SPECIAL PROCEEDINGS

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SETTLEMENT OF ESTATE OF DECEASED PERSONS

Summary settlement of estate

The general rule is that, when a person dies intestate, or if testate, he failed to name an executor in his will, or the executor so named therein is incompetent, or refuses the trust, or fails to give bond as required by the Rules of Court, his property shall be judicially administered and the competent court shall appoint a qualified administrator in the order established in Section 6 of Rule 78.[1] Said rule, however, is subject to exceptions.

Under Section 1, Rule 74, where the decedent left no debts and the heirs are all of age, or the minors are represented by their judicial guardians, there is no necessity for the institution of special proceedings and the appointment of an administrator for the settlement of the estate, because the same may be effected either extrajudicially or through an ordinary action for partition.[2] If there is an actual necessity for the court's intervention, in view of the heirs' failure to reach an agreement as to how the estate should be divided physically, the latter, under said rule still have the remedy of an ordinary action for partition.[3]

One of the requisites for extrajudicial partition is that the decedent left no debts or all of the debts he left are all paid.[4] But a bare allegation that "the estate has an existing debt of ₱50,000.00 from third persons" cannot be considered as a concise statement as to constitute a cause of action, particularly in view of the fact that there was no allegation or specification from whom and in what manner the said debt was contracted.[5]

Nor does the unverified statement, that there are other property not included in the deed of extrajudicial partition in the possession of one of the heirs, justify the institution of an administration proceedings because the same question that may arise as to them, *viz.*,

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* Recent Decisions Editor, PHILIPPINE LAW JOURNAL, 1964-65.

[1] Utulo v. Passion vda. de Garcia, 66 Phil. 302.

[2] Guico, et al., v. Bautista, et al., GR No. L-14921, December 21, 1960.

[3] Torres v. Torres, et al., GR No. L-19064, January 31, 1964.

[4] Section 1, Rule 74; See Fule v. Fule, 46 Phil. 317; Castillo v. Castillo, 23 Phil. 364.

[5] Torres v. Torres, et al., *supra*.

the title thereto and their partition if proven to belong to the intestate, can be properly litigated in an ordinary action for partition.[6]

But are these facts, say, the absence of debt, payment of the same if any, question over the property, etc., not matters to be proven by those participating in the extrajudicial partition? Upon whom does the burden of proof lie, in the first place? These facts are jurisdictional in the sense that the heirs cannot have extrajudicial settlement unless they first comply with the requisites laid down in Section 1 of Rule 74. Of course, it cannot be doubted that an ordinary action for partition is preferable for it is less expensive but even then, should the Rules be disregarded just for the sake of expediency?

Allowance or disallowance of will

In the probate of a will, as a rule, petitioner is bound to call or account for the witnesses to the testament.[7] But where petitioner was not trying to show that the will complied with the statutory requirement but that the will has been admitted to probate, he was not bound to call or account for the subscribing witnesses. Beyond contradiction, the probate decree conclusively established the due execution of the will.[8]

Once the will is probated, such is conclusive as to all and sundry concerning compliance with the formal requirements. And the failure of the instituted heir to file with the Register of Deeds a certified copy of his letters of administration and the will as required by Section 90 of Act No. 496, and to record the attested copies of the will and of the allowance thereof by the court under Section 624 of Act 190, as amended,[9] does not negate the validity of the judgment of decree of probate nor the right of the devisee under the will.[10]

Neither is the probate decree affected by the fact that the heir paid the inheritance taxes as "executor or administrator." It is usual, as observed by the court, for the administrator to pay these taxes, since by law,[11] no delivery of property may be made to the heirs until and unless the inheritance taxes are paid.[12]

Furthermore, a final judgment rendered on a petition for probate of a will is binding upon the whole world;[13] and public policy and sound practice demand that at the risk of occasional er-

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[6] *Ibid.*
[7] Rule 76, Section 11, Rules of Court.
[8] Lopez, et al. v. Gonzaga, et al., GR No. L-18788, January 31, 1964.
[9] Now, Rule 76, Section 13, Rules of Court.
[10] Lopez, et al. v. Gonzaga, et al., *supra.*
[11] Section 95 (c), National Internal Revenue Code.
[12] Lopez, et al. v. Gonzaga, et al., *supra.*
[13] Manalo v. Paredes, 47 Phil. 938; In re estate of Johnson, 39 Phil. 156.

rors, judgment of courts should become final at some definite date fixed by law. *Interest rei publicae ut finis set litium.*[14] Thus, a contention that a joint will being void [15] cannot be validated overlooks the fact that ultimate decision on whether an act is valid or void rests with the courts, and here they have spoken with finality when the will was probated.[16] This is so because the error committed by the trial court is an error of law but did not affect the jurisdiction of the probate court.[17]

But if the will is not executed and attested as required by law, it should be disallowed. Article 805 of the New Civil Code requires that the testator or the person requested by him to write his name and instrumental witnesses of the will shall sign also each and every page thereof, except the last, on the left margin, and all the pages shall be numbered etc. But where one of the witnesses through inadvertence failed to affix his signature to one page of the instrument, due to the simultaneous lifting of two pages in the course of signing, such is not sufficient to justify denial of probate.[18] On the reason underlying the requirement, the court said:

> Impossibility of substitution of this page is assured not only by the fact that the testatrix and the two other witnesses did sign the defective page, but also it bearing the coincident imprint of the seal of the notary public before whom the will was ratified by the testatrix and the three witnesses. The law should not be strictly and literally construed as to penalize the testatrix on account of the inadvertence of a single witness over whose conduct she had no control, where the purpose of the law is attained. Otherwise, as stated in Vda. de Gil v. Murciano, 49 OG 1459 at 1979, witnesses may sabotage the will by muddling or bungling it or the attestation clause. At any rate, this is not the first time whereby the court departed from strict and literal interpretation of the statutory requirement, where the purpose of the law is otherwise satisfied (Abangan v. Abangan, 41 Phil. 476; Lopez v. Liboro, 81 Phil. 429).

Section 9, Rule 76(d) also provides that the will shall be disallowed if it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit, or (e) if the signature of the testator was procured

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[14] Dy Cay v. Crossfield, 38 Phil. 521, and other cases cited in Moran, *Comments on the Rules of Court* (1963) p. 322.

[15] Article 669, Old Civil Code.

[16] de la Cerna, et al. v. Potot, et al., GR No. L-20234, December 23, 1964.

[17] But the Court of Appeals should have taken into account also, to avoid future misunderstanding, that the probate decree in 1939 could only affect the share of the deceased husband. It could not include the disposition of the share of the wife, who was then still alive, and over whose interest in the conjugal property the probate court acquired no jurisdiction. Be it remembered that prior to the new Civil Code, a will could not be probated during the testator's lifetime. De la Cerna, et al. v. Potot, et al. *supra.*

[18] Icasiano v. Icasiano, et al., GR No. L-18979, June 30, 1964.

by trick or fraud, and he did not intend that the instrument should be his will at the time of affixing his signature thereto. However, the mere fact that some heirs are favored than others is proof of neither.[19] Precisely, as the court stated:

> Diversity of apportionment is the usual reason for making a testament; otherwise, the decedent might as well die intestate. The testamentary disposition that the heirs should not inquire into other property and that they should respect the distribution made in the will, under penalty of forfeiture of their shares in the free part do not suffice to prove fraud or undue influence. They appear motivated by the desire to prevent prolonged litigation which, as shown by ordinary experience, often results in a sizeable portion of the estate being diverted into the hands of non-heirs and speculators. Whether these clauses are valid or not is a matter to be litigated on another occasion.[20]

It is also well to note that, as remarked by the Court of Appeals in one case,[21] fraud and undue influence are mutually repugnant and exclude each other; their joining as grounds for opposing probate shows absence of definite evidence against the validity of the will.

But, may a duplicate be entitled to probate inspite of the fact that the original will is in existence? In general, such would be unnecessary. An exception may be provided where the original and the duplicate both complied with the formalities required by law with the sole difference that in the original, the signature of one of the instrumental witnesses is wanting in one of its pages. The justification of the court is that:

> Thus, the proponent is in a dilemma: if the original is defective and invalid, then in law, there is no other will but the duly signed carbon duplicate and the same is probatable. If the original is valid and can be probated, then the objection to the signed duplicate need not be considered, being superfluous and irrelevant. At any rate, the duplicate serves to prove that the omission of one signature on the third page of the original testament was inadvertent and unintentional.[22]

It is fundamental in the probate of will that notice thereof should be published.[23] The mere fact that the carbon duplicate was produced and admitted without a new publication does not affect the jurisdiction of the probate court. The amended petition did not substantially alter the first filed but merely supplemented it by disclosing the existence of the duplicate, and no showing is made

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[19] In re Butalid, 10 Phil. 27; Bugnao v. Ubag, 14 Phil. 163; Pecson v. Coronel, 45 Phil. 216.
[20] Icasiano v. Icasiano, et al., *supra*.
[21] Sideco v. Sideco, 45 OG 168.
[22] Icasiano v. Icasiano, et al., *supra*.
[23] Section 3, Rule 76, Rules of Court.

that new interests were involved (the contents of the original and the duplicate are identical); and appellants were duly notified of the proposed amendment. It is nowhere proved or claimed that the amendment deprived the appellants of any substantial right.[24]

Jurisdiction of the probate court

In the case of *Zaldariaga v. Marino*,[25] it appears that while a civil action for partition was still pending, a special proceeding for the settlement of estate involved in the former was filed. The trial court dismissed the latter and now the judicial administrator assails the dismissal contending that by the institution of the special proceeding, the probate court acquired exclusive jurisdiction over the settlement of the Estate to the exclusion of all other courts and that, *inter alia*, it is improper for a declaration of heirs to be made in an ordinary civil action, in view of the pendency of the special proceedings and the question as to who are the heirs and their respective shares should be determined in the latter case.

However, the court found no merit in the appeal for all the minors and all the persons who claim an interest in the estate are parties in the civil action for partition and it is well settled that the matter of acknowledgment of an alleged natural child and his claim as such to a share in the estate of an alleged natural father may be determined either in an ordinary civil action or in a special proceeding. Should persons, proceeded the court, other than those who are parties in the ordinary civil case, feel that their interest in the estate of the deceased may be affected by the proceedings therein, they may intervene in such case; and this includes the government, as regards estate and inheritance taxes, if any were due.

When and to whom letters of administration granted

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 (a) to the surviving husband or wife as the case may be, or next of kin or both, in the discretion of the court.[26] The order of preference herein provided is predicated on the interest which the person to be appointed has in the estate left by the deceased.[27] But as between those comprised in one category, both the rule and jurisprudence are silent. In this legal quandary, reference should be made to the will of the deceased,

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[24] Icasiano v. Icasiano, et al., *supra*.
[25] GR No. L-19566, May 25, 1964.
[26] Section 6, Rule 78, Rules of Court
[27] De Guzman v. Limcolioc, 68 Phil. 673.

if any.[28] And in the absence of the same, the general rule based on "interest" should govern. The foregoing is reflected in the holding of the court in the case of *Cui v. Cui, et al.*[29]

> As between Jesus and Antonio the main issue turns upon their respective qualifications to the position of administrator. Jesus is older of the two and therefore under equal circumstances must be preferred, pursuant to section 2 of the deed of donation. However in the same instrument there is a preference to the one among the legitimate descendants named therein, "que possea titulo de abogado, o medico, etc."

Special administrator

As held in the case of *Roxas v. Pecson,*[30] only one special administrator may at a time be appointed. In line with this decision, the court in *Fernandez, et al. v. Maravilla,*[31] denied the petition for the appointment of a second special administrator. As observed the court:

> The rule does not contain any provision for special co-administrator, the reason being that the appointment of such special administrator is merely temporary and subsists only until a regular executor or administrator is duly appointed. Thus, it would not only be unnecessary but also impractical, if for the temporary duration of the need for a special administrator, another one is appointed aside from him, in this case upon whom the duty to liquidate the community property devolves, merely to protect the interests of the petitioners who, in the event that the disputed will is allowed to probate, would even have no right to participate in the proceedings at all.[23]

But upon motion for reconsideration,[33] the court in the same case, considering that the appointment of the special co-administrator would bring no material damage to respondent special administrator, amended and sustained the appealed order pending the determination of the main case (G.R. No. L-23225) or until a different set of circumstances than those alleged by the petitioners as now prevailing, would justify another action by this court in the same case. This resolution seems to run counter with the previous holding of the same court. As to what caused this reversal, the resolution is silent. For now, this leaves the situation an open question.

In an action for foreclosure of mortgage executed by the deceased, may a special administrator be sued in such capacity? This

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[28] Cui v. Cui, et al., GR No. L-18727, August 31, 1964.
[29] *Ibid.*
[30] 82 Phil. 407.
[31] GR No. L-18799, March 31, 1964.
[32] *Ibid.*, citing Roxas v. Pecson, *supra.*
[33] Resolution upon motion for reconsideration, promulgated on December 28, 1964.

question was resolved in the affirmative in *Liuag v. Reyes, et al.*[34] As stated by the court:

> The Rules do not prohibit expressly making the special administratrix a defendant in a suit against the estate. Otherwise, creditors would find the adverse effects of the Statute of Limitations running against them in cases where the appointment of a regular administrator is delayed. So that if we are to deny now the present action on this technical ground alone, the very purpose for which the mortgage was constituted will be defeated.

Bonds of executors and administrators

Before an executor or administrator enters upon the execution of his trust, and letters testamentary or of administration issue, he shall give a bond, in such sum as the court directs, conditioned to insure his faithful performance of the duties enumerated by the Rules.[35] And where he should fail in his duties, his surety shall be liable for the same in a motion filed in the same special proceeding wherein he was appointed executor or administrator.[36]

A denial of said motion is final and executory notwithstanding a declaration by the lower court that "it was not the proper remedy". On this question, the court held: What really determines whether a judgment or order is final or merely interlocutory is whether it puts an end to litigation,[37] or leaves something to be done therein on the merits.[38] The court was of the opinion that the April 29 order was final in character because it was a final disposition of the matter involved in the motion aforesaid.[39] Consequently, the latter's remedy was to appeal therefrom, especially because the said order was manifestly erroneous. However, he failed and allowed seven months to elapse before filing his motion for reconsideration. At that time, the order of denial had already become executory.[40]

As stated, the bond filed is answerable to the liability of the executor or administrator. But where the executor merely followed the order of the probate court to execute a deed of assignment, the mere fact that the property delivered is not free from liens and encumbrances will not render him liable for the same, neither is his bond.[41] As held by the court, there is no cause of action against the executor in his capacity as such because he was not a party

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[34] GR No. L-19159, September 26, 1964.
[35] Section 1, Rule 81, Rules of Court.
[36] Cosme de Mendoza v. Pacheco, et al., 64 Phil. 134; De la Cruz v. Plaridel Surety and Insurance Co., GR No. L-16483, April 30, 1964.
[37] Olsen & Co. v. Olsen, 48 Phil. 238.
[38] Hodges v. Villanueva, GR No. L-4134, October 25, 1951, and other cases.
[39] That order denied the administrator's motion.
[40] De la Cruz v. Plaridel Surety and Insurance Co., *Supra.*
[41] Ozaeta v. Palanca, et al., GR No. L-17455, August 31, 1964.

to the deed of assignment—his participation was merely to comply with the order of the probate court.[42] Besides, on the sale of a decedent's property under order of the court, there is no implied warranty, either of title or quality.[43] Finally, it is well to note that an adverse possession by another is not an encumbrance in law, and does not contradict the condition that the property be free from encumbrance;[44] nor is a lien, which connotes security for a claim.[45]

Removal of administrator

The grounds enumerated in Section 2 of Rule 82 are not exclusive.[46] Thus, where the deceased has provided that an administrator may be removed for ineptitude in the discharge of his office or lack of evident sound moral character, such provision should be given effect.[47]

In this light therefore, a lawyer who has been disbarred, thus touching on his moral character, may be declared disqualified to hold the office of administrator. But upon reinstatement to the practice of law, the disqualification ceases. Such is a recognition of his moral rehabilitation, upon proof no less than that required for his admission to the Bar in the first place.[48]

It must be noted also that in actions of this nature, prescription or laches may apply,[49] and this action must be filed within one year from the time the right of the plaintiff to hold office arose.[50]

Inventory and appraisal

Section 1 of Rule 83 requires every executor or administrator to return to the court within three months a true inventory and appraisal of all the real and personal property of the deceased which have come to his possession. But how far does this appraisal hold? In the case of *Francisco v. Matias*,[51] this query has, in a way, been resolved. In that case, the appellant, citing an array of decided cases, argues that in special proceedings, testate or intestate, the inventory value submitted by the executor or administrator is considered as the correct value of the estate—binding upon all parties and even the court, in the proper management and administration

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[42] *Ibid.*
[43] 34 C.J.S. 618; Nutt v. Anderson, 87 SW 28760.
[44] Yuson, et al. v. Diaz, 42 Phil. 22.
[45] Shanghai Banking Corporation v. Rafferty, 39 Phil. 145.
[46] Degala v. Ceniza, 78 Phil. 791.
[47] Cui v. Cui, et al., GR No. L-18727, August 31, 1964.
[48] *Ibid.*
[49] *Op. cit.*
[50] Section 16, Rule 66, Rules of Court.
[51] GR No. L-6349, January 31, 1964.

of such estate. He further cited the case of *Reyes v. de la Cruz*,[52] whereat the reference was made to the assessed value of the property adjudicated but not their market value.

However, the court held that the cited case is distinguishable from the instant case because the former merely refers to the interpretation of the written contract of services and besides there were elements of judgment not found there, for instance, resulting obscurity of the document prepared by the lawyer, etc.; whereas, the question here at issue is the value of the appellee's professional services on the basis of *quantum meruit*. As observed:

> The court must determine how much the services of appellee really worth. And we cannot refuse to take a realistic approach in the performance of the work. Inquiry into the real value of the estate (true market value) becomes imperative. In the case of *Sison v. Suntay* [53] we fixed the counsel fees for the services rendered in opposing will on the basis of the fair market value of the estate.[54]

General powers and duties of executors and administrators

The rule is that an executor or administrator shall have the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts of the deceased and the expenses of administration.[55] But where it appears that the distributee has already paid her share in the obligations of the estate, she is free as well as the property conveyed to her in the distribution. It would be unfair, to say the least, to let her shoulder the whole burden alone and pay more than his true and actual share in the obligations of the estate.[56]

In other words, the power of the executor or administrator rests on the necessity for the payment of debts and expenses of administration. Assuming that such is the case and granting further that the heir has not yet paid his part in the obligation, still he cannot be required to turn over property belonging to the estate of the deceased which is in his possession if it can be shown that said administrator or executor has other property of the estate in his possession and could readily be sold to meet these liabilities.[57]

As between a receiver and an administrator, the latter, as a rule, is preferred. But in some cases, appointment of a receiver over

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[52] GR No. L-12729, March 30, 1959.
[53] G.R. No. L-10000, December 28, 1957.
[54] Besides, the court took judicial cognizance of the general information that the market value of the real property in the provinces are usually three or more times the assessed valuation thereof. Francisco v. Matias, *supra*.
[55] Rule 4, Section 3, Rules of Court.
[56] Habana v. Imbo, et al., G.R. No. L-15598 & No. L-15726, March 31, 1964.
[57] *Ibid.*

property which is part of the estate of the deceased would be proper as where the contract itself provides for it.[58] Observed the court:

> It was therefore the will of the deceased himself that in case of judicial foreclosure, the property be put to a receiver, and this must be respected by the administratrix of the estate. The cases cited by the petitioner in favor of the theory that property in *custodia legis* cannot be given to a receiver is not applicable, considering that this is an action to enforce superior lien on certain property of the estate and the appointment of a receiver, which is a very convenient and feasible means of preserving and administering the property, has been agreed upon by the contracting parties.[59]

Expenses of administration

Attorney's fees for probating a will is a proper charge against the estate [60] on the theory that it is the duty of the executor to submit the will and have it probated.[61] And for this purpose, a motion to fix such fees served on the executor or administrator for the estate would suffice to meet the due process requirement of notice. Thus, a claim that not all of the heirs were notified of the motion is untenable, it being unnecessary for the reason that until the project of partition is approved and their portions adjudicated, the estate as well as the heirs are legally represented by the executor or administrator and a service upon the latter in his representative capacity would be sufficient.[62]

This 1964 ruling seems to run counter to a previous decision [63] which requires that notice must be served upon all the heirs and interested parties. At any rate, the present ruling seems to be more in accord with the nature of administration (administrators and executors), he being a legal representative of the estate. Service upon him in such capacity would suffice. Fear of "over-reaching" in the transaction would be more apparent than real for in the first place, everything is being done through the courts, the paramount interest of which is to protect the rights of the heirs. And, secondly, granting that the rights of the latter may be prejudiced, then the bonds

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[58] The contract provides, "In case of judicial foreclosure, the Mortgagor hereby consents to the appointment of the president of the Mortgagee corporation or any of its officers as receiver."

[59] Liwag v. Reyes, et al., G.R. No. L-191559, September 29, 1964. Wide latitude of discretion is usually given to the trial courts in the matter of receivership and unless this discretion is exercised arbitrarily, we are not to interfere. Motuomui v. Arieta, et al., G.R. No. L-15972, May 31, 1963.

[60] Sison v. Suntay, *supra*, and in the United States a majority of the courts will allow executors attorney's fees in probating a will (See note 40 ALR 2d, 1411-1414).

[61] Rule 75, Rules of Court.

[62] Francisco v. Matias, *supra*.

[63] Escueta v. SyJuiliong, 5 Phil. 405.

of the administrators or executors could be held liable for the same. In either way therefore, the heirs are amply protected.

But could the contract of *quantum meruit* be the basis for the computation of attorney's fees? Generally speaking, where the employment of an attorney is under an express valid contract fixing the compensation for the attorney, such contract is conclusive as to the amount of compensation.[64] But where the attorney has been misled to believe that the estate values less than what it is actually, then the basis of *quantum meruit* is warranted.[65] And, the guideposts to be considered are, *inter alia*, the importance of the subject matter (being contingent), the nature and extent of the services rendered and professional standing of the counsel.[66]

However, where the attorney is allowed one-third of whatever share the oppositors may get from the estate of the deceased, as ruled by the court *a quo* and it appears upon appeal that the oppositors have no right whatever to share in the same, then the lawyer gets nothing.[67]

On the matter of procedure to be followed in pursuing his claim, the case of *Aldamiz v. Judge of CFI* [68] holds:

> The correct procedure for the collection of attorney's fees, is for the counsel to request the administrator to make payment and file an action against him in his personal capacity and not as an administrator should he fail to pay.[69] If judgment is rendered against the administrator and he pays, he may include the fees so paid in his account to the court.[70] The attorney may also instead of bringing such an action file a petition in the testate or intestate proceeding asking the court, after notice to all persons interested, to allow his claim and direct the administrator to pay it as an expense of administration.

In the case of *Sato v. Rallos, et al.*,[71] it appears that the petition was not only filed against the administrator and a distributee but also against the other distributees which is more than the procedural requirements. Appellee's claim that since the estate had already been distributed and the heirs had received their respective shares, free from any obligation, no award can be made in favor of plaintiff, does not hold water. Under the circumstances of the case and in the spirit of Article 2142 of the New Civil Code, which declares that no one should unjustly enrich and/or benefit himself

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[64] 5 Am. Jur. 378.
[65] Francisco v. Matias, *supra*.
[66] *Ibid.*
[67] Besa v. Castellvi, G.R. No. L-18421, September 28, 1964.
[68] G.R. No. L-2360, December 29, 1949.
[69] Palileo v. Mendoza, 40 O.G. 132 Suppl.
[70] Uy Tioco v. Imperial, 53 Phil. 802.
[71] G.R. No. L-17194, September 30, 1964.

at the expense of another, there is no clear way out to deny the lawyer's claim to attorney's fees. Neither, as held by the court, could it be presumed that he served *gratis et amore*, in view of the millions involved in the case.[72]

Actions by and against executors and administrators

In the case of *Roa v. Pasicolan, et al.*[73] the petitioner questioned the order of the respondent judge in the proceeding for the settlement of the testate estate of a deceased denying the complaint for the annulment of the sale executed by the deceased during his lifetime, on the ground that it was fictitious.

Among the grounds for the denial was that the right to file the action to contest the sale did not appear to have been expressly transmitted by the deceased to her heir, or to the representative of her estate. The court held: Article 776 of the New Civil Code[74] does not require that such right should be expressly transmitted by the deceased to her heirs or legal representatives. The complaint should be given due course.

Distribution and partition of the estate

In a case,[75] the will partitioned the real property of the estate and all the heirs manifested to the court their conformity to this disposition. A distributee, in her capacity as heir and devisee, sold the lots adjudicated to her to third persons. Now, the administrator asks for the annulment of the sale on the ground that the property left were not sufficient to meet all the obligations of the estate. Denying said prayer, the court held:

> The distribution made in the will specifically referring to the lots in question is in accordance with Article 1080 of the Civil Code.[76] There was no showing that said distribution ever prejudiced the legitime of the compulsory heirs herein and as a matter of fact they consented to it. There was no suggestion even a vague one that it was unfair. Concepcion became the absolute owner of said lots under Article 1091 of the Civil Code, from the death of her ancestors, subject to the rights and obligations of the latter and she could not be deprived of her rights thereto except by the methods provided by law.[77] She could as she did sell her part in the estate even before the approval of the proposed partition of the same, for there is no provision of law which prohibits a co-heir from selling to a stranger his share of an estate held in common before

[72] *Ibid.*
[73] G.R. No. L-18968, January 31, 1964.
[74] Article 776 of the New Civil Code provides, "The inheritance includes all the property, rights and obligations of a person which are not extinguished by death of the decedent." See Section 2, Rule 87, Rules of Court.
[75] Habana v. Imbo, et al., *supra*.
[76] first paragraph.
[77] Articles 657, 659 & 661 of the New Civil Code.

partition of the property is approved by the courts.[78] An heir may sell the rights, interest and participation, which he has or might have in the property under administration or in *custodia legis*. The executor and the heirs should comply with the lawful provision of the will of the testator as authorized by Article 1080 of the Civil Code.

It is not inappropriate to note that Rule 90, Section 1 provides that no distribution shall be allowed until the payment of the obligations above-mentioned [80] have been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs. It is manifest in the aforesaid case that neither of these two conditions were complied with and yet a distribution was made. What the court did was to put the cart before the horse merely because the will said so. The controversy then could not have arisen if only the procedure laid down in said rule was followed. Of course there is no gainsaying that the will of the testator must be given effect and that the heirs, as a rule, succeed to the rights of the deceased. However, we must not lose sight of the fact that the items mentioned in Rule 90, Section 1, among others are held paramount than the rights of the heirs. Albeit we have that so-called "substantial compliance," that should not be abused.

To facilitate the distribution and partition of the estate, a project of partition may be prepared by the executor or administrator but this is not conclusive upon the interested parties who may enter their objections thereto and present their own counter-project of partition.[81] As stated by the court in *Cabaluna Jr. v. Heirs of Cordova,*[82]

> It would not seem fair and just to compel the herein petitioners to participate in the drawing by the lots of the property, grouped in accordance with the value of lands, arbitrarily and unilaterally, fixed by the Commissioner, including property already disposed of and or sold, and make them accept as final, the grouping of said lots effected by the commissioner, without giving them the opportunity to show by competent proofs the necessary facts." [83]

This is but in keeping with the fundamental rule that the heirs should not be deprived of their legitimate shares in the property of the decedent without due process of law.[84]

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[78] Cea v. Court of Appeals, G.R. No. L-1776, October 27, 1949; Beltran v. Doriano, 32 Phil. 66).

[80] Debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax. Section 1, Rule 90, Rules of Court.

[81] Camia de Reyes v. Reyes de Ilano, 63 Phil. 269.

[82] Cabaluna Jr. v. Heirs of Cordova, G.R. No. L-15746, February 29, 1964.

[83] *Ibid.*

[84] *Op. cit.*

Jurisdiction of the Supreme Court and the Court of Appeals on appealed cases

In one case[85] the respondent contended that appeals in special proceedings, as distinguished from ordinary civil cases are within the exclusive appellate jurisdiction of the Court of Appeals since they are not enumerated in Section 17 of the Judiciary Act of 1948, as amended. The court ruled this contention as puerile. Observed the court,

> Granting that it is not a civil action, it has never been decided that a special proceeding is not a civil case. On the other hand, it has been held that the term "civil case" includes special proceedings.[86] Moreover, Section 2, Rule 73 provides that the rules on ordinary civil actions are applicable in special proceedings where they are not inconsistent with, or when they may serve to supplement the provisions relating to special proceedings.

But how is the value to be determined for the purpose of fixing jurisdiction? In the United States, the rule is that "proceedings in probate are appealable where the amount or value involved is reducible to a pecuniary standard, the amount involved being either the appellant's interest or the value of the entire estate according as the issues on appeal involve only the appellant's rights or the entire administration of the estate . . . In a contest for administration of an estate the value or amount of the assets of the estate is the amount in controversy for the purpose of appeal." [86] The theory that the amount in controversy relative to the appointment of Lopez as special co-administrator to protect the rights of the respondents is only ₱90,000.00, i.e., one-fourth of the conjugal property is untenable in a case where the appointment of Lopez is merely incidental to the probate proceedings for the settlement of the estate of a deceased spouse.[87] The reason is that the property to be liquidated is the entire conjugal property and not only a part of the same.[88]

In line with this ruling, it is to be noted that respondent's own interest as appellant in the probate proceedings is according to his theory, the whole estate. Such interest reduced to pecuniary standard on the basis of the inventory, is the amount in controversy and thus being more than two thousand pesos, be certified to the Supreme Court.[89]

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[85] Fernandez et. al. v. Maravilla, *supra*.
[86] 4 C.J.S. 204.
[87] Fernandez, et al. v. Maravilla, *supra*.
[88] Section 2, Rule 75, Rules of Court.
[89] Section 17, Judiciary Act of 1948, as amended.

Rules of evidence in the settlement of estate

The court *a quo* in its judgment made a finding of fact that the judgment in favor of the spouses (by reason of which the writ of execution was issued) was a conjugal debt so that conjugal property must answer for the same. This finding of fact cannot be reviewed upon appeal so that all findings of fact made by the trial court are deemed admitted by the appellant and only questions of law may be raised.[90] It is to be noted however that the instant proceeding was an appeal directly made to the Supreme Court.

In another case,[91] on the question of the market value of the estate, the court found no reason to overrule the finding of the trial judge that the current market value is that reflected in the estimate of the provincial assessors, whose judgment, by reason of their official functions and wide experience in such particular line deserves great weight and reliability and furthermore, the trial judge occupied a much better position to estimate landed property prices. And further, the assessment of real property for tax purposes is of little use in a judicial inquiry as to the market value of the land.

GENERAL GUARDIANS AND GUARDIANSHIP

Appointment of guardian (Jurisdiction)

In the case of *Lagdameo v. Lao*,[92] which was a petition for the appointment of a guardian over the person and property of some minor, the question treated was whether the CFI of Manila had jurisdiction to entertain this case in view of Section 1 of R.A. No. 1401, approved in 1955, conferring upon the Juvenile and Domestic Relations Court "exclusive and original jurisdiction to hear and decide . . . cases involving custody, guardianshp, paternity and acknowledgment."

The Court of Appeals resolved this in the negative, this case having been filed two months after the approval of said Act. But the petitioners contend that the effect of Section 2 of the same is to defer the operation of the grant of authority, made under Section 1, in favor of the Juvenile and Domestic Relations Court, until the organization thereof on June 1, 1956.

Upon petition for certiorari, the Supreme Court upheld the contention of the petitioners. As observed by the court,

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[90] Jacinto v. Jacinto, G.R. No. L-123, July 31, 1959; Nieto de Comillang v. Delenela, et al., G.R. No. L-18897, March 31, 1964.

[91] Francisco v. Matias, *supra*.

Guardianship

[92] G.R. No. L-19953, December 24, 1964.

> Indeed otherwise, the result would be that, from September 9, 1955 to June 1, 1956, there would have been in Manila no judicial body competent to hear the cases specified in Section 1. We cannot assume that, in enacting the same Congress intended to create a vacuum in the very capital of the Republic, where precisely the biggest number of said cases exist. Such vacuum would certainly be inimical to public interest and we must not assume that Congress intended to bring about that result. On the contrary, the assumption should be that, to avoid that result, Congress intended no vacuum, and accordingly, meant the grant of jurisdiction to the Juvenile and Domestic Relations Court to be operative only upon the establishment or organization of the court.

Removal of Guardian

A guardian cannot be legally removed from office except for the causes enumerated in Section 2, Rule 97 of the Rules of Court, such as (1) insanity, (b) incapacity or unsuitableness for discharging the trust, (c) waste or mismanagement of the estate, and (d) failure for thirty days after it is due to render an account or make a return. It has been held that where there is a conflict of interest between the ward and the guardian, the latter must be relieved.[93]

But in the case of *Carpio, et al. v. Agrava*,[94] which involved a petition for the removal of the guardian and the appointment of another in his place, the court ruled that much depends upon the discretion of the trial court in determining when a trial for removal of guardian is warranted by a corresponding petition or the facts brought to its attention.

In that case, as grounds for removal, petitioners alleged (1) the animosity which the ward bears toward the guardian; (2) the guardian's disregard of the ward's health and well-being; (3) the guardian's disregard of the ward's needs; and (4) the guardian's intention to gain control of the management and administration of the ward's estate which, if proven would render the guardian "unsuitable to continue further in his present trust," and that since the appointment in 1919 he did not render any accounting of his expenses for the account of the ward.

But the lower court refused to give due course to the petition on the ground that mere dislike is not sufficient for removal and that as to the enumerated grounds, those statements cannot justify a hearing for the reception of the evidence at that time.

Upon the foregoing facts, which do not appear to be disputed, the Supreme Court sustained the view of the court *a quo* holding that it did not commit any abuse of discretion in declining to give due course to the petition. In the words of the court:

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[93] Ribaya v. Ribaya, 74 Phil. 254; Sotelo v. Gabriel, 74 Phil. 25.
[94] G.R. No. L-20403, November 28, 1964.

> Indeed the claim was that there was intense and unabating animosity between the ward and the guardian or that the latter did not have proper understanding of the ward's needs, health or well-being, a situation which respondent judge found from her visit (two hours) not to be true. Respondent judge must have noted also that the petition is not verified while the guardian's answer is subscribed and sworn to wherein he vehemently denied the charges levelled against him. The want of verification of the petition must also have convinced the respondent of the groundlessness of the petition. At any rate, we are not prepared to hold that respondent judge acted improperly, for as a rule, the matter of removal of a guardian is addressed to the discretion of the court, though it would have been more in keeping with due process if petitioners had been given opportunity to present their evidence as they requested in their petition . . . But this is obviated by the visit paid by respondent judge to the ward which made the hearing unnecessary.

The ruling appears so simple that it left so many things open to speculation. Were the petitioners present during the alleged visit? At least, were they notified of this beforehand? The decision does not so mention.

At any rate, the petitioners should have been allowed to present their evidence in support of their allegations and this, as the court itself admitted, would be more in keeping with due process.

Of course, there was a visit and a talk between the respondent judge and the ward and an on-the-spot investigation of his residence was made and the respondent judge found everything "okay." But, may we not entertain the doubt that the situation found during the visit was "fixed" specially in view of the fact that the respondent guardian was notified of this visit in the first instance, Of course, a person, being aware of this would try to camouflage and pervert the truth just to appear in a good light.

Furthermore, the court commented that the petition is not verified while the answer is so and that this swayed the court at least in some degree the denial of the petition. Why is it necessary to have the petition verified? Section 1, Rule 97 requires a verified petition but that refers only to petitions that the competency of the ward be adjudged unlike the instant petition which is for the removal of the guardian on the grounds mentioned in section 3 of Rule 97.

TRUSTEES

In the case of *Golfeo v. Court of Appeals, et al.*,[95] the issue placed under consideration was whether a trustee could acquire property held in trust by prescription through adverse possession.

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[95] G.R. No. L-15841, October 30, 1964.

It appears in that case that in CA-GR 8063-R, the court declared that the possessor held the lands as trustees for the heirs of the deceased owner. In the present petition, petitioner as administrator of the deceased sued to recover a parcel of land as part of the estate but the trial court denied the same on the ground that the possessor has acquired ownership over the land thru adverse possession. The court held: In CA-GR 8063-R the courts declared that the possessor held the land as trustee for the heirs of the deceased. That declaration naturally applied to the time he presented his suit—1949. So that if in 1949, he was trustee, the ten-year period of adverse possession had not yet elapsed when in 1955, the present suit for "revindication" was filed.

On the other hand, it was a mistake to compute the ten-year period from 1940 simply because in that year, Bee transferred the tax declaration for the property in his name. There was no finding that this transfer was known at that time to the heirs. And considering that he was in possession of the land as trustee, the transfer could have been made surreptitiously. As was held in *Laguna v. Levantino*,[96] the only instance in which the possession of a trustee may be deemed adverse to the *cestui que trust* is when the former makes an open repudiation of the trust by unequivocal acts made known to the latter.

It was manifested in this case that a trust was decreed by the court to have been created in spite of the contention that he is in possession of the property under a deed of sale from the deceased since 1926. It was a judicial declaration. Now, the question that may be propounded is whether Rule 98, particularly on the duties of the trustee, is applicable, although in said rule, it seems that what is contemplated is a voluntary trustee, that is, one designated by the trustor and has accepted the trust. The instant case is silent on this. But with utmost probability, they are also covered and with more reasons since the evils sought to be prevented by Rule 98 are more real and abiding in this instance.

But in another case,[97] the contention that the defendant shall, having been appointed administrator be deemed trustee upon the present, be held infantile under the peculiar circumstances of that case. The court reasoned out that in the first place no administration continued after the order of February, 1936 has approved the final account, adjudicated the property to the sole heir, cancelled the bond of the administrator, and ordered the case "archivado el mismo termina-

[96] 71 Phil. 566.
[97] Lopez, et al. v. Gonzaga, et al., G.R. No. L-18788, January 31, 1964.

do." No proof that the proceeding was reopened. Secondly, the transfer of the certificates of title to defendant'ts own name in 1936 would constitute an open and clear repudiation of any trust, and the lapse of more than 20 years open and adverse possession as owner would certainly suffice to vest title by prescription in the appellee.

As to what will constitute adverse possession depend upon the circumstances. Thus where the respondents executed a deed of extrajudicial partition stating therein that they are the sole heirs of the deceased and secured new transfer certificates of title in their own name, they thereby excluded the petitioners from the estate of the deceased and consequently set up a title adverse to them and this is why petitioners have brought this action for the annulment of said deed upon the ground that the same is tainted with fraud.[98] On the question of fraud, the court held that it must be filed within four years from the discovery of fraud perpetrated and this started to run from the time said instrument of extrajudicial partition was filed with the Registrar of Deeds and new certificates of titles were issued in the name of the respondents exclusively, for the registration constitutes constructive notice to the whole world.[99]

ADOPTION AND CUSTODY OF MINORS

Among the facts to be stated in the petition for adoption are (b) the qualification of the adopter; and (c) that the adopter is not disqualified by law.[100]

But in a case,[101] where the petition is denied by the trial court solely because the same would not result in the loss of the minor's Filipino citizenship and the acquisition by him of the citizenship by the adopter, the Supreme Court opined that "this, if pursued to its legal consequences, the judgment appealed from would impose a further requisite on the adoption by aliens beyond those required by law. As pointed out, the present Civil Code [102] only disqualifies from being adopters those aliens that are either (a) non-resident or (b) who are resident but the Republic of the Philippines has broken diplomatic relations with that government. Outside of these two cases, alienage by itself does not disqualify a foreigner from adopting a person under our law.

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[98] Gerona et al. v. De Guzman, G.R. No. L-19060, May 31, 1964.

[99] Diaz v. Garricho, G.R. No. L-11229, March 29, 1958; Avecilla v. Yatco, G.R. No. L-11578, May 14, 1958; Tuason and Co. v. Magdangal, G.R. No. L-15539, January 30, 1952; Lopez et al. v. Gonzaga, G.R. No. L-18788, January 31, 1964.

[100] Section 2, Rule 99, Rules of Court; Articles 334, 335 & 336 of the New Civil Code.

[101] Therkelsen, et al. v. Republic, G.R. No. L-21951, November 27, 1964.

[102] Article 335, New Civil Code.

The court in the same case went on saying—

> This conclusion of the lower court finds no support in law, for, as observed in *Ching Leng v. Galang*,[103] the citizenship of the adopter is a matter political, and not civil, in nature, and the ways in which it should be conferred lay outside of the ambit of the Civil Code. It is not within the province of our civil law to determine how or when citizenship in a foreign state may be acquired.

RESCISSION AND REVOCATION OF ADOPTION

The Civil Code of the Philippines contains provisions on adoption [104] and Article 345 provides that "the proceedings for adoption shall be governed by the Rules of Court insofar as they are not in conflict with this Code."

Nowhere in the foregoing provisions does the Civil Code specify the court where the proceedings should be filed. The Rules of Court designates the venue of the proceedings for adoption which is the place where the petitioner resides,[105] but is silent as to the venue for the proceeding for the rescission and revocation of adoption.[106]

It is clear, as stated in one case,[107] that:

> The proceedings are separate and distinct from each other. In the first, what is determined is the propriety for the establishment of the relationship of parent and child between two persons not related by nature . . . In the other proceedings either the adopting parent or the adopted seeks to severe the relationship previously established and the inquiry refers to the truth of the grounds upon which the revocation is sought.

In the same case cited, this problem has been resolved. The court reasoned out as follows:

> Since the proper court has granted a petition for adoption and the decree has become final the proceeding is terminated and closed. A subsequent petition for the revocation of the adoption is neither a continuance nor an incident in the proceeding for adoption. It is entirely a new one, dependent upon the facts which have happened since the decree of adoption. The venue of this case, applying Rule 99 in a *suppletory* character, is also the *place of the residence of the petitioner* (italics, mine).

A seemingly contrary rule is to the effect that no court has the power to interfere by injunction with the judgment or decree of a court of coordinate jurisdiction. But this rule is inapplicable in this in-

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[103] G.R. No. L-11931, October 27, 1958.
[104] Articles 334-348, New Civil Code.
[105] Section 1, Rule 99, Rules of Court.
[106] Rule 100, Rules of Court.
[107] De la Cruz, et al. v. de la Cruz, G.R. No. L-19391, September 29, 1964.

stance since there is no such interference which is sought to be prevented. The validity of the decree of adoption is not in question, nor sought to be enjoined.[108]

An incidental question may be raised, *viz.*, jurisdiction over the person of the minor adopted. But it is fundamental that appointment of the minor's natural mother as guardian *ad litem* will suffice to meet due process requirement.

HABEAS CORPUS

Section 1, Rule 102 of the Rules of Court provides that "except as otherwise expressly provided by law, the writ of habeas corpus shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty . . ." But where in a case,[109] a person is held in custody under a valid and effective warrant of arrest issued by a court, a petition for the issuance of the writ shall be dismissed. This is so even if the offense described in said warrant was "rebellion complex" if it appears that the information was subsequently amended and the petitioner can still be held guilty for simple rebellion.[110] And the mere fact that no new preliminary investigation was conducted after the amendment is of no moment for the reason that there has been no change in the nature of the crime charged which is rebellion.[111]

But assuming arguendo that the warrant issued for the purpose is defective, this fact alone will not justify issuance of the writ prayed for if under the circumstances so provided in Section 6-b, Rule 113 of the Rules of Court, petitioner's arrest is legal in spite of the absence of a warrant or invalidity of the same.[112]

And where in a petition for a writ of habeas corpus, a temporary restraining order or *ex parte* preliminary injunction is also prayed for, the well-settled rule is that, normally, a writ of preliminary injunction should not issue to restrain the prosecution of a criminal offense.[113]

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[108] *Ibid.*

[109] Lava v. Gonzales, G.R. No. L-23048, July 31, 1964.

[110] People v. Geronimo, G.R. No. L-8936, October 23, 1956; People v: Romagosa, G.R. No. L-8476, February 28, 1958; People v. Santos, G.R. No. L-11813, September 17, 1958.

[111] Lava v. Gonzales, *supra.*

[112] *Ibid.*

[113] Kwong Sing v. City of Manila, 41 Phil. 103; Gorospe v. Peñaflorida, G.R. No. L-11583, July 19, 1957.

JUDICIAL APPROVAL OF VOLUNTARY RECOGNITION OF MINOR NATURAL CHILDREN

The general rule as to the effect of a dismissal of a prior civil case is that "unless ordered by the court, any dismissal for lack of jurisdiction, operates as an adjudication upon the merits." [114] But where the action of the plaintiff is for support and acknowledgment in both civil cases, the rule does not apply because the judgment for support does not become final.[115]

This is particularly so since it appears that the former dismissal was predicated upon a compromise. Acknowledgment, affecting as it does the civil status of persons and future support cannot be the subject matter of compromise.[116] Hence, the first dismissal cannot have that force and effect and cannot bar the filing of another action, asking for the same relief against the defendant.[117]

The matter of acknowledgment of an alleged natural child may properly be brought under Rule 105 of the Rules of Court. But it is well-settled that such may also be determined in an ordinary civil action.[118]

CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Article 412 of the Civil Code provides that no entry in a civil registry should be changed or corrected, without a judicial order. In this, the law merely contemplates corrections of mistakes which are clerical in nature.[119]

Thus, in an action [120] wherein some corrections in the civil registry were sought alleging that some minors were erroneously entered in the same as Chinese citizens in spite of the fact that they were born out of wedlock by a Filipino mother, the Supreme Court held: That the instant action seeks a declaration of Philippine citizenship of some minor children. And it has been invariably held [121] that only clerical mistakes may be ordered corrected under Article 412 of the Civil Code. The procedure contemplated under this provision is summary in nature. If the petition, on the other hand, pursues the correction of entries that are substantial, the erroneous entry may be

[114] Section 4, Rule 30, Rules of Court.
[115] Advincula v. Advincula, G.R. No. L-19065, January 31, 1964.
[116] Paragraphs 1 & 4 of Article 2035, New Civil Code.
[117] Advincula v. Advincula, *supra*.
[118] Zaldarriaga v. Marino, G.R. No. L-19566, May 25, 1964.
[119] Ty Kang Tin v. Republic, 30 O.G. 1077; Brown v. Republic, 52 O.G. 6564; Quioctoo v. Republic, 53 O.G. 1041; Ansaldo v. Republic, 54 O.G. 5886.
[120] Reyes, et al. v. Republic, et al., G.R. No. L-17642, November 27, 1964.
[121] Beduya v. Republic, G.R. No. L-17639, May 29, 1964; De Castro v. Republic, G.R. No. L-17431, April 30, 1963.

corrected by the court by means of a proper action according to the nature of the issues in controversy and wherein all parties who may be affected by the entry are notified and represented and the evidence submitted to prove the allegations of the complaint and proof to the contrary admitted.[122]

It may be stated at this juncture that under Rule 108 any person interested may file a verified petition relating to any act, event, order or decree concerning the civil status of persons which has been recorded in the civil registry. The entries are so enumerated in Section 2 of the same. While "birth" is mentioned as one of the entries that may be corrected or cancelled, this includes only such particulars as are attendant to birth. Other details such as citizenship or nationality are not included. Rule 108 also covers citizenship but only as regards its election, loss or recovery.[123]

As manifested, the objection of the court rests primarily on the fact that the instant proceeding is summary in nature and being such is not the "proper action" according to the issues and wherein all the interested parties are notified and allowed to be represented and submit evidence in their behalf. But is it not a fact that Section 3, Rule 108 requires that—

> When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding?

In other words, even in proceedings of this sort, the fear expressed by the court is only apparent and not real. And as a matter of fact, the rule[124] exhorts that all persons-in-interest must be notified. Viewed in the light of the rule against circuity of suits, the position taken by the court becomes more untenable.

Furthermore, Section 2 of Rule 108 mentions "birth." The court, however, set the yardstick that it includes only such particulars as are attendant to birth. But what are those attendant to birth? The query appears simple but it is so fraught with implications if maturely scrutinized. At any rate, the court did not elaborate on this point. In the instant case,[125] is it not but an attendant to birth, i.e., a mistake in the entry in the civil registry?

Another case decided in the same light was *Beduya v. Republic.*[126] This was an action for the correction of entries in the civil registry,

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[122] Lui Lim v. Republic, G.R. No. L-18213, December 24, 1963; and other cases.

[123] Reyes, et al. v. Republic, et al., *supra.*

[124] Section 3, Rule 108, Rules of Court.

[125] Reyes, et al. v. Republic, et al., *supra.*

[126] G.R. No. L-17639, May 29, 1964.

particularly, the copies therein of the marriage contract of appellee and his wife. The correction consists of the deletion of the names of Sabas Obeso and Juana Bartolo and the substitution in their stead other names as father and mother, respectively of appellee; and also the change of appellee's name.

The Court held that Article 412 allows correction only of clerical mistakes, not those substantial changes which may affect the civil status or nationality of the persons involved.[127] A clerical error is one which is visible to the eyes or obvious to the understanding; error made by a clerk or a transcriber; a mistake in copying or writing;[128] or some harmless and innocuous change such as correction of a name that is clearly misspelled or of a misstatement of the occupation of the parent.[129]

The correction sought by the appellee in the case at bar refers to his family relationship, which necessarily affects his civil identities of his parents, with all the changes in the rights and allegations of the parties that a new relationship would entail. Needless to state, one's affiliation or parentage appearing in a public record where the law requires it to be entered; may not be changed except in the proper proceeding wherein the persons concerned are given the opportunity to be heard.

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[127] Ty Kong Tin v. Republic, G.R. No. L-5609, February 5, 1954.
[128] Black v. Republic, G.R. No. L-10869, November 28, 1958.
[129] Ansalada v. Republic, G.R. No. L-10226, February 14, 1958.