CIVIL PROCEDURE

EDCEL C. LAGMAN*
MANUEL D. YNGSON, JR.**

RULE OF CONSTRUCTION

Rules liberally construed

In the words of Justice Moreland, "lawsuits, unlike duels, are not won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts." Consistent with this basic rule on procedure, Section 2, Rule 1 of the Revised Rules of Court provides:

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

Letter-answer deemed to be responsive pleading

The Supreme Court held in *Cayetano v. Ceguerra*[1] that a letter-answer which contained a recital of the facts relied upon as defenses was a responsive pleading in substantial compliance to the rules. It was here enunciated that since the "letter-answer took the place of a responsive pleading, defendants should have not been declared in default for a defendant who has truly filed an answer cannot be in default." The Court concluded that "having filed an answer, defendants should have been entitled to notice of hearing. And if the answer was not responsive the trial court should have apprised the defendants of such fact considering that they were not lawyers."

Deficient docket fee does not avoid perfected appeal

A docket fee short of ₱4.00 but which was later cured by payment of the deficit after the reglamentary period expired did not invalidate an otherwise perfected appeal where it was shown that the incurring of the deficit was not due to the fault or negligence of the appellant. This was the case of *Jamago v. Arieta*,[2] where the Supreme Court also said that "courts should brush aside technicalities in procedure when they run counter to the principle of giving liberal interpretation to the rules. While the rules provide for the payment of the docket fee on time, a delay, which has been explained, should not deter the courts in overlooking a rigid ap-

---

* Member, Student Editorial Board (Recent Decisions).
** Member, Student Editorial Board (Recent Legislations).
1 G.R. No. L-18831, January 30, 1965.
2 G.R. No. L-20876, July 30, 1965.

plication of said rules, or from excepting particular case therefrom, when justice so requires."

Late transmittal of mislaid answer does not bar appeal

The case of *Rebullo v. Palo, et al.*[3] presented a situation where the appellants manifested that they were reproducing and adopting their written answer filed with the Justice of the Peace Court, as their answer in the Court of First Instance. The said answer was mislaid by the Justice of the Peace, hence it was not included in the record on appeal contrary to the reasonable expectation of the appellants that their answer was forwarded to the CFI. Will the transmittal of the answer to the CFI after the lapse of the period to appeal bar the appellants from prosecuting their appeal? *Held*: "Proper administration of justice could have persuaded the trial court to set aside its order of default and admit the answer and permit the defendants to adduce evidence to support their defenses." The rule which provides that if an answer is not filed within the reglamentary period, the defendant may be declared in default, should be construed liberally when under the facts of the case "it would clearly appear that the non-admission of defendants' answer and the hearing conducted in their absence, amounted to the denial of their day in court since it was not their fault that the written answer was not forwarded to the Court of First Instance from the Justice of the Peace Court, because it was 'mislaid'."

Only substantial compliance with the rules on continuance is necessary

There seems to be no question that motions for continuance are addressed to the sound discretion of the court. However, it has been repeatedly held that said discretion must be exercised wisely.[4] In the case of *Crisologo v. Dural*,[5] it was held that the trial court erred in dismissing the complaint simply because of counsel's failure to appear during the scheduled continuance of the hearing where it is evident from the records, that the plaintiffs and their counsel were not neglectful of their duties toward the court. During the scheduled hearing one of the plaintiffs was present and gave to the court a telegram from plaintiff's counsel expressing his reason for his failure to appear. The Supreme Court held that "there was substantial compliance with the rules." It has not been shown that counsel was neglectful. His fault, if ever it was one, is merely an excusable lapsus. And considering further the fact that the litigation involves the sum of around ₱70,000; that a witness was already presented by the plaintiff and that the allegations of the com-

[3] G.R. No. L-20717, July 30, 1965.
[4] Capitol Subdivision v. Province of Negros Occ., G.R. No. L-6204, July 31, 1956.
[5] G.R. No. L-19885, July 31, 1965.

plaint were substantiated, a dismissal of the case may not be altogether warranted.

Imperfection of forms must be disregarded

Reiterating previous decisions on liberal construction, the Supreme Court held that the "rule is always in favor of liberality in the construction so that the real matter in dispute may be submitted to the judgment of the court. Imperfection of forms and technicalities of procedure should be disregarded unless substantial rights would otherwise be prejudiced in testing the sufficiency of the complaint neither its caption or prayer is decisive. The allegations as a whole must be considered."[6] Similarly, in *Pamintuan v. CA*,[7] where the cause of action set forth in the pleading was actually one for injunction and so was the prayer made therein while the respondent judge and the Court of Appeals held that it is one for certiorari because Pamintuan impugned the jurisdiction of the municipal court, the Supreme Court ruled that from a strictly technical viewpoint, the complaint could be considered either as one of injunction or of certiorari but the spirit of the rules and the interest of justice and fair play would be served by allowing Pamintuan to perfect his appeal within the period prescribed for injunction cases, so that he had thirty days from notice to appeal said decision compared to only ten days for certiorari cases.

Strict observance of the rules

Despite the general policy of liberal construction, strict observance of the rules is an imperative necessity in certain circumstance in order to serve the ends of justice, the same goal aimed at by the principle of liberal interpretation. A liberal construction must be abandoned if to avail of it, delays will result and the orderly and speedy dispatch of judicial matters will be hampered.

Appeal bond cannot be paid in non-negotiable check

In *GSIS v. Reyes, et al.*,[8] it was ruled that "an appeal bond shall be either in cash or in the form of bond to be approved by the court. And here no such appeal bond was duly filed for petitioner did not put in either cash or bond but a check which cannot take the place of either. Hence, the appeal was not duly perfected." In this case, petitioner filed an appeal bond and tendered payment in the form of GSIS PNB check which was refused by the clerk of court on the ground that the check was stamped non-negotiable.

---

[6] Gaspar v. Dorado, G.R. No. L-17884, November 29, 1965.
[7] G.R. No. L-19670, June 24, 1965.
[8] G.R. No. L-24574, December 29, 1965.

The Court will not sanction flagrant violation of the rules in spite of a meritorious claim

In *Batangas Transportation Company v. Velando, et al.*,[9] while the Supreme Court sympathized with respondent claimant whose claim appeared to be meritorious, it nevertheless decided against him for the court "cannot disregard the flagrant violation of the rules of procedure both by the claimant and by the Commission. This terse ruling is necessary in the interest of orderly procedure in order that proceedings of this nature may not be unduly prolonged. In this case, the Workmen's Compensation Commission originally denied the claim of respondents herein. After the lapse of eight months or long after the time for making a motion for reconsideration had expired, respondent claimant sought the reconsideration of the decision of the Commission which eventually granted the claim despite the long lapse of time.

JURISDICTION AND VENUE

Allegations in the complaint determine jurisdiction

In *Gaspar v. Dorado*,[10] the Supreme Court reiterated the ruling that allegations in the complaint are determinative of whether the court has or has no jurisdiction over a case. The appellants contended that the Court of First Instance did not acquire jurisdiction over the case under the allegations of the original complaint because the cause of action therein was for the recovery of damages in the aggregate sum of less than ₱2,000 and therefore was not cognizable by the CFI but by the Justice of the Peace Court or Municipal Court. *Held*: "In testing the sufficiency of a complaint neither its caption nor its prayer is decisive. The allegations as a whole must be considered. Applying this test to the instant case, we find that in his original complaint plaintiff put in issue the validity of the sheriff's sale in favor of defendant Hodges and claimed exclusive and absolute ownership of the property in question by virtue of the prior sale in his favor and of its registration in the land registry of Capiz. The resolution of this question on which plaintiff's prayer for damages was predicated and without which no decision could be rendered, was within the jurisdiction of the CFI of Capiz."

Similar rulings were arrived at in the cases of *Aurelia Abo, et al. v. Philame Employees and Workers Union, et al.*[11] and in *Associated Labor Union v. Ramolete*.[12] In the former, the Supreme Court held that jurisdiction should be determined on the basis of the allegations of the complaint and the court should not be allowed to

[9] G.R. No. L-20675, June 23, 1965.
[10] G.R. No. L-17884, November 29, 1965.
[11] G.R. No. L-19912, January 30, 1965.
[12] G.R. No. L-23527, March 31, 1965.

read the allegations in the light of the evidence presented by the party in determining jurisdiction. With respect to the latter case, the Supreme Court observed that predicated upon the allegations of the complaint—the cause of action was for damages arising from interference in the performance of contractual obligations—the respondent judge did not commit any grave abuse of discretion in assuming jurisdiction over the case.

Jurisdiction over the person of the defendant

Jurisdiction over the person of the defendant is acquired by his voluntary appearance in court and his submission to its authority, or by the coercive power of legal process (service of summons) exerted over his person. Accordingly, in the case of *Baldoz v. Papa, et al.*[13] where the heirs of the deceased oppositor filed a motion before the lower court seeking the reversal of the order of default against the original oppositor and petitioning the court for substitution which was denied for having been filed too late, it was held that "by filing said motion and asking for affirmative relief, appellant and his co-heirs had submitted to the jurisdiction of the court."

Judgment-debtor's debtor impleaded as party-defendant by writ of garnishment

The court has the power to acquire jurisdiction over the person of the judgment-debtor's debtor by service of writ of garnishment. In *Bautista v. Barredo,*[14] it was held that while Barredo was not a party to the original action, jurisdiction over his person was acquired by the court when "he was impleaded not on the basis of any liability assumed by him under the judgment rendered in said case but rather on the strength of the writ of garnishment served upon him because of his liability to a party whose indebtedness was then the subject of execution."

Section 4, Rule 64 is not jurisdictional

Section 4, Rule 64 of the Revised Rules of Court provides:

> "In any action involving the validity of a municipal or city ordinance the provincial or city fiscal or attorney shall be similarly notified and entitled to be heard; and if the ordinance is alleged to be unconstitutional the Solicitor General shall also be notified and entitled to be heard."

The requisite of notification provided for in this rule is not jurisdictional as enunciated in *Buenaventura v. Municipality of San Jose.*[15] The Supreme Court held that "failure on the part of petitioner to

[13] G.R. No. L-18150, July 30, 1965.
[14] G.R. No. L-20653, April 30, 1965.
[15] G.R. No. L-19309, January 30, 1965.

so notify the Provincial Fiscal will not be a sufficient ground to throw the case out of court. We believe that the purpose of the above-quoted rule is simply to give the Provincial Fiscal, who is the legal officer of the local governments, a chance to participate in the deliberation to determine the validity of a questioned municipal ordinance before the competent court. If it appears, however, that the ordinance in question is patently illegal, as in the present case, and the matter has already been passed upon by a competent court, the requirements of Section 5 of Rule 66 of the Rules of Court (Section 4, Rule 64 of the Revised Rules of Court) may be dispensed with.

Jurisdiction of inferior courts

It has been held repeatedly that when the issue of ownership is directly interwoven with a forcible entry or detainer case, the inferior courts have no jurisdiction. The ruling was reaffirmed in *Santiago, et al. v. Cloribel*[15] wherein it was held that the municipal court had no power to decide the payment of rentals because in the first place it did not have jurisdiction over the case for ownership of the litigated property which was the principal issue.

Jurisdiction of Courts of First Instance

Does the Court of First Instance have the jurisdiction to review the decision and order of a collector of customs? This question was answered in the negative in the case of *Acting Collector of Customs v. De la Rama.*[17] To grant otherwise would be a violation of the provisions of the Administrative Code (section 1380) and the law creating the Court of Tax Appeals, in so far as it seeks to deprive the Commissioner of Customs of his power to review the decisions of his subordinate, the Collector of Customs, and to bar the Court of Tax Appeals from the exercise of its statutory exclusive appellate jurisdiction to review by appeal decisions of the Commissioner of Customs on fines or matters arising under the Customs Law, or any other law or part of law administered by the Bureau of Customs.

PARTIES TO CIVIL ACTIONS

Republic and Philippine National Bank are proper adversary litigants

The Armed Forces of the Philippines opened a current bank account with the Philippine National Bank. Through the negligence of the bank a person was able to draw the sum of ₱37,553.32 on the account of the AFP covered by two forged checks. The PNB refused to refund the value of the checks despite repeated demands from the AFP. Subsequently, an action was filed by the

[16] Santiago v. Cloribel, G.R. No. L-19598, August 14, 1965.
[17] G.R. No. L-20676, February 26, 1965.

Republic of the Philippines in behalf of its instrumentality — AFP — against the PNB, an entity 97% of which stocks belongs to the Government. Are the parties legally the same entity? This was resolved by the Supreme Court in the case of *Republic v. PNB*[18] with the following pronouncement:

> "We hold that the Republic of the Philippines is the proper party-plaintiff in this case. The Army is one of its instrumenlities through which its governmental functions are exercised, specifically the preservation of the State against any danger to its security, whether from within or from outside. These functions are compulsory and essential to sovereignty, constituent in character as distinguished from those ministrant and hence optional functions which are undertaken only in order to advance the general interest of society. (Bacani v. National Coconut Corporation, 53 O.G. 2798).
>
> "Defendant bank is one of those corporations and entities owned and controlled by the government and endowed with proprietary functions which have nothing to do with the exercise of political authority. They are governed by the Corporation Law and/or by their individual charters, in the case of defendant by RA 1300, which took effect on June 16, 1945, authorizing it among other purposes, to engage in the business of general banking. Thus it has a personality of its own and may sue or be sued as an entity entirely distinct from the Republic."

A person who acts for an unregistered corporation is the real party

Plaguing the highest tribunal for the third time, Jose M. Aruego asked in the case of *Albert v. University Publishing Co., Inc.*[19] whether the judgment may be executed against him as supposed President of University Publishing Co., Inc. as the real defendant. *Held*: On account of the non-registration of the University Publishing Co., Inc. in the Securities and Exchange Commission it cannot be considered a corporation, not even a corporation *de facto*. It has no personality separate from Aruego and therefore it cannot be sued independently. Jose M. Aruego was, in reality, the one who answered and litigated, through his own law firm as counsel. He was in fact, if not in name, the defendant.

In this connection, it must be realized that parties to a suit are "persons who have a right to control the proceedings, to make defense, to adduce and cross-examine witnesses, and to appeal from a decision."[20] Undoubtedly, Aruego was, in reality, the person who had and exercised these rights. Clearly, then, Aruego, had his day in court as the real defendant, and due process of law has been substantially observed.

---

[18] G.R. No. L-16485, January 30, 1965.
[19] G.R. No. L-19118, January 31, 1965.
[20] 67 CJS p. 887.

When a T.C.T. holder is not a necessary party

Register of Deeds v. Philippine National Bank[21] was an action wherein the petitioner register of deeds sought the cancellation of the original certificate of title erroneously issued to a fraudulent claimant. The purpose of the action was to protect the petitioner as administrative official relative to his liability under the Assurance Fund provisions. Should the holder of a transfer certificate of title covering the same property be allowed to intervene as a necessary party? It appearing that the petition did not question the validity of the transfer certificate of title, there is no necessity for the holder to participate in the proceeding. If the petition is favorably adjudged, the certificate in question would be cancelled, if otherwise, the petition should be dismissed. Any adjudication adverse to the transfer certificate of title holder should not prejudice him because he was not a party thereto.

Necessary or proper parties are those without whom the case may be finally determined between the parties in court, but they should be included in order that a final determination may be had in a single action of the whole controversy.[22] In the above-cited case, the issue could be adjudicated without the presence of the transfer of certificate of title holder and the latter was a complete stranger to the action.

The officer who rendered the last administrative decision is the real party-appellee

In instances where the decisions or orders of subordinate officers are appealed to the next superior officers in the hierarchy, the last administrative decision is the one appealable to the courts and the proper party-appellee is the most superior officer who rendered the last decision. In the event that the latter is not made a party in the appeal, as what happened in the case of *Castillo v. Rodriguez*,[23] wherein the Director of Lands and the Secretary of Agriculture and Natural Resources who were the ones impleaded as appellees and not the Executive Secretary who finally affirmed the decisions of the said subordinate officers in behalf of the President, the controlling judgment prior to the institution of the court proceeding must be deemed to have lapsed into a finality barring the perfection of an appeal. The Supreme Court held that the failure of the appellant to implead the Executive Secretary was fatal because "any ruling now against his said decision would have no binding effect on him at all. Neither this Court nor the court

[21] G.R. No. L-17641, January 30, 1965.
[22] 1 Moran, *Comments on the Rules of Court*, p. 149, (1963).
[23] G.R. No. L-17189, June 22, 1965.

below acquired jurisdiction over him with respect to the controversy in this incident."

Generally it is the corporation itself not the stockholders that is the proper party

By virtue of an amended complaint, the stockholders of the complainant corporation were joined merely *pro forma,* and "for the sole purpose of the *moral* damages which has been all the time alleged in the original complaint." Are the stockholders of the said corporation, who joined as party plaintiffs entitled to nominal and exemplary damages? They are not entitled because their interests, if any, were already represented by the corporation itself. which was the proper party plaintiff.[24]

PLEADINGS AND MOTIONS

Defenses not pleaded deemed waived

Objections or defenses not pleaded in either a motion to dismiss or in the answer are, as a general rule, deemed waived.[25] Thus, the trial court erred in applying Article 1687 of the New Civil Code in deciding for the defendant-appellee where the latter has not interposed the particular provision as a defense in his answer to the complaint and therefore, has been deemed waived. In effect, the Supreme Court, held in *Imperial Insurance Co. v. Pelagio Simon*[26] that the trial court cannot assign a defense for a party *motu proprio.* This ruling was rendered on July 31, 1965. It is important to note that exactly two months before the decision in the case of *Imperial Insurance Co. v. Pelagio Simon* was handed down, the same Supreme Court on May 31, 1965 promulgated in the case of *Romero, et al. v. De los Reyes*[27] a decision of an apparently opposite tenor:

> "It is true that the defense of *res judicata* is ordinarily pleaded as an affirmative defense, such a plea, however, may be raised in other ways. In the case at bar, the defense of a prior judgment in the accounting case G.R. No. L-5917 was brought out by the defendant in the course of his direct examination, at the hearing of appellants' petition for the issuance of a writ of preliminary injunction, the judgment on which the trial court might take judicial notice. Defendant De los Reyes testified ". . . Bishop Fonacier, during the case of replevin in the courts, raised these issues that we have *abandoned faith,* that *we have become episcopalians, that we have changed the faith, the rites, ceremonies have changed...*"
>
> Moreover, we would be indulging in sheer technicalities, to say that a court cannot take up the question of *res judicata* or

[24] Mindanao Academy Inc., et al. v. Yap, et al., G.R. No. L-17681, February 26, 1965.
[25] Section 2, Rule 9, Revised Rules of Court.
[26] G.R. No. L-20796, July 31, 1965.
[27] G.R. No. L-13816, May 31, 1965.

> any defense for that matter, *motu proprio*, when it is convinced that, because of a lawyer's omission or negligence an irregularity or injustice is committed. By closing its eyes and/or crossing its arms, when the evidence produced by the very plaintiffs-appellants themselves during the hearing of the preliminary injunction in the present case, showed that the same subject matter and issues were involved in a former case, would be a disservice to the administration of justice. Technicalities which will not aid in the just determination of litigations, should be laid aside."

The two decisions appear to be conflicting: In the case of *Romero, et al. v. De los Reyes,* the Supreme Court proclaimed that a court can take cognizance of the defense of *res judicata, or any defense for that matter, motu proprio,* when it is convinced that because of a lawyer's omission or negligence an irregularity or injustice is committed; while two months later the highest tribunal reverted to the old doctrine that defenses not pleaded either in a motion to dismiss or in the answer, were deemed waived and therefore the court cannot assign a defense for a party *motu proprio.* Was there really a reversion to the old doctrine?

The facts which obtained in the two cases were at striking variance: In the *Romero* case, although the defense of *res judicata* was not pleaded either in the answer or in a motion to dismiss, such defense was brought out during defendant's direct examination, whereas in the *Imperial Insurance Co.* case, nowhere during the proceeding was the defense contained in Art. 1687 of the New Civil Code brought to light by the defendant until the trial judge used it in favor of the defendant. Again, in the *Romero* case, if the defense of *res judicata* would not be taken cognizance of by the court, there will result a patent injustice because in all reality the defense of *res judicata* had it been properly pleaded would prosper beyond doubt, whereas in the *Imperial Insurance Co.* case even the defense said to be found in Art. 1687 will not improve the indefensible state of the defendant. According to the Supreme Court, "the article could not have contemplated the unwarranted extension of a period of lease by virtue of its mandate, thus making the terms of the contract indefinite until after judicial intervention."

It appears clear then, that the *ratio decidendi* of the *Romero* case still obtains and was not overruled by the subsequent case of *Imperial Insurance Co.* To recapitulate, the new doctrine enunciated in *Romero, et al. v. De los Reyes* provides: An affirmative defense, though not pleaded in a motion to dismiss or in an answer, as long as it was in some way raised during the proceedings, may be taken cognizance of by the court *motu prprio,* when it is convinced that to overlook the defense would result to a patent irregularity and a manifest disservice to the ends of justice.

Admission of supplemental pleading lies in the sound discretion of the court

The Revised Rules of Court provides that on motion of a party "the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading."[28] This means that the admission or non-admission of a supplemental pleading lies in the sound discretion of the court before which its admission is sought. The admission of a supplemental pleading, therefore, is not a matter of right.[29] Supplemental pleadings, as the name implies, are meant to supply deficiencies in aid of an original pleading, not entirely substitute the latter.

Service of summons necessary in an action for consolidation of ownership

In an action for the consolidation of ownership over a piece of land initiated by the vendee *a retro* due to the failure of the vendor *a retro* to repurchase the property within the stipulated period, the later should be served with summons like in ordinary civil actions.

In *Ongoco v. Judge of the CFI of Bulacan*,[30] the vendors *a retro* were not served with summons but only sent a copy of the petition for consolidation by registered mail. The vendees asked that the case be set for hearing on September 11, 1962 but on September 4, 1962, vendors moved for postponement. On the day set for hearing the vendors were not present. The Court of First Instance (referred to as CFI in this survey) denied the motion for postponement and thereupon rendered judgment declaring vendees absolute owners of the land and ordered registration thereof in their names. *Held*: From the facts of the case it is clear that the requisite of an ordinary civil action had not been followed. For, as stated, no summons was served on the vendors. Assuming that vendors' motion for postponement may be taken as voluntary submission to the lower court's jurisdiction — producing the effect or service of summons — still, they should have been given 15 days therefrom to file an answer.

In a previous case,[31] it was held that the action for consolidation of ownership (Art. 1607) requires the filing of an ordinary civil action and, consequently, service of summons on parties-defendants as well as opportunity to answer or move to dismiss within 15 days therefrom, is necessary.

The petition to consolidate ownership under Art. 1607 does not partake of the nature of a motion, it not being merely an in-

[28] Section 6, Rule 10, Revised Rules of Court.
[29] Bautista Trader's Insurance Co., Ltd. v. CIR.
[30] G.R. No. L-20941, September 17, 1965.
[31] Teodora v. Arcenas, G.R. No. L-15312, November 29, 1960.

cident to an action or special proceeding but is an ordinary civil action cognizable by the CFI. As such ordinary action it should be governed by the rules established for summons found in Rule 7 (now Rule 14) of the Rules of Court.

Motion to dismiss

Section 1 of Rule 16 enumerates the grounds upon which an action may be dismissed and it specifically provides that a motion to this end be filed. Consequently, a court has no power to dismiss the case without the requisite motion duly presented, unless the ground for dismissal has been pleaded as an affirmative defense in the answer wherein the action may be dismissed by the court without the requisite motion. However, the ruling in the *Romero* case, *supra,* will enable the court to dismiss a complaint *motu proprio.*

Pendency of another action between the same parties for the same cause

In order that this ground be invoked there must be, between the action under consideration and the other action, (1) identity of parties, or at least such as representing the same interest in both cases; (2) identity of rights asserted and relief prayed for, the relief being founded by the same facts; and (3) the identity in the two proceedings should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[32]

In the case of *Del Rosario v. Jacinto*[33] all the elements of *lis pendens* were found to obtain and therefore the action was barred by *lis pendens.* Appellants themselves aver that Aniana Deudor, Macario Fulgencio and Carlos Javier — as plaintiffs in the case pending at Quezon City — are but the same original owners of the land in question. Pilar, Macario and Salvador, all surnamed Del Rosario—as plaintiffs in the case pending at Pasig—are allegedly purchasers from said original owners. It follows therefore, that these parties represent the same interest in both actions. It is not in dispute that in both cases right asserted is the same, namely, ownership of the parcel of land covered by transfer certificates of title Nos. 26531 and 26532. So also, the relief prayed for is identical, that is, reconveyance or recovery of said parcel of land. From the foregoing identities it results that whatever judgment may be rendered in Pasig will be *res judicata* to the case pending before the Quezon City court, for it is settled that parties who base their contention upon the same rights as the litigants in a previous suit are bound by the judgment in the latter case.

---

[32] Moran, *supra,* p. 414.
[33] G.R. No. L-20340, September 10, 1965.

Can the defendant in a foreclosure of mortgage proceeding maintain a separate action to annul the foreclosure sale while the motion to confirm such sale and the debtor's opposition thereto are pending consideration in the proceedings. *Held*: Such action may not be maintained—because there was another action between the same parties pending before the same court, involving the same issues of irregularities in the auction sale and validity thereof.[34]

The only question sought to be resolved in the case of *Reyes v. Hamada*[35] is whether the pendency of Civil Case No. 1025, wherein the validity of the tender of redemption price and the ownership and the right to possession of the properties are in issue, precludes the institution of another for the recovery of rentals receivable from the same properties: *Held*: In Civil Case No. 1025, the pendency of which was the reason for the lower court's dismissal of Civil Case No. 1041, for recovery of rentals, the question involved the propriety and timeliness of the redemption of properties sold at public auction. It is clear, therefore, that the rentals during the period of redemption and thereafter are necessarily included in the issue of timeliness and adequacy of the redemption made. Consequently the pendency of the former is a bar to the prosecution of the latter inasmuch as the issues in both cases can properly be resolved only in one.

Complaint states no cause of action

This ground for dismissal appears on the face of the complaint.[36] In the determination of the sufficiency of the cause of action, only the allegations of the complaint must be considered. It has been said that the test of the sufficiency of the facts alleged in a petition, to constitute a cause of action, is whether or not admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the petition.[37]

When the defect is not patent or the deficiency may be cured, the court must not be harsh in outrightly dismissing a complaint for failure to state a cause of action. The ruling of the Supreme Court in *Hilado v. Victorias Milling Co., Inc. and Locsin*[38] attest to this liberal predisposition: "...the deficiency of the complaint, in so far as it purported to state a cause of action against Locsin, was one that may be cured. Therefore, instead of dismissing the complaint as against said party, the lower court should have given

[34] Nelita Moreno Vda. de Bacaling v. GSIS, G.R. No. L-20124, Aug. 14, 1965.
[35] G.R. No. L-19967, May 31, 1965.
[36] Moran, *supra*, p. 418.
[37] Paminsan v. Costales, 28 Phil. 487 (1914).
[38] G.R. No. L-17126, February 27, 1965.

appellant a reasonable opportunity to amend his complaint if he so desired."

Defer determination when ground is not indubitable

Section 3, Rule 16, reads:

> "After hearing the court may deny or grant the motion or allow amendment of pleading or may defer the hearing or determination of the motion until the trial if the ground alleged therein does not appear to be indubitable."

This provision was applied in *PNB v. Hipolito*[39] wherein the Supreme Court opined that "the ground for dismissal not being indubitable, the lower court should have deferred determination of the issue until after trial of the case on the merits." In this case, PNB prays the court to order defendants to pay the amount of ₱11,999.73 with accrued annual interest at the rate of 5% from January 17, 1957 up to the date of payment, plus attorney's fees equivalent to 10%. Defendants moved for dismissal on the ground of prescription. To the motion they attached a joint affidavit of merit wherein they averred that they never made any acknowledgment of indebtedness nor offered a plan of payment, but on the contrary had always maintained that plaintiff's action had prescribed. The lower court dismissed the complaint. The ground for dismissal is not indubitable because in the very motion to dismiss defendant hypothetically admitted the truth of the allegations of facts in the complaint. Furthermore, an examination of the complaint herein does not indicate clearly that prescription has set in. On the contrary it is belied by the allegation concerning defendant's offer of payment on May 7, 1957. Such offer, hypothetically admitted in the motion, worked as a renewal of the obligation.

NEW TRIAL

Service of written notice on adverse party is jurisdictional

Section 2, Rule 37 of the Revised Rules of Court provides:

> "The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party."

Unlike under the old Rules of Court wherein it was the court which served notice on the adverse party,[40] the new rule provides that the movant serves the written notice. This provision was strictly applied in the case of *Manila Surety and Fidelity Co., Inc. v. Batu*[41] where the Supreme Court held that "section 2 of Rule 37, regarding motion for new trial, requires that a written notice thereof be

[39] G.R. No. L-16463, January 30, 1965.
[40] Moran, vol. 2, p. 212.
[41] G.R. No. L-16636, June 24, 1965.

served by the movant on the adverse party, and this requirement applies whichever of the grounds allowed for such motion under the preceding section of the same rule is relied upon."

RELIEF FROM JUDGMENT

When the remedy of motion for new trial under Rule 37 is no longer available because the judgment has become final and executory, the aggrieved litigant has still one recourse under proper circumstances: relief from judgment.

Section 2 of Rule 28 reads:

> "When a judgment or order is entered, or any other proceeding is taken against a party in a Court of First Instance through fraud, accident, mistake or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment order or proceeding be set aside."

In the case where the defendant was declared in default by the Court of First Instance to which he appealed the decision of the inferior court on the ground that he failed to file an answer during the reglamentary period, motion for relief from judgment was granted where it was shown that during the period for filing an answer, the defendant made a manifestation that he was adopting and reproducing his written answer filed with the JP court as his answer in the CFI and the delay in the transmittal was due to the fault of the Municipal Judge who mislaid the answer.[42]

Sixty-day period may be counted from the order of execution

Section 3 of Rule 38 provides that petition for relief from judgment must be "filed within sixty (60) days after the petitioner learns of the judgment, order or other proceeding to be set aside, and not more than six (6) months after such judgment or order was entered, or such proceeding was taken."

In *Cayetano v. Ceguerra*,[43] the Supreme Court in applying Section 3 of Rule 38 said: "We consider the petition for relief filed on time. This is so, because a petition for relief may likewise be taken from the order of execution, inasmuch as Sec. 3, Rule 38, Revised Rules, does not only refer to judgments, but also to orders, or any other proceedings (PHHC v. Tiongco and Escasa, L-18891, Nov. 28, 1964). From the time they had actual knowledge of the order of execution, on April 21, 1961, until the filing of the petition for relief, on June 17, 1961, only 57 days had elapsed."

This ruling of the Supreme Court needs more than a reportorial attention. When the decision said that "a petition for relief may

---

[42] Rebullo v. Palo, et al., G.R. No. L-20717, July 30, 1965.
[43] G.R. No. L-18831, January 30, 1965.

likewise be taken from the order of execution" the Supreme Court actually grants a prospective petitioner an option in counting the sixty-day period from either the time the petitioner learns of the judgment or from the moment he knows about the order of execution. If we amplify further the liberal construction made by the Supreme Court, it may not be far-fetched to expect a litigant who will ask for relief from judgment more than five years from the time he learned of the judgment but only one day from the moment he knew about the order of execution because the winning party had the judgment executed only after the lapse of more than five years by an ordinary civil action in pursuance to Section 6, Rule 39. Such petitioner still falls within the purview of the pronouncement in *Cayetano v. Ceguerra.*

It appears that the ruling of the highest tribunal overlooks the six-months maximum fixed by the Revised Rules of Court. Under Section 3 of Rule 38 the petition for relief must in no way be filed more than six (6) months after such judgment or order was entered." The word "order" here *does not include* an order of execution but what it means is a "decision" or a "judgment" on a controversy not an "order" as to include an order of execution, as what was done by the Supreme Court. The interpretation of the Supreme Court does not promote the main purpose of Rule 38 which is to grant relief and meet a contingency, which purpose will not be served if the sixty-day period may be counted from the order of execution which may be sought for even within ten years from the order of final judgment. For the same reason, the six-months maximum period may also be negated if the prescriptive period may be held to run from the moment the petitioner learns about the order of execution because the order of execution may be availed of long after the lapse of 6 months from the time judgment was entered.

Section 3 of Rule 38 provides that the petition must be filed within sixty (60) days after the petitioner learns of the *judgment, order,* or other proceeding *to be set aside* (italics supplied). In a petition for relief what is sought *to be set aside* is a *judgment* or an *order* which settled a controversy not an order like an order of execution which implements or enforces a prior *judgment* or *order.* And further more, the fact of fraud, accident, mistake or excusable negligence prejudiced the petitioner in the original trial or proceeding which rendered the *judgment* or *order* and not during the promulgation of an enforcing order like an order of execution. An order of execution, therefore, has no relevance in Rule 38 and should not be read into its provisions, or be a basis in counting the prescriptive period.

Affidavit of merits must state facts, not opinions

An affidavit of merits stating that the defendant has a good and valid defense, his failure to marry plaintiff as scheduled having been due to a fortuitous event beyond his control does not satisfy the requirement of an affidavit of merits under Section 3 of Rule 38 which provides that the petition for relief "must be accompanied with affidavits showing fraud, accidental mistake or excusable negligence relied upon, and the facts constituting petitioner's good and substantial cause of action or defense as the case may be."

The rulings of the Supreme Court require of affidavits of merits to state not mere conclusions or opinions but facts.[44] Defendant's affidavit of merits stated no facts but merely an inference that defendant's failure was due to fortuitous events. This is a conclusion of fact, not a fact.[45]

EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

Approval of execution pending appeal rests in the discretion of the court

Section 2 of Rule 39 provides:

> "On motion of the prevailing party with notice to the adverse party the court may in its discretion, order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order. . . ."

In the case of *Astraquillo v. Javier*[46] the Supreme Court did not disturb the finding of fact of the Court of Appeals which affirmed the decision of the trial court granting execution of judgment pending appeal. In this case the factual finding was that the judgment-debtor was near insolvency, which circumstance warranted the execution of judgment pending appeal. It was held that insolvency of a party (in the sense of inability to show apparent assets adequate to meet its obligations) need not be proved directly, but may be inferred, as the appellate court did, from a number of circumstances appearing of record.

Propriety of execution with respect to the defendants who did not appeal

Where the right of the defendants to retain the property would depend upon the result of an appeal by some of them anchored on a defense which is not personal to one or some but common to all, execution of judgment shall not issue against the defendants who did not appeal. This was enunciated in the case of *Unsay v. Munoz-*

[44] Vaswani v. Tarach and Bus, G.R. No. L-15400, December 29, 1960.
[45] Wasmer v. Velez, G.R. No. L-20089, February 26, 1965.
[46] G.R. No. L-20034, January 30, 1965.

Palma[47] reiterating the decision handed down in *Municipality of Orion v. Concha.*[48]

It would have been different where the liability of each judgment-debtor is several, and one appeals only, the judgment on appeal will not affect those who did not appeal.

Effect of reversal of judgment

In *Salas v. Quinga,*[49] a direct appeal was interposed by Quinga against an order of the Court of First Instance of Iloilo requiring her to restore to Filomena Salas the products of a parcel of land that had been delivered to her pending appeal against a judgment of the same court in favor of Quinga but which was later reversed by final judgment of the Court of Appeals and subsequently affirmed by the Supreme Court. The Supreme Court held that the Court of Appeals had no need of specifying in the judgment of reversal that there should be restitution of the land and of its products. Such restoration is expressly provided for in Rule 39, Section 5, of the Rules of Court:

> "Where the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances."

Can a revived judgment be revived?

On June 29, 1949 the PNB obtained a judgment against Bondoc in Civil Case No. 8040 which judgment was never executed.

After five years and upon the instance of the PNB said judgment was revived in Civil Case No. 30663 on February 20, 1957. Neither was this judgment enforced during five years thereafter.

But on June 7, 1962 the PNB instituted in the CFI of Manila Civil Case No. 50601[50] for the enforcement of the judgment rendered in Civil Case No. 30663. On motion of defendant, however, the complaint for revival of judgment was dismissed on grounds of prescription and lack of cause of action.

The lower court held that the right to revive the judgment has prescribed inasmuch as more than ten years had elapsed, since it was first rendered on June 29, 1949. It further ruled that the Code of Civil Procedure (Act 190) or the New Civil Code does not provide for the revival of a revived judgment. *Held*: Section 6 of Rule 39 states: "A judgment may be executed on motion within five (5) years from the date of its entry or from the date it be-

---

[47] G.R. No. L-17712, May 31, 1965.
[48] 50 Phil. 679 (1927).
[49] G.R. No. L-20294, January 30, 1965.
[50] PNB v. Bondoc, G.R. No. L-20336, July 30, 1965.

comes final and executory. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

Section 6, above quoted, makes no distinction as to the kind of judgment which may be revived by ordinary independent action. Such being so, appellee's proposition that a revived judgment cannot any more be enforced by action under said section has no justification. When the law does not distinguish, neither should we.

A judgment rendered on a complaint for the revival of a previous judgment is a new judgment, and the rights of the plaintiff rest on the new judgment, not on the previous one. Precisely, the purpose of the revival of a judgment is to give a creditor a new right of enforcement from the date of revival. The rule seeks to protect judgment-creditors from wily and unscrupulous debtors who, in order to evade attachment or execution, cunningly conceal their assets and wait until the statute of limitations sets in.

A judgment is revived only when the same cannot be enforced by motion, that is, after five years from the time it becomes final. A revived judgment can be enforced by motion within five years from its finality. After said five years, how may the revived judgment be enforced? Appellee contends that by that time ten years or more would have elapsed since the first judgment becomes final, so that an action to enforce said judgment would then be barred by the statute of limitations.

Appellee's theory relates the period of prescription to the date the original judgment became final. Such a stand is inconsistent with the accepted view that a judgment reviving a previous one is a new and different judgment. The inconsistency becomes clearer when we consider that the causes of action in the three cases are different. In the original case, the action was premised on the unpaid promissory note signed by Bondoc in favor of the PNB; in the second case, the PNB's cause of action was the judgment rendered in Civil Case No. 8040; and in the present case, the basis is the judgment rendered in Civil Case No. 30663. Parenthetically, even the amounts involved are different.

The source of Section 6 aforecited is Section 447 of the Code of Civil Procedure which in turn was derived from the Code of Civil Procedure of California. The rule followed in California in this regard is that a proceeding by separate ordinary action to revive a judgment is a new action rather than a continuation of the old, and results in a new judgment constituting a new cause of action, upon which a new period of limitation begins to run.[51]

[51] Thomas v. Lally, 28 Cal. App. 308; 152 Pac. 53, 54; Palace Hotel Co. v. Crist, 45 Pac. 2nd 415.

Can a judgment rendered against several defendants, jointly and severally, be revived against one of them only?

Appellant was held "jointly and severally" liable together with his co-defendants in the judgment sought to be revived. It follows, therefore, that said judgment is totally enforceable against any of said judgment-debtors. For Art. 1216 of the New Civil Code provides: "The creditors may proceed *against any one* of the solidary debtors or some or all of them simultaneously."

The fact that the present suit[52] is for revival of judgment does not alter the rules on how to proceed against solidary debtors. The reason is that a revival suit is a new action; having for its cause of action the judgment sought to be revived. Since, as stated, the judgment sought to be revived constituted a solidary obligation, a suit with it as the cause of action can proceed against any of the solidary debtors.

It is not doubted that the judgment could have been executed within five years against herein appellant alone. There is no reason why a suit to enforce it could not be brought, or revival had, against him alone.

A judgment comprehends what is necessary to make it effective

It is of course settled that once a judgment has become final it may no longer be corrected or amended in substance. On the other hand, while the terms of a judgment may be explicit as to what a party is ordered to do, it may not be equally explicit as to the effect of his non-compliance; and yet implicit in the judgment is one specific effect on the unavoidable consequence. For as the Supreme Court said on another occasion,[53] a judgment is not confined to what appears on the face of the decision, but comprehends what is necessarily included therein or necessary thereto in order to make it effective.

The judgment in question in *Solomon v. Mendoza*,[54] states that the defendant can continue occupying the land as long as she pays monthly rental to the plaintiff..." The clear and necessary inference that can be derived from this disposition is that if the defendant should fail to pay the rents she could not continue occupying the land. This much the said defendant, now petitioner, does not deny. But she contends that the recourse of respondent Yu is not by order of the court in the same case in which the judgment was rendered but by an entirely new action for ejectment. Such a contention would render meaningless the express condition imposed by

[52] PNB v. Nuevas, G.R. No. L-21755, November 29, 1965.
[53] Perez v. Evete, G.R. No. L-16003, March 29, 1961; Unson v. Lacson, et al., L-13798, July 31, 1961.
[54] G.R. No. L-23628, July 31, 1965.

the court for petitioner's continued occupancy of the land and allow her to refuse to pay the rents with impunity.

There must be actual delivery of money in order to effect redemption

Under Section 30 of Rule 39, in order to effect redemption, the judgment-debtor must pay the purchaser within 12 months after the sale, "the amount of his purchase, with one *per centum* per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments of taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate," otherwise, the purchaser may justly refuse the tender if it is for less than the amount.

The payment mentioned in the rule must be made by tendering and delivering to the purchaser the sum of money required for the purpose. Obviously, he cannot be compelled to accept a promissory note; much less may he be compelled to accept an amount in the possession of a third person, which amount, to make things worse, is the subject of an adverse claim by another party.[55]

RES JUDICATA

Section 49 of Rule 39 provides:

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

In order that a judgment can operate as a bar to another, the following circumstances should concur:

(a) It must be a final judgment or order;

(b) The court rendering the same must have jurisdiction over the subject matter and of the parties;

(c) It must be a judgment or order on the merits; and

(d) There must be between the cases identity of parties, identity of subject matter and identity of cause of action.[56]

An adjudication on the merits constitutes res judicata

The complaint in Civil Case No. 1264 was ordered stricken out by the lower court upon motion of the defendant because of the failure of plaintiff Quillosa to comply with the order requiring him to submit a bill of particulars. Such failure is clearly a ground

[55] Aparri v. CA, G.R. No. L-15947, April 30, 1965.
[56] San Diego v. Cardena, 70 Phil. 281, 283 (1940).

for dismissal under Section 3, Rule 17 of the Revised Rules of Court, which dismissal is equivalent to an adjudication on the merits unless otherwise provided by the court. Consequently, the dismissal of Civil Case No. 1264 is a bar to the action filed by plaintiff, widow of the deceased Quillosa on the ground of prior judgment, all the other elements of *res judicata* being present.[57]

Res judicata applies even if remedy sought is different, or the form of action diverse

The appellants in *Kidpalos, et al. v. Baguio Mining Company*,[58] did not dispute that the subject matter in the registration proceedings was the same land involved in the previous litigation, or that the parties were the same. Neither was it disputed that the causes of action in both cases were identical, since in both the appellants asserted that they were the sole and exclusive owners of the land in dispute.

While the former cases were revindicatory in character and the subsequent ones were land registration proceedings, the Supreme Court held that such *"difference in forms of action* are irrelevant for the purposes of *res judicata."* It is a firmly established rule that a different remedy sought or a diverse form of action does not prevent the estoppel of the former adjudication.[59] Since there can be registration of land without applicant being its owner, the final judgment of the Court of Appeals in the previous litigation declaring that the mining company's title is superior to that of appellants should be conclusive on the question in the present case.

Much reliance was placed by appellants on the statements made in the Supreme Court's 1960 resolution declining review of the former judgment of the Court of Appeals, "without prejudice to the registration proceedings filed by petitioner before the same court regarding the properties herein involved."

The words quoted merely establish that the decision in the revindicatory action decided by the Court should not be considered as having decided the pending registration proceedings, since the nature of both proceedings were different, one being a personal action and the registration being one *in rem.* The CFI could not, in other words, automatically apply the decision of the CA to the registration proceedings. And the reason is plain: the pronouncements of the judgment in the former case would not necessarily preclude relitigation of the issues if *res judicata* is not invoked, since *res judicata* is a matter of defense and does not deprive the trial

[57] Quillosa v. Salazar, G.R. No. L-18172, July 20, 1965.
[58] G.R. Nos. G.R. Nos. L-19940-19944, August 14, 1965.
[59] Peñalosa v. Tuason, 22 Phil. 303, 322 (1912); Juan v. Go Cotoy, 26 Phil. 328 (1913); Chua v. Del Rosario, 57 Phil. 411 (1932).

court of jurisdiction to act on a second suit between the parties on the same subject matter. But the defense having been set up in the present proceedings, the trial court acted properly in considering and resolving the same.

Successors-in-interest are deemed same parties

As to the identities required, the parties in *Philippine Farming Corp., Ltd. v. Llanos, et al.*,[60] were defendants in Civil Case No. 1209. The newly added defendants-mortgagees and purchasers of right of redemption, were merely successors-in-interest and purchasers by title subsequent to the filing of the first action. Such parties were considered *the same as* their predecessors-in-interest for purposes of *res judicata*. It was held that "since their predecessors-in-interest were parties to the first case, the principle of *res judicata* applies even with their inclusion, since they are after all bound by the first judgment as the parties thereto."

Test of identity of causes of action

That the second suit should be in the form of an action for specific performance is not a bar to the application of *res judicata*. The test of identity of causes of action is whether the same evidence would support and establish both the former and the present causes of action,[61] and it is incontrovertible that in both cases the oppositor relied on the widow's alleged affidavit, purporting to recognize her right to the four parcels of land described therein, "as part of the hereditary portion due her."[62]

Compromise agreement has the effect of res judicata

In the case of *Manique, et al. v. Cayco*,[63] it was held that the litigants were the same parties involved in the ejectment case where a compromise agreement was reached, while the property and the issues were identical. The only question was whether the compromise had the effect of *res judicata*. This was answered in the affirmative invoking Art. 2037 of the Civil Code. The same ruling was reached in *Serrano v. Miave*[64] where it was emphasized that even more than a contract (which may be enforced by ordinary action for specific performance), the compromise agreement is part and parcel of the judgment.

No complete identity of subject matter, res judicata fails

In the case of *Antonio v. Jalandoni and Plana*[65] it was ruled

---

[60] Philippine Farming Corp., Ltd. v. Llanos, et al., G.R. No. L-21014, August 14, 1965.
[61] Peñalosa v. Tuason, *supra*.
[62] Garcia v. CA, G.R. No. L-19783, July 30, 1965.
[63] G.R. No. L-17059, November 29, 1965.
[64] G.R. No. L-14678, March 31, 1965.
[65] G.R. No. L-18301, July 31, 1965.

that there was no complete identity of subject matter to justify the dismissal of the complaint on the ground that it is barred by prior judgment. In the former action, what was sought to be recovered was Lot No. 8119 of the Passi cadastre containing an area of only 24,807 hectares according to appellant or 45,658 hectares according to appellees. In the subsequent action, aside from Lot No. 8119 appellant claimed an additional area, referred to in the complaint as a big portion of Lot No. 1104 "owned" by appellee Jalandoni, which was "transferred and had become a permanent part of Lot No. 761-A belonging to appellant." Under the allegations in the complaint in that case, appellant could not have recovered the additional area, and evidence concerning it would have been ruled out as irrelevant and immaterial. In other words, the finding of the lower court that there was identity of subject-matter, and hence bar by prior judgment, was held correct with respect to Lot No. 8119, but not so with respect to the rest of the property described in the complaint.

Res judicata does not apply where the basis of prior judgment is void

Petitioner set up the defense of *res judicata,* in view of the dismissal by the Court of First Instance of Antique of respondent Lomugdeng's petition for recount of votes in Precinct No. 4 against the questioned resolution of the Commission on Elections. It was pointed out that the order of dismissal of said petition was based on the fact that a winner to the position of mayor had already been proclaimed. This order, of course, was based on the legal presumption that such proclamation by petitioner was regular. Considering that the proclamation was null and void the aforesaid dismissal of the petition for recount cannot bar any remedy that may be available to respondent Lomugdeng under the circumstances.[66]

Res judicata does not apply in naturalization cases

A decision or order granting citizenship does not constitute *res judicata* to any matter or reason supporting a subsequent judgment cancelling the certification of naturalization already granted, on the ground that it had been illegally or fraudulently procured.[67]

APPEALS

A. Appeal From Inferior Courts To Courts Of First Instance

Failure to appeal or to petition within the time prescribed by law is fatal

Under Section 2 of Rule 40 of the New Rules of Court, the time for perfecting an appeal from inferior courts to the courts

[66] Javier v. Commission, G.R. No. L-22248, January 30, 1965.
[67] Republic v. Reyes, G.R. No. L-20602, December 24, 1965.

of first instance is fifteen days, computed from the date the appellant is notified of the judgment or order complained of. This period may be extended if the judgment or order is modified, in which case the period of fifteen days is computed from the date the appellant received notice of such modified judgment or order.[68] And if the appeal is not perfected within the time prescribed by law, the appeal is barred and the appellate court cannot acquire jurisdiction.[69] Reiterating these principles, the Court held in the case of *Daday et al. v. Hon. Pastor de Guzman, et al.*,[70] that "failure to appeal within the time prescribed by law is fatal."

Withdrawal of the appeal in the CFI revives the judgment of the inferior court

In *Benemerito v. Costanilla*,[71] the parties entered into an amicable settlement "to have the appeal of the above-entitled case dismissed". The settlement was without the approval of the court which on the same day, issued an order dismissing the appeal and directing that the case be returned to the lower court. Subsequently the latter court issued a writ of execution of the judgment, but the defendant refused to leave the premises. He filed a motion to quash the writ, alleging that the court's judgment could not be executed since the same had been novated by the amicable settlement, whereby it was agreed that the defendants would continue in possession of the land until the question of ownership could be litigated and decided.

Held: The effect of the dismissal of the appeal in the CFI, pursuant to the joint motion of the parties, was to revive the judgment appealed from (Section 9, Rule 40, Revised Rules of Court). It was evidently in accordance with this Rule that the Court of First Instance directed the return of the case to the Justice of the Peace Court and ordered expressly the "execution of the judgment".

Original jurisdiction of the CFI in certain cases appealed to it

Section 11, Rule 40 reads:

> "A case tried by an inferior court without jurisdiction over the subject matter shall be dismissed on appeal by the CFI. But instead of dismissing the case, the CFI in the exercise of its original jurisdiction, may try the case on the merits if the parties therein file their pleadings and go to the trial without any objection to such jurisdiction."

Obviously, under the above provision, the CFI cannot acquire original jurisdiction over a case appealed to it over which the inferior court had no jurisdiction if the parties object to such juris-

[68] Fabie v. Gutierrez David, 75 Phil. 536, 547 (1945).
[69] Valdez v. Acumen, G.R. No. L-13536, January 29, 1960.
[70] G.R. No. L-15938, June 30, 1965.
[71] G.R. No. L-17132, May 24, 1965.

diction. Thus, in *General Insurance and Surety Corporation v. Castelo,*[72] an ejectment case where both parties claimed ownership over the land in question (hence beyond the jurisdiction of the municipal court whose jurisdiction in such cases is limited to the issue of possession alone), the Supreme Court ruled that the CFI has no alternative but to dismiss the case appealed to it (CFI) from the municipal court over which the latter court had no jurisdiction, because "the pleadings and records bore out the fact that the defendants have been most vigorous and insistent in their objection to such exercise of jurisdiction by the CFI, filing a motion to dismiss questioning the jurisdiction of the CFI to try the case and filing a timely motion for reconsideration upon the denial of the first motion."

To the same effect was the ruling made by the Supreme Court in *Ganancial and PHHC v. Atillo*[73] where it was held that: If an inferior court tries a case without jurisdiction over the subject matter, on appeal, the only authority of the CFI is to declare the inferior court to have acted without jurisdiction and dismiss the case, unless the parties agree to the exercise by the CFI of its original jurisdiction to try the case on the merits (Aureo v. Aureo, L-11831, January 29, 1959). Where the defendant moved for the dismissal of the case on the ground that the statutory period had already lapsed, this was tantamount to contending the jurisdiction of the trial court.

B. Appeal From Courts Of First Instance To The Court Of Appeals

Appeal by party in default

May a party in default appeal from the decision rendered against him without first filing a motion under Rule 38, asking that the order of default be set aside? This was the question decided by the Supreme Court in *Antonio v. Jacinto.*[74] In this case, on the day before the last day for filing the answer, the counsel for the defendant requested for an extension of time to answer, for ten days from the last day to file the same, on the ground that he was engaged by defendant only on that day. It happened however that the judge was on leave. So the request had to be mailed to the other Branch judge then acting as vacation judge. There was a strike at the Rural Transit, which took charge of the transportation of the mails, so that by the time the vacation judge received the request, the regular judge was already available. The defendant was declared in default. He filed a motion for recon-

[72] G.R. No. L-19330, April 30, 1965.
[73] G.R. No. L-20830, June 28, 1965.
[74] G.R. No. L-18569, June 22, 1965.

sideration, but the same was denied for lack of verification and affidavit of merit. Then he filed a petition for relief from judgment, which petition plaintiff opposed. The petition was denied, hence the present appeal.

Held: On the question as to whether or not a party in default may appeal the judgment on the merits against him, the rulings were to the effect that a defendant who is declared in default cannot appeal, unless he files a motion under Rule 38 to set aside the order of default upon the ground of fraud, accident, error or mistake or excusable neglect, and if his motion is denied, he may then appeal from the order denying such motion, and he may, in the meantime, apply for a writ of preliminary injunction to stay the execution of the judgment on the merits. And if the motion to stay is denied, the motion may be renewed on appeal.

The above procedure, however, was changed by the Revised Rules of Court. Under *Rule 41, Section 2*, paragraph 3, a party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38 (Moran, Vol. I, p. 453, 1963 ed.).

The least that the attorney for the defendant in this case should have done was to file his answer while the motion for extension was pending before the Court.

Period to appeal interrupted

According to Section 3, Rule 41, "the time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted" from the 30-day period. Consequently, a motion for reconsideration based on the ground that the findings or conclusions are not supported by the evidence with express reference to the documentary evidence (specifically the compromise agreement herein involved) suspends the period to appeal. However, even where the period to appeal is interrupted by such motion, the appeal must still be perfected on time.[75]

In *Oliveros v. Querubin*,[76] the petitioners received a copy of the decision in the case on March 16, 1957. On April 3, 1957, they moved for reconsideration and new trial. The motion was denied and they were notified of the denial on April 13. On April 15, they filed a motion to appeal as paupers, with a request for an extension of fifteen days within which to file the record on appeal. On April 30, petitioners received copies of the orders of the court denying

[75] GSIS v. Cloribel, G.R. No. L-22236, June 22, 1965.
[76] G.R. No. L-16905, November 29, 1965.

prayer to appeal as pauper but granting request for extension of fifteen days. On the following May 8, they moved for reconsideration of the order denying them to appeal as paupers and the attachment to the records of certain exhibits, and the same was denied, the petitioners receiving a copy of the denial on May 20. On May 28, 1957, petitioners filed in the Supreme Court a petition for certiorari and mandamus, asking that the order of the trial court denying their prayer to appeal as paupers and to attach to the record certain exhibits rejected by the court during the trial, be set aside. This was granted on October 20, 1959. On December 9, 1959 acting on a motion of petitioners to implement the decision of the Supreme Court, respondent Judge issued the necessary order which petitioners received on December 14, 1959, and they filed their record on appeal on January 7, 1960. Upon motion of the defendant in the case, however, respondent Judge dismissed the appeal on the ground that it had been filed out of time.

Held: The lower court having granted an extension of 15 days to petitioners, the entire period within which to appeal was 45 days. Deducting the period of 36 days already consumed (from March 16, 1957 — notice of appealed decision — to May 28, 1957 — petion for certiorari and mandamus—excluding periods of interruption) 9 days still remained as of the date petitioners came to this Court in G.R. No. L-12466 (certiorari and mandamus). Assuming that the period commenced to run again only on December 14, 1959, when petitioners received the order of respondent Judge implementing the decision of this Court in said case, the last day to perfect the appeal was December 23, 1959. Petitioners filed their record on appeal only on January 7, 1960, which was well beyond the time limit. Petitioners seem to be of the opinion that the period to appeal started only from December 14, 1959, when they received a copy of the implementing order of respondent Judge. That opinion is incorrect. Their right to appeal did not proceed from this Court's decision, much less from said implementing order, and neither of them operated to wipe out the time that had already elapsed since petitioners received a copy of the lower court's decision from which they were appealing. All that this Court decided was that petitioners could appeal as paupers and that their exhibits should be attached to the record. The assumption, of course, is that such appeal should be perfected *within the proper periods.*[77]

Motion to dismiss appeal prior to transmittal of record

In *Vivo v. Arca*,[78] it was argued that there having been already an order to forward the records to the appellate court, the

[77] *Ibid.*
[78] G.R. No. L-21589, April 30, 1965.

CFI no longer had jurisdiction to dismiss the appeal. The Court held: This is not correct, since Section 14 of Rule 41 expressly authorizes a motion to dismiss an appeal in the trial court prior to the transmittal of the record to the appellate court; and the best evidence that the records in this case have not yet been so transmitted, despite the lapse of the 10 days fixed by Section 11, Rule 41, is that the petitioner is now still asking this Court to compel respondent Judge to elevate the records.

Appeal in prohibition cases; extensions of time to appeal

In the same case[79] the issue that was presented to the Supreme Court for resolution was whether the appeal was made on time or not within the purview of Section 17 of Rule 41 of the Old Rules of Court which was in force in 1963 when the case came up for decision. Said provision requires that appeals in prohibition cases be perfected within 15 days. The petitioning Commissioner did not deny that, discounting the period during which Judge Tizon held his motion for reconsideration under advisement, his notice of appeal was filed on the 16th day after notice of the questioned judgment, the operative period for appeal being from April 2 to April 17, 1963 (14 days) and from May 22 to May 24, 1963 (2 days). Petitioner contended however, that Judge Tizon, by his order of May 28, 1963, directing the clerk to forward the records of the case to this Court, impliedly extended the period for the appeal.

The court held that this position is not tenable, since no extension of the appeal period was ever asked by the Solicitor General of Judge Tizon. No objection was made at the time that the appeal was belated, because Judge Tizon merely took for granted that the appeal was timely. It is true that the Solicitor General filed an affidavit of his clerk, dated June 11, 1963, purporting to show that the delay in filing the notice was due to excusable negligence; but the affidavit was executed on June 11, almost 20 days after the expiration of the appeal period (on May 23) and was in fact submitted to Judge Arca, who correctly refused to consider it since the judgment had become final, and he no longer had any discretion in the matter (Tiongco v. Arca, L-8612, November 29, 1954, and cases therein cited; Rodriguez v. Fernandez, 54 O.G. 1802-1804; Sarabia v. Secretary of Agriculture, L-11107, July 25, 1958).

And as to the extensions of time, the Court held that it is well-established that extensions of time must be asked before expiration of the original period sought to be extended (Alejandro v. Endencia, 64 Phil. 321; Simbangco v. Arellano, 52 O.G. 6187; Buena v. Surtada, 54 O.G., 2184).

[79] Vivo v. Arca, *supra*.

However, although Section 17, Rule 41 of the Old Rules of Court specifically limits the period within which the appeal in certiorari, prohibition, mandamus, quo warranto, workmen's compensation and employer's liability cases may be perfected to a 15-day period, the said limitation has been eliminated from the same provision under the Revised Rules of Court. Consequently, appeals in such cases must be perfected within the ordinary 30-day period for appeals. Furthermore, there must be compliance with the provisions of Section 11 of Rule 41 regarding the transmittal of the record of appeal within 10 days from its approval.

Mandamus, proper remedy for erroneous dismissal of an appeal

Section 15, Rule 41 reads:

> "When erroneously a motion to dismiss an appeal is granted or a record on appeal is disallowed by the trial court, a proper petition for mandamus may be filed in the appellate court."

The Court applied this provision in *GSIS v. Hon. Gaudencio Cloribel*[80] where it held that the respondent judge having erroneously dismissed GSIS' timely appeal, the action of mandamus is the proper remedy. But the remedy in this section does not apply when the trial court denies the motion to dismiss, for under such circumstance the motion to dismiss may be renewed in the appellate court.[81]

C. Appeal From Courts Of First Instance To Supreme Court On Pure Questions Of Law

Section 2, Rule 42 states:

> "Where an appellant states in his notice of appeal or record on appeal that he will raise only questions of law, no other questions shall be allowed, and the evidence need not be elevated."

Applying this rule in *Esquejo v. Fortaleza,*[82] the Court held that: Aurea Esquejo's statement in her notice of appeal that she would raise only questions of law should be construed as a waiver of all questions of fact. Therefore, she can not now dispute the factual finding of the lower court that the residential land purportedly given to her under the deed of donation *propter nuptias* is the same land covered by Original Certificate of Title No. 4322 which the lower court found to have been sold to Serapio Fortaleza by the heirs of Pedro Fortaleza, the registered owner.

However, although Section 2, Rule 42 specifically provides that for this section to apply the appellant must "state" in his notice of appeal or record on appeal that he will raise only questions of

[80] *Supra*, note 75.
[81] 2 Moran, *Comments on the Rules of Court*, pp. 386-387 (1963).
[82] G.R. No. L-15897, February 26, 1965.

law, the Court, in a long line of cases,[83] has reiterated that direct appeal to the Supreme Court is by itself a waiver of findings of fact. This was so held in *Cabrera v. Tiano*,[84] and in *Savellano v. Diaz*.[85]

And in *GSIS v. Cloribel*,[86] the Supreme Court, reiterating the same ruling, held that "since the notice of appeal stated that appeal was being taken to the Supreme Court, *there was no need to state* (italics supplied) that it was based purely on questions of law". By appealing to the Supreme Court, GSIS is deemed to waive the right to dispute any finding of fact and the only question that may be raised is that of law.

However, where the court, in arriving at its conclusion, has manifestly overlooked or disregarded certain relevant facts not disputed by the parties, which if properly considered, would justify a different conclusion, questions of fact may be raised on appeal, despite the waiver of the same.[87]

To the same effect was the ruling of the Court in *Chua v. Patent Office*,[88] that questions of fact may be raised in cases where only questions of law are allowed, when the findings of the trial court are not supported by substantial evidence.

Final orders from the Securities and Exchange Commission appealable to the Supreme Court not to the CFI.

The Court held in *AFAG Veterans Corp. Inc. v. Pineda*,[89] in consonance with Section 1, Rule 43 of the Revised Rules, that whether the petition below was for injunction or for prohibition, its purpose was in effect to have the court *a quo* review the actuation of the Securities and Exchange Commission whereby it assumed jurisdiction of the administrative case before it and set the same for investigation. Such power of review pertains not to the Courts of First Instance but to the Supreme Court exclusively, pursuant to Section 1, Rule 43.

D. Procedure In The Court Of Appeals

Assignment of errors by appellee who is not an appellant

In *Aparri v. CA, Ferro and Bajar*,[90] the Court, citing Moran on the Rules of Court, held that "while an appellee who is not an appellant, may assign errors in her brief, she may do so only to

---

[83] Montelibano v. Bacolod-Murcia Milling Co., Inc., G.R. No. L-15092, September 29, 1962; Millar v. Nadres, 74 Phil. 307 (1943); Postea v. Pabellion, 84 Phil. 298 (1949).
[84] G.R. No. L-17299, July 31, 1963.
[85] G.R. No. L-17944, July 31, 1963.
[86] *Supra*, note 75.
[87] Abellana v. Dosdos, G.R. No. L-19498, February 26, 1965.
[88] G.R. No. L-18337, January 30, 1965.
[89] G.R. No. L-17159, November 23, 1965.
[90] G.R. No. L-15947, April 30, 1965.

maintain judgment on other grounds, but not to have the judgment modified or reversed, for, in such case she must appeal (2 Moran, Comments on the Rules of Court, pp. 427-428, 1963). On the other hand, although the appellee may assign errors in his brief, it is not necessary for him to do so, it being sufficient that he points out in his brief the errors committed against him by the lower court.[91]

Original papers that may be required

The Supreme Court, in *Albert v. University Publishing Co., Inc.*,[92] explained the kind of original papers that may be brought up before the court for inspection on appeal, in effect construing Section 7 of Rule 48 of the Revised Rules of Court (in relation to Section 1, Rule 42). Said section provides:

> "Whenever it is necessary or proper in the opinion of the court that original papers of any kind should be inspected in the court on appeal, it may make such order for the transmission, safekeeping, and return of such original papers as may seem proper, and the court may receive and consider such original papers in connection with the record."

According to the Court in the *Albert* case, this provision obviously refers to papers the originals of which are *of record* (italics supplied) in the lower court, which the appellate court may require to be transmitted for inspection. The original papers in question not having been presented before the lower court as part of its record, the same cannot be transmitted on appeal under the aforesaid section. In contrast, the certification as to University Publishing Co., Inc.'s non-registration forms part of the record in the lower court.

The Court also held in the same case that for original papers not part of the lower court's record, the applicable rule is Section 1 of Rule 53 on New Trial. Under said Rule, the papers in question cannot still be admitted, because they were not "newly discovered evidence," being in the movant's possession and control most of the time.

Dismissal of appeal

In *Government v. Antonio, et al.*,[93] the Supreme Court promulgated the ruling that the filing of appellant's brief does not bar a motion to dismiss the appeal on the ground that it was not perfected in due time, expressly abandoning the ruling in *Santiago et al. v. Valenzuela, et al.*[94]

---

[91] Relativo v. Castro, et al., 76 Phil. 563 (1946), citing Lucero v. De Guzman, 45 Phil. 852 (1924).
[92] G.R. No. L-19118, June 16, 1965.
[93] G.R. No. L-23736, October 19, 1965.
[94] 78 Phil. 397 (1947).

In the *Antonio* case. there was no showing, in any way of the records of appeal that the notices of appeal, appeal bond, and record of appeal were filed within 30 days from notice of the appealed order, after deducting the period during which the motions for reconsideration were pending, as required by Section 3, Rule 41. The Court held:

> "The deficiencies pointed out were fatal. For the reason that in ordinary appeals the original record is not forwarded to the appellate court, and because the dates when an applicant received the notice of the pertinent orders or judgment under appeal, and of the denial of his motion for reconsideration or new trial, are facts within the exclusive knowledge of said appellant, the Revised Rules of Court place upon appellant the burden of showing that his appeal is timely, and for that purpose prescribe (Rule 41, Sec. 6) that the record of appeal shall include "such data as will show that the appeal was perfected on time." This requirement is *mandatory and jurisdictional* (italics supplied), for unless appeal is perfected on time the appellate court acquires no jurisdiction over the appealed case, and has power only to dismiss the appeal (Bello v. Fernando, L-16970, Jan. 30, 1962; Caisip v. Cabangon, L-14684, August 26, 1960; Espartero v. Ladaw, 49 O.G. 1439). The certification of the record on appeal by the trial court after expiration of the period to appeal can not restore the jurisdiction which has been lost (Alvero v. De la Rosa, 76 Phil. 428, 433, and cases cited). The principle is confirmed by Rule 50, Section 1, Subparagraph (a)."

While the majority of the Court, in *Santiago, et al. v. Valenzuela, et al.* (78 Phil. 397) held that if after the appellant has already filed his brief a motion to dismiss the appeal is made on the ground that it was not perfected in due time, the motion must be denied, this doctrine has been subsequently abandoned and overruled in subsequent cases.

In *Miranda v. Guanzon, et al.* (92 Phil. 168), promulgated on October 27, 1952, we dismissed the appeal on the ground that it was perfected out of time, and this dismissal was done even after the briefs had already been filed. We held that the perfection of an appeal within the period prescribed by law is jurisdictional.

Then in *Valdez v. Acumen, et al.*, L-13536 promulgated on January 29, 1960, we dismissed an appeal because it was perfected out of time, and the dismissal again was made after the briefs of both sides had been filed. Mr. Justice Barrera, writing the opinion for the Court, stressed again the principle that the period to perfect an appeal is jurisdictional, and relied specifically on the cases of Layda v. Legaspi (39 Phil. 83), and Lim v. Singian, (37 Phil. 817) which the dissenters in the Santiago et al. v. Valenzuela et al. case had invoked in their dissent.

Again in the *Valdez v. Acumen, et al.* case, the Court through Mr. Justice Barrera, rejected the theory of waiver or

estoppel allegedly supported by Luengco & Martinez v. Herrero, et al. (17 Phil. 29), and Slade v. Perkins, (57 Phil. 223), which the majority in the Santiago v. Valenzuela case, cited in their support. In all these cases, it is true, the Court did not say expressly that Santiago v. Valenzuela was abandoned; but it is time that we say so in order that others may not be misled."

Award of half back wages to reinstated employee not "plain error" under Section 7 of Rule 51

In *Cromwell Commercial Employees and Laborers Union v. CIR,*[95] the Court held that "the fact that full back pay was not given certainly cannot be stigmatized as 'plain error,' much less a clerical one. As noted in the decision of the Court of Industrial Relations, the salesmen were not exactly justified in refusing to turn over their collections to the company. Nor is this the first case that one-half instead of full back wages are awarded."

E. Procedure In The Supreme Court

Appeals to Supreme Court must be on live, justiciable issues

In *Castillo, et al. v. Provincial Board of Canvassers, Surigao del Sur,*[96] where the appeal has become moot and academic, the Court held that "the Court's authority to review, revise, reverse, modify or affirm final judgments or decrees of the lower courts is understood to refer to the determination of live, justiciable issues."

PROVISIONAL REMEDIES

Provisional remedies are those to which parties litigant may resort, for the preservation or protection of their rights or interests, and for no other purpose, during the pendency of the principal action. If an action, by its nature, does not require such protection or preservation, said remedies cannot be applied for and granted. To each kind of action or actions, a proper provisional remedy is provided for by law. The Rules of Court clearly specify the cases in which they may be properly granted.

When property under attachment is sold by order of the court, the proceeds of the sale take the place of the property

In *Aparri v. Court of Appeals,*[97] Aparri mortgaged a piece of land to the Philippine National Bank (hereafter referred to as PNB) to secure the payment of ₱600.00. Subsequently, he was charged with malversation and all his properties were attached, including the one he had mortgaged to the PNB. In the meantime, Aparri failed to pay his indebtedness and so the PNB extra-

[95] G.R. No. L-19778, February 26, 1965.
[96] G.R. No. L-22765, and G.R. No. L-24038, January 30, 1965.
[97] G.R. No. L-15947, April 30, 1965.

judicially foreclosed the mortgage. The property was sold at public auction to one Ferro, for ₱1,500.00. Of this amount, ₱1,400.00 was paid to the PNB and ₱18.60 was paid to the sheriff for his fees. The remaining ₱477.40 was retained by the sheriff.

Within the one-year period of redemption, Aparri tendered to Ferro the sum of ₱1,265.32, and when the latter refused to receive the same, Aparri paid the amount to the provincial sheriff. The sheriff refused to execute the corresponding certificate of redemption in favor of Aparri, and at the same time refused to execute a final deed of sale in favor of Ferro. The latter brought the matter on mandamus, and the court decided in her favor. Hence the present appeal by Aparri.

Aparri contended that as the prosecution in the criminal case did not make any move to attach the surplus amount of ₱477.40, the sheriff had no right to retain the same, and that, added to this amount the sum of ₱1,265.32, which he had paid to the sheriff, is equal to the amount paid by Ferro for the land and its taxes, assessments and interest.

Held: The rule is that if any property under attachment is sold by order of the court because it is fungible in nature or by virtue of a writ of execution issued to satisfy the judgment rendered, the proceeds of the sale take the place of the property and should be used by the sheriff to pay the defendant, and the balance, if any, should be retained by him as security for the satisfaction of the claims of other parties with a subordinate lien on the same property.

Garnishment

Garnishment is an attachment by means of which plaintiff seeks to subject to his lien property of the defendant in the hands of a third person or money owed by such third person to defendant. In *Tayabas Land Co. v. Sharruf*[98] it was defined as a "species of attachment for reaching credits belonging to the judgment-debtor and owing to him from a stranger to the litigation." The Court reiterated this ruling in *Bautista v. Barredo, et al.*[99]

Preliminary injunction not granted without notice

Section 5 of Rule 58 provides that "no preliminary injunction shall be granted without notice to the defendant" except where "it shall appear from facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice."

---

[98] 41 Phil. 382.
[99] G.R. No. L-20653, April 30, 1965.

Thus, in *Trinidad and Barroga v. Moya*,[100] the Court held that: "the general rule it is true is that a writ of preliminary injunction should be issued in proper cases only after notice served upon the party sought to be enjoined, but the Rules of Court give the Court discretion to issue the writ *ex parte* upon a showing that the party seeking the injunction will suffer irreparable injury should the writ not be issued immediately."

Receivership

The case of *Duque v. CFI*[101] reaffirmed the principle that the appointment of a receiver is not a matter of absolute right, but one of discretion on the part of the court. In the *Duque* case, the Court held that "the appointment and discharge of receivers are matters primarily addressed to, and resting largely on, the discretion of the trial court, not being a matter of strict right, and a reviewing court will not interfere with the exercise of such discretion unless convinced that the same has been abused (Samson v. Araneta, 64 Phil. 549; Lama v. Apacible, 79 Phil. 69; De la Cruz v. Guinto, 79 Phil. 304; Tecson v. Macadaeg, 88 Phil. 605; Medel v. De Aquino, 925 Phil. 895). This is all the more true of the trial court's choice between candidates for receivership proposed by the contending parties, who have been fully heard in the matter."

SPECIAL CIVIL ACTIONS

Special civil actions are actions having reference to special matters requiring special procedure. They differ from special proceedings which are the acts by which one seeks to establish the status or right of a party, or of a particular fact. The special civil actions enumerated in the Rules of Court[102] are: interpleader, declaratory relief and similar remedies, certiorari, prohibition, mandamus, quo-warranto, eminent domain, foreclosure of mortgage, partition, forcible entry and detainer, and contempt.

A. Declaratory Relief

Is the *bijon* (rice spaghetti) industry included within the terms of Rep. Act 3018 nationalizing the rice and corn industry? This was the issue presented to the Court in *Chua U et al. v. Lim et al.*[105] In said case, the Rice and Corn Board issued a ruling that the petitioners were covered by the terms of Rep. Act 3019. Claiming exclusion from the coverage of said Republic Act, petitioners filed action for declaratory judgment. In denying the remedy prayed for by the petitioners, the Court made the following pronouncements: In

[100] G.R. No. L-16886, April 30, 1965.
[101] G.R. No. L-18359 and G.R. No. L-23754, March 26, 1965.
[102] Sec. 1, Rule 62, Revised Rules of Court.
[103] G.R. No. L-19639, February 26, 1965.

the first place, the remedy of declaratory judgment is proper only if adequate relief is not available through other existing forms of action or proceeding (Ollada v. Central Bank, L-11357, May 31, 1962; Hoskyns v. National City Bank of New York, 85 Phil. 201, citing 1 CJS 1027). And as ruled in Elliot v. American Manufacturing Co.,[104] courts are loath to interfere prematurely with administrative proceedings, and will not assume jurisdiction of declaratory judgment proceedings until administrative remedies have been exhausted. In the case at present, the way was open for the petitioners to appeal the Board's ruling to its administrative superiors, and, thereafter, institute an ordinary judicial action to contest the Board's ruling and prohibit it from enforcing the ruling.

A second reason for denying relief according to this Court in this case, was that the declaratory judgment sought would necessarily affect also other manufacturers and processors of rice and corn derivative products (such as gaw-gaw, face powder, etc.), which were not represented in these proceedings.

In the third place, it is also the rule in this jurisdiction that action for declaratory judgment must be brought before any breach of the statute or ordinance sought to be tested.[105]

B. Certiorari, Prohibition and Mandamus

Certiorari

Certiorari is a writ issued from a superior court to any inferior court, board or officer exercising judicial functions, whereby the record of a particular case is ordered to be sent up for purposes of review.[106] The writ lies when the following requisites are present: (a) that it is directed against a tribunal, board or officer exercising judicial functions; (b) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion; and (c) that there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[107]

Against a tribunal, board or officer exercising judicial functions

An officer or a body may be said to be exercising judicial functions when such officer or body is clothed with authority and undertakes to determine what the law is and what the legal rights of the parties are with respect to the matter in controversy.[108]

---

[104] 138 Fed. 2d 678.

[105] Section 1, Rule 64, Revised Rules of Court; Santos v. Aquino, 94 Phil. 65 (1953).

[106] 14 CJS, p. 121, cited in Moran, Comments on the Rules of Court, Vol. 3, pp. 139-140.

[107] Moran, *ibid.*

[108] State v. Dunn, 90 N.W. 772, cited in Moran, *supra.*

Without or in excess of jurisdiction

The writ is intended to keep a tribunal, board or officer within the limits of its jurisdiction, that is, "to prevent acts in excess of authority or jurisdiction as well as to correct manifest abuses of discretion committed by an inferior tribunal, when an appeal does not prove to be more speedy and adequate remedy."[109]

The Court, promulgating anew the above enunciated principle, held in the *Davao* case[110] that: the writ of certiorari is intended to keep an inferior court within its jurisdiction, and, consequently, only questions of jurisdiction may be raised; only jurisdictional matters may be averred in the petition, inclusive of matters of grave abuse of discretion, which are equivalent to lack of jurisdiction.[111]

Grave abuse of discretion

By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction,[112] and not every error in the proceeding, or every erroneous conclusion of law or of fact, is an abuse of discretion.[113]

Thus, in *Alisolorin v. Canonoy and Salud*,[114] where the respondent judge ordered the petitioner to deposit in court the proceeds of the sale of conjugal properties and to use them in paying the amount of the liquidated share due the petitioner's wife, by virtue of a judgment ordering the petitioner to give his wife a share of the conjugal properties and precisely the petitioner sold the said properties to avoid compliance with his duty under the judgment, there was no abuse of discretion, it being clear that such relief is but another means of compelling petitioner to comply with the final judgment referred to heretofore.

But in the *Manzano* case,[115] where the respondent judge ordered the demolition of a residential house levied in execution, despite the pendency of an action to annul the whole execution proceedings on the ground that the property levied upon did not belong to the judgment debtor, the judge was held to have acted with grave abuse of discretion in issuing such order. The petitioners should have at least been given a chance to be heard, concerning the interest they claim to possess in said properties.

And it was also a grave abuse of discretion on the part of a judge to issue a writ of preliminary prohibitory injunction re-

---

[109] Claudio, et al. v. Zandueta, 64 Phil. 812, 817 (1937).
[110] City of Davao v. Department of Labor, G.R. No. L-19488, January 30, 1965.
[111] Moran, *supra*, p. 143.
[112] Hamoy v. Secretary, G.R. No. L-13456, January 30, 1960.
[113] Gala v. Cui, 25 Phil. 522 (1913).
[114] G.R. No. L-16744, March 31, 1965.
[115] Manzano v. CA, G.R. No. L-20815, May 19, 1965.

straining a person from occupying the office of auditor of the Central Bank, when there was pending in court a quo-warranto proceeding to determine the rights of the contesting parties to such office. The parties should be given an opportunity to present evidence thereon.[116]

Absence of appeal or any other plain, speedy and adequate remedy

The Rules of Court explicitly provides that certiorari, as a special civil action, will lie only when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[117] When adequate relief is available in the court of origin, it is of necessity that such relief be availed of. Otherwise the writ will not issue.[118]

In *Arroyo v. Mencias,*[119] the petitioner, a co-owner in a property subject of a partition proceedings who was not included in the said proceedings, went directly to the Supreme Court upon learning of the lower court's order, without first bringing his case to the attention of the lower court. The Court ruled that petitioner's omission was fatal. He had the remedy of making a special appearance in the trial court and move for the reconsideration of the order in question. The purpose is to give such court a chance to correct any error, if there be any, without involving the parties in another litigation. Questions which the CFI are required by law to decide should not be summarily taken away from them and presented to the Supreme Court without first giving them an opportunity of deliberately passing on such questions themselves.[120]

There is still adequate remedy where a motion to dismiss had been denied by the trial court, for the denial does not preclude the movant from renewing or reiterating said motion in the appellate court. Under Rule 50, Section 1(b), the petitioner may file a motion to dismiss in the appellate court, in their capacity as appellees, on the ground of failure of the appellants to file the appeal bond within the prescribed time.[121]

In *Acharon v. Purisima, et al.,*[122] the Court held that the remedy of the petitioner when the motion to quash filed by him to nullify a criminal case against him was denied, was not to file a petition for certiorari, but to go to trial without prejudice on his part to reiterate the special defenses he had invoked in his motion,

---

[116] Dizon v. Yatco, et al., G.R. No. L-23449, January 30, 1965.
[117] Section 1, Rule 65, Revised Rules of Court.
[118] Nicolas v. Castillo, 97 Phil. 336 (1955); Ricafort v. Fernen and Espero, 54 O.G. 2534 (1957); St It v. Rianco, G.R. No. L-18376, February, 1962.
[119] G.R. No. L-21186, August 31, 1965.
[120] Herrera v. Barretto and Joaquin, 25 Phil. 245 (1913).
[121] Balbalio v. Heirs of deceased spouses Galaban and Bautista, G.R. No. L-21496, September 17, 1965.
[122] G.R. No. L-23731, February 26, 1965.

and if, after trial on the merits, an adverse decision is rendered, to appeal therefrom in the manner authorized by law.

But where an appeal from the orders of the trial court would not be a speedy and adequate remedy, since it could not be taken until after the case was decided by said court on the merits, and the parties agreed that the trial is far from being finished, the remedy of certiorari is available to set aside the afore-stated orders.[123]

Lower court must first be given opportunity to correct itself before certiorari will lie

In *Aquino v. Estenzo*,[124] the Court ruled that it is elementary that before filing a petition for certiorari with the higher court the attention of the lower court should first be called to its supposed error and its correction asked for, and if this is not done the petition for certiorari should be denied.

But in *Malayang Manggagawa sa ESSO v. ESSO Standard Eastern, Inc.*,[125] the Court gave due course to the petition for certiorari even though the lower court had not been given a chance to correct itself because of the circumstance that the striking laborers were being arrested *en masse*, and because the Court was of the opinion that the lower court acted without jurisdiction, for the question involved is one for the CIR, as an incident in the certification election case.

Exhaustion of administrative remedies in certiorari proceedings

Before the writ of certiorari will lie, it is necessary that administrative remedies be first exhausted. This is in compliance with the requisite of the non-availability or absence of a "plain, speedy, and adequate remedy" for certiorari to lie. Thus in *Maloga v. Gella*,[126] the Court denied the writ of certiorari prayed for, because the petitioner did not exhaust the administrative remedies available before instituting the certiorari proceedings.

However, the rule on exhaustion of administrative remedies may be relaxed when its application may cause great and irreparable damage which cannot otherwise be presented except by taking the opportune appropriate action.[127] In the *De Leon* case,[128] the Court held that the rule on exhaustion of administrative remedies in certiorari proceedings is inapplicable if it should appear that an irreparable damage and injury will be suffered by a party if he should await, before taking court action, the final action of the

---

[123] Reyes v. Arca, G.R. No. L-21447, November 29, 1965.
[124] G.R. No. L-20791, November 29, 1965.
[125] G.R. No. L-24224, July 30, 1965.
[126] G.R. No. L-20281, November 29, 1965.
[127] De Leon v. Cloribel, G.R. No. L-21653, May 31, 1965.
[128] *Supra.*

administrative official concerned on the matter. The same ruling was made by the Supreme Court in *Cotabato Timberland Co., Inc. v. Plaridel Lumber Co., Inc.*[129]

Prohibition

Prohibition may be defined as a writ by which a superior court prevents inferior courts, corporations, boards or persons from usurping or exercising a jurisdiction or a power with which they have not been vested by law.[130] Certiorari differs from prohibition in that while the former is intended to annul proceedings had without or in excess of jurisdiction, the latter is intended to prevent a power about to be exercised without or in excess of jurisdiction.[131] The former is a corrective remedy and refers to an act already consummated; the latter a preventive remedy to restrain the doing of some act which is about to be done.[132]

For prohibition to apply, the requisites are similar to those in certiorari, only that while the former refers to the acts of "any tribunal, board or officer exercising judicial functions," the latter applies in "proceedings of any tribunal, corporation, board or person, whether exercising functions judicial or ministerial." Thus in *Delfin v. CA*,[133] the Court held that grave abuse of discretion is a ground for prohibition and that for grave abuse of discretion to prosper as such ground, it must first be demonstrated that there was such a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or that the lower court has exercised its power in an arbitrary or despotic manner by reason of passion or personal hostility. And as to the requisite of adequate remedy, the Court held that since the petitioner has an adequate remedy in the ordinary course of law by way of appeal, the extraordinary remedy of prohibition cannot be resorted to.

Mandamus

Mandamus is a writ issued in the name of the State, to an inferior tribunal, a corporation, board or person, commanding the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station.[134]

In 1965, the Supreme Court made at least four pronouncements regarding mandamus, reiterating the previous rulings thereon. In *Abellana v. Dosdos*,[135] it held that the duty of the respondent judge not being ministerial, he could not be compelled by a proceeding in

---

[129] G.R. No. L-19432, February 26, 1965.
[130] 50 CJ, p. 654.
[131] Go Hap v. Roxas, 69 Phil. 343 (1940).
[132] Agustin, et al. v. Fuente, 84 Phil. 515 (1949).
[133] G.R. No. L-21023, February 27, 1965.
[134] Moran, *supra*, p. 162.
[135] G.R. No. L-19498, February 26, 1965.

mandamus. This is indeed a reaffirmation of the rulings in previous cases that mandamus lies to compel an officer to perform a ministerial duty,[136] but not to compel the performance of a discretionary duty.[137] In *Morales v. Patriarca*,[138] the Court held that in mandamus, unlike in quo warranto, there is no requirement that the respondent be actually holding the disputed office.

In *Gabutas v. Castellanes*,[139] it was held that mandamus is the proper remedy to compel a municipality to pay petitioner his back salaries where it was shown that the municipality had its full day in court having been represented by the mayor in the latter's capacity as chief executive of the municipality.

And in *Villaluz v. Zaldivar, et al.*[140] the Court quoted itself in this wise: "this Court has aptly said that a delay of slightly over one (1) year was considered sufficient x x x to bar an action for mandamus, by reason of laches or abandonment of office (Jose v. Lacson, et al., L-10477, May 17, 1957)."

C. Quo Warranto

Period for filing quo warranto proceedings

The period required within which to file quo warranto proceedings is the same as in mandamus cases. Thus in *Villegas v. De la Cruz*,[141] the Supreme Court made these pronouncements: In an action of quo warranto involving the right to an office, the action must be instituted within the period of one year. . . . We find this provision to be an expression of policy on the part of the State that those entitled to the right to an office of which they are illegally dispossessed should take steps to recover said office and that if they do not do so within a period of one year, they shall be considered as having lost their right thereto by abandonment. And the rationale of this doctrine according to the Court is that, the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one for the illegal occupant rendering service, and another for the lawful official not rendering service.

---

[136] Hoey v. Baldwin, 1 Phil. 551 (1902); Lamb v. Phipps, 22 Phil. 456 (1912); Cia Gral v. French, 39 Phil. 34 (1918); Zobel v. City of Manila, 47 Phil. 169 (1925); Vda. e Hijos de Crispulo Zamora v. Wright, 53 Phil. 613 (1929).

[137] Inchausti & Co. v. Wright, 47 Phil. 866 (1925); Marcelo Steel Corp. v. The Import Control Board, 48 O.G. 117 (1950); Diokno v. RFC, G.R. No. L-4712, July 11, 1952.

[138] G.R. No. L-21280, October 21, 1965.

[139] G.R. No. L-17323, June 23, 1965.

[140] G.R. No. L-22754, December 31, 1965.

[141] G.R. No. L-23752, December 31, 1965.

Venue in special civil actions of certiorari, prohibition and mandamus

Section 4, Rule 65 provides:

> "The petition may be filed in the Supreme Court, or, if it relates to the acts or omissions of an inferior court, or of a corporation, board, officer or person, *in a court of first instance having jurisdiction thereof* (italics supplied). It may also be filed in the Court of Appeals if it is in aid of its appellate jurisdiction."

This rule was applied by the Supreme Court in the case of *Alhambra Cigar v. Regional Administrator*.[142] In this case, it was contended by the respondents-appellants that the court below had no jurisdiction to take cognizance of the petition for certiorari and prohibition with preliminary injunction in question, because the respondents, or the officers, whose authority and whose actuations are being challenged were not officially holding office, and did not perform the acts sought to be restrained, in Manila or within the judicial district to which the CFI of Manila belongs.

Held: We find merit in the foregoing contention. The petition filed by the petitioner-appellee in the Court of First Instance of Manila, Branch X, was an aftermath of a compensation case that was filed with the Regional Office No. 2 of the Department of Labor at Tuguegarao, Cagayan. The province of Cagayan is in the First Judicial District. The petitioner-appellee filed a motion to dismiss the claim of Francisco Atip before the hearing officer of the Regional Office of the Department of Labor in Tuguegarao, and said motion was denied there by the said hearing officer. The petitioner-appellee then filed the petition in question before the CFI of Manila in an effort to annul the actuations of the hearing officer from taking further action on the case. The CFI of Manila took cognizance of the case; issued a writ of preliminary injunction, and later actually granted the writ of certiorari and prohibition and issued a permanent injunction against those labor officials in Tuguegarao, Cagayan.

This action of the Court of First Instance of Manila was null and void and cannot be given effect outside its territorial jurisdiction.

In the *Anderson Filipino American Veteran Corps, Inc.* case,[143] hereinafter referred to as AFAG, the Court also applied Section 4 of Rule 65, holding that the provision applies to prohibition proceedings as well as certiorari, and that the venue in such cases lies in the Supreme Court except when they relate to the acts and omis-

---

[142] G.R. No. L-20491, August 31, 1965.
[143] G.R. No. L-17959, November 23, 1965.

sions of inferior courts in which cases the petition may be filed in the CFI.

D. Eminent Domain

Binding effect of commissioners' appraisal

Under Section 7 of Rule 67, the commissioners are obliged "to make a full and accurate report to the court of all their proceedings, and such proceedings shall not be effectual to bind the property or the parties until the court shall have accepted their report and rendered judgment in accordance with their recommendations".

In consonance with the above rule, the Court held in *City of Cebu v. Ledesma, et al.*,[144] that it is well settled, that "reports submitted by commissioners of appraisal in condemnation proceedings are not binding but merely advisory in character as far as the court is concerned." Thus, in this case, the Court accepted the views of the minority commissioner and rejected those of the majority, because the former was strongly supported by documentary evidence which the court examined with special attention.

E. Foreclosure of Mortgage

Disposition of proceeds from extrajudicial foreclosure sales

Section 4 of Rule 68 provides that the money realized from the sale of the mortgaged property, after deducting the cost of the sale, shall be paid to the mortgagee foreclosing his mortgage, and the balance or residue, if any, shall be paid to junior encumbrancers in the order of their priority to be ascertained by the Court. Only if there be no such junior encumbrancers or there be a balance or residue after paying their claims, is said balance or residue to be delivered to the mortgagor.

In *Aparri v. CA and Vda. de Ferro*,[145] a case which involved an extrajudicial foreclosure sale, the Court applied the above provision which relates to judicial foreclosure sales, holding that: It is the considered opinion of this Court that the rule and practice in judicial foreclosure sales with respect to any balance or residue should be likewise applied to extrajudicial foreclosure sales in a similar event, considering that both are foreclosure sales.

F. Ejectment for Forcible Entry and Detainer

Time to commence action

Section 1 of Rule 70 requires that the action for ejectment must be brought before the Municipal Court *at any time within one year* (italics supplied) after the unlawful deprivation or withholding of possession complained of has taken place, otherwise

[144] G.R. No. L-16723, July 30, 1965.
[145] G.R. No. L-15947, April 30, 1965.

before the Court of First Instance which has jurisdiction thereof. And the purpose of the law in fixing at one year the period within which actions for forcible entry and detainer may be brought is, undoubtedly, to require cases of said nature to be tried as soon as possible and decided promptly.[146]

In the ejectment cases decided in 1965, the Supreme Court made an important pronouncement regarding the period within which to commence forcible entry and detainer actions, distinguishing as the basis of such computation the mode of illegal entry committed by the defendant, whether the same was through force and violence, or one obtained by stealth.

In *Vda. de Prieto v. Reyes, et al.*,[147] the Court, confronted with an ejectment case where the entry was done through stealth, held that in such case the one-year period must begin only from the time that the plaintiff learned of the defendant's intrusion and not from the time of such intrusion itself, because the owner or possessor of the land, "could not be expected to enforce his right to its possession against the illegal occupant and sue the latter before learning of the clandestine intrusion." Furthermore, "to deprive the lawful possessor of the benefit of the summary action under Rule 70 of the Revised Rules, simply because the stealthy intruder manages to conceal the trespass for more than a year would be to reward clandestine usurpations even if they are unlawful."

Then, in the subsequent case of *Ganancial and PHHC v. Atillo*,[148] the ruling in the *Prieto* case, *supra*, was further strengthened. In the *Ganancial* case, it was alleged in the complaint that the cause of action for ejectment was the defendant's unlawful entry in the premises of the plaintiff, through or by means of "force, intimidation and threat".

According to the Supreme Court in this case, "If these be the grounds for illegally occupying the premises, it does not require much stretch of the imagination to perceive that the plaintiffs knew, on the very date of the occupation, that they were unlawfully dispossessed. We cannot conceive of any case of dispossession by force, violence or intimidation without the person dislodged knowing of this fact. It stands to reason therefore that the commencement of the one (1) year period should be, as it is, the very date of illegal entry."

Possession de facto, not ownership is the issue

In an ejectment case, it is sufficient for the plaintiff to prove prior possession of the property. He need not establish his owner-

[146] 3 Moran, *supra*, p. 274.
[147] G.R. No. L-21470, June 23, 1965.
[148] G.R. No. L-19572, July 30, 1965.

ship over the same, and it is error for the court to dismiss the complaint when the plaintiff did not prove his title over the property. In *Garcia v. Anas, et al.*,[149] the Court held that: in an action for ejectment the only issue involved is one of possession *de facto* the purpose of which is merely to protect the owner from any physical encroachment from without. The title of the land or its ownership is not involved, for if a person is in actual possession thereof he is entitled to be maintained and respected in it even against the owner himself. The main thing to be proven is prior possession and if the same is lost through force, stealth or violence, it behooves the court to restore it regardless of its title or ownership (Moran, Comments on the Rules of Court, Vol. 2, 1957 ed., p. 289).

Demand, a pre-requisite

Under Section 2 of Rule 70, mere failure on the part of a tenant to pay rents does not *ipso facto* make unlawful the tenant's possession. It is the owner's demand for the tenant to vacate the premises, when the tenant has failed to pay the rents on time, and the tenant's refusal to vacate after such demand, which make unlawful the holding of possession.[150] And under said rule, the demand shall be made at least 15 days, or 5 days in the case of building, before an action for ejectment may be commenced.

In *Gallarde v. Moran*,[151] where the complaint does not state the time when the demand was made, it was deemed defective for it failed to meet the condition imposed by Section 2 of Rule 70 that the demand be made at least 15 days or 5 days, as the case may be, before actions for ejectment may be commenced.

Furthermore, in the *Gallarde* case, *supra*, the court nullified the complaint because it was not alleged therein that the demand to vacate was made for failure to pay rent or comply with conditions of the contract, and again for not alleging facts to show that such "demand" had been made in the form required by Section 2, viz. personally, or by serving written notice, or by posting such notice, both allegations being necessary requisites for a valid complaint in ejectment cases.

G. Contempt

Direct Contempt

Direct contempt is punished summarily under Section 1 of Rule 71 by a fine not exceeding two hundred pesos or imprisonment not exceeding ten days or both if committed against a superior court,

---

[149] G.R. No. L-20617, May 31, 1965.
[150] Moran, *supra*, pp. 289-290.
[151] G.R. No. L-24438, July 30, 1965.

or by a fine not exceeding ten pesos or imprisonment not exceeding one day or both if it be an inferior court.

The recent case of *Paragas v. Cruz*[152] illustrates direct contempt. In this case, asking for reconsideration of the Court's dismissal of his petition for certiorari, Atty. Jeremias T. Sebastian, counsel for the petitioner, stated in his written motion, remarks which the Supreme Court considered to be derogatory to its dignity. By a resolution, Atty. Sebastian was ordered by the Court to show cause why administrative action should not be taken against him, and failing to give a satisfactory explanation, the Court declared him in contempt.

Said the Court in this case: That such threats and disrespectful language contained in pleadings filed in courts are constitutive of direct contempt has been repeatedly decided (Salcedo v. Hernandez, 61 Phil. 724; Pes v. Venturanza, 52 O.G. 769; Medina v. Rivera, 66 Phil. 151; Sison v. Sandejas, L-9270, April 29, 1959; Lualhati v. Albert, 57 Phil. 86). What makes the present case more deplorable is that the guilty party is a member of the bar.

Furthermore, the Court ruled that the counsel's disavowal of any offensive intent is of no avail, for "it is a well-known and established rule that defamatory words are to be taken in the ordinary meaning attached to them by impartial observers".

Venue in indirect contempt cases

In *Israel v. Estenzo*,[153] the Court issued a resolution declaring that: the charge of indirect contempt falls under Rule 71, Section 4, according to which the same may be filed in the CFI of the province or city in which the same has been committed; it is punished under Section 6 of the same Rule and not under any penal statute; and that it is not a criminal offense but a special civil action.

[152] G.R. No. L-34438, July 30, 1965.
[153] G.R. No. L-24671, June 30, 1965.