REMEDIAL LAW

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I. Introduction

Remedial law is that branch of law which provides for the enforcement or protection of a right, or the prevention or redress of a wrong, or the establishment of the status or right of a party, or a particular fact.[1] Consequently, every case which reaches the courts, especially the highest tribunal in the land, directly or indirectly involves procedural law. Such being the case, any attempt at surveying decisions in this field must necessarily cover all the products of the judicial and quasi-judicial mills that have reached the Supreme Court. As in the past efforts, there is, however, a realization that to do so will be less useful for the purpose of this project than a selective approach.

This work has not lost sight of the fact that a number of decisions contain mere reiteration of previous rulings on similar, if not identical, questions of procedural law. Instead of concentrating only on novel pronouncements, this work takes into account reiterations in judicial rulings, even if only to provide a link between recent and past decision. To maintain a continuity in the judicial process, pertinent decisions rendered in the past, especially their connection with the current rulings, are pointed out and/or referred to in this paper.

It is heartening to note that among the decisions of the Supreme Court for 1967 are pronouncements which are not mere reiteration of previous rulings on questions of procedure. There are significant ones which may be considered either breakthroughs in the untrodden paths, or vanguards in the progress, of procedural law.

II. Jurisdiction

Jurisdiction is defined as the power and authority of a court to hear, try and decide a case.[2] It may be well to consider that jurisdiction over the subject matter is conferred by law.[3] To determine this, the provisions of Rep. Act No. 296, as amended, are the best guide.

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[1] Rules of Court, Rule 2, Secs. 1 and 2.

[2] 1 Moran, Rules of Court, 31 (1963).

[3] *Id.* at 33.

A. *Supreme Court*

In *Remotigue v. Osmeña*,[4] where the plaintiff prayed the court to declare the defendant disqualified, to declare the latter's certificate of candidacy illegal, also to restrain him from running as City Mayor, and from resigning from his office as Senator, the Supreme Court ruled that the determination of the issue, thus raised would amount to a declaratory judgment and a judgment in an original action for injunction. These are matters not within its original exclusive jurisdiction.

An action was instituted in *Pinto v. Court of Appeals*[5] to annul a project of partition on the ground that an acknowledged natural child, who is entitled to share in the deceased's estate worth over ₱1,000,000.00, was fraudulently preterited. The defendants filed a motion to dismiss, which was denied by the Court of First Instance of Manila. They filed a petition for certiorari with the Court of Appeals which granted the same. When the decision of the Court of Appeals was brought for review, the Supreme Court held that, considering the value of the estate (of some ₱1,000,000.00), it is the Supreme Court, not the Court of Appeals, which had original jurisdiction to hear and decide the petition for certiorari. The Court of Appeals had no original jurisdiction because its act of taking cognizance of the petition for certiorari could not be in aid of appellate jurisdiction, aside from the fact that an order denying a motion to dismiss the complaint may not be reviewed by certiorari.

B. *Court of Appeals*

Along the same line as the ruling in *Pinto v. Court of Appeals*[6] is that in *Philippine Products Co. v. Court of Appeals*.[7] In this case, the Supreme Court sustained the petitioner's submission that the Court of Appeals had no jurisdiction to entertain the petition for certiorari and prohibition filed before it. According to the Supreme Court, the Court of Appeals may only issue writs of certiorari and prohibition "in aid of its appellate jurisdiction." This phrase has been consistently interpreted to mean that should the case be appealed and the appeal fall under the exclusive appellate jurisdiction of the Court of Appeals, then

[4] G.R. No. 28202, November 10, 1967.
[5] Pinto v. Court of Appeals, G.R. No. 20525, February 18, 1967.
[6] *Id.*
[7] G.R. No. 20308, November 15, 1967.

only can it act on said special civil actions concerning a matter incidental to the main case. Otherwise, i.e., if the main case is not properly appealable to the Court of Appeals, jurisdiction to act on the special civil actions would devolve on the Supreme Court exclusively.

C. *Court of First Instance*

Republic Act No. 3828 was applied in the case of *Salon v. Figuracion*,[8] where the defendants moved to dismiss the complaint, invoking said law to the effect that all civil suits where demand does not exceed ₱10,000.00 are cognizable solely by inferior courts. In arriving at the conclusion that the aggregate of the sum demanded (₱11,000.00) is within the original jurisdiction of the Court of First Instance, the Supreme Court held that "the amount demanded for attorney's fees must be included in determining the jurisdiction, since the only items excluded are the costs and interest." This is a reiteration of a ruling made in previous cases.[9]

Under section 44 of Republic Act No. 296, as amended by section 5 of Republic Act No. 2613, the Court of First Instance has original and exclusive jurisdiction in all civil actions which involve the title to or possession of real property, or any interest therein. Is this provision applicable in cases affecting lands of the public domain? This question was answered in Heirs of *Julian Molina v. Honorio Vda. de Bacud*,[10] where the Supreme Court held that the authority given to the Bureau of Lands over the disposition of public lands does not exclude the courts from their jurisdiction over possessory actions, the public character of the land notwithstanding. The reasoning is that even if it be granted that the Director of Lands could validly dispose of the lands in favor of appellants, still jurisdiction over the instant case must be recognized in the court because once a sales application is approved and entry is permitted, the land ceases to be part of the public domain and the Director of Lands loses control and possession thereof except if the application is finally disapproved and entry is annulled or revoked.

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[8] G.R. No. 23036, January 27, 1967.

[9] This reiterates the ruling in J.M. Tuason & Co. v. Torres, G.R. No. 24717, December 4, 1967; Cabigao v. Del Rosario, 44 Phil. 182 (1922); and Philippine National Bank v. Javellana, 82 Phil. 525 (1953).

[10] G.R. No. 20195, April 27, 1967.

The question as to whether a Court of First Instance of one district in a replevin proceeding may ignore a search warrant issued by another Court of First Instance was raised in *Pagkalinawan v. Gomez.*[11] It was held in this case that the moment a Court of First Instance has been informed through the filing of an appropriate pleading that a search warrant has been issued by another Court of First Instance, it cannot, even if the literal language of the Rules of Court (Sec. 3 of Rule 60) yield a contrary impression which in this case demonstrated the good faith of respondent Judge for acting as he did, require a sheriff or any proper officer of the Court to take the property subject of the replevin action if theretofore it came into the custody of another public officer by virtue of a search warrant. Only the Court of First Instance that issued such a search warrant may order its release. Any other view would be subversive of a doctrine that has been steadfastly adhered to, the main purpose of which is to assure stability and consistency in judicial actuations and to avoid confusion that may otherwise ensue if courts of coordinate jurisdiction are permitted to interfere with each other's lawful orders.[12]

In *Commissioner of Customs v. Cloribel,*[13] the court ruled that Section 7 of Rep. Act No. 1125 has taken away the power of Courts of First Instance to review the actuations of the customs authorities in a case involving seizure, *detention* or release of property, or other matters arising under the Customs Law or other laws administered by the Bureau of Customs. This ruling was reiterated in *De Joya v. David,*[14] citing *Pacis v. Averia,*[15] to the effect that the Court of First Instance must yield to the jurisdiction of the Collector of Customs in seizure and forfeiture proceedings on grounds of public policy. Otherwise, actions for forfeiture of property for violation of Customs laws could easily be undermined by the simple device of replevin. The judicial recourse of the property owner is not in the Court

[11] G.R. No. 22585, December 18, 1967.
[12] This reiterates the ruling in Carlos v. P. J. Kiener Construction, Ltd., 100 Phil. 29 (1956); Rosario v. Justice of the Peace, G.R. No. 9284, July 31, 1956, 52 O.G. 5157 (Sept., 1956); and Suanes v. Almeda-Lopez, 73 Phil. 573 (1942).
[13] G.R. No. 20266, January 31, 1967.
[14] G.R. No. 23504, December 29, 1967.
[15] G.R. No. 22526, November 29, 1966.

of First Instance but in the Court of Tax Appeals, and only after exhausting administrative remedies in the Bureau of Customs.[16]

But in admiralty cases, the jurisdiction of the Courts of First Instance was reaffirmed. Thus, in *Firemen's Insurance Company v. Manila Port Service*,[17] the Supreme Court held that "admittedly, the action under such contract of carriage calls for the exercise of admiralty jurisdiction, which municipal courts do not have, and is within the original *exclusive* competence of Courts of First Instance." The same ruling was made in *Insurance Company of North America v. Warner Barnes & Co.*,[18] thereby sustaining the joinder of two causes of action notwithstanding the fact that the amount of one cause of action was outside the jurisdiction of the Court of First Instance.

A reiteration of the ruling on non-interference by one court with another court of concurrent and coordinate jurisdiction was made in *Calderon v. Gomez*.[19] In finding that the petition was to enjoin the questioned public works, the Supreme Court noticed that the writ of preliminary injunction issued by Branch VII seemed clear enough. Among others, it specifically commanded the respondent to refrain and desist from making, causing or authorizing payment of any payroll or voucher in connection with any of the projects in question, or in any manner allowing and causing the disbursement of public funds earmarked for such projects. Under the guise of a separate suit, petitioners in the mandamus suit would want a declaration in their favor and thereby avoid compliance with the writ of preliminary injunction. It was observed that if Branch II were permitted to take cognizance of the mandamus case and thereafter should render judgment granting the relief prayed for, it would amount in effect to setting aside the writ of preliminary injunction, which situation should not be permitted to arise at all.[20] The same principle which legally prevents a court of justice from interfering, by means of injunction, with the judgment or decree of another court of concurrent and coordinate jurisdiction, applied with equal logic in a case where another provisional remedy, other

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[16] Also De Joya v. Lantin, G.R. No. 24037, April 27, 1967.
[17] G.R. No. 22810, August 31, 1967.
[18] G.R. No. 24106, October 31, 1967.
[19] G.R. No. 25239, November 18, 1967.
[20] Citing Onsingko v. Tan, 97 Phil. 330 (1955); and Mas v. Dumara-og, G.R. No. 16252, September 29, 1964.

than injunction, is resorted to. The basic reason for disallowing interference is to avoid confusion and to enable the administration of justice to go unhindered. The Supreme Court particularly noted that this fundamental objective is definitely disregarded when a provisional remedy proceeding from one court is utilized to defeat a co-equal and coordinate court's lawful processes. Jurisprudence and existing laws do not justify such a course of action.

D. *Municipal Courts*

In *Pabulario v. Palanca*,[21] it was held that, even assuming for the sake of argument only, that the information under consideration alleges two different and separate offenses, it does not follow that the Municipal Court of Iligan City had no jurisdiction to hear the criminal case, inasmuch as the offense of damage to property amounting to ₱397.00, through reckless negligence, and that of multiple slight physical injuries, through reckless negligence, are within the jurisdiction of said court.

An action the subject matter of which is not capable of pecuniary estimation falls within the original exclusive jurisdiction of the Courts of First Instance, and not of the inferior courts.[22] This delineation of jurisdictional powers were discussed in *De Jesus v. Garcia*,[23] and *Arroz v. Alojado*.[24]

In *De Jesus v. Garcia*, it was observed that the averments of the complaint, taken as a whole, are what determine the nature of the action, and therefore, the court's jurisdiction. Under this criterion, it was concluded that plaintiff's action comes within the concept of specific performance of contract and is not capable of pecuniary estimation. As to the power to grant final injunction, it was ruled that such authority is expressly granted by statute to the Courts of First Instance in the exercise of their original jurisdiction.

In *Arroz v. Alojado*, the complaint seeks fulfillment of the terms of the agreement, whereby the defendant would consider as sold to the plaintiff the piece of land given as security for the loan of ₱1,500.00 in the event that the defendant fails to

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[21] G.R. No. 23000, November 4, 1967.
[22] Rep. Act No. 296 (1948), Sec. 44(1), as amended by Rep. Act No. 2613 (1959), Sec. 5.
[23] G.R. No. 26816, February 28, 1967.
[24] G.R. No. 22153, March 31, 1967.

pay within the period provided for therein. Having failed to pay the loan when it became due, the defendant is now asked to deliver to the plaintiff by means of a deed of conveyance the piece of land. In an appeal from the decision of the Court of First Instance dismissing plaintiff's complaint on the ground that the case falls under the jurisdiction of the municipal courts, the Supreme Court held that section 88 of the Judiciary Act, as amended, confers on municipal courts and city courts original jurisdiction over cases where the value of the subject matter does not exceed ₱10,000.00. However, paragraph 2 of said section states that the jurisdiction of the municipal court shall not extend to civil action in which the subject matter is not capable of pecuniary estimation. Indeed, the legality or illegality of the conveyance sought for and the determination of the validity of the money deposited by the defendant with the municipal treasurer's office are not matters which are capable of pecuniary estimation.

III. CIVIL PROCEDURE

A. *Cause of Action*

Rule 2, section 3 of the Rules of Court, requires that a party may not institute more than one suit for a single cause of action. And a cause of action is defined as "an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are legal right of the plaintiff, correlative obligation of the defendant, and an act or omission of the defendant in violation of said legal right."[25]

Resolving an appeal from the decision of the Court of First Instance of Laguna granting a motion to dismiss, the Supreme Court had occasion to discuss once again the test of the sufficiency of the facts alleged in the complaint as to constitute a cause of action. Such test, according to the Court, is whether or not, admitting the facts alleged, a valid judgment can be rendered thereon. It was noted further that a complaint would be sufficient if it contains sufficient notice of the cause of action even though the allegation may be vague or indefinite, in which event, the proper recourse would be, not a motion to dismiss, but a motion for a bill of particulars.[26]

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[25] 1 MORAN, *op. cit.*, 91 citing Ma-ao Sugar Central Co. v. Barrios, 79 Phil. 666 (1947).

[26] Ramos v. Condez, G.R. No. 22072, August 30, 1967.

In *American Insurance Co. v. Macondray and Co.*,[27] it was held that it is the duty of the party attempting to show liability on the part of the government to allege in the complaint, as basis of the cause of action, that the Republic of the Philippines has consented to be sued, either by special law covering special subject matter or by general law expressing the terms on which such consent is given. Since in the case at bar no such allegation was made, the case against the Republic was therefore dismissed.

Enguerra v. Dolosa[28] saw a restatement of the rule on splitting of causes of action. Plaintiff filed in the municipal court a complaint against the defendant for unpaid overtime services rendered. When the municipal court dismissed the complaint, the plaintiff appealed to the Court of First Instance. Soon thereafter, the plaintiff filed with the same court another complaint against the same defendant for termination pay, underpayment, and damages for the same period covered by the former complaint. The motion to dismiss filed by the defendant on March 8, 1963 was sustained by the Court of First Instance upon the ground that there is another case pending between the same parties for the same cause of action and the second complaint is a violation of the rule against splitting a cause of action. In upholding the position of the lower court, the Supreme Court held that "the basis of the complaints in both cases is the same, namely, violations of employee's rights covering the same period" and that "damages incidental to a cause of action cannot be made subject of a suit independent of the principal cause."[29]

B. *Joinder of Causes of Action*

Rule 2, section 5, Rules of Court, provides thus:

> "SEC. 5. *Joinder of causes of action.* Subject to rules regarding jurisdiction, venue and joinder of parties, a party may in one pleading state, in the alternative or otherwise, as many causes of action as he may have against an opposing party (a) if the said causes of action arise out of the same contract, transaction or relation between the parties, or (b) if the causes of action are for demands for money, or are of the same nature and character.
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> "In the cases falling under clause (a) of the preceding paragraph, the action shall be filed in the inferior court unless any of the causes joined falls within the jurisdiction of the Court

[27] G.R. No. 24031, August 19, 1967.
[28] G.R. No. 23233, September 28, 1967.
[29] See Rules of Court, Rule 2, Sec. 4.

> of First Instance, in which case it shall be filed in the latter court.
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> "In the cases falling under clause (b) the jurisdiction shall be determined by the aggregate amount of the demands, if for money, or by their nature and character, if otherwise."

The aforecited provisions of the Rules of Court received consideration in *Firemen's Fund Insurance Co. v. Compania General de Tabacos de Filipinas*.[80] The main issue is whether or not the Court of First Instance has jurisdiction over the subject matter of the action in so far as defendants Manila Port Service and Manila Railroad Co. are concerned, considering that the amount demanded in the complaint is only ₱1,898.66, and that these defendants were joined as alternative defendants with a carrier of goods by sea, namely, defendant Compania General de Tabacos. In resolving the question in the affirmative, the Supreme Court held that the lower court erred in dismissing the action against the two alternative defendants, not only because section 13 of Rule 3 permits it, in case of uncertainty, to sue several defendants in the alternative, but also because section 5, Rule 2 of the Rules of Court permits a joinder of causes of action in the alternative or otherwise, if said causes of action arise out of the same contract, transaction or relation between the same parties. The Court took special notice of the second paragraph of the above-quoted provision of the Rules of Court in connection with the fact that the case involved an issue in admiralty.[81]

Concerning the policy behind joinder of causes of action, the Supreme Court stated that the joinder of the two causes of action against alternative defendants avoids unnecessary multiplicity of suits and, without sacrificing any substantial rights of the parties, removes the undue disadvantage in which plaintiff would be placed by having to prove its case in different courts by means of evidence that is within the exclusive knowledge of said defendants.[82]

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[80] G.R. No. 22625. April 27, 1967.

[81] The same ruling was made in United Insurance Co. v. Royal Interocean Liner, Inc., G.R. No. 22688, April 27, 1967; Firemen's Insurance Co. v. Manila Port Service, G.R. No. 22810, August 31, 1967; Hanover Insurance Co. v. Manila Port Service, G.R. No. 20976, January 23, 1967, 63 O.G. 9636 (Oct., 1967); Tabacalera Insurance v. Manila Railroad Co., G.R. No. 23636, October 31, 1967; and Fulton Insurance v. Manila Railroad Co., G.R. No. 24263, November 18, 1967.

[82] Hanover Insurance Co. v. Manila Port Service, *supra*, citing Rizal Surety and Insurance Co. v. Manila Railroad Co., G.R. No. 20875, April 30, 1966.

In *Aquizap v. Basilio*[33] the Court stated that it is a rule firmly imbedded in jurisprudence that jurisdiction is determined by the statute in force at the time of the filing of the action. The Court also noted that the reservation of the appellant's action made in the order of dismissal did not make the present action filed in 1953 a continuation of that which was thereby dismissed. The present action, then, is a completely new action which should have taken into account the law in force at the time of its filing.

C. *Parties*

Every action must be prosecuted and defended in the name of the real party in interest.[34]

Republic Bank v. Cuaderno,[35] is a derivative suit filed by a minority stockholder of the bank. Regarding the procedural question whether the corporation itself must be made party defendant, it was observed that absence of corporate authority would seem to militate against making the corporation a party plaintiff, while joining it as defendant places the entity in an awkward position of resisting an action instituted for its benefit. The Court concluded that what is important is that the corporation should be made a party in order to make the court's judgment binding upon it, and thus bar future litigation of the issues.

In *Guingon v. Capitol Insurance and Surety Co., Inc.,*[36] it was held that the "no action" clause in the policy of insurance cannot prevail over the Rules of Court provisions aimed at avoiding multiplicity of suits, and that section 5 of Rule 2 on "joinder of causes of action" and section 6 of Rule 3 on "permissive joinder of parties" cannot be superseded, at least with respect to third persons not a party to the contract, as is true in the case at bar, by a "no action" clause in the contract of insurance.

The provisions of Rule 3, section 22, Rules of Court, on pauper litigant was interpreted in *Acar v. Rosal.*[37] In the case at bar, plaintiffs' request that they be authorized to litigate in *forma pauperis* was denied by the trial court because plaintiffs have regular employment and sources of income and thus, not poor

[33] G.R. No. 21293, December 29, 1967.
[34] Rules of Court, Rule 3, Sec. 2.
[35] G.R. No. 22399, March 30, 1967.
[36] G.R. No. 22042, August 17, 1967.
[37] G.R. No. 21707, March 18, 1967.

nor paupers. In reversing the position of the trial court, the Supreme Court held that an applicant for leave to sue in *forma pauperis* need not be a pauper; the fact that he is able-bodied and may earn the necessary money is no answer to his statement that he does not have sufficient means to prosecute the action or to secure the costs. It is sufficient that the plaintiff is indigent, though not a public charge. And the difference between paupers and indigent persons is that the latter are persons who have no property or source of income sufficient for their support aside from their own labor, though self-supporting when able to work and in employment. It is, therefore, in this sense of being indigent that "pauper" is taken with reference to suits in *forma pauperis*

D. *Venue*

Venue is defined as the place where an action must be instituted and tried.[88] Rule 4, sections 1 and 2, Rules of Court provide for the venue of actions in this jurisdiction.

An action for damages based upon tort was filed by the New Cagayan Grocery against Clavecilla Radio System with the Municipal Court of Cagayan de Oro City. On the ground of improper venue, Clavecilla Radio System filed a motion to dismiss which was denied. Upon a petition for prohibition with the Court of First Instance, the jurisdiction of the municipal court was upheld. When the case was brought on appeal before it, the Supreme Court applied the provision of section 1, Rule 4 of the New Rules of Court to the effect that when "the action is not upon a written contract, then (the action may be filed) *in the municipality where the defendant . . .* resides *or may be served with summons.*" Since the place where the corporation has its principal office is its residence, clearly Clavecilla Radio System resides in Manila, and may be used in that City. In answer to the appellees' contention that with the filing of the action in Cagayan de Oro City, venue was properly laid on the principle that the appellant may also be served with summons in that city where it maintains a branch office, the Court ruled that the term "may be served with summons" does not apply when the defendant resides in the Philippines for, in such case, he may be sued only in the municipality of his residence, re-

[88] 1 MORAN, *op. cit.*, 184.

gardless of the place where he may be found and served with summons.[39]

Rule 4, section 4, Rules of Court, expressly provides that when improper venue is not objected to in a motion to dismiss it is deemed waived. This provision was taken up in *Pantranco v. Yatco*.[40] A case for damages resulting from injuries suffered by a passenger in the bus of Pantranco when it collided with a La Mallorca-Pambusco bus was filed in the Court of First Instance of Rizal. After submitting its answer, Pantranco filed a counterclaim for ₱5,000.00 and a third-party complaint against La Mallorca and its driver. Although he alleged in his complaint that he was a resident of Quezon City, the passenger testified that he was a resident of Dagupan City and was merely vacationing in Quezon City. Pantranco moved to dismiss on the ground of improper venue. Upon denial of its motion to dismiss, Pantranco filed the action for prohibition with the Supreme Court. In finding the petition for prohibition untenable, the Supreme Court held that the objection to venue is deemed waived when, as in the present case, it is not set up before the filing of the answer in the lower court. The filing of Pantranco's counterclaim in the Court of First Instance of Rizal and later of Pantranco's third-party complaint against La Mallorca necessarily implied a submission to the jurisdiction of said court, and accordingly a waiver of such right as the Pantranco may have had to object to the venue, upon the ground that it had been improperly laid. The Court further noted that the introduction of part of the evidence for the Pantranco after the denial of its motion to dismiss and before the institution of the present case tended also to have the same effect.

In *Mayormente v. Robaco Corporation*,[41] the Court noted that whatever be the nature of the petitioner's action, we cannot see why it was necessary for the court to transfer the hearings to Butuan City with all the expenses that the transfer would entail to the petitioner. It was held that once laid, venue cannot be changed save, of course, with the consent of the parties or for overriding reasons. It cannot be changed on the ground that the Court of Industrial Relations has jurisdiction over the whole country just as the venue of an ordinary civil action can-

[39] Cohen v. Benguet Commercial Co., Ltd., 34 Phil. 526 (1916).
[40] G.R. No. 23090, October 31, 1967.
[41] G.R. No. 25337, November 27, 1967.

not be changed from one province to another on the reasoning that Courts of First Instance are courts of general original jurisdiction. Indeed, section 1 of Republic Act No. 1171 is no different from the rule governing ordinary civil actions, namely, section 2(b) of Rule 4. The choice is thus given to the plaintiff employee and such choice would be rendered meaningless if, while an employee may initially choose the venue of his action, he may not be heard to complain later against the subsequent transfer of that venue.

E. *Third-Party Complaint*

May a third-party complaint to enforce a warranty against eviction be filed by the defendant after the answer to the complaint pursuant to article 1559 of the New Civil Code and section 12, Rule 6 of the Rules of Court? As a corollary, may an order denying admission of the third-party complaint be appealed from at this stage of the proceedings?

Both questions were answered in the affirmative in *De Dios v. Balagot.*[42] As a rule, the admission of the third-party complaint is left to the discretion of the trial court.

With respect to the first question, it was held that the act of summoning the vendor can be accomplished either under article 1559 of the Civil Code, by asking that said vendor be made co-defendant, in which case the request must be made within the time for answering the complaint; or through the filing of a third-party complaint against the vendor under section 12, Rule 6 of the Rules of Court. In the first case, the vendor is summoned by being made a co-defendant, while in the second, by being made a third-party defendant. From this, it can be seen that a third-party complaint filed after the answer but before trial is not late. The time limit under article 1559 does not apply. Section 2 of Rule 12 of the old Rules of Court (see Rule 6, Sec. 12, Revised Rules of Court) applies, provided that after service of his answer, defendant may, with notice to the plaintiff, move for leave as third-party plaintiff to file a complaint against a third-party defendant.

Concerning the second question, it was held that appeal from such denial may be made for the reason that after disallowance, nothing further was left to be done in the court *a quo* as regards

[42] G.R. No. 24103, August 10, 1967.

defendant's right to enforce against the vendor the warranty against eviction.

But it was held in *Republic v. Ramos*,[43] that while Rule 6, Section 12, Rules of Court, allows third-party complaints in order to minimize the number of lawsuits and avoid the necessity of bringing two or more actions involving the same subject matter, the desirability of avoiding multiplicity of suits should not operate so as to consolidate in a single proceeding matters which are or should be appropriately threshed out separately. As a consequence, a third-party defendant may not be impleaded if the effect would be to introduce a new and separate controversy into the action. Stated differently, the allowance of a third-party complaint is predicated on the need for expediency and the avoidance of unnecessary lawsuits. But it should not be considered as an excuse for indiscriminately filing any claim which a defendant may have against a third-party defendant, although unrelated to the main action.

F. *Filing of Pleading*

Under Rule 13, section 1, Rules of Court, the filing of pleadings, appearances, motions, notices, orders and other papers with the court as required by these rules shall be made by filing them personally with the clerk of the court or by sending them by registered mail.

In *Clorox Company v. Director of Patents*,[44] it was not disputed that immediately after it received the notice of dismissal of its opposition, the company, in due time, filed a motion advising the Director of Patents that its verified opposition was filed on time, although it was submitted under an erroneous covering letter. The fact alone, the Court held, did not support the proposition that a pleading "misfiled" is a pleading "not filed". A covering letter is not part of the pleading. What is important is the fact that the pleading reached the official designated by law to receive it within the prescribed time, regardless of the mistake in the endorsement or covering letter which is not a necessary element of filing.

Although the case at bar is a patent case, it is submitted that the ruling therein can serve as a guide in the application

[43] G.R. No. 18911, April 27, 1967.
[44] G.R. No. 19531, August 10, 1967.

of interpretation of the afore-quoted provision of the Rules of Court on filing of pleadings.

G. *Summons*

The case of *Gemperle v. Schenker*[45] arose from a previous case filed by Mrs. Schenker, as attorney-in-fact and representative of Mr. Schenker, against Gemperle to enforce the latter's alleged subscription to the Philippine-Swiss Trading Co. Alleging that in the complaint in the previous case, Mrs. Schenker had caused to be published defamatory allegations, Gemperle brought the present action against the Schenker spouses. The issue is whether or not the lower court had acquired jurisdiction over Mr. Schenker, a Swiss citizen residing in Switzerland, who had not been actually served with summons in the Philippines, although the summons addressed to him and Mrs. Schenker had been served personally upon her in the Philippines. The Supreme Court ruled that the lower court acquired jurisdiction over said defendant, through service of the summons addressed to him upon Mrs. Schenker, it appearing that the latter had authority to sue, and had actually sued, on behalf of her husband, so that she was also empowered to represent him particularly in a case, like the one at bar, which is a consequence of the action brought by her on his behalf.

H. *Publication of Notices*

For the purpose of regulating the publication of judicial notices, advertisements of public biddings, notices of auction sales and other similar notices, Congress enacted Republic Act No. 4383. According to said law, these notices shall be published in newspapers or publications published, edited and printed in the same city and/or province where the requirement of general circulation applies. If there is no newspaper or periodical published in the locality, said notices may be published in the newspaper or periodical published and edited in the nearest town, city or province. A further requisite is imposed to the effect that no newspaper or periodical which has not been regularly published for at least two years before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish the said notices.

[45] G.R. No. 18164, January 23, 1967.

I. *Motion to Dismiss*

Rule 16, section 1, Rules of Court, enumerates the grounds upon which a motion to dismiss an action may be based. One such ground is that there is another action pending between the same parties for the same cause.[46] Construing the term "another action" in *Solancho v. Ramos*,[47] the Supreme Court took into account Rule 2, section 1, Rules of Court, which defines the word "action", thus, "action means an ordinary suit *in a court of justice* by which one party prosecutes another for the redress of a wrong." From this, it was concluded that the Bureau of Lands is not covered under the aforecited provisions of the Rules of Court. Consequently, the motion to dismiss on the ground that there is a pending administrative case between the plaintiff and the defendant was denied. In this connection, the Court noted that a motion to dismiss under Rule 16 of the Rules of Court is not like a demurrer provided for in the old Code of Civil Procedure that must be based only on the facts alleged in the complaint. Except where the ground is that the complaint does not state any cause of action which must be based only on the allegations in the complaint, a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint.

Another ground for a motion to dismiss is that the complaint states no cause of action.[48] In *Acuña v. Batac Producers Cooperative Marketing Association, Inc.*,[49] the Court had occasion to reiterate a previous ruling to the effect that when a motion is based on this ground, the averments in the complaint are deemed hypothetically admitted and the inquiry is limited to whether or not they make out a case on which relief can be granted. If said motion assails directly or indirectly the veracity of the allegations, it is improper to grant the motion upon the assumption that the averments therein are true and those of the complaint are not. The sufficiency of the motion should be tested on the strength of the allegations of fact contained in the complaint, and no other. If these allegations show a cause of action, or furnish sufficient basis by which the complaint can be maintained, the complaint should not be dismissed

[46] Rules of Court, Rule 16, Sec. 1(e).
[47] G.R. No. 20408, April 27, 1967.
[48] Rules of Court, Rule 16, Sec. 1(g).
[49] G.R. No. 20333, June 30, 1967.

regardless of the defenses that may be averred by the defendants. It was particularly noted in the case at bar that affidavits, such as those presented by defendants in support of the motion, can only be considered for the purpose of ascertaining whether an issue of fact is presented, but not as a basis for deciding the factual issue itself. This should await the trial on the merits.

In *Kahn v. Asuncion*,[50] the trial court granted a motion to dismiss after a preliminary hearing on the ground that the claim asserted is not enforceable under the statute of frauds.[51] In holding that the statute of frauds does not bar the present suit, the Supreme Court ruled that the point of preliminary inquiry is whether the plaintiff's acts of partial execution redounded to defendant's benefit. This point cannot be ascertained from the records. Consequently, the ground for a motion to dismiss under the statute of frauds *does not appear to be indubitable as required.*[52]

J. *Dismissal of Actions*

Rule 17 of the Rules of Court provides for instances where an action may be dismissed. One instance is where the plaintiff fails to prosecute his action for an unreasonable length of time.[53] Recognizing that the dismissal of an action on this ground rests on the sound discretion of the court, the Supreme Court sustained the order of the lower court dismissing the protest on the ground of abandonment in *Ortega v. De Guzman*.[54] It was found out that for several months, the election protest remained dormant because of the inaction of the protestant and his counsel. Moreover, the Court noted that the unmistakable indication of lack of interest on the part of the protestant and his counsel is the undisputed fact that faced with a motion to dismiss, and although given a period of time to file a written opposition thereto, the said counsel never filed a written opposition, contenting himself in orally in perfunctorily opposing the motion.

In *American Insurance Company v. Macondray and Co., Inc.*,[55] it was ruled that while it is true that the absence of an alle-

[50] G.R. No. 23377, April 27, 1967.
[51] See Rules of Court, Rule 16, Sec. 1(i).
[52] Citing Rules of Court, Rule 16, Sec. 3.
[53] Rules of Court, Rule 17, Sec. 3.
[54] G.R. No. 25758, February 18, 1967.
[55] G.R. No. 24031, August 19, 1967.

gation concerning the consent of the Republic of the Philippines to be sued is not one of the instances in which the court *motu proprio* may dismiss the complaint, and although it was not relied upon by the Republic in its motion to dismiss, since it inherently vitiates the complaint and as it may be passed upon at any stage of the proceedings, it is within the court's power to determine at that instance, the effect of the absence of such allegation. Finding that no such allegation was made, the Court dismissed the case against the Republic.

K. *Pre-Trial*

In any action, after the last pleading has been filed, the court shall direct the parties and their attorneys to appear before it for a conference to consider certain matters.[56] A party who fails to appear at a pre-trial conference may be non-suited or considered in default.[57]

On the date set for pre-trial in a case, only plaintiff's counsel appeared. When the court asked from counsel of the plaintiff his authority to compromise, he could not present such authority and the court dismissed the complaint for plaintiff's failure to appear. On appeal from said order dismissing the complaint, it was ruled that the trial court has the discretion whether or not to declare a party non-suited. However, the point was not resolved in view of the fact that the defendant enjoyed immunity from suit.[58]

Concerning the mandatory nature of a pre-trial, the Supreme Court was more explicit in *Home Insurance Co. v. United States Lines Co.*[59] On the date set for pre-trial, only the plaintiff's counsel appeared and he assured the court that though he had no written authority, he had such authority orally given by the plaintiff. When the trial court dismissed the case for plaintiff's failure to appear, plaintiff filed a motion for reconsideration, upon the denial of which, plaintiff appealed. After comparing Sec. 1 of Rule 20 of the Revised Rules of Court with Sec. 1 of Rule 25 of the old Rules of Court which provided that the court *may* in its discretion direct the *attorneys for the parties* to appear before it for a conference, and after citing the provisions of Sec. 2, Rule 20 of the new Rules of Court, the

[56] Rules of Court, Rule 20, Sec. 1.
[57] Rules of Court, Rule 20, Sec. 2.
[58] American Insurance Co. v. Republic, G.R. No. 25478, October 23, 1967.
[59] G.R. No. 25593, November 15, 1967.

Supreme Court stated that this shows the purpose of the Rules to compel the parties to appear personally before the court to reach, if possible, a compromise. Accordingly, the court is given the discretion to dismiss the case should the plaintiff not appear at the pre-trial.

As to the authority which a party may give to his counsel, the Court observed that the Rules require for attorneys to compromise the litigation of their clients a "special authority," citing Rule 138, Sec. 23, Rules of Court. And while the same does not state that the special authority be in writing, the court has every reason to expect that, if not in writing, the same be duly established by evidence other than the self-serving assertion of counsel himself.[60]

In *Insurance Company of North America v. Republic of the Philippines*,[61] a pre-trial was held but as the parties could not reach any settlement, the case was set for trial. After the lapse of one year, three months, and twenty-one days since the last pleading, the trial court dismissed the case for failure to prosecute. The court noted that while under the Rules, the clerk of court has the duty to include a case in the trial calendar after the issues are joined, and to fix the date for trial as well as to notify the parties of the same, the plaintiff may not rely upon said duty of the clerk nor is it relieved of its own duty to prosecute the case diligently, calling if necessary the attention of the court to the need of putting the case back to its calendar if the court, because of numerous cases, has neglected to attend thereto. As to plaintiff's reliance on Sec. 1, Rule 20 of the Rules of Court which requires the court to hold a pre-trial before a case is heard, the Supreme Court held that the fact that an amended complaint was later, with leave of court, filed, did not necessitate, under the circumstances, another pre-trial. It would have been impractical, useless and time consuming to call another pre-trial, considering that the Republic of the Philippines merely adopted and repleaded all the pleadings of the Bureau of Customs and the Customs Arrastre Service.

L. *Subpoena*

Concerning the scope of the provisions of Rule 23, Sec. 9, of the Rules of Court, a question was posed in *People v. Mon-*

[60] *Id.*
[61] G.R. No. 26794. November 15, 1967.

tejo,[62] thus: Does the Court of First Instance possess the authority in a criminal case to compel by subpoena the attendance of a witness who resides hundreds of miles from the place of trial? Respondent's contention is that an examination of the placement of section 9 of Rule 23 discloses that it is found under the topic, Procedure in the Court of First Instance, and that such provision makes no distinction between a criminal and a civil case, and thus it is not proper to make any distinction. Admitting that it is loathe to clip what undoubtedly is the inherent power of the court to compel the attendance of persons to testify in a case pending therein, the Supreme Court held that Section 9 of Rule 23 is thus interpreted to apply solely to civil cases.

M. *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 grounds specified therein materially affecting the substantial rights of said party.[63] One such ground is newly discovered evidence, which the party could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result.[64]

From a resolution of the Court of Appeals granting a new trial, petitioners in the case at bar appealed to the Supreme Court, alleging that the respondents have not exercised reasonable diligence in producing heretofore the new evidence they now seek to introduce; that said new evidence is unworthy of belief and that apart from being corroborative, said evidence cannot alter the result of the case. In upholding the position of the Court of Appeals, the Supreme Court held that the respondents were not negligent in securing the new evidence. The respondents had no means of knowing it before Matro, allegedly pricked by his conscience, had approached counsel for the respondents, soon after June 8, 1963, when notice of the resolution of the Court of Appeals of June 5, 1963 was served upon said counsel. Matro's affidavit was made on June 10, 1963, the day, respondents' additional petition in support of the motion for reconsideration was filed. Four days later, respondents filed a petition for new trial based on the ground of newly discovered

[62] G.R. No. 24154, October 31, 1967.
[63] Rules of Court, Rule 37, Sec. 1.
[64] Rules of Court, Rule 37, Sec. 1(b).

evidence, referring to Matro's testimony. Obviously, this is newly discovered evidence and respondents were not negligent in securing the same, in the light of attending circumstances. Whether Matro's testimony is worthy of belief or not, it is a question of credibility which is one of fact, the findings of the Court of Appeals on which are not subject to the Court's review. The Court added that the factual issue in the case at bar appears to be precariously dependent upon the credibility of the testimonial evidence for the petitioner contradicted by that of the respondents, both being, more or less, so evenly balanced that anything could perhaps tip the balance in favor of either side. There is authority upholding the propriety of ordering a new trial when the newly discovered evidence may affect the credibility of the testimony for the prosecution.[65]

It is settled that a motion for new trial rests upon the sound discretion of the trial court. In *Colcol v. Philippine Bank of Commerce*,[66] the Supreme Court sustained the lower court's denial of a motion for new trial based on alleged mistake and execusable negligence consisting of the failure of counsel's new clerk to bring to the lawyer's attention the notice of hearing, as the clerk allegedly merely filed the notice in the folio of the case. The Court added that the duty rests on every counsel to see to it that there is adopted and strictly maintained a system that shall efficiently take into account all court notices sent to him, and that appellant's counsel should have been prudent enough to instruct his new clerk to keep him notified of pleadings that reach his office.

The above ruling was amplified in *Baring v. Cabahug*[67] where it was held that the fact that counsel delegated to his clerk the task of noting the date of hearing in his calendar and that the latter forgot to do so, does not constitute excusable negligence. And for want of diligent supervision, the inexcusable negligence of the clerk is imputable to counsel.

Bernabe v. Court of Appeals[68] reiterates the ruling that a motion for new trial is addressed to the sound discretion of the

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[65] Philippine Air Lines, Inc. v. Salcedo, G.R. No. 22119, September 29, 1967 citing People v. Saez, G.R. No. 15776, November 29, 1961, 61 O.G. 2335 (April, 1965).

[66] G.R. No. 23117, November 17, 1967.

[67] G.R. No. 23229, July 20, 1967.

[68] G.R. No. 18278, March 30, 1967.

trial court; that a party has no reasonable ground to assume that his motion for postponement of the hearing would be granted; and that an affidavit of merit should be attached to the motion for new trial, otherwise there is no possible reason to expect or assume that the result of the case would be otherwise, if the motion were granted.

Stressing further the point that the reopening of a case before decision thereon acquires finality is a matter addressed to the court's sound discretion is *Deltin v. Court of Agrarian Relations*.[69] This is a tenancy case which had been pending in the lower court for over 5 years. The failure to present evidence on the threshing fee is not ascribed to fraud, accident, mistake or excusable neglect. Such evidence is not newly discovered. It is forgotten evidence. In this factual backdrop, forgotten evidence is not a ground for reopening or new trial. If a case may be reopened from time to time as a party or his lawyer remembers evidence which was overlooked, then litigation will suffer undue delay. Instead of giving relief, court suit may become intolerable. Here, neither equity nor law sanctions reopening.

N. *Relief from Judgments, Orders or Other Proceedings*

Rule 38 of the Rules of Court specifies the grounds for a petition for relief from judgments, orders or other proceedings, as well as the periods within which this remedy may be availed of.

In *Daran v. Angco*,[70] the petitioner learned on October 16, 1961 that he was declared in default in the decision of the Justice of the Peace Court of Aurora, Isabela. He filed his petition for relief from the judgment of default in the Court of First Instance on April 12, 1962. The Supreme Court held that the petition was belated, having been filed much later than the period allowed for the purpose by section 3 of Rule 38 of the Rules of Court, which is only "sixty (60) days after the petitioner learns of the judgment, order or other proceeding to be set aside." In the case at bar, that period expired on December 16, 1961.

The excuse offered in one case by a party as reason for his failure to perfect in due time his appeal from the judgment of the Municipal Court, that counsel's clerk forgot to hand him

[69] G.R. No. 23348, March 14, 1967.
[70] G.R. No. 23561, August 28, 1967.

the court notice, was held by the Supreme Court to be the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court. The uncritical acceptance of this kind of commonplace excuses, in the face of the Supreme Court's repeated rulings that they are neither credible nor constitutive of excusable negligence, is certainly such whimsical exercise of judgment as to be a grave abuse of discretion.[71]

In *Philippine National Bank v. Fernandez*,[72] it was held that the case at bar being an appeal from an order denying relief from judgment, it is pertinent to inquire whether or not appellant has a meritorious defense. This is the reason why the Rules require that a petition for such relief be accompanied by an affidavit of merits.

The rule regarding the period within which such relief may be availed of has been relaxed in *Balite v. Cabangon*.[73] In this case, a petition for relief was filed 65 days after the petitioner learned of the judgment, order or other proceeding to be set aside. It was held that a few days in excess of the 60-day period requirement set forth in Rule 38, Section 3, is not fatal, so long as the petition is filed, as in this case, within six months from the date the order was issued.[74] Adding to this the fact that the present case involves the Court of Agrarian Relations, which is not bound by technicalities of procedure (Section 155, Agricultural Land Reform Code), the dismissal of the said petition for being late constituted serious abuse of discretion remediable by certiorari.

O. *Execution of Judgments*

In *Ocampo v. Caluag*[75] it was held that after the reglementary period to appeal has expired and no motion for reconsideration was filed nor any appeal therefrom perfected, the finality of the decision set in as a matter of course. Having thus become final, it was removed from the power or jurisdiction of the court

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[71] Philippine Air Lines, Inc. v. Arca, G.R. No. 22729, February 9, 1967, citing Gaerlan v. Bernal, G.R. No. 4039, January 29, 1952 and Mercado v. Domingo, G.R. No. 19457, December 17, 1966.

[72] G.R. No. 20086, July 10, 1967.

[73] G.R. No. 24105, May 18, 1967.

[74] Citing Prudential Bank v. Macadaeg, G.R. No. 10454, May 25, 1959, and Angala v. Tan, G.R. No. 10562, August 31, 1959.

[75] G.R. No. 21113, April 27, 1967.

to further alter or amend, much less revoke. The only power retained by the trial court, after a judgment has become final and executory, is to order its execution.

Reiterating the above ruling is the decision in *Commissioner of Internal Revenue v. Visayan Electric Co.*[76] It was ruled in this case that a judgment becomes final and executory by operation of law, not by judicial declaration. Finality of judgment in turn becomes a fact upon the lapse of the reglementary period for appeal, if no appeal is perfected. In such a situation, the prevailing party is entitled as a matter of right to a writ of execution, and issuance thereof is the court's ministerial duty compellable by mandamus. The precepts recited are as true in ordinary civil actions as in tax cases.

Is an order directing the issuance of a writ of execution legal, although the entry of judgment was made long after the death of the defendant? This question was answered in the affirmative in *Miranda v. Abbas.*[77] The Court ruled that the provision (section 7 of Rule 39) relied upon by the petitioners cannot be so construed as to invalidate the writ of execution already issued in so far as service thereof upon the heirs or successors-in-interest of the defendant is concerned. It merely indicates against whom a writ of execution is to be enforced when the losing party dies after the entry of judgment or order. Nothing therein, nor in the entire Rule 39, even as much as intimates that a writ of execution issued after a party dies, which death occurs before entry of judgment is a nullity. The writ may yet be enforced against his executor or administrator, if there be any, or his successor-in-interest. In the case at bar, judgment was rendered on December 21, 1960, two months before the death of the defendant. Since neither the defendant, nor his heirs after his death, appealed from the judgment, the writ of execution issued as a matter of course. The matter of the death of the defendant was communicated to the trial court for the first time on July 26, 1961, after the decision had become final. And in its order of August 30, 1961, the court clearly commanded that the writ of execution already issued be enforced against the deceased defendant's successor-in-interest, and this is so because

[76] G.R. No. 24921, March 31, 1967.
[77] G.R. No. 20570, January 27, 1967.

the record does not at all show that there has been an executor or administrator appointed for the estate of the deceased.

Regarding cases pending at the time Republic Act No. 3844 went into effect, according to Section 168 of said law, the adjudication of said cases shall proceed in accordance with, and with due observance of, the provisions of Republic Act No. 1199, as amended, among which, Section 50(a) of the law, which specifically ordains that the judgment of dispossession of the tenant shall not be enforced until the lapse of one year from the date the decision becomes final.[78]

The fact that an appeal has been perfected from a decision in one case does not totally preclude the possibility of execution of the portion of the decision not involved in the appeal. This is the crux of the ruling in *Baldisimo v. Court of First Instance of Capiz*.[79] In granting the petition for mandamus directing the lower court to issue the writ of execution, the Supreme Court held that the appeal of the petitioner from the supplemental decision of the respondent court simply involves the reasonableness of the amount fixed as the value of the improvements introduced in the petitioner's land. The ownership of the land, and naturally its possession, is not being questioned in the appeal since the Court of Appeals had already declared petitioner the owner of the controverted property. And this is the decision of the Court of Appeals which the petitioner sought to enforce by asking the Court of First Instance to place him in possession of the land, contending that the decision had already become final. The petitioner is entitled to be placed in possession of the entire property under litigation, and in refusing to issue the writ to execute the decision of the Court of Appeals, respondent court neglected to perform an act which the law enjoins as a duty resulting from said office. It is true that the petitioner had appealed from the supplemental decision ordering him to pay the value of the improvements made by the respondent on the property in question. But under Section 9, Rule 41 of the Rules of Court, it is within the power of the trial court to issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated in the appeal.

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[78] Pineda v. De Guzman, G.R. Nos. 23773-74, December 29, 1967.
[79] G.R. No. 22261, September 29, 1967.

A clarification on the period after which a writ of execution may be issued, that is, when the judgment approving a compromise agreement entered into by the parties to the case may be executed, was made in *Tina v. Avila*.[80] In the civil case before the lower court, the parties submitted a compromise agreement which was approved by the court in its decision dated February 4, 1954. Under the compromise agreement, petitioner herein bound himself to satisfy the obligation thereunder within six (6) years from the date thereof. After the expiration of the six-year period, the creditor filed a motion for the execution of the decision approving the compromise agreement. When the motion was granted and writ of execution was ordered issued, and after his motion for reconsideration was denied, petitioner filed the instant petition for certiorari, invoking Rule 39, Section 6, which provides that a judgment may be executed on motion within five (5) years from the date of its entry, and that after the lapse of such time and before it is barred by the statute of limitations, a judgment may be enforced by action. In overruling such contention, the Supreme Court held that had the creditor-respondent demanded payment from the petitioner before the expiration of the term given to him, he could very well have refused payment on the ground that his obligation has not yet become due. A writ of execution would have been as futile. Since such writ could only have been effectively issued after the lapse of six (6) years, respondent court committed neither abuse nor error when it did issue the writ of execution upon motion after the lapse of six (6) years, pursuant to Rule 39, Section 6.

In *Chan v. Montejo*[81] it was held that under Sections 8 and 9 of Rule 72 of the Rules of Court, the landlord, in whose favor a decision for ejectment has been rendered by the court, is entitled to ask for the execution of the judgment if the tenant fails to pay or deposit, on or before the 10th day of each calendar month, the rent for the preceding month, as determined in the decision, which requirement is mandatory. However, there is nothing to preclude the judgment creditor from waiving his right.

Rule 39, section 2, Rules of Court, authorizes execution even before the expiration of the time to appeal, on motion of the

[80] G.R. No. 20900, May 16, 1967.
[81] G.R. No. 23699, December 18, 1967.

prevailing party with notice to the adverse party, upon good reasons to be stated in the special order. Regarding the "good reasons" for execution pending appeal, it was held in *Ma-ao Sugar Central Co., Inc. v. Cañete*[82] that a party's being destitute and in constant danger of death because of his critical and deteriorated condition are compelling reasons of urgency or justice which justify immediate execution of the award compensation in his favor. In *De Leon v. Caluag*[83] the Court considered "good reasons" the fact that sixteen (16) years elapsed since the basis of De Leon's claims disappeared when the title of her vendor was annihilated by the final decision of the Court of First Instance of Manila rescinding the original sale to her predecessors-in-interest, and the rightful owner is still unable to enjoy what is legally his. To this circumstance should be added the fact that this petitioner's own suit to confirm her pretended title has been unconditionally dismissed for lack of prosecution, a dismissal that under the Rules of Court "shall have the effect of an adjudication on the merits, unless otherwise proved." Thus, her lack of title becomes more evident, and that she has bent all her efforts to drag out these litigation as far as possible.

NAWASA v. Catolico[84] is authority to the proposition that although the execution of a decision pending appeal may be suspended upon the filing of a supersedeas bond, the judgment debtor is not entitled to a suspension as a matter of right. The court is merely empowered to order it *in the exercise of its sound judgment or discretion.* In the case at bar, it was held that considering that the unconstitutionality of the aforementioned feature of Republic Act No. 1383 is now settled, and that the appeal from the decision of the lower court — insofar as the ownership, possession, administration and control of the Systems in question — cannot possibly prosper and can merely have, therefore, a dilatory effect, the lower court was obviously justified in refusing to suspend the execution of its decision, despite NAWASA's offer of a supersedeas bond.

The main thrust of petitioners' attack in *Lao v. Mencias,*[85] is centered on the fact that the motion for issuance of the writ

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[82] G.R. No. 26361, March 18, 1967.
[83] G.R. No. 18722, September 14, 1967.
[84] G.R. No. 21705, April 27, 1967.
[85] G.R. No. 23554, November 25, 1967.

of execution filed by the other respondents pending appeal was "unverified." It was ruled in this case that there is no such requirement under the Rules of Court and that a motion of the prevailing party with notice to the adverse party allows the Court to "order execution to issue even before the expiration of the time to appeal, upon good reasons to be stated in a special order."

The Court had occasion to discuss the formalities required by the Rules of Court concerning levy upon a realty in *Philippine Surety & Insurance Co., Inc. v. Zabal.*[86] In this case, the Court held that to effect a levy upon realty, the sheriff under section 7 of old Rule 59 (now section 7 of the Revised Rule 57) is required to do two specific things: (1) file with the register of deeds a copy of the order, description of the attached property and notice of attachment; and (2) leave with the occupant of the property a copy of the same order, description and notice. These are prerequisites to a valid levy, non-compliance with any of which is fatal. The purpose of the law in imposing these requirements is to make levy public and notorious. Since the Court of Appeals, in this case, found that no notice of the levy was given to the respondent who was then in occupancy of the land, a factual finding which the Supreme Court could not then review, it was obvious that there was no valid levy on the land and therefore its registration in the registry of deeds and annotation in the title were invalid and ineffective. Petitioner's case is not helped by the allegation that Fajardo, in whose name the land was registered, was duly notified of the attachment. When notice to the occupant is required by law for the validity of the levy, personal service of the copy of the writ, description of the property and notice to the owner, who is not the occupant, does not constitute compliance with the statute.

In *Reyes v. Noblejas,*[87] an appeal by certiorari was made to review the resolution of the Land Registration Commissioner ordering the Register of Deeds of Rizal to deny registration of the Deed of Sale and the Affidavit of Consolidation of Ownership presented to him by the petitioner. Sustaining the position taken by the respondent Commissioner, the Supreme Court held that Section 27, Rule 39 of the Revised Rules of Court, provides that the certificate of sale executed by the sheriff in a public

[86] G.R. No. 21556, October 31, 1967.
[87] G.R. No. 23691, November 25, 1967.

auction sale must be filed in the Office of the Register of Deeds of the province where the land is situated. This is a mandatory requirement. Failure to register the certificate of sale violates the said provision of law and, construed in relation with Section 50 of the Land Registration Law, shall not take effect as a conveyance or bind the land covered by a torrens title because "the act of registration is the operative act to convey and affect the land."

In *Realiza v. Duarte*,[88] three (3) cases of forcible entry and detainer were involved and after the decisions therein became final, writs of execution were issued. More than five (5) years later, the plaintiff again filed three (3) separate actions and secured judgments for the revival and enforcement of the previous decisions. On appeal, it was contended that the said judgments could not be revived because they had already been satisfied. Finding this contention untenable, the Supreme Court held that in order to constitute a full execution of a writ, both defendant and his personal property must be removed from the premises, and the estate given to the plaintiff, unless the removal of the personal property is waived by the defendant. In the case at bar, it is admitted that the defendant did not vacate the premises and have ignored and disobeyed the writs of execution and have contemptuously remained in possession of the land. Indubitably therefore, the writs have not been fully executed. The right to revive and enforce the judgments by an independent action is a remedy granted to the prevailing party by section 6, Rule 39 of the Rules of Court.

P. *Res Judicata*

In *Lazo v. Tuason & Co.*,[89] one of the grounds for the motion to dismiss is that the action was barred by prior judgment. As to the portion of the complaint seeking to enforce an alleged preferential right to buy the land under the compromise agreement, it was held that the same is barred by *res judicata,* as it should have been interposed as a compulsory counterclaim in the previous civil case.

In a case, the correctness of the application by the lower court of the doctrine of *res judicata* to the present case is questioned on the ground that there is no identity of subject

[88] G.R. Nos. 20527-29, August 31, 1967.
[89] G.R. No. 23817, December 11, 1967.

matter and causes of action. It was held that it is well settled that a change in the remedy sought or in the form of action is no bar to *res judicata*.[90]

But in *Caseñas v. Sanchez Vda. de Rosales*,[91] it was held that inasmuch as there was no obligation on the part of the plaintiff-appellant to amend his complaint in the first case, after the defendants therein had died, such imposition being void, his failure to comply with such order would not justify the dismissal of his complaint. Granted as it was upon a void order, the dismissal was itself void. Consequently, as the dismissal of the previous case was void, the claim may not be asserted to bar the subsequent prosecution of the same or identical claim.

In a case filed before the Court of First Instance of Cebu, Del Mar obtained a judgment compelling the RFC (now DBP) to accept Del Mar's backpay certificates in payment for his debt to the RFC. The decision in that case became final. However, the RFC discounted the certificate at the rate of 2% per annum pursuant to Section 2 of Republic Act No. 897. In another suit before the Court of First Instance of Cebu, Del Mar questioned RFC's power to charge a discount on his certificate. When the case was dismissed, Del Mar claimed on appeal that the RFC was barred by the rule of omnibus motion (Section 8, Rule 15, Rules of Court) from raising the point of discount because it did not do so in his first suit. In finding said contention untenable, the Supreme Court held that the right of the RFC to charge a discount was not the issue in said case and Del Mar only questioned such right in the present appeal.[92]

In *Iñigo v. Estate of Maloto*,[93] the plaintiff filed a complaint for specific performance of a contract of sale with the deceased Adriana Maloto. The defendant filed a motion to dismiss based on the judgment in the ejectment case filed against the plaintiff in the City Court of Iloilo, where the decision was in favor of the defendant and directed the plaintiff to vacate the premises. When the lower court sustained said motion to dismiss, the plain-

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[90] Clemente v. H.E. Heacock Co., G.R. No. 23212, May 18, 1967, citing 2 MORAN, RULES OF COURT 329, 330, and Francisco v. Blas, 93 Phil. 1 (1953).

[91] G.R. No. 18707, February 28, 1967.

[92] Del Mar v. RFC (DBP), G.R. No. 22254, August 8, 1967.

[93] G.R. No. 24384, September 28, 1967.

tiff instituted the present appeal. In setting aside the order dismissing the case and remanding the same for further proceeding, the Supreme Court held that the decision in the ejectment case is not an obstacle to the present suit for the simple reason that an action for ejectment is no bar to another contesting ownership. The question of ownership was not seriously presented before the City Court so that, possession, the problem before the City Court, could not have been properly resolved there without first settling that of ownership. Since the call of ownership became apparent in the course of the trial in the ejectment case, the City Court lost jurisdiction to proceed further with the trial thereof and the judgment thereon. The decision in the ejectment case accordingly is not decisive on the question of ownership.

An interesting question came up in the case of *People v. Olarte*[94] where one of the questions decided was defendant's defense of prescription which, on appeal, the Supreme Court decided against him. The above ruling of the Supreme Court became final and executory, and pursuant thereto, the lower court set the case for hearing on the merits and the prosecution presented its evidence. Subsequent to the Supreme Court decision in the earlier appeal of Olarte, the decision in *People v. Coquia*[95] was laid down. On the same facts as those in the earlier Olarte case, the Supreme Court apparently contradicted its decision in the Olarte appeal. Olarte therefore presented anew a motion to quash the information, which motion was sustained by the lower court on the basis of the Coquia decision. On appeal instituted by the prosecution, in the case at bar, the Supreme Court ruled that its ruling in the first Olarte appeal constitutes the law of the case, and even if erroneous, it may no longer be modified since it has become final long ago. A subsequent reinterpretation of the law may be applied to new cases but certainly not to any old one finally and conclusively determined.[96] The court added that posterior changes in the doctrine of this court cannot retroactively be applied to nullify a prior ruling in the same proceeding where the prior adjudication was against him, whether the case should be civil or criminal in nature.

[94] G.R. No. 22465, February 28, 1967.
[95] G.R. No. 16456, June 29, 1963.
[96] Citing People v. Pinuila, 103 Phil. 992 (1958).

Q. *Appeals*

Sumodio v. Sucaldito[97] reiterates the rule that appeal may not be interposed from an interlocutory order. In the case at bar, the order appealed from was issued by the Commissioner of the Court of Agrarian Relations to the landholder to desist from disturbing, harassing and threatening, and to maintain the tenant peacefully in the possession of the land pending final determination of the case. The court also noted that the appeal purportedly to be made is one under section 13 of Republic Act 1267 which provision refers only to final orders or decisions of the Court of Agrarian Relations.

Has an appeal interposed by a debtor any effect on a co-debtor who did not appeal? This question was answered in *Government of the Republic of the Philippines v. Tizon.*[98] According to the court in this case, the effect of the appeal by one judgment debtor upon the co-debtors depends upon the particular facts and conditions in each case. The rule is quite general that a reversal as to the parties appealing does not necessitate a reversal as to the parties not appealing, but that the judgment may be affirmed or left undisturbed as to them. An exception to the rule exists, however, where a judgment cannot be reversed as to the party appealing without affecting the rights of his co-debtor or where their rights and liabilities and those of the parties appealing are so interwoven and dependent as to be inseparable, in which case a reversal as to one operates as a reversal as to all.

Does a petition for extension of time to file a motion for reconsideration stop the running of the period to appeal? In answering the question in the negative in *King v. Joe,*[99] the Supreme Court ruled that a petition for extension of time to file a motion for reconsideration — unlike a motion for new trial — does not tell the reglementary period for perfecting the appeal, and if a *pro-forma* motion for reconsideration or new trial does not stop the running of the period for appeal, with greater reason should it be said that a motion to extend the period for filing a motion for reconsideration purposely for delay is similarly without merit.

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[97] G.R. No. 20262, May 11, 1967.
[98] G.R. No. 22108, August 30, 1967.
[99] G.R. No. 23617, August 26, 1967.

From what date should the period within which to perfect an appeal be counted? In *Lonaria v. De Guzman*,[100] the Supreme Court said that when the petitioner filed his first motion for reconsideration on November 28, 1962, he certainly had knowledge of the order appealed from, otherwise there was no basis for his motion for reconsideration. By filing said motion, he waived his right to have the period of appeal counted from receipt of the order. The reasons for the rule requiring that the period of appeal be counted from notice of the order of decision are, first, in order that the period may not commence to run until the party concerned has opportunity to take the steps he may deem proper in view of the order or decision, which steps he cannot take unless he has knowledge of the order or decision, which knowledge he acquires usually only upon receipt of a copy thereof; and second so that the commencement of the period for the appeal may not be uncertain. These two purposes had already been fulfilled when petitioner filed his first motion for reconsideration. There is then no reason to say that in this case the period of appeal should commence to run from the date he received a copy of the order on January 18, 1963, because settled in law is the maxim: *cessante ratione legis, cessat et ipsa lex,* "where the reason of the law ceases, the law itself ceases."

In *Fernandez v. Zurbano*,[101] it is noted that section 3, Rule 41 of the Rules of Court requires that for the perfection of an appeal, all three requisites — notice of appeal, appeal bond and record on appeal — must be filed with the trial court within thirty days from notice of the order or judgment. This period may be extended by the court upon a showing of a justifiable reason therefor, such as fraud, accident, mistake or excusable negligence, or similar supervening casualty, without fault of the appellant, which the court may deem sufficient reason for relieving him from the consequences of his failure to comply strictly with the law. But the question is, if the extension granted refers only to the period for filing one of the three requisites — record on appeal as in this case — may such extension apply also to the period for filing the others? In the case at bar, the petitioner pleaded excusable negligence as the reason to except his case from the general rule. What really made petitioner's

[100] G.R. No. 20840, September 29, 1967.
[101] G.R. No. 23772, November 25, 1967.

counsel believe that his motion had been granted by the court *in toto* was the opening statement of the order — "Finding the motion filed by Atty. Ramon Fernandez meritorious" — and his belief may not be said to be unfounded under the circumstances, considering that his motion for extension of time embraces a prayer not only "to perfect his appeal," which necessarily includes and comprehends the filing of a notice of appeal, record on appeal and appeal bond but also to allow the petitioner to put a cash bond of ₱60.00 in lieu of ₱120.00 as provided in the Revised Rules of Court, for the very reason stated in the order in question. Citing section 2 of Rule 1 of the Revised Rules of Court, the Court concluded that, under the facts obtaining in this case, petitioners right to appeal must not be defeated by mere procedural technicality as long as the appealing party or his counsel has not displayed gross negligence in the prosecution of his case.

In *Embroidery & Apparel Control and Importation Board v. Cloribel,*[102] it was held that since the petitioners were appealing from a decision rendered in a special civil action (Prohibition) it was not necessary for them to file an appeal bond. Hence, upon the filing of the notice of appeal, the petitioners' appeal had thereby been perfected and respondent Judge was already divested of jurisdiction to recall the order granting the appeal, much less to act on the motion filed thereafter by respondent Rafael praying for the issuance of a writ of preliminary injunction pending appeal. The "granting" of the notice of appeal by the lower court was not even necessary for the perfection of petitioners' appeal.[103] As to respondent's contention that if it be held that upon the perfection of petitioners' appeal, the lower court had lost jurisdiction over the case, an anomalous situation will arise in that the lower court could no longer act on his appeal even if made within the reglementary period, the Supreme Court found this contention without merit for the reason that under Section 9 of Rule 41 of the Rules of Court, even after the perfection of an appeal, the Court of First Instance can still issue orders for the protection and reservation of the rights of the parties which do not involve any matter litigated by the appeal. The court also noted that the right to appeal from a decision when availed of by a party on time — that is, within the period for appeal as provided in the Rules of

[102] G.R. No. 20024, June 30, 1967.
[103] Citing Alba v. Evangelista, 100 Phil. 683, 687-688 (1957).

Court — is a right that should be protected by the courts, the right to appeal being a matter that is not litigated by the appeal. The court, therefore, may act and give due course to the timely appeal of one party in a case even if the other party had already perfected his appeal.

On the subject of the sufficiency of the record on appeal, the case of *Atlas Consolidated v. Progressive Labor Association*[104] shows the tendency of strictness on the part of the court. In the case at bar, the record on appeal filed by the plaintiff did not show when the plaintiff received notice of the order of the Court of First Instance of Cebu dismissing the case for lack of jurisdiction, from which will commence the period for appeal, and when it received the notice of denial of the motion for reconsideration from which the period for appeal would again resume to run. On its face, the record on appeal shows that the appeal was perfected 53 days after the rendition of the order dismissing the case. When the case was brought before it, the Supreme Court held that the omission of such important data on the record on appeal makes it impossible for the court to determine from the face of the record whether or not the appeal was perfected on time. Section 6, Rule 41 of the Revised Rules of Court, provides that the record on appeal shall also state "such data as will show that the appeal was perfected on time." Section 1 of Rule 50 specifies as one of the grounds for dismissal of an appeal "(a) failure of the record on appeal to show on its face that the appeal was perfected within the period fixed by these rules." Regarding the certification of the Clerk of Court below to the effect that the appeal was perfected within the reglementary period, the Court stated the purpose of requiring the record on appeal to show on its face that the appeal was perfected on time was to eliminate the unnecessary waste of time in verifying conflicting allegations of fact made in the briefs. This purpose would be completely defeated if we give thereto the interpretation advocated by the appellant. The court cited the case of *Government v. Antonio*[105] where it was held that the requirement as to what should be included in the record on appeal is mandatory and jurisdictional for unless the appeal is perfected on time, the appellate court acquires no

[104] G.R. No. 27125, September 15, 1967.
[105] G.R. No. 23736, October 19, 1965.

jurisdiction over the appealed case. It was concluded that the certification by the Clerk of Court cannot now bring the case within the jurisdiction of the court since it was submitted after the expiration of the period for appeal.

The same tendency is indicated in *P. J. Kiener Co., Ltd. v. Republic of the Philippines.*[106] In the case at bar, it was held that, notwithstanding the explanation of the Solicitor General that the delay was due to the excusable negligence of the receiving clerk of his office in inadvertently misplacing the notice to file the record on appeal, the appeal should be dismissed upon the ground of inexcusable failure to print the record on appeal on time. Appellate courts look with disfavor on excuses such as that offered by appellants' counsel, which appears to be a "habitual subterfuge employed by litigants who failed to observe the procedural requirements prescribed in the Rules of Court." Appellees' first motion to dismiss cannot be deemed to have suspended the period to file the printed record on appeal since said period had already lapsed when the motion was filed.

To whom would notice be sent in case of appeal from the decision of an inferior court to the Court of First Instance — to the party or counsel? This question was resolved in *Cordovis v. Obias.*[107] After considering the provisions of Rule 40, Section 7 of the old Rules of Court (also section 7, Rule 40 of the Revised Rules of Court), the Supreme Court observed that in *Ortiz v. Mania*[108] notice of the appealed case to the parties was sufficient. In 1962, it was held in *Elli v. Ditan*[109] that the provision, taken in conjunction with section 2, Rule 27 of the old Rules (now section 2, Rule 13) requires that notice of the appealed case to the parties themselves is proper only if the parties are not represented by counsel, so that the moment an attorney appears for the parties, notice should be sent to the attorney, otherwise there is no legal service. At the time when the notice was sent to Cordovis, the prevailing doctrine was the *Ortiz* case. When the *Ditan* case was promulgated, the judgment by default had become final. Moreover, the *Ditan* ruling was abandoned in *Valenzuela v. Balayo*[110] where it was held that

[106] G.R. No. 27341, October 30, 1967.
[107] G.R. No. 21184, September 5, 1967.
[108] 93 Phil. 317 (1953).
[109] G.R. No. 17444, June 30, 1962.
[110] G.R. No. 18748, March 30, 1963; 62 O.G. 3153 (May, 1966).

notice of the appealed case sent to the parties themselves, even if represented by counsel, is proper, stating that the reason "lies in the fact that on an appeal from an inferior court, only the complaint in the justice of the peace court is deemed reproduced, and the proceeding immediately following the filing of the complaint is the summoning of the defendant" and "instead of being summoned, he is only personally notified because he is already within the court's jurisdiction, the notice taking the place of the summons."[111]

Concerning the scope of the power of review, the Supreme Court held in *Ramos v. Pepsi-Cola Bottling Co.*[112] that assignments of error involving the credibility of witnesses and which in effect dispute the findings of fact of the Court of Appeals, cannot be reviewed in these proceedings. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them.[113]

Taleon v. Secretary of Public Works and Communications,[114] and *Santos v. Moreno*[115] reiterate the ruling in *Lovina v. Moreno*[116] to the effect that a review of an administrative finding is limited to the evidence already presented before the administrative body. This rule bars presentation of evidence *aliunde* and limits the trial court's function to determining whether there is evidence in the administrative records substantial enough to support the findings therein.

R. *Dismissal of Appeal*

Rule 50, section 1, Rules of Court, enumerates the grounds upon which appeals may be dismissed by the Court on its own motion or on that of the appellee.

In *Gaspay v. Sangco,*[117] the dismissal of the appeal was affirmed by the Supreme Court for the reason that clearly there is nothing to it, no material allegation of any essence to persuade a reasonable judicial mind to change its decision, for the two pretended grounds of lack of notice and of supposed estoppel through condonation of unpaid rental, lack merit.

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[111] Ortiz v. Mania, 93 Phil. 317, 318 (1953).
[112] G.R. No. 22533, February 9, 1967.
[113] Citing Co Tao v. Court of Appeals, G.R. No. 9194, April 25, 1956, 55 O.G. 232 (Jan., 1959).
[114] G.R. No. 24281, May 16, 1967.
[115] G.R. No. 15829, December 4, 1967.
[116] G.R. No. 17821, November 29, 1963, 62 O.G. 7460 (Oct., 1960).
[117] G.R. No. 27826, December 18, 1967.

While a case was pending appeal before the Court of Appeals, the appellee filed a motion to dismiss on the ground that the issues raised had become moot and academic in view of appellant's voluntarily vacating the premises. The Court of Appeals required the appellant to answer the motion, but as the latter filed no answer, the court resolved to take up the motion when the appeal would be decided on the merits. When the case was certified to the Supreme Court, it was held that appellant's failure to answer the motion is taken as an implied acquiescence thereto. The appeal was dismissed.[118]

What is the effect of the withdrawal of an appeal? This question was answered in *Gabon v. Jorge*.[119] In this case, the respondent Director of Lands appealed from a decision of the Court of First Instance declaring as null and void some of his orders. Instead of filing his brief, the appellant filed a pleading giving notice that he is voluntarily abandoning and withdrawing the appeal. The Supreme Court held that, it appearing that the appellees did not file their brief, nor did they interpose objections to appellant's withdrawal of the appeal, the appeal is hereby considered withdrawn with the effect of dismissal, in accordance with sections 2 and 4, Rule 50 of the Rules of Court.

S. *Decision of the Supreme Court*

Can the Supreme Court make new findings of fact? In *Hilario v. City of Manila*[120] it was held that it is only when the issues raised in the appeal are purely questions of law that the Supreme Court is bound to respect the findings of fact of the lower court, in the absence of abuse of discretion, or patent mistake, absurdity, or impossibility. But this is not true where the appeal involves questions of fact which requires the Supreme Court to review the entire evidence on record and state the facts as established thereby. In the case at bar, it was specifically stated that the findings of fact contained in the decision of the appellate court were all based on the evidence on record. It was further observed that the Supreme Court could not simply review the facts found by the lower court unfavorable to the plaintiff and accept those favorable to him especially because the defendants also appealed from the decision.

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[118] Corpuz v. Jimenez, G.R. No. L-21655, September 29, 1967.
[119] G.R. No. 23655, September 30, 1967.
[120] G.R. No. 19570, September 14, 1967.

T. *Decision of the Court of Appeals*

In *Ramos v. Ramos*,[121] the petitioners' dissatisfaction over the decision of the Court of Appeals lies in their belief that as nothing was said about Exhibit "1" in the decision, the court did not at all consider the document in weighing the evidence and hence, failed to perform its duty under Section 83 of the Judiciary Act. In holding the contention untenable, the Supreme Court stated that the issue in the appeal was defined by the petitioners themselves and on their own definition, the Court of Appeals resolved the issue by confirming the findings of the trial court. The appellate court need not expressly state in its decision that Exhibit "1" does not suffice to overcome the verbal testimony of the appellees' witnesses. And its giving credence to the latter necessarily implies the refusal to accord said Exhibit "1" the importance of probative value claimed for it by the appellants, petitioners herein. It was specifically noted that even section 33 of the Judiciary Act does not impose on the Court of Appeals the duty of stating complete findings of fact on all assigned errors, but merely on all issues properly raised before the Court of Appeals and the appellate court did just that. It would have been much better, of course, for the Court of Appeals to have expressly stated its opinion on the probative value of Exhibit "1", but failure to do so is not a violation of the Judiciary Act.

IV. SPECIAL CIVIL ACTION

A. *Certiorari, Prohibition and Mandamus*

Macabingkil v. Yatco[122] is authority to the effect that where a party has been denied due process, certiorari and prohibition are available as remedies. The same ruling was adopted in *Jacinto v. Montesa*[123] where it was held that while as a rule certiorari will not lie when there is an appeal, the rule may be relaxed where, as in the instant case, a writ of execution is in the process of being carried out. Needless to say, the underlying reason for this doctrine is to give a party litigant his day in court and an opportunity to be heard.[124]

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[121] G.R. No. 23007, March 30, 1967.
[122] G.R. No. 23174, September 18, 1967.
[123] G.R. No. 23098, February 28, 1967.
[124] Citing Liwanag v. Castillo, G.R. No. 13517, October 20, 1959, 57 O.G. 1962 (Mar. 1961). The same ruling may be gleaned from Tirona v. Nañawa, G.R. No. 22107, September 30, 1967, and Jose v. Gella, G.R. No. 22463, March 31, 1967.

It is settled that the jurisdiction to annul a judgment of a branch of the Court of First Instance belongs *solely* to the very same branch which rendered the judgment. Any other branch, even if it be in the same judicial district that attempts to do so *either exceeds its jurisdiction or acts with grave abuse of discretion amounting to lack of jurisdiction.* In either case, certiorari and prohibition would be proper to prevent the attempting branch of the court from proceeding to nullify a final decision rendered by a co-equal and co-ordinate branch.[125]

In *Cruz v. Nalda*,[126] it was held that despite the fact that the case has been submitted upon documentary evidence, the determination of the question whether or not petitioner had acted in bad faith is one of fact or at least, a mixed question of fact and law. In any event, the reasonableness of the amount awarded as compensation and as attorney's fees is a question of fact. Accordingly, since the jurisdiction of no court is really involved in the appeal from the decision of the Court of First Instance, aside from the fact that the petitioner had explicitly appealed therefrom to the Court of Appeals, it is clear that the present certiorari proceedings is in aid of the jurisdiction of said Court of Appeals, and hence, within its original jurisdiction.

The Supreme Court denied the petition for mandamus in *Bonilla v. Secretary of the Department of Agriculture and Natural Resources*,[127] there being no abuse of discretion by the Secretary.

B. *Quo Warranto*

In *Republic v. Security Credit and Acceptance Corporation*,[128] an original *quo warranto* proceeding was instituted to dissolve respondent corporation for allegedly engaging in banking operations without the authority required therefor by the General Banking Act. The Court found out that the transactions in question partake of the nature of banking, as the term is used in Section 2 of the General Banking Act. It was urged, however, that the case at bar should be remanded to the Court of

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[125] J.M. Tuason & Co., Inc. v. Torres, G.R. No. 24717, December 4. 1967.
[126] G.R. No. 21985, September 29, 1967.
[127] G.R. No. 20083, April 27, 1967.
[128] G.R. No. 20583, January 23, 1967.

First Instance of Manila upon the authority of *Veraguth v. Isabela Sugar Co.*[129] In this connection, it should be noted that the Supreme Court is vested with original jurisdiction, concurrently with courts of first instance, to hear and decide quo warranto cases and, that, consequently, it is discretionary for the Court to entertain the present case or require that the issues therein be taken up in the lower courts. The Court noted that the *Veraguth* case is not in point, because in said case there were issues of fact which required the presentation of evidence, and courts of first instance are, in general, better equipped than appellate courts for the taking of testimony and the determination of questions of fact. In the case at bar, there is, however, no dispute as to the principal fact. The main issue here is one of law, namely, the legal nature of said facts or of the aforementioned acts of the corporation. The Court granted the writ prayed for and the corporation was ordered dissolved.

C. *Eminent Domain*

The Republic of the Philippines filed a complaint with the Court of First Instance for expropriation of lands needed for the Iloilo South Road. It simultaneously took possession of the properties involved, while the owners objected to the amount of the compensation. The issue involved in the case at bar is whether or not the interest should be limited to the balance in accordance with the decision in *Republic v. Lara.*[130] In answering this question in *Republic v. Tayengco,*[131] the Supreme Court said that in the present case the appellant deposited the sum not at the time it filed the complaint on April 17, 1958, while in the *Lara* case, the plaintiff deposited the provisional amount at the commencement of the proceedings. The Court added that interest accrued from the time of the taking of the condemned properties or from the time of filing of the complaint to the time the plaintiff made the deposit.

D. *Foreclosure of Mortgage*

It was reiterated in *IFC Service Leasing and Acceptance Corporation v. Nera*[132] that there is no law in this jurisdiction

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129 57 Phil. 266 (1932).
130 96 Phil. 170 (1954).
131 G.R. No. 23766, April 27, 1967.
132 G.R. No. 21720, January 30, 1967. The ruling was made in Barrameda v. Gontang, G.R. No. 24110, February 18, 1967.

whereby the purchaser at a sheriff's sale of real property is obliged to bring a separate and independent suit for possession after the period for redemption has expired and after he has obtained the sheriff's final certificate of sale. Moreover, if under Section 7 of Act No. 3135 the court has the power on the ex-parte application of the purchaser, to issue a writ of possession during the period of redemption, there is no reason why it should not also have the same power after the expiration of that period, especially where, as in this case, a new title has already been issued in the name of the purchaser.

May a restraining order be issued to interfere with the right of foreclosure? This was answered in the negative in *Zulueta v. Reyes.*[133] In the case at bar, it was held that the issuance of a restraining order will on insufficient grounds interfere with the exercise of the right of foreclosure and the mortgagee's right to foreclose will then be subject to the control of mortgagor's whims and caprices.

Is a court order confirming a sheriff's sale upon a judgment in foreclosure of real estate mortgage a bar to a subsequent action by the judgment debtor to annul the sale? In answering this question in the affirmative in *Ocampo v. Domalanta,*[134] the Court ruled that law and jurisprudence have formulated the rule that confirmation of sale of real estate in judicial foreclosure proceedings cuts off all interests of the mortgagor in the real estate sold and vests them into the purchaser. Confirmation retroacts to the date of the sale. The order of confirmation in judicial foreclosure proceedings is a final order, not merely interlocutory. The right to appeal therefrom has long been recognized. In the case at bar, since no appeal was taken, the order became final and binding.

E. *Forcible Entry and Detainer*

The summary nature of an action for forcible entry and detainer is recognized in *Mendoza v. Duave*[135] where the Court reiterated its admonition to lawyers to cooperate with the courts in the prompt trial of cases by refraining from filing motions for continuance unless there are sufficient and strong reasons for doing so.

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[133] G.R. No. 21807, May 24, 1967.
[134] G.R. No. 21011, August 30, 1967.
[135] G.R. No. 21336, February 18, 1967.

In *Clemente v. Court of Appeals*,[186] it was contended that the inferior court did not have jurisdiction over the case for the reason that the answer to the complaint raised the question of title in such a manner that it became inseparable from the question of mere possession. Finding such contention to be untenable, the Supreme Court said that upon the pleadings filed in the inferior court, the only question before said court was the recovery of physical possession of the land and house subject-matter of the contract of conditional sale of March 3, 1951. It was held that the mere fact that in his answer Clemente alleged that since March 3, 1951 he had considered himself as the exclusive owner of the aforesaid house by virtue of the contract of conditional sale already mentioned did not operate to deprive said court of its jurisdiction to try the ejectment case.

Along the same line is the ruling in *Calubayan v. Pascual*[187] to the effect that allegation as to plaintiff's ownership of the parcels of land, when merely made to show the character of plaintiff's possession, does not bring the case within the jurisdiction of the court of first instance.

The question as to when demand is deemed made in ejectment cases has been answered in the aforecited *Calubayan v. Pascual*. The Court recalled the settled doctrine that a person who occupies the land of another at the latter's tolerance or permission, without any contract between them, is necessarily bound by the implied promise that he will vacate upon demand, failing which a summary action for ejectment is the proper remedy. In such a case, the unlawful deprivation or withholding of possession is to be counted from the date of the demand to vacate. In the case at bar, the Court said that the one year period of unlawful detainer should be counted not from the time the defendant ignored plaintiff's notification and invitations to see him, for these were only manifestations of plaintiff's desire to be recognized as the owner of the parcels of land, but from February 2, 1963, when a demand to vacate was effectively made. Assuming that the notification should be construed as demands to vacate, the length of time that the defendant detained the premises is to be reckoned from the

[186] G.R. No. 18686, January 24, 1967.
[187] G.R. No. 22645, September 18, 1967.

date of the last demand. Plaintiff's failure to file an action in court shortly after the defendant had ignored his previous notices is to be considered a waiver on former's part to eject the defendant in the meantime. The written demand having been made on February 2, 1963 and the complaint filed on May 6, 1963, the case must be treated as one for ejectment over which the inferior court has exclusive jurisdiction.

Chien Hung v. Tam Ten[188] reiterates the rule that in forcible entry and detainer cases, the plaintiff, as the winning party, is entitled to an immediate restoration of possession of the property in question, if the defendant, as a losing party, appeals but fails to deposit the amount adjudged as rental or reasonable compensation for the said property in accordance with Rule 70, section 8, of the Rules of Court.

In *Ramirez v. Sy Chit,*[189] it was contended that the municipal court should have dismissed the complaint for lack of jurisdiction, because the special defense raised in the answer invoked article 1687 of the Civil Code and constituted a new matter transforming the action into one for the fixing of the duration of the lease. In holding the contention untenable, the Supreme Court said that the action is for ejectment as made out by the allegations in the complaint. The exercise of the power given the court in article 1687 to extend the period of the lease when the defendant has been in occupancy of the premises for more than a year does not contemplate a separate action for that purpose. That power may be exercised as an incident to the action for ejectment itself and by the court having jurisdiction over it. Otherwise, the summary character of the action for ejectment would be defeated.

F. *Contempt*

In *Commissioner of Immigration v. Cloribel,*[140] contempt proceedings were instituted by the petitioner against the respondent on account of the disregard by the latter of the writ of injunction issued by the Supreme Court. It was observed that courts are inherently empowered to punish for contempt to the end that they may enforce their authority, preserve their integrity, maintain their dignity and insure the effectiveness of the admi-

188 G.R. No. 21209, September 27, 1967.
189 G.R. No. 22022, December 26, 1967.
140 G.R. No. 24139, August 31, 1967.

nistration of justice. The disobedience which the law (section 3, Rule 71, Rules of Court) punishes as constructive contempt implies wilfulness. The Court held that the act of the respondent complained of comes easily within the coverage of this rule. In assessing the penalty, the Court further considered the salutary rule that the power to punish for contempt should be exercised on the preservative, not vindictive, principle.

A petition for certiorari was filed in *Austria v. Masaquel*[141] to annul the order of the respondent Judge declaring the petitioner guilty of contempt of court. The respondent Judge considered the actuation of the petitioner as offensive, insulting, and a reflection on his integrity and honesty and a showing of lack of respect to the court. The respondent Judge considered that the petitioner was not justified and had no reason to entertain doubts on his fairness and integrity simply because the defendant's counsel was his former associate. In annulling and setting aside the order in question, the Supreme Court held that when the petitioner requested respondent Judge to inhibit himself from further trying the case upon the ground that the counsel for the opposite party was the former associate of the respondent Judge, petitioner did so because he was impelled by a justifiable apprehension which can occur in the mind of a litigant who sees what seems to be an advantage on the part of his adversary; and that the petitioner made his request in a manner that was not disrespectful, much less insulting or offensive to the respondent Judge or to the court.

The Court held in *Benedicto v. Canada*[142] that under Rule 71, section 3(b) of the new Rules, the act of re-entry into the land by a party from which he was ordered by the court to vacate may be punished as for contempt of court even after the lapse of five (5) years from the date of the execution of the judgment. In this connection, it was noted that consent or acquiescence by the plaintiff is a sufficient defense for the defendant to the charge of contempt of court. Moreover, the Court said that there is another reason why the appeal interposed in the case at bar by the plaintiff cannot prosper. Under Sections 3, 5, 6, 7 and 8 of Rule 71 of the Rules of Court, a charge for contempt of court partakes of the nature of a criminal action, even

[141] G.R. No. 22536, August 31, 1967.
[142] G.R. No. 20292, November 27, 1967.

when the act complained of is an incident in a civil action. As a consequence, a judgment in contempt proceeding is subject to review only in the manner provided for review of judgments in criminal cases. In fact, Section 10 of Rule 71 of the Rules of Court provides that the appeal in contempt proceedings may be taken as in criminal cases. Hence, as in criminal proceedings, an appeal would not lie from the order of dismissal of, or an exoneration from, a charge of contempt of court.

V. Special Proceedings

A. *Settlement of Estate of Deceased Persons*

Is an heir who has executed a deed of transfer and renunciation of his hereditary rights to the decedent's estate in favor of a co-heir still an "interested person" in the contemplation of Rule 79, section 2, Rules of Court?

The question may be viewed from two angles, namely, (1) when the assignment or renunciation takes place during the course of the settlement proceeding as in the *In Re Santos* case;[143] and (2) when it takes place when there is no such settlement proceeding as in *In Re Duran*.[144]

In the *Santos* case, at the time of the assignment, the settlement court had already acquired jurisdiction over the properties of the estate. As a result, any assignment regarding the same had to be approved by said court. And since the approval of the court is not deemed final until the estate is closed, the assigning heir remains an interested person in the proceedings even after said approval, which can be vacated, is given.

The situation is different in the *Duran* case where the assignment took place when no settlement proceeding was pending. The properties subject matter of the assignment were not under the jurisdiction of a settlement court. Allowing that the assignment must be deemed a partition as between the assignor and the assignee, the same does not need court approval to be effective between the parties. Should it be contended that said partition was attended with fraud, lesion or inadequacy of price, the remedy is to rescind or to annul the same in an action for that purpose. And in the meanwhile, the assigning heir cannot initiate a settlement proceeding, for until the deed of assign-

[143] G.R. No. 11848, May 31, 1962.
[144] G.R. No. 23372, June 14, 1967.

ment is annulled, it is deemed valid and effective against him, so that he is left without that "interest" in the estate required to petition for settlement proceedings.

In *Ignacio v. Elchico*,[145] it was held that the property in question being already in *custodia legis* of the Court of First Instance of Rizal acting as probate court in two special proceedings, the Manila Court of First Instance may not take that property out of the administration proceedings in the Rizal Court without leave or consent of the latter. Should such interference be sanctioned, confusion may ensue and the administration of justice will be impaired.

The subject of money claims as actions which do not survive came up in *Climaco v. Siy Uy*.[146] Climaco filed with the lower court an action for damages against Siy Uy and Manuel Co for maliciously charging him with estafa. Before the summons could be served on him, Siy Uy died. Climaco moved to amend the complaint to substitute the estate of Siy Uy. When the lower court denied the motion and dismissed the complaint, Climaco interposed the instant appeal. The Supreme Court held that Climaco's cause of action is for damages, that is, a sum of money, and the action is one that does not survive upon the death of the defendant in accordance with Rule 3, section 21, of the Rules of Court. Neither could the action be maintained against the estate of the decedent under Rule 87, section 1, of the Rules of Court because such provision authorizes only actions against the executor or administrator when they are for the recovery of real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, or when the action is to recover damages for an injury to person or to property, real or personal. The damages which Climaco sought to recover from the deceased Siy Uy did not spring from any injury caused to his person. In so far as the appealed order denied Climaco's motion for leave to amend his complaint in the sense stated, the same is correct. But the appealed order is erroneous in so far as it dismissed the case against Manuel Co.

Falling squarely within one of the exceptions stated in the *Climaco v. Siy Uy* case is *Belamal v. Polinar*[147] where the claim is patently one "to recover damages for any injury to person

[145] G.R. No. 18937, May 16, 1967.
[146] G.R. No. 21118, April 27, 1967.
[147] G.R. No. 24098, November 18, 1967.

or property" and can be prosecuted by separate action against the administrator under sections 1 and 2 of Revised Rule 87.

In *Intestate Estate of Elchico vda. de Fernando v. Pampanga Bus Co., Inc.*,[148] it was claimed that the dismissal of the civil case filed by the Pampanga Bus Co., Inc. should be ordered, as all money claims should be filed in the testate or intestate proceeding upon the defendant's death (section 21, Rule 3). The Supreme Court held that, considering that the case was prosecuted to final conclusion with the assent of the administrator of defendant's estate, courts are loathe to overturn a final judgment. Judicial proceedings are entitled to respect. Appellant's technical objection that plaintiff's claim should have been litigated in the probate court does not impair the validity of said judgment. For though presentment of probate claims is imperative, it is generally understood that it may be waived by the estate's representative. Certainly, the administrator's failure to plead the statute of non-claims, his active participation, and resistance to plaintiff's claim, in the civil suit, amount to such waiver.[149]

The Supreme Court in *De Borja v. Mencias*[150] held that whatever rights, interest and participation belong to the respondent in the real properties under judicial administration in the special proceeding — which have been properly levied upon pursuant to a writ of execution issued — may be sold in accordance with law, with the understanding that the sale is not of any definite and fixed share in any particular property, but only what might be adjudicated to said respondent upon the final liquidation of the estate. The sale, once made, shall be submitted to the probate court with jurisdiction over the special proceedings for proper consideration upon the final liquidation of the estate.[151]

B. *Adoption*

The consequences of an adoption proceeding as on one claiming to be an acknowledged natural child were taken up in *Bong-*

[148] G.R. No. 18936, May 23, 1967.

[149] Citing 21 Am. Jur. Executors and administrators, Sec. 337 (1939) 14 C.J.S. Chattel mortgages, Sec. 67 (1939); Annot., 34 A.L.R. 393-395 (1925).

[150] G.R. No. 20609, November 29, 1967.

[151] The same ruling was made in Gotuaco and Co., v. Register of Deeds of Tayabas, 59 Phil. 756 (1934) and Jakosalem v. Rafols, 73 Phil. 628 (1942).

cal v. Bongcal.[152] The petitioner claimed to be the acknowledged son of the deceased Zosimo Bongcal, while the respondent alleged that the action brought by the petitioner was already barred by reason of the final order rendered by the lower court in a special proceeding in which the adoption of one Rustico Bongcal was favorably acted upon. The Supreme Court made the following conclusions: (1) since petitioner did not have the status of an acknowledged natural child of the deceased Zosimo Bongcal at the time of the adoption of Rustico Bongcal, the provision of article 335, paragraph 1, of the Civil Code, did not apply and constituted no impediment to the adoption; (2) by the same token, the petitioner, not having the personality then to contest the adoption, could not be bound thereby in any way in so far as his own status was concerned; and (3) the adoption of Rustico Bongcal did not deprive the petitioner of his right to seek recognition as a natural child in a proper petition and upon competent and legally admissible evidence.

C. *Habeas Corpus*

A petition for habeas corpus was filed in *Real v. Trouthman*[153] by the parents of a woman 24 years old against a married man who persuaded the daughter to elope and live with him. It was held that, considering the provisions of article 403 of the Civil Code, the court is left with no alternative but to dismiss the petition on account of the fact that the woman is already more than 24 years of age and therefore beyond the coverage of said article.

D. *Change of Name*

Reiterating the rule that a change of name is a privilege and not a matter of right in *Que Liong v. Republic,*[154] the Supreme Court held that in the absence of prejudice to the State or any individual, a sincere desire to adopt a Filipino name to erase signs of a former alien nationality which unduly hamper social and business life is a proper and reasonable cause for a change of name.

What is the coverage of the term "person" as used in Rule 103 of the Rules of Court? Does it include aliens? The Supreme

[152] G.R. No. 17463, May 16, 1967.
[153] G.R. No. 23074, May 24, 1967.
[154] G.R. No. 23167, August 17, 1967.

Court had occasion to answer these questions in *In the Matter of the Petition to Change Name of Ong Huan Tin to Teresita Tan v. Republic.*[155] It was held that the world "person" is a generic term which is not limited to Filipino citizens, but embraces all natural persons. The rule is clear and affords no room for interpretation. It sets forth all the requirements, and Filipino citizenship is not one of them. But only aliens domiciled in the Philippines may apply for change of name in the courts thereof. An alien who temporarily stays in the Philippines may not therefore avail of the right to change his name. A court proceeding for the purpose will only be a useless ceremony, the salutary effects flowing from a change of his social relation and condition may not thus be achieved.

May a minor file a petition for change of name? Answering this question in the affirmative in *In Re Petition to Change Name, Felimon Tse and Alice Tse v. Republic,*[156] the Supreme Court ruled that section 2, Rule 103 of the Rules of Court provides that a petition for change of name shall be signed and verified by the person desiring his name changed, or some other person in his behalf. No provision contained in said rules requires that a person desiring to change his name should be of age and that if he is a minor the verification made by him is of no legal effect. Besides, conformably with article 316, paragraph 1, of the New Civil Code, the basic petition shows that the same was filed in the name of the minor petitioners, assisted by their mother as their guardian *ad litem.* The Court added that on the question of whether or not there is sufficient reason to justify the change of name, the fact that the petitioners had been using the names of Florimon Sia and Alice Sia for school purposes and their respective school records are under the names aforesaid constitutes by itself a valid ground upon which to authorize the change of their name. In this connection, the Court took into account that, according to the evidence, the Chinese surname Tse is really the same as or equivalent to Sia.

Is the requirement that the petition for change of name be verified jurisdictional? The Supreme Court gave a negative answer in *Oshita v. Republic.*[157] It was noted that the requirement regarding verification of a pleading is simply intended to

[155] G.R. No. 20997, April 27, 1967.
[156] G.R. No. 20708, August 31, 1967.
[157] G.R. No. 21180, March 31, 1967.

secure an assurance that what are alleged in the pleading are true and correct and not the product of an imagination or a matter of speculation, and that the pleading is filed in good faith. In concluding that, in the light of previous rulings, verification is not jurisdictional but a formal requisite, the Court observed that while the petition in the case at bar was not verified, it was subscribed and sworn to by the petitioner and that jurisdiction of the lower court was not affected by the absence of verification. It was further noted, however, that the lower court should have required the appellee to have the petition verified.

E. *Cancellation or Correction of Entries in Civil Registry*

The cases of *Oliva v. Republic*[158] and *Chug Siu v. Local Civil Registrar of Manila*[159] reiterate the ruling that a summary petition as authorized by article 412 of the New Civil Code does not lie where the matter "concerns the citizenship not only of petitioner but his children." There is a need for its being "threshed out in an appropriate action." It is settled that the jurisdiction of the court to order the correction or alteration of entry in the civil registry, allowed under article 412 of the Civil Code, is limited only to innocuous or clerical mistakes.

F. *Appeals in Special Proceedings*

Rule 109 of the Rules of Court, specifically section 1 thereof, enumerates the orders or judgments from which appeals may be taken. One of them is where such order or judgment allows or disallows a will.[160]

In *Fernandez v. Dimagiba*[161] and *Reyes v. Dimagiba,*[162] the Supreme Court ruled that a probate decree finally and definitely settles all questions concerning the capacity of the testator and the proper execution and witnessing of his last will and testament, irrespective of whether its provisions are valid and enforceable or otherwise. Such a probate order is final and appealable. In the cases at bar, the probate decree of the lower court was not appealed on time and has become final and conclusive. Appellate courts may no longer revoke said decree nor review the evidence upon which it is made to rest.

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158 G.R. No. 21806, August 17, 1967.
159 G.R. No. 20649, July 31, 1967.
160 Rules of Court, Rule 109, Sec. 1(a).
161 G.R. No. 23638, October 12, 1967.
162 G.R. No. 23662, October 12, 1967.

VI Criminal Procedure

A. *Prosecution of Offenses*

In *People v. Pineda*.[163] it was held that the question of instituting a criminal charge is one addressed to the sound discretion of the investigating Fiscal. The information he lodges in court must have to be supported by facts brought about by an inquiry made by him. It stands to reason then to say that in a clash of views between the judge who did not investigate and the Fiscal who did, or between the Fiscal and the offended party or the defendant, those of the Fiscal should normally prevail. In this regard, he cannot ordinarily be subject to dictation.

The Supreme Court held in *Del Rosario v. Callanta*[164] that under the Rules, a complaint or information is sufficient if it can be understood from the recital thereof that the offense was committed within the jurisdiction of the court, "unless the particular place wherein it was committed constitutes an essential element of the offense." In the case at bar for libel, attached to the complaint was an affidavit of the complainant, stating that the news item was read by a certain Councilor Napoleon Foz in the afternoon of August 29, 1962 in the presence of many other residents of that municipality. The Court concluded that the latter statement is an allegation that publication of the supposed defamatory news report also took place in the locality.

B. *Preliminary Investigation.*

In *Catelo v. Chief of City Jail, MPD*[165] the Supreme Court held that since Catelo was already in legal custody of the police, the first part of section 38-C of the Manila Charter does not apply and the fiscal could file an information against him even without preliminary investigation. To obtain preliminary investigation, Catelo must sign a waiver of Article 125 of the Revised Penal Code. Since he did not do so, the Fiscal perforce had to surrender him to the court by filing an amended information, even without first completing a preliminary investigation, because the law fixed a time limit of 18 hours for the Fiscal to do so.

Can the City Fiscal of Manila be restrained from proceeding with the investigation on the ground that "the essence of the

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[163] G.R. No. 26222, July 21, 1967.
[164] G.R. No. 23986, December 26, 1967.
[165] G.R. No. 26703, September 5, 1967.

crime is the accused's possession of prohibited interests in corporations domiciled in Naga City and in Mandaluyong, Rizal and that the place where the crime is to be prosecuted is the situs of such shares? This was answered by the Supreme Court in the negative in *Hernandez v. Albano.*[166] The Court said that in the case at bar the charges are not directed against the corporations. Possession of prohibited interests is but one of the essential components of the offense. As necessary an ingredient thereof is the fact that petitioner was head of a department — Secretary of Finance. So also, the fact that while head of department and chairman of the Monetary Board, he allegedly was financially interested in the corporations aforesaid which secured the dollar allocations, and that he had to act officially, in his dual capacity, not in Camarines Sur, but in Manila where he held his office. Since criminal action must be instituted and tried in the place where the crime or an essential ingredient thereof took place, it stands to reason to say that the Manila Fiscals, under the facts obtaining in the present case, have jurisdiction to investigate the violation complained of.

Can the special prosecutors legally conduct an investigation in the absence of the Provincial Fiscal whom they are designated to assist? In *Secretary of Justice v. Maglanoc.*[167] the Supreme Court held that the mere fact that the special prosecutors were designated to "assist" the Provincial Fiscal does not mean that the latter must always be present at every stage of the investigation.

C. *Prosecution of Civil Action*

In *Tactaquin v. Palileo,*[168] the Supreme Court sustained the dismissal by the lower court of a civil action on the ground that the claim for damages is already barred by the judgment in the criminal case concerning the same accident. The Court further stated that on the question of whether or not appellant made of record in the criminal case her right to institute a separate civil action for damages, the record tends to show that the reservation was made after appellee had already pleaded guilty and after the private prosecutor had entered his appearance jointly with the prosecuting attorney in the course of the cri-

[166] G.R. No. 19272, January 25, 1967.
[167] G.R. No. 19600, July 19, 1967.
[168] G.R. No. 20865, December 29, 1967.

minal proceedings. It was concluded that such reservation must be deemed legally ineffective.

There is some gap in the above decision, more particularly as to when such reservation should be made in order to be effective. This point has been made clear in the resolution of the Court in the same case on a motion for reconsideration. In said resolution, the Court held that, while the rule does not say when or at what stage of the criminal proceeding the reservation should be made, it seems logical to presume that for the reservation to be timely and legally effective, it must be made *before* the rendition of judgment.[169]

D. *Bail*

In *Villaseñor v. Albaño*,[170] it was held that the principal factor considered to the determination of which most other factors are directed in bail fixing, is the probability of the appearance of the accused, or his flight to avoid punishment. Of importance in this connection is the probable penalty that may be meted, which depends upon the gravity of the offense. It was also noted in the case at bar that the provision of Section 9, Rule 114 to the effect that as a qualification for sureties "each of them must be a resident householder or freeholder within the Philippines" is but a minimum requirement.

In connection with the appeal interposed by the bondsmen in *People v. Del Carmen*[171] it was contended that inasmuch as under Section 15, Rule 114 of the Rules of Court, the bondsmen are given 30 days to comply with its requirements, the court had no authority to render judgment on September 18, 1963 since the order to produce the body of the accused and show cause why judgment should not be entered on the bond was issued only on September 6, 1963. Holding such contention untenable, the Supreme Court said that all that is required before judgment upon the bond may be rendered is the performance by the bondsmen of two acts: (1) produce the body of the principal or give the reason for his non-production; and (2) explain satisfactorily why the principal did not appear before the court when first required to do so. In the case at bar, there is no point at all in deferring judgment since the matter is already

[169] *Id.*
[170] G.R. No. 23599, September 29, 1967.
[171] G.R. No. 22082, October 30, 1967.

submitted to the court on the only question of whether or not the explanation is satisfactory and whether or not the bondsmen should be held liable.

E. *Appointment of Assessors*

The question of whether or not the respondent Judge acted in excess of jurisdiction in denying the request of the accused for appointment of assessors was taken up in *Manaois v. De la Cruz*.[172] Answering the question in the negative, the Supreme Court held that the right to the service of assessors is subject to the provision that the request for the appointment should be made at the earliest convenient time, so as not to hinder or delay the trial or to unnecessarily inconvenience the progress of the work of the Court. In the case at bar, the accused waited three (3) months after arraignment to make the request one (1) day before the trial. The Supreme Court concluded that, under the circumstances, the respondent Judge had reason to believe that the request was not seasonably made and was merely for purposes of delay.

F. *Trial*

The main contention in *People v. Padernal*[173] is that the accused having pleaded guilty cannot be acquitted and that there was no trial on the merits but only a hearing to establish mitigating circumstances. Finding such contention to be without merit, the Supreme Court said that the court below caused a plea of not guilty to be entered in place of the plea of guilty considered withdrawn by the exculpatory testimony of the accused. And the trial judge reset the case for hearing on the merits four days thereafter, giving the prosecution the opportunity to prepare for trial on the merits. The fact that on the date of the trial itself, the prosecution and the defense chose to adopt the testimonies adduced during the previous hearing as their evidence on the merits does not mean that there was no trial on the merits. Due process of law was observed and both parties were given full and adequate opportunity to prove their respective case. The decision of acquittal, therefore, can no longer he reviewed herein, since the appeal is barred by the principle of double jeopardy.

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[172] G.R. No. 25567, February 20, 1967.
[173] G.R. No. 26734, September 5, 1967.

G. *Appeal*

In *People v. Ayoso*,[174] the accused-appellants contend that the law (Rule 123, Section 5) is specific that from a judgment of the Municipal Court only the convicted party may appeal. It was also contended that while in the Municipal Courts only the convicted party can appeal, in the Court of First Instance or courts of similar jurisdiction, any party can appeal, the only restriction being that the defendant is not placed in double jeopardy.[175] In the case at bar, the Supreme Court held that what was appealed in the Court of First Instance was the order of the Municipal Court dismissing the complaint upon the appellants' motion to quash before arraignment. Appropriately, as may be gleaned from the dispositive portion of the judgment, the Court of First Instance limited itself to the determination of the validity of the questioned dismissal, without in any way passing upon the guilt or innocence of the accused of the offense charged. Upholding the decision of the Cebu Court of First Instance in the case at bar, the Supreme Court noted the observation of said court to the effect that the provisions of Rule 118, Section 2 (now Rule 122, Section 2) are applicable in all criminal cases. In respective of the court where they may be pending, that legal provision constitutes no more than a mere enunciation of the principle of law that no appeal may be interposed by the prosecution in a criminal case if such an appeal shall thereby subject the accused for double jeopardy. The Court added that if we adopt the view espoused by the accused, then there will be no uniformity in the applicability of that legal principle and we will be confronted with absurd and curious situation that errors committed by the Municipal Courts in their rulings and judgments in criminal cases, which are not final in character, adverse to the state, shall be without remedy, while on the other hand, errors of the same nature committed by the Court of First Instance are renewable on appeal to the appellate courts because they are not in violation of the constitutional right of the accused against double jeopardy. The Court held that surely that could not be the intendment of the law. It was further observed that there is greater possibility of error of that nature in the Municipal Courts, considering the very nature of the composition of such courts, aside from the fact that there are a

[174] G.R. No. 18762, April 27, 1967.
[175] Rules of Court, Rule 122, Secs. 1 and 2.

great many more of such courts than are Courts of First Instance.

On appeal before the Supreme Court in *De Guzman v. Court of Appeals*[176] the petitioner claimed that the Municipal Court of Angat, Bulacan did not have original jurisdiction to try the case because of the value of the property stolen and, therefore, the Court of First Instance did not have appellate jurisdiction and, consequently, the Court of Appeals was bereft of the power to sentence him. In dismissing the appeal, the Supreme Court held that unquestionably the Municipal Court did not have jurisdiction but the petitioner went to the Court of First Instance and submitted to trial *de novo* and all along, he never raised his voice to protest. The Court noted with approval that as ultimately decided by the Court of Appeals the single case falls exclusively within the jurisdiction area allocated to the Court of First Instance and as the petitioner submitted to the original exercise thereof by that court without objection, he was thus properly convicted therein and, consequently, the Court of Appeals acquired appellate jurisdiction.

V.. EVIDENCE

A. *Admissibility*

Evidence is admissible when it is relevant to the issue and is not excluded by these rules.[177]

In *Stonehill v. Diokno*,[178] relying upon *Moncado v. People*,[179] the respondent-prosecutors maintained that, even if the searches and seizures under consideration were unconstitutional, the documents, papers and things thus seized are admissible in evidence against the petitioners. On this subject, the Supreme Court was of the unanimous opinion that the position taken in the *Moncado* case must be abandoned. It was noted that most common law jurisdictions have already given up the approach followed in that case and eventually adopted the exclusionary rule, realizing that this is the only practical means of enforcing the constitutional injunction against unreasonable searches and seizures. The Court cited Judge Learned Hand, thus:

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[176] G.R. Nos. 27671, 27684-86, July 27, 1967.
[177] Rules of Court, Rule 123, Sec. 3.
[178] G.R. No. 19550, June 19, 1967.
[179] 80 Phil. 1 (1948).

> "In earlier times, the action of trespass against the offending official may have been protection enough; but that is true no longer. Only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will that wrong be repressed."

B. *Judicial Admissions*

Rule 129, Section 2, Rules of Court, provides that admissions made by the parties in the pleadings, or in the course of the trial or other proceedings, do not require proof and can not be contradicted unless previously shown to have been made through palpable mistake.

The Supreme Court had occasion to apply the above provision in *Sveriges Angfartygys Assurans Forening v. Quo Chee Gan.*[180] Finding that plaintiff's cause of action suffers from several defects and inconsistencies, the Court pointed out that the alleged shipment of 812,800 kilos for Karlshamn is contradicted by plaintiff's admission in paragraphs 2 and 3 of its complaint to the effect that defendant shipped only 2,032,000 kilos of copra at Siain, purportedly for both Gdynia and Karlshamn. It was ruled that the plaintiff is bound by such judicial admission.

C. *Confession*

In *People v. Pereto*[181] the Supreme Court evaluated the accused's extra-judicial confession and his repudiation of the same at the trial. The Court held that the confession cannot be disregarded where the accused expressly acknowledged his participation in the commission of the crime charged, especially when there is ample evidence that said confession was made by the accused voluntarily. If it were true that the answers contained in the confession were not furnished by the accused, it would have been extremely easy for him to expose that fact before trial, yet no explanation had been given by him why he never denounced the same to the proper authorities — an inaction which heavily argues against the veracity of his claim. The Court stated that it cannot discard the confession simply because the accused denies what he stated therein.

With respect to defendants' allegations in *People v. Fontanosa*[182] that the extra-judicial confessions made by them were

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[180] G.R. No. 22146, September 5, 1967.
[181] G.R. No. 20894, December 29, 1967.
[182] G.R. No. 19421, May 24, 1967.

obtained through force, violence and duress, the Court noted that the fact that the medical certificates presented by them were not given much weight is due to the delay incurred by their counsel in having them examined by a doctor in spite of the fact that the lawyer had seen the purported effects of the maltreatment accorded them by the Philippine Constabulary as early as December 23, 1957, whereas the examination took place only on January 6, 1958. Moreover, cross-examination of the examining physician by the fiscal brought out the testimony that the wounds were self-inflicted 3 or 4 days prior to the examination thus conducted.

In the Fontanosa case, the Court reiterated the ruling on *corpus delicti*. This is in connection with the contention of the accused that the lower court erred in giving much weight to the extra-judicial confessions where the prosecution failed to corroborate the same with evidence of *corpus delicti*. The Court stated that it hardly needs reiteration that in murder, the fact of death is the *corpus delicti*.[183] It added that the rule stated in section 3, Rule 133 simply means that there must be some proof, aside from an extra-judicial confession, to show that the crime has been committed.

D. *Admissions*

In an administrative case, two complainants asked the Supreme Court to take disciplinary action against the respondent for professional non-feasance. During the hearing, an affidavit executed by one of the complainants was presented, asking for the dismissal of the administrative case. The Court ruled that the affidavit of Blanza, one of the complainants, cannot prejudice Pasion, the other complainant, because of the principle "*res inter alios acta altere nocere non debet.*"[184]

E. *Hearsay Evidence*

Rule 130, section 30, Rules of Court, provides that a witness can testify only to those facts which he knows of his own knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules.

In *People v. Castro*[185] it was ruled that the opinion of Conrada Pili-Gomez as to the guilt of the accused is not controlling,

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[183] Citing People v. Garcia, 99 Phil. 381, 388 (1956).
[184] Blanza v. Arcangel, G.R. Adm. Case No. 492, September 5, 1967.
[185] G.R. Nos. 20555 & 21449, June 30, 1967.

since she was not a witness to the incident in question. Obviously, it may be said that such opinion is hearsay.

F. *Act or Declaration about Pedigree*

The act or declaration of a person deceased, or outside of the Philippines, or unable to testify, in respect to the pedigree of another person related to him by birth or marriage, may be received in evidence where it occurred before the controversy, and the relationship between the two persons is shown by evidence other than such act or declaration. The word "pedigree" includes relationship, family genealogy, birth, marriage, death, the dates when and the places where these facts occurred, and the names of the relatives. It embraces also facts of family history intimately connected with pedigree.[186]

In *Gravador v. Manigo*,[187] the controversy involved is the date of birth of the petitioner, a public school principal, in connection with the law requiring compulsory retirement from the service at the age of 65. In sustaining the evidence presented by the petitioner, the Supreme Court held that the post-war records should be upheld. It reiterated the rule that although a person may have no personal knowledge of the date of his birth, he may testify as to his age as he has learned it from his parents and relatives and his testimony in such case is an assertion of a family tradition.[188] The Court also considered the import of the declaration of the petitioner's brother, contained in a verified pleading in a cadastral case way back in 1924, to the effect that the petitioner was then 23 years old. Made *ante litem motam* by a deceased relative, this statement is at once a declaration regarding pedigree within the intendment and meaning of section 33 of Rule 130 of the Rules of Court. Thus, it was held that December 11, 1901 was established as the date of birth of the petitioner not only by evidence of family tradition but also by the declaration *ante litem motam* of the deceased relative.

G. *Testimony at Former Trial*

According to Rule 130, section 41, Rules of Court, the testimony of a witness deceased or outside of the Philippines, or unable to testify, given in a former case between the same par-

[186] Rules of Court, Rule 130, Sec. 33.
[187] G.R. No. 24989, July 21, 1967.
[188] Rules of Court, Rule 130, Sec. 34.

ties, relating to the same matter, the adverse party having had an opportunity to cross-examine him, may be given in evidence.

In *Tan v. Court of Appeals*,[189] the witnesses at the former trial were subpoenaed by the Juvenile and Domestic Relations Court a number of times. But these witnesses did not appear to testify. The question is whether or not their testimonies in the former trial fall within the coverage of the rule of admissibility set forth in section 41, Rule 130 quoted above. Answering the question in the negative, the Supreme Court said that these witnesses are not dead, nor outside of the Philippines. Can they be categorized as witnesses of the class unable to testify? The witnesses in question were available. Only, they refused to testify. It was ruled that they do not come within the legal purview of those unable to testify.

H. *Weight and Sufficiency of Evidence*

1. Weight of Evidence in Appellate Courts

The defendant assigned as error the credibility accorded by the trial court on the witnesses for the prosecution in *People v. Gumarin*.[190] The Supreme Court held that the principle is well settled that "as far as credibility is concerned, the findings of the lower court which had the opportunity to see, hear and observe the witness testify and to weigh their testimonies will be accorded the highest respect by this Tribunal."[191]

This doctrine is the basis of an interesting ruling made by the Supreme Court in *Roque v. Buan*.[192] In this case, there was a disagreement between the Court of Appeals and the trial court regarding the latter's findings on certain matters of fact, as a result of which each court reached a different conclusion. Confronted with this problem, the Supreme Court held that if the decision of the Court of Appeals on the controversial matter suffers, as it does in the case at bar, from some ambiguity, the doubt should be resolved to sustain the trial court in the light of the principle that the judge who tries a case in the court below has advantage for the ascertainment of truth or falsehood over the appellate court sitting in review.

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189 G.R. No. 22793, May 16, 1967.

190 G.R. No. 22357, October 31, 1967.

191 This reiteration was also made by the Supreme Court in its earlier decision in *People v. Castro*, see note 185, *supra*.

192 G.R. No. 22459, October 31, 1967.

2. Evidence to Prove Due Execution of Wills

Junquera v. Borromeo[193] reiterates the ruling that in this jurisdiction the subscribing witnesses to a contested will are regarded as the best witnesses in connection with its due execution. It is similarly true, however, that to deserve full credit, their testimony must be reasonable and unbiased and that, as in the case of any of the witnesses, their testimony may be overcome by any competent evidence — direct or circumstantial.

3. Alibi

People v. Pelagio[194] reiterates the ruling that no jurisprudence is more settled in criminal cases than the rule that alibi is the weakest of all defenses and that the same should be rejected when the identity of the accused is sufficiently and positively established by witnesses. When nothing supports the alibi except the testimonies of relatives and friends, the said defense weighs and is worth nothing. Besides, the rule is to the effect that for alibi to prosper, it is not enough that he was also somewhere when the crime was committed but the defendant must prove that it was physically impossible for him to have been at the scene of the crime at such time. According to the Supreme Court, in the case at bar, defendant's alibi does not meet this standard.

But in a proper case, alibi may yet prove an effective defense after all. This is shown in *People v. Baquiran.*[195] It was held in this case that although alibi is the weakest defense that an accused can avail of, where the appellant's alibi is uncontradicted by the prosecution, its veracity has not been seriously challenged and except for minor inconsistency as to the name of the stolen bottle of wine, no other contradiction fatal to the alibi of the appellant has been exposed, the alibi acquires commensurate strength where, as in this case, no positive and proper identification has been satisfactorily made by witnesses of the offender's identity. The prosecution has the *onus probandi* in establishing the guilt of the accused, and the weakest of the defense does not relieve it of this responsibility.[196]

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[193] G.R. No. 18498, March 30, 1967.
[194] G.R. No. 16177, May 24, 1967.
[195] G.R. No. 20153, June 29, 1967.
[196] Citing People v. Fraga, G.R. No. 12005, August 31, 1960.

4. Power of Court to Allow Additional Evidence

In *Republic v. Luzon Stevedoring Corporation*,[197] one of the charges of the defendant against the lower court during the appeal is the alleged abuse of its discretion in the admission of plaintiff's additional evidence after the latter had rested its case. Finding this contention without merit, the Supreme Court ruled that whether or not further evidence will be allowed after a party offering the evidence has rested its case, lies within the sound discretion of the trial Judge, and this discretion will not be reviewed except in clear case of abuse. In the case at bar, the Court noted that no abuse of discretion is shown. What was allowed to be introduced, after plaintiff had rested its evidence in chief, were vouchers and papers to support an item of ₱1,558.00 allegedly spent for the reinforcement of the panel of the bailey bridge, and which item already appeared in Exhibit GG. The defendant, in fact, has no reason to charge the trial court of being unfair, because it was also able to secure, upon written motion, a similar order dated November 24, 1962, allowing reception of additional evidence for the said defendant.

[197] G.R. No. 21749, September 29, 1967.