REMEDIAL LAW—PART ONE

CIVIL PROCEDURE

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Introductory

Like the skilled artisan, the law practitioner masters the rules of his trade. While he knows that litigation is not a game of skill, the winning of a lawsuit depends on his familiarity with technical rules that inhere in the various stages of litigation. Thus, at several points, the lawyer has to bear in mind the basic rule at each stage.

First, he knows that before he institutes a litigation for his client, he must be sure that the latter has a good cause of action, consisting of a right violated by the antagonist. Second, his client must be a party with capacity to sue, and defendant with capacity to be sued. Third, when he prepares the complaint, he should not split the cause if it is simple although he can join various causes. Fourth, in his complaint he should allege in clear and precise language the ultimate, and not evidentiary, facts constituting the cause.

Fifth, he should file it in the proper Court with jurisdiction over the subject matter, and having territorial venue. Sixth, having filed his complaint, and paid the docket fees, he goes to the Sheriff and pays for services of summons and he sees to it that there is proper service to be sure that defendant is given his day in Court. Seventh, after service he waits for the responsive pleading, e.g. motion to dismiss, motion for bill of particulars, answer of defendant; if these do not come, he files motion to declare defendant in default, and presents evidence *ex parte;* if on the other hand, defendant resists, he meets the contrary move with his reply or opposition; if the answer does not tender an issue, he moves for judgment on the pleadings or if it does but it is sham, he asks for summary judgment. Eighth, if the answer is *bona fide,* he bides his time and waits for pre-trial; meanwhile, he avails of ways to understand defendant's proofs by the accepted modes of discovery; also, to be sure that his client's case will not result in a mere paper victory, he takes advantage, if justified by the facts, of the provisional remedies, e.g. attachment, preliminary injunction, receivership, or replevin. Ninth, before trial comes he marshalls his evidence and

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in the courtroom, he presents these conformably to the rules of relevancy and competency, taking care that his documentary proof is not rejected for lack of proper identification. Tenth, after the conclusion of trial, he presents his memorandum in order to help the Court understand his client's cause, emphasizing its validity and justice.

Eleventh, if he wins, he waits to attack the moves of the antagonist to appeal, availing himself of the technical defects on the timeliness of the motion for reconsideration or new trial, appeal bond, record on appeal. Twelfth, if the urgency of the situation demands it, he asks for immediate execution justifying this on accepted grounds, otherwise he takes advantage of the usually accepted modes open to him short of execution pending appeal, e.g. preliminary injunction, attachment, or receivership. Thirteenth, if the appeal prospers, he prepares the groundwork for the fight in the review, and here his memorandum filed in the trial court becomes the draft of his brief. Fourteenth, he is also alert to take advantage once again of the technicalities open to him to dismiss the appeal of the other party, the fatal omissions in the record on appeal, or the late filing of the brief. Fifteenth, if the appeal is given due course, he notes if there is need for oral argument, and asks for it; if granted, he only lays stress on the vital points; then he waits for the decision. Sixteenth, if he wins once again he bides his time and verifies when the judgment on appeal should become final; and when that comes, moves for remand to trial court for execution.

Seventeenth, if he loses, he keeps tab of the period to seek review on certiorari to the Supreme Court, availing himself a motion for reconsideration to maintain a breathing space. Eighteenth, if his motion for reconsideration is denied, he prepares and within the reglementary period files the petition for review with the highest court, there seeking to emphasize why its supervisory authority must come in to correct obvious departures of the Court of Appeals from established laws, substantive or remedial. Nineteenth, if his petition is given due course, he files his brief within the time prescribed by the Rules, and waits for his opponent's. Twentieth, when the case is finally heard and decided, and he loses, he takes the last chance of asking for reconsideration, but if he wins and judgment becomes final, he goes to the trial court and moves to execute the judgment for his client. Twenty-first, and here he does not relax because execution is the last but most important lap, most valuable to his client and to himself because of his honorarium, so that he sees to it that all the efforts of the antagonist to frustrate enforcement of the judgment are nullified; and finally he and his client can afford to rest.

The foregoing is the skeleton of the ordinary civil litigation, but the practitioner further knows the incidents that come in, the motions, the sudden twists that may occur, where he must use his head and cool calculations,

where he is faced with a situation where it becomes a matter of life and death for the case if he does not avail of the extraordinary legal remedies particularly of mandamus and certiorari to keep the trial Judge within the legal bounds of his judicial authority; when he does choose to avail of these, he knows the conditions precedent to fulfill, files a motion for reconsideration unless extreme urgency or manifest lack of authority will justify his omitting this requisite and when he does file his petition with the proper reviewing tribunal, with the Court of Appeals if in aid of its appellate jurisdiction, or with the Supreme Court otherwise, he avails himself in the meantime, of seeking preliminary injunction to maintain the *status quo* in the litigation.

Having the foregoing in mind, understanding the fundamentals of civil procedure, perhaps the practitioner will see from a review of the decisions of the Supreme Court that they are mere reiterations of what he already knows; perhaps more important is that he should keep abreast with the statutes yearly pouring down from the Legislative mill, that insert complicated changes in the matter of jurisdiction as well as in the conduct of litigations, e.g. appeals from quasi-judicial tribunals. A study of the Supreme Court decisions is always helpful because they illustrate the application of the Rules to particular sets of facts; but on this the practitioner learns to bear in mind, to be wary that where the facts differ one way or the other, he will do well to use his discerning powers and see if in such deflected situations the decisions would have been the same.

Following the foregoing sequence in the conduct of litigations we now review the 1970 decisions.

A. *PARTIES*

Impleading indispensable party

Boniel v. Reyes[1] follows the rule that where a party files a unilateral petition in the Court of First Instance to annul a patent issued on public land on the ground that it had been issued in fraud of petitioner, but he did not implead the patentee or even the Director of Lands, they being indispensable parties, his petition will be dismissed.

In *Queto v. Catolico*,[2] the Judge of the Court of First Instance ordered his Clerk of Court to send notices to thirty-seven (37) naturalized citizens of Misamis Oriental to appear on 15 October 1965 at nine a.m. When they appeared, the judge declared that their naturalization were void, and he upbraided them for being " '*balasubas*'; ingrate; '*hambog*', animalistic; a danger and, a disgrace to the community; a dishonor to the Filipino people."

[1] G.R. No. 28400, September 30, 1970.
[2] G.R. No. 25204, January 23, 1970.

Hearing on their announced denaturalization was postponed to November 12, 1965 and before that date the said naturalized citizens went to the Supreme Court on prohibition. The Court granted the writ on the ground that only the Solicitor General can file denaturalization proceedings by proper motion under Commonwealth Act No. 473, and the judge cannot do that *motu propio.*

In re Bishop of Moncadian Church of the Philippines [3] concerns a petition filed under Section 112, Act No. 496 to cancel title of original patentee and to issue new title to purchaser, herein petitioner, as the original patentee had already died. The petition was dismissed for plaintiff should have filed an ordinary action impleading the heirs of the deceased or it could just have registered its purchase, or if as it alleged its deeds of sale were lost it could file administration proceedings for the settlement of the estate of the deceased and prove its title to the land in the administration proceedings.

Suits against the state as defendant

In *Carabao, Inc. v. Agricultural Productivity Commission,*[4] plaintiff furnished fire extinguishers to the Agricultural Productivity Commission as they were not paid; plaintiff filed claim with the Auditor General but it was dismissed; therefore it instituted civil action in the Court of First Instance of Manila which dismissed the case for lack of jurisdiction. On appeal, the Supreme Court affirmed, saying that under Commonwealth Act No. 327 amending Act No. 3083 in which the State waives immunity from suit, if a claimant is a private party and is not satisfied with the decision of the Auditor General he must file the appeal not with the Court of First Instance but with the Supreme Court.

Begosa v. Philippine Veterans Administration,[5] is an action by a veteran against the Philippine Veteran's Board for a claim for pension. The defendant put up the defense that this was a suit against the State and could not be entertained. It was held that this was not a suit against the State but a suit to compel a public officer to properly perform his duty as imposed by a statute appropriating funds for the purpose. As to the non-exhaustion of administrative remedies, the action being patently illegal, there was no need to exhaust administrative remedies, the rule being that the requirement to exhaust administrative remedies as a preliminary step to go to the courts in order to annul the action of a quasi-judicial officer does not apply where the action is palpably illegal or where the situation is one of extreme urgency or where the question is purely legal or where the quasi-judicial officer was the *alter ego* of the President.

[3] G.R. Nos. 25543-44, July 31, 1970.
[4] G.R. No. 29304, September 30, 1970.
[5] G.R. No. 25916, April 30, 1970.

Caltex (Phil.), Inc. v. Customs Arrastre[6] merely reiterates previous rulings that the Customs Arrastre is an arm of the State, and as the suit was against the State, the order of dismissal of the lower court was affirmed.

In *Gloren v. Republic,*[7] plaintiff filed suit against the Republic because his merchandise imported from abroad, after having been discharged without damage, was lost while in the possession of the arrastre service. The Republic, as proprietor of arrastre, was sentenced to pay damages. On appeal to the Supreme Court, it was held that while arrastre service is proprietary, it is also incident to the primary and governmental function of the Bureau of Customs. Therefore, the suit was against the State and since the Republic could not be sued without its consent, the remedy for plaintiff was to file a money claim with the Auditor General pursuant to Act No. 3083, Commonwealth Act. No. 327.

Pauper litigants

"Pauper" litigant was defined in the case of *Enaje v. Ramos.*[8] Here, plaintiff filed action to recover ₱85.00 plus legal interest and attorney's fees in the municipal court and asked to litigate as pauper alleging that even though he formerly had various parcels of land, the same had already been disposed of and he had no means of livelihood. The municipal judge refused, and the plaintiff went on certiorari to the Court of First Instance, which dismissed the certiorari. On appeal, the Supreme Court reversed the Court of First Instance ruling. Under Republic Act No. 6035 granting free transcript to indigents, an indigent is defined as one without visible means of income or income insufficient to support his family, and while one may not be really a pauper, he may even be able bodied, where he has no means of subsistence for his family, he can sue in *forma pauperis;* in fact, under Republic Act No. 6035 an income of ₱300.00 a month still falls within the qualification of indigent.

Death of parties

Where a claim for overtime was filed in the Court of Industrial Relations against Halili Transit and after judgment had become final and execution issued, Halili died so that he was substituted by his widow. According to the Supreme Court, this cannot be a ground to dismiss the case and the court can compel plaintiff-claimants to submit their claim before the probate court, for Section 21, Rule 3 was designed to prevent useless repetition.[9]

In *Aguinaldo v. Aguinaldo,*[10] judgment was rendered and became final against defendant. Defendant died afterwards, and plaintiff asked the lower

[6] G.R. No. 26632, May 29, 1970.
[7] G.R. No. 26811, July 31, 1970.
[8] G.R. No. 22109, January 30, 1970.
[9] Halili v. C.I.R., G.R. No. 27773, December 28, 1970.
[10] G.R. No. 30362, November 26, 1970.

court to have defendant's legitimate children be substituted in his place. The lower court granted the motion and the legitimate children appealed. The ruling was affirmed, the Court holding that the duty to inform the court of the death of the defendant lay upon the attorney of the deceased defendant but since this was not performed that it was the adverse party that performed it, it was not for defendants to complain.

Petitioner in *Re Bishop of Moncadian Church of the Philippines,*[11] filed petition under Section 112, Act 496 to cancel title of original patentee and to issue new title to purchaser, herein petitioner, the original patentee having already died. The Court affirmed dismissal, for plaintiff should have filed an ordinary action impleading the heirs of the deceased or it could just have registered its purchase, or if as it alleged its deeds of sale were lost, it could file administration proceedings for the settlement of the estate of the deceased and prove its title to the land in the administration proceedings.

B. *CAUSE OF ACTION*

Change of cause of action

In *Ylaya Textile Market, Inc. v. Felix Ocampo, Inc.*[12] Ocampo was owner of the land; he leased to Ylaya who constructed a building but in the deed of lease the lessee was placed as Yap, and Ylaya was only sublessee. Ocampo later filed against Yap an ejectment suit and a petition under Section 112, Act No. 496 to register the building in the title. In the ejectment suit, Yap did not defend but Ylaya intervened. Judgment was rendered by the court of Ocampo against Yap and his assignees and successors-in-interest in the ejectment suit. Ylaya then filed the present suit for damages against Ocampo contending that the true contract of lease was between Ocampo and himself. Ocampo moved to dismiss and the Court of First Instance dismissed but Ylaya went to the Supreme Court on certiorari contending that the true contract was between himself and Ocampo. *Held,* judgment was set aside, for if Ylaya's present complaint were true, then he suffered damages by the alleged conspiracy between Ocampo and Yap and this action is for the damages. It is true, according to the Court, that two other cases were pending, but this was not deemed relevant because in the ejectment case the issue was whether ejectment could issue without passing on the question of ownership; in the case at bar question of ownership was involved; in the petition under Section 112, the issue was whether the land registration court could pass on the question of ownership. It is true that the present civil case is in one branch while the other cases are in other branches and one branch cannot interfere with the orders of another,

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[11] *Supra,* note 3.
[12] G.R. No. 27823, March 20, 1970.

continued the court, but plaintiff was not the one responsible for the raffle, and the remedy is to consolidate. As to the failure of plaintiff to attach certified copies of the orders assailed, this was held not to be a substanial error.

In *Anaya v. Palaroan,*[13] there was a prior suit to annul marriage on the ground of force and intimidation, but the case was dismissed. Afterwards the wife sought to annul the marriage in a new case and the wife alleged that husband had divulged to her that he had pre-marital relations with a woman which allegedly constituted fraud. The husband in answer resisted the action; the wife filed reply, this time alleging that husband paid court to her without any intention to perform his duty of *consortium.* The lower court dismissed and the wife appealed. The Supreme Court affirmed, saying that a party may not in a reply allege a new cause of action or amend or change the cause of action in the original complaint, otherwise pleadings would be interminable. In the present case, since parties were married in 1953, the wife must have discovered the alleged intent of the husband not to comply with the duty of *consortium* since then but since this case was filed only in 1966 and the basis was fraud, the prescriptive period of which is only four (4) years, this action has already prescribed.

In *Quimiguing v. Icao,*[14] a woman filed action against defendant alleging that defendant though married had relations with her and as a result she became pregnant and had to stop studying. Defendant filed a motion to dismiss on the ground that when the original complaint was filed no support was yet due since the child was still unborn. Plaintiff filed an amended complaint alleging that afterwards she gave birth, but the lower court held that since the original complaint alleged no cause of action, it could not be amended. Plaintiff appealed to Supreme Court which reversed. Since the complaint alleged that defendant made plaintiff yield to his lust, stated the Court, therefore the act of defendant was against Article 21, New Civil Code and made defendant liable for damages. As to the child, even though he was still unborn when the original complaint was filed, as such unborn child it could receive donations; therefore, it was also entitled to support and for purposes of the motion to dismiss, defendant hypothetically admitted the allegations of the complaint and he thereby admitted also hypothetically his paternity. The complaint therefore was held to allege a good cause of action.

Gayon v. Gayon,[15] is an action for *reivindicacion,* where it was held that the fact that defendants were only alleged heirs and there had been no previous declaration of heirship in their favor was not a bar to the filing of the action against them because succession takes place by operation of

[13] G.R. No. 27930, November 26, 1970.
[14] G.R. No. 26795, July 31, 1970.
[15] G.R. No. 28394, November 26, 1970.

law. While the deceased was plaintiff's sister-in-law and therefore under Article 217 of the New Civil Code if parties litigant are members of the same family it is necessary that there had been made previous efforts to compromise, this situation was considered not to fall under Article 222 because the deceased were only plaintiff's nephews and nieces and therefore they were not considered members of the same family.

C. *JURISDICTION; CONFLICTS THEREOF*

Plaintiff in *Ella v. Salanga*,[16] filed civil case in the Court of First Instance of Ilocos Sur against the Secretary of Public Works for specific performance to compel payment of more than ₱52,000. It was raffled to Branch II before Judge Dumawal who issued preliminary injunction to restrain disbursement of the sum equivalent to said amount already earmarked for the purpose. In due time defendant answered and the parties entered into partial stipulation of facts, but Judge Dumawal died and was substituted by Judge Nicolas assigned to Court of First Instance branch in Narvacan; then Judge Nicolas was transferred to Mindoro. After some time defendants filed before Branch III presided by Judge Salanga in Vigan a motion to return the case to Vigan and Judge Salanga granted and lifted preliminary injunction upon filing of bond in the sum of ₱20,000. Plaintiffs went to the Supreme Court on certiorari contending that the action of Judge Salanga was illegal since he interfered with another—coordinate branch. The Supreme Court denied the petition. It is true that Branches II and III are coordinate and neither can interfere with the other, said the court, but here there was no interference since there was no judge in Branch II and there was no ill motive of Judge Salanga in taking over, unlike the case of *Luque v. Kayanan*[17] where the Supreme Court ordered return of the case transferred from one branch to another without any reason and laid the Judge open to the charge of unusual interest. As to the lifting by Judge Salanga of the preliminary injunction, this was in the exercise of sound discretion and the discretion was correctly exercised since the claim was for money and therefore compensable, a bond having been posted. As to the charge that respondents committed contempt against the Supreme Court, this was dismissed, because the case was taken to the Supreme Court on November 18, 1964 and preliminary injunction was issued by Supreme Court on November 20, 1964, while Judge Salanga lifted the preliminary injunction issued by Judge Dumawal on November 5, 1964.

Where De Leon got judgment for ₱30,000 against Bernabe in the Court of First Instance of Rizal (Branch XII) in Civil Case No. 189, judgment became final, execution issued and properties of Bernabe sold at public auction and bought by sister of De Leon. but two weeks before the end

[16] G.R. No. 23826, September 28, 1970.
[17] G.R. No. 26826, August 29, 1969, 29 SCRA 165 (1969).

of redemption period Bernabe filed Civil Case No. 1217 which fell to another branch and the action was to annul the sheriff's sale as irregular and anomalous and Judge Salvador in said case granted preliminary injunction against the buyer and pending his decision granted motion to redeem, whereupon defendant in the second case before Judge Salvador went to the branch of the first case and there filed motion to consolidate her title on the ground that the redemption period had already passed and Judge Cruz in the first case granted such motion so that both parties went to the Supreme Court on certiorari, the sister of De Leon against Judge Salvador and Bernabe against Judge Cruz, and the question involved was which branch had authority to grant or deny redemption, it was held that since Courts of First Instance are coordinate and can not interfere with one another and since execution is the fruit of a suit and marks its end, therefore incidents therein are within the cognizance of the Court that granted it and here the property being already in *custodia legis* before the first branch, Judge Salvador had no authority to entertain the second case.[18]

In *Lakas ng Manggagawa ng Makabayan (LMM) v. Abiera,*[19] a labor union had obtained from a company a termination of employment of private respondents members of *Iglesia ni Cristo* because one of the tenets of the *Iglesia* is to prohibit membership in labor organizations. Said respondents went to the Court of First Instance of Negros Occidental and secured preliminary injunction but the labor union went to the Supreme Court questioning the jurisdiction of the Negros Court. The Court granted the petition because the termination of services of private respondents amounted to an unfair labor practice of which only the Court of Industrial Relations has exclusive jurisdiction.

In Re Testate Estate of Alejandro Gonzales,[20] a probate court had approved the sale of the share of a minor because her guardian had given his ratification but after the order of approval had already become final, it was sought to be reconsidered on the ground that there had been no obligation of the estate to satisfy for which the sale had been ordered. The Supreme Court held that the probate court had no authority to entertain because this should have been ventilated in a court of general jurisdiction.

Macailang v. Andrada[21] was a land dispute before the Secretary of Agriculture where the Secretary decided and ruled out any reconsideration holding that his decision had long become final and executory. The losing party went to the Office of President, and the Executive Secretary "by authority of President" reversed. Plaintiffs brought suit in Court of First Instance,

[18] De Leon v. Salvador, G.R. Nos. 30871 & 31603, December 28, 1970.
[19] G.R. No. 29474, December 19, 1970.
[20] G.R. No. 21033, December 19, 1970.
[21] G.R. No. 21607, January 30, 1970.

Cotabato against respondents and Executive Secretary in representation and as representative of the President, and the Court of First Instance declared the decision of the Executive Secretary null and void. Defendants appealed to the Supreme Court, which affirmed. While this petition was not labelled certiorari it was really certiorari because it charged the Executive Secretary with grave abuse since the order of Secretary of Agriculture had long become final, noted the Court. As to the argument that the Court of First Instance of Cotabato could not annul an act of the Executive Secretary in Manila, citing the case of *Acosta v. Alvendia,*[22] the Court said the *Acosta* case was inapplicable because this case involved a question of legality of the decision of the Executive Secretary. The Court of First Instance of Cotabato where plaintiff resides had jurisdiction; the case was filed in the Court of First Instance where plaintiff resides and where the questioned administrative decision was being enforced, said the Court. As to the merits, since under Lands Administrative Order No. 6, Sections 12 and 13, a decision of the Secretary of Agriculture becomes final after thirty (30) days from notice and in this case that period had long expired, therefore the Executive Secretary could no longer review.

In *Veterans Security Free Workers Union (FFW) v. Cloribel,*[23] a labor union declared a strike and conducted a picket on May 6, 1966. The next day the company filed a civil case in Court of First Instance, Manila, asking to declare the strike and picket illegal; respondent Judge issued *ex parte* resolution granting preliminary injunction. Four days later, on May 11, 1966 the union filed an unfair labor practice in the Court of Industrial Relations and after that went to the Court of First Instance, Manila and claimed that the Court of First Instance had no jurisdiction over the case. The Court of First Instance denied and the labor union went to Supreme Court on certiorari. The petition was granted. Since the Court of Industrial Relations had exclusive jurisdiction of unfair labor practice cases the mere fact that the company first filed the civil case in Court of First Instance was held immaterial. As to the alleged lack of employer-employee relationship, this was considered only a matter of defense in the Court of Industrial Relations.

In *Laquian v. Baltazar,*[24] N filed civil action No. 2312 in Court of First Instance, Pampanga against L for alleged libel; he later filed a criminal complaint on the same facts in Municipal Court of San Fernando, Pampanga. Subsequently, defendant moved to dismiss the criminal case on the ground that the municipal court had no jurisdiction over Article 360, par. 3, Revised Penal Code as amended by Republic Act No. 1289 giving exclusive jurisdiction to the Court of First Instance. The motion to dismiss as well as reconsideration was denied. On appeal, it was reversed. Assuming that

[22] G.R. No. 14598, October 31, 1960, 60 O.G. 6396 (Oct., 1964).
[23] G.R. No. 26439, January 30, 1970.
[24] G.R. No. 27514, February 18, 1970.

both courts had concurrent jurisdiction the first court excluded the second, held the Court; besides under Republic Act No. 1289 amending Article 363 and further amended by Republic Act No. 4363, providing that criminal and civil actions for libel are to be filed in the Court of First Instance of the province where the article was printed and first published or where the offended party resides at the time of commission of the offense, and the civil action shall be filed in the same court as the criminal and vice-versa, the court where the first action was filed excluded the second.

Republic v. Ledesma, [25] is an action for sum of money originally filed in the Court of First Instance, Manila. After plaintiff had presented evidence, defendant moved to dismiss for lack of jurisdiction over subject matter. The trial Judge dismissed, but this was reversed and remanded. Since the claim in the complaint amounted to ₱8,100.71 plus interest and attorney's fees, the total of all of which was more than ₱10,000.00, the Court of First Instance had jurisdiction. The rule is that in an action to recover sum of money, the jurisdiction is based on the amount of the claim and defendant cannot take the case out of the court by proving that plaintiff is entitled to less. There was no pretense in the present case that the amount claimed was exaggerated to make the case fall within the jurisdiction of the Court of First Instance.

The rule of state immunity was invoked and rejected in *Director of the Bureau of Telecommunications v. Aligaen,* [26] where plaintiff sued the Bureau of Telecommunications alleging that he being the grantee of a congressional franchise, the Bureau, in violation thereof, was starting to establish its own system in the province. He asked for preliminary injunction *ex parte* and this was granted. Defendant attacked the jurisdiction of the Court of First Instance on ground that this was a suit against the State and also that since the Bureau of Telecommunications has its offices in Manila, injunction could not be issued by the Court of First Instance of Capiz. The lower court maintained injunction and the Bureau went to the Supreme Court on certiorari. The Supreme Court held for respondents reasoning that since the Bureau was acting against the law, it was an unauthorized act and therefore not a suit against the State. As to the argument that under the case of *Acosta v. Alvendia* [27] a Court of First Instance cannot issue an injunction so as to enforce it outside of its territorial jurisdiction, the Court pointed out that the present case was one wherein the acts complained of and being enjoined were being committed in Roxas City within the territory of Court of First Instance, Capiz. Refuting the argument that the Bureau represented the State and the lower court should have permitted the dissolution of the injunction without a counterbond, the court stated that this was wrong

[25] G.R. No. 31863, April 30, 1970.
[26] G.R. No. 31135, May 29, 1970.
[27] *Supra,* note 22.

because the action being unauthorized, the very counterbond would be utilized to permit continuance of the illegal action.

The authority of the Commissioner of Immigration to conduct deportation proceedings was upheld in *Calacday v. Vivo,* [28] where, in deportation proceedings being conducted by the Commissioner of Immigration, the respondent therein went to the Court of First Instance to stop the proceedings. The court ordered the Commissioner of Immigration to refrain, but on appeal to the Supreme Court, the order was reversed. The Commissioner of Immigration being in the process of conducting an investigation, the Court of First Instance had no authority to step in, declared the Court. Besides, the order of the Court of First Instance appealed from being a final order and therefore appealable, it should have contained a finding of facts which it did not.

Derecho v. Abiera, [29] is an ejectment suit filed in the municipal court. Defendant moved to dismiss claiming that as leasehold tenant he could only be ejected by the Court of Agrarian Relations under Republic Act No. 1199. The motion to dismiss was denied by the trial Judge and after trial, judgment was rendered for plaintiff. Defendant moved to reconsider, and upon denial, he appealed to Court of First Instance. Here, since defendant failed to file supersedeas bond the Court of First Instance granted execution upon motion of plaintiff, and defendant moved to reconsider but the Court of First Instance denied; therefore defendant went to the Supreme Court on certiorari. The Supreme Court set aside the order of execution, since if defendant was a leasehold tenant, the Court of Agrarian Relations had exclusive jurisdiction. What the Court of First Instance should have done was to hold a preliminary hearing on the question of jurisdiction. The Supreme Court distinguished this case from *Evangelista v. Court of Agrarian Relations* [30] where the land owner sued the tenant in the Municipal Court and the tenant questioned the jurisdiction of municipal court by motion to dismiss and went to the Court of First Instance for prohibition which was dismissed for lack of merits. The tenant did not appeal therefrom but instead filed a new action in the Court of Agrarian Relations for alleged illegal dispossession. The Supreme Court held that since the question of jurisdiction had already been raised in the Court of First Instance the parties should await the decision there and if defendant-tenant was defeated he should appeal, but the Court of Agrarian Relations could not proceed simultaneously with the Court of First Instance because that would permit the tenant to ride on two horses at the same time. Here, the Supreme Court pointed out, the tenant squarely raised the question of jurisdiction and asked for preliminary hearing when he was sued in the ejectment case. This procedure adopted by tenant was correct, and the

[28] G.R. No. 26681, May 29, 1970.
[29] G.R. No. 26697, July 31, 1970.
[30] G.R. No. 13875, October 31, 1960, 60 O.G. 7932 (Nov., 1964).

Court of First Instance should have ordered preliminary hearing on the question of jurisdiction.

Kaisahan ng mga Manggagawa sa La Campana v. De los Angeles, [31] is an unfair labor practice case against an employer where the Court of Industrial Relations rendered monetary judgment for the workers. Judgment became final and writ of execution issued, as a result of which properties of the employer were sold by sheriff. The employer filed a petition in the Court of First Instance to annul the sale on various grounds, and the workers' union went to the Supreme Court to prohibit the Court of First Instance from hearing the case on the ground that it had no jurisdiction. The Supreme Court held that the Court of First Instance had no jurisdiction over the case.

In *Uriarte v. Court of First Instance, Negros Occidental,* [32] Vicente Uriarte filed special proceedings intestate of Juan Uriarte in Court of First Instance, Negros Occidental alleging that he was a natural son of deceased Juan Uriarte, having filed a complaint for compulsory recognition during the lifetime of Juan. The intestate proceedings were opposed by Higino Uriarte who alleged that Juan died with a will executed in Spain and that he would submit the same to the Court of First Instance, and he also challenged the personality of Vicente to file the special proceeding. Afterwards the testamentary heirs of the deceased filed special proceeding in the Court of First Instance of Manila to probate the last will of the deceased and on the same date coincidentally they filed motion in Negros Occidental to dismiss special proceeding filed there which was an intestacy on the ground that deceased had died testate. The Negros Court of First Instance dismissed the intestate proceeding over opposition of petitioner Vicente. Vicente appealed and then went to Manila Court of First Instance, to intervene therein in order to dismiss the petition for probate. This was denied and, assailing the dismissal of Negros case and the non-dismissal of the Manila case, he went on certiorari to the Supreme Court against both the Negros Court of First Instance and Manila Court of First Instance. The Supreme Court dismissed the petition, for deceased having been a non-resident of the Philippines at the time of his death, his properties could be settled in any province where he had properties which in this case was either Negros or Manila. As it was alleged that he died intestate the proceeding was intestacy but as a will was discovered afterwards it should be converted into a testamentary proceeding. If probate is rejected the proceeding will continue as intestate, the Court continued; the first court that entertained the case should continue, but since venue is waivable, and since Vicente knew of the will when it was submitted to the Manila Court of First Instance since August, 1962, but he filed the motion to dismiss the Manila case only on October 31, 1962, this was negligence, and the Supreme Court would not dismiss the Manila case

[31] G.R. No. 30798, November 26, 1970.
[32] G.R. Nos. 21938-39, May 29, 1970.

for wrong venue, otherwise the result would be to repeat the proceedings. Vicente should just be permitted to continue with the old Civil Case No. 6142 to establish his status or to intervene in the probate case in the Court of First Instance, Manila for the same purpose; it is this probate case that should continue, concluded the Court.

Republic v. Court of First Instance, Pampanga, [33] is an expropriation case where the Court of First Instance held that it was without jurisdiction to determine the question of ownership of one of the contested lots. However, the Supreme Court reversed on the authority of Rule 69, Section 9; the reason being that if an independent action were required there would be multiplicity of suits and the Government would have to re-adduce evidence and a new set of commissioners would be appointed.

The rule on prejudicial question was relied upon in *Valino v. Muñoz* [34] to uphold the jurisdiction of the Court of Agrarian Relations. In an agrarian case, the landlord filed ejectment suit against the tenant. In the compromise agreement threshed out, the tenant agreed to be ejected but the landlord agreed to suspend execution as long as the tenant paid yearly rental. Later, for alleged failure to pay rental, the tenant was ejected. The tenant filed two cases, one criminal in the Municipal Court of San Ildefonso against the landlord for unlawful dispossession and another in the agrarian court in Malolos for illegal dispossession. In the criminal case, over the motion of landlord to suspend trial in view of pendency of the agrarian case, the Municipal Court refused to suspend; the landlord filed prohibition in the Court of First Instance contending that the agrarian case was prejudicial question. The tenant intervened in the prohibition case contending that the agrarian case was non-prejudicial question. The Court of First Instance ruled it was prejudicial; and this present action was filed in the Supreme Court for certiorari to compel the criminal case to proceed. The Supreme Court denied certiorari, holding that it is true that where a landlord dispossesses a tenant without authority from the Agrarian Court, his criminal liability is fixed, but in the present case, in view of the compromise agreement, the Agrarian Court should have decided if because of it the dispossession was correct and properly exercised pursuant to the compromise agreement. Therefore its ruling one way or the other must be the vital factor that will determine whether or not there was basis for the criminal prosecution; hence it is a prejudicial question.

D. *MOTION TO DISMISS, PRESCRIPTION OF ACTIONS*

The rule that prescription does not run against the State was relied on in *Republic v. Hernaez.* [35] Defendants here executed chattel mortgages in

[33] G.R. No. 27006, June 30, 1970.
[34] G.R. No. 26151, October 22, 1970.
[35] G.R. No. 24137, January 30, 1970.

1943 in favor of Bank of Taiwan; they were due on October 27, 1944. Complaint was filed by the Republic of the Philippines, successor of Bank of Taiwan on March 30, 1962, and defendants put up the defense of prescription on the ground that deducting a period of suspension by Moratorium Law of three (3) years four (4) months and sixteen (16) days from the period of seventeen (17) years five (5) months and three (3) days that had ran from October 27, 1944 to March 30, 1962 there had lapsed a period of fourteen (14) years and seventeen (17) days. The Court of First Instance dismissed but the Supreme Court reversed. Since the Republic acquired rights to the credit by transfer to it by United States government on July 20, 1954 when less than ten (10) years had passed from the time the cause of action had accrued, and since prescription does not run against the State therefore action had not yet prescribed, ruled the Court. As to defendant Hernaez, while his appeal raised questions of fact, he could not raise them in the Supreme Court because this was an appeal by Republic to Supreme Court and is limited to questions of law. The case was remanded to the Court of First Instance to permit him to raise his factual defenses.

In a partnership between plaintiff and defendant in *Diña v. Tañega*[36] the defendant by his acts represented himself as absolute owner of the enterprise which was a newspaper business. This is an action to recover the share of plaintiff as a partner but more than ten (10) years had passed before plaintiff filed his case. The Supreme Court dismissed the case, for this being an action to recover personal property it has already prescribed. Besides, if it was a case of trust the trust was repudiated by defendant's representation of exclusive ownership. Finally, it was shown from the evidence that plaintiff had led defendant to believe by his acts that he, the plaintiff, has recognized defendant as the owner, therefore plaintiff was guilty of laches.

In *De Guzman v. Aquino*,[37] a guardianship proceeding in Court of First Instance, an order closing it was promulgated in 1955 and the parties did not take any steps to correct the order since then. In 1967 the children asked to reconsider the order of closure on the ground that they had not been given the parcels of land described in the inventory as their property. It was denied by the then incumbent judge but later granted by the judge who succeeded him. The guardian moved to reconsider but it was denied. He went on certiorari to the Supreme Court which dismissed the case. Since the wards were not given notice of the order of closure of guardianship in 1955, that order never became final, according to the Court; under Rule 98, Section 3 of the Old Rules and the case of Junquera v. Vaño, [38] a guardanship court cannot close the proceedings unless the ward himself asks for it and

[36] G.R. No. 23232, June 17, 1970.
[37] G.R. No. 29134, July 31, 1970.
[38] 72 Phil. 293 (1941).

with a hearing. His marriage terminates the guardianship over his person but not over his property, said the court. As to the point that the motion had already been barred by prescription, this was held not applicable because a guardian is an express trustee and since the guardian was the father of the wards all the more reason exists that for prescription to operate, his repudiation of the trust should be clear. A contrary ruling would go against morals as a parent should not deprive his children of what belongs to them, concluded the court.

The Supreme Court reiterated the rule that on a motion to dismiss for lack of cause of action allegations in the complaint will be deemed hypothetically admitted in *Salvador v. Frio.*[39] The ground relied upon was held to be a mere matter of defense that could not justify dismissal for lack of cause of action. An order denying motion to dismiss is interlocutory and therefore cannot be corrected by certiorari unless it be shown that the trial judge was clearly proceeding in excess of jurisdiction.[40]

Answer to counterclaim

In *Gojo v. Goyala,*[41] an action to secure consolidation of *pacto de retro,* the answer presented, by way of counterclaim, was that the agreement was in truth a mortgage and therefore defendant asked for reformation. Plaintiff failed to answer said counterclaim and was declared in default. However, the Supreme Court held that the order of default was wrong; this was a compulsory counterclaim and therefore there was no need to answer it; the very complaint was the answer to that. On the other argument that since defendant had died in the meantime, it was the duty of plaintiff to amend his complaint, this also was considered without merit, as there was no duty resting upon plaintiff to amend because of the death of the other party.

Discovery

The Supreme Court had the opportunity to touch on the nature of discovery proceedings in *Orbe v. Inting.*[42] In the city court a civil case was filed for collection of indebtedness. Defendant moved to inspect certain documents of plaintiff but this was denied. The defendant then filed certiorari in the Court of First Instance. When this was dismissed, defendant appealed to the Supreme Court. *Held,* affirmed; petitioner had failed to show the materiality and necessity of the documents sought to be inspected, according to the Court; besides, it appeared that the indebtedness was based on invoices which petitioners wanted to inspect but the fact was that invoices were issued and if they were issued, presumably copies thereof must have been in the hands of petitioner. The case was dismissed with double costs to be paid by petitioner and his counsel jointly and severally.

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[39] G.R. No. 25352, May 29, 1970.
[40] Moscoso v. Quitco, G.R. No. 30248, December 16, 1970.
[41] G.R. No. 26768, October 30, 1970.
[42] G.R. No. 28998, August 31, 1970.

Lis Pendens

In a probate case where the incident in issue was the fitness of a special administrator, mandamus to compel notation of *lis pendens* under Section 24, Rule 16 was denied because in order for *lis pendens* to be annotated the question must affect title to real property.[43]

E. JUDGMENT ON THE PLEADINGS; SUMMARY JUDGMENT AND JUDGMENT BY CONFESSION

Judgment by confession

Where after trial had been postponed five times and in the last postponement the trial judge ordered that if within thirty (30) days the parties should not agree to a stipulation of facts, "defendant shall be deemed to have confessed judgment," and it appearing from the pleadings that the action was to recover on letters of credit and defendant admitted having applied therefor but denied responsibility on the ground that the signatures of acceptance in the drafts were unauthorized, and where no stipulation of facts was afterwards filed so that trial judge held for plaintiff without further trial, *Held;* reversed; for under such an order, judgment for plaintiff was a foregone conclusion and all that plaintiff had to do was to refuse to enter into a stipulation. This was not a case of confession of judgment since only a client can confess nor can it be considered judgment on the pleadings since defendant denied responsibility.[44]

Equitable Banking Corp. v. Liwanag [45] is an action for a sum of money filed in Court of First Instance, based on a promisory note, where defendant, in answer, alleged lack of knowledge, no cause of action, and that exorbitant attorney's fees were being claimed. Plaintiff moved for judgment on the pleadings, defendant did not oppose and the court granted. Defendant appealed to Supreme Court, which affirmed, holding that this was a proper case for judgment on the pleadings because the answer failed to tender an issue and otherwise admitted the material allegations of the complaint. The Court invoked the authority of *Capitol Motors Corporations v. Yabut.* [46]

In *Agcanas v. Nagum,* [47] action for *reinvindication,* defendant resisted, alleging that plaintiffs' patent had been obtained by fraud. Plaintiff moved for summary judgment and the Court of First Instance granted. On appeal to the Supreme Court, the order was reversed, since there were factual issues raised, this could not be a case for the grant of summary judgment.

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[43] Garcia v. Vasquez, G.R. Nos. 26615, 26884 & 27200, April 30, 1970.
[44] Manufacturers Bank & Trust Co. v. Woodworks, Inc. G.R. No. 29453, December 28, 1970.
[45] G.R.No. 28335, March 30, 1970.
[46] G.R. No. 28140, March 19, 1970.
[47] G.R.No. 20707, March 30, 1970.

Where the facts are within defendant's knowledge, he cannot feign ignorance thereof, ruled the Supreme Court in *Capitol Motors Corporations v. Yabut.*[48] This is an action for sum of money on promissory note, where defendant answered admitting paragraph 1 of the complaint but as to paragraphs 2, 3, 4, 5, 6 and 7 the same were "specifically denied for lack of knowledge sufficient to form a belief as to the truth thereof." Plaintiff moved for judgment on the pleadings, and defendant did not oppose. The Court granted judgment as to all sums claimed, and defendant appealed. The Supreme Court affirmed, stating that since the facts were plainly and necessarily within defendant's knowledge,[49] and it was very easy for defendant to allege the true facts as he understood them and he could not have been ignorant thereof because the promissory note was attached to the complaint and he did not even oppose the motion for judgment on the pleadings, the appeal was without basis.

De la Cruz v. Cruz,[50] sought to compel exercise of preemption and redemption. The Court of First Instance dismissed on motion for summary judgment and at the same time granted damages on the counterclaim plus attorney's fees of defendant, and plaintiff appealed. The Supreme Court affirmed as to dismissal but reversed as to the counterclaim. On the merits, judgment on the pleadings was correct, said the Court, but this could not include the amount of damages for under Rule 9, Section 1, the failure to specifically deny an avernment in the complaint in the contrary party's pleading does not amount to an implied admission of the amount of damages and this question if not passed upon is deemed to be waived in the motion for the judgment on the pleadings.[51] However, as to the attorney's fees adjudicated for defendant, this could be permitted in the court's discretion under Article 2208 of the New Civil Code.

Judgment on compromise

In *Republic v. Cloribel,*[52] it was shown that where in a previous case in the Manila Court of First Instance, Branch VI, A had won judgment against Central Bank for more than three million pesos (₱3,000,000), but in a second case Central Bank sued A on certain exportations and importations and in this second case the parties agreed to compromise, agreeing to terminate all of these and compensate their mutual claims both in the first as well as in the second case but in one of the paragraphs of the compromise agreement it was stated that A had entered into an agreement with the NAMARCO for trade assistance and copy of said agreement was attached to the compromise and this amicable settlement based on compromise was

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[48] *Supra,* note 46.
[49] Warner Barnes & Co., Ltd. v. Reyes, 103 Phil. 666 (1958).
[50] G.R. No. 27759, April 17, 1970.
[51] Rili v. Chunaco, 98 Phil. 505 (1956).
[52] G.R. No. 27905, December 28, 1970.

approved by the Court of First Instance in the second case so that judgment was rendered in accordance with its terms but afterwards NAMARCO failed to comply with its obligations under the trade assistance agreement contrary to the aforementioned trade assistance agreement inserted in the compromise, it was held that enforcement of the trade assistance agreement could not be compelled by execution because it was entered into and constituted only the motive for the compromise on the part of A but did not form part of the compromise agreement itself.

Day in court; notice

Where a party files a unilateral petition in the Court of First Instance to annul a patent issued on public land on the ground that it had been issued in fraud of petitioner but he did not implead the patentee or even the Director of Lands, they being indispensable parties, dismissal of his petition by the Court of First Instance was correct and affirmed by the Supreme Court.[53]

Hu Chon Sunpongco v. Ronquillo [54] is a petition to cancel a Torrens title under Section 112 of the Land Registration Law filed by the heirs of deceased registered owner. It was after the same had been granted that a third party, the one who had sold it to the deceased, filed a motion for reconsideration on the ground that he had sold it because of fraud, and also that the sale was void as the deceased vendee was a Chinese national and that the petition had been filed without giving him notice. The contention was overruled as to lack of notice, as the third party had no interest at the time when petition was filed, and his interest came in and became known only when he filed a motion for reconsideration. Therefore, before that, he was not entitled to notice; and since he claimed that the sale was a product of fraud and it was void because the vendee was a Chinese national and could not buy the property, this question could not be passed upon under Section 112.

Where a motion *ex parte* was filed by a redemptioner to compel the Development Bank of the Philippines to surrender a duplicate certificate of title, the objection of Development Bank that it was not given its day in court was overruled because after all it filed its motion for reconsideration and was heard therein so that the procedural objection was overcome.[55]

In *Queto v. Catolico* [56] the Judge of the Court of First Instance ordered his clerk of court to send notices to thirty-seven (37) naturalized citizens of Misamis Oriental to appear on October 15, 1965 at nine a.m. Then and there the Judge declared that their naturalization were void, and he upbraided them for being *"balasubas,"* ingrate, *"hambog,"* animalistic, a danger and a

[53] Boniel v. Reyes, G.R. No. 28400, September 30, 1970.
[54] G.R. No. 27040, December 19, 1970.
[55] Development Bank v. Jimenez, G.R. No. 28165, December 19, 1970.
[56] *Supra*, note 2.

disgrace to the community; a dishonor to the Filipino people. Hearing on their announced denaturalization was postponed to November 12, 1965 and before the date the said naturalized citizens went to the Supreme Court on prohibition. The petition was granted for only the Solicitor General can file denaturalization proceedings by proper motion under Commonwealth Act No. 473. A judge cannot do that *moto proprio*.

Republic v. Yap [57] was a naturalization case where the trial judge decided for petitioner. The decision was received by the Provincial Fiscal on March 31, 1965, and by the Solicitor General on April 7. Record on appeal was filed by the Fiscal on May 5, 1965, that is, more than thirty (30) days counted from his receipt of decision. Therefore the trial judge dismissed the appeal and the Solicitor General went to the Supreme Court on certiorari and mandamus. The Court granted the writ, for the attorney of record was the Solicitor General. It is true that the Provincial Fiscal had authority to appear but he was only acting in representation of the Solicitor General, observed the Court. Under the Naturalization Law, Commonwealth Act No. 473, it is the Solicitor General himself or through his delegate or Provincial Fiscal who should appear in behalf of the government. Therefore it is the date when he received copy of the decision, not the date when the Fiscal received the copy, that should be the starting point of the counting of the period to appeal. This is not a case where a litigant appeared through two attorneys in which case notice to one could have been enough, concluded the Court.

In *Lopez v. De los Reyes*,[58] a replevin suit in the Court of First Instance, Manila, Atty. Valladolid for plaintiff had registered his address at 1622 Peñafrancia, Paco, Manila. After trial he went to Batangas and stayed there temporarily and wrote Atty. de Jesus, counsel for defendant, requesting that copy of the latter's memorandum be sent to him at Nasugbu, Batangas and this was complied with. The Court of First Instance dismissed the complaint and copy of the decision was sent to Atty. Valladolid at Nasugbu, but this was not received notwithstanding three registry notices to Atty. Valladolid at Nasugbu Rural Bank where he used to transact some business, and therefore the mail was returned to Court of First Instance, Manila. Much later, Atty. Valladolid filed a record on appeal, notice of appeal and appeal bond but it was disapproved for having been filed out of time. He went to the Court of Appeals on mandamus and the Court of Appeals granted the writ, and so defendant went to the Supreme Court on certiorari. The Supreme Court affirmed, saying that Nasugbu, Batangas was not the address of record of Atty. Valladolid but a temporary one, only a private arrangement between himself and Atty. de Jesus. It is true, continued the Court, that in

[57] G.R. No. 25519, January 30, 1970.
[58] G.R. No. 23671, January 30, 1970.

his memorandum in the Court of First Instance he wrote the words "Nasugbu, Batangas" below his signature but this must be considered in relation to his request to opposing counsel, he not having filed a notice of change of address.

Luzon Surety in *Luzon Surety Co., Inc. v. Beson* [59] and Manila Fidelity Surety were bondsmen of an administrator. The Court of First Instance ordered the administrator to pay more than ₱8,000 within ten (10) days or the bond would be confiscated. There was confusion as to which surety should be liable, Luzon or Manila, the defense of Manila being that its bond was prospective and liability had already attached upon Luzon as of the time when Manila filed its bond. The Court of First Instance, without giving a chance to Luzon to be heard, granted execution against it; Luzon went to the Supreme Court on certiorari, which was granted, as it was not given its day in court.

Where in a hearing for the taking of the oath in an approved naturalization case, the Solicitor General was absent because he was not given proper notice and evidence of petitioner was produced *ex parte*, and afterwards the Solicitor General moved to reconsider but the trial judge permitted petitioner to take the oath and later the Solicitor General moved to cancel certificate on the ground that it had been fraudulently obtained but the trial Judge denied, the Supreme Court set aside order granting certificate. It was held to be the right of Solicitor General to be present at the hearing of the taking of the oath and where he had not been given proper notice thereof, Court of First Instance had no authority to hear the evidence *ex parte*.[60]

Sosa v. Yu Chu [16] is a *reinvindicacion* case filed in Court of First Instance, Marinduque, where plaintiff's lawyer failed to appear on the date of hearing which he received only the day before, as the attorney was in Manila, but plaintiff appeared in the hearing. In that situation the trial judge dismissed the case, and plaintiff moved for new trial and set forth documentary evidence he would have adduced in support of his client's case, but this motion was denied. On appeal to the Supreme Court, the order was reversed; since the documents appeared to be indubitable and plaintiff's case was apparently good and since the attorney was in Manila and was served notice of hearing only the day before he could not really be in court the next day.

Technicality was disregarded in *Universal Textile v. Court of Industrial Relations*,[62] where, after a motion for reconsideration in the Court of In-

[59] G.R. Nos. 26865-66, January 30, 1970.
[60] Republic v. Cloribel, G.R. No. 27751, August 31, 1970.
[61] G.R. No. 21057, June 30, 1970.
[62] G.R. Nos. 31287 & 31332, December 29, 1970.

dustrial Relations had been heard *en banc* and the opponent had argued that the same had been filed out of the five day period fixed in its rules, and the Court of Industrial Relations, not having located the envelope, held it in abeyance but afterwards having found that only three instead of six copies had been filed contrary to the rules of the Court of Industrial Relations and because of that it denied the motion, the Supreme Court set aside the order. The Court of Industrial Relations was ordered to give due course after the sufficient number of copies should have been filed without delay.

In *Joson v. Secretary of Agriculture and Natural Resources*,[63] upon complaint to the Secretary of Agriculture that certain public land applications were being railroaded, and after investigation of the Bureau of Lands, the Secretary of Agriculture issued an order setting aside portions from sale applications of Sociedad Agricola de Ballerin and as to a patent issued to Leonardo T. Joson, sufficient evidence having been adduced to show fraud and irregularity, the Secretary of Agriculture ordered investigation to pinpoint responsibility. Joson filed action in the Court of First Instance against the Secretary contending that he was denied due process. The Court of First Instance dismissed and Joson appealed to Supreme Court. It was held that since the Republic had already filed reversion proceedings Civil Case Nos. 3972 and 3976, it should be in these cases where petitioner should be given full opportunity to present his side. The Court of First Instance order was therefore affirmed.

The case of *Bonifacio v. B.L.T. Bus Co., Inc.*[64] laid down the ruling that a judge is not disqualified just because a former classmate was one of the counsel; nor the fact that he questioned a witness for a party rather closely would show bias, but only his interest in the search for truth.

F. TRIAL

By Commissioner

De la Rama v. National Development Co. [65] is a civil case in the Court of First Instance wherein a Board of Accountants was created pursuant to authority of the court to appoint commissioners under Section 11, Rule 33. The Board of Accountants submitted its report and the parties agreed that if within two weeks from November 12, 1965 no objections would be presented and filed, this would amount to a waiver. Since no such objections were presented, the lower court affirmed the report of the Board in *toto*. The Supreme Court ruled that the action of the lower court was correct; failure of the adverse party to object was a waiver and therefore precluded him from presenting and disclosing objections for the first time on appeal.

[63] G.R. No. 23533, January 30, 1970.
[64] G.R. No. 26810, August 31, 1970.
[65] G.R. No. 26966, October 30, 1970.

Demurrer to evidence

The effect of a demurrer to the evidence was again discussed by the Supreme Court in *Villanueva v. Javellana.*[66] In the Court of First Instance, when plaintiff finished presenting his evidence, defendant moved to dismiss with reservation to present his evidence in case of denial. The trial judge denied the motion and decided against defendant notwithstanding the reservation. The Supreme Court set the order aside, for under Rule 35, Section 1, it is only when a motion of that kind or demurrer to the evidence is granted and reversed on appeal that defendant is not given the chance to present evidence.

Preliminary attachment

In *Javellana v. Plaza Enterprises,*[67] an action for sum of money in the Court of First Instance, judgment was rendered for plaintiff. Defendant moved to reconsider and the court reconsidered in part, reducing the attorney's fees and interest and granting defendant damages for attachment of his properties. Plaintiff appealed to the Supreme Court which held that as to attorney's fees and interest, since the only basis of the trial judge in reducing was the fact that there was a reduced amount stated in the original complaint but this original complaint was not presented in the evidence by defendant and since the evidence justified the increased amount, this having been stated in the invoice presented as proof, the reduction by the trial judge was wrong. As to the damages for wrongful attachment, while defendant failed to perform and that the checks bounced, this did not justify the attachment because this related to defendant's failure to perform his obligation but was not the source of it. Therefore, according to the Court, there was no cause to attach on the ground of fraud and even if plaintiff had acted in good faith in asking the attachment, this was no excuse to free him from payment of damages by reason of the wrongful attachment, he having had no right to attach and therefore no proof of malice was necessary.

In the main action in *Aquino v. Socorro*[68] plaintiff sought to prohibit defendant from cutting timber in a lumber concession and he asked for preliminary injunction. This was granted on the filing of ₱1,000.00 bond but was dissolved when the adverse party filed ₱2,000.00 counterbond. The main action was dismissed but before dismissal became final the adverse party filed his claim against the antagonist for damages for ₱199,000.00 for issuance of the preliminary injunction. The Court of Appeals dismissed the claim, there having been no showing of malice and bad faith. According to the Supreme Court, since the application for damages for the issuance

[66] G.R. No. 29467, June 30, 1970.
[67] G.R. No. 28297, March 30, 1970.
[68] G.R. No. 23868, October 22, 1970.

of an injunction is covered by the same principles as that of wrongful bringing of an action,[69] the claim for damages was properly dismissed. Note however that if the claim for damages is upon the bond, according to the case of *Pacis v. Commissioner, Commission on Elections*[70] there is no need to show malice.

Replevin

Republic Commodities v. Oca[71] was for replevin in the Court of First Instance, Manila. The Court of First Instance granted the writ, articles were seized, and the sheriff delivered these to plaintiff but defendant had presented counterbond and copy served upon plaintiff's counsel more than five days after the sheriff had taken articles under Rule 60, Section 6. The court ordered plaintiff to redeliver but plaintiff refused. He was found guilty of contempt and fined ₱100.00. On appeal, the Supreme Court affirmed, since plaintiff took no steps to correct the errors. The order might have been erroneous but the court had jurisdiction, it was plaintiff's duty to obey, and no one may take the law into his hands.

H. APPEALS

Jurisdiction of Court of Appeals

In *Aguilar v. Tan,*[72] plaintiff filed mandamus in Court of First Instance, Manila to compel continuance of his porterage service in Manila International Airport. The Court of First Instance dismissed the case, and plaintiff sought to appeal. In time he asked Court of First Instance to maintain the *status quo* but the Court of First Instance denied. Plaintiff went to the Court of Appeals and the Court of Appeals granted preliminary injunction *ex parte*. In its decision, it sustained its resolution to maintain the *status quo.* Plaintiff went to the Supreme Court, which held that while the Court of Appeals had not yet received the appealed case when it issued its *ex parte* resolution, this did not mean that it had not acquired jurisdiction over respondent because after its *ex parte* resolution, respondent answered. As to the power of the Court of Appeals to maintain the *status quo,* however, since the Court of First Instance had discretion to refuse to maintain that *status quo,* assuming that it had erred, that was only an error of judgment and could not be cured by certiorari in Court of Appeals.

In *Uy-Tiepo v. Aggabao,*[73] A filed suit against U and secured a money judgment which became final. Property of U was sold in execution sale;

[69] Molina v. Somes, 24 Phil. 66 (1913).
[70] G.R. No. 29026, August 22, 1969.
[71] G.R. No. 24995, May 27, 1970.
[72] G.R. Nos. 23600 & 23631, January 30, 1970.
[73] G.R. No. 28671, September 30, 1970.

then a brother of U filed third party claim. A filed bond and the sale went ahead but the brother of U filed action to annul the sale and won in the Court of First Instance and in the Court of Appeals with damages against A. This judgment became final and the brother of U filed motion for execution. A asked the Court of First Instance to stay execution, but this was denied. A went to the Court of Appeals on certiorari on the ground that execution against him should not lie because she had, after the sheriff's sale in which she had bought the tractor, sold it to Koppel and she could no longer return it, and therefore, the rental value of the tractor fixed in the judgment was subjected to this supervening fact. The Court of Appeals set aside the order of Court of First Instance and stayed the Sheriff's sale pending determination of rental to be paid by A from loss of the tractor. The brother of U therefore went to Supreme Court on certiorari on three (3) grounds: first, the Court of Appeals could issue certiorari only in aid of its appellate jurisdiction but here judgment in favor of A had already become final; second, the Court of First Instance had not been given a chance to reconsider; third, in the original case, the rental value of the tractor was fixed at ₱200.00 a month, therefore, this could no longer be modified. The Supreme Court held that as to the first, while it is true that where a judgment of a Court of First Instance has already become final there can be no more appeal and the Court of Appeals can have no more authority to issue the writ of certiorari in aid of its appellate jurisdiction, where, however, a Court of First Instance issues a writ of execution upon a final judgment and the defendant judgment debtor contends that the writ of execution varies the terms of the judgment, and that supervening facts have rendered a literal execution of the original judgment inequitable, this being a matter that will require presentation of evidence and has become an issue of fact, therefore, the ruling of the trial judge upon the objection can in due time be taken to the Court of Appeals. Consequently, the Court of Appeals had authority to grant certiorari because the same was in aid of its appellate jurisdiction. As to the second ground that the trial judge should be given a chance to reconsider his alleged excess of authority or grave abuse, this rule would not apply where the matter is of extreme urgency as in the present case where the Sheriff's sale was already scheduled and fast approaching. As to the third, while it was true that the original decision already fixed the rental value of ₱200.00 for the tractor and this may be considered as final, yet since it appeared that after the delivery by the Sheriff to A, A had sold it to a third party, and the Court of Appeals was not apprised of this fact, therefore, restoration of the tractor to petitioner brother of U had become impossible. Thus, it became necessary to determine the extent of liability of A as to the tractor without departing from the essence of the judgment. Certiorari was therefore denied.

In *Subido v. Mison*[74] defendant refused to obey *subpoena* issued by Subido, Commissioner of Civil Service. Charged with contempt under Section 58, Revised Administrative Code in relation to Section 6 and 13, Rule 71, defendant was absolved. When Subido sought review, the Supreme Court said that the case partook of criminal prosecution and no appeal was permissible.

Bayot v. Phodaca[75] concerns an ejectment case in the City Court of Manila which decided for plaintiff. Defendant appealed to the Court of First Instance, where the parties entered into compromise and judgment was rendered on the basis of compromise. The plaintiff filed a motion for execution which was granted. Defendant appealed on four grounds. The Supreme Court affirmed. As to the ground that compromise was void since the validity of the compromise was not assailed in the lower court, it could not be assailed on appeal in violation of Article 2232 of the Civil Code requiring approval by the court of compromise entered into by guardian for administrator. As to the ground that a compromise is not a judgment, the Court said that what should be remembered is that the reason why in the case of *Saminiaga v. Mata*[76] the judgment based on compromise was held not capable of execution was because it contained a provision for the designation of a commissioner to make a partition of the land subject of the compromise and to submit a report thereof to the court so that the agreement could not bcome complete until after the commissioner should have submitted his report and the same approved by the parties and the court, and the approval by the court of the original compromise was therefore only interlocutory. In present case, the Court pointed out, the compromise was essentially a termination of the differences and the judgment approving it was a final judgment. As to the ground that plaintiff having accepted overdue rentals upon the issuance of the writ of execution, so that allegedly there was created a new lease, citing *Dimayuga v. Raymundo*,[77] that was held not applicable because in the present case there was no lease entered into by plaintiff. As to the ground that the lease was renewable from year to year and therefore there was automatic renewal, neither is this argument correct because the contract specifically providing that the renewal was to be an agreement in writing, to permit automatic renewal as argued would render useless the requirement of writing.

Philippine Marketing & Management Corp. v. Reyes[78] is an action for unfair competition, plaintiff alleging that defendant imitated manufactured custom-built rubber shoes of plaintiff. The trial judge after hearing, decided

[74] G.R. No. 27704, May 28, 1970.
[75] G.R. No. 30206, March 30, 1970.
[76] G.R. No. 4358, January 2, 1953, 92 Phil. 426 (1953).
[77] 76 Phil. 143 (1946).
[78] G.R. No. 27195, March 30, 1970.

for plaintiff and prohibited defendants from manufacturing shoes; defendants sought to perfect an appeal but the trial judge nevertheless issued an order upon defendants to show cause why defendants should not be cited for contempt as they kept on manufacturing such shoes. Defendants went to Supreme Court contending that the trial judge had no more jurisdiction because of their appeal. The Supreme Court, however dismissed the appeal, for under Rule 39, Section 4 the judgment being one of injunction was not stayed by the appeal.

The effect of an appeal upon an order appointing a guardian was discussed in *Sarte v. Court of Appeals.*[79] Petitioner was appointed guardian by the Juvenile Court over a mentally-deranged person. The oppositors appealed but pending appeal the guardian asked leave, and was permitted, to bring the ward to the hospital. However, the oppositors went on certiorari to the Court of Appeals and the Court granted certiorari. On review in the Supreme Court, the order was reversed, the Court saying that the order appointing the guardian was good until reversed on appeal and in the meantime the guardian could do what was necessary to protect the incompetent, following *Mercader v. Wislizenus.*[80]

The case of *Mina v. Valdez,*[81] holds that a petition filed in Section 112 of Land Registration Law which results in important questions as to the respective rights of the parties and orders the surrender of title by one for cancellation in the name of another is appealable.

In *Guerra Enterprises Co., Inc. v. Court of First Instance, Lanao del Sur,*[82] the lower court dismissed the appeal of petitioner and he went to the Supreme Court on mandamus to compel approval. The court granted the writ, saying that it was not true that the motion for reconsideration was *pro forma,* since the ground stated in said motion was different from that stated by petitioner in his memorandum prior to decision. In fact, petitioner could not have alleged this ground because it was brought about only by the fact that the trial judge based his decision on a ground not stated or discussed in the memorandum since the trial judge decided against him by just relying on a decision of the Supreme Court in the case of *Arroyo v. Granada,*[83] the Court pointed out. It is true that the record on appeal did not state the date when counsel for appellant received copy of the order of dismissal or the date he received the order denying the motion for reconsideration, but all that was needed was to permit amendment of the record on appeal and not to bar the appeal. As to the fact that the present petition was allegedly defectively verified, neither is this correct because

[79] G.R. No. 23976, March 30, 1970.
[80] 34 Phil. 846 (1916).
[81] G.R. No. 25136, April 30, 1970.
[82] G.R. No. 28310, April 17, 1970.
[83] 18 Phil. 484 (1911).

the verification was "to the best of my knowledge, information and belief" and this is good enough under Rule 7, Section 6, and on the authority of *Arambulo v. Perez.*[84]

Appeal by the Republic from the order of dismissal of the lower court in a naturalization case was allowed in *Habaña v. Vamenta.*[85] In the hearing of taking of oath of allegiance, the Republic sought to appeal an order permitting the taking of an oath. The trial Judge dismissed the appeal on the ground that petitioner had only "fallen out of the graces of the powers that be, he having charged them criminally." The Republic sought mandamus to compel approval of the appeal, and the Supreme Court granted, since the order is appealable and the appeal was timely taken.

In a labor case,[86] the filing of a motion for new trial within the five-day period was held to suspend running of the period to appeal but the Supreme Court suggested that only one motion of that kind be permitted to be filed.

In two civil cases[87] tried jointly in the Court of First Instance, consolidated decision was promulgated and one of the parties filed notice of appeal, appeal bond and record on appeal and because there was no objection, the lower court approved. However, it turned out that on the same date the adverse party had filed a second motion for reconsideration and this having been granted afterwards, the trial Judge ordered the first party to amend his record on appeal in order to incorporate the order amending the decision as per the second motion for reconsideration. The first party refused but the Court of First Instance maintained its order. The first party went to the Supreme Court on certiorari on the position that the Court of First Instance had no more jurisdiction nor authority to order amendment of his record on appeal. The Supreme Court dismissed the petition, reasoning that if petitioner's theory were upheld, it would be within his power or within the power of any of the litigants to deprive the other party of the right to ask for reconsideration. Since the trial Judge could still reconsider when he granted the motion for reconsideration, the true decision was the second one and it is that which ought to be appealed.

In *Republic v. Reyes,*[88] after final naturalization had been granted and applicant had taken the oath, the Republic filed, pursuant to Section 18 of Naturalization Law, a motion to declare the naturalization null and void. In the hearing of the motion, evidence was presented pro and con and the Republic's motion was denied but it sought to appeal. However the trial

[84] 78 Phil. 387 (1947).
[85] G.R. Nos. 27091-92, June 30, 1970.
[86] Kapisanan ng mga Manggagawa sa Alak (NAFLU) v. Hamilton Distillery Co., G.R. No. 23714, June 30, 1970.
[87] Simsim v. Belmonte, G.R. No. 25388, August 31, 1970.
[88] G.R. No. 23075, August 19, 1970.

judge refused to permit appeal and consequently dismissed the appeal, so that the Republic filed the present petition for mandamus to compel approval of the appeal. Since that was a final order, it was appealable, ruled the Supreme Court in granting mandamus.

The Supreme Court ruled that motions for extension to file record on appeal need not be quoted in such record in *Industrial Co., Inc. v. Court of Appeals*.[89] In this case, the appeal stated that appellant was notified of the decision on July 20, 1967 and notice of appeal and appeal bond were filed on August 19, 1967. The lower court extended the period to file the record on appeal up to September 15, 1967 and again up to October 14, 1967 and record on appeal was filed before October 14, 1967. It was held that the record on appeal was not defective as it need not incorporate the motions for extension to file record on appeal by quoting the same because such motions are not pleadings; the statement in the record on appeal that the lower court extended the period to file up to specified dates was held to be substantial compliance.

In *Fojas v. Navarro*,[90] a copy of a decision of the Court of Appeals was sent to counsel of record by registered mail at his address of record, but despite three registry notices he did not get it and it was returned unclaimed. However, after it had been returned to the Court of Appeals, new attorneys appeared and asked to set aside the judgment and the Court of Appeals, over objection of the winning party on the ground that judgment was already final, set the judgment aside. The winning party went to the Supreme Court on certiorari, and the resolution of the Court of Appeals setting the decision aside was annulled. According to the Supreme Court, since the first registry notice to counsel of record of the decision was received by him on July 20, therefore, on the expiration of five days therefrom, that is, July 26, he was already deemed served with copy of the decision, and it became final fifteen (15) days thereafter, that is, August 10. Since the new attorneys came in only on August 25, 1965, their motion to set aside the decision had been filed too late, the judgment of the Court of Appeals having already become final.

I. APPEAL FROM QUASI-JUDICIAL TRIBUNAL OR OFFICER

In *Free Telephone Workers Union v. Philippine Long Distance Telephone Co.*,[91] the Supreme Court reiterated the rule that an issue not raised in the court below cannot be raised in the Supreme Court. On the merits, the Court held that a judgment of the Court of Industrial Relations granting an average increase of ₱.16 per hour for each employee is said to be sup-

[89] G.R. No. 30083, October 22, 1970.
[90] G.R. No. 26365, April 30, 1970.
[91] G.R. No. 24593, July 31, 1970.

ported "by substantial evidence" where the resolution appealed from recited increase in the cost of living in the Manila area. Substantial evidence does not refer to *quantum* of evidence but more importantly to the quality of the facts.

In *Vargas v. Philippine American Embroideries, Inc.*,[92] petitioner went to the Workmen's Compensation Commission on a claim for compensation and this was denied. On the last day of appeal to the Supreme Court he filed a petition with the Supreme Court serving the required number of copies on the Workmen's Compensation Commission. On the ground that defendant failed to file a formal notice of appeal to the Commission, contrary to Section 1, Rule 43, Rules of Court, the Commissioner moved for dismissal. The Supreme Court denied the motion and, on the merits, reversed the order. The Court said that a notice of appeal serves to inform the Commission that the losing party desires to contest its ruling; therefore when the Commission acknowledged receipt of a copy of the petition for review, that was itself an acknowledgment that it was notified of claimant's desire to appeal.

In ejectment of a tenant in Court of Agrarian Relations, the finding of the Agrarian Court as to whether or not there was bona fide intention of landowner to eject is a question of fact into which Supreme Court cannot inquire, unless it lacks substantial basis on record.[93]

While the rule is that administrative decisions will not be reviewed by the courts in the absence of clear manifest and grave abuse of discretion amounting to lack or excess of jurisdiction, this rule merely refers to the correctness of the decision, and it does not prevent a trial Judge from entertaining a proper case for review and, in connection with that, issue a preliminary injunction to maintain the *status quo* where he is convinced that there is a *prima facie* showing of denial of due process.[94]

J. APPEAL TO SUPREME COURT

In *Victorino v. Lao*,[95] an action for rescission of contract in the Court of First Instance, defendant's counsel was absent despite due notice. Trial proceeded *ex parte*, and decision was rendered for plaintiff. Defendant filed a motion for reconsideration and new trial alleging inadvertence of the mailing clerk of the court to send him notice of trial, but it was unaccompanied by an affidavit of merits. The lower court refused to grant new trial because it did not know whether defendant had a valid defense. On appeal, the Supreme Court affirmed. Since the Clerk of Court certified to the fact

[92] G.R. No. 23762, August 31, 1970.
[93] Resuena v. Bas, G.R. No. 19641, August 14, 1970.
[94] Rico v. Court of Appeals, G.R. No. 25757, December 28, 1970.
[95] G.R. Nos. 24456 and 25273, May 28, 1970.

that notice had been sent to counsel four months before the trial and there was no counter-affidavit, it must be held that there was previous notice of the trial. Besides, continued the Court, this being a direct appeal to the Supreme Court on a question of law, the trial Court's finding of fact that there was due notice cannot be assailed; furthermore, defendant's motion for new trial was fatally defective because it did not have an affidavit of merits.

In *Testate Estate of Del Rosario*,[96] accounting of administrator was approved by the Court of First Instance, but the oppositor appealed. The Supreme Court affirmed, stating that as to alleged lack of hearing, this is a mere question of fact and was not raised in the court below, hence it could not be raised in the Supreme Court for the first time (Rule 46, Section 80). In fact, the record showed that there was a notice but the other party failed to come.

Where the Court of Appeals found as a fact that the purpose of the widow and the legal heirs of a homestead applicant in insisting on redemption within five years from reconveyance was not to keep it within the family but to resell it as a subdivision, the case does not fall under Section 119, Commonwealth Act No. 141 permitting redemption, and such finding of fact of the Court of Appeals is binding on the Supreme Court because the rule is that findings of fact of the Court of Appeals as to credibility of witness and weight of conflicting evidence are final unless totally devoid of support in the record or so glaringly erroneous as to constitute serious abuse of discretion.[97]

K. EXTRAORDINARY LEGAL REMEDIES

Begosa v. Philippine Veterans Administration[98] is an action by a veteran against the Philippine Veteran's Board for a claim for pension where the Supreme Court ruled that the defense that this was a suit against the State and could not be entertained, is not correct. This is not a suit against the State but a suit to compel a public officer to properly perform his duty as imposed by a statute appropriating funds for the purpose, declared the Court. As to the non-exhaustion of administrative remedies, the action being patently illegal, there was no need to exhaust administrative remedies, the rule being that the requirement to exhaust administrative remedies as a preliminary step to go to the Courts in order to annul the action of a quasi-judicial officer does not apply where the action of the quasi-judicial officer is palpably illegal or where the situation is one of extreme urgency or where the question presented is purely legal or where the quasi-judicial officer was the *alter ego* of the President.

[96] G.R. No. 29306, May 29, 1970.
[97] Simeon v. Peña, G.R. No. 29049, December 29, 1970.
[98] G.R. No. 25916, April 30, 1970.

L. SPECIAL CIVIL ACTIONS

Ejectment

Where the first demand to vacate in an action for ejectment in the Municipal Court was, after some time, followed by a second demand and the complaint was filed more than one year after the first but less than one year after the second, the complaint conferred jurisdiction upon the Municipal Court, the reason being that after the first demand where no action was filed, plaintiff is deemed to have waived action on the same and the defendant's possession after that was still not unlawful.[99]

Palma v. Oreta[100] is a suit for ejectment where, because defendants surrendered the premises, the trial judge dismissed the case. However, on motion of plaintiff, the court reconsidered in order to make the supersedeas bond liable for unpaid rentals, and the defendants filed certiorari to annul the order. The writ was denied on the reasoning that since defendant was liable on the ejectment suit, therefore plaintiff was entitled to collect the rentals unpaid and supersedeas bond should answer for that.

The concurring opinion pointed out that since the case itself, not the appeal, was what was dismissed, there could have been no judgment for the rentals unpaid which could have been executed against the supersedeas bond, but since defendant did not object to the motion to execute the bond, this was estoppel.

Contempt

Where a decision of Supreme Court had already become final and in disobedience to it respondents refused to obey by refusing to turn over agricultural machinery, work animals and other properties of an hacienda and said losing party was charged with contempt for deliberately disobeying the terms of the decision, he was fined ₱1,000.00 and ordered to deliver; if not, he would be sent to jail until he delivered; his excuse of honest belief could not be accepted or the excuse that as to the jeep, the same had been delivered to a third party, for if this were true, it should be respondent who should get it.[101]

The nature of the contempt power of courts was discussed in the case of *Buyos v. Zosa,*[102] where the Court of First Instance Judge ordered the city auditor and treasurer of the City of Ozamiz to be punished for contempt because they had refused to approve the voucher for the payment of the gasoline allowance of the judge in a manner that tended to belittle and ridicule the judge. However, the Supreme Court held that there was

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[99] Development Bank v. Canonoy, G.R. No. 29422, September 30, 1970.
[100] G.R. No. 27807, August 31, 1970.
[101] Ysasi v. Fernandez, G.R. No. 28593, January 30, 1970.
[102] G.R.No. 25800, August 31, 1970.

no contempt because the subject matter had no official connection with the administration of jus**ice. As the Court stated, it is not the personal and private degradation of the judge that is *contumacios*, but the degrading of the administration of justice. Viewing the case as *habeas corpus*, the Supreme Court granted the petition for certiorari.

In *Velez v. Court of Appeals*[103] Bucoy was condemned to restore possession to Velez. Bucoy attempted to appeal but it was too late; he filed a petition for relief but it was denied by the Court of First Instance. So he went to the Court of Appeals which issued injunction to prevent him from being ousted but the injunction was too late because Velez had already taken possession. However, the Court of Appeals found Velez guilty of contempt for having violated its injunction. In the Court of Appeals Velez asked that Justice Piccio be disqualified because he had granted allegedly private interviews to Bucoy, but this motion was not resolved. What the Court of Appeals did was to order the arrest of Velez until he should have relinquished possession; thus, Velez went to the Supreme Court on certiorari. It was held that as to the disqualification of Justice Piccio the fact that he may have granted private interviews to Bucoy is not a ground for compulsory disqualification under Rule 137, Section 1. Besides, Justice Piccio was then dead and therefore the point had become moot. However, as to the finding that Velez was guilty of contempt for violation of injunction issued by Court of Appeals, this was set aside because the injunction was prohibitory, but there was nothing more to prohibit, because execution had already been implemented before its issuance and that became a consummated fact.

M. JUDGMENT

Where, in action for foreclosure of mortgage in the Court of First Instance the court decided for plaintiff and in its decision reasoned out that defendant should not be credited the ₱200,250.00 alleged on one of the special defenses and dismissed the other special defenses "as lacking in merit," the decision is not defective because it is not ambiguous and it gives the basis therefor; also, it was noted that the lower court felt there was no need to elaborate on the other five defenses.[104]

In *Lazo v. Republic Surety & Insurance Co., Inc.*,[105] plaintiff filed an action to redeem foreclosed property. The defense contended that the complaint was defective, since it stated no cause of action and it was barred by prescription. The Court of First Instance, instead of deciding on the issues, ruled that the extra-judicial foreclosure was invalid. On appeal, the

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[103] G.R. No. 24703, July 31, 1970.
[104] Jose v. Santos, G.R. No. 25510, October 30, 1970.
[105] G.R. No. 27365, January 30, 1970.

Supreme Court held that the Court of First Instance could not go out of the issues under Section 1, Rule 6. On the merits, Supreme Court held that plaintiff had lost the right to redeem.

N. EFFECT OF FINAL JUDGMENT

In mandamus to compel payment in an order of a final award of Workmen's Compensation Commission, the respondent in the case below was the Republic, including the Auditor General. According to the Supreme Court, the case against the Republic is *res judicata* because there was no appeal taken from the final award and the Auditor General was thus included; mandamus granted.[106]

Where, in a guardianship proceeding a compromise was entered into and afterwards it was sought to be enforced by motion but it turned out that there had occurred a supervening fact consisting in the transfer of properties to other parties and other vendees, it was held that this could not be done by mere motion and the guardianship court had no jurisdiction to adjudicate questions of ownership as against a third party and to compel it to surrender the title.[107]

O. PETITION FOR RELIEF

In *Radiowealth Trading Corp. v. Abastillas,*[108] the parties entered into oral agreement during the pre-trial with defendant and counsel being present but the amicable agreement was made dependent upon plaintiff's submission of a resolution of its Board of Directors within two days. However, the plaintiff did not present that resolution; defendant therefore moved for non-suit but this was denied. The trial judge then ordered defendant to give the basis for his exception otherwise he would be understood to have accepted the claims of plaintiff to the sum of ₱37,236.00. The defendant moved to reconsider but this was denied and defendant appealed contending that there was lack of authority of plaintiff's representative to enter into the compromise. In affirming, the Supreme Court noted that defendant was not serious in contending that there was lack of authority of plaintiff's representative to enter into the compromise; besides, if there was any lack of authority it was ratified when plaintiffs submitted the accounting required in the compromise. The Supreme Court also noted that defendant's motion to set aside the judgment based on compromise was filed on May 12, 1966 but it had received copy of the decision on March 3, 1966, therefore it fell outside the sixty-day period permitted in Rule 38, Section 3.

[106] Falcon v. Mathay, G.R. No. 30303, August 31, 1970.
[107] Guardianship of Angela Tuazon de Perez, G.R. No. 28114, October 30, 1970.
[108] G.R. No. 27022, May 28, 1970.

P. EXECUTIONS

In *Crumb v. Court of Appeals*,[109] plaintiff won a land suit in the Court of First Instance. Judgment was ordered executed but defendant refused to vacate. Plaintiff then moved to punish defendant for contempt; he also filed another civil case against 482 persons, among them herein respondents. In the original civil case, the Court of First Instance found respondents guilty of contempt and ordered the sheriff to demolish their houses. Respondents filed a notice of appeal and the Court of First Instance held that the contempt was appealable but the execution of the decision which was already final was not appealable. Respondents went to the Court of Appeals on certiorari and Court of Appeals held the Court of First Instance guilty of grave abuse in directing respondents, petitioners in this certiorari, to vacate and have their houses demolished. The Supreme Court, on certiorari, affirmed the ruling of Court of Appeals, since the order of Court of First Instance was issued upon a motion for contempt not upon a motion for execution. The Supreme Court set aside the order of eviction and demolition of houses.

In *Guanzon v. Argel*,[110] the plaintiff sought declaration that a *pacto de retro* document in favor of defendant was only a mortgage. Defendant resisted, but the court held it was only a mortgage and ordered that upon payment of ₱1,500.00 within 20 days from finality of decision, defendant should execute the deed of reconveyance otherwise execution may issue against plaintiff. Judgment became final and defendant moved the court for execution but plaintiff did not pay the ₱1,500.00. However, the judge gave plaintiff 10 days to deposit the ₱1,500.00 and plaintiff deposited and also filed bill of costs against defendant which the judge approved, and it ordered execution against defendant on the bill of costs. Defendant went to the Supreme Court on certiorari on the ground that judgment had already become final and therefore plaintiff had lost any right to compel execution of reconveyance. The Supreme Court affirmed, since the judgment held the contract to be only a mortgage, therefore the mere fact that plaintiff may not have paid the ₱1,500.00 within the twenty days cannot give defendant the right to have the execution in his favor so as to make the mortgage not a mortgage; in other words, the interpretation being given by defendant to the judgment would go against the law. Therefore, even if more than twenty days had already passed, plaintiff could still deposit the amount of redemption of the mortgage. This is not a case covered by Rule 39, Section 10, as it is only a money judgment in favor of defendant, said the Court.

The Republic in the case of *Commissioner of Public Highways v. San Diego*,[111] filed expropriation proceedings. The petition was granted, but the

[109] G.R. No. 26187, January 30, 1970.
[110] G.R. No. 27706, June 16, 1970.
[111] G.R. No. 30098, February 18, 1970.

government did not pay the indemnity of more than ₱209,000 for the expropriated lot. Upon motion of landowner, the Court of First Instance garnished money of the Bureau of Public Highways on deposit with Philippine National Bank. The Commissioner of Public Highways went to Supreme Court on certiorari, and the Court set aside the order. It is true that when the Republic sues on expropriation, it submits itself to jurisdiction of Court of First Instance but the power of the Court of First Instance ends upon judgement; it has no authority to order garnishment of deposits, and the proper remedy for the landowner is to secure approved disbursements by appropriation as required by law. In this case, another defect of the garnishment is that it was made by a special sheriff. A special sheriff is permitted by Rule 14, Section 5 in so far as service of summons is concerned but as to enforcement of execution, this must be done by the sheriff as provided in Sections 183 and 330, Revised Administrative Code because the sheriff is bonded. It is true that a judge can deputize another as sheriff if the sheriff himself is a party or the position is vacant as provided in Section 185, but this is not the case here, the Supreme Court said. However, in the present case, no personal liability could be imposed on the sheriff appointed by the Judge because he was only acting strictly pursuant to the orders of respondent judge.

Where a property was assessed at ₱59,647.05 and sold in a sheriff's sale for ₱10,000.00 this is not enough to annul; considering that there is a one year period of redemption and in forced sales the price obtained is usually low; besides, there was no showing that if resold, a better price could be obtained.[112]

In a case [113] for ejectment against a tenant, decision for plaintiff became final in 1956, but plaintiff asked for execution only in 1963 or after more than six years and eleven months. The Agrarian Court granted execution and this was affirmed by Court of Appeals. The tenant went to the Supreme Court to set aside the writ of execution, but the Court dismissed the case. On principle, the motion filed more than five years after judgment had become final and should have been barred, but in the present case there are peculiar circumstances that intervened, noted the court. It turned out that the landlord had within the five year period asked for execution three times in view of the tenants' refusal to vacate. However, the lower court suspended issuance of the writ in view of the existence of an independent civil case afterwards filed by the tenant asking for indemnification for improvements which civil case was afterwards dismissed being a compulsory counterclaim to the ejectment suit, and this dismissal of the independent civil case

[112] Ponce de Leon v. R. F. C., G.R. No. 24571, December 18, 1970.
[113] Casela v. Court of Appeals, G.R. No. 26754, October 16, 1970.

even reached the Court of Appeals. The period consumed in that independent civil case amounting to three years, nine months and twenty-five days should be deducted from the reglementary period of five years to ask for execution of judgment, concluded the Court.

In *De Guzman v. Santos,*[114] Santos filed ejectment suit against de Guzman in the Municipal Court on breach of contract. The case was dismissed by the Municipal Court and Santos appealed to the Court of First Instance where defendant de Guzman was declared in default and judgment against him and writ of execution was issued. Thereupon de Guzman filed Civil Case 7266 in Court of First Instance to annul the default judgment and secured injunction to prevent the sale of his property to satisfy the monetary judgment against him. After trial, Court of First Instance annulled the default judgment, and both parties appealed. *Held*: De Guzman was properly held in default in the ejectment suit because his attorney received copy of the notice of elevation of the court of records on March 1, 1961 and notice to his attorney was notice to the client; therefore, his failure to file an answer within the reglementary period was just cause to declare him in default.[115] As to the argument of Santos, however, that Civil Case 7266 should have been dismissed on the ground of prior judgment in the ejectment suit because in said ejectment suit De Guzman had already filed a motion that the execution be quashed and that motion was denied on August 31, 1962, the Supreme Court did not consider this meritorious, since the record showed that as of the date when de Guzman filed Case No. 7266 to annul the default judgment on July 12, 1962, the order of denial of August 31, 1962 had not yet been promulgated as of that date. Furthermore, said order of August 31, 1962 was promulgated precisely on the ground that said motion was improper to resolve the validity of the default judgment. However, as to the sale by the sheriff of the properties of De Guzman to satisfy the monetary judgment against him in the ejectment suit, Supreme Court held that the sale was *void,* because the property sold being real, assessed at more than ₱400.00, under Rule 39, Section 18, notice of sale should have been published once a week for three weeks in a newspaper of general circulation in the province and if there be newspapers there both in English and in Spanish, then it should have been published in both for a period of twenty days. It was observed that here the notice of sheriff's sale was published only in *Nueva Era* on May 15, 22 and 29, that is to say, only for a period of fifteen days and *Nueva Era* was a newspaper of limited circulation in Nueva Ecija.

[114] G.R. No. 22636, June 11, 1970.

[115] Under the rules then existing and in force, note however, that, under the Revised Rules of Court (Rule 40, Section 7):

"the pleadings filed in the Municipal Court are considered reproduced."

Q. REVIVAL AND ENFORCEMENT OF JUDGMENT

In former civil case filed in Court of First Instance, Manila, Civil Case No. 5203, action was by Pascual against Bautista, Lovina and Yambao. Bautista filed third party complaint against Flores, and Flores was declared in default on the third party complaint. Judgment in the main case was for plaintiff against Bautista and for Bautista against the third party defendant Flores; Yambao was absolved. Upon appeal to the Supreme Court by all except Flores, the Supreme Court affirmed with modifications and this judgment of the Supreme Court became final in 1957. Bautista asked execution against Flores but it was unsatisfied. He filed this present case on November 12, 1961 to revive the judgment. Flores raised the defense of prescription; but the lower court revived the judgment. The Supreme Court reversed as the judgment against Flores sought to be revived by Bautista was a judgment against the third party defendant by Bautista.[116] It must be noted that Flores was declared in default then; under the Rules then in force [117] it was immediately executory and could not be appealed by Flores, therefore it became final as of the time when it was rendered. Since the present action for revival of the judgment was filed more than 10 years after that and an action to revive judgment prescribes in ten years from the date judgment becomes final, the same had already prescribed.

In action to enforce decision of Tribunal of Arbitration of Bengal Chamber of Commerce affirmed by High Court of Judicature of Calcutta, it appearing that decision suffered from defect of "clear mistake of law", Supreme Court held that such decision could not be enforced.[118]

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[116] Pascual v. Bautista, G.R. No. 21644, May 29, 1970.
[117] Lim Toco v. Go Fay, 80 Phil. 166 (1948).
[118] Rule 39, sec. 50.