Effect of filing of declaration during pendency of proceedings.

FACTS: Petitioner filed his "Declaration of Intention" with the Office of the Solicitor General after he had filed his petition for naturalization in court, but before the hearing of the same was finished, contrary to the provisions of Sec. 5, Revised Naturalization Law.

HELD: Petitioner contended that he had substantially complied with the law by presenting his "Declaration of Intention" during the pendency of the proceedings. This contention cannot be sustained. An alien who seeks political rights as a member of this nation can rightly obtain them only upon terms and conditions specified by Congress. Courts are without authority to sanction changes or modifications; their duty is rigidly to enforce the legislative will in a matter so vital to the public welfare.

Petitioner argued that the failure of the Solicitor General to object to the introduction in evidence of the document evidencing the filing of petitioner's "Declaration of Intention" amounted to a waiver of the requisite of filing of declaration. This contention is untenable because the competency of the court is conferred by law, not by the will of the applicant, nor by the acquiescence of the fiscal, nor by the condescension of the judge who presides. (DE LA CRUZ *vs.* REPUBLIC, G. R. No. L-4589, Feb. 27, 1953.)

REMEDIAL LAW

CIVIL PROCEDURE

COMMENCEMENT OF ACTIONS

Accrual of cause of action.

FACTS: This is an action to recover damages arising from the alleged unlawful possession by defendants of three parcels of land belonging to plaintiff. The three parcels of land had been the subject of a previous registration proceeding wherein Bough, deceased husband of plaintiff, was the applicant and defendants were the oppositors. Plaintiff contends that it was premature to bring any action for damages against defendants before the final termination of the registration proceeding.

HELD: Plaintiff's contention that an action for damages against defendants was not yet in order during the pendency of the registration proceeding is untenable. (VDA. DE BOUGH *vs.* SINGSON, G. R. No. L-5155, Feb. 16, 1953.)

PARTIES TO CIVIL ACTIONS

Indispensable parties.

In an action for the annulment of a sale of property, the vendees are indispensable parties. Being indispensable parties, they should be joined in the proceedings for annulment. As that was not done, it was error for the lower court to order the annulment of the sale and to have its transfer certificate of title, already issued in favor of the vendees, canceled. (INTESTATE ESTATE OF TAN SIN AN, G. R. No. L-5303, June 30, 1953.)

Judgment cannot be rendered against persons who have not been impleaded.

Judgments must be responsive to the issues presented by

the pleadings. As there can be no issues between plaintiff or defendant on the one hand and a stranger to the case on the other, no judgment can be rendered for or against one who has not been impleaded. For the court has absolutely no jurisdiction over the person of such stranger. (SUSACAY *vs.* BUENAVENTURA ET AL., G. R. No. L-5856, Dec. 29, 1953.)

INFERIOR COURTS

Right to demand limitation of issues to those presented in the lower court.

In a case appealed from the JP Court to the CFI, the right to demand a limitation of the issues to those presented in the JP Court is purely a procedural privilege or right, lodged in the party adversely affected, and, like any other procedural or statutory right not involving a public policy, subject to waiver by him. The party accorded the privilege must raise it at the first opportune time, and his failure to do so amounts to a waiver thereof. (SARREAL *vs.* TAN ET AL., G. R. No. L-5429, Feb. 19, 1953.)

VENUE

Action to collect under Workmen's Compensation Act must be at defendant's place of residence.

FACTS: Plaintiffs are parents of A. Sipin who, as conductor of a bus that met with an accident in San Nicolas, Ilocos Norte, due to the driver's recklessness, died as a result of the accident. Action was brought in the JP Court of San Nicolas to collect the sum of ₱1,274.00 as compensation under the Workmen's Compensation Act.

Court dismissed the complaint on the ground that venue had been improperly laid. The court said that since the action was a personal one, it should have been filed in the municipal court of the City of Manila where defendant resided. This was affirmed by the CFI of Ilocos Norte. Hence this appeal.

HELD: The action to recover under the Workmen's Compensation Act did not arise in San Nicolas because the accident took place there. The action to collect compensation under the Act being a personal one, it must be brought in the court

or city where defendant resides. (SIPIN and FONTANO *vs.* ROJAS, G. R. No. L-5214, Aug. 21, 1953.)

COMPLAINT

Amount of exemplary damages need not be alleged.

The amount of exemplary damages need not be pleaded in the complaint because the same cannot be pre-determined, the reason being it is merely incidental or dependent upon what the court may award as compensatory damages. One can merely ask that it be determined by the court if, in its discretion, the same is warranted by the evidence. (SINGSON ET AL. *vs.* ARAGON ET AL., G. R. No. L-5164, Jan. 27, 1953.)

Effect of a prayer for an unspecified amount of exemplary damages on jurisdiction of Municipal Court.

FACTS: Lorza filed a complaint in the Municipal Court of Manila against petitioners herein, to recover the sum of ₱1,321.80 as actual damages, and ₱500.00 as attorney's fees, and praying that he be awarded such exemplary damages as the court might deem proper. Petitioners filed a motion to dismiss, contending that the municipal court had no jurisdiction over the case because it involved a prayer for an unspecified amount of exemplary damages, which was beyond its limited jurisdiction.

HELD: The fact that the amount of exemplary damages prayed for was not specified does not necessarily mean that the case was beyond the jurisdiction of the Municipal Court of Manila, considering that the determination of the amount of exemplary damages depends upon the discretion of the court. If the court should decide to award exemplary damages because they are warranted by the evidence, it can only do so by awarding plaintiff such amount as, in addition to the actual damages, would not exceed the limit of its jurisdiction. Plaintiff may waive totally or partially his claim for exemplary damages, and when he files his case before the municipal court he is presumed to have waived such amount as, if added to actual damages, will exceed the amount of ₱2,000.00. (SINGSON ET AL. *vs.* ARAGON ET AL., G. R. No. L-5164, Jan. 27, 1953.)

MOTION TO DISMISS

Where title to properties is involved, an ordinary civil action is not a duplication of the probate proceedings although the parties and subject-matter may be identical.

FACTS: During her lifetime, Maria donated to plaintiffs four parcels of land. When Maria died, she left a purported will wherein the four parcels of land were still listed as part of her estate. Defendant Augusto filed a petition for the probate of said will in Special Proceedings No. 450. Plaintiffs opposed the probate, claiming that the four parcels of land could no longer be disposed of in the will because they had previously been donated to them.

Subsequently, plaintiffs filed the present action, claiming that the four parcels in question belonged to them by virtue of the donation made by Maria. Plaintiffs prayed that Augusto be declared not to have any interest whatsoever in said properties and that the title of plaintiffs thereto be declared valid. Upon motion by defendant, the trial court dismissed the complaint on the ground that the parties and the subject-matter involved in the probate proceedings and in the ordinary action were the same and that the present action was in effect a duplication.

HELD: The present action is not a duplication of the probate proceedings although the parties and subject-matter may be identical. A probate court cannot adjudicate or determine title to properties claimed to be part of the estate and equally claimed to belong to outside parties. All the said court can do as regards said properties is determine whether they should or should not be included in the inventory or list of properties to be administered. If there is no dispute, well and good; but if there is, then the parties, the administrator and the opposing parties have to resort to an ordinary action for a final determination of the conflicting claims of title, because the probate court cannot do so. It is evident that the conflicting claims in the present action cannot be adjudicated in the probate proceedings. (MALLARI ET AL. *vs.* MALLARI, G. R. No. L-4656, Feb. 23, 1953.)

When another pending action constitutes no defense.

FACTS: This is an action to recover from defendant as party subsidiarily liable for the crime committed by an employee in the discharge of the latter's duty. Defendant filed a motion to dismiss on the ground that there was another pending action between the same parties for the same cause (Civil Case No. 8023).

HELD: The present case (Civil Case No. 9221) stems from a criminal case in which defendant was made subsidiarily liable under Art. 103 of the Rev. Penal Code; the other case (No. 8023) was an action for damages based on *culpa aquiliana.* No doubt, in both cases, there is identity of parties. But there is no identity of relief prayed for. Evidently, therefore, both cases involve different causes of action. (DIANA ET AL. *vs.* BATANGAS TRANSPORTATION CO., G. R. No. L-4920, June 29, 1953.)

Motion to dismiss based on pendency of another action.

In order that a motion to dismiss may prosper on the ground that there is already a pending action between the same parties, the facts must be such that judgment in one case will constitute *res judicata* in the second. There must be identity of parties, of causes of action, of relief sought.

Here there was identity of parties. The cloud on the title of F. in the third case was the claim of ownership asserted by S. and B. Insofar as the latter were concerned, the issue of ownership had already been raised in the third case. The action to quiet title in effect depended upon the resolution of the question of ownership. There was therefore also identity of both the cause of action and the relief asked. The decision in the first two cases, therefore, constituted *res judicata* for the third (FRANCISCO *vs.* BLAS ET AL., G. R. No. L-5078, May 4, 1953.)

Case should not be dismissed merely because parties fail to agree on stipulation of facts.

FACTS: The lower court ordered the parties to file an agreed statement of facts within ten days. Upon the parties' failure to file same because they could not agree thereon, the court dismissed the case.

HELD: The lower court's reasoning would put it within the power of one party to have a case dismissed by simply not

signing any stipulation of facts which his adversary might propose. (BUENAVENTURA *vs.* BUENAVENTURA and BUENVENTURA, 50 O. G. 101.)

COUNTERCLAIM

Effect of failure to file counterclaim in inferior court in case appeal is taken to the CFI.

FACTS: Sarreal brought an action in the JP Court against Samonte. Samonte failed to appear on the day of the trial; the court heard the case, and, thereafter, rendered judgment against him. Samonte appealed to the CFI and, in the answer filed by him, he added a counterclaim. Sarreal did not file an answer to this counterclaim, and for such failure was declared in default. This petition for *certiorari* is lodged against the order of the trial court, declaring plaintiff in default on defendant's counterclaim, notwithstanding the fact that said counterclaim was not presented in the JP Court.

HELD: It is true a counterclaim cannot be entertained in the CFI on appeal if it was not presented in the JP Court. In the case at bar, however, defendant had no opportunity to present an answer, as the trial was held in his absence. The issue is whether the rule that, in a case appealed from the JP Court to the CFI, the parties may not present new issues not raised in the JP Court, is applicable to the case at bar. The answer must be in the negative. In the first place, as defendant did not have the opportunity to present an answer, verbal or written, it cannot be said that he raised any issue at all, and so he may not be said to have changed the issues on the appeal. In the second place, the right to demand the limitation of the issues to those presented in the JP Court is purely a procedural right not involving any public policy. The party accorded the privilege must raise it at the first opportune time, and his failure to do so amounts to a waiver thereof. Besides, amendments should be allowed freely in the discretion of the court in order to render substantial justice, and more especially to the end that the real matter in dispute may, as far as possible, be completely determined in a single proceeding (Sec. 2, Rule 17). Defendant's counterclaim is a perfectly fair, legitimate and valid one, directly related to plaintiff's cause of action. (SARREAL *vs.* TAN, G. R. No. L-5429, Feb. 19, 1953.)

INTERVENTION

Only necessary or indispensable parties may intervene, and it must be during trial.

FACTS: In an action between R. Bool and Mendoza, an amicable settlement was reached whereby Mendoza ceded and conveyed in favor of R. Bool his title to, interest, and participation in a parcel of land. However, Evangelista and Lim, as intervenors, alleged that the land had already been adjudicated by a cadastral court to J. Bool. The trial court denied their petition to intervene.

HELD: Since the intervenors were not necessary or indispensable parties to the action and since they were in no way affected by the amicable settlement nor bound thereby, they had no right to intervene.

Though intervention is allowed "at any stage of the trial," the term "trial" is used in the restricted sense, i.e., the period for the introduction of evidence by both parties. (BOARD *vs.* MENDOZA, G. R. No. L-5539, April 17, 1953.)

AMENDED AND SUPPLEMENTAL PLEADINGS

Amendment allowed even after original complaint dismissed.

FACTS: Plaintiffs filed on June 28, 1951, an action in the CFI of Quezon Province for the annulment of two documents, alleging that Felix Carpio and his son, Maximo, had been compelled to sign said documents through force and intimidation and against their will. One document purports to be an affidavit executed by Maximo Carpio on March 12, 1945, and the other a deed of sale with *pacto de retro* executed on May 3, 1945.

On motion of defendants, the CFI dismissed the case on the ground that plaintiffs' action had prescribed.

Plaintiffs asked for reconsideration of the order of dismissal and to meet the defense of prescription, also filed an amended complaint alleging that the force and intimidation, including the threat of death, by defendants had continued on up to the present since May 3, 1945. The reconsideration was denied and the amended complaint disallowed. Plaintiffs contended on appeal that the CFI erred in 1) not admitting their amended

complaint, and 2) holding that their action had prescribed.

HELD: Appellants are correct on both counts.

1) Amendments to pleadings are favored and should be liberally allowed in furtherance of justice (Torres *vs.* Tomacruz, 49 Phil. 913). Moreover, under sec. 1 of Rule 17, a party may amend his pleading once without leave of court at any time before a responsive pleading is served. A motion to dismiss is not a "responsive pleading." Since plaintiffs amended their complaint before it was answered, the motion to admit the amendment should not have been denied. True, the amendment was presented after the original complaint had been ordered dismissed. But that order was not yet final for it was still under reconsideration.

2) As to the question of prescription, it is evident that, with the allegation in the amended complaint that the threats by the defendant had continued until 1951, plaintiffs' action does not appear to have prescribed because in such cases prescription does not begin to run until the party affected is perfectly free to go to court if he wishes. (PAESTE ET AL. *vs.* JAURIGUE, 50 O. G. 112.)

Supplemental answer cannot be filed after judgment has become final.

FACTS: In a civil case before the CFI of Sorsogon, in which herein petitioners were plaintiffs and herein respondent Benito was defendant, a decision was rendered in favor of Benito. Upon appeal by petitioners, the Court of Appeals reversed the judgment insofar as it condemned petitioners to pay to Benito the sum of ₱1,500.00 yearly. In all other respects the judgment was affirmed. After the decision of the Court of Appeals had become final and the records had been returned to the CFI of Sorsogon, respondent filed in the latter court a motion for the admission of a supplemental answer, praying that petitioners be ordered to pay ₱1,500.00 annually. Over the objection of petitioners, respondent judge admitted the supplemental answer and gave petitioners ten days within which to plead thereto. Petitioners filed this petition for *certiorari*.

HELD: Respondents argue that a supplemental answer was admissible both under Sec. 2, Rule 17, which permits amendments of pleadings at any stage of the proceedings, and under Sec. 5 of said Rule, which allows it when the supplemental pleading sets forth transactions, occurrences and events which have happened since the date of the pleading sought to be supplemented. This argument is untenable because the term "any stage of an action" means "not after the rendition of a final judgment." Here, damages that had already been finally disallowed by the Court of Appeals were prayed for in the supplemental answer, with the result that a final judgment was to be altered regarding a substantial matter. This clearly cannot be done. (DE OCAMPO ET AL. *vs.* MAÑALAC ET AL., G. R. No. L-5952, March 26, 1953.)

DEPOSITIONS

Order by court to take deposition discretionary; Sec. 16, Rule 18 construed.

FACTS: Plaintiff filed a complaint against Cojuangco in the CFI of Manila, praying for an accounting of the assets of a partnership organized by plaintiff and Cojuangco.

Plaintiff, before trial, served on Cojuangco a notice for the latter's deposition by oral examination. One hour before the time set for the deposition of Cojuangco, the latter served notice of his motion asking the court to order that the deposition be not taken at all. Cojuangco also served notice to plaintiff that he would instead take plaintiff's deposition. The motion was set for hearing on the day of the trial and was denied.

HELD: Sec. 16, Rule 18 provides that, "After notice is served for taking deposition by oral examination, upon motion reasonably made by any party or by the person to be examined and upon notice and for good cause shown, the court in which the action is pending may make an order that the deposition may not be taken x x x" The taking of a deposition is, therefore, discretionary upon the court.

As there has been neither abuse of discretion nor excess of jurisdiction on the part of respondent judge, *certiorari* does not lie; nor may *mandamus* be issued because this remedy is available only to compel the performance of a mandatory and ministerial act. (JACINTO *vs.* AMPARO and COJUANGCO, G. R. No. L-6096, Aug. 25, 1953.)

MOTIONS

Denial of a premature motion not a bar to subsequent motion based on same ground.

The denial of a motion for being premature may not be considered a bar to a second and same motion, filed after the ground for the motion has arisen or come into existence. (SAMINIADA *vs.* MATA ET AL., G. R. No. L-4358, Jan. 2, 1953.)

Motion to set aside decision.

Petitioner cannot ask to set aside a decision based on a summary adjudication by stipulation on the ground of illiteracy and lack of knowledge of the true contents of the stipulation when said stipulation bore his signature and his attorney's. Nor can he move to set aside a decision on the ground that he had no notice of it when notice had in fact been served on his attorney. (VILLORIA *vs.* VILLORIA, G. R. No. L-5217, May 13, 1953.)

PLEADINGS

Completeness of service and filing with Court.

FACTS: Copies of an order dismissing an action were transmitted by registered mail to the parties' counsel. The copy for plaintiff's attorney was received at the post-office on the 17th day of May and on the 18th, the postmaster notified him thereof. He got the registered matter on the 24th of May, 1951. Thereafter, he prepared and signed a motion for reconsideration dated June 22, 1951 and it was received by the Clerk of Court on June 26, 1951.

HELD: The motion for reconsideration dated June 22, 1951 was belatedly presented, because plaintiff, having legally received notice of the order of dismissal on May 23, 1951 pursuant to Rule 27, Sec. 8, the thirty-day period expired on June 23, 1951, and the motion for reconsideration was actually before the court *only* on June 26, 1951 when it was received in the office of the Clerk. (DE LA CRUZ *vs.* CAÑIZARES ET AL., G. R. No. L-6129, Feb. 28, 1953.)

Applicability of Sec. 1, Rule 27 to Inferior Courts.

FACTS: Manabat and his wife were sued in the JP Court for having failed to pay a debt based on a promissory note. When they failed to appear and present evidence at the hearing of the case, the JP Court rendered a decision against them. Manabat received notice of the decision on September 7, 1951. On September 22, he sent by registered mail his notice of appeal, a postal money order for docket fees, and an appeal bond, all of which were received in the JP Court on September 24. When Manabat's appeal was forwarded to the CFI, the latter court dismissed it on the ground that it was late because the fifteen-day period therefor had expired on September 22. The CFI refused to apply Sec. 1, Rule 27, on which Manabat relied to sustain the timeliness of his appeal. The CFI held that Sec. 1 does not regulate Inferior Courts, since it is only found among rules governing Courts of First Instance. Hence, this petition for *mandamus*.

HELD: Sec. 1, Rule 27 should be applied not only to Superior Courts but also to Inferior Courts in order to uphold the uniform principle that "the date of deposit in the post office by registered mail" of court papers is "the date of filing." Uniformity of rules is to be desired to simplify procedure. (MANABAT and MANABAT *vs.* DE AQUINO, G. R. No. L-5558, April 29, 1953.)

DISMISSAL OF ACTIONS

Ground for order of dismissal must be one of those recognized by the Rules.

FACTS: Plaintiff brought this action to enable him to repurchase from defendant a parcel of land. The trial court dismissed the case. Plaintiff contends that the lower court erred in dismissing the complaint upon the simple expedient that the identity of the land sought to be repurchased was pending determination in an appeal before the Court of Appeals; the court dismissed the case without prejudice, considering that it might take two years before the appeal could be decided.

HELD: The ground on which the court dismissed this case after hearing the parties on a pre-trial has no legal basis or justification. The ground is not one of those recognized by

the Rules of Court. (BRAVO *vs.* BARRERAS, G. R. No. L-4872, Feb. 16, 1953.)

Motion to dismiss action upon compromise constitutes res adjudicata.

FACTS: Plaintiff was lessee of lands belonging to defendant. In a previous action, defendant sued plaintiff for unpaid rentals due. Said action was terminated by means of a compromise duly approved by the court. Lessee now seeks to recover the excess amount allegedly paid by him, contending that the termination of the previous action was without prejudice to another.

HELD: The dismissal was with prejudice on account of the fact that it had been predicated upon a motion of both parties and therefore, Sec. 1, Rule 30 cannot be invoked. The Civil Code provides that a compromise duly approved shall constitutes *res adjudicata* between parties. (SERRANO *vs.* CABRERA ET AL., G.R. No. L-5189, Sept. 21, 1953.)

CALENDAR AND ADJOURNMENT

Postponements at discretion of court.

Postponements of trial are addressed to the sound discretion of the court, and this discretion should not be interferred with unless it has been abused. While petitioner's request for postponement was not entirely groundless, he had no reason to assume that the court would grant it. Plaintiff was consequently guilty of carelessness and neglect when he failed to appear at the trial. The trial judge did not abuse his discretion when he refused to grant the postponement. (SARREAL *vs.* TAN ET AL., G. R. No. L-5429, Feb. 19, 1953.)

JUDGMENTS, ORDERS AND ENTRY THEREOF

Nature and effects of judgment by consent; Remedies against a compromise agreement approved by the court.

FACTS: The action which gave rise to this *certiorari* proceeding involved a riceland containing an area of a little over 2 hectares, which Mata claimed to have purchased from Ponce. Saminiada alleged that he had occupied it by virtue of a Free Patent Application. The court designated Rempillo, Junior

Public Land Inspector, as commissioner to determine whether or not the land described in the complaint formed part of the land covered by Saminiada's Free Patent Application. Later, Rempillo submitted his report, stating that the land was the same land covered by Saminiada's Free Patent Application. He submitted a sketch of the property, indicating that the land contained an area of some seven hectares. Thereafter, the parties submitted an agreement wherein Mata bound himself to limit his claim to the western portion of the land containing an area of 2.76 hectares, and Saminiada agreed to recognize the former's ownership over said portion and limit his own claim to the remaining portion. The court rendered judgment in accordance with said agreement.

Subsequently, Saminiada presented a "petition for relief," alleging that, relying on the commissioner's report to the court that the land contained an area of over seven hectares, he was induced to enter into the agreement and that, subsequently, upon trying to make the segregation of 2.76 hectares in accordance with the agreement, the commissioner found that the area was only 5 hectares, more or less.

The objection urged against the granting of the petition was that it was filed beyond the 60-day period prescribed in Sec. 3, Rule 38.

HELD: If the so-called "decision" of the court, which recites the compromise agreement and approves it, were the final judgment *on the issues involved in the case*, the objection to the remedy under Rule 38 would seem to be valid. But the so-called "decision" of the court was not, in effect, a judgment, because no finding on any issue of fact or law was made, and no legal conclusion was made thereon as to the respective rights and obligations of the parties insofar as the subject matter of the action was concerned. A decision must "state clearly and distinctly the facts and the law upon which it is based" (Sec. 1, Rule 35); these essentials of a judgment are lacking in the "decision" in question.

In American law, the agreement in question is known as a *judgment by consent*, and generally considered a contract. The highest judicial authority in the United States has sustained the proposition that when a litigation is adjusted between the parties and said adjustment sanctioned by the decree of a court, the agreement or settlement does not have the effect of a final judgment or the character of *res judicata;* the

court's approval is considered merely as an administrative recording of what has been agreed to between the parties. The above principles of procedure may be considered as having been adopted in this jurisdiction by the enactment of Act No. 190, entitled a Code of Civil Procedure; the compromise agreement in the case at bar could, therefore, be set aside on the ground of fraud or mistake, the approval of the court thereof notwithstanding.

Petitioner in the case at bar had two alternative remedies against the compromise approved by the court. He could file the petition for relief under Rule 38, or file a new action to annul the contract or agreement within the period established by the statute of limitations. The first remedy was still available to him when he presented his petition for relief, the objection thereto being purely technical. (SAMINIADA *vs.* MATA ET AL., G. R. No. L-4358, Jan. 2, 1953.)

Rule regarding judgment on pleadings.

Judgment on the pleadings can only be rendered when the pleading of the party against whom the motion is directed, be he plaintiff or defendant, does not tender any issue, or admits all the material allegations of the pleading of the movant. (FABELLA ET AL. *vs.* PROV. SHERIFF OF RIZAL ET AL., G. R. No. L-6090, Nov. 27, 1953.)

Finality of judgment.

The suspension of judgment pending an amicable settlement does not *per se suspend the finality thereof.* (EMBATE *vs.* PENOLIO, G. R. No. L-4942, Sept. 23, 1953.)

When judgment not final; Effect of a reservation therein.

Where the judgment in a gambling case left something to be done later i.e., the determination of the question of whether the money seized from the defendant should be confiscated, which had been expressly reserved for subsequent adjudication, it cannot be regarded final.

Where a judgment expressly reserved decision on a particular matter, although quite irregular, the court does not lack jurisdiction to hear such matter, for the hearing is not a modification of the decision but a procedural step in furtherance thereof. (LIM *vs.* ORETA, G. R. No. L-6247, Nov. 27, 1953.)

Judgment—To what affirmation thereof refers.

When the Supreme Court declares in a civil case that "the decision appealed from is hereby affirmed," the affirmation does not comprehend all matters adjudged therein but only that part of the decision impugned by the appellant, for said court, unlike appeals in criminal cases, can only review the errors assigned by him. (VITUG *vs.* MONTEMAYOR ET AL., G. R. No. L-5297, Nov. 28, 1953.)

RELIEF FROM JUDGMENTS

Petition for relief from judgment must be filed within reglamentary period.

FACTS: On April 14, 1950, judgment in this case was rendered by the CFI in favor of plaintiff. On June 23 defendant's counsel, Atty. A. Barredo, presented his record on appeal, notice of appeal and motion for extension of time to file an appeal bond. On June 24 the court denied the appeal on the ground that it was untimely. On November 20, F. de la Cruz, defendant's new counsel, asked for relief under Rule 38, asserting that defendant's failure to appeal had been due to a mistake consisting in Atty. Barredo's mistaken impression that, having received the decision of April 14 on May 23, the thirty-day period for appeal would expire the succeeding month, i.e., on June 23. However, since the motion for relief had been filed beyond the sixty-day period, the court denied it. Hence this appeal.

HELD: Even supposing that the appeal period began only when F. de la Cruz personally came to know of the order denying the appeal, i.e., on September 19, and not when Atty. Barredo was notified on June 28, yet, since the petition for relief was filed on November 20, i.e., sixty-two days after notice to F. de la Cruz, it was still obviously belated. Statements in the printed record on appeal of appellant to the effect that the petition was submitted on November 18 cannot prevail. For one

thing, had it been submitted on November 18, the petition could not have referred expressly to an "order of November 20." (TUASON & Co., INC. *vs.* F. DE LA CRUZ, G. R. No. L-4883, March 25, 1953.)

Petition for relief from judgment must be filed in the same case.

FACTS: This appeal stems from an action filed in the CFI wherein plaintiffs prayed that the judgment rendered by the same court in Civil Case No. 4147 be annulled on the ground that said court had committed several mistakes in the appreciation of the evidence. Defendants filed a motion to dismiss on the ground that the complaint stated no cause of action. Plaintiffs replied that their action was predicated on Sec. 2, Rule 38, which gave them the right to ask relief from a judgment based on fraud, accident, mistake or excusable negligence. The court dismissed the case on the ground of *res judicata.*

HELD: In order that relief under Rule 38 may be invoked, a party must file the petition therefor in the same case "within sixty days after he learns of the judgment, x x x and not more than six months after said judgment has been rendered." This plaintiffs failed to do. Instead of filing the petition for relief in the same case, they filed an independent action.

Since the issue here involved questions of fact, it is presumed they were considered and passed upon in Civil Case No. 4147 and, in this sense, are now *res judicata.* (RAMOS ET AL. *vs.* ALBANO ET AL., G. R. No. L-5380, March 25, 1953.)

Circumstances constituting inexcusable negligence.

The two-fold circumstance that defendant's grandmother was taken ill and defendant had to leave for Nueva Ecija does not constitute excusable negligence. As a matter of fact defendant filed his answer to the complaint three months after the notice requiring him to answer the complaint, showing he had been absolutely negligent. (ORTIZ *vs.* MANIA, G. R. No. L-5147, June 2, 1953.)

Petition for relief from execution.

Where petitioner has already filed a complaint alleging an auction sale to be illegal, confabulation among defendants, damages, and praying for the annulment of such sale and the

restoration of property plus compensation, a petition for relief will not be granted because the relief provided for in Rule 38 is exceptional in character and allowed only in cases where no other remedy is available. (ARANTE *vs.* ROSEL ET AL., G. R. No. L-5217, May 13, 1953.)

Equity demands exercise of judicial discretion be reconsidered if good reasons warrant same.

FACTS: Defendants were declared in default; thereupon, plaintiff presented evidence. Judgment by default was rendered against defendant and a copy of the decision served on the latter's attorney. However, through an accident, the attorney failed to receive the notice. Upon coming to know of the decision, he filed a petition for relief and for more time to gather affidavits of merit. Pending the petition, war broke out. After liberation, defendant's attorney sought to have his petition acted upon. Both parties agreed to waive the hearing and instead, file memoranda to support their contentions. The court denied the petition.

HELD: The contention of defendant is well founded. There has been no negligence on his part nor was there any showing of any attempt to delay the proceedings. Hence, the order appealed from is set aside and defendant should be given his day in court. (TECSON *vs.* BENJAMIN ET AL. ALL SURNAMED TECSON, G. R. No. L-5233, Sept. 30, 1953.)

Relief from the order of default; Lifting of order of default discretionary upon filing of proper motion.

FACTS: This is an action to recover a sum of money for extraordinary services rendered. Plaintiff, employed as an accountant by defendant corporation, alleged that defendant had engaged him to compromise its war profits tax liability and secure the necessary clearance. After the complaint had been filed, defendant moved to dismiss, but was denied. Thereupon, defendant filed an answer outside the reglamentary period for filing, and on the day of the trial, neither defendant nor his counsel appeared. Plaintiff, therefore, moved for judgment by default, which was granted. This order of default was later lifted on a motion for reconsideration by defendant and over the vigorous objection of plaintiff. At the trial, plaintiff's complaint was dismissed. He now assigns as

error abuse of discretion by the trial court in vacating its order of default.

HELD: The explanation given by defendant as to its failure to file an answer within the reglamentary period is satisfactory. Moreover, the case is important and far-reaching enough to have compelled the grant of the motion for reconsideration. Finally, since the motion for relief was addressed to the sound discretion of the court, and since there is no showing that there was a clear abuse of discretion in the exercise of this prerogative, the order to vacate cannot be disturbed. (JOSE *vs.* CONSOLIDATED INVESTMENTS, INC. ET AL., G.R. No. L-5023, Sept. 18, 1953.)

EFFECT OF JUDGMENTS

Order of probate court, relating to sale of property, does not render the issue of title to said property res judicata.

FACTS: In special proceedings for the settlement of the estate of Amihan, the administrator filed a motion asking for authority to sell a parcel of land. Baquial opposed it, claiming that the land had already been sold to him by the decedent's widow, as evidenced by a deed of sale. The court declared the deed of sale invalid, dismissed the opposition and approved the authorization prayed for. However, when the sale was submitted to the court for approval, the judge issued an order holding the approval of the sale in abeyance and instructing the parties interested to institute a separate civil action to settle the question of ownership. Thus, Baquial instituted the present action to recover the ownership and possession of the land. A motion to dismiss was presented on the ground that the order of the court dismissing Baquial's opposition to the authority to sell, was a final order binding upon Baquial.

HELD: In the special proceeding for the settelement of the estate of a deceased person, persons not being heirs who intervene therein to protect their interests are allowed to do so, but not for a decision on their action. The opposition of Baquial was filed against a petition of the administrator to sell the property, and the court's finding on the invalidity of Baquial's deed, although necessary to determine the motion to sell, could not be considered *res judicata*. (BAQUIAL *vs.* AMIHAN ET AL., G. R. No. L-4377, Jan. 23, 1953.)

Removal of regular administratrix pending appeal must be for reasons of fitness; Sec. 2, Rule 39 construed.

FACTS: This is an application for *mandamus* to compel respondent judge to order the regular administratrix to turn over the administration of the estate to petitioner. The main question is whether an order removing a regular administratrix and appointing a new one is executory during the pendency of an appeal from said order.

HELD: Sec. 2, Rule 39, the general rule on this question, does not so authorize. It authorizes the removal of a regular administrator pending appeal only when such action is necessary to protect an estate from mismanagement. Here the fitness of the administratrix to discharge her duties was never in question. The only objection was technical and highly controversial, viz., whether the marriage in China of her deceased father, whose estate is under administration here, to her mother, was valid. Upon the outcome of this question depends her right to administer the estate. (COTIA *vs.* PECSON ET AL., G. R. No. L-5516, Sept. 29, 1953.)

Revival of Judgment; Sec. 6, Rule 39 construed.

Sec. 6, Rule 39 provides that only final judgments may be revived by separate action after the expiration of five years.

It will be seen that at the present state of the litigation, there is an accounting still to be made, and not until this has been effected and acted upon can there be a final judgment. The only course open to plaintiff is to follow through the order for accounting and liquidation so that the case may be placed in a state as to be definitely decided. (CARRASCOSO, JR. *vs.* FUENTEBELLA, G. R. No. L-5888, April 22, 1953.)

APPEALS

Presenting of new issues on appeal.

Where the defendant did not have the opportunity to present an answer in the Justice of the Peace Court, it cannot be said that he raised any issue at all, and so he may not be said to have changed the issues on the appeal. (SARREAL *vs.* TAN ET AL., G. R. No. L-5429, Feb. 19, 1953.)

Appellant is not required to secure approval *of the appeal bond.*

FACTS: Casillan filed a motion to dismiss the appeal of the Espartero heirs on the ground that the appeal bond had not been approved by the court within the reglamentary period in view of the heirs' failure to secure its approval. Finding the motion well taken, the respondent judge dismissed the appeal. Hence, this petition for *mandamus.*

HELD: There is nothing in the rules which imposes upon the party appealing the duty of securing from the court the approval of the appeal bond. This is an act which the court should attend to once said bond is filed by the appealing party. This is a duty imposed upon the court by Sec. 5, Rule 41. The only duty of the appealing party is to *file* it within the reglamentary period. Petitioners have complied with this duty. (VDA. DE ESPARTERO ET AL. *vs.* LADAW ET AL., G. R. No. L-5181, Feb. 24, 1953.)

Effect of court's failure to approve appeal bond within reglamentary period for the filing thereof.

Where an appellant filed his cash appeal bond together with his notice of appeal and record on appeal within the reglamentary period, the court's failure to approve the appeal bond within that same period does not operate to place appellant's appeal outside the legal period; so far as the latter is concerned, his appeal was filed on time. (GAMMAD ET AL. *vs.* ARRANZ ET AL., G. R. No. L-6079, April 29, 1953.)

Appeal on a question of fact already determined by Court of Appeals.

Where the decision of the Court of Appeals is premised on a misapprehension of a fact, as may be seen from the record, fairness requires that proper rectification, which the Supreme Court can do in the exercise of its discretion, be made to give justice where justice is due. (DE LA CRUZ *vs.* SOSING ET AL., G. R. No. L-4875, Nov. 27, 1953.)

Running of period computed from denial of motion for reconsideration.

FACTS: This is a petition to vacate an order of the CFI, denying appeal to petitioner who had failed to perfect his appeal within the prescribed period from the date of the order denying his motion for reconsideration.

HELD: Since the order of dismissal was of a final and not interlocutory character, petitioner should have appealed within the period of thirty days upon receipt of notice denying his motion. (MACHINERY & ENGINEERING SUPPLIES, INC. *vs.* LIWAG, G. R. No. L-5135, Sept. 8, 1953.)

Running of period computed from date of amended judgment.

FACTS: The JP Court rendered a decision against appellant, who promptly filed a motion for reconsideration and new trial. The court denied the motion and dismissed appellant's special defenses and counterclaim. When appellant appealed, the CFI affirmed the inferior court's decision.

HELD: Where a judgment is amended, the date of amendment should be considered the date of decision for computation of the period for perfecting an appeal (Cuenco *vs.* Paredes, 40 Phil. 346). The change in the original decision was sufficient to give the second decision the character of an amended decision, particularly since same had made findings of facts with respect to appellant's counterclaim and special defenses. (CAPISTEANO *vs.* CARIÑO, G. R. No. L-5269, Sept. 8, 1953.)

When appeal perfected even in case of failure to file appeal bond within reglamentary period.

FACTS: This is a petition to compel the CFI of Manila to give due course to petitioner's appeal. Petitioners had filed a petition to litigate as paupers in a partition action. The complaint was dismissed on the ground of *res adjudicata.* Petitioners thereupon gave notice of appeal together with a motion to appeal as paupers; they prayed that they be exempted from filing an appeal bond. Respondent opposed the motion to appeal as paupers and the court ruled in the latter's favor when petitioners failed to appear. A copy of the order of denial was duly sent to petitioners. Subsequently, petitioners filed a motion for reconsideration, which was denied. This last order of denial was received by petitioners well beyond the reglamentary period for filing an appeal. Meanwhile, they filed an appeal bond in the alternative and without prejudice to their right to appeal as paupers in case the same should be ruled upon favorably. However, on the initiative of respondent, the judgment appealed from was adjudged to

be final and executory. The question at issue is whether or not petitioners may still appeal even if they filed their appeal bond outside the reglamentary period.

HELD: Sec. 22, Rule 3 authorizes appeals by paupers and exempts them from filing appeal bonds. This provision was unsuccessfully invoked by petitioners. However, they did file an appeal bond in the alternative, i.e., in the event that their motion to appeal as paupers were denied, as in fact it was. The appeal bond was actually filed six days after receipt of the order denying their motion to appeal as paupers, excluding the period spent in considering their motion for reconsideration. Therefore the appeal bond was in fact filed on time because, in the first place, petitioners were entitled to appeal as paupers under the original authority until the court ruled otherwise. (MATUTE ET AL. *vs.* MACADAEG ET AL., G. R. No. L-5820, Sept. 18, 1953.)

No appeal allowed on interlocutory order.

FACTS: Plaintiff claimed that (1) he was the owner of 106 cartons of imported cigarettes which defendant had seized and retained possession of without legal cause; (2) after the seizure, defendant had directed the cartons to be sold at public auction; and (3) he had prayed for and had been granted a writ of preliminary injunction to prevent the sale.

Defendant stated in his answer that (1) as acting collector of customs in Tacloban, he had seized the cigarettes because the same, being foreign in origin, were subject to control; (2) plaintiff had failed to show that the cigarettes were imported legally; and (3) the forfeiture had been approved by the Commissioner of Customs. This answer was withdrawn by Fiscal and in lieu thereof he filed a motion to dismiss the complaint on the ground of lack of jurisdiction. The court ruled that since motion to dismiss was introduced after the answer to the complaint had been filed, said motion was late; the court, therefore, set the case for hearing. Fiscal then filed an amended answer where he prayed for dismissal of the complaint upon the same ground set forth in his previous motion to dismiss. The same was denied. Hence this appeal.

HELD: Defendant cannot appeal from an interlocutory order. The denial of a motion to dismiss a complaint does not entitle the party whose motion was denied to appeal therefrom. (YU GOAT *vs.* HUCO, G. R. No. L-4842, Aug. 20, 1953.)

Where records of a case on appeal are intact, there is no need for parties to file their actions anew.

FACTS: In 1941 the CFI of Cebu ordered Alo to pay Nacua ₱810.00. Alo appealed to the Court of Appeals. During the war Alo died. Special proceedings were instituted in the CFI for settlement of Alo's estate, and his daughter was appointed administratrix. Nacua filed his claim in the special proceedings and his counsel sent a copy of the decision upon which his claim was based. The probate court approved Nacua's claim. The administratrix appealed to the Court of Appeals and the latter reversed the decision appealed from on the ground that the decision of the Cebu court in favor of Nacua was still pending appeal, and therefore could not be a sufficient basis for the probate court to grant the claim. The appellate court also ruled that the failure of the administratrix to ask for a reconstitution constituted a waiver; hence the other party was free to take action anew. Nacua appealed by *certiorari.*

HELD: Since the records of the CFI of Cebu are complete, there is no reason why the parties may not start from there and renew the appeal. To require the parties to file their actions anew, incur expenses, and suffer the annoyance and vexation incident to the filing of pleadings and the conduct of hearings, when all along the record of the former pleadings exist and are not disputed, all this would appear to be neither just nor fair, reasonable nor logical to the parties, including the trial court which committed no negligence or fault. (NACUA *vs.* INTESTATE ESTATE OF ZACARIAS ALO ET AL., G. R. No. L-4933, Aug. 6, 1953.)

Withdrawal of Appeal from a judgment sentencing accused to death does not divest Supreme Court of jurisdiction to review said judgment.

FACTS: In 1947 the People's Court declared Villanueva guilty of treason on several counts and sentenced him to suffer the death penalty. Villanueva appealed to the Supreme Court. Subsequently, Villanueva filed a petition, stating that on or about July 4, 1953, the Chief Executive had granted executive clemency to all prisoners convicted of treason, including those whose cases were pending appeal, on condition that such appeals be first withdrawn, supposedly to give finality to the judgment of the lower court; he therefore asked that he be allowed to withdraw his appeal.

HELD: An accused, appealing from a decision sentencing him to death, may be allowed to withdraw his appeal like any other appellant in an ordinary criminal case before the briefs are filed, but his withdrawal of the appeal does not remove the case from the jurisdiction of the Supreme Court, which under the law is authorized and called upon to review the decision, even though unappealed. Consequently, the withdrawal of the appeal in this case cannot serve to render the decision of the People's Court final. (PEOPLE *vs.* VILLANUEVA, G. R. No. L-2073, Oct. 19, 1953.)

When jurisdiction of the Supreme Court limited; Judiciary Act (R. A. No. 296) applied.

Where the value of the property in litigation is only a little over ₱5,000.00 and factual points are involved, the controversy does not fall within the Supreme Court's appellate power to review, and should be transferred to the Court of Appeals in accordance with law. (GO BON CHIAT *vs.* VALMORIDA, G. R. No. L-4605, April 24, 1953.)

Matters foreign to jurisdiction of Securities and Exchange Commission.

Whether the payment made by the issuer of the bonds of the whole amount of the mortgage obligation or bonded indebtedness to the trustee, who is still in possession of part of said amount, has discharged the issuer from its obligation to pay the bondholders who have not been paid because of their failure to call upon and receive from the trustee what was due them upon their bonds, are matters foreign to the jurisdiction or functions of the Securities and Exchange Commission and they fall within the field of judicial determination and adjudication. (LA ORDEN DE P.P. BENEDICTINOS *vs.* STIVER ET AL., G. R. No. L-4568, June 16, 1953.)

A party has right to appeal from an order of taxation; Sec. 8, Rule 131 construed.

FACTS: When the decision in a civil case was rendered in favor of plaintiffs and then appealed from by defendant Sandico, the Supreme Court affirmed it, but in its decision's dispositive part ordered that the costs be borne by plaintiffs. Thereafter, Sandico filed an amended bill of costs in the sum of ₱394.00, for which the clerk of court, after making a taxation of the costs in accordance with Sec. 8, Rule 131, issued a writ of execution. Plaintiffs appealed from said taxation to the lower court, which however sustained the taxation. Plaintiffs then filed in due time the necessary pleadings preparatory to appeal, but same were disapproved. Hence, this petition for *mandamus* to compel respondent judge to give due course to their appeal.

HELD: Plaintiffs complied with the procedure embodied in Sec. 8, Rule 131, viz., that costs would be taxed by the clerk of court on five days' written notice given by the prevailing party to the adverse party; that objections to the taxation should be in writing and should specify the items objected to; that each party might appeal to the court from the clerk's taxation. Therefore, there existed no cogent reason why the order of taxation could not be appealed from. (DEL ROSARIO ET AL. *vs.* BAYONETA ET AL., G. R. No. L-5686, April 17, 1953.)

PROVISIONAL REMEDIES

ATTACHMENT

Bond to discharge attachment; When cancellation of the same erroneous.

FACTS: Anzures filed an action against Aguilar to recover ₱3,500.00 with a prayer for a preliminary attachment. The writ was issued but the attachment was subsequently discharged upon the filing by Aguilar of a bond subscribed by the Alto Surety & Ins. Co. for ₱3.500.00. When the case was called for hearing, Anzures and Aguilar filed a joint petition for a "judgment by compromise," alleging that Aguilar would pay Anzures the ₱3,500.00. The court approved the compromise and rendered judgment in accordance therewith. Upon motion of Alto Surety, the respondent judge issued an order cancelling the bond.

HELD: Under Sec. 12, Rule 59 the bond filed for the discharge of an attachment is to "secure the payment to the plaintiff of any judgment he may recover in the action," and stands "in place of the property so released." It follows that the order of cancellation issued by the respondent Judge was erroneous.

HELD: An accused, appealing from a decision sentencing him to death, may be allowed to withdraw his appeal like any other appellant in an ordinary criminal case before the briefs are filed, but his withdrawal of the appeal does not remove the case from the jurisdiction of the Supreme Court, which under the law is authorized and called upon to review the decision, even though unappealed. Consequently, the withdrawal of the appeal in this case cannot serve to render the decision of the People's Court final. (PEOPLE *vs.* VILLANUEVA, G. R. No. L-2073, Oct. 19, 1953.)

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of the costs in accordance with Sec. 8, Rule 131, issued a writ of execution. Plaintiffs appealed from said taxation to the lower court, which however sustained the taxation. Plaintiffs then filed in due time the necessary pleadings preparatory to appeal, but same were disapproved. Hence, this petition for *mandamus* to compel respondent judge to give due course to their appeal.

HELD: Plaintiffs complied with the procedure embodied in Sec. 8, Rule 131, viz., that costs would be taxed by the clerk of court on five days' written notice given by the prevailing party to the adverse party; that objections to the taxation should be in writing and should specify the items objected to; that each party might appeal to the court from the clerk's taxation. Therefore, there existed no cogent reason why the order of taxation could not be appealed from. (DEL ROSARIO ET AL. *vs.* BAYONETA ET AL., G. R. No. L-5686, April 17, 1953.)

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HELD: Under Sec. 12, Rule 59 the bond filed for the discharge of an attachment is to "secure the payment to the plaintiff of any judgment he may recover in the action," and stands "in place of the property so released." It follows that the order of cancellation issued by the respondent Judge was erroneous.

There is no point in the contention of Alto Surety that the compromise was entered into without its knowledge and consent. Alto Surety was not a party to the civil case and, therefore, need not have been served with notice of the petition for judgment. (ANZURES *vs.* ALTO SURETY & INSURANCE CO. INC. ET AL., G. R. No. L-5693, Feb. 28, 1953.)

An answer is not a waiver of the motion for dissolution; Dissolution based on supplementary motion.

Where a complaint was filed with a petition for the issuance of a preliminary attachment, the presentation of the answer may not be claimed as a waiver of the motion to dissolve the attachment, as the issues raised in said motion are different from those developed in the main action.

Where the court dissolved the attachment upon considering the reasons cited in a supplementary motion filed after the original motion to dissolve had been overruled, it does not act without or in excess of jurisdiction in the dissolution, as the supplementary motion had become integrated into the original that it supplemented. (VILLONGCO ET AL. *vs.* PANLILIO ET AL., G.R. No. L-6214, Nov. 20, 1953.)

INJUNCTION

Injunction will not lie to restrain a public officer from performing his duty.

It is not the proper function of the writ of injunction to restrain a public officer from performing a duty specifically imposed by law or to permit the doing of that declared unlawful. (WONG *vs.* AQUINO, G. R. No. L-3602, Jan. 30, 1953.)

Claim for damages arising from the issuance of a preliminary injunction must be presented in the principal action.

FACTS: An action for forcible entry was instituted in the JP Court against Cruz, in which plaintiffs obtained the issuance of a writ of preliminary injunction. After the issuance of the writ, plaintiffs took possession of the property in litigation. In an action for *certiorari* filed in the CFI, Cruz was able to obtain a judgment declaring all the proceedings had in the forcible entry case null and void. Five months later, Cruz initiated in the same CFI an action for damages against the same persons who succeeded in dispossessing him of the property in the forcible entry case, and for the first time he averred having incurred losses in the sum of ₱2,950.00.

HELD: Cruz has no right to institute the present action for damages. The procedure for recovery of damages on account of the issuance of a writ of attachment, *injunction*, receivership, and replevin requires that the claim for damages should be presented in the same action which gave rise to the special proceeding in order that it may be included in the final judgment of the case; it cannot be the subject of a separate action. The philosophy of the rule seems to be that the court that acted in the special proceeding which occasioned the damages has the exclusive jurisdiction to assess them because of its control of the case. This rule tends to avoid multiplicity of action. (CRUZ *vs.* MANILA SURETY & FIDELITY CO. INC., ET AL., G. R. No. L-5268, Feb. 23, 1953.)

Surety cannot be held liable on bond beyond time agreed upon.

FACTS: On July 5, 1951, Avecilla as principal and the Capital Insurance and Surety Company as surety executed and filed a bond in the lower court to forestall the issuance of a mandatory injunction against Avecilla in connection with an ejectment case against the latter. The liability of the surety on the bond was to expire within thirty days and the bond was to be canceled ten days after expiration; the bond, however, was extended to July 4, 1952, to be canceled ten days after. After judgment against defendant Avecilla, a writ of execution was issued on June 25, 1952, but was returned unsatisfied. Plaintiffs then moved on September 1 for an *alias* writ against Avecilla and the Capital Insurance and Surety Company. The company objected on the ground that the bond had expired. On the other hand, plaintiffs contended that the time limitation of the surety's obligation was unauthorized and illegal.

HELD: The surety was not bound to execute a bond it did not wish to. If the bond executed and filed was defective, the parties in whose favor it had been executed should have objected to it. This the obligees failed to do. There is no rule of court which requires a surety to execute a bond which would answer for the principal's liability that might be adjudged

by the court in the case where it was filed, if the surety did not wish to execute such bond. (SANTOS and FRIAS *vs.* MEJIA ET AL., G. R. No. L-6383 and L-6384, Dec. 29, 1953.)

RECEIVERS

Appointment thereof by court discretionary.

FACTS: Pending final determination of a civil case between Jose Jojuyco on the one hand, and Prisco Jojuyco and Medel on the other, the lower court granted Jose Jojuyco's *ex parte* petition for the appointment of a receiver. Appeal therefrom for a writ of *certiorari.*

HELD: The petition for appointment of a receiver was made in 1951. Ever since the civil case was filed in 1945, Medel has been enjoying the products of the land in question and has offered no security or assurance that he would reimburse Jose Jojuyco the amount or value of those products in case, ultimately, a decision were rendered in the latter's favor.

Under these circumstances, a receiver should be appointed to preserve the products of the land in such a way that the court's decision may not be rendered ineffective because of the losing party's inability to make good their restoration to the prevailing party. (MEDEL and JOJUYCO *vs.* DE AQUINO, G. R. No. L-5587, April 17, 1953.)

DELIVERY OF PERSONAL PROPERTY

Possession of disputed property should be adjudicated to the one entitled thereto.

FACTS: Ello lost a jeep, but found it later in the possession of Mortos, who had bought it from Felipe, Panganiban and Gregorio. In an action of replevin by Mortos to recover the jeep, the CFI ordered Mortos to deliver the vehicle to Ello. On the other hand, Ello instituted a criminal complaint against Felipe, Panganiban and Gregorio. Two of the defendants were sentenced to prison and to indemnify Ello in the sum of ₱1,200.00. Ello had not expressly waived or reserved his right to institute a separate civil action, as same had been impliedly instituted with the criminal case for theft. It turned out that the two defendants failed to indemnify Ello.

HELD: It was not necessary for Ello to reserve the right to file a civil suit for indemnity because he was legally in possession of the jeep. Although Ello had set up a counterclaim for damages, yet his answer alleged ownership in himself. Sec. 9, Rule 62 provides that the possession of disputed property should be adjudicated to the one entitled thereto. Since Ello was not indemnified by the defendants in the criminal case, the order awarding Ello possession of the jeep or its value was in accordance with Sec. 9 which authorizes judgment in the alternative, for delivery either of the disputed property to the party entitled thereto, or of its value in case delivery cannot be made. (MORTOS *vs.* ELLO, G.R. No. L-5089, May 15, 1953.)

ALIMONY *PENDENTE LITE*

Effect of an appeal from an order granting same.

While an order denying or granting alimony *pendente lite* is interlocutory and, consequently, non-appealable, however, if appeal is taken therefrom, and no timely objection is interposed thereto, the objection is deemed waived. (SALAZAR *vs.* SALAZAR, G. R. No. L-5823, April 29, 1953.)

CONTEMPT

Scope of applicability of Rule 64.

FACTS: This is an appeal from an order of the CFI, dismissing the two informations for contempt against Mendoza and Dizon, respectively. The two informations substantially charged both defendants with having violated the order of the Representative of the Dept. of Justice (Tenancy Division), ordering them to desist from prohibiting the complaining tenants from working their landholdings.

HELD: Rule 64 is not applicable to the two cases so as to punish as contempt of court the violation of the orders issued by the Dept. of Justice officials under C. A. No. 461 as amended by R. A. No. 44. Rule 64 applies only to inferior and superior courts and does not comprehend contempt committed against administrative officials or bodies, unless said contempt is clearly considered and expressly defined as *contempt of court.* (PEOPLE *vs.* MENDOZA; PEOPLE *vs.* DIZON, G. R. Nos. L-5059 and L-5060, Jan. 30, 1953.)

Reentry into real property after dispossession of the same by court constitutes contempt; Sec. 3, Par. (h), Rule 64 applied.

FACTS: In an action for partition of real property, Aragon was adjudged, as her share, a portion of land. Acting on the writ of execution subsequently issued, the sheriff delivered possession of the said land to Aragon after ousting therefrom the defendants. Later, however, Aragon complained to the court that defendants Conrado and Maximo had reentered the land and executed acts of ownership and possession by gathering therefrom coconuts, in violation of Sec. 3 (h), Rule 64. The court dismissed the complaint, declaring that complainant's remedy was to file a complaint for theft or robbery.

HELD: Coming squarely under Sec. 3 (h), Rule 64, the act complained of constitutes contempt which may be redressed as therein provided. The fact that the same act may also constitute a violation of the Revised Penal Code does not necessarily take it out of the sanction of said section. Indictable statutory offenses may be punished as such, while the offenders may likewise be subjected to punishment for the same acts as contempts, the two being *diverso intuito* and capable of standing together. (ARAGON *vs.* ARAGON ET AL., G. R. No. L-5129, Jan. 30, 1953.)

C. A. 461, as amended by R. A. 44, fails to define or consider a violation of orders by Department of Justice officials of the Tenancy Division as contempt of court, or prescribe the penalty therefor.

Where the law desires and intends to punish any violation of or disobedience to any process or order issued by any administrative official or body, it clearly defines and terms such violation as *contempt of court*, or it authorizes said official or body to summarily punish for contempt, providing at the same time the corresponding penalty; and where the aid of the courts is necessary, the corresponding penalty upon conviction is also prescribed. Unfortunately, C. A. 461, as amended by R. A. 44, fails to define or consider a violation of orders by Dept. of Justice officials of the Tenancy Division as *contempt of court*, or prescibe the penalty therefor. (PEOPLE *vs.* MENDOZA; PEOPLE *vs.* DIZON, G. R. Nos. L-5059 and L-5060, Jan. 30, 1953.)

SPECIAL CIVIL ACTIONS

DECLARATORY RELIEF

When no justiciable controversy exists as to a person's citizenship, declaratory relief is not the remedy.

FACTS: This is an appeal from a judgment of the CFI, which dismissed a petition for declaratory relief wherein petitioner had alleged that he was a Filipino citizen by birth and parentage, residing in Bacacay, Albay; that in 1941, because of an "erroneous belief and fear of criminal prosecution," he had registered himself with the Municipal Treasurer as a Chinese alien, but that notwithstanding said registration he never had intended to give up his Filipino citizenship, and that, as a matter of fact, he had continued to hold himself out as a Filipino citizen.

The Solicitor-General filed an opposition, alleging that the petition contained no cause of action, that no actual controversy had arisen against any one, and that, if petitioner desired to establish his Filipino citizenship, he should do so in another proceeding. The CFI sustained the opposition.

HELD: Petitioner's allegations of fact in his petition are entitled to no more than an advisory opinion, because a ruling upon the effect of the registration by petitioner will involve no actual, genuine, live controversy affecting a definite legal relation. Moreover, since petitioner's aim was to be declared a Filipino citizen, his action for declaratory relief was not the proper remedy. (OBILOS *vs.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-5204, March 27, 1953.)

When same may no longer be brought; Real party in interest must bring the action.

Where the payment of municipal license taxes was already

due under the ordinance at the time the action was brought questioning its validity, and the prayer of the petition showed that the petitioner had not paid them, he cannot bring an action for declaratory relief.

Where the petitioner was neither the owner nor part owner but merely the manager of a theater, the interest of which may be affected by the ordinances in question, he is not entitled to bring the action for declaratory relief, for the rule that actions must be brought in the name of the real party in interest applies to actions brought under Rule 66. (SANTOS *vs.* AQUINO ET AL., G. R. No. L-5101, Nov. 28, 1953.)

CERTIORARI

Where the petitioner *had* a plain and adequate remedy by appeal from the order dismissing his complaint, the petition for *certiorari* must be dismissed, notwithstanding that his time to appeal had already lapsed when he submitted his petition for *certiorari.* (FLORETE *vs.* MAKALINTAL ET AL., G. R. No. L-5712, Feb. 27, 1953.)

Neither appeal nor certiorari *lie against a denial of motion to dismiss.*

It is well settled in this jurisdiction that a denial of a motion to dismiss a complaint, being interlocutory, is not appealable. If the denial of a motion to dismiss cannot be appealed, much less will a petition for *certiorari* lie to set aside such denial. (LOPEZ *vs.* VDA. DE TINIO and CABRERA, G. R. No. L-6005, Dec. 29, 1953.)

When Certiorari *may lie even when Appeal is available.*

While it is true that the defendant could have appealed from the order denying its motion to set aside, and while it is equally true that the rule is, *certiorari* does not lie when an appeal may be taken, said rule may be relaxed where, as in the present case, a writ of execution has already issued and is in the process of being carried out. (WOODCRAFT WOODWORKS, LTD. *vs.* MOSCOSO, G. R. No. L-5470, April 29, 1953.)

FORECLOSURE OF MORTGAGE

Parties in a foreclosure suit; Purchaser of real property already mortgaged to another.

While it is true that the interest of applicant Santiago in the land in question was subordinate to that of the mortgagee, the rule of procedure in force at the time the foreclosure suit was instituted required that in an action for foreclosure "all persons having or claiming an interest in the premises subordinate in right to that of the holder of the mortgage . . . be made defendants in the action." This rule applied not only to a subordinate lienholder but also to a purchaser of real property already mortgaged to another, and the effect of the failure to implead a subordinate lienholder or subsequent purchaser or both is to render the foreclosure ineffective as against them, with the result that there remains in their favor the "unforeclosed equity of redemption." But the foreclosure is valid as between the parties to the suit. (SANTIAGO *vs.* DIONISIO, G. R. No. L-4008, Jan. 15, 1953.)

Moratorium; Parties to action.

An order of dismissal issued on a motion alleging debt moratorium as provided by Executive Orders Nos. 25 and 32 should be rebuked. And an order refusing amendment of a complaint to implead parties alleged to have a right to mortgaged property subordinate to that of the mortgagees should likewise be revoked as a violation of Sec. 1, Rule 70. (NICOLAS ET AL. *vs.* MATIAS ET AL., G. R. No. L-5250, May 29, 1953.)

Ten days prior notice of sale to mortgagee necessary for its validity.

FACTS: Lucas Grande Lumber Corporation chattel mortgaged its machineries and equipment situated in Surigao in favor of the Philippine Trust Company. Subsequently, the mortgagor failed to pay its indebtedness and so the mortgagee instructed the sheriff to sell the properties mortgaged. At the sale on Oct. 8, 1949, the mortgagee was sole bidder. It happened however that the list of machineries attached to the certificate of sale did not include many of the items listed in the mortgage deed. The mortgagee therefore protested, and an agreement was had with the sheriff whereby a second sale would be held on Nov. 10, 1949, so as to cover all properties

not included in the first sale. Sheriff however advanced the sale to Nov. 7, and gave notice of this by telegram to the mortgagee, which received it on the date of the sale. The only bidder at this sale was plaintiff L. F. Long. The mortgagee protested the second sale and the sheriff referred it to the Fiscal who held that the second sale was illegal. Thereupon, the sheriff refused to execute a certificate of sale in favor of Long. Another sale was advertised and this time the mortgagee was sole bidder. Action was instituted by Long to (1) compel the sheriff to execute a certificate of sale in his favor; (2) have him deliver to Long the chattels sold; and (3) prevent him from executing a certificate of sale in favor of the mortgagee. When the trial court held that of the three sales, the second had been valid, the mortgagee appealed.

HELD: The second sale was held without the prior notice of ten days to the mortgagee; for that omission it must be declared null and void. There was no waiver of the objection to the illegality of the sale but a re-assertion of the right to an opportunity to bid. The third sale must be upheld for there was no objection against it except the alleged validity of the second sale. (L. F. LONG *vs.* ACTING PROVINCIAL SHERIFF ET AL., G. R. No. L-4083, Aug. 31, 1953.)

Foreclosure is only the incident of failure to pay a principal debt.

When an action is filed to foreclose a mortgage on a parcel of land upon failure to pay the purchase price, the payment of which is secured by said land, the principal obligation is the money indebtedness; the subjection of the property is only resorted to upon failure to pay the debt. Hence, the money debt is the principal thing, and foreclosure of the property is only the result or incident of the failure to pay the indebtedness. (SALVADOR ET AL. *vs.* LOCSIN, G. R. No. L-4629, May 29, 1953.)

FORCIBLE ENTRY AND DETAINER

Prior physical possession of land not necessary before one may bring action for unlawful detainer, where only issue involved is possession de facto.

FACTS: In 1947 petitioner filed a complaint for unlawful

detainer in the JP Court against respondent over a parcel of land acquired by petitioner through purchase during the Japanese occupation. The complaint was dismissed on the ground that petitioner, being a Chinese citizen, had no right to acquire the land in question.

The issues now raised by petitioner are: (1) Is prior physical possession a condition precedent before a vendee, against whom the possession of land is unlawfully withheld after termination of a right to possession, can file action for unlawful detainer? (2) Where the fact of the sale is admitted, but the validity thereof is questioned on the ground that the vendee is an alien, cannot the question of possession be decided without first settling the question of title, so that the court may continue to exercise jurisdiction over the action?

HELD: (1) In an action for unlawful detainer, it is not necessary that prior physical possession be first proved by the person bringing such action. It is sufficient that the action be instituted by a landlord, vendor, vendee or other person, against whom possession of the land is unlawfully being withheld after the expiration of the right to hold it (Sec. 1, Rule 72).

Petitioner bought the land; this is a fact admitted by respondent. In this action, such allegation is unnecessary upon the theory that the vendee has stepped into the shoes of the vendor and succeeded to his rights and interests. In contemplation of law, the vendee's possession is that of the vendor.

(2) In an action for unlawful detainer, the only issue involved is physical possession of real property, possession *de facto* and not *de jure*. The question of ownership is foreign to this action, and once involved, the JP Court loses jurisdiction. The fact that respondent raised the question of ownership by alleging that petitioner was a Chinese and hence could not own land in the Philippines, did not deprive the JP of its jurisdiction to decide the matter. The general rule is that an allegation by defendant claiming ownership of the property does not and cannot divest the court of its jurisdiction, unless it appears during the trial that, by the nature of the proof presented, the question of possession cannot properly be determined without settling that of ownership; then the court's jurisdiction is lost and the action should be dismissed.

Here, the question of mere physical possession can be determined without settling that of ownership. Though petitioner is a foreigner, it must be borne in mind that he bought the land in 1944, when the Constitution was not in force. Hence, the sale to petitioner of the land in 1944 was valid. (DY SUN *vs.* BRILLANTES and COURT OF APPEALS, G. R. No. L-4478, May 27, 1953.)

Where a question of ownership or title is necessarily involved, JP Courts lose jurisdiction.

FACTS: This case originated in the JP Court of Pasig as an action of unlawful detainer in which respondent Santos was the plaintiff and petitioner Raymundo was the defendant. The inferior court rendered judgment for Santos, and Raymundo appealed to the CFI on the ground that the action necessarily involved a question of ownership or title of the property in question. On appeal to the Court of Appeals, that court held that inasmuch as respondent Santos had had a transfer certificate of title issued in his name, he was entitled to the possession of the property. The validity of plaintiff's (Santos) title was disputed by defendant (Raymundo) on the ground that plaintiff's grantor, Felisa Afable, had fraudulently obtained the title to said property. Santos had never had prior possession of the property in question.

HELD: Santos' right to possession necessarily involved a prior adjudication of the question of ownership of the property in question and the action fell outside the jurisdiction of the JP Court. (RAYMUNDO *vs.* SANTOS, G. R. No. L-4770, June 30, 1953.)

Suspension of execution when failure to deposit monthly rents due to error or excusable negligence.

FACTS: Respondent Valencia was an employee retired by the board of directors of petitioner-company. The union to which Valencia belonged contested his retirement before the CIR, which found same illegal. The CIR's resolution was brought for review to the Supreme Court. Pending review, petitioner brought an action for detainer against Valencia, who had been occupying a house owned by the company. The court ordered Valencia to vacate the premises, but upon appeal, the enforcement of the writ of execution was stayed by Valencia's filing of a *supersedeas* bond to secure the judicial deposit of the monthly rentals. Subsequently, Valencia failed to deposit two months' rent; petitioner thereupon moved for a writ of execution, which was granted. Valencia filed a motion for reconsideration to suspend execution on the ground of error, viz., he had thought the *supersedeas* bond would answer for failure to deposit monthly rentals. The CFI therefore lifted the order of execution. Petitioner now questions the jurisdiction of the CFI to vacate an order of execution.

HELD: The CFI has jurisdiction to deny execution upon grounds of fraud, error or excusable negligence (Yu Phi Khim *vs.* Amparo, 47 O. G. 12 (s) 98). Furthermore, since the validity of Valencia's removal from employment was still pending review by the Supreme Court, a denial of execution was in consonance with justice and equity. (CEBU PORTLAND CEMENT CO. *vs.* VARELA ET AL., G. R. No. L-5438, Sept. 29, 1953.)

What supersedeas *bond covers.*

A *supersedeas* bond only covers rentals in arrears up to the time an appeal is perfected in the CFI. In addition to a *supersedeas* bond, to stay execution during appeal, defendant should deposit in court, or pay to plaintiff, the current rentals as they become due. (BAGTAS *vs.* TAN ET AL., G. R. No. L-6050, Sept. 25, 1953.)

SPECIAL PROCEEDINGS

SETTLEMENT OF ESTATE

Appointment of Administrator; Previous notice to parties interested in appointment thereof necessary.

FACTS: FB was appointed executor of the will of his deceased spouse. Subsequently, due to old age and infirmity, FB became unable to manage the estate, and CB was appointed administrator in the former's stead. Later, the court revoked CB's appointment on the ground that the latter had not been rendering his accounts properly, that instead, a third person over whom the court had no jurisdiction, had been making the reports for him. The court appointed JB administrator

in place of CB. This last appointment was made without notice to the parties interested. CB filed a motion for reconsideration of the last appointment but it was denied.

HELD: The appointment of CB was valid and the subsequent revocation of the latter's appointment was with sufficient cause, viz., his failure to render the estate accounts properly. There was, however, a procedural error in the appointment of JB, i.e., no notice had been given to interested parties; but this was cured when CB prosecuted his claim by a motion for reconsideration of the appointment. The law only prohibits the absolute absence of notice, not the absence of previous notice. (BORJA ET AL. *vs.* TAN, G. R. No. L-6108, May 25, 1953.)

Appointment of Administrator—Procedure therefor; Sec. 6, Rule 79 construed.

FACTS: LM, married to HS, died intestate. JT, alleging to be a creditor of the conjugal partnership, petitioned the court for the issuance of letters of administration in favor of de Jesus. Widow HS opposed the petition, alleging her preferential right to appointment under Sec. 6, Rule 79. The court disregarded her contention and appointed De Jesus, because HS had been hostile to creditors, disputing their credits, and therefore, unsuitable.

The issue here is twofold: (1) May a creditor of the deceased be appointed administrator, and (2) is HS unsuitable as an administratrix simply because she disputed the claims of alleged creditors?

HELD: Creditors, as signified by Sec. 6, Rule 79, are "those declared to be so by appropriate proceedings." By "appropriate proceedings" is meant those filed and considered after a regular administrator had been appointed. By asking creditors to prove their claims before honoring them, HS did only what an administratrix should do in the interest of the estate and its creditors. The appointment, therefore, of De Jesus as administrator should be annulled, and letters of administration issued to the widow. (INTESTATE ESTATE OF MORALES ET AL. *vs.* SICAT, G. R. No. L-5236, May 25, 1953.)

Special administrator may be authorized to sell perishable property; Sec. 2, Rule 81 applied.

FACTS: This is an appeal from an order of the lower court whereby Nagar as judicial administrator was ordered to execute another deed of sale of property in favor of Abas, subject to the approval of the court. A previous deed of sale had been excuted in due form by and at the behest of Pabilonia as the former special administrator. When Pabilonia's deed of sale was submitted for confirmation, the court held that a regular administrator, not a special administrator like Pabilonia, should sign the instrument if the same were to be valid.

HELD: The conveyance made by the special administrator was both valid and effective. There was no need to appoint a regular administrator to ratify it. Sec. 2, Rule 81 expressly authorizes a special administrator to sell such perishable and other property as the court orders sold. (PABILONIA ET AL. *vs.* SANTIAGO ET AL., G.R. No. L-5110, July 29, 1953.)

Probate court may authorize sale of properties if beneficial to heirs.

FACTS: This is an appeal from a judgment of the Court of Appeals, affirming that of the CFI which had annuled the sale of certain properties upon order of a probate court on the ground that one of the heirs, not having been notified thereof, had objected thereto.

HELD: The probate court had jurisdiction to order the sale over the objection of the heir because the sale would have redounded to the benefit of all the heirs. Respondent could not claim that notice had not been given her because same had been made by mail and publication. Moreover, her objection to the sale meant knowledge of the court's order. The new Rules of Court precisely seek to remove the shackles which bind the court in settling testate and intestate proceedings. (CELIS *vs.* DE LA SANTA, G. R. No. L-5294, Sept. 30, 1953.)

Order of sale of property of decedent not final until *actual sale and confirmation thereof.*

The order of the court for the sale of the property is not a final order or judgment on the question of the validity of

the deed of sale in favor of plaintiff, or on the question of ownership of the property. The reason is that it never became final, because it was suspended by the new order holding the approval of the sale in abeyance. The record fails to disclose the date of this subsequent order, but even if it was promulgated more than 30 days after the original order of sale, the court should still suspend its effects, because an order of sale is not considered final until an actual sale has been made thereunder and confirmed by the court. (BAQUIAL *vs.* AMIHAN ET AL., G. R. No. L-4377, Jan. 23, 1953.)

Probate court may determine title to real property to determine its inclusion in the inventory; Heir may sell his interest in an inheritance, but sale subject to the result of the administration proceeding.

FACTS: In the testate proceedings of the deceased spouses Hilarion and Ligoria Martir, their only legitimate children, Hermogenes and Angela, were appointed co-administrators of both estates. Hermogenes died in 1943 and was succeeded by Jalandoni.

On July 5, 1947, Angela submitted for approval an inventory of the two estates, the accounts of her administration for 1945 and 1946, and a project of partition. The inventory was objected to by Jalandoni, insofar as it included certain parcels of land which, he claimed, had been bought by his wife from Hermogenes in 1940.

The court (1) overruled Jalandoni's objection, and (2) declared the sale void as an unauthorized disposal of property in *custodia legis*.

HELD: (1) Though questions involving title to real property cannot be determined in testate or intestate proceedings, it is now established that, for purposes of determining whether or not a given property should be included in the inventory, the probate court may pass upon the title thereto, though such determination is not conclusive and is subject to final decision in a separate action between the same parties.

(2) On examining the deed of sale, it can be noted that Hermogenes conveyed to Jalandoni's wife merely his right to, and interest in the lands in question, i.e., his rights and interests as an heir in a partition of the hereditary estate. There is no law that prohibits an heir from selling his interests in an inheritance, except that any such sale must be deemed subject to the result of the administration proceeding (Cea et al. *vs.* Court of Appeals et al., G.R. No. L-1776, Oct. 27, 1949). (TESTATE ESTATE OF HILARION MARTIN *vs.* JALANDONI and RAMOS, G.R. Nos. L-5048 and L-5049, Oct. 31, 1953.)

Effect of determination of title by probate court.

A court which takes cognizance of testate or intestate proceedings has power and jurisdiction to determine whether or not the properties included therein or excluded therefrom belong *prima facie* to the deceased, although such a determination is not final or ultimate in nature, and without prejudice to the right of interested parties, in a proper action, to raise the question bearing on the ownership or existence of the right or credit. (BAQUIAL *vs.* AMIHAN ET AL., G. R. No. L-4377, Jan. 23, 1953.)

GUARDIANSHIP

Power of the court to authorize the sale of property of which the ward is only a co-owner.

FACTS: Antonio and Justa, husband and wife, owned a residential lot registered as conjugal property. After the death of Justa, Antonio executed a deed of promise to sell the western half of the lot in question to Magpali and Miranda with option on their part to buy the whole lot for ₱7,000.00. Antonio received as earnest money or partial payment the sum of ₱100.00. Thereafter, Antonio became mentally incapacitated. Benita applied for the guardianship of the person and property of Antonio. The petition was granted and Benita was appointed guardian.

In the meantime, Elpidio, the only child of Antonio and Justa, executed a deed of *pacto de retro* sale of the same residential lot in favor of the same Magpali and Miranda for ₱5,000.00, but the purchasers were given the option to make the sale definite and absolute if they added ₱2,000.00 to the purchase price. Thus Benita, acting as guardian jointly with Magpali and Miranda petitioned the court for authority to sell the lot to Magpali and Miranda in the sum of ₱7,000.00, alleging that Elpidio had already received from them a total of ₱5,450.00, and that she as guardian had also received from the

said purchasers the sum of ₱1,450.00. Elpidio filed a motion for the disapproval of the order authorizing her to sell, contending that the court did not have jurisdiction to authorize the sale of the one-half portion belonging to him.

HELD: Technically, the contention of Elpidio is correct because the court could authorize the sale of only that portion that belonged to the incompetent. However, under the circumstances, he has no reason to complain, specially since all the court did was sanction and legalize what had already been done by Antonio and Elpidio. Technicalities must give way to substantial justice. (TABOR *vs.* BALTAZAR ET AL., G. R. No. L-5468, Feb. 11, 1953.)

ADOPTION

The consent of the natural father is not required where he has abandoned and has not recognized his natural child.

FACTS: The court decreed the adoption of the child Lydia by the spouses Norberto and Flora. About a year later, Dayrit presented a motion for reconsideration, alleging that the parents by adoption had presented the petition for adoption without the knowledge or consent of the natural father of the adopted child; that as the natural father, his consent to said adoption was essential.

HELD: The contention that, as the natural father, Dayrit's consent was essential to the adoption of his daughter by the respondent spouses is without basis in view of the provisions of Sec. 3, Rule 100. Dayrit abandoned his daughter and never did anything for her, and only remembered to claim his right to give his consent to her adoption almost a year after the child had already been adopted by the respondent spouses. Furthermore, Dayrit never recognized his natural child. His consent was, therefore, unnecessary. (DAYRIT *vs.* PICCIO ET AL., G. R. No. L-5627, Feb. 27, 1953.)

A decree of adoption cannot be set aside after it has become final.

Where one year and eight days have passed after the promulgation of a decree of adoption, said decree of adoption cannot be revoked because it has already become final. (DAYrit *vs.* PICCIO ET AL., G. R. No. L-5627, Feb. 27, 1953.)

CRIMINAL PROCEDURE

PROSECUTION OF OFFENSES

Intervention by the offended party; Secs. 4 and 6, Rule 106 construed.

ISSUE: In the prosecution of a criminal case commenced either by complaint or information, may an offended party intervene, personally or by attorney, as a matter of right as claimed by petitioner, or by mere tolerance as ruled by respondent judge?

HELD: Sec. 4, Rule 106 provides that "all criminal actions either commenced by complaint or information shall be prosecuted under the direction and control of the fiscal," and Sec. 15, Rule 106, as a corollary, provides that "unless the offended party has waived the civil action or expressly reserved the right to institute it after the termination of the criminal case . . . he may intervene personally or by attorney, in the prosecution of the offense." From these provisions, it can be inferred that while criminal actions as a rule are prosecuted under the direction and control of fiscal, an offended party may intervene, especially in cases of offenses which cannot be prosecuted except at the instance of the offended party. The only exception to this rule is when the offended party waives his right to the civil action or expressly reserves his right to institute it later. And even in cases which do not involve civil liability, an offended party may appear and not merely as a matter of tolerance on the part of the court, just so long as he has not waived the civil action or reserved his right to institute one. (LIM TEK GOAN *vs.* YATCO, 50 O. G. 98.)

Effect of failure of prosecution to prove all *the acts charged under one count or paragraph of information.*

FACTS: This is an appeal from a judgment of the CFI, finding appellant guilty of treason under three counts. Appel-

lant's counsel claims that the facts alleged in count No. 2 have not been satisfactorily proved.

HELD: Count No. 2 charges four specific acts, each of which constitutes a complete act of treason, by itself independent of the others; the failure of the prosecution to prove all does not entitle the accused to be acquitted of the whole count or of all the charges contained therein when any one or more of the acts are proved. While it is convenient that each count or paragraph should contain only one offense or one specific act of treason for the sake of clarity, this does not justify the inference or claim that all of the acts charged under one count or paragraph should be considered as only one act or offense, and proof of all the acts included therein necessary to prove the charge. (PEOPLE *vs.* RASAY, G. R. No. L-5361, Feb. 24, 1953.)

PROSECUTION OF CIVIL ACTION

Prejudicial Question; Suspension of civil action upon filing of criminal action. Sec. 1, Rule 107 applied.

FACTS: Estafania Pisalbon found in the records of a cadastral case a purported affidavit subscribed and sworn to by her before a notary public, in which she renounced in favor of Eugenia Pisalbon and the latter's heirs and assigns all her (Estafania) rights and interests in Lot No. 7525. Estafania said she had no knowledge of the affidavit nor had she executed it. She therefore filed a criminal complaint against the notary public with the Justice of the Peace. Without, however, holding any investigation, the JP dismissed her complaint on the ground that he could not proceed with the criminal case until the CFI decided the cadastral case in which the alleged falsified affidavit had been presented. On appeal, the CFI affirmed the JP's decision on the same ground.

HELD: The CFI erred. The civil case did not involve a question prejudicial to the criminal case, for, to whomsoever the land might be awarded after all the evidence has been presented in the civil case, the result would not affect the alleged crime committed by the notary public, which crime is the issue in the criminal case. And even supposing that both the civil and the criminal cases involve the same question and one must precede the other, it should be the civil case which

should be suspended, rather than the criminal (Sec. 1, Rule 107; Almeida et al. *vs.* Abaroa, 8 Phil. 178). (PISALBON ET AL. *vs.* TESORO ET AL., G. R. No. L-5065, April 20, 1953.)

Civil action not stayed when independent of cause of criminal case.

FACTS: Petitioner requests that respondent judge be required to give due course to her civil action against her husband, D. Mendoza, without waiting for the termination of the criminal prosecution initiated by her against him for concubinage.

Petitioner's civil complaint against her husband in the CFI of Cebu prayed specifically for (1) separation of property, and (2) administration by her of the conjugal assets. The complaint alleged that the husband, as manager of the conjugal partnership, had maintained illicit relations with another woman under scandalous circumstances, thereby impelling the wife to institute a criminal case for concubinage against him and the woman; the complaint also averred that the husband had defrauded the marital partnership. The husband moved to dismiss the complaint, arguing that it demanded legal separation based upon supposed unfaithfulness and, therefore, it should not be given due course until the criminal action for concubinage shall have been terminated. The court denied his motion, explaining that the prayer in the complaint had asked for "separation of property," not "separation of parties." However, on motion for reconsideration, the court observed that, although plaintiff had not specifically prayed for a legal separation of the parties, the allegations of the complaint adverting to the concubinage might, if proved, entitle her to legal separation also. The court, therefore, ordered the suspension of the civil proceedings during the pendency of the criminal prosecution.

HELD: Because the main basis of the civil action was the husband's mismanagement and fraud, and since legal separation was excluded from plaintiff's objectives, the complaint's reference to the husband's infidelity becomes not the central point nor her cause of action, but mere evidentiary or corroborative allegations of the husband's wasteful living. Since, therefore, the civil action for separation of property or administration by the wife was not founded upon the same offense of con-

cubinage, which is the subject-matter of the criminal proceedings, the respondent judge erred in staying such civil litigation under Rule 107. (CABAHUG-MENDOZA *vs.* VARELA, G. R. No. L-5099, April 29, 1953.)

PRELIMINARY INVESTIGATION

Right of an accused to a preliminary investigation qualified.

FACTS: The Provincial Fiscal filed an information in the CFI of Capiz, charging petitioners herein with robbery with homicide. Arrested, petitioners subsequently on arraignment pleaded not guilty.

Before the trial, petitioners moved to have the case dismissed on the ground that they had been deprived, without due process of law, of their right to a preliminary investigation because no notice of same had been given them. This motion was denied and an action for *certiorari* filed.

HELD: Notice of a preliminary investigation is required only after an accused has requested to be present at the investigation, for to hold that the Fiscal is required to give notice to the accused before conducting the investigation will make it impossible for him to conduct such investigation in cases where the whereabouts of the accused are unknown.

In any event, even supposing that petitioners had a right to be notified of the preliminary investigation so that they might participate in it, despite the fact that they had not so requested it, such right was waived when they pleaded not guilty upon arraignment. For it is now settled that the right to a preliminary investigation is waived by failure to claim it before the accused pleads not guilty (People *vs.* Magpala, 70 Phil. 176). (LOZADA and LOZADA *vs.* HERNANDEZ ET AL., G. R. No. L-6177, April 29, 1953.)

BAIL

Where some of the bondsmen surrender the accused to the court, all the bondsmen are discharged.

FACTS: Two sets of sureties signed a bail bond for the provisional release of Hanasan, who was held on a charge of *estafa.* Becoming apprehensive however that the accused might jump bail following his detention for the crime of abduction in another municipality, some of the bondsmen in both sets surrendered him to the court with a petition that he be committed to custody and the bond for his temporary release canceled. Thus, the court had the accused put in jail, but ordered him released again when a new surety signed a separate bail bond to take the place of the sureties who had petitioned for the cancellation of their bond, the judge being of the impression that, despite the surrender and incarceration of the accused, the other sureties, i.e., those who did not join in the petition for cancellation, continued to be bound by their undertaking and became co-sureties of the new bondsmen. Appellants contend, however, that when Hanasan was surrendered to the court and ordered into custody, the bailment ended so that all of the sureties were discharged from their undertaking.

HELD: Appellants' contention is correct, for the Rules of Court provide that the bail bond shall be canceled and the sureties discharged from liability where the sureties so request upon surrender of the accused to the court or where he is rearrested or ordered into custody on the same charge (Sec. 16 (a) and (b), Rule 110). In the present case, the accused was surrendered to the court and forthwith ordered into custody on the same charge. It is immaterial that it was not the appellants themselves but their co-sureties who surrendered the accused. Once the accused was ordered into custody, his bondsmen no longer had control over him so that neither those of them who effected the surrender nor the others who did not, could be held responsible for his appearance for any purpose. (PEOPLE *vs.* HANASAN ET AL., G. R. Nos. L-4743, L-4744, and L-4745, Feb. 27, 1953.)

When surety still liable.

The failure of the surety to inform the court of the accused's arrest, while on bail, by constabulary authorities, raises a presumption of the continuation of its liability, and his escape from their custody will not excuse it from non-performance of its obligation under the bond. (PEOPLE *vs.* DIET, G. R. No. L-5256, Nov. 27, 1953.)

MOTION TO QUASH

Effect of failure to move to quash in the Court of First Instance.

FACTS: Petitioner was found by the Court of Appeals, upon appeal from the CFI, to have sold a 10-pound bag of refined sugar for ₱2.00, in excess by twenty centavos of the ceiling price fixed in Executive Order No. 331. Petitioner contends that the classification of refined sugar into groups contained in said Executive Order is ambiguous. Petitioner claims that, for the same refined sugar, two ceiling prices for one kilo are fixed, viz., ₱0.40 and ₱0.45, with the result that, if ₱0.45 is adopted as a criterion, 10 pounds of sugar would cost approximately ₱2.02, or two centavos more than the amount for which the petitioner sold the 10-pound bag of refined sugar.

Respondent argues, however, that petitioner failed to raise the point not only in the CFI by a motion to quash, but also in the Court of Appeals, as a consequence of which he must be deemed to have waived the objection.

HELD: In the first place, under Sec. 10, Rule 113, failure to move to quash amounts to a waiver of all objections which are grounds for a motion to quash, except when the complaint or information does not charge an offense. The point now raised by petitioner is, in effect, that the information did not charge an offense. In the second place, as an appeal in a criminal proceeding throws the whole case open for review, it should have been the duty of the Court of Appeals to correct such errors as might be found in the appealed judgment, whether assigned or not. Finally, notwithstanding the absence of assignments of error, the appellate court will review the record and reverse or modify the appealed judgment, not only on grounds that the court had no jurisdiction or that the acts proved do not constitute the offense charged, but also on prejudicial errors to the right of the accused which are plain, fundamental, vital or serious. (SOY SUI *vs.* PEOPLE, G. R. No. L-5278, Feb. 17, 1953.)

Double Jeopardy

When plea not available.

The defendant is estopped from demurring to the Philippine court's jurisdiction and pleading double jeopardy on the strength of his trial by the court martial. A party will not be allowed to make a mockery of justice by taking inconsistent positions which, if allowed, would result in brazen deception. It is trifling with the courts, contrary to the elementary principles of right dealing and good faith, for an accused to tell one court it lacks authority to try him and, after he has succeeded in his effort, to tell the court to which he has been turned over that the first committed error in yielding to his plea. (PEOPLE *vs.* ACIERTO, G. R. Nos. L-3708 and L-3355-60, Jan. 30, 1953.)

None when defendant consents to dismissal of case.

FACTS: The prosecution asked for provisional dismissal of the case because the plaintiff was ill. To the order granting dismissal, defendant's attorney put the words "no objection" and affixed his name. The Fiscal also signed same. Subsequently, upon motion for reinstatement of the case, defendant pleaded jeopardy.

HELD: No jeopardy. The words "no objection' are equivalent to "I agree"; hence, they express consent. (PENDATUN *vs.* ARAGON ET AL., G. R. No. L-5469, Sept. 25, 1953.)

Dismissal of information upon accused's initiative; Sec. 9, Rule 113 applied.

Where an information for estafa against an accused was provisionally dismissed not only with his consent but upon his own initiative, it follows that said dismissal does not operate as a bar to another prosecution for the same crime. (PEOPLE *vs.* CHANG, G. R. No. L-5839, April 29, 1953.)

Test to determine whether second prosecution would place accused in a second jeopardy.

FACTS: Tried for the theft of a U. S. Treasury Check payable to the order of Paulina Belches Vda. de Orbina, and acquitted for insufficiency of evidence, defendants were subsequently charged with *estafa*, involving the same check, and under an information alleging that they,

> "x x x thru false pretense, represented and made it appear that Agripina Magat de Soriano is x x x Paulina Belches x x x to the Municipal Treasurer x x x and the latter because of such false pretense x x x cashed said check x x x."

Before arraignment, defendants moved to quash, pointing to their former acquittal and arguing that they had already been in jeopardy of punishment for the same offense under the previous information for theft. The court dismissed the case on the above ground and the fiscal appealed.

HELD: To determine the fact of double jeopardy, the point to consider is whether under the information for theft the defendants could have been convicted of *estafa* described in the second information. Well-known is the rule that the offense charged is not the name given it by the fiscal, but that described by the facts alleged in the information.

The crucial allegations of the *estafa* charge were the allegations of false pretense and representations which were *totally lacking* in the first information for theft. True, the first information said "the accused succeeded to cash the said check and collected the amount," and it might be contended that this *impliedly* alleged the same false representations included in the second information. Such theory, however, would tolerate implied allegations in a criminal information to the utter disadvantage of the accused whose constitutional right to be informed of the nature of the accusation might thereby be undermined.

The appellees maintain that the offense described in the information for *estafa* is the same crime *proved* at the trial for theft. But the test as to jeopardy is the crime *alleged* in the information—not the crime *proved* thereafter. Although the offense described in the new information for *estafa* is the same crime *proved* at the trial for theft against the same accused, there is no double jeopardy as the information described the offense of theft only. In other words, the accused could not be convicted of such *proved* crime if it was not sufficiently described in the information. They were not therefore in danger of being punished for such *proved* crime. (PEOPLE *vs.* SORIANO and MIRANDA, 50 O. G. 106.)

Double Jeopardy caused by dismissalof information.

Where the Court of First Instance dismissed the information against the accused, after trial, under the mistaken belief that it had no jurisdiction over the crime charged, when in fact the offense was cognizable by it, the judgment dismissing the case is unappealable, because the appeal places the accused in a second jeopardy. (PEOPLE *vs.* HERNANDEZ, G.R. No. L-4213, Nov. 28, 1953.)

PLEAS

Danger of improvident plea of guilty; When plea of not guilty considered entered.

FACTS: This is an appeal from a decision finding the accused guilty by his own voluntary confession of the crime of murder. Before the hearing, the accused's counsel manifested to the court that his client would plead guilty, and prayed that defendant be sentenced to *destierro* because he had killed the deceased while the latter was having carnal intercourse with defendant's wife. On the basis of the above manifestation and without taking any evidence, the lower court found defendant guilty of murder.

HELD: The danger involved in the entry of improvident pleas of guilty in criminal cases must be ever borne in mind. The prudent, advisable course, especially where grave crimes are concerned, would be to take additional evidence to show the guilt of the accused (U. S. *vs.* Jamad, 37 Phil. 105). The appealed decision is conditioned upon the allegation, and the evidence adduced proved, that defendant had killed the deceased while in actual adultery with defendants' wife. The defendant in this case must therefore be considered as having entered a plea of not guilty. (PEOPLE *vs.* MORO SABILUL, G. R. No. L-5520, July 31, 1953.)

TRIAL

State Witness; Discharge of a defendant to serve as state witness is discretionary upon the court; Sec. 9, Rule 114 construed.

FACTS: Salcedo as Mayor of Malaybalay, and Quirab as a road *capataz*, together falsified a voucher by stating therein that one Ma-aliao had worked as a laborer for twelve days when in fact he had not been so employed. The Provincial Fiscal presented a motion, asking the court to discharge Quirab on the grounds that there was no other direct evidence available for the proper prosecution of the offense committed; that Quirab's testimony could be substantially corroborated in its material points; and, that he did not appear to be the most guilty and had not at any time been convicted of any offense involving moral turpitude. Judge Ibañez denied the motion,

believing there was no material ground to discharge Quirab, it being apparent that the voucher could not have been paid without the signature of the *capataz* and, vice versa, the mayor's. The court, moreover, said that what the prosecution would establish as evidence could be established even without Quirab's testimony.

HELD: It is apparent from Sec. 9, Rule 115, that the discharge of an accused that he may turn state's evidence is expressly left to the sound discretion of the court, which is the exclusive entity having the responsibility of seeing to it that the conditions prescribed by said rule exist.

Whether as a witness for the government or as a defendant fighting for his acquittal, Quirab could not afford to be silent on how and why he had affixed his name to the voucher. And since the two defendants were prosecuted under one information and tried together, Quirab's testimony in his own defense could be as effective against Salcedo as when given in the capacity of a state witness. (PEOPLE *vs.* IBAÑEZ, G. R. No. L-5242, April 20, 1953.)

JUDGMENT OR SENTENCE

Execution in a criminal case of a judgment that has become final cannot be delayed.

FACTS: In the case of *People vs. A. Guillermo et al., G. R. No. L-2180*, said Guillermo was declared by the Supreme Court guilty of seven murders, and sentenced to life imprisonment and to indemnify the heirs of each victim. After the decision had become final, the case was remanded to the court of origin for execution of judgment. Instead of ordering execution, the lower court, upon motion of the accused and his bondsmen, in effect suspended execution by ordering that its promulgation be held in abeyance pending the determination of the accused's petition for amnesty before the Seventh Guerrilla Amnesty Commission.

Alleging that it was the ministerial duty of the lower court to immediately execute the judgment of the Supreme Court, and that the lower court had acted without authority and with grave abuse of discretion in suspending the execution, the children of Donato Luis, one of the victims of Guillermo, brought the present action for *mandamus*.

HELD: Since the judgment in the above criminal case had already become final, all attempts to delay its execution on the pretext of a pending petition for amnesty (to which accused was declared not entitled) should have been ignored. (LUIS and LUIS *vs.* BELMONTE, G. R. No. L-5224, March 26, 1953.)

EVIDENCE

Relevancy; Reputation of accused.

FACTS: In this appeal from a judgment of the CFI finding Sulit guilty of robbery with intimidation of persons, with rape, objection is made against the statement of the trial judge that Sulit's reputation was such as to induce the court to believe that he must have committed the crime imputed to him.

HELD: We find no ground for disturbing the consideration of relevancy given by the trial court to this point. The appellant himself declared that while living in Bongco and as a young man, he used to fight any one who would dare to question his physical superiority. (PEOPLE *vs.* SULIT, G. R. No. L-4919, Jan. 21, 1953.)

Judicial Notice of Urban Planning Commission's project.

FACTS: Lazatin contracted with the Heirs of Eduque to lease a lot in the City of Manila, located at the corner of Legarda and Alejandro VI, and to rebuild the Prince Theatre and apartments within six months. Plans therefor were to be approved by both parties and city authorities. Lazatin subsequently submitted plans to the Urban Planning Commission, which disapproved them. Thus, a building permit was never granted and the Prince Theatre and apartments never constructed. Thereafter, Lazatin wrote the Heirs of Eduque that in view of his failure to secure a building permit, and in view also of the hostile attitude of the tenants on the leased property, he was asking for cancellation of the lease without prejudice to the possibility of future negotiations after the government made the necessary adjustments. The Eduque Heirs sued for damages plus rentals.

HELD: Lazatin's efforts to secure a building permit exonerates him from liability as he did his best to secure the approval of the plans for construction. It is of judicial notice that it was

difficult to secure such approval in the face of the Urban Planning Commission's project to expand streets, and the city engineer would not grant such permission without the recommendation of said Commision. However, Lazatin must pay the rentals. (EDUQUE TABORA ET AL. *vs.* LAZATIN, G. R. No. L-5245, May 29, 1953.)

Judicial notice

Judicial notice may be taken of the fact that in the Philippines the same alphabet is used for writing English, Spanish or any of the native dialects, so that one who can write English well enough may also be expected to write Spanish, *Chavacano*, or any other Philippine dialect he knows. (WU SIOCK BOON *vs.* REPUBLIC, G. R. No. L-4688, Feb. 16, 1953.)

Confession offered by an accomplice is admissible but should be cautiously accepted.

FACTS: Raiz, Rebillos and others one night took De la Cruz from his house. At a nearby place, Raiz and Rebillos shot and killed De la Cruz. The two, who were then special policemen, summoned seven men from the neighborhood to bury the dead man's body. To the seven, the two killers revealed that they had killed De la Cruz; they also threatened the seven with death if they would reveal the occurrence.

When both killers were apprehended, Raiz's defense was that Verzosa had caught a Huk named De la Cruz, that Verzosa and Rebillos had shot him for attempting to escape, and that Lazatin, with aid from seven others, buried the body on orders from Verzosa, a fugitive from justice. On the other hand, Rebillos testified that Verzosa had killed De la Cruz during an escape try.

HELD: The testimony of the seven men ordered to bury the victim's body conclusively established that Raiz and Rebillos were the authors of the crime. The fact that both openly ordered other men to bury the deceased is not unnatural because the two were then special policemen entrusted to go after Huks. The wife of the victim testified that, shortly after her husband had been taken from their house, she heard a gun report. The fact also that Raiz, while in prison, had written a relative, suggesting ways and means by which evidence of the prosecution might be weakened, and urging a witness for the prosecution to testify in a manner favorable

to him, strengthens the above conclusion. Moreover, Rebillos signed a confession, pointing to Raiz as the killer; although this confession may not be introduced directly against Raiz, yet it may be taken into consideration in passing upon the weight and credibility of witnesses of the opposing parties. (PEOPLE *vs.* RAIZ ET AL., G. R. No. L-4565, May 20, 1953.)

Testimony offered by an accomplice is admissible but should be cautiously accepted.

FACTS: Lanas, Ngina and Liswig were charged with murder. Ngina confessed in writing to the killing, and, as a result, was tried separately. At the trial of Lanas and Liswig, Ngina testified that the crime had been perpetrated by all three, that Lanas had offered him and Liswig ₱200.00 to kill the deceased. Ngina explained that he had confessed because he had been threatened by Lanas; but Ngina offered no proof showing the threats. No evidence, contrary to the written confession, successfully rebutted the imputations made to Lanas by Ngina.

HELD: The testimony of accomplices is both admissible and competent, but when it comes from a polluted source, it must be scrutinized with care and viewed with suspicion. If it is not corroborated, its credibility is affected. However, if corroborated absolutely or to an extent indicative of trustworthiness, the testimony of an accomplice is sufficient to warrant a conviction even if he had made previous statements inconsistent with his present testimony, provided such inconsistency is satisfactorily explained.

Here, however, Lanas and Liswig were acquitted. (PEOPLE *vs.* LANAS ET AL., G. R. No. L-5086, May 25, 1953.)

Proof of corpus delicti *may corroborate extra-judicial confession.*

A conviction in a criminal case may be based on an extra-judicial confession with proof of *corpus delicti* independent of said confession. *Corpus delicti* is not necessarily the body of the crime but may consist of facts and circumstances tending to corroborate the confession, e.g., the fact that the confessed killer brought three hand grenades, sailed after the victims, returned without them; and the fact that pieces of wreckage of the victims' vinta were seen. (PEOPLE *vs.* MORO ANSAREG, G.R. No. L-4847, May 15, 1953.)

Where testimony is not incredible, it cannot be denied merely because witnesses were relatives of deceased.

FACTS: At about eight o'clock in the evening in 1950, the now deceased Adel was attacked near his house by five men with knives, sustained serious wounds, and died a few hours later. Identified as the assailants, S. Valdez, his son A. Valdez, and the three Balibat brothers were prosecuted for murder and found guilty. Only S. Valdez appealed.

Appellant testified that at the time of the crime's perpetration, he was in a distant barrio. Although his alibi was corroborated by another, it was proved at the trial that appellant had been named by the deceased as one of his assailants, and positively identified by three others then in the vicinity of the crime. The only thing to determine here is whether appellant participated in the attack.

HELD: Though the defense questioned the testimony of the three persons above-mentioned, there is no sufficient reason to doubt their veracity. Recognition of appellant by them was not improbable, considering a bright moon that night; they knew appellant well and saw him at close range. Their testimony, not being incredible, is not to be denied credence simply because they were in one way or another related to the deceased. (PEOPLE *vs.* VALDEZ ET AL., G. R. No. L-5177, March 28, 1953.)

When criminal complaint and its supporting affidavit filed with an inferior court are per se *hearsay.*

FACTS: Defendants were convicted in the lower court of multiple murder with aggravating circumstances, on the strength of the testimony of state witnesses Guiyab, Siazon and Cinco. On appeal, defendants tried to discredit such testimony by claiming that, as appeared in the criminal complaint filed with the justice of the peace court and the supporting affidavit of his wife, Juan Reves, whom Siazon and Cinco claimed had participated in the murder, was already dead at the time of the commission of the offense.

HELD: While both the affidavit of Reves' wife and the complaint filed with the justice of the peace court are admissible as public records, the statements contained therein as to the date of the supposed death of Juan Reves are hearsay because the declarants were not subjected to cross-examination. The making of the statements, or its presentation, though circumstantial evidence to the effect that Reves has been killed, are not conclusive as to the time of Reves' death. It is quite possible that the murder may have actually been committed in October, 1945, while Reves was still alive. In any case, granting Siazon and Cinco were mistaken as to Reves' presence, that supposition does not necessarily make the rest of their testimony incredible. (PEOPLE *vs.* CAGGAWAN ET AL., 50 O. G. 124.)

Presumptions—Criminal Intent and Innocence.

FACTS: Found short of, and unable to produce upon demand by the provincial auditor, the amount of ₱3,938.00, defendant, as an officer in charge of the municipal treasurer's office in Despujols, Romblon, explained to the examining officer that several days before he had put the money by mistake in an envelope, gone with it to a show, and forgotten it on his seat; that on returning to look for it, the envelope was gone. Prosecuted for the crime of malversation of public funds, defendant was found guilty.

On appeal, defendant contended that (1) lacking direct evidence of actual misappropriation, the trial court had convicted him on mere presumption of criminal intent in losing the money; and (2) the presumption of his guilt from the mere fact that he had failed, upon demand, to produce the sum lacking, violated his constitutional right to be presumed innocent.

HELD: (1) The first contention is irrelevant, because the trial court did not believe defendant's explanation that the money had been lost. The court considered it a mere cloak to cover the misappropriation. (2) The contention that there was a violation of the constitutional presumption of innocence cannot be sustained. Not having been raised in the court below, this constitutional question may not on appeal be considered for the first time. (PEOPLE *vs.* MINGOA, G. R. No. L-5371, March 26, 1953.)

Credibility of testimony

FACTS: Rivera, a witness for the prosecution, declared that from a distance of about 20 meters from where his father had dropped dead, he heard gunshots and saw Pesquiza run away.

HELD: It cannot be claimed that this witness was present at the scene of the crime or, if he was, that he recognized his

father's assailants. The crime was committed at about seven p.m. The admitted fact that Rivera did not tell the authorities the name of the assailant until arrest six months later, and that not even to his sister with whom he and his father lived and who, after his father was killed, was his only house companion, did he disclose the identity of the accused, is hardly compatible with the veracity of his statements at the trial. (PEOPLE *vs.* PESQUIZA, G. R. No. L-5036, Feb. 27, 1953.)

Corroborative Testimony.

FACTS: At about seven o'clock in the evening, while the now deceased Tinapay was lying on his back at the edge of the *azotea* of his house, he was without warning attacked by two men, one of whom hit him in the thigh with a piece of wood while the other stabbed him in the breast with a knife A sturdy man, Tinapay managed to get possession of the knife, whereupon his assailants fled. Tinapay died the following day.

Casas and Salcedo were prosecuted for Tinapay's murder. Salcedo was acquitted, but Casas was found guilty of homicide. Latter appealed. The question before the court is, who stabbed the deceased?

HELD: In answer to this question, there is first, the testimony of the widow that, as she came out into the *azotea* in answer to her husband's cry for help, he showed her the knife in his hand, saying, "Here is the knife with which Vicente (Casas) stabbed me." Then there is the ante-mortem statement of the deceased taken down by a policeman in the presence of a municipal councilor, again naming Casas as the one who had stabbed him. And lastly, there is the testimony of Billato, Casas' friend and co-worker, who had accompanied him to the house of the deceased but took no part in the assault. (PEOPLE *vs.* CASAS ET AL., G. R. No. L-5873, March 31, 1953.)

Defense of Alibi crumbles in face of corroborative testimony.

FACTS: One afternoon in 1948, Mrs. de Aquino, her twin daughters Corazon and Amelia, and Mercedes Belmes were walking home from their farm in Abra. Some point along the way, they were ambushed by three men. Mrs. Aquino was shot in the right shoulder. Wounded, Mrs. Aquino heard

Corazon shouting for help. She turned around and saw Beleno pounding Corazon with a rifle butt even as Pizarro was raising the fallen girl from the ground. Horrified, Mrs. de Aquino, Amelia and M. Belmes ran away. Next day, Beleno and Pizarro were arrested, and subsequently charged with murder and frustrated murder, because Corazon had died of external and intra-cranial hemorrhage.

The two defendants submitted their defenses separately. Pizarro declared in substance that Beleno had compelled him under threat to join the ambuscade; that Beleno had shot Mrs. de Aquino and repeatedly butted Corazon with his gun; that, out of pity, Pizarro had tried to raise the fallen girl but had to forsake her on orders of Beleno.

Beleno tried to prove that, at the time of the crime, he was six kilometers away, helping his ailing father. He insinuated it was Pizarro who had committed the crimes for purposes of robbery. The lower court convicted Beleno only, who appealed.

HELD: Beleno's alibi is unconvincing in the face of the positive identification made by the offended parties, who would be corroborated by M. Belmes if the latter had been placed on the witness stand. Moreover, the confession by Pizarro to Sergeant Agloos involving Beleno served definitely to clinch the case against the latter. (PEOPLE *vs.* BELENO ET AL., G. R. Nos. L-5853 and L-5854, March 27, 1953.)

What constitutes proof beyond reasonable doubt.

FACTS: A, his wife B and children C and D, and E—B's relative, were attacked in 1945 by JI together with AI and S, the last three heavily armed. A and B died on the spot; D died later, while E was merely wounded. C saw the perpetration of the crime. After the attackers had fled, the Mayor happened to pass by and was informed by C and E that JI and AI were the attackers. The incident was reported also to the Constabulary captain. However, C did not file a complaint until after six years because she had been afraid of AI who was still at large.

HELD: There is no proof beyond a reasonable doubt of JI's guilt. To begin with, C made no formal complaint before the proper prosecuting officer. The allegation that she was afraid of a reprisal from the assailants is weakened by the fact

that she reported the matter to the Constabulary. The Mayor, likewise, took no steps for the prosecution of the attackers. Moreover, an information filed by the Provincial Fiscal had been dismissed by the JP of Indanan. (PEOPLE *vs.* ALI, G.R. No. L-4881, May 27, 1953.)

Circumstantial evidence; Inference.

From the mere fact that the appellant may have been of a healthy and virile disposition and had a wife already 60 years of age, no inference can properly be made that he was of a sensuous nature and disposed to satisfy his sexual urge on younger and more attractive women as the offended party appeared to be. (PEOPLE *vs.* SULIT, G. R. No. L-4919, Jan. 21, 1953.)

Allegations in affidavit supporting an Attachment must be proved; Secs. 70 *and* 100, *Rule* 123 *applied.*

Where the allegations in a supplementary motion to dissolve the attachment put in issue the facts alleged in plaintiff's affidavit, it is incumbent upon plaintiff to prove the facts in issue either by affidavits or depositions, or by other forms of evidence, the affidavit supporting the attachment being insufficient to prove the allegations contained therein. (VILLONGCO ET AL. *vs.* PANLILIO ET AL., G. R. No. L-6214, Nov. 20, 1953.)

RECONSTITUTION OF JUDICIAL RECORD

Effect of failure of losing party to ask for reconstitution of records.

May the judgment rendered before the war in a case pending appeal before the Court of Appeals, be considered final for failure of the losing party to ask for the reconstitution of the records in the appellate court within the time prescribed by the law for reconstitution of judicial records?

The duty to reconstitute lies upon both parties to the action. If a party in whose favor a judgment is rendered fails to ask for the reconstitution of the records of the case wherein the judgment is rendered, he impliedly waives, by his voluntary omission to ask for reconstitution, his right to the favorable judgment; and if the period for reconstitution has already expired, Sec. 29 of Act 3110 is applicable, the parties being

understood as having waived the right to reconstitution and having the right to file their respective actions anew. (AMBAT *vs.* DIRECTOR OF LANDS, G. R. No. L-5042, Jan. 30, 1953.)

Rules of Court do not prohibit reconstitution of terminated cases.

FACTS: Plaintiff had obtained a judgment for the foreclosure of a mortgaged property. The judgment was duly executed; the sale was confirmed and later registered with the Register of Deeds. During the occupation, the records of the case were destroyed. Plaintiff, therefore, sought their reconstitution to recover the properties, and damages. Defendants opposed it on the ground that (1) only records of pending cases might be reconstituted; (2) the mortgage debt had been paid during the occupation.

HELD: (1) Cases that have been terminated may, like pending cases, also be reconstituted because they evidence rights and obligations finally adjudicated. (2) The second ground is one involving evidence in favor of plaintiff. (ERLANGER & GALINGER INC. *vs.* EXCONDE, G. R. Nos. L-4792 and L-4793, Sept. 30, 1953: EXCONDE *vs.* ERLANGER & GALINGER INC., G. R. No. 4794, Sept. 30, 1953: *In Re Transfer Certificates of Title;* ERLANGER & GALINGER INC,, *Petitioner,* G. R. No. L-4795, Sept. 30, 1953.)