REMEDIAL LAW

Arturo E. Balbastro*

I. Introduction

As noted in a previous survey, every case which reaches the court or any quasi-judicial body especially the highest tribunal in the judicial hierarchy, necessarily involves procedural law. But as realized in the past, only on a selective basis can a work of this nature ever attempt to be useful.[1]

The decisions of the Supreme Court during the year 1968 have kept faith with the ideal of progress in the continuity and development of procedural law in this country. The rulings included in this survey are eloquent witnesses to the dedicated and courageous effort of the members of the Supreme Court to forge ahead in the unchartered and frequently turbulent seas of procedural law.

II. Jurisdiction

While the primary guide on matters of jurisdiction is the provisions of Republic Act No. 296, as amended, otherwise known as the Judiciary Act of 1948, the Supreme Court has opened new horizons to some heretofore uncertain aspects of jurisdiction.

A. *Court of First Instance*

The jurisdiction of Courts of First Instance over actions the subject matter of which is not capable of pecuniary estimation received a clarification in *Lapitan v. Scandia, Inc.*[2] This case involved an appeal from an order of the Court of First Instance of Cebu, dismissing, for lack of jurisdiction, a complaint for rescission and damages. The Supreme Court held that the subject matter of actions for rescission of contracts is not capable of pecuniary estimation, and the court below erred in declining to entertain appellant's action for lack of jurisdiction.

A review of the jurisprudence indicates that, in determining whether an action is one the subject matter of which is not capable of pecuniary estimation, the Supreme Court has adopted the criterion of first ascertaining the nature of the principal action or remedy sought. If it is primarily for the recovery of a sum of money, the claim is considered

* *Professorial Lecturer in Law*, University of the Philippines.
[1] Balbastro, *Remedial Law*, 43 Phil. L.J. 296 (April, 1968).
[2] G.R. No. 24668, July 31, 1968.

capable of pecuniary estimation, and whether jurisdiction is in the municipal courts or in the courts of first instance would depend on the amount of the claim. However, where the basic issue is something other than the right to recover a sum of money, or where the money claim is purely incidental to, or a consequence of, the principal relief sought, like in suits to have the defendant perform his part of the contract (specific performance) and in actions for support, or for annulment of a judgement or to foreclose a mortgage, the Supreme Court has considered such actions as cases where the subject of the litigation may not be estimated in terms of money, and are cognizable exclusively by courts of first instance. The rationale of the rule is plainly that the second class cases, besides the determination of damages, demand an inquiry into other factors which the law has deemed to be more within the competence of the courts of first instance. Of course, where the money claim is prayed for as an *alternative* relief to specific performance, an equivalence is implied that permits the jurisdiction to be allocated by the amount of money claim.[3] But no such equivalence can be deduced in the case at bar, where the money award can be considered only if the rescission is first granted.[4]

In *Abenaza v. Court of Appeals*,[5] after a careful review of the record and the complicated circumstances involved, the Supreme Court arrived at the conclusion that both the Court of First Instance of Cebu and the Court of Appeals erred. The Court of First Instance of Cebu erred because under the resolution of the Court of Appeals of February 24, 1958 and the Supreme Court decision in G.R. No. 16671 of March 30, 1962, it had absolutely no authority and no discretion to dismiss the case remanded to it expressly for the purpose of conducting the "hearing as ordered by the Court of Appeals in the resolution dated February 24, 1958, in case C.A-G.R. No. 16861-R for the purpose of retaking the portions of the testimonies in the case which were lost, after which to forward the same to the Court of Appeals for decision." Its only duty, therefore, was to retake the testimony of witnesses the stenographic notes of whose testimonies had been lost by fire. Instead of doing this, it dismissed the case for lack of jurisdiction. Similarly, the Court of Appeals erred in dismissing the case C.A-G.R. No. 16861-R when it should have ordered the Court of First Instance of Cebu to proceed to retry the case under the conditions heretofore mentioned. Both courts, in this manner, rendered nugatory and virtually set aside the Supreme Court decision in G.R. No. 16671.

[3] Cruz v. Tan, 87 Phil. 627 (1950).
[4] See *supra* note 2.
[5] G.R. No. 23345, November 27, 1968.

III. Civil Procedure

A. *Parties*

Filipinas Industrial Corporation v. San Diego[6] reiterates the ruling that an attorney-in-fact is not a real party in interest, and hence an action brought by an attorney-in-fact in his name cannot be maintained.[7] This ruling is grounded in the provisions of section 2 of Rule 3 of the old Rules of Court (now section 2, Rule 3 of the Revised Rules of Court) which expressly provides that "every action must be prosecuted in the name of the real party in interest." The Supreme Court held that this provision is mandatory, and the real party in interest is the party who would be benefited or injured by the judgment or is the party entitled to the avails of the suit.[8] In the light of these authorities, the Supreme Court ordered dismissed a complaint filed with the Court of First Instance of Rizal for damages with preliminary attachment and injunction, entitled "Pastor D. Ago, in his capacity as attorney-in-fact of Francisco Laiz, Plaintiff, versus Filipinas Industrial Corporation, et al., Defendants."[9]

B. *Intervention*

Pacuesa v. Del Rosario[10] involves an appeal from the portion of the decision of the Court of Appeals dismissing the petition in the court below on the sole ground that the intervention, if allowed, would unduly delay and prejudice the rights of the original parties to the case. In sustaining the position of the Court of Appeals, the Supreme Court laid down the requisite considerations to be taken into account in granting or denying a motion for intervention. According to the Supreme Court, a party in interest who desires to pursue judicial relief — in intervention — must do so within a reasonable time. He should not idly sit by. He should be diligent. He should not permit precious time to pass before he asserts his rights in court. He should not allow a litigation in which he has a vital interest to proceed and then make an eleventh-hour effort to squeeze in. These are the guiding principles the purpose of which is to save parties already in court from undue delay and prejudice in the adjudication of their rights, arising out of intervention. In the case at bar, the Court found that delay was inexcusable and it would work injustice. Moreover, laches should be a bar.

---

[6] G.R. No. 22347, May 27, 1968.
[7] Citing Arroyo v. Granada, 18 Phil. 484, 489-490 (1911).
[8] Citing Subido v. City of Manila, G.R. No. 14800, May 30, 1960; 58 O.G. 4507 (June, 1962); Salonga v. Warner Barnes & Co., Ltd., 88 Phil. 125 (1951).
[9] *Supra*, note 6.
[10] G.R. No. 26353, July 29, 1968.

Undoubtedly, the above ruling expounds the spirit underlying the provisions of Rule 12, section 2, Revised Rules of Court, on intervention. This subject was further enunciated in *Cue v. Dolla.*[11]

Challenged on appeal in *Cue v. Dolla*[12] is the correctness of the order of the Court of First Instance of Manila denying appellant Philippine Savings Bank's motion to intervene in a case of unlawful detainer. In reversing and setting aside said order, and ordering the lower court to allow the bank's intervention and to admit its complaint in intervention, the Supreme Court held that no one may quibble over the existence of the court's discretion on whether to admit or reject intervention. But such discretion is not unlimited. As we assess the bank's position: its desire to obtain prompt possession of the premises to construct a branch office therein, its investment thereon, and the prejudice it will suffer by a delay in the delivery of the premises under its deed of sale, the conclusion is reached that the discretion of the trial court had not been here prudently exercised.

C. *Service and filing of pleadings and other papers*

Rule 13, Section 2, of the Revised Rules of Court received further elaboration in *J.M. Javier Logging Corporation v. Mardo.*[13] The issue in this case narrowed down to the validity of the service of the decision upon the employer itself, instead of upon its counsel of record. Reiterating the ruling in *Notor v. Daza,*[14] the Supreme Court held that the expression "every written notice" in the aforecited section includes notice of a decision. And conformably to the later part of the rule, where a party appears by attorney, notice to the former is not a notice in law, unless service upon the party himself is ordered by the court, which does not appear in the case at bar. The Court further noted that this rule is not a mere technicality, but one founded on consideration of fair play. A party engages an attorney of record precisely because it does not feel competent to deal with the intricacies of law and procedure. Furthermore, as the party directly served would have to communicate with its attorney and turn over to him the notice received, the net result would be to noticeably shorten the usable period for taking the proper steps required to protect the party's interests. The Court bewailed the fact that respondents' anxiousness to grant speedy remedy to the claimant has resulted in further prolonging the litigation.

[11] G.R. No. 27598, May 27, 1968.
[12] *Id.*
[13] G.R. No. 28188, August 27, 1968.
[14] 76 Phil. 850 (1946).

D. *Summons*

A question of transcendental importance which necessarily involves an inquiry into procedural due process is whether summons in a suit *in personam* against a resident of the Philippines temporarily absent therefrom may be validly effected by substituted service under section 8, Rule 14 (formerly section 8, Rule 7) of the Rules of Court. Speaking through Mr. Justice Sanchez, the Supreme Court tackled this question in *Montalban v. Maximo.*[15]

After reviewing foreign jurisprudence, the Supreme Court arrived at the view that it can be done; that American cases forged the doctrine, now long recognized, that domiciliaries of a state, though temporarily out of its territorial jurisdiction, are always amenable to suits *in personam* therein. And this precept is the foundation for the American rule that declares substituted service binding on absent residents. The Court concluded that there should be no doubt, therefore, that in suits *in personam,* courts have jurisdiction over residents temporarily out of the country.[16]

The Court went further to say that this construction is but fair. It is in accord with substantial justice. The burden on a plaintiff is not to be enlarged with a restrictive construction as desired by the defendant here. Under the rules, a plaintiff, in the initial stage of suit, is merely required to know the defendant's "dwelling house or residence" or his "office or regular place of business" — and no more. He is not asked to investigate where a resident defendant actually is, at the precise moment of filing the suit. Once defendant's dwelling house or residence or office or regular place of business is known, he can expect valid service of summons to be made on "some person of suitable age and discretion then residing" in defendant's dwelling house or residence, or on "some competent person in charge" of his office or regular place of business. By the terms of the law, the plaintiff is not even duty-bound to see to it that the person upon whom service was actually made delivers the summons to the defendant or informs him about it. The law presumes that for him.[17]

E. *Motion to dismiss*

The grounds for a motion to dismiss are enumerated in section 1, Rule 16 of the Revised Rules of Court. One ground is that "the court has no jurisdiction over the person of the defendant or over the subject of the action or suit."[18]

[15] G.R. No. 22997, March 15, 1968.
[16] *Id.*
[17] *Id.*
[18] Rules of Court, Rule 16, Sec. 1(a).

In *Tijam v. Sibonghanoy*,[19] the facts of the case show that from the time the surety became a quasi-party on July 31, 1948, it could have raised the question of the lack of jurisdiction of the Court of First Instance of Cebu to take cognizance of the present action by reason of the sum of money involved which, according to the law then in force, was within the original jurisdiction of inferior courts. The Court observed that it failed to do so. Instead, at several stages of the proceedings in the court *a quo* as well as in the Court of Appeals, it invoked the jurisdiction of said courts to obtain affirmative relief and submitted its case for a final adjudication on the merits. It was only after an adverse decision was rendered by the Court of Appeals that it finally woke up to raise the question of jurisdiction. In the language of the Supreme Court, were we to sanction such conduct on its part, we would in effect be declaring as useless all the proceedings had in the present case since it was commenced on July 19, 1948 and compel the judgment creditors to go up their Calvary once more. The Court added that the inequity and unfairness of this is not only patent but revolting.

Speaking through Mr. Justice Dizon, the Supreme Court said that it has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction.[20] In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject matter of the action or of the parties was not important in such cases because the party is barred from such conduct *not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice cannot be tolerated* — obviously for reasons of public policy.[21]

Another ground for a motion to dismiss is that "there is another action pending between the same parties for the same cause."[22] One aspect of this ground was discussed in *Calo v. Ajax International Incorporated*.[23]

In this case, the dismissal of Civil Case No. 860 by the court *a quo* because of the pendency of Civil Case No. IV-93062 in the municipal court of Manila is predicated on the supposition that plaintiff's claim is a compulsory counterclaim that should be filed in the latter case. There is no question that it arises out of the same transaction which is

[19] G.R. No. 21450, April 15, 1968.
[20] Citing Dean v. Dean, 136 Or. 694, 300 P. 1027, 86 A.L.R. 79 (1931).
[21] *Supra*, note 19.
[22] Rules of Court, Rule 16, Sec. 1(e).
[23] G.R. No. 22485, March 13, 1968.

the basis of the complaint in Civil Case No. IV-93062 and does not require the presence of third parties over whom the municipal court of Manila could not acquire jurisdiction.[24]

However, it was found that plaintiff's claim is not a compulsory counterclaim in Civil Case No. IV-93062 for the simple reason that the amount thereof exceeds the jurisdiction of the municipal court. The rule that a compulsory counterclaim not set up is barred, when applied to the municipal court, presupposes that the amount involved is within said court's jurisdiction. Otherwise, as the Supreme Court noted in *Yu Lay v. Galmes*,[25] we would come to the absurd situation where a claim must be filed with the municipal court which it is prohibited from taking cognizance of, being beyond its jurisdiction. Besides, the reason underlying the rule, which is to settle all related controversies in one sitting only, does not obtain. For, even if the counterclaim in excess of the amount cognizable by the inferior court is set up, the defendant cannot obtain relief. The Rules allow this only for the defendant to prevent the plaintiff from recovering from him because "counterclaim beyond the court's jurisdiction may only be pleaded by way of defense."[26] This means that should the court find both plaintiff's complaint and defendant's counterclaim (for an amount exceeding said court's jurisdiction) meritorious, it will simply dismiss the complaint on the ground that the defendant has a bigger credit. Since the defendant still has to institute a separate action for the remaining balance of his counterclaim, the previous litigation did not really settle all related controversies.[27]

In the case at bar, plaintiff Calo's claim of ₱12,000.00 not being a compulsory counterclaim in Civil Case No. IV-93062, it need not be filed there. The pendency then of said civil case could not be pleaded in abatement of Civil Case No. 860. Consequently, the Supreme Court concluded that the lower court erred in dismissing plaintiff's complaint, and ordered the case remanded for further proceedings.[28]

Municipality of Tacurong v. Abragan[29] reiterates the rule that as a ground for dismissal, lack of a cause of action must appear on the face of the complaint. And thus to determine whether a complaint states a cause of action, only facts alleged in the complaint, and no other, should be considered. Such ground for a motion to dismiss is specifically provided in Rule 16, section 1(g), Revised Rules of Court.

---

[24] *Id.*
[25] 40 Phil. 651, 662 (1920).
[26] Rules of Court, Rule 5, Sec. 5.
[27] See *supra* note 23.
[28] *Id.*
[29] G.R. No. 25314, February 10, 1968.

F. *Dismissal of actions*

Under the rules, "an action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment."[30]

Speaking through Mr. Justice Castro, the Supreme Court held in *Sunga v. Lacson*[31] that nothing in the language of section 1 of Rule 17 of the Rules of Court supports the view that before the defendant has answered, the action can be dismissed only at the instance of the plaintiff. To paraphrase Frankfurter, only literary perversity or jaundiced partisanship can sponsor such a particular rendering of the law.[32] For what the rule says is that before the defendant has answered the plaintiff can withdraw his action by merely giving notice to the court (Rule 17, sec. 1), but that after the defendant has answered the plaintiff may do so only with prior leave of the court (Rule 17, sec. 2). In other words, the rule governs the conditions under which the plaintiff may dismiss his action; it does not purport to deny thereby to the defendant the right to seek the dismissal of the action, in much the same way that to say that all men are mortal does not mean that all women are not. Such implication rests on a fallacy and is possible only through the use of an "illicit major."[33]

Saulog v. Custombuilt Manufacturing Corporation[34] reiterates the settled rule that the parties should be diligent in their prosecution or defense in a case and that to be entitled to a relief, the party concerned must show excusable negligence. In affirming the order of the lower court dismissing the appeal from the inferior court and in effect reviving the latter's judgment, the Supreme Court found that all the facts point to one conclusion, namely, lack of interest on the part of the appellant to defend itself against the complaint. Rather, the pattern of conduct discloses a desire to delay the disposal of the case.

G. *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 conference to consider settlement of the case and such other matters as may aid in the prompt disposition of the action.[35] A party who fails to appear at a pre-trial conference may be non-suited or considered as in default.[36]

---

[30] Rules of Court, Rule 17, Sec. 1.
[31] G.R. No. 26055, April 29, 1968.
[32] Frankfurter, *Some Reflections on the Reading of Statutes*, 47 COLUM. L. REV. 527 (1947).
[33] *Supra*, note 31.
[34] G.R. No. 29612, November 15, 1968.
[35] Rules of Court, Rule 20, Sec. 1.
[36] Rules of Court, Rule 20, Sec. 2.

In a case brought on appeal to the Supreme Court from an order of the Court of First Instance of Manila, dismissing the defendants' appeal from the city court for their failure to appear at the pre-trial, it was held that when the defendants, who themselves moved for the scheduling of the pre-trial conference, failed to appear at the pre-trial, the Court of First Instance correctly dismissed their appeal for failure to prosecute.[37]

The point in issue in *American Insurance Co. v. Manila Port Service*[38] has already been ruled upon in *Home Insurance Co. v. United States Lines Co.*,[39] wherein it was held that under the Revised Rules of Court pre-trial is mandatory and the parties as well as their counsel are required to appear during the pre-trial. And there it was stressed that section 2, Rule 20 provides that "a party who fails to appear at a pre-trial conference may be non-suited or considered as in default." In the case at bar, both defendants and defendants' counsel failed to appear. Although another lawyer appeared, ten minutes after the pre-trial was called and the dismissal order of the appeal from the inferior court issued, to ask for postponement of said pre-trial on behalf of defendants' counsel, the court did not err in denying the same, not only because it was late but also because of its finding that the defendants had already asked several postponements. Furthermore, defendants themselves, or their representatives, did not appear. A finding of failure to prosecute their appeal was therefore in order.[40]

H. *Relief from judgments, orders and other proceedings*

Go v. Gonzales[41] reiterates the ruling that a delay of a few minutes on the part of the litigants, their lawyers and/or witnesses to arrive in court for hearing does not justify the court to deprive a suitor of his day in court. As previously ruled in *Gil v. Talaña*,[42] where the plaintiff and counsel "were only about fifteen minutes late in arriving at the court" it was "an abuse of discretion of the trial court to dismiss the case definitely" and that it "would be too drastic to make a litigant suffer for such a short tardiness."

I. *Execution of judgments*

Execution shall issue only upon a judgment or order that finally disposes of the action or proceeding. Such execution shall issue as a

[37] International Harvester Macleod, Inc. v. Co Ban Ling & Sons Co., G.R. No. 26863, October 26, 1968.
[38] G.R. No. 27776, January 31, 1968.
[39] G.R. No. 25593, November 15, 1967.
[40] *Supra*, note 38.
[41] G.R. No. 23637, February 26, 1968.
[42] 96 Phil. 32, 34 (1954).

matter of right upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.[43]

The procedural issue in *Corpus v. Alikpala*[44] is whether, under the facts, the order of execution is appealable or not or, whether some discretion may yet be exercised by the court below. If no discretion is left to be exercised, the issuance of the order of execution is ministerial and non-appealable; otherwise, it is appealable. If ministerial, the issuance of execution is compellable by mandamus; if discretionary, mandamus will not lie.

The case at bar is an appeal from the order of execution, not an appeal from the judgment. And the general rule is that an order of execution is not appealable; otherwise, a case could never end.[45] Two exceptions to this rule were announced in *Castro v. Surtida,*[46] namely, where the order of execution varies the tenor of the judgment and when the terms of the judgment are not very clear and there is room for interpretation. The present case does not fall under either exception since the order of execution does not vary the tenor of the judgment, but is in accord therewith; and the terms of the judgment, as previously stated, are clear and definite; hence, the general rule of non-appealability applies.[47]

Go v. Gonzales[48] also reiterates the rule that to grant the issuance of a writ of execution pending appeal, the order must specify a good reason therefor.[49]

J. *Res judicata*

Aguila v. J. M. Tuason & Co., Inc.[50] reiterates the rule on *res judicata* and further elaborates on the philosophy behind it. In the case at bar, the Supreme Court said that public policy is firmly set against unnecessary multiplicity of suits; the rule of *res judicata,* like that against splitting causes of action, are all applications of the same policy, that matters once settled by a Court's final judgment should not thereafter be invoked again. Relitigation of issues already settled merely burdens the Courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases. As the Roman maxim goes, *Non bis in idem.*

---

[43] Rules of Court, Rule 39, Sec. 1.
[44] G.R. Nos. 23707 & 23720, January 17, 1968.
[45] 2 MORAN, COMMENTS ON THE RULES OF COURT 360 (1963).
[46] 87 Phil. 166 (1950).
[47] *Supra* note 44.
[48] *Supra* note 41.
[49] Rules of Court, Rule 39, Sec. 2.
[50] G.R. No. 24223, February 22, 1968.

K. *Appeal*

Fagtanac v. Court of Appeals[51] brings to mind a rule long familiar to practitioners in this jurisdiction that it is the duty of the appellant to prosecute his appeal with reasonable diligence. He cannot simply fold his arms and say that it is the duty of the Clerk of the Court of First Instance under the provisions of section 11, Rule 41 of the Rules of Court, to transmit the record on appeal to the appellate court. It is appellant's duty to make the clerk act and, if necessary, procure a court order to compel him to act. He cannot idly sit by and wait till this is done. He cannot afterwards wash his hands and say that delay in the transmittal of the record on appeal was not his fault. For, indeed, this duty imposed upon him was precisely to spur on the slothful.

In *Tinagan v. Roviro,*[52] the Supreme Court held that with respect to the record on appeal, it appearing that the disapproval of the record on appeal was based not on legal grounds, there being no showing that it was disallowed because it was defective, or filed out of time, or not in conformity with the requirements of the Rules, the lower court is hereby directed to set for hearing anew the record on appeal and appeal bond, and thereupon to take such action and to issue such orders in relation thereto as circumstances would warrant.

The Supreme Court upheld in *Infantado v. Liwanag*[53] the exercise of discretion by the Court of Appeals in granting extensions for filing a brief. According to the Supreme Court, the mere lapse of the period to file appellant's brief does not automatically result in the dismissal of the appeal and the loss of jurisdiction by the appellate court over the appeal. After the expiration of the period to file appellant's brief, there is still the need for the appellate court to act — that is, to order the dismissal of the appeal upon motion by the appellee, or to order the dismissal *motu proprio.* After the dismissal of the appeal by the court the party adversely affected by the dismissal still has a period of fifteen days from notice of the order of dismissal within which to file a motion for reconsideration, and the court can still reinstate the appeal if the motion for reconsideration is timely filed. It was presumed that the Court of Appeals found the motion for reconsideration filed by the appellant to be meritorious and that there was justification for granting him an additional period within which to file his brief.

[51] G.R. Nos. 26922 & 26923, March 21, 1968.
[52] G.R. No. 23555, January 29, 1968.
[53] G.R. No. 23697, December 28, 1968.

L. *Dismissal of appeal*

For failure to appear at the pre-trial conference before the Court of First Instance, after perfecting an appeal from an adverse decision of the inferior court, defendants' appeal was dismissed by the lower court. And since according to section 9, Rule 40 of the Rules of Court the judgment of the city court was thereby deemed revived, the case should be forthwith remanded to the city court for execution of judgment — which the Court of First Instance precisely ordered to be done in one case.[54]

Identical rulings were made along the same line in *Saulog v. Custombuilt Manufacturing Corporation*[55] and *American Insurance Company v. Manila Port Service*.[56]

M. *Costs*

In Cobb-Perez v. Lantin,[57] the Supreme Court modified its decision of May 22, 1968 by requiring attorneys Crispin D. Baizas and A. N. Bolinao, Jr. to pay jointly and severally the treble costs assessed against the petitioners. The Court expressly found that the protracted litigation, alluded to in the quoted portion of its decision, was designed to cause delay, and the active participation of the petitioners' counsel in this adventure was patent. The Court had occasion to deal on the duties of counsel. According to the Court, it is the duty of a counsel to advise his client, ordinarily a layman, on the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. A lawyer must resist the whims and caprices of his client, and temper his client's propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable.

IV. PROVISIONAL REMEDIES

A. *Preliminary injunction*

The provisions of Rule 58 of the Revised Rules of Court govern preliminary injunction in this jurisdiction.

Detective & Protective Bureau, Inc. v. Cloribel[58] is a reiteration of the rule regarding the necessity of verification of the motion for

[54] *Supra*, note 37.
[55] *Supra*, note 34.
[56] Supra, note 38.
[57] G.R. No. 22320, July 29, 1968.
[58] G.R. No. 23428, November 29, 1968.

dissolution of a writ of preliminary injunction to the effect that the requirement of verification is not absolute but is dependent on the circumstances obtaining in a particular case. The Supreme Court had occasion to summarize the precedents and also to consider and elaborate on the terminology of section 6 of Rule 58 of the Revised Rules of Court. According to the Court, if the application is based on the insufficiency of the complaint, the motion need not be verified. If the motion is based on the ground that the injunction would cause great damage to the defendant while the plaintiff can be fully compensated for such damages as he may suffer, the motion should be verified.

V. Special Civil Action

A. *Forcible entry and unlawful detainer*

Rule 70, section 1 of the Rules of Court determine when and by whom may actions of forcible entry or unlawful detainer may be instituted. These rules received substantial clarification in *Sarona v. Villegas*.[59]

As aptly put by the Supreme Court, speaking through Mr. Justice Sanchez, the key question in the case at bar is whether the present case is one of forcible entry or one of unlawful detainer. The law and jurisprudence leave no doubt that what determines the cause of action is the nature of defendants' entry into the land. If the entry is illegal, then the cause of action which may be filed against the intruder within one year therefrom is forcible entry. If, on the other hand, the entry is legal but thereafter possession became illegal, the case is one of illegal detainer which must be filed within one year from the date of the last demand.[60]

But will the rule as to tolerance hold true in a case where there was forcible entry at the start, but the lawful possessor did not attempt to oust the intruder for over one year, and only thereafter filed forcible entry suit following demand to vacate? Answering this question in the negative, the Supreme Court said that a close assessment of the law and the concept of the word "tolerance" confirms the view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer — not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. The Court gave two cogent reasons for this view.[61]

---

[59] G.R. No. 22984, March 27, 1968.
[60] *Id.*
[61] *Id.*

VI. CRIMINAL PROCEDURE

A. *Preliminary investigation*

Preliminary examination is a previous inquiry or examination made before the arrest of the accused by a judge or officer authorized to conduct the same, with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial.[62] According to Rule 112, section 10, Revised Rules of Court, in cases triable in the municipal courts, the accused shall not be entitled as a matter of right to a preliminary investigation in accordance with this section.

In *People v. Monton,*[63] the Supreme Court held that it cannot yield to the prosecution's suggestion that preliminary investigation be dispensed with in the case at bar for the mere reason that unlike in other offenses, in libel, the declaration of witnesses need not be taken, for the document itself, if found defamatory, and the authors definitely identified, is sufficient for filing the information. The Court observed that there is nothing in the law that pronounces an exception to the requirement which is substantial insofar as the rights of the accused are concerned. It is a basic rule that when the law does not distinguish neither should the courts distinguish. Of course, there is no dispute as to the latitude of discretion that the fiscal may exercise in the determination of what constitutes sufficient evidence as will establish "probable cause" for filing the information against a supposed offender. But the same is by no means absolute and does not in any manner grant the said investigating officer the license to dispense with preliminary investigation altogether.

The Court further held that section 1687 of the Revised Administrative Code, as amended, giving the provincial fiscal authority to file an information on the basis of a certification made by him to the effect that he had conducted a proper preliminary investigation presupposes the existence of good faith — that no such certification would be made without actual conduct of the same — so that where evidence adduced do not support such a claim, then, such a certification would not suffice to dispense with the preliminary investigation to which the defendant is entitled.[64]

---

[62] Rules of Court, Rule 112, Sec. 1.
[63] G.R. No. 23906, June 22, 1968.
[64] *Id.*

B. *Bail*

Bail is the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance.[65] According to the same Rule, a capital offense, as the term is used in this rule, is an offense which, under the law existing at the time of its commission, and at the time of the application to be admitted to bail, may be punished by death.[66] And it is settled that no person in custody for the commission of a capital offense shall be admitted to bail if the evidence of his guilt is strong.[67]

These rules found application in *People v. San Diego*.[68] In that case the information charged the principals in the murder of Jess Lapid with qualifying circumstances of treachery, evident premeditation, and abuse of superior strength, and with the aggravating circumstances of nocturnity, aid of armed men and craft or fraud. The prosecution and the defense agreed that the motions for bail of the accused would be considered in the course of the regular trial instead of in a summary proceeding. In the course of the regular trial, after the prosecution had presented eight witnesses, the trial court resolved the motions for bail granting the same despite the objection of the prosecution on the ground that it still had material witnesses to present. Setting aside the questioned orders granting the accused bail, the Supreme Court said:

> "The question presented before us is, whether the prosecution was deprived of procedural due process. The answer is in the affirmative. We are of the considered opinion that whether the motion for bail of a defendant who is in custody for a capital offense be resolved in a summary proceeding or in the course of a regular trial, the prosecution must be given an opportunity to present, within a reasonable time, all the evidence that it may desire to introduce before the court should resolve the motion for bail. If, as in the criminal case involved in the instant special civil action, the prosecution should be denied such an opportunity, there would be a violation of procedural due process, and the order of the court granting bail should be considered void on that ground. The orders complained of dated October 7, 9 and 12, 1968, having been issued in violation of procedural due process, must be considered null and void.
>
> The court's discretion to grant bail in capital offenses must be exercised in the light of a summary of the evidence presented by the prosecution; otherwise, it would be uncontrolled and might be capricious or whimsical. Hence, the court's order granting or refusing bail must contain a summary of the evidence for the prosecution followed by its conclusion whether or not the evidence of guilt is strong. The orders of October 7, 9 and

[65] Rules of Court, Rule 114, Sec. 1.
[66] Rules of Court, Rule 114, Sec. 5.
[67] Rules of Court, Rule 114, Sec. 6.
[68] G.R. No. 29676, December 24, 1968.

12, 1968, granting bail to the five defendants are defective in form and substance because they do not contain a summary of the evidence presented by the prosecution. They only contain the court's conclusion that the evidence of guilt is not strong. Being thus defective in form and substance, the orders complained of cannot, also on this ground, be allowed to stand."

C. *Motion to quash*

The rules governing motion to quash are provided for in Rule 117 of the Revised Rules of Court.

In *Cabrera de Chuatoco v. Aragon,*[69] the accused's motion to quash the criminal complaint for simple slander was denied by the Justice of the Peace of Antipolo on September 20, 1960. In the case at bar, the Supreme Court said the rulings of said Court on this matter have been consistent that neither certiorari nor prohibition lies against an order of the court granting or denying a motion to quash the complaint or information in a criminal case.[70] If the court has jurisdiction to take cognizance of the case and to decide the motion to quash, appeal in due time is the obvious and only remedy for the public prosecutor or the accused, as the case may be.[71]

D. *Promulgation of judgment*

The rule on promulgation of judgment as provided for in section 6, Rule 120 of the Revised Rules of Court received elaboration in two leading cases.

The first case is *Jimenez v. Republic*[72] where, speaking through Mr. Justice Angeles, the Supreme Court sustained the petitioner's theory that for a decision to be validly promulgated, the same must not only be rendered by a judge legally appointed and acting either as *de jure* or *de facto,* but that the decision must also be promulgated during the incumbency of the judge who penned the decision. The instant case was heard and tried by the Honorable Eulogio Mencias and judgment was rendered by him before he retired on January 21, 1965,

[69] G.R. No. 20316, January 30, 1968.

[70] Should there be not a distinction between an order granting a motion to quash and an order denying said motion? This is especially so considering that in the case of the former, it leaves nothing more to be done in the trial court and therefore appealable, while in the case of the latter, it does not dispose of the cause upon its merits and is merely interlocutory and not appealable. [4 MORAN, COMMENTS ON THE RULES OF COURT 306 (1963)]. It is submitted, in the case of such interlocutory order, the special civil action of certiorari or prohibition is available, especially in view of the inavailability of an appeal (Rules of Court, Rule 65, Secs. 1 and 2).

[71] Citing Arches v. Beldia, G.R. No. 2414, May 27, 1949; Ricafort v. Fernan, 101 Phil. 575 (1957); Mill v. Yatco, 101 Phil. 599, 602 (1957).

[72] G.R. No. 24529, February 17, 1968.

having reached the age of 70 years. Respondent Judge Pedro Navarro, who was immediately designated to take the place of Judge Mencias, ordered that the sentence be promulgated on January 29, 1965, but for some reason, it was postponed to March 1, 1965. In the light of these facts, the Supreme Court held that the decision rendered by the retired Judge Eulogio Mencias cannot be validly promulgated and acquire a binding effect for the same has become null and void under the circumstances.

People v. Soria,[73] which is the second case referred to earlier, involves an appeal by the People of the Philippines from the order of dismissal, by the Court of First Instance of Nueva Ecija, of its Criminal Case No. 176-G, upon motion to quash filed by the accused. Speaking thru Mr. J.B.L. Reyes, the Supreme Court held that the appeal must be dismissed, for it appears that the order of Judge Ramos, although dated October 1, 1965, was actually received by the Clerk of the Court of First Instance of Nueva Ecija and filed with the records of the case only on October 19, 1965; but prior to that date, on October 11, 1965, Judge Ramos had been extended by the President an *ad interim* appointment to the Court of First Instance of Manila, to which position he qualified on October 12, 1965. Evidently, therefore, while the order in question might have been written by Judge Ramos prior to his assumption to office as Judge of First Instance of Manila, the said order was promulgated *after* he had ceased as Judge of the Court of First Instance of Nueva Ecija. This renders the promulgation of the dismissal order invalid, for it is not the date of the writing of the decision or judgment that constitutes rendition thereof and gives it validity and binding effect, but the filing of such decision or judgment or order with the Clerk of Court.[74] And, if the decision is sent by registered mail, it is considered filed in court, not as of the date of posting, but as of its receipt by the Clerk.[75] In similar cases, decisions promulgated after the judge who penned the same had been appointed and had qualified to another court were declared not valid and without effect.[76]

In the case at bar, the Supreme Court did not subscribe to the contention of the Solicitor General that, notwithstanding Judge Ramos' appointment and qualification to the Manila Court of First Instance, he did not cease "holding office" and could have continued discharging

[73] G.R. No. 25175. March 1, 1968.
[74] Ago v. Court of Appeals, G.R. No. 17898, October 31, 1962.
[75] Sec. 51, Judiciary Act of 1948, as amended by Rep. Acts 1186 (1954) and 1404 (1955).
[76] Citing Ong Siu v. Paredes, G.R. No. 21638, July 26, 1966, and cases cited therein; Jimenez v. Republic, G.R. No. 24529, February 17, 1968.

the functions of Judge of First Instance of Nueva Ecija, because nobody was immediately appointed to fill the latter position and that the promulgation of the order even after the assignment of the judge to another court is allowed under section 9 of the Revised Rule 135 of the Rules of Court. The reason of the Supreme Court is that, under the law, after his acceptance of the appointment to preside over Branch III of the Court of First Instance of Manila, Judge Ramos could sit and attend to cases in any other court only upon proper authority of the Secretary of Justice, with previous approval of the Supreme Court.[77]

E. *Appeal*

From all final judgments of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Court of Appeals or to the Supreme Court as hereinafter prescribed.[78]

This rule was applied and expounded in *Andico v. Judge Amado G. Roan.*[79] The Supreme Court held that under such circumstances, and in view of the explicit provision of the latest amendatory act, to the effect that in all cases where judges of the municipal courts and Courts of First Instance have concurrent jurisdiction as above provided, which are to be tried and decided on the merits by them with proceedings to be recorded, the "decision therein shall be appealable direct to the Court of Appeals or to the Supreme Court,"[80] the appeal in this particular criminal case, where respondent Fidelino was found guilty and penalized by six months of *arresto mayor,* so petitioner asserts, should have been elevated to the Court of Appeals.

It was further held in the case at bar that on the controlling authority of *Esperat v. Avila,*[81] which speaks in categorical language, it is indisputable that respondent Judge Vasquez of the Court of First Instance of Manila, in taking cognizance of the appeal and refusing to elevate this case to the Court of Appeals, acted without jurisdiction. However, it was ruled that no mandamus lies as against respondent Judge Roan of the Municipal Court of Manila, for at this stage the judgment is not yet final and executory, the appeal having been perfected in due time.[82]

---

[77] *Supra,* note 72 citing Sec. 51, Rep. Act No. 296 otherwise known as Judiciary Act of 1948, as amended by Rep. Act Nos. 1186 (1954) and 1404 (1955), which was taken into account with Sec. 9, Rule 135 of the Rules of Court.

[78] Rules of Court, Rule 122, Sec. 1.

[79] G.R. No. 26563, April 16, 1968.

[80] Sec. 87(c), last par. of the Judiciary Act of 1948, as amended by Rep. Act No. 3828 (1963).

[81] G.R. No. 25922, June 30, 1967.

[82] See *supra* note 79.

VII. Evidence

A. *Judicial notice*

In *Municipality of Tacurong v. Abragan,*[83] the Supreme Court held that the lower court correctly took judicial notice of Executive Proclamation No. 351 which is among the matters within judicial notice under section 1, Rule 129 of the Rules of Court.

B. *Disqualification by reason of interest or relationship*

Under the Rules of Court, a husband can not be examined for or against his wife without her consent; nor a wife for or against her husband without his consent, except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other.[84]

In *Lezama v. Rodriguez,*[85] the basic issue was: In a case where the wife is a codefendant in a suit charging fraud against the spouses, can the wife be compelled to testify as an adverse party's witness concerning her participation in the alleged fraud without violation section 20(b) of Rule 130? Resolving this issue, the Supreme Court observed that in those jurisdictions which allow one spouse to be subjected to examination by the adverse party as a hostile witness when both spouses are parties to the action, either the interests of the spouses are separate or separable, or the spouse offered as a witness is merely a formal or nominal party. The final point urged upon the Court was that to prevent one spouse from testifying would encourage alliance of husband and wife as an instrument of fraud; for then what better way would there be to prevent discovery than to make a coconspirator in fraud immune to the most convenient mode of discovery available to the opposite party? The Court noted that this argument overlooks the fact that section 6 of Rule 132 is a mere concession, for the sake of discovery, from the rule which precludes the husband or the wife from becoming the means of the other's condemnation. The said rule of discovery should therefore not be expanded in meaning or scope as to allow examination of one's spouse in a situation where this natural repugnance obtains. Moreover, the Court also noted that the adverse party intending to present the wife as a hostile witness has not demonstrated that there is no evidence available to him other than the Lezamas' testimony to prove the charge recited in the complaint.

---

[83] See *supra* note 29.
[84] Rules of Court, Rule 130, Sec. 20(b).
[85] G.R. No. 25843, June 27, 1968.

C. *Confession*

The declaration of an accused expressly acknowledging his guilt of the offense charged, may be given in evidence against him.[86] It is, however, a rule that a confession, to be admissible, should be voluntary.[87]

In *Chavez v. Court of Appeals*,[88] the Supreme Court ruled that the court may not extract from a defendant's own lips and against his will an admission of his guilt. Nor may a court as much as resort to compulsory disclosure, directly or indirectly, of facts usable against him or a confession of the crime or the tendency of which is to prove the commission of a crime. Because, it is his right to forego testimony, to remain silent, unless he chooses to take the witness stand — with undiluted, unfettered exercise of his own free, genuine will. The Court elaborated that compulsion as it is understood here does not necessarily connote the use of violence; it may be the product of unintentional statements. Pressure which operates to overbear his will, disable him from making a free and rational choice, or impair his capacity for rational judgment would be sufficient. So is moral coercion "tending to force testimony from the unwilling lips of the defendant."

D. *Weight and sufficiency of evidence*

In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greatest number.[89] The rule for determining the weight of evidence in civil cases, are also applicable in determining the weight of evidence in criminal cases.[90]

The Supreme Court had occasion to amplify the above rules in *People v. Fontillas*.[91] According to the Supreme Court, the weight to be given to the testimony of witnesses possessing integrity and intel-

[86] Rules of Court, Rule 130, Sec. 29.
[87] 5 MORAN *op. cit.* at (1963) citing People v. Pulido, 85 Phil. 695 (1950).
[88] G.R. No. 29169, August 19, 1968.
[89] Rules of Court, Rule 133, Sec. 1.
[90] 6 MORAN *op. cit.* at 138 (1963) citing U.S. v. Claro, 32 Phil. 413 (1915).
[91] G.R. No. 25298, April 16, 1968.

ligence, as are the witnesses of the prosecution in this case, who have no motive to fabricate the facts and to foist a very serious crime against the appellants, depends chiefly upon their observation and means of knowing the facts testified to by them. Other things being equal, in case of conflict of testimony, the great weight should be given to the testimony of those witnesses whose position gave them the best opportunity for observation.[92]