REMEDIAL LAW

DEOGRACIAS T. REYES*

I

INTRODUCTION

To have as one's task the annual survey of the decisions of the Supreme Court in any branch of Remedial Law is certainly no easy matter. But to have to undertake an annual survey of Supreme Court decisions in the whole vast field of Remedial Law is nothing short of staggering. Hardly is there any case pending in the Supreme Court, not to mention the lower courts, which does not involve any question in procedure. Remedial Law, being that branch of the law which gives form to and provides the vehicle for the enforcement of all substantive rights, is pertinent to every conceivable case that may arise in the courts of justice, from the most unpretentious municipal court in the smallest town to the august halls of our highest Tribunal. So vast indeed is the expanse of Remedial Law's relevance.

The easiest way to undertake a survey of this nature would be to chronicle each and every Supreme Court decision involving any provision of Remedial Law. However, while that would be the least tiresome mentally, that would also be the least profitable. That system, which is not much more than clerical work, would offer nothing by way of observation, analysis or emphasis. This writer, therefore, elected to adopt a different and, in his opinion, more sensible method — he was chosen to be guided by the principle of selectivity, picking out only those cases which, either by their importance or by their novelty, deserve the attention of students of Remedial Law. Those decisions which, apart from their involving relatively unimportant aspects of procedure, have only traveled the worn-out and time-honored path established by numerous past decisions, he has deemed better to gloss over.

II

JURISDICTION

Section 44 of the Judiciary Act of 1948 as amended, lays down the original exclusive jurisdiction of the Courts of First Instance.

* Professorial Lecturer in Law, University of the Philippines.

One of the classes of cases reserved exclusively and originally for the Courts of First Instance has proved particularly troublesome; *viz.* "all actions in admiralty and maritime jurisdiction, irrespective of the value of the property in controversy or the amount of the demand." Though some cases are clear-cut and obvious admiralty suits many others are exceedingly difficult of determination, appearing in some aspects to be admiralty cases, yet in other aspects seeming to be simple cases of specific performance, breach of contract, or some other sort of litigation.

The Supreme Court in the case of *Negre v. Cabahug Shipping and Co.*[1] had occasion to clarify what the scope of admiralty jurisdiction is. In that case, appellant Negre filed a complaint in the Court of First Instance against appellee shipping company, a common carrier engaged in sea transport, to recover the sum of ₱3,774.90, representing a cargo of dried fish loaded on the latter's vessel and which was totally destroyed on board due to the negligence of the crew. The appellee move to dismiss on the ground that the amount of the claim did not fall within the court's jurisdiction. Granting appellee's motion, the court dismissed the complaint.

The appellant, on the other hand, maintains that his action is one in admiralty and maritime jurisdiction and within the exclusive original jurisdiction of the Court of First Instance.

The Supreme Court, speaking through Mr. Justice Arsenio Dizon, held that to give admiralty jurisdiction over a contract, *the same must relate to trade and business of the sea.* (Italics supplied). Observing that the action by the appellant Negre was based upon an oral contract for transportation of goods by water and that it was shown that the contract had been partially performed with the loading of the goods on board appellee's vessel and the acceptance thereof by the appellee and that the contract was breached by the carrier, the Supreme Court ruled that the action was one in admiralty and thus within the exclusive original jurisdiction of the Court of First Instance.

III

CIVIL PROCEDURE

A. *Venue*

Venue is defined as the place where an action must be instituted and tried. Rule 4 of the New Rules of Court determines

[1] G.R. No. 19609, April 29, 1966.

the proper venue of actions. The determination of the proper venue is dependent upon such factors as the nature of the action, the location of the property in litigation, and the agreement of the parties.

Rule 4, Section 2 of New Rules of Court lays down the rules of venue in the Courts of First Instance:

> "SEC. 2. Venue in Courts of First Instance. — (a) Real actions. — Actions affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property, shall be commenced and tried in the province where the property or any part thereof lies.
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> "(b) Personal actions. — All other actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff.
>
> "(c) Actions against nonresidents. — If any of the defendants does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff, or any property of the defendant located in the Philippines, the action may be commenced and tried in the province where the plaintiff resides or the property, or any portion thereof is situated or found."

There are some instances when the distinction between real and personal actions, insofar as this distinction is necessary for the establishment of proper venue, is none too clear. In such cases it is necessary to discover the essential element of the action, in contradistinction with the incidental elements. This is illustrated in the case of *Claridades v. Mercader*.[2] In that case petitioner Claridades instituted an action in the Court of First Instance of Bulacan against the respondents for the dissolution of a partnership allegedly existing between them and for an accounting of the operation of the partnership, particularly a fishpond located in Marinduque, which was the main asset of the partnership. A certain Alfredo Zulueta and his wife sought leave to intervene, alleging that they were the owners of the fishpond. Having thus been given leave to intervene, the Zuluetas filed a motion to dismiss on the ground that the action, involving as it did the ownership of the fishpond, should have been instituted in the Court of First Instance of Marinduque. The lower court dismissed the action. The Supreme Court, through Mr. Justice (now Chief Justice) Roberto Concepcion, held the dismissal by the court *a quo* to have been erroneous, pointing out that petitioner's complaint merely sought the liquidation of the partnership. The action, continued the Supreme Court, was obviously a personal one, which

[2] G.R. No. 20341. April 14, 1966.

could be brought in the place of residence of either the plaintiff or the defendant. And since the petitioner was a resident of Bulacan, he had the right to bring the action in the Court of First Instance of Bulacan. The Court explained that the fact that the petitioner prayed for the sale of the partnership assets, including the fishpond, did not change the nature of the action, such sale being merely a necessary incident of the liquidation of the partnership.

B. *Requirement of 3-day Notice for Motions*

Rule 15, Section 4 provides:

> "Notice of a motion shall be served by the applicant to all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion."

Previously, it had been held that the three-day notice requirement was a jurisdictional matter and its non-fulfilment prevented the court from acquiring jurisdiction over the motion. According to a distinguished authority, "three days at least must intervene between the date of service of notice and the date set for hearing, otherwise the court may not validly act on the motion."[3]

An important qualification to this rule, however, was established in the case of *Remonte v. Bonto*.[4] The facts of that case are briefly, as follows: On 9 January 1962, NBI agents entered the premises of the plaintiff and investigated the latter's personnel. On the same day defendant Fiscal Bonto subpoenaed plaintiff to testify in connection with an alleged violation of RA 337. On 22 January 1962, the plaintiff filed a complaint for injunction with a petition for preliminary injunction. On 26 January 1962 the defendant NBI agents filed an opposition to the petition for preliminary injunction. On 27 January 1962, the defendant fiscal likewise filed an opposition to the petition for preliminary injunction. On 2 February 1962, the defendant NBI agents filed an answer to the complaint. On 3 February 1962, the fiscal filed a motion to dismiss on the ground that the complaint stated no cause of action. On 5 February 1962, the plaintiff filed his reply to the oppositions to the preliminary injunction. On 12 February 1962, the plaintiff opposed the motion to dismiss, having received a copy of said motion on 10 February 1962. On 20 February 1962,

[3] 1 Moran, Rules of Court, 1963 ed., 404.
[4] G.R. No. 19900, February 28, 1966.

the plaintiff was notified of the court order dated 8 February 1962 denying the petition for preliminary injunction and dismissing the case.

Quite obviously, the issue in this case was the validity of the order of 8 February 1962, inasmuch as it was made before the plaintiff had even received a copy of the motion to dismiss. The Supreme Court upheld the validity of the said order, reasoning out thus: "Prior to the date of the disputed order of 8 February 1962, the question of law raised in the motion to dismiss had been thoroughly threshed out in the NBI agents' opposition of 26 January 1962, in the plaintiff reply of 5 February 1962, and in the agents' answer of 2 February 1962. There was nothing new in the averments of the fiscal's motion to dismiss and the plaintiff's opposition thereto. The purpose of the law in requiring the 3-day notice of hearing, which is to avoid surprise, has been sufficiently complied with."

Thus we see that although, as a general rule, three days notice of hearing is necessary in case of motions, the presence of unusual and exceptional circumstances, such as those in the above-cited case, may make such a requirement unnecessary and superfluous.

C. *Motion to Dismiss*

Rule 16, Section 1 enumerates ten grounds for a motion to dismiss. One of them is:

> "(e) That there is another action pending between the same parties for the same cause."

The case of *Pampanga Bus Company v. Ocfemia*.[5] is a good illustration of this ground: In 1962, a cargo truck owned by the defendant collided with a bus of the plaintiff. The defendant filed a complaint for damages in the Court of First Instance of Nueva Ecija. A month later, the plaintiff filed the present suit against the defendant in the Court of First Instance of Pampanga, also for damages. The defendant filed a motion to dismiss the latter case on the ground of *lis pendens* (i.e. Rule 16, Section 1[e]). The plaintiff opposed the motion, alleging that the defendant filed the former case only after the plaintiff demanded damages and in anticipation of a probable suit. The plaintiff also alleged that it received the summons in the former case only after it had filed the latter case. The Court of First Instance of Pampanga, over

[5] G.R. No. 21793, October 20, 1966.

the opposition of the plaintiff, dismissed the latter case, on the ground of *lis pendens*.

The Supreme Court, on appeal, upheld the propriety of the dismissal by the Pampanga CFI, pointing out that there are three requisites for *lis pendens*:

1) identity of the parties;

2) identity of the rights asserted, the relief being founded on the same facts; and

3) identity of such a nature that the judgment that may be rendered in the pending case, regardless of who wins, would be *res judicata* in the other case.

All of the above-enumerated requisites were held by the Supreme Court to be present in the case.

Failure to state a cause of action as a ground for a motion to dismiss was availed of in *Remitere v. Montinola Vda. de Yulo*.[6] In that case, the ruling established in so many previous cases[7] was reiterated to the effect that the lack of a cause of action as a ground for dismissal must appear on the face of the complaint, and to determine whether the complaint states a cause of action, only the facts alleged therein, and no other, should be considered.

D. *Postponement*

Rule 22, Section 3 gives the court the power and the discretion to grant postponements. As held in the case of *Ong v. Fonacier*,[8] postponements are matters within the sound discretion of the court. This being the case, in the absence of a clear showing of grave abuse of discretion, the Supreme Court will not interfere with the exercise by the lower court of this power.

E. *New Trial*

The grounds for the granting of a new trial are given by Rule 37, Section 1:

> "SEC. 1. Grounds of and period for filing motion for new trial. — Within the period for perfecting appeal, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

[6] G.R. No. 19751, February 28, 1966.

[7] Cf. Zobel v. Abreu, 51 O.G. 3593 (July 1956) Marabiles v. Quito, 52 O.G. 650 (Nov. 1956); Carreon v. Prov. of Pampanga, 99 Phil., 808, (1956); Aurelio v. Baguiran, 100 Phil. 274. (1956).

[8] G.R. No. 20887, July 8, 1966.

"(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;

"(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result;

"(c) Award of excessive damages, or insufficiency of the evidence to justify the decision, or that the decision is against the law."

When the ground for a motion for new trial is fraud, accident, mistake, or excusable negligence, Rule 37, Section 2 requires that the movant attach affidavits of merit to his motion. However, there is an instance when affidavits of merit are not necessary and this is when the granting of the motion is not discretionary with the court but is demandable as of right.[9]

The case of *Soloria v. Cruz*[10] is important in this connection for two reasons: 1) it gives a good example of accident within the meaning of Rule 37, Section 1(a); and 2) it explains when the affidavits of merit are not necessary.

The facts of that case are as follows: In 1961, de la Cruz commenced a proceeding against Soloria, alleging that since 1950, he (de la Cruz) had been a share tenant of Soloria over the latter's riceland and that on 20 May 1961, Soloria, without just cause, summarily ejected him from the land. Soloria filed an answer. On the date of the hearing, respondent Soloria and counsel did not appear. The court allowed petitioner de la Cruz to present evidence *ex parte*. On 30 August 1962, the court rendered a decision for petitioner. Three days after receipt of the decision, the respondent moved to reconsider and to set aside the decision and to allow her to cross-examine petitioner's witnesses and to present her own evidence. The respondent claimed that her failure to attend the hearing was due to accident since notice thereof was received on 14 June, six days after the hearing. This claim was supported by an affidavit. The respondent's motion was denied on the ground that the respondent was negligent in not filing, before judgment was rendered on 30 August 1962, any pleading to indicate her intention to cross-examine and present her own evidence despite the receipt by her on 8 August 1962 of the order of 8 June 1962 considering the case submitted for decision and also

[9] 2 Moran, op. cit., 213.
[10] G.R. No. 20738, January 31, 1966, 63 O.G. 2759 (Mar. 1967).

on the ground that the respondent failed to submit an affidavit of merit.

The Supreme Court, through Mr. Justice J. B. L. Reyes, held: "It is not disputed that the respondent did not receive a notice of hearing on or before the date of trial. This has been held in previous cases to constitute an 'accident' within the meaning of Section 1, Rule 37.[11]

"Moreover", the court continued, "affidavits of merits are not necessary when the granting of the motion for new trial is not discretionary with the court but is demandable as of right, as where the movant has been deprived of his day in court, through no fault or negligence of his own.[12]

F. *Execution of Judgments*

"Execution shall issue only upon a judgment or order that finally disposes of the action or proceeding. *Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.*

"If the judgment has been duly appealed, execution may issue as a matter of right from the date of the service of the notice provided in Section 11 of Rule 51."[13] (Italics supplied).

The case of *Ago v. Court of Appeals*[14] is the latest authority for the rule that "the court cannot refuse to issue a writ of execution upon a final and executory judgment, or quash it, or order its stay, for, as a general rule, the parties will not be allowed, after final judgment, to object to the execution by raising new issues of fact or of law, nor can it refuse — and the reason is more compelling — to issue such writ, or quash it or order its stay, when the judgment has been reviewed and affirmed by an appellee court, for it cannot review or interfere with any matter decided on appeal, or give other or further relief or assume supervisory jurisdiction to interpret or reverse the judgment of the higher court.[15]

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[11] Citing Muerteguy v. Delgado, 22 Phil. 109 (1912); Lavitoria v. Judge of First Instance of Tayabas, 32 Phil. 204 (1915); Villegas v. Roldan, 76 Phil. 349 (1946).

[12] Citing Valerio v. Tan, G.R. No. 8446, September 19, 1955; Navarro v. Bello, G.R. No. 11647, January 31, 1958.

[13] Rule 39, Section 1.

[14] G.R. No. 19718, January 31, 1966, 63 O.G. 2137 (March 1967).

[15] 2 Moran, op. cit., 257, citing Amor v. Jugo. 77 Phil. 703 (1946); Castro v. Surtida, 47 O.G. Supp. (12) 351 (Dec. 1951); Doliente v. Blanco; G.R. No. 3525, November 29, 1950.

In the *Ago* case, after the Supreme Court handed down its decision, a writ of execution was issued. The petitioner asked for a stay of execution on the ground that there had been a change in the situation of the parties which made it inequitable to enforce the decision. To support this claim, the petitioner brought up new issues of fact. In rejecting petitioner's claim, the Supreme Court held that a court cannot refuse to issue a writ of execution upon a final and executory judgment or quash it, or order its stay, for, as a general rule, the parties will not be allowed, after final judgment, to object to the execution by raising new issues of fact or of law.[16]

G. *Res Judicata*

Rule 39, Section 49 establishes the rule of *res judicata*. The elements of *res judicata*, as laid down in so many decisions, are four:

1. There must be a final judgment or order;

2. The court rendering the same must have jurisdiction of the subject-matter and of the parties;

3. It must be a judgment or order on the merits; and

4. There must be between the two cases identity of parties, identity of subject-matter, and identity of cause of action.

Two 1966 cases on *res judicata* deserve mentioning, if only to illustrate the elements of the rule. The first is the case of *Gaffud v. Cristobal*.[17]

A summary judgment was rendered by the Court of First Instance of Isabela by virtue of which the plaintiff was declared the absolute owner of the land covered by OCT No. A-110 of the Register of Deeds of Isabela. In the same judgment, the court issued a final mandatory injunction ordering the defendant to vacate and surrender to the plaintiff portions of said land, and a permanent prohibitory injunction against defendant's re-entering said portions. The summary judgment was based on *res judicata*. The plaintiff's predecessor-in-interest was the registered owner of certain parcels of land covered by Certificate of Title No. A-110, pursuant to the registration proceeding in 1915. By virtue of that decision, 44 persons were evicted from the land, among them the defendants in this present case. Subsequently,

[16] Citing 2 Moran, op. cit., 257.
[17] G.R. No. 17638, February 28, 1966.

the defendants filed 9 separate complaints against the plaintiffs, each asserting a claim of ownership. In 1956, a joint summary judgment was issued dismissing the complaints. The defendants appealed but the appeal was dismissed due to their failure to pay the docket fee. The instant action was filed on the ground that the plaintiff's predecessor-in-interest included the lands in question in the application although he knew that they were owned by the defendants and that in the hearing of the said application the defendants were not given a chance to prove their allegations.

The Supreme Court held that between the 9 actions instituted by the defendants against the plaintiffs and the present one, there is identity of parties, identity of subject-matter, and identity of cause of action. The judgment in those 9 actions had long acquired finality. Such being the case, it was held that all the elements of *res judicata* were present.

The second case is that of *Republic v. Planas*.[18] The Supreme Court chronicles the facts thus:

This is the third time the subject-matter involved in this appeal has been brought to the attention of this court. This concerns the tax on war profits allegedly due from appellee Carmen Planas. In 1950, the appellee was assessed by the Collector of Internal Revenue war profits taxes. The case reached the Board of Tax Appeals, then the Supreme Court, which dismissed the appeal without prejudice, on the ground that this kind of case came within the jurisdiction of the regular courts. In 1958, the appellant Republic of the Philippines filed in the Court of Tax Appeals a motion for execution of the judgment of the Board of Tax Appeals. The Court of Tax Appeals granted the motion but the Supreme Court annulled the order of the Court of Tax Appeals on the ground that the decision of the Board of Tax Appeals was void. In January 1962, the appellant brought suit in the Court of First Instance. The CFI dismissed the case on the ground of prescription. In July 1962, the appellant again brought suit in the CFI, this time against the appellee and the surety company. The CFI again dismissed the suit, on the ground of *res judicata*. The appellant, on appeal, claims that whereas the first case was against the appellee alone, the second case is against the appellee and the surety company. Appellant further claims that by posting a bond, the appellee assumed two obligations to pay tax, giving rise, therefore, to two sources of action in favor of the appellant.

[18] G.R. No. 21224, September 27, 1966.

The Supreme Court, speaking through Mr. Justice Jesus Barrera, resoundingly rejected appellant's claims when it categorically held that the appellee did not assume two obligations. In connection with the question of *res judicata*, the High Court held that the fact that the forms of the two actions, as well as the relief prayed for, are not the same, does not preclude the operation of the rule of *res judicata*, where it clearly appears that the parties are actually litigating the same thing. A party cannot, by varying the form of action or making a different presentation of his case, be allowed to escape the application of the rule that *one and the same cause of action shall not be twice litigated* (Italics supplied). A simple restatement, indeed, of an all-important rule in procedure.

H. *Filing of record on appeal within reglamentary period.*

> "Appeal may be taken by serving upon the adverse party and filing with the trial court within thirty (30) days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal."[19]

"Under the above section, an appeal may be taken by filing with the trial court and serving upon the adverse party a notice of appeal, a record on appeal, and an appeal bond. *Each of these papers must be filed and served within 30 days from notice of judgment. If one of them is filed after 30 days, the appeal is not well taken.*"[20] (Italic supplied)

The filing, therefore, of the notice of appeal, appeal bond, and record on appeal are jurisdictional requirements for an appealed case to be considered by the appellate court. In the case of *Roque v. Rosario*[21] where the record of appeal was filed 14 days late, the Supreme Court, in sustaining the trial court's dismissal of the appeal, emphasized that the "timely perfection of an appeal is a jurisdictional requisite to enable the appellate court to take cognizance of the case".[22]

In *Galima v. Court of Appeals*,[23] the Supreme Court refused to relax the rule regarding the period when the record on ap-

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[19] Rule 41, Section 3.

[20] 2 Moran, op. cit., 366, citing Capinpin v. Ysip, G.R. No. 14018, August 31, 1959.

[21] G.R. No. 24873, September 23, 1966.

[22] Citing Government v. Antonio, G.R. No. 23736, October 19, 1965; Miranda v. Guanzon, 92 Phil. 168 (1952) which overruled Santiago v. Valenzuela, 78 Phil. 397 (1947), Valdez v. Acumen, G.R. No. 13536, January 29, 1960.

[23] G.R. No. 21046, January 31, 1966.

peal should be filed, despite the protestations of the petitioner that her failure was due to a miscomputation of the period. The pertinent facts of that case are as follows: In civil cases U-234 and U-435 of the Court of First Instance of Pangasinan, judgment was rendered ordering the petitioners Galima to deliver to Juliana Bautista 382 square meters covered by OCT No. 18790. Copy of the decision was received by counsel for the petitioners on 30 January 1962. Steps were taken to appeal the judgment and the notice of appeal and cash bond were filed prior to 26 February 1962. No record of appeal was filed prior to 1 March 1962, when the 30-day appeal period expired but on 2 March 1962, the petitioners appealed for an extension of 5 days to present it. Despite objections, the vacation judge granted the extension and the petitioners were allowed to file their record on appeal. The adverse party, Juliana Bautista, asked for reconsideration and on 5 June 1962, the regular judge set aside the order of the vacation judge and dismissed the appeal.

It is not denied that the 30-day appeal period expired on 1 March and that the petition to extend the time to file the record on appeal was one day late. Petitioners claim, however, that the extension was validly granted since the trial court had discretion to allow the record on appeal on equitable grounds. Petitioners further claim that they honestly believed that 2 March was the last day.

The Supreme Court, in rejecting petitioners' contentions, held that the miscomputation of the appeal period will not rest the course of the same, nor prevent the finality of the judgment. The case of *Santiago v. Valenzuela*,[24] invoked by the petitioners, has been overruled by the subsequent cases of *Miranda v. Guanzon*,[25] *Valdez v. Acumen*,[26] and *Government v. Antonio*,[27] the Supreme Court pointed out. In these later cases, it was ruled that the perfection of an appeal within the period of prescribed by law (which process involves the filing of the record on appeal) is jurisdictional.

I. *Power of Trial Court Pending Appeal*

Rule 41, Section 9 reads:

> "SEC. 9. When appeal deemed perfected; effect thereof. — If the notice of appeal, the appeal bond and the record on appeal have been filed in due time, the appeal is deemed perfected upon the

[24] 78 Phil. 397, (1947).
[25] 98 Phil. 168, (1955).
[26] G.R. No. 13326, January 28, 1960.
[27] G.R. No. 23736, October 19, 1965.

> approval of the record on appeal and of the appeal bond other than a cash bond, and thereafter the trial court loses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, to approve compromises offered by the parties prior to the transmittal of the record on appeal to the appellate court, and to permit the prosecution pauper's appeals."

The case of *Cabilao v. Judge of the Court of First Instance of Zamboanga,*[28] is both important and interesting in that it gives us an idea of the extent of the trial court's power over the case in the event the latter appealed. The respondents in that case filed an action in the Court of First Instance for the recovery of land. The court rendered judgement in favor of the respondents. The petitioners filed a notice of appeal, an appeal bond, and a record on appeal, all of which the court approved. Six days later, the respondents moved for reconsideration of the order of approval on the ground that the notice of appeal, the appeal bond, and the record on appeal had not been received by counsel because he had just arrived from Manila. The motion was granted and the respondents were given 10 days to examine the record on appeal. The respondents then moved for immediate execution pending appeal. Three days later, they filed an opposition to the record on appeal, stating that it should be amended so as to include other pleadings. The motion for immediate execution was granted.

HELD: There is no question that the trial court, after the perfection of the appeal but prior to the transmittal of the record on appeal to the appellee court, still has the power to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal. The question, however, is whether the order reconsidering the approval of the record on appeal and whether the order of execution pending appeal are among the orders still within the trial court's jurisdiction to issue. Regarding the first, the old case of *Valdez v. CFI,*[29] held that it could not be done. But in the later case of *Cabungcal v. Fernandez,*[30] this was allowed. The second question — whether the order of execution pending can be issued — must be answered in the negative because it is settled that the execution of judgment is a proceeding affecting the rights of the parties which are the subject matter of the action from which appeal is taken, and its purpose is not to protect and preserve the subject-

[28] G.R. No. 18454, August 29, 1966.
[29] 88 Phil. 585 (1951).
[30] G.R. No. 16520, April 30, 1964.

matter of the litigation.[31] Therefore the lower court's order reconsidering the approval of the record on appeal did not produce the effect of reviving the court's full jurisdiction over the case and the court still had no power to order execution of its judgment pending appeal.

J. *Injunction Against The Patent Office*

The Patent Office is given by law the same rank and category as the Courts of First Instance. Pursuant to this, the Supreme Court in *Honda Giken Kogyo Kabushiki Kaisha v. San Diego*,[32] ruled that the Court of First Instance of Rizal could not enjoin the Director of Patents. The Supreme Court reasoned out that under Rule 44 of the Rules of Court and Section 33 of Rep. Act 166, appeals from orders and decisions of the Patent Office must be taken by the Supreme Court itself. Consequently, the Courts of First Instance have no jurisdiction to issue injunctive writs against the Patent Office.

K. *Computation of Reglamentary Period*

The case of *Viray v. Court of Appeals*[33] is a very important guide for practitioners in the computation of the periods of appeals, motions, and other pleadings and papers. The petitioner in that case received notice on 25 October 1965 that her motion for reconsideration in the Court of Appeals was denied. Admittedly the 15-day period of appeal to the Supreme Court expired on 9 November 1965. The petitioner, however, was granted 15 days extension from the expiration of the reglamentary period. The petition for certiorari was filed on 26 November 1965. The petitioner claims that the first 15 days should be considered as expiring on 10 November 1965 because 9 November was Election Day and that the fifteenth day from 10 November — 25 November — being Thanksgiving Day, another legal holiday, the last day was 26 November.

The Supreme Court refused to follow petitioner's mode of computation. The Court ruled: The extension of 15 days granted to the petitioner tacked to the original 15 days, in effect gave her 30 days from 25 October 1965. Therefore, the last day was 24 November, not 26 November. The rule that excludes the last day of period, should the same be a holiday, refers to the perfomance

[31] Citing Sumulong v. Imperial, 51 Phil. 251 (1927); Syquia v. Concepcion, 60 Phil. 186 (1934); Fuente v. Jugo, 76 Phil. 262 (1946).
[32] G.R. No. 22756, March 18, 1966.
[33] G.R. No. 25290, March 18, 1966.

of the act prescribed. *But it does not apply where at the end of the period no such act is to be done.* (Italics supplied).

L. *Authority of Another CA Division to Render Judgment*

Rule 51, Section 1 provides:

> "SEC. 1. Justices; who may take part. — All matters submitted to the court for its consideration and adjudication will be deemed to be submitted for consideration and adjudication by any and all of the Justices who are members of the division of the court at the time when such matters are taken up for consideration and adjudication, whether such Justices were or were not present at the date of submission; however, only those members present when any matter is submitted for oral argument will take part in its consideration and adjudication, if the parties or either of them, express a desire to that effect in writing filed with the clerk at the date of submission."

The Supreme Court in the case of *Palisoc v. Court of Appeals*[34] clarified the scope of the above rule. The petitioner in that case was convicted of estafa in the Court of First Instance. He appealed to the Court of Appeals where the case was assigned to the 6th Division. One of the justices in the said Division died. Consequently, the case was reassigned to the 5th Division. The petitioner moved for oral argument, which was denied; judgment was rendered by the 5th Division without oral argument. The petitioner impugned the validity of the judgment of the 5th Division on the ground that the members thereof were not the ones before whom the case was orally argued.

HELD: The Justices present when the case was orally argued and submitted for decision do not have the exclusive authority to decide the case. Any and all of the Justices who were members of the Court of Appeals at the time the case was taken up for consideration and adjudication, regardless of whether or not such Justices were members of the Court and whether or not they were present on the date of submission, could participate in such consideration and adjudication.

IV

PROVISIONAL REMEDIES

A. *Injunction*

Nothing of much consequence was brought up or decided in the field of injunction. Rather, the Supreme Court, during this

[34] G.R. No. 21889, July 26, 1966.

survey year, chose to stick close to the well-established doctrines heretofore laid down in connection with this particular provisional remedy. Two decisions, however, are worth mentioning only because they reiterate two fundamental rules regarding injunction. The first is the case of *Escobar v. Ramolete*.[35] The second is the case of *Remonte v. Bonto*.[36]

The *Escobar* case is authority for the rule that injunction cannot be granted if the petition is based on grounds which are disputed. The facts should first be proved by the necessary evidence. In the meantime, the petition is premature.

The *Remonte* case reiterates the very fundamental doctrine that injunction cannot be availed of if the act complained of has already been consummated.

B. *Grave Abuse of Discretion*

The Rules of Court provides that:

> "Upon the trial the amount of damages to be awarded to the plaintiff, or to the defendant, as the case may be, upon the bond of the other party, shall be claimed, ascertained, and awarded under the same procedure as prescribed in Section 20 of Rule 57."[37]

The section referred to (Rule 57, Section 20) requires proper hearing before damages are awarded.

The Supreme Court in the case of *Luzon Surety Co., Inc. v. Guerrero*,[38] had occasion to apply Rule 58, Section 9 in connection with Rule 57, Section 20. The facts of that case are as follows: Respondent Guerrero filed an ejectment suit against the spouses Felipe Navarro and Julia Navarro. The latter defaulted and the court rendered judgment for the respondent. The writ of execution was issued and several personal effects of the Navarros were levied upon. The Navarros filed a petition for relief with the CFI praying that the judgment and the writ of execution be set aside. Upon the Navarros' filing a bond with the petitioner firm the court issued a preliminary injunction restraining the sale of the properties seized. For failure to prosecute their case, the petition for relief of the Navarros was dismissed and their bond was held liable for whatever damages Guerrero suffered by reason of the injunction. An *ex parte* order for the isuance of a writ of execution against the bond was issued. The petitioner moved to have

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[35] G.R. No. 21851, 21924-26, January 31, 1966.
[36] *Supra*, Note 4.
[37] Rule 58, Section 9.
[38] G.R. No. 20705, January 20, 1966.

the order and the writ set aside on the ground that they were issued without notice and hearing. The motion was denied and the case was brought to the Supreme Court. The issue was whether the judge committed a grave abuse of discretion in issuing the order and writ complained of. The Supreme Court held that in accordance with Section 9, Rule 60 and Section 20, Rule 59, the party enjoined must make a formal claim for damages and the claim must be set for hearing to give the adverse party a chance to defend himself. Only after such hearing may the corresponding judgment be rendered resolving the claim for damages.[39] Since in the instant case, there was no hearing, the Court held that the order and writ were void for having been issued with grave abuse of discretion.

C. *Delivery of Personal Property*

In an action for the delivery of personal property it is settled that the prevailing party has the right to reject the same should it not be in a satisfactory condition.[40] In the case of *Ago v. Court of Appeals*,[41] the Supreme Court held that the party has this right even if delivery of personal property is resorted to only as a provisional remedy. The following are the facts of that case: In 1955, Venancio Castañeda and Nicetas Henson, respondents herein, brought an action for replevin to recover from petitioner Ago a Caterpillar tractor, a Jaeger hoist, and a cargo truck which the former had delivered to the latter for use in his logging business in Agusan. Respondents asked for immediate delivery and posted a bond but petitioner filed a counterbond, for which reason he was allowed to retain the machinery. On 30 May 1957, the court rendered judgment for the respondents, ordering the petitioner to return the machinery or, in the alternative, to pay the sum of ₱30,000 to the respondents. The petitioner appealed to the Supreme Court. While the appeal was pending, petitioner's surety became bankrupt. The court *a quo* ordered the petitioner to file a new counterbond and when petitioner failed to do so, it issued a writ of replevin. On 5 January 1959, the sheriff served the writ on the petitioner, then took possession of the tractor and the hoist and offered to deliver them to the respondents, but the latter refused to accept them because they were unserviceable while the truck could not be produced. The issue was whether the respondents had the right to refuse to accept the properties in question.

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[39] Citing Visayan Surety v. Pascual, 47 O.G. 5075 (Oct. 1967); Underwriters Insurance Co. v. Tan, G.R. No. 12256, April 29, 1960.

[40] Kunz v. Nelson, 76 P2d 577 (1938).

[41] *Supra*, Note 14.

The Supreme Court, speaking through Mr. Justice Roberto Regala, held: Where judgment is rendered for the articles or their value and they cannot be returned in substantially the same condition, it is settled that the prevailing party may refuse to take them and instead sue on the redelivery bond, or, as in this case, execute on the judgment for value.[42] If the prevailing party has this right after judgment, it is at once obvious that he must also have the same right when, asking for the delivery *pendente lite* of the same property, he afterwards finds them in a substantially depreciated condition. This right to reject is assured in the first instance by the provision that the judgment in a suit for replevin must be in the alternative so as to afford a measure of relief where the property cannot be returned,[43] in the second case, it is implied from the requirement that "if for any reason the property is not delivered to the plaintiff, the officer must return it to the defendant.[44] It then becomes the defendant's obligation to take them back upon tender of the sheriff.

V

SPECIAL CIVIL ACTION

A. *Mandamus*

1. Real party in interest in a mandamus action:

Rule 65, Section 3 reads:

> "SEC. 3. Petition for mandamus. — When any tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of the petition, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant."

The case of *Almario v. City Mayor*,[45] interpreting the phrase "the person aggrieved thereby", dismissed the petition for manda-

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[42] Citing Kunz v. Nelson, 76 P2d (1938).
[43] Citing Rule 60, Sec. 9.
[44] Citing Rule 60, Sec. 6.
[45] G.R. No. 21565, January 31, 1966.

mus. In that case the petitioner Almario on 21 January 1963 filed before the Court of First Instance of Rizal a petition that judgment be rendered commanding the respondent officials to eject their co-respondents from the stalls they are occupying in the Pasay public market. Petitioner claims that as a Filipino citizen he is charged with the public duty to procure the enforcement of the law providing for the nationalization of public markets contemplated in Rep. Act 37 which the respondent officials neglected to implement by issuing permits to their co-respondents who, being aliens, should not be allowed to occupy said stalls to the prejudice of the Filipinos. The respondents filed a motion to dismiss alleging that the petitioner is not a real party in interest. The court *a quo* dismissed the petition ruling that petitioner does not have the legal capacity, right, or personality to file the same. The petitioner promptly went on appeal to the Supreme Court, which held that under Rule 65, Sec. 3 of the Rules of Court, a petition for mandamus can only be initiated by a person who feels *aggrieved* by, among others, any person who unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office. The petitioner in the instant case, the Court continued, is not an "aggrieved person" for there is no pretense that he is an applicant for any stall or booth in the market. The petitioner does not have any special or individual interest in the subject matter of the action which would enable the Court to say that he is entitled to the writ as a matter of right.[46]

2. Necessity of exhausting administrative remedies

One of the requisites for mandamus is that there should be no other plain, speedy, and adequate remedy in the ordinary course of law. This requirement is particularly pertinent in cases when the law provides for a system of administrative appeals, in which case the petitioner should first have exhausted the process of administrative appeals, subject, of course, to certain recognized exceptions which will not be discussed here as they more properly belong to the field of political law.

The same case of *Almario v. City Mayor*,[47] is authority for the rule above mentioned, when it was held therein that the fact the petitioner had not exhausted all the administrative remedies that the law provides before he could bring the matter to court in itself nullified the validity of his petition.

[46] Citing Costas v. Aldanese. 45 Phil. 345 (1923).
[47] *Supra*, note 45.

VI

SPECIAL PROCEEDINGS

A. *Liability of Estate for Attorney's Fees*

Under Rule 85, Section 7, an executor or administrator is allowed the "necessary expenses in the case, management, and settlement of the estate."

In this connection it has been observed that "attorney's fees may be allowed as expenses of administration when the attorney's services have been rendered to executor or administrator to assist him in the execution of his trust."[48]

In the case of *Testate Estate of Vito Borromeo, Beltran v. Borromeo*,[49] the Supreme Court disallowed the reimbursement by the estate of attorney's fees for the reason that they were not incurred to assist the administrator in the execution of his trust. The court in that case observed: The rule is that for attorney's fees for services rendered to an administrator to be chargeable against the estate, such services must have been rendered to assist him in the execution of his trust. In the instant case, Beltran engaged a lawyer to defend him although his position as special administrator was not in issue. He was not even a party in that appeal. The order appealed from was for the removal of Junquera as special administrator, not the order appointing Beltran as special administrator. Attorney's fees in this case, therefore, are not chargeable to the estate.

B. *Adoption*

Rule 99, Section 2 enumerates what should be contained in a petition for adoption:

> "SEC. 2. Contents of petition. — The petition for adoption shall contain the same allegation required in a petition for guardianship, to wit:
>
> (a) The jurisdictional facts;
>
> (b) The qualifications of the adopter;
>
> (c) That the adopter is not disqualified by law;
>
> (d) The name, age, and residence of the person to be adopted and of his relatives or of the persons who have him under their care;
>
> (e) The probable value and character of the estate of the person to be adopted.

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[48] 3 Moran, op. cit., 417.
[49] G.R. No. 19722, February 28, 1966.

In connection with the name of the person to be adopted, the question arises: if there is a variance between the person's name appearing in the Civil registry and that appearing in the baptismal registry, which should be stated in the petition and in the publication as the person's name? This question was answered in the case of *Cruz v. Republic*.[50] In that case, the child's name as contained in the adoption petition and as published in the newspapers, was Rossana E. Cruz, her baptismal name, and not Rossana E. Bucoy, her name in the record of birth. The oppositor claims that the court did not acquire jurisdiction because there was a substantial defect in the petition. The Supreme Court, in upholding oppositor's contention held: A proceeding in adoption is a proceeding *in rem*[51] in which notice is made through publication to protect the interests of all persons concerned. Said interests will not be protected if the notice by publication does not carry the true name of the child to be adopted, because the persons to be served by the notice have the right to expect the use of the child's officially recorded name. The defect in the instant case amounts to a failure of service by publication, and the court *a quo* acquired no jurisdiction over the case.

VII

CRIMINAL PROCEDURE

A. *Double Jeopardy*

Easily the most intriguing aspect of Criminal Procedure is the question of double jeopardy. Reams and reams of paper have been consumed in the treatment of this subject, in the problem of when jeopardy attaches, and in the discussion of the elements of jeopardy. The Supreme Court itself has come out with scores of decisions — conflicting ones, many of them — involving the question of double jeopardy. During this survey year, three important cases on double jeopardy deserve mention.

But first, the following is the pertinent provision on the matter:

> "SEC. 9. Former conviction or acquittal or former jeopardy. — When a defendant shall have been convicted or acquitted, or the case against him dismissed or otherwise terminated without the express consent of the defendant, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after

[50] G.R. No. 20927, June 26, 1966.
[51] Citing Ellis v. Republic, G.R. No. 16922, April 30, 1963.

> the defendant had pleaded to the charge, the conviction or acquittal of the defendant or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.[52]

In the case of *People v. Fajardo*,[53] the appellees were charged under Section 878 of the Revised Administrative Code, in connection with Section 2692 thereof, prohibiting unlicensed possession of firearms. Appellees pleaded not guilty. Then they filed a motion to quash on the grounds that:

1) There can be no conspiracy in the crime of illegal possession of firearms; and

2) A so-called "paltik" is not a firearm within the contemplation of law.

The court ordered the fiscal to amend the information. The fiscal failed to do so and the court ordered the case provisionally dismissed. The State appealed. The appellees invoked double jeopardy.

HELD: There can be no question that the information was sufficient with respect to both appellees. The issue is whether the case was dismissed with the appellees' express consent. While the appellees filed a motion to quash or that a reinvestigation be held, the court granted neither alternative. What it did was to order the prosecution to amend the complaint. This order was in effect a denial of the motion to quash. That being the case, jeopardy attached when the case was dismissed.

The case of *People v. Macabuhay*,[54] deals with the problem of determining when an offense includes or is excluded in another. That case was an appeal from the order of the Court of First Instance of Laguna quashing the information against Macabuhay on the ground of double jeopardy. The complaint in the justice of the peace court charged the accused with serious physical injuries, less serious physical injuries, double slight physical injuries, and damage to property through reckless imprudence. The accused asked for the exclusion of the charge of slight physical injuries on the ground that a light felony cannot be made part of a complex crime. The slight physical injuries charge was filed as two separate cases. After trial of these two latter cases, the accused was acquitted. The fiscal now wants the court to

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[52] Rule 117, Section 9.
[53] G.R. No. 18257, June 30, 1966.
[54] G.R. No. 19648, February 28, 1966.

allow the prosecution of the accused for damage to property. The question is whether slight physical injuries necessary includes or is included in damage to property.

The Supreme Court observed that the essential elements of *lesiones leves,* as charged in the information are:

1) the date and place of the vehicular collision;

2) the accused's reckless imprudence in driving his bus;

3) the accused's having caused the bus, by his reckless imprudence, to hit the jeepney "Floralicia";

4) physical injuries to Rosa Latayan; and

5) the period within which the injuries would heal.

The first three elements, considered together with the allegation in the information that the accused failed to take the necessary precaution to prevent an accident to persons and damage to property, constitute the offense of damage to property. Therefore, the crime of *lesiones leves,* as alleged, includes damage to property.[55]

What is important to note in the *Macabuhay* case is the rule that, in determining whether or not an offense necessarily includes or is included in another, the elements of the offense *as alleged in the complaint or information,* and not *in abstracto,* should be examined.

In the case of *Arenajo v. Lustre*[56] the following are the facts:

In a criminal case for theft, the justice of the peace court acquitted petitioner Arenajo but ordered the return of the wrist watch to the complainant. The acquittal was based on the fact that the evidence failed to show theft. The petitioner appealed the civil aspect of the case awarding the watch to the complainant. The Court of First Instance issued an order considering as refiled the entire case in its criminal and civil aspect, basing the order on Rule 40, Section 9 regarding trial *de novo.* The petitioner instituted certiorari proceedings to review said order of the CFI. The Supreme Court, through Mr. Justice Jesus Barrera, held that in this jurisdiction, a judgment of acquittal is such a final verdict that, once rendered and promulgated, it takes effect immediately. To hold that the respondent Judge may retry the criminal aspect of the case would defeat the very essence and

[55] Citing People v. Narvas, G.R. No. 14191, April 27, 1960.
[56] G.R. No. 21382, July 2, 1966.

purpose of a judgment of acquittal. It would constitute double jeopardy.

B. *Effect of plea of guilty*

Perhaps the most important case in Criminal Procedure decided in 1966 was that of *People v. Balisacan*,[57] involving the effect of a plea of guilty by the accused.

The defendant in the *Balisacan* case was charged with homicide in the Court of First Instance. He pleaded guilty, but he was allowed to present evidence to prove mitigating circumstances. Thereupon he testified that he stabbed the deceased in self-defense because the latter was strangling him. On the strength of his testimony, the court acquitted him. The prosecution appealed. In a well-reasoned decision, the Supreme Court held: The prosecution claims that the trial court erred in acquitting the accused despite his plea of guilty. The prosecution's contention is meritorious. A plea of guilty is an unconditional admission of guilt with respect to the offense charged. It forecloses one's right to defend oneself from the said charge and leaves the court with no alternative but to impose the penalty fixed by law. In view of the assertion of self-defense, the proper course should have been to take defendant's plea anew and then proceed with the trial.

As to the question of whether or not there was double jeopardy, the Supreme Court held that there was none because the existence of a plea is an essential requisite to double jeopardy.[58] In the instant case, the defendant's plea was guilty. However, the testimony of self-defense operated to vacate said plea of guilty. A new plea was not entered. Therefore, the court rendered judgment by acquittal without any standing plea.

The case of *People v. Digoro*[59] involved an alleged violation of Article 168 of the Revised Penal Code. The accused pleaded guilty. The defense subsequently claimed that the information does not charge an offense. The issue is the effect of the plea of guilty. The Supreme Court held that mere possession of false treasury or bank notes is not a criminal offense. For there to be an offense, the possession must be with intent to use said notes. The information alleging possession without alleging intent to use but only intent to possess charges no offense. A plea of guilty to such an information does not warrant conviction. A plea of

[57] G.R. No. 26376, August 31, 1966.
[58] Citing People v. Ylagan, 58 Phil. 851 (1933); People v. Quimsing, G.R. No. 19860, December 23, 1964.
[59] G.R. No. 22032, March 4, 1966.

guilty is an admission only of the material allegations of the information but not that the facts alleged constitute an offense.[60]

VIII

EVIDENCE

A. *Alibi*

Alibi is one of the weakest defenses that can be resorted to by an accused.[61] During this survey year, there was not a single case in which the defense of alibi was given credence. Either or both of the following reasons were used by the Supreme Court in rejecting the defense of alibi:

1) the place where the accused claimed he was at the time of the commission of the offense was not of such a distance from the place of commission as to make it impossible for him to be at the latter place at or about the time of the commission of the crime; and

2) positive identification of the accused by witnesses.

Illustrating the first is the case of *People v. Secapuri*[62] which held that "for the defense (of alibi) to succeed, it should be shown to the satisfaction of a prudent mind that the distance between the places where the accused claimed to be and where the crime was committed is such that it would have been clearly impossible for him to be at the latter at the time of the crime.[63]

Illustrating the second are the *Secapuri* case itself and the cases of *People v. Pedro*[64]; *People v. Pasiona*[65]; *People v. Villa*[66]; *People v. Sampang*[67]; *People v. Agustin*[68]; *People v. Casalme*[69]; *People v. Berdida*[70]; *People v. Tania*[71]; *People v. Salvacion*[72]; *People v. Genilla*[73]; *People v. Manobo*[74]; *People v. Gracia*[75]; *People*

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[60] Citing People v. Fortuno, 73 Phil. 407 (1941).
[61] 5 Moran, op. cit., 26, citing People v. de la Cruz, 76 Phil. 601 (1946) and many other cases.
[62] G.R. No. 17518-19, February 28, 1966.
[63] Citing People v. Palamos, 49 Phil. 601 (1926); People v. Resobal, 50 Phil. 780 (1927).
[64] G.R. No. 18997, January 31, 1966.
[65] G.R. No. 18295, February 28, 1966.
[66] G.R. No. 19114, March 18, 1966.
[67] G.R. No. 15843, March 31, 1966.
[68] G.R. No. 18368, March 31, 1966.
[69] G.R. No. 18033, July 26, 1966.
[70] G.R. No. 20183, June 30, 1966.
[71] G.R. No. 18514, April 30, 1966.
[72] G.R. No. 20022, April 30, 1966.
[73] G.R. No. 23681, September 20, 1966.
[74] G.R. No. 19798, September 20, 1966.
[75] G.R. No. 21419, September 29, 1966.

v. Gaqui[76]; *People v. Orzame*[77]; *People v. Sina-on*[78]; *People v. Reyes*[79]; *and People v. Reyes*[80].

B. *Parol Evidence*

Rule 130, Section 7 lays down what is known as the Parol Evidence rule:

> "SEC. 7. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is to be considered as containing all such terms, and, therefore, there can be, between the parties and their successors in interest no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:
>
> "(a) When a mistake or imperfection of the writing, or its failure to express the true intent and agreement of the parties, or the validity of the agreement is put in issue by the pleadings;
>
> "(b) When there is an intrinsic ambiguity in the writing."

If any of the recognized exceptions, therefore, is present, parol evidence is admissible to prove the true intent of the parties. But it does not follow that parol evidence, even if admitted, will exclude the reception of contrary evidence, as illustrated in the case of *Calderon v. Medina*.[81] The appellants in that case filed complaint seeking cancellation of a mortgage which they had executed in favor of the appellee. The appellants contend that they entered into an agreement with the appellee whereby the latter would finance the construction of an apartment house on appellants' lot. To secure payment the appellants mortgaged the said lot to the appellee. Appellants' later claimed that the appellee failed to carry out his obligation. The appellee, for his part, denied the existence of any oral agreement to build a house and claimed that the mortgage was constituted to secure the sum of ₱15,000 which he loaned to the appellants. As a special defense the appellee invoked the Statute of Frauds. The trial court, on the strength of the trial parol evidence rule, forbade evidence showing that the appellant never received the ₱15,000 and that the appellee had agree to build an apartment house.

Previously, the appellant, Calderon, as guardian of the other appellants, had petitioned the guardianship Court for authority to

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[76] G.R. No. 20200, October 28, 1966.
[77] G.R. No. 17773, May 19, 1966.
[78] G.R. No. 15631, May 27, 1966.
[79] G.R. No. 19894, May 27, 1966.
[80] G.R. No. 18892, May 30, 1966.
[81] G.R. No. 17634, October 29, 1966.

mortgage the wards' property in order to secure a loan with which to build an apartment.

Appellants now claim that parol evidence is admissible to prove failure of consideration.

In holding for the appellee, the Supreme Court ruled: The appellants, in seeking the guardianship court's approval of the mortgage deed acknowledged receipt of the ₱15,000. By asking for the said approval, the appellants represented to the court that the mortgage was what it purported to be; they cannot now claim the contrary. *Even if parol evidence is admissible to prove failure of consideration, such parol evidence, even if admitted, cannot prevail over the recitals of the mortgage instrument.* (Italics supplied).

C. *Confession*

The courts will not readily accept a claim that the confession was involuntarily made, especially when there is a strong corroborative proof that the confession states the truth. This is in accordance with the controversial and much criticized ruling that a confession, to be repudiated, must not only be proved to have been obtained by force and violence, but also that it is false or untrue, for "the law rejects the confession when, by force or violence or intimidation, the accused is compelled against his will to tell a falsehold, not when by such force or violence, he is compelled to tell the truth."[82] It is hoped that like the *Moncado* case, this ruling will, in the foreseeable future, find its way to the dross heap of oblivion. In the meantime, in the case of *People v. De Villa*,[83] where the appellant, in a statement sworn to before a justice of the peace, admitted having shot the deceased and indicated the place where he had hidden the murder weapon, but later claimed that the confession was not made voluntarily, the Supreme Court held: This self-serving contention cannot prevail over the fact that the confession is fully corroborated by the testimony of two prosecution witnesses that both saw the appellant holding a carbine in the direction from which the shots came, and that he was the one who dare the male occupants of the bus to come down and face him. Also, in the confession, the appellant indicated the precise place where he had hidden the carbine used in committing the offense.

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[82] People v. De los Santos, G.R. No. 4880, May 18, 1953; People v. Villanueva, 52 OG 5864 (December 1956).

[83] G.R. No. 19114, March 18, 1966.

D. *Exceptions to the Hearsay Rule*

Rule 130, Sections 31-41 enumerate the recognized exceptions to the hearsay rule.

Rule 130, Section 38 provides:

> "SEC. 38. Entries in official records. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated."

The Supreme Court in the case of *Africa v. Caltex*,[84] had occasion to discuss the requisites of Section 38, Rule 130, specifically, the last requisite thereof. That case was an action for damages caused by a fire that broke out at a gasoline station and burned several houses. The question involved is the admissibility of certain reports on the fire, prepared by the Manila Police Department, the Manila Fire Department, and a certain Captain Tinio of the Armed Forces of the Philippines. The reports were objected to as being double hearsay. The respondents, on the other hand, contended that the reports were admissible under Rule 123 (now 130) Section 35 (now 38).

The Supreme Court, speaking through Mr. Justice Querube Makalintal, held: There are three requisites for admissibility under the rule just mentioned:

a) that the written statement was made by a public officer, or by another person specially enjoined by law to do so;

b) that it was made by the public officer in the performance of a duty specially enjoined by law; and

c) that the public officer or the other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.[85]

Only the last requisite need be considered here, the Court continued. Obviously, the material facts recited in the reports as to cause and circumstances of the fire were not within the personal knowledge of the investigating officers. Was knowledge of such facts, however, acquired by them through official information? As to some facts, the sources thereof are not even identified. Others are attributed to third persons. To qualify their statements as official information acquired by the officers who prepared the reports, the persons who made the statements not

[84] G.R. No. 12986, March 31, 1966.
[85] Citing 5 Moran, op. cit., 368.

only must have personal knowledge of the facts but must have the duty to give such statements for record. The facts stated in the report were not acquired by the reporting officers through official information, not having been given by the informants pursuant to any duty to do so.

Therefore, the exception to the hearsay rule could not be said to be present.

E. *Credibility of Witnesses and Appreciation of Evidence*

The cases involving the credibility of witnesses and the appreciation of evidence followed the established rule that the appellate courts will rarely interfere with the trial court's findings in this regarding because the latter which was able to observe the demeanor of the witnesses, is particularly equipped to perform this task. To this effect were the rulings laid down in *People v. Quintab;*[86] *People v. Secapuri;*[87] *People v. Villalba;*[88] *People v. Serdeña;*[89] *People v. Tania;*[90] *People v. Sigayan;*[91] *People v. Akiran;*[92] *People v. De Gracia;*[93] *People v. Orzame;*[94] *People v. Sinaon;*[95] and *People v. Reyes.*[96]

F. *Extrajudicial Confession*

"An extrajudicial confession made by an accused, shall not be sufficient ground for conviction, unless corroborated by evidence of *corpus delicti.*"[97]

What is meant by "evidence of *corpus delicti*"? This phrase was explained by the Supreme Court in the case of *People v. Abrera,*[98] when it pointed out that "the rule that an extrajudicial confession to be sufficient must be corroborated by evidence of *corpus delicti* does not mean that all the elements of the crime must be clearly established by evidence independent of that confession. It only means that there should be some evidence tending to show the commission of the crime apart from the confession."[99]

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[86] G.R. No. 21417, January 31, 1966.
[87] *Supra,* note 62.
[88] G.R. No. 17243, August 23, 1966.
[89] G.R. No. 18032, April 30, 1966.
[90] *Supra,* note 71.
[91] G.R. No. 18523-26, April 30, 1966.
[92] G.R. No. 18760, September 29, 1966.
[93] *Supra,* note 75.
[94] *Supra,* note 77.
[95] *Supra,* note 78.
[96] *Supra,* note 79.
[97] Rule 133, Section 3.
[98] G.R. No. 20038, July 28, 1966.
[99] Citing People v. Bantayan, 54 Phil. 834 (1930).