# REMEDIAL LAW

## JUDICIARY ACT

### JURISDICTION

*The Jurisdiction Of The Court Is Determined By The Amount As Alleged In The Complaint, Not By The Amount As Fixed By The Evidence.*

FACTS: Fernandez, in his complaint in the CFI, prayed for judgment against Sison in the amount of ₱3,687, representing the unpaid balance of the fees due him in surveying 11 lots belonging to Sison. During the trial, the parties submitted a stipulation of facts, in which the balance due Fernandez was fixed at ₱884. Judgment having been rendered against him, Sison appeals, claiming that, although the CFI had jurisdiction over the subject matter according to the complaint, it lost such jurisdiction when the claim was reduced to ₱884.

HELD: The claim is without merit. It is settled that the allegations of a complaint in a civil case and of an information in a criminal action is what determines the jurisdiction of the judge, and not the outcome of the proofs. (FERNANDEZ *v.* GALA-SISON, G. R. No. L-6091, December 10, 1954.)

*Civil And Military Courts Have Concurrent Jurisdiction Over Offenses In Violation Both Of Military And Public Law.*

FACTS: Livara was convicted in a civil court of the crime of malversation of public funds. In his appeal, Livara challenges the jurisdiction of the civil court on the ground that, as the crime occurred while he was an officer of the PC and as said crime is punishable under military law, the case fell within the jurisdiction of the military courts.





HELD: The contention is untenable. Both civil courts and courts-martial have concurrent jurisdiction over offenses committed by a member of the Armed Forces in violation of military and public law. The first court to take cognizance does so to the exclusion of the other. (PEOPLE *v.* LIVARA, G. R. No. L-6201, April 20, 1954.)

## CIVIL PROCEDURE

### COMMENCEMENT OF ACTIONS

*In a Counterclaim Composed of Several Accounts Arising from Different Transactions or Causes of Action, the Jurisdiction of the Court is Determined by the Amount of Each Cause of Action.*

FACTS: In an action in the municipal court, defendants set up a counterclaim, with an aggregate amount of ₱3,500, divided into: (1) ₱2,000, the value of furniture taken away by plaintiffs from the house in litigation; (2) ₱1,000 as expenses incurred because of the false allegations in the complaint; and, (3) ₱500 as attorney's fees. The municipal court found for the plaintiffs. On appeal to the CFI, the defendants reiterated their counterclaim. The plaintiffs moved for the dismissal of the counterclaim, claiming that the amount involved exceeded the jurisdiction of the municipal court and therefore the CFI could not act on it in its appelate jurisdiction. The motion being granted, defendants appeal.

HELD: If a claim is composed of several accounts each distinct from the other or arising from different transactions, they may be joined in a single action even if the total exceeds the jurisdiction of the inferior court. Each account furnishes the test. If the accounts arise from the same transaction, they should be stated in one cause of action and cannot be divided to bring the case within the jurisdiction of the inferior court. The causes of action in the present counterclaim arise from different sets of facts; and each falls within the jurisdiction of the municipal court. Thus, the counterclaim is cognizable by the CFI in the exercise of its appelate jurisdiction. (ALICIA

GO, ET AL., *v.* ALBERTO GO, ET AL., G. R. No. L-7020, June 30, 1954.)

*Local Courts Have Jurisdiction Over Cases Arising From Contracts Executed Abroad.*

FACTS: Under an agency contract set forth in a letter of Wu, a resident of New York, dated 7 Nov. 1946 in New York, addressed to and accepted by Sycip, Wu was made the exclusive agent of Sycip in the sale of Philippine Oil in the U.S. On this contract, Wu sued Sycip for the collection of his commissions. Judgment having been rendered in favor of Wu, Sycip appeals, and claiming that as the contract was executed abroad the CFI of Manila has no jurisdiction over the case.

HELD: The contention is without merit because it is settled that " a non-resident may sue a resident in the courts of this country where the defendant may be summoned and his property leviable upon execution, in case of a favorable, final and executory judgment. It is a personal action for the collection of a sum of money which the courts of first instance have jurisdiction to try and decide." (KING MAU WU *v.* SYCIP, G. R. No. L-5897, April 23, 1954.)

*Allegation of Heirship Sufficient To Entitle Plaintiff To Maintain Action To Recover Property Claimed As Inheritance; Judicial Declaration Of Heirship Unnecessary.*

FACTS: In his action for recovery, Cabuyao alleged that the land in litigation belonged to his parents, that he was the latter's sole heir, and that defendants were in unlawful possession of the land. On defendants' motion, the case was dismissed on the ground that, there being no allegation that plaintiff had been judicially declared heir, plaintiff had no legal capacity to sue. Hence, this appeal.

HELD: Under the Civil Code, heirs succeed to the rights of the decedent by the mere fact of death. Thus, we have always held that, since heirs acquire ownership of the decedent's estate from the moment of death, a previous legal declaration of heirship is not needed before they may assert a cause of action as alleged heirs. ( CABUYAO *v.* CAAGBAY ET AL., G. R. No. L-6636, August 2, 1954.)



## PARTIES TO CIVIL ACTIONS

*In An Action For Refund Of Taxes Paid Under An Illegal Ordinance, The Real Party In Interest Is Municipality Concerned.*

FACTS: The Municipal Council of Cordova adopted ordinances imposing an annual tax on: the occupation of Installment Manager; on local drum deposits of inflamable materials; and on tin can factories. The Shell Co. brought action against Vaño, the municipal treasurer, for recovery of the taxes paid by it on the ground that the ordinances were *ultra vires.*

HELD: In an action for refund of municipal taxes claimed to have been paid and collected under an illegal ordinance, the real party in interest is not the Municipal Treasurer, as in this case, but rather the municipality concerned that is empowered by law to sue and be sued. (SHELL CO. OF P.I.,LTD. *v.* VAÑO, G. R. No. L-6093, February 24, 1954.)

*Rule Requiring "Real Parties In Interest" To Be Impleaded Refers to Parties-Plaintiff; Sec. 2, Rule 3, Construed.*

FACTS: Respondents, president and general manager of an unregistered corporation, leased certain equipment from petitioner. In the action for recovery of the equipment and rentals, petitioner did not implead all the members of the association. The lower court, in an order, refused to admit the complaint on the ground that it is a legal requirement that any action should be brought against the real party in interest.

HELD: The trial court committed an error as the rule requiring real parties to be impleaded is applicable to parties plaintiff and not to parties defendants. (VAÑO *v.* ALO, G. R. No. L-7220, July 30, 1954.)

*Choice of Defendants Absolute Prerogative of Plaintiff.*

FACTS: Dumadag and Jumamuy, officers of an unregistered corporation, leased certain equipment from petitioner. Petitioner brought action against said officers for the recovery of the equipment. Opposing the admission of the complaint, said officers insist that all the members of the unregistered

corporation should be included as parties defendants as provided in Sec. 15, Rule 3.

HELD: It is the absolute prerogative of the plaintiff to choose the theory on which he predicates his right of action, or the parties he desires to sue, without dictation or imposition by the court or the adverse party. If he makes a mistake in the choice of his right of action, or in the choice of defendants, that is his own concern as he alone suffers therefrom. (VAÑO *v.* ALO, G. R. No. L-7220, July 30, 1954.)

*Party, On The Validity Of Whose Title Depends The Result Of A Suit, Is Indispensable; Thus, In A Suit For Rentals, He Who, Without Valid Authority, Allowed The Use Of The Premises Must Be Joined As Party-Defendant.*

FACTS: The Bureau Of Aeronautics offered to lease the land, converted into an airfield, from the owners. The owners did not act on the offer, but indicated their willingness to let the Government use the land subject, however, to their right "to full enjoyment of the fruits thereof, in their dealing with private airlines." The bureau having opened the airfield, free of landing charges, the owners sued for rentals from the airline companies which had used the airfield. The CFI ruled that, as the Govt. had no power to allow the gratuitous use of the airfield, the companies were liable. The companies now claim that, as the bureau was not made defendant, the court should not have proceeded with the trial.

HELD: The companies' liability cannot be dissociated from that of the bureau because the airstrip was occupied jointly by them and because the bureau encouraged the use thereof. In equity, the companies cannot be held liable without making the bureau partly or wholly liable. The bureau is an indispensable party under the principle that where the result of the suit is dependent upon the validity of the right or title of an absent person, as a suit for injunction against one who is acting under the charter of another or a suit between lessees of different persons for the same property, the absent party is indispensable. (PUENTEVELLA ET AL. *v.* FAR EASTERN AIR TRANSPORT, INC. ET AL., G. R. No. L-4958, March 30, 1954.)



## INFERIOR COURTS

*In Inferior Courts, Sole Ground For Default Is Failure To Appear; Answer Is Equivalent To Appearance.*

FACTS: Negado filed a complaint against Makabenta in the JP. Makabenta filed his answer in due time. However, on the day of trial, Makabenta failed to appear and, on Negado's motion, was declared in default. Judgment having been declared in Negado's favor, Makabenta appealed to the CFI. The appeal was dismissed on the ground that, by virtue of the order of default, Makabenta had no standig in court. Hence, this petition for certiorari.

HELD: The petition must be granted. The order of default is illegal and without effect. We have consistently held that the sole ground for default in inferior courts is failure to appear. By filing his answer in the JP, petitioner put in his appearance and submitted to its jurisdiction; hence, he was not in default. (MAKABENTA *v.* BOCAR, G. R. No. L-6450, August 11, 1954.)

## SUMMONS

*In Order That Process May Be Served And Jurisdiction Acquired, It Is A Sine Que Non Requirement That A Foreign Corporation Must Be Doing Business In PI; Isolated Act, Incidental Or Casual, Is Not "Doing Business."*

FACTS: Petitioner, a foreign corporation, secured the services of Luceno to act as cook in one of its vessels. Upon Luceno's death, his wife filed a claim with the Workmen's Compensation Commission. Petitioner filed a special appearance to obtain dismissal of the case on the ground of lack of jurisdiction over it because it is a foreign corporation not domiciled in the PI nor licensed to engage and is not engaging in business here. Decision having been rendered against it, this petition to enjoin the Commission from acting on the claim was filed by petitioner.

HELD: Before service may be effected in the manner provided in Sec. 14, Rule 7, said section requires that the foreign

corporation must be one which is *doing business in the PI.* This is a *sine que non requirement.* This fact must first be established so that summons can be made and jurisdiction acquired. To constitute "doing business" there must be continuity of conduct and intent to establish a continuous business. The act of employing Luceno is an isolated one, incidental, or casual, and "not of a character to indicate a purpose to engage in business" within the meaning of the rule. (PACIFIC MICRONISIAN LINE, INC. *v.* BAENS DEL ROSARIO, G. R. No. L-7154, October 23, 1954.)

*Petition By Telegram Asking The Court To Fix Amount Of Counterbond Is Voluntary Appearance, Equivalent To Service Of Summons.*

FACTS: Lezama, residing in Iloilo, had a fishing business managed by Cesar in Cebu. In an action by his employee for wages, as Cesar could not be found in Cebu, summons were sent to the Sheriff of Iloilo for service on Lezama. Meanwhile, a boat of Lezama was attached. On June 5, Lezama wired the judge offering to post a ₱5,000 counterbond to dissolve the attachment. On June 13, the counterbond was finally filed. On Oct. 11, Lezama was declared in default and judgment was rendered on Dec. 22. In this petition to declare the proceedings void, Lezama claims that, as summons were actually served on him only on Dec. 10, the time for answer began to run from such date and, hence, the order of default was illegal.

HELD: The telegram, which did not impugn the jurisdiction of the court, was a voluntary appearance which according to Sec. 23, Rule 7, is equivalent to service of summons. Hence, Lezama was properly declared in default because he should have filed his answer within 15 days, not from Dec. 10, but from June 5 or at the latest, from June 13 when he filed the counterbond. However, considering the other facts of the case, we believe Lezama should be given his day in court. The order of default is set aside. (LEZAMA *v.* PICCIO ET AL., G. R. No. L-6606, September 29, 1954.)

## MOTION TO DISMISS

*Dismissal On The Ground Of Prescription Is Proper Only If The Complaint Shows On Its Face That The Action Has Already Prescribed.*



FACTS: In plaintiff's complaint to compel defendants to execute a deed of partition over the land in question, it is alleged that defendants had been in possession as co-owner of the land since 1910, that in 1946 defendants promised to deed over plaintiff's share in the land. Instead of an answer, defendants moved for dismissal on the ground of prescription, alleging adverse possession since 1910. The dismissal having been granted, plaintiffs appeal.

HELD: Dismissal on the ground of prescription would be in order only if the complaint shows upon its face that the action has already prescribed. This has to be so because in a motion to dismiss, defendant hypothetically admits the truth of the allegations in the complaint. That the action prescribed is not shown by the present complaint for while it admits defendants' possession since 1910 it also alleges that such possession is that of co-owner. These allegations exclude the idea that defendants have been in adverse possession since 1910. (FRANCISCO *v.* ROBLES, G. R. No. L-5388, February 15, 1954.)

*Jurisdiction Of Subject Matter And Of Defendant Essential To Validity Of Foreign Divorce In PI; Plaintiff's Bona Fide Residence In Foreign State Needed To Confer Jurisdiction Of Subject Matter; Defendant's answer Denying Plaintiff's Claim Of Legal Residence Is Special Appearance And Does Not Confer Jurisdiction Over Defendant.*

FACTS: Alfredo and Salud, both Filipinos, were married in PI in 1939. Alfredo left for the U.S. leaving Salud and a child behind. While in the U.S., in 1941, Alfredo filed an action for divorce. Having received copy of the complaint, Salud answered denying Alfredo's claim of legal residence in the U.S. However, the divorce decree was granted on April 9, 1941. Upon Alfredo's return, Salud filed an action for support. Alfredo claims that the marriage was dissolved by the divorce decree.

HELD: For the divorce decree to be valid, the court must

have jurisdiction over the subject matter; to acquire this, plaintiff in the divorce case must be bona fide domiciled in the foreign State. Temporary residence for the purpose of obtaining divorce is not sufficient. And even if plaintiff in the divorce case acquired legal residence, the divorce would not be valid here because the wife was still domiciled in the PI and the foreign court never acquired jurisdiction over her person. Salud's answer did not place her under the court's jurisdiction, its purpose being solely to impugn Alfredo's claim of legal residence in the U.S. The answer is deemed a special appearance impugning the jurisdiction of the court. (SALUD ARCA *v.* ALFREDO JAVIER, G. R. No. L-6768, July 31, 1954.)

*Moratorium Act No Longer A Defense.*

FACTS: In an action to revive a judgment against him, defendant claimed that the action against him could not be maintained, in view of the Moratorium Act, since he had filed a claim with the Phil. War Damage Commission.

HELD: As to the defense based on the Moratorium Act, R. A. 342, our decision in Rutter v. Esteban (1953), 49 O. G. 1807, declaring the continued operation of said Act to be unconstitutional, is conclusive, so that it may no longer be invoked as a defense. (PICORNELL & Co. *v.* CORDOVA, G. R. No. L-6338, August 11, 1954.)

FORMS AND INTERPRETATION OF PLEADINGS

*In An Action For Recovery Of Land, Defendant Must Set Up As An Alternative Defense A Claim For Recovery Of Expenses For The Care Of The Land; Sec. 9 Rule 15, Applied.*

FACTS: In a previous action, defendant brought an action against the mother of plaintiffs herein for the recovery of a piece of land. Judgment was rendered therein declaring defendant exclusive owner of the property. Plaintiffs now bring this action for the recovery of expenses incurred by them in clearing, cultivating and preserving the land while in possession thereof in good faith. The case was dismissed on the ground of res adjudicata. In this appeal, plaintiffs claim that they could not have possibly raised the present claim in the previous action without weakening their defense therein that they were the true owners of the land.



HELD: The contention cannot be sustained because "a party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses." Plaintiffs could have set up the claim that they were entitled to the land and alternately that, assuming (hypothetically) that they were not entitled to the land, at least they were entitled as possessors in good faith for their expenses thereon. (CAMARA *et al. v.* AGUILAR *et al.*, G. R. No. L-6337, March 12, 1954.)

DISMISSAL OF ACTIONS

*Where Plaintiff Is Present And Willing To Proceed, Mere Absence Of His Counsel Is Not Ground For Dismissal For Failure To Prosecute; Sec. 3, Rule 30, Construed.*

FACTS: In probate proceedings, petitioners appeared at the hearing without their counsel, the latter having filed a motion for postponement on the ground that he was advised by his physician not to leave his house. The court denied the motion and dismissed the petition for failure to prosecute, under Sec. 3, Rule 30; hence this appeal.

HELD: The Rules do not expressly provide for the application of Rule 30 in special proceedings. However, even under the provisions of Sec. 3, Rule 30, the dismissal is not justified. In this case, petitioners were present, only their lawyer was absent. The rule does not provide for dismissal on the ground of absence of counsel; there is failure to prosecute only when plaintiff is unwilling to proceed with the trial. (DAYO *v.* DAYO G. R. No. L-6428, August 31, 1954.)

*Absence Of Plaintiff's Counsel, Where Party Is Unwilling To Proceed With The Trial, Amounts To Failure To Prosecute.*

FACTS: On the day of hearing, before trial, the court received a telegram from plaintiff's counsel asking for postpone-

ment. When the case was called for hearing, the defendant objected to the postponement. And as plaintiff could not proceed with the trial, the court dismissed the case.

HELD: The failure of a plaintiff's attorney to be present at the trial constitutes a failure to prosecute, if the party is unwillling to proceed with the scheduled trial. (RODILLAS *v.* FARMACIA CENTRAL, INC. G. R. No. L-6908, December 22, 1954.)

*For A Dismissal By Plaintiff To Be With Prejudice, Under Sec. 1, Rule 30, There Must Be A First Action Which Is Finally Dismissed; Dismissal Is Without Prejudice Where First Action Is Still Pending.*

FACTS: In case 7312, plaintiff amended his complaint by excluding certain claims with a reservation of his right to institute a separate action thereon. Later, he filed Case 1384 based on the excluded claims. However, plaintiff moved for dismissal of Case 1384 and incorporated the claims therein in Case 7312. The court having granted the dismissal without prejudice, defendant argues that the dismissal should have been with prejudice according to Sec. 1, Rule 30.

HELD: Sec. 1, Rule 30, contemplates a case wherein a first action was dismissed finally, followed by the dismissal of the second action. The rule does not apply to a situation where, as in this case, the first action is still pending and the claim involved in the second action was merely reinstated in the pending first action. (NACOCO *v.* KALAW, G. R. No. L-5412, January 28, 1954.)

*Where Defendant Has Pleaded A Counterclaim Prior To Service On Him Of Plaintiff's Motion To Dismiss, The Case Cannot Be Dismissed Against His Objection.*

FACTS: The G.L. Co. brought suit against Belleza and his guarantor, W.W.I.Co., for recovery of damages suffered by reason of Belleza's breach of contract. In his answer, Belleza claimed that, on the contrary, it was the G.L. Co. that was guilty of delay in the performance of its obligation under the contract and prayed that said G.L. Co. be made to pay ₱75,000



as damages caused by the delay. Belleza died before the hearing, and during the trial, G.L. Co. moved for the dismissal of its action against Belleza which was granted by the court over the opposition of the other defendant, W.W.I. Co. Hence, this petition for certiorari.

HELD: Sec. 2, Rule 30, clearly states that "if a counterclaim has been pleaded by the defendant prior to service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication." The judge's power to dismiss is not purely discretionary for it is regulated by said article. Petition granted. (WORLD WIDE INSURANCE AND SURETY CO., INC. *v.* JOSE ET AL., G. R. No. L-6295, October 27, 1954.)

## CALENDAR AND ADJOURNMENTS

*Continuance, Asked For The First Time, Due To Complainant's Absence Because Of Typhoon, Should Be Granted.*

FACTS: In the hearing of the case, the prosecution moved for postponement, the complaining witness being absent because there was a typhoon on that day. The court denied the postponement and dismissed the case. Hence, this appeal.

HELD: Postponements are discretionary with the court, but, under the circumstances, we believe that the continuance should have been granted considering that it was *for the first time* asked by the Government. (PEOPLE *v.* ALIPAO, G. R. No. L-7251, October 18, 1954.)

*Consent Of Adverse Party To A Motion To Postpone Does Not Bind Court To Grant Said Motion.*

FACTS: On the date set for trial, defendant filed a motion for postponement, to which plaintiff manifested his consent. When the case was called for hearing on that date, both parties failed to appear, whereupon the court dismissed the case. Plaintiff appeals.

HELD: Plaintiff should not have assumed that his motion

for postponement would be necessarily granted by the court even though the defendant had given his conformity to the postponement. Hence, there was no excuse for his non-appearance at the trial on the date set. (SALVADOR *v.* ROMERO ET AL., G. R. No. L-6317, October 25, 1954.)

## NEW TRIAL

*Failure To Cite Authorities In Support Of A Motion For Reconsideration Does Not Make It A Pro Forma Motion.*

FACTS: Judgment having been rendered against him, plaintiff filed a motion for reconsideration worded as follows: "That the decision is contrary to the evidence adduced during the hearing of this case and law; that if the sheriff, as found by the court, is absolved of responsibility, having performed his duty in accordance with the legal orders of the court, then the damages granted to defendants are null and void." The motion was denied and plaintiffs tried to appeal. Opposing said appeal, defendants claim that, for failure to particularize the legal provisions involved, the motion for reconsideration was *pro forma* and did not interrupt the period for appeal and consequently plaintiff's appeal was filed out of time.

HELD: While a citation of authorities might have been helpful, its omission did not make the motion for reconsideration *pro forma*. Its brevity—far from being a defect—is desirable in good pleading. (MACASERO ET AL. *v.* SAGUIN, G. R. No. L-6240, April 29, 1954.)

## RELIEF FROM JUDGMENTS

*Opposition To Petition For Issuance Of New Certificates Of Title To Distributees Under A Final Order Of Partition, Not Void On Its Face, Is A Collateral Attack Thereon And Cannot Be Allowed.*

FACTS: In the probate proceedings, Salud and the minor Mila were declared children of the deceased, Bibiano. A project of partition, signed by Salud and Maria, Bibiano's wife,



as guardian of Mila, was approved by the court and became final. However, new Titles were not issued to the distributees. Later, Maria died leaving a will wherein she stated that Mila was the only child of Bibiano. Subsequently, the heirs of Salud (who also died) petitioned that new Titles be issued in their name as co-owners of ½ of the property partitioned. Mila opposes the petition, claiming that the project of partition on which the petition was based was void since the one who signed for her was not authorized to do so and since, as stated in Maria's will, Salud was not a child of Bibiano.

HELD: One attacking collaterally must show that the judgment complained of is void as it appears on the record. In this case, the record does not show that Maria had no authority to sign the project of partition for Mila. That Salud is not the daughter of Bibiano does not apear in the record. Thus, the judgment is not a patent nullity and may not be attacked collaterally. (REYES *v.* BARRETTO, G. R. No. L-5549, February 26, 1954.)

*Fraud Which May Annul a Judgment Must be Extrinsic; Fraud is Extrinsic When Based on Facts Not Previously Controverted.*

FACTS: Upon the death of Mariano, Jose instituted intestate proceedings stating in the petition that plaintiff, who was then abroad, was the sole heir. Earnest efforts were exerted to locate plaintiff but his whereabouts remained unknown. Meanwhile a compromise agreement was entered into between the nearest resident relatives and one Carmelo whereby the former recognized the latter as the acknowledged natural child and sole heir of the deceased. Judgment was rendered on the compromise and the same became final. Plaintiff brings this action to annul said judgment and to declare him as sole heir, alleging that the defendants committed fraud in securing judgment.

HELD: To annul a judgment because of fraud, the fraud must be extrinsic or collateral and the facts upon which it is based have not been controverted or resolved in the case where the judgment sought to be annulled was rendered. False testimony or perjury is not a ground for assailing said judg-

ment, unless the fraud refers to jurisdiction. Fraud is regarded as extrinsic where it has prevented a party from having a trial. Plaintiff canot claim to have been so prevented: a thorough search for his whereabouts was made; in the petition, it was even alleged that he was the sole heir; and the proceedings lasted for over 2 years.. (VARELA *v.* VILLANUEVA, G. R. No. L-3052, June 29, 1954.)

## EXECUTION AND EFFECT OF JUDGMENTS

*A Court Order Suspending the Enforceability of a Final Decision Suspends the Running of the Prescriptive Periods For the Execution of Said Judgment by Motion or Its Enforcement by Action.*

FACTS: On Dec. 5, 1941, the Bank of PI secured a foreclosure judgment against the assignees of the insolvent Kwong, Inc. Subsequently, the right of the Bank in said judgment was acquired by David, while the obligation of the insolvent corporation was assumed by Sotto. In 1944, Sotto tendered payment of the mortgage credit, which petitioner refused. Sotto then judicially consigned the amount and filed Case 193 to compel David to accept payment. On Aug., 1945, David petitioned for the execution of the foreclosure judgment. On Oct., 1945, the court issued an order deferring action on the petition until Case 193 shall have been finally decided. On Nov. 3, 1949, judgment in Case 193 was rendered, declaring void the consignation by Sotto. Soon after said judgment was finally affirmed by the appellate court, David filed another petition, on July 15, 1953, for the execution of the foreclosure judgment of Dec. 5, 1941. The petition was denied on the ground that the 5-years and 10-years prescriptive period for the execution and enforcement of judgments, respectively, set forth in Sec. 6, Rule 39, had already elasped.

HELD: The prescription set forth in Sec. 6, Rule 39, can only operate when there is an enforceable right; or, in case of final judgment, when there is no legal impediment to its execution. Although David had a final judgment in his favor, he could not enforce it because of the refusal of the court to grant execution and because of Case 193 which rendered



execution of said judgment conditional. (DAVID *v.* CARLITOS, G. R. No. L-7142, June 30, 1954.)

*Court May Restore Injunction In Anticipation Of An Appeal From Judgment Dissolving Said Injunction; Sec. 4, Rule 39, Construed.*

FACTS: Delgado, in a petition for certiorari and prohibition with the CFI, obtained a writ of preliminary injunction restraining Roque from carrying out an order for the closure of a cockpit. Later, the CFI dismissed the petition and dissolved the writ. Thereupon, Delgado, relying on Sec. 4, Rule 39, obtained an order restoring the writ. In this petition with the S. Ct., Roque contends that the court acted in abuse of discretion because, while Sec. 4 allows the restoration of an injunction only "during the pendency of the appeal" and only "when an appeal is taken", the order of restoration was issued without an appeal having been taken.

HELD: Although Sec. 4 speaks of an appeal being taken and of the pendency of the appeal, we cannot see any difference for all practical purposes between the period when appeal has been taken and the period during which an appeal may be perfected, since in both cases the judgment is not final. In fact, there is authority to the effect that the court may restore an injunction in anticipation of an appeal. (ROQUE *v.* DELGADO ET AL., G. R. No. L-6770, August 31, 1954.)

*A Judgment On a Compromise, Among All Claimants To an Estate, Which Decides Who has Preferential Right to Inheritance Is Judgment On the Merits.*

FACTS: Upon the death of Mariano Valera, defendant Jose instituted intestate proceedings alleging that plaintiff, who was then abroad, was the sole heir of the deceased. Earnest efforts to locate plaintiff failed. Following the publication of the petition, various collateral relatives entered their appearances. Later, a compromise was entered into between the nearest collateral relatives of the deceased and Carmelo Bautista whereby the former recognized Carmelo as the acknowledged natural child and the sole heir of the deceased. Judgment rendered

on the compromise became final. Subsequently plaintiff filed a complaint to annul said judgment.

HELD: In the proceedings, claims to the estate were actually before the court. The court was called upon to determine who of the claimants had preferential right to the inheritance and each claimant was entitled to dispute Carmelo's right and to establish his adverse claim. The issue thus presented was disposed of in the order approving the compromise. There was then a judicial settlement and the order was no less a judgment on the merits which may be annulled only upon the ground of extrinsic fraud. (VALERA *v.* VILLANUEVA ET AL., G. R. No. L-3052, June 29, 1954.)

*Intestate Proceedings and Judgment Therein are In Rem and Said Judgment Is Binding Against the Whole World; Sec. 44 (a), Rule 39, applied.*

FACTS: In the intestate proceedings of deceased Mariano Varela, a compromise agreement was entered into between the surviving collateral relatives, with the exception of plaintiff (brother of deceased) who was then abroad and could not be located, whereby they recognized Carmelo as the acknowledged natural child and sole and exclusive heir of the deceased. The judgment rendered in accordance with the agreement, became final. Subsequently, upon his return, plaintiff filed this action to annul said judgment and to declare him sole heir. Plaintiff argues that the agreement is not binding on him as he was not party thereto.

HELD: Intestate proceedings are *in rem* and the judgment therein, declaring Carmelo sole heir, is therefore binding against the whole world. (VARELA *v.* VILLANUEVA ET AL., G. R. No. L-3052, June 29, 1954.)

*Judgment Determining Ownership Of A Piece Of Land Is Not Res Judicata On One Not A Party To The Case Nor Successor-In-Interest By Title Subsequent; Sec. 44,* (b), *Rule 39, Applied.*

FACTS: Felipa sold the land in litigation to Ramoran who in turn sold it to Vea. Later, Felipa and some others executed a deed of partition, wherby the same land was adjudicated to



Felipa. After Felipa's death, Acoba as heir of Felipa brought an action against Ramoran for the land. The court rendered judgment declaring Acoba the owner as successor-in-interest of Felipa. Said judgment became final. In this action by Vea for the recovery of the land, Acoba pleads *res judicata*, claiming that the decision in the former case is binding on Vea as privy or grantee of the losing party, Ramoran.

HELD: The claim of *res judicata* is not tenable, for the simple reason that Vea was not a party to the case nor was he a successor-in-interest "by title subsequent to the commencement of the action', according to Sec. 44, (b), Rule 39. Vea became owner much prior to the commencement ofthe action and as such he could not have been bound by the decision. (VEA *v.* ACOBA, G. R. No. L-5973, March 20, 1954.)

*Decision Denying Injunction Because Writ Sought To Be Enjoined Had Been Carried Out Is Not Res Judicata On Issue Of Legality of the Writ.*

FACTS: Ciriaco obtained a writ of execution of a court order which was duly carried out. Gaspar petitioned the Court of Appeals for an injunction to prevent its enforcement but the petition was denied because what was sought to be prevented had already been totally accomplished. Gaspar petitions now for the annulment of the writ. Ciriaco maintains that, the Court of Appeals decision having become final, the question of the legality of the writ is already *res adjudicata.*

HELD: The decision of the CA denying the injunction was based on the ground that the writ had already been carried out. Said decision did not pass upon the legality of the writ and the question of its validity is not yet therefore *res judicata.* (GASPAR LLAMAS *v.* SEGUNDO MOSCOSO, G. R. No. L-7524, July 31, 1954.)

*Judgment In An Action For Recovery Of Secured Credit Is Not Res Judicata On Action To Recover The Judgment Credit.*

FACTS: Plaintiff sued defendant to recover a loan of ₱15,000, secured by a mortgage. Judgment was rendered for plaintiff and the security was sold for ₱5,000. On defendant's failure

to pay the balance, plaintiff brought this action. Defendant pleads *res judicata.*

HELD: There is no *res judicata.* Although there is identity of parties, there is no identity of causes of action. The first action was for ₱15,000, a secured credit, and the second is for ₱10,000, a credit based on a judgment. (GUANSON *v.* LLANTADA, G. R. No. L-5064, January 14, 1954.)

*Judgment Based on Admission, in a Compromise Agreement, Not Binding On Person Not Party to the Action.*

FACTS: The land in question is part of a homestead application of Vergara. In 1941, Vergara sold the land to defendant, making an assignment thereof on August 1948. On Nov., 1948, in an action against Vergara, a compromise was effected whereby Vergara recognized plaintiff's title to the land. Judgment was rendered thereon. Plaintiff relying on that judgment, brings action to recover the title to and possession of the land from defendant.

HELD: The judgment based on an admission contained in a compromise agreement between the parties cannot bind defendant, who was not a party to the action. When Vergara made the compromise, he was no longer in possession of nor was he still the owner of the land. (ARNIDO *v.* FRANCISCO, G. R. No. L-6764, June 30, 1954.)

## SUMMARY JUDGMENTS

*Annulment Of Marriage Cannot Be Obtained By Summary Judgment Proceeding; Action "To Recover On a Claim," Mentioned In Sec. 1, Rule 36, Means Action To Recover Debt Or Liquidated Demand For Money.*

FACTS: In an action for legal separation, Asuncion alleged that Francisco committed concubinage with another woman. In his answer, Francisco set up a counterclaim for the annulment of his marriage to Asuncion stating that at the time of their marriage, Asuncion was already married to Bayora. In her answer to said counterclaim, Asuncion failed to deny squarely her previous marriage to Bayora. On motion for



summary judgment on Francisco's counterclaim, the court rendered summary judgment annulling Francisco's marriage to Asuncion. Hence, this petition for certiorari.

HELD: The annulment cannot be granted by summary judgment proceeding, first, because an action to annul a marriage is not an action "to recover upon a claim" or "to obtain declaratory relief," and, second, because it is the policy of the State to prohibit annulment of marriages by summary proceedings. An action "to recover upon a claim" means an action to recover a debt or liquidated demand for money. (ROQUE *v.* ENCARNACION, G. R. No. L-6505, August 23, 1954.)

## APPEAL

*Where, On Appeal To The CFI, The Defendant Has Made, Within The Required Period For Filing An Answer, A Proper Manifestation To Have His Written Answer In The JP Reproduced, He Cannot be declared in default.*

FACTS: Appealing to the CFI from a JP decision, defendant submitted an answer wherein it was merely stated that he was reproducing the written answer he had filed in the JP court and which was already attached to the record. However, at the hearing, on motion, the court declared him in default. Hence, this petition for certiorari.

HELD: Where the defendant has filed a written answer in the JP, he may on appeal merely reproduce his answer by making a proper manifestation to that effect within the period required for filing of the answer. When he has done so, as in this case, he cannot be declared in default. (LICLICAN ET AL. *v.* ARRANZ, G. R. No. L-6940, March 23, 1954.)

*On Appeal To The CFI, Defendant May, Instead Of Filing An Answer Anew, Reproduce His Answer In The Inferior Court By Making Proper Manifestation Within The Period For Filing An Answer.*

FACTS: In an action in the JP, Liclican filed a written answer. Judgment having been rendered against him, he appealed to the CFI, and, upon receipt of the notice that the

case had been docketed, submitted a pleading stating that he was reproducing the answer he had filed in the JP court. On the day of hearing, the court, on motion, declared Liclican in default on the ground that he had failed to file his answer within the required period. Hence, this petition for certiorari.

HELD: While Sec. 7, Rule 40, provides that, on appeal, only the complaint filed in the JP court shall be considered reproduced, and not the answer, so much so that the defendant is required to put in his answer within the required period from the date of the receipt of the clerk's notice, however, the filing of such answer is not necessary when the defendant has filed a written answer in the JP court. In such case, he may merely reproduce his answer by making a proper manifestation to that effect within the reglamentary period for the filing of the answer. (LICLICAN ET AL. *v.* ARRANZ, G. R. No. L-6940, March 23, 1954.)

*Upon Perfection Of Appeal, Court Loses Jurisdiction To Modify Or Revoke An Order Of Execution Previously Issued.*

FACTS: The CFI rendered judgment for the plaintiffs. Defendants gave notice of appeal and filed their record on appeal. Pending approval of the record, plaintiffs obtained an order of immediate execution on Oct. 15. The appeal was finally perfected on Nov. 3. On Nov. 7, upon being served with the writ of execution, defendants moved to dissolve the writ, stating that they had filed a supersedeas bond the day before. The motion having been denied, defendants appealed to the CA which ordered the dissolution of the writ. Hence, this appeal to the S. Ct. by plaintiffs.

HELD: The perfection of an appeal taken from a judgment deprives the trial court of its jurisdiction over said judgment and said jurisdiction is transferred to the appellate court; thus, the trial court cannot modify or revoke any order of execution of said judgment after the appeal is perfected. (UVERO *v.* COURT OF APPEALS, G. R. No. L-6521, May 24, 1954.)

*Before CFI May Merely Review The Decision Of An Inferior Court Under Sec. 10, Rule 40, The Decision Must Have Been Made On Question Of Law And Without Trial; Dismissal Sustaining Demurer To Plaintiff's Evidence Is Dismissed After Valid Trial.*



FACTS: In the municipal court, after plaintiffs closed their evidence, defendant interposed a demurer thereto and filed a motion to dismiss which was granted by the court on the ground that the facts proved did not entitle plaintiffs to recover. On appeal, the CFI merely reviewed the record and, believing that the case had been disposed of by the inferior court on a question of law and before a trial on the merits, rendered judgment reversing the inferior court's order of dismissal and remanding the case to said court, under the authority of Sec. 10, Rule 40. From this judgment, plaintiffs appeal.

HELD: The existence of a trial on the merits is the determining factor for the application of Sec. 10, Rule 40. Even if the case is decided on a question of law, provided there was a trial, the case may not be remanded to the inferior court. In this case, there was a trial on the issue of whether or not plaintiffs are entitled to recover. Even if defendants did not present evidence, still there was valid trial, only that the court found that continuation thereof was of no advantage to plaintiffs because they failed to prove facts entitling them to recover. (ALARIN *et al*, *v.* NAVARRO, G. R. No. L-5257, April 14, 1954.)

*In The Absence Of Objection, A Case Dismissed By Inferior Court, For Lack Of Jurisdiction, May Be Tried By CFI In The Exercise Of Its Original Jurisdiction; Sec. 11, Rule 40, Applied.*

FACTS: Petitioner sold to Respondent a piece of land, subject to repurchase within 1 year and to the vendor's right to occupy the premises as lessee. On Petitioner's failure to pay rent, respondent filed an action for illegal detainer. In its answer, petitioner claimed that the deed was not a sale but merely a loan secured by a mortgage. On the ground that question of title was involved, the municipal court declared itself without jurisdiction and dismissed the case. On appeal by respondent to the CFI, petitioner reproduced its answer in the inferior court. Judgment having been rendered in respondent's favor, petitioner now seeks to annul the CFI judgment claiming that the CFI had no appellate jurisdiction to try

the case previously dismissed by the inferior court for lack of jurisdiction.

HELD: The CFI exercised its original jurisdiction without objection from petitioner who did not question such jurisdiction until after the case was well on. Petitioner raised the question of jurisdiction too late. This is in accordance with Sec. 11, Rule 40, of the Rules. (CAÑAVERAL & BAUTISTA *v.* ENCARNACION, SURIO & VILLACORTA, G. R. No. L-6205, Sept. 28, 1954.)

*Appealed Judgment Does Not Become Final Until Appellate Court Decision Affirming It Becomes Executory; Prescriptive Period Runs Only From Entry Of Final Judgment.*

FACTS: In 1939, plaintiff obtained judgment against defendant. On appeal, the CA affirmed the decision in 1940. A motion for reconsideration was denied in 1941. In 1950, plaintiff filed suit to revive the judgment. Defendant claims prescription.

HELD: The appealed judgment did not become final until it was affirmed by the CA, precisely because of the appeal; hence, the period of limitation did not begin to run until final judgment was entered, after the motion for reconsideration was denied in 1941. From the latter date less than 10 years have elapsed so that the action is not yet barred. (PICORNELL & Co. *v.* CORDOVA, G. R. No. L-6338, August 11, 1954.)

*On Appeal To The S. Ct., Findings Of Fact And Legal Pronouncements Of Probate Court Are Not Binding On And May Be Reviewed By Appellate Court.*

FACTS: After hearing, the probate court, finding that the due execution and provisions of the lost will had been satisfactorily proved, allowed the will. On motion for reconsideration, however, the court, while reiterating its findings of fact in its previous decision, denied the probate of the will on the ground that the provisions had not been clearly proved by at least 2 witnesses. On appeal, the S. Ct. affirmed the disallowance. The proponent now moves for reconsideration on the ground that the findings of fact, made by the probate court in its first judgment and reiterated in the second, show that the



execution and provisions of the will had been proved as required by law.

HELD: The appellant suffers from an infirmity born of a mistaken premise that all the conclusions and pronouncements of the probate court in its first decree allowing the will to probate must be accepted by this Court. This is not a petition to review the judgment of the CA, where the findings of fact of said court are binding. This is an appeal from the probate court and this Court in the exercise of its appellate jurisdiction must review the evidence and the findings of fact and legal pronouncements made by the probate court. (IN RE TESTATE ESTATE OF SUNTAY, G. R. No. L-3087; IN RE: INTESTATE ESTATE OF SUNTAY, G. R. No. L-3088; Resolution, November 5, 1954.)

*Liability Of Sureties On Supersedeas Bond Is Limited To The Appealed Decision, If Affirmed.*

FACTS: In an action by plaintiff, the lower court rendered judgment ordering defendant to execute a deed of resale of the land in litigation to plaintiff. Defendant appealed and, to stay execution of the judgment, filed a supersedeas bond with Pereyra and Abasolo as sureties. The CA affirmed *en toto* the CFI decision. Subsequently, plaintiff filed another action against defendant to recover damages caused by defendant's use and occupation of the land. The CFI rendered judgment against defendant and ordered that the supersedeas bond in the first suit be made to answer for the damages.

HELD: Where the bond executed and filed to stay execution, issued before the expiration of the time to appeal, was conditioned for the payment by the defendant of any sum due by reason of the affirmance of the decision, the measure of the liability of the sureties is the appealed decision, if affirmed. (MIRAFUENTES *et al. v.* SABELLANO *et al.*, G. R. No. L-5686, February 25, 1954.)

## PROVISIONAL REMEDIES

### ATTACHMENT

*Application For Damages, Caused By Wrongful Attachment, Against And Notice Thereof To Surety On Attachment*

*Bond Must Be Made Before Judgment Against Principal Becomes Executory; Sec. 20, Rule 59, Construed.*

FACTS: In an ejectment case, plaintiff obtained a writ of attachment, with A. S. & I, Co. as surety, against defendant. Judgment was rendered for plaintiff. On appeal to CFI, defendant, in his answer, set up a counterclaim for damages caused by the attachment wrongfully issued. No notice of the counterclaim was given A. S. & I, Co. The CFI granted the counterclaim in its judgment which became final. The writ of execution of the judgment having been returned unsatisfied, defendant moved that A. S. & I., Co. be ordered to show cause why it should not answer for the damages awarded against its principal, plaintiff. The motion was denied on the ground that it was filed out of time.

HELD: Sec. 20, Rule 59, provides that the award against the surety shall be included in the final judgment. Thus, the application for damages and notice to sureties should be made either before trial or at the latest before entry of final and executory judgment against the principal. In this case, defendant's motion was filed after final judgment and cannot then be granted. (DEL ROSARIO *v.* NAVA, G. R. No. L-5513, August 18, 1954.)

## INJUNCTION

*In the Court's Discretion, Injunction May Be Dissolved "Ex Parte"; "Ex Parte" Dissolution Not In Excess Of Jurisdiction; Sec. 6, Rule 60, Construed.*

FACTS: In a case for forcible entry, petitioner obtained a writ of preliminary mandatory injunction. Subsequently, without notice and hearing, respondent dissolved said injunction. Petitioner contends that the dissolution, having been made without notice and hearing, was illegal.

HELD: Sec. 6, Rule 60, grants the court power to dissolve preliminary injunctions if in its opinion its continuance may cause great damage to the defendant, but is silent as to whether it may be granted *ex parte* or only after notice and hearing. The rule gives the court ample discretion, and notice and hearing are not necessary in order that the court may act on a motion for dissolution. Thus, when it acts *ex parte*, it cannot be deemed to have acted without or in excess of jurisdiction. (FARRALES *v.* FUENTECILLA, G. R. No. L-6354, July 26, 1954.)

# SPECIAL CIVIL ACTIONS

## CERTIORARI AND MANDAMUS

*An Order Denying A Motion To Dismiss Being Interlocutory, Certiorari Will Not Lie Unless It Is Clear That The Trial Court Lacks Jurisdiction.*

FACTS: One of the contestants in the essay contest sponsored by the Philippines International Fair, Inc. filed an action against petitioners, alleging that the award of the judges was in violation of the rules promulgated for the contest. Petitioners filed a motion to dismiss which was denied. Hence this petition for certiorari and prohibition.

HELD: Althought an order denying a motion to dismiss a complaint on the ground of lack of jurisdiction is interlocutory, yet if it is clear that the trial court lacks jurisdiction, a higher court would be justified in issuing a writ of certiorari and prohibition. But in this case, the facts alleged, if proved, constitute an actionable wrong or tortious acts, hence the general rule that an appeal will not lie must be adhered to. If from an interlocutory order an appeal does not lie, an extraordinary remedy cannot be resorted to. (PHILIPPINES INTERNATIONAL FAIR, INC. *v.* IBAÑEZ, G. R. No. L-6448, February 25, 1954.)

*A Petition to Compel an Employer to Reinstate an Employee Unlawfully Discharged is not an Action of Injunction but of Mandamus; Mandatory Injunction Identical with Mandamus.*

FACTS: Following an investigation of respondent for violation of R. A. No. 602, on the strength of complaints of some of his employees, respondent discharged one of the complainants.

Petitioner, as Acting Chief of the Wage Administration Service, thereupon, filed a petition with the CFI for a writ of preliminary mandatory injunction ordering th reinstatement of the discharged employee. The court refused to order reinstatement on the ground that injunction is available only against acts about to be committed or actually being committed and not against consummated violations of law. Hence, this appeal.

HELD: The action of petitioner is not an action of injunction but one of mandamus because it seeks the performance of a legal duty, the reinstatement of an employee unlawfully discharged. The writ known as preliminary mandatory injunction is also a mandamus, though merely provisional in character, and may be granted to effect reinstatement. (MORABE *v.* BROWN, G. R. No. L-6018, May 31, 1954.)

## EMINENT DOMAIN

*Expropriation Is Not The Proper Remedy To Divest Aliens Of Their Title Over Lands Illegally Owned By Them.*

FACTS: Plaintiff municipality filed proceeding to expropriate the land owned by defendant corp., the stock of which belongs mostly to Chinese. On motion, the CFI dismissed the case on the ground that the land was only a small parcel. Plaintiff then moved for reconsideration on the ground that defendant corporation being owned by aliens is disqualified to hold title to lands. The court set aside the dismissal and, upon hearing, rendered judgment of expropriation. Defendant appeals.

HELD: Admittedly the property is only a small parcel of land and may not be expropriated. The fact that the land is owned by an alien corporation would not authorize the exercise of the power of eminent domain. If the corporation is disqualified to own land because of alienage of the owners of its corporate stock, eminent domain is not the proper proceeding to divest it of its title. Besides, condemnation proceedings postulate that defendant owns the land and it is inconsistent to recognize and at the same time deny the title of the defendant. (MUNICIPAL GOVERNMENT OF CALOOCAN *v.* CHUAN HUAT & Co., INC., G. R. No. L-6301, October 30, 1954.)



*Where Possession Preceded The Filing Of The Complaint For Expropriation, The Value Of The Land Must Be Fixed As Of The Time Of Possession; Sec. 5, Rule 69, Construed.*

FACTS: The land in question was converted into an airfield during the enemy occupation and after liberation was turned over by the US Govt. to the AFP, in 1945. In 1949, the Govt. filed expropriation proceedings and 3 commissioners were duly appointed. The court rendered judgment, accepting the commissioners report, fixing the value of the property as of the date of the filing of the complaint in 1949. From this, the Govt. appeals.

HELD: Sec. 5, Rule 69, in providing that the value of the property must be determined as of the date of the filing of the complaint, simply fixes a convenient date for the valuation of the property under normal circumstances. But where the actual taking, with the owner's consent, long precedes the filing of the complaint, the value should be fixed as of the date when it was taken and not the date of the filing of the proceeding. For in such case, its value may be enhanced by the expropriation or may be decreased because of other factors. (REPUBLIC OF THE PHILIPPINES *v.* LIRA, ET AL., G. R. No. L-5080, November 29, 1954.)

*Owners Of Land Partially Expropriated Are Entitled To Damages Caused To Remaining Land.*

FACTS: Following the filing of the complaint, the court appointed 3 commissioners to determine the just compensation for the land to be taken. The commissioners recommended in their report the payment of ₱200, as consequential damages, on those parcels, of which only a part was being expropriated. The court accepted this recommendation and rendered judgment accordingly. The Govt. appeals.

HELD: The court committed no error. The rule is clear that "where only a part of a parcel of land is taken the owner is not restricted to compensation for the land actually taken but is also entitled to recover for the damage to his remaining land; the damage need not be special or peculiar or actionable;

it is enough that it is a consequence of the taking." (REPUBLIC OF THE PHILIPPINES *v.* LARA ET AL., G. R. No. L-5080, November 29, 1954.)

## PARTITION

*Where The Philippine Alien Property Administrator Files Action For Partition Of Property Claimed By It, The Court Has Jurisdiction To Pass On Nationality Of Former Owners.*

FACTS: ½ undivided share in the property in question belonged to CT and CM, the other half owned by MB. The Philippine Alien Property Administrator (PAPA) made a finding that CT and CM were Japanese and consequently issued an order vesting title thereto in itself. Later, title to the share of CT and CM was transferred to MB, who then refused to surrender possession of ½ of the property to the PAPA. PAPA then filed an action for partition but the CFI denied the partition, declaring that the former owners (CT and CM) were actually Filipinos and thus the order of the PAPA vesting title in itself was illegal. The U.S. Atty-Gen., as successor of the PAPA, now appeals claiming that the determination by the PAPA of the character of the property and the citizenship of its owners is conclusive and not subject to court review.

HELD: The action by the PAPA is one for partition under Rule 71, so that the court had to pass upon the rights and ownership of the parties. By filing this action, the PAPA submitted to its jurisdiction and put in issue the legality of the order, by which it vested title in itself. (BROWNELL *v.* BAUTISTA, G. R. No. L-6801, September 28, 1954.)

## FORCIBLE ENTRY AND DETAINER

*Where The Sale Of The Land Allegedly Detained Is Denied By Defendant Who Sets Title In Himself As Mortgagor, The Question Of Title Is Involved And Inferior Court Loses Jurisdiction.*

FACTS: In the action for unlawful detainer of land allegedly leased to defendant by plaintiff, defendant denied the lease and claimed that the land was merely mortgaged to plaintiff. Defendant questions now the jurisdiction of the JP court.

HELD: Where plaintiff's claim to possession is predicated upon a deed of sale alleged to have been executed by defendant, who in turn claims the document to be fictitious and fraudulent and there are no circumstances showing that the claim is unfounded, the JP loses its jurisdiction. The question of possession, in such case, cannot properly be determined without deciding the question of ownership. (TEODORO *v.* BALATBAT, G. R. No. L-6314, January 22, 1954.)

*Issue of Title Not Involved In Ejectment Suit By Purchaser In Foreclosure Suit Though There Is A Pending Action To Annul The Mortgage.*

FACTS: Defendant's father mortgaged certain conjugal property. On foreclosure, the land was bought at auction by plaintiff. There having been no redemption, title to the land was issued in his favor. Meanwhile, defendants brought action to annul the mortgage executed without their consent on their ½ share of the conjugal property. Subsequently, finding defendants on the land, plaintiff brought suit for ejecment. Defendants seek dismissal of the ejectment case, claiming that, because of their action to annul the mortgage, the case cannot be decided without passing on the question of ownership and thus the JP has no jurisdiction over the case.

HELD: The claim cannot be sustained. The facts clearly show that the case is within the JP's jurisdiction. The fact that there is a pending suit wherein defendants claim ½ of the mortgaged land does not deprive the JP of jurisdiction. The most that could be done is to suspend the trial of the ejectment case until the annulment case is decided. It may also be said that the right to the land claimed by defendants cannot be invoked by them until judgment in the annulment case is rendered in their favor; hence their plea of the pending action did not raise the question of title and did not remove the case from the JP's jurisdiction. (PADILLA *v.* DE JESUS, G. R. No. L-6008, August 31, 1954.)

*In Forcible Entry And Detainer Cases, Upon Defendant's Failure To File Supersedeas Bond Or To Pay Monthly Rental, Court's Duty To Order Execution Is Ministerial and Imperative; Court Has No Jurisdiction To Allow Extensions.*

FACTS: Judgment having been rendered against defendants by the JP in the detainer case, defendants appealed but failed to file a supersedeas bond or to deposit rentals in arrears. On Plaintiff's motion, the court issued a writ of execution which was duly served on defendants by the sheriffs. Instead of complying with the writ, defendants asked permission to file a supersedeas bond to stay execution; whereupon, the court issued an order granting the petition and suspending execution of judgment. Challenging the validity of this order, plaintiff filed this petition for mandamus.

HELD: It is settled that failure of the defendant in a forcible entry and detainer case to file a supersedeas bond or to pay on time the adjudged monthly rentals for the occupation of the property is a ground for execution under Sec. 8, Rule 72, and the duty of the court to order such execution is ministerial and imperative. The CFI to which such case has been appealed has no jurisdiction to allow extensions of time for the payment of such rents. (VDA. DE POSADAS *v.* NIEVRE ET AL., G. R. No. L-7026, March 30, 1954.)

*Upon Perfection Of Appeal, Trial Court Loses Power To Issue Orders Involving Matters Litigated By the Appeal; Rentals Are Involved In The Appeal Where The Judgment Ordering Their Payment May Be Reversed By Appellate Court.*

FACTS: From a 1950 judgment to vacate a certain premises and to pay rentals thereon from 1946, Feldman filed notice of appeal. The record on appeal was alowed in 1952. He assigned as errors the conclusions: that he waived his rights over the premise voluntarily; that he was a *mala fide* possessor. In 1953, on respondent's motion, the CFI ordered Feldman to deposit in court all unpaid rentals and rentals falling due till the appeal should have been decided. In answer to Feldman's petition to annul said order, respondents claim that, considering Feldman's assignment of errors, no matter litigated by the



appeal was involved in the order, and thus, according to Sec. 9, Rule 41, the court had the power, despite the perfection of the appeal, to issue said order for the protection of the rights of the parties.

HELD: The rentals are matters involved in the appeal, for if, as Feldman claims in his assignment of errors, his waiver was not voluntary and if he had exercised his option, he would be entitled to possession of the premises; consequently, if he was a *bona fide* possessor, the CFI judgment ordering him to pay rentals would have to be reversed. (FELDMAN *v.* ENCARNACION, G. R. No. L-7021, July 31, 1954.)

## SPECIAL PROCEEDINGS

### GENERAL PROVISIONS

*Special Proceedings Should Not Be Dismissed Except When Dismissal Is The Only Remedy Consistent With Equity And Justice.*

FACTS: In proceedings for probate of a will, petitioner's counsel filed a motion for postponement of the hearing on the ground that he could not attend the same on advice of his doctor, as evidenced by an attached medical certificate. However, the CFI denied the motion and dismissed the petition, with prejudice, for failure to prosecute. Hence, this appeal.

HELD: The same considerations regarding dismissal of civil actions should apply to dismissal of special proceedings, with the added circumstance that since they are not contentious suits depending on the will of an actor, but upon a state or condition of things or persons not entirely within the parties' control, dismissal should be ordered not as penalty for neglect, but only in extreme cases where the dismissal of the proceedings is the only remedy consistent with equity and justice. (DAYO *v.* DAYO, G. R. No. L-6428, August 31, 1954.)

### SETTLEMENT OF ESTATE

*Requisites For Valid Extra-judicial Adjudication Of Estate By Sole Heir; Sec. 1, Rule 74, Applied.*

FACTS: In his action to recover certain properties from defendants, plaintiff alleged in the complaint that the land in litigation belonged to his parents, that he was the latter's sole heir, that he was of age, that he had adjudicated the property to himself, pursuant to Sec. 1, Rule 74, and that defendants were unlawfully in possession of the property. The case was dismissed on the ground that plaintiff had no right to maintain the action until a judicial declaration of heirship had been secured by him. Plaintiff appeals.

HELD: This view conflicts with Sec. 1, Rule 74, which provides that a sole heir may adjudicate to himself the entire estate by means of an affidavit filed in the office of the register of deeds. Plaintiff's affidavit of extrajudicial adjudication is sufficient if the following conditions are present: (a) that the decedent left no debts and (b) that heirs and *le*gatees are all of age, or the minors are represented by their judicial guardians. Both these requisites are alleged to be present in the complaint. (CABUYAO *v.* CAABAY ET AL., G. R. No. L-6636, August 2, 1954.)

*Extra-judicial Settlement, When Possible Under Sec. 1, Rule 74, Is Mandatory, Except Where Good Reasons Exist For Resorting to Administration Proceedings.*

FACTS: Mercado died intestate without any debts and leaving heirs of legal age. Javier, one of the heirs, petitioned however for letters of administration which was opposed by the other heirs on the ground that there was no necessity for subjecting the estate to judicial administration since it could be extra-judicially settled, under Sec. 1, Rule 74.

HELD: Undoubtedly, it is Javier's theory that Sec. 1, Rule 74, is not mandatory. However, the rule is that where administration proceeding is unnecessary because the more expeditious remedy of partition is available, the majority of the heirs may not be compelled to submit the estate to such proceeding. The case of Rodriguez v. Tan, G. R. No. L-6044, Nov. 24, 1952, where the statement was made that sec. 1, Rule 74 "does not preclude the heirs from instituting administration proceedings even if the estate has no debts, if they do not



desire to resort for good reasons to an ordinary partition" cannot be successfully invoked by Javier for it should be noted that the statement sanctions recourse to administration proceedings only if *good reasons* exist, of which there are none in this case. (JAVIER *v.* MAGTIBAY, G. R. No. L-6829, December 29, 1954.)

*Assignment Of Interest In The Estate Does Not Bar A Petition For Probate Of Deceased's Will.*

FACTS: In opposing the petition for probate, the administrator of the estate claims that the proponent, having transferred all his interest in the estate, is disqualified from asking for the probate of the will.

HELD: The contention that the petitioner is estopped from asking for the probate of the will because of the transfer or assignment of his share, right, title and interest in the estate to another is without merit, for the validity and legality of such assignments cannot be threshed out in this proceedings which is concerned only with the probate of the will. (IN RE: TESTATE ESTATE OF SUNTAY, G. R. No. L-3087; IN RE: IN TESTATE ESTATE OF SUNTAY, G. R. No. L-3088; July 31, 1954.)

*Lack Of Objection To Probate Of Will Does Not Relieve Proponent From Proving Its Due Execution.*

FACTS: Upon the death of Jose B. Suntay, Silvino, his son, petitioned for the probate of a lost will allegedly excuted by the deceased. The will having been disallowed, Silvino appealed to the S. Ct., which upheld the disallowance of said will on the ground that the provisions of the lost will had not been satisfactorily proved by at least 2 credible witnesses. Silvino now moves for reconsideration, relying on the pleading filed by the other heirs wherein it was stated that as the petition "seeks only to put into effect the ... wishes of their late father, they have no opposition thereto."

HELD: All the answer of the other heirs implies is that if the lost will was really the will of their father, they could have no objection to its probate. But such lack of objection to the probate of the lost will does not relieve the proponent

from establishing its due execution and proving clearly the provisions thereof by at least 2 crdible witnesses. (IN RE TESTATE ESTATE OF SUNTAY, G. R. No. L-3087; IN RE: INTESTATE OF SUNTAY, G. R. No. L-3088; Resolution, November 5, 1954.)

*Issues in Probate is Fixed by the Rules of Court; During the Hearing, the Oppositor may Submit Evidence on Grounds Not Stated in His opposition; Sec. 9 & 12, Rule 77, applied.*

FACTS: Petitioner presented a document supposed to be the will of Jose Vaño. Oppositors, in their opposition, claimed that the signature of the testator was obtained through trickery, fraud, and under undue pressure and influence. During the hearing, oppositors presented handwriting experts to show that the signatures on the document were forged. The will having been denied probate, petitioner appeals and assigns as an error, the reception of oppositor's evidence on forgery. He contends that, as said ground was not alleged in the opposition, the court should not have permitted the presentation of evidence in support thereof.

HELD: In this jurisdiction, the law itself fixes the issues in the probate of wills because Secs. 9 & 12, Rule 77, requires proof of due execution, sanity of the testator, absence of duress, menace and undue influence or fraud. The oppositors, therefore, were not precluded from attacking the will on the ground of forgery despite the fact that their opposition was confined to other grounds. (TEODORO VAÑO *v.* VDA. DE GARCES, ET AL., G. R. No. L-6303, June 30, 1954.)

*Provisions Of Lost Will Must Be Proved By At Least Two Credible Witnesses.*

FACTS: A petition was presented in the lower court for the probate of a lost will alleged to have been executed in the Philippines by the deceased, Suntay. To prove the provisions of the lost will, petitioner presented Go, Anastacio and Ana. The will having been disallowed, petitioner appealed.

HELD: Because of the hearsay character of the testimony of Go and the inconsistencies in that of Ana, their testimony can-



not be accepted. Only the testimony of Anastacio is convincing but still his testimony alone falls short of the legal requirement that the provisions of the lost will must be "clearly and distinctly proved by at least 2 credible witnesses." (IN RE: TESTATE ESTATE OF SUNTAY, G. R. No. L-3087; IN RE: INTESTATE ESTATE OF SUNAY, G. R. No. L-3088; July 31, 1954.)

*A Probate Court's Order Adjudicating Possession of Property To An Heir Does Not Terminate A Lease Thereon In Favor Of One Not Party To The Proceedings.*

FACTS: During intestate proceedings, Ciriaco as administrator leased to Gaspar, with court approval, Lot 56. Subsequently, by virtue of a court order of partition which stated that the parties were to take possession of the premises with all the rights of ownership, Lot 56 was allocated to Ciriaco. Ciriaco obtained a writ of execution of the order whereby he was placed in possession of lot 56. Gaspar petitions for the annulment of the order of execution claiming that he was deprived of his leasehold rights without the lease having been terminated. Ciriaco contends that the order of partition which entitled him to possession *ipso facto* terminated the lease.

HELD: The order of partition authorizing Ciriaco to take possession did not terminate the lease, for the lessee was not a party to that partition and the court cannot, without any legal ground and proper proceedings for the purpose, annul the lease. (GASPAR LLAMAS *v.* SEGUNDO MOSCOSO, G. R. No. L-7524, July 31, 1954.)

*Manifestation to File Intestate Proceeding Does Not Preclude Other Proper and Less Burdnsome Remedy; Sec.* 685 *C.C.P. applied.*

FACTS: In a pre-trial in a land registration case between defendants, as applicants, and plaintiff, as oppositor, plaintiff manifested that she would file intestate proceedings in order to determine the ownership of the lands in question. In view of this, the court issued an order suspending the registration proceedings until the question of ownership would be determined in the intestate proceedings. Instead of filing intestate

proceedings, plaintiff filed an action for accounting, liquidation and partition of the conjugal estate involving the lands in question. On motion of defendant on the ground that the directive in the registration case was for the filing of intestate proceedings, the lower court dismissed the action for accounting and liquidation.

HELD: The lower court order suspending the land registration case upon plaintiff's manifestation that an intestate proceeding would be filed does not legally deprive him of bringing an ordinary and less burdensome action for liquidation and partition of said estate. (MACALINAO *et al. v.* VDA. DE ANGELES *et al.*, G. R. No. L-5705, June 30, 1954.)

*Factors To Be Considered In Determining Compensation For Legal Services.*

FACTS: Appellee obtained the probate of Mina's will, acting as attorney for the trustees named therein. He also rendered services for the benefit of the estate by successfully defending the validity of the provisions of the will in court. For his services, he filed a claim for ₱150,000 which was reduced by the probate court to ₱50,000. From said judgment, the heirs appeal claiming that the reasonable compensation should be around ₱7,000.

HELD: To determine the compensation for legal services, courts in this jurisdiction take into account, in the absence of contract, several factors: (1) amount and character of services rendered; (2) labor, time and trouble involved; (3) nature and importance of the litigation or business in which the services were rendered; (4) responsibility imposed; (5) amount of money or value of the property affected by the controversy, or involved in the employment; (6) skill and experience called for in the performance of the services; (7) professional character and social standing of the attorney; (8) results secured; (9) whether or not the fee is absolute or contingent, it being a recognized rule that an atty. may properly charge a much larger fee when it is to be contingent. These are factual questions which are left to the trial judge. The judgment must be upheld. (QUINTILLAN *v.* DEGALA, G. R. No. L-5767, October 30, 1954.)



*A Dismissed Attorney May Cause His Lien To Be Registered, As Distinguished From Its Enforcement, Before Rendition Of Judgment.*

FACTS: Sebastian Palanca employed Dingsalan as his attorney in the testate proceedings of Carlos Palanca. Subsequently, Sebastian did away with Dingsalan's services. Dingsalan then filed in the proceedings a notice of attorney's lien for services rendered by him. The court ordered the notice of the lien to be attached to the records for all intents and purposes. Objecting to the court's action, Sebastian filed this petition for certiorari and mandamus.

HELD: Although a lawyer, due to withdrawal or dismissal, does not finish the case successfully in favor of his client, he may cause a statement in his lien to be registered, as distinguished from its enforcement, even before the rendition of any judgment, the purpose being merely to esstablish his right to the lien. (PALANCA *v.* PECSON, G. R. No. L-6334, February 25, 1954.)

*Claims, Covered By Statute Of Non-Claims, Are Those Upon Liability Contracted By Decedent Before Death; Sec. 5, Rule 87, Construed.*

FACTS: Atty. Quintillan obtained the probate of the deceden't will, rendering his services for the trustees named therein. For said services, he filed a claim for ₱150,000 which was opposed by said trustees. The probate court granted claimant ₱50,000. The trustees appeal, claiming that since Sec. 5, Rule 87 bars money claims against the decedent, arising from contract, which are not filed within the time limited in the notice for filing the same, the court had no jurisdiction over Quintillan's claim which was filed after the expiration of the period set by the court.

HELD: The section invoked by appellants refer obviously to claims "against the decedent arising from contract" with her. It applies to demands "which are proper against the decedent, that is, claims upon a liability contracted by the decedent before his death"... "except funeral expenses" etc.

Quintillan's claim is not covered by said section. (QUINTILLAN *v.* DEGALA, G. R. No. L-5767, October 30, 1954.)

## ADOPTION

*Judicial Sanction is Essential for a Valid Adoption.*

FACTS: On March 20, 1954, pursuant to Rule 100 of the Rules of Court then applicable, an adoption agreement was executed whereby the parents of the minor, Marcial Resaba, agreed to the adoption of said minor by the petitioners. The petition having been opposed by the Solicitor General on the ground that petitioners were disqualified under the New Civil Code, petitioners contend that the codal prohibition did not apply since the adoption agreement was executed under the Rules of Court, then applicable, which did not contain a similar prohibition. Thus, they asked that the agreement be given full effect in the same manner as any other contract.

HELD: While the agreement was executed when the law applicable was the Rules of Court, which did not disqualify petitioners, yet such agreement cannot have the effect of establishing the relation of paternity and filiation by legal fiction without the sanction of court. The only valid adoption in this jurisdiction is that made through court, or in pursuance of the procedure laid down by the rule. (YÑIGO *v.* REPUBLIC OF THE PHILIPPINES, G. R. No. L-6294, June 28, 1954.)

## CRIMINAL PROCEDURE

### PROSECUTION OF OFFENSES

*Sec. 1, Rule 106, Is Mandatory In That All Persons Appearing To Be Responsible For The Offense Must Be Made Parties-Defendant; Fiscal's Discretion Limited To Exclusion Of Those Against Whom There Is No Sufficient Evidence.*

FACTS: In a criminal action, the fiscal excluded from the information certain persons who admittedly participated either as principals or accomplices in the crime. Pursuant to a petition for mandamus, the court ordered the fiscal to include said persons. Hence, this appeal.



HELD: The use of the word "shall" in Sec. 1, Rule 106, is mandatory, not merely directory. Its mandatory nature, demanded by sound public policy, deprives prosecuting officers of discretion so that they may not shield their friends. This does not mean, however, that prosecuting officers have no discretion at all; their discretion lies in determining whether the evidence is sufficient to justify a reasonable belief that a person has committed an offense and in excluding from the information those against whom no sufficient evidence of guilt exists. (QUIAO *v.* FIGUEROA, G. R. No. L-6481, May 17, 1954.)

*Although There May Be Only 1 CFI For 2 Provinces Within A Judicial District, Trial Of A Criminal Case May Only Be Held In The Province Where The Crime Was Committed Or An Essential Ingredient Thereof Took Place; Sec. 14 (a), Rule 106, Applied.*

FACTS: In the information for malversation of public funds, it was alleged that the crime was committed in Occidental Mindoro. Trial was commenced in said province but was later transfered to Oriental Mindoro. Beltran, the accused, objected to the transfer but the trial court overruled the objection. In this petiion for prohibition, the court contends that, as the provinces of Mindoro constitute the 8th judicial district and there being no separate court for each of the 2 provinces, the court may hold session in either province.

HELD: The contention is untenable. Sec. 14 (a), Rule 106, expressly provides that "a criminal action shall be instituted and tried in the municipality or province where the offense was committed or any of the essential ingredients thereof took place." Although the judge may hold session in any part of said district, yet he should hold trial in any particular case, subject to the specific provisions of Sec. 14 (a), Rule 106, so that the fundamental rights of the accused may not be disregarded. (BELTRAN *v.* RAMOS, G. R. No. L-6410, November 24, 1954.)

*CFI Of Province Where Libelous Article Was Neiher Pub-*

*lished Nor Circulated Has No Jurisdiction Over Crime Of Libel.*

FACTS: Copies of the article, allegedly libelous, were distributed by the corporation, of which defendant was a director, to its members residing in Leyte; to 1 member in Samar; to the PC authorities in Tacloban and Quezon City; and to a company in Manila. The case was prosecuted in the CFI of Samar which found the copies sent to the members of the corporation to be privileged but convicted the accused because of the copies sent to Tacloban, Quezon City and Manila. Hence, this appeal.

HELD: A case for libel may be commenced in any jurisdiction where the article was published or circulated, regardless of where it was written or printed. However, since the only copy sent to the member of the corporation in Samar was found by the CFI to be privileged, and the resolution was neither published nor circulated in that province, consequently, the CFI of Samar has no jurisdiction to take cognizance of the crime alleged in the information. (PEOPLE *v.* CHAPMAN, G. R. No. L-6312, September 9, 1954.)

*Change In Allegation As To The Manner Of The Commission Of The Crime Does Not Deprive Court Of Jurisdiction Already Acquired; Jurisdiction Attaches Upon Filing Of Complaint And Over The Crime, Irrespective Of The Manner Of Commission.*

FACTS: In the JP, the offended party filed a complaint accusing Bangalao of having raped her "by means of force and intimidation." Forwarded to the fiscal, an information for rape was filed, based on the fact that the offended party "is a minor and demented girl." The court dismissed the case on the ground that, as the information did not correspond to the complaint filed by the offended party as to the manner in which the offense was committed, the case had not been initiated by the person called by law to do so but by the fiscal.

HELD: The complaint was for rape, and this gave the court the jurisdiction to try the case. The jurisdiction of the court is not over the crime of rape when committed on a minor and demented girl, but over rape, irrespective of the manner in which it is committed. The power to try an accused for rape attached from the filing of the complaint, and a change in the allegations thereof as to the manner of committing the crime does not divest the court of jurisdiction it has already acquired. (PEOPLE *v.* BANGALAO, G. R. No. L-5610, February 17, 1954.)



*Evidence That The Weapon Was Used By The Accused In Committing Homicide Does Not Cure A Defective Information For Illegal Possession Of Firearms.*

FACTS: Two informations were filed against Austria, one for homicide and another for illegal possession of firearms. In the latter case, the prosecution presented evidence showing that the weapon was the same one used in the homicide case; however, the court dismissed the case, on the grouned that the information did not charge an offense under R.A. No. 482.

HELD: Evidence showing that the weapon, for which the accused was prosecuted for illegal possession, has been used in killing his victim in a homicide case cannot have the effect of validating a void information for possession of unlicensed firearms. (PEOPLE *v.* AUSTRIA, G. R. No. L-6216, April 30, 1954.)

## PROSECUTION OF CIVIL ACTION

*In The Crime Of Bigamy, The Nullity Of The Second Marriage Because Of Defendant's Alleged Use Of Force And Threats Is Not A Prejudicial Question.*

FACTS: Aragon was charged with Bigamy for having contracted a second marriage while his prior valid marriage was still subsisting. While said action was still pending, his second wife filed a civil action for the annulment of the second marriage on the ground that Aragon forced her to marry him by means of force and threats of bodily harm. Thereupon, Aragon filed a motion in the criminal action asking for its provisional dismissal on the ground that the civil suit for the annulment of the second marriage is a prejudicial question.

HELD: A prejudicial question is that which arises in a case, the resolution of which is a logical antecedent of the issue involved in said case, and the cognizance of which pertains to another tribunal. It is true that if the allegations in the civil action are true, the second marriage is void but its nullity cannot be raised by Aragon as a defense. The second wife, if she were the one charged with bigamy, could perhaps raise said defense but not the party guilty of force and intimidation. The guilty party may not use his malfeasance to defeat an action based on his criminal act. (PEOPLE *v.* ARAGON, G. R. No. L- 5930, February 17, 1954.)

## ARRAIGNMENT

*An Amended Information, To Which Accused Has Not Pleaded, Cannot Be The Basis Of A Valid Conviction.*

FACTS: The accused was charged with illegal possession of firearms. The original information was later amended so as to allege facts essential to the offense which had been previously omitted. During arraignment, the original information was read and the accused pleaded not guilty thereto. At this point, accused's counsel called the court's attention to the fact that the accused was being arraigned not under the amended information but under the original. However, the court proceeded with the trial and convicted the accused.

HELD: Where the accused was arraigned under the original information but not with respect to the charge contained in the amended information, his counsel twice calling the court's attention to the omission, his right to arraignment under the amended charge is not waived and a conviction thereunder suffers from a reversible defect. (CABANGANGAN *v.* CONCEPCION, ET AL., G. R. No. L-6353, May 26, 1054.)

## MOTION TO QUASH

*A Conviction Of Treason By A Military Court Bars, On The Ground Of Jeopardy, A Prosecution Of The Accused For The Same Offense In A Civil Court.*



FACTS: Crisologo, a USAFFE officer, was charged with treason, under the Articles of War, before a military court and was convicted thereof. Subsequently, an information for treason was filed in the CFI. A motion to dismiss having been denied, Crisologo petitions for certiorari and prohibition.

HELD: One who has been tried and convicted by a court martial under circumstances giving that tribunal jurisdiction of the defendant and of the offense, has been once in jeopardy and cannot for the same offense be again prosecuted in another court of the same sovereignty. (CRISOLOGO *v.* PEOPLE OF THE PHILIPPINES ET AL., G. R. No. L-6277, February 26, 1954.)

*Treason Being A Continuing Offense, A Conviction Based On One Set Of Overt Acts Bars, On The Ground Of Jeopardy, Another Action Therefor, Though Based On A Different Set Of Overt Acts.*

FACTS: An indictment, containing charges of alleged overt acts of treason, was filed before a court-martial against Crisologo. The court convicted him of said charges. Subsequently, a criminal case for treason was filed in the CFI. In the information, certain overt acts, different from those contained in the military indictment, were alleged. His motion to dismiss having been denied by the CFI, Crisologo filed his petition for certiorari and prohibition.

HELD: While certain overt acts specified in the amended information in the civil court were not alleged in the indictment in the court-martial, they all are embraced in the general charge of treason, which is a continuous offense and one who commits it is not criminally liable for as many crimes as there are overt acts. Consequently, the sentence meted out by the court-martial is a bar to Crisologo's further prosecution for the same offense in the civil court on the ground of double jeopardy. (CRISOLOGO *v.* PEOPLE OF THE PHILIPPINES ET AL., G. R. No. L-6277, February 26, 1954.)

*There Is No Double Jeopardy Where The Offense Charged Is Punishable Under Different Laws.*

FACTS: Anito was caught fishing with dynamite, and blast-

ing caps and powder were found in his possesseion. He was prosecuted for illegal fishing and, subsequently, also for illegal possession of blasting caps and powder. He now raises the defense of double jeopardy against the second information.

HELD: Each offense being punished by a separate law, one offense is distinct from the other and the defense of double jeopardy cannot be maintained. (PEOPLE *v.* ANITO, G. R. No. L-6866, September 28, 1954.)

*Where A Court, Having Jurisdiction, Dismisses A Case On Defendant's Motion To Quash, An Appeal From The Dismissal Cannot Be Taken On The Ground Of Double Jeopardy.*

FACTS: In the JP, the complaint alleged that the accused committed the crime of rape "by means of force and intimidation." However, in the CFI, the information filed by the fiscal for rape was based on the fact that the offended party was "a minor and demented person." Relying on this discrepancy, the accused moved to quash the information on the ground of lack of jurisdiction. The court granted the motion, and the prosecution now appeals.

HELD: The CFI had jurisdiction because a mere change in the allegations as to the manner of the commission of the crime does not deprive th court of jurisdiction. Unfortunately, however, the appeal cannot prosper because it puts the accused in double jeopardy. As the trial court had jurisdiction to try the case upon the filing of the complaint, the accused would be placed in double jeopardy if the appeal is allowed. (PEOPLE *v.* BANGALAO, G. R. No. L-5610, February 17, 1954.)

*Dismissal Of A Criminal Action "For Failure Of The Govt. To Prosecute," Though Ordered On Defendant's Motion Or With His Express Consent, Bars Another Action For Same Offense, On The Ground Of Double Jeopardy.*

FACTS: Diaz was charged in the JP with violation of the Revised Motor Vehicle Law, to which he pleaded not guilty Upon failure of the prosecution to appear twice for hearing, the JP, on Diaz's motion, dismissed the case "for failure of the Govt. to prosecute." Subsequently, another information was



filed in the CFI charging Diaz for the same act. The case having been dismissed on the ground of double jeopardy, the Govt. appeals, claiming that, as the first dismissal was with the defendant's express consent, jeopardy did not attach.

HELD: For the reason that it was with the accused's express consent, at first blush it would seem that there is no jeopardy. However, "such dismissal is not just a dismissal, although so-called, but an acquittal of the accused because of the prosecution's failure to prove his guilt, and it will bar another prosecution for the same offense, even though it was ordered upon motion or with the accused's express consent, in exactly the same way as a judgment of acquittal upon the defendant's motion." (PEOPLE *v.* DIAZ, G. R. No. L-6518, March 30, 1954.)

*Order Of Dismissal Is Equivalent To Acquittal And Cannot Be Reversed Without Putting Accused In Double Jeopardy.*

FACTS: In a criminal case for Kidnapping With Murder, after the prosecution rested its case, the accused move for dismissal which was granted. However, the court subsequently reversed its order of dismissal. Hence, this petition for certiorari and prohibition.

HELD: The order of dismissal amounted to an acquittal, whether such acquittal was due to some misrepresentation of facts as stated in the order of reconsideration, or to a misapprehension of the law or of the evidence presented by the prosecution. The fact remains that it was a valid order and to continue the case would put the accused in double jeopardy. (CATILO *v.* ABAYA, G. R. No. L-6921, May 14, 1954.)

*The Benefit of Prescription of Crimes, Being a Substantive Right, Is Not Waived by Failure To Raise the Same Before Plea and May be Invoked Even After Arraignment; Sec. 10, Rule 113, modified.*

FACTS: On Jan. 19, accused inflicted on Bustos injuries requiring medical attention for 5 days. On April 14, a complaint for slight physical injuries was filed in the JP. Judgment was rendered after trial finding the accused guilty. On

appeal to the CFI, before trial but after having entered a plea of guilty, accused moved to dismiss claiming that, since a light offense prescribes in 2 months, the crime had already prescribed when the complaint was filed in the JP. The Solicitor General on the other hand claims that since the accused failed to move to quash before pleading, he must be deemed to have waived this defense under Rule 113, Sec. 10.

HELD: Sec. 10, Rule 113, is not of absolute application, especially when it conflicts with substantive legal provisions (People v. Moran, 44 Phil. 387) since, under the Constitution, rules promulgated by this Court cannot prevail over substantive rights. One of such provisions is Art. 89 of the Revised Penal Code which provides that the prescription of crime has the effect of totally extinguishing criminal liability. (PEOPLE *v.* CASTRO, G. R. No. L-6407, July 29, 1954. Bengzon, dissenting.)

## TRIAL

*Only The Court, Not The Fiscal, Has Discretion Of Excluding From The Information A Person Appearing To Be Responsible For The Offense.*

FACTS: Certain persons, who, admittedly, participated in the crime as principals or accomplices, were excluded from the information by the fiscal. By virtue of a petition for mandamus, the court ordered the fiscal to include them. Hence, the fiscal appeals, claiming that he was merely exercising his discretion of excluding those whom he considered to be indispensable state witnesses.

HELD: Sec. 1, Rule 106, imposed upon prosecuting officers the mandatory duty of filing charges against those whom the evidence may show to be responsible for an offense. Fiscals have no discretion in excluding those who appear responsible for a crime, but if it becomes necessary to do so, the procedure prescribed by law must be followed and the exclusion of the accused, to be utilized as a state witness, is lodged in the sound discretion of competent court, not in that of the prosecuting officer. (QUIAO *v.* FIGUEROA, G. R. No. L-6481, May 17, 1954.)



## JUDGMENT

*In Promulgating Judgment Of Acquittal, Presence Of Accused Not Required; Sec. 6, Rule 116, Construed; Judgment Of Acquittal Duly Promulgated Upon Entry And Service Of Copies Thereof.*

FACTS: In a decision, which was duly entered in the criminal docket and copies whereof served on the parties, the CFI acquitted Cinco et al. and convicted one Martinez. Notice of its reading was served on Martinez but not on Cinco et al. The decision was finally read in Martinez's presence only. Later, a new decision convicting Cinco et al. was rendered. However, on Cinco's petition, the CA declared void the proceedings after the first decision and ordered the CFI to desist from promulgating the new one. In this appeal by the prosecution from the CA, it is claimed that as the first decision was not rendered in the presence of the accused, Cinco et al., as required by Sec. 6, Rule 116, the same had not been duly promulgated and the court still had jurisdiction to promulgate a new judgment of conviction.

HELD: Sec. 6, Rule 116, requires the accused's presence only if the judgment is for conviction of a grave or less grave offense. The accused's presence is not needed if the judgment is for conviction of a light offense, and, more so, if the judgment is of acquittal. The sec. provides that a judgment is promulgated by "reading it in the presence of the defendant." To read is to make known the contents. Thus, the first decision was sufficiently promulgated after it was entered and the defendants were served with copies thereof. Consequently, to allow promulgation of the new judgment convicting defendants is to put them in double jeopardy. (CEA ET AL. *v.* CINCO ET AL., G. R. No. L-7075, November 18, 1954.)

*The Inherent Power Of A Court To Modify Its Orders Under Sec. 5, Rule 124, And Its Judgment Under Sec. 7, Rule 116, Does Not Include Orders Or Judgments Of Acquittal.*

FACTS: On the accused's motion, the court issued an order

of dismissal. On the same day, however, the court, relying on its power to modify its orders, reversed the order of dismissal. Hence, this petition for certiorari with prohibition.

HELD: The inherent powers of a court to modify its orders or decision under Sec. 5, Rule 124, do not extend to an order of dismissal which amounts to a judgment of acquittal in a criminal case, and the power of a court to modify a judgment or set it aside before it becomes final or an appeal has been perfected under Sec. 7, Rule 116, refers to a judgment of conviction and does not and cannot include a judgment of acquittal. To hold otherwise would be to put the accused in jeopardy of punishment for the same offense. (CATILO *v.* ABAYA, G. R. No. L-6921, May 14, 1954.)

## APPEAL

*Non-Publication of Administrative Regulation, Under Which An Accused Is Sought To Be Punished Is A Jurisdictional Question Which May Be Raised For The First Time On Appeal.*

FACTS: Que Po Lay was convicted of violating Central Bank Circular 20, isssued as authorized by R. A. 1265. On appeal, he claims that, as said circular was not published in the Off. Gaz. prior to the act or omission imputed to him, said circular had no force and effect. The Sol-Gen. contends, however, that the question of non-publication, not having been raised in the court below, cannot be raised for the first time on appeal.

HELD: Ordinarily, one may raise on appeal any question of law or fact that has been raised in the trial court and which is within the isssues made by the parties in their pleadings. But the question of non-publication is fundamental for if it had not really been published, in the eyes of the law there was no circular which was violated and the trial court may be said to have had no jurisdiction. The question may thus be raised at any stage of the proceeding. (PEOPLE *v.* QUE PO LAY, G. R. No. L-6791, March 29, 1954.)



## EVIDENCE

*In The Absence Of Proof, Foreign Law On Probate Is Deemed The Same As PI Law And The Failure Of The Foreign Court To Make Required Publication Invalidates The Proceedings Therein.*

FACTS: Upon the death of Jose Suntay, his son presented a will allegedly executed in China and allowed by the district court of Amoy. The will was denied probate by the CFI; the petitioner appeals and insists on giving effect to the previous probate of the will by the Chinese court.

HELD: In the absence of proof that the municipal district court of Amoy is a probate court and on the Chinese law of Procedure in probate matters, it may be presumed that the proceedings in the matter of probating or allowing a will in the Chinese courts are the same as those provided for in our laws on the subject. It is a proceeding *in rem* and for the validity of such proceedings personal notice or by publication or both to all interested parties must be made, a step which was not done in this case. (IN RE: TESTATE ESTATE OF SUNTAY, G. R. No. L-3087; IN RE: INTESTATE ESTATE OF SUNTAY, G. R. No. L-30 3088; July 31, 1954.)

*Testimony Of Consul General Is Not Admissible To Prove The Laws Of His Country.*

FACTS: In the hearing of the petition for the probate of a will allegedly executed in Amoy, China, and previously probated by the municipal district court of Amoy, petitioner attempted to prove the law of China on procedure in the allowance of wills by means of a document containing the answers of the Consul General of China to certain questions propounded by petitioner.

HELD: The unverified answers to the questions propounded to the Consul General are inadmissable, because apart from the fact that the office of Consul General does not qualify and make the incumbent an expert on the Chinese law on procedure in probate matters, if the same be admitted, the adverse party would be deprived of his right to confront and

cross-examine the witness. (IN RE: TESTATE OF SUNTAY, G. R. No. L-3088; July 31, 1954.)

*Right Against Self-Incrimination Must Be Invoked After The Question Is Asked, Not Before.*

FACTS: In the hearing of his claim for overtime pay against Kot, Gonzales had Kot summoned as witness and put under oath. Before any question was asked, Kot invoked his constitutional right against self-incrimination, calling attention to the fact that the law on overtime pay provided penalties for its violation. The investigator then ordered Kot's withdrawal from the witness stand. This order of withdrawal having been affirmed by the Sec. of Labor, Gonzales instituted this petition for certiorari.

HELD: The order is not justified. The privilege against self-incrimination must be invoked at the proper time, i.e., when a question calling for an incriminating answer is propounded, not before. This is so because before a question is asked, there would be no way of telling whether the information elicited from the witness is self-incriminatory or not. (GONZALES *v.* SECRETARY OF LABOR, G. R. No. L-6409, February 5, 1954.)

*Mutual Mistake Of Parties Authorizes Reformation Of Instrument Under Sec. 22, Rule 123; Surety On Bond For Dissolution Of Attachment Estopped From Denying Liability Thereon.*

FACTS: To dissolve a writ of attachment against defendant, defendant and L.S. Co. executed a bond in favor of plaintiff. The bond erroneously contained the following terms: "it (L.S. Co.) and the plaintiff would pay all the costs which may be adjudged to the defendant." Judgment having been rendered against defendant, a writ of execution was issued. In its motion to quash the writ, the L.S. Co. contends that, under the terms of the bond, it was not responsible for the amount of the judgment.

HELD: The title of the bond clearly shows that it was for the purpose of lifting the writ of attachment. As good faith is presumed, both plaintiff and L. S. Co. must have failed to note the terms of the bond or the faulty language used. The mistake that both parties have fallen into is known as a mutual mistake which authorizes the reformation of the instrument under Sec. 22, Rule 123. In any case, the surety is estopped from denying the purpose of the bond and its liability thereon. (DE LA CRUZ *v.* DEL PILAR, G. R. No. L-6671, July 27, 1954.)