CRIMINAL PROCEDURE

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The decisions of the Supreme Court in the year 1965 are of particular importance in the vast field of Remedial Law, as the innovations introduced by the Revised Rules of Court upon its effectivity on January 1, 1964, have begun to find their way in the stream of judicial controversy to the Supreme Court. So it was that, in the law of Criminal Procedure, several cases interpreting and applying the provisions of the new Rules added to the enrichment of the jurisprudence on the subject. While many of the cases followed, as in previous years, the tested ways of precedent or stare decisis, these reiterations served to strengthen the doctrines which have been incorporated substantially unchanged in the Revised Rules.

In some of the cases decided last year, the Supreme Court elected to apply the former rules, upon the authority of Rule 144 of the Revised Rules, to the extent that, in its opinion, the application of the Revised Rules would not be feasible or would work injustice in the cases already pending prior to January 1, 1964. In the treatment of these cases, the proper annotations are made to indicate the amendments introduced by the Revised Rules.

JURISDICTION

Courts are competent to try a criminal case and render a particular judgment thereon only when the offense charged is within the class of offenses placed by law under its jurisdiction, and proceedings had in the absence or in excess of jurisdiction, to the extent of such excess, are void and of no legal effect.[1] The extent and limits of the jurisdiction of our courts are provided for mainly in the Judiciary Act.[2]

Section 87(c) thereof, as amended by Republic Act No. 3828, confers upon municipal judges and judges of city courts of chartered cities exclusive orginal jurisdiction to try all offenses, except violation of election laws, in which the penalty provided by law is imprisonment for not more than three years or a fine of not more than three thousand pesos, or both such fine and imprisonment.

Jurisdiction determined by law at time of filing of case.

Said amendment, expanding the jurisdiction of the municipal

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[1] People v. Pegarum, 58 Phil. 715 (1933).

[2] Rep. Act No. 296, as amended.

and city courts, was involved in the case of *People v. Adolfo*.[3] In that case, Jose Adolfo was found guilty by the Court of First Instance of Manila of damage to property through reckless imprudence, and was sentenced to pay the offended party damages in the sum of ₱485.55 and a fine of ₱971.10. The act charged in the information was alleged to have taken place on April 10, 1963, while the information itself was filed in court on July 30, 1963. In the interim, or on June 22, 1963, Rep. Act 3828 was enacted, amending the Judiciary Act by providing that offenses in which the penalty provided by law is a fine of not more than ₱3,000.00 falls within the original jurisdiction of the municipal court. The accused questions the judgment of conviction principally on the lack of jurisdiction of the CFI to pass upon the case, for the reason that, as alleged in the information, the amount of damages sustained by the offended party was only ₱890.49, and the maximum penalty therefor under Article 365 of the Revised Penal Code is a fine of not more than three times the value of the property, or not more than ₱2,671.47. The solicitor-general, on the other hand, contended that the CFI had jurisdiction over the case, because the incident that gave rise to the suit occured on April 10, 1963, whereas the amendatory provision above referred to deprived the CFI of such jurisdiction only from the date of its effectively on June 22, 1963.

The Supreme Court sustained the defendant and decreed that the CFI had no jurisdiction over the case, because the jurisdiction of the court to try a criminal case is determined not by the law in force at the time of the commission of the offense, but by the law in force at the time of the institution of the action.[4]

Concurrent jurisdiction of CFI and municipal courts.

Section 87(c) of the Judiciary Act also confers concurrent jurisdiction upon the city courts or municipal courts of provincial capitals with the Court of First Instance. Said section reads:

> "Municipal judges in the capitals of provinces and subprovinces and judges of city courts shall have like jurisdiction as

[3] People v. Adolfo, G.R. No. L-24191, March 31, 1965.

[4] Note should be taken of the fact that Section 44(f) of the Judiciary Act, which confers upon the Courts of First Instance exclusive original jurisdiction "in all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos," has not been expressly amended. The Supreme Court did not discuss the effect of R.A. 3828 on said section in the *Adolfo* case, but merely assumed that the increased jurisdiction of the municipal courts had divested the Courts of First Instance of the jurisdiction to try cases where the penalty involved is imprisonment for not more than three (3) years or a fine of not more than three thousand pesos. Hence, while an implied repeal is never favored in law, it seems clear nevertheless that the extension of the original exclusive jurisdiction of the inferior courts under R.A. 3828 impliedly amended Section 44(f) of the Judiciary Act, resulting in a corresponding diminution of the jurisdiction of Courts of First Instance.

> the Court of First Instance to try parties charged with an offense committed within their respective jurisdictions, in which the penalty provided by law does not exceed *prision correccional* or imprisonment for not more than six years or fine not exceeding six thousand pesos, or both, ...
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> "All cases filed under the next preceding paragraph with municipal judges of capitals and city court judges shall be tried and decided on the merits by the respective municipal judges or city judges. Proceedings had shall be recorded and decisions therein shall be appeallable direct to the Court of Appeals or to the Supreme Court, as the case may be."

In the case of *Aquino, et al. v. Hon. Estenzo, et al.*,[5] an information was filed in the City Court of Ormoc City against Manuel Aquino and Felix Pirante for grave coercion. The City Court took cognizance of the case in the exercise of its concurrent jurisdiction with the CFI of Leyte, pursuant to Sec. 87(c), above-quoted. The accused were found guilty of light coercion, and judgment was accordingly entered. The accused filed a notice of appeal, manifesting therein that in the hearing of the case in the City Court, no stenographic notes were taken, as there was no stenographer in court. The Clerk of Court, instead of transmitting the records of the case to the Court of Appeals, forwarded the same to the CFI of Leyte. A new information was filed before the CFI of Leyte charging the accused with the same crime of grave coercion of which they were previously charged in the City Court of Ormoc City. The petitioners filed a motion to quash, on the ground that the CFI had no appellate jurisdiction to try the criminal case, as the petitioners had not appealed to the CFI of Leyte, but to the Court of Appeals, pursuant to Section 87(c) of the Judiciary Act. The motion was denied, and the accused went to the Supreme Court on a petition for certiorari, questioning the jurisdiction of the CFI to try the case.

The Supreme Court pointed out that the City Court had concurrent jurisdiction with the CFI of Leyte to try the criminal case for grave coercion, and that when the City Court assumed jurisdiction, it had thereby excluded the CFI of Leyte from the jurisdiction to try the same case. However, when the City Court tried the case, it did not proceed in accordance with Section 87(c) of the Judiciary Act, which requires that a record be made of all the proceedings had therein. This being so, the City Court had failed to exercise its jurisdiction in accordance with law. The proceedings in the City Court of Ormoc City were, therefor, void, not because it had no jurisdiction to try the case, but because the requirements of the law that the proceedings be recorded were not complied with. When the City Court acts in the exercise of its

[5] G.R. No. L-20791, May 19, 1965.

concurrent jurisdiction with the CFI, it acts as a Court of First Instance and must, therefore, act as a court of record. Otherwise, no appeal can be taken therefrom to the Court of Appeals, because the findings of facts of the trial court cannot be reviewed by the appellate court if there is no record of evidence taken during the trial. Consequently, the Supreme Court declared, when the new information was filed in the CFI of Leyte, a new criminal case was actually instituted against the petitioners, and said court took cognizance thereof in the exercise of its original jurisdiction, not of its appellate jurisdiction over cases coming from the City Court. The preliminary investigation conducted by the City Attorney of Ormoc City previous to the filing of the information in the City Court served as the basis for the filing of the information in the CFI of Leyte.

Jurisdiction to order reinstatement of accused.

In *People v. Consigna*,[6] the Supreme Court sustained the jurisdiction of the trial court to order, upon acquittal, the reinstatement of a government employee who was dismissed because of the criminal case against him. The facts of the case are as follows:

Consigna was a property clerk in the Office of the Division Superintendent of Schools in Surigao del Norte. He was accused in the CFI of Surigao, together with a certain Borja, warehouseman of the Namarco, with the crime of malversation for allegedly appropriating and converting to their personal use a certain quantity of GI sheets. Consigna was acquitted after trial, for "absolute lack of evidence". In the judgment of acquittal, the Court also ordered the reinstatement of Consigna. The Provincial Fiscal moved for a reconsideration of that part of the decision ordering the reinstatement of Consigna, invoking, in support thereof, the decision rendered by the Commissioner of Civil Service in an administrative case against Consigna for the same acts alleged in the information, finding him guilty of gross negligence and ordering his removal from office. The motion was denied, and the government appealed. It is claimed by the appellant that the trial court had no authority to order such reinstatement, for the reason that the only issue joined by Consigna's plea of not guilty is whether or not he had committed the crime charged in the information and that, therefore, the only proper judgment that could be rendered is either one of acquittal or conviction.

The Supreme Court, after stating that the decision of the Commissioner of Civil Service was obviously not binding upon the courts, upheld the authority of the lower court to order the reinstatement of the accused. It said:

[6] G.R. No. L-18087, August 31, 1965.

> "According to Art. 217 of the Revised Penal Code, a party found guilty of malversation of public funds should be punished with imprisonment and the additional penalty of special perpetual disqualification. It is clearly inferable from this that his conviction necessarily results in his dismissal from the public office he occupied at the time he committed the offense. On the other hand, the preventive suspension of Consigna followed his indictment for the crime of malversation, and this was later followed by an order for his dismissal as a result of the administrative investigation to which he was subjected even while the criminal case for malversation was pending in court. It must be observed, in this connection, that although this administrative investigation was started after the filing of the criminal case, Consigna's administrative superiors went ahead with said investigation . . . instead of waiting for the result of the criminal case. . . . We would say that 'the least that could be done is to restore to him the office and post of which he has been illegally deprived' . . . 'to remedy the evil and wrong committed' and to fully accomplish the vindication to which he is entitled.
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> "The case of People v. Daleon,[7] is not controlling, x x x because our ruling in the former was simply to the effect that upon acquitting one charged with malversation of public funds the court has no authority to order payment of the salaries corresponding to the period of his suspension, because his right to the same was not involved in the case. This ruling does not apply to defendant's right—in case of acquittal—to reinstatement to the position he was occupying at the time of his suspension, because . . . this matter would seem to be involved in the case of malversation—albeit as a mere incident—because conviction of the offense charged results necessarily in a denial of such right to reinstatement in view of the penalty of disqualification provided by law. If this is the inevitable result of conviction, reinstatement should also follow acquittal."

Territorial jurisdiction

It is a fundamental rule of criminal procedure that one who commits a crime may be held to answer therefor only in the jurisdiction where the crime is committed.[8] The court, in other words, must have jurisdiction not only with respect to the crime charged, but also with respect to the territory in which it is alleged to have been committed. Otherwise, any judgment rendered is null and void.[9]

The venue of criminal actions is governed by Section 14(a), Rule 110 of the New Rules, which provides:

> "In all criminal prosecutions, the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place."

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[7] G.R. No. L-15630, March 24, 1961.
[8] IV Moran, *Comments on the Rules of Court*, 1963 ed., p. 53.
[9] Luistro v. People, G.R. No. L-43845, February 28, 1938.

In the case of *People v. San Antonio,*[10] the Supreme Court held that the CFI of Bulacan may properly hear and decide an information charging estafa alleged therein to have been committed in Bulacan, although the instrument showing the receipt of the money misappropriated which was presented in evidence by the prosecution was executed in Manila. This is so because the delivery of the goods to be bought or the return of the money misappropriated by the accused was to be made in Obando, Bulacan, which delivery was an essential element of the offense charged.

Authority of vacation judge to try cases

Section 65 of the Judiciary Act provides for a yearly vacation for Courts of First Instance, commencing on the first of April and closing with the first of June. The Secretary of the Department of Justice shall issue an order naming the judges who are to remain on duty during the court vacation of that year. A judge assigned to vacation duty shall not ordinarily be required to hold court during such vacation; but the Secretary of Justice may direct any judge assigned to vacation duty to hold during the vacation a special term of court in any district.

In one case,[12] pursuant to said authority, the Department of Justice designated Judge Buslon as vacation Judge, to act in the Court of First Instance of Agusan "for the purpose of trying all kinds of cases and to enter judgments therein." The question raised on a petition for certiorari filed by the Government seeking to annul the judgement or acquittal rendered by said Judge in a murder case, was whether such judge had authority to render a judgment on a case the trial of which had already been commenced by the regular judge. The Supreme Court said that while it is not customary for vacation judges to hear cases already begun and partly tried by the regular judge, the authority given by the Department of Justice in this case to the respondent judge was sufficiently broad to authorize the holding of the trial of a case already commenced by the regular judge, if the respondent judge was willing to do so, and render a valid judgment thereon.

PROSECUTION OF OFFENSES

No conviction for offense not charged

The constitutional right of the accused to be informed of the nature and cause of the accusation against him[13] is designed to secure to the accused the opportunity to prepare fully and adequately his defense. It is a right which involves the public interest so in-

[10] G.R. No. L-20430, May 20, 1965.
[11] Section 66, Judiciary Act, as amended.
[12] People v. Hon. Buslon, et al., G.R. No. L-22778, November 29, 1965.
[13] Phil. Const., Art. III, Section 1, clause 17.

timately that it cannot be waived even by the accused himself.[14] No judgment of conviction of a crime, therefore, can be rendered against a person unless he has been properly apprised thereof in an information duly filed.

Catuiza v. People and the Court of Appeals[15] reiterated this principle. In that case, the accused, a bus driver, was involved in a mishap on the highway when the bus he was driving collided with a jeep, resulting in the death of 8 persons and serious injuries to 2 others, all occupants of the jeep. The accused was charged with multiple homicide and physical injuries. The question was whether he could be sentenced to pay for the resultant damages to the jeep, in the absence of any allegation in the information that his acts resulted in damages to property. The Court, citing previous rulings,[16] held that the accused cannot be convicted of and sentenced for something with which he was not charged.

Sufficiency of the information

Section 8, Rule 110 of the new Rules, requires that:

> "The acts or ommissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment."

In *People v. Ramon Lopez*,[17] the information alleged, in part:

> "That on or about the 21st day of December, 1960, in the Municipality of Bacuag, Province of Surigao del Norte, Philippines, and within the jurisdiction of this Honorable Court, the said accused with deliberate and criminal intent and without lawful cause did then and there wilfully, unlawfully, and feloniously have in their possession, custody, and control seven (7) false keys, one of which is a picklock or master key."

Counsel for the accused argued that an essential element of illegal possession of aflse keys penalized in Article 304 of the Revised Penal Code was not alleged, namely, that the picklocks or false keys were "specially adapted to the commission of the crime of robbery". The Supreme Court disposed of this claim by citing Article 299 and 302 of the Revised Penal Code, which provided that the crime of robbery may be committed by entry in a building through the use of picklocks. Since picking of locks is one way to gain entrance to commit robbery, a picklock, therefore, is *per se* specially adapted to the commission of the robbery. The description in the informa-

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[14] IV Moran, *Comments on the Rules of Court*, 1963 ed., p. 156.
[15] G.R. No. L-20455, March 31, 1965.
[16] People v. Narvas, G.R. No. L-14191, April 29, 1960; People v. Despuvellador, G.R. No. L-13814, January 28, 1961.
[17] G.R. No. L-18766, May 20, 1965.

tion of a picklock as "specially adapted to the commission of robbery" is unnecessary and superflous, the omission of which will not render the information fatally defective.

PROSECUTION OF CIVIL ACTION

The general rule is that when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or serves his right to institute it separately.[18] Criminal and civil actions arising from the same offense may be instituted separately, but after the criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action.[19] As exceptions, the Civil Code provides for certain cases where a civil action entirely separate and distinct from, and to proceed independently of, the criminal action may be brought.[20]

Before the effectivity of the Revised Rules of Court, reservation of the right to institute a separate civil action in the cases falling under Articles 31, 32, 33, 34, and 2177 of the Civil Code was not necessary. However, the present procedure[21] now requires the offended party to reserve such right even in these excepted cases.

Capuno, et al. v. Pepsi-Cola Bottling Co. of the Philippines, et al.[22] was a separate civil action, instituted under the old Rules by the heirs of the victims in a vehicular accident. On January 3, 1953, a Pepsi-Cola truck driven by a certain Elordi collided with a car, resulting in the death of Cipriano Capuno and two other occupants of the car. Elordi was charged with triple homicide in an information which was subsequetly amended to include claims for damages of the heirs of the three victims. On October 1, 1953, the estate of Buan, the former employer of Capuno, filed a civil action for damages against Pepsi-Cola and Elordi for indemnity in the sum of ₱2,623.00 paid by the estate to the heirs of Capuno under the Workmen's Compensation Act. Appearances were filed by counsel of the estate of Buan and the heirs of Capuno, respectively, in the criminal case, which were however disallowed by the court on motion of the accused on the ground that, with respect to the estate of Buan, its right to intervene had been abated by the civil action, and, with respect to the Capuno heirs, they no longer had any interest as they had already received compensation for the death of their decedent. No appeal was taken from the orders of the court issued

[18] Section 1, Rule 111 of the Revised Rules of Court.
[19] Section 3(a), Rule 111 of the Revised Rules of Court.
[20] See Articles 31, 32, 33, 34, and 2177 of the new Civil Code.
[21] Section 2, Rules 111 of the Revised Rules of Court.
[22] G.R. No. L-19331, April 30, 1965.

on September 3, 1953, and October 23, 1954, respectively disallowing the said appearances. The civil case filed by the estate of Buan was eventually compromised. On September 26, 1958, the heirs of Capuno commenced the civil action under consideration, for damages against Pepsi-Cola and Elordi, but the lower court dismissed the same principally on the ground that the action had prescribed, it appearing that the civil case was filed more than 4 years from January 3, 1953. Elordi was subsequently acquitted in the criminal case. The plaintiffs appealed the dismissal of the civil case to the Supreme Court, contending that no prescription has as yet set in because the 4-year prescriptive period for actions based on a quasi-delict[23] had been interrupted by the filing of the criminal case inasmuch as they had neither waived the civil action nor reserved the right to institute it separately. *Held*: In filing the civil action as they did, the appellants considered it as entirely independent of the criminal action pursuant to Articles 31 and 33 of the Civil Code. They could have commenced the action, therefore, immediately upon the death of Cipriano Capuno, and the same would not have been stayed by the filing of the criminal action for homicide through reckless imprudence, as no reservation of the right to institute a civil action separately was necessary under the old Rules.[24] Consequently, the institution of the criminal action could not have the effect of interrupting the running of the period of prescription of a civil action based on a quasi-delict.

The Court did not find it necessary to consider whether Section 2, Rule 111 of the Revised Rules, which now requires the reservation of the right to institute an independent civil action in the cases provided for in the Civil Code, affects the question of prescription. At any rate, a similar case could hardly arise under the present procedure, as the non-reservation of such right in the criminal case would preclude the offended party from successfully prosecuting a separate and independent civil action based on the same acts charged therein.

PRELIMINARY INVESTIGATION

Under Rule 112 of the new Rules, before an offense cognizable by the Court of First Instance can be instituted, a preliminary examination and a preliminary investigation must first be conducted. The preliminary examination is a previous inquiry or examination made before the arrest of the accused, by a judge or officer authorized to conduct the same, for the purpose of determining whether there is reasonable ground to believe that an offense has

[23] Art. 1146, New Civil Code.
[24] Pocholo v. Tumangday, G.R. No. L-14500, May 25, 1960; Azucena v. Potenciano, G.R. No. L-14028, June 30, 1962.

been committed, and the accused is probably guilty thereof, so that a warrant of arrest may be issued.[25] The preliminary investigation, on the other hand, is the proceeding whereby the accused, after arrest, is informed of the complaint and the substance of the evidence presented against him, and in which he is given the opportunity to present evidence in his behalf if he so desires.[26] The purpose of the preliminary examination is to determine whether or not there exists reasonable ground for the issuance of a warrant of arrest,[27] and of the preliminary investigation, whether or not the accused should be released or held for trial before the competent court.[28]

Among those who are authorized to conduct the preliminary examination and investigation are judges of the Court of First Instance, under Section 13 of Rule 112 of the new Rules. Said section reads:

> "Upon complaint filed directly with the Court of First Instance, without previous preliminary examination and investigation conducted by the fiscal, the judge thereof shall either refer the complaint to the justice of the peace . . . for preliminary examination and investigation or himself conduct both preliminary examination and investigation simultaneously in the manner provided in the preceding sections, and should he find reasonable ground to believe that the defendant has committed the offense charged, he shall issue a warrant for his arrest, and thereafter refer the case to the fiscal for the filing of the corresponding information."

The Supreme Court had occasion to explain the amendment introduced by this section which now requires the judge to conduct a preliminary investigation in addition to the preliminary examination, in the important case of *Albano, et al. v. Hon. Arranz, et al.*[29] There, a shooting incident involving bodyguards of Congressman Albano occurred near the premises of the CFI of Isabela, on March 18, 1965, on the occasion of the hearing of an election protest, in which two persons were killed. After gathering sufficient evidence, the provincial fiscal filed an information directly with the CFI of Isabela, charging Delfin Albano, his brother, and some of his bodyguards with multiple murder. Giving due course to the information, the CFI of Isabela conducted an investigation, allegedly on the authority of Section 13, above-reproduced, by taking the declarations of several witnesses, and on the basis thereof, issued a warrant for the arrest of the petitioners. At the same time, the court

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[25] Section 1, Rule 112 of the Revised Rules of Court.
[26] Section 10, Rule 112 of the Revised Rules of Court.
[27] People v. Bautista, 67 Phil. 518 (1939); People v. Datu Galantu, et al., 39 O.G. 1182.
[28] Hashim v. Boncan, 71 Phil. 216 (1941); Biron v. Cea, 73 Phil. 673 (1942).
[29] G.R. No. L-24403, December 22, 1965.

referred the case to the provincial fiscal in order that he may file the corresponding information in accordance with the last sentence of said section. The petitioners assail the validity of the information filed by the fiscal and the warrant of arrest issued by the court, alleging that the same were made in violation of Section 13, above-cited. *Held*: Section 13 speaks of a complaint, and not of any other pleading, when the preliminary examination and preliminary investigation are to be conducted by the CFI. What was filed in this case was an information, not a complaint, which, under Section 2 of Rule 110, may be filed only by (1) the offended party, (2) any peace officer, and (3) an employee of the government or governmental institution in charge of the enforcement or execution of the law violated. The provincial fiscal is not one of those who may file a complaint and, consequently, the information filed by the provincial fiscal with the court cannot be considered as the complaint referred to in said section. While under the old rules, the proceedings may be initiated "upon complaint or information"[30] filed directly with the CFI, the words "or information" have been eliminated under the Revised Rules, thereby implying that, under the present procedure, said proceedings may be instituted only by complaint. This being the case, the preliminary investigation and examination conducted by the respondent judge had no legal basis.

In comparing the old procedure, which required only a preliminary examination to be conducted by the Judge of the Court of First Instance, with said section, the Court said:

> "Thus, it is interesting to note that the aforequoted section 13 requires that both examination and investigation be conducted by the judge simultaneously, that is, on the same occasion, by receiving the evidence of the complainant in the presence of the accused, as well as the evidence of the latter, if he so desires, and that only when he finds reasonable ground to believe that the accused had committed the offense charged that he shall issue a warrant for his arrest. Hence, it is a mistake to claim that it merely contemplates one proceeding, or the holding of preliminary examination which may be conducted *ex parte*, or in the absence of the accused."

Accused entitled to be heard at preliminary investigation.

In the preliminary investigation of cases triable by the Court of First Instance, the defendant is entitled, as a matter of right, to be present therein and to give evidence in his favor.[31] The statutory right to a preliminary investigation is a substantial one, to which the defendant is entitled as part of the due process of law,[32] and its denial, over the objection of the accused, is a prejudicial error.

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[30] Section 4, Rule 108 of the Old Rules of Court.
[31] Section 10, Rule 112 of the Revised Rules of Court.
[32] People v. Moreno, 77 Phil. 549 (1946).

Thus, in the same case,[33] it was held that since compliance with the requirement of a preliminary investigation in cases triable by the Court of First Instance is an integral element of due process, its non-observance has the effect of nullifying the proceedings of the court.

BAIL

Admission to bail in capital offenses

Section 5, Rule 114 of the Revised Rules, states that "no person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong." Capital offenses are thus bailable, in the discretion of the court, before conviction,[34] and such discretion refers to the determination as to whether the evidence of guilt is strong.[35] The burden of showing that evidence of guilt is strong in the hearing of an application for admission to bail is on the prosecution.[36]

These principles were involved in the case of *Magno v. Hon. Macapanton Abbas, et al.*,[37] the facts of which are as follows:

The petitioner was accused, along with others, of robbery with rape in the CFI of Davao. A motion for bail was filed by the petitioner and, after hearing, the respondent judge issued an order on November 24, 1961, granting the motion and fixing the bail bond in the amount of ₱40,000.00. The fiscal sought a reconsideration of the order, claiming newly-discovered evidence, and after hearing the motion for reconsideration, the order allowing bail was revoked. In his revoking order, the judge stated, among other things, that "it is enough, for the denial of bail, that the proof of guilt is evident or the presumption great", and that "the least that can be said about the evidence on record, without passing on the merits, is that the proof of guilt of the accused is presumptively strong." The petitioners allege that the respondent judge committed a grave abuse of discretion in denying bail only on the strength of "a strong presumption of guilt". *Held*: A reading of the order shows that in the opinion of the respondent judge, the evidence presented during the summary hearing on the motion for bail indicated that "the accused Pepito Magno had participated in the commission of the offense". Casting aside the unnecessary pronouncements[38] made in the order complained of, what the respondent judge really found and held was that the evidence of guilt

[33] Albano, et al. v. Hon. Arranz, note 29, *supra*.
[34] U.S. v. Babasa, 19 Phil. 198 (1911); People v. Alano, 81 Phil. 19 (1948).
[35] Montalbo v. Santamaria, 54 Phil. 955 (1930).
[36] Section 7, Rule 114 of the Revised Rules of Court.
[37] G.R. No. L-19361, February 26, 1965.
[38] The Court was presumably referring to the statements of the trial judge regarding the strong presumption of guilt of the accused.

presented against the petitioner was strong and justified denial of his motion for bail. There was, therefore, no abuse of discretion.

Liberal attitude of courts on forfeiture of bail bond

Section 15, Rule 114 of the New Rules provides that:

> "When the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty (30) days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond. Within the said period of thirty (30) days, the bondsmen (a) must produce the body of their principal or give the reason for its non-production; and (b) must explain satisfactorily why the defendant did not appear before the court when first required so to do. Failing in these two requisites, a judgment shall be rendered against the bondsmen.

Generally, courts are liberal in accepting the explanation of the bondsmen when the body of the defendant is produced.[39] Two cases decided in 1965 illustrate the attitude of courts on this matter.

In the first case,[40] the Alto Surety & Insurance Co., Inc. filed a bond in the amount of ₱5,000.00 to secure the provisional release of Ornales pending his appeal from the judgment of conviction of theft rendered by the CFI of Manila. The judgment was affirmed, and on September 14, 1959, the date set for the promulgation of judgment, the accused failed to appear. The court ordered his arrest and the confiscation of the bond, at the same time ordering the surety to produce the accused within 30 days, otherwise the bond would be executed. The surety failed to produce the defendant, and on January 18, 1960, judgment was rendered against the bond and the same was ordered executed. On March 18, 1960, the surety arrested the accused and turned him over to the police. The surety then filed a motion to lift the order of execution, alleging that its failure to present the accused in court was due to the fact that the accused left his residence without notifying the surety. The question presented to the Supreme Court was whether, under said facts, the surety is entitled to a release from, or at least a reduction of, its liability under the bond. The Court held that the liability of the bondsmen after judgment has been rendered on the bond, depends upon the discretion of the court, and the liberal attitude of the court in dealing with bondsmen, where the accused is apprehended by them and his presence already made available to the court, is founded on the theory that the ultimate desire of the state is not the monetary

[39] People v. Alameda, G.R. No. L-2155, May 15, 1951.
[40] People v. Ornales and Alto Surety & Insurance Co., Inc., G.R. No. L-20078, January 30, 1965.

reparation of the bondsmen's default, but the enforcement and execution of the sentence in a criminal case. However, the court said, while it is committed to this policy of liberality, the circumstances of each case shall determine the degree in which said liberality is to be exercised. Accordingly, considering the circumstances of the case, the surety's liability on the bond was reduced from ₱5,000.00 to ₱2,500.00.

In the other case,[41] the accused did not appear for the promulgation of the judgment of conviction on August 7, 1959. The court ordered his arrest and the confiscation of the bail bond which was in the amount of ₱15,000.00. Notified of the order, the surety exerted efforts to arrest the accused, and finally succeeded on September 4, 1959, when it surrendered the accused to the police. On September 5, 1959, the surety filed a petition for relief, reciting the efforts it exerted to arrest the accused, and praying that the order of confiscation of the bond be lifted. The court denied the petition, and the case was appealed to the Supreme Court. The Supreme Court found that the trial court was unduly severe in refusing to exercise its discretion to set aside the forfeiture order or reduce the amount of the surety's liability. The Court said that such discretion should be exercised with a view to liberality, considering that it is for the best interest of the state to mitigate, in similar instances, the liability of the sureties, not only to make it worth their while to aid in locating and apprehending the defendant, but also to hold down premiums and to make bail less difficult or expensive for detention prisoners.[42] Because the surety's own agents effected the arrest and within 30 days from the non-appearance of the accused, the Court reduced the liability of the surety from ₱15,000.00 to ₱3,000.00.

DOUBLE JEOPARDY

The protection against double jeopardy may be invoked in the following cases: (1) previous acquittal; or (2) conviction of the same offense; or (3) when the case against the accused has been dismissed or otherwise terminated without his consent, provided that, in any of these instances, the following conditions are present: (a) by a court of competent jurisdiction (b) upon a valid information or complaint sufficient in form and substance to sustain a conviction and (c) after he has been arraigned and pleaded to the charge. When all these conditions are met such case constitutes a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense

[41] People v. Guevarra, et al., G.R. No. L-17644, June 22, 1965.
[42] People v. Puyal, 52 O.G. 6886 (1956); People v. Tan, 54 O.G. 989 (1957).

which necessarily includes or is necessarily included in the offense charged in the former complaint or information.[43]

Offense charged must be included in pervious case

In *People v. Egual, et al.*,[44] Egual was charged with the murder of an overseer of a private property in Lipa, Batangas. The accused was a member of the Hukbalahap movement. In a previous criminal case in the CFI of Laguna, he was convicted of the crime of rebellion. The accused moved to quash on the ground that the murder charge was included in the crime of rebellion of which he had been previously convicted. The Supreme Court found the following: that the murder charge was not among those alleged in the case of rebellion decided by the CFI of Laguna; that there was no evidence presented to show that the murder was committed as a necessary means to further the rebellion; that the CFI of Laguna had no jurisdiction to try a case for murder committed in Batangas; and that the victim had no established connection with the government. On these considerations, the Court refused to sustain the defense of double jeopardy.

In a related case[45] jointly decided with that case, the accused Sancho Diwa raised the same defense of double jeopardy to an information charging him with the murder of 3 Philippine Constabulary soldiers. Diwa claimed that in Criminal Case No. 774 of the CFI of Batangas, he was convicted of the crime of rebellion which, as charged in the information therein filed, was committed between June 30, 1950 and August 11, 1954 — a period which includes the date of the commission of the murder charged. Since the murder of the Philippine Constabulary soldiers was not mentioned at all in the rebellion case, and since no evidence was presented by the defense to show that it was in furtherance of the crime of rebellion, the court said that the offense charged in the present case could not have absorbed by that of rebellion.

Mere irregularities in proceedings leading to acquittal do not preclude defense of double jeopardy

In *People v. Hon. Buslon, et al.*,[46] the Court denied the motion of the prosecution to reopen the case after the accused was acquitted, even though there appeared to be some indication of irregularities in the proceedings in the lower court, for the reason that the accused would be placed in double jeopardy. The facts of that case are as follows:

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[43] Section 9, Rule 117 of the Revised Rules of Court.
[44] G.R. No. L-13469, May 27, 1965.
[45] People v. Diwa, G.R. No. L-14240, May 27, 1965.
[46] G.R. No. L-22778, November 29, 1965.

On February 21, 1961, Alburo was charged with the murder of one Julio Carlon in the CFI of Agusan. After the prosecution had rested its case, the defense filed a motion to dismiss, and the court allowed the latter 10 days from March 5, 1964, within which to submit its memorandum in support of the motion. On March 23, the defense notified the clerk that it was waiving its motion to dismiss and requested that the case be set on April 3, 6, 7, and 8 to receive the evidence of the defense. Coincidentally, the respondent Judge Buslon was assigned to hold court in said sala as vacation judge. On March 31, Judge Buslon notified the clerk of court that he would try the case on April 7 and 8, and the clerk accordingly issued a notice of hearing. No service of the notice was made upon the office of the Fiscal, and although the private prosecutor, Atty. Rosales, was given notice at his office on April 6, his clerk noted on the original thereof that he was in Manila for one week. On April 8, 1964, Alburo's case was called for trial, and the special counsel for the office of the Provincial Fiscal, Atty. Bajarias, sought a postponement of the trial due to lack of notice and because he (Bajarias) could not act as the provincial fiscal handled the case personally. Judge Buslon, nevertheless, insisted on the continuation of the trial. The defendant's witnesses, therefore, were presented, and cross-examination was conducted by Atty. Bajarias. On April 15, Judge Buslon promulgated his decision acquitting the accused. The prosecution brought this case to the Supreme Court on a petition for certiorari, to annul the proceedings conducted by Judge Buslon and to set aside the judgment of acquittal rendered therein. It is contended by the petitioners that respondent Judge had no authority to try the case which had already been partly tried by the regular judge, and that he abused his discretion in trying the case despite lack of notice to the prosecution. After finding that the respondent judge had jurisdiction to try the case, and that the information was sufficient, the Supreme Court refused to proceed further, for the reason that the acquittal after trial bars a relitigation of the issue. Otherwise, the Court said, the defendant would be placed twice in jeopardy of punishment for the same offense. While there were irregularities committed by the respondent judge, none of them constitutes illegality that would vitiate and annul the trial or amount to lack of jurisdiction. The absence of notice of trial to the prosecution was subsequently cured by the cross-examination conducted by special counsel Bajarias. The Court, therefore, found itself without alternative but to dismiss the petition.

[47] Note 12, *supra*.

PLEAS

Upon arraignment, the defendant shall plead to the information or complaint either by a plea of guilty or not guilty, submitted in open court, and entered on record.[48] Under Article 13 of the Revised Penal Code, a plea of guilty is a mitigating circumstance which the courts are to take into account in the imposition of the penalty, if made prior to the presentation of evidence for the prosecution.

In *People v. Ortiz*,[49] the accused was charged in the CFI of Pangasinan with murder and frustrated murder. He entered a plea of not guilty, but after the prosecution had presented two witnesses, defendant manifested his willingness to plead guilty to the lesser offenses of homicide and frustrated homicide. The Provincial Fiscal, with the permission of the court, amended the information accordingly, and upon new arraignment, the accused entered a plea of guilty. The trial court, however, refused to give the defendant the benefit of the mitigating circumstance of plea of guilty, on the ground that it was made after the prosecution had already commenced the presentation of witnesses. From this ruling, the defendant appealed. The Supreme Court, citing its ruling in the case of *People v. Intal*,[50] reversed the trial court and allowed the accused the benefit of said mitigating circumstance. Even though trial on the original information had already begun, the same was amended with the approval of the court in view of the willingness of the accused to plead guilty to a lesser offense. When the accused pleaded guilty, it was to an entirely new information, and no evidence had as yet been presented in connection with the charges made therein before the plea was entered. In effect, therefore, the Court ruled that evidence presented under the original information is not evidence under an amended information, at least for the purpose of determining whether the accused is entitled to the mitigating circumstance of plea of guilty.

No question of fact raised in appeal from plea of guilty

In a number of cases, the Supreme Court has laid down the rule that an appeal from a judgment of conviction based upon a plea of guilty raises no question of fact, but merely of the legality or propriety of the penalty imposed, and the appellate court will look into the record only for the purpose of ascertaining whether the penalty is in accordance with law based upon the facts alleged in the complaint or information.[51]

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[48] Section 1, Rule 118 of the Revised Rules of Court.
[49] G.R. No. L-19585, November 29, 1965.
[50] G.R. No. L-10585, April 29, 1957.
[51] U.S. v. Burlado, 42 Phil. 73 (1921); U.S. v. Barba, 29 Phil. 206 (1915); U.S. v. Tamarra, 21 Phil. 143 (1912).

This doctrine was apparently applied in *People v. Monte*.[52] In that case, Leandro Monte pleaded guilty to the information charging him with the qualified theft of certain goods. Judgment was rendered sentencing him to the proper penalty. In due course, Monte appealed, alleging that "sensing his guilt", he had voluntarily surrendered to the authorities, that his plea of guilty had suppressed his right to introduce evidence, and that the court erred in failing to consider in his favor the mitigating circumstance of voluntary surrender. He prayed that the case be remanded to the lower court to afford him an opportunity to prove said mitigating circumstance. The Supreme Court refused to grant the prayer, stating that there was nothing in the records that would even suggest that the defendant voluntarily surrendered to the authorities. The Court said:

> "Had appellant really surrendered to the authorities voluntarily, his counsel could have, and, in all probability, would have filed a motion in the Court of First Instance, for an opportunity to establish said mitigating circumstance. Counsel has not even tried to explain why he had failed to make such move in the lower court. There is not even an affidavit of appellant in support of his alleged voluntary surrender. In the absence of such affidavit and of satisfactory explanation that appellant's failure to seek, in the lower court, a chance to prove the circumstance adverted to above had been due to excusable neglect, the relief prayed for cannot be granted."

JUDGMENT

Section 5, Rule 120 of the Revised Rules of Court, states:

> "An offense charged necessarily includes that which is proved, when some of the essential elements or ingredients of the former, as this is alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form a part of those constituting the latter."

In *Samson v. Court of Appeals, et al.*,[53] the Court reiterated the settled rule that, under an information for malversation, the accused could be convicted, not only of the willful offense expressly charged therein, but also of the same offense of malversation through negligence. While a criminal negligent act is not a simple modality of a willful crime but a distinct crime in itself designated as a quasi-offense in our Penal Code, a conviction for the former can be had under an information exclusively charging the commission of a willful offense, upon the theory that the greater offense includes the lesser one.

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[52] G.R. No. L-21597, March 31, 1965.
[53] G.R. No. L-10364 and L-10367.

denial of the lower court to grant a new trial based on the failure of the defendant's counsel to present a certain witness was upheld by the Supreme Court, stating that "the error of counsel for the accused in the conduct of a case is not ground for new trial, particularly when the said counsel does not seem to have conducted himself in an irregular and improper manner or to have acted against the interest of his client."

B. *Newly discovered evidence*

In order that a new trial may be granted on this ground, the following requisites must be present: (a) that the evidence was discovered after the trial; (b) that such evidence could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (c) that it is material, not merely cumulative, corroborative, or impeaching in character and is of such weight that, if admitted, it will probably change the result.[62]

In *People v. Evaristo, et al.*,[63] the motion for new trial filed by the accused was denied, because it appeared that what was alleged as newly discovered evidence consisted merely of the improbable testimonies of witnesses, or were merely cumulative, corroborative, or impeaching in character, incapable of altering the results reached by the court, and it was not satisfactorily shown why the same could not have been produced at the trial by the exercise of due diligence. Forgotten evidence is not newly discovered evidence and cannot serve as the basis for a new trial.

The same result was reached in *People v. Sagario, et al.*[64]

In another case,[65] Eugenio Pasilan was accused of the murder of a certain Abarra during the Japanese occupation. Justina Miguel testified that on December 14, 1944, in Barrio Dibuluan, Isabela, she saw a "long-haired guerrilla" whose name she later knew to be that of the accused, slap and stab the victim. No other witness was presented by the prosecution to identify the accused as the assailant. On the basis of this identification, the accused was convicted. The accused moved for new trial on the ground of newly discovered evidence which, it was claimed, could reverse the decision of the lower court. Alleged as newly discovered evidence are sworn statements attesting to Justina Miguel's recantation, and Proclamation No. 8 of President Roxas granting amnesty to persons who, during the war, committed any act penalized under the Revised Penal Code in furtherance of the resistance against the enemy or against persons aiding in the war efforts of the country. The lower

[62] IV Moran, *Comments on the Rules of Court*, 1963 ed., p. 297.
[63] G.R. No. L-14520, February 26, 1965.
[64] Note 61, *supra*.
[65] People v. Pasilan, G.R. No. L-18770, July 31, 1965.

court denied the motion, and the accused elevated the question directly to the Supreme Court. *Held*: Not every recantation of a witness entitles the accused to a new trial. Otherwise, the power to grant a new trial would rest not in the courts, but in the witnesses who have testified against the accused.[66] Furthermore, recanting testimony is exceedingly unreliable.[67] Neither can the additional ground of amnesty entitle the appellant to a new trial. The aforesaid presidential proclamation is not a newly discovered evidence, for it was already known when the case was tried.

APPEAL

In order that a judgment may be appealed from, it is necessary that it be final[68] in the sense that it completely disposes of the cause, so that no further questions affecting the merits remain for adjudication.[69] An order overruling a motion to dismiss presented by the defendant does not dispose of the cause upon its merits and is thus merely interlocutory and not a final order within the meaning of Section 1, Rule 122 of the new Rules.[70]

Under Section 1, Rule 117, if the motion to quash by the defendant is overruled, he shall immediately plead. This means that trial shall go on, and if a judgment of conviction is rendered, the defendant may reiterate, on appeal, the ground for the motion to dismiss which was denied.

In the case of *People v. Acharon, et al.*,[71] the accused moved to quash the information against him for violation of Commonwealth Act No. 303, on the ground that the conditions precedent provided for in said law, namely, exhaustion of administrative remedies and a certification to be issued by the Secretary of Labor, have allegedly not been complied with. The motion was denied, and Acharon filed a petition for certiorari in the Court of First Instance. The CFI denied the petition, and the accused appealed to the Supreme Court. In sustaining the ruling of the trial court, the Supreme Court indicated that when the motion to quash filed by Acharon to nullify the criminal case against him was denied by the municipal court, his remedy was not to file a petition for certiorari, but to go to trial without prejudice on his part to reiterating the special defenses he had invoked in his motion and, if after trial on the merits, an adverse

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[66] Citing People v. Cu Unjieng, 61 Phil. 906 (1935).
[67] People v. Follantes, 64 Phil. 515 (1937).
[68] Section 1, Rule 122 of the Revised Rules of Court.
[69] People v. Labay, 53 O.G. 3561 (1956).
[70] Fuster v. Johnson, 1 Phil. 670 (1903); People v. Manuel, G.R. Nos. L-6794 and L-6795, August 11, 1954; People v. Virata, et al., G.R. No. L-6647, September 2, 1954; Mill v. People, 54 O.G. 3235 (1957); cited in IV Moran, *Comments on the Rules of Court*, 1963 ed., p. 122.
[71] G.R. No. L-23731, February 26, 1965.

decision is rendered, to appeal therefrom in the manner authorized by law. The step Acharon had taken in filing a petition for certiorari from the order denying the motion to quash was unwarranted and contrary to the usual course of law. The extraordinary remedy of certiorari is not the proper remedy from such an order, because the accused has a plain, speedy, and adequate remedy in an appeal.

Appeal must be seasonably made

Under Section 6, Rule 122 of the Revised Rules, an appeal must be taken within fifteen (15) days from promulgation or notice of the judgment or order appealed from.

In *People v. Vales,*[72] criminal cases were filed against Vales and Villadolid, both employees of H.E. Heacock, Inc., before the CFI of Manila for qualified theft. It was alleged that the two had taken 311 pieces of assorted watches belonging to their employer. The Manila Police Department succeeded in recovering 145 of the said watches from the T. V. Picache's Agencia de Empeños, Inc., pawned to it by the accused. The plea of not guilty of the accused was later substituted with one of guilty of simple theft to the value of the wrist watches not actually recovered. The two accused were accordingly sentenced in separate judgments, which also directed that all the stolen articles involved in the case in the custody of the MPD be returned to the complainant. Pursuant to said orders, the MPD delivered to the complainant all the watches in its custody, including the 145 pieces seized from Picache Agencia. Seven months after the judgments were promulgated in the two cases, Picache Agencia filed a motion in each case praying for the return to it of the 145 watches seized by the MPD, claiming that the court orders directing the delivery of the watches to Heacock, Inc., deprived Picache Agencia of its property without due process, and that, furthermore, the court exceeded its jurisdiction in ordering the delivery of the property because the watches were never presented as evidence and in fact were even excluded in the plea of guilty. Since the watches were not under the control of the court, the Picache Agencia argued, the court had not opwer to order their delivery to the complainant.

The Supreme Court, in denying the relief sought by the appellant, said:

> "The claim (of the appellant) may be correct, only that it came too late, or at a time when the court *a quo* had no more jurisdiction over its decision. x x x The motion under consideration was filed in the two cases *seven months* after the decisions had been rendered, or after said decisions had become final and executory. In fact, the two accused not only failed to appeal

[72] G.R. Nos. L-20376 and L-20377, September 14, 1965.

but commenced to serve their sentences on the very day they were passed upon. Hence, it is evident that the court *a quo* had no more power to alter, amend, or modify the two decisions, except probably to correct clerical errors, which is not the case here.[73]

"The fact that the defendants merely pleaded guilty to a portion of the articles stolen described in the two information did not deprive the court *a quo* of its jurisdiction over them, it appearing that they were allowed to substitute their plea of not guilty for that of guilty for a lesser amount only out of simple pity on the part of the offended party after they had admitted having committed the offense as originally charged. The court *a quo* may be mistaken in ordering the delivery of the rest of the articles stolen to the offended party instead of ordering that they be litigated in an appropriated action, but that is merely an error of law that cannot affect the jurisdiction of the court."[74]

The remedy of Picache Empeños, at this time, is to assert its claim over the watches in an appropriate action which it may take separately against H.E. Heacock, Inc.

Time of filing of brief

In cases appealed to the Supreme Court, the appellant's brief must be filed within thirty days from receipt of notice from the clerk of court that the evidence is already attached to the record.[75] If the appellant fails to file his brief within the said period, or an extension thereof in a proper case, the Court may dismiss the appeal, except in cases where the appellant is represented by an attorney de oficio.[76]

In *People v. Donion Tan*,[77] Atty. Marcelino Sayo, counsel for the defendant-appellant, was fined ₱50.00 by the Supreme Court for his failure to file his client's brief within the prescribed time. His explanation that "for the last six months, he had been sickly suffering from hypertension" was unsatisfactory to the Court, for the following reasons, namely: no medical certificate was presented in support thereof; hypertension alone could not have prevented him from preparing his client's brief; and even assuming that he was partially disabled, he should have informed the court in due time.

However, instead of dismissing the appeal, the Court directed the clerk of court to submit the name of an attorney who may be appointed as counsel de oficio for the appellant.

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[73] Citing the case of the Fiscal of the City of Manila v. Del Rosario, 52 Phil. 20 (1928).

[74] Citing Herrera v. Barreto, 25 Phil. 245 (1913); Castro v. Pena, 80 Phil. 488 (1948).

[75] Section 1, Rule 125, in connection with Section 3, Rule 134, of the Revised Rules of Court.

[76] Section 8, Rule 124 of the Revised Rules of Court.

[77] G.R. No. L-22697, November 2, 1965.

Moot question on appeal

Finally, as in civil cases, the appellate court will not decide an appealed case when the issue involved therein has become moot. Thus, in one case,[78] where the issue is whether a complaint filed with the Bureau of Civil Service against a District Supervisor for falsification of a public document had the nature of a prejudicial question to be decided before a criminal case thereon could be continued, and while the appeal was pending the said administrative case was finally decided, the court dismissed the appeal because the issue therein had become moot and academic.

SEARCH AND SEIZURE

A search warrant, to be valid, must fulfill, among other requisites, the following: that the petition by virtue of which it was issued must be under oath; that it must describe in detail not only the place but also the persons and things which are the object of the search, unless by the nature of the objects sought to be searched, a general description would be sufficient; that there is a probable cause; that it must be in connection with on specific offense; and that the affidavit in support of the petition for its issuance must be based upon personal knowledge and not on mere reference or hearsay.[79]

In *Oca, et al. v. Maiquez, et al.*,[80] the legal officer of the Department of Labor applied for search warrants over certain premises to seize documents being used as means of committing the offenses of misappropriation of union funds, falsification of public documents, and violation of labor laws. The search warrants were issued and subsequently executed, resulting in the seizure of certain documents and papers, on the basis of which an information against the petitioners was filed in the Fiscal's office in Manila. The petitioners moved to quash the search warrants and to recover the documents and effects seized by virtue thereof, alleging that the judge did not follow the procedure laid down by Section 3, Rule 122 of the old Rules of Court, in that the affidavits of the witnesses and the search warrants themselves were pre-typewritten by the law enforcement agents and that the search warrants were general in tenor and character.

On the first question, the Court ruled that neither the Constitution nor the Rules of Court requires that the physical act of typing the affidavits be done before the judge. It is sufficient if

[78] Esteban v. Antonio, et al., G.R. No. L-21361, February 26, 1965.
[79] IV Moran, *Comments on the Rules of Court*, 1963 ed., p. 342, and cases cited therein.
[80] G.R. Nos. L-20748 and L-20823, July 30, 1965.

the affidavits were subscribed and sworn to before the judge, who personally examined the affiants, thereby satisfying himself of the existence of probable cause. Similarly, the search warrants were clearly issued and subscribed by the judge. The judge need not personally type each and every word of the warrant. The purpose of the law in requiring the judge to examine the witnesses under oath is to enable him to determine for himself that probable cause exists,[81] and said purpose is attained without requiring of the judge the mechanical act of personally typing the affidavits and search warrants. As to the second issue raised by the petitioners, the requirement that the search warrants must particularly describe the place to be searched and the things to be seized had been complied with by the search warrants in question, which set forth in detail the articles to be seized as well as the addresses of the places to be searched.

However, with the effectivity of the Revised Rules of Court, it is now required, among other things, that a search warrant must be in connection with one specific offense.[82]

[81] Citing Alvarez v. CFI of Tayabas, 64 Phil. 33 (1937).
[82] Section 3, Rule 126 of the Revised Rules of Court.