That the relief granted by the respondent court lies within its jurisdiction is not disputed. Having the authority to grant the relief, the respondent court did not exceed its jurisdiction; nor did it abuse its discretion in granting it.

With persistency petitioners claim that they have been deprived of their right without due process of law. But they had no right to continue as directors of the corporation unless reelected by the stockholders in a meeting called for that purpose every even year. They had no right to a hold-over brought about by the failure to perform the duty incumbent upon one of them.[3] If they felt they were sure to be reelected, why did they fail, neglect, or refuse to call the meeting to elect the members of the board? Or, why did they not seek their reelection at the meeting called to elect the directors pursuant to the order of the respondent court?

The alleged illegality of the election of one member of the board of directors at the meeting called by the respondent Gapol as authorized by the court, being subsequent to the order complained of, cannot affect the validity and legality of the order. If it be true that one of the directors elected at the meeting called by the respondent Gapol was not qualified in accordance with the provisions of the by-laws, the remedy of an aggrieved party would be *quo warranto*. Also, the alleged previous agreement to dissolve the corporation does not affect or render illegal the order issued by the respondent court.

The petition is denied, with costs against the petitioners. (*Domingo Ponce and Buhay L. Ponce vs. Demetrio B. Encarnación and Potenciano Gapol, G. R. No. L-5883*, prom. Nov. 28, 1953.)

attachment which may be issued ex-parte upon compliance with the requirements of the rules and upon the court being satisfied that the same should issue. Such provisional reliefs have not been deemed and held as violative of the due process clause of the Constitution.

Delaware is a state that has a law similar to ours and there the chancellor of a chancery court may summarily issue or enter an order authorizing a stockholder to call a meeting of the stockholders of the corporation and preside thereat. This means that the chancellor may issue such order without notice and hearing. (In re Jackson, 9 Del. 279, 81 Atl. 992; In re Gullah, 13 Del. Ch. 1, 114 Atl. 496.)

[3] The by-laws of the corporation in this case provided that the Chairman of the Board of Directors was to call a general meeting of the stockholders to elect the Board of Directors every even year during the month of January.

REMEDIAL LAW

JURISDICTION OF WORKMEN'S COMPENSATION COMMISSION: REPUBLIC ACT 772 CONFERRED UPON THE WORKMEN'S COMPENSATION COMMISSION "EXCLUSIVE JURISDICTION" TO HEAR AND DECIDE ALL CLAIMS FOR COMPENSATION UNDER THE WORKMEN'S COMPENSATION ACT, ON AND AFTER JUNE 20, 1952, SUBJECT TO APPEAL TO THE SUPREME COURT.

FACTS: This is an appeal from an order of Hon. Jesus Y. Perez of the C.F.I. of Bulacan dismissing plaintiffs' complaint for workmen's compensation on the ground that the matter properly falls within the jurisdiction of the Workmen's Compensation Commission.

The fatal accident which befell the husband of the plaintiff occurred in January, 1952, and action was commenced in the C.F.I. of Bulacan in August, 1952. Appellants contend that the date of the accident, and not the date of filing the complaint should be considered because the right to compensation of the laborer or employee or his dependents, like the obligation of the employer to pay the same, begins from the very moment of the accident.

HELD: It is true that the right arises from the moment of the accident, but such right must be declared or confirmed by the government agency empowered by law to make the declaration.

Republic Act No. 772 which took effect on June 20, 1952, conferred upon the Workmen's Compensation Commission "exclusive jurisdiction" to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court.[1]

Appellants further argue that Republic Act No. 772 should not be enforced as to accidents happening before its approval, because it has introduced changes affecting vested rights of the parties. Without going into details, it might be admitted that changes as to substantive rights will not govern such "previous" accidents. But here we are dealing with remedies and jurisdiction which the Legislature has power to determine

[1] Before the passage of said Act, demands for compensation had to be submitted to the regular courts.

and apportion. And then also, it is hard to imagine how one litigant could acquire a vested right to be heard by one particular court, even before he has submitted himself to that particular court's jurisdiction.[2]

Appealed order is affirmed. (*Carmen Castro, et al. vs. Francisca Sagales, G. R. No. L-6359*, prom. Dec. 29, 1953.)

CIVIL PROCEDURE: A MOTION TO DISMISS IS NOT A "RESPONSIVE PLEADING" AND THUS UNDER SEC. 1, RULE 17 OF THE RULES OF COURT, AMENDMENT MAY BE MADE AFTER THE ORIGINAL COMPLAINT HAS BEEN ORDERED DISMISSED. AMENDMENTS TO PLEADINGS ARE FAVORED AND SHOULD BE LIBERALLY ALLOWED IN THE FURTHERANCE OF JUSTICE.

FACTS: Plaintiffs, on June 28, 1951, filed an action in the C.F.I. of Quezon Province against the defendant for the annulment of two documents, copied in the complaint, alleging that Felix Carpio and his son, Maximo Carpio, had been compelled to sign said documents through force and intimidation and against their will. One of the documents purports to be an affidavit executed by Maximo Carpio on March 12, 1945, and the other a deed of sale with pacto de retro executed on May 3, 1945. The complaint also alleged that defendant with the aid of armed men repeatedly entered another piece of land which was in the possession of plaintiffs and against plaintiffs' will gathered coconuts therefrom of the total value of ₱7,000.

On motion of the defendants, the C.F.I. dismissed the case on the ground that plaintiffs' action had already prescribed.[1]

Plaintiffs asked for reconsideration of the order of dismissal and to meet the defense of prescription, also filed an amended complaint alleging that the force and intimidation by the defendants continued since May 3, 1945, and that the

[2] In the United States, actions pending in one court may be validly taken away by statute and transferred to another (21 C. J. S. 148).

[1] According to the C.F.I., under Art. 1301 of the Spanish Civil Code of 1889 as well as under Sec. 43, Par. 3, of the Code of Civil Procedure and Art. 1391 of the new Civil Code, an action for nullity in case of intimidation or duress must be brought within four (4) years from the date the cause of action accrued.

latter warned the plaintiffs not to bring the incident to the proper authorities under pain of death.

The lower court denied reconsideration and disallowed the amended complaint whereupon plaintiffs brought this case to the Supreme Court by way of appeal, alleging that the appeal involved a purely legal question. Appellants contend that the lower court erred in not admitting their amended complaint and in holding that their action had already prescribed.

HELD: Appellants are right on both counts.

Amendments to pleading are favored and should be liberally allowed in the furtherance of justice.[2] Moreover, under sec. 1 of Rule 12, Rules of Court, a party may amend his pleading once as a matter of course, that is, without leave of court, at any time before a responsive pleading is served. A motion to dismiss is not a "responsive pleading".[3] As plaintiffs amended their complaint before it was answered, the motion to admit the amendment should not have been denied. It is true that the amendment was presented after the original complaint had been ordered dismissed. But that order was not yet final for it was still under reconsideration.

As to the question of prescription, it is evident that, with the allegation in the amended complaint that the threats by the defendant continued until 1952, plaintiffs' action does not appear to have prescribed, because in these cases prescription does not begin to run until the party affected is perfectly free to go to court if he wishes.

We also observed that the original complaint claims damages for fruits gathered from 1945 to 1951 from land held by the plaintiffs but different from the one covered by the documents in question. Not all of this claim is barred by prescription.

Thus, the order dismissing the case and rejecting the amended complaint is hereby set aside and the case remanded to the court below for further proceeding. (*Pedro Paeste, et al. vs. Rustico Jaurigue, G. R. No. L-5711*, prom. Dec. 29, 1953.)

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[2] Torres v. Tomacruz, 49 Phil. 913.

[3] Moran on the Rules of Court, Vol. 1, 1952 ed., p. 376.

CIVIL PROCEDURE: AN APPEAL BOND BECOMES UNNECESSARY WHEN A SUPERSEDEAS BOND TO STAY EXECUTION OF JUDGMENT IS GIVEN, WHICH HAS IN PART THE SAME PURPOSE; WHEN THE DEPOSIT ALREADY MADE BY THE DEFENDANT DOES NOT FULLY COVER THE AMOUNT FIXED IN THE JUDGMENT APPEALED FROM, A SUPERSEDEAS BOND WHICH COVERS THE BALANCE OF SUCH BACK RENTS AND THE PROBABLE AMOUNT OF COSTS, IN THE ABSENCE OF A REGULAR APPEAL BOND, SHOULD BE CONSIDERED GOOD AND SUFFICIENT.

FACTS: In Civil Case No. 1306, respondent Zoilo Balmaceda sued petitioner Gregorio Salceda for illegal entry into and detainer of a lot and a camarin built on it in Naga City. In turn, Salceda instituted Civil Case No. 1431 against Balmaceda, seeking a declaration of ownership of the camarin in his favor. Both cases were tried jointly and thereafter a single decision was issued dismissing Civil Case No. 1431 on the ground that original jurisdiction thereof properly belonged to the Municipal Court, and declaring Balmaceda owner of the camarin in Civil Case No. 1306. Salceda was ordered to vacate the camarin, to pay ₱990 as rentals from November 29, 1948 to August 29, 1951 and ₱30 a month thereafter until the said camarin was returned to Balmaceda. The decision was rendered on September 13, 1951 and on September 27, Salceda filed his notice of appeal and an appeal bond in the sum of ₱60. On October 16, 1951, he also filed a supersedeas bond of ₱400 to stay execution. Finally, on October 24, 1951, he filed a motion to appeal as pauper. Balmaceda opposed the petition on the ground that Salceda was not destitute and filed a counter motion to dismiss the appeal for the reason that only one appeal bond had been filed for the two cases. Respondent court denied the petition to appeal as pauper, dismissed the appeal in Civil Case No. 1431, but gave due course to the appeal in Civil Case No. 1306, and ordered Salceda to file a new supersedeas bond in the amount of ₱1,000. A subsequent motion to reconsider the above order having been denied, Salceda filed the present petition for certiorari with mandamus.

HELD: In brief, it is alleged that the respondent court gravely abused its discretion when it (a) refused to accept and apply to both cases the appeal bond of ₱60 filed by the

petitioner, (b) required the petitioner to file a new supersedeas bond of ₱1,000 and (c) denied the petition to appeal as pauper.

Regarding the first allegation, respondents rightly assert that the error of considering both cases as only one,[1] honest though it be, cannot excuse the duty of perfecting two separate appeals, if such be intended, or make a single appeal bond perform the office of two. The respondents do not question the sufficiency of the single notice of appeal filed by the petitioner for both cases, and they admit that two separate records on appeal were submitted. However, they allege that since only one appeal bond was filed, due course can be given to the appeal in only one of the two cases. The contention is not meritorious because two bonds were actually filed by the petitioner, the appeal bond of ₱60 and the supersedeas bond of ₱400 to stay execution, both within the period fixed for perfecting an appeal. The Rules of Court, in section 5 of Rule 41, provides that the appeal bond shall be in the amount of ₱60, unless a different amount is fixed by the court *or a supersedeas bond has been filed.*[2] Thus the filing of the supersedeas bond of ₱400, in conjunction with the notice of appeal and the record on appeal, perfected the petitioner's appeal in Civil Case No. 1306, without the necessity of another and ordinary appeal bond. In law no less than in justice and fairness, the appeal bond of ₱60 also filed by him should be deemed to perform a similar office in Civil Case No. 1431. It does not matter that the petitioner may never have intended such a result. What is important, and what ought to have satisfied the respondent court, is that by accident

[1] The mere fact of two cases being jointly tried and of the issuance of a single judgment covering both does not make both cases one.

[2] In the case of Contreras v. Danglasan, 45 O. G. (No. 1) 257, the Supreme Court held that since the purpose of the appeal bond is to answer for the costs that may be adjudged against the appellant in the appellate court, it becomes unnecessary when a supersedeas bond to stay execution of the judgment is given, which has in part the same purpose. The judgment in said case quoted with approval the ruling laid down in Fernando v. De la Cruz, 61 Phil. 435, on a similar question which arose when the Code of Civil Procedure was still in force, to the following effect: "x x x the defendant, who appeals to the Court of First Instance may give a bond to pay the costs alone, or he may give a bond to pay rents, damages, and costs. It is perfectly clear, therefore, that the bond to pay rents, damages, and costs includes the condition to pay the costs. Why should he give two bonds to pay the costs? x x x."

or design, he actually perfected his appeal in both cases.

Likewise, there is merit in the assertion that the respondent court incurred grave abuse of discretion in requiring the petitioner an increased supersedeas bond of ₱1,000. The petitioner claims, and the respondents have not denied, that he had faithfully deposited rental at the rate of ₱30 per month, the same rate fixed in the judgment of the respondent court, up to June, 1951 and that, as of November, 1951, he was in arrears in his deposit only in the amount of ₱150. If this is true, and the Court has no doubt that it is, in view of the respondents' failure to dispute it, then a bond of ₱1,000 is clearly unnecessary and oppressive. According to leading cases,[3] a supersedeas bond is unnecessary when the defendant has deposited in court the amount of all back rents declared by final judgment of the justice of the peace or the municipal court to be due the plaintiff from him and an appeal bond has been filed to answer for costs; the reason being that such bond answers only for rents or damages up to the time the appeal is perfected from the judgment of the justice of the peace or municipal court and not for rents or damages accruing while the appeal is pending which are guaranteed by future deposits or payments to be made by the defendant. Following this reasoning a step further, when, as in this case, the deposits already made by the defendant do not fully cover the amount fixed in the judgment appealed from and the supersedeas bond is made to answer for costs as well, in the absence of a regular appeal bond, a supersedeas bond which covers the balance of such back rents and the probable amount of costs should be considered good and sufficient. Finally, there appears to be no reason why the propositions just set forth which, in the said leading cases, were applied to appeals from Municipal Courts to Courts of First Instance, should not apply with equal force to appeals from Courts of First Instance to higher courts where a supersedeas bond is filed for the first time on appeal from a Court of First Instance. Considering, therefore, that at the time he perfected his appeal, the petitioner lacked only ₱150 to complete his deposit of the total back rents fixed in the judgment of the respondent court and that in ordinary appeals an appeal bond of ₱60 is deemed sufficient to guarantee the payment of costs, the petitioner's bond of ₱400 more than served its purpose and it was plain and grave abuse of discretion to order it increased to ₱1,000.

[3] Mitschiener v. Barrios, 42 O. G. 1901; Sogueco v. Natividad, 45 O. G. Supp. (No. 9) 449; Aylon v. Jugo, 45 O. G. (No. 1) 188; Hilado v. Tan, L-1964, August 23, 1950.

On the third question, it does not appear that the petition in this case is one which ought to have been granted. Though petitioner now alleges that his petition to appeal as pauper was filed before the time to appeal had expired, he failed to deny the correctness of the allegation in respondents' answer that said petition was filed after the time to appeal had expired and he also failed to appear at the hearing set by this Court or file a memorandum, which he was given sufficient time to do, in which he could have explained or proved that he was notified of the decision on a date later than that alleged by the respondents. Consequently, and in view of the absence of other proof in the record before this Court regarding the date of such notification, there is no choice but to believe that the respondents have stated the truth and that the petitioner saw no point in disputing it. Such late filing occasions grave doubt as to the merits of the petition and supports the respondents' claim that the petitioner is not really destitute and only presented it as a recourse to revive a right of appeal which he believed he had lost.

In view of the foregoing, the petition is granted in part and denied in part. Let a writ of mandamus issue directing the respondent court to give due course to the petitioner's appeal in Civil Case No. 1431 and to approve with modification the petitioner's supersedeas bond of ₱400. (*Gregorio Salceda vs. Hon. Jose T. Surtida, Judge of the C.F.I. of Camarines Sur, and Zoilo Balmacela* (*C.A.*) *G. R. No.* 8949-*R*, prom. Nov. 28, 1953.)

CRIMINAL PROCEDURE: TO DETERMINE WHETHER THE SECOND PROSECUTION WOULD PLACE THE DEFENDANT IN A SECOND JEOPARDY, THE POINT TO CONSIDER IS WHETHER UNDER THE FACTS *ALLEGED* IN THE FIRST INFORMATION [RATHER THAN UNDER THOSE *PROVED* IN THE TRIAL THEREUNDER] THE DEFENDANT COULD HAVE BEEN CONVICTED OF THE CRIME DESCRIBED IN THE SECOND INFORMATION.

11

FACTS: Double jeopardy is the issue in this appeal coming from the C.F.I. of Rizal.

Tried for the theft of U.S. Treasury Check No. 43,388,834 payable to the order of Paulina Belches, Vda. de Orbina, in the amount of $1,327.50 and acquitted for insufficiency of evidence, the defendants were subsequently charged for estafa, involving the same check, and under an information alleging that they,

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

Before the arraignment, the defendants moved to quash the prosecution, pointing to their former acquittal and arguing that they had already been in jeopardy of punishment for the same offense under the previous information for theft. The court denied the motion but upon petition for reconsideration, it dismissed the proceeding on the ground of double jeopardy.

The fiscal appealed.

HELD: For the purpose of determining whether the second prosecution would place the defendants in a second jeopardy, the point to consider is whether under the information for theft they could have been convicted of estafa described in the second information. Well-known, of course, is the rule that the offense charged is not the name given to it by the Fiscal, but that described by the facts alleged in the information.

The crucial allegations of the estafa charge, besides the collection of the money were the allegations of false pretense and representations which were *totally lacking* in the first information for theft. It is true that such first information said, "the accused having succeeded to cash the said check and collected the amount", and it might be contended that this *impliedly* alleged the same false representations included in the second information. However, such theory would tolerate implied allegations in a criminal information, to the utter

disadvantage of the accused whose constitutional right to be informed of the nature of the accusation might thereby be undermined. Besides, such allegation (of false representations) is not necessarily deducible from the fact that, being payable to another person, the check was paid to these accused, the reason being that the treasurer might have acted with full knowledge of facts, without having been misled, even thru connivance with the said accused.

The appellee maintains that the offense described in the information for estafa is the same crime proved at the trial for theft. But the test as to jeopardy is the crime alleged in the information—not the crime proved thereafter. The accused could not be convicted of such proved crime if it was not sufficiently described in the information. They were not therefore in danger of being punished for such proved crime.

From the foregoing it follows that the trial judge erred in dismissing the second information. Judgment reversed and the record will have to be returned for further proceedings. (*People vs. Agripina Magat de Soriano and Rodrigo Miranda, G. R. No. L-6080*, prom. Dec. 29, 1953.)

CRIMINAL PROCEDURE: JUDGMENT IS NOT FINAL AND THUS MAY BE MODIFIED, IF THE JUDGMENT ITSELF EXPRESSLY RESERVED FOR SUBSEQUENT ADJUDICATION THE DETERMINATION OF THE QUESTION WHETHER MONEY SEIZED FROM THE DEFENDANT IN GAMBLING SHOULD BE CONFISCATED.

FACTS: The pertinent facts in this action for prohibition are thus stated in the appellant's brief:

1. On September 4, 1952, the petitioner-appellee, Felino Lim, with twenty-one others were charged for gambling before the J.P. of Caloocan, Rizal. That same day, the defendants were arraigned before the respondent-appellant and all of them pleaded guilty.

2. After making his plea, the petitioner-appellee manifested to the court that, since he had no lawyer at the time, he was reserving his right to present evidence to prove that the sum of ₱1,000.00 which was seized from his pocket during the gambling raid by the peace officers and which was then in the custody of the authorities of Caloocan was not a part

of the proceeds or instruments of the crime and for this purpose requested the court to set a day to enable him to introduce such evidence with the assistance of counsel.[1]

3. Whereupon the respondent-appellant rendered a decision sentencing the accused Jose Lajon and Felino Lim, as maintainer and banker, respectively, and the rest as bettors, to each pay a fine and with costs proportionately. Regarding the sum of ₱1,000, which had been taken from the pocket of the defendant, the court set the hearing for September 15, 1952, in order to determine whether said amount should be confiscated, as part of the evidence, in favor of the government or not.

4. In compliance with said decision, the petitioner-appellee immediately paid the fine of ₱100 and the proportionate share of the costs imposed upon him.

5. On September 15, 1952, when the case was called for hearing in order to pass upon the remaining question, whether or not the said amount of ₱1,000 should be decreed confiscated to the Government or returned to its lawful owner, the petitioner-appellee through counsel questioned the proceeding on the ground of double jeopardy.

6. In view of respondent-appellant's insistence on hearing the case over and above petitioner-appellee's opposition, a petition for prohibition was filed by the latter against the former before the C.F.I. of Rizal. The C.F.I. granted the petition and directed the respondent-appellant to issue an order for the refund of the ₱1,000 to petitioner-appellee, on the ground that in a criminal case once the decision is promulgated or once the accused is found guilty and has paid the fine, the decision is final, which is the situation in this case, and thus the court had lost jurisdiction of the case.

7. From this order appeal was taken.

HELD: There is reason to doubt whether the decision of September 4, 1952 could be legally considered "final". It left something to be done later, i.e., the determination of the question whether the money should be confiscated—a proper issue in the criminal proceeding. Unless and until that issue

[1] The appellee asserts there is no proof of the facts stated in this paragraph. But such facts were alleged in the answer, and as judgment was rendered on the pleadings, they must be deemed admitted.

(expressly reserved for subsequent adjudication), was passed upon, the judgment could not be regarded final.[2]

Yet, even if payment by the accused of the fine accorded finality to the judgment, he may not prevent further actuation as to the money seized in his possession because the *judgment itself* reserved that point. In making payment he accepted the verdict, together with the reservation.

Had the judgment been silent on the matter, the decision of this court in U.S. vs. Hart,[3] invoked by the appellant, would be clearly applicable. In the instant case however, the justice of the peace had not attempted to "modify" his decision. He took further steps in consonance therewith. Although it was quite irregular, it cannot be held that he lacked jurisdiction. This is distinguishable from the Hart precedent wherein the judge had said nothing about confiscation in his decision imposing a fine. Here the justice of the peace had expressly reserved the power to continue hearing the matter.

Hence the proposed hearing is not a modification of the decision but a procedural step in furtherance thereof.

Judgment reversed without costs. (*Felino Lim vs. Hon. Jose F. Oreta, G. R. No. L-6247*, prom. Nov. 27, 1953.)

[2] When the order or judgment does not dispose of the case completely but leaves something to be done upon the merits it is not final. (Moran, Comments on the Rules of Court, 1952 Ed., Vol. I, p. 895.)

[3] In that case, the accused (for gambling) pleaded guilty and were sentenced to pay a fine. They promptly paid it. Afterwards the fiscal asked that the judgment be "modified" to dispose of the money which had been seized, and of which he was informed only after promulgation of the decision. The judge, modifying his decision, decreed the confiscation. Reversible error, said the Supreme Court. (U.S. vs. Hart, 24 Phil. 578.)