jurisdiction to determine the persons entitled to participate therein and their respective shares in the net assets of the estate, the existence of which net assets was still undetermined, and could not possibly be determined at that time.

II. GUARDIANSHIP.

INVENTORIES AND ACCOUNTS OF GUARDIANS UNDER OATH.

The Rules provide that inventories and accounts rendered by the guardian shall be under oath.

> Inventories and accounts of guardians, and appraisement of estates.—A guardian must render to the court an inventory of the estate of his ward within three (3) months after his appointment, and annually after such appointment an inventory and account, the rendition of any of which may be compelled upon the application of an interested person. *Such inventories and accounts shall be sworn to by the guardian.* x x x (Emphasis supplied).[23]

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[20] *Ibid.*
[21] *Ibid.*
[22] Castelvi v. Castelvi, G.R. No. L-17630, October 31, 1963.
[23] Sec. 7, Rule 96, Rules of Court.

Opposition to the final report of accounts by the guardian should also be under oath and should not be couched in general terms.

In one case,[24] the appellants' motion for reconsideration did not prosper as the same was not verified nor supported with any kind of evidence reasonably supporting their claim that the appellee's report was incomplete.

III. TRUSTEESHIP.

In 1963, here was only one case[25] involving trusteeship, although the same trusteeship had been the subject of several litigations in the past. In 1962 alone, three cases involving the same trusteeship were adjudicated by the Supreme Court.

FEES OF TRUSTEE CANNOT BE DETERMINED IN ADVANCE; REASONABLENESS OF FEES.

In the absence of provisions to the contrary in trustee's agreement or in the trust instrument, a trustee rendering legal services to the estate is entitled, not to the usual professional charges for such services, but to a compensation fixed and determined by the court according to what is fair and reasonable in view of all the circumstances.[27]

In the case of *Araneta v. Perez*,[28] the guardian-appellant sought to reduce the future fees of the trustee so as to place them on par with the rates allegedly collected by trust companies which is about 5% of the gross income.

Sustaining the lower court's denial of the guardian's petition, it being premature, the Supreme Court held that the time to determine the reasonableness of the future fees is when the trustee files a claim for the same.

Reasonableness cannot be decided in advance, since it depends upon variable circumstances such as (1) character and powers of the trusteeship; (2) the risk and responsibility; (2) time, and (4) labor and skill required in the administraton of the trust, as well as the care and management of the estate.[29]

For this very reason, the court may not set in advance that the trustee's fees should not exceed that charged by trust companies,

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[24] Guardianship of the Incompetent Marcosa Rivera, et al. v. A. Rivera, et al., G.R. No. L-17092, September 30, 1963.
[25] Araneta v. Perez, G.R. No. L-16187, February 27, 1963.
[27] C.J.S. 90, p. 719.
[28] G.R. No. L-16187, February 27, 1963.
[29] Araneta v. Perez, G.R. No. L-16187, February 27, 1963.

unless equality of circumstances is proved. Moreover, it is difficult to see how trust companies which are fully dedicated to the professional management of trust estates, can be equated with trusteeships.[30]

IV. HABEAS CORPUS.

IN GENERAL.

Habeas corpus is a prerogative common-law writ of ancient origin directed to a person detaining another, commanding him to produce the body of the prisoner at a designated time and place, to do, submit to, and receive whatever the court shall consider in that behalf.[31] It is in the nature of a writ of error to examine the legality of the commitment; but it is not available as a writ for the review and correction of mere errors in proceedings, as distinguished from jurisdictional defects. Strictly speaking, it is not an action or suit, but is a summary remedy open to the person detained.[32]

The office of the writ of habeas corpus is to give a person restrained of his liberty an immediate hearing so that the legality of his detention may be inquired into and determined.[33] The sole function of the writ is to relieve from unlawful imprisonment, and ordinarily it cannot properly be used for any other purpose.[34]

In one case,[35] an alien's application for extension of stay as a prearranged employee was denied by the Board of Commissioners of the Bureau of Immigration. At the same time, he was ordered by said Board to depart from the Philippines within five days. To forestall his arrest and the filing of the corresponding deportation proceedings, the alien filed a petition for prohibition praying that the Commissioner of Immigraton desist and refrain from arresting and expelling him from the Philippines unless and until proper and legal proceedings are conducted by the Board of Commissioners in connection with his application for extension of stay.

The writ of prohibition was denied by the court on several grounds. One of the reasons advanced dealt with the existence of the adequate remedy by habeas corpus which barred the issuance of the writ of prohibition. Speaking through Justice J. B. L. Reyes, the court held that the use of habeas corpus to test the legality of

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[30] Araneta v. Perez, G.R. No. L-16187, February 27, 1963.
[31] C.J.S. 39, p. 424.
[32] C.J.S. 39, p. 425.
[33] C.J.S. 39, pp. 428-429.
[34] C.J.S. 39, p. 430.
[35] Bisschop v. Galang, G.R. No. L-18365, May 31, 1963.
[36] Lao Tang Bun v. Fabre, 81 Phil. 682, 683.

aliens' confinement and proposed expulsion from the Philippines is now a settled practice.[36] This is because habeas corpus, aside from being thorough and complete, affords prompt relief from unlawful imprisonment of any kind, and under all circumstances. It reaches the facts affecting jurisdiction, or want of power, by the most direct method, and at once releases the applicant from restraint when it is shown to be unauthorized.[37]

WARRANT OF ARREST ISSUED BY DEPORTATION BOARD ILLEGAL.

Kishnu Dalamal filed a petition for habeas corpus seeking the annulment of the warrant of arrest issued by the Deportation Board as well as the cancellation of the bond posted for his provisional liberty.[38]

The court categorically stated that such warrant of arrest was illegal because it was issued in violation of a constitutional safeguard.[39] It provides:

> The rights of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

COURTS OF FIRST INSTANCE HAVE NO POWER TO RELEASE AN ALIEN ON BAIL.

In one case,[40] the Deportation Board recommended the deportation of Vicente Kho as an undesirable alien. After having been taken into custody, he filed a petition for habeas corpus to test the legality of his arrest. During the pendency thereof, he asked for bail which was granted by the lower court.

Reversing the lower court's decision, the Supreme Court held that when an alien is detained by the Bureau of Immigration for deportation pursuant to an order of deportation by the Deportation Board, the Court of First Instance has no power to release such alien on bail even in habeas corpus proceedings because there is no law authorizing it.[41]

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[37] Bisschop v. Galang, G.R. No. L-18365, May 31, 1963, quoting cf. People ex rel. Livingston v. Wyatt, 186 N.Y. 383; 79 N.E. 330.

[38] Dalamal v. Deportation Board, G.R. No. L-16812, October 31, 1963.

[39] PHIL. CONST., Art. III, sec. 1, par. (3).

[40] Deportation Board, et al. v. Cloribel, et al., G.R. No. L-20458, October 31, 1963.

[41] *Ibid.*

In habeas corpus proceedings to challenge a deportation order issued by the President upon recommendation of the Board, the real issue is whether or not due process has been observed.[42]

V. CHANGE OF NAME.

Elaine Moore filed a petition praying that her minor child by a former marriage be permitted to change his name to include her present husband's surname. The petition was denied on the following grounds:

1. Philippine laws [43] do not authorize a legitimate child to use the surname of a person who is not his father. Indeed, if a child born out of a lawful wedlock be allowed to bear the surname of the second husband of the mother, should the first husband die or be separated by a decree of divorce, there may result a confusion as to his real paternity. In the long run, the change may redound to the prejudice of the child in the community.[44]

2. The child concerned is still a minor who for the present cannot fathom what would be his feeling when he comes to a mature age. If that time comes, he may decide the matter for himself and take such action as our law may permit.[45]

In one case,[46] a petition to change the name of the petitioner from Trinidad Rodriguez to Trinidad Asensi prospered.

Trinidad Rodriguez is the natural child of Luisa Rodriguez and Graciano Asensi, both of whom at the time of her conception and birth, were single. Subsequently, the parents were legally married and the child Trinidad was taken into the family. There was no question therefore that the minor Trinidad had been duly legitimated.

On appeal, the Government contended that judicial change of name is not necessary as the legitimated child can, without judicial approval, adopt her parents' surname in accordance with Article 272 in relation to Article 264 of the New Civil Code.

The Supreme Court, through Justice Barrerra, deemed the appeal a waste of time and effort. The objection of the Republic was

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[42] Deportation Board, et al. v. Cloribel, et al., G.R. No. L-20458, Oct. 31, 1963.

[43] Art. 364, New Civil Code—Legitimate and legitimated children shall principally use the surname of the father.

Art. 369, New Civil Code—Children conceived before the decree annulling a voidable marriage shall principally use the surname of the father.

[44] Moore v. Republic, G.R. No. L-18407, June 26, 1963.

[45] *Ibid.*

[46] In the Matter of the Change of Name of Trinidad Asensi, G.R. No. L-18047, Dec. 26, 1963.

too technical. There is no legal prohibition against obtaining a judicial confirmation of a legal right. It may be a superfluity but is not against law, customs or morals. It does no harm to anybody. No one is prejudiced thereby.[47]

VI. CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY.

The Revised Rules of Court[48] has laid down in Rule 108 the procedural aspect of the civil code provision[49] on the cancellation or correction of entries in the civil registry. It provides:

> Any person interested in any act, event, order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located.[50]

During 1963, several cases[51] on cancellation or correction of entries in the civil registry came up for final determination by the Supreme Court.

What the law contemplates is correction of mistakes that are clerical in nature[52] and not those which may affect the civil status or the nationality or citizenship of the persons involved.[53]

If the errors or mistakes be clerical, the same may be corrected in a summary proceeding, as provided for in Article 412 of the Civil Code; but if substantial, the present summary proceedings would be inappropriate to correct them and other proper or appropriate remedy or proceedings must be availed of to effect the correction.[54]

What is authorized under the aforesaid article are merely harmless and innocuous changes such as, the correction of a name that is merely misspelled, occupation of the parents, etc., but if the changes involve the civil status of the parents, their nationality or citizenship, or important matters which may have a bearing on the

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[47] *Idem.*

[48] Effective January 1, 1964.

[49] Art. 412—No entry in a civil register shall be change or corrected, without a judicial order.

[50] Sec. 1, Rule 108.

[51] In re: Correction of Entries in the Birth Record of the Office of the Local Civil Registrar, Remedios Tan Luis de Castro v. Republic of the Philippines, G.R. No. L-17431, April 30, 1963; Dy Kim Liong v. Republic of the Philippines, G.R. No. L-18608, Dec. 26, 1963; Lui Lin v. Nuño, et al., G.R. No. L-18213, Dec. 24, 1963.

[52] In re: Correction of Entries in the Birth Recorl of the Local Civil Registrar, Remedios Tan Luis de Castro v. Republic, *supra.*

[53] Lui Lin v. Nuño, *supra.*

[54] In Re Correction, *supra.*

citizenship or nationality not only of said parents but of the offsprings, for such change it is necessary to file the proper suit wherein not only the State but also all the parties concerned should be made parties defendants.[55]

Needless to say, the petitions involving correction of mistakes in the civil registry did not prosper. Undoubtedly, the errors or mistakes sought and prayed for by the appellant to be corrected are substantial, affecting as they do substantial matters such as rights, status and paternity of the child, her filiation whether legitimate or illegitimate, and the marital or matrimonial relation between her mother and supposed father. Hence, not being merely clerical, they cannot be corrected summarily under Article 412 of the Civil Code.[56]

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[55] Lui Lin v. Nuco, *supra*.
[56] In Re Correction, *supra*.