REMEDIAL LAW

PART I

CIVIL PROCEDURE AND EVIDENCE

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CIVIL PROCEDURE

I. JURISDICTION OF COURTS

Jurisdiction has been defined as the power and authority of a court to hear, try and decide a case.[1]

A. Supreme Court

In *Planas v. Commission on Elections* and other cases jointly decided,[2] the Supreme Court was called upon to rule whether or not it had authority to pass upon the validity of Presidential Decree No. 73, in view of the Solicitor General's contention that said question was a political one. It was held that the contested decree purported to have the force and effect of a legislation, so that the issue on the validity thereof was manifestly a justiciable one, on the authority, not only of a long list of cases in which the Court had passed upon the constitutionality of statutes and/or acts of the Executive, but, also, of no less than that of Subdivision (1) of Section 2, Article VIII of the 1935 Constitution, which expressly provided for the authority of the Court to review cases involving such an issue.

However, in denying the propriety of taking a hand in the case, the Supreme Court held in *Ozaeta v. Oil Industry Commission*[3] that the law dictates the appropriate steps to be taken from determination of administrative agencies and certainly any attempt on the part of a party to thrust upon the Supreme Court the resolution of what it calls "the merits of the petition" thus yielding the impression that it would be made to interfere in matters appropriate for administrative agencies to

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1 Herrera v. Barreto, 25 Phil. 245 (1913)

2 Planas v. Commission on Elections, G.R. No. L-35925; Sanidad v. Commission on Elections, G.R. No. L-35929; Roxas v. Commission on Elections, G.R. No. L-35940; Monteclaro v. Commission on Elections, G.R. No. L-35941; Ordoñez v. National Treasurer of the Philippines, G.R. No. L-35942; Tan v. Commission on Elections, G.R. No. L-35948; Diokno v. Commission on Elections, G.R. No. L-35953; Jimenez v. Commission on Elections, G.R. No. L-35961; Gonzales v. Commission on Elections, G.R. No. L-35965; and Hidalgo v. Commission on Elections, G.R. No. L-35979, January 22, 1973, 49 SCRA 105, 125-126 (1973).

3 G.R. Nos. L-35812-17, February 23, 1973, 49 SCRA 409 (1973).

decide, is not likely to carry persuasion. This is not to say that if the pertinent legal questions are raised in the appropriate proceedings, the Supreme Court will not act in accordance with law. When certain cardinal "primary rights" embraced in procedural due process are ignored, then the Supreme Court is duty-bound to set matters right and have the constitutional mandate obeyed. Until such an occasion presents itself, however, the hand of the Supreme Court should be stayed.

Considering the prejudice to the government and public caused by the delay in awarding the contract to operate the arrastre services in the piers of Manila South Harbor, the Supreme Court held in *Virata v. Bocar*[4] that because, as stated in the order of respondent Judge Cuevas, Guacods, Inc. and Filipinas Marine-Express Terminal, Inc. did not interpose any objection to the suspension of the preliminary hearing, they too concede, as they must, the authority of the Supreme Court to direct the petitioners to make the final award.

In *Buendia v. City of Baguio,*[5] it was ruled that since petitioners-city judges were manifestly not private persons or entities who could appeal the Auditor General's decision directly to the Supreme Court rather than to the President, the present petitions were beyond the jurisdiction of the Supreme Court.[5a]

Reiterated in *Encinares v. Catighod*[6] is the well-settled principle that where the appeal is taken directly to the Supreme Court, only questions of law could be raised.

B. Court of First Instance

In *Zulueta v. Pan American World Airways, Inc.,*[7] reiterating the rule that a claim for moral damages is one not susceptible of pecuniary estimation, the Supreme Court held that appellees' complaint is within the original jurisdiction of courts of first instance, which includes all civil actions in which the subject of litigation is not capable of pecuniary estimation. It was further observed that having not only failed to question the jurisdiction of the trial court—either in that court or in the Supreme Court, before the rendition of the latter's decision, and even subsequently thereto, by filing the motion for reconsideration and seeking the reliefs therein prayed for—but also, having urged both courts to exercise jurisdiction over the merits of the case, defendant is now estopped from impugning said jurisdiction. Moreover, it was also noted that defendant's setting up of a counterclaim in the aggregate sum of ₱12,000, which is also

[4] G.R. Nos. L-33426 & L-35014, April 30, 1973, 50 SCRA 488 (1973).
[5] G.R. No. L-33156, July 25, 1973, 52 SCRA 154, 159 (1973).
[5a] [ED's NOTE: The facts out of which this case arose took place under the 1935 Constitution.]
[6] G.R. No. L-29764, November 29, 1973, 54 SCRA 140, 143-144 (1973).
[7] G.R. No. L-28589, January 8, 1973, 49 SCRA 1, 4-6 (1973).

within the original jurisdiction of the courts of first instance, cured the alleged defect, if any, in plaintiffs' complaint.

Taken into account in *Gamara v. Valero*[8] is the fact that the petitioner and his alleged companions, not being members of the Armed Forces of the Philippines, are certainly categorized as civilians. The petitioner and his companions being civilians and considering that the Court of First Instance of Laguna had already exercised jurisdiction over Criminal Case No. SC-486 first, it was ruled that the said court cannot simply abdicate such jurisdiction in favor of the Military Tribunal and must continue the proceedings to their conclusion. This is also true even if the crime involved were said to have been committed by a "syndicate" as this term is understood in the light of the provisions of General Order No. 12-B.

For the first time on appeal, the accused-appellant in *People v. Casuga*[9] questioned the jurisdiction of the Court of First Instance. In her brief on appeal, the accused maintained that the crime of grave slander of which she was charged comes within the area of concurrent jurisdiction of Municipal Courts of provincial capitals or City Courts and Courts of First Instance, and that the judgment of the La Union Court of First Instance to which she had expressly appealed the municipal court's conviction should be deemed null and void for want of jurisdiction as her appeal should have been directly to the Court of Appeals or the Supreme Court. Finding the said contention untenable, the Supreme Court held that this question is foreclosed by the doctrine of estoppel enunciated by the Court that "after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court." Sound public policy and the interest of a just, orderly, efficient and inexpensive administration of justice, whereby justice and fairness are accorded both to the plaintiff and the defendant, to the offended party as well as to the accused, properly raise a barrier against a party who would speculate on the fortunes of litigation and in the event of an adverse decision challenge the jurisdiction of the very tribunal whose jurisdiction he or she has invoked and procured at the expenditure of so much time, expense and effort on the part of the litigants and of the State.

II. PARTIES

Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.[10]

It was held in *Amargo v. Court of Appeals*[11] that being parties in whose favor reliefs were granted by the Court of First Instance of Ma-

[8] G.R. No. L-36210, June 25, 1973, 51 SCRA 322, 327 (1973).
[9] G.R. No. L-37642, October 22, 1973, 53 SCRA 278, 281-283 (1973).
[10] RULES OF COURT, Rule 3, Sec. 7.
[11] G.R. No. L-31762, September 19, 1973, 53 SCRA 64, 75 (1973).

nila in its decision, private respondents were, without question, indispensable parties. They had such an interest in the controversy that a final decree could not proceed without their presence. True it is that it was an order of the court which was being assailed in the petition for review, but that circumstance did not dispense with the need for private respondent's inclusion in the proceedings. This requirement is explicit from the express provision of section 5, Rule 65 of the Revised Rules of Court. In various cases, it has been held that where the party interested in sustaining the order complained of has not been included as a co-respondent in the proceeding contrary to section 5, Rule 65 of the Rules, the petition for writ of *certiorari* is defective.

Noted in *American Express Company, Inc. v. Santiago*[12] was the fact that the witness also stated that the charge orders of the appellant were in due course of business submitted by the establishments concerned to the appellee for payment and paid by the latter. The Court concluded that there could be no doubt, therefore, that the appellee was the creditor of the appellant and as such was the proper party to file this suit for collection.

In *Torres v. Court of Appeals*,[13] the Court stated that Judge Guillermo Torres should not have been made to appear as active party-petitioner in the case, his participation having become *functus officio* after he rendered judgment, and therefore his role being purely nominal in this petition.

III. Pleadings in General

Pleadings are the written allegations of the parties of their respective claims and defenses submitted to the court for trial and judgment.[14]

A. Counterclaim

A counterclaim is any claim for money or other relief which a defending party may have against an opposing party. A counterclaim need not diminish or defeat the recovery sought by the opposing party, but may claim relief exceeding in amount or different in kind from that sought by the opposing party's claim.[15]

The Supreme Court reiterated the ruling on counterclaims in its decision in *National Marketing Corporation v. Federation of United Namarco Distributors, Inc.*[16] It was observed that the rule on compulsory counterclaim contained in section 6 of Rule 10 of the old Rules of Court is taken from Section 97 of Act No. 190. This rule is substantially the same as Rule 13(a) of the Federal Rules of Civil Procedure. This rule is "man-

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[12] G.R. No. L-27058, January 17, 1973, 49 SCRA 75, 78 (1973).
[13] G.R. No. L-25889, January 17, 1973, 49 SCRA 67, 74 (1973).
[14] Rules of Court, Rule 6, Sec. 1.
[15] Rules of Court, Rule 6, Sec. 6.
[16] G.R. No. L-22578, January 31, 1973, 49 SCRA 238, 255-256 (1973).

datory" because failure of the corresponding party to set it up will bar his right to interpose it in a subsequent litigation. Under this Rule, a counterclaim not set up shall be barred if the following circumstances are present: (1) that it arises out of, or is necessarily connected with, the transaction or occurrence that is the subject matter of the opposing party's claim; (2) that it does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction; and (3) that the court has jurisdiction to entertain the claim. Conversely, a counterclaim is merely permissive, and hence is not barred if not set up, where it has no logical relation with the transaction or occurrence that is the subject matter of the opposing party's claim, or even when there is such a connection, where the court has no jurisdiction to entertain the claim or such claim requires for its adjudication the presence of third persons of whom the court cannot acquire jurisdiction.

B. Cross-Claim

A cross-claim is any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein. Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant.[17]

In *Torres v. Court of Appeals*,[18] it was held that the cross-claim in that case was purely defensive in nature. It arose entirely out of the complaint and could prosper only if the plaintiffs succeeded. Hence, it could not be the subject of independent adjudication once it had lost the nexus upon which its life depended.

C. Third-Party Complaint

A third-party complaint is a claim that a defending party may, with leave of court, file against a person not a party to the action, called the third-party defendant, for contribution, indemnity, subrogation or any other relief, in respect of his opponent's claim.[19]

Referring to the propriety of the third-party complaint in *Rubio v. Mariano*,[20] the Supreme Court observed that there appears at first blush to be some merit in the contention of the respondents (third party defendants), since there is no demand from them for contribution, indemnity, subrogation or any other relief in respect of the plaintiffs' claim (Rule 6, Sec. 12), which is to stop Miguel Perez Rubio from interfering with a certain transaction between the said plaintiffs and a third person. What

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17 RULES OF COURT, Rule 6, Sec. 7.
18 *Supra*, note 13 at 74.
19 RULES OF COURT, Rule 6, Sec. 12.
20 G.R. No. L-30404, January 31, 1973, 49 SCRA 319, 355-337 (1973).

the third-party complaint seeks is to hold the third-party defendants directly liable to the third-party plaintiff for damages for alleged fraudulent acts which would render his counterclaim against the plaintiffs unrecoverable.

However, Miguel Perez Rubio was accorded by the Supreme Court the right to seek protection of his credit for the unpaid balance of the price of his shares in the Hacienda which he had sold to the Phillips which credit had been jeopardized by the acts of the plaintiffs and the third-party defendants. It would be an exercise in futility to allow Miguel Perez Rubio's counterclaim against the plaintiffs to remain in the case (No. 8632) for adjudication by the Court and at the same time throw out his third-party complaint against third persons for acts which would prevent such counterclaim from being realized because by said acts, the plaintiffs' assets are placed beyond the counterclaimant's reach.

The Supreme Court concluded that it would not serve the ends of justice or of a prompt dispatch of the controversies and issues involved to affirm the orders herein challenged and cause an entirely new action to be commenced. The main dispute below has been delayed long enough for reasons that can be attributed to the plaintiffs and the third-party defendants. The same policy considerations against multiplicity of suits which prompted the Supreme Court in *Balbastro, et al. v. Court of Appeals*[21] to affirm the admission of the third-party complaint therein involved, despite a finding of its procedural infirmity, likewise obtain in the case at bar. Besides, it was noted, the bringing in of the private respondents as third-party respondents in the case below is in accordance with sections 14 and 15, Rule 6, Rules of Court.

Regarding the wisdom or propriety of the admission of the petitioner's new pleadings by the trial court in *Rubio v. Mariano*,[22] the Supreme Court pointed out that respondent's respective denials of petitioner's claims in his amended and supplemental answer and third-party complaint can best be ventilated in a full-blown trial on the merits.

IV. AMENDED AND SUPPLEMENTAL PLEADINGS

In *General Insurance and Surety Corporation v. Masakayan*,[23] it was clear that the amendment set up a counterclaim for damages suffered by the petitioner, as owner of the lot in question, for having been deprived by the respondents of the use and enjoyment thereof. Said counterclaim was necessarily connected with the lot subject of the action and should be interposed in the same action. No new cause of action or defense was thereby interposed since the same was the subject matter between the

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[21] G.R. No. L-33255, November 29, 1972, 48 SCRA 231 (1972).
[22] *Supra*, note 20.
[23] G.R. No. L-28764, November 29, 1973, 54 SCRA 120, 132 (1973).

same parties in the ejectment case filed in the municipal court, but which was dismissed not for lack of merit but for lack of jurisdiction. If the amendment was not to be allowed, another action would have to be instituted, (if not barred) against respondents Castelos, thus causing multiplicity of suits. The Court noted that the rule seeks to avoid precisely this situation and thus compels the parties to litigate all the issues in a single proceeding.

Rubio v. Mariano[24] reiterates the rule that an amendment will not be considered as stating a new cause of action if the facts alleged in the amended complaint (or counterclaim) show substantially the same wrong with respect to the same transaction, or if what are alleged refer to the same matter but are more fully and differently stated, or where averments which were implied are made in express terms, and the subject of the controversy or the liability sought to be enforced remains the same.[25]

V. Intervention

It was held in *Macias v. Cruz*[26] that the motions filed by petitioner-appellant praying that he be given copies of all notices, orders, processes, and pleadings are, in effect, motions for intervention because he claims an interest in both estates as beneficiary thereof and as such may be affected by the distribution or disposition of the assets belonging to both estates.

VI. Summons

It was ruled in *Aguilos v. Sepulveda*[27] that while normally the claim of petitioners that as additional defendants they were entitled to be served with summons for the lower court to acquire jurisdiction over their persons would be correct, yet this would not hold true where, as in this case, petitioners waived the requirement of summons and voluntarily submitted to the lower court's jurisdiction through the appearance of two counsels on their behalf (Rule 14, Section 23).

VII. Motion to Dismiss

Galeon v. Galeon[28] reiterates the rule that in a motion to dismiss a complaint based on lack of cause of action, "the question submitted to the court for determination is the sufficiency of the allegations of fact made in the complaint to constitute a cause of action, and not whether these allegations of fact are true, for said motion must hypothetically admit the truth of the facts alleged in the complaint." The test of

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[24] G.R. Nos. L-36404, L-29235, and L-30935, January 31, 1973, 49 SCRA 319, 333-335 (1973).

[25] Shaffer v. Palma, G.R. No. L-24115, March 1, 1968, 22 SCRA 934 (1968).

[26] G.R. Nos. L-28947, L-29235, & L-30935, January 17, 1973, 49 SCRA 80, 97-100 (1973).

[27] G.R. No. L-29312, October 19, 1973, 53 SCRA 269, 274 (1973).

[28] G.R. No. L-30380, February 28, 1973, 49 SCRA 516, 520-521 (1973).

the sufficiency of the facts is whether or not, accepting the veracity of the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint. The uniform ruling of the Supreme Court is that the trial court "may not inquire into the truth of the allegations, and find them to be false before a hearing is had on the merits of the cause." If the court finds the allegations to be sufficient but doubts their veracity, it is incumbent upon said court to deny the motion to dismiss and require the defendant to answer. The veracity of the assertions could be ascertained at the trial on the merits.

The same case of *Galeon v. Galeon*[29] reiterates the ruling that an action cannot be dismissed upon the ground that the complaint is vague, ambiguous or indefinite (see Rule 8, section 1). The reason for this is that the defendant, in such case, may ask for more particulars (Rule 12) or he may compel the plaintiff to disclose more relevant facts under the different methods of discovery provided by the Rules (Rules 24, 25, 26, 27 and 28).

It was ruled in *Espiritu v. Solidum*[30] that the Rules of Court requires in effect that the order of the trial court dismissing an action should be founded on indubitable grounds in order to avoid multiplicity of appeals. Hence, in case of doubt as in the case at bar, the rule provides that the court must defer its final hearing and determination until the trial. "Indubitable" means "something which cannot be doubted; also certain and unquestionable; without doubt". It was noted that petitioners' grounds for dismissal were certainly far from indubitable and respondent court properly entered a provisional denial until it could duly decide them after the presentation of evidence at the trial and would have had sufficient time and opportunity to study and rule upon the responsive legal contentions of the parties.

VIII. DISMISSAL OF ACTIONS

The Supreme Court held in *Rubias v. Batiller*[31] that the stipulated facts and exhibits of record indisputably established plaintiff's lack of cause of action and justified the outright dismissal of the complaint. Manifestly, the plaintiff's complaint against the defendant asking to be declared absolute owner of the land and to be restored to possession thereof with damages was bereft of any factual or legal basis.

In *Viray v. Mariñas*,[32] it was noted that it was pointless for the petitioner to rely on the order of the Court of First Instance of Manila in Civil Case No. 71861, dismissing respondent Mariñas' action for recovery

[29] *Id.* at 523.
[30] G.R. No. L-27672, July 25, 1973, 52 SCRA 131, 135 (1973).
[31] G.R. No. L-35702, May 29, 1973, 51 SCRA 120, 130 (1973).
[32] G.R. No. L-33168, January 11, 1973, 49 SCRA 44, 54 (1973).

of possession. The aforesaid case was dismissed without hearing on the ground that the court had no jurisdiction over the subject matter of the suit, as the complaint was filed within one year from the date of accrual of respondents's cause of action and therefore the case was within the original jurisdiction of the City Court. A dismissal of an action solely on the ground that the court has no jurisdiction over the subject matter or of the parties is not an adjudication on the merits and will not bar another action for the same cause.

The ruling in *Abeleda v. Court of First Instance of Baguio*[33] is that judgment directly in petitioner's favor cannot be rendered, as respondent's motion was one of dismissal on the ground of petitioner's alleged lack of authority or capacity to file the suit as permitted under Rule 16, section 1(d) and not for a judgment of dismissal on demurrer to evidence under Rule 35, section 1, under which latter rule, respondents-movants, upon reversal on appeal of the dismissal order secured by them, would be deemed to have lost their right to present evidence on their behalf, with the result that adverse judgment could then be forthwith rendered against them on the basis of petitioner's evidence.

IX. DEFAULTS

In *Carandang v. Cabatuando*,[34] it was held that the petitioner had not been deprived of his right to be heard. The record showed that summons and copy of the complaint in CAR case No. 866 were served upon the petitioner on March 8, 1963. No answer or responsive pleading was filed within the reglementary period. The answer should have been filed within 5 days after the service of summons, pursuant to Rule 7 of the Rules of Court of Agrarian Relations promulgated under the provisions of Section 10 of Republic Act No. 1267, as amended by Section 6 of Republic Act No. 1409. Having failed to answer, the petitioner was declared in default on June 10, 1963 by the trial judge, upon motion filed by respondent Pandy. The action of the CAR judge was perfectly legal.

Furthermore, it was also held that the trial court did not abuse its discretion when it denied the motion to lift the order of default, for neither said motion nor the affidavit supporting it stated facts constituting a valid and meritorious defense. The decision reiterated the ruling that when a motion to lift the order of default does not show that the defendant has a meritorious defense and that his failure to answer the complaint on time is legally excusable, or that anything would be gained by having the order of default set aside, the denial by the court of the motion to lift the order of default does not constitute abuse of discretion.[35]

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[33] G.R. No. L-35173, February 28, 1973, 49 SCRA 549, 554 (1973).
[34] G.R. No. L-25384, October 26, 1973, 53 SCRA 383, 391-392 (1973).
[35] Manzanillo v. Jaramilla, 84 Phil. 809, 811 (1949).

What are the remedies available to a party who has been declared in default?

This question is answered by the decision in *Luzon Rubber & Manufacturing Co. v. Estaris.*[36] Reiterated in that case is the rule that a defendant, who has been declared in default by the municipal or city court, in order to regain his standing in court, may avail himself of either of the two remedies, *i.e.*, (1) he may ask the court, within one (1) day after notice of the order of default, to set aside such order, by appearing and showing to the satisfaction of the court that his failure to appear was due to fraud, accident, mistake or excusable negligence under Section 13, Rule 5 of the Revised Rules of Court; or (2) he may, if he fails to avail himself of this remedy and the judgment has become final and executory, file a petition for relief in the Court of First Instance under Section 1 of Rule 38 of the Revised Rules of Court. He may also file a motion to lift the default judgment and ask for new trial, before the judgment becomes final and executory under Section 16 of Rule 5. Thus, a defendant who has been declared in default loses his standing in court, and, without having regained the same, shall not be entitled to notice of subsequent proceedings, nor to take part in the trial. He shall also not be entitled to service of papers other than substantially amended or supplemental pleadings and final orders or judgments, unless he files a motion to set aside the order of default, in which event he shall be entitled to notice of all further proceedings regardless of whether the order of default is set aside or not. He cannot appeal from the judgment rendered by the court on the merits, unless he files a motion to set aside the order of default. He cannot file a notice of appeal, appeal bond and record on appeal, nor claim the right to be heard, nor file a brief or memorandum on appeal. If he is not entitled to notice or to be heard in the suit, he cannot appeal as appellant nor appear and be heard as appellee because an appeal is a continuation of the same case or suit commenced in the lower court. A proper motion to set aside the judgment by default under Section 13 of Rule 5, when denied, may give the defaulted defendant the right to appeal, but the appeal in that case would be from the order denying the motion and not from the judgment by default itself. The defendant can appeal from such judgment only after he has regained his standing in court.

X. PRE-TRIAL

It was held in *Trocio v. Labayo*[37] that there is no merit in petitioner's contention that the notice as to the hearing scheduled for October 14 should specify that it was for a pre-trial. A hearing as known

[36] G.R. No. L-31439, August 31, 1973, 52 SCRA 391, 397-399 (1973).
[37] G.R. No. L-35701, September 19, 1973, 53 SCRA 97, 100-101 (1973).

to the law is not confined to a trial but embraces the several stages of a litigation. It does not preclude pre-trial. Outside the American cases cited by respondents, the Court noted, mention can be made of authorities in this jurisdiction that can speak to the same effect. A hearing "does not necessarily mean presentation of evidence." It could cover the determination of whether an accused is entitled to bail or the submission for the court's determination of a motion to dismiss, or any motion for that matter. It does not admit of doubt then considering furthermore what did take place, that such a purely technical objection on the petitioner's part raised at the last moment should not be taken too seriously. Much less does it lay any basis for an asserted denial of procedural due process.

XI. CALENDAR AND ADJOURNMENTS

In *Shell Company of the Phil., Ltd. v. Enage*,[38] the Supreme Court held that it does not admit of doubt that, as counsel of petitioner Shell Company was not notified of the proceedings had, a failure attributed to the mistaken assumption that Deen, Mercado and Cataluña law office in Butuan City and not Alfred Deen of Cebu City was retained by it, the denial of procedural due process was quite obvious.

In *G.A. Machineries, Inc. v. Januto*,[39] it was held that this is not to deny that appellant would be entitled to invoke the protection of due process if he could validly show that he was not given his day in court. Nothing is better settled than that the right to be heard is an indispensable element of such constitutional guarantee. He would predicate such a grievance on the lack of personal notification as to the date of trial of the original action, as a result of which came the decision upon which the first writ of execution, which was partially satisfied, was based. It is not unknown to him that once a party is represented by counsel, there is no need that he be personally informed of the proceedings in court. It is the lawyer retained by him, whose appearance is duly noted, to whom such notice is sent. That is equally indisputable.

Shell Company of the Phil., Ltd. v. Enage,[40] reiterates the rule that continuance or adjournment is discretionary with a court of justice, but such discretion must be exercised wisely with a view to substantial justice.

XII. DEPOSITIONS AND DISCOVERY

In *American Express Company, Inc. v. Santiago*,[41] the other points raised by the appellant in his brief had to do with certain objections of his to a number of questions directed by the appellee to its employee and

[38] G.R. Nos. L-30111-12, February 27, 1973, 49 SCRA 416, 421 (1973).
[39] G.R. No. L-27958, March 31, 1973, 50 SCRA 1, 4 (1973).
[40] *Supra*, note 38 at 423-424.
[41] *Supra*, note 12 at 78-79.

witness, George R. de Salvio, in the latter's deposition taken upon written interrogatories. The Court held that it had considered the nature and the phrasing of the questions objected to and concluded that the objections were either groundless or had no material bearing on the merits of the case.

Furthermore, it was ruled that the fact that it was appellee's counsel who picked up the deposition from the Department of Foreign Affairs and delivered it to the Clerk of Court, instead of its being filed directly with the latter, did not affect its integrity as to render it inadmissible. This was especially so because, as the Court noted, after all there was no pretense that the appellant did not contract the indebtedness for the collection of which he was being sued or that the same had been paid, the only important issue posed in the appeal being whether or not the appellee was the real party in interest.

XIII. JUDGMENTS

Regarding the language or form of a judgment, *NAWASA v. NWSA Consolidated Unions*[42] reiterates the rule that there is no rigid formula as to the language to be employed to satisfy the requirement of clarity and distinctness. It suffices that the judge's decision is not tainted with that degree of ambiguity that opens vistas of doubt both as to what the facts really were and the significance attached to them by the law.

It was held in *Flores v. Flores*[43] that certainly, it is undoubted that for the lower court to make such detailed findings of fact and thereafter disregard with impunity what as a consequence is required by law is to act with manifest unfairness. That certainly is judicial conduct that cannot meet the test prescribed by due process. The function legitimately vested in courts is to be exercised in any manner but that. This is not to deny the discretion that a court is possessed in determining what evidence is entitled to belief. It is merely to assert that once it has done so, the legal norms to be applied should not betray any inconsistency with what has thus been accepted as the true state of affairs. This, the lower court failed to do.

In *Amargo v. Court of Appeals*,[44] it was observed that the rule invoked by petitioner refers to "judgments determining the merits of cases," and the petitioner does not pretend that the trial court's decision on the merits was not based on stenographic notes of the plaintiffs' testimony and of the defendant's cross-examination, or that the said judgment does not contain clearly and distinctly the facts and the law on which it is based. Certainly, section 1 of Rule 36 of the Rules of Court does not

[42] G.R. No. L-32019, October 26, 1973, 53 SCRA 432, 444 (1973).
[43] G.R. No. L-28930, August 17, 1973, 52 SCRA 293, 300 (1973).
[44] G.R. No. L-31762, September 19, 1973, 53 SCRA 64, 69-70 (1973).

apply to interlocutory orders like the order of June 20, 1969, which delegated to a commissioner the reception of private respondents' evidence.

The Supreme Court noted in *Imperial v. De la Cruz*[45] that the petitioner's appeal has not been withdrawn or dismissed for failure to prosecute such appeal. On the contrary, petitioner's appeal was successfully prosecuted and resulted in plaintiff's non-suit and the dismissal of the case. The vacated judgment of the city court no longer existed in contemplation of law. With the successful prosecution of petitioner's appeal for non-suit of plaintiff-appellee, the only judgment that could be rendered by respondent court was the definitive dismissal of plaintiff's case.

At the time *People v. Donesa*[46] was submitted for resolution, the prevailing rule was that contained in *People v. Soria*[47] and the cases therein cited to the effect that "the signing or writing of judgments outside the territorial jurisdiction of the court where the cases are pending, is allowed when the judge leaves the province by *'transfer or assignment to another court of equal jurisdiction,'* or 'by expiration of his temporary assignment'. In other words, *the rule* contemplates of a *temporary occupancy by the judge* of either the post he has left or of the one he is going to assume," reiterating that "in similar cases, decisions promulgated *after* the judge who penned the same *had been appointed and had qualified to another court* were declared not valid and without any effect."

In a separate opinion in the case at bar,[48] Mr. Justice Teehankee observed that the contrary interpretation now adopted by the Supreme Court is that a district judge who has left the court of his original assignment or appointment by permanent (not merely temporary) transfer or assignment to another court of equal jurisdiction, without having decided a case totally heard by him and which was duly argued or wherein opportunity was given for argument to the parties or their counsel, may lawfully prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment, as duly provided by section 51 of the Judiciary Act.

The only qualification that he would add—for purposes of avoiding any unnecessary conflict in case another judge has already been appointed to his former court and the same is no longer vacant or unoccupied—is that in line with the statutory proviso therein governing cases "heard only in part," as well as with the first paragraph of the cited section providing for detail of judges, the interested parties should obtain from

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[45] G.R. No. L-37121, December 28, 1973, 54 SCRA 424, 430 (1973).
[46] G.R. No. L-24162, January 31, 1973, 49 SCRA 271, 293 (1973).
[47] G.R. No. L-25175, March 1, 1968, 22 SCRA 948 (1968).
[48] People v. Donesa, *supra*, note 46 at 294.

the Supreme Court the corresponding authorization for the permanently transferred judge, who heard *in toto* the case and the evidence, to render the decision thereon, in the same manner as temporarily transferred or assigned judges on detail.

He added that compelling considerations support such abandonment of *Soria* and a reversion to the old rulings cited in the main opinion that the public interest and the speedy administration of justice will be best served if the judge who heard the evidence (although he may have been permanently transferred to another province or station) renders the decision rather than leaves a mountain of evidence and transcripts for the perusal and appreciation of a new judge totally unfamiliar with the case and who did not have the opportunity of hearing the witnesses and observing their deportment for purposes of gauging their credibility and appraising their testimony.

In *Cadano v. Cadano,*[49] it was held that the validity of a judgment or order of a court cannot be assailed collaterally unless the ground of attack is lack of jurisdiction or irregularity in its entry apparent on the face of the record or that it is vitiated by fraud. If the purported nullity of the judgment lies on the party's lack of consent to the compromise agreement, the remedy of the aggrieved party is to have it reconsidered, and if denied to appeal from such judgment, or if final to apply for relief under Rule 38. Reiterated is the well-settled rule that a judgment on a compromise is not appealable and is immediately executory, unless a motion is filed to set aside the compromise on the ground of fraud, mistake or duress in which case an appeal may be taken from the order denying the motion.

Regarding the giving of notice of judgment, it was found in *Luzon Rubber & Manufacturing Co. v. Estaris*[50] that when the judgment of the City Court was sent to the petitioner, no appearance of its counsel had as yet been received by said court. Thus, without any record before the Court of any attorney appearing for said party, it certainly was in accordance with Section 2 of Rule 13 of the Revised Rules of Court to serve the judgment upon the party affected thereby. It would be an absurdity to hold otherwise.

XIV. MOTION FOR RECONSIDERATION AND NEW TRIAL

According to the Supreme Court in *Philippine Fiber Processing Co., Inc. v. Court of Industrial Relations,*[51] the threshold question was whether the filing by the petitioner of its motion for extension of time to file a motion for reconsideration tolled the running of the 5-day period within which,

[49] G.R. No. L-34998, January 11, 1973, 49 SCRA 33, 40-43 (1973).
[50] *Supra,* note 36 at 400.
[51] G.R. No. L-29770, July 19, 1973, 52 SCRA 110, 113-114 (1973).

under the industrial court's rules, a motion for reconsideration should be filed. It was held that said period was not tolled.

The Supreme Court elaborated on the subject in *Philippine Advertising Counselors, Inc. v. Revilla.*[52] It noted that among the ends to which a motion for reconsideration is addressed, one is to convince the court that its ruling is erroneous and improper, contrary to the law or the evidence, and in so doing, the movant has to dwell of necessity upon the issues passed upon by the court. The dissallowance of *pro forma* motions for reconsideration or new trial is mainly predicated upon their being resorted to solely to gain time and delay the proceedings. It reiterated the ruling that "it is not enough that a motion should state *what* part of the decision is contrary to law or the evidence; it should also point out *why* they (sic) are so * * *."

It was also held that Section 4, Rule 15 of the Rules of Court provides that notice of a motion shall be served by the applicant on all parties concerned, at least three (3) days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it; and Section 5 of the same Rule requires the notice to be directed to the parties concerned and to state the time and place of the hearing of the motion. A motion which fails to comply with these requirements is nothing but a useless piece of paper.

In the case at bar, the Supreme Court ruled that the filing of the motion for reconsideration did not suspend the running of the period within which to perfect an appeal because of the failure of the movant to comply with said requirements. The trial court, therefore, exceeded its jurisdiction when it granted the motion, set aside its decision and scheduled the case for hearing on the merits.

In *Tesoro v. Court of Appeals,*[53] the Supreme Court had occasion to restate the rule on new trial. In the case at bar, it was found that the proofs which the petitioner intended to submit at the new trial were not newly-discovered evidence and/or evidence which could not have been discovered by the exercise of ordinary diligence. The allegedly newly-discovered evidence was actually forgotten evidence which does not justify a new trial.

XV. Relief from Judgments, Orders and Other Proceedings

In *Macias v. Cruz,*[54] it was held that petitioner-appellant's petition for relief from the order of May 12, 1967 was properly dismissed by the lower court, as said petitioner was no longer entitled to notice of the order

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[52] G.R. No. L-31869, August 8, 1973, 52 SCRA 246, 253-254 (1973).
[53] G.R. No. L-36666, December 19, 1973, 54 SCRA 296 (1973).
[54] *Supra,* note 23 at 99-100.

of May 12, 1967 and all other orders issued in Special Proceeding No. 57405 after November 10, 1966 and November 15, 1966 when his motions (in effect, for intervention) to be furnished copies of all orders, notices, processes and pleadings in said special proceeding were denied.

XVI. EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

Answering petitioners' contention in *China Banking Corporation v. Ortega*[55] that under Republic Act No. 1405 the judgment debtor's bank deposit cannot be subject to garnishment to satisfy a final judgment, the Supreme Court ruled that the lower court did not order an examination of or inquiry into the deposit of B & B Forest Development Corporation, as contemplated in the law. It merely required Tan Kim Liong to inform the court whether or not the defendant B & B Forest Development Corporation had a deposit in the China Banking Corporation only for the purposes of the garnishment issued by it, so that the bank would hold the same intact and not allow any withdrawal until further order. It will be noted from the discussion of the conference committee report on Senate Bill No. 351 and House Bill No. 3977, which later became Republic Act No. 1405, that it was not the intention of the lawmakers to place bank deposits beyond the reach of execution to satisfy a final judgment.

It was ruled in *Padilla v. Court of Appeals*[56] that since the issuance of execution pending appeal is a matter which is properly within the discretion of the court having jurisdiction, and such discretion may be interfered with only in case of grave abuse, the facts and circumstances which moved the court to act as it did and its own assessment of the equities of the case are entitled to considerable weight when grave abuse of discretion is alleged, particularly when the conclusions of said court are based on evidence that is not controverted.

Reiterated in *Provincial Sheriff of Bulacan v. Reyes*[57] was the rule that "it was manifestly unnecessary for the redemptioner to seek out the purchaser for the purpose of making payment to him", where it was suggested that the redemption was rendered ineffectual by reason of the fact that the tender of payment was made to the officer who made the sale instead of directly to the purchaser.[58]

Viray v. Mariñas,[59] *Tiongson v. Court of Appeals*,[60] and *Heirs of Arches v. Vda. de Diaz*[61] reiterate the well-settled ruling on *res adjudicata*.

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[55] G.R. No. L-34964, January 31, 1973, 49 SCRA 355, 357-358 (1973).
[56] G.R. No. L-31569, September 28, 1973, 53 SCRA 168, 175-176 (1973).
[57] G.R. No. L-29441, May 31, 1973, 51 SCRA 164, 168 (1973).
[58] Javellana v. Mirasol and Nuñez, 40 Phil. 761, 770-771 (1920).
[59] *Supra*, note 32 at 50-52.
[60] G.R. No. L-35059, February 27, 1973, 49 SCRA 429, 434-435 (1973).
[61] G.R. No. L-27136, April 30, 1973, 50 SCRA 440, 443-444 (1973).

The influence of laches on the effect of judgment received some elaboration in *G.A. Machineries, Inc. v. Januto.*[62] In the case at bar, the judgment which appellant was assailing as having been rendered without his having been given his day in court was promulgated on January 30, 1958 by the Court of First Instance of Manila. As noted in the appealed decision, there was no effort on his part to raise this particular question even after a writ of execution had been issued, with his personal property thereafter levied upon and sold at public auction. It was much too late, then, as held by Judge de Borja, to search for possible defects in the previous judgment thus rendered in the case tried in his sala. That was a matter that should have been earlier ventilated so that it could have been passed upon. This, appellant, for reasons known only to himself, failed to do. He was not without remedy, but he neglected to resort to it. For the prejudice to which he is now subjected—even on the assumption that there was some basis for the defense raised, which, as clearly demonstrated above, is far from being the case—is purely the result of his own inattention. If he were not even minded to take care of his own interest when the law gave him the opportunity to do so, he ought not to labor under a sense of grievance if it is now too late to raise such an issue. This is another manifestation of that well-known maxim in equity, *vigilantibus non dormientibus equitas subvenit.*

XVII. APPEALS

A. Right to Appeal

Velasco v. Court of Appeals[63] reiterates the ruling that "the right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner provided by law."

Following such precept, it was held in *Ong Ching v. Ramolete*[64] that under such circumstances it will not serve any useful purpose to allow the appeal since it cannot be reasonably expected that "the legal conclusions of the trial court, which are apparently in accordance with law, will be modified substantially to warrant a different result."

As noted earlier, in *Buendia v. City of Baguio,*[65] it was held that since petitioners-city judges were manifestly not private persons or entities who could appeal the Auditor General's decision directly to the Supreme Court rather than to the President, the present petitions were beyond the jurisdiction of the Supreme Court.

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[62] *Supra,* note 39 at 7.
[63] G.R. No. L-31018, June 29, 1973, 51 SCRA 439, 448-449 (1973).
[64] G.R. No. L-35356, May 18, 1973, 51 SCRA 13, 20 (1973).
[65] *Supra,* note 5; see ED's NOTE, fn. 5a.

Sison v. Gatchalian[66] reiterates the ruling that the record on appeal must show on its face that the appeal has been perfected within the period required by law. It was observed in the case at bar that there are no such "strong compelling reasons" that would call for a relaxation of the iron-clad doctrine.

However, in *Guiala v. Court of Appeals*,[67] it was held that Section 6 of Rule 41 does not require that the record on appeal should state that it has been approved. Indeed, it would be absurd to so require because the approval has to come only after its filing.

Reiterated in *Berkenkotter v. Court of Appeals*[68] is the rule that the period within which the record on appeal and appeal bond should be perfected and filed may be extended by order of the court, upon application made, prior to the expiration of the original period. Along the same line is the ruling in *Mintu v. Court of Appeals*.[69]

Encinares v. Catighod[70] reiterates the well-settled principle that where the appeal is taken directly to the Supreme Court, only questions of law could be raised. Following this principle, it was held in *Arangco v. Baloso*[71] that in a review on a question of law, the party appealing directly to the Supreme Court is deemed to have waived the right to dispute any finding of fact made by the trial court.

In *Eladjoe v. Leaño*,[72] it was observed that the defendant-appellant obviously anchored his direct appeal to the Supreme Court on questions of law on the proposition that the question of whether a judgment is totally unsupported by the evidence on the record is a question of law. The burden lies heavily on appellant in such cases to show clearly and convincingly the void of evidence to support the judgment and that his evidence supports no other judgment than one that should be in his favor and that consequently, the lower court erred in law in disregarding his evidence and rendering adverse judgment against him.

National Marketing Corporation v. Federation of United Namarco Distributors, Inc.,[73] *Gonzaga v. Court of Appeals*,[74] and *Amargo v. Court of Appeals*[75] reiterate the rule that questions which were not raised in the lower court cannot be raised for the first time on appeal.

On the effect of an appeal, two cases may serve as guide.

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[66] G.R. No. L-34709, June 15, 1973, 51 SCRA 262, 265-267 (1973).
[67] G.R. No. L-34447, June 22, 1973, 51 SCRA 310, 311-312 (1973).
[68] G.R. No. L-36629, September 28, 1973, 53 SCRA 228, 235-236 (1973).
[69] G.R. No. L-36854, September 19, 1973, 53 SCRA 114, 118-119 (1973).
[70] *Supra*, note 6.
[71] G.R. No. L-28617, January 31, 1973, 49 SCRA 296, 303-305 (1973).
[72] G.R. No. L-24278, September 14, 1973, 53 SCRA 44, 46-47 (1973).
[73] G.R. No. L-22578, January 31, 1973, 49 SCRA 238, 269-270 (1973).
[74] G.R. No. L-27455, June 28, 1973, 51 SCRA 381, 386 (1973).
[75] *Supra*, note 11 at 72.

The first is *Imperial v. De la Cruz*[76] where it was held that since respondent court correctly declared the plaintiff non-suited and ordered the dismissal of his case for his failure to prosecute and non-appearance at the pre-trial, plaintiff's action has utterly failed. There is *no judgment* that plaintiff may invoke in his favor. The judgment of the city court in favor of plaintiff was vacated by petitioner's appeal and the dismissal of the case could not possibly or logically have the contrary effect of reviving such vacated judgment.

The second is that of *Marcelo Steel Corporation v. Court of Appeals*[77] where it was pointed out that the trial court did not issue any order of execution. The sheriff's act of proceeding with the foreclosure sale was not done by virtue of any such order of execution, but pursuant to his authority and duty under Act 3135 as amended by Act 4118 governing the extrajudicial foreclosure of mortgages, which is simply to sell the mortgaged properties at public auction to the highest bidder, upon verified petition of the mortgagee and without need of any judicial order. In other words, the sheriff went ahead not because he was so ordered by the court, but precisely because the court refused to restrain him by dismissing respondent's petition for prohibition and lifting the *status quo* order it had preliminarily issued upon the filing of the complaint. Under these circumstances, it was specifically held that the perfection of respondent's appeal could not by itself have had the effect of restoring the *status quo* order, without an express order in that sense, which, of course, the court had the power to issue.

B. Dismissal of Appeal

In sustaining the dismissal of the appeal, the Supreme Court said in *Reparations Commission v. Coquia*[78] that petitioner's task in opposing respondent's motion to dismiss the appeal was far from easy. For one thing, it could not successfully refute the fact of dismissal of the main case by the Court of Appeals. It ought to have known then that the incidental matter of its having to comply with and respect the writ of preliminary injunction in question could not survive. This is so especially, as the resolution of the Court of Appeals has reached the stage of finality. Its insistence on keeping an aspect thereof alive is bereft of support of law. There is no justification then for this proceeding, the Court concluded, being further kept in the docket of the Tribunal, when no useful purpose would be served thereby.

Certainly obvious to the Court of Appeals in *Philippine Bank of Communications v. Court of Appeals*[79] was that on the basis of the typewritten

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[76] *Supra*, note 45 at 428-429.
[77] G.R. Nos. L-34317 & L-34335, November 28, 1973, 54 SCRA 89, 93-94 (1973).
[78] G.R. No. L-34697, February 28, 1973, 49 SCRA 545, 548 (1973).
[79] G.R. No. L-37362, November 29, 1973, 54 SCRA 217, 230 (1973).

data contained in the original record on appeal, forwarded to and received by it, the appeal was perfected on time, but it was the handwritten alterations in ink of the dates of the filing of the motion for reconsideration, notice of appeal, appeal bond and record on appeal appearing on pages 22 and 40 thereof, which completely and substantially altered the picture to the prejudice of the petitioner. The Supreme Court concluded that, in the light of the certification as to correctness made by the acting clerk of court of the Court of First Instance of Pangasinan and the existence of alterations in ink on the typewritten dates contained in the original record on appeal, it was, therefore, precipitate and hasty on the part of the respondent Court of Appeals to have dismissed petitioner's appeal.

In *Ortalis v. Court of Appeals,*[80] it was held that the dismissal of the appellant's appeal was caused either by gross negligence or deliberate and wanton error committed by someone in the Office of the Clerk of Court of the Court of Appeals who sent the notice to file appellant's brief to a wrong address. It is unfortunate that the Court of Appeals refused to listen to the plea of Atty. Ramon H. Garaygay that he does not have his law office in Iloilo City as it is in Bacolod City. Without making any effort to verify the correct address of Atty. Ramon H. Garaygay, the Court of Appeals turned a deaf ear to his correct claim that the notice was not received by him and persisted in its refusal to reconsider the dismissal of the appeal. For this ineptitude and obstinacy, petitioner had to go to the Supreme Court for relief and incur additional expense. In finding the petition meritorious, the Supreme Court made mention of the fact that an undue delay in the administration of justice as well as unnecessary expense in obtaining the same was thereby perpetrated.

The Supreme Court stated in *Monticines v. Court of Appeals*[81] that justice in this instance would have been served had no such dismissal of the appeal been ordered, especially so as the brief had been submitted to respondent Court as far back as October 16, 1972. It could even be said with some degree of assurance that had there been a reconsideration of such an order, perhaps by this time litigation could have been ready for adjudication by respondent Court.

It was held in *Municipality of Tiwi, Albay v. Cirujales,*[82] that the appellate court's summary dismissal of the appeal even before its receipt of the records of the appealed case as ordered by it in a prior *mandamus* case must be set aside as having been issued precipitately and without an opportunity to consider and appreciate the unavoidable circumstances of record not attributable to petitioners that caused the delay in the elevation of the records of the case on appeal.

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[80] G.R. No. L-36088, May 16, 1973, 51 SCRA 1, 3 (1973).
[81] G.R. No. L-35913, September 4, 1973, 53 SCRA 14, 19 (1973).
[82] G.R. No. L-37520, December 26, 1973, 54 SCRA 390 (1973).

XVIII. Provisional Remedies

A. Attachment

It was held in *Virata v. Aquino*[83] that the placing of the goods under attachment as a result of an action commenced by a third party against the consignee, while the liabilities due on the said goods to the Government have not been fully settled and while they remain in the custody of custom authorities, undermines the efficacy of our customs laws and is void. It reiterated the ruling that a writ of preliminary attachment is a provisional remedy issued upon order of the court where an action is pending, to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant. On proper grounds, to be determined by the trial court in accordance with the Rules of Court, the writ will issue and be levied upon the property of the defendant. In the present case, however, the Government of the Philippines, "having a lien on the goods for the payment of the duties accruing thereon, and being entitled to a virtual custody of them from the time of their arrival in port until the duties are paid or secured, any attachment by [the sheriff] is an interference with such lien and right of custody."

B. Injunction

The Supreme Court held in *Firmalo v. Tutaan*[84] that the trial court had no power to alter the effect of the final decision in L-32651-52 by lifting the writ of preliminary mandatory injunction ordered reinstated by the Supreme Court and substituting in its place a receivership which would take away the possession of the property in dispute from the Firmalos, pending trial on the merits in Civil Case No. IV-146.

As observed by the Supreme Court in *Vda. de Enriquez v. De la Rosa*,[85] the petitioners failed to comprehend the true import of the preliminary injunction issued by the respondent court. The action brought by the Alcaparas was not one to dispute the validity of the judgment of eviction of the inferior court. It was an action for the vindication of their alleged preferential right to purchase a portion of the Government-owned estate —and this was not barred, not being in the nature of a compulsory counterclaim in an ejectment suit, by the decision earlier rendered by the inferior court. The petition of Alcaparas for preliminary injunction merely sought to stop the demolition of their dwelling and their exclusion therefrom which, if consummated, would render inutile whatever favorable judgment the respondent court might hand down in their favor. On equitable

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[83] G.R. No. L-35027, September 10, 1973, 53 SCRA 24, 30-31. (1973).
[84] G.R. No. L-35408, October 27, 1973, 53 SCRA 505, 510. (1973).
[85] G.R. No. L-27729, November 26, 1973, 54 SCRA 1, 11 (1973).

grounds, the court was well within the limits of a sound exercise of discretion in issuing the ancillary writ of preliminary injunction.

C. Delivery of Personal Property

Reiterated in *Northern Motors, Inc. v. Herrera*[86] is the principle that there can be no question that persons having a special right of property in the goods the recovery of which is sought, such as a chattel mortgagee, may maintain an action for replevin therefor. It was added that the Rules do not require that in an action for replevin, the plaintiff should allege that the "mortgagee has asked or directed a public officer to foreclose the mortgage and that the mortgagor has refused to surrender the mortgaged chattel to such public officer." All that is required by Section 2 of Rule 60 is that upon applying for an order for replevin, the plaintiff must show that he is "the owner of the property claimed, particularly describing it, or is entitled to the possession thereof"; that the property is wrongfully detained by the defendant with an allegation on the cause of detention; that the same has not been taken for any tax assessment or fine levied pursuant to law nor seized under any execution, or an attachment against the property of such plaintiff or if so seized that it is exempt from seizure. The affidavit must also state the actual value of the property.

XIX. SPECIAL CIVIL ACTIONS

A. *Certiorari* and *Mandamus*

Carandang v. Cabatuando[87] reiterates the doctrine that in a *certiorari* proceeding, the court is confined to questions of jurisdiction. The reason is that the function of the writ of *certiorari* is to keep an inferior court within its jurisdiction, to relieve persons from acts—that is, of acts which they have no authority or power in law to perform—of courts and judges and not to correct errors of procedure or mistakes in the judge's findings or conclusions.[88] For a writ of *certiorari* to issue, it must not only be shown that the board, tribunal or officer acted without or in excess of jurisdiction, or in grave abuse of jurisdiction, but also that there is no appeal or other plain, speedy, and adequate remedy in the course of law.[89]

In *Rubio v. Mariano*,[90] it was held that while the Court recognized the fact that the movants did raise in their respective answers the issue

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[86] G.R. No. L-32674, February 22, 1973, 49 SCRA 392, 396-397 (1973).

[87] *Supra*, note 34 at 390.

[88] Bustos v. Moir and Fajardo, 35 Phil. 415, 417-418 (1916); Pacis v. Averia, G.R. No. L-22526, November 29, 1966, 18 SCRA 907, 914-915 (1966); Albert v. Court of First Instance of Manila, G.R. No. L-26364, May 29, 1968, 23 SCRA 948, 965 (1968); Estrada v. Sto. Domingo, G.R. No. L-30570, July 29, 1969, 28 SCRA 890, 915 (1969).

[89] Jose v. Zulueta, G.R. No. L-16598, May 31, 1961, 2 SCRA 574, 578 (1961); Atlas Development and Acceptance Corporation v. Gozon, G.R. No. L-21588, July 31, 1967, 20 SCRA 886, 891 (1967).

[90] *Supra*, note 20.

as to the propriety of the petition for *certiorari* on the ground that the remedy should have been by appeal within the reglementary period, it considered such issue as a mere technicality which would have accomplished nothing substantial except to deny the petitioner the right to litigate the matters raised in the amended and supplemental answer and in the third-party complaint, leaving him, however, the right to do so in an entirely new action.

The Supreme Court held in *Carandang v. Cabatuando*[91] that even assuming, *arguendo,* that the trial judge committed an error in basing his decision on respondent's testimony, the petitioner had a remedy by appeal and not by a petition for *certiorari.* Where the petitioner had failed to file a timely appeal from the trial judge's order, he could no longer avail himself of the remedy of the special civil action for *certiorari* in lieu of his lost right of appeal, if there is no error of jurisdiction committed by the trial court.[92]

The Supreme Court sustained the ruling of the Court of Appeals in *Torres v. Court of Appeals*[93] concerning the contention that respondents were guilty of laches because they filed their petition for *certiorari* after the lapse of over 9 months from the time of the judgment. Assuming that the decision complained of was actually received by the respondents on the date it was rendered, the intervening period to the filing of the petition is only 2 months and 7 days, which is shorter than the shortest period of 2 months and 28 days cited in petitioners' *ex-parte* motion for reconsideration filed in the Court of Appeals in support of their theory of laches. And a mere 12 days intervened between the issuance of the writ of execution and the filing of the petition for *certiorari.*

In *Macias v. Cruz,*[94] it was held that any arbitrary or capricious denial of the motion for intervention is correctible by *mandamus,* if an ordinary appeal would not be an adequate and speedy remedy.

B. Forcible Entry and Unlawful Detainer

Fuentes v. Bautista[95] reiterates the well-settled rule that what determines the jurisdiction of municipal or city courts in forcible entry and detainer case is the nature of the action pleaded in the complaint. If the facts therein alleged constitute forcible entry and detainer, the municipal or city court may validly try and decide the case, regardless of whether the facts are not proved at the trial.

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[91] *Supra,* note 34 at 393.

[92] Mabuhay Insurance & Guaranty, Inc. v. Court of Appeals, G.R. No. L-28700, March 30, 1970, 32 SCRA 245, 252 (1970).

[93] *Supra,* note 13.

[94] *Supra,* note 26 at 98.

[95] G.R. No. L-31351, October 26, 1973, 53 SCRA 420, 426 (1973).

Reiterated in *Bormaheco, Inc. v. Abanes*[96] is the rule that an action for ejectment requires, as an indispensable requisite, prior possession.

In *Viray v. Mariñas,*[97] it was held that the dismissal of the first ejectment case on the ground that the tenant was "paying regularly the rentals" does not preclude the owner, however, from making a new demand upon the tenant to vacate should the latter again fail to pay the rents on time. The second demand for the payment of the rents and for the surrender of the possession of the leased premises and the refusal of the tenant to vacate, would then constitute a new cause of action.

Saliwan v. Amores[98] is a case where in effect by the very issues joined by the parties and by the very nature of the proof presented by them, the question of physical possession could not properly be determined without settling that of lawful or *de jure* possession and of ownership. It was held that the jurisdiction of the municipal court over the forcible entry case was lost and the action should have been dismissed.

The ruling in *Ariem v. De los Angeles*[99] is to the effect that the family, relatives, and other privies of the defendant are as much bound by the judgment in an ejectment case as the party from whom they derive their possession.[100]

XX. SPECIAL PROCEEDINGS

A. Settlement of Estate of Deceased Persons

1. Venue

Under the facts on record in *Cuenco v. Court of Appeals,*[101] the Supreme Court held that the Cebu court did not act without jurisdiction nor with grave abuse of discretion in declining to take cognizance of the intestate petition and instead deferring to the testate proceedings filed just a week later by petitioner as surviving spouse and designated executrix of the decedent's last will, since the record before it (the petitioner's opposition and motion to dismiss) showed the falsity of the allegations in the intestate petition that the decedent had died without a will. It was noteworthy that respondents never challenged by *certiorari* or prohibition proceedings the Cebu court's order of April 10, 1964 deferring to the probate proceedings before the Quezon City court, thus leaving the latter free (pursuant to the Cebu court's order of deference) to exercise jurisdiction and admit the decedent's will to probate. Quezon City was the conjugal residence of the decedent.

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[96] G.R. No. L-28087, July 13, 1973, 52 SCRA 73, 78 (1973).
[97] *Supra*, note 32 at 53.
[98] G.R. No. L-26356, June 27, 1973, 51 SCRA 329, 336-338 (1973).
[99] G.R. No. L-32164, January 31, 1973, 49 SCRA 343, 347-348 (1973).
[100] Gozon v. De la Rosa, 77 Phil. 919, 925 (1947).
[101] G.R. No. L-24742, October 26, 1973, 53 SCRA 360, 369-370 (1973).

2. Allowance or Disallowance of Will

In holding in *Cruz v. Villasor*[102] that the last will and testament in question was not executed in accordance with law, the Court observed that the notary public before whom the will was acknowledged could not be considered as the third instrumental witness since he could not acknowledge before himself his having signed the will.

3. General Powers and Duties of Executors and Administrators

In *Macias v. Cruz,*[103] it was held that the appointment of an ancillary administrator is committed to the wisdom of the trial court.

Reiterated in *Medina v. Court of Appeals*[104] is the established doctrine that an administrator is deemed unsuitable and should be removed where his personal interests conflict with his official duties, by virtue of the equally established principle that an administrator is a quasi-trustee, disqualified from acquiring properties of the estate, and who should be indifferent between the estate and claimants of the property except to preserve it for due administration, and who should be removed when his interest conflicts with such right and duty. It was also stated that the Court does not look with favor upon the practice of appointing clerks of court or other court employees as administrators or receivers of estates or the like, and probate courts are therefore enjoined to desist from such a practice.

In *Vda. de Bacaling v. Laguna,*[105] it was ruled that under Section 3, Rule 82 of the Rules of Court, petitioner's lawful acts before the revocation of her letters of administration or before her removal shall have the same validity as if there was no such revocation or removal. It is elementary that the effect of revocation of letters of administration is to terminate the authority of the administrator but the acts of the administrator, done in good faith prior to the revocation of the letters, will be protected, and a similar protection will be extended to rights acquired under a previous grant of administration.

4. Actions by and against Executors and Administrators

The Court held in *Abeleda v. Court of First Instance of Baguio*[106] that petitioner's appointment as permanent administratrix removes all doubts as to her authority to take charge of the Baguio property (even under her original special letters of administration) and to file the collection suit in the Baguio city court on behalf of the estate of the deceased.

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[102] G.R. No. L-32213. November 26, 1973, 54 SCRA 31, 33 (1973).
[103] *Supra*, note 26 at 100.
[104] G.R. No. L-34760, September 28, 1973, 53 SCRA 206, 213-214 (1973).
[105] G.R. No. L-26694, December 18, 1973, 54 SCRA 243 (1973).
[106] *Supra*, note 33.

5. Distribution and Partition of the Estate

In *Lee v. Court of Appeals*,[107] it was observed that when three more parcels of land of the estate were discovered after the distribution, and the three heirs partitioned the same among themselves extrajudicially in 1963 instead of reopening the closed intestate proceeding, none of the three heirs or any affected third party has ever questioned the said extrajudicial partition.

B. *Habeas Corpus*

In *Mendoza v. Court of First Instance of Quezon*,[108] it was stated that *habeas corpus* could be invoked by the petitioner if he were able to show the illegality of his detention. There is aptness and accuracy in the characterization of the writ of *habeas corpus* as the writ of liberty. The party who is keeping a person in custody has to produce him in court as soon as possible. What is more, he must justify the action taken. Only if it can be demonstrated that there has been no violation of one's right to liberty will he be absolved from responsibility. Unless there is such a showing, the confinement must thereby cease.

C. Change of Name

It was ruled in *Secan Kok v. Republic*[109] that Section 2 of Rule 103 of the Revised Rules of Court provides that a petition for a change of name shall be signed and verified by the person in his behalf. There is need therefore for a separate petition to be filed by the wife Lucia O. Tee, who is already of age, in her own behalf and in behalf of her minor children. The change of name of the petitioner-appellee's wife and other minor children cannot be done by mere motion as an incident in the proceedings for the change of name of the petitioner-appellee. It was also held that inasmuch as petitioner-appellee's own petition and the publication of the same do not include all his names and aliases, the new name he desires to bear as well as those of his minor daughter Marilyn Se, the trial court acquired no jurisdiction over his petition and the decision granting his petition is void *ab initio* and could be attacked collaterally, vitiated as it was by a fatal lack of jurisdiction.

EVIDENCE

Evidence is defined as the means, sanctioned by the Rules of Court, of ascertaining in a judicial proceeding the truth respecting a matter of fact.[110]

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[107] G.R. No. L-37135, December 28, 1973, 54 SCRA 442, 446 (1973).
[108] G.R. Nos. L-35612-14, June 27, 1973, 51 SCRA 369, 371 (1973).
[109] G.R. No. L-27621, August 30, 1973, 52 SCRA 322, 327-329 (1973).
[110] RULES OF COURT, Rule 128, Sec. 1.

I. ADMISSIBILITY

Evidence is admissible when it is relevant to the issue and is not excluded by the Rules.[111]

A. Qualification of witnesses

Held in *Carandang v. Cabatuando*[112] is that the law itself provides that a party or any other person interested in the outcome of a case may testify.[113] Reiterated is the ruling that the testimony of an interested witness should not be rejected on the ground of bias alone and must be judged on its own merits, and if such testimony is clear and convincing and not destroyed by other evidence on record, it may be believed.[114] Neither can said testimony be said to be self-serving. Self-serving evidence is that made by a party out of court at one time; it does not include a party's testimony as a witness in court.[115]

B. Confession

People v. Manipula[116] reiterates the ruling that the most painstaking scrutiny must be resorted to by the trial courts in weighing evidence relating to alleged voluntary confessions of the accused and the courts should be slow to accept such confessions unless they are corroborated by other testimony, having in mind that involuntary or coerced confessions obtained by force or intimidation are null and void and abhored by the law, which proscribes the use of such cruel and inhuman methods to secure a confession.

Along the same line is the ruling in *People v. Palacpac*.[117]

C. Dying Declaration

In *People v. Geronimo*,[118] it was noted that the dying declaration of the deceased points to Romeo and Jose, together with Enrico, as his assailants who had grudges against him. It was found that the statement of the deceased was taken at the municipal building while he was in a serious condition. The Court held that a man at the threshold of death would not accuse his first cousins, who supposedly even helped him, as his would-be killers if the accusation does not sit with the truth.

D. Part of the *Res Gestae*

Reiterating the settled ruling on the subject of *res gestae*, the Supreme Court, in *People v. Abboc*,[119] held that while the statement of the deceased

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111 RULES OF COURT, Rule 128, Sec. 3.
112 G.R. No. L-25384, October 26, 1973, 53 SCRA 383, 392-393 (1973).
113 RULES OF COURT, Rule 130, Sec. 18.
114 U.S. v. Mante, 27 Phil. 134, 138 (1914).
115 National Development Co. v. Workmen's Compensation Commission, G.R. No. L-21724, April 27, 1967, 19 SCRA 861, 865-866 (1967).
116 G.R. No. L-27608, July 6, 1973, 52 SCRA 1, 10 (1973).
117 G.R. No. L-27822, February 28, 1973, 49 SCRA 440, 457-458 (1973).
118 G.R. No. L-35700, October 15, 1973, 53 SCRA 246, 257 (1973).
119 G.R. No. L-28327, September 14, 1973, 53 SCRA 54, 61 (1973).

Lucagan Banig to his sister Dayapan cannot strictly be considered an *ante mortem* declaration, it is admissible in evidence as part of the *res gestae*.[120]

E. Motive

It was held in *People v. Herila*[121] that it is true that no motive has been shown why the appellant would kill Matias Lalaguna, but the Court has repeatedly held that motive is pertinent only when there is doubt as to the identity of the culprit. Since in the case at bar the accused was positively identified by credible witnesses to be one of the assailants of the victim, proof of motive is not essential for conviction.

II. BURDEN OF PROOF AND PRESUMPTIONS

A. Burden of Proof in Criminal Cases; Self-Defense

People v. Llamera[122] reiterates the settled rule that one who admits the infliction of injuries which caused the death of another has the burden of proving self-defense with sufficient and convincing evidence. If such evidence is of doubtful veracity, and is not clear and convincing, the defense must necessarily fail. The reason is that having admitted that he is the author of the death of the deceased, appellant, in order to avoid criminal liability, is now obliged to prove the justifying circumstance claimed by him, relying not on the weakness of that of the prosecution but on the strength of his own evidence, for even if the evidence of the prosecution is weak, it cannot be disbelieved after the accused himself has admitted the killing.

B. Presumptions

Amargo v. Court of Appeals[123] restates the settled principle that after jurisdiction has once been acquired, every act of a court of general jurisdiction shall be presumed to have been rightly done. This rule is applied to every judgment or decree rendered in the various stages of the proceedings from their initiation to their completion. Unless the contrary appears or is shown, it will be presumed that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have been and will be duly and regularly performed.

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[120] People v. Palamos, 49 Phil. 601 (1926).
[121] G.R. No. L-32785, May 21, 1973, 51 SCRA 31, 38 (1973).
[122] G.R. Nos. L-21604-5-6, May 25, 1973, 51 SCRA 48, 57 (1973).
[123] G.R. No. L-31762, September 19, 1973, 53 SCRA 64, 72-73 (1973).

III. Weight and Sufficiency of Evidence

A. Weight of Evidence in Appellate Courts

People v. Abboc[124] reiterates the settled doctrine that great respect and weight are due to the judgment of the trial court in passing on the credibility of witness and that unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted as to impeach its findings or call for a different finding, the Court on appeal will justifiably assume that the trial court acted fairly, justly and legally in the exercise of its primary function of appraising and resolving the question of credibility and will not interfere with the trial court's judgment and findings thereon.

The decisions in *Evangelista & Co. v. Abad Santos,*[125] *People v. Carandang*[126] and *People v. Geronimo*[127] are along the same line.

B. Credibility

In *People v. Geronimo,*[128] the Court observed that no sufficient reason has been adduced why the trial court's findings and conclusion on the credibility of the witnesses for the prosecution should be discarded. The Court further pointed out that the prosecution witnesses have no reason to impute so grave a wrong to the accused, if really the latter did not commit it.

In *People v. Resayaga,*[129] it was noted that it is a common phenomenon to find inconsistencies, even improbabilities, in the testimony of a witness, especially on minor details or collateral matters. That the accounts of witnesses regarding the same occurrence are contradictory on certain details is not unusual. There is no perfect or omniscient witness because there is no person with perfect faculties or senses. An adroit cross-examiner may trap a witness into making statements contradicting his testimony on direct examination. By intensive cross-examination on points not anticipated by a witness and his lawyer, a witness may be inveigled into making statements that do not dovetail with the testimonies of other witnesses on the same points. Yet, if it appears that the witness has not willfully perverted the truth, as may be gleaned from the tenor of his testimony and as concluded by the trial judge from his demeanor and behavior on the witness stand, his credibility on material points may be accepted.

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[124] *Supra,* note 119.
[125] G.R. No. L-31684, June 28, 1973, 51 SCRA 416, 423 (1973).
[126] G.R. No. L-31012, August 15, 1973, 52 SCRA 259, 267-268 (1973).
[127] *Supra,* note 118 at 258.
[128] *Supra,* note 118 at 258.
[129] G.R. No. L-23234, December 26, 1973, 54 SCRA 350, 360 (1973).

Of the same tenor are the decisions in *People v. Otto*,[130] *People v. Abboc*[131] and *People v. Macaraeg*.[132]

C. Proof Beyond Reasonable Doubt

Reiterated in *People v. Zamora*[133] is the principle that accusation is not, according to the fundamental law, synonymous with guilt. It is incumbent on the prosecution to demonstrate that culpability lies. An accused is not even called upon then to offer evidence on his behalf. His freedom is forfeited only if the requisite *quantum* of proof necessary for conviction be in existence. To such a standard, the Supreme Court has always been committed.

Along the same line is the ruling in *People v. Macaraeg*[134] where it was stated that what is required is moral certainty.

Applying the above well-settled doctrine in *People v. Palacpac*,[135] the Supreme Court held that it is difficult to explain and legally impossible to justify how the trial judge, after admitting "that the participation of the accused Canuto Tolentino, Leopoldo Palad and Jose Corpuz was not clearly shown by testimonial witnesses for the prosecution," could have found them guilty, and as co-principals yet. How could there be in his mind that moral certainty, the existence of which is indispensable?

D. Evidence of Conspiracy

People v. Geronimo[136] reiterates the rule that when the defendants by their acts aimed at the same object, one performing one part and another performing another part so as to complete it, with a view to the attainment of the same object, and their acts, though apparently independent, were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments, the court will be justified in concluding that said defendants were engaged in a conspiracy. Conspiracy must be proved as clearly and as convincingly as the commission of the crime itself. It must be real and not presumptive. In the absence of clear proof that the killing was in fact envisaged by them, and there being no satisfactory showing that the killing was done in furtherance of the conspiracy, they cannot be held responsible therefor.

Of the same tenor are the rulings in *People v. Enomar*,[137] *People v. Palacpac*[138] and *People v. Llamera*.[139]

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[130] G.R. No. L-29631, Janaury 31, 1973, 49 SCRA 306, 315-316 (1973).
[131] *Supra*, note 119.
[132] G.R. No. L-32806, October 23, 1973, 53 SCRA 285, 294-295 (1973).
[133] G.R. No. L-34090, November 26, 1973, 54 SCRA 47, 52-53 (1973).
[134] *Supra*, note 132 at 292-293.
[135] *Supra*, note 117 at 457.
[136] *Supra*, note 118 at 254-255.
[137] G.R. No. L-26898, January 16, 1973, 49 SCRA 55, 63-65 (1973).
[138] *Supra*, note 117 at 451.
[139] *Supra*, note 122 at 58-60.

E. *Alibi*

Sustaining in *People v. Herila*[140] the ruling of the trial court that the defense of alibi is without merit, the Supreme Court reiterated the settled rule that alibi cannot prevail over positive testimonies of identification by credible witnesses. Besides, it was found that it was not physically impossible for the accused to be at the scene of the crime at six o'clock in the morning of August 17, 1966 since the distance from Barrio Mapuyo and Sitio Sawmill was only four (4) kilometers and could be reached in thirty (30) minutes hiking.

The rulings in *People v. Manipula,*[141] *People v. Abboc,*[142] *People v. Dorico*[143] and *People v. Llamera*[144] are of the same tenor.

IV. POWERS OF THE COURTS

In *Vda. de Precilla v. Narciso,*[145] the main ground of movants is that there is no need for the remand order in the August 18, 1972 resolution because after all, there is enough proof in the record, independent of the testimony of Dr. Tamesis regarding the alleged inability of the deceased to read the will in question, of such incapacity. The Court pointed out that the purpose of the remand is not to give the proponent opportunity to complete her evidence, as movants seem to insinuate, but rather to give oppositors all the chances to concretize, if they can, their technical evidence by which alone the weight of the testimonies of the attesting witnesses may perhaps be successfully overthrown.

The Supreme Court said in *Alcantara-Pica v. Judge CFI-Rizal*[146] that it sees no useful end or purpose that can be served by respondent court's last order of January 15, 1973 belatedly reserving to the parties the bringing of a proper court action to recover possession of the car and litigate once more the issue of ownership thereof—when for all intents and purposes such action has already been duly submitted to respondent court and its resolution is now properly the subject of the present petition. It was held that the issues of possession and ownership of the vehicle, having been duly litigated below, should properly be determinately resolved in the present case, without further waste of time and effort that would be needlessly expended in a separate action that would just duplicate the proceeding already had in the case at bar.

In *Republic v. CFI of Lanao del Norte,*[147] the Supreme Court said that it finds no other alternative but to terminate the present proceedings

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[140] *Supra,* note 121.
[141] *Supra,* note 116 at 12.
[142] *Supra,* note 119 at 57-58.
[143] G.R. No. L-31568, November 29, 1973, 54 SCRA 172, 181 (1973).
[144] *Supra,* note 122 at 58.
[145] G.R. No. L-27200, July 9, 1973, 52 SCRA 34, 35-36 (1973).
[146] G.R. No. L-36434, October 27, 1973, 53 SCRA 512, 519-520 (1973).
[147] G.R. Nos. L-33949, L-33986, & L-34188, October 23, 1973, 53 SCRA 317, 346 (1973).

before it, so as to give way to further proceedings in the court below, wherein all pertinent issues arising from the developments which have taken place since August 17, 1972 may be appropriately and fully threshed out, considering that the factual matters involved therein would require the formal and proper presentation of varied and voluminous evidence which the appellate court is not adequately equipped to receive.