REMEDIAL LAW

PART I

CIVIL PROCEDURE

ARTURO E. BALBASTRO*

I. PARTIES

According to Rule 3, Section 2, Rules of Court, "Every action must be prosecuted and defended in the name of the real party in interest."

A. *Indispensable Parties*

All persons who claim an interest in the controversy or the subject thereof adverse to the plaintiff, or who are necessary to a complete determination or settlement of the questions involved therein shall be joined as defendant.[1]

As held in *Secretary of Education v. Gatmaitan,*[2] the test of indispensability of a party in an action or proceeding is precisely whether or not, absent the party or parties desired to be impleaded, a final determination can be had of the case.[3]

In *Yturralde v. Court of Appeals,*[4] it was held that the action for consolidation should be brought against all the indispensable parties, without whom no final determination can be had of the action; and such indispensable parties who are joined as party defendants must be properly summoned pursuant to Rule 14 of the Revised Rules of Court. If anyone of the party defendants, who are all indispensable parties is not properly summoned, the court acquires no jurisdiction over the entire case and its decision and orders therein are null and void.

B. *Representative Parties*

Finding merit in petitioner union's appeal, the Supreme Court stated in *Liberty Manufacturing Workers Union v. Court of First Instance of Bula-*

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[1] RULES OF COURT, Rule 3, Sec. 2.

[2] G.R. No. L-34052, March 13, 1972, 44 SCRA 1.

[3] RULES OF COURT, Rule 3, Sec. 7.

[4] G.R. No. L-31586, February 28, 1972, 43 SCRA 313.

can[5] that the respondent court's error was in ruling out any cause of action on the part of petitioner union since "it is not the real party in interest but each individual employee whose service was terminated" and disregarding the plain fact spelled out in the complaint that petitioner union was filing *not* a *personal* suit on its own behalf but a *representative* suit for the benefit of its 57 members expressly named in the complaint in the respective amounts set out opposite their respective names. This is a reiteration of the ruling in the analogous case of *City Counsel of Cebu City v. Cuizon.*[6]

In *City Council of Cebu City v. Cuizon,*[7] it was ruled that plaintiffs' suit is clearly not one brought by them in their personal capacity, but one filed on behalf of the City of Cebu, in pursuance of their prerogative and duty as city councilors and taxpayers, in order to question and declare null and void a contract which according to their complaint was executed by defendant city mayor purportedly on behalf of the city without valid authority and which had been expressly declared by the Auditor-General to be null and void *ab initio* and therefore could not give rise to any valid or allowable monetary claims against the city. Plaintiffs' right and legal interest as *taxpayers* to file the suit below and seek judicial assistance to prevent what they believe to be an attempt to disburse public funds of the city unlawfully and to contest the expenditure of public funds under contracts and commitments with defendant bank and Tropical which they assert to have been entered into by the mayor without legal authority and against the express prohibition of law have long received the Court's sanction and recognition.[8] Plaintiffs' right and legal interest as *city councilors* to file the suit below and to prevent what they believe to be unlawful disbursements of city funds by virtue of the questioned contracts and commitments entered into by the defendant city mayor notwithstanding the city council's revocation of his authority with due notice thereof to the defendant bank must likewise be recognized.

C. *Proper Parties*

In *Balbastro v. Court of Appeals,*[9] the Supreme Court restated the rule on third-party complaint. Even though the private respondent included the petitioners in the court below as third-party defendants, the Supreme Court viewed the inclusion of petitioners not as third-party defendants but as proper parties in the action because "there is a question

[5] G.R. No. L-35252, November 29, 1972, 48 SCRA 273.
[6] G.R. No. L-28972, October 31, 1972.
[7] G.R. No. L-28972, October 31, 1972, 47 SCRA 325.
[8] Gonzales v. Hechanova, G.R. No. L-21897, October 22, 1963, 9 SCRA 230.
[9] G.R. No. L-33255, November 29, 1972, 48 SCRA 231.

of law or fact common to the right or duty in which" they are "interested and another right sought to be enforced in the action."

II. CAUSE OF ACTION

A. *Actionable Wrong*

Bataan Hardwood Corp. v. Dy Pac & Co., Inc.[10] reiterates the rule that a cause of action is the delict or wrong by which the rights of the plaintiff are violated by the defendant, and where there is only one delict or wrong, there is but a single cause of action regardless of the number of rights that may have been violated belonging to one person. And the rule is that all such rights should be alleged in a single complaint, otherwise those that are not therein included cannot be the subject of subsequent complaints, for they are barred forever.

B. *Splitting of Cause of Action*

It was held in *Tarnate v. Garcia,*[11] that while from the strictly technical viewpoint there was a splitting of the cause of action in pursuing the same remedy in two separate complaints notwithstanding the fact that the alleged forcible entry constituted one and the same act, still a realistic and practical approach dictated the action taken by the municipal court. It should be remembered that the first complaint was commenced on August 17, 1964 and had not yet been tried when the second was filed about three weeks later. The two cases could be tried together as one, or the second complaint could be treated as amendment of the first. Either way the entire controversy between the parties could be judicially settled, disregarding unessential procedural niceties, especially in the light of the reasonable explanation offered by the plaintiff below.

C. *Moot Questions*

The Supreme Court held in *Santos v. Bautista*[12] that, as stated by the movants, by virtue of the transfer of all the rights and interests of all the parties in the case to Mariano Z. Velarde, the issues raised by the petition and the answer have become moot and academic as the resolution of which would serve no useful purpose.

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[10] G.R. No. L-29492, February 29, 1972, 43 SCRA 450.
[11] G.R. No. L-26266, December 29, 1972, 48 SCRA 464.
[12] G.R. No. L-33445, December 28, 1972, 48 SCRA 454.

III. JURISDICTION

Restated in *Sonora v. Tongoy*[13] is the rule that it is the law and not the choice of the parties that determines jurisdiction, whether original or appellate.

Libudan v. Gil[14] reiterates the rule that, having voluntarily submitted their cause to the trial court, the petitioners cannot later on, after receiving an adverse verdict, now question its jurisdiction or authority. The doctrine of estoppel by laches bars them then from raising the question.

Holding that the defendant-petitioner is barred by laches when he raised the question of jurisdiction for the first time on appeal in *Quimpo v. Dela Victoria*,[15] the Supreme Court reiterated the ruling in *Tijam v. v. Sibonghanoy*[16] that "a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean v. Dean, 136 Or. 694, 86 A.L.R. 79)."

Macias v. Uy Kim[17] reiterates the rule that the branch of the court of first instance that first acquired jurisdiction over the case retains such jurisdiction to the exclusion of all other branches of the same court of first instance or judicial district and all other coordinate courts.

The same ruling has been made in *Intestate Estate of Wolfson.*[18]

Abut v. Abut[19] reiterates the rule that jurisdiction of the court once acquired continues until the termination of the case,[20] and remains unaffected by subsequent events. In the case at bar, it was held that the court below erred in holding that it was divested of jurisdiction just because the original petitioner died before the petition could be formally heard. Parties who could have come in and opposed the original petitioner, as herein appellees did, could still come in and oppose the amended petition, having already been notified of the pendency of the proceeding by the publication of the notice thereof.

It was held in *Bahanuddin v. Hidalgo*[21] that an order declaring the court devoid of jurisdiction over a subject matter does not immediately divest it of authority over the case. Such order attains finality only

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[13] G.R. No. L-33095, April 19, 1972, 44 SCRA 411.
[14] G.R. No. L-21163, May 17, 1972, 45 SCRA 17.
[15] G.R. No. L-31822, July 31, 1972, 46 SCRA 139.
[16] G.R. No. L-21450, April 15, 1968, 23 SCRA 29.
[17] G.R. No. L-31174, May 30, 1972, 45 SCRA 251.
[18] G.R. No. L-28054, June 15, 1972, 45 SCRA 381.
[19] G.R. No. L-26743, May 31, 1972, 45 SCRA 326.
[20] G.R. No. L-18979, June 30, 1964, 11 SCRA 422.
[21] G.R. No. L-28674-5, February 29, 1972, 43 SCRA 433.

after the lapse of thirty (30) days and without an appeal being interposed therefrom. But before the expiration of that period, the order of dismissal remains subject to the reconsideration, correction or modification by the court, as the circumstances of the case may warrant. In the instant case, the inadequacy of the order was brought to the attention of the Supreme Court before the order became final.

In *Commisioner of Customs v. Court of Tax Appeals*,[22] it was observed that private respondent argued that petitioner had not shown that the respondent court committed grave abuse of discretion or error of jurisdiction in issuing the order complained. In this connection, the Supreme Court held that although a court has jurisdiction over the subject matter and the parties, if a court has no power to give certain kinds of relief, and it acts otherwise, it is acting without jurisdiction.[23]

IV. PLEADINGS AND MOTIONS

A. *Complaint, Answer, Counterclaim and Cross-claim*

Viacruces v. Court of Appeals[24] reiterates the rule long settled that laches is a defense that must be pleaded especially, and that, otherwise, it is deemed waived, so that it cannot be set up for the first time on appeal.

Supreme Investment Corporation v. Engineering Equipment, Inc.[25] reiterates the rule that "a counterclaim or cross-claim not set up shall be *barred* if it arises out of or is necessarily connected with, the transaction or occurrence that is the subject-matter of the opposing party's or co-party's claim."[26]

B. *Amended Complaint*

In *Sta. Maria, Jr. v. Court of Appeals*,[27] petitioner had announced his intention to file an amended complaint on November 20, 1967 yet actually filed it only on May 2, 1968, just one (1) day before the hearing scheduled two months previously. Being his own lawyer, petitioner Sta. Maria, Jr. ought to have known that after a case is set for hearing, the allowance or refusal of amendments to a pleading depends upon the sound discretion of the court.[28]

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[22] G.R. No. L-33471, January 31, 1972, 43 SCRA 192.
[23] 14 AM. JUR. 2d. 786 (1964).
[24] G.R. No. L-29831, March 29, 44 SCRA 176.
[25] G.R. No. L-25755, April 11, 1972, 44 SCRA 244.
[26] RULES OF COURT, Rule 9, Sec. 4.
[27] G.R. No. L-30602, June 30, 1972, 45 SCRA 596.
[28] RULES OF COURT, Rule 10, Sec. 3.

Republic v. Marsman Development Company[29] holds that for practical reasons and to avoid the complications that may arise from undue delays in the admission thereof, such an amended complaint must be considered as filed, for the purposes of such a substantive matter as prescription, on the date it is actually filed with the court, regardless of when it is ultimately formally admitted by the court.

C. *Motions*

It was held in *Lucas v. Mariano*[30] that a second motion for reconsideration is actually a motion for reconsideration only of the order of denial of the first motion, and if it does not raise any new issue relative to the first order, naturally, it cannot affect the legality and validity thereof, and becomes, in effect, a mere dilatory strategy and consequently, nothing more than pro-forma. An attempt to have a reconsideration of the denial of a previous plea for reconsideration is not conducive to a speedy administration of justice. After all, the party aggrieved has a more effective recourse by appealing immediately to the appropriate appellate tribunal.

V. DEFAULT

Manio v. Gaddi[31] restates the rule that where a party has been declared in default, the amount of damages that should be adjudged against him cannot exceed the amount alleged in the complaint even if the complainants are able to prove during the reception of the evidence before the court commissioner a higher amount of damages.[32]

VI. PRE-TRIAL

It was held in *Sta. Maria, Jr. v. Court of Appeals*[33] that it was no error for the court of origin to hold an *ex parte* hearing on May 3, 1968 without a mandatory pre-trial being first had and without first having resolved the motion for leave to admit the second amended complaint. For it was petitioner himself who gave cause for a pre-trial not being had by not appearing on May 3, 1968 and for having the motion for leave to file a second amended complaint filed just one (1) day previous to the hearing, without the three-day notice to the adverse party required by the Rules.

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[29] G.R. No. L-18956, April 27, 1972, 44 SCRA 418.
[30] G.R. No. L-29157, April 27, 1972, 44 SCRA 501.
[31] G.R. No. L-30860, March 29, 1972, 44 SCRA 198.
[32] RULES OF COURT, Rule 18, Sec. 5.
[33] *Supra*, note 27.

In *Gutierrez v. Estenzo,*[34] the Supreme Court expressly noted that it is apparent from the record that the court *a quo* had gravely abused its discretion in issuing its order of dismissal. In the first place, there is its uneven, if not partisan, handling of the absences of the parties at the pre-trial hearings. When the defendants failed to appear at the pre-trial conference of 26 September 1968, the trial court merely postponed pre-trial to 11 December, instead of declaring them in default, as warranted by Section 2 of Revised Rule 20. But when it was plaintiff who failed to appear at the hearing of 11 December 1968, the trial court rigidly applied the section aforementioned and *incontinenti* non-suited the petitioner. It was further observed that the partiality of the court below is emphasized by its refusal to take into account the serious cause for plaintiff's non-appearance at the pre-trial of 11 December 1968, averred in the plaintiff-petitioner's sworn motion for reconsideration (Petition, Annex "C"). Petitioner therein averred, under oath, that he could not come to Olongapo for the pre-trial, because he was at the time at the bedside of his father, who was on the verge of death, in Macabebe, Pampanga. This fact alleged in a verified motion was nowhere controverted or denied by private respondents. That the reason given by the plaintiff constituted sufficient excuse is not disputable.

VII. TRIAL

Zulueta v. Pan American World Airways, Inc.[35] is authority for the ruling that where a party knew as early as two months and a half that its turn to present evidence would take place and no valid excuse is offered for its failure to bring to court its witnesses on the date set for trial, it cannot later complain that the court abused its discretion for refusing the grant of further postponement.

In *Sta. Maria, Jr. v. Court of Appeals,*[36] as early as March 4, 1968, the petitioners knew that the case was set for hearing on May 3, 1968, yet during the intervening time they did not protest against the case being set for hearing instead of a pre-trial; when the day arrived, the petitioners absented themselves, the husband by attending a "cursillo" and the wife by attending to a sick child. The wife's absence could possibly be excused but that of the husband cannot, for he did not have to attend the "cursillo" at the date of the trial already set.

Bashier v. Commission on Elections[37] reiterates the well-settled principle that a party is bound by the theory he adopts and by the cause of

[34] G.R. No. L-30247, January 31, 1972, 43 SCRA 173.
[35] G.R. No. L-28589, February 29, 1972, 43 SCRA 397.
[36] G.R. No. L-30602, June 30, 1972, 45 SCRA 596.
[37] G.R. No. L-33692, February 24, 1972, 43 SCRA 238.

action he stands on and cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to relitigate the matter anew either in the same forum or on appeal.

VIII. DISMISSAL

In *Supreme Investment Corporation v. Engineering Equipment, Inc.*,[38] the Supreme Court held that although, in the exercise of its discretion, the lower court could have ordered the consolidation of the two cases, it was not prepared to hold that the lower court had abused its discretion or committed a reversible error in ordering the dismissal of the case, since discretion is the authority to choose between several alternatives and be *right* whichever alternative is chosen.

Reiterated in *Sta. Maria, Jr. v. Court of Appeals*[39] is that the doctrine that the complaint may not be dismissed if the counterclaim cannot be independently adjudicated is not available to, and was not intended for the benefit of, a plaintiff who prevents or delays the prosecution or hearing of his own complaint. Otherwise, the trial of counterclaims would be made to depend upon the maneuvers of the plaintiff, and the rule would offer a premium to vexing or delaying tactics to the prejudice of the counterclaimants. It is in the same spirit that a complaint may not be withdrawn over the opposition of the defendant where the counterclaim is one that arises from, or is necessarily connected with, the plaintiff's action and cannot remain pending for independent adjudication.[40]

IX. JUDGMENT

It was ruled in *Libudan v. Gil*[41] that the findings of fact of the court based on the set of facts brought out during the pre-trial are findings based on evidence and they may support a decision or order of the court.

In the case of *Philippine Reconstruction Corporation, Inc. v. Aparente*,[42] the Supreme Court pointed out that, considering the tenor of defendant's answer which raised no valid defense, the lower court should have rendered a judgment on the pleadings upon motion of the complainant provided by the court. The Supreme Court went further to state that it is time that trial judges impress upon practitioners the proper use of the form of specific denial consisting of the allegation of "lack of sufficient knowledge or information to form a belief as to the truth of any

[38] G.R. No. L-25755, April 11, 1972, 44 SCRA 244.
[39] *Supra*, note 36.
[40] Ynotorio v. Lira, G.R. No. L-16677, November 27, 1964.
[41] G.R. No. L-21163, May 17, 1972, 45 SCRA 17.
[42] G.R. No. L-26630, May 30, 1972, 45 SCRA 217.

material averment made in the complaint permitted by Section 10, Rule 8, to the end that sham and insincere denials may be totally discouraged, thereby saving unnecessary prolongation and even proliferation of cases.[43]

Vda. de Espiritu v. Court of First Instance of Cavite[44] is authority for the rule that there is substantial compliance with the fundamental law and the rules where the order of the court adopts by reference the reasons, alleged in the motion to dismiss of respondents, which includes the facts and the law in support thereof.

X. EXECUTION, SATISFACTION AND EFFECT OF JUDGMENT

In *Sapida v. De Villanueva*,[45] the trial court was confronted, during the hearing of the motion for execution of the judgment, with the question of when the defeated party received, by mail, the court's order denying said party's motion for new trial. Two opposing affidavits were submitted, one by the docket clerk and the other by the defeated party's receiving clerk. The trial court resolved the issue on the basis alone of its docket clerk's affidavit. The Supreme Court sustained the holding of the Court of Appeals that under such circumstances, the trial court practically had no basis to make its findings of fact, without first asking the prudent course of hearing the two affiants and subjecting them to cross-examination so that he could properly make up his mind on whom of them to believe. In the face of these contradictory affidavits, both *ex-parte*, neither of which was subjected to cross-examination, while it is true that under the Rules, a court may hear motions solely upon affidavits and counter-affidavits, Rule 134 Section 7, Revised, if the affidavits contradict each other on matters of fact, a court practically can have no basis to make its findings of fact. But here what the trial judge did was to *totally ignore the affidavit* of Lourdes E. Dimapilis *without giving any reason for so doing*. There is no question that the trial judge had the right to disbelieve, but he should have given his reasons.

It was also held in *Asian Surety & Insurance Co., Inc. v. Relucio*[46] that the procedure by which a defaulting defendant may secure a stay of execution of the judgment on the merits is to file a verified petition to set aside the order of default. The basis for the need to secure a preliminary injunction by the defaulting defendant to stay the execution is under Rule 38. Moreover, the rule that upon appeal, the trial court may not order execution of its judgment does not apply to an appeal from an order denying the petition for relief.

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[43] Warner Barnes & Co., Ltd. v. Reyes, 103 Phil. 662 (1958).
[44] G.R. No. L-30486, October 31, 1972, 47 SCRA 354.
[45] G.R. No. L-27673, November 24, 1972, 48 SCRA 19.
[46] G.R. No. L-32442, October 23, 1972, 47 SCRA 225.

Quimpo v. Dela Victoria[47] applied the rule regarding appeal from a judgment in forcible entry case to the effect that even if the defendant has perfected the appeal, if he did not file a supersedeas bond and deposit the monthly rentals fixed by the lower court, he cannot be heard to complain against the immediate execution of the judgment which is legally sanctioned.

The Supreme Court observed in *Varsity Hills, Inc. v. Navarro*[48] that in the face of the declarations in a final decision of the highest court of the land, it becomes indubitable that the action in the court below was definitely barred: for while present private respondents were not parties to the 1933 cause, their predecessor in interest was such a party, and the final judgment against the latter concludes and bars his successors and privies as well.[49]

In *Vda. de Luna v. Valle,*[50] it was held that estoppel by judgment, while not requiring identity of causes of action, bars a subsequent litigation only on "a point which was actually and directly in issue in a former suit, and was there judicially passed upon and determined by a domestic court of competent jurisdiction."[51] In the case at bar, it was found that a determination of the issue in the present case does not militate against the principle invoked by the defendants.

Also reiterated in *Quimpo v. Dela Victoria*[52] is the rule that in order that the ground of pendency of another action between the same parties for the same cause may be availed of there must be, between the action under consideration and the other action, (1) identity of parties; or at least such as representing the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and the identity of the two preceeding particulars should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration.

Holding that the requirements of *res adjudicata* were not present in *Surigao Development Bank v. Buslon,*[53] the Supreme Court said that Section 1 (e), Rule 16 of the Rules of Court, authorizes the dismissal of an action where "there is another action pending between the same parties for the same cause." The requisites of said rule are as follows: (1) identity of

[47] *Supra*, note 15.
[48] G.R. No. L-30889, February 29, 1972, 43 SCRA 503.
[49] Rule 39, Sec. 49(b), Rules of Court.
[50] G.R. No. L-26878, December 27, 1972, 48 SCRA 361.
[51] Peñalosa v. Tuason, 22 Phil. 303, 313 (1912).
[52] *Supra*, note 15.
[53] G.R. No. L-23577, December 27, 1972, 48 SCRA 308.

parties, or at least such as represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity in both instances in the sense that the judgment that may be rendered in the pending case would, regardless of which party is successful, amount to *res judicata* in the other.

Libudan v. Gil[54] reiterates the ruling that the law of the case does not apply solely to what is embodied in the decision but to its implementation carried out in fealty to what has been decreed by the court.

XI. ACTION ON JUDGMENT

Reiterated in *Marc Donnelly v. Court of First Instance of Manila*[55] is the rule that an action to revive a judgment is a personal one and not *quasi in rem*.[56] The Supreme Court went further to state that when the defendant's address cannot with due diligence be ascertained and no property of his can be found, the period of prescription is tolled under Article 1108 (2) of the New Civil Code.

Philippine Reconstruction Corporation, Inc. v. Aparente[57] involves a revival of a previous judgment. The Supreme Court had occasion to state that the present suit being one merely for the revival of a previous regular and valid final judgment against the appellant, the consideration of any issue affecting matters that could have been raised in the previous case must be deemed as definitely foreclosed, and, surely, the alleged lack of personality of a suing corporation is among those questions which must be considered as no longer open in an action of revival inasmuch as it does not in any manner affect the validity of the judgment sought to be enforced. It must be borne in mind that an action of revival is no more than a procedural means of securing the execution of a previous judgment which has become dormant after the passage of five years without its being executed upon motion of the prevailing party.[58]

XII. NEW TRIAL

People v. Hon. Eulogio Mencias[59] reiterates the rule that a motion for reconsideration, if based on an error of law, is equivalent to a motion for new trial, and the time during such a motion is pending should be excluded from the computation of the period for appeal.

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[54] *Supra*, note 14.
[55] G.R. No. L-31209, April 11, 1972, 44 SCRA 381.
[56] Aldeguer v. Gemelo, 68 Phil. 421 (1939).
[57] *Supra*, note 42.
[58] RULES OF COURT, Rule 39, Sec. 6.
[59] G.R. Nos. L-23572-76, July 29, 1972, 46 SCRA 88.

XIII. APPEAL

A. *Right to Appeal*

Rodriguez v. Director of Prisons[60] reiterates the rule that the right to appeal is not a natural right or a part of due process, except where it is granted by statute in which case it should be exercised in the manner and in accordance with the provisions of law. Hence, the appellate court may upon motion of the appellee or its own motion and notice to the appellant, dismiss the appeal if the appellant fails to file his brief within the time provided by the Rules of Court, except in case the appellant is represented by an attorney *de officio.*

The rule is reiterated in *Vda. de Espiritu v. Court of First Instance of Cavite*[61] that the period for appeal from any final record or judgment starts when it is duly served.

In *Vda. de Espiritu v. Court of First Instance of Cavite*[62] it was held that under Section 3 of Rule 41, the period for appeal from any final order or judgment starts only from the date of notice thereof, which means when it is duly served. Section 7 of Rule 13 very explicitly enjoins that "final orders or judgments shall served either personally or by registered mail", and "under this provision, a final order or judgment can be served by ordinary mail."[63]

Asian Surety & Insurance Co., Inc. v. Relucio[64] restates the rule that the party who voluntarily executes, either partially or *in toto,* the execution of a judgment, is not permitted to appeal from it, and appellate jurisdiction extends to all incidental matters.

Pangilinan v. Aguilar[65] reiterates the rule that the requirement of a supersedeas bond is mandatory and cannot be dispensed with by the courts, except when the delay or failure to file the same is due to fraud, accident or mistake or excusable negligence.

B. *Appeal as Pauper*

In *Reyes v. Sta. Maria,*[66] it was held that a motion to be allowed to appeal as pauper and to extend the period for filing the record on appeal must be filed within the thirty-day reglementary period for perfecting the appeal. It should be heard and resolved promptly, or before the lapse

[60] G.R. No. L-35386, September 28, 1972, 47 SCRA 153.
[61] *Supra,* note 44.
[62] *Supra,* note 44.
[63] 1 MORAN, RULES OF COURT 430 (1970).
[64] *Supra,* note 46.
[65] G.R. No. L-29275, January 31, 1972, 43 SCRA 136.
[66] G.R. No. L-29554, November 20, 1972, 48 SCRA 1.

of said period, so as to apprise the appellant whether or not his obligation to file the record on appeal or the appeal bond within the said period is dispensed with.[67] The parties or their attorneys should be immediately notified of the order issued on the matter so that they may avail themselves of the proper remedy if it is denied. In case it is granted and the court fails to state when the extension should commence to run, it should be joined to the original period or that fixed by law and must be computed from the date following the expiration thereof. If the order granting the extension is issued and notice thereof served after the expiration of the period fixed by law, the extension must be computed from the date of notice of the order granting it.[68] The filing of such motion, however, does not suspend the running of the period for perfecting the appeal,[69] and the appellant has the duty to ascertain the status of his motion, for if no action is taken thereon or is denied after the lapse of the period, the right to appeal is lost.[70]

C. *Appeal from Court of First Instance*

The main issue involved in *Agoncillo v. Court of Appeals*[71] concerns the sudden dismissal *motu proprio* by Judge Catolico of petitioner's appeal. It is to be noted that nowhere in the rules governing the procedure of appeals is the trial court granted authority to dismiss on its own motion an appeal already taken by a party by the timely filing of the notice and record on appeal and appeal bond, upon the ground of failure to prosecute. According to said rules, after a party has submitted his record on appeal bond for approval, the next step for the perfection of the appeal is supposed to be taken by the court acting thereon. If after such submittal, the court fails to act for sometime, it is quite odd for the court to punish the party concerned for the court's own inaction. Under Section 3 of Rule 46, the dismissal of an appeal on the ground of abandonment or failure to prosecute may be asked by appellee, after, not before, the approval of the record on appeal, and this, if the appellant fails to see to it that the record on appeal reaches the appellate court within thirty (30) days from such approval. And it is clear under Section 1(c) of Rule 50, that the power to dismiss the appeal pertains to the appellate court and not to the trial court. The only instance provided in the rules when the trial court may dismiss an appeal is under Section 14 of Rule 41, upon the ground that either the notice of appeal, appeal bond or record on appeal has not been filed on time. What is more, the Supreme Court

[67] Semira v. Enriquez, 88 Phil. 228, 231 (1951); Rule 135, Sec. 1, Rules of Court.
[68] Alejandro v. Endencia, 64 Phil. 321 (1937).
[69] Escolin v. Garduño, 57 Phil. 924 (1933); Garcia v. Buenaventura, 74 Phil. 611, 613 (1944).
[70] Cumplido v. Mendoza, G.R. No. L-20265, June 30, 1964, 11 SCRA 477, 481.
[71] G.R. No. L-32094, November 24, 1972, 48 SCRA 147.

also noted, instead of allowing the trial court to dismiss an appeal timely taken, Section 15 of Rule 41 expressly provides that mandamus would lie "when erroneously a motion to dismiss an appeal is granted or a record on appeal is disallowed by said court."

D. *Dismissal of Appeal*

In *Gica v. Consolacion,*[72] the dismissal of the main case below rendered the action in the appellate court moot and academic.

In *TIP Workers Union, NATU v. Tobacco Industries of the Philippines,*[73] it was held that a motion to dismiss appeal is rendered moot and academic by amicable settlement.

In *Sarmiento v. Salud,*[74] it was held that a motion to dismiss appeal on the ground that the record on appeal does not contain data showing that the appeal was perfected on time is barred by laches where the movant allowed six years after the filing of their brief to elapse without moving for the dismissal of the case; where no justification is offered nor explanation is given for such neglect and procrastination that in effect nullify the purposes for which Rule 41, Section 6 was enacted; and where, upon the other hand, the case of the appellant is meritorious.

The Supreme Court held in *Palanca v. Philippine Commercial & Industrial Bank*[75] that as far as back as 19 October 1965, it had ruled that the requirements of Section 6, Rule 41 of the Rules of Court that the record on appeal should include such data as will show that the appeal was perfected on time are mandatory and jurisdictional, for unless appeal is perfected on time the appellate court acquires no jurisdiction over the appealed case.[76] In the instant case, it was further held that the fact that appellee raised no objection in the court below when defendant-appellant sought approval of the record on appeal, and for the first time in the Supreme Court raised the issue of the non-compliance in the record on appeal with the requirements of Section 6, Rule 41 of the Rules of Court, does not place appellant in estoppel, for it has been repeatedly decided that non-compliance with said requirements is a jurisdictional defect that may be raised at any stage of the proceedings.[77]

[72] G.R. No. L-28020, September 8, 1972, 47 SCRA 1.
[73] G.R. No. L-35067, October 31, 1972, 47 SCRA 435.
[74] G.R. No. L-25221, August 18, 1972, 46 SCRA 365.
[75] G.R. No. L-28713, May 31, 1972, 45 SCRA 331.
[76] Government of the Philippines v. Antonio, G.R. No. L-23736, October 19, 1965, 15 SCRA 119.
[77] Valere v. Court of Appeals, G.R. No. L-29416, January 28, 1971, 37 SCRA 80; Imperial Insurance, Inc. v. Court of Appeals, G.R. No. L-28722, October 29, 1971, 42 SCRA 97.

In *Arellano v. Court of Appeals*,[78] the Supreme Court pointed out that the ruling in *Santiago v. Valenzuela*[79] wherein it was stated that if the motion to dismiss the appeal on the ground that the appeal was perfected out of time, is filed for the first time with the appellate court, after appellant had paid the docketing fee, and the cost of printing the record on appeal, and especially after he had filed his brief, the appellate court should deny the motion, for the appellee may be considered in estoppel by his failure to object on time, was abandoned in *Miranda v. Guanzon*[80] where it was held that "the fact remains that the appeal was perfected out of time and such failure takes the case out of the jurisdiction of the court." In the latter case, it was added that the requirement regarding the perfection of an appeal within the reglementary period is not only mandatory but jurisdictional. Such failure has the effect of rendering final the judgment of the court, and the certification of the record on appeal thereafter cannot restore the jurisdiction which has been lost. Dismissal of the appeal can be effected even after the case has been elevated to the Court of Appeals.[81]

The petition in *Ever Ice Drop and Ice Cream Factory v. Court of Appeals*[82] is grounded on the fact that in dismissing the appeal, the Court of Appeals erred in holding that the record on appeal which was a joint one with the other appellants does not show on its face that the appeal was made on time, contrary to the requirement of Section 6, Rule 41, and the decisions of the Supreme Court interpreting the same. In granting the petition and in setting aside the resolution of the Court of Appeals dismissing the appeal, the Supreme Court said that the printing of the record on appeal is not indispensable to the jurisdiction of the appellate courts, the sole purpose of such printing being convenience in the handling, keeping and reading of the record on appeal. Inasmuch as Rule 41 is in the portion of the rules pertaining to the stage of the appeal process taking place in the trial court, it is but logical that the frame of reference, when the completeness of a record on appeal, as therein provided, is in question, must be the contents of said record as filed with the said court, and not necessarily those of the printed one filed with the appellate court. Moreover, under Section 7 of Rule 46, it is the appellee who is called upon to check on the record on appeal as printed and to state his objections thereto within thirty days (30) from receipt of his copies thereof, hence, the absence of any such objection may be taken into account in determining whether or not it should be dismissed by reason of any ir-

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[78] G.R. No. L-31856, November 24, 1972, 48 SCRA 130.
[79] 78 Phil. 397 (1947).
[80] 92 Phil. 168 (1952).
[81] RULES OF COURT, Rule 50, Sec. 1(a).
[82] G.R. No. L-33366, October 20. 1972, 47 SCRA 305.

regularity in the printed record on appeal. Accordingly, when, as in the case at bar, the objection is made after the period fixed in the said section and it turns out that the omission is a result of unintentional error of the printing press, as must have happened in this case, because it is not seriously denied that the original record on appeal, as sent to the printing press, included the notice of appeal in question, it would be purely technical and hardly equitable, to make the petitioners suffer from such omission, which could have even been due to honest oversight on the part of counsel for the other appellants who, it is not also denied, was the one who took the original of the said record from the Court of Appeals to the printing press and must have been the one who gave the instructions for its printing.

The Supreme Court dismissed the appeal in *Marsman v. Syquia*[83] in consonance with the ruling developed in the line of decisions marked by *Government v. Antonio.*[84] These decisions, notable for their number and unanimity, affirm that the requirement of Section 6 of Rule 41 that the record on appeal must contain "such data as will show that the appeal was perfected on time," is *mandatory and jurisdictional,* non-compliance with which justifies dismissal of the appeal.

In *Suntay v. Aguinaldo, Jr.,*[85] it was observed that even after the approval of Republic Act No. 5440, no law has been enacted by Congress nor has any rule been promulgated by the Supreme Court outlining definitely the procedure to be observed in instances of appeals "erroneously brought" to the Supreme Court or the Court of Appeals, beyond the injunction of Section 3 of Rule 50, precisely the rule on DISMISSAL OF APPEAL that "where the appealed case has been erroneously brought to the Court of Appeals (or to the Supreme Court), *it shall not* dismiss the appeal, but shall certify the case to the proper court." The rule, of course, goes further to require that the certifying court should make "a specific and clear statement of the grounds therefor."

The holding in *Sonora v. Tongoy*[86] is that, in dismissing outright petitioners' appeal, the Court of Appeals acted in complete disregard of the unequivocal injunction of Section 3 of Rule 50 of the Rules of Court that "where the appealed case has been erroneously brought before the Court of Appeals, it shall not dismiss the case, but shall certify the case to the proper court, with a specific and clear statement of the grounds therefor."

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[83] G.R. No. L-28027, March 29, 1972, 44 SCRA 113.
[84] G.R. No. L-23736, October 19, 1965, 15 SCRA 119.
[85] G.R. No. L-33484, May 12, 1972, 45 SCRA 6.
[86] G.R. No. L-33095, April 19, 1972, 44 SCRA 411.

XIV. PROVISIONAL REMEDIES

A. *Injunction*

Abiera v. Court of Appeals[87] reiterates the rule that "no court has power to interfere by injunction, with the judgments or decrees of a court of concurrent or coordinate jurisdiction having equal power to grant the relief sought by injunction." It was observed that the doctrine as thus formulated is well settled, and has been adhered to consistently whenever justified by the facts in order to avoid conflict of power between different courts of coordinate jurisdiction and to bring about a harmonious and smooth functioning of their proceedings. For the doctrine to apply, however, the injunction issued by one court must interfere with the judgment or decree issued by another court of equal or coordinate jurisdiction, and the relief sought by such injunction must be one which could be granted by the court which rendered the judgment or issued the decree.

B. *Delivery of Personal Property*

It was held in *Bataan Hardwood Corp. v. Dy Pac & Co., Inc.*[88] that the determination of the amount due the respondent Dy Pac & Co., Inc. in its action for replevin is procedurally correct in order to avoid once and for all the determination of the liability in another court proceeding.

XV. SPECIAL CIVIL ACTIONS

A. *Declaratory Relief*

In *United Central & Cellulose Labor Association (PLUM) v. Santos,*[89] it was held that one who is not a party to a contract cannot have the "interest" in it that the rule requires as basis for a declaratory relief. Moreover, if plaintiffs have any cause of action in connection with respondent companies' and petitioner's actuations relative to the check-off, the same had already ripened into an appropriate subject of an ordinary suit, certainly, far beyond the stage proper for a special civil action for declaratory relief.

B. *Certiorari, Prohibition and Mandamus*

The decision in *Commissioner of Customs v. Court of Tax Appeals*[90] restates the rule that a petition for certiorari is the proper procedure for obtaining relief from, or review of, an interlocutory order.

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[87] G.R. No. L-26294, May 31, 1972, 45 SCRA 314.
[88] G.R. No. L-29492, February 29, 1972, 43 SCRA 450.
[89] G.R. No. L-21049, May 30, 1972, 45 SCRA 147.
[90] G.R. No. L-33471, January 31, 1972, 43 SCRA 192.

It was held in *Enriquez v. Abdulwahid Bidin*[91] that it is essential for a writ of mandamus to issue, that the plaintiff have a legal right to the thing demanded and that it be the imperative duty of the defendant to perform the act required. The legal right of the plaintiff to the thing demanded must be *well-defined, clear and certain.* The corresponding *duty* of the defendant to perform the required act must also be *clear and specific.*

In *Vda. de Espiritu v. Court of First Instance of Cavite,*[92] the Supreme Court held that mandamus to comply approval and certification of an appeal, even if otherwise well grounded, has to be denied where it is evident that there is no merit in the appeal itself, and "it would serve no useful purpose to reinstate the same."

Vda. de Pimentel v. De los Angeles[93] reiterates the rule that it is essential for a writ of mandamus to issue, that the plaintiff has a legal right to the thing demanded and that it is the imperative duty of the defendant to perform the act required. The legal *right* of the plaintiff to the thing demanded must be *well-defined, clear and certain.* The corresponding *duty* of the defendant to perform the required act must also be *clear and specific.* In the case at bar, since petitioners' issues have become moot and academic, it is patent that the present action must likewise fail for lack of a clear right.

It was held in *Manzano v. Villa*[94] that the failure of the municipal judge to immediately act on the motion to dismiss did not amount to such a wanton neglect as to warrant the issuance of such a writ. The petition for prohibition and mandamus was filed only about three weeks from the date of the motion to dismiss. The delay was not a neglect of duty on the part of the municipal judge, especially considering that the motion did not even contain a written notice of the date and place of hearing but was submitted for the consideration of the court "in chamber." Moreover, the petitioner should have asked the court to act on his motion before filing the mandamus case.

C. *Forcible Entry and Detainer*

It was held in *Pangilinan v. Aguilar*[95] that it is a settled principle that the complaint for unlawful detainer is sufficient if it alleges that the withholding of possession or the refusal to vacate is unlawful without necessarily employing the terminology of the law, "and other details like

[91] G.R. No. L-29620, October 12, 1972, 47 SCRA 183.
[92] *Supra*, note 44.
[93] G.R. No. L-30418, June 15, 1972, 45 SCRA 396.
[94] G.R. No. L-27018, August 30, 1972, 46 SCRA 711.
[95] *Supra*, note 65.

the one-year period within which the action should be brought, and the demand when required to be made by the Rules, *must be proved but need not be alleged in the complaint.*"

Quimpo v. Dela Victoria[96] reiterates the rule that insufficiency in the verification would not render the complaint for forcible entry, or the whole proceedings in the lower court, void. The reason is that the requirement for verification is not jurisdictional, but merely formal. Held sufficient in this case is the verification of the complaint stating "that I am one of the plaintiffs in the above entitled case; that I have read the allegations thereof; that they are true and correct."

D. *Contempt*

It is observed in *National Sugar Workers Union v. La Carlota Sugar Central*[97] that it is a basic doctrine in this jurisdiction that once a court, especially by its own admission, has declared itself devoid of jurisdiction, then any further action taken, more particularly in this case, to hold a party in contempt, is bereft of support in law.

XVI. SPECIAL PROCEEDINGS

A. *Settlement of Estate of Deceased Persons*

It was held in *Abut v. Abut*[98] that a proceeding for the probate of a will is one *in rem,* such that with the corresponding publication of the petition the court's jurisdiction extends to all persons interested in said will or in the settlement of the estate of the deceased. The fact that the amended petition named additional heirs not included in the original petition did not require that notice of the amended petition be published anew. All that Section 4 of Rule 76 provides is that those heirs be notified of the hearing for the probate of the will, either by mail or personally.

Vda. de Precilla v. Narciso[99] restates the rule that the probate court has to be convinced of the authenticity and due execution of the will even if its allowance is not opposed and Rule 76, Section 5, Rules of Court requires in such a situation that, at least, one attesting witness must testify that the will was executed as is required by law.

[96] *Supra,* note 15.
[97] G.R. No. L-23569, May 25, 1972, 45 SCRA 104.
[98] G.R. No. L-26743, May 31, 1972, 45 SCRA 326.
[99] G.R. No. L-27200, August 18, 1972, 46 SCRA 538.

In *Guilas v. Judge of the Court of First Instance of Pampanga,*[100] it was held that the probate court loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same. The finality of the approval of the project of partition by itself alone does not terminate the probate proceeding. As long as the order of the distribution of the estate has not been complied with, the probate proceedings cannot be deemed closed and terminated, because a judicial partition is not final and conclusive and does not prevent the heir from bringing an action to obtain his share, provided the prescriptive period therefor has not elapsed. The better practice, however, for the heir who has not received his share, is to demand his share through a proper motion in the same probate or administration proceedings, or for reopening of the probate or administration proceedings if it had already been closed, and not through an independent action, which would be tried by another court or judge which may thus reverse a decision or order of the probate or intestate court already final and executed and reshuffle properties long ago distributed and disposed of.

B. *Guardianship*

Nery v. Lorenzo[101] restates the rule that service of the notice upon the minor if 14 years of age or upon the incompetent, is jurisdictional. Without such notice, the court acquires no jurisdiction to appoint a guardian.

C. *Habeas Corpus*

The ruling in *Roy v. Fernandez*[102] is to the effect that where a military officer for whom the writ of habeas corpus was sought is no longer restrained of his liberty and upon his own request has been restored to full duty status, the petition for the writ becomes moot and academic. This was without prejudice to his right to file the appropriate action or to seek the corresponding remedy for his alleged unlawful confinement.

D. *Change of Name*

Republic v. Reyes[103] reiterates the rule that petitions for change of name being proceedings *in rem,* strict compliance with the requirements of publication is essential, for it is by such means that the court acquires jurisdiction. For the trial court to acquire jurisdiction over the petition for a change of name, the following must appear in the title or caption

[100] G.R. No. L-26695, January 31, 1972, 43 SCRA 111.
[101] G.R. No. L-23096, April 27, 1972, 44 SCRA 431.
[102] G.R. No. L-35276, September 28, 1972, 47 SCRA 149.
[103] G.R. No. L-29850, June 30, 1972, 45 SCRA 570.

thereof, to wit: (1) his real name; (2) the name sought to be adopted; and (3) his aliases or other names used. In the case at bar, it was held that there being a failure to comply with this requirement, the lower court acquired no jurisdiction to hear and determine the petition.

Go Chiu Beng v. Republic[104] reiterates the rule that change of name is a judicial proceeding ***in rem.*** Jurisdiction to hear and determine a petition therefor, by law, is acquired after publication of the order reciting the purpose of the petition and the date and place for the hearing thereof for three (3) successive weeks in a newspaper of general circulation. Publication is notice to the whole world that the proceeding has for its object "to bar indifferently all who might be minded to make an objection of any sort against the right sought to be established". But, for that publication to be effective, it must give the correct information.

[104] G.R. No. L-29574, August 18, 1972, 46 SCRA 617.

PART II

CRIMINAL PROCEDURE AND EVIDENCE

ARTURO E. BALBASTRO*

CRIMINAL PROCEDURE

I. PRELIMINARY INVESTIGATION

In *Manzano v. Villa*,[1] it was held that the preliminary investigation conducted by the municipal judge was essentially a procedural matter and no substantial rights of the accused were violated just because he had not been given an opportunity to examine the witnesses against him. This first stage of the preliminary investigation is "not the occasion for full and exhaustive presentation of parties' evidence but only such as may engender well-grounded belief that an offense has been committed and that the accused is probably guilty thereof." The proceeding is usually held *ex-parte*, for under Section 5 of Rule 112 all that is required is for the judge conducting such examination to "take under oath, either in the presence or absence of the accused, the testimony of the complainant and his witnesses," said testimony to be reduced to writing and signed by them. Hence the absence of the accused during the preliminary examination was not a denial of due process of law.

It was reiterated in *Talusan v. Ofiana*[2] that "when a Fiscal or prosecuting attorney receives a criminal case, elevated to the Court of First Instance by the Justice of the Peace Court (Municipal Court) which has conducted the corresponding preliminary investigation, and on the ground that there was probable cause, the *said Fiscal has the right to conduct his own investigation to convince himself of the sufficiency* of said evidence for the prosecution."[3]

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[1] G.R. No. L-27018, August 30, 1972, 46 SCRA 711.

[2] G.R. No. L-31028, June 29, 1972, 45 SCRA 467.

[3] Assistant Fiscal, Bataan v. Dollete, G.R. No. L-12196, May 28, 1958, 103 Phil. 914 (1958).

II. PLEAS

People v. Matias[4] reiterates the ruling in *People v. Baylosis*[5] and *People v. Solacito*[6] to the effect that in every case under the plea of guilty, where the penalty may be death, it is advisable for the court to call witnesses for the purpose of establishing the guilt and the degree of culpability of the defendant, and judges are duty bound to be extra-solicitous in seeing to it that when an accused pleads guilty he understands fully the meaning of his plea and the import of an inevitable conviction.

Reiterated in *People v. Valera*[7] is that "the norm that should be followed where a plea of guilty is entered by the defendant, especially in cases where the capital penalty may be imposed, is that the court should be sure that defendant fully understood the nature of the charges preferred against him and the character of the punishment provided by law before it is imposed.[8] In the instant case, prudence dictated that the Court should take some evidence in order to be reasonably certain that no injustice was being done to the accused, as pointed out in *People v. Alincastre*.[9]

People v. Baylosis[10] brings to surface the rule enunciated in *People v. Ama*[11] that when an accused is arraigned in connection with a criminal charge, the only duty of the court is to inform him of its nature and cause so that he may be able to comprehend it, as well as the circumstances attendant thereto, and when the charge is of a serious nature, it becomes the imperative duty of his counsel not only to assist him during the reading of the information but also to explain to him the real import of the charge so that he may fully realize the gravity and consequences of his plea. In this connection, the trial judge may take evidence to determine whether or not the accused understood the meaning of the plea, and should exercise patience and circumspection in explaining the meaning of the accusation and the full import of the plea of guilty to the accused.[12]

III. TRIAL

A. *Suspension of Proceedings*

Reiterating the ruling in *Dasalla v. City Attorney*[13] on the suspension of the criminal proceedings because of the existence of a prejudicial

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[4] G.R. No. L-35383, November 28, 1973, 48 SCRA 181.
[5] G.R. No. L-34014, September 8, 1972, 47 SCRA 5.
[6] G.R. No. L-29209, August 25, 1969, 29 SCRA 61.
[7] G.R. No. L-30039, February 8, 1972, 43 SCRA 207.
[8] *People v. Flores*, G.R. No. L-32692, July 30, 1971, 40 SCRA 230.
[9] G.R. No. L-29891, August 30, 1971, 40 SCRA 391.
[10] *Supra*, note 5.
[11] G.R. No. L-14783, April 29, 1961, 1 SCRA 1235.
[12] *People v. Simeon*, G.R. No. L-33730, September 28, 1972, 47 SCRA 129.
[13] G.R. No. L-17338, May 20, 1962, 5 SCRA 193.

question, the holding in *Bautista v. Navarro*[14] is that the time to ask for the suspension of the criminal proceedings on that ground is not during the preliminary investigation but after the filing of the information if warranted.

IV. NEW TRIAL

In *People v. Lao Wan Sing*,[15] it was held that although recanting testimony is oftentimes regarded as unreliable, especially so where the recantation relied upon involves perjury, and motions for new trial based on subsequent retraction by a witness are not favorably considered, yet when aside from the testimonies of the retracting witnesses there is no evidence to support the judgment of conviction, a new trial may be granted. Moreover, the rules governing new trial should be construed and applied liberally, especially so when the presentation and admission of the retractions of the prosecution witnesses might show that the State's evidence against the appellant is weak and unsatisfactory, when the retractions might tip the scales in favor of the appellant, and when the retractions might produce at least a reasonable doubt as to the guilt of the appellant.

EVIDENCE

I. ADMISSIBILITY

Evidence is admissible when it is relevant to the issue and is not excluded by the rules.[16]

A. *Parol Evidence*

Talosig v. Vda. de Nieba[17] reiterates the ruling that failure of the petitioner to object to the parol evidence introduced by the respondent constitutes a waiver on the petitioner's part to the admissibility of said parol evidence.

B. *Admission*

In *Viacruces v. Court of Appeals*,[18] it was noted that the testimony of Mrs. Costelo and this recognition by the now deceased Pelagio Costelo —which were confirmed by the public document Exh. G—constitute a

[14] G.R. No. L-35345, November 24, 1972, 48 SCRA 176.
[15] G.R. No. L-16379, August 18, 1972, 46 SCRA 298.
[16] RULES OF COURT, Rule 128, Sec. 3.
[17] G.R. No. L-29557, February 29, 1972, 43 SCRA 472.
[18] G.R. No. L-29831, March 29, 1972, 44 SCRA 176.

declaration of Mr. and Mrs. Costelo *adverse to their interest,* which is admissible in evidence, pursuant to section 32 of said Rule 130. Petitioners have no reason whatsoever to object to the consideration in favor of Orais of said admission, the same having been made in 1936, more than five (5) years *before* their (petitioners) predecessor in interest, Balentin Ruizo, had entered into the picture, when Orais and Costelo were the only parties who had any interest in the object of said admission. Pursuant to said legal provision, such admission "may be received in evidence," not only against the party who made it "or his successors in interest", but, also, "against third persons."[19]

C. *Confession*

People v. Urro[20] reiterates the rule that the confession or "declaration of an accused expressly acknowledging his guilt of the offense charged" may be given in evidence against him, where it is voluntary. However, involuntary or coerced confessions obtained by force or intimidation are null and void and are abhorred by the law, which proscribes the use of such cruel and inhuman methods to secure a confession. A coerced confession "stands discredited in the eyes of the law and is as a thing that never existed."

Reiterated in *People v. Domondon*[21] is the rule that although as a general rule an extrajudicial confession is evidence only against the person making it, the same may be taken into consideration as a circumstance in assessing and passing upon the weight and credibility of the testimony of an accomplice[22] as well as those of the witnesses of the opposing parties.[23] It may likewise serve as a corroborative evidence if it is clear from the other facts and circumstances that other persons had participated in the perpetration of the crime charged and proved.[24]

D. *Part of the Res Gestae*

In *People v. Tiongson,*[25] reiterating the rule on doctrine of *res gestae,* the Supreme Court stated that it is well-settled that as an exception to the hearsay rule, such evidence must comply with these requisites, namely, an occurrence both startling and unusual in character and an utterance made before the declarant could have any opportunity for falsification or distortion, one moreover limited to such event as well as the immediate at-

19 People v. Toledo, 51 Phil 825 (1928).
20 G.R. No. L-28405, April 27, 1972, 44 SCRA 473.
21 G.R. No. L-29836, February 29, 1972, 43 SCRA 486.
22 People v. Narciso, G.R. No. L-24484, May 28, 1968, 23 SCRA 844, 853.
23 People v. Raiz, 93 Phil. 94, 99 (1953).
24 People v. Sta. Maria, G.R. No. L-19929, October 30, 1965, 15 SCRA 222, 232.
25 G.R. No. L-29569, October 30, 1972, 47 SCRA 279.

tending circumstances. It was added that whether specific statements are admissible as part of the *res gestae* is a matter within the sound discretion of the trial court, the determination of which is ordinarily conclusive upon appeal, in the absence of a clear abuse of discretion. The following statements have been held to be part of the *res gestae*, namely: the statement of a child made within an hour after an alleged assault; the testimony of a police officer as to what a victim told him not more than 30 minutes after the commission of the alleged crime; the statements of defendant's employees made about thirty minutes after an accident; and the declaration of a victim some five to ten minutes after an incident.[26]

E. *Motive*

People v. Sales[27] reiterates the rule that motive to kill assumes pertinence only when there is doubt as to the identity of the culprit.

People v. Basuel[28] reiterates the rule that proof of motive is necessary when identification of perpetrator of offense is far from convincing.

II. PRESUMPTIONS

In *Hernandez v. Navarro*,[29] it was held that when there are several related acts supposed to be performed by a public officer or employee in regard to a particular matter, the presumption of regularity in the performance of official functions would not arise and be considered as comprehending all the required acts, if the certification issued by the proper office refers only to some of such acts, particularly in instances wherein proof of whether or not all of them have been performed is available under the law or office regulations to the officer making the certification. In other words, the omission of some of the acts in the certification may justify the inference that from the proof available to the officer there is no showing that they have also been performed. Of course, where the certification is worded in general terms that reasonably comprehend performance of all the related acts, the presumption of regularity holds as to all of them.

De la Paz v. De Guzman[30] restates the rule that in a more traditional terminology, the lower court's judgment has in its favor the presumption of correctness and is entitled to great respect.

Along the same line is the decision in *People v. Angcap*.[31]

26 People v. Ner, G.R. No. L-25504, July 31, 1969, 28 SCRA 1151.
27 G.R. No. L-29340, April 27, 1972, 44 SCRA 489.
28 G.R. No. L-28215, October 13, 1972, 47 SCRA 207.
29 G.R. No. L-28296, November 24, 1972, 48 SCRA 44.
30 G.R. No. L-28147, February 29, 1972, 43 SCRA 384.
31 G.R. No. L-28748, February 29, 1972, 43 SCRA 437.

III. Weight and Sufficiency of Evidence

A. *Weight of Evidence in Appellate Courts*

People v. Largo[32] and *People v. Gan*[33] reiterate the well settled rule that appellate courts will not disturb the findings of the trial court on the credibility of witnesses, it being acknowledged that the latter is in a better position to evaluate their testimonies, having seen and heard the witnesses themselves and observed their demeanor and manner of testifying. To depart from such rule, appellant must satisfactorily show that the trial court "overlooked, misunderstood or misapplied some fact or circumstance of weight and substance as would offset the results of the case."

Tagumpay Minerals and Mining Association v. Masangkay[34] reiterates the well settled rule that in appeals by certiorari the findings of fact made in the decision appealed from will not be reviewed by the Supreme Court, unless there has been a grave abuse of discretion in making said findings, by reason of the total absence of competent evidence in support thereof.

People v. Sales[35] reiterates the rule on the weight of the findings of fact of the trial court in the appellate courts.

In *Talosig v. Vda. de Nieba,*[36] in answering petitioner's argument that the deed of sale should have been given more weight than the oral testimony of the respondent, the Supreme Court held that the premises of the argument involve appreciation of evidence, which is within the domain of the Court of Appeals, for its findings of fact are not reviewable by the Supreme Court.

It was also held by the Supreme Court in *Viacruces v. Court of Appeals*[37] that as regards the effect or import of the failure of Orais to file the present action until November 15, 1960, this is a matter relevant to the issue whether the sale attested to by Exhibit B is simulated, as contended by petitioners herein, or a true and authentic sale, as Orais maintains. The decision of the Court of Appeals, affirming that of the trial court and sustaining the claim of Orais, constitutes a finding of fact, which is final in this proceeding for review on certiorari.

Reiterated in *Napolis v. Court of Appeals*[38] is the rule that on appeal from a decision of the Court of Appeals, the findings of fact made in said decision are final, except—(1) when the conclusion is a finding grounded

[32] G.R. No. L-28106, August 18, 1972, 46 SCRA 597.
[33] G.R. No. L-33446, August 18. 1972, 46 SCRA 667.
[34] G.R. No. L-28946, August 18, 1972, 46 SCRA 608.
[35] *Supra,* note 27.
[36] *Supra,* note 17.
[37] *Supra,* note 18.
[38] G.R. No. L-28865, February 28, 1972, 43 SCRA 301.

entirely on speculations, surmises or conjectures; (2) when the inference is manifestly mistaken, absurb or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both applicant and appellee.

The ruling in *Caltex Filipino Managers and Supervisors Association v. Court of Industrial Relations*[39] is that in ignoring the strong evidence coming from the witnesses of the Company damaging to its case as well as that adduced by the Association also damaging to the Company's case, the respondent court clearly and gravely abused its discretion, thereby justifying the Supreme Court to review or alter its factual findings.

B. *Credibility*

Concerning credibility and weight of evidence, *People v. Basuel*[40] also restates the rule that the silence of the witnesses for about two years detracts from their trustworthiness.

C. *Burden of Proof in Self-Defense*

People v. Tingson[41] reiterates the rule that the accused has the burden of establishing his plea of self-defense by credible, clear and convincing evidence.

D. *Proof Beyond Reasonable Doubt*

Reiterated in *People v. Custodio*[42] is the rule that only by proof beyond reasonable doubt, which requires moral certainty, may the presumption of innocence be overcome.

E. *Evidence of Conspiracy*

In *People v. Tingson*,[43] it was held that evidence is required to prove conspiracy, while in *People v. Tiongson*,[44] it was held that a conspiracy need not be proved by direct evidence; it may be deduced from the mode and manner in which the offense was perpetrated. In *People v. Cus-*

[39] G.R. No. L-30632-33, April 11, 1972, 44 SCRA 350.
[40] *Supra*, note 28.
[41] G.R. No. L-31228, October 24, 1972, 47 SCRA 243.
[42] G.R. No. L-30463, October 30, 1972, 47 SCRA 289.
[43] *Supra*, note 41.
[44] *Supra*, note 25.

todio,[45] it was ruled that conspiracy presupposes the existence of a preconceived plan or agreement.

People v. Lunar[46] reiterates the rule that conspiracy can be inferred and proven by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interest, and such unity of purpose and concert of action serve to establish the existence of the conspiracy and the criminal liability as principals of the conspirators.

F. *Alibi*

People v. Ragas[47] reiterates the ruling that alibi is a weak defense for it is easy to fabricate. In the instant case, it was found that it would have been easy for Ragas to have left his house and gone to the house of Tañares, the scene of the crime, at past midnight on 24 February 1967, because the distance was but one or two kilometers.

People v. Tanjalali Gajali[48] reiterates the rule that accused's alibi cannot prevail against his positive identification by three prosecution witnesses.

Reiterating the well-settled rule on alibi, the Supreme Court held in *People v. Olden*[49] that against the positive identification made by the witnesses, no motive for them to implicate the appellants falsely having been shown, the alibis respectively alleged by them in defense cannot stand.

People v. Basuel[50] also reiterates the ruling that where the accused's identification is weakened and rendered unreliable, the defense of alibi assumes importance and may be given credence.

IV. POWERS OF COURTS

Commissioner of Customs v. Court of Tax Appeals[51] reenunciates the holding that when the issues are clear before the court, the deficiency in the observance of the rules should not be given undue importance, and what is important is that the case is decided upon the merits and that it should not be allowed to go off on procedural points.[52]

In *Narag v. Cecilio*[53] it was ruled that ordinarily, the remedy should be limited to setting aside the appealed order and remanding the matter

[45] *Supra*, note 42.
[46] G.R. No. L-15579, May 29, 1972, 45 SCRA 119.
[47] G.R. No. L-29393, March 29, 1972, 44 SCRA 152.
[48] G.R. No. L-28534, July 31, 1972, 46 SCRA 130.
[49] G.R. No. L-27571, September 20, 1972, 47 SCRA 45.
[50] *Supra*, note 28.
[51] G.R. No. L-33471, January 31, 1972, 43 SCRA 192.
[52] *Go Tiamco v. Diaz*, 75 Phil. 672 (1946).
[53] G.R. No. L-23408, November 24, 1972, 48 SCRA 11.

to the lower court so that the case could be tried on the merits. Considering, however, the length of time that had elapsed and the virtual admission of defendants as to the deprivation of possession inflicted by them on the plaintiff, the cause of justice could be served by decreeing immediate recovery. This is in line with the ruling in *Francisco v. The City of Davao*[54] that where, notwithstanding the cogency of the jurisdictional question raised, the Supreme Court brushed it aside to yield to the dictates of what is just and equitable.

In *Borromeo v. Court of Appeals*,[55] applying what it terms as "practical and substantial justice", the Supreme Court ruled that an action to fix the period within which the debtor was to pay and to recover the unpaid amount may be fixed by the court, not necessarily in a separate action to avoid delay.

The question raised in *Somosa-Ramos v. Vamenta, Jr.*[56] is whether or not Article 103 of the Civil Code prohibiting the hearing of an action for legal separation before the lapse of six months from the filing of the petition, would likewise preclude the court from acting on a motion for preliminary mandatory injunction applied for as an ancillary remedy to such a suit. In answering this question in the negative, the Supreme Court, speaking thru Mr. Justice Fernando, while recognizing that under Article 103 the court where the action is pending is to remain passive and must let the parties alone in the meanwhile, observed that the law is cognizant of the need in certain cases for judicial power to assert itself as may be discernible from Article 104 of the Civil Code. There would appear to be then a recognition that the question of management of respective property of the spouses need not be left unresolved even during such six-month period. An administrator may even be appointed for the management of the property of the conjugal partnership. The absolute limitation from which the court suffers under Article 103 is thereby eased.

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54 G.R. No. L-20654, December 24, 1964, 12 SCRA 628.
55 G.R. No. L-22962, September 28, 1972, 47 SCRA 65.