PROCEDURE IN THE SUPREME COURT IN SPECIAL CIVIL ACTIONS OF *CERTIORARI,* PROHIBITION AND *MANDAMUS*

by *JOSE S. DE LA CRUZ* *

Certiorari lies when any tribunal, board or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction or with grave abuse of discretion, and there is no appeal or other plain, speedy and adequate remedy in the ordinary course of law.[1] Prohibition is available when the proceedings of any tribunal, corporation, board or person, exercising judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal or other plain, speedy and adequate remedy in the ordinary course of law.[2] *Mandamus* may be resorted to when any tribunal, corporation, board or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office, and there is no other plain, speedy and adequate remedy in the ordinary course of law.[3] In *certiorari* the relief to be asked is that the proceedings complained of be annulled or modified;[4] in prohibition, that the respondent be ordered to desist from further proceedings in the action or matter involved;[5]

* Clerk of Court, Supreme Court of the Philippines.

1 Section 1, Rule 67, Rules of Court.
2 Section 2, Rule 67, Rules of Court.
3 Section 3, Rule 67, Rules of Court.
4 Section 1, Rule 67, Rules of Court.
5 Section 2, Rule 67, Rules of Court.

and in *mandamus,* that the respondent be ordered to do the act required to protect the rights of the petitioner, and to pay the damages sustained by the latter by reason of the wrongful acts of the respondents.[6] By express provision in the Rules of Court,[7] *mandamus* is the proper remedy when a motion to dismiss an appeal is erroneously granted or a record on appeal is disallowed by the trial court.

The original jurisdiction of the Supreme Court over petitions for *certiorari,* prohibition and *mandamus* is concurrent with Courts of First Instance, and exclusive if against the Court of Appeals.[8] The original jurisdiction of the Court of Appeals over the same special civil actions, when it is in aid of its appellate jurisdiction, is not exclusive but concurrent with the Supreme Court's.[9] When a petition for *certiorari,* prohibition or *mandamus,* being in aid of the appellate jurisdiction of the Court of Appeals, is filed with the Supreme Court, the latter, though possessed with concurrent jurisdiction, may dismiss the petition without prejudice to the same being filed with the Court of Appeals. To avoid this eventuality, it is necessary to determine what cases are properly in and of the appellate jurisdiction of the Court of Appeals. In one case[10] the Supreme Court pointed out that such petition falls under the jurisdiction of the Court of Appeals if the latter has jurisdiction to review by appeal or writ of error the final orders or decisions of a lower court, and if the wrongful acts or omissions complained of are not appealable; that a petition for *certiorari,* prohibition or *mandamus* involving acts or omissions of Inferior Courts may not be filed with the Court of Appeals because the latter has no appellate jurisdiction over the final orders or decisions of the Justice of the Peace or Municipal Courts; that the Court of Appeals has no jurisdiction over said petitions in civil or criminal cases cognizable by the Court of First Instance and appealable directly to the Supreme

6 Section 3, Rule 67, Rules of Court.
7 Section 15, Rule 41, Rules of Court.
8 Section 17, Republic Act No. 296.
9 Section 30, Republic Act No. 296; Richard Breslin *et al.* v. Luzon Stevedoring Company *et al.,* G. R. No. L-3346 (CA—G. R. No. 3121-R), Sept. 29, 1949, 47 O. G. (3) 1170.
10 Breslin *et al.* v. Luzon Stevedoring Company *et al., supra.*

Court; that the petition may not be filed with the Court of Appeals against boards, corporations or persons because there is no right of appeal directly to the Court of Appeals from their acts or decisions.

In practice, with reference to the concurrent jurisdiction of the Supreme Court, it is desirable and perhaps more expedient to institute petitions for *certiorari*, prohibition and *mandamus* in the Supreme Court only when they involve acts or omissions of the Courts of First Instance; and to file the same with the latter courts when they refer to acts or omissions of an Inferior Court, corporation, board, officer or person; or with the Court of Appeals when in aid of its appellate jurisdiction. As a matter of fact, the Supreme Court has dismissed numerous petitions, without prejudice however to the filing of the proper actions with the Courts of First Instance or the Court of Appeals. The petitioners in those cases forfeited their docketing fee of ₱24.00, incurring, as well, loss of time and even waste of labor. The Supreme Court is obviously constrained to go to this extreme, not only to give effect to the permissive provision of Section 4, Rule 67 of the Rules of Court,[11] but to relieve it somewhat from the ever-increasing number of cases being elevated to it; whereas there is only one Supreme Court, there are numerous Courts of First Instance.

Let us suppose that there are annually around one hundred petitions for *certiorari*, prohibition or *mandamus* concurrently cognizable by the Supreme Court and the different Courts of First Instance. If all such petitions were to be dumped into the Supreme Court, its docket would be swelled by one hundred cases. Upon the other hand, if they were brought to the various Courts of First Instance, the latter would perhaps each receive only one additional case. Nevertheless the Supreme Court has entertained petitions for *certiorari*, prohibition and *mandamus* which could just as well have been instituted in the Courts of First Instance, for the reason that the

[11] This rule is to the effect that the "petition may be filed in the Supreme Court, or, if it relates to the acts or omissions of an Inferior Court, or of a corporation, board, officer or person, in a Court of First Instance having jurisdiction thereof."

questions involved were of such importance and urgency as to demand its immediate and final resolution.[12]

When a petition for *certiorari*, prohibition or *mandamus*, filed with the Supreme Court, relates to a proceeding of the Court of Appeals or the Courts of First Instance, the said petition in effect calls for appellate review, as distinguished from original actions instituted in the Supreme Court in first instance, like those involving ambassadors, other public ministers, and consuls; controversies between the Roman Catholic Church and the municipalities or towns, or the Filipino Independent Church, as to title to, or ownership, administration or possession of hospitals, convents, cemeteries or other properties used in connection therewith; controversies between the Government of the Philippines and the Roman Catholic Church or *vice versa*, for the title to, or ownership of, hospitals, asylums, charitable institutions, or any other kind of property; and suits to prevent and restrain violations of law concerning monopolies and combinations in restraint of trade.[13]

In proper cases of *certiorari*, prohibition or *mandamus* filed with the Supreme Court, after the error complained of has been called to the attention of the lower court with a view to its reconsideration,[14] the party filing the action is called the *petitioner*, and the party against whom it is directed, the *respondent*.[15] The court or judge whose proceedings are assailed must be included as party respondent jointly with the person favored by, or interested in sustaining, the said proceedings.[16] The nature and designation of the action must be indicated in the caption[17] which may be in the following form:

[12] Vera v. Avelino, 43 O. G. 3597; The Emergency Powers Cases, 45 O. G. 4411, 4457; U. S. Tobacco Corporation v. Luna, G. R. No. L-3875, July 6, 1950, 47 O. G. (Supp. 12), 255; Marcelo Steel Corporation v. Import Control Board, G. R. No. L-4033, September 21, 1950, 48 O. G. 117; Lacson v. Roque *et al.*, G. R. No. L-6225, January 11, 1953, 49 O. G. (1), 93; Ocampo *et al.* v. Secretary of Justice *et al.*, G. R. No. L-7910; Ichong v. Jaime Hernandez *et al.*, G. R. No. L-7995.

[13] Section 17, Republic Act No. 296.

[14] Herrera v. Barretto, 25 Phil. 245; Uy Chu v. Imperial, 44 Phil. 27; The Manila Post Publishing Company v. Sanchez, 46 O. G. (Supp. 1), 412; Alvarez v. Ibañez, G. R. No. L-2120, March 9, 1949, 46 O. G. (9), 4233.

[15] Section 1, Rule 49, Rules of Court.

[16] Section 5, Rule 67, Rules of Court.

[17] Section 2, Rule 15, Rules of Court.

REPUBLIC OF THE PHILIPPINES
SUPREME COURT

JUAN SANTOS,
Petitioner,

G. R. No. .....
Certiorari Under Rule 67

vs.

HON. PABLO REYES, Judge of the Court of First Instance of ----------, and ANDRES RAMOS,
Respondents.

x----------x

PETITION

* * *

The petition must be verified and must allege facts with certainty, with the proper prayer for relief.[18] Following the general principles of pleading which have been made applicable to proceedings in the Supreme Court,[19] the petition, after stating the place where the respondents may be served with summons, should contain in a methodical and logical form a plain, concise and direct statement of the ultimate facts on which the petitioner relies for his claim.[20] In addition, it is better to specify and argue briefly on the errors committed, and to cite authorities if any are applicable. Supporting papers must be attached,[21] and it should be remembered that mere reference to annexes or exhibits cannot take the place of allegations.[22] The supporting papers usually consist of copies of all pleadings, motions and orders involved or referred to in the allegations of the petition. When the petition for *mandamus* refers to the disallowance by the trial court of a record on appeal, a copy of this record on appeal should be attached to the petition. There have been many cases dismissed either for lack of supporting papers or for

18 Sections 1, 2 and 3, Rule 67, Rules of Court.
19 Section 1, Rule 51, Rules of Court.
20 Section 3, Rule 15, Rules of Court.
21 Section 2, Rule 49, Rules of Court.
22 Cañete v. Wislizenus, 36 Phil. 428.

merely making reference to annexes or exhibits without sufficient allegations of fact. In such cases the corrective measure generally is to file a motion for reconsideration accompanied by an amended petition supplying the deficiency in question.

An allegation of fact, with particular reference to a pleading, may be as follows:

> On January 5, 1954, a complaint was filed with the Court of First Instance of Manila by the petitioner against the respondent Andres Ramos for the recovery of the sum of P5,000.00, due and owing from the said respondent to the petitioner, as the purchase price of a piano, a copy of which complaint is hereto attached and made an integral part hereof as Annex A.

On the other hand, the following would be an insufficient allegation of the same fact: "On January 5, 1954, the petitioner filed against the respondent with the Court of First Instance of Manila the complaint, Annex A."

The petition must be signed and verified by the petitioner himself or his attorney, and the address of either must be stated.[23] The verification is an affidavit at the bottom of the petition, stating that the affiant has read the pleading and that its allegations are true of his knowledge;[24] a complaint however was held sufficient where it was signed by the plaintiff's attorney under an oath with the following form: "Subscribed and sworn to before me on this 23rd day of June, 1945, affiant with residence certificate No. 0788120, issued at Manila on June 12, 1945."[25]

If the issuance of a writ of preliminary injunction is desired, it is necessary to make the corresponding allegations and prayer in the petition. A writ of preliminary injunction may be granted at any time after the commencement of the action and before judgment, upon a showing (a) that the petitioner is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of,

23 Section 5, Rule 15, Rules of Court.
24 Section 6, Rule 15, Rules of Court.
25 Arambulo *et al.* v. Perez, 44 O. G. 3284.

either for a limited period or perpetually; (b) that the commission or continuance of some act complained of during the litigation would probably work injustice to the petitioner; or (c) that the respondent is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the petitioner's rights respecting the subject of the action, and tending to render the judgment ineffectual.[26] Such preliminary injunction may be granted by the Supreme Court or any Justice thereof;[27] except however in rare instances brought about by special circumstances and urgent considerations, it has become an almost fixed policy that no Justice issues a a preliminary injunction, especially when the Supreme Court is in regular session. It would therefore be to the best interest of the parties to file their petitions soon enough to allow the Supreme Court ample time (generally two or three days after the filing of the petition) to deliberate on the matter of the issuance of the preliminary injunction, so that by the time such injunction, if proper, is issued, the acts sought to be prevented will not yet have been accomplished.

Except when the Government is the petitioner, a writ of preliminary injunction is issued only upon the filing by the petitioner of a bond to be fixed by the Supreme Court, the criterion therefor usually being the amount of damages roughly to be suffered by the adverse party as a result of the injunction. For the sake of expediency, a surety or cash bond should be filed.

It is not necessary to include in the petition a prayer that the proceedings involved be certified to by the lower court or judge for review because the Supreme Court, when it deems it necessary, will order the elevation of the records even without such prayer.[28] In practice, the records are not needed inasmuch as the petition has to be accompanied by supporting papers which consists of copies of all pleadings, motions and orders involved; and it is to be supposed that the pleadings (including of course the answer) supply a sufficient basis for decision.

Simultaneously with the filing of a petition for *ceterior-*

[26] Section 3, Rule 60, Rules of Court.
[27] Section 2, Rule 60, Rules of Court.
[28] Section 8, Rule 67, Rules of Court.

ari, prohibition or *mandamus,* the docketing fee of ₱24.00 must be paid[29] in cash, money order or certified check. If the petitioner desires to be exempted from the payment of said fee, a proper motion should accompany the petition or the corresponding prayer must be made in the petition itself; but in all cases the right to exemption ought to be duly established. Twelve typewritten or mimeographed copies or twenty printed copies, plus as many copies as there are respondents (the petitioner need not serve any copy upon the respondents), must be filed,[30] and the copies intended for the respondents must be signed by the petitioner or his counsel.[31] Typewritten copies should be clearly legible, and all copies must be as complete as the original, including the annexes.

Some entertain the notion that, for better results, one or more of the Justices should be seen in connection with the filing of a petition, especially where a preliminary injunction is prayed for. This is contrary to the following resolution of the Supreme Court of July 3, 1945:

> The Supreme Court, upon motion of Justice de Joya, unanimously resolved, as one of the means of maintaining the highest ethical standard of the legal profession, not to permit private discussion by lawyers of their cases with individual Justices.

While the matter of interviewing a Justice is addressed to the sound judgment of the lawyer, who would perhaps consider the degree of acquaintance or intimacy between them, we should realize that the Supreme Court can act only collectively and undoubtedly in accordance with the merits of any petition. Indeed, many petitions for *certiorari,* prohibition or *mandamus* have been given due course and preliminary injunction issued *ex parte* although said petitions were merely mailed from the provinces and the attorneys were far from being known personally.

Immediately after the filing of a petition for *certiorari,* prohibition or *mandamus,* the Clerk of Court reports the same to the Supreme Court, furnishing each Justice

[29] Section 2, Rule 130, Rules of Court.
[30] Section 2, Rule 58, Rules of Court, as amended by Resolution of October 6, 1949.
[31] Section 2, Rule 49, Rules of Court.

with a copy thereof. After deliberation, if the petition is found to be sufficient in form and substance[32] or shows a *prima facie* case, the Court will issue an order requiring the respondents to answer the petition within ten days,[33] although the period may be shortened,[34] depending upon the urgency of the matter involved. This is forthwith followed by the issuance by the Clerk of Court of a summons accompanied by a copy of the petition, addressed to the respondents. The period within which to file an answer is computed from the service of summons. Twelve typewritten or mimeographed copies or twenty printed copies of the answer must be filed, and a copy thereof must be served by the respondents upon the petitioner.[35] The respondents may ask for an extension of time within which to file their answer. When the petition assails acts or omissions of a court or judge, the persons interested in sustaining the judicial proceedings complained of — and these are always made parties respondents, — must file an answer not only in their own behalf but also in behalf of the court or judge.[36] The purpose of this requirement is to save the court or judge from being bothered about, or spending its official time, preparing answers. As in appeals, the appellee (not the respondent court) files the brief in support of the appealed order or decision. The answer must contain in a methodical and logical form a plain, concise and direct statement of the ultimate facts on which the respondents rely for their defense. In addition it may contain also a brief argument in support of the act or omission disputed, with a citation of applicable authorities, if there are any. The answer should likewise be accompanied by the necessary supporting papers. However, if the annexes or exhibits of the petition are correct and sufficient for the purposes of the answer, a reference to said annexes or exhibits may dispense with the necessity of attaching supporting papers to the answer. Although not specifically required, unlike in a petition for *certiorari,* prohibition or *mandamus,* the

[32] Section 6, Rule 67, Rules of Court.
[33] Section 6, Rule 67, Rules of Court.
[34] Section 7, Rule 67, Rules of Court.
[35] Section 4, Rule 49, and Section 2, Rule 58, Rules of Court, as amended by Resolution of October 6, 1949.
[36] Section 5, Rule 67, Rules of Court.

safer practice is to verify an answer, especially when denials and factual allegations are made.

If the respondents have suffered damages as a result of the issuance of a preliminary injunction, their claim therefor must be filed with due notice to the petitioner and the latter's sureties, if any, before the hearing or, in the discretion of the Supreme Court, before entry of final judgment.[37]

After the filing of the answer, or after the expiration of the time granted to the respondents without an answer having been filed, the case is set for hearing, during which the parties, through their attorneys, orally argue their respective sides.[38] If no answer is filed, the petition shall be heard *ex parte*.[39] This hearing is for oral argument only, and not for the purpose of receiving evidence; but if an issue of fact arises from the pleadings, and the Supreme Court finds it necessary to do so, a commissioner (usually the Clerk of Court) is appointed to receive the corresponding evidence and it is only after the presentation of such evidence that the case is set for oral argument. During the hearing the petitioner is granted thirty minutes as are likewise the respondents. In case more time is needed by any or both of the parties in view of the importance or bulk of the case, the corresponding motion should be filed with the Court before the date of the hearing.[40] Although several attorneys for one party may all be heard in the discretion of the Court,[41] it is necessary to apportion among them the reglamentary thirty minutes. The petitioner opens the argument, followed by the respondents; if the petitioner wishes to close the argument, he may leave a part of his time for such purpose; and should the respondents want to refute the petitioner's closing arguments, they should do the same. In addition to oral argument, either of the parties may be allowed to file a written memorandum or citation of authorities;[42] and

[37] Section 9, Rule 60, in connection with Section 20, Rule 59, Rules of Court; Facundo v. Tan *et al.*, G. R. Nos. L-2717, L-2718 and L-2767, December 29, 1949, 47 O. G. 2912.
[38] Section 5, Rule 49, Rules of Court.
[39] Section 4, Rule 49, Rules of Court.
[40] Section 10, Rule 58, Rules of Court, as amended by Resolution of January 9, 1948.
[41] Section 5, Rule 50, Rules of Court.
[42] Section 7, Rule 50, Rules of Court.

when allowed, twelve copies should be filed, with a copy served upon the adverse party. Memoranda in lieu of oral argument may be filed. For all practical purposes, written memoranda are preferable because they remain in the record and may always be referred to when a given case is taken up for consideration and adjudication. A motion to that effect may be presented either before or at the hearing; the time needed must be specified in the motion. Oral argument may be conducted in English, Spanish or Tagalog.[43]

If a petition for *certiorari,* prohibition or *mandamus* is given due course by requiring the respondents to answer, without however there being issued the preliminary injunction prayed for in the petition, the petitioner may subsequently file a motion reiterating the prayer for preliminary injunction. Such motion may be filed at any time before judgment. Upon the other hand, after a preliminary injunction has been issued, the respondent may at any time before judgment move for its dissolution.

If a petition for *certiorari,* prohibition or *mandamus* is not sufficient in form and substance, the Supreme Court, without as much as requiring the respondent to answer, may dismiss the petition summarily in a minute resolution (not signed by the Justices) briefly worded as follows: "The petition for *certiorari,* prohibition or *mandamus* (as the case may be) filed in G. R. No. L- ------, Juan Santos v. Hon. Andres Ramos, *etc., et al.,* is dismissed for lack of merit." Notice of this resolution is signed and sent by the Clerk of Court. This form of resolution has evoked criticisms from attorneys who claim that the grounds for the dismissal of their petition should at least be stated by the Court, not only for their satisfaction but also for their guidance. They contend further that the Supreme Court is required by law to state expressly the reasons for its decisions.

It may be stated in this connection that, when a petition is dismissed for lack of merit, it is logically to be inferred that the propositions relied upon are overruled and the proceedings complained of are correct. In other

[43] Commonwealth Act No. 570, in relation to Commonwealth Acts Nos. 184 and 333, and Executive Order No. 134, dated December 30, 1937.

words, the Court implicitly adopts the views that gave justification for the acts or omissions assailed, although in some cases the Court may have another or additional grounds too obvious or unnecessary to be expressed.

At any rate, Section 12 of Article VIII of the Constitution, which provides that "No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based," and Section 21 of Republic Act No. 296, which provides that "When a decision is rendered by the Supreme Court, a written opinion or memorandum exemplifying the ground and scope of the judgment of the court shall be filed with the Clerk of Court and shall be by him recorded in an opinion book," do not seem to apply to a resolution dismissing a petition for *certiorari,* prohibition or *mandamus* before the filing of an answer. It should be noted that under Section 6 of Rule 67, it is only when, in the opinion of the Supreme Court "the petition is sufficient in form and substance to justify such process," that the Court may order the respondents to answer. A summary dismissal therefore amounts to a finding that the petition is not sufficient in form or substance. On the other hand, under Section 8 of Rule 67, the Supreme Court is required to render judgment for such relief as the petitioner is entitled to only after the filing of an answer or the expiration of the time for its filing, and after a hearing of the case. It is clear therefrom that a petition, dismissed before the answer, has not yet reached the stage where the Court is required to render a judgment on the merits. The constitutional provision and the law requiring the statement of the grounds for a judgment of the Supreme Court obviously refer to cases submitted for decision after the regular processes and hearing provided for in the Rules of Court.

The procedure adopted in this jurisdiction finds more or less a counterpart in the practice of the Supreme Court of the United States of dismissing, without indicating the grounds therefor, petitions for *certiorari* intended for the review of decisions of our Supreme Court prior to Philippine independence. In the last recorded case,[44] the

[44] Ysabel Bibby Vda. de Padilla, Executrix of the Estate of Nar-

U. S. Supreme Court issued the following typical resolution:

> On consideration of the petition for a writ of *certiorari* herein to the Supreme Court of the Commonwealth of the Philippines, IT IS ORDERED by this Court that the said petition be, and the same is hereby, denied.

After the case is submitted for decision, that is to say, after the oral argument or after the submission of memoranda in lieu of oral argument, or upon failure of the parties to appear at the oral argument, the Supreme Court in due time will render a decision, taking into account its preferential nature.

The Justices who will take part in the decision are the members of the Court at the time a given case is taken up for consideration and adjudication, whether or not they were members, or were present, on the date of its submission. However, if the parties or either of them should file a written manifestation to that effect with the Clerk of Court on the date of its submission, only those members present when the case was submitted on oral argument will take part.[45] Where the Court is equally divided in opinion, or the necessary majority cannot be had, the case will be reheard, and if on rehearing no decision is reached, the action will be dismissed and on all incidental matters, the petition or motion will be denied.[46]

A copy of the decision is then served upon the petitioner and the respondents through their respective attorneys. Within fifteen days from notice of the decision any of the parties may file a motion for rehearing or reconsideration. Although said motion may be made *ex parte,* in the name of fairness, a copy of the motion should be served upon the adverse party. A second motion for reconsideration may be filed, with leave of the Supreme Court, within the same period of fifteen days from notice of the judgment, deducting the time during which the first motion was pending or, in the discretion of the Court, within two days

ciso A. Padilla, Deceased, Petitioner, v. Concepcion Paterno Vda. de Padilla, No. 271, October Term, 1946.

[45] Section 1, Rule 53, Rules of Court.

[46] Section 2, Rule 56, Rules of Court.

from notice of the order denying the first motion.[47] The Court may, upon proper motion, grant an extension of time to file a motion for rehearing or reconsideration. Twelve typewritten or mimeographed copies or twenty printed copies of any motion for reconsideration or rehearing must be filed. No oral argument is granted for a motion for rehearing or reconsideration; but if such motion is granted, the adverse party may be required to file an answer, after which the Court may in its discretion set the case for oral argument.[48] Accordingly, an adverse party does not have to answer a motion for reconsideration since, if necessary, the Court will direct him to do so. When thus required, twelve typewritten or mimeographed copies or twenty printed copies of such answer must be presented, and a copy thereof served upon the party that filed the motion for reconsideration. The petitioner may within the same period of fifteen days file a motion for the reconsideration of a minute resolution dismissing a petition for *certiorari,* prohibition or *mandamus* summarily.

The decision of the Supreme Court becomes final and executory after the expiration of fifteen days from notice thereof, if no motion for reconsideration or rehearing was filed.[49] A motion for rehearing or reconsideration filed on time suspends the running of the fifteen-day period. After the entry of final judgment, the Clerk of Court will transmit to the respondent court or judge, or any individual respondent, as the case may be, a certified copy of the judgment for execution; and disobedience thereof will be punished as contempt of court.[50]

The last step naturally will be the collection of costs by the prevailing party. If a petition for *certiorari,* prohibition or *mandamus* is granted, and the decision of the Supreme Court is with costs against the respondent (other than a respondent court or judge), the petitioner may recover as costs the sum of ₱40.00, covering his attendance and that of his attorney, and the sum of ₱24.00 for doc-

[47] Section 1, Rule 54, Rules of Court.

[48] Section 2, Rule 54, Rules of Court.

[49] Section 8, Rule 53, Rules of Court as modified by Resolution of October 1, 1945.

[50] Section 9, Rule 67, Rules of Court; L-2682, Almanzor v. Cruz, Resolution of February 2, 1949.

keting fee.[51] If the decision is in favor of the respondent with costs against the petitioner, the former may collect as costs the sum of ₱40.00 for his own attendance and his attorney's.[52] When testimony is received in the Supreme Court which was not taken in another court and subsequently transmitted to the Supreme Court, the prevailing party may recover the same costs for witness fees, depositions as well as for the process and service thereof as he would have been allowed for such items had the testimony been introduced in a Court of First Instance.[53] After the decision becomes final, the prevailing party may file the corresponding *bill of costs* which, after referring to the judgment assessing the costs in its favor and to the fact that the said judgment has become final, may pray that the amount of _____, be taxed against the losing party, specifying therein the item for which it is collected. Said *bill of costs* must be verified and copy thereof served upon the adverse party. The losing party may file a written objection thereto within five days from the receipt of the *bill of costs.* The Clerk of Court will thereupon issue the proper taxation of costs, allowing or disapproving the *bill of costs;* either party may appeal by proper motion or petition to the Court from the Clerk's taxation[54] within five days from the receipt of notice thereof;[55] the Court will act thereon accordingly. Where there are two of more prevailing parties represented by different attorneys, the costs recoverable by them has been costrued to be only in a collective sense.[56]

If a bond was filed for the issuance of a writ of preliminary injunction and the case is decided for the petitioner; or even if the decision is in favor of the respondent but no claim for damages was filed and allowed against the injunction bond before entry of final judgment, the petitioner may, upon proper motion presented after the judgment has become final, have the bond canceled or, if it was in cash, returned.

[51] Section 11, Rule 131, Rules of Court.
[52] Section 11, Rule 131, Rules of Court.
[53] Section 11, Rule 131, Rules of Court.
[54] Section 8, Rule 131, Rules of Court.
[55] Javier v. Visayan Surety & Insurance Corporation, G. R. No. L-48489, January 30, 1943.
[56] Catolico v. Ranjo *et al.*, G. R. No. L-1827, Resolution of August 31, 1949.

In case a petition is dismissed summarily without prejudice to the filing of the proper action with the Court of First Instance or Court of Appeals, and the originals of the annexes submitted to the Supreme Court have to be attached to the new petition to be filed with the proper court, the same may be withdrawn upon motion but copies thereof will be required to be left with the record.