taken on each article of impeachment separately; a two thirds vote of all the members of the Batasan is required to convict. A certified copy of the judgment shall be entered and deposited in the Archives of the Batasan.

Criticism of Impeachment Procedure

The system of vesting the power of impeachment in the legislature, a political rather than a judicial organ, has not been satisfactory. There has been a growing tendency to give this power to the courts. In New York, the judges of the highest court are added to the Senate as a tribunal for impeachment. In Nebraska, impeachment trial is by the courts upon charges prepared and presented by joint action of the two legislative chambers. In some European countries, the highest courts of the states act as tribunals to hear and decide impeachment charges.

The incident about the proposed impeachment of then President Quirino reveals the futility of the impeachment process as provided in the Constitution. It simply goes to show that a judicial function, such as impeachment, cannot be satisfactorily vested in a purely political and partisan body such as the legislature. This is specially true in the Philippines where attachment to the leader of a dominant party takes the form of strong personal loyalty and independent action among party members is rarely manifested. Unless the President loses control over the majority of the legislature, impeachment through the exclusive action of the two houses of Congress can never be used against him regardless of the errors of judgment or abuses of power or derelictions of duty he might be guilty of. In this matter, the framers of the original provisions of the Constitution of the Philippines as well as the Constitutional Convention that proposed its ratification did no more than copy blindly the provisions of the Constitutions of the United States on impeachment without any critical study of its practical applicability to the conditions of the country or the modifications introduced in other constitutions on the impeachment organ and procedure. Its obsolescence in democratic England was not noticed. The partial or total transfer of the impeachment power in other jurisdictions from the hands of the legislature to the courts was perhaps not even known or given any importance at all by the authors of our Constitution. But the brief experiment the country has had with the impeachment provisions gives ample proof of the impracticability of the system as it now stands. It is not only cumbersome and complicated but it is grossly inadequate in exacting responsibility from the high officials of the government to the Constitution and the state.[19]

[19] Sinco, Op. Cit., pp. 376-379.

NOTES ON THE REVISED RULES OF COURT**

Alan F. Paguia*

RULE 1

Section 2:

1) *Lim Tanhu v. Ramolete*, 66 SCRA 425 (1975). It appears in this case that upon motion of private respondents, a case was dismissed against some defendants despite the fact that no notice was served on them. Moreover, the case was set for hearing against the non-defaulted defendants *ex parte* and the court there and then rendered a decision granting the respondents reliefs not even prayed for. For such acts, the Court advised counsel and client to avoid attempts to befuddle the issues as invariably they will be exposed for what they are, certainly unethical and degrading to the dignity of the law profession. (Jorge Coquia, 1975 Bar Review Lecture)

RULE 2

Sections 1 & 2:

1) When you are confronted with a problem on what is the proper remedy, you ask this question: Is this an ordinary suit in a court of justice where one person prosecutes another for the enforcement or protection of a right or the prevention or redress of a wrong? If it is not, then it is a special proceeding. (Ramon C. Fernandez, 1976 Bar Review Lecture)

Sec. 6:

1) *Salacup v. Madella*, 91 SCRA 275 (1979): Respondent's contention that there was no pending case because no summons and copy of the complaint had been served upon it was clearly unmeritorious, since "a civil action is commenced by filing a complaint with the court." Consequently, when the latter case was filed, the former case was already pending. (Jose Y. Feria, 1979 Bar Review Lecture)

*Notes Editor, Ateneo Law Journal

**Based on Supreme Court decisions and Bar Review Lectures covering the period from 1975 to 1979.

RULE 3

Section 1:

1) From the provision authorizing the Bureau of Customs to lease arrastre operations to private parties, there is no authority to sue the said Bureau in the instances where it understakes to conduct said operation itself. Clearly, therefore, the Bureau of Customs, acting as part of the machinery of the national government in the operation of the arrastre service, pursuant to express legislative mandate and as a necessary incident of its prime governmental function, is immune from suit, there being no statute to the contrary. The consignee's remedy is to file a claim with the Commission on Audit as contemplated in Act No. 3083 (1923) and Commonwealth Act No. 327 (1938). (Gonzalo T. Santos, Jr., 1978 Bar Review Lecture)

Secs. 2, 7, & 8:

1) When is intervention proper? In the case of *Bukid V. Reyes,* 72 SCRA 318 (1976), it was held that:

> "Considering that Salazar wants to take the place of Castillo and Carandang as tenants and desires to be restored to the possession of the landholdings in question, which since 1967 have allegedly been under the control of the intervenors;
>
> Considering that Salazar's demand for his share of the produce during the time that the land has been in the possession of Maria Bukid and her sons (or, alternately, for the price of the permanent trees) would adversely affect their own shares in the products thereof (already received and to be received) as well as their rights, if any, to the planting thereon;
>
> Considering that the intervenors have an interest in the subject matter of Salazar's action and that complete relief cannot be granted therein without hearing their side of the controversy; that any adjudication in Salazar's favor would prejudice them; that their interest in the CAR case is actual and material, direct and immediate, and not merely contingent and inchoate (See secs. 2, 7 and 8, Rule 3 in relation to Rule 12), and their intervention will not unduly delay or prejudice the adjudication of the rights of Salazar and the Macalintal spouses;
>
> The Court resolved to set aside the trial court's order denying the motion for intervention of Maria Bukid and her sons, Castillo and Carandang, and to direct that, in justice to them, their intervention complaint be admitted, and thus obviate duplicity of suits. That order was issued with grave abuse of discretion."

(Milagros A. German, 1976 Bar Review Lecture)

Sec. 12:

1) *Sulo ng Bayan v. Gregorio Araneta, Inc.,* 72 SCRA 347 (1976): The court dismissed the appeal, but actually, it affirmed the dismissal of the complaint on the ground of failure to state a cause of action, inasmuch as plaintiff non-stock corporation may not institute an action in behalf of its individual members for the recovery of certain parcels of land allegedly owned by said members. It is elemental that a corporation is a distinct legal entity separate and apart from the individual stockholders or members who compose it, unless in exceptional cases the corporate fiction may be disregarded.

   Moreover, the complaint may not be treated as a class suit, inasmuch as the subject matter was not of common or general interest, each person claiming ownership of their respective portions of the property. (Feria, 1976 Bar Review Lecture)

Sec. 14:

1) *Salazar v. Bartolome,* 73 SCRA 247 (1976): The rule was reiterated that upon the dismissal of a complaint by motion to dismiss on a ground other than lack of jurisdiction, the plaintiff has the right to file an amended complaint curing the defect as long as the order of dismissal is not yet final, since a motion to dismiss is not a responsive pleading.

   In this case, the alleged defect was not really one, inasmuch as plaintiff sued "the heirs of Roman Castro" without specifying their names and this is allowed by Section 14 of Rule 3. (Feria, 1976 Bar Review Lecture)

Sec. 21:

1) *Dy v. Enage,* 70 SCRA 96 (1976): Plaintiffs' complaint contained two causes of action – the first, for payment based on alleged contractual breach, and the second, for damages arising from alleged tortious or penal acts. Defendant filed counterclaims. Before judgment was rendered by the trial court, defendant died. However, respondent judge refused to dismiss the complaint on the ground that defendant had filed counterclaims which could not remain pending for independent adjudication.

   The Court held that since the first cause of action was clearly a money claim under Section 5 of Rule 86 and Section 1 of Rule 88, dismissal was mandatory under Section 21 of Rule 3, and Section 2 of Rule 17 did not apply. Respondent judge was ordered to dismiss the subject case insofar as the first cause of action was concerned, without prejudice to its being filed as a money claim against the estate of the

deceased defendant; and to proceed with the trial of defendant's counterclaims.

The reason given for the continuation of the trial on the counterclaims was that they apparently related more to the second rather than to the first cause of action. The second cause of action survived defendant's death inasmuch as it was based on tort or delict, and hence, it could be filed or continued against the executor or administrator or heirs of the deceased. In any event, any counterclaim against a money claim which has to be dismissed because of defendant's death may be continued by the executor or administrator or may be alleged in the probate court pursuant to Section 10 of Rule 86. (Feria, 1976 Bar Review Lecture)

2) *Mananlansan v. Castaneda,* 83 SCRA 777 (1978): The defendant mortgage debtor died during the pendency of his appeal to the Court of Appeals. The writ of execution was issued against the executor or administrator. This was opposed on the ground that the property was in *custodia legis* and that the judgment should be presented as a money claim against the estate of the deceased mortgagor.

The Court held that under Section 1 of Rule 87, the action survives, being one for foreclosure of a mortgage or to enforce a lien on property. Under Section 7 (b) of Rule 39, execution may be enforced against the executor or administrator. This rule is applicable whether defendant died before or after entry of judgment. The order of the trial court delegating the execution to the probate court was set aside on certiorari.

This case should be distinguished from *Paredes v. Moya,* 61 SCRA 526 (1974), where the defendant in an action for money died during the pendency of the appeal. Under Section 21 of Rule 3, the action survived because the defendant died after final judgment in the CFI. However, the the judgment could not be enforced by levying on the property of the estate of the deceased which is in *custodia legis,* and the remedy was to file a money claim under Section 5 of Rule 86.

In a case like this, the action always survives and could even be commenced against the executor or administrator. The mortgaged property is not in *custodia legis,* except in so far as its value may exceed the mortgage debt. (Feria, 1978 Bar Review Lecture)

Sec. 22:

1) *Tiozon v. Court of Appeals,* 70 SCRA 284 (1976): The approval of the

amended record on appeal and the giving of due course to the appeal without requiring an appeal bond amounted to a tacit approval of the motion to appeal as pauper, and therefore, appellants were exempted from payment of legal fees pursuant to Section 22 of Rule 3. (Feria, 1976 Bar Review Lecture)

RULE 4

Section 2:

1) *Koh v. Court of Appeals,* 70 SCRA 298 (1976): Plaintiff filed a personal action against defendant in the Court of First Instance of Ilocos Norte claiming that, although he was presently residing in Quezon City, he was domiciled in Ilocos Norte. Defendant moved to dismiss on the ground of improper venue and failure to state a cause of action, which motion was denied. Defendant filed with the Court of Appeals a petition for *certiorari* with preliminary injunction, which petition was dismissed. Defendant then filed with the Supreme Court a petition for review on *certiorari.*

The Court dismissed the complaint and restrained the lower court from further proceeding with the trial of said case. It held that the venue of a personal action depends on the residence, not the domicile, of the parties, citing Section 2 of Rule 4. This ruling in effect sets aside the ruling in *Evanglista v. Santos,* 86 Phil. 387 (1950), and reinstates the ruling in *De la Rosa v. Borja,* 54 Phil. 990 (1929). (Feria, 1976 Bar Review Lecture)

2) *Hernandez v. Rural Bank of Lucena, Inc.,* 81 SCRA 75 (1978): An action to compel a mortgagee to accept payment and release the mortgage is a personal action. It is not a real action under Section 2 (a) of Rule 4 which includes foreclosure of mortgage on real property. A real action is not the same as an action *in rem* and a personal action is not the same as an action *in personam.* The venue was improperly laid in Batangas because the actual residence of plaintiffs was in Quezon City, although they claimed Batangas as their domicile.

However, since the bank was under liquidation, the liquidation Court or Manila Court was held to have exclusive jurisdiction to entertain the claim of plaintiffs. (Feria, 1978 Bar Review Lecture)

RULE 5

Section 5:

1) *Legaspi Oil Co., Inc. v. Geronimo,* 76 SCRA 174 (1977): In a trial *de novo* on appeal in the Court of First Instance, the court cannot in the excercise of its appellate jurisdiction bring in a new party for the first time. As held in *Malinao v. Bocar,* 91 Phil. 536 (1952), on appeal to the Court of First Instance, the parties can neither change the cause of action or defenses they have pleaded in the inferior court nor add new ones even if the cases were tried *de novo.* This case arose prior to Republic Act No. 6031 (1969) where there is no trial *de novo.* (Feria, 1977 Bar Review Lecture)

Sec. 11:

1) *Cabunillas v. Court of Appeals,* 80 SCRA 706 (1977): Petitioner's complaint for forcible entry against private respondent was dismissed for non-suit despite petitioner's two telegrams, one to respondent municipal judge and another to private respondent, requesting postponement on the ground that petitioner's counsel had died four days before the scheduled hearing. Upon denial of his motion for reconsideration, petitioner filed a petition for *certiorari* with the Court of First Instance, which dismissed the petition. On appeal, the Court of Appeals affirmed the dismissal. Petitioner then filed a petition for review on *certiorari* with the Supreme Court.

   The Court set aside the dismissals and directed respondent municipal judge to reinstate petitioner's complaint. The motion for reconsideration of the order of dismissal of respondent municipal judge was based on well-founded ground, the death of counsel. Although Section 11 of Rule 5 provides that a dismissal for non-suit in an inferior court shall not be a bar to a subsequent action for the same cause, to compel a party to refile the case would be to subject him to further expenses and further delay the prosecution of the case.

   The Court, however, did not rule on the applicability of Section 13 of Rule 5 which provides that the court may set aside an order of dismissal within one (1) day after notice thereof. (Feria, 1977 Bar Review Lecture)

Sec. 12:

1) *Carreon v. Flores,* 64 SCRA 238 (1975): A judge was dismissed for utter ignorance of the law, incompetence, and manifest partiality. It was observed that the questioned decision had no findings of facts but simply stated the bare conclusion that the evidence established the accused's guilt (for theft) beyond reasonable doubt. Such decisions of inferior courts were formerly permissible under Rule 5, Section 12, before municipal and city courts were converted into courts of record. (Coquia, 1975 Bar Review Lecture)

Sec. 19:

1) It is true that Section 2 of Rule 40 does not expressly allow an appeal from a judgment by default rendered by an inferior court, but a consideration of Section 9 of Rule 13, in relation to Section 19 of Rule 5, requiring notice of final judgments or orders to a defendant in default in an inferior court, as well as Section 2 of Rule 41, reveals the intent of the Rules. There appears to be no sufficient justification for granting a defaulting defendant in the Court of First Instance the right of appeal and denying the same right to a defaulting defendant in an inferior court. With the enactment of Republic Act No. 6031 on August 4, 1969, abolishing trial *de novo* on appeal from an inferior court to the Court of First Instance, *a fortiori* the same right should be given a defaulting defendant in both courts. (Feria, 1975 Bar Review Lecture)

RULE 6

Section 7:

1) *Republic v. Bisaya Land Transportation Co., Inc.,* 81 SCRA 9 (1978): The cross-claimant objected to the dismissal of the complaint for *quo warranto* on the ground that his cross-claim could not remain pending for independent adjudication, citing Section 2 of Rule 17. The court held that said provision applies only to a counterclaim. A cross-claim is proper only when the cross-claimant stands to be prejudiced by the filing of an action against him. Hence, where such action is dismissed, his cross-claim would have no leg to stand on. (Feria, 1978 Bar Review Lecture)

RULE 9

Section 2:

1) *Torreda v. Boncaros,* 69 SCRA 247 (1976): This was an original action for *certiorari* and *mandamus* to set aside the orders of the respondent

court dismissing the civil action for damages based on *culpa aquiliana* on the ground of prescription.

The ground of prescription was not included in the original motion to dismiss. but was raised in a supplemental motion to dismiss which was granted.

The second division of the Court granted the petition, set aside the order of dismissal and ordered the respondent court to proceed with the trial of the case. The basis of this decision was that since the defense of prescription was interposed for the first time in the supplemental motion to dismiss filed more than six months after the filing of the original motion to dismiss, where the petitioner would be left without a remedy should respondents be excused for belatedly invoking prescription, equity and justice make it preferable to apply Section 2 of Rule 9 which provides that defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived.

It may be argued that the respondents could have raised the defense of prescription in their answer. However, the omnibus motion rule would then apply.

In the light of this decision, it is difficult to justify the decision in the case of *Philippine National Bank v. Perez*, 16 SCRA 270 (1966), wherein a dismissal on the ground of prescription was sustained although the defendants, being in default, could not invoke such defense.

It should also be noted that the Court followed an unusual procedure in this case. The remedy from the order granting the supplemental motion to dismiss (which was final in character) should have been an appeal by *certiorari* and not an original action for *certiorari* and *mandamus*. (Feria, 1976 Bar Review Lecture)

2) *Vergara v. Ruque*, 78 SCRA 312 (1977): The distinction between *res judicata* under Section 49 (b) of Rule 39 and conclusiveness of judgment or estoppel by judgment under Section 49 (c) of the same rule was reiterated. The first is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. The second aspect is that it precludes the relitigation of a particular fact or issue in another action between the same parties on a different claim or cause of action.

Petitioner could not, through a petition for prohibition filed with the Supreme Court, litigate anew the questions of both fact and law decided by the Court of Appeals and sustained by the Court. Neither could he question the lack or excess of jurisdiction of the Appellate Court in rendering said decision on the ground of *res judicata*, which defense was deemed waived when he did not interpose it either in a motion to dismiss or in an answer. (Feria, 1977 Bar Review Lecture)

3) *Castillo v. Galvan*, 85 SCRA 526 (1978): The admission of an amended answer filed before trial which incorporated the defense of prescription was sustained by the Court, citing Sections 2 and 3 of Rule 10 on amendments. Justice Barredo concurred because he is "in favor of liberalizing the rule (Rule 9, Sec. 2) on waiver of defenses in order to promote substantial justice." However, the order dismissing the complaint on the ground of prescription was reversed inasmuch as plaintiff's action was to declare void and inexistent the deed of sale in question, which is imprescriptible.

In *Ferrer v. Ericta*, 84 SCRA 705 (1978); it was held that the fact that the plaintiff's own allegation in the complaint or the evidence it presented shows clearly that the action had prescribed removes the case from the rule regarding waiver of defenses by failure to plead the same.

In the light of these two decisions, it is difficult to justify the ruling in *Torreda v. Boncaros, supra*, where the Court applied strictly the rule on waiver of defenses simply because the ground of prescription was raised in a supplemental motion to dismiss. (Feria, 1978 Bar Review Lecture).

4) Aside from the three cases provided in Section 3 of Rule 17 wherein a court may dismiss an action *motu propio*, there is a fourth case, namely, lack of juristiction over the subject matter. (Feria, 1979 Bar Review Lecture)

RULE 10

Section 2:

1) *Salazar v. Bartolome*, 73 SCRA 247 (1976): The rule was reiterated that upon the dismissal of a complaint by motion to dismiss on a ground other than lack of jurisdiction, the plaintiff has the right to file an amended complaint curing the defect as long as the order of dismisal is not yet final, since a motion to dismiss is not a responsive pleading.

In this case, the alleged defect was not really one, inasmuch as

plaintiff sued "the heirs of Roman Castro" without specifying their names and this is allowed by Section 14 of Rule 3. (Feria, 1976 Bar Review Lecture)

2) *Gumabay v. Baralin,* 77 SCRA 258 (1977): Plaintiff filed a complaint with the Court of First Instance for recovery of possession of land based on ownership. Defendants filed a motion to dismiss on the ground of lack of jurisdiction. Without waiting for the resolution of the motion, plaintiff filed an amended complaint alleging that defendants claimed ownership and converting her action into one to quiet title. Copy of the amended complaint was served on defendants' counsel. The lower court admitted the amended complaint and ordered defendants to answer it. Defendants did not answer the amended complaint and judgment by default was rendered against them. Defendants filed a petition for relief. This was denied. The Court affirmed the denial.

Citing *Ong Peng v. Custodio,* 111 Phil. 382 (1961), and *Republic v. Ker & Co., Ltd.,* 18 SCRA 207 (1966), the Court held that defendants' theory that a new summons should have been issued for the amended complaint was untenable, inasmuch as the trial court had already acquired jurisdiction over them when they were served with summons on the basis of the original complaint and when they appeared and filed a motion to dismiss.

It should be noted that plaintiff had the right to file an amended complaint since defendants' motion to dismiss was not a responsive pleading.

It should also be noted that if defendants had not appeared by filing a motion to dismiss and had been declared in default, a new summons would have been necessary to give the court jurisdiction to render judgment on the amended complaint. (Feria, 1977 Bar Review Lecture)

Sec. 5:

1) *Lianga Lumber Co. v. Lianga Timber Co., Inc.,* 76 SCRA 179 (1977): This is an example of an appeal by *certiorari* under Rule 45 and at the same time a special civil action for *certiorari* under Rule 65. In an appeal by *certiorari,* the respondent is the appellee alone, whereas in a special civil action of *certiorari,* the respondents are the court and the party interested in sustaining the proceedings in the court. Treating the action as an appeal rather than as a special civil action, the Court reversed the

decision of the Court of Appeals and affirmed the judgment of the trial court principally because "well-settled is the rule that questions which were not raised in the lower court cannot be raised for the first time on appeal" and that "in order that the question may be raised on appeal it is essential that it be within the issues made by the parties in their pleadings." It should be noted, however, that Section 18 of Rule 46 now provides that such question should be "within the issues framed by the parties," because under Section 5 of Rule 10, issues not raised by the pleadings may be tried by the express or implied consent of the parties. (Feria, 1977 Bar Review Lecture)

RULE 11

Section 7:

1) *Trajano v. Cruz,* 80 SCRA 712 (1977): Petitioners' "Motion for Admission of Answer" was filed before private respondents' "Ex-Parte Motion to Declare Defendants in Default." Respondent judge declared petitioners in default, but upon discovery that the motion for admission of answer was filed earlier than the motion for default, he admitted the answer. Subsequently, on motion of private respondent, the order of default was reinstated.

On *certiorari,* the Court set aside the order of default on the following grounds, to wit: (1) when petitioners filed their answer, they were not yet legally in default since a court cannot *motu propio* declare a party in default; (2) the answer contained good and substantial defenses; (3) no prejudice could have been caused to plaintiff by the admission of defendant's answer since the latter had not yet been declared in default; and (4) judgments by default are generally looked upon with disfavor.

Section 7 of Rule 11 should also be noted, the second paragraph of which provides as follows: "The court may also, upon like terms, allow an answer or other pleading to be filed after the time fixed by these rules." (Feria, 1977 Bar Review Lecture)

2) *Corsino v. Nicolas,* G.R. No. 38367, November 24, 1978: The order of default, judgment by default and writ of execution were set aside on *certiorari* on the following grounds: Two defendants who had not been served with summons filed a motion for extension of time to file answer. This was a voluntary appearance which was equivalent to service. They filed their answer four days later. Hence, they should not

have been declared in default.

The other defendants filed a motion for extension of time to file answer one day after the reglementary period had lapsed. The answer was filed four days later, which was indicative of good faith. Disapproval of default judgments was reiterated.

It should be noted that under Section 7 of Rule 11, the court may also allow an answer or other pleading to be filed after the time fixed by the Rules. (Feria, 1978 Bar Review Lecture)

RULE 12

Section 2:

1) See note on Rule 3, Section 2: *Bukid v. Reyes.*

2) *Commissioner v. Cloribel,* 77 SCRA 459 (1977): The motions of defendant for leave to file their third-party complaint and for the admission thereof were granted *ex parte* notwithstanding that the trial of the case had already been terminated. Respondent court paid no heed to the requirement of Sec. 2 of Rule 12.

3) *Gibson v. Revilla,* 92 SCRA 219 (1979): Respondent court denied the motion to intervene as defendant filed by one of the several foreign reinsurers of defendant-insurer, Malayan Insurance Company, on the ground that if this were granted, it was highly probable that other reinsurers may likewise intervene and thus unduly delay the proceedings between plaintiff Lepanto and defendant Malayan; and moreover, the rights, if any, of movant were not prejudiced by the present suit and could be fully protected in a separate action against him and his co-insurers by defendant.

Petitioner filed a petition for review which was treated by the Court as a special civil action of *certiorari* and *mandamus.* The Court sustained respondent court and dismissed the petition. While petitioner may have had a legal interest in the matter in litigation and in the success of the defendant, respondent court properly exercised its discretion in denying the intervention. As to petitioner's contention that he had to pay once Malayan was finally adjudged to pay Lepanto because of the very nature of a contract of reinsurance, the Court ruled that the reinsurer is entitled to avail itself of every defense which the re-insured might urge in an action by the person orginally insured.

In this case, the intervention was timely because the motion was filed before defendant presented its evidence. Defendant could not file a third party complaint because the re-insurer was not subject to the jurisdiction of the court. (Feria, 1979 Bar Review Lecture)

RULE 13

Section 2:

1) *Sagarino v. Pelayo,* 77 SCRA 402 (1977): "xxx Notice of a pre-trial conference should be sent not only to the attorneys but also to the parties. The contention of the defendant-appellee is that notice to counsel is notice to the party, citing Section 2 of Rule 13. There is no question that under the cited Section and Rule, a notice to counsel is a notice to the party xxx. This particular section is the general rule governing the filing and serving of papers and orders of courts upon parties affected thereby. However, since there is a specific provision of the Revised Rules of Court governing service of notice specifically for pre-trial conference, Section 1, Rule 20 thereof, there is no reason for applying the general rule as the court *a quo* had done."

Section 8:

1) *Barrameda v. Castillo,* 78 SCRA (1977): The lower court relied on the notations on the envelope of the dates of the notices of the postmaster regarding the registered mail containing the decision of the municipal court, and dismissed the appeal. It did not require the appellee to present the postmaster's certification that a first notice was sent to and received by the appellant's lawyer. Hence, the Court set aside the order of dismissal.

The Court ruled that since the exception in service by registered mail under Section 8 of Rule 13 refers to constructive service, not to actual service of the mail, it is evident that the fair and just application of that exception depends upon conclusive proof that a first notice was sent by the postmaster to the addressee. (Feria, 1977 Bar Review Lecture)

2) *Arines v. Cuachin,* 84 SCRA 330 (1978): The resolution of the Court of Appeals denying the motion for reconsideration was sent by registered mail to one of the two attorneys of petitioners whose address was unknown, and hence, the registry notice was not received by them. The Clerk of Court should have sent the resolution to the other attorney whose address was known. It is incumbent on a party who relies on

constructive service under Section 8 of Rule 13 to prove that the first notice was sent and delivered to the addressee.

Sec. 9:

1) *Lim Tanhu v. Ramolete,* 66 SCRA 425 (1975): The Court ordered the dismissal of the complaint, not only against the non-defaulting defendants as prayed for by the plaintiff, but also against the defaulting defendants, on the ground that inasmuch as the complaint stated a common cause of action against all the defendants, some of whom answered and others did not, the latter or those in default acquired a vested right not only to own the defense interposed in the answer of their co-defendants not in default but also to expect a result of the litigation totally common with them in kind and in amount whether favorable or unfavorable. Section 4 of Rule 18 was quoted in support of this conclusion.

Moreover, there was no notice of the motion to dismiss given the defaulting defendants despite the fact that they had filed a motion to set aside the order of default issued against them for failure to appear at the pre-trial. This motion to set aside entitled them to such notice under Section 9 of Rule 13. In effect, the Court ruled that the requirements of such a motion are not as strict as those provided by Section 3 of Rule 18 in cases of default for failure to answer on time. Mention should be made of *Lucero v. Dacayo,* 22 SCRA 1004 (1968), where the Court held that an affidavit of merit is not required to support a motion for reconsideration of an order of non-suit for failure to appear at the pre-trial. (Feria, 1975 Bar Review Lecture)

2) *Philippine British Co., Inc. v. Delos Angeles,* 63 SCRA 50 (1975): One of the questions raised in this case was whether the mere filing of a motion to set aside an order of default, even if denied, partially restores the defaulting party's standing in court so as to entitle him to notice of all further proceedings.

Counsel contended that since he had filed such a motion, the failure of respondent to notify him of the motions for immediate execution of the default judgment fatally vitiated the order granting the same and the writs and levies pursuant thereto.

The Court held that since his motion did not comply with the requirements of Section 3 of Rule 18, particularly the oath and the affidavit of merit, he was not entitled to notice of all further proceedings. (Feria, 1975 Bar Review Lecture)

3) See note on Rule 5, Section 19.

Sec. 10:

1) *Cortes v. Valdellon,* 70 SCRA 556 (1976): The issue was whether or not there was proof of service of the dismissal order sent by registered mail two years before. The lower court held there was none because the registry receipt and return card were not attached to the record and cound not be found. The Court of Appeals on *certiorari* upheld respondent judge.

The Supreme Court, in a review of *certiorari* which it treated as a special civil action, set aside respondent judge's disputed order on the ground that respondent judge's disputed order on the ground that respondent court misread Rule 13, Section 10 on proof of service and plainly disregarded and failed to give due weight to the mass of overwhelming documentary evidence showing conclusively that service of the dismissal order had in fact been made and completed on respondent's counsel. (Feria, 1976 Bar Review Lecture)

RULE 14

Section 8:

1) *Keister v. Navarro,* 77 SCRA 209 (1977): Summons was purportedly served on defendant, who was out of the Philippines, through the Chuidian Law Office. Petitioner, through counsel, filed a special appearance questioning the jurisdiction of the court over his person and moved to dismiss the complaint, which was denied by the court. Petitioner filed a petition for prohibition with preliminary injunction with the Supreme Court. This was granted on the ground that, although substituted service of summons in an action *in personam* is proper on a resident defendant temporarily out of the Philippines, in the case at bar, the summons was not served either at his dwelling house or residence on some person of suitable age or discretion, or at his office or regular place of business on some competent person in charge thereof.

It should be noted that the action in the *Montalban* case, 22 SCRA 1070 (1968), was *in personam,* being an action for damages; whereas the action in the *Keister* case was *quasi in rem,* since the subject thereof was an automobile and hence summons by publication would have been also proper. (Feria, 1977 Bar Review Lecture)

Sec. 13:

1) *Delta Motor Sales Corporation V. Mangosing,* 70 SCRA 556 (1976): The Court annulled and set aside the order of default, the judgment by default and order of execution on the ground that the trial court did not acquire jurisdiction over defendant corporation inasmuch as the summons was not served on any of the officers designated in Section 13 of Rule 14. Here, summons was served on *Delta Motors* through the Secretary of the head of the personnel department. Mr. Justice Barredo wrote a dissenting opinion. According to him, as long as there was substituted service of summons under Section 8, Rule 14, it should be enough.

In the earlier case of *Trimica, Inc., v. Polaris Marketing Corporation,* 60 SCRA 321 (1974), petitioner was impleaded as co-defendant in an amended complaint, but no summons was served on it although its president had appeared as counsel and witness for the other defendant. Hence, the judgment against it was set aside. (Feria and Gopengco, 1976 Bar Review Lectures)

2) *Villa Rey Transit, Inc. v. Far East Motor Corp.,* 81 SCRA 298 (1978): This case has modified prior decisions on how summons must be served on domestic corporations. Under the Rules of Court, summons is limited to service on the President, General Manager, Cashier, Corporate Agent, Corporate Secretary or any member of the Board of Directors. In this case, summons was served on the Assistant General Manager at a substation of the transit company. Held: Summons was properly served so long as it is made on a representative of the Corporation whose position is so integrated in the corporate organization that *a priori* he is a responsible official who could be called upon to advise the corporation of the filing of the case.

In effect the *Villa Rey* case has repealed the decisions in the following cases: *Delta Motor Sales Corp. v. Mangosing, supra,* where it was held that summons served on the secretary of the Department Head was not proper; *Litton Mills, Inc. v. Werner Management Consultants, Inc.,* 61 O.G. 690 (1965), where it was held that summons served on the Sales Manager was void as he was not a "top official"; *Clavecilla Radio System v. Antillon,* 19 SCRA 379 (1967), where it was held that summons served at one of the radio stations was improper as it was not the principal place of business, and the case of *Trimica Inc. v. Polaris Marketing Corp., supra,* where summons served on the President of the Corporation in open court while he, as a lawyer, was attending to another case, was also improper. (Dean Jesus De Veyra, 1978 Bar Review Lecture)

Sec. 17:

1) *De Midgely v. Ferandos,* 64 SCRA 23 (1975): It was held that inasmuch as the action was *quasi in rem,* jurisdiction over the person of the defendant was not essential and extraterritorial service of summons is required only for the purpose of complying with the requirements of due process. (Feria, 1975 Bar Review Lecture)

Sec. 20:

1) *Dultra v. Court of First Instance of Agusan,* 70 SCRA 465 (1976): Through special civil actions of *certiorari, mandamus* and prohibition, the judgment of the respondent court was annulled on the ground that as the Dultra spouses had not been properly summoned, the lower court did not acquire jurisdiction over them.

The decisive fact in this case was the candid admission of the process server, Patrolman Bernal, that he did not serve the summons on the Dultra spouses. Moreover, his proof of service was not sworn to as required by Section 20 of Rule 14 of a server who is not a sheriff or deputy. However, in the earlier case of *J.M. Tuazon & Co., Inc., v. Estabillo,* 62 SCRA 1 (1975), this irregularity (lack of oath) was considered waived when the defendant filed motions to lift the order of default and for relief from judgment. (Feria, 1976 Bar Review Lecture)

Sec. 23:

1) See note on Rule 11, Section 7: *Corsino v. Nicolas.*

RULE 15

Section 8:

1) See note on Rule 9, *Torreda v. Boncaros,* re: omnibus motion.

RULE 16

Section 3:

1) *Jayme v. Alampay,* 62 SCRA 131 (1975): The Supreme Court set aside the order of the lower court granting a motion to dismiss on the ground of prescription, inasmuch as no evidence on this issue was received by the respondent judge.

The resolution of this issue depended on whether the action was one for reformation of instrument as alleged by plaintiffs in their complaint, which prescribes in ten (10) years, or one for annulment of sale as alleged by defendant in his answer, which prescribes in four (4) years.

However, the decision states that "respondent court instead of disregarding, should have adhered to the established rule that in motions to dismiss, the allegations of the complaint are deemed to be hypothetically admitted." This statement should be qualified to avoid confusion.

The settled rule is that in a motion to dismiss an action on the ground that the complaint states no cause of action, the movant is deemed to admit, at least hypothetically, the facts alleged in the complaint. However, a motion to dismiss on other ground may be based on on facts not alleged and may even deny those alleged in the complaint; and that is the reason why it is set for hearing for the presentation of evidence.

If the ground is not indubitable, the court should defer the hearing and determination of the motion until the trial. This is what the lower court should have done in this case. (Feria, 1975 Bar Review Lecture)

Sec. 4:

1) *Acosta-Ofalia v. Sundiam,* 85 SCRA 412 (1978): The order of default, judgment by default and writ of execution were set aside on *certiorari* on the ground that respondent judge acted with grave abuse of discretion when he declared petitioners in default prematurely. Copy of the order denying the motion to dismiss was received by counsel for petitioners September 24, 1975. On September 29, 1975, respondent judge declared petitioners in default and allowed private respondents to present their evidence *ex parte.*

Under Section 4 of Rule 16, petitioners had fifteen (15) days from September 24, 1975 within which to file their answer. Apparently, respondent judge applied Section 4, Rule 8 of the 1940 Rules of Court, under which a motion to dismiss merely interrupts the time to plead. This was amended by Section 4, Rule 16 of the 1964 Rules of Court, under which the period for filing an answer begins to run all over again from notice of the order of denial or deferment. This was clearly ruled upon in the case of *Matute v. Court of Appeals,* 26 SCRA 768 (1969). (Feria, 1978 Bar Review Lecture)

2) *Mercader v. Bonto,* 92 SCRA 665 (1979): There appear to be erroneous rulings in this case. Firstly, defendants in a complaint for interpleader filed a motion to dismiss twelve (12) days after service of summons. The Court stated that defendants' counsel overlooked the fact that he had three (3) days left from receipt of the order of denial within which to file an answer to the complaint. Actually, defendants had fifteen (15) days from notice of denial within which to file an answer.

Secondly, defendants filed an ordinary appeal from the orders of default and denial of their motion to set aside the order of default. The Court subsequently required them to file a petition for review on *certiorari.* These orders were interlocutory and hence not immediately appealable. The proper remedy was a special civil action of *certiorari.* (Feria, 1979 Bar Review Lecture)

RULE 17

Sec. 2:

1) See note on Rule 3, Section 21: *Dy v. Enage.*

Sec. 3:

1) *American Insurance Co. v. United States Lines Co.,* 63 SCRA 326 (1975): The Court set aside the appealed order dismissing the third complaint, since the dismissals for failure to prosecute of two previous complaints filed by petitioner could not operate as dismissals with prejudice as they had been made expressly without prejudice and the previous orders had long become final.

This case should be distinguished from the two-dismissal rule under Section 1 of Rule 17 under which two dismissals by the plaintiff of the same claim before a competent court would be ground for dismissing the third complaint. (Feria, 1975 Bar Review Lecture)

2) *Insular Veneer, Inc. v. Plan,* 72 SCRA 140 (1976): The Court, in a *certiorari* and *mandamus* case, set aside the order of the lower court denying the motion to dismiss based on *res judicata* and directed the dismissal of the amended complaint.

Two points deserve mention, to wit:

a) *Certiorari* lies against an order denying a motion to dismiss based on *res judicata,* on the ground of grave abuse of discretion, since

such an order is not immediately appealable.

b) The dismissal of the complaint due to non-appearance of counsel for the plaintiff at the pre-trial conference, without the qualification that the dismissal was without prejudice, constituted an adjudication on the merits, and therefore *res judicata,* all the requisites thereof being present. (Feria, 1976 Bar Review Lecture)

3) *De la Cruz v. Paras,* 69 SCRA 556 (1976): The dismissal for "apparent lack of interest in the prosecution of the respective claims of the litigants" pursuant to Section 3 of Rule 17 of a "complaint for Partition of Real Estate" was held to be *res judicata* in a subsequent complaint for partition involving the same lot, the dismissal being final in character and appealable.

A procedural error appears in this decision. The Court of Appeals erroneously certified to the Supreme Court the special civil action for *certiorari* and/or *mandamus* originally filed with it by petitioner, on the ground that the question involved in the proposed appeal was only one of law - whether an order is final and appealable or merely interlocutory. The Court of Appeals should have decided the petition because its original jurisdiction in aid of appellate jurisdiction is not dependent upon the kind of questions, as being of fact or of law, raised or to be raised on appeal. In any event, the Supreme Court could also decide the petition, as it did in the cases of *Breslin v. Luzon Stevedoring Co.,* 84 Phil. 518 (1949) and *Philippine Merchant Marine Academy v. Court of Appeals,* 69 SCRA 493 (1976), instead of remanding the case back to the Court of Appeals. (Feria, 1976 Bar Review Lecture)

4) *Abinales v. Court of First Instance of Zamboanga City,* 70 SCRA 590 (1976): The dismissal of the complaint without prejudice for failure to prosecute under Section 3 of Rule 17 was set aside with the following words of caution to lower courts: "The policy of the Court to expedite disposal of cases and prevent clogging of dockets is well nigh desirable. Nevertheless, inconsiderate dismissals, even if without prejudice, do not constitute a panacea nor a solution to the congestion of court dockets; while they lend a deceptive aura of efficiency to records of individual judges, they merely postpone the ultimate reckoning between the parties. In the absence of clear lack of merit or intention to delay, justice is better served by a brief continuance, trial on the merits, and final disposition of the cases before the court.' x x x Speed in judicial administration should not be promoted at the expense of justice, which is indispensable to any court system worthy of its name x x x As a result, any reduction of trial court dockets accomplished by such dismissals will be more than offset by the increased burden of appellate courts." (Feria, 1976 Bar Review Lecture)

5) See note # 4, Rule 9, Section 2.

6) *Tandoc v. Tensuan,* 93 SCRA 880 (1979): Summons was served on one of two private respondents but the other private respondent could not be located and served with summons. Consequently, seven months later, petitioner filed a motion to declare the first private respondent in default. Three days after, petitioner's counsel received respondent judge's dismissal order for failure to prosecute. Petitioner forthwith filed the next day her motion for reconsideration, but this was denied. Petitioner appealed to the Supreme Court. The Court set aside the dismissal order for having been issued with grave abuse of discretion, as there was no failure on petitioner's part to prosecute her just suit for an unreasonable length of time so as to warrant dismissal thereof by respondent judge *motu propio.*

It should be noted that as to the private respondent who had not been served with summons, the dismissal could not operate as an adjudication on the merits or *res judicata,* because the court had not yet acquired jurisdiction over his person. However, as to the other private respondent, the dismissal, if not set aside, would have barred a subsequent action inasmuch as it was not made expressly "without prejudice." (Feria, 1979 Bar Review Lecture)

RULE 18

Section 3:

1) See note on Rule 13, Section 9: *Lim Tanhu v. Ramolete.*

2) *Gapoy v. Adil,* 81 SCRA 739 (1978): Plaintiff failed to appear at the trial, when he was due to testify in his own behalf, on the ground of illness, his counsel's verbal motion for postponement, which was not objected to by defendants, was denied. A verified motion for reconsideration was denied on the ground that it was not accompanied by an affidavit of merit.

On *certiorari,* the Court set aside the order of dismissal. Quoting from *Lucer v. Dacayo,* 22 SCRA 1004 (1968), the Court held that an

affidavit of merit is not necessary to set aside an order of dismissal for non-suit; unlike the case where a judgment has already been rendered and a party moves for a new trial on the ground of fraud, accident, mistake or excusable negligence under Rule 37.

In the case of *Lim Tanhu v. Ramolete, supra,* the Court held that such an affidavit is not necessary to set aside an order of default for failure to appear at the pre-trial.

However, an affidavit of merit is expressly required to set aside an order of default for failure to file a written answer. (Feria, 1978 Bar Review Lecture)

3) See preliminary note on Rule 38.

Sec. 4:

1) See note on Rule 13, Section 9: *Lim Tanhu v. Ramolete.*

2) *Luzon Surety Co., Inc. v. Magbanua,* 72 SCRA 254 (1976): This decision reiterates the controversial rulings in *Luzon Rubber & Mfg. Co. v. Estaris,* 52 SCRA 391 (1973), and *Strachan & MacMurray, Ltd. v. Court of Appeals,* 62 SCRA 109 (1975), to the effect that a defendant declared in default in an inferior court cannot appeal from the judgment by default unless he has filed a motion set aside the order of default within one (1) day after notice of the order of default.

What is noteworthy, however, is the clarification that under Section 4 of Rule 18, a defaulting defendant may not take advantage of the answer filed by his co-defendant to a complaint which states a common cause of action against all defendants, if the defense raised by the answering defendant (such as forgery) is personal to him. (Feria, 1976 Bar Review Lecture)

RULE 20

Section 1:

1) The cases in 1975 reveal numerous judicial compromises entered into not only in ordinary civil cases, but also in agrarian and labor cases, in administrative cases, and even in a habeas corpus case. There was an instance where a compromise was reached after the case had been submitted to the Supreme Court for decision. These uncommon occurrences are due to the policy of the law embodied in Article 2029 of the New Civil Code, imposing a duty on the courts to endeavor to persuade the litigants in a civil case to agree upon some fair compromise. For this reason, the Revised Rules of Court provide for a pre-trial to determine the possibility of an amicable settlement or of submission of the case to arbitrators. (Araceli Baviera, 1975 Bar Review Lecture)

2) See note on Rule 13, Section 2: *Sagarino v. Pelayo.*

Sec. 2:

1) See note on Rule 17, Section 3: *Insular Venner, Inc. v. Plan.*

Sec. 3:

1) *Auman v. Estenzo,* 69 SCRA 525 (1976): The issue was the propriety of the summary judgment rendered by the trial judge after a pre-trial pursuant to Section 3 of Rule 20.

The Court set aside the summary judgment on two grounds, to wit: (1) There was no motion for summary judgment with supporting affidavits and/or depositions filed in accordance with Section 3 of Rule 34; (2) The answer of defendants as well as the affidavits of their witnesses submitted at the pre-trial raised genuine issues which could be resolved only after an appreciation of the evidence of the parties.

The second ground was sufficient to set aside the summary judgment. As to the first ground Section 3 of Rule 20 does not require the filing of a motion for summary judgment in accordance with Section 3 of Rule 34. However, the Court held that a hearing was necessary to determine the propriety of a summary judgment inasmuch as plaintiffs did not submit any affidavits and/or depositions of their witnesses, or even admissions of defendants, to support a summary judgment. (Feria, 1976 Bar Review Lecture)

RULE 22

1) *Barrera v. Barrera,* 34 SCRA 98 (1970): The Supreme Court commented: "What calls for disciplinary action is the recklessness with which the respondent judge did hurl the baseless allegation that the Clerk of the Supreme Court was permitted to exercise an authority which appertained to the Chief Justice. He did speak with all valor of ignorance. Nor

did he retreat from such an indefensible stand in the face of his being informed that what the Clerk did was solely in accordance with what was previously decided by the Supreme Court which certainly will not tolerate anybody else, much less a subordinate, to speak and act for itself. This gross disrespect shown to the Supreme Court has no justification."

It appears that respondent judge refused to continue trying cases which been pending after a period of three (3) months from the first day of the trial on the merits in spite of orders from the Supreme Court to do so. Following his own interpretation of Rule 22 of the Rules of Court, respondent contended that not even the Chief Justice of the Supreme Court could validly, legally and morally extend his power to try said case. He then questioned the phrase "by authority of the Chief Justice" signed by the Clerk of Court whom he alleged to be a mere employee of the Court who in turn gave power and authority to the respondent trial judge to continue trying a case even if it has already been dismissed. (Coquia, 1975 Bar Review Lecture)

RULE 24

Section 16:

1) *De los Reyes v. Court of Appeals,* 63 SCR 144 (1975): The Court reiterated the ruling in *Jacinto v. Amparo,* 93 Phil. 633 (1953), that under Section 16 of Rule 24, the trial court has discretion to issue an order that the deposition be taken only on written interrogatories. (Feria, 1975 Bar Review Lecture)

RULE 27

Section 1:

1) *Chuidian v. Puno,* 68 SCRA (1975): This is a petition for *certiorari* praying for the setting aside of the orders of the respondent court which denied petitioner's motion for inspection, photographing, and copying of various documents in the possession of private respondents who are defendants in a civil action in the Court of First Instance of Manila, filed by petitioner against said respondents seeking the turn over of 1,500 shares of stock in E. Razon, Inc. to plaintiff (petitioner) including the certificates evidencing said shares, and to recognize the estate represented by plaintiff as the lawful owner of said shares, the payment of moral damages, attorney's fees, and exemplary damages by defendant (herein respondents) be ordered to account for the management of the

affairs of the corporation.

In the aforementioned civil case, petitioner had filed under date of March 31, 1973, a motion for inspection, photographing, and copying pursuant to the provisions of Section 1 of Rule 27, which was denied by respondent judge on the ground that the inquiry into the facts sought to be obtained is prohibited, and that said documents are deemed absolutely privileged by P.D. 23, as amended by P.D. 161, on tax amnesty, it appearing that respondents E. Razon, Inc. and Enrique Razon had filed tax amnesty declarations and paid the corresponding taxes due thereon. Held: That the immunity extended by the said presidential decrees includes any inquiry that might give rise to a civil liability of the taxpayer not only to the government but even to another private individual as otherwise, the objective desired of having parties concerned disclose their hidden income may not be achieved, since it is not only from the government but also from others that they might be concealing the same.

The Court, therefore, resolved to dismiss the petition. (Santos, Jr., 1975 Bar Review Lecture)

RULE 29

Sections 3 & 5:

1) *Arellano v Court of First Instance,* 65 SCRA 46 (1975): In this case, the complaint was dismissed for failure of the plaintiff to serve answers to written interrogatories as provided by Section 5 of Rule 29 (which should be distinguished from the consequences of refusal to answer a particular question in the set of interrogatories under Sections 1 and 3 of Rule 29), as well as for failure to prosecute under Section 3 of Rule 17. The dismissal operated as an adjudication on the merits since the court did not provide otherwise. Hence, when it became final, it constituted *res judicata* and barred the filing of an amended complaint on the same cause of action.

The Court ruled that "after a decision terminating a case has been final, it may be set aside on the ground of fraud (also accident, mistake or excusable negligence) by means of a justified petition for relief, if filed within the period fixed in Section 3 of Rule 38, and after said period but within four (4) years, only by another action for the purpose. (Feria, 1975 Bar Review Lecture)

RULE 33

1) *Laluan v. Malpaya,* 65 SCRA 494 (1975): The issue was whether the trial court may authorize the clerk of court to receive evidence in the absence of defendants who did not appear at the scheduled hearing despite due notice to them. The Court held that no provision of law or principle of public policy prohibits a court from so acting since, after all, the reception of evidence by the clerk of court constitutes but a ministerial task, precluding the exercise of judicial discretion usually called for when the other party who is present makes an objection. More importantly, the duty to render judgment on the merits still rests with the judge. Rule 33 on trial by commissioner did not apply to the case at bar. The Court affirmed in part the judgment of the trial court and remanded the case to the court *a quo* for a new trial as to the other part.

In support of its decision, the Court could also have cited Section 5 of Rule 136, which authorizes the clerk of court, when directed so to do by the judge, to receive evidence in special proceeding. (Feria, 1975 Bar Review Lecture)

RULE 34

Section 3:

1) *Purugganan v. Paredes,* 69 SCRA 69 (1976): The summary judgment appealed from was affirmed inasmuch as the report of the Commissioner, to which defendants-appellants had given their conformity, and the non-registration of their alleged easement of light and view on the title of the servient estate, showed that there was no genuine issue as to any material fact that the movant was entitled to a judgment as a matter of law. (Feria, 1976 Bar Review Lecture)

2) See note on Rule 20, Section 3: *Auman v. Estenzo.*

3) *Viajar v. Estenzo,* 89 SCRA 684 (1979): Defendant filed a motion for summary judgment dismissing the action on the basis of an alleged admission in the complaint that the change of course of the river was gradual and therefore, it was a case of alluvion. The motion was opposed on the ground that there was a sudden change of course and hence, no accretion. The trial court rendered summary judgment dismissing the complaint.

On appeal, the Court set aside the summary judgment and remanded the case to the trial court for further proceedings. The rule was reiterated that relief by summary judgment is intended to expedite or promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admission and affidavits. If there is a doubt as to such facts and there be an issue or issues of fact joined by the parties, neither one of them can pray for a summary judgment.

A summary judgment is by no means a hasty one. It assumes a scrutiny of facts in a summary hearing after the filing of a motion for summary judgment by one party supported by affidavits, depositions, or other documents. A party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact or that the issue posed in the complaint (or answer) is so patently unsubstantial as not to constitute a genuine issue for trial, and any doubt as to the existence of such an issue is resolved against the movant.

In this case, there were no supporting affidavits, depositions or admissions. The trial court relied merely on the alleged admission in the pleadings. Hence, what the trial court actually rendered was a judgment on the pleadings, not a summary judgment. (Feria, 1979 Bar Review Lecture)

Sec. 4:

1) *Estrada v. Consolacion,* 71 SCRA 523 (1976): The order of the trial court that defendants have judgment summarily against the plaintiff for such amount as may be found due them for damages, to be ascertained by trial upon that issue alone, was held to be a mere interlocutory order. After assessing the amount of damages, the court shall render the appropriate summary judgment containing findings of fact and conclusion of law which is final and appealable.

Summary judgment or accelerated judgment is a device of weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in a trial. At the hearing of the motion for summary judgment, the purpose of the judge is not to try the issue, but merely to determine whether there is a meritorious issue to be tried.

The test, therefore, of a motion for summary judgment is whether the pleadings, affidavits and exhibits in support of the motion are sufficient to overcome the opposing papers and to justify a finding

as a matter of law that there is no defense to the action or the claim is clearly meritorious (or, conversely, that the claim is clearly a sham). (Feria, 1976 Bar Review Lecture)

RULE 36

Section 5:

1) *Miranda v. Court of Appeals,* 71 SCRA 295 (1976): In this important and far-reaching decision, the Supreme Court *en banc* abandoned the doctrine in *Fuentebella v. Carrascoso,* G.R. No. 48102, May 27, 1942 (unreported), and adopted the opposition rule that judgments for recovery with accounting are final and appealable (without need of awaiting the accounting) and would become final and executory if not appealed within the reglementary period.

In support of this new ruling, the Court cited among others, Section 5 of Rule 36 on judgment at various stages. The judgment of July 26, 1965 of Judge Mendoza terminated the action with respect to the claim for recovery of the properties pertaining to the decedent's estate, and the action was yet to proceed with respect to the remaining relief of accounting as ordered in the judgment, as well as ordered to be done and completed per the remand of the case by the Court in *Dy Chua v. Mendoza,* 25 SCRA 431 (1968). Consequently, Judge Tantuico had no authority to amend the original decision in an amended decision dated October 4, 1969.

The Court also cited Section 4 of Rule 39 which provides that a judgment directing an accounting shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal, unless otherwise ordered by the court.

In resume, the Court considered the better rule to be that stated in *H.E. Heacock Co. v. American Trading Co.*, 53 Phil. 481 (1929), and accordingly, the contrary ruling in *Fuentebella v. Carrascoso, supra,* which expressly reversed the *Heacock* case and a line of similar decisions and ruled that such a decision for recovery of property with accounting "is not final but merely interlocutory and therefore not appealable" and subsequent cases adhering to the same must be now in turn abandoned and set aside.

In view of this latest decision, an order for partition under Section 2 of Rule 69 is not merely interlocutory but final and appealable. This new

ruling, however, should apply only in cases where the appellant claims exclusive ownership of the whole property and denies the adverse party's right to any partition, because in such cases the action becomes one for title.

Similarly, an order of condemnation under Section 4 of Rule 67 is also final and appealable.

It should be noted, however, that two justices merely concurred in the result and one justice qualified his vote just so the case could be terminated without further delay. Justice Barredo stated in his concurring opinion that with only seven (7) votes unqualifiendly supporting the main opinion, the purported reversal of the *Fuentebella* doctrine could only have academic worth. (Feria, 1976 Bar Review Lecture)

2) *De Guzman v. Court of Appeals,* 74 SCRA 222 (1976): The new ruling in *Miranda v. Court of Appeals, supra,* was applied to an action for partition of real estate with accounting. Defendants filed answers claiming sole ownership of the property, invoking prescription, laches and estoppel as special defenses. Judgment was rendered ordering partition and accounting. Defendants appealed to the Court of Appeals which dismissed the appeal and remanded the case to the trial court for further proceedings on partition under Rule 69. Applying the *Miranda* ruling, the Court directed the Court of Appeals to decide the appeal on the merits.

It should be noted that if defendants did not claim sole ownership, the order of partition would be interlocutory and not appealable until after final judgment of partition was rendered. (Feria, 1976 Bar Review Lecture)

RULE 37

Section 1:

1) See note on Rule 18, Section 3: *Gapoy v. Adil.*

2) *De las Alas v. Court of Appeals,* 83 SCRA 200 (1978): The *Lloren v. De Veyra* ruling, 4 SCRA 637 (1962), was incorporated in Section 3 of Rule 41 as follows: "But where such a motion has been filed during office hours of the last day of the period herein provided, the appeal must be perfected within the day following that in which the party appealing received notice of the denial of said motion."

The Court held that this ruling applies to all cases whether the motion for reconsideration is filed before or on the last day of the appeal period. In effect, the date of filing of the motion for reconsideration must be added to the remainder of the period for appeal.

It should be noted that Section 3 of Rule 41 expressly provides that "the time during which a motion to set aside the judgment or order or for a new trial has been pending shall be deducted, *unless such motion fails to satisfy the requirements of Rule 37.*"

This has broadened the scope of the *pro-forma* motion rule. Consequently, *pro-forma* motions for new trial or reconsideration are not limited to the third ground, but also include the first two grounds, of a motion for new trial under Rule 37. (Feria, 1978 Bar Review Lecture)

3) *Cabales v. Tan Nery,* 94 SCRA 374 (1979): Plaintiff was authorized to present his evidence *ex parte* when defendants and counsel failed to appear despite notice, and judgment was rendered in favor of plaintiff. Counsel for defendants received a copy of said decision on November 25, 1966. On January 24, 1967, he filed a petition for relief on the ground of accident, mistake or excusable negligence, stating that he had misplaced and inserted the notice of hearing in the record of another case and forgot all about it until he received a copy of the decision. The trial court denied the petition for relief and this was affirmed on appeal by the Court of Appeals.

The Court, on appeal by *certiorari,* affirmed the decision denying relief. The Court held that the reason given by the counsel did not justify the granting of the petition for relief and that counsel's negligence was binding upon the clients.

It should be further noted that when defendants' counsel received a copy of the decision on November 25, 1966, he should have filed a motion for new trial within thirty (30) days from said date, instead of filing a petition for relief sixty (60) days from notice. (Feria, 1979 Bar Review Lecture)

Sec. 4:

1) *City of Cebu v. Mendoza,* 62 SCRA 440 (1975): The issue in this case was whether the second motion for new trial or reconsideration filed by respondents in the lower court was based on a ground not existing nor available when the first motion was made, as provided by Section 4 of Rule 37. If it was, it would have suspended the remaining reglementary period for perfecting their appeal; otherwise, the remaining period would not have been suspended and their right to appeal would have been lost.

Five justices were of the opinion that the second motion for new trial reconsideration did not comply with the requirements of Section 4 of Rule 37 and hence, voted to dismiss the petition for *mandamus* to compel the Court of First Instance to give due course to the appeal. Four justices dissented. Inasmuch as the necessary eight (8) votes could not be secured, the petition for *mandamus* and *certiorari* was dismissed. (Feria, 1975 Bar Review Lecture)

RULE 38

Section 2 of Rule 41 now allows an appeal from a judgment of a Court of First Instance by a defendant in default, as being contrary to the evidence or to the law, "even if no petition for relief to set aside the order of default has been presented by him in accordance with Rule 38." (Incidentally, the proviso between quotations should be amended to make it refer to a motion to set aside the order of default under Section 3 of Rule 18, and not to a petition for relief under Rule 38 which is available only when the judgment is already executory. (Feria, 1975 Bar Review Lecture)

Section 3:

1) *Samonte v. Samonte,* 64 SCRA 524 (1975): The main issue in this case was the time to file a petition for relief from a judgment based on a compromise agreement. The Court ruled that it should have been filed within six (6) months from the date the judgment was rendered. This was not done.

Section 3 of Rule 38 provides that such a petition should be filed "not more than six (6) months after such judgment or order was entered, or such proceeding was taken." Inasmuch as a judgment by compromise is final and immediately executory, it may be entered immediately upon its promulgation. Moreover, an order approving a compromise agreement could be considered as a "proceeding taken" which need not be entered and hence the period begins from the date of its occurrence

The Court also ruled that the petition was not filed within sixty (60) days from learning of the judgment, was not verified, and was not accompanied by affidavits of merit.

Mention should be made, however, of the fact that the petioner had another remedy - an action to annul the judgment on the ground of extrinsic fraud filed within four (4) years from the discovery of the fraud. (Feria, 1975 Bar Review Lecture)

2) *Luzon Stevedoring Corp. v. Reyes,* 71 SCRA 655 (1976): The Court upheld the ruling of the Workmen's Compensation Commission that it no longer had any appellate jurisdiction to review the awards which had become final and executory by reason of petitioner's failure to appeal timely within the reglementary fifteen (15) day period from receipt of notice and copy of the referee's decision and its failure to file the petition for relief from judgment within the reglementary thirty (30) day period from learning thereof. In effect, the Court upheld the validity of the Revised Rules of the Commission which fixed the periods for filing a petition for relief from judgment at 30 days from knowledge of the decision and three (3) months from entry thereof, in lieu of the period fixed in Rule 38 of the Rules of Court.

This decision may be applied to the rules of procedure which the Securities and Exchange Commission may promulgate pursuant to Presidential Decree No. 902-A (1976). (Feria, 1976 Bar Review Lecture)

3) *Ong Tiao Seng v. Court of Appeals,* 81 SCRA 417 (1978): The motion for extension of time to file the record on appeal was filed five (5) days beyond the reglementary period. It was denied. A motion for reconsideration was also denied.

The Court held that a petition for relief under Rule 38 provides a remedy for such failure to appeal on time. However, said rule requires a showing of (a) fraud, accident, mistake or excusable negligence, and (b) good and substantial cause of action or defense as the case may be. The illness of counsel was not considered sufficient ground inasmuch as he was able to file the notice of appeal on time. There was no valid reason for filing the motion for extension of time to file the record on appeal on the same date. Moreover, the motion for reconsideration was not supported by an affidavit of merit. (Feria, 1978 Bar Review Lecture)

RULE 39

Section 1:

1) *Far Eastern Surety & Insurance Co., Inc. v. Hernandez,* 67 SCRA 256 (1975): A motion for execution of a final and executory judgment may be granted *ex parte.* It is not a litigated motion like a motion to dismiss or a motion for new trial or a motion for execution of judgment pending appeal, in all of which instances a written notice thereof is required to be served by the movant on the adverse party. (Feria, 1975 Bar Review Lecture)

2) *People v. Court of Appeals,* 92 SCRA 607 (1979): The Court of Appeals granted the motion for new trial filed by accused on the ground of newly discovered evidence consisting of a witness who could not be located to testify during the trial because she went into hiding due to threats on her life. The resolution was served on the Solicitor General but not on the private prosecutor nor on the City Fiscal of Iloilo. After said witness had testified and before the presentation of rebuttal evidence, private petitioner and the City Fiscal of Iloilo filed separate petitions for *certiorari* with the Supreme Court claiming grave abuse of discretion in granting a new trial.

The Court held that since the Resolution of the Court of Appeals granting new trial was served on the Solicitor General on November 23, 1976, it became final on December 9, 1976, and "the present Pettions for Certiorari may not be utilized to obtain review of that Resolution after the time of appeal had lapsed. The remedy of Certiorari cannot be used as a substitute for appeal."

There is no issue with the dismissal of the Petition for Certiorari because there was no grave abuse of discretion in granting new trial. Moreover, the petitions should have been seasonably filed as soon as petitioners came to know of the questioned resolution of the Court of Appeals, and not after the witness had testified.

However, the statement that said resolution became final on December 9, 1976 and the time of appeal had lapsed is erroneous. This statement assumes that an order or resolution granting a new trial is one which finally disposes of the action, when in fact it is interlocutory. Being interlocutory, it is not immediately appealable, but may be subject of *certiorari* when appeal from the final judgment is not an adequate remedy because, as the Court held, citing *People v. Bocar,* 97 Phil. 414 (1955), after the new trial the court may acquit the defendant and thereafter "the prosecution would have no more opportunity of bringing before the appellate court the question of the legality or illegality of the order granting a new trial because the defendant acquitted

may plead double jeopardy."

In *People v. Bocar, supra,* the Court also stated that in civil cases, the granting of a new trial is considered a mere interlocutory order not subject to appeal or special civil action. The reason is that the party dissatisfied with the order granting a new trial may, after judgment, appeal from the same and include in his appeal the supposed error committed in the issuance of the interlocutory order. However, this being a criminal case, the Court entertained the petition for *certiorari* (not appeal) for the reason above stated.

In *Pineda v. Court of Appeals,* 65 SCRA 258 (1975), a civil case, the order granting a new trial was set aside on a petition for *certiorari* (not appeal). (Feria, 1979 Bar Review Lecture)

Sec. 2:

1) *Director of Lands v. Reyes,* 69 SCRA 415 (1976): The issue was: Did the trial court act without or in excess of its jurisdiction in ordering the issuance of a decree of registration despite the timely appeal taken from the decision? Apparently, the trial court took that action in accordance with Rule 143 of the Rules of Court, which, by exception, may also be applied to land registration or cadastral cases by analogy or in a supplementary character and whenever practicable and convenient. One such rule is Section 2, Rule 39, which gives the trial court discretion to issue, upon motion of the prevailing party, an order of execution of the decision even before the expiration of the time to to perfect an appeal. Even then, this may be done only for good reasons to be stated in the order. The Supreme Court ruled here that the trial court acted without or in excess of its jurisdiction when it ordered the issuance of the final decree of registration even while the case was pending appeal to allow execution pending appeal in land registration proceedings under Act No. 496 (1903) - to finally settle, quiet and adjudicate title to land, and to issue certificates of ownership that are absolute, indefeasible and free from claims other than those stated therein. Besides, it violates the express provision of the Land Registration Act, which requires that a final decree of registration can be issued only after the decision has become final and executory. The Supreme Court further said that the action of the trial court is fraught with dangerous consequences. (Ramon N. Casanova, 1976 Bar Review Lecture)

2) *Vasco v. Court of Appeals,* 81 SCRA 762 (1978): The Juvenile and Domestic Relations Court of Quezon City granted the motion for execution of the judgment for support after it had approved the record on appeal and ordered the elevation of the record to the Court of Appeals.

This order was set aside on *certiorari* inasmuch as the Juvenile and Domestic Relations Court had no more jurisdiction to issue the order of execution. The Court held that before the rendition of the judgment, plaintiffs could have availed themselves in the lower court of the provisional remedy of support *pendente lite.*

The order of execution could have been granted before the perfection of the appeal, inasmuch as the necessity for support is a good reason for execution pending appeal. (Feria, 1978 Bar Review Lecture)

3) *Banco de Oro v. Bayuga,* 93 SCRA 443 (1979): The trial court ordered the issuance of a writ of execution pending appeal for the release of the loan of ₱369,000 granted by petitioner bank on the security of a real estate mortgage. Petitioner filed a petition for *certiorari* with the Court of Appeals, but said court denied the petition with the modification of excluding the damages awarded. Petitioner then filed a petition for review on *certiorari* with the Supreme Court. The petition was originally denied for lack of merit, but was subsequently given due course on a motion for reconsideration. However, when the restraining order was lifted, the amount of ₱ 369,000 was released to private respondents.

The Court set aside the judgment of the Court of Appeals and ordered private respondents to restore the sum of ₱ 369,000 with the stipulated interest to petitioner. The Court held that, while *prima facie,* execution pending appeal seemed justified because of the unilateral cancellation of the release of the loan by petitioner, and the absence of complete supporting documents to the petition, disclosures by the parties during the hearing and pleadings and documents subsequently filed upheld a contrary view. The Court was particularly irked by the evident lack of fair play on the part of private respondents. As a result, the Court not only set aside the order of execution pending appeal for lack of good reasons. but it also set aside the judgment of the trial court and rendered the appeal therefrom moot and academic. (Feria, 1979 Bar Review Lecture)

Sec. 3:

1) *Apachecha v. Ravina,* 83 SCRA 251 (1978): The lower court denied the judgment creditors' motion to require the surety on the supersedeas bond (filed to stay execution pending appeal) to pay the amount of the judgment after the record had been remanded to the trial court and the execution against the judgement debtors had been returned unsatisfied. The lower court erroneously held that the procedure under Section 9 of Rule 58 in connection with Section 20 of Rule 57 should be followed.

This was set aside on *certiorari,* since the procedure applicable was a mere motion under Section 3 of Rule 39. (Feria, 1978 Bar Review Lecture)

Sec. 4:

1) See note on Rule 36, Section 5: *Miranda v. Court of Appeals.*

Sec. 6:

1) *Central Bank of the Philippines v. Court of Appeals,* 65 SCRA 654 (1975): The Supreme Court had approved the compromise agreement in the Decision of December 10, 1974. By motion dated January 17, 1975, the parties submitted an amendatory agreement superseding part of the original compromise agreement. The Supreme Court rendered judgment approving the amendatory agreement.

No question was raised regarding the propriety of amending a judgment by compromise which is immediately final and executory. However, this question was decided in the case of *Miranda v. Dominguez,* G.R. No. 7044, January 31, 1955, wherein it was held that a court has jurisdiction to approve a new compromise agreement in the exercise of its jurisdiction to enforce its judgment within five (5) years from the date of its entry or from the date it becomes final and executory under Section 6 of Rule 39. (Feria, 1975 Bar Review Lecture)

2) *Overseas Bank of Manila v. Geraldez,* 94 SCRA 937 (1979): The trial court dismissed the complaint on the ground of prescription, holding that a demand letter tolls the prescriptive period only for the period of time indicated in the letter within which payment should be made and if no period of payment was indicated in the demand letter, that would mean that payment should be made within one (1) day.

On appeal, the Court held that the interruption of the prescriptive period by written extrajudicial demand means that the said period would commence anew from the receipt of the demand. Consequently, although the cause of action accrued on February 16, 1966 and the complaint was filed on October 22, 1976, or more than the period of ten (10) years provided by Article 1144 (1), Civil Code, the written extrajudicial demand wiped out the period that had already lapsed and started anew the prescriptive period.

The Court also held in passing that the same meaning has been given to the interruption of prescription by means of a judicial action, citing *Florendo v. Organo,* 90 Phil. 483 (1951), *Nater v. CIR,* 114 Phil 611 (1962), *Saguicio v. Bulos,* 115 Phil. 786 (1962), and *Fulton Insurance Co. v. Manila Railroad Co.,* 21 SCRA 974 (1967), wherein the following ruling was quoted: "When prescription is interrupted by a judicial demand, the full time for the prescription must be reckoned from the cessation of the interruption."

However, in the last case above mentioned, the Court stated that there are two schools of thought as to the legal effect of the cessation of the interruption by an intervening action upon the period of prescription. The above quotation represents the first view. The contrary view is, that the cessation of the interruption merely tolls the running of the remaining period of prescription, deducting from the full period thereof, the time that has already elapsed prior to the filing of the intervening action. In this last case, the second action was filed within the remaining period of prescription counted from the date the order of dismissal of the first action for lack of jurisdiction, became final.

Actually, in the case of *Florendo v. Organo* and *Saguicio v. Bulos, supra,* there was no necessity of dismissing the interruption of prescription by action or judicial demand, because, as indicated in the second case, it was a question of enforcement of a judgment which could be done by motion within five (5) years from the date of its entry or from the date it becomes final and executory, and by action within five (5) years after the lapse of such time or a total of ten (10) years.

There would be no point in discussing the interruption of prescription by an action if the judgment rendered therein constitutes *res judicata.* In such case, it would be either a question of enforce-

ment of the judgment or a bar by prior judgment. It is only in a case of dismissal without prejudice that the question of interruption of prescription becomes pertinent.

Finally, it should be noted that this provision of interruption of prescription by written extrajudicial demand under Article 1155 of the Civil Code does not apply to an action to enforce or revive a judgment. (Feria, 1979 Bar Review Lecture)

Sec. 7:

1) *Py Eng Chong v. Herrera,* 70 SCRA 130 (1976): The Court sustained the order of the lower court recalling the writ of execution on the ground that the writ could no longer be enforced in view of the death of the judgment debtor, and that the judgment creditor should file his claim in the proceedings for the settlement of the estate of said deceased pursuant to Section 5 of Rule 86. Since no such proceedings had been instituted, the judgment creditor should initiate the same under Section 2 of Rule 79 if he died intestate.

Had the levy been made before the death of the judgment debtor, the sale on execution could have been carried to completion in accordance with Section 7 (c) of Rule 39. (Feria, 1976 Bar Review Lecture)

2) See note on Rule 3, Section 21: *Manalansan v. Castañeda*

Sec. 11:

1) *Roque v. Court of Appeals,* 93 SCRA 540 (1979): The Court held that a levy on attachment of personal property may be either actual or constructive and that in this case levy had been constructively made by registration of the sale of barge with the Philippine Coast Guard, since actual possession was not feasible. Moreover, the Rules do not provide any lifetime for a Writ of Attachment unlike a Writ of Execution which is valid for only sixty (60) days.

Sec. 14:

1) *Arabay, Inc. v. Salvador,* 82 SCRA 138 (1978): The third-party claimant filed a separate action with the Caloocan Court of First Instance to enjoin the auction sale by the sheriff of the properties owned by him. The Caloocan court issued the writ of preliminary injunction. The Court held that the Caloocan court could stop the execution of the

Manila court's judgment against properties not belonging to the judgment debtor. The third-party claimant has the right to vindicate his claim to the properties levied upon by means of a proper action.

Generally, the rule that no court has authority to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction having equal power to grant injunctive relief, is applied in cases where no third-party claimant is involved. (Feria, 1978 Bar Review Lecture)

2) *Casanova v. Lacsamana,* 90 SCRA 68 (1979): The rule was reiterated that before the court may issue a special order of demolition, there must be a hearing on the motion for demolition and the judgment debtor must have been given a reasonable time to remove the improvements.

Sec. 17:

1) *Northern Motors, Inc. v. Coquia,* 66 SCRA 415 (1975): In its resolution on a motion for reconsideration, the Court *en banc* held that a chattel mortgagee may properly file a third-party claim, thus revoking the ruling to the contrary in *Serra v. Rodriquez,* 56 SCRA 538 (1974).

It was held that a chattel mortgagee, as a third-party claimant comes within the purview of the provisions of Section 17 of Rule 39, even before there is a breach of the mortgage because the recording of the mortgage gives him the symbolical possession of the mortgaged chattel, and because what a judgement creditor of the chattel mortgagor can attach is only the equity or right of redemption. (Feria, 1975 Bar Review Lecture)

2) *Sampaguita Pictures, Inc. v. Jalwindor Manufacturers, Inc.,* 93 SCRA 426 (1979): Plaintiff filed an action against defendant to nullify the Sheriff's sale of the jalousies levied on execution to satisfy the judgment in favor of defendant for payment of the balance of the purchase price thereof, in which defendant was the highest bidder. Plaintiff had previously filed a third-party claim as owner of said jalousies by virtue of the stipulation in its lease contract with the lessee-purchaser that the improvements on the leased premises shall belong to the lessor and considered as part of the monthly rentals. However, since defendant filed an indemnity bond, the jalousies were sold at public auction to defendant. The trial court dismissed the complaint.

On appeal, the Court held that plaintiff became the lawful owner of the jalousies by virtue of its agreement with the lessee-purchaser and that the latter had acquired ownership thereof by delivery though full payment had not been made.

The procedure adopted by plaintiff was in accordance with Section 17 of Rule 39 and the ruling in *Bayer Phil. Inc. v. Agana,* 63 SCRA 355 (1975), "that the rights of third-party claimants over certain properties levied upon by the Sheriff to satisfy the judgment, may not be taken up in the case where such claims are presented but in a separate and independent action instituted by claimants." This ruling was reiterated in subsequent cases, lastly in *Arabay, Inc. v. Salvador, supra.*

In *Bayer Phil., Inc. v. Agana,* the Court distinguished the case from *Herald Publishing Co. v. Ramos,* 88 Phil. 94 (1951), where it held that intervention under Section 2 of Rule 12 may be resorted to by a third-party claimant in cases of preliminary attachment, since intervention is proper before or during a trial, but obviously, it is not proper in a case already terminated by final judgment. (Feria, 1979 Bar Review Lecture)

Sec. 29:

1) *General v. Barrameda,* 69 SCRA 182 (1976): The right of redemption in an extrajudicial foreclosure of real estate mortgage under Act 3135 may be assigned by the mortgagor to another. The transferee of such right stands in the position of a successor in interest of the mortgagor under Section 29 of Rule 39 and must pay the amount of purchase price with interest at 1% per month up to the date of redemption, and the amount of taxes which the purchaser may have paid thereon after the purchase, with interest at the same rate. The period to redeem a registered land shall be reckoned from the time the certificate of sale was registered since it is only from the date of registration that a certificate of sale takes effect as a conveyance. (Haydee B. Yorac, 1976 Bar Review Lecture)

Secs. 29, 30 & 31:

1) *Gorospe v. Santos,* 69 SCRA 191 (1976): In affirming the propriety of the summary judgment rendered by the lower court, the Court disposed of the substantive legal issues raised. It reiterated the ruling that the one-year period of redemption granted to the mortgage debtor or his successor in interest (in this case a transferee) in case of extrajudicial sale of foreclosure of mortgage is counted from the registration of the certificate

of sale; that the amount of the redemption price is the purchase price paid in the sale at public auction pursuant to Sections 29, 30 and 31 of Rule 39 of the Rules of Court as provided in Section 6 of Act No. 3135 as amended by Act No. 4148; and that, consequently, the redemption price did not include the amount of the deficiency.

It should be noted, however, that if the mortgage creditor were a banking institution, the redemption price in judicial and extrajudicial foreclosures of real estate mortgages would be "the amount fixed by the court in the order of execution" or the amount judicially adjudicated to the creditor bank. (Feria, 1976 Bar Review Lecture)

Sec. 30:

1) *Crystal v. Court of Appeals,* 62 SCRA 501 (1975): It appeared that the redemptioner delivered a check for ₱ 11,200 to the sheriff as redemption price pursuant to Rule 39, Section 30 of the Rules of Court. It also appeared without dispute that the check became stale and was consequently dishonored. Issue: Whether the delivery of a check by a redemptioner to a sheriff constitutes a valid redemption? Held: Under Article 1249 of the Civil Code, "the delivery of promissory notes payable to order or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired." Inasmuch as the check in question had been dishonored, it did not constitute a valid redemption.

Otherwise stated, payment by check may be accepted and if found good and cashed, the payment is valid; however, if subsequently dishonored, it would be deemed as if no payment had ever been made at the time it was paid. (Sulpicio Guevara, 1975 Bar Review Lecture)

2) See note on Section 29: *Gorospe v. Santos.*

3) *Gonzales v. Philippine National Bank,* 48 Phil. 824 (1926): The language of the law is "sale" and it was interpreted to mean registration of the sale. The term "sale" is the same as that used in the Rules of Court, Section 30, Rule 39. That has been interpreted to mean registration of the sale. The important thing to remember in this case is that the fact that the law says "auction sale" does not change the concept or philosophy behind the reason for giving the debtor one year from the registration of the sale. (Simeon M. Gopengco, 1976 Bar Review Lecture)