

# REMEDIAL LAW—PART I

## CIVIL PROCEDURE

MAGNO S. GATMAITAN \*

At the outset, it may be worthwhile to note that 1971 is noteworthy because the Supreme Court reversed itself on a doctrine which it had enunciated and stuck to from 1964 in the matter of conflict of jurisdiction.<sup>1</sup>

### I. PARTIES

#### A. Necessary

In *Bautista v. Fernandez*,<sup>2</sup> it was held that the petitioner's husband should have been impleaded as a party-defendant for the reason that the action involves recovery of property, admitted by the petitioner herself to be conjugal, and that although the case does not fall within the exceptions of Article 113 of the Civil Code, as restated in Section 4 of Rule 3 of the Rules of Court, the Supreme Court in *Cuyugan v. Dizon*<sup>3</sup> laid down the remedial solution. Although relating to the non-joinder of plaintiff's husband, the latter case applies as well to the non-joinder of defendant's husband. In the *Cuyugan* case, the Supreme Court ruled that the case should not be dismissed for plaintiff's failure to join her husband, nor the case be remanded to the court below and a new trial ordered on this account, and the complaint may and should be amended here, to cure the defect of party plaintiffs, after final decision is rendered.

In making the above ruling, the Supreme Court must have back of its mind the provision of Rule 1, Section 2, Rules of Court, to the effect that "these rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."

Remanding the case for further proceeding in *Constantino v. Espiritu*,<sup>4</sup> the Supreme Court stated that it appearing that the amended complaint submitted by the appellant to the lower court impleaded the beneficiary under the contract as a co-party plaintiff, it seems clear that the three

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\* *Professorial Lecturer in Law*, University of the Philippines.

<sup>1</sup> See *Dulap v. Court of Appeals*, G.R. No. L-28306, December 18, 1971, 42 SCRA 537 (1971).

<sup>2</sup> G.R. No. L-24062, April 30, 1971, 38 SCRA 548 (1971).

<sup>3</sup> 79 Phil. 80 (1947).

<sup>4</sup> G.R. No. L-22404, May 31, 1971, 39 SCRA 206 (1971).

parties concerned therewith would as a result be before the court and the latter's adjudication would be complete upon them.

Setting aside the order of the lower court dismissing the complaint on the ground of lack of jurisdiction, in *Gabila v. Barriga*,<sup>5</sup> the Supreme Court held that while it is true that the amended complaint has included the Director of Lands as a party plaintiff, the said government official is a plaintiff in name and the amended complaint is signed by the lawyer admittedly representing the plaintiff.

#### B. *Intervenor*

In *Batama Farmers' Cooperative Marketing Ass., Inc. v. Hon. Rosal*,<sup>6</sup> the Supreme Court granted the writ of certiorari to correct the lower's court error in admitting Teves' complaint in intervention. The record shows that Teves signed a separate independent contract with the petitioner association, while Villegas has likewise a separate independent contract with the said petitioner which he alone signed, without any intervention on the part of Teves. Consequently, Teves has no legal interest in the subject matter of the contract signed by Villegas with the petitioner. This case reiterates the ruling that a mere collateral interest in the subject matter of the litigation cannot justify intervention.

#### C. *Foreign corporation*

The Supreme Court ruled in *General Garments Corp. v. Director of Patents*,<sup>7</sup> that under Section 21-A of the Trade Mark Law, a foreign corporation or juristic person can bring an action in the Philippine courts for infringement of a trade mark or trade name, for unfair competition, or false designation or origin and false description, "whether or not it has been licensed to do business in the Philippines under Act Numbered Fourteen Hundred and Fifty Nine, as amended, otherwise known as the Corporation Law, at the time it brings the complaint."

## II. CAUSE OF ACTION

### A. *Actionable Wrongs*

In *Ramcar, Inc. v. Sumadchat*,<sup>8</sup> the order of the lower court dismissing the complaint was affirmed because there was no contractual relationship between the plaintiff and the defendant inasmuch as the latter had held and later on released the metals under the authority and order of the Bureau of Customs, the validity of which had not been impugned.

<sup>5</sup> G.R. No. L-28917, September 30, 1971, 41 SCRA 131 (1971).

<sup>6</sup> G.R. No. L-30526, November 29, 1971, 42 SCRA 408 (1971).

<sup>7</sup> G.R. No. L-24295, September 30, 1971, 41 SCRA 50 (1971).

<sup>8</sup> G.R. No. L-27693, January 29, 1971, 37 SCRA 112 (1971).

Reversing the lower court's decision in *De los Santos v. De la Cruz*,<sup>9</sup> holding that the defendant, being a party to the extrajudicial partition agreement, was estopped from raising in issue plaintiff's right to inherit from the decedent, the Supreme Court ruled that plaintiff-appellee, being a mere grandniece of the decedent, could not inherit from the latter by right of representation in accordance with Article 927 of the Civil Code. It added that the legal effect of plaintiff-appellee's exclusion and participation in the extrajudicial partition agreement did not confer upon her the right to institute this action. Not being such an heir, partition is void with respect to her pursuant to Article 1105 of the Civil Code. It was then concluded that extrajudicial partition agreement being void with respect to the plaintiff-appellee, she may not be heard to assert estoppel against the appellant.

*Agreda v. Agreda*<sup>10</sup> reiterates the rule that the remedy provided for in Section 38 of Act No. 496 is not exclusive and does not bar any other to which the aggrieved party may be entitled.

In holding in *Lee v. Commissioner of Immigration*,<sup>11</sup> that the petition of the appellee in the court *a quo* is really one for declaratory relief, considering the prayer therein that "she be adjudged to have acquired the citizenship of her husband, Jackson Barra, who is a Filipino xxx", the Supreme Court stated that, in a long line of decisions, it has repeatedly held that there is no proceeding established by law, or the rules, for the judicial declaration of the citizenship of an individual.

#### B. *Conditions precedent*

It was held in *Ma-ao Sugar Central v. Manila Port Service*<sup>12</sup> that the computation of the 15-day period for filing claims must start from the day following the event.

In *Manila Cordage Co. v. Court of Industrial Relations*,<sup>13</sup> petitioners attempted to take the case out of the jurisdiction of the Court of Industrial Relations, which the latter denied. In answering petitioners' contention that the lower court had no jurisdiction over the case since the certification "appears to have been made on the erroneous factual bases" of the existence of labor dispute and "that the business of the company is not indispensable to national interest", the Supreme Court stated that there can be no argument against the validity and efficacy of the presidential certification.

<sup>9</sup> G.R. No. L-29192, February 22, 1971, 37 SCRA 555 (1971).

<sup>10</sup> G.R. No. L-22312, May 31, 1971, 39 SCRA 191 (1971).

<sup>11</sup> G.R. No. L-23446, December 20, 1971, 42 SCRA 561 (1971).

<sup>12</sup> G.R. No. L-22230, January 30, 1971, 37 SCRA 179 (1971).

<sup>13</sup> G.R. No. L-25943, January 30, 1971, 37 SCRA 288 (1971).

The Supreme Court noted in *Peligrino v. General Base Metals, Inc.*<sup>14</sup> that considering the nature of the lease contract between the parties which was on a monthly basis, it seems clear that the appellee had the right to terminate the same at the end of any given month, giving timely notice thereof to the appellant, which the appellee did. It was then concluded that when the appellant refused to do so, the appellee had the right to eject it from the leased premises.

In the seven cases filed against the *Manila Port Service* and the *Manila Railroad Company*,<sup>15</sup> with respect to the first issue raised, except in two cases, the Supreme Court reiterated the rule that a provisional claim is sufficient "even if the value of the goods involved were not stated therein, if it describes the goods sufficiently to permit its identification by the operator and the determination by the latter of the facts relevant thereto, such as the name of the carrying vessel, its date of arrival, the corresponding bill of lading xxx." In the cases at bar, the provisional claims involved therein contain the data aforementioned and that, accordingly, they comply substantially with the requirement of paragraph 15 of the management contract, as a condition precedent to the institution of a court action.

### C. Moot questions

In *Binabay v. People*,<sup>16</sup> the petitioner contended further proceedings by the respondents would place him in jeopardy of punishment for the same offense on the ground that the judgment orally given had become final and executory, he having begun to serve his sentence immediately thereafter. In holding petitioner's contention as devoid of merit, the Supreme Court observed that he did not put it up in the lower court, and he could not have served sentence because no order of commitment had been issued therefor. Moreover, no such order could have been issued for no written judgment had ever been rendered.

The action for partition of the estate and the liquidation of conjugal partnership in *Martirez v. Iturralde*,<sup>17</sup> was ordered dismissed inasmuch as the present appeal had become moot and academic because the partition of the estate of the deceased spouses should be made in the intestate proceedings already referred to.

Holding the question involved in *Central Bank v. Hon. Vasquez*<sup>18</sup> as having become moot, the Supreme Court stated that it is no longer called

<sup>14</sup> G.R. No. L-22683, May 31, 1971, 39 SCRA 216 (1971).

<sup>15</sup> G.R. No. L-23444, October 29, 1971, 42 SCRA 31 (1971); G.R. No. L-23521, October 29, 1971, 42 SCRA 33 (1971); G.R. No. L-23522, October 29, 1971, 42 SCRA 37 (1971); G.R. No. L-23602, October 29, 1971, 42 SCRA 34 (1971); G.R. No. L-24046, October 29, 1971, 42 SCRA 34 (1971); G.R. No. L-24622, October 29, 1971, 42 SCRA 34 (1971); and G.R. No. L-24799, October 29, 1971, 42 SCRA 34 (1971).

<sup>16</sup> G.R. No. L-31008, January 30, 1971, 37 SCRA 445 (1971).

<sup>17</sup> G.R. No. L-21543, April 29, 1971, 38 SCRA 426 (1971).

<sup>18</sup> G.R. No. L-33593, December 13, 1971, 42 SCRA 530 (1971).

upon to rule on the validity of the Monetary Board resolution suspending respondent bank's foreign exchange operation since the said board has lifted such suspension, pursuant to the Court's resolution of August 26, 1971.

#### D. Prescription

It was held in *Quiniano v. Court of Appeals*<sup>19</sup> that prescription would not lie. The patent was obtained in 1941 and the complaint was filed in 1943. An ordinary action based on fraud should be filed within four years. Fermin who acquired the rights of Capito, the previous vendee, cannot be considered an innocent purchaser for value. It is undisputed that neither the first vendee Capito, nor petitioner Fermin took the trouble of securing a certificate of title in their names.

### III. VENUE

*Ocampo v. Domingo*<sup>20</sup> reiterates the rule that where the defendant fails to challenge timely the venue in a motion to dismiss as provided by section 4 of Rule 4, and allows the trial to be held and a decision to be rendered, he cannot on appeal or in a special action be permitted to challenge belatedly the wrong venue, which is deemed waived.<sup>21</sup>

In *Time, Inc. v. Hon. Reyes*,<sup>22</sup> it was noted that under the first proviso in Section 1, Republic Act No. 4362, the venue of a civil action for damages in cases of written defamations is localized upon the basis of, first, whether the offended party or plaintiff is a public officer or a private individual; and second, if he is a public officer, whether his office is in Manila or not in Manila, at the time of the commission of the offense. If the offended party is a public officer with office in the City of Manila, the proviso limits him to two choices of venue, namely "in the Court of First Instance of the City of Manila or in the city or province where the libelous article is printed and first published x x x." In the case at bar, the complaint lodged in the court of Rizal by respondents does not allege that the libelous article was printed and first published in the province of Rizal, and, since the respondents-plaintiffs are public officers with offices in Manila at the time of the commission of the alleged offense, it is clear that the only place left for them wherein to file their action is the Court of First Instance of Manila.

*Universal Insurance and Indemnity Co. v. Hon. Consino*<sup>23</sup> reiterates the rule that, where there is no agreement in the insurance policy as to where an action for recovery thereon should be filed, Rule 4, Section 1(b)(2),

<sup>19</sup> G.R. No. L-23024, May 31, 1971, 39 SCRA 221 (1971).

<sup>20</sup> G.R. No. L-27632, March 27, 1971, 38 SCRA 134 (1971).

<sup>21</sup> *Juanillo v. De la Rama*, 74 Phil. 43 (1942).

<sup>22</sup> G.R. No. L-28882, May 31, 1971, 39 SCRA 303 (1971).

<sup>23</sup> G.R. No. L-25082, November 23, 1971, 42 SCRA 216 (1971).

Rules of Court should govern, to wit: "If there is no such agreement, in the place of the execution of the contract sued upon as appears therefrom." In the instant case, the policy shows that the place of execution is Makati, Rizal. Any evidence to show otherwise would be immaterial since the purpose of the rule is to avoid further inquiry outside that which appears on the document itself as the place of execution.

It was held in *Enriquez v. Macaraeg*<sup>24</sup> that prohibition is the proper remedy against a judge who proceeds "in defiance of the Rules of Court by refusing to dismiss an action which could not be maintained in his court" on the ground of improper venue.

#### IV. JURISDICTION

*Benito Go v. Civil Registrar, Deiparine v. Republic, Castañeda v. Republic, Civil Registrar v. Hon. Luis B. Reyes, and Republic v. Capalla*,<sup>25</sup> reiterate the rule that Article 412 of the Civil Code sanctions the correction of mere "clerical errors of a harmless or innocuous nature," not changes involving civil status, nationality or citizenship which are substantial and/or controversial.

In *Manila Stevedoring and General Worker's Union v. Lantin*,<sup>26</sup> the actionable wrong sought to be redressed consists in exclusion, by means of violence and intimidation of an independent contractor and his men from work which properly belongs to them, by another contractor and the latter's followers under the guise of legitimate unionism. It was ruled that the subject matter of the complaint, thus understood, clearly falls within the jurisdiction of the Court of First Instance.<sup>27</sup>

Holding that the Court of First Instance should yield to the decision of the Collector of Customs, in *Lopez v. Commissioner of Customs*,<sup>28</sup> the Supreme Court noted that the jurisdiction of the Collector of Customs is provided for in Republic Act No. 1937 which took effect on July 1, 1957, much later than the Judiciary Act of 1948, and it is axiomatic that a later law prevails over a prior statute. Moreover, on grounds of public policy, it is more reasonable to conclude that the legislators intended to divest the Court of First Instance of the prerogative to replevin a property which is a subject of a seizure and forfeiture proceedings for violation of the Tariff and Customs Code. Otherwise, actions for forfeiture of property for violation of Customs Laws could easily be undermined by the simple device of

<sup>24</sup> 84 Phil. 674 (1949).

<sup>25</sup> G.R. No. L-29544, May 31, 1971, 39 SCRA 350 (1971); G.R. No. L-30227, May 31, 1971, 39 SCRA 350 (1971); G.R. No. L-30228, May 31, 1971, 39 SCRA 350 (1971); G.R. No. L-3099, May 31, 1971, 39 SCRA 350 (1971); and G.R. No. L-31075, May 31, 1971, 39 SCRA 350 (1971).

<sup>26</sup> G.R. No. L-29785, January 28, 1971, 37 SCRA 88 (1971).

<sup>27</sup> In *Racaza v. De Ocampo*, G.R. No. L-22328, January 30, 1971, 37 SCRA 190 (1971), it was held that as the price at which the defendant sold the jeep was only ₱1,000.00, the action was within the original jurisdiction of the municipal court.

<sup>28</sup> G.R. No. L-28235, January 30, 1971, 37 SCRA 327 (1971).

replevin. Parenthetically, the order affirmed was previously issued by the lower court pursuant to the Supreme Court ruling in *Pacis v. Averia*.<sup>29</sup>

In *Paulino v. Belen*,<sup>30</sup> it was not questioned that procedurally speaking, the appeal was duly elevated to the court *a quo* and it being the Supreme Court ruling that said Court of First Instance had appellate jurisdiction over the appealed decision of the city court, it follows that the court *a quo* erred in dismissing the said appeal for lack of jurisdiction. The fact that Republic Act No. 6031 changed the rule of appellate jurisdiction in cases of this nature on August 4, 1969 did not affect the appellate jurisdiction already vested in the court *a quo* in 1966 under Republic Act No. 2613.

*Leoquinco v. Canada Dry Bottling Co. of the Philippines, Inc. Employees Association*<sup>31</sup> reiterates the rule concerning the authority of the Court of Industrial Relations to take cognizance of cases connected with the carrying out of a strike. In a long series of decided cases, the Supreme Court has held that where the acts complained of in the petition for injunction are found to arise out of or to be connected with any case exclusively belonging to the jurisdiction of the Court of Industrial Relations, the case shall be heard by said court.

In ruling that compensable injury falls under the exclusive jurisdiction of the Workmen's Compensation Commission, the Supreme Court observed in *Hudencial v. S. P. Marcelo & Co., Inc.*,<sup>32</sup> that before the enactment of Republic Act No. 772 (amending Act No. 3428) which took effect on June 20, 1952, claims for compensation under the Workmen's Compensation Act were cognizable by the regular courts, but since then exclusive jurisdiction was vested in the Workmen's Compensation Commission.

*Tamayo v. Manila Cordage Workers Union*<sup>33</sup> restates the rule that the Court of Industrial Relations and not the Court of First Instance is vested with jurisdiction over any kind of unfair labor practice.<sup>34</sup>

Found in *City of Cebu v. Hon. Consolacion*<sup>35</sup> is the fact that, whether plaintiff's action subject of Civil Case No. 238-C is a personal action or a real action, it cannot be denied that any of the branches of the Court of First Instance of Cebu whether stationed in the City of the same name or in any of the municipalities of the province would be the proper venue for its trial and determination, it being admitted that the parties are residents of the Province of Cebu and the lands in question are within the territorial limits. For a party who assails the authority of Branch VII of the Court of First Instance to take cognizance of said civil case, said party must affir-

<sup>29</sup> G.R. No. L-22526, November 29, 1966, 18 SCRA 907 (1966).

<sup>30</sup> G.R. No. L-28863, January 30, 1971, 37 SCRA 357 (1971).

<sup>31</sup> G.R. No. L-28621, February 22, 1971, 37 SCRA 535 (1971).

<sup>32</sup> G.R. No. L-23969, February 27, 1971, 37 SCRA 707 (1971).

<sup>33</sup> G.R. No. L-29385, March 15, 1971, 38 SCRA 21 (1971).

<sup>34</sup> LMM v. Abiera, G.R. No. L-29474, December 19, 1970, 36 SCRA 437-445 (1970).

<sup>35</sup> G.R. No. L-26068, March 29, 1971, 38 SCRA 152 (1971).

matively allege that the approval of the Department of Justice had not been previously secured and that the exercise of authority over the case by the aforesaid branch was not demanded by the interest of the administration of justice. In the case at bar, this was not done.

Reaffirmed in *Espanilla v. La Carlota Sugar Centra*<sup>36</sup> is the rule that under the Industrial Peace Act, Sec. 5(a), the Court of Industrial Relations has jurisdiction over the prevention of unfair labor practices.

Also reaffirmed in *Luna v. Pacis*<sup>37</sup> is the rule that Republic Act No. 1125, Sec. 7, which took effect on June 16, 1954, gave the Court of Tax Appeals exclusive appellate jurisdiction to review on appeal, decisions of the Commissioner of Customs, involving seizure, detention or release of property affected x x x or other matters arising under the Customs Law or other laws administered by the Bureau of Customs.

The ruling in *Spouses Gonzales and Yusay v. Province of Iloilo*<sup>38</sup> is to the effect that where an assessment is disputed for whatever ground or improper, illegal or void, or excessive or unreasonable, the action challenging the assessment after first exhausting the administrative remedy of appeal to the assessment appeals board and regardless of whether the corresponding real estate tax has been paid and refund sought, pertains to the exclusive jurisdiction of the tax court to the exclusion of the courts of first instance.

It was held in *Sabulao Vda. de Decena v. Hon. De Los Angeles*<sup>39</sup> that since 6 years, 11 months and 10 days had elapsed since the decision of the respondent court of first instance became final, the second demolition order was void, as the court *a quo* had ceased to have jurisdiction to execute the dormant judgment upon mere motion.

Reiterated in *Señeres v. Hon. Frias*<sup>40</sup> is the rule that the customs authorities acquire exclusive jurisdiction over goods sought to be imported into the Philippines, for the purpose of enforcement of Philippine customs laws, from the moment the goods are actually under their possession and control, even if no warrant for seizure or detention thereof was previously issued by the port collector of customs.

*Hoey v. Aurelio & Co., Inc.*<sup>41</sup> reiterates the established rule that when a party appeals directly to the Supreme Court, and submits his case there for decision, he is deemed to have waived the right to dispute any finding of fact made by the trial court. The only questions that may be raised are those of law. However, following the ruling laid down in *Justo v. Hernando*<sup>42</sup> and considering the provision of Section 2, Republic Act No. 5440, further

<sup>36</sup> G.R. No. L-23722, March 31, 1971, 38 SCRA 186 (1971).

<sup>37</sup> G.R. No. L-24237, March 31, 1971, 38 SCRA 189 (1971).

<sup>38</sup> G.R. No. L-24663, March 31, 1971, 38 SCRA 209 (1971).

<sup>39</sup> G.R. No. L-29317, May 29, 1971, 39 SCRA 94 (1971).

<sup>40</sup> G.R. Nos. L-32921-40, June 10, 1971, 39 SCRA 533 (1971).

<sup>41</sup> G.R. No. L-31111, June 30, 1971, 39 SCRA 658 (1971).

<sup>42</sup> 89 Phil. 268 (1951).

amending the Judiciary Act of 1948, the Supreme Court was constrained to refer the appeal to the Court of Appeals.

In *Union Obrera de Tabaco v. Quicho*,<sup>43</sup> the mischief sought to be removed was the flaunting by the defendants of the right of membership of the Union to change its leaders. It was ruled that the actionable wrong was within the exclusive jurisdiction of the Court of Industrial Relations, and that the Court of First Instance had no power to hear the case.

The ruling in *Utleg v. Arca*<sup>44</sup> is that only the Bureau of Forestry has jurisdiction to grant licenses for the taking of forest products, pursuant to Section 1816 of the Revised Administrative Code.

*People v. Salanga*<sup>45</sup> reiterates the settled rule that jurisdiction is vested in the court, not in the judge. Any of the branches of the Court of First Instance of Ilocos Sur has jurisdiction to try and decide the said cases—the crimes involved therein being those of murder and frustrated murder and the accused were all validly brought before the court for trial. Under Section 7, Rule 22 of the Rules of Court, the assignment of cases to the different branches of the court, or the transfer, may be done by raffle or upon accord among the judges. What is required is that the parties are given notice so that they may be present when the raffle is made or when the transfer from one branch to another is ordered by a judge.

In *Associated Labor Union v. Judge Cruz*,<sup>46</sup> it was ruled that the fact that when the complaint for damages was filed in the court of first instance no formal charge for unfair labor practice against any of the parties had as yet been presented in the Court of Industrial Relations, or that the Union's charge against the company was subsequently withdrawn, would not affect the jurisdiction of the Court of Industrial Relations to take cognizance of the labor dispute. It may be pointed out that at the time the unfair labor practice against the Union<sup>47</sup> for having declared an illegal strike was already pending in the Court of Industrial Relations.

Holding that the order of transfer of Case No. V-10874 was null and void in *Osmeña Jr. v. Secretary of Justice*,<sup>48</sup> the Supreme Court concluded that while Memorandum Circular No. 53 of the Department of Justice does not, on its face, single out the anti-graft case against the petitioner, the peculiar facts surrounding the transfer of the said case to the circuit court lead to no other conclusion than that the transfer to the Circuit Court was in effect one of a pre-selected case.

<sup>43</sup> G.R. No. L-25799, August 31, 1971, 40 SCRA 589 (1971).

<sup>44</sup> G.R. No. L-25026, August 31, 1971, 40 SCRA 597 (1971).

<sup>45</sup> G.R. Nos. L-23584-85, August 31, 1971, 40 SCRA 610 (1971).

<sup>46</sup> G.R. No. L-28978, September 22, 1971, 41 SCRA 12 (1971).

<sup>47</sup> Case No. 4924—ULP.

<sup>48</sup> G.R. No. L-32033, September 30, 1971, 41 SCRA 199 (1971).

*Robles v. Yap Wing*<sup>49</sup> reaffirms the holding that under Section 46 of the Workmen's Compensation Act "the Workmen's Compensation Commission shall have jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court." It was noted that in *Manalo v. Foster Wheeler Corp.*,<sup>50</sup> in sustaining the order of the trial court dismissing an employee's claim for damages against the employer for injuries suffered in an accident which happened in the course of his employment, the Supreme Court said that "the Legislature evidently deemed it best, in the interest of expediency and uniformity that all claims of workmen against their employers for damages due to accidents suffered in the course of the employment shall be investigated and adjudicated by the Workmen's Compensation Commission, subject to appeal to the Supreme Court." It was also pointed out that the Workmen's Compensation Act provides for two exceptions. The first is in Section 6, which gives the injured employee the option to claim compensation benefits against his employer under the Act or to sue the third person who caused the injury for damages in the regular courts. The other exception is in Section 42, which refers to small private employers, in which case claims for compensation by reason of accident or injury shall be governed by the provisions of Act No. 1874 or by those of the Civil Code. Significantly, the case at bar does not fall under any of the exceptions.

The ruling in *Ignacio v. CFI of Bulacan*<sup>51</sup> is that while it is true that the jurisdiction of the Court in a suit for ejectment or forcible entry is determined by the allegations of the complaint, yet where tenancy is averred as a defense and, upon hearing, is shown to be the real issue, the court should dismiss the case for want of jurisdiction.

The six (6) cases of *Minrapco v. Omandam*, *Dominguez v. Pepsi Cola Bottling Co.*, *Glipo v. Alarco*, *Democratic Labor Union v. Hon. Villamor*, *Manila Cordage Workers' Union v. Hon. Reyes*, and *National Mines and Allied Worker's Union v. Hon. Quicho*<sup>52</sup> involved a common basic issue, namely, which court has jurisdiction over the same, the Court of First Instance or the Court of Industrial Relations. Since said cases involved labor disputes, it was held that the Court of Industrial Relations has jurisdiction over them.

It was held in *Dulap v. Court of Appeals*<sup>53</sup> that a Court of First Instance or a branch thereof has the authority and jurisdiction to take cog-

<sup>49</sup> G.R. No. L-20442, October 4, 1971, 41 SCRA 267 (1971).

<sup>50</sup> 98 Phil. 856 (1956).

<sup>51</sup> G.R. Nos. L-27897-98, October 29, 1971, 42 SCRA 89 (1971).

<sup>52</sup> G.R. No. L-23058, November 27, 1971, 42 SCRA 250 (1971); G.R. No. L-23473, November 27, 1971, 42 SCRA, 250 (1971); G.R. No. L-23871, November 27, 1971, 42 SCRA 250 (1971); G.R. No. L-24232, November 27, 1971, 42 SCRA 251 (1971); G.R. No. L-24718, November 27, 1971, 42 SCRA 251 (1971); and G.R. No. L-24956, November 27, 1971, 42 SCRA 251 (1971).

<sup>53</sup> *Supra*, note 1.

nizance of, and to act in, a suit to annul a final and executory judgment or order rendered by another court of first instance or by another branch of the same court.

*Mas v. Dumara-og*<sup>54</sup> would give the impression that when a suit to annul the judgment of a court of first instance or of a branch thereof is filed with another court of first instance or another branch of the same court, the question of jurisdiction inevitably comes up. This question was squarely ruled upon in *Vda. de Ursua v. Pelayo*<sup>55</sup> where it was held that the said view is untenable, for the jurisdiction of all courts in the Philippines, as far as the authority thereof depends upon the nature of the litigation, is defined in the Revised Judiciary Act, pursuant to which courts of first instance shall have exclusive jurisdiction over civil cases the subject matter of which are not capable of pecuniary estimation, and an action for annulment of a judgment and an order of a court of justice belongs to this category. It was noted that *Montesa v. Manila Cordage Co.*<sup>56</sup> is not in point, for the issue involved therein was whether the Court of First Instance may indirectly—not in an action for the specific purpose of annulling a judgment—and by interlocutory order, or a writ of preliminary injunction, set aside an attachment levied in pursuance of an order issued in another case pending before another branch of the same court.

It was cited in the *Dumara-og* case that it is regarded as an elementary principle of high importance in the administration of justice that the judgment of a court of competent jurisdiction may not be opened, modified, or vacated by any court of concurrent jurisdiction.<sup>57</sup> However, it was pointed out in the case at bar that while said principle may be valid in the *Dumara-og* case, it has no application to the present case because “x x x this rule does not apply, however, to different departments of the same court.”<sup>58</sup> With particular reference to the different branches of a court of first instance, the correct view is that expressed in *Bacalso v. Ramolete*,<sup>59</sup> to wit:

“xxx The various branches of the Court of First Instance of Cebu under the Fourteenth Judicial District, are coordinate and co-equal courts, and the totality of which is only one Court of First Instance. x x x”

The policy of judicial stability, which underlies the doctrine laid down in *Dumara-og* case,<sup>60</sup> should be held subordinate to an orderly administration of justice based on the existing rules of procedure and the law. In *Garchitorena v. Sotelo*,<sup>61</sup> the Supreme Court said:

<sup>54</sup> G.R. No. L-16252, September 29, 1964, 12 SCRA 34 (1964).

<sup>55</sup> 107 Phil. 622 (1960).

<sup>56</sup> G.R. No. L-4559, September 19, 1952.

<sup>57</sup> 30-A AM. JUR. *Judgments*, Sec. 631 citing *Turgeon v. Bean*, 109 Me. 189, 83 A. 557 (1913) and *Brown v. Harding*, 170 N. C. 253, 86 S.E. 1010 (1917).

<sup>58</sup> *Id.*

<sup>59</sup> G.R. No. L-22488, October 26, 1967, 21 SCRA 519 (1967).

<sup>60</sup> *Supra*, note 54.

<sup>61</sup> 74 Phil. 25, 32 (1942).

"Petitioners vehemently invoke reasons of public policy which favor the stability of judicial decisions. Suffice it for us to say that such reasons are mute in the presence of fraud, which the law abhors."

It may be argued that the abandonment of the doctrine in *Dumara-og*, etc. may lead to chaos, nay, even enmity among the judges of the different courts whose judgments or orders become the subject of annulment proceedings before other courts of concurrent jurisdiction. The matter should, however, be viewed academically and objectively. On the other hand, to limit the authority to annul a judgment to the very branch that rendered the same may, in some cases, result in a failure of justice, for if the branch that tries the annulment case is presided over by the same judge who penned the decision sought to be annulled, the tendency might be for the said judge to uphold the validity of his judgment regardless of the evidence. The Supreme Court, however, pointed out that this consideration is not among those that have led it to arrive at the new doctrine, for it has great and abiding faith in the sense of justice and responsibility of the members of the judiciary.

## V. PLEADINGS, MOTIONS, SUMMONS AND SERVICE

### A. Extension to file

*Naga Development Corporation v. Court of Appeals*<sup>62</sup> reiterates the long-settled rule that the granting of additional time within which to file an answer to a complaint is a matter largely addressed to the sound discretion of the trial court.

### B. Motions

It was restated in *Vda. de Azarias v. Hon. Maddela*<sup>63</sup> that a motion which does not meet the requirement of Sections 4 and 5 of Rule 15 of the Rules of Court is a worthless piece of paper which the Clerk has no right to receive and the respondent court *a quo* has no authority to act upon.<sup>64</sup>

### C. Notice

The ruling in *Citizen's Surety & Insurance Co. v. Hon Melencio-Herrera*<sup>65</sup> is to the effect that the proper course for a creditor in the same situation as the petitioner is to locate properties, real or personal, of the resident defendant debtor with unknown address and cause them to be attached under Rule 57, Sec. 1(f), in which case, the attachment converts

<sup>62</sup> G.R. No. L-28173, September 30, 1971, 41 SCRA 105 (1971).

<sup>63</sup> G.R. No. L-25932, March 19, 1971, 38 SCRA 35 (1971).

<sup>64</sup> PNB v. Donasco, G.R. No. L-18638, February 28, 1963, 7 SCRA 409 (1963).

<sup>65</sup> G.R. No. L-32170, March 31, 1971, 38 SCRA 369 (1971).

the action into a proceeding *in rem* or *quasi in rem* and the summons by publication may then be accordingly deemed valid and effective. It was added that because debtors who abscond and conceal themselves are also quite adept at concealing their properties, the dismissal of the case below by the respondent Judge should be set aside and the case held pending in the court's archives, until the petitioner as plaintiff succeeds in determining the whereabouts of the defendant's person or properties.

*Domingo de Lopez v. Aquino and Court of Appeals*<sup>66</sup> reiterates the rule that notice on counsel of record at his address of record is valid.

#### D. Trials, defaults, due process

Reiterated in *PHHC v. Mobo*<sup>67</sup> is the rule long settled in this jurisdiction that whether to grant or to deny a motion for reconsideration the postponement of a trial is a matter addressed to the sound discretion of the trial judge, unless it clearly appears that such discretion was gravely abused.

The ruling in *Catura v. CIR*<sup>68</sup> is to the effect that petitioners having been heard on a motion for reconsideration constitutes as it does sufficient opportunity to inform the tribunal of his side of the controversy.

### VI. DISMISSAL, JUDGMENTS, JUDGES

#### A. Disqualification

In *Geotina v. Hon. Gonzalez*,<sup>69</sup> it was held that the refusal of the respondent judge to disqualify himself and his insistence to hear the criminal case in the face of the express prohibition contained in Section 1 of Rule 137 of the Rules of Court constitutes grave abuse of discretion amounting to excess or lack of jurisdiction.

But it was also held in *Beltran v. Judge Garcia*<sup>70</sup> that mere suspicion that respondents are partial to the accused is not enough. There should be evidence to prove the charge.

#### B. Pre-trial

In *Rice and Corn Administration v. Mariano Ong Ante*,<sup>71</sup> it was held that there is no pattern of conduct to delay the disposal of the case or wanton failure to observe the mandatory requirement of the rule. The new RCA counsel did bring along the RCA assistant general manager's authority

<sup>66</sup> G.R. No. L-28078, April 29, 1971, 38 SCRA 472 (1971).

<sup>67</sup> G.R. No. L-22736, July 9, 1971, 40 SCRA 1 (1971).

<sup>68</sup> G.R. No. L-27392, January 30, 1971, 37 SCRA 303 (1971).

<sup>69</sup> G.R. No. L-26310, September 30, 1971, 41 SCRA 66 (1971).

<sup>70</sup> G.R. No. L-30868, September 30, 1971, 41 SCRA 158 (1971).

<sup>71</sup> G.R. No. L-30558, October 4, 1971, 41 SCRA 636 (1971).

“to act as representative or management . . . in the pre-trial.” This did not constitute a compliance with Atty. Silao’s undertaking to “take along with him the RCA general manager or the necessary board resolution authorizing him to represent an action and in behalf of the defendant corporation in the next hearing, as pointed out in respondent court’s decision. However, it was ruled that this constitutes an honest mistake or excusable negligence, as pleaded and should not prejudice petitioner’s case on the merits.

The ruling in *St. Paul Fire & Marine Insurance Co. v. United States Lines*<sup>72</sup> is that the motion to dismiss for lack of jurisdiction did not necessarily relieve the plaintiff of its duty to attend the pre-trial as far as the two shipping companies were concerned inasmuch as the question of jurisdiction alleged in the motion to dismiss did not affect them.

### C. Consolidation

It was held in *Raymundo v. Felipe*<sup>73</sup> that the trial court erred in its refusal to consolidate the two cases, which consolidation should have been ordered as allowed under Section 1 of Rule 31 of the Revised Rules of Court.

### D. Dismissal

*Zenith Films, Inc. v. Hon. Herrera*<sup>74</sup> restates the rule that while it devolves upon the court itself to observe the time limitation thus fixed when it issued the summons, the clear import of Section 4, Rule 5, is that the defendant has up to the date set for trial within which to file his answer to the complaint.

Reiterated in *Philippine Columbia Enterprises Co. v. Hon. Lantin*<sup>75</sup> is the rule that the court has discretion to defer the hearing if the ground in the motion to dismiss is not indubitable. In the case at bar, the main ground in the motion to dismiss was that the complaint did not state any cause of action because the plaintiff is not licensed to do business in the Philippines so that the contracts sued upon became invalid and unenforceable. An examination of the complaint will show that the same expressly avers that the transactions upon which the respondent is suing were “consummated in Tokyo” and hence, not in the Philippines. Petitioner’s assertion that the contracts were made in the Philippines squarely contradicts the averments in the complaint and violates the basic and well-known rule that whether a cause of action is pleaded or not must be ascertained solely

<sup>72</sup> G.R. No. L-24861, October 29, 1971, 42 SCRA 54 (1971).

<sup>73</sup> G.R. No. L-30887, December 24, 1971, 42 SCRA 615 (1971); G.R. No. L-29754, December 24, 1971, 42 SCRA 615 (1971).

<sup>74</sup> G.R. No. L-26619, March 27, 1971, 38 SCRA 120 (1971).

<sup>75</sup> G.R. No. L-29072, June 7, 1971, 39 SCRA 376 (1971).

upon the face of the complaint. Such inconsistency suffices to render the ground for the motion to dismiss doubtful.<sup>76</sup>

#### *E. Validity of judgment*

In *Solis v. Court of Appeals*,<sup>77</sup> it was held that it is firmly established in this jurisdiction that a decision is void if promulgated after the judge who rendered it had permanently ceased to be a judge of the court where he sat in judgment.

Ruling that the decision in question was a patent nullity, the Supreme Court held in *Dajunos v. Tandayag*<sup>78</sup> that the court below did not have the power to determine who were entitled to an award of free patent title over the piece of property that yet belonged to the public domain.

In *Gillego v. Diaz*,<sup>79</sup> the petitioner filed with the lower court a petition for certiorari praying for a declaration of nullity of the judgment on the ground that "said decision is null and void for the reason that the same is rendered after the lapse of one year from the date of the filing of the complaint." Sustaining the lower court's dismissal of the said petition, the Supreme Court held that Rule 5, Sections 8 and 10 of the New Rules of Court, as held in the case of *People v. Catolico*,<sup>80</sup> is but directory rather than mandatory in character, for it could not have been possibly intended to divest without sanction of law the trial courts of their jurisdiction and authority to try and decide cases within their competent jurisdiction as conferred by statute.

#### *F. Form of Judgment*

In *Obando v. Regis*,<sup>81</sup> it was ruled that the decision under appeal fails to state clearly and distinctly the facts and the law on which it is based, as required by the rules. The decision does not permit the identification of the ballots admitted or rejected for each of the parties, nor does it specify the reasons for admitting or rejecting the particular ballots, for which reason the decision is incomplete and therefore, inoperative.

#### *G. Effect of judgment, res judicata*

Sustaining the defense of *res judicata* in *Wong San Mei & Rabo v. Republic*,<sup>82</sup> the Supreme Court held that the dismissal by the Court of Appeals on July 31, 1963 of Civil Case No. 39865 filed on March 14, 1962

<sup>76</sup> *Militante III v. Edrosolano*, G.R. No. L-27940, June 10, 1971, 39 SCRA 473 (1971), is along the same line.

<sup>77</sup> G.R. Nos. L-29777-83, March 26, 1971, 38 SCRA 53 (1971).

<sup>78</sup> G.R. Nos. L-32651-52, August 31, 1971, 40 SCRA 449 (1971).

<sup>79</sup> G.R. No. L-27428, May 29, 1971, 39 SCRA 88 (1971).

<sup>80</sup> G.R. Nos. L-31261-65, April 20, 1971, 38 SCRA 389 (1971).

<sup>81</sup> G.R. No. L-32683, May 31, 1971, 39 SCRA 335 (1971).

<sup>82</sup> G.R. No. L-22551, March 16, 1971, 38 SCRA 26 (1971).

by the petitioners for mandamus and prohibition with preliminary injunction before the Court of First Instance of Manila forecloses the right of petitioners to file this petition with the Court of First Instance of Camarines Norte.

Along the same line are the rulings in *Rasay-Lahoz v. Leonor*,<sup>83</sup> *Go Oh v. Vivo*,<sup>84</sup> and *Dy Pac Pakiao Workers Union v. Dy Pack & Co., Inc.*<sup>85</sup>

#### H. Action on judgments

In *Philippine Refining Co. v. Flores*,<sup>86</sup> the company challenged the jurisdiction of the respondent court to enforce its 1947 judgment on the ground that more than five years had passed since it became final when the petition for that purpose was filed on December 28, 1956. It was held that the petition below was not a mere motion for execution but an action to enforce the judgment within the meaning of Section 6 of Rule 39 of the Rules of Court then in force.

### VII. APPEALS

#### C. Frivolous appeals

In *Reyes v. Kalaw*,<sup>87</sup> it was held that since all the proceedings in the City Court including the judgment become as it were inexistent in case of appeal to the Court of First Instance and since the trial *de novo* must be held in the latter court, the execution of the afore-said decision of the City Court was not yet proper and warranted.<sup>88</sup>

#### B. From Court of First Instance

*Vulera v. Court of Appeals*<sup>89</sup> reiterates the rule that the Revised Rules of Court place upon the appellant the burden of showing that his appeal is timely, and for that purpose prescribe that the record on appeal shall include such data as will show that the appeal was perfected on time. This requirement is mandatory and jurisdictional for unless the appeal is perfected on time the appellate court acquires no jurisdiction over the appealed case, and has power only to dismiss the appeal.

*Marinduque Mining & Industrial Corporation v. Hon. Enriquez*<sup>90</sup> holds that failure to file an appeal bond on time would be as fatal as failure to file a record on appeal. Service of such record on appeal on the adverse

<sup>83</sup> G.R. No. L-27388, March 23, 1971, 38 SCRA 47 (1971).

<sup>84</sup> G.R. No. L-24898, March 31, 1971, 38 SCRA 228 (1971).

<sup>85</sup> G.R. No. L-27377, March 31, 1971, 38 SCRA 263 (1971).

<sup>86</sup> G.R. No. L-21669, June 30, 1971, 39 SCRA 577 (1971).

<sup>87</sup> G.R. No. L-28466, March 27, 1971, 38 SCRA 138 (1971).

<sup>88</sup> See Rep. Act No. 6031 (1969).

<sup>89</sup> G.R. No. L-29416, January 28, 1971, 37 SCRA 80 (1971).

<sup>90</sup> G.R. No. L-26485, June 7, 1971, 39 SCRA 369 (1971).

party on time is mandatory, and there is no reason why a similar service with respect to the appeal bond should be accorded a different treatment.

In *De Guia v. Court of Appeals*,<sup>91</sup> it was ruled that since the record on appeal of petitioner is bereft of any mention or reference to the filing of the appeal bond, it is evident that the record on appeal submitted by the appellant does not show on its face the timely perfection of the appeal and does not comply with Section 6 of Rule 41. Such ruling has been reiterated in *Imperial Insurance Inc. v. Court of Appeals*.<sup>92</sup>

### C. Frivolous appeals

Considering the appeal as frivolous in *Tiu v. Court of Appeals*,<sup>93</sup> the Supreme Court noted that private respondent's justification to remain on the premises subject matter of the ejectment proceeding is based on a defense which is unavailable to him.

## VIII. SPECIAL CIVIL ACTION

### A. Ejectment

In *Reyes v. Zamora*,<sup>94</sup> it was observed that the period contemplated in Section 2 of Rule 70 of the Rules of Court refers only to the time that should transpire from the demand to the date of filing of the action, not to the period given in the letter of demand.

The ruling in *Borden v. Hon. Hontanosas*<sup>95</sup> is to the effect that the respondent judge is allowed by Section 3 of the Revised Rule 16 to defer action on the jurisdictional issue until after evidence has been received on the matter. It was noted, moreover, that the petitioners had failed not only to post a supersedeas bond but also to pay the monthly rentals adjudged by the City Court for their use of the property, which failure makes it mandatory upon the lower court to order the immediate execution of the decision.

### B. Quo warranto

It was held in *Alejo v. Marquez*<sup>96</sup> that, according to Section 16, Rule 66 of the Rules of Court, a petition for *quo warranto* must be filed within one year after the cause of the ouster or the right of the petitioner to hold office arose. Pursuant to consistent decisions of the Supreme Court, this one year period begins to run when the petitioner might lawfully have assumed office, and not from the date the incumbent began to discharge the

<sup>91</sup> G.R. No. L-33101, July 30, 1971, 40 SCRA 332 (1971).

<sup>92</sup> G.R. No. L-28722, October 29, 1971, 42 SCRA 97 (1971).

<sup>93</sup> G.R. No. L-32626, January 28, 1971, 37 SCRA 99 (1971).

<sup>94</sup> G.R. No. L-29431, February 24, 1971, 37 SCRA 610 (1971).

<sup>95</sup> G.R. No. L-30335, November 29, 1971, 42 SCRA 401 (1971).

<sup>96</sup> G.R. No. L-29053, February 27, 1971, 37 SCRA 762 (1971).

duties of the office. The reason for this limitation is that title to public office cannot be left to continued uncertainty.

### C. Declaratory relief

The Supreme Court found in *Jimenez v. Roda*<sup>97</sup> that the petitioner's petition failed to make out a proper case for declaratory relief. This is patent from the prayer of the petition, whereby he petitioned the lower court "to exercise its power to determine the validity of petitioner's appointment should it be attested pending final disposition of the criminal case against herein petition for alleged violation of section 2753 of the Revised Administrative Code."

### D. Certiorari

In issuing the writ in *Fernandez v. Tañada*,<sup>98</sup> the Supreme Court found that the lower court, in ordering the demolition at the stage of the proceeding in question, acted with grave abuse of discretion.

Dismissing the petition in *Guevara v. Hermoso*,<sup>99</sup> the Supreme Court restated the settled rule that where appeal as an adequate remedy has been lost through the petitioner's fault or negligence, he will not be permitted to avail of certiorari as a substitute for an appeal.

## IX. EXECUTION

### A. Pending appeal

In *Cucharo v. Hon. Subido*,<sup>100</sup> it was held that the Civil Service Commissioner has the discretion to order the immediate execution in the public interest of his decision pending appeal.

Concerning an ejection proceeding is *Borden v. Hon. Hontanosas*<sup>101</sup> where the petitioners had failed not only to post a supersedeas bond but also to pay the monthly rentals adjudged by the City Court for their use of the property, which failure makes it mandatory upon the lower court to order the immediate execution of the decision.

### B. When appealable

The ruling in *Heirs of J.D. Francisco v. Hon. Muñoz-Palma*<sup>102</sup> is that while it is true that, as a general rule, an order of execution of a final judgment is not appealable, it is also recognized that the rule is subject to two exceptions, v.z.: (1) when the order of execution varies or tends to

<sup>97</sup> G.R. No. L-30496, May 31, 1971, 39 SCRA 329 (1971).

<sup>98</sup> G.R. No. L-31673, June 30, 1971, 39 SCRA 662 (1971).

<sup>99</sup> G.R. No. L-28241, August 6, 1971, 40 SCRA 335 (1971).

<sup>100</sup> G.R. No. L-27887, February 22, 1971, 37 SCRA 523 (1971).

<sup>101</sup> *Supra*, note 95.

<sup>102</sup> G.R. No. L-28746, February 27, 1971, 37 SCRA 753 (1971).

vary the tenor of the judgment, and (2) when the terms of the judgment are not clear enough so that there remains room for interpretation thereof by the trial court. In such instances, appeal is to be allowed to the party who may feel aggrieved by the order of execution thus issued. In the present case, it was noted that the decision left a number of things to be done, any of which would involve the use of discretion.

*C. Novation of judgments*

*Sandico v. Hon. Piguing*<sup>103</sup> restates the rule that courts have jurisdiction to entertain motions to quash previously issued writs of execution because courts have the inherent power, for the advancement of justice, to correct the errors of their ministerial officers and to control their processes. In the instant case, the payment of the judgment debt by the respondent although in a reduced amount but accepted by the petitioners as "in full satisfaction of the money judgment", warrants the quashal of the *alias* writ.

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<sup>103</sup> G.R. No. L-26115, November 29, 1971, 42 SCRA 322 (1971).