REMEDIAL LAW

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I. Introduction

The year 1969 has been a steady and consistent development in remedial law. This is quite heartening to note during these times when our society is in ferment. Resort to legal processes by our people can only indicate their faith in our legal institutions. In such process, procedural law plays a significant role. This is especially so when we consider that 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]

As expected because of the conservative nature of the discipline, the Supreme Court decisions in this field for 1969 abound in reiteration of previous rulings. Such a tendency shows the continuity in judicial pronouncements which lend stability to our legal system. But also noteworthy are the new avenues which have been opened paving the way for further development in procedural law. Even for this alone, a perusal of this year's survey in this field can be enriching to the legal mind.

II. Jurisdiction

A. Supreme Court

A novel and intriguing problem was presented in *People v. Marquez*,[2] where appeal in two (2) cases were taken by all the defendants directly to the Court of Appeals. Whereas in criminal case No. 7050, the sentence imposed by the trial court was life imprisonment, in the other, criminal case No. 7054, it was *reclusion temporal*. The first case is indisputably within the exclusive jurisdiction of the Supreme Court, while the second, where questions of law and fact are raised and the penalties meted out are lower than life imprisonment, is reviewable initially by the Court of Appeals.[3]

B. Court of Appeals

In the aforecited case of *People v. Marquez*,[4] the Court of Appeals certified both cases to the Supreme Court. It appears, as noted by the Supreme

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1 Rule 2, secs. 1 and 2, Rules of Court.

2 G.R. Nos. 24373 & 24374, November 28, 1969.

3 (Judiciary Act of 1948), sec. 17, par. (4) and sec. 29, Rep. Act No. 296, as amended.

4 *Supra*, note 2.

Court itself, that the Court of Appeals, in abdicating its appellate jurisdiction, was persuaded by several factors. The Court of Appeals would therefore have only one appellate court review the single decision in these two cases in order to avoid possible conflict in the final findings of two appellate tribunals on the common factual aspects. Rightly so, each case was separately determined by the trial court, as each should be separately reviewed on appeal. However, the Supreme Court pointed out that appellate competence is circumscribed by statute, and is not in flux and ferment to be settled by exigencies of trial proceedings, much less by the physical composition of the *expediente*.

Noted in *Lim v. Court of Appeals*[5] was the fact that on September 9, 1968, Republic Act No. 5440 was approved, amending the Judiciary Act of 1948 by removing altogether the value-in-controversy test with respect to the allocation of appellate jurisdiction between the Court of Appeals and the Supreme Court in civil cases. Since the appeal from the basic expropriation case, if allowed to be taken, would go to the Court of Appeals, necessarily the question of whether or not mandamus should issue to compel the trial court to give due course to such appeal is addressed to the Court of Appeals, the writ prayed for being in aid of its appellate jurisdiction in the premises.

C. Court of First Instance

Although for infractions of the general penal laws, military courts and civil courts have concurrent jurisdiction, the rule enunciated in *Crisologo v. People*[6] accords to the court first acquiring jurisdiction over the person of the accused by the filing of charges and having him in custody the preferential right to proceed with the trial.[7]

Evidently in *Arula v. Espino*,[8] the general court-martial has acquired jurisdiction, which it acquired exclusively as against the Court of First Instance of Cavite, not only as to the element of precedence in the filing of the charges, but also because it first acquired custody or jurisdiction of the persons of the accused. Court-martial jurisdiction continues throughout all phases of the proceedings, including appellate review and execution of the the sentence.

Philippine Education Co., Inc. v. Manila Port Service,[9] is an ordinary action for the collection of a sum of money. The total amount of the claim is, however, not merely ₱4,451.90. A perusal of the complaint reveals that the claim of the plaintiff-appellate is for the total sum of ₱5,451.90, consisting of ₱4,451.90 representing attorney's fees. Under the then existing law,[10]

[5] G.R. No. 23138, May 21, 1969.
[6] 94 Phil. 477, 482 (1954).
[7] Arula v. Espino, G.R. No. 28949, June 23, 1969.
[8] *Id.*
[9] G.R. No. 26524, April 25, 1969.
[10] Rep. Act No. 296 (1948), as amended by Rep. Act No. 2613 (1959). Sec. 44, par. (c).

courts of first instance had original jurisdiction in all cases in which the demand, exclusive of interests, amounted to more than five thousand pesos. In the determination of the jurisdictional amount, only interest and costs are excluded. The amount of attorney's fees claimed is included in the determination of the jurisdiction of the court. In the case at bar, the total amount of the claim inclusive of attorney's fees is ₱5,451.90. The court of first instance clearly had jurisdiction over the case when the complaint was filed on December 7, 1961.

This subject was further elaborated in *National Marketing Corporation v. Marquez*,[11] where the appellant surety company argued that since the balance due on the principal of the promissory note guaranteed by it is only ₱10,000.00, in view of the debtor's payment of ₱2,000.00 on account of the principal loan, the jurisdiction lay with the Municipal Court, and not with the Court of First Instance, pursuant to section 44(c) of the Judiciary Act, as amended by Republic Act No. 3828. Such contention was held without merit, for it ignored the fact that upon the terms of the promissory note, copy of which was attached to the guaranty bond, default upon the principal or interest entitled the creditor to an additional ten per centum of the total amount due for attorney's fees and costs of collection. Even disregarding interest overdue and payable, when the complaint was filed the creditor-appellee was entitled to collect no less than ₱10,000.00 on the loan plus ₱1,000.00 as attorney's fees, or a total of ₱11,000.00. It was specifically noted that the initial limit of the original jurisdiction of the Court of First Instance under Republic Act No. 3828 is as follows:

> "all cases in which the demand, exclusive of interest, or the value of the property in controversy, amounts to more than ten thousand pesos."

Further enunciation of the rule on the determination of jurisdictional amount is found in *Ganaban v. Bayle*.[12] In this case, the lower court presumably felt that the case falls within the purview of the second sentence of Section 88 of the Judiciary Act, as amended by Republic Act No. 2613, which makes reference to "*several* claims or *causes of action* between the same parties embodied in the same complaint," thereby overlooking the fact that the "distinct *interest*," of each of the plaintiffs "over the *estate* left by Leon Ganaban," is something entirely different from their "*cause of action*" against the defendant. Plaintiffs' complaint sets forth only *one* cause of action, namely, the right of Leon Ganaban to recover the money admittedly entrusted by him to the defendant. The singleness of that cause of action is not affected by the circumstance that its enforcement is now sought by his heirs, who, as such, have merely stepped into his shoes, and are thus his *alter egos*. The truth of this assertion becomes more apparent when we bear

[11] G.R. No. 25553, January 31, 1969.
[12] G.R. No. 28864, November 27, 1969.

in mind that the present case could have been brought by the administrator — had there been one — of the estate of the deceased. The fact that several persons would profit by such case would not have the the effect of splitting the cause of action therein into as many claims or causes of action as there are beneficiaries or heirs of the deceased. As a consequence, the sum total of the judgment prayed for in plaintiffs' complaint, which lies within the competence of the lower court, not of a municipal or city court, is determinative of the jurisdiction over the case.

The ruling in *Palanan Lumber and Plywood Co. v. Judge Arranz*[13] and the cases therein cited is reiterated in *De la Cruz v. Gabor*,[14] more particularly concerning jurisdiction to issue injunction. It was held in the present case that the Court of Instance correctly stated the law to be that it had no jurisdiction to issue the writ of preliminary injunction prayed for in the complaint against the national officials stationed outside of the territorial jurisdiction of the court. Section 44(h) of the Judiciary Act and the consistent jurisprudence of the Supreme Court are clear to that effect. The Supreme Court added that, contrary to appellant's view, section 17, paragraph 1, of the Judiciary Act, that defines the jurisdiction of the Supreme Court in concurrence with that of the courts of first instance, in no way enlarges the power of the latter beyond the territorial limits set by section 44(h).

The rule is well settled that the jurisdiction of a court is determined by the statute in force at the time of the commencement of the action, and that jurisdiction once acquired continues until the case is finally terminated. A case with facts more or less analogous to those of the instant case was recently decided by the Supreme Court.[15] In that case, plaintiff's demand was for ₱6,000.00, which amount, at the time of the filing of the complaint on June 20 1963, under Section 44(c) of Republic Act No. 296, was within the jurisdiction of the Court of First Instance of Manila. In sustaining the jurisdiction of the Court of First Instance, the Supreme Court held that it was of no moment that summons was served after the effectivity of Republic Act No. 3828, because the rule is firmly entrenched in our law that jurisdiction once acquired, as it was so acquired in said case upon the filing of the complaint two (2) days before the effectivity of said law, continues until the case is finally terminated.[16]

Luansing v. People[17] elaborates on one of the questions falling within the twilight zone of jurisdiction, more particularly as between inferior courts and courts of first instance. In this case, it was observed at the outset that Section 44(f), Republic Act No. 296, as amended, provides that Court of First Instance have original jurisdiction of "all criminal cases in which the

[13] G.R. No. 27106, March 20, 1968.
[14] G.R. No. 30774, October 31, 1969.
[15] Republic v. Central Surety and Insurance Co., G.R. No. 27802, October 26, 1968.
[16] Uypuanco v. Hon. Jose N. Leuterio, G.R. No. 22706, March 28, 1969.
[17] G.R. No. 23289, February 28, 1969.

penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos," and Section 87(b) of the same Act provides that Justice of the Peace and Municipal Courts have original jurisdiction over "all offenses in which the penalty provided by law is imprisonment for not more than six months, or a fine of not more than two hundred pesos, or both such fine and imprisonment." The penalty imposed by Article 338 of the Revised Penal Code for the crime of simple seduction is *arresto mayor*, the duration of which is from one month and one day to six months. Apparently, the crime of simple seduction falls under the original jurisdiction of the Justice of the Peace or Municipal Courts. However, it should not be overlooked that persons guilty of seduction shall also be sentenced to indemnify the offended woman, to acknowledge the offspring unless the law should prevent him from so doing, and to give support to such offspring.[18] These are inherent accesory liabilities when a child is born as a result of the crime. The acknowledgment of, and the giving of support to, the offspring are matters beyond the jurisdiction of the Justice of the Peace or Municipal Courts. They pertain to the Court of First Instance.[19]

It has been held that laws conferring jurisdiction on the inferior courts over demands below certain amounts do not preclude a determination of said demands in the superior courts, where they are connected with larger claims or with a type of demand solely within the jurisdiction of the superior court. Thus for instance, where an action is within the jurisdiction of the Court of First Instance because it involves an issue of admiralty, the said court must be held likewise to have jurisdiction over other causes of action joined thereto even if the amount sought to be collected is less than the jurisdictional limit.[20] In like manner, since the crime of seduction carries with it a liability, under Article 345 of the Revised Penal Code, to acknowledge and give support to the offspring resulting from the crime — matters beyond the jurisdiction of the Justice of the Peace or Municipal Courts — it follows that the instant case falls within the jurisdicton of the Court of First Instance.[21] It would be absurd to have the principal case of seduction tried and decided by the Municipal Court and the resulting acknowledgment and support of offspring by the Court of First Instance. The duplication would entail unnecessary waste of time and effort for the parties and for the courts, to the detriment of an orderly administration of justice.[22]

The question raised in *Bisaya Land Transportation Co., Inc., v. Hon. Francisco Geronimo*,[23] involves the provisions of Section 9, Rule 41 of the Revised Rules of Court substantially to the effect that notwithstanding the perfection

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18 REV. PEN. CODE, art. 345.
19 Rep. Act No. 296 (1948); Sec. 44(a) and (e).
20 Fireman's Fund Insurance Co. v. Cia. General de Tabacos de Filipinas, G.R. No. 22625, April 27, 1967.
21 U.S. v. Bernardo, 19 Phil. 265 (1911).
22 *Supra*, note 17.
23 G.R. No. 29618, August 28, 1969.

of an appeal, the trial court may still "issue orders for the protection and preservation of the rights of the parties which do not involve any matter litigated by the appeal, etc." This provision has been construed in the sense that, during the pendency of an appeal, the trial court retains jurisdiction to appoint a receiver,[24] and to make any order for the protection and preservation of the rights of the parties which do not affect the issue involved in the appeal.[25]

What court has jurisdiction to annul a particular decision previously rendered? This question has been answered in *Sterling Investment Corporation v. Hon. V. M. Ruiz*.[26] In the case at bar, the jurisdiction of respondent Judge was assailed on the ground that only the same branch of the court of first instance, which rendered the decision, possesses the competence to annul it. Since it was admitted that the 1958 decision was rendered in the sala then presided by Judge Andres Reyes, now Justice of the Court of Appeals, clearly respondent Judge who presided in another and distinct branch was not vested with jurisdiction over said case. This contention finds support in *J.M. Tuason & Co., Inc. v. Torres*,[27] where it was held that "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." Further, support for such contention may be found in the rulings that "any other branch, even if it be in the same judicial district — like those of the Courts of First Instance of Rizal, sitting at Pasig and Quezon City, which belong to the 7th Judicial District — that attempts to do so either exceeds its jurisdiction,[28] or acts with grave abuse of discretion amounting to lack of jurisdiction".[29] Parenthetically, these two rulings have been reaffirmed in *Mas v. Dumara-og*.[30] 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 coordinate branch.[31]

D. Municipal or City Court

It has been observed in *People v. Laba*,[32] that one of the cardinal purposes of the Judiciary Act of 1958 was to enlarge the jurisdiction of the justices of the peace (now municipal judges), who are all required by the Constitution to be full-fledged lawyers. Section 87 of the Judiciary Act of

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[24] Velasco v. Gochuico, 28 Phil. 39 (1914); Government v. de Asis, 68 Phil. 718 (1939).
[25] Dizon v. Moir, 36 Phil. 759, 760-761 (1917); Canafe v. Caluag, 78 Phil. 836 (1947).
[26] G.R. No. 30694, October 31, 1969.
[27] G.R. No. 24717, December 4, 1967, 21 SCRA 1169, 1172 (1967).
[28] Cabigao v. Del Rosario, 44 Phil. 182 (1922).
[29] Philippine National Bank v. Javellana, 92 Phil. 525 (1953).
[30] G.R. No. 16252, September 29, 1964.
[31] *Supra*, note 26.
[32] G.R. No. 28022, July 30, 1969.

1948 was amended by Republic Act No. 2613 on August 19, 1959 to further enlarge the jurisdiction exercised by justices of the peace and by municipal courts in capitals of provinces, by authorizing them to try offenses for which the penalty provided by law does not exceed *prision correccional* or imprisonment for not more than 6 years or a fine of not exceeding ₱3,000, or both. Such cases are to be tried on the merits, and the decisions rendered therein by the municipal or city courts are appealable directly to the Court of Appeals or the Supreme Court, as the case may be.

The above ruling in *People v. Laba*[33] has been reiterated in *Alcantara v. Hon. Marcelo Valdehueza*[34] which was decided by the Supreme Court a day later. Both these cases are reiterations of the earlier case of *People v. Cook*.[35]

Jurisdiction of courts of limited jurisdiction — and municipal courts are amongst them, is to be interpreted in *strictissimi juris*. Under this frame of mind, the Supreme Court exercised its duty to examine whether petitioners' case in *Deveza v. Hon. Juan B. Montecillo*[36] fits into the applicable legal precept. Section 1 of Rule 70 specifies a time limit — "within one (1) year after such unlawful deprivation or withholding of possession" — within which an action may be brought in the inferior court. The one-year period is thus to be counted from illegality of possession. If any meaning is to be given to the complaint, it is this: the illegal nature of the possession in question coincided with the start of the possession. Because jurisdiction hinges on the one year period "after such unlawful deprivation or withholding of possession" and the period of such unlawful deprivation or withholding of possession *does not clearly appear* on the face of the complaint, and, for the reason that petitioners have admitted that private respondent was in the land for more than one year prior to the time the complaint was lodged in court, the case at bar was ordered dismissed.

Makati Development Corporation v. Tanjuatco & Concrete Aggregates, Inc.[37] involves an appeal from the order of dismissal of the Court of First Instance of Rizal (Pasig) which was predicated upon lack of jurisdiction. Reliance is made upon Rule 63 of the present Rules of Court, prescribing the procedure in cases of interpleading, and section 19 of Rule 5 of said Rules of Court, which, unlike section 19 of Rule 4 of the old Rules, omits the Rules on interpleading among those made applicable to inferior courts. The Supreme Court noted that this fact does not warrant, however, the conclusion drawn therefrom by the plaintiff. To begin with, the jurisdiction of our courts over the subject-matter of justiciable controversies is governed by Republic Act No. 296, as amended, pursuant to which municipal courts

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[33] *Id.*
[34] G.R. No. 27790, July 31, 1969.
[35] G.R. No. 25305, January 31, 1969.
[36] G.R. No. 23942, March 28, 1969.
[37] G.R. No. 26443, March 25, 1969.

shall have exclusive original jurisdiction in all civil cases "in which the demand, exclusive interest, or the value of the property in controversy" amounts to not more than "ten thousand pesos." Secondly, "the power to define, prescribe, and apportion the jurisdiction of the various courts" belongs to Congress and is beyond the rule-making power of the Supreme Court, which is limited to matters "concerning pleading, practice, and procedure in all courts, and the admission to the practice of law." Thirdly, the failure of said section 19 of Rule 5 of the present Rules of Court to make its Rule 63, on interpleading, applicable to inferior courts, merely implies that the same are not bound to follow Rule 63 in dealing with cases of interpleading, but may apply thereto the general rules on procedure applicable to ordinary civil action in said courts.

III. Civil Procedure

A. Purposes of the Rules of Court

In awarding treble costs against the defendant-appellant in *J.P. Juan & Sons, Inc. v. Lianga Industries, Inc.*,[38] the Supreme Court said that cases such as this contribute to the needless clogging of court dockets. The Rules of Court were devised to limit the issues and avoid unnecessary delays and surprises. Hence, the mandatory provisions of Rule 20 of the Revised Rules of Court for a pre-trial conference for the simplification of the issues and the consideration of all matters which may aid in the prompt disposition of an action. The Rules further require in Rule 7 section 5 that "every pleading of a party represented by an attorney shall be signed by at least one attorney of record in his individual name" and that "the signature of an attorney constitutes a certificate by him that he has read the pleading and that to the best of his knowledge, information and belief, there is good ground to support it; and that it is not interposed for delay" with the express admonition that "for willful violation of this rule, an attorney may be subjected to disciplinary action." The cooperation of litigants and their attorneys is needed so that the salutary objectives of these Rules may be attained.

B. Cause of Action

In *Sabangan v. Manila Railroad Company*,[39] it was noted that there can be no question that the complaint was very unskillfully drafted. But it was equally unquestionable that it asserted certain rights against the defendants, particularly the Manila Railroad Company, and asserted likewise that the demands for such rights had not been complied with. The complaint may be deficient in details with respect to the factual basis of each and every item claimed, but the deficiency, in the Supreme Court's opinion, was not such as

[38] G.R. No. 25137, July 28, 1969.
[39] G.R. No. 29839, July 17, 1969.

to amount to a failure to state a cause of action; and if necessary, could be cured by means of a motion for a bill of particulars so as to enable the defendants to properly frame their responsive pleadings.

City of Bacolod v. San Miguel Brewery, Inc.[40] illustrates splitting a cause of action. In this case, the Supreme Court held that there was no question that the appellee split up its cause of action when it filed the first complaint on March 23, 1960, seeking the recovery of only the bottling taxes or charges plus legal interest, without mentioning in any manner the surcharges. The rule is clear and an old one, namely, that embodied in Sections 3 and 4 of the Rules of Court still in force then (same at present). The meaning, origin and purpose of this rule has been explained by the Supreme Court in *Bachrach Motor Co., v. Icarañgal.*[41] In other words, whenever a plaintiff has filed more than one complaint for the same violation of a right, the filing of the first complaint on any of the reliefs born of the said violation constitutes a bar to any action on any other possible reliefs arising from the same violation, whether the first action is still pending, in which event, the defense to the subsequent complaint would be *litis pendentia,* or it has already been finally terminated, in which case, the defense would be *res adjudicata.* Indeed, *litis pendentia* and *res adjudicata,* on the one hand, and splitting a cause of action, on the other, are not separate and distinct defenses, since either of the former is by law only the result or effect of the latter, or, better said, the sanction for or behind it.

C. Commencement of Action

A civil action is commenced by filing a complaint with the court,[42] and the payment of legal fees is provided for specifically by the Revised Rules of Court in its Rule 141.

In *Garcia v. Hon. Conrado M. Vasquez,*[43] it was held that the petitioner should have been aware that there is no escape from the payment of the corresponding docket fee, otherwise, the Court is not called upon to act on a complaint or petition. Nor does it suffice to vary the rule simply because there is only one decedent whose estate is thus to be disposed of by will that must first be probated. It is far farfetched or implausible that a decedent could have left various wills. Under such circumstances, there is nothing inherently objectionable in thus exacting the payment of a docket fee, every time a will is sought to be probated. Petitioner could have sought the probate of the will presented by him in the same proceeding. He did not; he filed instead a separate action.

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[40] G.R. No. 25134, October 30, 1969.
[41] 68 Phil. 287, 292-293 (1939).
[42] RULES OF COURT, Rule 2, sec. 6.
[43] G.R. No. 26808, March 28, 1969.

D. Parties

Every action must be prosecuted and defended in the name of the real party in interest.[44]

Thus, where respondent had been judicially declared by the Supreme Court in a previous proceeding to be without legal interest in the estate of the decedent, no useful purpose would be served by his pending action in the sala of respondent Judge for partition, with inventory, accounting and delivery of shares. Accordingly, the order of respondent Judge refusing to dismiss the case would clearly appear, under the circumstances, to be devoid of any support in law and amount to a grave abuse of discretion.[45]

In *Narito v. Carrido*,[46] it was held that even before the adoption of the Revised Rules of Court, the Supreme Court had uniformly frowned upon appellate courts entertaining petitions to appeal as pauper, holding that the task of determining the merits of such petitions properly devolves upon the trial court, even though the old Rules contained no provision, as does the present one, expressly withholding from an appellate court the right to entertain petitions to appeal as pauper. The reason behind the policy is that whether a party-litigant is so poor as to qualify him to litigate as pauper is a question of fact which can best be determined by a trial court.[47]

E. Venue

The crucial issue in the appeal in *Salud v. Hon. Executive Secretary*[48] is whether or not a petition for review of an administrative decision is to be filed in the Court of First Instance of the province or city where the real property subject of the litigation is located or where the officer who rendered the decision holds office? It was the view of the Judge that as the action was one "affecting title to, or for recovery of possession of real property," it should be commenced and tried in the province where it lies. In reversing said order of the Judge, the Supreme Court said that the answer thus given does not reflect the settled law on the subject. The doctrine concerning the jurisdiction of the judicial tribunal where the executive official whose decision is sought to be assailed holds office is applied with an undeviating rigidity.

An interesting treatment of the subject of venue has been made in *Polytrade Corporation v. Blanco*.[49] Section 2(b), Rule 4 of the Revised Rules of Court on venue of personal actions triable by courts of first instance provides that such "actions may be commenced and tried where the defendant

[44] RULES OF COURT, Rule 3, sec. 2.
[45] Clemeña v. Clemeña, G.R. No. 24739, May 22, 1969.
[46] G.R. No. 27792, July 28, 1969.
[47] This is a reiteration of the ruling in Alcantara v. Tuazon, G.R. No. 4998, September 4, 1951.
[48] G.R. No. 25446, May 22, 1969.
[49] G.R. No. 27033, October 31, 1969.

or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff." Qualifying this provision is Section 3 of the same Rule which states that venue may be stipulated by written agreenment — "By written agreement of the parties the venue of an action may be changed or transferred from one province to another."

In the case at bar, according to the defendant, plaintiff and defendant, by written contracts, stipulated that: "The parties agree to sue and be sued in the Courts of Manila." This agreement is valid. But this does not preclude the filing of suits in the residence of the plaintiff or defendant. The plain meaning is that the parties merely consented to be sued in Manila. Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom. That agreement did not change or transfer the venue. It is simply permissive. The parties solely agreed to add the courts of Manila as tribunals to which they may resort. They did not waive their right to pursue remedy in the courts specifically mentioned in Section 2(b) of Rule 4. *Renuntiatio non praesumitur.*[50]

F. Third-Party Complaint

The only issue of law raised in the appeal in *Firestone Tire and Rubber Company of the Philippines v. Tempongko*[51] from an order of the Court of First Instance of Manila is: where plaintiff obtained judgment in the Municipal Court against defendant who in turn obtained judgment for reimbursement against the third-party defendant, but only the latter appealed to the Court of First Instance, may plaintiff's judgment against defendant be deemed to have become final and executory? In answering this question in the affirmative, after citing Rule 6, Section 12, of the Revised Rules of Court, the Supreme Court discussed the nature of a third-party complaint as follows:

> The third-party complaint is, therefore, a procedural device whereby a "third party" who is neither a party nor privy to the act or deed complained of by the plaintiff, may be brought into the case with leave of court, by the defendant, who acts as third party plaintiff to enforce against such third party defendant a right for contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim. The third party complaint is actually independent of and separate and distinct from the plaintiff's complaint. Were it not for this provision of the Rules of Court, it would have to be filed independently and separately from the original complaint by the defendant against the third party. But the Rules permit defendant to bring in a third party defendant or so to speak, to litigate his separate causes of action in respect of plaintiff's claim against a third party in the original and principal case with the object of avoiding circuitry of action and unnecessary proliferation of lawsuits and of disposing expeditious-

[50] *Id.*
[51] G.R. No. 24399, March 28, 1969.

ly in one litigation the entire subject matter arising from one particular set of facts. Prior leave of Court is necessary, so that where the allowance of a third party complaint would delay the resolution of the original case, such as when the third-party defendant cannot be located or where matters extraneous to the issue of possession would unnecessarily clutter a case of forcible entry, or the effect would be to introduce a new and separate controversy into the action, the salutary object of the rule would not be defeated, and the court should in such cases require the defendant to institute a separate action. When leave to file the third party complaint is properly granted, the Court renders in effect two judgments in the same case, one on the plaintiff's complaint and the other on the third party complaint. When he finds favorably on both complaints, as in this case, he renders judgment on the principal complaint in favor of plaintiff against defendant and renders another judgment on the third party complaint in favor of defendant as third party plaintiff, ordering the third party defendant to reimburse the defendant whatever amount said defendant is ordered to pay plaintiff in the case. Failure of any of said parties in such a case to appeal the judgment as against him makes such judgment final and executory. By the same token, an appeal by one party from such judgment does not inure to the benefit of the other party who has not appealed nor can it be deemed to be an appeal of such other party from the judgment against him.

G. Periods for Pleading

A highly significant ruling on the period within which to file responsive pleading has been made by the Supreme Court in *Matute v. Court of Appeals*.[52] It was noted at the outset that Rule 11, section 1 of the Revised Rules of Court gives the defendant a period of fifteen (15) days after service of summons within which to file his answer and serve a copy thereof upon the plaintiff, unless a different period is fixed by the court. However, within the period of time for pleading, the defendant is entitled to move for dismissal of the action on any of the grounds enumerated in Rule 16. If the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer *within the period prescribed by Rule* 11, computed from the time he receives notice of the denial or deferment, unless the court provides a different period (Rule 16, section 4). In other words, the period for filing a responsive pleading commences to run *once again* from the time the defendant receives notice of the denial of his motion to dismiss.[53]

In *Villanueva v. National Marketing Corporation*,[54] the procedural point concerning the answer to the amended complaint involves the question of whether or not it was entitled to admission in the first place, even without leave of court. The appellant invoked section 3 of Rule 11, which states that if the complaint is amended a new answer thereto may be filed (as a matter of right) within 10 days from notice, failing which the previous answer

[52] G.R. Nos. 26751, 26085 & 26106, January 31, 1969.
[53] *Id.* citing 1 FRANCISCO, REVISED RULES OF COURT, 703 (1965).
[54] G.R. No. 27441, June 30, 1969.

filed before the amendment shall stand as an answer to the amended complaint. In the case at bar, the defendant filed its answer to the amended complaint within the reglementary period. The Supreme Court held that the trial court should not have ordered the said answer stricken out, for while it is true that the amended complaint contained practically the same allegations of fact as the original petition, there was a substantial change in the nature of the cause of action itself: the first was one for mandamus while the other was one for specific performance. And in any case, since the case had not yet been scheduled for trial at the time the said answer was submitted, the trial court should have allowed it, especially considering that in its opinion the original answer failed to tender an issue, as shown by the fact that it rendered a partial summary judgment.

H. Service and Filing of Pleadings and Other Papers

It was the contention of petitioners in *Palteng v. Court of Appeals*[55] that, for purposes of the appeal, it was their new lawyer who should have been considered the counsel of record and upon whom notices and processes should have been served, more specifically with respect to the notice to pay the docket fees which was served on the counsel of record. According to the Supreme Court, there is no merit to this argument. For it was not denied that Atty. Capuchino was petitioners' counsel of record in the trial court; and that while it is true that it was the new counsel who filed the notice of appeal, appeal bond and the record on appeal, it is equally a fact that there had been no formal relief of the former lawyer as counsel for the defendants (petitioners) and there was no formal substitution by the new lawyer. The situation is that, on record, defendants-appellants stood represented by two lawyers who, in view of the absence of notification to the contrary, were considered their attorneys in the appeal (Section 2, Revised Rule 46). Considering that, where a party is represented by two attorneys, service of notice or pleading on either of them is sufficient to bind such party, there was no abuse of discretion in the Court of Appeals' ruling that there had been proper and adequate notice to defendants (petitioners) to pay the docket fees, a requirement that they failed to observe. It was added that if the new lawyer had been engaged to replace the former counsel, the provisions of Section 2, Rule 46, and of Section 26, Rule 138, should have been complied with.

I. Motions in General

It was ruled in *Dacanay v. Hon. Carmelino G. Alvendia*[56] that mere citation and/or amplication of authorities not previously brought to the court's attention *on the same argument* does not remove the pleading from the ambit of the *pro forma* doctrine. Looking with disfavor on peacemeal argu-

[55] G.R. Nos. 25739 & 25886, January 31, 1969.
[56] G.R. No. 22633, October 31, 1969.

mentation, the Rules of Court have provided the *omnibus motion* rule.[57] The salutary purpose of said rule is to obviate multiplicity of motions as well as discourage dilatory pleadings. This reiterates the rule laid down in *Medran v. Court of Appeals.*[58]

J. Motion to Dismiss

The procedural question posed by the appellants in *Malig v. Bush*[59] was: May the lower court dismiss an action on a ground not alleged in the motion to dismiss? In answering this question to the effect that without prejudice to whatever defenses may be available to the defendant, the plaintiffs' cause should not be foreclosed without a hearing on the merits, the Supreme Court called attention that the first motion to dismiss, alleging lack of cause of action, *res judicata* and statute of limitations, was denied because those grounds did not appear to the court to be indubitable. The second motion reiterated none of those grounds and raised only the question of jurisdiction. In dismissing the complaint upon a ground not relied upon, the lower court in effect did so *motu proprio,* without offering the plaintiffs a chance to argue the point. In fact, the court did not even state in its order why in its opinion the action had prescribed, and why in effect, without any evidence or new arguments on the question, it reversed its previous ruling that the ground of prescription was not indubitable.

In *Uypuanco v. Hon. Jose N. Leuterio,*[60] respondents in their answer maintained that petitioners' motion to dismiss in the court below was correctly denied because the motion to dismiss was filed out of time, it having been filed when the issues had already been joined. This contention of the respondents was held to be without merit. It has been consistently held by the Supreme Court that the question of jurisdiction may be raised at any stage of the proceedings.

The Supreme Court had occasion to stress in *Dauden-Hernaez v. Hon. Walfrido de los Angeles*[61] that it is well-established rule in our jurisprudence that when a court sustains a demurrer or motion to dismiss it is error for the court to dismiss the complaint without giving the party plaintiff an opportunity to amend his complaint if he so chooses. Insofar as the first order of dismissal did not provide that the same was without prejudice to amendment of the complaint, or reserve to the plaintiff the right to amend his complaint, the order was held erroneous; and this error was compounded when the motion to accept the amended complaint was denied in the subsequent order. Hence, the petitioner-plaintiff was within her rights in filing her so-called second motion for reconsideration, which was actually a first

[57] RULES OF COURT, Rule 15, sec. 8.
[58] 83 Phil. 164 (1949).
[59] G.R. No. 22761, May 31, 1969.
[60] *Supra,* note 16.
[61] G.R. No. 27010, April 30, 1969.

motion against the refusal to admit the amended complaint. Such second motion for reconsideration was not really *pro forma* because it was addressed to the court's refusal to allow amendment to the original complaint, and this was a ground not invoked in the first motion for reconsideration. Moreover, since a motion to dismiss is not a responsive pleading, the plaintiff-petitioner was entitled as of right to amend the original dismissed complaint.[62]

What is the effect of a denial of a motion to dismiss in the nature of a demurrer to evidence? In *Director of Lands v. Hon. Patricio V. Ceniza,*[63] the Supreme Court had occasion to restate the rule governing judgments on demurrers to evidence, by way of collation and clarification of the doctrine enunciated in earlier cases, now embodied in Rule 35 of the Revised Rules of Court.[64] In the cited case, the Supreme Court held that the trial court, after denying the motion to dismiss for insufficiency of plaintiff's evidence or demurrer to the evidence, should permit the defendant to present his own evidence and give him his day in court, regardless of whether or not the defendant has made a reservation of his right to present his evidence in the event of the denial of his motion or demurrer.[65] According to the Supreme Court in *Siayngco v. Costibolo,*[66] the rationale behind the rule is simple and logical. The defendant is permitted, without waiving his right to offer evidence in the event that his motion is not granted, to move for a dismissal, that is, demur to the plaintiff's evidence, on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court *denies* the dismissal motion, i.e., finds that plaintiff's evidence is sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendant's evidence so that all the facts and evidence of the contending parties may be properly placed before it for adjudication as well as before the appellate courts, in case of appeal. This doctrine is but in line with the established procedural precepts in the conduct of trials that the trial court liberally receive all proferred evidenced at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the materials before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence, with all the concommitant delays. The rule, however, imposes the condition by the same token that if his demurrer is *granted* by the trial court, and the order of dismissal is *reversed on appeal,* the movant loses his right to present evidence in his behalf and he shall have been deemed to have elected to stand on the insufficiency of plaintiff's case and evidence. In

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[62] *Id.*, citing Paeste v. Juarigue, 94 Phil. 179, 181 (1953).
[63] G.R. No. 18527, June 29, 1963.
[64] Formerly Rule 30, sec. 1.
[65] *Supra,* note 63.
[66] G.R. No. 22506, February 28, 1969.

such event, the appellate court which reverses the order of dismissal shall proceed to render judgment on the merits on the basis of plaintiff's evidence.

Simply restated, a defendant who presents a demurrer to plaintiff's evidence retains the right to present his own evidence, *if the trial court disagrees with him*, and on appeal, *if the appellate court disagrees* with both of them and reverses the dismissal order, he loses the right to present his own evidence.[67]

According to the Supreme Court in *Carbajal v. Diolola*,[68] under the rule contained in Rule 35, Section 1, Revised Rules of Court, what extinguishes defendant's rights to present evidence is the waiver or renunciation thereof. Reservation by the defendant of the right to present evidence is not necessary because the rule itself reserves such right to the defendant. In the instant case, the defendant moved to dismiss on the ground of insufficient evidence but did not waive his right to present evidence in the event his motion would be denied. He therefore had the right to present his evidence after his motion to dismiss had been denied, because the rule itself reserved his right to do so. It was not necessary for him to make the reservation.[69]

K. Dismissal of Actions

Indeed, it is not disputed that the question whether or not a case should be dismissed for "failure to prosecute" is mainly addressed to the sound discretion of the trial court. As a consequence, the action taken by said court should not be disturbed by an appellate court unless it appears *affirmatively* that the former had abused its aforementioned discretion. In other words, the trial court must be presumed to have acted correctly, unless and until the contrary is satisfactorily established. In the case at bar, the Court of Appeals adopted, in effect, the opposite procedure, for it *assumed* that "in all probability, the court" — of first instance — "could not have heard the case immediately even if there was a motion to set it for hearing, because of the pendency of other urgent or similar matters" and that "this is the reason why the clerk of court did not x x x include this case in the calendar," during the period it had not been included therein.[70]

In setting aside the lower court's order of dismissal of the complaint, the Supreme Court in *Ramos v. Raymundo*[71] ruled that in the interest of justice, overlooking the procedural neglect, of which both counsel for the plaintiffs and counsel for the defendant had been equally at fault in the court below, the case is one which should be heard and decided on the merits.

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[67] *Id.*
[68] G.R. No. 23275, May 29, 1969.
[69] *Id.*, citing Director of Lands v. Ceniza, G.R. No. 18527, June 29, 1963 which was also cited in the recent case of Siayngco v. Costibolo, *supra*, note 66.
[70] Gonzales Vda. de Palanca v. Chua Keng Kian, G.R. No. 26430, March 11, 1969.
[71] G.R. No. 23069, October 31, 1969.

L. Postponements

Lazatin v. Hon. Ruperto Kapunan[72] restates the rule long before established that postponements and adjournments are matters addressed to the discretion of the trial court. To the question of whether or not respondent judge gravely abused his discretion, the Supreme Court in this case noted that a wide breadth of discretion is granted a court of justice in certiorari proceedings, and in the exercise of its superintending control over inferior courts, it is to be guided by all circumstances of each particular case *"as the ends of justice may require."* So it is, that the writ will be granted where necessary to prevent a substantial wrong or to do substantial justice.

According to the Supreme Court in *People v. Mendez,*[73] this rule on continuance or postponement is, even independently of statute, universally recognized. In this jurisdiction, the rule finds expression in Rule 119, Section 2, Revised Rules of Court, as far as criminal cases are concerned.

In *Tropical Building Specialties, Inc. v. Nuevas,*[74] the Supreme Court sustained the exercise of the lower court's discretion in denying a motion for postponement. Considering that the hearing of the case in the Court of First Instance had been postponed five (5) times, on motion of the defendant; and that the order of March 15, postponing the hearing to April 21, explicitly stated that it was the "last", and that "no further postponement" would "be countenanced by the Court"; that, despite defendant's failure to appear, in due time, on April 21, said Court granted him, on May 31, another opportunity to be heard on July 7; that, although defendant claims that the hearing of his case in Cavite had been set "first", or before May 31, 1966, he had ample time to make representations to this effect, in the Court of First Instance of Manila, before July, 1966, but did not do so until July 6, 1966, or on the eve of the hearing of the present case; that the defendant succeeded in securing several postponements by giving the impression that he was trying to settle the case amicably, which he never did; that the record suggests that he had no valid defense and that the appeal was purely dilatory in nature; that postponements of hearings are matters primarily addressed to the discretion of the Court, the exercise of which should not be interfered with on appeal, in the absence of a manifest abuse of discretion; and that no such abuse existed in the case at bar, it was obvious that, as the Supreme Court observed, the order appealed from must be sustained.

The ruling in *Limon v. Candido*[75] is along the same line, namely, that the allowance or denial of motions for postponement and the setting aside of orders previously issued rest principally upon the sound discretion of the

[72] G.R. No. 29894, March 28, 1969.
[73] G.R. No. 27348, July 29, 1969.
[74] G.R. No. 26968, January 31, 1969.
[75] G.R. No. 22418, April 28, 1969.

court to which the same are addressed. It was, however, added that such discretion should always be predicated on the consideration that more than mere convenience of the courts or of the parties in the case the ends of justice and fairness would be served thereby.

M. Subpoena

In *Caltex (Philippines), Inc. v. Caltex Dealers Association of the Philippines, Inc.*,[76] the Supreme Court did not sustain petitioner's claim that the subpoena is unreasonable and oppressive by reason of the voluminous documents to be produced thereunder. On the other hand, it upheld respondent's position that said documents are definite, particularized, refer to specific periods and, in fact, lesser in number than the documents produced by the petitioner heretofore.

N. Deposition and Discovery

The Supreme Court had occasion to enunciate a rule in *Caltex (Philippines), Inc. v. Caltex Dealers Association of the Philippines, Inc.*[77] to the effect that "fishing for evidence" is not prohibited but allowed under the present Rules of Court on Discovery and Deposition, for the reason that it enables litigants adequately to prepare their pleadings and for trial, this, in turn, resulting often in the simplification or reduction of triable issues.

However, the power or the right to take deposition is not unlimited. In *Caguiat v. Hon. Guillermo E. Torres*,[78] it was held that there can be no question that the trial court has jurisdiction to direct, in its discretion, that a deposition shall not be taken, if there are valid reasons for so ruling.[79] That the right of a party to take depositions as means of discovery is not exactly absolute is implicit in the provisions of the Rules of Court, sections 16 and 18 of Rule 24, which are precisely designed to protect parties and their witnesses, whenever in the opinion of the trial court, the move to take their depositions under the guise of discovery is actually intended to only annoy, embarrass or oppress them. In such instances, these provisions expressly authorize the court to either prevent the taking of a deposition or stop one that is already being taken.[80]

O. Judgment

The only question involved in the appeal in *Casilan v. Kapunan de Salcedo*[81] is whether that statement in the decision of the Supreme Court, before the dispositive part thereof, which reads: "Said respondent (referring

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[76] G.R. No. 25883, April 29, 1969.
[77] *Id.*
[78] G.R. No. 25481, October 31, 1969.
[79] Cojuangco v. Caluag, G.R. No. 7952, July 30, 1955 (unreported).
[80] *Supra*, note 78.
[81] G.R. No. 23247, January 31, 1969.

to appellant Casilan), however, may still recover what he has paid under the equitable principle that no one shall be unjustly enriched or benefited at the expense of another" may serve as a basis for the lower court to issue a writ of execution against the properties of defendant Concepcion Kapunan de Salcedo, so that said appellant may thereby recover what he had paid to said defendant. In other words, may that statement be considered a judgment against defendant Concepcion Kapunan de Salcedo? In answering this question in the negative, the Supreme Court said that this portion of its decision relied upon by the appellant in his motion for execution is simply an opinion of the Court and does not constitute the judgment itself.

P. New Trial

It was noted in *Magno v. Hon. Montano Ortiz*[82] that, as correctly stated by the trial court, the subject motion for reconsideration was in fact a motion for new trial. The reasons relied upon are equivalent to an assertion that the decision was contrary to law, which is a ground for new trial.[83]

Q. Petition for Relief from Judgment

In *Florendo v. Florendo*,[84] in sustaining the lower court's denial of a petition for rehearing, the Supreme Court noted that the defendants-appellants did not, perhaps because they could not, even intimate that the opportunity for a rehearing, if granted, would be fruitful in the sense that they could justify their possession of the land in controversy. It would be, therefore, both time-consuming as well as futile and would undoubtedly result in a denial of justice, if the lower court did indulge them by assenting to their unwarranted petition for relief. Fortunately, such was not the case. What the lower court did finds support no less in the controlling legal principles than in the interest of what is fair and what is just.

The Supreme Court took particular note in *Lanting v. Guevara*[85] that paragraph 5 of the affidavit was written in an effort to show that petitioner had a good defense. But paragraph 5 contains nothing more than an averment couched in conclusionary terms. Petitioner there merely said that he believed that "considering the facts and circumstances which are not disputed, the applicable law and the decided cases," — without spelling them out — he was not liable to the plaintiff. It was concluded that such affidavit does not contain an averment of facts constituting a valid defense and is not the one contemplated by the Rules.[86]

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[82] G.R. No. 22670, January 31, 1969.
[83] RULES OF COURT, Rule 37, sec. 1(c).
[84] G.R. No. 24982, March 28, 1969.
[85] G.R. No. 22799, April 25, 1969.
[86] *Id.*, citing Joson v. Nable, 87 Phil. 337, 340 (1950).

R. Execution of Judgment

Ramos v. Hon. Honorato Graciano[87] restates the rule that after the lapse of five (5) years from the date of entry of judgment, such judgment may be enforced only by an ordinary action, not by mere motion.[88] The limitation that a judgment be enforced by execution within five years, otherwise it loses efficacy, goes to the very jurisdiction of the Court. A writ of execution issued after such period is void, and the failure to object thereto does not validate it, for the reason that jurisdiction of courts is solely conferred by law and not by express or implied will of the parties.

Pending perfection of defendants' appeal, the plaintiffs filed with the lower court a motion for immediate execution of its decision, upon the ground that the appeal taken therefrom was dilatory in nature. Despite defendants' opposition, the lower court issued an order granting said motion, "unless defendants file a supersedeas bond in the amount of the judgment within ten (10) days from receipt" of said order. In a proceeding for certiorari, the petitioner maintained that the respondent judge had gravely abused his discretion in ordering the execution of the decision in the main case. In holding that the petitioner had not made out a case against the respondent, the Supreme Court ruled that it is well-settled that the question whether or not a decision should be executed pending appeal is mainly addressed to the sound discretion of the court which in the instant case, appeared to have properly exercised it, for the following reasons: (1) while her co-defendants did not seem to have any property upon which the judgment against them may be satisfied, the petitioner was in imminent danger of insolvency; (2) no other property appeared to be available for the satisfaction of said judgment, especially considering that petitioner's house and lot were mortgaged and the mortgage debt aggregated to ₱191,863 due to non-payment of interest; (3) the petitioner had a plain, speedy and adequate remedy in the ordinary course of law to forestall the execution of the decision against her by filing a supersedeas bond; and (4) the suit against the defendants in the main case was for the recovery of damages resulting from fraud allegedly committed by them against the plaintiffs therein. Furthermore, the Supreme Court noted that considering the evidence for the plaintiffs, including the testimony of a handwriting expert, on the genuineness of the signature of the petitioner, and the other circumstances surrounding the case, respondent Judge — after comparing the questioned signature with standard signatures of the petitioner — found the evidence for the defendants unworthy of credence, and concluded that their appeal had been "taken for the purpose of delay," and that the record in the proceeding did not warrant disturbing the lower court's conclusion, which in turn, was sufficient ground to justify execution pending appeal.

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[87] G.R. No. 22341, April 29, 1969.
[88] RULES OF COURT, Rule 39, sec. 6.

The only issue to be resolved in *Reyes-Gregorio v. Reyes*[89] was whether or not appellees exercised their right of redemption in the manner provided by law. Section 30 of Rule 39 of the Rules of Court, in relation to the provisions of Act 3135, as amended by Act 4118, is decisive of the above issue. It provides that the payment of the redemption money should be made "to the purchaser or redemptioner, or for him to the officer who made the sale." And it has been held in this connection that it is the duty of the officer who made the sale to accept the tender of payment and execute the corresponding certificate of redemption provided such tender is made within the period for the purpose.[90]

In *Luzon Steel Corporation v. Sia*[91] the compromise was submitted to the court and the latter approved it, rendered judgment in conformity therewith, and directed the parties to comply with the same. Defendant having failed to comply, the plaintiff moved for and obtained a writ of execution against the defendant and the joint and several counterbond the surety, however, moved to quash the writ of execution against it, averring that it was not a party to the compromise, and that the writ was issued without giving the surety notice and hearing. The lower court, overruling plaintiff's opposition, set aside the writ of execution, and later cancelled the counter-bond, and denied the motion for reconsideration. On appeal the main issues posed were: (1) whether the judgment upon the compromise discharged the surety from its obligation under its attachment counterbond; and (2) whether the writ of execution could be issued against the surety without previous exhaustion of the debtor's properties. In the case at bar, the Supreme Court called attention to the fact that both questions could be solved by bearing in mind that it was dealing with a *counterbond* filed *to discharge a levy on attachment.* Rule 57, section 12, specifies that an attachment may be discharged upon making a cash deposit or filing a counterbond "in an amount equal to the value of the property attached as determined by the judge"; that upon the filing of the counterbond "the property attached — shall be delivered to the party making the deposit or giving the counterbond, or the person appearing on his behalf, *the deposit or counterbond aforesaid standing in place of the property so released.*" The underscored expressions constitute the key to the entire problem. Whether the judgment be rendered after trial on the merits or upon compromise, such judgment undoubtedly may be made effective upon the property released; and since the counterbond merely stood in the place of such property, there was no reason why the judgment should not have been made effective against the counterbond regardless of the manner how the judgment was obtained. It was observed further that it is true that under Section 17 recovery from the surety or sureties should be "after notice and

[89] G.R. No. 24699, March 28, 1969.
[90] Enage v. Vda. A. Escaño, 38 Phil. 657 (1918).
[91] G.R. No. 26449, May 15, 1969.

summary hearing in the same action." But it was also noted that this requirement has been substantially complied with in the case at bar from the time the surety was allowed to move for the quashal of the writ of execution and for the cancellation of their obligation.

S. *Res Adjudicata* or Bar by Prior Judgment

Santos v. Hon. Angel H. Mojica[92] restates the rule on *res adjudicata* and bar by prior judgment. In the first place, the petitioner was bound by the judgment in a former case where he was a successor-in-interest of his parents, defendants therein, and his right, if any, was claimed under them. The fact that the sale to the petitioner from his parents was registered, was of no moment because, as pointed out, he was bound by the judgment against them. Secondly, the present petition was held barred by the prior judgment in a case where herein petitioner was one of the petitioners against the same respondents in the present proceeding. In the two cases, there was identity of subject-matter, namely, the portion of the lot and the house standing on said portion alleged by the petitioner to belong to him. There was also identity of cause of action, to wit: the order of the respondent Judge for the removal or demolition of the houses standing on the lot. In the previous case, the Supreme Court had jurisdiction, and its decision which was on the merits, had become final. It was therefore evident that the judgment of the Supreme Court in the earlier case is *res adjudicata* on the question of the validity of the previous order of demolition.

T. Appeals

As ruled by the Supreme Court in *Lanting v. Guevara*[93] it was appellant's duty and that of his attorney to see to it that the appeal would be perfected within the time limit set forth in the Rules. To perfect an appeal payment of the appellate docket fee is a prerequisite. In the instant case, there was no dispute that the appellate court docket fee required by Section 2, Rule 40 of the Rules of Court was never paid.

Rule 141, Section 16, Rules of Court, expressly provides that the Republic of the Philippines is exempt from paying the legal fees provided for in this rule. In *Favis v. Municipality of Sabañgan, Bontoc, Mountain Province*,[94] it was ruled that such exemption is applicable only to the Republic of the Philippines, namely, the national government, and not to the local governments or subdivisions, as correctly ruled by the late Secretary of Justice Pedro Tuason.[95] However, it was also held in the same case that the court *a quo* did not commit a fatal error of jurisdiction in erroneously holding that the

[92] G.R. No. 25450, January 31, 1969.
[93] *Supra*, note 85.
[94] G.R. No. 26522, February 27, 1969.
[95] Op. No. 319, s. of 1954.

defendant Municipality was exempt from payment of the appellate court docket fee provided in Rule 40, Section 2, and taking cognizance of its appeal.

As to the computation of the period to appeal, *Mara, Inc. v. Court of Appeals*[96] reiterates the ruling in *Lloren v. de Veyra*[97] to the effect that where the motion for reconsideration is filed on the 15th day of the period within which he may perfect his appeal, that day should be excluded so that when he received copy of the order denying his motion for reconsideration he had still one day within which to perfect his appeal. This period of one day should be computed again in accordance with the rule that the day of receipt should be excluded and the next day included.

In *Government Service Insurance System v. Custodio*[98] it was held that appellants' raising on appeal the issue of fraud or mistake, without having specifically stipulated or pleaded the same, constitutes an unfair surprise upon their adversary, besides being in violation of the rule that fraud be specifically pleaded.[99]

In view of the circumstances existing in *La Campana Food Products, Inc. v. Court of Industrial Relations*,[100] the Supreme Court exercised the discretion granted by Section 4 of Rule 50 of the Rules of Court to decide the case at bar on the merits since the same had already been submitted for decision as early as December 20, 1967. This reiterates the ruling in *U.S. v. Sotto*[101] to the effect that "after a case has been heard and is submitted to the court for decision, the appellant cannot, at his election, withdraw the appeal."

U. Dismissal of Appeal

The Supreme Court ruled in *Philippine National Bank v. Philippine Milling Co., Inc.*[102] that, contrary to petitioner's assertion that, on November 22, 1966, "it became its (Court of Appeals') ministerial duty to dismiss the appeal and remand the case for execution to the Court of origin," the Court of Appeals had, under the provisions of the Rules of Court, *discretion* to dismiss or *not* to dismiss respondents' appeal. Petitioners' assertion of abuse of discretion was predicated solely upon the alleged "ministerial" duty of said Court to dismiss the appeal therein, which is devoid of legal foundation.[103]

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[96] G.R. No. 26584, July 31, 1969.
[97] G.R. No. 13929, March 28, 1962, 61 O.G. 5172 (Aug. 1965), 4 SCRA 637, March 28, 1962.
[98] G.R. No. 26170, January 27, 1969.
[99] RULES OF COURT, Rule 8, sec. 5.
[100] G.R. No. 27907, May 22, 1969.
[101] 38 Phil. 666, 677 (1918).
[102] G.R. No. 27005, January 31, 1969.
[103] This reiterates the ruling in Ordoveza v. Raymundo, 63 Phil. 275 (1936), and Alquiza v. Alquiza, G.R. No. 23342, February 10, 1968.

V. Decision of the Courts of Appeals

It was held in *Castañeda v. Court of Appeals*[104] that there is nothing in the rule (Section 1 Rule 52, Rules of Court) relied upon which would justify the argument that the fifteen-day period within which to file a motion for reconsideration of the decision of the Court of Appeals may not be extended. The Court has control over its processes and in its discretion may grant such extention if seasonably sought. The rule fixing the periods of time within which certain acts relating to procedure must be done are not so rigid as to render the periods thus fixed absolutely non-extendible, unless the rules themselves expressly so provide. Besides, it was noted that the respondent himself, in his answer to the petitioners' motion, asked that the error be corrected, and he would not have done so if he believed that the error was already beyond correction.

IV. Provisional Remedies

A. Attachment

It was held in *Garcia v. Hon. Andres Reyes*[105] that only because of the unique situation that the litigation presented, the challenged order of the respondent Judge which denied the urgent motion of the petitioners to allow the presentation of evidence in support of their plea to discharge the writ of attachment and which granted the motion to sell the attached properties on the part of respondent, was issued with grave abuse of discretion. It was stressed that such a conclusion would not ordinarily be called for as the discretion of the lower court, while not unconfined, is sufficiently broad. Nonetheless, the specific facts presented in the case at bar as appraised in the light of the fundamental doctrine that the exercise of this power to issue a writ of attachment is subject to its strict conformity with all procedural requirements upon pain of its being annulled in an appropriate certiorari proceeding compel the conclusion that due process would not be satisfied unless petitioners be granted the opportunity to be heard.

B. Injunction

Subido v. Hon. Simeon Gopengco[106] is authority to the effect that as the issuance of a mandatory injunction is the exception rather than the rule, the party applying for it must show a clear legal right the violation of which is so recent as to make its vindication an urgent one.

C. Receivers

The only issue in the appeal in *Central Sawmills, Inc. v. Alto Surety & Insurance Co.*[107] is whether or not, in an action for the collection of a

104 G.R. No. 20268, April 28, 1969.
105 G.R. No. 27419, October 31, 1969.
106 G.R. No. 25618, March 28, 1969.
107 G.R. No. 24508, April 25, 1969.

debt, where there is already a final and executory judgment, the Court has the authority to appoint a receiver of the properties of the judgment debtor which are not involved in the action, in aid of the execution of said judgment. In affirming the order of receivership appealed from, the Supreme Court said that this issue is not new. Almost on all fours with the present case is that of *Philippine Trust Co. v. Santamaria.*[108] There being no detailed rules under Rule 39 governing these matters, it was ruled that under the authority of Section 6, Rule 124 (now Rule 135), the pertinent provisions of Rule 59 may be adopted insofar as they prescribe the procedure and the bond requirements in a receivership as well as other matters related to the carrying out of such receivership.

At this juncture, it may be pertinent to note the ruling in *Bisaya Land Transportation Co., Inc. v. Hon. Francisco Geronimo*[109] to the effect that jurisdiction thus retained by the trial court — to appoint a receiver — necessarily includes the authority to control and supervise the latter's actuation as an officer of the Court.

V. Special Civil Actions

A. Certiorari, Prohibition and Mandamus

It was contended in *Sotto v. Mijares*[110] that the controverted order is interlocutory, since it does not dispose of the case with finality but leaves something still to be done, and hence is unappealable. The remedy, it was pointed out, should have been by petition for certiorari. The point, strictly speaking, is well taken. But the Supreme Court saw fit to disregard technicalities and treat the appeal as such a petition and consider it on the merits, limiting the issue, necessarily, to whether or not the court below exceeded its jurisdiction or committed a grave abuse of discretion in issuing the order complained of. The Supreme Court particularly observed that if the debtor had the right of withdrawal, he surely had the right to refuse to make the deposit in court in the first place. It was therefore concluded that for the court to compel him to do so was a grave abuse of discretion amounting to excess of jurisdiction, and the order appealed from was set aside.

Such liberality of the Supreme Court was further pursued in *Anduiza v. Dy-Kia.*[111] It was held in the case at bar that while interlocutory orders are not appealable, nonetheless, when want or excess of jurisdiction or abuse of discretion is averred in the petition for review, an appeal may, in the discretion of the court, be converted into a special civil action for certiorari, to avert injustice and thwart delay.[112]

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108 53 Phil. 463 (1939).
109 *Supra*, note 23.
110 G.R. No. 23563, May 8, 1969.
111 G.R. No. 23757, August 29, 1969.
112 *Id.*, citing Estrada v. Sto. Domingo, G.R. No. 30570, July 29, 1969.

In *Locsin v. Hon. Rafael C. Climaco*[113] it was ruled that when a definite question has been properly raised, argued, and submitted to a lower court, and the latter has decided the question, a motion for reconsideration is no longer necessary as a condition precedent to the filing of a petition for *certiorari* in the Supreme Court. Specifically noted in this case was the fact that from the order of November 22, 1966, enjoining any and all parties to the case "from removing or in any manner damaging the railroad lines," the petitioners filed a motion to dissolve the said writ, contending that the writ was issued in excess of jurisdiction and with grave abuse of discretion, and alleging five reasons in support thereof. This motion was denied by the respondent court when, in its order of January 7, 1967, it maintained the effectivity of the writ. It was held that the motion to dissolve the writ satisfied the requirements of a motion for reconsideration; another one of the same species would be a patent superfluity.

Matute v. Court of Appeals[114] is authority for the rule that a defendant who has been *illegally* declared in default is not precluded from pursuing a more speedy and efficacious remedy, like the petition for *certiorari* to have the judgment by default set aside as a nullity.

In *Tolentino v. Hon. Godofredo Escalona*[115] the Supreme Court noted that the petitioners could have appealed from the contested orders of the respondent judge, and no plausible reason has been adduced — in fact, no effort has been made — to show that an appeal would not have been a plain, speedy and adequate remedy for them. Having failed to appeal from said orders, they may not avail of the writ of certiorari to offset the adverse effects of their omission.

Petitioners in *Vera v. Hon. Francisco Arca*[116] were held entitled to the writ of certiorari prayed for, as respondent judge was held to have abused gravely his discretion. Even on a matter of less significance, the Supreme Court noted that it had not hesitated to exercise its supervisory authority by correcting such failure to abide by controlling legal principles with a petition for certiorari as the appropriate remedy.

In *Lazatin v. Hon. Ruperto Kapunan,*[117] it was ruled that a wide breadth of discretion is granted a court of justice in certiorari proceedings, and in the exercise of its superintending control over inferior courts, the Supreme Court is to be guided by all the circumstances of each particular case *"as the ends of justice may require."* So it is, that the writ will be granted where necessary to prevent a substantial wrong or to do susbtantial justice.

The Supreme Court overruled petitioner's contention in *Paredes v. Hon. Simeon M. Gopengco*[118] that respondents' resort to prohibition and cer-

[113] G.R. No. 27319, January 31, 1969.
[114] *Supra*, note 52.
[115] G.R. No. 26556, January 24, 1969.
[116] G.R. No. 25721, May 26, 1969.
[117] *Supra*, note 72.
[118] G.R. No. 23710, September 30, 1969.

tiorari should not be permitted, on their theory that any judgment of acquittal by petitioner judge in the criminal case would be null and void. Such a judgment of acquittal would be valid and a bar to further prosecution for the same offense. The decision, even if rendered by a disqualified judge would suffer not from any fatal defect of lack of jurisdiction but only from an error reversible in appropriate proceedings. Since the prosecution or offended party would have no right of appeal in the event of such a verdict of acquittal, their recourse to the special civil action of prohibition and certiorari for a timely review of the judge's ruling of his non-disqualification, ahead of the judgment on the merits and a possible verdict of acquittal which would bar all further recourse, was held properly taken.

Against the background of liberality in special civil actions, the Supreme Court withheld issuance of the writs in two cases. In *Estrada v. Sto. Domingo,*[119] in denying the issuance of the writs of certiorari and prohibition, the Supreme Court said that their function is to keep an inferior court within the bounds of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to excess of jurisdiction. This is based on its finding that the order in question was issued in the proper exercise of jurisdiction and there was no abuse of discretion. Reiterated in *Apurillo v. Hon. Judge Honorato Garciano*[120] is the rule that a writ of prohibition will not issue, unless it appears that the party against whom it is sought has acted without or in excess of jurisdiction or with grave abuse of discretion, and that there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law.

B. Forcible Entry and Detainer

The Supreme Court explained its ruling in *Dizon v. Concina*[121] that plaintiff's cause of action is forcible entry. The subject matter thereof merely is material possession or possession *de facto* over the real property. Ownership or the right of possession as an attribute of ownership is not to be determined. The questions to be resolved simply are these: *First,* who had actual possession over the piece of real property? *Second,* was the possessor ousted therefrom within one year from the filing of the complaint by force, threat, strategy or stealth? And *lastly,* does he ask for the restoration of his possession? Mere posture of ownership by the plaintiff or defendant does not take the case out of the jurisdiction of the trial court, unless the issue of material possession necessarily depends upon the question of ownership, which is not the case here. Any controversy over ownership rights could and should be settled after the party who had the prior, peaceful and actual possession is returned to the property.

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[119] G.R. No. 30570, July 29, 1969.
[120] G.R. No. 23683, July 30, 1969.
[121] G.R. No. 23756, December 27, 1969.

The nature of ejectment proceeding has been further explained in *Laurel v. Hon. Onofre Sison.*[122] In a proceeding for unlawful detainer the only issue is who between the litigants has a better right to the physical possession. Unlike an ordinary civil case, an action for unlawful detainer is a special civil action which is intended to be summary in character. It is distinct from an ordinary civil case in the sense that while in the latter case a perfected appeal operates to vacate the judgment of the inferior court, in an unlawful detainer action, notwithstanding the perfection of an appeal, the judgment of the inferior court remains in force and may be executed at any time prior to rendition of judgment by the court of first instance. This is to prevent further damage to the plaintiff arising from continued loss of possession. However, the defendant may stay execution (a) by perfecting an appeal and filing a supersedeas bond, and (b) by paying promptly from time to time either to the plaintiff or depositing with the court of first instance the adjudged reasonable value of the use and occupation of the property. This rule is mandatory, the exception being when the delay is due to fraud, accident, mistake or excusable negligence.

In *De la Cruz v. Burgos*[123] it was further ruled that to stay execution of a judgment in ejectment cases, it has been repeatedly held that the requirement of a supersedeas bond is "mandatory" and cannot be dispensed with by the courts; that, when said bond is not filed, the duty of the court to order the execution of the appealed decision is "ministerial and imperative"; and that the execution of the judgment shall then issue immediately. Such ruling is mainly premised on the provisions of Rule 70, Section 8, Rules of Court.

Regarding the computation of the period for filing an ejectment suit, the Supreme Court ruled in *Deveza v. Hon. Juan B. Montecillo*[124] that Section 1 of Rule 70 specifies a time limit — "within one (1) year after such unlawful deprivation or withholding of possession" — within which an action may be brought in the inferior court. The one-year period is thus to be counted from illegality of possession. If any meaning is to be given to the complaint in the instant cases, the Supreme Court said that it is this: the illegal nature of the possession in question coincided with the start of the possession.

Sy v. Hon. Gregorio N. Garcia[125] and *Lim v. Hon. Gregorio N. Garcia*[126] presented an identical question: In the event that there are various letters of demand, should the one-year period in ejectment suits be counted from the first or the last one sent the lessee? In both cases, the answer of the lower courts was that it should be the last which controls in accordance with previous rulings of the Supreme Court, more specifically in *Racaza v. Susana Realty,*

122 G.R. No. 26098, October 31, 1969.
123 G.R. No. 28095, July 30, 1969.
124 *Supra*, note 36.
125 G.R. No. 29328, June 30, 1969.
126 G.R. No. 29589, June 30, 1969.

Inc.[127] which was decided on the theory that the lessor has the right to waive his action based on the first demand and to let the lessee remain in the premises.[128]

VI. Special Proceedings

A. Habeas Corpus

Section 1 Rule 102 of the Rules of Court, provides that "except as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto."

It was held in *Chua v. Cabangbang*[129] that the petitioner had not proven that she was entitled to the rightful custody of her own daughter. Upon the contrary, by wantonly and completely shunting aside her legal and moral obligations toward her child, she must be deemed as having forfeited all legitimate legal and moral claim to her custody. The Supreme Court ruled that the lower court acted correctly in dismissing the petitioner's complaint.

B. Change of Name

The only question in *Yap v. Republic*[130] was whether or not the standard which would warrant a change of name had been satisfied by the petitioner. What is that standard? The following may be considered, among others, as the proper and reasonable causes that may warrant the grant of a petition for change of name: (1) when the name is ridiculous, tainted with dishonor, or is extremely difficult to write or pronounce; (2) when the request for change is a consequence of a change of status, such as when a natural child is acknowledged or legitimated; and (3) when the change is necessary to avoid confusion.[131]

In denying the petition in the said case of *Yap v. Republic*[132] the Supreme Court said that, in the light of what was set forth in the decision appealed from, it could not be said that there was a proper or reasonable cause, much less a compelling reason, to justify such a change of name. As the decision itself admitted, the petitioner "is still a Chinese citizen" although his father apparently had become naturalized. Under the circumstances, it would cause confusion if, having used his present name in both his personal and business dealings, he would thereafter be known differently. It was not enough that his Filipino playmates from his childhood days have called

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127 G.R. No. 20330, December 22, 1966, 18 SCRA 1172 (1966).
128 *Id.*, Also Calubayan v. Pascual, G.R. No. 22645, September 18, 1967, 21 SCRA 146 (1967).
129 G.R. No. 23253, March 28, 1969.
130 G.R. No. 25437, April 28, 1969.
131 1 TOLENTINO, CIVIL CODE OF THE PHILIPPINES, 660 (1953).
132 *Supra*, note 130.

him by the name he wants to adopt, and neither would a sense of filial respect persuade the Court to let petitioner use his father's surname.

C. Cancellation or Correction of Entries in Civil Registry

Noted specifically by the Supreme Court in *Chua v. Republic*[133] is the fact that, while ostensibly, the action seeks a mere correction of an entry in the Civil Registry, in effect, it requests the judicial declaration of Philippine citizenship. It has been clearly stated time and again that declaratory relief is not available for the purpose of obtaining a judicial declaration of citizenship.[134]

D. Settlement of Estate of Deceased Persons

In *Matute v. Court of Appeals*[135] it was held that the scope of a co-administrator's trust encompasses the entire estate and is co-extensive in effect with those of the other administrators; consequently, the value of the entire estate should be the proper basis of the jurisdictional amount irrespective of the value of the particular property or assets of the estate which are the objects of a separate administration pending the settlement proceedings. In the instant case it was also ruled that the settled jurisprudence is that the removal of an administrator under section 2 of Rule 82 lies within the discretion of the court appointing him. As aptly expressed in one case, "The sufficiency of any ground for removal should thus be determined by the said court, whose sensibilities are, in the first place, affected by any act or omission on the part of the administrator not conformable to or in disregard of the rules or the orders of the court." Consequently, appellate tribunals are disinclined to interfere with the action taken by a probate court in the matter of the removal of an executor or administrator unless positive error or gross abuse of discretion is shown. In the case at bar, the Supreme Court was constrained to nullify the disputed order of removal because it appeared indubitable that the probate judge ousted the respondent from his trust without affording him the full benefit of a day in court, thus denying him his right to due process.

VII. Criminal Procedure

A. Prosecution of Offenses

The issue involved in *People v. Cayosa*[136] is whether or not the subscribing of the complaint before the municipal mayor, and not before the justice of the peace, conferred jurisdiction on the court over the person of accused.

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[133] G.R. No. 25439, March 28, 1969.

[134] This reiterates the doctrine enunciated in Chug Siu v. Local Civil Registrar, G.R. No. 20649, July 31, 1967; Lee v. Lee Hian Tiu, G.R. No. 24540, April 25, 1968; and Dy En Siu Co v. Local Civil Registrar, G.R. No. 20794, July 29, 1968.

[135] *Supra*, note 52.

[136] G.R. No. 24689, December 26, 1969.

The Supreme Court found no error in the lower court's denial of the motion. The defect adverted to by the accused-appellant, i.e., the complaint being subscribed to before the municipal mayor instead of before the Justice of the Peace, is clearly one of form that is curable by amendment. For even the absence of an oath in the complaint does not necessarily render it invalid, unless the complaint charged a private offense under Articles 344 and 360 of the Revised Penal Code, which is not the case here.

The pivotal issue in *Del Rosario v. Vda. de Mercado*[137] is whether or not a widow may be considered an offended party within the meaning of the provision of Rule 110, Section 2, Revised Rules of Court, entitled to file a complaint for the murder of her deceased husband? Reversing the ruling of the lower court, the Supreme Court held that the widow possesses the right to file such a complaint as an offended party. However much it may postulate the separate identities between husband and wife, the Supreme Court admitted that it cannot go so far as to hold that the death of either does not vitally affect the interest of the survivor, sufficient in law if such death arose from a criminal offense to give the widow the character of an offended party.

In *Reyes v. People*,[138] the rule is reiterated that after the accused has pleaded the information may be amended as to all matters of form by leave and at the discretion of the court, when the same can be done without prejudice to the rights of the defendant.[139] Amendments that touch upon matters of substance cannot be permitted after the plea is entered.

B. Preliminary Investigation

The Supreme Court held in *People v. Figueroa*[140] that the lower court's order quashing the information for lack of substantial compliance with Section 14 of Rule 112 of the Rules of Court was patently erroneous, and it set the order aside. To borrow the language of the Supreme Court, assuming that the trial court felt that the accused should have been given more "ample chance and opportunity to be heard in the preliminary investigation," then what it could properly have done, since in its order it recognized that the fiscal had conducted a preliminary investigation although "hurriedly" in its opinion, was not to dismiss the information but to hold the case in abeyance and conduct its own investigation or require the fiscal to hold a reinvestigation.

In the case at bar, the Supreme Court had occasion to elaborate on the nature of a preliminary investigation. According to it, the investigation is advisedly called preliminary, to be followed by the trial proper. The investigating judge or prosecuting officer acts upon probable cause and reasonable belief, not upon proof beyond reasonable doubt. The occasion is not

137 G.R. No. 25710, August 28, 1969.
138 G.R. Nos. 21528-29, March 28, 1969.
139 RULES OF COURT, Rule 110, sec. 13.
140 G.R. No. 24273, April 30, 1969.

for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof. When all this is fulfilled, the accused will not be permitted to cast about for fancied reasons to delay the proceedings; the time to ask for more is at the trial.[141]

As held in *People v. Santos*[142] it is the law in this jurisdiction that the prosecuting officer is in duty bound to prosecute "all persons who appear to be responsible" for the commission of the offense charged, while, on the other hand, all criminal prosecution shall be "under the direction and control of the Fiscal."[143] These provisions of the Rules of Court should not, however, be construed to abridge the discretion of the prosecuting officer not to file any criminal charge against a person whose guilt he may not be able, in his opinion, to establish with sufficient evidence.[144] In determining who are the persons who "appear to be responsible" for the commission of the offense complained of, the prosecuting officer has to consider, examine and evaluate the incriminatory evidence submitted to him. Needless to say, the weighing and evaluation thereof requires the exercise of discretion on his part — discretion that, for obvious reasons, must be free from pressure and other irrelevant considerations. It is not fair to compel the prosecuting officer to prosecute a person whose guilt may not, in his opinion, be established with the evidence submitted to him for consideration.[145]

The Supreme Court had occasion to state in *People v. Marquez*[146] that it has been consistently held that the defense of absence of a preliminary investigation must be raised before the entry of the plea, otherwise, it is waived. In the instant case, it follows that the appellee forfeited his right to question both the complaint and the information under discussion by entering his plea of not guilty and otherwise submitting to the jurisdiction of the court for trial.

C. Bail

It was enunciated in *People v. Judge Juan L. Bocar*[147] that it cannot be denied that, under our regime of laws, and concomitant with the legal pre-

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141 *Id.*, citing Hashim v. Boncan, 71 Phil. 216, 225 (1941).
142 G.R. No. 25413, October 31, 1969.
143 RULES OF COURT, Rule 106, secs. 1 and 4.
144 People v. Ong, 53 Phil. 544 (1929); People v. Agasang, 60 Phil. 182 (1934).
145 *Supra*, note 142.
It was held in People v. Jamisola, *infra*, note 158, that under Rule 110 of the Rules of Court, the Fiscal has "the discretion and control" of the prosecution (Section 4). In the exercise of this authority, Fiscal may reinvestigate the case and subsequently move for its dismissal should the re-investigation show either that the defendant is innocent or that his guilt may not be established beyond reasonable doubt.
146 G.R. No. 23654, March 28, 1969.
147 G.R. No. 27120, March 28, 1969.

sumption of innocence before conviction, an accused is entitled to provisional liberty on bail, the only exception being when he is charged with a capital offense and the evidence of his guilt is strong. But even in the latter instance, the high regard reserved by the law for personal freedom is underscored by the provision placing upon the prosecution, not on the defense, the burden of proving that the accused is not entitled to bail. This protective attitude toward the sanctity of the liberty of a person notwithstanding, due process also demands that in the matter of bail the prosecution should be afforded the full opportunity to present proof of the guilt of the accused. Thus, if it were true that the prosecution in the case at bar was deprived of the right to present its evidence against the bail petition, or that the order granting such petition was issued upon incomplete evidence, then the issuance of the order would really constitute grave abuse of discretion that would call for the remedy of certiorari.

D. Motion to Quash

It was also held in *People v. Cayosa*[148] that it is well-established under Revised Rule 117, section 10, that the failure of an accused to move for the quashal of the complaint or information before he pleads thereto constitutes a waiver of all of objections which may properly be grounds for such a motion, except when the complaint or information does not charge an offense or the court is without jurisdiction over the said offense. In the present case, the pretended defect is one of jurisdiction over the person, and it is one of the defenses deemed waived by the accused-appellant when he submitted to the arraignment and entered his plea therein.

E. Trial

In *Palanca v. Hon. Jose R. Querubin*,[149] it was held that consolidation of trial is the clear course of action to take. Justifying its ruling that the respondent judges gravely abused their discretion in denying petitioner's motion for consolidation, the Supreme Court said:

> It cannot be denied that in all these cases there is only one offended party, one accused, an identical offense committed in substantially the same way over the same period of time, such that the criminal informations were couched in almost identical language. The witnesses listed are the same except that in some informations, Atty. Romeo H. Mediodia appears as a witness and in others, Atty. Fernando Mirasol. And this, because these two were the notaries public that interchangeably notarized the documents.
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> There is much to petitioner's claim. The reasons he advanced deserve assent. To be achieved by consolidation are simplification, not confusion, of procedure; economy, not waste, of time, energy and expense. And with one judge to hear the case, shuttling from one judge to three others at the same time or at different times will be obviated. Defendant will be in-

[148] *Supra*, note 136.
[149] G.R. Nos. 29510 & 29531, November 29, 1969.

> sulated from unjust vexation. It is, indeed, correct to say that, all things considered, the administration of justice would be better served if only *one trial* before *one judge* is conducted in these 22 cases. We particularly note the absence of justifiable ground back of respondent judges' respective rulings against consolidation. All they say is that the cases are well distributed to the four branches of the court and that the denial was the consensus of all the judges. In the circumstances here presented, no potent reason suggests itself why these cases should not be lumped together in one branch of the trial court.

F. Appeal

In *People v. Cayosa*,[150] it was ruled that the denial of a motion to dismiss was not a final order, since it did not put an end to the proceedings in the court below. Not being final, said denial order was not appealable.[151] The duty of the accused was to go ahead with the trial until judgment on the merits, and thereafter reiterate his objections embodied in the motion to dismiss in the course of his appeal from the judgment, if it be one of conviction.[152]

An attempt by the State to appeal from a judgment of acquittal was made in *People v. Montemayor*,[153] the prosecuting fiscal evidently nurturing the belief that the decision sought to be reviewed constituted a flagrant act of maladministration of justice. Reviewing a consistent line of rulings on the subject,[154] the Supreme Court held that it was clear that the appeal in the present case would not lie. The accepted doctrine on double jeopardy, compelling the court to respect a judgment of acquittal by virtue of such a guarantee, constituted an insurmountable barrier. Commenting on the position taken by the prosecution, the Supreme Court said:

> x x x That may well be so; such instances, though rare, have been known to happen before and may occur again. After all the fallibility of human judgment is one of the facts of life. As so aptly noted, there is no guarantee of justice in the long run except the personality of the judge.[155]

Reiterating the ruling laid down in *People v. Obsania*,[156] the Supreme Court said in a group of cases that "the application of the sister doctrines of waiver and estoppel requires two *sine qua non* conditions: *first*, the dismissal must be sought or induced by the defendant personally or through his counsel; and *second*, such dismissal must not be on the merits and must not necessarily amount to an acquittal." It was emphasized in the same case that "the doctrine of estoppel is in quintessence the same as the doctrine

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150 *Supra*, note 136.
151 RULES OF COURT, Rule 122, sec. 1.
152 *Supra*, note 136.
153 G.R. No. 29599, January 30, 1969.
154 People v. Bringas, 70 Phil. 598 (1940); People v. Hernandez, 94 Phil. 49 (1953); People v. Ang Cho Kio, 95 Phil. 475 (1954) and People v. Pomeroy, 97 Phil. 927 (1955).
155 *Supra*, note 153 citing CARDOSO quoting Ehrlich, THE NATURE OF JUDICIAL PROCESS, 16-17 (1921).
156 G.R. No. 24447, June 29, 1968, 23 SCRA 1249-1274.

of waiver: the thrust of both is that a dismissal, other than on the merits, sought by the accused in a motion to dismiss, is deemed to be with the express consent and bars him from subsequently interposing the defense of double jeopardy on appeal or in a new prosecution for the same offense." It was concluded that said cases at bar fall within the ambit of the rule on estoppel, for the dismissal of the previous complaint on the technical ground of duplicity was granted at the instance and insistence of the accused.[157]

In *People v. Jamisola*,[158] it was held that upon appeal by the defendant from a judgment of conviction by the municipal court, the appealed decision is vacated and the appealed case "shall be tried in all respects anew in the court of first instance as if it had been originally instituted in that court."[159] In the appellate court the case may proceed upon the complaint filed below or upon an information filed with the court by the Provincial Fiscal charging exactly the same offense, the appellate proceedings calling thereafter for arraignment of the defendant.[160]

In *People v. Hon. Ernesto P. Valencia*,[161] the Supreme Court held that the fallacy in the respondent judge's position in his conclusion that decisions of ordinary municipal courts are appealable directly to the Court of Appeals or the Supreme Court because their jurisdiction and that of the courts of first instance are concurrent and therefore similar. Mere concurrence of jurisdiction does not authorize an appeal direct to the Court of Appeals or the Supreme Court from decisions of ordinary municipal courts in the absence of express legislative authority. Appeal is a purely statutory right. Section 45 of the judiciary Act, as amended, explicitly excepts judgments rendered by municipal courts of provincial capitals and city courts exercising like jurisdicton as courts of first instance pursuant to the penultimate paragraph of secion 87(c), as amended, from the scope of the general rule that courts of first instance have appellate jurisdiction over all cases arising in their respective provinces.

VIII. Evidence

A. Admissibility

1. *Hearsay Evidence*

The Supreme Court held in *People v. Mongado*[162] that it was error on the part of the trial court to consider the affidavits of admission of the three accused attached to the record in appreciating aggravating circumstances against them. Affidavits are generally classed as hearsay evidence; they are

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157 People v. Sy, G.R. Nos. 27537-44, October 31, 1969.
158 G.R. No. 27332, November 28, 1969.
159 RULES OF COURT, Rule 123, sec. 7.
160 *Supra*, note 158.
161 G.R. No. 29396, August 29, 1969.
162 G.R. No. 24877, June 30, 1969.

objectionable on hearsay grounds; they are not admissible evidence of the facts they narrate. These affidavits must first be formally offered and admitted in evidence before the court may consider their contents. It was further ruled that the fundamental rule on this point is found in Section 35, Rule 132 of the Rules of Court, which provides that "the court shall consider no evidence which has not been formally offered." It is the duty of the judge to rest his findings of facts and his judgment only and strictly upon the evidence adduced. In the case at bar, the affidavits of admission were not formally offered, much less admitted, in evidence. It was ruled that they could not be taken into account.

2. *Confession*

It is a settled rule that a confession is admissible as evidence, and it is presumed to be voluntary until the contrary is shown. Before a confession can be set aside, both confession and the reasons or motives given for its repudiation should be carefully scrutinized. It would be unsound practice for the court to disregard the confession of an accused simply because the accused repudiated it during the trial.[163]

Reiterating the ruling in *People v. Cruz*[164] the Supreme Court held in *People v. Pareja*[165] that there was no valid reason to differ with the trial court in its conclusion regarding the manner the extra-judicial confessions were taken. They were replete with details known exclusively to the declarants; the narrations reflected spontaneity and coherence, and the response to every question was fully informative, in many instances going beyond what the question called for, as to indicate that the mind of the declarant was free from extraneous compulsion or restraint. It was concluded that the Court was satisfied that the confessions, viewed objectively and in the light of the testimony of the officers who took them and before whom they were signed, were voluntarily given.

The only evidence relied upon for the conviction of appellant Yakan Pahoto in *People v. Han*[166] were the affidavits of the two other accused, Arasa Han and Anjal Jawalil, admitting their commission of the crime and naming Pahoto as one of their companions. These affidavits were repudiated by Arasa Han and Anjal Jawalil as having been extracted from them by force and maltreatment, when they testified and set up their defense of alibi. The Supreme Court said that the trial court correctly rejected their claims, as they had not complained of such alleged maltreatment to the City Judge, Hon. Francisco S. Atilano, before whom they executed the same, after the contents thereof had been duly interpreted to them in the dialect by the Court in-

163 People v. Dorado, G.R. No. 23464, October 31, 1969.
164 73 Phil. 651 (1942).
165 G.R. No. 21937, November 29, 1969.
166 G.R. No. 22945, April 25, 1969.

terpreter, Hamid Amerin, who witnessed their signing. But while these affidavits were properly taken by the trial court as admissions validly and voluntarily given by said declarants and as valid evidence against them, said affidavits, duly objected to, could not be validly considered as evidence against appellant Yakan Pahoto, in the absence of independent proof of any conspiracy implicating Pahoto.

3. *Part of Res Gestae*

In *People v. Ner*,[167] the Supreme Court noted that the fact that the witness' statement to an investigation was part of her narration, prompted by his questions about the details of the occurrence, and did not detract from the spontaneity of her statement. All that is required for the admissibility of a given statement as part of the *res gestae* is that it be made under the influence of a startling event witnessed by the person who made the declaration before he had time to think and make a story, or to concoct or contrive a falsehood, or to fabricate an account, and without any undue influence in obtaining it, aside from referring to the event in question or its immediate attending circumstances.

B. Weight and Sufficiency of Evidence

1. *Weight of Evidence in Appellate Courts*

The rule enunciated in *People v. Bautista*[168] was reiterated in *People v. Dorado*[169] to the effect that the findings of fact by the trial court should not be disturbed on appeal unless it is shown that the trial court had overlooked certain facts of weight and importance, it being acknowledged that the court below, having seen and heard the witnesses during the trial, is in a better position to evaluate their testimonies.[170]

2. *Proof Beyond Reasonable Doubt*

It was held in *People v. Maisug*[171] that, by and large, the evidence on record did not engender enough faith that appellant was guilty of the charge. If somehow it was discernible that it was the inadequacy of details in the state's evidence that made it difficult for the court to arrive at definite conclusions rather than, perhaps, the actual facts, still the court admitted that it could not pin responsibility on the appellant. It was pointed out that the

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167 G.R. No. 25504, July 31, 1969.
168 G.R. Nos. 23303-04, May 20, 1969.
169 *Supra*, note 163.
170 The same ruling has been made in People v. Pareja, *supra*, note 165; People v. Aglibut, G.R. No. 23694, October 30, 1969; People v. Macaraeg, G.R. No. 20700, February 27, 1969; Yturralde v. Vagilidad, G.R. No. 20571, May 30, 1969; People v. Ablaza, G.R. No. 27352, October 31, 1969; People v. Braña, G.R. No. 29210, October 31, 1969; San Ildefonso Electric Plant, Inc. v. Baliuag Electric Light and Power Co., Inc., G.R. Nos. 26770 & 26771, March 25, 1969; and Gonzales v. Victory Labor Union, G.R. No. 23256, October 31, 1969.
171 G.R. No. 22187, March 28, 1969.

moral conviction that may serve as basis of a finding of guilt in criminal cases is only that which is the logical and inevitable result of the evidence on record, exclusive of any other consideration. Short of this, it is not only the right of the accused to be freed, it is, even more, the court's constitutional duty to acquit him.[172]

3. *Evidence of Self-Defense*

People v. Talaboc, Jr.[173] restates the long familiar rule that in self-defense the burden of proof rests upon the accused. His duty is to establish self-defense by clear and convincing evidence. It matters not that the People's evidence is weak. For, as well expressed in the leading case of *People Ansoyon*,[174] such evidence "could be disbelieved after the accused himself had admitted the killing." Since the evidence in exculpation was notches below the level of that which is clear and convincing, the Supreme Court held that conviction was in order.

4. *Evidence of Conspiracy*

It was held in *People v. Tapac*[175] that for conspiracy to exist, no previous agreement to commit the offense is necessary. Conspiracy is deemed to have been established if the evidence shows that the defendants had the same purpose and joind together in its execution.[176] In the present case, such evidence was found to exist. If conspiracy has been established, the act or acts of any one conspirator is or are the acts of all of them, and each conspirator is responsible for the unlawful act or acts of his co-conspirator.

5. *Evidence to Prove Due Execution of Wills*

Pascual v. De la Cruz[177] reiterates the rule that, where a will is contested, the subscribing witnesses are generally regarded as the best qualified to testify on its due execution. However, it is similarly recognized that for the testimony of such witnesses to be entitled to full credit, it must be reasonable and unbiased, and not overcome by competent evidence, direct or circumstantial. For it must be remembered that the law does not simply require the presence of three instrumental witnesses; it demands that the witnesses be credible.

6. *Evidence Necessary to Overcome Notarial Document*

A rule of long standing which, through the years, has been adhered to was restated in *Yturralde v. Azurin*[178] to the effect that a notarial document is

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[172] The same ruling was made in People v. Bulawin, G.R. No. 30069, September 30, 1969.
[173] G.R. No. 25004, October 31, 1969.
[174] 75 Phil. 772, 777 (1946).
[175] G.R. No. 26491, May 20, 1969.
[176] People v. Cadag, G.R. No. 13830, May 31, 1961.
[177] G.R. No. 24819, May 30, 1969.
[178] G.R. No. 22158, May 30, 1969.

evidence of the facts in clear, unequivocal manner therein expressed. It has in its favor the presumption of regularity. To contradict all these, as plaintiff sought in the case at bar, there must be evidence that is "clear, convincing and more than merely preponderant." In the instant case, the Supreme Court found that the plaintiff had not discharged his burden of proof and the deed of donation, made in a public document, was held to be properly executed.

7. *Alibi*

People v. Lumantas[179] reiterates the observation that alibi is one of the weakest defenses that can be resorted to by an accused.[180] To establish it, the accused must show that he was at some other place for such a period of time that it was impossible for him to have been at the place where the crime was committed at the time of its commission.[181] In the case at bar, the Supreme Court found that accused-appellant failed to establish these requisites, as he did not even show how long he stayed in the place he alleged he was in, which was only two kilometers away from the place of the crime.[182]

The reason for the Court's skepticism of the defense of alibi was restated in *People v. Ali*[183] in that alibi is a defense very easily concocted, and for this reason, to be sustained, it must be supported with strong and unassailable evidence. In the instant case, it was held that appellant's evidence was far from being of this nature and could not overcome nor sufficiently weaken that of the prosecution wintesses who clearly and positively pointed to him and to his companions as the ones who had killed the victim.

However, in *People v. Gallora*,[184] the defense of alibi was sustained. According to the Supreme Court, the corroborated alibi of the appellant; the fact that he did not hesitate to go with the municipal authorities to the scene of the crime; the failure of the two material witnesses for the prosecution to identify him when identification would have been most timely and in accord with the natural human reaction; the absence of evidence concerning motivation; and the finding of the tell-tale handkerchief in the possession of another person — all these circumstances could not but cast a grave doubt as to the guilt of the appellant.

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[179] G.R. No. 28355, July 17, 1969.

[180] People v. De la Cruz, 76 Phil. 601 (1946).

[181] U.S. v. Oxiles, 29 Phil. 587 (1915); People v. Palamos, 49 Phil. 601 (1926); People v. Resabal, 50 Phil. 780 (1927).

[182] Similar rulings were made in People v. Ompad, G.R. No. 23513, January 31, 1969; People v. Vacal, G.R. No. 20913, February 27, 1969; People v. Tapitan G.R. No. 21492, April 25, 1969; People v. Manuel, G.R. Nos. 23786 & 23787, August 29, 1969; and People v. Bautista, G.R. No. 27638, November 28, 1969.

[183] G.R. No. 18519, October 30, 1969.

[184] G.R. No. 21740, October 30, 1969.

8. *Suppression of Evidence*

It was held in *People v. Caragao*[185] that the failure to introduce the testimony of a supposed witness to the execution of a document and that of the other persons who purportedly participated in the execution thereof should not be taken against the prosecution, not only because that testimony would be corroborative in nature but also because said witnesses were likewise available to the defense, which could have, and would have surely, called them to the witnesses stand had it expected them to testify in favor of defendant.

9. *Power of the Court to Allow or Limit Presentation of Evidence*

People v. Hon. Felino D. Abalos[186] enunciates the rule that trial courts have ample discretion to determine whether or not the parties should be allowed to introduce evidence in rebuttal. Moreover, its resolution on these matters are interlocutory in nature and will not generally be reviewed, except on appeal taken from a decision rendered on the merits. Judicial discretion, however, is not unlimited. It must be exercised reasonably, with a view to promoting the ends of justice, one of which is to ascertain the truth. Hence, whenever discretion is vested, it must be understood to be a sound one, inasmuch as the interest of justice, equity and fair play cannot be advanced otherwise. This is particularly true with respect to rules of procedure, especially those governing the admission or exclusion of evidence. As a matter of general practice, it is deemed best to resolve doubts in favor of admission of the contested evidence, without prejudice to such action as the court may deem fit to take in deciding the case on the merits. This practice has added importance as regard evidence for the prosecution in criminal cases, for, once the accused has been acquitted, there is no means to secure a review by appeal, no matter how erroneous the action of the lower court may have been. Hence, the Supreme Court was constrained to suspend the proceedings in the criminal action involved in the case at bar to forestall a possible miscarriage of justice.

Such power of the court is also grounded on the provisions of Rule 133, section 6, Rules of Court.

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185 G.R. No. 28258, December 27, 1969.
186 G.R. No. 29039, November 28, 1969.