SPECIAL PROCEEDINGS

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SETTLEMENT OF ESTATE OF DECEASED PERSONS

Summary Settlement of Estates

Under Section 1, Rule 74 of the Rules of Court, where a person dies intestate leaving no pending obligations and his heirs are all of age, or the minors are represented by their judicial or legal representatives, the settlement of his estate may be effected either by extrajudicial agreement among the heirs embodied in a public instrument filed in the office of the register of deeds, or should the heirs disagree, through an ordinary action of partition, without the necessity of judicial administration and the appointment of an administrator. Except in cases covered by Section 4, Rule 74, the distribution of the estate as a consequence of partition, whether judicial or extrajudicial, should be considered as a final settlement of the estate of the deceased.

In the case of *Garcia v. Court of Appeals and Dimaunahan*,[1] one of the heirs, alleging that the widow of the deceased transferred and conveyed to her certain parcels of land as part of her hereditary portion, objected to the project of partition submitted by the widow. The trial court dismissed the opposition for failure to prosecute and later approved the project of partition. Thereafter, the heir instituted an action for specific performance in another court based upon an alleged affidavit of the widow agreeing to the conveyance. The court held that although the action was for specific performance, its real purpose was to vary the final distribution made by a former court, increasing the share of the plaintiff at the expense of her co-heirs. The dismissal of the opposition to the projected partition which has since become final, operated as a judgment on the merits against her claim.

Proceedings in Testate Succession

The rule is now settled that where a will exists, its presentation for probate is an indispensable requisite to the settlement of the estate of the decedent. Section 1, Rule 74, in authorizing extrajudicial settlement of estates by agreement among heirs, limits the right of the heirs to divide the estate as they see fit only in cases where the "decedent left no will." Other provisions of the Rules of Court make it the duty, the violation of which is punishable by

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[1] G.R. No. L-19783, July 30, 1965.

a fine, of any person who has the custody of the will or of any executor named in the will to take steps to bring the same to probate.[2]

As held in one case,[3] even if the decedent left no debts and nobody raises any question as to the authenticity and due execution of the will, none of the heirs may sue for the partition of the estate in accordance with that will without first securing its allowance or probate of the court; first, because the law expressly provides that "no will shall pass either real or personal estate unless it is proved and allowed in the proper court"; and, second, because the probate of a will, which is a proceeding *in rem,* cannot be dispensed with and substituted by any other proceeding, judicial or extrajudicial, without offending against public policy designed to effectuate the testator's right to dispose of his property by will in accordance with law and to protect the rights of the heirs and legatees under the will.

Nature of probate proceedings

Proceedings for the allowance or probate of a will partake of the nature of a proceeding *in rem,* and, as such, through the publication of the petition for the probate of the will, the court acquires jurisdiction over all persons interested and the judgment rendered after due hearing is binding on all the world.[4] As a corollary, once the order admitting the will to probate and the order approving the distribution of the estate as provided in the will become final and unappealable, the same shall constitute *res judicata* to any subsequent action questioning either the due execution of the will or the validity of its allowance or probate.

In *Coloma v. Coloma*[5] where the plaintiffs questioned the existence of a will which had been duly probated by the Court of First Instance of Ilocos Norte, the Supreme Court, after finding that the proceedings for probate were regular and in accordance with law, affirmed the decision of the lower court dismissing the later proceeding on the ground of *res judicata* thus —

> "In Special Proceedings No. 3204 the court that rendered the judgment and orders had jurisdiction over the subject matter and over the parties. The judgment or orders had been rendered on the merits, because due hearing had been held. Special Proceedings No. 3204 was a proceeding *in rem* that was directed towards the whole world, including the appellants herein, so that it can be said that there is a similarity of parties in Special Proceedings No. 3204 and in the present case, because in both cases what are involved are all the properties left by the late Agapito Geronimo. There is identity of the causes of ac-

[2] Sections 2, 3, 4 and 5, Rule 75, Rules of Court.
[3] Guevara v. Guevara, 74 Phil. 479 (1943).
[4] McMaster v. Reismann and Co., 68 Phil. 142 (1939).
[5] G.R. No. L-19399, July 31, 1965.

> tion or issue involved because in both cases the questions to be determined were as to whether the late Geronimo executed a will in accordance with law, whether the proceedings had for the probate of the will were in accordance with law, and who are the persons that are entitled to inherit the properties left by the late Geronimo. x x x What is sought by the appellants to be determined and settled in the present case had already been determined and settled in Special Proceedings No. 3204."

Parties to probate proceedings

Any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed. The testator himself may, during his lifetime, petition the court for the allowance of his will.[6] No one, other than those included in the enumeration, has authority to petition for the allowance or probate of a will.[7]

On the other hand, the proper party to contest the probate of a will must be a person having some interest in the estate which may be affected by the probate of the proposed will; one having no interest in succession can not oppose the probate.[8] It is a well-settled rule that in order that a person may be allowed to intervene in a probate proceeding, he must have an interest in the estate, or in the will, or in the property to be affected by it either as executor or a claimant of the estate; and an interested party has been defined as one who would be benefited by the estate such as an heir or one who has a claim against the estate like a creditor.[9]

In *Teotico v. Del Val, et al.*,[10] an adopted child of a deceased sister of the testatrix who was also an acknowledged natural child of a deceased brother filed an opposition to the probate of a will left by the testatrix. The court held that she had no right to intervene in the proceedings. Under the provisions of the will, she had no interest in the estate either as heir, executor, or administrator. Nor did she have any claim to any property affected by the will either as designated heir, legatee or devisee. Even in the supposition that the will is disallowed, still she has no right to intervene because she is not a legal heir under the Civil Code. Being an illegitimate child she is prohibited by law from succeeding to the legitimate relatives of her natural father. Her adoption by a deceased sister of the testatrix did not improve her situation. The relation-

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[6] Section 1, Rule 76. Rules of Court.

[7] Woodruff v. Hundley, 127 Ala. 640, 29 S. 98 cited in Jacinto, G., Commentaries and Jurisprudence on the Revised Rules of Court, Special Proceedings, 1965 Edition.

[8] In the Matter of the Will of Cabigting, 14 Phil. 463 (1909).

[9] Teotico v. Del Val, et al., G.R. No. L-18753, March 26, 1965.

[10] *Supra.*

ship established by adoption is limited solely to the adopter and the adopted and does not extend to the relatives of the adopting parent.

In *Cacho v. Udan,*[11] where the brothers of the testatrix who was survived by an illegitimate son opposed the probate of the latter's will, the court held that the oppositors had no interest in the proceedings. They were excluded by the provisions of the will from participating in the estate. Nor can they inherit through intestate succession. Under the Civil Code, collateral relatives of one who died intestate inherit only in the absence of descendants, ascendants, and illegitimate children. In another case, *Coloma v. Coloma,*[12] the court disallowed the opposition filed by the children of a sister of the testator who pre-deceased the latter because they were not otherwise designated in the will either as heirs, legatees or devisees.

In the above-cited case of *Teotico v. Del Val, et al.,* however, a legatee was not allowed to intervene in the probate proceedings. On appeal, the Supreme Court held that this was another reason why the declaration of the probate court that the legacy was void and inoperative should be set aside because the legatee was not given opportunity to defend its validity.

Jurisdiction of probate courts

As a necessary inference from the rule that the allowance of a will is conclusive as to its due execution, the doctrine is well-settled that probate proceedings are limited to the question as to whether a will was executed in accordance with the formalities required by law and whether the testator had testamentary capacity to make such a will. The jurisdiction of probate courts, therefore, is necessarily circumscribed thus —

1. Questions of title to property cannot be passed upon by probate courts; and
2. The intrinsic validity of the provisions of the will as well as the validity of any disposition of property therein may not be inquired into in probate proceedings.[13]

(a) *Questions of title to property*

The general rule is that questions of title to property cannot be passed upon in testate or intestate proceedings. The probate court can decide only provisionally questions of title to property for the purpose of inclusion into, or exclusion from, the inventory, without prejudice to a final determination of the question in a separate

[11] G.R. No. L-19996, April 30, 1965.
[12] G.R. No. L-19399, July 31, 1965.
[13] Castañeda v. Alemany, 3 Phil. 426 (1904); Riera v. Palmaroli, 40 Phil. 105 (1919); In re Estate of Johnson, 39 Phil. 156 (1918); Pimentel v. Palanca, 5 Phil. 436 (1905).

action.[14] It is only when the parties interested are all heirs and they agree to submit to the probate court the question as to title to property that the probate court may definitely pass judgment thereon.

In the case of *Alvarez, et al. v. Espiritu,*[15] the collateral relatives of the testatrix, claiming the lot subject matter of the dispute tc be paraphernal property of the wife and not conjugal property of the spouses, brought an action against the husband of the testatrix for reconveyance of the lot in question. The defendant raised the issue that the probate court's order summarily distributing the estate of the testatrix was conclusive of the conjugal character of the property constituting the estate. In considering the defense to be without merit, the court reiterated the general rule that questions of title to property cannot be passed upon in testate or intestate proceedings. The exception to the rule did not apply because there was no agreement among the heirs to submit for determination by the probate court of the question as to whether the lot under litigation was conjugal or paraphernal property. If this point was at all considered, it was only provisionally, for purposes of inventory, and certainly without prejudice to its final determination in a separate action.

(b) *Intrinsic validity of testamentary provisions*

The probate of a will does not determine the validity of any of its provision nor the validity of any disposition of property therein.[16] The only purpose of a probate proceeding is to determine if the will was executed in accordance with the requirements of the law.

In *Teotico v. Del Val, et al.,*[17] the oppositor alleged the additional ground that the will was inoperative as to the share of a legatee, a physician who took care of the testatrix during her last illness. The court *a quo* while admitting the will to probate declared the disposition in favor of the legatee void and the portion vacated by the annulment to be governed by intestate succession. On appeal, the Supreme Court set aside this pronouncement as having been made in excess of jurisdiction, holding that a probate proceeding "does not determine nor even by implication prejudge the validity or efficiency of the provisions; these may be impugned as being vicious or null, notwithstanding its authentication. The court has no power to pass, during the probate of the will, upon the validity of any provisions made in the will."

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[14] Vda. de Paz, et al. v. Vda. de Madrigal, et al., G.R. No. L-8981, October 23, 1956.
[15] G.R. No. L-18833, August 14, 1965.
[16] Pimentel v. Palanca, *supra;* Limjoco v. Ganara, 11 Phil. 393 (1908).
[17] *Supra,* note 9.

The probate court, however, may inquire into and rule on the successional rights of the parties to the probate proceedings. Thus, in *Cacho v. Udan*,[18] where the oppositors-appellants questioned the lower court's finding that they are neither testamentary nor legal heirs on the ground that any ruling on their successional rights by the probate court is premature, the Supreme Court held that even in the proceedings for probate, inquiry into the hereditary rights of the oppositors may be made and the same is not premature, if the purpose is to determine whether their opposition should be excluded in order to simplify and accelerate the proceedings. As the court observed —

> "If the oppositors cannot gain any hereditary interest in the estate whether the will is probated or not, their intervention would merely result in unnecessary complication."

The apparent similarity of the facts in the two above-cited cases may seem to indicate conflicting decisions on the jurisdiction of the probate court. Actually, however, there is no conflict between the two cases. The facts are really different. In the *Teotico* case the probate court annulled a disposition made in favor of a legatee and therefore dealt with the intrinsic validity of a testamentary provision, while in the *Cacho* case, the probate court merely disallowed the opposition to the probate filed by persons to whom or in whose favor no testamentary disposition was made.

Allowance or disallowance of will

A will shall be disallowed in any of the following cases: (a) If not executed and attested as required by law; (b) If the testator was insane, or otherwise mentally incapable to make a will, at the time of its execution; (c) If it was executed under duress, or the influence of fear or threats; (d) If it was procured by undue and improper pressure and influence, on the part of the beneficiary, or of some other person for his benefit; (e) If the signature of the testator was procured by fraud or trick, and he did not intend that the instrument should be his will at the time of fixing his signature thereto.[19]

The formalities required by law to be observed in the execution of wills are those provided for in Articles 804-819 of the Civil Code. Where the testatrix affixed her signature at the bottom of the will and on the left margin of each and every page thereof in the presence of three witnesses, who in turn affixed their signatures below the attestation clause and on the left margin of every page of the will in the presence of the testatrix and of each other, and

[18] G.R. No. L-19996, April 30, 1965.
[19] Section 9, Rule 76, Rules of Court.

the will was acknowledged before a notary public, the court held that the will was executed with the formalities prescribed by law.[20]

The existence of improper and undue influence is a matter to be proven to the satisfaction of the court, whose decision cannot be questioned unless it is shown that the judge has committed an error of fact or has violated some provision of law or some legal doctrine amounting to error of law.[21] In the *Teotico* case the court found nothing which could have presented the testatrix, had she really wanted to, from subsequently revoking her will if it did not in fact reflect and express her own testamentary dispositions. Even if she was living under the same roof with the legatee she was often seen in several places alone and on several occasions, the oppositor was able to talk to her.

The exercise of improper pressure and undue influence must be supported by substantial evidence and must be of a kind that would overpower and subjugate the mind of the testator as to destroy his free agency and make him express the will of another rather than his own.[22] The fact alone that the designated heir and legatee had the opportunity to exert pressure on the testatrix because the latter lived in their house for several years prior to the execution of her will and that she was isolated from her friends is insufficient to disprove what the instrumental witnesses had testified that the testatrix freely and voluntarily and with full consciousness of the solemnity of the occasion executed the will.[23]

EXECUTORS AND ADMINISTRATORS

(a) *Power of appointment*

The power to appoint an administrator, whether regular or special, is entirely within the discretion of the court.[24] Even the order of preference provided for in Section 6, Rule 78, founded as it is on the assumption that the persons included in the enumeration are suitable, may be entirely disregarded by the court if it turns out that the persons, though included, are not suitable to be administrators of estates the settlement of which is pending before the court.[25]

Although it is usual for the court to permit the majority of the heirs to select the administrator, the grant of such permission rests in the court's discretion.[26] The choice of the administrator is not the absolute right or privilege of the majority of the heirs.

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[20] Teotico v. Del Val, et al., *supra*, note 9.
[21] Macapinlac v. Alimurong, 16 Phil. 41 (1910).
[22] Coso v. Deza, 42 Phil. 596 (1921).
[23] Teotico v. Del Val, et al., *supra*, note 9.
[24] Capistrano v. Nadurata, 46 Phil. 726 (1924).
[25] De Jesus v. Vda. de Morales, 93 Phil. 155 (1953).
[26] Monserrat v. Ibañez, G.R. No. L-3367, May 24, 1950.

If the administration of the estate of a deceased person were not a judicial proceeding, the majority of the heirs would have the right to determine who would manage the estate. But as the proceeding is judicial, the law places the discretion in the choice of the administrator upon the judge.[27]

The appellate court will not ordinarily interfere with the exercise of the discretion by the trial court. Even when subsequent developments supervene during the pendency of the apepal, the choice of the administrator remains with the trial court. Thus, in *Fernandez, et al. v. Maravilla*[28] where two special administrators were appointed one after the other by the trial court, and the first one appointed questioned the propriety and necessity of the subsequent appointment, but later while the case was pending appeal before the Supreme Court, offered to withdraw the temporary administration of the estate in favor of an impartial third party for the sake of saving the entire estate from the confusion attendant to the conflict between the two special administrators, the Supreme Court recognized the justifiability of reconsidering the entire matter in the face of the subsequent developments that have supervened, but remanded the same to the trial court "the matter of appointment of a co-special administrator being primarily within the sound discretion of the latter."

(b) *Special administrator*

A special administrator is a representative of a decedent, appointed by the probate court to care for and preserve his estate until an executor or general administrator is appointed.[29] Under Section 1, Rule 80, when there is a delay in granting letters testamentary or of administration by any cause including an appeal from the allowance or disallowance of a will, the court may appoint a special administrator to take possession and charge of the estate of the deceased until the questions causing the delay are decided and executors or administrators are appointed. Likewise, under Section 8, Rule 86, a special administrator shall be appointed if the executor or administrator has a claim against the estate he represents.

The case of *Fernandez, et al. v. Maravilla*[30] is illustrative of the provisions of Section 1, Rule 80. Herminio Maravilla, surviving spouse and executor of a will left by the testatrix was appointed special administrator pending the appointment of a regular administrator. The probate of the will was disallowed by the trial court, and Maravilla, as executor, appealed. During the pendency of the

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[27] Sioca v. Garcia, 44 Phil. 711 (1923); De Borja v. Tan, 93 Phil. 167 (1953).
[28] G.R. No. L-18799, March 26, 1965.
[29] Jones v. Minnesota Transfer R. Co., 108 Minn. 129; 121 NW 606, cited in Jacinto, G., *supra*, p. 106.
[30] *Supra*, note 28.

appeal, some of the intestate heirs of the deceased petitioned the lower court to appoint one Eliezar Lopez as special co-administrator to protect their interest which the court granted. Maravilla appealed questioning the propriety and necessity of such appointment.

Apparently, the lower court in this case followed the provisions of Section 1, Rule 80 which allows the appointment of a special administrator when there is a delay in granting letters of administration due to an appeal from the allowance or disallowance of a will. There is one point, however, which makes a problem presently contingent: the court *a quo* appointed two special co-administrators. The settled rule is that only one special administrator may at a time be appointed.[31] The Supreme Court in a well-reasoned decision promulgated on March 31, 1964 reversed the lower court in this regard. However, upon a motion for reconsideration, the Court reconsidered its decision and sustained the order of appointment of the special co-administrator.[32] A subsequent motion for reconsideration filed this time by Maravilla failed to resolve the problem as Maravilla later offered to withdraw his temporary administration and the Supreme Court remanded the case to the lower court in view of this supervening development.[33]

The general rule that only one administrator may be appointed to administer temporarily the estate of a decedent, however, is not absolute. As held in the case of Matias v. Gonzales,[34] in a situation where there are at least two factions among the heirs of a decedent, one supporting and the other contesting the probate of his will, if the probate court deems it best to appoint more than one special administrator pending ultimate determination of whether the will should be admitted for probate or not, justice and equity demand that both factions be represented in the management of the estate the idea being to protect their respective interests. The situation envisaged in this cited case might as well cover the facts in the case of *Fernandez, et al. v. Maravilla.*

(c) *Powers and duties of administrators and executors*

An executor or administrator has the right to the possession and management of the real as well as the personal property of the deceased so long as it is necessary for the payment of the debts and the expenses of administration.[35]

The right to the possession and management of the estate of the deceased, however, does not include the authority to continue the

[31] Roxas v. Pecson, 82 Phil. 407 (1948).
[32] Resolution upon Motion for Reconsideration, promulgated on December 28, 1964.
[33] Resolution upon Motion for Reconsideration, promulgated March 26, 1965.
[34] G.R. No. L-10907, June 29, 1957.
[35] Section 3, Rule 84, Rules of Court.

business in which the deceased was engaged at the time of his death. The normal duty of the personal representative is limited to winding up the affairs of the estate. There must be an order of the court authorizing the administrator to carry on the business of the deceased.[36] But were such an order is issued by the court, the business shall be regarded as if conducted by the deceased himself.

In the case of *Gomez v. Syjuco, et al.*,[37] the lower court authorized the administratrix to continue running the hotel of the deceased on property leased by the latter during his lifetime for the period and under the terms and conditions of the contract of lease. Later, when the movables within the premises of the hotel were ordered sold, the question was raised whether the claim for unpaid rentals constitutes a preferred claim with respect to the proceeds of the sale and the lower court held that for the claim to be preferred, the rent should have been incurred personally by the lessee. On appeal, the Supreme Court reversed this decision on the ground, among others, that even admitting as correct the lower court's view on the matter, the contract of lease entered into by the administratrix with the court's authority was on behalf of the estate of the deceased lessee and consequently, the rentals that fell due thereunder were, for all legal purposes, the same as those provided for under the original contract of lease.

A special administrator has the power to take possession and charge of the goods, chattels, rights, credits and estate of the deceased and preserve the same for the executor or administrator afterwards appointed, and for that purpose, may commence and maintain suits as administrator.[38] Thus, a special administrator has the authority to appear and defend suits against the estate, an authority necessarily implied from the broad and express power to preserve the estate.[39]

In the case of *Liwanag v. Court of Appeals, et al.*,[40] a mortgagee commenced against the special administratrix a civil action for foreclosure of a real estate mortgage constituted by the deceased during his lifetime. The court in rejecting the theory of the special administratrix that she could not be sued by a creditor of the deceased, reiterated the rule laid down in a former case involving the same petitioner, the same estate of the deceased, a similar action for foreclosure although of another mortgage and an identical motion to dismiss that —

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[36] Wilson v. Rear, 55 Phil. 44 (1930).
[37] G.R. No. L-16784, May 19, 1965.
[38] Section 2, Rule 80, Rules of Court.
[39] Cadman v. Richards, 13 Nebr. 383, 14 NW 159 cited in Jacinto, G., *supra*, p. 109.
[40] G.R. No. L-20735, August 14, 1965.

> "The Rules of Court do not expressly prohibit making the special administratrix a defendant in a suit against the estate. Otherwise, creditors would find the adverse effects of the statute of limitations running against them in case where the appointment of a regular administrator is delayed, x x x (and) the very purpose for which the mortgage was constituted would be defeated."[41]

(d) *Sales, mortgages, and other encumbrances of property of decedent*

Courts may grant to administrators the authority to sell, mortgage, or otherwise encumber real estate, in lieu of personal estate, if it appears necessary for the purpose of paying debts, expenses of administration and legacies. Under Section 4, Rule 89, personal or real property may be sold, but not mortgaged or otherwise encumbered, whenever the sale would be beneficial to the heirs, devisees, legatees and other interested persons, although not necessary for the payment of debts, expenses and legacies. Thus, where the sale of property was absolutely necessary for the subsistence of the family of the deceased during the Japanese occupation, the probate court authorized and approved the same.[42]

A similar ruling was made in the case of *Vda. de Gil v. Cancio.*[43] In this case, the widow and the adopted son of the deceased, both designated heirs in the will, secured a loan during the Japanese occupation for the payment of which they agreed to transfer to the creditor real property after the same had been finally adjudicated to both or either of the two heirs. An authority to execute the necessary deed of transfer was granted by the lower court. A subsequent petition requesting approval of the deed of sale, however, was denied upon the theory that the obligation for which the properties were sold was personal in character and has no connection with the probate proceedings and therefore should be threshed out in a separate action.

On appeal, however, the Supreme Court held that under the provisions of Article 1430 of the Civil Code, the widow and children of the deceased are entitled to certain allowances for their support out of the estate pending its liquidation and until their shares have been delivered to them. It was for this reason that both the widow and the son, who were prospective heirs, obtained the loan in order that they may have means to support themselves in the interregnum since the estate was then unproductive, a matter which comes perfectly within the purview of the law.

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[41] Liwanag v. Reyes, G.R. No. L-19159, September 29, 1961.
[42] Castillo v. Samonte, G.R. No. L-12880, April 30, 1960.
[43] G.R. No. L-21472, July 30, 1965.

(e) *Expenses of administration*

It is well-settled that payment by the administrator of the estate of a decedent of the amount due to his attorney for services rendered is a legal and allowable item.[44] The allowance as well as the amount of attorney's fees is discretionary with the court and ordinarily the appellate court does not interfere in the exercise of this discretion by the lower court. But where the order of the court fixing the amount of counsel fees is not very helpful in its concession, having been made without any discussion or statement of the reasons that led the court to reach its conclusions, the intervention of the appellate court is necessary in the interest of justice.[45]

Claims Against the Estate

Time within which claims shall be filed

Immediately after granting letters testamentary or of administration, the court shall issue a notice requiring all persons having money claims against the decedent to file them in the office of the clerk of said court.[46] In the notice the court shall state the time for the filing of claims against the estate, which shall not be more than twelve nor less six months after the date of the first publication of the notice.[47]

The period prescribed in the notice to creditors, however, is not exclusive. At any time before an order of distribution is entered, money claims against the estate may be allowed, at the discretion of the court, for cause and upon such terms as are equitable, to be filed within a time not exceeding one month. It is clear, therefore, that it is within the discretion of the court to grant an extension of the time within which to file money claims, and unless there is abuse of discretion amounting to lack or excess of jurisdiction, the same cannot be reversed or set aside by the appellate court.[48]

Thus, in the case of *Angel de Rama v. Palileo*,[49] the Supreme Court refused to set aside the order of the lower court granting the claimant one month from the receipt of the order to file her claim it appearing that no final decree of distribution has as yet been entered in the case and that there was no abuse of discretion in the grant of the extension. The claim in this case was a money judgment awarded as damages to the claimant in a decision of the Court of Appeals after the six-month period provided in the notice to creditors had already elapsed. Observed the court —

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[44] Dacanay v. Commonwealth, 72 Phil. 50 (1941); Aldamiz v. Judge, 85 Phil. 228 (1949).

[45] Guerrero and Associate v. Tan, G.R. No. L-21819, June 24, 1965.

[46] Section 1, Rule 86, Rules of Court.

[47] Section 2, Rule 86, Rules of Court.

[48] In re Estate of De Dios, 24 Phil. 573 (1913); In re Estate of Yiangco, 39 Phil. 967 (1919).

[49] G.R. No. L-18935, February 26, 1965.

> "The claimant could not have filed a money claim against the estate before the promulgation of the Court of Appeals decision because although the lower court in the case upheld her right to the ownership and possession of the property under litigation, no damages were adjudged in her favor until the Court of Appeals granted money judgment when the case was decided on appeal."

Mortgage debt due from the estate

Under Section 7, Rule 86, a creditor holding a claim against the deceased, secured by a mortgage or other collateral security, may pursue any but not all of the following remedies: (1) abandon his security and prosecute his claim and share in the general distribution of the assets of the estate; (2) foreclose his mortgage or realize upon his security by an action in court, making the executor or administrator a party defendant, and if there is a deficiency after the sale of the mortgaged property, he may prove the same in the testate or intestate proceeding; and (3) rely exclusively upon his mortgage and foreclose it any time within the ordinary period of limitations, and if he relies exclusively upon the mortgage, he shall not share in the distribution of the assets.[50]

When a mortgage creditor files an action for foreclosure, the executor or administrator of the deceased debtor is an indispensable party defendant.[51] But the Rules of Court do not expressly prohibit making the special administrator a defendant in a suit against the estate, otherwise, creditors would find the adverse effects of the statute of limitations running against them in cases where the appointment of a regular administrator is delayed.[52]

Also, an action for foreclosure of mortgage must be brought against the executor or administrator within ten years from the date the cause of action accrues. The running of the prescriptive period, however, may be interrupted by any of the causes provided for under the Civil Code. In the case of *Development Bank of the Philippines v. Ozarraga*,[53] it was held that a petition for the appointment of an administrator for the estate of the mortgage debtor does not toll the prescriptive period. A petition to open an administration proceeding is not a cause sufficient to interrupt prescription, and therefore, even if brought by the creditor, does not discharge the function of an action to enforce the debt.

TRUSTEESHIP

The case of *Araneta v. Perez*[54] was the only case on trusteeship

[50] Liwanag v. Reyes, *supra*, note 41.
[51] Govt. of P.I. v. De las Cajigas, 55 Phil. 667 (1931).
[52] Liwanag v. Court of Appeals, *supra*, note 40.
[53] G.R. No. L-16631, July 20, 1965.
[54] G.R. Nos. L-20787-8, June 29, 1965.

decided by the Supreme Court in 1965. The trusteeship of the minors Benigno, Angela and Antonio Perez y Tuason, from which the 1965 case evolved, had been the subject of several litigations during the last four years.[55]

The 1965 litigation arose out of a promissory note executed by Antonio Perez, the judicial guardian and father of the minors, in favor of J. Antonio Araneta, the trustee, to secure the payment of a loan extended by the latter to the former. Perez failed to pay upon the maturity of the notice despite demands made upon him to do so, and Araneta filed a complaint to collect an amount in accordance with the terms stipulated in the note.

In his answer, Perez alleged that the proceeds of the note were applied by him to the payment of the medical treatment of his minor daughter Angela, one of the beneficiaries of the trust, and that the trust estate is bound to pay the expenses of said treatment because they were for the benefit of the minor and therefore, the personal fund he borrowed from Araneta, for which he issued the note, should be paid in the manner above-stated. The Supreme Court, although finding Perez liable on the ground that the obligation created by the promissory note was personal to him and had nothing to do with the trust, observed —

> "Even assuming, for the sake of argument, that what is claimed by appellant Perez as to how he spent the proceeds of the note is true, that will not exempt him from his liability to Araneta but would merely give him some basis to claim for recoupment against the share of the trust fund belonging to the benefited minor. . . . Moreover, the trust herein created merely provides for delivery to the beneficiaries of the share that may correspond to them in the net income of the trust fund, but does not impose upon the trustee the duty to pay any obligation or expenses that may be needed by said beneficiaries."

Appellant Perez cited several authorities to support the contention that medical expenses made for the sake of the beneficiary should be borne by the trust fund. The Court held that these authorities require that the beneficiary is insolvent in order that the trust estate may be obliged to shoulder the expenses, a fact which is not present here because, as Perez himself admitted, the beneficiary has properties worth at least a quarter of a million.

ADOPTION

Under Section 3, Rule 99, the written consent to the adoption of each of the living parents who is not insane or hopelessly intemperate or has not abandoned the person to be adopted is necessary

[55] G.R. No. L-16962, February 17, 1962; G.R. Nos. L-16185-6, May 31, 1962; G.R. No. L-16708, October 31, 1962; G.R. No. L-16187, February 27, 1963.

if the latter is not yet of legal age. No particular form of written form is prescribed; the substantial thing required by law is that the parties whose consent is required do consent in the presence of the judge, and that such consent is manifested by writings delivered by them for that purpose. Thus, in the case of *Suarez v. Republic of the Philippines*,[56] where the consent of the natural parents of the minor to be adopted was in the form of a statement, subscribed and sworn to before a notary public, the court held the same sufficient to confirm the facts alleged in the petition for adoption and express the conformity of the natural parents to the adoption.

Under Section 5, Rule 99 in conjunction with the provisions of Article 341 of the Civil Code, the adoption of a person entitles him to use the surname of his adopter. However, in case the adopter is a married woman whose husband has not joined in the adoption, the problem arises as to which surname the adopted person is entitled to use, the adopter's surname as a married woman or her surname before marriage. In the *Suarez* case,[57] the Supreme Court in holding that the adopted person cannot bear the adopter's surname as a married woman called attention to the consequent confusion if the minor child were allowed to use the surname of the spouse who did not join in the adoption. "For one thing," the court observed, "to allow the minor to adopt the surname of the husband of the adopter, would mislead the public into believing that she has also been adopted by the husband, which is not the case. And when later, questions of successional rights arise, the husband's consent to the adoption might be presented to prove that he has actually joined in the adoption."[58]

HABEAS CORPUS

The writ of habeas corpus has for its object the speedy release by judicial decree of persons who are illegally restrained of their liberty or illegally detained from the control of those who are entitled to their custody.[59] In habeas corpus, therefore, what is inquired into is the legality of one's detention or confinement.

No writ, however, shall issue where the object of the petition for a writ of habeas corpus is to inquire into the wisdom of a particular decision and not into the legality of one's detention or confinement as the result of such decision. In the case of *Sy v. Commissioner and Board of Commissioners of Immigration*,[60] the respondent

[56] G.R. No. L-20914, December 24, 1965.
[57] *Supra.*
[58] Adoption of the Minor Ana Isabel Henrietta Antonia Concepcion Georgina, G.R. No. L-18284, April 30, 1963.
[59] Jacinto, G., *supra*, p. 369.
[60] G.R. No. L-21453, November 29, 1965.

commissioner issued a warrant for petitioner's deportation on the basis of a finding of the Board of Commissioners that the petitioner who claimed to be Aurora Sy was really Chiu Wan Hong, a Chinese subject admitted as a temporary visitor, whose right to stay as such in this country had already expired. In the petition for a writ of habeas corpus, petitioner maintained, contrary to the findings of the Board, that she was not the overstaying Chinese visitor. In denying the petition, the Supreme Court held that in effect the petitioner assailed the correctness of the Board's findings—"a matter which affects the wisdom, not the validity of the decision of the Board."

CHANGE OF NAME

Purpose of proceedings for change of name

The declared purpose of proceedings for a change of name is the prevention of fraud.[61] The possible consequences of the change of name must be carefully taken into account, and the policy of the courts should be to deny the application in the absence of clear proof that the change is really necessary and will not in any way serve any unlawful purpose. The state has an interest in the name borne by each individual for purposes of identification, and the same should not be changed for trivial reasons.[62]

A change of name is a privilege and not a matter of right, so that before a person can be authorized to change his name given him either in his certificate of birth or civil registry, he must show proper or reasonable or any compelling cause which may justify such change.[63]

What constitutes reasonable cause for change of name

The following may be considered, among others, as proper and reasonable causes that may warrant the grant of a petition for change of name: (1) when the name is ridiculous, tainted with dishonor, or is extremely difficult to write or pronounce; (2) when the request for change is a consequence of a change of status, such as when a natural child is acknowledged or legitimated; and (3) when the change is necessary to avoid confusion.[64]

(a) *Desire to adopt a Filipino name*

In *Uy v. Republic of the Philippines*,[65] Candido Uy, a Filipino citizen by naturalization, filed a petition for a change of name on

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[61] Jacinto, G., *supra*, p. 408.

[62] Ty Bio Giao v. Republic of the Pihlippines, G.R. No. L-18669, November 29, 1965.

[63] Yu Chi Han v. Republic of the Philippines, G.R. No. L-22040, November 29, 1965.

[64] Tolentino, A., Civil Code of the Philippines, 1953 ed., Vol. I, p. 660.

[65] G.R. No. L-22712, November 29, 1965.

the ground that with his Chinese surname "Uy", he is frequently mistaken for and identified as a Chinese citizen, his business suffers from time lost in having to explain in his dealings, especially with government agencies, that he is a naturalized Filipino; and that it has proved to be a social liability, causing much difficulty for him in entering civic organizations. In granting the petition, the court held that petitioner's earnest desire to do away with all traces of his former Chinese nationality and to be recognized as a Filipino is in line with the policy of our naturalization laws that applicants for naturalization should fully embrace Filipino customs and traditions and socially mingle with Filipinos, and therefore, constitutes a proper and reasonable cause for a change of name.

(b) *Desire to adopt a Christian name*

In *Go v. Republic of the Philippines*[66] it appears that representatives of the Cebu Maternity Hospital where the minor was born, registered the boy in the office of the Local Civil Registrar under the name of Baby Go. The minor's parents petitioned to change said name to a Christian one, Alberto Go on the ground that the former name was given to the child without his parents having the opportunity to choose his appropriate name. Finding the allegations to be true, the court granted the petition holding that there was a justifiable cause for changing the name.

(c) *Use of several names without legal authority*

In the case of *Ty Bio Giao v. Republic of the Philippines,*[67] the petitioner admitted that during his residence in the Philippines he had used and had been known under several names without legal authority to do so. The court held that the possibility exists — should the petitioner be allowed to change his name — that confusion would arise in the minds of those who had previously known him under different names.

(d) *Desire to continue using name given after baptism*

In *Yu Chi Han v. Republic of the Philippines,*[68] the petitioner prayed for the change of the name given him at birth to a name given after baptism in accordance with the rites of his newly acquired Catholic faith "in order to avoid confusion" as a result of his being known under these names. In denying the petition, the court held that the confusion alluded to, if any, was mainly due to petitioner's unauthorized use of a name other than his true name on several occasions, and this situation can be easily remedied by merely asking his friends and business associates to call him simply by his

[66] G.R. No. L-20160, November 29, 1965.
[67] *Supra*, note 62.
[68] *Supra*, note 63.

registered name instead of asking for a judicial authority to change his name.

No authority to make erasures or cancellations

Section 6, Rule 103 provides that judgments or orders rendered in connection with the rule on change of name shall be furnished the civil registrar of the municipality or city where the court issuing the same is situated, who shall forthwith enter the same in the civil register.

In the case of *Go v. Republic of the Philippines*,[69] the court construed the above provision to mean that while it authorizes the registration of the change of name in the proper book of the civil registry, it does not allow the alteration or changing of entries in the civil register. Accordingly, the order granting petition for change of name shall also be construed as not to make erasures or cancellations in the change of names in the original entry, but only to make the proper marginal corrections or annotations in the civil register.

CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Article 412 of the New Civil Code provides that no entry in a civil register shall be changed or corrected without a judicial order. In several cases,[70] the Supreme Court has invariably construed Article 412 as authorizing changes or corrections even upon judicial order only of clerical errors of a harmless and innocuous nature like misspelled names, occupation of the parents, etc., not such as may affect the civil status, nationality, or citizenship of the persons involved. Where matters of the latter kind are involved, they must be threshed out in a proper action, depending upon the nature of the issue.

This construction of Article 412 was reiterated in the case of *David v. Republic of the Philippines*,[71] where the corrections sought to be made in the birth certificate of petitioner's son were: (1) to change the name of the child from Raul Sabile to Raul David; (2) to delete the name of the father mentioned therein; (3) to change petitioner's name from Sabile to David; and (4) to delete the place and date of marriage. In denying the petition, the court held that these corrections are not merely harmless or innocuous but substantial in the sense that they tend to affect the civil status not only of the petitioner herself but her child's as well, the latter from legitimate to illegitimate.

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[69] *Supra*, note 66.
[70] Cases cited in Jacinto, G., *supra*, p. 449, note 2.
[71] G.R. No. L-21316, November 29, 1965.

Under the Revised Rules of Court, however, changes or corrections affecting the civil status of persons may now be allowed through a special proceeding for cancellation or correction of entries in the civil registry. Section 1, Rule 108 provides that any person interested in any act, event, order or decree concerning the civil status of persons which have been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto. Section 2 of the same Rule enumerates the entries in the civil register subject to cancellation or correction.

In a 1964 case,[72] the scope of Rule 108 was delineated thus: "birth" which is mentioned as one of the entries that may be cancelled or corrected includes only such particulars as are attendant to birth; other details such as nationality or citizenship are not included. Entries relating to citizenship may be corrected or changed only as regards its election, loss or recovery.

Thus, the rule still remains that corrections or changes that are substantial and controversial in nature are not allowed in summary proceedings. However, where the corrections or changes sought to be made are not controversial but matters which are supported by indubitable documents, the same are allowable. In the case of *Tiong, et al. v. Republic of the Philippines*,[73] where as a consequence of the naturalization and subsequent change of name of their father, the same were annotated on the respective identification certificates issued to petitioners by the Bureau of Immigration, the Court held that since the names of the petitioners appearing in their birth certificates on file with the local civil registrar were those given to them at birth and before their father's naturalization, it is but fair that the corresponding annotation thereon regarding their true status and citizenship be made to avoid any misunderstanding in the future.

Moreover, where the civil registry entry of birth of a child is sworn to by the mother only, shows that the child was illegitimate, but states the name of the purported father, the latter is entitled to have the entry corrected to eliminate all reference to him as father of the child.[74] In a similar case, *Alisoso v. Lastimoso, et al.*,[75] the Court held that considering the facts obtaining, that the petitioner is not the father of the minor, that he has no amorous relation with the minor's mother, and that the one who reported the false entry was a mere interloper or one bereft of any authority to make such entry, there is no justifiable reason why the same should not be corrected or deleted.

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[72] Reyes. et al. v. Republic, et al., G.R. No. L-17642, November 27, 1964.
[73] G.R. No. L-20715, November 27, 1965.
[74] Roces v. Civil Registrar of Manila, G.R. No. L-10598, February 14, 1958.
[75] G.R. No. L-19659, May 31, 1965.