Luzon Surety vs. Quebar (R 81 2-4; R 86, 1; R90 1-3) 127 SCRA 295

Luzon Surety issued 2 administrator's bond (P15,000.00 each), in behalf of Pastor T. Quebrar, as administrator of the testate estates of A. B. Chinsuy and Cresenciana Lipa,.

For the first year, premiums and documentary stamps were paid. On June 6, 1957, the CFI of Negros Occidental approved the amended Project of Partition and Accounts of Quebrar. On May 8, 1962, Luzon Surety demanded the payment of the premiums and documentary stamps but the Quebrar moved for the cancellation and/or reduction of executor's bonds on the ground that "the heirs of these testate estates have already received their respective shares". The CFI of Negros Occidental ordered the bonds cancelled.

On January 8, 1963, the Luzon Surety filed the case with the CFI of Manila. The defendants-appellants offered P1,800.00 by way of amicable settlement which the Luzon Surety refused. The lower court allowed the plaintiff to recover from the defendants-appellants. Defendants-appellants appealed to the CA. CA certified the herein case to the SC after finding that this case involves only errors or questions of law.

ISSUE: Whether or not the administrator's bonds were in force and effect from and after the year that they were filed and approved by the court up to 1962, when they were cancelled

HELD: Section 1 of Rule 81 the administrator/executor to put up a bond for the purpose of indemnifying the creditors, heirs, legatees and the estate. It is conditioned upon the faithful performance of the administrator's trust.

The surety is then liable under the administrator's bond, for as long as the administrator has duties to do as such administrator/executor. Quebrar still had something to do as an administrator/executor even after the approval of the amended project of partition and accounts. Liquidation means the determination of all the assets of the estate and *payment of all the debts and expenses*. It appears that there were still debts and expenses to be paid after June 6, 1957.

The sureties of an administration bond are liable only as a rule, for matters occurring during the term covered by the bond. And the term of a bond does not usually expire until the administration has been closed and terminated in the manner directed by law. Thus, as long as the probate court retains jurisdiction of the estate, the *bond contemplates a continuing liability* notwithstanding the non-renewal of the bond by the defendants-appellants.

The lower court was correct. The payment of the annual premium is to be enforced as part of the consideration, and not as a condition for the payment was not made a condition to the attaching or continuing of the contract. The premium is the consideration for furnishing the bonds and the obligation to pay the same subsists for as long as the liability of the surety shall exist.

Rodriguez vs. Silva R 81 2-4 90 Phil 752

This appeal is from an order of the CFI of Manila authorizing the cancellation of the bond of Pablo M. Silva who had resigned as joint administrator of the intestate estate of Honofre Leyson, deceased, and allowing Silva P600 as compensation for his services. The appellants are the remaining administrator and an heir of the deceased.

ISSUE: May the court fix an administrator's or executor's fee in excess of the fees prescribed by section 7 of Rule 86, which follows?

HELD: Yes. It will be seen from this provision that a greater sum may be allowed "in any special case, where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator." And so it has been held that "the amount of an executor's fee allowed by the CFI in any special case under the provisions of Section 680 of the Code of Civil Procedure is a matter largely in the discretion of the probate court, which will not be disturbed on appeal, except for an abuse of discretion."

The fact that the appellee is an attorney-at-law has served the estate in good stead, has served the estate in good stead, and this ought not be lost sight it. Although being a lawyer is by itself not a factor in the assessment of an administrator's fee, it should be otherwise as in this case the administrator was able to stop what appeared to be an improvident disbursement of a substantial amount without having to employ outside legal help at an additional expense to estate.

ISSUE: WON the lower court erred in cancelling Silva's administrators bond, inasmuch as few months before his

resignation, he secured the cancellation of a TCT issued in the name of Honofre Leyson, and in their stead another titles were issued in the name of Mr. Pablo M. Silva, in a doubtful manner.

HELD: There is no showing that De Silva was guilty of misappropriation or any of the acts of commission or omission for which his bond could be held liable under Rule 86. The sole ground for the insistence that this cancellation should have been withheld is that the appellee is in possession of a residential lot in Cubao, Quezon City, which belonged to the deceased Honofre Leyson. But the appellee claims that this lot was sold to him by Leyson on March 2, 1945. Certainly it was already in possession when he and appellant Rodriguez took over the administration from the special administratrix. This land therefore did not come into De Silva's hands in pursuance or in the inventory prepared by or in conjunction with one of the appellants. Even granting then, for the sake of argument, that De Silva has no valid title to this lot, the sureties are not chargeable for it on the bond. De Silva's liability is personal and exclusive of the sureties who are the parties mostly affected by the third assignment of error.

Moreover, there is a pending suit over this property and that suit affords the estate ample protection against the said property being alienated pending final disposition of the litigation.

Upon the foregoing consideration, the order appealed from is affirmed, with costs.

Advincula vs. Teodoro R 82 1 99 phil 413

Emilio Advincula was appointed special administrator, then later regular administrator of his deceased wife's estate. After he qualified as administrator, his brothers-in-law submitted a document purporting to be the deceased'd will. Emilio opposed the probate of the will on the ground that the signature was not his wife's and even if it was, the same was procured by fraud. One of the brothers-in-law, Enrique Lacson, prayed that he (Enrique) be appointed administrator in lieu of Emilio. During the hearing, it was alleged that Emilio was incompetent, incapable and unsuitable to act as administrator because Emilio is foreign to the estate". The court ruled in favor of Enrique's motion. Emilio filed an MR but the same was denied so he instituted the present action for certiorari to annul the lower court's order.

ISSUE: WON the lower court acted with GADLEJ in granting Lacson's motion

HELD: Yes. The appointment of Lacson as administrator in lieu of Advincula is predicated on the fact that Lacson was named executor of the deceased'd will. This provision, however cannot be enforced until the said will is admitted to probate.

The discovery of a will of the deceased does not ipso facto nullify letters of administration already issued or even authorize the revocation thereof until the alleged will is "proved and allowed by the court".

Furthermore, the lower court appears to have followed the argument of the respondents that Emilio, being foreign to the deceased's estate is incapable of being an administrator. This argument is untenable because from the viewpoint of logic and experience, a stranger may be competent, capable and fit to be administrator of the estate in the same way that a family member can be incompetent, incapable and unfit to do so. Besides, Emilio as the surviving spouse if a forced heir of the deceased. He is entitled to ½ of all property apart from his share of the other half thereof as heir of the deceased since "all property of the marriage is presumed to belong to the conjugal partnership"-

Lao vs. Genato (R 82 2; R89,5-7) 137 SCRA 85-86

On June 25, 1980, Sotero Jr., with due notice to all his co-heirs, moved to sell certain properties of the deceased to pay off certain debts. The motion was granted. So, Sotero Jr. sold to his son, Sotero III, the subject property which the latter sold to William Go. Respondent-heir Florida Nuqui, moved to annul the sale on the ground that it was made in violation of the court's order and that the consideration of the two sales were grossly inadequate. Sotero Jr. opposed Nuqui's motion alleging that the actual consideration of the sale was P200,000.00 and they agreed that preference will be given to close family members to keep the property within the family. Nuqui filed a Reply, stating that the two sales were but a single transaction simultaneously hatched and consummated in one occasion. The other heirs joined Nuqui's motion.

Respondent Go moved to intervene and manifested that he paid Sotero III P225,000.00 and being a purchaser in good

faith and for value, his title to the property is indefeasible pursuant to law.

On February 6, 1981, petitioner spouses moved to intervene and alleged that Sotero Jr, without revealing that the property had already been sold to William Go, entered into a Mutual Agreement of Promise to Sell to them for P270,000 which was reduced to P220,000.00; that they paid earnest money of P70,000; that the balance of P150,000 was to be paid upon the production of the TCT and the execution of the final Deed of Sale; that Sotero III the was merely a nominal party because the negotiation and transactions were between the Sotero Jr. and petitioners; that the contract of sale has been perfected because earnest money was already paid; that the sale in favor of Go was made to defraud the estate and the other heirs;

At the hearing, petitioners submitted a copy of the Contract of mortgage executed by Sotero Jr in favor of Juan Lao, one of the petitioners, whereby the former mortgaged "all his undivided interest in the estate of his deceased mother".

After several days of hearing, respondent Judge allowed all the interested parties to bid for the property. Go bid P280,000.00. Petitioners bid P282,000.00, spot cash. All the heirs, except the administrator (Sotero Jr.), filed a Motion Ex Parte stated that the offer of William Go appears the highest obtainable price and that of the petitioners was not been made within a reasonable period. So, they submitted an amicable settlement to which the petitioners opposed because they offered to buy the property for 300,000. Despite said opposition, respondent Judge approved the Amicable Settlement.

ISSUE: Whether or not respondent Judge is guilty of grave abuse of discretion in 1) approving the amicable settlement and confirming the two (2) Deeds of Sale in question; and 2) in not accepting the offer of the petitioners in the amount of P300,000.00 for the purchase of the lot in question.

HELD: Sotero Jr. as administrator occupies a position of the highest trust and confidence. In the case at bar, the sale was made necessary "*in order to settle other existing obligations of the estate*. In order to guarantee faithful compliance with the authority granted, respondent Judge ordered him "to submit to this Court for approval the transactions made by him."

The sale to his son was for the grossly low price of only P75,000,00. Dionisio III has no income whatsoever and still a dependent of Dionisio, Jr. On top of that, not a single centavo, of the P75,000.00 was ever accounted for nor reported by Dionisio, Jr. to the probate court. Neither did he submit said transaction as mandated by the order for its approval. This sale was confirmed and legalized by His HONOR's approval of the assailed Amicable Settlement. No doubt, respondent Judge's questioned approval violates Article 1409 of the New Civil Code and cannot work to confirm nor serve to ratify a fictitious contract which is non-existent and void from the very beginning. The heirs' assent to such an illegal scheme does not legalize the same.

The offer by the petitioner of P300,000.00 for the purchase of the property in question does not appear seriously disputed on record. As against the price stated in the assailed Compromise Agreement the former amount is decidedly more beneficial and advantageous not only to the estate, the heirs of the descendants, but more importantly to its creditors, for whose account and benefit the sale was made. No satisfactory and convincing reason appeared given for the rejection and/or non-acceptance of said offer thus giving rise to a well-grounded suspicion that a collusion of some sort exists between the administrator and the heirs to defraud the creditors and the government.

Gustilo vs. Sian (R 82 2) 53 SCRA 155

Agripino S. Gustilo was appointed administrator of the estate of his deceased father, Angel Gustilo; In 1925, Agrapino filed his accounts for the years 1923 to 1925, inclusive. In 1926, the widow and the other heirs moved for the removal of Agrapino for negligence, exorbitant accounts and illegal expenses, ruinous to the state under administration.

On July 16, 1927, Agrapino moved that he be granted a salary of P3,000 annually. On the same day, Agrapino presented separate accounts 1925-1926 and 1926-1927. In the first of these accounts there appeared a deficit of P462.25; while in the second there appeared a deficit of P3,222.91. Leocadia Majito, one of the creditors, opposed to the accounts, especially to the annual salary of P3,000 and the sum of P1,000 paid to his attorney. This opposition was reiterate in

writing in which exception was taken to the distribution of surplus in the amount of P11,304.50. Still later, Leocadia Majito, in a more detailed writing of opposition, pointed out that certain alleged debts had been charged twice to the estate and that no adequate vouchers were exhibited to justify the charges.

On August 23, 1927, Judge Santamaria (of the CFI of Iloilo), disapproved the accounts of the administrator and ordered him to file amended accounts within thirty days. On September 30, 1927, the administrator asked for an extension. On February 28, 1928, the administrator presented for a second time the old accounts without change.

On March 26, 1928, Judge Fernando Salas (in the absence of Santamaria) ordered the administrator to present amended accounts within ten days; but, on April 7, 1928, he reconsidered the order Judge Santamaria and at the same time approved the same two accounts.

On his order the opposing creditors do not appear to have received due notices. On June 26, 1928, the attorney for the appellant moved for reconsideration of Judge Salas' order, alleging fraud, mistake and surprise, for the removal of the administrator and for forfeiture of his bond.

ISSUE: WON Judge Salas erred in approving the two accounts;

HELD: Yes. It was improvident, to say the least, and made without a reasonable opportunity having been given to the adverse creditors to make effective opposition.

We hereby set aside the order of Judge Fernando Salas of April 7, 1928, with the result of the proceedings will be restored to the position in which they stood before that order was entered, except as stated in the next paragraph.

A careful examination of the facts revealed in this record concerning the activities of Agripino S. Gustilo, as administrator of Angel Gustilo, convinces this court that he is not a fit person to be administrator of this estate and that he has not in fact administered it so far with due regard to the rights of other persons in interest. It is the opinion of the court, therefore, that he should be removed and required to render his accounts as administrator. However, to order the forfeiture of the bond of the administrator would be premature.

RULE 82 SEC 2-4
GONZALES VS. AGUINALDO

FACTS: This is an intestate proceeding of the estate of Gonzales Vda. de Favis. The court appointed Beatriz F. Gonzales and Teresa Olbes as coadministratrices of the estate of Gonzales Vda. de Favis.

While Beatriz was in the US, Olbes filed a motion to remove the former as co-administratrix, on the ground that she is incapable or unsuitable to discharge the trust and had committed acts and omissions detrimental to the interest of the estate and the heirs.

The court issued an Order requiring Beatriz and the other parties to file their opposition. Only Asterio Favia opposed the removal of Beatriz as co-admistratrix, as the latter was still in the United States attending to her ailing husband. The Judge cancelled the letters of administration granted to Beatriz and retained Olbes as the administratrix of the estate. The court reasoned that Beatriz has been absent from the country as she is in the United States and she has not returned even up to this date and her removal is necessary so that the estate will be administered in an orderly and efficient manner.

Beatriz moved to reconsider the order. This was denied.

Beatriz now contends that court's Order should be nullified on the ground of grave abuse of discretion, as her removal was not shown by Olbes to be anchored on any of the grounds provided under Section 2, Rule 82.

HELD:

DOCTRINE: The court is invested with ample discretion in the removal of an administrator. However, the court must have some fact legally before it in order to justify a removal. There must be evidence of an act or omission on the part of the administrator not conformable to or in disregard of the rules or the orders of the court, which it deems sufficient or substantial to warrant the removal of the administrator.

In the present case, the court a quo did not base the removal of Beatriz as co-administrratrix on any of the causes specified in Olbes's motion for relief of Beatriz. Neither did it dwell on, nor determine the validity of the charges brought against Beatriz by Olbes Olbes.

1. The court based the removal of Beatriz on the fact that

in the administration of the estate, conflicts and misunderstandings have existed between Beatriz and Olbes which allegedly have prejudiced the estate.
Certainly, it is desirable that the administration of the deceased's estate be marked with harmonious relations between coadministrators. But for mere disagreements between such joint fiduciaries, without misconduct, one's removal is not favored. Conflicts of opinion and judgment naturally, and, perhaps inevitably, occur between persons with different interests in the same estate. Such conflicts, if unresolved by the coadministrators, can be resolved by the probate court to the best interest of the estate and its heirs.
Further, the court a quo failed to find hard facts showing that the conflict were unjustly caused by Beatriz, or that Beatriz was guilty of incompetence in the fulfillment of her duties, or prevented the management of the estate according to the dictates of prudence, or any other act or omission showing that her continuance as co-administratrix of the estate materially endangers the interests of the estate.
2. The court removed Beatriz also on the ground that she had been absent from the country.
In her motion for reconsideration, Beatriz explained that her absence from the country was due to the fact that she had to accompany her ailing husband to the US. Also, Beatriz's absence from the country was known to Olbes, and that the latter and Beatriz had continually maintained correspondence with each other with respect to the administration of the estate during Beatriz's absence. As a matter of fact, Beatriz, while in the US, sent Olbes a letter addressed to the Land Bank authorizing her (Olbes) to receive, and collect the interests accruing from the Land Bank bonds belonging to the estate, and to use them for the payment of accounts necessary for the operation of the administration. These facts show that Beatriz had never abandoned her role as co-administratrix of the estate nor had she been remiss in the fulfillment of her duties. Suffice it to state, temporary absence in the state does not disqualify one to be an administrator of the estate.
Thus, as held in re Mc Knight's Will a temporary absence from the state on account of ill health, or on account of business, or for purposes of travel or pleasure is not such a removal from the state as to necessitate his removal as executor.
3. Finally, it seems that the court refuge in the fact that two (2) of the other three (3) heirs of the estate of the deceased have opposed the retention or re-appointment of Beatriz as co-administratrix of the estate. Suffice it to state that the removal of an administrator does not lie on the whims, caprices and dictates of the heirs or beneficiaries of the estate, nor on the belief of the court that it would result in orderly and efficient administration.
As the appointment of Beatriz Beatriz F. Gonzales was valid, and no satisfactory cause for her removal was shown, the court a quo gravely abused its discretion in removing her. Stated differently, Beatriz Beatriz F. Gonzales was removed without just cause. Beatriz is ordered reinstated as coadministratrix of said estate.

COBARRUBIAS VS. DIZON (SPANISH)

DOCTRINE as found in Herrera book:
The grounds enumerated by the rule (R82Sec 2) are not exclusive.
Thus, where the appointment of an administrator was procured thru false or incorrect representations, the power of the probate court to remove the appointment on that ground is beyond question. This is so, because the position of the administrator is one of confidence. Once the court finds the appointee to the position not entitled to that confidence, it is justified in withdrawing the appointment and giving no valid efficacy thereto.

CABRIEL VS. COURT OF APPEALS and ROBERTO GABRIEL

After the death of Domingo Gabriel, Roberto (son) filed with the RTC Mla a petition for letters of administration.
The court below issued an order setting the hearing of the petition . The court further directed the publication of the order. No opposition having been filed despite such publication of the notice of hearing, Roberto was allowed to present his evidence ex parte. Thereafter, the probate court appointed Roberto as administrator of the intestate estate.
Petitioners Nilda, Eva, Boy, George, Rosemarie, and Maribel, all surnamed Gabriel, filed their "Opposition and Motion" praying for the recall of the letters of administration issued to Roberto and the issuance of such letters instead to petitioner

Nilda Gabriel, as the legitimate daughter of the deceased, or any of the other oppositors who are the herein petitioners. Petitioners alleged that (1) they were not duly informed by personal notice of the petition for administration; (2) petitioner Nilda Gabriel, as the legitimate daughter, should be preferred over Roberto; (3) Roberto has a conflicting and/or adverse interest against the estate because he might prefer the claims of his mother and (4) most of the properties of the decedent have already been relinquished by way of transfer of ownership to petitioners and should not be included in the value of the estate sought to be administered by Roberto.
The probate court denied the opposition of petitioners.
HELD:Under the Rules, the widow is preferred as administrator because she is supposed to have an interest therein as a partner in the conjugal partnership. Under the law, the widow would have the right of succession over a portion of the exclusive property of the decedent, aside from her share in the conjugal partnership. Failure to apply for letters of administration for thirty (30) days after the decedent's death is not sufficient to exclude the widow from the administration. In the case at bar, there is no compelling reason sufficient to disqualify Felicitas Jose-Gabriel from appointment as administratrix of the decedent's estate.
(RULE 82 Sec 2)
On the other hand, the appointment of Roberto should not be nullified. The determination of a person's suitability for the office of judicial administrator rests, to a great extent, in the sound judgment of the court exercising the power of appointment and said judgment is not to be interfered with on appeal unless the said court is clearly in error. Administrators have such a right and corresponding interest in the execution of their trust as would entitle them to protection from removal without just cause. Thus, Section 2 of Rule 82 provides the legal and specific causes authorizing the probate court to remove an administrator.
DOCTRINE: A mere importunity by some of the heirs of the deceased, there being no factual and substantial bases therefor, is not adequate ratiocination for the removal of Roberto. Suffice it to state that the removal of an administrator does not lie on the whims, caprices and dictates of the heirs or beneficiaries of the estate.

There is no prohibition on having more than one administrator. Under both Philippine and American jurisprudence, the appointment of coadministrators has been upheld for various reasons:
1. to have the benefit of their judgment and perhaps at all times to have different interests represented
2. where justice and equity demand that opposing parties or factions be represented in the management of the estate of the deceased
3. where the estate is large or, from any cause, an intricate and perplexing one to settle
4. to have all interested persons satisfied and the representatives to work in harmony for the best interests of the estate
5. when a person entitled to the administration of an estate desires to have another competent person associated with him in the office.

The SC ordered that there be a co-administration of the estate by petitioner Felicitas Jose-Gabriel and private respondent Roberto Gabriel.

VDA. DE BACALING VS. LAGUDA

Laguda is the registered owner of residential land in Iloilo City. Many years back, petitioner and her late husband, Dr. Bacaling, with the acquiescence of Laguda, constructed a residential house on a portion of said lot paying a monthly rental.
Unable to pay the lease rental for more than one year, an action for ejectment was filed by Laguda against petitioner in her capacity as judicial administratrix of the estate of her late husband. The filing of said case spawned various court suits.
The petitioner entered into a compromise agreement (which was approved by the court) with Laguda (on the ejectment case). Said agreement provides among others that upon failure of defendant to comply with any provision of the amicable settlement within fifty (50) days the plaintiff shall be entitled to 'immediate execution to restore plaintiff in possession of the premises and to recover all the unpaid monthly rents.
For failure of the petitioner to satisfy the conditions of the settlement within the 50-day period, Laguda moved for

execution which the Court granted.
Petitioner moved to quash the writ of execution. Denied. A special order of demolition was issued upon the motion of Laguda.
Petitioner claims that since she was no longer the judicial administratrix of the estate of her late husband, Dr. Ramon Bacaling, and was no longer in control of estate funds when the stipulated obligations in the amicable settlement became due and payable, the special order of demolition could not be enforced.
HELD: DOCTRINE: Such a view is not tenable. Under Section 3, Rule 82 of the Rules of Court, petitioner's lawful acts before the revocation of her letters of administration or before her removal shall have the same validity as if there was no such revocation or removal. It is elementary that the effect of revocation of letters testamentary or of administration is to terminate the authority of the executor or administrator, but the acts of the executor or administrator, done in good faith prior to the revocation of the letters, will be protected, and a similar protection will be extended to rights acquired under a previous grant of administration.

BORROMEO VS. BORROMEO

Maximo Borromeo died leaving his widow Johanna Hofer Borromeo, and a will wherein he designated the Borromeo Bros. Estate Inc. as his sole heir and naming his brother Canuto as executor.
Proceedings having been instituted, the CFI probated the will and granted letters testamentary to Canuto.
Thereafter, the attorneys for the widow submitted an "Urgent Motion" whereby they prayed for the removal of Canuto on the grounds of negligence in the performance of his duties and unfitness to continue discharging the powers of the office.
Canuto withdrew, without authority from the court, the amount of P23,930.39 from a joint current account of Canuto and Maximo in BPI and then deposited P24,244.39 of the sum thus withdrawn in the joint account of said Canuto and his brother Exequiel. The court, for several reasons, one of them the unauthorize withdrawal of funds, decreed the removal of Canuto. On motion for reconsideration, Canuto's attorney prayed that the order be revoked or that at least, Canuto be permitted to resign.
Later, the court modified its order in the sense that said executor was "relieved of (instead of removed from) his commitments as such executor". Notwithstanding such modification Canuto appealed, contending that the modified order should be revoked.
HELD: There is no question that an order removing Canuto or administrator is appealable. But we fail to perceive the utility of the instant appeal inasmuch as Canuto begged to be permitted to resign and the court all but granted his request. Canuto got substantially what he wanted.

In any event, supposing he was removed, there were sufficient grounds therefor. One of which was the unauthorized withdrawal. Attempting to justify his attitude, Canuto points out that, according to the joint deposit agreement Exhibit H signed by Canuto and Maximo Borromeo.
“that all the moneys, interest, dividends and credits thereon shall be the property of all of us as joint owners and shall be payable to and collectible by anyone of us, during our lifetimes and after the death of any one of us shall be the sole property of and payable to the survivors, or survivor, provided that this last deposition is not contrary to provisions of laws now in force or may hereafter be in force in the Philippine Islands."
He claims, in effect, that the money deposited was his at the time he withdrew it. However, the bank only allowed him because he was the executor. Thus, he should have kept it in his account as executor.
Furthermore, and this is important, the agreement says provided that this last disposition is not contrary to provisions of laws now in force * * * in the P.I." And under Art. 1413 of the Civil Code, no alienation or agreement which the husband may make with respect to conjugal property in fraud of the wife shall prejudice her or her heirs. There is at least some ground to doubt whether the stipulation could deprive the wife of her share in the conjugal assets. The validity of the agreement could properly be the subject of debate in court; yet this executor avoided or bypassed judicial adjudication by getting the money.

Second reason. Canuto omitted to include in his report, as income of the estate, the sum which he, had received from Hacienda Plaridel. Further, he received other sums as proceeds from the farm of the deceased, but instead of depositing them in his name as executor, placed them in his joint account with his brother Exequiel.
Third reason. Canuto claimed as his own certain shares of the Interisland Gas Service in the name of Maximo, asserting that Maximo was merely his "dummy".
Conflict between the interest of the executor and the interest of the deceased is ground for removal or resignation of the former, who was thereby become unsuitable to discharge the trust. (Section 2, Rule 83.)
"Reasons for rule.--'An executor is a quasi trustee, who should be indifferent between the estate and claimants of the property, except to preserve it for due administration, and when his interest conflicts with such right and duty the county court, in the exercise of a sound discretion, may remove him.'
It becomes unnecessary to examine the other reasons which induced the trial court to let this executor go. The record discloses sufficient data justifying the order.
DOCTRINE: Further, it is a settled principle that an appellate court is disinclined to interfere with the action taken by the probate court in the matter of the removal of an executor or administrator unless positive error or gross abuse of discretion is shown.

Rule 83, Section 1
Case Number 1: Chua Tan vs. Del Rosario (October 27, 1932)

Funds belonging to the late Chua Piaco were delivered to his adopted son, Chua Toco, by way of trust. Santa Juana, the administratix of the estate of the deceased father, sought to secure an accounting of funds against del Rosario, the administratix of the estate of the deceased son. The latter refused to render an accounting of said funds. A previous CFI judgment (civil case 25797) dismissed the plaintiffs' complaint and absolved del Rosario of the complaint. On appeal, the plaintiffs alleged that the TC erred in sustaining del Rosario's defense of res judicata on the ground that the SC already decided the case. Before the SC decided on the question as to who owns the sum of money involved, the question of procedure-- WON there was res judicata-- was resolved first.

ISSUE: WON there was res judicata. (YES).

HELD: But there is a need to determine first if there is (1) identity of parties, (2) subject matter, and (3) cause of action.

(1) Identity of parties:
In case 25797 the plaintiff was Santa Juana, and the defendant was del Rosario. In the present case the plaintiffs are the presumptive heirs of the late Chua Piaco and the defendant is del Rosario. Under the law, the judicial administrator is the legal representative not only of the testate or intestate estate, but also of the creditors, and heirs and legatees, inasmuch as he represents their interest in the estate of the deceased.
Santa Juana, as administratrix of the estate of Chua Piaco, was the legal representative not only of said estate but also of its creditors and heirs. In view of this relation of agent and principal between her and the plaintiffs in the present case, the decision rendered against Santa Juana, as administratrix, in the former case is conclusive and binding upon said plaintiffs in the present case, in accordance with sec 306 of the Code of Civil Procedure.
With reference to the **parties plaintiffs**, *while there is no real identity between the plaintiff in case 25797 and the plaintiffs in the present case, nevertheless, there exists between them the* **relation of legal representation** *by virtue of which the decision rendered in such case against the former binds the latter.*
With respect to the **parties defendant**, there is no question that the defendant in the first case is the same in the present and appears in the same capacity.

(2) Identity of subject matter:
In the former case the petition was for the rendering of an accounting of certain funds alleged to have been

delivered in trust by the father to his adopted son. Here, the petition is for the partition of those same funds and their fruits between the heirs of both deceased. Thus, the subject matter of the litigation is the same and there is perfect identity of subject matter.

(3) Identity of cause of action:

In the former case and as in this case, the plaintiffs include the *same allegation of trust*, and the defendant makes the same denial, except that instead of a rendition of accounts, the partition of said funds and the products thereof is asked. The cause of action in the former case is thus identical with the cause of action in the present case, and is predicated on one and the same alleged right of action arising out of an alleged trust, and the same general denial and special defense.

Although the relief sought, the rendition of accounts in the former case, is different from the relief sought in the present case, which is the partition of funds, but the question at issue (upon the determination of which depended the granting or denial of such relief), is the same, whether Chua Piaco or Chua Toco was the owner of said funds. There is **identity of issue**, upon which depends the granting or denial of the relief sought in each of said cases, and this issue has been impliedly decided in the former case.

A final judgment upon the merits rendered against the judicial administratrix of an intestate estate, as such, in a case where she is plaintiff and the administratrix of another intestate estate, as such, is the defendant, in which she seeks to secure an accounting of funds alleged to have been delivered in trust by the deceased, represented by the plaintiff administratrix, to the other deceased, represented by the defendant administratrix, **constitutes res judicata** in another case where the heirs of the alleged donor are plaintiffs and the administratrix of the supposed trustee is defendant, and in which the partition of the same funds and the products thereof is sought between the heirs of both, under the same allegation of trust, the alleged trustee being the adopted child of the donor.

Rule 83, Section 1
Case Number 2: De Leon vs CA

De Leon was the administratix of the estate of his father. De Leon had 4 other siblings. Her brother, Ramon, filed a "Motion for Collation" claiming that their father during his lifetime gave them by gratuitous title real properties which De Leon failed to include in the inventory of their father's estate. Upon court's order, Ramon filed an Amended Motion for Collation with supporting documents. This new list however was the same as the first one filed except for properties listed in Items 6 and 7 (stating that a son, Antonio, received certain real properties). The court issued an Order acting on the Amended Motion for Collation (the disputed order in this case) and instructed De Leon to include certain properties in the probate proceedings. De Leon filed MR stating that the properties were already titled in their names years ago and that the same cannot be collaterally attacked in a motion for collation. The RTC denied the motion. De Leon filed MR but this was opposed by Ramon. De Leon filed certiorari with the CA. CA said that the assailed Order **became final** for failure of petitioners to appeal the order.

ISSUE: WON the assailed order became final. (NO).

HELD: Partly meritorious.

Contrary to CA's finding the assailed Order is merely interlocutory. The decision was contrary to jurisprudence. Under the cases cited, any aggrieved party, or a third person may bring an ordinary action for the final determination of the conflicting claims.

As stated in Garcia vs Garcia, "XXX...*should an heir or person interested in the properties of the a deceased person duly call the court's attention to the fact that certain properties, rights or credits have been left out in the inventory, it is likewise the court's duty to hear the observations, with power to determine if such observations should be attended to or not and if the properties referred to therein belong* ***PRIMA FACIE*** *to the intestate, but to no such determination is final and ultimate in nature as to the ownership of the said properties*."

A probate court whether testate or intestate, can only pass upon questions of title provisionally. The rationale is stated in Jimenez vs CA: "*The patent reason is the probate court's limited jurisdiction and the principle that questions of ownership or title which resulting the exclusion or inclusion from the inventory of the property, can only be settled in a separate action."*

The assailed Order was erroneously referred to as an Order of collation both by the RTC and the CA. For all intents and purposes, said Order was a mere order including the subject properties in the inventory (order of inclusion). The motion for collation was filed with the probate court at the early stage of the estate proceedings. The debts of the decedents were not yet paid nor the net remainder of the conjugal estate determined. The issue on collation then was still premature. Assuming the Order was a final order, it is a hornbook doctrine that a final order is appealable.

Rule 83, Sections 2-3
Case Number 1: Bachrach vs Seifert (September 20, 1949)

The will of E.M. Bachrach provided for the distribution of his properties. He devised to his wife (Mary) for life all the fruits and usufruct of the remainder of his estate after payment of legacies, bequests and gifts; that upon the Mary's death ½ of the estate should go to charitable hospitals and the other ½ shall be divided between Bachrach's **legal heirs**, to the exclusion of his brothers. The widow was the executrix of the estate. Subsequently, the 4 **legal heirs** filed a petition (which was granted) asking that Mary be authorized to pay them a monthly allowance, until they receive their share of the estate upon her death, which would be deducted from the share of the estate. From July 1940 to December 1941, Mary made the payments as ordered. During the Japanese occupation payments were suspended. Payments were resumed from August 1945 to January 1947. Thereafter, Mary declined to make further payments. The heirs petitioned for a writ of execution, praying that Mary pay the allowances in arrears. This was denied and so they filed for mandamus in the SC. SC granted mandamus.

In the meantime, Mary filed a petition recommending the liquidation of the assets of the estate *destined for charity*. She alleged that she had already paid the heirs and that the allowances paid to them were taken from the income of the estate which *belong exclusively to her as a usufructuary*, (meaning the allowances paid were advances from her personal funds). She said that unless the heirs give security, the 1/2 of the estate pertaining to them (consisting of *shares of stock)*, may not be sufficient to reimburse her estate after her death. She prayed that *she be relieved from the obligation to pay the heirs allowances and that she be authorized to sell the assets--the 1/2 destined for the heirs--to enable her to continue the payment of allowances*.

The TC, acting on the 2 petitions, said that pending the determination of the proceedings, it advised the sale of properties destined for charity AND also those of the heirs. The heirs appealed.

ISSUE: WON the lower court erred in ordering the sale. (YES).

According to the SC decision in the mandamus case, Mary had in her posesssion the sum of P351,116 which were adjudicated to and belonged, although pro indiviso, to the heirs and that the monthly allowances being paid to the heirs or due them should be paid from this sum and *not from the personal funds of the Mary*. This cash in Mary's possession corresponding to the 1/2 of the estate adjudicated to the heirs is sufficient for the allowances being paid to the heirs and that the sale of the 1/2 of the estate corresponding to them is not needed.

The main objection of the heirs to the sale of 1/2 of the estate adjudicated to them (besides the cash already mentioned, consists mostly of shares of stock) is that said shares if sold may not command a good price and that said heirs prefer to keep said shares intact as long as there is no real necessity for their sale.

Mary would then have a right and reason to refuse the payment of said allowances from her said personal funds or from the fruits of the estate, which as a usufructuary, belong to her during her lifetime. But, until that point is reached, the SC saw no valid reason for ordering the sale of the 1/2 of the estate belonging to the heirs over their objection.

Rule 83, Sections 2-3
Case Number 2: Estate of Ruiz vs. CA (January 29, 1996)

H. Ruiz executed a holographic will naming as his heirs his only son, Edmond, his adopted daughter, PR Maria Montes, and his 3 granddaughters, all children of Edmond. The testator bequeathed cash, personal and real properties and named Edmond executor. When H. Ruiz died, the cash was distributed among Edmond and PRs according to the will. One of the properties of the estate – a house and lot at Valle Verde IV, which the testator bequeathed to the granddaughters, - was leased out by Edmond to third persons. The court ordered Edmond to deposit the rental payments totalling P540K as one-year lease of the property. In compliance, Edmond turned over cash but only P348,583.

Eventually, the court approved Edmond's motion for the release of P50K to pay the real estate taxes of the estate. Edmond filed another Motion for Release of Funds. Montes opposed. She prayed for the release of the rent payments to the granddaughters and for the distribution of the Valle Verde property and the Blue Ridge apartments in accordance with the will. The court granted Montes' motion. The court, however, delayed the release of the titles.

Edmond was ordered to submit an accounting of the expenses for administration including provisions for the support of the granddaughters. Petitioner appealed to the CA. CA sustained the court's order.

ISSUE: WON the probate court, after admitting the will to probate but before payment of the estate's debts and obligations, has the authority: (1) to grant an allowance from the funds of the estate for the support of the grandchildren; (2) to order the release of the titles to certain heirs; and (3) to grant possession of all properties of the estate to the executor of the will. (NO).

HELD:

RE: #1: **Sec 3, Rule 83 of the Rules of Court** is controlling. Petitioner alleges that this provision only gives the widow and the minor or incapacitated children of the deceased the right to receive allowances for support during the settlement of estate proceedings. He contends that the granddaughters do not qualify for an allowance because they are not incapacitated and are no longer minors but of legal age, married and gainfully employed. In addition, the provision expressly states "children" of the deceased which excludes the latter's grandchildren. **It is settled that allowances for support under Section 3 of Rule 83 should not be limited to the "minor or incapacitated" children of the deceased. Article 188 (now Art 133 of the Family Code) of the Civil Code, the substantive law in force at the time of the testator's death**, provides that during the liquidation of the conjugal partnership, the deceased's legitimate spouse and children, regardless of their age, civil status or gainful employment, are entitled to provisional support from the funds of the estate. The law is rooted on the fact that the right and duty to support, especially the right to education, subsist even beyond the age of majority. Be that as it may, grandchildren are **not** entitled to provisional support from the funds of the estate. The law clearly limits the allowance to "widow and children" and does **not** extend it to the grandchildren, regardless of their minority or incapacity. It was error for the CA to sustain the probate court's order granting an allowance to the grandchildren of the testator pending settlement of his estate.

RE: # 2: The lower courts also erred when they ordered the release of the titles of the properties to PRs. An order releasing titles to properties of the estate amounts to an advance distribution of the estate which is allowed **only** under the conditions under R 109 Sec 2 in relation to R 90 (kindly read the rules; this is not under Rule 83 anyway; the other issues involve R90 and R84).

Rule 83, Sections 2-3
Case Number 2: Santero vs. CFI of Cavite (September 14, 1987)

Petitioners are the children of the late Pablo Santero with Felixberto Pacursa. PRs are 4 of the 7 children of Pablo with Anselma Diaz. Both sets of children are the natural children of Pablo since neither of their mothers, was married to him. Before the SC could act on the instant petition for certiorari, PRs filed a Motion for Allowance to include 3 other siblings of the PRs and praying that the administrator deliver the sum of P6K to each of the 7 children of Anselma as their allowance from the estate of Pablo. The CFI granted the motion of the PRs but oppositors (petitioners herein) asked the court to reconsider said Order. An Amended Order was issued by the CFI directing Anselma to submit her explanation as to the additional 3 children. Anselma in her "Clarification" stated that in her previous motions, only the last 4 minor children as represented by her were included in the *motion for support*, and her first 3 children who were then of age should have been included since all her children have the right to receive allowance as advance payment of their shares in the inheritance of Pablo under Art. 188 of the New Civil Code. Petitioners opposed the inclusion of 3 more heirs. Another Order was issued by the CFI directing the administrator to get back the allowance of the 3 additional children of Anselma apparently based on the oppositors' Motion.

ISSUE:
WON the CFI acted with GADLEJ in granting the allowance to PRs:

HELD: Certiorari dismissed.

Petitioners argue that PRs are not entitled to any allowance since they have already attained majority age, two are gainfully employed and one is married as provided for under **Sec. 3 Rule 93**, **of the Rules of Court**. Petitioners also allege that there was misrepresentation on the part of the guardian in asking for allowance for school expenses because these wards have already attained majority age so that they are no longer under guardianship.

The controlling provision of law is not Rule 83, Sec. 3 of the Rules of Court but Arts. 290 and 188 of the Civil Code. The fact that PRs are of age, gainfully employed, or married is of no moment and should not be regarded as the determining factor of their right to allowance under Art. 188. While the Rules of Court limit allowances to the widow and minor or incapacitated children of the deceased, the New Civil Code gives the surviving spouse and his/her children without distinction. Hence, the PRs Victor, Rodrigo, Anselmina and Miguel all surnamed Santero are entitled to allowances as advances from their shares in the inheritance from their father Pablo. Since the provision of the Civil Code, **a substantive law**, gives the surviving spouse and to the children the right to receive support during the liquidation of the estate of the deceased, such right cannot be impaired by Rule 83 Sec. 3 of the Rules of Court which is a procedural rule.

NOTE: with respect to "spouse," the same must be the "legitimate spouse" (not common-law spouses who are the mothers of the children here).

R 84 S 1-3
LUZ CARO v. **CA and BASILIA LAHORRA VDA. DE BENITO, ADMINISTRATRIX**
FACTS:
Alfredo Benito, Mario Benito and Benjamin Benito were the original co-owners of two parcels of land in Sorsogon. Mario died. Subsequently, his wife, Basilia and father, Saturnino were subsequently appointed as joint administrators of his estate.
Benjamin sold his one-third undivided portion to Luz Caro. Subsequently, with the consent of Saturnino and Alfredo a subdivision title was issued to Caro over Lot I-C. In 1966, Basilia Vda. de Benito learned that Caro bought from Benjamin the said one-third undivided share. She offered to redeem the said share but Caro ignored her offer. Basilia thus filed the present case to prove that as a joint administrator of the estate of Mario Benito, she had not been notified of the sale as required by Article 1620 in connection with Article 1623 of the NCC.
The judge dismissed the complaint on the grounds that: (a) private respondent, as administratrix of the intestate estate of Mario Benito, does not have the power to exercise the right of legal redemption, and (b) Benjamin Benito substantially complied with his obligation of furnishing written notice of the sale of his one-third undivided portion to possible redemptioners. The CA reversed.
ISSUE:
WON the CA erred in allowing the exercise of the right of legal redemption with respect to the lots in question
HELD:
Yes, the CA erred. As early as 1960, co-ownership of the parcels of land covered was terminated when Alfredo, Caro and the Intestate Estate of Mario, represented by administrators Saturnino and representative of the heirs of Mario Benito, agreed to subdivide the property. The title became incontrovertible after one year from its registration.
Even if there still is co-ownership and the right of legal redemption, the administratrix has no personality to exercise said right for and in behalf of the intestate estate of Mario Benito. She is on the same footing as co-administrator Saturnino Benito. Hence, if Saturnino's consent to the sale cannot bind the intestate estate of Mario Benito on the ground that the right of redemption was not within the powers of administration, in the same manner, Basilia as co-administrator has no power to exercise the right of redemption of the undivided share sold to a stranger by one of the co-owners after the death of another because in such case, the right of legal redemption only came into existence when the sale to the stranger was perfected and formed no part of the estate of the deceased co-owner. Hence, that right cannot be transmitted to the heir of the deceased co-owner. Basilia cannot be considered to have brought this action in her behalf and in behalf of the heirs of Mario Benito because the jurisdictional allegations of the complaint specifically stated that she brought the action in her capacity as administratrix of the intestate estate of Mario Benito.
ESTATE OF AMADEO MATUTE OLAVE vs. **CA**
FACTS:
The estate of Amadeo Matute Olave (AMO) is the owner of a parcel of land in Davao (OCT 0-27). Southwest Agricultural Marketing Corporation (SAMCO) filed a collection case with the CFI of Davao against Carlos V. Matute and Matias S. Matute, co-administrators of the estate of AMO. Carlos and Matias denied their lack of knowledge and questioned the legality of the claim of SAMCO. The CFI of Manila directed the administrators to secure the probate court's approval before entering into any transaction involving the seventeen (17) titles of the estate, of which OCT No. 0-27 is one. The parties (CFI Davao) submitted to the CA an Amicable Settlement whereby OCT No. 0-27 was conveyed and ceded to SAMCO as payment of its claim. The said Amicable Settlement was not submitted to and approved by the then CFI of Manila. In 1967, the CA approved the said Amicable Settlement and gave the same the enforceability of a court decision.
Issue: WON the amicable settlement needs to be approved by the probate court
HELD: YES, the amicable settlement needs to be approved by the probate court.
The claim of private respondent SAMCO being one arising from a contract may be pursued only by filing the same in the administration proceedings in the CFI of Manila for the settlement of the estate of the deceased Amadeo Matute

Olave; and the claim must be filed within the period prescribed, otherwise, the same shall be deemed "barred forever." (Section 5, Rule 86, Rules of Court).

The purpose of presentation of claims against decedents of the estate in the probate court is to protect the estate of deceased persons. That way, the executor or administrator will be able to examine each claim and determine whether it is a proper one which should be allowed. Further, the primary object of the provisions requiring presentation is to apprise the administrator and the probate court of the existence of the claim so that a proper and timely arrangement may be made for its payment in full or by pro-rata portion in the due course of the administration, inasmuch as upon the death of a person, his entire estate is burdened with the payment of all of his debts and no creditor shall enjoy any preference or priority; all of them shag share pro-rata in the liquidation of the estate of the deceased.

Section 1, Rule 73 of the Rules of Court, expressly provides that "the court first taking cognizance of the settlement of the estate of a decedent, shall exercise jurisdiction to the *exclusion* of all other courts." The law is clear that where the estate of the deceased person is already the subject of a testate or intestate proceeding, the administrator cannot enter into any transaction involving it without prior approval of the probate court.

MAURO P. MANANQUIL vs. **ATTY. CRISOSTOMO C. VILLEGAS**

FACTS:

As early as 1961, Villegas was retained as counsel of record for Felix Leong, one of the heirs of the late Felomina Zerna, who was appointed as administrator of the Testate Estate of the Felomina Zerna. A lease contract was executed between Felix Leong and the "Heirs of Jose Villegas" involving sugar lands of the estate. Felix Leong was designated therein as administrator and "owner, by testamentary disposition, of 5/6 of all said parcels of land.." Mananquil, appointed special administrator after Felix Leong died, alleges that over a period of 20 years, Villegas allowed lease contracts to be executed between his client Felix Leong and a partnership HIJOS DE JOSE VILLEGAS, of which Villegas is a partner, under iniquitous terms and conditions. Moreover, complainant charges that these contracts were made without the approval of the probate court and in violation of Articles 1491 and 1646 of the new Civil Code.

ISSUE: WON Villegas committed acts of misconduct in failing to secure the approval of the court in Special Proceedings No. 460 to the various lease contracts executed between Felix Leong and respondent's family partnership.

HELD: No. Pursuant to Section 3 of Rule 84 of the Revised Rules of Court, a judicial executor or administrator has the right to the possession and management of the real as well as the personal estate of the deceased so long as it is necessary for the payment of the debts and the expenses of administration. He may, therefore, exercise acts of administration without special authority from the court having jurisdiction of the estate. For instance, it has long been settled that an administrator has the power to enter into lease contracts involving the properties of the estate even without prior judicial authority and approval.

Thus, considering that administrator Felix Leong was not required under the law and prevailing jurisprudence to seek prior authority from the probate court in order to validly lease real properties of the estate, respondent, as counsel of Felix Leong, cannot be taken to task for failing to notify the probate court of the various lease contracts involved herein and to secure its judicial approval thereto.

R 85 1-5

BERNARDO PICARDAL and SEBASTIAN PICARDAL vs. CENON LLADAS

Facts: Bernardo Picardal entrusted to Cenon Lladas a piece of land at Lanao del Norte. This land formed part of the properties belonging to the conjugal partnership between Bernardo and his wife, Aurea, and was under judicial administration. The property was not yet partitioned among the heirs. Cenon Lladas entered the landholding and was appointed as special administrator of Aurea's estate. Picardal asked Lladas to vacate because of his unsatisfactory practices. Lladas then filed a petition with CAR. Picardal answered that the landholding in question was a part of the property of the late Aurea Burgos and was the subject of administration proceedings and that they have never notified Cenon Lladas to vacate the premises, and that the

landholding in question was under *custodia legis*.
Lladas stopped harvesting after May 1960. Lladas amended his petition saying that he had been ejected from the landholding and that as a result of the ejectment, he suffered damages in not receiving his share of the produce. The CAR and the SC held that Lladas had been ejected
ISSUE: WON the estate, which is in the hands of the administratrix and not with herein petitioners, should be liable for the damages
Held: No, the estate should not be liable for damages.
Bernardo Picardal and Sebastian Picardal were the ones who ejected Cenon Lladas, according to the finding of the lower court. They, therefore, Should be the ones to suffer the consequences of their unlawful act.
The Picardals' responsibility for the damages cannot be shifted to the intestate estate for the following reasons:
Even if it be assumed, *gratia argumenti*, that the special administrator acquiesced to the ejectment, the estate would still not be liable, because if Section 5, Rule 85 of the Rules of Court makes the administrator himself liable for any waste committed in the estate through his negligence, with more reason would he be personally responsible, and not the estate, for the consequences of his unlawful act.
The fact that the proceeds of the landholding in question, as claimed by petitioners, were turned over to the estate, would neither render the estate liable, because the intestate estate did not really benefit from the dispossession.
The intestate estate before partition is owned in common by all the heirs (Article 1078, Civil Code). A co-ownership should not suffer the consequences of the unlawful act of any of the co-owners (Article 501, Civil Code).
Under A18 of the CC, petitioners themselves, and not the intestate estate, should indemnify the respondent for the damages suffered by the latter on account of the unlawful dispossession.

R 85 S 6-7

INTESTATE ESTATE OF CARMEN DE LUNA vs.**IAC**

In 1964, Jose de Luna Gonzales and former Judge Ramon Icasiano were appointed co-administrators of the estate of Carmen de Luna. Judge Icasiano died so Gonzales performed his duties as sole administrator of the estate. Gonzales filed a motion for allowances and payment of administrator's commission in accordance with Section 7, Rule 85 of the Rules of Court leaving the matter to the discretion of the court.
The TC required the administrator to define the fees he was demanding. Jose de Luna Gonzales died. His heirs filed in his behalf an Urgent Supplemental Motion for allowances and payment of administrator's commission or fees. One of the heirs opposed.
The TC directed the new administratrix to submit a complete and sworn inventory of all the properties of the deceased, indicating therein the current values of each and with respect to the real properties, the current assessed and market value.
The administratrix filed the inventory where the total of the real and personal property of the estate was listed at P10,751, 189.97.
The TC granted 500,000.00 by way of compensation of the deceased administrator Jose de Luna for the services rendered by him as such administrator of the estate of Carmen de Luna. Subsequently, the court granted the administratrix's motion for authority to withdraw from bank deposits and to mortgage estate properties.
ISSUE:
Whether or not Jose de Luna Gonzales is entitled to the amount of P500, 000.00 by way of compensation as administrator of the estate of Carmen de Luna.
HELD: YES, Jose Gonzales is entitled to 500,000.
The applicable provision is the proviso which states: "in any special case, where the estate is large and the settlement has been attended with great difficulty and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed." A wide latitude, leeway or discretion is therefore given to the trial court to grant a greater sum. And the determination of whether the administration and liquidation of an estate have been attended with greater difficulty and have required a high degree of capacity on the part of the executor or administrator rests on the sound discretion of the court which took cognizance of the estate.
The records of the case is replete with evidence to prove that the late administrator Jose de Luna Gonzales had taken good

care of the estate and performed his duties without any complaint from any of the heirs.
While it may be true that the inventory of the properties of the estate as of April 25, 1975 was only P 890,865.25 it has been shown that the value of the estate has increased not only by the efforts of the late administrator to take good care of the same but in succeeding to locate other properties belonging to the estate so that when he submitted the inventory of the properties, real and personal of the estate as of April 13, 1980 the total appraisal thereof appears to be over P10 M. No objection thereto appears to have been interposed.

ASINAS v. CFI OF ROMBLON

FACTS: In 1926, an application for the probate of what purports to be the will of the deceased Mauricio Asinas was filed in the CFI of Romblon. Opposition to the will was entered by respondent Felisa Asinas, alleging that she is an acknowledged natural daughter of Mauricio Asinas. Since petitioner Catalina Asinas denied Felisa Asinas' right to intervene in the proceeding for the probate of said alleged will, the court proceeded to determine whether said respondent is really an acknowledged natural daughter of the deceased.
After the hearing, the court authorized Felisa Asinas to intervene in said probate proceeding as well as in the administration of the said deceased's state, and granted her, moreover, P200 travelling expenses for herself and her witnesses, chargeable to the funds under administration.
Petitioner Calalina Asinas thus filed this original petition for a writ of prohibition against the CFI of Romblon and Felisa Asinas.
ISSUE: W/N the respondent court exceeded its jurisdiction in ordering that the expenses incurred by Felisa Asinas' appearance in court and that of her witnesses be charged to the funds under administration. (YES)
HELD: These expenses cannot be considered as administration expenses, inasmuch as they are not necessary either for the management of the property or its protection from destruction of deterioration, or for the production of fruits.
The expenses of administration should be those necessary for the management of the property, for protecting it against destruction or deterioration, and possibly for the production of fruits; but the sum expended by an administrator of an extensive administration of the estates of the decedent cannot be considered "expenses of administration."
Although a CFI has jurisdiction to authorize a judicial administrator of a decedent's estate to make certain expenses for the benefit of said estate, or to approve those already made, such jurisdiction is confined to expenses strictly necessary for the good management thereof. Thus, respondent court exceeded its jurisdiction.
However, the respondent court's decree was final in character and appealable, without the necessity of waiting for the termination of the administration. As there is another plain, speedy and adequate remedy in the ordinary course of justice, namely, an appeal, prohibition cannot lie.
The petition is dismissed.

JOHANNES v. IMPERIAL

FACTS: Petitioner, B. E. Johannes, is the husband of the deceased Carmen Theodora Johannes, who, at the time of her death, was a resident of Singapore, and a British citizen. Petitioner is likewise a British citizen and resident of Singapore. At the time of her death, Carmen had money on deposit in PNB Manila.
Petitioner claims that the deceased left no will and that under British law, the husband of a deceased wife is the sole heir, to the exclusion of all others, of the property of his wife when she dies intestate
Upon the death of his wife, the petitioner was duly appointed as administrator of her estate by the court at Singapore. However, Almeida, brother of the deceased and a resident of the Philippines, was appointed as ancillary administrator over her properties in the Philippines.
In a separate civil case, Johannes then filed a petition for certiorari and a temporary injunction, praying for the annulment of the appointment of D' Almeida as ancillary administrator and for the issuance of an order directing the PNB to deliver to B. E. Johannes all of the funds of said deceased, now on deposit. Upon a hearing, however, the SC dismissed this petition.
After the decision was rendered, petitioner came to Manila

and claims to have established a temporary residence at the Manila Hotel, based upon which, in legal effect, he asked for an order of court that D'Almeida be removed as ancillary administrator, and that he be appointed.
The CFI denied this petition, hence this appeal, praying for, among other things, the payment against the estate for attorneys' fees incurred by the petitioner.
ISSUE: W/N attorney's fees incurred by petitioner should be charged against the funds under administration. (NO)
HELD: It is the duty of the court to protect the estate from any illegal, unjust, or unreasonable charges. All claims against the estate should be for just debts only, or for the actual expenses of administration, and those should be reasonable. No other claims should be allowed.
If, as claimed, the real dispute here is whether the brothers and sisters of the deceased are entitled to share in her estate, or whether the petitioner only, as the surviving husband, is entitle to all of it, that question is not one of administration, and any expense and attorneys' fees incurred by either party for the settlement of that question is a personal matter to them, and should not be allowed as claims against the estate. Claims against the estate should only be for just debts or expense for administration of the estate itself.

SULIT v. SANTOS

FACTS: This is an appeal from orders of the CFI of Rizal, disallowing certain items of the account rendered by the executor of the estate of the deceased Fruto Santos.
One of the contested items is a claim of P500 for attorney's fees, which the trial judge reduced to P250. The action of the presiding judge was predicated on the failure of the executor to secure authority from the court for the incurring of expenses for legal services, and on the fact that some of the service performed by the attorney should have been performed by the executor personally.
It is well settled that the Court of First Instance has a discretionary right to fix attorney's fees in testamentary proceedings pending before it, and no improper misuse of that discretion is here disclosed.
However, the trial judge further refused to permit the executor to secure reimbursement from the estate for money paid as premium on the bond filed by him as special administrator, and for the preparation, filing, and substitution of his bond as such and as executor of the estate.
ISSUE: W/N the expenses incurred by an executor or administrator to procure a bond is a proper charge against the estate. (NO)
HELD: The position of an executor or administrator is one of trust. It is proper for the law to safeguard the estates of deceased persons by requiring the executor or administrator to give a suitable bond. The ability to give this bond is in the nature of a qualification for the office. The execution and approval of the bond constitute a condition precedent to acceptable of the responsibilities of the trust.
If an individual does not desire to assume the position of executor or administrator, he may refuse to do so. On the other hand, when the individual profers an adequate bond and has it approved by the probate court, he thereby admits the adequacy of the compensation which is permitted his pursuant to law.
The expense incurred by an executor or administrator to procure a bond is not a proper charge against the estate. Section 680 of the Code of Civil Procedure does not authorize the executor of administrator to charge against the estate the money spent for the presentation, filing, and substitution of a bond.
Separate Opinion
IMPERIAL, *J.,* concurring and dissenting in part:
We concur with the majority in so far as the attorney's fees are concerned. However, appellant should be credited with the sum which he paid for the premium, preparation, and filing of his bond.
While Code of Civil Procedure does not expressly authorize the reimbursement, by way of administration expenses, of the premium the administrator or executor has had to pay upon the bond, the same is true of attorney's fees, and yet we have uniformly held that such fees constitute legal expenses of administration, for which the administrator is entitled to reimbursement. Since the same reason exist (in both cases), we do not see why they should not be decided the same way.

OCCEÑA v. MARQUEZ

FACTS: Petitioners, Atty. Jesus Occeña and Atty. Samuel Occeña, are the lawyers for the estate executrix, Mrs. Necitas Ogan Occeña, and they had been representing the said executrix since 1963, defending the estate against claims and protecting the interests of the estate.

In order to expedite the settlement of William Ogan's estate, the seven instituted heirs decided to enter into compromise with the claimants, as a result of which the total amount of P220,000.00 in cash was awarded to the claimants, including co-executor Atty. Isabelo V. Binamira, his lawyers and his wife. A partial distribution made to the heirs in the total amount of P450,000.00.

Petitioners filed a Motion for Partial Payment of Attorneys' Fees, asking the court to approve payment to them of P30,000.00, as part payment of their fees for their services as counsel for the executrix since 1963, and to authorize the executrix to withdraw the amount from the deposits of the estate and pay petitioners.

Three of the heirs moved to defer consideration of the motion until after the total amounts for the executrix's fees and the attorney's fees of her counsel shall have been agreed upon by all the heirs. Later, five of the seven instituted heirs filed with the court a Manifestation stating that they had no objection to the release of P30,000.00 to petitioners as partial payment of attorney's fees and recommending approval of petitioners' motion.

Respondent Judge issued an order fixing the total fees of petitioners for the period March, 1963 to December, 1965 at P20,000.00. Petitioners moved to reconsider that order. Respondent issued an order not only denying petitioners' Motion for Reconsideration but also modifying the original order by fixing petitioners' fees for the entire testate proceedings at P20,000.00.

Petitioners contend that respondent Judge acted with gadlej in fixing the entire attorney's fees to which they are entitled as counsel for the executrix, and in fixing the said fees in the amount of P20,000.00.

In his Answer to the petition, respondent Judge alleged that (a) petitioners' proper remedy is appeal and not a special civil action, considering that there is already a final order on the motion for payment of fees; (b) petitioner Atty. Samuel Occeña is the husband of executrix Necitas Ogan Occeña, hence, Samuel Occeña's pecuniary interest now goes against the pecuniary interest of the four heirs he is representing in the special proceeding; (c) there are miscellaneous payments appearing in the compromise agreement and in the executrix's accounting which cover expenses incurred by petitioners for the estate; and (e) it is the duty of respondent Judge not to be very liberal to the attorney representing the executrix, who is at the same time the wife of said counsel and is herself an heir to a sizable portion of the estate, for respondent Judge's duty is to see to it that the estate is administered "frugally," "as economically as possible," and to avoid "that a considerable portion of the estate is absorbed in the process of such division," in order that there may be a worthy residue for the heirs.

ISSUE: W/N Judge Marquez acted with gadlej when he fixed the attorney's fees solely on the basis of the records of the case, without allowing petitioners to adduce evidence to prove what is the proper amount of attorney's fees to which they are entitled for their entire legal services to the estate. (YES)

HELD: The rule is that when a lawyer has rendered legal services to the executor or administrator to assist him in the execution of his trust, his attorney's fees may be allowed as expenses of administration. The estate is, however, not directly liable for his fees, the liability for payment resting primarily on the executor or administrator. If the administrator had paid the fees, he would be entitled to reimbursement from the estate.

There is no question that the probate court acts as a trustee of the estate, and as such trustee it should jealously guard the estate under administration and see to it that it is wisely and economically administered and not dissipated. This rule, however, does not authorize the court, in the discharge of its function as trustee of the estate, to act in a whimsical and capricious manner or to fix the amount of fees which a lawyer is entitled to without according to the latter opportunity to prove the legitimate value of his services. Opportunity of a party to be heard is admittedly the essence of procedural due process.

In fixing petitioners' attorney's fees solely on the basis of the

records of the case, without allowing petitioners to adduce evidence to prove what is the proper amount of attorney's fees to which they are entitled for their entire legal services to the estate, respondent Judge committed a grave abuse of discretion correctable by *certiorari*.
The court *a quo* is directed to hold a hearing to determine how much the total attorney's fees petitioners are entitled to.

PALILEO v. MENDOZA

(Digest to come later... but here is the case itself...)
Despues del fallecimiento de Baldomero Cosme, que dejo hijos menores, entre ellos, la demandada Rosario Cosme de Mendoza, los servicios del abogado Aurelio Palileo fueron solicitados con el objjecto de que tanto los hijos menores del difunto comno los bienes que dejo estuviernal al amparo de la ley. El abogado Sr. Aurelio Palileo promovio entonces, para estos fines, la tutela de los hijos menores del difunto Baldomero Cosme, promovio abintestato de este, y, con el fin de que el abintestato pudiera cobrar un credito hipotecario contra una deudora ya difunta, llamanda Victorina Torres, promovio tambien el abintestato de esta, y, finalmente, contra el abintestayo Victorina Torres promovio el correspondiente juicio para la ejecucion de la hipoteca en favor del abintestato de Baldomero Cosme. En este juicio de ejecucion de hipoteca se dicto sentencia contra la deudora en favor del abintestato de Baldomero Cosme para el pago de la dueda y de la cantidad de P1,400 por honorarios de abogado.
La presente accion la entabla el demandante Aurelio Palileo contra la demandada, como administrador del abintestato de Baldomero Cosme, para cobrar la cantidad de P2,200, importe de sus servicios prestados, segunnse ha dicho antes. El Juzgado de Primera Instancia fallo la causa en favor del demandante, pero redujo a P1,400 el importe de los honorarios reclamados, deduciendo ademas de esta cantidad la de P500 que la demandad ha pagado ya con anterioridad, a cuenta de los mismos servicios.
En la causa Escueta *contra* Sy-Julliong (Jur. Fil., tomo 5, 425), este Tribunal sento la doctrina de que en los casos como el presente el acreedor puede entablar una accion contra el administrador, como persona particular, el cual, si se dicta sentencia contra el, puede incluir en su cuenta, como gasto de administracion, la cantidad que a este efecto haya pagado, o, puede tambien dicho acrredor solicitar en el expediente de administracion el pago de esta cantidad, como gasto de administracion. En el presente caso el demandante no entabla su accion contra la demandada como persona particular, sino como administradora judicial de los bienes del difunto Baldomero Cosme.
No procede, por tanto, esta accion, pero, el demandante puede solicitar el pago de la cantidad que reclama, como, gastos, en el expediente de la administracion de los bienes del difunto Baldomero Cosme. Resulta ademas que, de hecho, el demaqndante, antes de entablar la presente accion, ha solicitado ya en dicho expediente el pago de la misma cantidad, hallandose al presente pendiente de resolucion dicha solicitud.
Por estas consideraciones se absuelve a la demandada, sin perjuicio de la resolucion que se dicte sobre esta misma recamacion del demandante el la administracion de los bienes del difunto Baldomero Cosme, con las costas. Asi se ordena.

UY TIOCO vs. **IMPERIAL** 53 Phil 802

FACTS: Panis was counsel for the administration of the estate of deceased Yangco. Before the final settlement of accounts, he presented a motion in the probate proceedings for the allowance of attorney's fees in the sum of P15,000. The judge granted the motion and allowed the fees claimed by Panis.
ISSUE: W/N the attorney’s fees should be paid from the funds of the estate.
HELD: The services for which the fees are being sought were rendered to the executor or administrator to assist him in the execution of his trust. The attorney can therefore not hold the estate directly liable for his fees. The liability for the payment rests on the executor or administrator, but if the fees paid are beneficial to the estate and reasonable, he is entitled to the reimbursement from the estate. Such payment should be included in his accounts and the reimbursement therefore settled upon the notice prescribed in section 682 of the Code of Civil Procedure.

J. GONZALES-ORENSE vs. **CA** 163 SCRA 570

FACTS: Orense was retained by Alba to represent her in the probate of her husband's will. He claimed the stipulated attorney's fees equivalent to 10% of the estate but the

probate court allowed him only P20,000.00 on the basis of *quantum meruit.* He filed a notice of appeal from this order, and the probate court then transmitted the records of the case to the CA. Orense submitted the brief for the appellant. Alba traversed with her brief for the appellee. However, the CA declared Orense's appeal abandoned and dismissed for his failure to submit his record on appeal.

ISSUE: W/N, when an award of attorney's fees by the probate court is elevated to the CA, a record on appeal is necessary.

HELD: The decisive provision is Rule 109, Section 1, of the Rules of Court. It is settled that the fees of the lawyer representing the executor or administrator are directly chargeable against the client for whom the services have been rendered and not against the estate of the decedent. However, the executor or administrator may claim reimbursement of such fees from the estate if it can be shown that the services of the lawyer redounded to its benefit.

As Orense's claim for attorney's fees is not a claim against the estate of Alba's husband, he could have filed it in an ordinary civil action, in which event an appeal therefrom will not be regarded as involved in a special proceeding requiring the submission of a record on appeal. It appears, however, that it was not filed in such separate civil action but in the probate case itself, which is a special proceeding and so should be deemed governed by Rule 109 on appeals from such proceedings. The appeal would come under Subsection (e) thereof as the order of the probate court granting the challenged attorney's fees "constitutes, in proceedings relating to the settlement of the estate of a deceased person, or the administration of a trustee or guardian, a final determination in the lower court of the rights of the party appealing." The consequence is that the record on appeal should be required.

Rule 50, Section 1 provides that an appeal may be dismissed by the CA, on its own motion or on that of the appellee, for (b) *Failure* to file, within the period prescribed by these rules, the notice of appeal, appeal bond or *record on appeal.* On the basis of this rule, the resolution of CA dismissing Orense's appeal cannot be faulted.

It is noted, however, that the question presented in this case is one of first impression; that Orense acted in honest if mistaken, interpretation of the applicable law; that the probate court itself believed that the record on appeal was unnecessary; and that Alba herself apparently thought so, too, for she did not move to dismiss the appeal and instead impliedly recognized its validity by filing the appellee's brief. In view of these circumstances, and in the interest of justice, the Court feels that Orense should be given an opportunity to comply with the rules by submitting the required record on appeal as a condition for the revival of the appeal.

ILUMINADA DE GALA-SISON vs. **MADDELA** 67 SCRA 478

FACTS: The CFI issued an order directing the administratrix to deposit with any reputable banking institution the remainder of the amount of P40,938.56, which may be in her possession, after deducting the expenses approved by the court and the allowances and inheritances authorized by the court to be given to the widow and the heirs of the deceased.

The administratrix did not comply with the order. She contends that she cannot be compelled to deposit in a bank what she no longer has, considering that she is entitled to the deductions which she made from the original amount, for as administratrix, she is to be reimbursed for her expenditures and to deduct her fees as such administratrix. She therefore prayed for the payment of P22,000.00 "as the payment of her fees as administratrix.

ISSUE: W/N administratrix Iluminada de Gala-Sison may be allowed payment of P22,000 for her fees as administratrix.

Held: Pursuant to Section 7 of Rule 85 of the Rules, the administrator may be allowed a greater or additional sum "where the estate is large, and the settlement has been attended with great difficulty, and has required a high degree of capacity on the part of the executor or administrator". It must be noted that the administratrix is seeking as her compensation an amount greater than that ordinarily allowed under the rules on the ground that the estate is large, its settlement "having been attended with great difficulty (since 1947 or almost 17 years ago) and required a high degree of capacity". In order to entitle the executor or administrator to additional compensation, the estate must be large, the settlement extraordinarily difficult, and a high degree of capacity demonstrated by him. The amount of his fee in special cases under the Rules is a matter largely in the

discretion of the probate court, which will not be disturbed on appeal, except for an abuse of discretion. Whether or not the probate court abused its discretion would depend on the attendant facts.

ROSENTOCK vs. ELSER 48 Phil 709

FACTS: Upon the death of Henry Elser, Rosentock filed a petition praying that he be appointed as executor of the estate.

Rosentock was appointed executor. He filed a petition praying that he be allowed P1,000/month as compensation as administrator of the estate. Rosentock alleged that the work of administering the estate is such as to require an unusual amount of time, owing to its size and involved condition. The said amount had also been agreed upon by all the parties in the case. The court granted the petition.

The widow of Elser filed a petition asking that the order be revoked and that the compensation of the executor should be based upon the provisions of Section 680 of the Code of Civil Procedure. The judge revoked the order and fixed the compensation at P400/month.

ISSUE: W/N the compensation of the executor could be validly reduced to P400/month.

HELD: The order reducing the executor's fee to P400/month was made more than 19 months after the original order (allowing a P1,000/month compensation) was made. That is, at the time the last order was made, Rosentock had been administering the affairs of the estate for 19 months with the ultimate view of winding up and closing it. It is very important that whatever reasons may have existed for allowing him a compensation of P1,000/month at the time of his appointment have ceased to exist. During that period, all of the assets and liabilities of the estate should have been legally ascertained and determined. The character and class of work which now devolves upon the executor is of a very different type and nature than at the time of appointment. Although by mutual consent his compensation was fixed at P1,000/month at the time of appointment, that was not a valid or binding contract continuous throughout the whole administration of the estate. It was always subject to change and the approval of the court, and to either increase or decrease as conditions might warrant. At all times the compensation of the executor was a matter largely in the discretion of the probate court.

INTESTATE ESTATE OF CARMEN DE LUNA vs. **IAC** 170 SCRA 246

FACTS: Gonzales was appointed administrator of the estate of de Luna. When Gonzales died, his heirs filed in his behalf a motion for allowances and payment of administrator's commission asking the amount of P100,000.00. His heirs again filed a motion, this time, asking for P500,000.00. The trial court issued an order granting the P500,000 compensation. CA reduced the amount to P4,312.50.

ISSUE: W/N Gonzales is entitled to the amount of P500,000.00 by way of compensation as administrator of the estate of de Luna.

HELD: The applicable provision is the proviso which states: "in any special case, where the estate is large and the settlement has been attended with great difficulty and has required a high degree of capacity on the part of the executor or administrator, a greater sum may be allowed." A wide latitude, leeway or discretion is therefore given to the trial court to grant a greater sum. And the determination of whether the administration and liquidation of an estate have been attended with greater difficulty and have required a high degree of capacity on the part of the executor or administrator rests on the sound discretion of the court which took cognizance of the estate. The trial court, in applying this proviso awarded the sum of P500,000.00 as administrator's compensation.

There appears to be no sound justification why the CA should interfere with the exercise of the trial court's discretion, absent a showing that the trial court committed any abuse of discretion in granting a greater remuneration to Gonzales. The trial court's order is based on substantial evidence and the applicable rule.

The records of the case is replete with evidence to prove that the late administrator Gonzales had taken good care of the estate and performed his duties without any complaint from any of the heirs. While it may be true that the inventory of the properties of the estate as of April 25, 1975 was only P 890,865.25 it has been shown that the value of the estate has increased not only by the efforts of the late administrator to

take good care of the same but in succeeding to locate other properties belonging to the estate so that when he submitted the inventory of the properties, real and personal of the estate as of April 13, 1980 the total appraisal thereof appears to be over P10 M. Considering the size of the estate and extent of the care given by the administrator, the amount asked for is not unreasonable and should therefore be allowed.

KALAW v. IAC
213 SCRA 289 (1992)

This is a petition for certiorari, prohibition and mandamus with a preliminary injunction to annul the decision of the IAC removing Ana Kalaw as administratrix and appointing her sister Rosa Kalaw as the new administratrix of the estate of their father Carlos Kalaw.

Carlos Kalaw died intestate in 1970. In 1972, a petition for the issuance of letters of administration was filed. In 1974, the court issued an order appointing Ana Kalaw as the special administratrix of the estate. Ana Kalaw filed a preliminary inventory of the properties that came into her possession by virtue of such appointment. In 1977, the court issued an order appointing Ana Kalaw as the judicial administratrix of the said estate and issued the corresponding Letter of Adminstration after Ana Kalaw took her oath. In 1982, Jose Lim filed a motion asking the court to require Ana Kalaw to render an accounting of her administration. The court granted the motion and issued an order requiring Ana Kalaw to render an accounting of her administration. In 1983, the court again issued another order requiring Ana Kalaw to render an accounting of her administration with the express instruction that the order be given to Ana Kalaw personally since the order issued in 1982 was returned to the court unserved.

In 1984, Rosa Kalaw, a sibling of Ana Kalaw, along with their other sisters, Pura and Victoria filed a petition to remove Ana Kalaw as the adminstratrix of their father on the ground of Ana's negligence in her duties in failing to render an accounting of her administration for more than six years, in violation of Rule 85 Sec. 8 of the Rules of Court. They also prayed that Rosa be appointed instead. The court issued an order requiring Ana Kalaw to render an accounting of her administration w/in 30 days. She was able to submit the said requiring, claiming that the delay in the submission was due to the fact that she did not to whom to render an account because the court did not have a judge for a considerable length of time (the former judge was promoted to the CA, while the replacement died of a cardiac arrest).

The lower court decided in favor of Rosa and her other siblings, holding that Ana Kalaw violated the provisions of Rule 85 Sec. 8 by failing to render an account of her administration within one year from the issuance of letters of administration and that the same is a ground for her removal as administratrix, as provided by Rule 82 sec. 2. The court appointed Rosa Kalaw as the new administratrix. On appeal, the IAC affirmed the judgment of the lower court.

ISSUE:

WON THE IAC COMMITTED GADLEJ IN AFFRIMING THE LC'S DECSION REMOVING ANA KALAW AS THE ADMINSTRATRIX AND APPOINTING ROSA KALAW AS THE NEW ADMINISTRATRIX?

HELD:

NO. There was no GADLEJ on the part of the IAC. The Rules of Court, under Rule 85 Sec. 8 provides that the executor/administrator shall render an accounting of his administration within one year from the issuance of the Letter of Administration. This requirement is mandatory, as indicated by the word *shall*. The only exception recognized by the courts is extensions in time when there is a delay in presenting the claims against the estate or in paying the debts or disposing the assets. The said circumstances are not present in the case at bar.

As to her removal under Rule 82 Sec 2, SC agreed with the IAC that the removal of the administratrix is upon the discretion of the court appointing him, in this case, the lower court. It is that court that should determine the sufficiency of the ground for the removal of the administrator. The appellate courts seldom interfere with the action taken by the probate courts.

As to the claim of Ana Kalaw that she was denied due process since no hearing was held on her removal, SC held that she was not. It is a fact that several pleadings were filed by the parties and that showed that the court gave her the opportunity to be heard.

SC denied Ana Kalaw's petition.

FACINAL v. CRUZ 13 SCRA 289 (1992)

FYI: THERE IS NO MENTION OF RULE 85 SEC 8 IN THE CASE, MUST BE AN OVERSIGHT, THIS CASE CONCERNS PROBAION, NOT PROBATE. NEVERTHELESS, HERE IS THE DIGEST OF THE CASE:

FACTS:

This is a petition for certiorari and mandamus to review the orders of the CFI, Capiz granting probation to the Dasals.

Leopoldo and Sancha Facinal are co-owners of a parcel of land consisting of a fishpond, situated in Capiz. A portion of the property was leased to Clodualdo Jamora and Lucina Orbion for a lease term of ten years. Upon the lapse of the lease term, the Facinals demanded the return of the leased property but the lessees refused to vacate the property. The Facinals instituted an action for unlawful detainer against the lessees. The Municipal Court decided in favor of the Facinals and ordered the lessees (the Dasals, because it seems that Jamora had subleased the property) to vacate the property and deliver the same to the Facinals.

The Facinals regained possession of the property only to be deprived of the same again when the Jamoras and the Dasals reentered and refused to vacate the said property. The Facinals brought an action for indirect contempt of court. The CFI ruled in favor of the Facinals. The Dasals reentered the property twice, and in one case, they, together with armed men and PC soldiers forcibly drove the Facinals out of the property. The CA affirmed the decision of the CFI finding the Dasals guilty of indirect contempt. The case was remanded to the CFI where the Dasals filed a petition for probation. The Court held that the grant of probation will be on the condition that the possession of the property will be returned to the Facinals. However, on the failure of the Dasals to comply with the said condition, the CFI denied the petition for probation. However on MR by the Dasals, the CFI granted probation on the ground that the decision of the CA affirming the CFI decision on the indirect contempt did not mention that the Facinals were again deprived of the possession of the property.

ISSUE: WON THE CFI COMMITTED GADLEJ WHEN IT GRANTED PROBATION TO THE DASALS?

HELD:

YES.

Although private respondents would ordinarily be entitled to probation after their conviction in a contempt proceedings since they are not expressly disqualified under the probation law, considering however that their conviction was the result of their continued defiance of the court's order, private respondents have not shown that repentance nor a predisposition to rehabilitation or reformation which the probation law sought to achieve. They have defied the Courts order not only once or twice but five times, showing their contempt and disrespect for court orders and processes.

Respondent judge should not have granted probation to the private respondents until the latter have permanently vacated and delivered said property to petitioners because of private respondents blatant refusal to obey the final order of the court that they were cited for indirect contempt.

To require petitioners to file another contempt proceeding against private respondents for subsequent dispossession would not only be time consuming but, would practically condone the continuous defiance by private respondents of a final decision of a court of record. As long as private respondents have not complied with the orders of the Court they are in a state of indirect contempt. They cannot make a mockery of court processes and get away with it.

TUMANG v. LAGUIO96 SCRA 124 (1980)

FACTS:

In Special Proceeding no. 1953 involving the estate of the late Dominador Tumang, his wife, Magdalena Tumang, who is also the adminstratrix and executrix of the will, filed a petition to declare the testate proceedings definitely terminated and closed with respect to her and her two children, Melba and Nestor. The petition was premised on the claim that the said heirs have already received the properties adjudicated to them and that to be able to transfer the said properties in their names, there should be an order from the court declaring that the testate proceedings closed with regard to the said heirs. The petition was opposed by Guia T. Laguio, another child of Magdalena, on the ground that not all the

properties adjudicated to them have been delivered and that there could not be a partial termination of the proceedings. Magdalena, the administratrix withdrew the petition.
In the hearing of the motion to withdraw the petition, the administratrix submitted a pleading alleging to show that the attached receipts showed that the corresponding estate and inheritance taxes have been paid and that there is a certification from the deputy clerk of court that there is no claim that there are still properties not given to Guia and to her minor children, and that the Guia had received the properties as well as the dividends from the shares of stock, as shown in the projects of partition. In this action, Guia also asked the court to require the admninistratrix to render an accounting of her administration of the estate. The lower court ruled in favor of the administratrix and held that there is no need to render an accounting because the final accounting of the administratrix had already been approved. Guia filed an MR but it was denied, the court held that Guia's acceptance of the cash dividends constituted a waiver on her part to question the correctness of the accounting filed by the administratrix.
ISSUE:
WON THE COURT SHOULD HAVE REQUIRED THE ADMINISTRATRIX TO RENDER AN ACCOUNTING OF THE CASH AND STOCK DIVIDENDS RECEIVED AFTER THE APPROVAL OF HER FINAL ACCOUNTING?
WON THE ACCEPTANCE OF THE CASH DIVIDENDS BY AN HEIR CONSTITUTED A WAIVER TO DEMAND SUCH ACCOUNTING?
HELD:
Section 8 of Rule 85 provides that the "executor or administrator shall render an account of his administration within one (1) year from the time of receiving letters testamentary or of administration * * *, and be shall render such further accounts as the court may require until the estate is wholly settled."
In the instant case, further accounts by the executrix appear to be in order, in view of the fact that the dividends sought to be accounted for are not included in the final accounts rendered by the executrix. It appears that the interests of all the parties will be better served and the conflict between petitioners and respondent will be resolved if such additional accounting is made. Further, "it has been held that an executor or administrator who receives assets of the estate after he has filed on account should file a supplementary account thereof, and may be compelled to do so, but that it is only with respect to matters occurring after the settlement of final account that representatives will be compelled to file supplementary account."
SC held that the executor/administrator should account for his receipts and disbursements subsequent to his last accounting.
As to the alleged waiver, SC held that the said acceptance does not constitute a waiver. The duty of an executor or administrator to render an account is not a mere incident of an administration proceeding which can be waived or disregarded. It is a duty that has to be performed and duly acted upon by the court before the administration is finally ordered closed and terminated, to the end that no part of the decedent's estate be left unaccounted for. The fact that the final accounts had been approved does not divest the court of jurisdiction to require supplemental accounting for, aside from the initial accounting, the Rules provide that "he shall render such further accounts as the court may require until the estate is wholly settled."

DE GUZMAN v. DE GUZMAN CARILLO
83 SCRA 256 (1978)

FACTS: This case is about the propriety of allowing as administrative expenses certain disbursements made by the administrator of the testate estate of Felix de Guzman.
Felix de Guzman was survived by his eight children. Among the properties left by him is a residential house located at Gapan, Nueve Ecija. The eight children co-owned this property pro indiviso. Dr. Victorino de Guzman, one of the heirs, was appointed administrator of the estate. Dr. de Guzman submitted an accounting of his administration of the estate. In connection with this, four of his siblings interposed an opposition to some of the disbursements made by the administrator. Some of these expenses include the repairs and maintenance of the house, representation expenses and irrigation expenses.
The lower court allowed as administrative expenses the said disbursements, saying that an executor or administrator is

allowed the necessary expenses in the care, management, and settlement of the estate and that he is entitled to possess and manage the decedent's real and personal estate as long as it is necessary for the payment of the debts and the expenses of administration.
ISSUE: WON THE LOWER COURT ERRED IN ALLOWING THE SAID EXPENDITURES TO BE CHARGED AGAINST THE ESTATE?
HELD: As regards the repairs and maintenance of the house, SC held that this is a proper expense of the estate as it redounded to the benefit of the heirs, who are the co-owners of the house pro indiviso. The said expenses were meant to keep up with the social standing of the family.
However, the expenses incurred by Librada, an heir who has been living in the house does not qualify as an administrative expense. The SC did not agree with the lower court's rationale that the fact of Librada's stay at the house does not deprive the other heirs of the opportunity to stay there as well. Those expenses were personal to Librada and should be shouldered by her and not by the estate.
On the issue of the representation expenses, it was likewise disallowed because there was no explanation provided for the same. The expenses on the 1st death anniversary were also disallowed because that does not fall under the funeral expenses.
The expenses regarding the attorney's subsistence and the physician's gift were allowed.
The expenses on the irrigation system was also allowed despite the fact that it was not that clear because the heirs did not express any contention as regards the same.
The Rules of Court provides that one of the conditions of the administrator's bond is that he should render a true and just account of his administration to the court. The court may examine him upon oath with respect to every matter relating to his accounting "and shall so examine him as to the correctness of his account before the same is allowed. Except when no objection is made to the allowance of the account and its correctness is satisfactorily established by competent proof, the heirs, legatees, distributees, and creditors of the estate shall have the same privilege as the executor or administrator of being examined on oath on any matter relating to an administration account."
Furthermore, a hearing is usually held before an administrator's account is approved, especially if an interested party raises objections to certain items in the accounting report
At that hearing, the practice is for the administrator to take the witness stand, testify under oath on his accounts and identify the receipts, vouchers and documents evidencing his disbursements which are offered as exhibits. He may be interrogated by the court and cross-examined by the oppositors's counsel. The oppositors may present proofs to rebut the administrator's evidence in support of his accounts.

SUILIONG & CO. v. CHIO TAYSAN 12 PHIL 13

FACTS:
Avelina Caballero owned a property in Manila, duly registered under her name. She borrowed P1,000 Mexican currency from Francisca Jose and as a security for the loan, she turned over the title of the said property to Jose. The transaction was not inscribed in the title.
Caballero died and Silvina Chio-Taysan instituted a petition for the declaration of heirship. The CFI Manila found her to be the daughter of Jose Chio-Taysan and Caballero, granted the petition and declared her as the only and exclusive heir of Caballero.
An inscription to the effect that Silvina Chio-Taysan is the owner of the property at issue was made in the RD. Chio-Taysan borrowed money from Fire and Marine Insurance and Loan Co. and mortgaged the said land as security for the loan. Suiliong & Co. is the appointed liquidator of Fire and Marine Insurance and Loan Co.
The husband of Chio-Taysan instituted special proceedings for the administration of the estate of Caballero, of which he was appointed as the administrator. He submitted an inventory of the properties of the estate, which included the subject land. Jose submitted her claim against the estate as a creditor of the deceased. Suiliong instituted a case against the estate and sought to foreclose on its mortgage. The court permitted Jose to intervene. Jose asked that the mortgage executed between Suiliong and Chio-Taysan be rescinded and declared no effect. The lower court ruled in favor of Suiliong and against Chio-Taysan and Jose.
ISSUE: WON THE TRIAL COURT ERRED IN DENYING ANY

RELIEF TO JOSE?
HELD: YES.
The TC, in ruling against Jose, held that, she abandoned whatever lien she has on the property when she submitted a claim against the estate of Caballero. SC held that all Jose asked in the petition is merely for rescission and annulment of the mortgage executed between Suiliong and Chio-Taysan and of the inscription in the title of the property, and a declaration that as a creditor of the estate she has a superior right to that of the plaintiff company in the proceeds of any sale of the land in question. She does not seek to enforce her claim and recover her debt in this proceeding, but merely to prevent the plaintiff from securing a judgment in this action which would take out of the estate property which she believes to be subject to her claim set up in the administration proceedings.
According to the Civil Code, a sole and exclusive heir became the owner of the property, and was charged with the obligations of the deceased at the moment of his death, upon precisely the same terms and conditions as the property was held and as the obligations bad been incurred by the deceased prior to his death, save only that when he accepted the inheritance, "with benefit of an inventory" he was not held liable for the debts and obligations of the deceased beyond the value of the property which came into his hands.
However, the New Civil code, which was applicable to the case at bar, provides a machinery for the enforcement of the debts and other obligations of the deceased, not as debts or obligations of the heir, but as debts or obligations of the deceased, to the payment of which the property of the deceased may be subjected wherever it be found.
It is evident, therefore, that a judgment in an action for the declaration of heirship in favor of one or more heirs could not entitle such persons to be recognized as the owner or owners of the property of the deceased on the same terms as such property was held by the deceased, for it passes to the heir, under the new code, burdened with all the debts of the deceased his death having created a lien thereon for the benefit of creditor
SC held that it is evident that Caballero's death created a lien upon her property in favor of Jose, for the payment of the debt contracted by her during her lifetime, and that this ought to have and has priority to any lien created upon this property by the heir of the deceased; that the judicial declaration of heirship in favor of Silvina Chio-Taysan, could not and did not furnish a basis for an entry in the land registry of the name of Silvina Chio-Taysan as the absolute owner of the property of Avelina Caballero; that such entry, improperly made, could not and did not prejudice, the lien of Jose, for the debt due her by the deceased and that the mortgage of the property of the deceased by her heir, Silvina Chio-Taysan, was subject to the prior lien of Jose, for the payment of her debt.

SANTOS v. MANARANG

Facts: De Ocampo died on November 18,1906. It was stated in his will that debts detailed therein be paid by his wife and executors in the form and at the time agreed upon with the creditors. Among the debts are two in favor of Santos. The will was duly probated and a committee appointed to hear and determine the claims against the estate as might be presented.

The committee submitted its report to the court on June 27,1908. Santos presented a petition to the court on July 14,1909 asking that the committee be required to reconvene and pass upon his claims against the estate which were recognized in the will of the testator. This was denied. Santos then instituted the present proceedings against the administratix of the estate to recover the sums. Relief was denied. Hence, this appeal.
In his petition of July 14,1909, Santos states that his failure to present his claims to the committee was due to his belief that it was unnecessary to do so because of the fact that the testator, in his will, expressly recognized them and directed that they should be paid.
Issue: Did the court err in refusing to reconvene the committee for the purpose of considering claims of Santos?
Held:
Sec689 of Code of Civil Procedure provides: "The court shall allow such time as the circumstances of the case require for the creditors to present their claims to the committee for examination and allowance; but not, in the first instance,

more than twelve months, or less than six months; and the time allowed shall be stated in the commission. The court may extend the time as circumstances require, but not so that the whole time shall exceed eighteen months." Its saving clause is found on Sec690, which states: "On application of a creditor who has failed to present his claim, if made within six months from the time previously limited, or, if a committee fails to give the notice required by this chapter, and such application is made before the final settlement of the estate, the court may, for cause shown, and on such terms as are equitable, renew the commission and allow further time, not exceeding one month, for the committee to examine such claim, in which case it shall personally notify the parties of the time and place of hearing, and as soon as may be make the return of their doings to the court."
In the present case the time previously limited was six months from July 23,1907, or until January 23,1908. The court, in its discretion, could extend within six months after January 23,1908, or until July 23,1908. However, Santos' petition was not presented until July 14,1909.

IN RE ESTATE OF DE DIOS
Facts:
Osmena claims to have had a claim against the estate of de Dios, but did not present the same within six months for the presentation of claims to the commissioners. Osmena moved for an extension, alleging that during said time one of the heirs of said estate was making propositions to him (Osmena) to pay on his (the heir's) account the debt, and in the hope that the proposed settlement would terminate satisfactorily he did not have the opportunity to formulate his claim within the six months, and that said heir did not however paid the debt.
The Court denied the motion, as the Court did not find in said motion any allegation which they may consider just cause.
Issue:
W/N the Court erred in refusing to extend the period for the presentation of the claims against the estate of de Dios.
Held:
Before the time in which claimants must present their claims against an estate is extended, the person asking the privilege must present sound reasons therefor. Whether or not those are sufficient and whether as a result of their presentation the time ought or ought not to be extended rests in the sound discretion of the court. However, the appellant failed to show that the court below abused the discretion. He, admitting full knowledge of the time within which he should have presented his claim, presents no sufficient explanation for failure to present within the period. Although during said time negotiations may have been pending, the claim could have been presented nevertheless.

SIKAT v. VIUDA de VILLANUEVA
Facts:
Sikat, judicial administrator of intestate estate of Mariano Villanueva, filed a complaint against Vda de Villanueva, judicial administratix of intestate estate of Pedro Villanueva, with regard to the credit of Mariano.
Vda de Villanueva set up prescription as defense.
TC held that action has prescribed.
Issue:
W the TC erred in holding that the claim of Mariano's estate against Pedro's estate has already prescribed.
Held:
Under Sec689 of the Code of Civil Procedure, the maximum period for the presentation of claims against the estate is eighteen months from the time fixed by the committee on claims and appraisal in its notice, and this period may be extended one month if a creditor applies for it within six months after the first term, according to Sec690.
It may be argued that inasmuch as none of the persons entitled to be appointed administrators or to apply for the appointment of an administrator have taken any step in that direction, and since no administrator or committee on claims and appraisal has been appointed to fix the time for filing claims, the right of Sikat to present the claim could not prescribe.
However, Sikat was guilty of laches in not instituting the intestate proceedings of Pedro until after the lapse of three years after this court has set aside the intestate proceedings begun.
To hold otherwise would permit a creditor having knowledge

of his debtor's death to keep the latter's estate in suspense indefinitely, by not instituting either testate or intestate proceedings in order to present his claim, to the prejudice of the heirs and legatees.

TIJAM v. SIBONGHANOY

This case did not mention anything on period within which to file claims against the estate. It only discussed laches.

Facts:

Barely a month after the effectivity of the Judiciary Act of 1948, spouses Tijam filed a case against spouses Sibonghanoy to recover P1,908. The Court ruled in favor of spouses Tijam.

The Court issued a writ of execution against spouses Sibonghanoy. The writ having been returned unsatisfied, spouses Tijam moved for the issuance of a writ of execution against the Surety's bond. The Surety opposed on the ground of absence of a previous demand. The Court denied the motion. Necessary demand was made and second motion for execution was filed. The Court granted this and a writ was issued.

The Surety moved to quash on the ground that there was no summary hearing. The TC denied. In the CA, the Surety filed a Motion to Dismiss, alleging lack of jurisdiction as the action was filed in the CFI whereas the Judiciary Act of 1948 was at the time already in operation which conferred exclusive jurisdiction to inferior courts all civil actions where the value does not exceed P2,000.

Held:

Jurisdiction over the subject matter is conferred upon the courts exclusively be law. However, Surety is barred by laches from invoking lack of jurisdiction at this late hour for the purpose of annulling everything done in this case with its active participation.

The action was commenced in the CFI on July 19,1948, that is almost fifteen years before the Surety filed its motion to dismiss on January 12,1963 raising the question of lack of jurisdiction for the first time.

RODRIGUEZ v. CA

This case did not mention anything on period within which to file claims against the estate. It only discussed laches.

Facts:

Nieves Cruz authorized the spouses Valenzuela, Victorio and Santos to sell a parcel of land belonging to her. Subsequently, the agency contract was verbally novated into a sales agreement. As confirmed in a receipt, advance payment was made. Meanwhile proceedings to place the land under the Torrens system were initiated. In due season OCT was issued to the applicants Nieves Cruz and her brother Emilio. Eventually, pursuant to a partition between Nieves and Emilio, OCT was cancelled and superseded by two TCTs.

Then Nieves Cruz sold the property in question to Rodriguez. A TCT was issued in the name of Rodriquez which carried over the annotation respecting the rights of Valenzuela, Victorio and Santos. Nieves gave notice to the three of her decision to rescind their original agreement enclosing the sums advanced by them. In their reply, they contended that the agreement sought to be rescinded had been novated by a sales agreement. They also impleaded Rodriguez.

Pending the proceedings, Nieves died and was substituted by her surviving children. The TC found for Nieves and her buyer Rodriguez. The CA reversed, making reference to the annotation and stating that Rodriguez' acquisition of the land must yield to the superior rights of the appellants. Hence, this petition. They alleged that the land involved has a value in excess of P200,000 and so the CA should have certified the appeal to the SC, pursuant to the Judiciary Act of 1948.

Held:

It has been proved that the value of the land was below P200,000 when the appeal was perfected. And assuming that the value is in excess of P200,000, they are already estopped to set aside the decision. The fact remains that they had allowed an unreasonable period of time to lapse before they raised the question of value and jurisdiction, and only after the respondent Court had decided against her.

Danan v. Buencamino

Facts: Dominador Danan died intestate.

On November 13, 1973, the court issued an order directing all persons having money claims against the estate to file them within six months after the date of the first publication of the order which was December 10, 1973. On June 12, 1974, Benito Manalansan and Ines Vitug Manalansan filed a contingent claim.

On July 11, 1974, the administratrix filed an answer to the contingent claim
The court allowed the claim to be heard without prejudice to the right of the administratrix to present rebuttal evidence. Atty. Navarro, who represented the Manalansans, asked that the presentation of the exhibits be made during the next hearing wherein the administratrix shall be given the opportunity to present rebuttal evidence. Accordingly, the court set the next hearing to October 3, 1974, but was reset to November 18, 1974, at the request of the administratrix.
It was only on January 8, 1981, that the administratrix filed an Opposition to Contingent Claim against Estate. There the administratrix questioned the jurisdiction of the court to entertain the claim
Issue:
WON the court can take cognizance of a claim filed against the Estate when said claim was filed outside the period
Held:
The contingent claim was filed two days beyond the six-month period stipulated in the order which directed all persons having money claims against the estate to file them.
However, it is to be noted that the claim was filed on June 12, 1974, whereas the timeliness of its filing was raised only on January 8, 1981, in the Opposition to the Contingent Claim against Estate. In the interregnum the administratrix had acquiesced to the entertainment of the claim by filing an answer thereto on July 11, 1974, and again by asking for postponement of the October 3, 1974, hearing wherein she was to present her rebuttal evidence. She is not only estopped by her conduct but laches also bar her claim.
Moreover, Rule 86, Sec. 2 of the Rules of Court gives the probate court discretion to allow claims presented beyond the period previously fixed provided that they are filed within one month from the expiration of such period but in no case beyond the date of entry of the order of distribution. The contingent claim of the Manalansans was filed within both periods.

Quisumbing v. Guison

Facts:
During her lifetime, the deceased, Consuelo Syyap, executed a promissory note in favor of Leonardo Guison.
In the inventory filed by the administrator of the estate of the deceased, the obligation was acknowledged as one of the liabilities of the decedent.
Syyap died on November 30, 1940. On December 5, 1940, intestate proceedings were instituted and notice given to creditors to file their claim within six months, which period for filing claims expired on August 31, 1941.
Guison died on December 31, 1941, and his son, who was appointed as administrator of the intestate estate of his deceased father, filed a claim against Syyap's estate on March 9, 1943.
In his reply to the answer of the administrator of the estate of Syyap, the claimant stated that he believed in good faith that he was relieved of the obligation to file a claim with the court, because the debt was admitted in the inventory and Syyap's administrator had been paying the interest due on the note up to January 1943.
The lower court ordered the appellant, administrator for Syyap's estate, to pay the debt.
Issue:
WON cause was shown by the claimant why he did not file the claim within the time previously limited
Held:
When the court allows a claim to be filed for cause or causes which it considers as sufficient, on appeal, this court cannot reverse the action of the lower court unless the latter has abused its discretion which has not been shown by the appellant in this case.
The appellant does not only acknowledge in the inventory the existence of the debt, but does not deny it in his answer and had been paying interest due thereon up to January 1943, two months before the claim had been filed.
The court considered the admission of the existence of the debt in the inventory filed by the appellant as one of the reasonable causes or reasons for his failure to file it within the time previously limited.

Echaus v. Blanco

Facts:
Petitioner Angelina Echaus, in her own behalf and as Administratrix of the intestate estate of her deceased father, filed a complaint on May 30, 1962 against Charles Newton

Hodges (C.N. Hodges) praying for an accounting of the business covering the Ba-Ta Subdivision, the recovery of her share in the profits and remaining assets of their business and the payment of expenses and damages.
The trial court rendered judgment in favor of petitioner.
The same trial court issued an order granting petitioner's motion for the issuance of a writ of execution against the Philippine Commercial and Industrial Bank (PCIB), as administrator of the estate of deceased C. N. Hodges. However, the writ was not enforced as petitioner opted to file a motion dated February 20, 1967 in Special Proceedings No. 1672 (estate proceedings of deceased C. N. Hodges) for the payment of the judgment.
Respondent Judge Ramon Blanco issued an Order reiterating his position that the motion to direct payment of the judgment credit cannot yet be resolved.
Petitioner then filed the instant petition for mandamus seeking to set aside respondent judge's order and to order PCIB to pay the judgment credit in Civil Case No. 6628.
Private respondent Avelina Magno, in her memorandum in lieu of oral argument, alleged that the Judgment sought to be enforced is barred under the Rules of Court. The proceedings for the settlement of the estate of C. N. Hodges was opened in 1962 and the notice to creditors was published in "Yuhum" a newspaper of general circulation in its issues of March 12, 10, and 27, 1963. Under Section 2, Rule 27 of the Rules of Court, the time provided for filing claims against the estate shall be stated by the court in the notice, which shall not be more than twelve (12) months nor less than six (6) months after the date of its first publication.
Issue:
WON petitioner's motion to direct payment only on February 20, 1967, more than four years from the publication of the notice, is already barred
Held:
The Rules of Court allows a creditor to file his claim after the period set by the court in the notice to creditors, provided the conditions stated in the rules are present.
It is clear from Section 2 of Rule 87 [now Rule 86] that the period prescribed in the notice to creditors is not exclusive; that money claims against the estate may be allowed any time before an order of distribution is entered, at the discretion of the court for cause and upon such terms as are equitable. At the time petitioner's motion to direct payment of the judgment credit was filed, no order of distribution was issued yet.

The claim was filed in the probate court on February 25,1959 while the defendants in the civil case were still perfecting their appeal therein. The record does not show that the administrator objected thereto upon the ground that it was filed out of time. The pendency of that case is a good excuse for tardiness in the filing of the claim.

Ignacio v. Pambusco

Facts:
August 29, 1951. Pampanga Bus Company, Inc. (Pambusco) lodged its complaint against two defendants Valentin Fernando and Encarnacion Elchico Vda. de Fernando (Civil Case 14578). The suit was to upon a contractual obligation.
January 23, 1955. Encarnacion Elchico Vda. de Fernando died. By this time, Pambusco in the foregoing civil case had already presented its evidence and submitted its case.
March 23, 1955. Intestate proceedings were filed. Notice to the estate's creditors was given for them to file their claims within six months from this date, the first publication of the notice.
The CFI rendered judgment in the civil case (Civil Case 14578) in favor of Pambusco.
January 25, 1961. The judgment in the civil case having reached finality, Pambusco moved in the intestate proceedings that the heirs and/or the present joint administratrices, be ordered to pay the share of the deceased in the judgment debt.
The administratrices opposed.
Issue:
WON Pamubusco's claim is time-barred
Held:
It matters not that Pambusco's said claim was filed with the probate court without the six-month period from March 25, 1955, set forth in the notice to creditors. For, Section 2, Rule 86, permits acceptance of such belated claims.
The claim was filed in the probate court on February 25,

1959, while the defendants in the civil case were still perfecting their appeal therein. The record does not show that the administrator objected thereto upon the ground that it was filed out of time. The pendency of that case is a good excuse for tardiness in the filing of the claim. And, the order of final distribution is still to be given.
The order of the lower court of allowing payment of appellee's claim "impliedly granted said appellee an extension of time within which to file said claim." The probate court's discretion has not been abused. It should not be disturbed.

De Rama v. Palileo

Facts:
In connection with the proceeding for the settlement of the intestate estate of the deceased Beatriz Cosio de Rama, and pursuant to the order of the CFI before which the proceeding is pending, a notice to all persons with money claims against the deceased to file their said claims within six months, was duly published, the first notice appearing in the August 13, 1958.
The period provided in the published notice having expired without anybody filing any claim against the deceased, the administrator, upon order of the court, submitted a final account of the estate and a project of partition, which were approved.
Cherie Palileo petitioned the court for permission to file a claim in the proceeding, alleging that on the decision of the Court of Appeals promulgated on May 6, 1961, she obtained a money judgment against the deceased.
Although the lower court decided in her favor the question of ownership and possession of a real property involved in the case, it was only the Court of Appeals that granted money judgment, when the case was decided on appeal.
The administrator opposed this petition on the ground that the claim was filed beyond the period provided in the notice to creditors.
Issue:
WON the claimant-appellee’s money claim was filed beyond the prescribed period
Held:
The period prescribed in the notice to creditors is not exclusive; that money claims against the estate may be allowed any time before an order of distribution is entered, at the discretion of the court, for cause and upon such terms as are equitable. This extension of the period shall not exceed one month, from the issuance of the order authorizing such extension.
The petition of claimant-appellee, for permission to file a claim in the proceeding, was based on the fact that the award of damages in her favor, against the deceased, was contained in the decision of the Court of Appeals which was promulgated after the 6-month period provided in the notice to creditors had already elapsed. It is her contention that she could not have filed a money claim against the estate before the promulgation of said decision because although the lower court in that case upheld her right to the ownership and possession of the building subject thereof, no damages were adjudged in her favor. Considering this argument, the lower court found it sufficient to justify the relaxation of the rule and extension of the period within which to file her claim. In the circumstances, the action taken by the lower court cannot be considered an abuse of discretion amounting to lack or excess of jurisdiction to justify its reversal by this court.

PINEDA VS. CFI

Facts:
The deceased Villadiego, had submitted and paid his income taxes for the years 1925 and 1926 before his death. During the intestate proceedings for his estate, the CIR made a revision of the assessment and found that it was underassessed by P240. The respondent judge in the intestate proceedings then issued an order upon motion ordering the administratixes to pay the additional tax assessed.

Petitioners claim that the court had no jurisdiction to order the payment of the claim without the presentation of the same to the committee on claims

Issue: W/N the court has jurisdiction

Held: Yes it does. The clear weight of judicial authority is to the effect that claims for taxes and assessments, whether assessed before or after the death of the decedent, are NOT required to be presented to the committee

In the case before us the tax now claimed by the Government was not due until it was assessed; and this assessment was not made until after the individual against whom the tax was assessed had died. The claim therefore arose during the course of administration. The law imposes on the administrator of a deceased person the duty to pay taxes assessed against the property of the deceased; and as is well known, in case of insolvency, such taxes constitute a preferential claim in the distribution of assets over ordinary debts, under section 735 of the Code of Civil Procedure. In the case, before us it is not suggested that the estate is insolvent, and there is therefore no danger of imperiling the payment of funeral expenses or expenses of last sickness by ordering the immediate payment of these taxes.

GOVERNMENT VS. PAMINTUAN

Facts:
Pamintuan filed and paid his taxes for the year 1919. He then died and intestate proceedings were initiated and his property was distributed to his heirs. After the proceedings were closed, it was discovered that the deceased did not in fact pay the additional income tax due for the year 1919 resulting from the net profits from the sale of his house which was not included in his return for the year. Defendants cannot disprove the claim of the government since they have destroyed the records and evidence regarding the sale. They claim that the failure of the plaintiff to file its claim with the committee on claims barred it from collecting the tax in question in this action.

Issue: W/N the failure to file the claim with the committee barred it from collecting the tax.

Held: No it is not.

The administration proceedings of the late Florentino Pamintuan having been closed, and his estate distributed among his heirs, the defendants herein, the latter are responsible for the payment of the income tax here in question in proportion to the share of each in said estate, in accordance with section 731 of the Code of Civil Procedure, and the doctrine of this court laid down in Lopez vs. Enriquez (16 Phil.,336) as follows:

ESTATE; LIABILITY OF HEIRS AND DISTRIBUTEES. — Heirs are not required to respond with their own property for the debts of their deceased ancestors. But even after the partition of an estate, heirs and distributees are liable individually for the payment of all lawful outstanding claims against the estate in proportion to the amount or value of the property they have respectively received from the estate. The hereditary property consists only of that part which remains after the settlement of all lawful claims against the estate, for the settlement of which the entire estate is first liable. The heirs cannot, by any act of their own or by agreement among themselves, reduce the creditors' security for the payment of their claims.

For the reasons stated, we are of opinion and so hold that claims for income taxes need not be filed with the committee on claims and appraisals appointed in the course of testate proceedings and may be collected even after the distribution of the decedent's estate among his heirs, who shall be liable therefore in proportion to their share in the inheritance.

EVANGELISTA VS. LA PROVEEDORA

Facts:
Manuel Abad Santos died and subsequently, a writ of execution was issued and his property was levied by the sheriff. Meanwhile, intestate proceeding for the settlement of his estate was filed and petitioner was appointed

administratrix. Even prior to her appointment, having been notified of the scheduled auction sale of the property subject of the levy, she informed the sheriff of the death of Abad Santos and demanded that he desist from the sale. She filed a motion with the court but it was denied and the property was sold to the highest bidder, La Proveedora.

Issue: W/N the judgment must be presented as a claim against the estate if the debtor dies before the levy of execution.

Held: Yes it must be presented.

The property levied upon in case the judgment debtor dies after the entry of judgment, as in this case, may be sold for the satisfaction of the judgment in case death occurs "after execution is actually levied." On the other hand, Section 5 of Rule 86 provides that a judgment for money against the decedent must be filed with the court in the proceeding for the settlement of the estate. In other words, the cut-off date is the date of actual levy of execution. If the judgment debtor dies after such levy, the property levied upon may be sold; if before, the money judgment must be presented as a claim against the estate, although of course the same need no longer be proved, the judgment itself being conclusive. But the judgment creditor will share the estate with other creditors, subject only to such preferences as are provided by law.

Since in this case the death of the deceased preceded the levy of execution on his properties, the judgment against his should be presented as a claim against his estate, and the sale at auction carried out by the sheriff is null and void.

REGALA VS. CA

Facts:
PR filed a case against Regala for recovery of money. The judge granted the motion for the issuance of a writ of preliminary attachment against the properties of Regala. During trial, Regala died and his heirs prayed for the dismissal of the complaint based on Rule 3, Section 21.

Issue: W/N the case should be dismissed upon the death of the defendant.

Held:

There is no question that the action in the Court below is for collection or recovery of money.

It is already a settled rule that an action for recovery of money for collection of a debt is one that does not survive and upon the death of the defendant the case should be dismissed to be presented in the manner especially provided in the Rules of Court. This is explicitly provided in Sec. 21, Rule 3 of the Rules of Court which states that:

Sec. 21. *Where claim does not survive*. — Then the action is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, it shall be dismissed to be prosecuted in the manner especially provided in these rules.

The reason for the dismissal of the case is that upon the death of the defendant a testate or intestate proceeding shall be instituted in the proper court wherein all his creditors must appear and file their claims which shall be paid proportionately out of the property left by the deceased.

We hold that as the complaint filed against Agustin P. Regala was for a sum of money, the trial court lost jurisdiction there over upon his death on 7 June 1989, before final judgment thereon could be rendered. Consequently, such claim must now be dismissed, without prejudice to its being filed against the estate of the deceased defendant in the appropriate probate proceedings.

DIZON VS. CA

Facts: Balde was an employee of the Fernandez Companies and he was summarily dismissed from his job. He then filed a case for recovery of damages resulting from illegal dismissal against Fernandez, the President of the companies. Fernandez however died before final judgment. The legal consequences of the party's death are what are not chiefly in issue.

Issue: W/N the case should be dismissed because of the death of the defendant.

Held: Yes, it should be dismissed.

If the defendant dies after final judgment of the RTC, the action (for money, debt or interest thereon) is dismissed, and an appeal may be taken by or against the administrator, bit if that judgment against the deceased becomes final and executory, it shall be enforced, not by execution under Rule 39, but in accordance with Section 5 of Rule 86, i.e. by presenting the same as a claim against the estate.

If, on the other hand, the claim against the defendant is other than for money, debt or interest thereon – i.e. it is a real action, or one for recovery of personal property "or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal," supra –and the defendant dies, the claim against him is not dismissed but continue against the decedents' legal representative.

It was therefore error for the trial court to decline to dismiss the suit as against the deceased and to insist on continuing with the action as to Fernendez by ordering his substitution by his administrator.

Rule 86, Sections 3 – 5
Bonilla v. Barcena

Facts:
Fortuna Barcena, mother of minors Rosalio and Salvacion Bonilla, and wife of Ponciano Bonilla, instituted a civil action in CFI Abra to quiet title over certain parcels of land in Abra.
Defendants filed a motion to dismiss complaint on the ground that Fortuna is dead and therefore has no legal capacity to sue.
Court immediately dismissed a case, ruling that a real party in interest has no legal personality to sue.

Issue:
Whether or not Fortuna can be substituted by her heirs

Held:
Substitution of minor children should be allowed. While it is true that a person who is dead cannot sue in court, yet he can be substituted by his heirs in pursuing the case up to its completion if the court timely acquired jurisdiction over her person. The records of the case show that the death of Fortuna took place after the complaint was filed, therefore, the court had acquired jurisdiction over her person.

Under section 17, Rule 3, ROC, it is the duty of the court, if the legal representative fails to appear, to order the opposing party to procure the appointment of a legal representative of the deceased. In the case at bar, this procedure need not have been complied with since Fortuna's counsel had not only asked that the minor children be substituted for her but also suggested that their uncle be appointed as legal guardian ad litem for them since their father is busy in Manila earning a living.

#7 Peneyra v. IAC

Facts:
Board of Trustees of Corregidor College Inc. (CCI) awarded the management and operation of its canteen at a monthly rental of P80 to pets. Subsequently, upon instructions of Dizon, Chairman of CCI, the rental payments of pets were refused and partial demolition of the canteen was effected. Pets filed an action against Dizon for damages with preliminary mandatory injunction.

After sometime, Dizon died and his counsel moved to dismiss the complaint by reason thereof. TC dismissed the complaint on the ground that the action for damages did not

survive the death of Dizon.

Issue:
Whether or not the action for damages against Dizon survived his death

Held:
An action for recovery of damages for injury to personal property is not extinguished by the death of the defendant. This is because such action may still be brought against the executor or administrator of the defendant's estate. Dizon should then be substituted by the executor/administrator/legal representative of his estate as party-defendant.

 # 8 De Bautista v. De Guzman

Facts:
Numenario Bautista, husband and father of plaintiffs-appellees, sustained physical injuries while inside a passenger jeep driven by Medrano (convicted of homicide through reckless imprudence); and owned and operated by Rosendo de Guzman

Writ of execution was issued against the driver but remained unsatisfied. After which, De Guzman died. Plaintiff-appellees then prayed that heirs of De Guzman pay the sums as well as the costs of suit.

The heirs of de Guzman refused. In support of this motion, they maintained that the suit was for a money claim against the supposed debtor who was already dead and as such it should be filed in testate or intestate proceedings, or in the absence of such proceedings, after the lapse of 30 days, the creditors should initiate such proceedings, that the heirs could not be held liable therefore since there was no allegation that they assumed the alleged obligation.

Issue:
Whether or not the heirs of Bautista can claim from the heirs of De Guzman

Held:
Bautista heirs can no longer recover because of negligence and a failure to observe mandatory provisions of the law and the Rules. They overlooked the fact that they were no longer suing de Guzman who died shortly after the accident but his heirs. Section 5, Rule 86 makes it mandatory to inform the executor or administrator of the claims against it, thus enabling him to examine each claim and determine whether it is a proper one which should be allowed.

The termination of intestate proceedings and the distribution of the estate to the heirs did not alter the fact that plaintiff-appellees claim was a money claim which should have been presented before a probate court. The only instance wherein a creditor can file an action against a distribute of the debtor's asset is under Section 5, Rule 88. Even under this rule, the contingent claims must first have been established and allowed in the probate court before the creditors can file an action directly against the distributees.

 # 9 Aguas v. Llemos

Facts:
Salinas and Spouses Aguas jointly filed an action to recover damages from Llamos, averring that the latter had served them by registered mail with a copy of a petition for a writ of possession, with notice that the same would be submitted to the court of Samar on Feb 23, 1960, 8am; that in view of the copy and notice served, plaintiffs proceeded to the court from their residence in Manila accompanied by their lawyers only to find that no such petition had been filed; and that Llamos maliciously failed to appear in court, so that plaintiff's expenditure and trouble turned out to be in vain, causing them mental anguish and undue embarrassment.

Before Llamos could answer the complaint, he died. Upon leave of court, plaintiffs amended their complaint to include the heirs of the deceased. Court dismissed the complaint, saying that the legal representative and not the heirs should have been made the party defendant and that anyway the action for recovery of money, testate or intestate proceedings should be initiated and the claim filed therein.

Issue:

Whether or not maliciously causing a party to incur unnecessary expenses, injurious to that party's property survive against decedent' executor/ administrator

Held:
The action survives. It is not included in the actions abated by death provided under Section 5, Rule 87. Rather, it is included under Section 1, Rule 88, as an action to recover damages fro an injury to person or property.

 # 10 Dinglasan v. Ang Chia

Facts:
Dinglasan, et al filed a case in CFI Capiz against Ang Chia, her son Claro Lee and one Lee Bun Ting to recover the ownership and possession of a parcel of land located in Capiz and damages in the amount of P1k. Subsequently, plaintiffs filed a motion for the appointment of a receiver to which counsel for defendants objected. The motion was withdrawn upon knowledge of the pendency of intestate proceedings in the same court, and field an amended complaint including administratrix of estate (widow Ang Chia), who was already a party defendant in her own capacity and moved for the increase of her bond and an appointment of a co-administrator.
Administratrix then filed motion to dismiss the claim in intervention and objected to the motions.

Issue:
Whether or not intestate proceedings should be held in abeyance pending determination of civil case against administratrix

Held:
The heirs of an estate may not demand the closing of an intestate proceeding at any time where there is a pending case against administrator. The probate court can rightfully hold in abeyance the closing of the intestate proceedings until the civil case is settled. To hold otherwise would render Section 17, Rule 3 and Section 1, Rule 88 nugatory.

PAREDES v. MOYA

FACTS:
Petitioner Severino Paredes sued his employer, August Kuntze, for collection of separation and overtime pay in the CFI-Manila. Paredes prevailed, and Kuntze appealed to the CA. Kuntze died pending appeal and was substituted by the administratrix of his estate. The CA dismissed the appeal for the administratrix's failure to file the printed record on appeal, and the record of the case was remanded. Paredes filed a motion for execution, so the provincial Sheriff of Rizal levied on the properties of August Kuntze. Paredes was the highest bidder at the auction sale conducted by the Sheriff. In spite of a Motion to Quash the Writ of Execution filed by the Administratrix still pending resolution, Paredes sold the property to co-petitioner Victorio Ignacio. Respondent Court (Judge Moya) set aside the Writ of Execution and the Sheriff's Sale and Public Auction of the property without prejudice to the filing of the judgment as a claim in the proceedings for settlement of the estate of the deceased.

ISSUE: W/N the CFI correctly set aside the Writ of Execution and the Sheriff's Sale and Public Auction – YES.

HELD:
In the case of a money claim where the defendant dies while appeal is pending, the appeal should not be dismissed; it should continue, but the deceased defendant should be substituted by his legal representative—executor or administrator of the estate. If the lower court is affirmed, the plaintiff must go to the probate court for an order directing the executor or administrator to satisfy the judgment. The CFI that originally rendered the judgment has no power to order its execution and levy on the properties of the deceased because the same are already in *custodia legis* in the probate court where administration proceedings for the settlement of the estate of the deceased defendant are already pending (see Section 21, Rule 3)
If the defendant dies *after* final judgment has been rendered by the CFI, as in the case at bar, the action survives. The appeal should proceed with the deceased defendant being

substituted by his legal representative. This would prevent a useless repetition of presenting anew before the probate court the evidence already presented in the CFI on the validity of the claim. Consequently, contrary to respondents' claim, the judgment against the deceased Kuntze became final and executory; it was not arrested by his death.

It was error on the part of the plaintiff Paredes, now one of the petitioners, to have the money judgment in his favor executed against the properties of the deceased Kuntze.

The proper remedy of Paredes should have been to file his claim in the administration proceedings of the estate of the deceased defendant Kuntze because all claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice to the creditors.

The respondent court correctly nullified the order of execution pursuant to the judgment, which became final and executory, and the corresponding levy on execution and the public auction sale.

The judgment for money against the deceased stands in the same footing as all claims for money against the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedent, (1st sentence, Sec. 5, Rule 86 of the Rules of Court), Rule 86 of the Rules of Court), although the validity of the money claim covered by a judgment against the decedent which has already become final and executory can no longer be litigated in the court where administration proceedings for the settlement of the properties of the deceased are still pending, unlike the other money claims whose validity may yet be challenged by the executor or administrator.

The writ of execution was not the proper procedure for the payment of debts and expenses of the administration. The proper procedure is for the court to order the administratrix to make the payment; and if there is no sufficient cash on hand, to order the sale of the properties and out of the proceeds to pay the debts and expenses of the administration.

The ordinary procedure by which to settle claims of indebtedness against the estate of a deceased person, as an inheritance tax, is for the claimant to present a claim before the probate court so that said court may order the administrator to pay the amount thereof.

To such effect is the decision of this Court in *Aldamiz vs. Judge of the Court of First Instance of Mindoro*, G.R. No. L-2360, Dec. 29, 1949, thus: . . . *a writ of execution is not the proper procedure allowed by the Rules of Court for the payment of debts and expenses of administration*. The proper procedure is for the court to order the sale of personal estate or the sale or mortgage of real property of the deceased and all debts or expenses of administration should be paid out of the proceeds of the sale or mortgage. The order for the sale or mortgage should be issued upon motion of the administrator and with the written notice to all the heirs, legatees and devisees residing in the Philippines, according to Rule 89, section 3, and Rule 90, section 2. And when sale or mortgage of real estate is to be made, the regulations contained in Rule 90, section 7, should be complied with. Execution may issue only where the devisees, legatees or heirs have entered into possession of their respective portions in the estate prior to settlement and payment of the debts and expenses of administration and it is later ascertained that there are such debts and expenses to be paid, in which case "the court having jurisdiction of the estate may, by order for that purpose, after hearing, settle the amount of their several liabilities, and order how much and in what manner each person shall contribute, and may *issue execution* if circumstances require" (Rule 39, section 6; see also Rule 74, section 4;). And this is not the instant case.

The same rule must be applied in connection with money judgments against the deceased that have already become final, such as the money judgment in favor of Paredes. No writ of execution should issue against the properties of the deceased. The claim for satisfaction of the money judgment should be presented in the probate court for payment by the administrator.

The legal basis for such a procedure is the fact that in the testate or intestate proceedings to settle the estate of a

deceased person, the properties belonging to the estate are under the jurisdiction of the court and such jurisdiction continues until said properties have been distributed among the heirs entitled thereto. During the pendency of the proceedings all the estate is in *custodia legis* and the proper procedure is not to allow the sheriff, in the case of court judgment, to seize the properties but to ask the court for an order to require the administrator to pay the amount due from the estate and required to be paid. In this jurisdiction, a void judgment or order is in legal effect no judgment or order. By it no rights are divested. From it no rights can be obtained. Being worthless, it neither binds nor bars anyone. All acts performed under it and all claims flowing from it are void.

PY ENG CHONG vs. HON. A. MELENCIO HERRERA, in her capacity as Judge of the Court of First instance of Manila, and JULIA SO DE CHIAT & SONS, respondents.

FACTS:
On June 6, 1967, the CFI-Manila ordered defendants-spouses Eduardo Uy Chiat and Cecilia G. Uy Chiat to pay petitioner Chong, pursuant to which a writ of execution was issued. Chong secured a writ of execution dated September 28, 1967, but it was returned unsatisfied by the Provincial Sheriff of Negros Occidental.
Upon motion of the petitioner, a First Alias Writ of Execution directing the Sheriff of the City of Manila to levy on the goods and chattels of the spouses, jointly and severally, especially their participation in the general partnership of Julia So De Chiat and Sons, but this was likewise returned unsatisfied. Upon motion of the petitioner, the trial court issued a Second Alias Writ of Execution directing the Sheriff of Negros Occidental to levy on the properties of the Uy Chiat spouses, jointly and severally, especially their participation in the general partnership of the respondent Julia So De Chiat & Sons.
On June 23, 1969, the same Sheriff levied upon the rights, interests and participation of the spouses over the 12 parcels of land registered in the name of respondent general partnership. Respondent partnership filed an Urgent Motion to Lift Levy on Execution alleging that the properties levied upon by the Sheriff belong exclusively to said respondent and that judgment debtors have ceased to be members of the partnership, having sold all their rights and participation therein to Julia So De Chiat, mother of judgment debtor Eduardo Uy Chiat. Petitioner opposed the motion.
Respondent Judge granted the motion to lift the levy on execution by ordering the recall of the Second Alias Writ of Execution, stating that Eduardo Uy Chiat died on March 30, 1968, hence, a writ of execution against him can no longer be enforced.
Petitioner's MR was denied, hence this petition for *certiorari,* seeking the nullification of the orders.

ISSUE:
W/N the judgment creditor is under obligation to file his claim with the estate of the deceased where no proceedings have been instituted for the settlement of the estate of said deceased – YES.

HELD:
Petition denied. The basic reason of the respondent court in recalling the writ of execution was that the judgment being for money and the judgment debtor having died prior to the levy, 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.
The respondent court was correct in recalling the Second Alias Writ of Execution. Defendant Eduardo Uy Chiat having died on March 30, 1968, prior to the levy which was made by the Provincial Sheriff of Negros Occidental on June 23, 1969, the judgment in favor of petitioner, being one for a sum of money, may no longer be enforced by means of the said writ of execution, but must be filed in the proper estate proceedings. This is in consonance with the rule laid down in Section 5 of Rule 86 of the Rules of Court. The above-quoted provision is mandatory. This requirement is for the purpose of protecting the estate of the deceased by informing the executor or administrator of the claims against it, thus enabling him to examine each claim and to determine whether it is a proper one which should be allowed. The plain and obvious design of the rule is the speedy settlement of the

affairs of the deceased and the early delivery of the property to the distributees, legatees, or heirs. The law strictly requires the prompt presentation and disposition of claims against the decedent's estate in order to settle the affairs of the estate as soon as possible, pay off its debts and distribute the residue[6]
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 which provides that in case the judgment debtor dies *after* execution is actually *levied* upon any of his property, the same may be sold for the satisfaction of the judgment. However, this is not the case here.
Petitioner contends that he could not present his claim in the proper estate proceedings because no such proceedings for the settlement of the estate of the deceased Eduardo Uy Chiat have been instituted. However, the Rules of Court provide a remedy for petitioner. He may initiate proceedings under Section 1 of Rule 76 of the Rules of Court if Eduardo Uy Chiat died testate, or under Section 6 (b) of Rule 78 if he died intestate.
If a creditor, having knowledge of the death of his debtor and the fact that no administrator has been appointed, permits more than three years to elapse without asking for the appointment of an administrator or instituting the intestate proceedings in the competent court for the settlement of the latter's estate, he is guilty of laches and his claim prescribes. To hold otherwise would be to permit a creditor having knowledge of the debtor's death to keep the latter's estate in suspense indefinitely, by not instituting either estate or intestate proceedings in order to present his claim, to the prejudice of the heirs and legatees.

SPOUSES BENITO MANALANSAN and INES VITUG-MANALANSAN, petitioner,
vs.
HON. MARIANO CASTANEDA, JR., presiding Judge, Branch III, CFI of Pampanga; ADORACION VDA. DE DANAN, for herself and as administratix of the ESTATE OF DOMINADOR DANAN, Spec. Proc. No. G-22, CFI Branch II, Pampanga, respondents.

FACTS:
Spouses Dominador and Adoration Danan mortgaged their fish-pond and residential lot in Pampanga in favor of petitioner-spouses Benito Manalansan and Ines Vitug-Manalansan, to guarantee payment of money. As the mortgagors did not pay notwithstanding demands, an action for the foreclosure of the mortgage was filed with the CFI-Pampanga. Judgment was rendered in favor of the plaintiffs. The spouses Danan appealed to the CA, which modified the judgment by eliminating payment of moral damages. Dissatisfied, the defendant spouses filed a petition for review with the SC, but this was denied.
In due time, the records of the case were remanded to the court below and upon application, a writ of execution was issued on January 13, 1975, but when the sheriff was about to levy upon the mortgaged properties, respondent Adoracion Danan opposed the levy on execution and filed a motion to set aside the writ of execution for the following reasons: the properties are in *custodia legis* and the judgment should be presented as a money claim in the Intestate Estate of Dominador Danan, pursuant to Sec. 5 , Rule 86 of the Revised Rules of Court since Dominador Danan died on November 7, 1970, while the case was pending appeal before the Court of Appeals and intestate proceedings for the settlement of his estate had already been instituted.
The respondent Judge ordered the setting aside the writ of execution.
The petitioners' MR was denied. The spouses Manalansan filed a petition to annul the order, and to direct the respondent Judge to proceed with the execution of the judgment rendered in the foreclosure proceedings.

ISSUE: W/N respondent Judge acted correctly in setting aside the writ of execution – NO. There was GADLEJ.

HELD: Petition granted. Petitioners contend that the respondent Judge abused his discretion, amounting to lack of jurisdiction, in delegating the execution of a judgment to the probate court, which has no jurisdiction to enforce a lien on property.
There is merit in the contention. To begin with, the saving

clause in Sec. 7, Rule 86 of the Revised Rules of Court, which the respondent Judge required to be performed and the observance of which he gave as reason for setting aside the writ of execution he had previously caused to be issued, and in delegating the authority to execute the judgment in the foreclosure proceedings to the probate court, does not confer jurisdiction upon the probate court, of limited jurisdiction, to enforce a mortgage lien.

Nor can it be relied upon as sufficient ground to delegate the execution of the judgment of foreclosure to the probate court. The rule merely reserves a right to the executor or administrator of an estate to redeem a mortgaged or pledged property of a decedent which the mortgage or pledgee has opted to foreclose, instead of filing a money claim with the probate court, under said Section 7 of Rule 86. While the redemption is subject to the approval of the probate court, the exercise of the right is discretionary upon the said executor or administrator and may not be ordered by the probate court upon its own motion.

Besides, the action filed herein is for the foreclosure of a mortgage, or an action to enforce a lien on property. Under Sec. 1, Rule 87 of the Revised Rules of Court, it is an action which survives. Being so, the judgment rendered therein may be enforced by a writ of execution.

In the case of *Testamentaria de Don Amadeo Matute Olave vs. Canlas*, the Court ruled that an action to enforce a lien on property may be prosecuted by the interested person against the executor or administrator independently of the testate or intestate proceedings for the reason that such claims cannot in any just sense be considered claims against the estate, but the right to subject specific property to the claim arises from the contract of the debtor whereby ha has during life set aside certain property for its payment, and *such property does not, except in so far as its value may exceed the debt, belong to the estate.*

Since the mortgaged property in question does not belong to the estate of the late Salvador Danan, according to the foregoing rule, the conclusion is reasonable that the probate court has no jurisdiction over the property in question, and that the respondent Judge had abused his discretion in delegating the execution of the judgment to the probate court.

The fact that the defendant Salvador Danan died before, and not after the decision of the Court of Appeal became final and executory will not nullify the writ of execution already issued. Thus, in *Miranda, vs. Abbas,* judgment was rendered two months before the death of the defendant. Since neither the defendant nor his heirs after his death appealed from the judgment, the writ of execution was issued as a matter of course. The death of the defendant was communicated to the trial court six months after the decision had become final. The successors of the decedent contended that the writ of execution issued was void because contrary to Section 7, Rule 39, the defendant died before, not after, the entry of judgment. The Court rejected the theory, saying that Section 7, Rule 39 cannot be so construed as to invalidate the writ of execution already issued in so far as service thereof upon the heirs or successors-in-interest of the defendant is concerned. It merely indicates against whom the writ of execution is to be enforced when the losing party dies after the entry of judgment or order. Nothing therein, nor in the entire Rule 39, to our mind, even as much as intimates that a writ of execution issued after a party dies, which death occurs before entry of the judgment, is a nullity. The writ may yet be enforced against his executor or administrator, if there be any, or his successors-in-interest.

The respondent Judge committed an error and acted with grave abuse of discretion in setting aside the writ of execution and in ordering that the judgment be served on the administratrix of the estate of the late Dominador Danan, through the intestate court, Branch II of the Court of First Instance of Pampanga, with his indorsement for the execution of the judgment.

SATURNINO A. TANHUECO, petitioner,
vs.
HON. ANDRES AGUILAR, Presiding Judge, Branch II, Court of First Instance of Pampanga, ROSARIO SORIANO VDA. DE GUIAO, ET AL., respondents.

FACTS:

Petitioner/lessor filed with the City Court of Angeles City a

complaint for unlawful detainer against lessee Julian Guiao, deceased, praying that the latter be ordered to vacate the building being leased and to pay the rentals in arrears. Guiao's defense was that petitioner did not introduce certain repairs on the leased premises and that he did not deal with petitioner, with a counterclaim for damages. The City Court ordered Guiao to vacate the leased premises and to pay the rentals in arrears. Guiao appealed from said Decision to the CFI-Pampanga, putting up the required supersedeas bond. On 18 November 1967 Julian Guiao died. Guiao's counsel filed a motion for substitution, and respondent Judge issued an Order ordering the substitution of the other respondents in lieu of deceased Guiao as parties-defendants. In March 1968 the new defendants vacated the leased premises.
June 1968, respondents filed a motion to dismiss, alleging that all rentals that accrued during the pendency of the appeal in the CFI had been paid, that what remain to be litigated are the unpaid rentals that accrued during the pendency of the case in the City Court; consequently, the remaining issue has been reduced to a mere claim for money, thus the CFI has no jurisdiction to hear and decide a claim for money, and that jurisdiction belongs to the probate court.
Petitioner opposed the motion to dismiss, stating that respondents were estopped from seeking dismissal, having previously filed a motion for substitution which was granted by the Court, and that the claim involved is not mere claim for money but is in the nature of damages arising from the unlawful withholding of the possession of real property.
Respondent judge issued an Order dismissing the case on the ground that an action for unpaid rentals, which is a claim for a sum of money, cannot be maintained against the heirs of a deceased defendant. Hence, this petition for review by certiorari directed against the Order of dismissal.

ISSUE: W/N the unpaid rentals are "money claims," within the meaning of Section 21 of Rule 3 - YES

HELD:
Sec. 21, Rule 3 provides that when the action is for recovery of money, debt or interest therewith, and the defendant dies before final judgment in the CFI, it shall be dismissed to be prosecuted in the manner especially provided in these rules. The reference is to the corresponding testate or intestate proceeding for the settlement of the estate of the deceased, wherein all his creditors may appear and file their claims so that the same may be paid proportionately out of the said estate. Section 1 of Rule 87 states: No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; but actions to recover real or personal property, or an interest therein, from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal, may be commenced against him.

If the unpaid rentals in question here are "money claims" under the foregoing rules, they do not survive, but must be presented against the estate in the probate court. However, in a case of ejectment, or unlawful detainer, the main issue is possession of the property, to which the right to recover damages for the withholding of such possession after the right thereto has terminated is only incidental; and the rents accrued and unpaid are simply the measure for the determination of such damages. The action for ejectment itself is not abated by the death of the defendant, but must continue until final judgment, in which the question of damages must be adjudicated. The fact that the occupants of the tenement subject of the action vacated the same during the pendency of the case on appeal does not divest the recoverable damages of their character as an incident in the main action and convert them into simple claims for money which must be prosecuted against the estate in the administration proceeding. The issue concerning the illegality of the defendant's possession is still alive, and upon its resolution depends the corollary issue of whether, and how much, damages may be recovered.
On the other hand, if the respondents' act of vacating the building subject of the case be construed as abandonment of their appeal, then the judgment appealed from would acquire the character of finality, and thus preclude the necessity of filing the claim for unpaid rentals before the probate court.
The order complained of is set aside, and the case is remanded to the trial court for further proceedings.

FABIANA C. VDA. DE SALAZAR, petitioner,
vs.
COURT OF APPEALS, PRIMITIVO NEPOMUCENO and EMERENCIANA NEPOMUCENO, respondents.

FACTS:
Respondents Nepomuceno filed separate complaints for ejectment with the Court of Agrarian Relations of Malolos, Bulacan against petitioner's deceased husband, Benjamin Salazar. The trial court ruled in favor of private respondents. The CA denied the petitioner's appeal. Almost a year after the termination of that appeal, the same trial court decision subject thereof was once again assailed before the CA through a petition for annulment of judgment. Petitioner assailed the same trial court decision as having been rendered by a court that did not have jurisdiction over her and the other heirs of her deceased husband because notwithstanding the fact that her husband had already died on October 3, 1991, the trial court still proceeded to render its decision on August 23, 1993 without effecting the substitution of heirs in accordance with Section 17, Rule 3, of the Rules of Court thereby depriving her of her day in court.
Petitioner, not having asserted the matter of fraud or collusion in her petition for annulment of judgment, the CA decided the same on the basis of the sole issue of non-jurisdiction resulting from the alleged deprivation of petitioner's right to due process and upheld the trial court decision. Petitioner's MR was denied.
ISSUE: W/N the lower court had jurisdiction over petitioners – yes.
HELD:
Petition denied. The need for substitution of heirs is based on the right to due process accruing to every party in any proceeding. The rationale underlying this requirement in case a party dies during the pendency of proceedings of a nature not extinguished by such death, is that the exercise of judicial power to hear and determine a cause implicitly presupposes in the trial court, amongst other essentials, jurisdiction over the persons of the parties.
The defendant in an ejectment case having died before the rendition by the trial court of its decision therein, its failure to effectuate a formal substitution of heirs before its rendition of judgment, does not invalidate such judgment where the heirs themselves appeared before the trial court, participated in the proceedings therein, and presented evidence in defense of deceased defendant, it undeniably being evident that the heirs themselves sought their day in court and exercised their right to due process.
The CA correctly ruled that ejectment, being an action involving recovery of real property, is a real action which as such, is not extinguished by the defendant's death. The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental.
There is no dispute that an ejectment case survives the death of a party, which death did not extinguish the deceased's civil personality. More significantly, a judgment in an ejectment case is conclusive between the parties and their successors in interest by title subsequent to the commencement of the action. Furthermore, judgment in an ejectment case may be enforced not only against defendants therein but also against the members of their family, their relatives, or privies who derive their right of possession from the defendants While it is true that a decision in an action for ejectment is enforceable not only against the defendant himself but also against members of his family, his relatives, and his privies who derived their right of possession from the defendant and his successors-in-interest, it had been established that petitioner had, by her own acts, submitted to the jurisdiction of the trial court. She is now estopped to deny that she had been heard in defense of her deceased husband in the proceedings therein.

FLORENDO, JR., ET AL. vs. COLOMA, ET AL
FACTS:
A petition for certiorari with preliminary injunction. Salindon,

an awardee of a Philippine Homesite and Housing Corporation (PHHC) lot filed a complaint for ejectment against William Vasquez and Silverio Nicolas with the respondent court. In her complaint, Salindon alleged that the defendants were squatters occupying her property.

Salindon died. There was no substitution of party. The case was remanded to the city court. The deceased Salindon continued to be an adverse party.

CA eventually dismissed Salindon's appeal.

ISSUE:
W/N the lower court should take judicial notice of Salindon's death.

HELD:
Salindon's counsel after her death failed to inform the court of the death. The appellate court could not be expected to know or take judicial notice of the death of Salindon without the proper manifestation from counsel. The appellate court was well within its jurisdiction to proceed as it did with the case.

This is one such case where the successors-in- interest of the original plaintiff are estopped from questioning the jurisdiction of the respondent court. Adela Salindon, the original plaintiff in the ejectment case consistently maintained her stand that the respondent court had jurisdiction over the ejectment complaint.

CHEN V. ANDRADE
FACTS:
This is an administrative case filed by Ang Kek Chen against respondent Judge Amalia R. Andrade for serious misconduct, gross inefficiency, and extreme bias and partiality.

In a VERIFIED COMPLAINT, complainant charged respondent Judge with serious inefficiency and serious misconduct for claiming that during one of the hearings of the case, plaintiff's counsel manifested before the Court that the other defendant, Mr. Tui Hok, died on January 5, 1990. Despite admission of plaintiff's counsel of the fact of death of Mr. Tui Hok, respondent court kept on sending orders and notices to the deceased, which, according to complainant, is in violation of the Rule that no court can acquire jurisdiction over a dead person.

ISSUE:
W/N respondent judge should be held liable.

HELD:
With respect to the charge that notices and orders continued to be sent to defendant Tui Hok, respondent judge explained that it was because no proof had been submitted to her court to prove the reported death of defendant Tui Hok.

Respondent judge contended that complainant had failed to substantiate the charges of her alleged character deficiencies and vindictiveness. Office of the Court Administrator recommended and SC held with the exception of the charge relative to the care and custody of case records, that the complaint against respondent Judge Amalia R. Andrade be DISMISSED for failure to substantiate the charges.

SY VS. EUFEMIO
FACTS:
A petition for review by *certiorari* of an order of the Juvenile and Domestic Relations Court of Manila, dismissing said case on the ground that the death of plaintiff, Carmen Sy, which occurred during the pendency of the case, abated the cause of action as well as the action itself. The dismissal order was issued over the objection of the heir of the deceased plaintiff who sought to substitute the deceased and to have the case prosecuted to final judgment.

Carmen Sy filed a petition for legal separation against Eufemio. Before the trial could be completed, petitioner died. Counsel for petitioner duly notified the court of her death.

ISSUE:
W/N the death of the plaintiff before final decree in an action for legal separation abates the action.

HELD:
An action for legal separation which involves nothing more than the bed-and-board separation of the spouses (there being no absolute divorce in this jurisdiction) is purely personal. The Civil Code of the Philippines recognizes this in its Article 100, by allowing only the innocent spouse (and no one else) to claim legal separation; and in its Article 108, by providing that the spouses can, by their reconciliation, stop or abate the proceedings and even rescind a decree of legal separation already rendered. Being personal in character, it follows that the death of one party to the action causes the death of the action itself — *actio personalis moritur cum persona.*

GUTIERREZ, Jr vs. MACANDOG
FACTS:
A petition for certiorari seeks to annul two orders of the respondent judge of the CFI of Negros Occidental. The first order authorized the release of P50,000.00 to the private respondent to be taken from the loan secured by the estate of Agustin Gutierrez, Sr., from the Philippine National Bank (PNB); and the second denied the motion for reconsideration which was filed by the heirs of the decedent.

The administratrix filed a verified Motion to Reconsider Order and for an Order Directing the PNB Not to Release Any Withdrawals.

ISSUE:
W/N the claim for support should be charged to the estate.

HELD:
The respondent Elpedia's claim for support should not have been addressed to the estate of Agustin Gutierrez, Sr.

When the first questioned order was issued by the respondent judge, Mauricio Gutierrez was still alive. In fact, he was one of those who opposed such order. Respondent judge had no authority to issue the said order because she knew fully well that the claim had no leg to stand on as Elpedia was not an heir to the estate and the decedent had no obligation whatsoever to give her support. Respondent Elpedia, at this point, should have asked for support *pendente lite* before the juvenile court where the action for legal separation which was filed by her husband was pending. Then, when Mauricio Gutierrez died, she should have filed an action for the settlement of estate of her husband where she and her children could receive such allowance as may be directed by the court under Section 3, Rule 83 of the Revised Rules of Court.

Therefore, the second order is also null and void for being without any legal basis.

DOMINGO vs. GARLITOS, ET AL.

FACTS:
A petition for *certiorari* and *mandamus* against Judge Garlitos, seeking to annul certain orders of the court and for an order in the SC directing respondent court to execute judgment in favor of the Government against the estate of Walter Scott Price for internal revenue taxes.

In an earlier case, the SC declared as final and executory the order for the payment by the estate of the estate and inheritance taxes, charges and penalties, issued by the CFI of Leyte in, special proceedings No. 14 entitled "In the matter of the Intestate Estate of the Late Walter Scott Price." In order to enforce the claims against the estate the fiscal presented a petition to the court below for the execution of the judgment. The petition was, however, denied by the court which held

that the execution is not justifiable as the Government is indebted to the estate under administration.

ISSUE:
W/N the petition for *certiorari* and *mandamus* should be granted.

HELD:
The petition to set aside the above orders of the court below and for the execution of the claim of the Government against the estate must be denied for lack of merit. The ordinary procedure by which to settle claims of indebtedness against the estate of a deceased person, as an inheritance tax, is for the claimant to present a claim before the probate court so that said court may order the administrator to pay the amount thereof.

Aldamiz vs. Judge of the CFI of Mindoro

FACTS: Santiago Rementeria, the decedent was a member of the commercial partnership "Aldamiz y Rementeria". The other members were his brothers Gavino and Jose Aldamiz. Rementeria died in 1937, and a probate proceeding was instituted in the same year in the CFI of Mindoro, by Gavino Aldamiz, represented by Atty. Juan Luna. Aldamiz was appointed administrator, and was represented by Atty. Luna until 1947, when the order complained of was issued.

On January 15, 1947, after 10 years from the date of appointment, Gavino, through Atty. Luna, submitted his accounts, and a project for partition with a view to closing the proceedings. The court approved the accounts but refused to approve the project for partition unless all debts including attorneys fees be first paid.

In the project of partition, it was expressly stated that attorneys fees, debts and incidental expenses would be proportionately paid by the beneficiaries after the closure of the testate proceedings, but the court refused to sanction this clause of the project.

It if for this reason that, Atty. Luna, without previously preparing and filing a written petition to have his professional fees fixed and without previous notice to all interested parties, submitted evidence of his services and professional standing so the court might fix the amount for compensation and the administrator may make payment. This failure was not due to bad faith or fraudulent purpose but to an honest belief that such requirements were not necessary under the circumstances.

At the time respondents evidence was submitted to the court, Gavino and Jose Aldamiz were residing in the Philippines and other interested parties were residing in Spain. No written claim had ever been filed for respondents fees, and the interested parties had not been notified thereof nor of the hearing, not even the administrator Gavino Aldamiz who did not know when he was called to testify that he would testify in connection with respondents fees.

The court ordered payment of P28,000. Gavino made a payment of 5,000, but did not pay the rest. After several demands, Atty. Luna filed a motion for execution which was granted by the court, which resulted in the levying of two parcels of land owned by the commercial partnership "Aldamiz y Rementeria.

ISSUE: Was the order of the court valid?

HELD: The fixing of the amount of Attorneys fees by the court is null and void. As such, the order of execution is also null and void.

The correct procedure for the collection of attorney's fees, is for the counsel to request the administrator to make payment and file an action against him in his personal capacity, and not as an administrator should he fail to pay. If judgement is

rendered against the administrator and he pays, he may include the fees so paid in his account to the court. The attorney may, instead of bringing such action, file a petition in the testate or intestate proceeding, asking that the court, after notice to all persons interested, allow his claim and direct the administrator to pay it as an expense of administration.

In this case, no written petition for the payment of atty.'s fees has ever been filed and the interested parties had not been previously notified thereof nor of the hearing held by the court. Thus, the orders issued by the Court are null and void as having been issued in excess of jurisdiction.

The order of execution was declared by the Court as null and void because a writ of execution was not the proper procedure allowed by the Rules of Court for the payment of debts and expenses of administration.

The proper procedure was for the court to order the sale of personal estate or the sale or mortgage of real property of the deceased and all debts or expenses of administration should be paid out of the proceeds of the sale or mortgage.

De Bautista vs. De Guzman

FACTS: Bautista, the father of the appellees, was a passenger in a Jeepney owned and operated by Guzman. They Jeepney figured in an accident due to the recklessness of the driver and Bautista. The driver was convicted of reckless imprudence, and ordered to indemnify the heirs of Bautista. A writ of execution was issued to the driver, but the same was returned to the court unsatisfied.

Afterwards, De Guzman died. Due to the failure of the heirs of Bautista to claim from the driver (Medrano), they filed a complaint against the De Guzmans alleging that, other than the above mentioned incidents, that they demanded from De Guzman and from his family, the payment of P3,000 as subsidiary liability, plus actual, exemplary and moral damages, and attorneys fees, but they refused to pay. The De Guzman's filed a motion to dismiss.

The lower court sustained the motion, stating that the procedure for a money claimant against a deceased person as in the instant case, is for the claimant to file proceedings for the opening of judicial administration of the estate of said deceased person and to present his claim in said proceedings. He may only proceed to sue the heirs directly if such heirs have entered into an extra-judicial partition of such estate and have distributed the latter among themselves, in which case, the heirs become liable to the claimant in the proportion to the share which they have received as inheritance. This order became final.

Soon after, the a similar complaint was filed, stating analogous allegations, but further alleging that De Guzman died intestate, and a project of partition for his estate was presented and approved by the court, and that said intestate proceedings were closed. Once again, they made a claim for damages, and the De Guzmans once again filed a motion to dismiss based on the same grounds. In this case, the motion to dismiss was denied.

ISSUE: whether or not the trial court erred when it gave due course to the complaint stated above?

HELD: The court should not have allowed the complaint to prosper. The Bautista's lost their right to recover because of negligence and their failure to follow mandatory provisions of the rules. They overlooked the fact that they were no longer suing Rosendo de Guzman, but his heirs.

Sec. 5 Rule 86 provides: all claims for money against the decedent arising from the contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses for the last sickness of the decedents, and judgement for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as

counterclaims in any action that the executor or administrator may bring against the claimants x x x Claims not yet due, or contingent may be approved at their present value.

The above quoted rule is mandatory. Therefore upon the dismissal of the first complaint of the Bautistas, they should have presented their claims before the intestate proceedings filed in the same court. Instead, they slept on their right. They allowed the proceedings to terminate and the properties to be distributed to the heirs pursuant to a project of partition before instituting this separate action. This is not sanctioned by the rules. This constitutes a bar to a subsequent claim or similar action.

Therefore it was an error on the part of the trial court to hold that they had a cause of action against the De Guzmans.

The only instance where a creditor can file an action against a distributee of the debtor's asset is under section 5 of rule 88. (please refer to the rule). But even under that rule, the contingent claim must first have been established and allowed in the probate court before the creditors can file an action directly against the distributes. Such is not the situation however in the case at bar. The complaint was filed after the intestate proceedings had terminated and the estate finally distributed to the heirs. If we are to allow the complaint to prosper, and the trial court to take cognizance of the same, then the rules providing for the claims against the estate in a testate or intestate proceeding within a definite period would be rendered nugatory as a subsequent action for money claim against the distributees may be filed independently of such proceedings. This precisely is what the rule seeks to prevent so as to avoid further delays in the settlement of the estate of the deceased and in the distribution of his property to the heirs, legatees or devisees.

G.R. No. L-11307 October 5, 1918

ROMAN JAUCIAN vs. FRANCISCO QUEROL

FACTS: In October, 1908, Lino Dayandante and Hermenegilda Rogero executed a private writing in which they acknowledged themselves to be indebted to Roman Jaucian in the sum of P13,332.33. Hermenegilda Rogero signed this document in the capacity of surety for Lino Dayandante; but it appears from the instrument itself both debtors bound themselves jointly and severally to the creditor.

In November, 1909, Rogero brought an action in the Court of First Instance of Albay against Jaucian, asking that the document in question be canceled as to her upon the ground that her signature was obtained by means of fraud. In his answer to the complaint, Jaucian, by way of cross-complaint, asked for judgment against the plaintiff for the amount due upon the obligation, which appears to have matured at that time. Judgment was rendered in favor of Rogero, from which judgment the Jaucian appealed to the Supreme Court.

While the case was pending, Rogero died and the administrator of her estate, Querol, was substituted as the party plaintiff and appellee. On November 25, 1913, the Supreme Court rendered in its decision reversing the judgment of the trial court and holding that the disputed claim was valid.

During the pendency of the appeal, proceedings were had in the Court of First Instance of Albay for the administration of the estate of Rogero. A committee was appointed to pass upon claims against the estate. This committee made its report on September 3, 1912.

On March 24, 1914, or about a year and half after the filing of the report of the committee on claims against the Rogero estate, Jaucian entered an appearance in the estate proceedings, and filed with the court a petition in which he averred the execution of the document of October, 1908, by the deceased, the failure of her co-obligor Dayandante, to pay any part of the debt, except P100 received from him in March, 1914, and the complete insolvency of Dayandante.

Upon these facts Jaucian prayed the court for an order directing the administrator of the Rogero estate to pay him the sum due.

A copy of this petition was served upon Querol who opposed the granting of the petition upon the grounds that the claim had never been presented to the committee on claims for allowance.

The court held that no contingent claim was filed before the commissioners by Roman Jaucian, who seems to have rested content with the action pending. Section 746 et seq. of the Code of Civil Procedure provides for the presentation of contingent claims, against the estate. This claim is a contingent claim, because, according to the decision of the Supreme Court, Hermenegilda Rogero was a surety of Lino Dayandante. The object of presenting the claim to the commissioners is simply to allow them to pass on the claim and to give the administrator an opportunity to defend the estate against the claim. This having been given by the administrator defending the suit in the Supreme Court, the court considers this a substantial compliance with the law, and the said defense having been made by the administrator, he cannot now come into court and hide behind a technicality and say that the claim had not been presented to the commissioners and that, the commissioners having long since made report, the claim cannot be referred to the commissioners and therefore the claim of Roman Jaucian is barred. The court considers that paragraph (e) of the opposition is well-taken and that there must be legal action taken against Lino Dayandante to determine whether or not he is insolvent, and that declaration under oath to the effect that he has no property except P100 worth of property, which he has ceded to Roman Jaucian, is not sufficient.

On October 28, 1914, counsel for Jaucian filed another petition in the proceedings upon the estate of Hermenegilda Rogero, in which they averred, upon the grounds last stated, that Dayandante was insolvent, and renewed the prayer of the original petition. It was contended that the court, by its order of April 13, 1914, had "admitted the claim."

The petition was again opposed by the administrator, and the judge, after hearing, refused to grant Jaucian’s petition.

In this court the appellant contends that the trial judge erred (a) in refusing to give effect to the order dated April 13, 1914; and (b) in refusing to order the administrator of the estate of Rogero to pay the appellant the amount demanded by him. The contention with regard to the order of April 13, 1914, is that no appeal from it having been taken, it became final.

An examination of the order in question, however, leads us to conclude that it was not a final order, and therefore it was not appealable. In effect, it held that whatever rights Jaucian might have against the estate of Rogero were subject to the performance of a condition precedent, namely, that he should first exhaust this remedy against Dayandante. The court regarded Dayandante. The court regarded Dayandante as the principal debtor, and the deceased as a surety only liable for such deficiency as might result after the exhaustion of the assets of the principal co-obligor. The pivotal fact upon which the order was based was the failure of appellant to show that he had exhausted his remedy against Dayandante, and this failure the court regarded as a complete bar to the granting of the petition at that time. The court made no order requiring the appellee to make any payment whatever, and that part of the opinion, upon which the order was based, which contained statements of what the court intended to do when the petition should be renewed, was not binding upon him or any other judge by whom he might be succeeded. Regardless of what may be our views with respect to the jurisdiction of the court to have granted the relief demanded by appellant in any event, it is quite clear from what we have stated that the order of April 13, 1914, required no action by the administrator at that time, was not final, and therefore was not appealable. We therefore conclude that no rights were conferred by the said order of April 13, 1914, and that it did not preclude the administrator from making opposition to the petition of the appellant when it was renewed.

Appellant contends that his claim against the deceased was contingent. His theory is that the deceased was merely a surety of Dayandante. His argument is that as section 746 of the Code of Civil Procedure provides that contingent claims "may be presented with the proof to the committee," it follows that such presentation is optional. Appellant, furthermore, contends that if a creditor holding a contingent claim does not see fit to avail himself of the privilege thus provided, there is nothing in the law which says that his claim is barred or prescribed, and that such creditor, under section 748 of the Code of Civil Procedure, at any time within two years from the time allowed other creditors to present their claims, may, if his claim becomes absolute within that period present it to the court for allowance. On the other hand counsel for appellee contends (1) that contingent claims like absolute claims are barred for non-presentation to the committee but (2) that the claim in question was in reality an absolute claim and therefore indisputably barred.

HELD: From what has been said it is clear that Rogero, and her estate after her death, was liable absolutely for the whole obligation, under section 698 of the Code of Civil Procedure; and if the claim had been duly presented to the committee for allowance it should have been allowed, just as if the contact had been with her alone. (the case itself made a long discussion on the difference between joint liability and solidary liability, and they concluded from the evidence that Rogero was solidarily liable for the claim)

It is thus apparent that by the express and incontrovertible provisions both of the Civil Code and the Code of Civil Procedure, this claim was an absolute claim. Applying section 695 of the Code of Civil Procedure, this court has frequently decided that such claims are barred if not presented to the committee in time and we are of the opinion that, for this reason, the claim was properly rejected.

There is no force, in our judgment, in the contention that the pendency of the suit instituted by the deceased for the cancellation of the document in which the obligation in question was recorded was a bar to the presentation of the claim against the estate. The fact that the lower court had declared the document void was not conclusive, as its judgment was not final, and even assuming that if the claim had been presented to the committee for allowance, it would have been rejected and that the decision of the committee would have been sustained by the Court of First Instance, the rights of the creditor could have been protected by an appeal from that decision.

In regards to rule 88, 4-5 MALCOLM and FISHER, JJ., concurring:

The concurring justices were of the opinion that section 748 and 749 must be construed as being limited by the two preceding sections, and hold that only such contingent claims as have been presented to the committee may be recovered from the estate or the distributees. If no such contingent claims are presented to the committee they will be non-existent so far as the distributees are concerned. If such claims are proved, but do not become absolute within the two years, the distributees will know that their respective shares are subject to a contingent liability, definite in amount, and may govern themselves accordingly.

They were also of the opinion that the contention of the appellant cannot be sustained. Sections 748 and 749, in speaking of contingent claims which are demandable after they become absolute, against the administration or against the distributees, use the _expression "such contingent claim." The use of the word "such" is, we think, clearly intended to limit the words "contingent claim" to the class referred to in the two proceeding sections — that is, to such contingent claims as have been presented to the committee and reported to the court pursuant to the requirements of sections 746 and 747.

With respect to the contention that the bar established by section 695 is limited to claims "proper to be allowed by the committee" our reply is that contingent claims fall within this

definition equally with absolute claims. It is true that as long as they are contingent the committee is not required to pass upon them finally, but merely to report them so that the court may make provision for their payment by directing the retention of assets. But if they become absolute after they have been so presented, unless admitted by the administrator or executor, they are to be proved before the committee, just as are other claims. We are of the opinion that the _expression "proper to be allowed by the Committee," just as are other claims. We are of the opinion that the _expression "proper to be allowed by the Committee," as limiting the word "claims" in section 695 is not intended to distinguish absolute claims from contingent claims, but to distinguish those which may in no event be passed upon the committee, because excluded by section 703, from those over which it has jurisdiction.

G.R. No. L-28046 May 16, 1983

PHILIPPINE NATIONAL BANK vs. INDEPENDENT PLANTERS ASSOCIATION

FACTS: This is an appeal by PNB from the Order of CFI of Manila dismissing PNB's complaint against several solidary debtors for the collection of a sum of money on the ground that one of the defendants (Ceferino Valencia) died during the pendency of the case (i.e., after the plaintiff had presented its evidence) and therefore the complaint, being a money claim based on contract, should be prosecuted in the testate or intestate proceeding for the settlement of the estate of the deceased defendant pursuant to Section 6 of Rule 86.

ISSUE: Whether in an action for collection of a sum of money based on contract against all the solidary debtors, the death of one defendant deprives the court of jurisdiction to proceed with the case against the surviving defendants.

HELD: It is now settled that the quoted Article 1216 grants the creditor the substantive right to seek satisfaction of his credit from one, some or all of his solidary debtors, as he deems fit or convenient for the protection of his interests; and if, after instituting a collection suit based on contract against some or all of them and, during its pendency, one of the defendants dies, the court retains jurisdiction to continue the proceedings and decide the case in respect of the surviving defendants.

Construing Section 698 of the Code of Civil Procedure from whence the aforequoted provision (Sec. 6, Rule 86) was taken, this Court held that where two persons are bound in solidum for the same debt and one of them dies, the whole indebtedness can be proved against the estate of the latter, the decedent's liability being absolute and primary; and if the claim is not presented within the time provided by the rules, the same will be barred as against the estate. It is evident from the foregoing that Section 6 of Rule 87 (now Rule 86) provides the procedure should the creditor desire to go against the deceased debtor, but there is certainly nothing in the said provision making compliance with such procedure a condition precedent before an ordinary action against the surviving solidary debtors, should the creditor choose to demand payment from the latter, could be entertained to the extent that failure to observe the same would deprive the court jurisdiction to take cognizance of the action against the surviving debtors. Upon the other hand, the Civil Code expressly allows the creditor to proceed against any one of the solidary debtors or some or all of them simultaneously. There is, therefore, nothing improper in the creditor's filing of an action against the surviving solidary debtors alone, instead of instituting a proceeding for the settlement of the estate of the deceased debtor wherein his claim could be filed.

It is crystal clear that Article 1216 of the New Civil Code is the applicable provision in this matter. Said provision gives the creditor the right to 'proceed against anyone of the solidary debtors or some or all of them simultaneously.' The choice is undoubtedly left to the solidary, creditor to determine against whom he will enforce collection. In case of the death of one of the solidary debtors, he (the creditor) may, if he so chooses, proceed against the surviving solidary debtors without necessity of filing a claim in the estate of the deceased

debtors. It is not mandatory for him to have the case dismissed against the surviving debtors and file its claim in the estate of the deceased solidary debtor.

G.R. No. L-8246 October 7, 1913

TOMASA R. OSORIO vs. ANGELA SAN AGUSTIN

FACTS: This is an action brought by the plaintiff against the defendants for the foreclosure of a mortgage. Antonio Osorio died on the 13th day of May, 1908, and Benito San Agustin died on the 1st day of November, 1908.

The complaint alleges that on the 28th day of February, 1891, Benito San Agustin executed and delivered to Antonio Osorio a mortgage upon a property, for the purpose of securing the payment of the sum of P800. The mortgage contained a provision that the debtor should pay to the creditor the sum of P150 in case of a default in the compliance with the conditions of said mortgage. The plaintiff prayed for a judgment on said mortgage, with interest at 7 per cent, from the 28th day of February, 1891, together with the sum of P150 to cover the expenses incurred by the plaintiff by reason of the fact that the defendants had failed to comply with the conditions of said mortgage.

On the 8th day of March, 1911, the defendant Crisanta Hernandez, widow of the said Benito San Agustin, presented a petition asking for permission to intervene in said cause, for the purpose of defending the estate of her deceased husband.

On the 12th day of September, 1911, the said Crisanta Hernandez answered the complaint presented by the plaintiff. The said defendant, Crisanta Hernandez, in her answer, filed a general and special denial in the lower court and alleged that said action had prescribed; that **there was another action pending for the same purpose between the same parties** and that the court had no jurisdiction over the person of the said defendant.

The court ruled among other things, that another case is pending between the same parties for the same sum claimed herein, because the judgment rendered in case No. 603 is pending on appeal before the Supreme Court, an appeal raised by the same counsel for the administratrix of the deceased Antonio Osorio. Therefore, the court absolved the defendants from this complaint, with costs against the plaintiff.

ISSUE: Whether or not the court erred in declaring that another case is pending in this matter between the same parties.

HELD: The record showed that the plaintiff presented the claim contained in said mortgage, constituting the basis of the complaint in the present action, before the commissioners appointed by the court for the purpose of considering claims against the estate of the said Benito San Agustin. The said commissioners disallowed the same. The plaintiff appealed to the CFI. On the 27th day of August, 1910, the plaintiff, in furtherance of said appeal, presented a complaint in the Court of First Instance, in which he alleged the execution and delivery of the mortgage described in the present cause, the fact that said claim had been presented to the said commissioners and had been disallowed, and prayed that the Court of First Instance render a judgment in favor of the estate of the said Antonio Osorio and against the estate of said Benito San Agustin for the amount due on said mortgage. After hearing the evidence in that cause (No. 603) the Honorable Vicente Jocson, judge, on the 10th day of March, 1911, reached the following conclusion: "The court absolves Crisanta Hernandez from the complaint and declares prescribed the action or credit herein claimed by the estate of Antonio Osorio from the estate of Benito San Agustin, sentencing the plaintiff to payment of the costs occasioned to Crisanta Hernandez."

From that judgment (cause No. 603, Court of First Instance) the plaintiffs gave notice of their intention to appeal.

From the foregoing it is clearly seen that the purpose of the present action (No. 603, Court of First Instance) had for its object exactly the same purpose for which said action No. 603 was brought. In other words, the two actions were for the purpose of securing a judgment upon exactly the same indebtedness. The appellant contends that she had a right to maintain the two actions by virtue of the provisions of section 708 of the Code of Civil Procedure, which provides:

A creditor holding a claim against the deceased, secured by mortgage or other collateral security, may abandon the security and prosecute his claim before the committee, and share in the general distribution of the assets of the estate; or he may foreclose his mortgage or realize upon his security, by ordinary action in court, making the executor or administrator a party defendant; . . . .

It is clear by the provisions of said quoted section that a person holding a mortgage against the estate of a deceased person may abandon such security and prosecute his claim before the committee, and share in the distribution of the general assets of the estate. It provides also that he may, at his own election, foreclose the mortgage and realize upon his security. But the law does not provide that he may have both remedies. If he elects one he must abandon the other. If he falls in one he fails utterly. He is not permitted, under said section, to annoy those interested in the estates of deceased persons by two actions for exactly the same purpose. A multiplicity of action is abhorrent to the law is not permitted in equity and justice. In view of the fact that the plaintiff had elected to abandon the security given by him mortgage and to prosecute his claim before the committee, he forfeited his rights to bring an action upon the security in another separate and distinct action. With this conclusion, the judgment of the lower court must be affirmed, with costs. So ordered.

CERNA vs. CA 220 SCRA 517

FACTS:

Delgado and Leviste entered into a loan agreement which was evidenced by a promissory note. Delgado executed a chattel mortgage over a Willy's jeep owned by him. And acting as the attorney-in-fact of herein petitioner, Cerna (petitioner), he also mortgaged a "Taunus" car owned by the latter. The period lapsed without Delgado paying the loan. This prompted Leviste to file a collection suit. Herein petitioner filed his first Motion to Dismiss· The grounds cited in the Motion were lack of cause of action against petitioner and the death of Delgado. This Motion to Dismiss was denied. Petitioner filed his second Motion to Dismiss on the ground that the trial court, acquired no jurisdiction over deceased defendant, that the claim did not survive, and that there was no cause of action against him.

ISSUE:

WON the complaint be dismissed for lack of cause of action as against Cerna who is not a debtor under the promissory note- considering that according to settled jurisprudence the filing of a collection suit is deemed an abandonment of the security of the chattel mortgage?

HELD:

Only Delgado signed the promissory note and accordingly, he was the only one bound by the contract of loan. Nowhere did it appear in the promissory note that petitioner was a co-debtor. The Special Power of Attorney did not make petitioner a mortgagor. All it did was to authorize Delgado to mortgage certain properties belonging to petitioner. From the contract itself, it was clear that only Delgado was the mortgagor regardless of the fact that he used properties belonging to a third person to secure his debt. Leviste, having chosen to file the collection suit, could not now run after petitioner for the satisfaction of the debt. This is even more true in this case because of the death of the principal debtor, Delgado. Leviste was pursuing a money claim against a deceased person. Section 7, Rule 86. It is clear by the provisions of said quoted section that a person

holding a mortgage against the estate of a deceased person *may* abandon such security and prosecute his claim before the committee, and share in the distribution of the general assets of the estate. It provides also that he may, at his own election, foreclose the mortgage and realize upon his security. *But the law does not provide that he may have both remedies. If he elects one he must abandon the other*. If he fails in one he fails utterly.

BICOL SAVINGS vs. CA 171 SCRA 630

FACTS:

Juan de Jesus was the owner of a parcel of land. He executed a Special Power of Attorney in favor of his son, Jose de Jesus. Jose obtained a loan from petitioner bank. To secure payment, Jose de Jesus executed a deed of mortgage on the real property referred to in the Special Power of Attorney. By reason of his failure to pay the loan obligation even during his lifetime, petitioner bank caused the mortgage to be extrajudicially foreclosed. Private respondents herein filed a Complaint for the annulment of the foreclosure sale or for the repurchase by them of the property. Trial Court was reversed by respondent Court of Appeals and stated that since the special power to mortgage granted to Jose de Jesus did not include the power to sell, it was error for the lower Court not to have declared the foreclosure proceedings -and auction sale held in 1978 null and void because the Special Power of Attorney given by Juan de Jesus to Jose de Jesus was merely to mortgage his property, and not to extrajudicially foreclose the mortgage and sell the mortgaged property in the said extrajudicial foreclosure.

ISSUE:

Whether or not the agent-son exceeded the scope of his authority in agreeing to a stipulation in the mortgage deed that petitioner bank could extrajudicially foreclose the mortgaged property.

HELD:

The stipulation granting an authority to extrajudicially foreclose a mortgage is an ancillary stipulation supported by the same cause or consideration for the mortgage and forms an essential or inseparable part of that bilateral agreement. The power to foreclose is not an ordinary agency that contemplates exclusively the representation of the principal by the agent but is primarily an authority conferred upon the mortgagee for the latter's own protection. That power survives the death of the mortgagor. That right existed independently of said stipulation and is clearly recognized in Section 7, Rule 86 of the Rules of Court, which grants to a mortgagee three remedies that can be alternatively pursued in case the mortgagor dies, to wit: (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and (3) to rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription, without right to file a claim for any deficiency. The stipulation in that regard, although ancillary, forms an essential part of the mortgage contract and is inseparable therefrom. No creditor will agree to enter into a mortgage contract without that stipulation intended for its protection. Petitioner bank, therefore, in effecting the extrajudicial foreclosure of the mortgaged property, merely availed of a right conferred by law.

DE JACOB vs. CA 184 SCRA 294

FACTS:

Dr. Alfredo E. Jacob was the registered owner of a parcel of land. Centenera was appointed as administrator of Hacienda Jacob. Because of the problem of paying realty taxes, internal revenue taxes and unpaid wages of farm laborers of the hacienda, Dr. Jacob asked Centenera to negotiate for a loan. Consequently, Centenera secured a loan from the Bicol Savings. Centenera signed and executed the real estate mortgage and promissory note as attorney-in-fact

of Dr. Jacob. Centenera failed to pay the same but was able to arrange a restructuring of the loan using the same special power of attorney and property as security. Again, Centenera failed to pay the loan when it fell due and so he arranged for another restructuring of the loan. When the loan was twice re-structured, the proceeds of the same were not actually given by the bank to Centenera since the transaction was actually nothing but a renewal of the first or original loan and the supposed proceeds were applied as payment for the loan. Centenera again failed to pay the loan upon the maturity date forcing the bank to send a demand letter. The bank foreclosed the real estate mortgage. Tomasa Vda. de Jacob who was subsequently named administratrix of the estate of Dr. Jacob and who claimed to be an heir of the latter, conducted her own investigation and therefore she filed a complaint alleging that the special power of attorney and the documents therein indicated are forged and therefore the loan and/or real estate mortgages and promissory notes are null and void.

ISSUE:

Whether or not an extrajudicial foreclosure of a mortgage may proceed even after the death of the mortgagor?

HELD:

From the foregoing provision of the Rules of court it is clearly recognized that a mortgagee has three remedies that may be alternately availed of in case the mortgagor dies, to wit: (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) to foreclose the mortgage judicially and prove the deficiency as an ordinary claim; and; (3) to rely on the mortgage exclusively, or other security and foreclose the same at anytime, before it is barred by prescription, without the right to file a claim for any deficiency. From the foregoing it is clear that the mortgagee does not lose its light to extrajudicially foreclose the mortgage even after the death of the mortgagor as a third alternative under Section 7, Rule 86 of the Rules of Court. The power to foreclose a mortgage is not an ordinary agency that contemplated exclusively the representation of the principal by the agent but is primarily an authority conferred upon the mortgagee for the latter's own protection. That power survives the death of the mortgagor. The right of the mortgagee bank to extrajudicially foreclose the mortgage after the death of the mortgagor, acting through his attorney-in-fact, did not depend on the authority in the deed of mortgage executed by the latter. That right existed independently of said stipulation and is clearly recognized in Section 7, Rule 86 of the Rules of Court aforecited.

MAGLAGUE vs. PDB 307 SCRA 156

FACTS:

Spouses Egmidio Maglaque and Sabina Payawal were the owners of a parcel of land. They obtained a loan of two thousand pesos from the Bulacan Development Bank evidenced by a promissory note. To secure the loan, the spouses executed a deed of real estate mortgage on the above-described parcel of land, including its improvements. Sabina Payawal died. On December 22, 1977, Egmidio Maglaque paid Planters Development Bank the amount of P2,000.00, which the bank accepted. On April 9, 1979, Egmidio Maglaque died. On September 15, 1978, for non-payment in full of the loan, the bank extra-judicially foreclosed on the real estate mortgage. David Maglaque, as heir of the deceased spouses filed a complaint for annulment of the sale, reconveyance of title, with damages, and injunction. On September 24, 1980, the bank sold the property to the spouses Angel S. Beltran and Erlinda C. Beltran. Trial court rendered decision dismissing the complaint for lack of merit or insufficiency of evidence. Court of Appeals rendered decision affirming the appealed decision *in toto*.

ISSUE:

WON Honorable Court of Appeals erred in not finding that the Bank should have filed its claim in the settlement of

estate of the deceased mortgagors.

HELD:

The rule is that a secured creditor holding a real estate mortgage has three (3) options in case of death of the debtor. These are: (l) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and (3) to rely on the mortgage exclusively, foreclosing the same at anytime before it is barred by prescription, without right to file a claim for any deficiency. Obviously, respondent bank availed itself of the third option.

PNB vs. CA 360 SCRA 370

FACTS:

The spouses Chua were the owners of a parcel of land. Upon Antonio's death, the probate court appointed his son, private respondent Allan M. Chua, special administrator of Antonio's intestate estate. The court also authorized Allan to obtain a loan from petitioner Philippine National Bank to be secured by a real estate mortgage over the above-mentioned parcel of land. For failure to pay the loan in full, the bank extrajudicially foreclosed the real estate mortgage. To claim a deficiency, PNB instituted an action against both Mrs. Asuncion M. Chua and Allan Chua in his capacity as special administrator of his father's intestate estate. The trial court declared them in default and received evidence *ex parte*. The RTC rendered its decision, ordering the dismissal of PNB's complaint. On appeal, the Court of Appeals affirmed the RTC decision by dismissing PNB's appeal for lack of merit.

ISSUE:

WON the CA erred in holding that PNB can n longer pursue its deficiency claim against the estate of the deceased having elected one of its alternative right pursuant to Sec. 7 Rule 86 of the ROC despite a special enactment covering extrajudicial foreclosure sale allowing recourse for a deficiency claim as supported by contemporary jurisprudence?

HELD:

In the present case, it is undisputed that the conditions under the aforecited rule have been complied with. It follows that we must consider Sec. 7 of Rule 86, appropriately applicable to the controversy at hand. Case law now holds that this rule grants to the mortgagee three distinct, independent and mutually exclusive remedies that can be alternatively pursued by the mortgage creditor for the satisfaction of his credit in case the mortgagor dies, among them: (1) to waive the mortgage and claim the entire debt from the estate of the mortgagor as an ordinary claim; (2) to foreclose the mortgage judicially and prove any deficiency as an ordinary claim; and (3) to rely on the mortgage exclusively, foreclosing the same at any time before it is barred by prescription *without right to file a claim for any deficiency*. The plain result of adopting the last mode of foreclosure is that the creditor waives his right to recover any deficiency from the estate. Following the *Perez* ruling that the third mode includes extrajudicial foreclosure sales, the result of extrajudicial foreclosure is that the creditor waives any further deficiency claim. Clearly, in our view, petitioner herein has chosen the mortgage-creditor's option of extrajudicially foreclosing the mortgaged property of the Chuas. This choice now bars any subsequent deficiency claim against the estate of the deceased, Antonio M. Chua. Petitioner may no longer avail of the complaint for the recovery of the balance of indebtedness against said estate, after petitioner foreclosed the property securing the mortgage in its favor. It follows that in this case no further liability remains on the part of respondents and the late Antonio M. Chua's estate.

RULE 86, SECTION 8-9

(1) RAMOS vs. BIDIN

161 SCRA 561 (1988)

FACTS:

Attorney Fernandez , counsel for the administratrix Rosaura Jaldon whose services has already been terminated, filed a claim for attorney's fees in the judicial settlement of the estate of Felixberto D. Jaldon. The subsequent counsel for the administratrix, Atty. Ramos also filed a claim for attorney's fees. The lower court awarded P50,000 and P25,000 to Atty. Fernandez and Atty. Ramos, respectively. The latter moved for reconsideration. Judge Bidin increased his award of attorney's fees to P40,000.

Administratrix Rosaura P. Jaldon filed a Petition for Certiorari urging that respondent court acted without or in excess of his jurisdiction or with grave abuse of discretion in issuing the order awarding attorney's fees to Virginia Ramos, without the latter filing a formal claim under Section 9 of Rule 86 of the Revised Rules of Court and that she and the estate had been denied due process since her counsel, Virginia Ramos, had not notified nor served her with copies of her pleadings and the assailed orders of respondent court.

ISSUE: W/N the respondent court erred in awarding the attorney's fees to Atty. Ramos

HELD: Yes.

The petitioner Rosaura Jaldon had not been served with a copy of Virginia Ramos' Motion for Reconsideration. The records too, clearly show that Rosaura Jaldon was not furnished with a copy of the petition of Virginia Ramos here, and that only Rosemarie Jaldon (adopted daughter of the administratrix and decedent) had been aware of Virginia Ramos' claim for professional fees.

In estate settlement proceedings, it is of course imperative that the administrator be notified of any claim that is in fact asserted against the estate so as to afford him every opportunity to dispute that claim. This notice requirement is basically an implication of the due process. Clearly, in the instant petition, the administratrix was deprived of her day in court. She was not afforded any opportunity to opposing Virginia Ramos' claim, which she could have disputed had she been aware of it.

It may be noted that no formal claim had been filed by petitioner Ramos against the estate for her professional fees. Initially, her claim was brought to the respondent Court's attention through a verbal manifestation in open court where she alleged that a written contract for services had been entered into between her and the administratrix. A creditor has two remedies- (1) He can prosecute an action against the administrator as an individual. If judgment is rendered against the administrator and it is paid by him, when he presents his final account to the Court of First Instance as such administrator he can include the amount so paid as an expense of administration and (2) the creditor can also present a petition in the proceeding relating to the settlement of the estate, asking that the court, after notice to all persons interested, allow his claim and direct the administrator to pay it as an expense of administration.

Atty. Ramos failed to resort to either procedure in pressing for her attorney's fees before the respondent Court. We find that the respondent Court exceeded its jurisdiction in awarding petitioner Ramos professional fees without either a formal claim therefore in the estate proceedings or a claim against the administratrix for which the latter sought to reimburse herself as an allowable expense of administration.

GONZALES-ORENSE VS. CA

163 SCRA 477 (1988)

FACTS:

Prima Alba retained Atty. Gonzales to represent her in the probate pf her husband's will. The petitioner claimed the stipulated attorney's fees equivalent to 10% of the estate but the probate court in its order allowed him only P20,000.00 on the basis of *quantum meruit.* Petitioner then filed a notice of appeal from this order, and the probate court then transmitted the records of the case to the Court of Appeals. However, the Court of Appeals declared the petitioner's appeal abandoned and dismissed for his failure to submit his record on appeal as required under BP 129 and the Interim Rules and Guidelines. The petitioner then came on appeal by certiorari to the SC to ask that the said resolution be set aside as null and void.

ISSUE: w/n when an award of attorney's fees by the probate court is elevated to the CA, a record of appeal is necessary

HELD: Yes.

The pertinent provision of BP 129 reads as follows:

Sec. 39. *Appeals*. — The period for appeal from final orders, resolution, awards, judgment or decisions of any court in all cases shall be fifteen (15) days counted from the notice of the final order, resolution award, judgment or decision appealed from. Provided, however, that in *habeas corpus* cases the period for appeal shall be forty-eight (48) hours from the notice of the judgment appealed from.

No record on appeal shall be required to take an appeal. In lieu thereof, the entire original record shall be transmitted with all the pages prominently numbered consecutively together with an index of the contents thereof.

This section shall not apply in appeals in special proceedings and in other cases wherein multiple appeals are allowed under applicable provisions of the Rules of Court.

It is settled that the fees of the lawyer representing the executor or administrator are directly chargeable against the client for whom the services have been rendered and not against the estate of the decedent. However, the executor or administrator may claim reimbursement of such fees from the estate if it can be shown that the services of the lawyer redounded to its benefit.

As the petitioner's claim for attorney's fees is not a claim against the estate of the private respondent's husband, he could have filed it in an ordinary civil action, in which event an appeal therefrom will not be regarded as involved in a special proceeding requiring the submission of a record on appeal. It appears, however, that it was not filed in such separate civil action but in the probate case itself, which is a special proceeding and so should be deemed governed by Rule 109 on appeals from such proceedings. Accordingly, record on appeal is require.

HOWEVER, it is noted that the question presented in this case is one of first impression and that the petitioner acted in honest if mistaken, interpretation of the applicable law. In view of these circumstances, and in the interest of justice, the Court feels that the petitioner should be given an opportunity to comply by submitting the required record on appeal as a condition for the revival of the appeal.

DE JESUS VS. DAZA [1]

43 O.G. 2055 (1946)

FACTS:

Justina S. Vda de Manglapus purchased from Sixto de Jesus and Natalia Alfonga, co-heirs of the petitioners, the rights, interest, and participation of the said Sixto and Natalia in the testate estate of Gavino de Jesus, particularly, the two parcels of land. These parcels of land were assigned to Sixto and Natalia as their shares in the same testate estate based on the project of partition duly approved by the probate

court. The sale was also approved by the probate court.

After learning of the aforesaid sale, petitioners instituted an action in the CFI of Batangas for legal redemption against respondent Vda. de Manglapus. While the latter case is pending appeal, Vda. de Manglapus in the estate of the deceased Gavino de Jesus asked the CFI of Batangas to order the provincial sheriff of said province to take immediate possession of the parcels of land in controversy, which was in the possession of the petitioners, and to deliver them to her afterwards. The petition was granted and delivery was subsequently made by the sheriff.

ISSUE: w/n the respondent judge, presiding the probate court, had jurisdiction to order the delivery of the possession of the aforesaid parcels of land to respondent Vda. de Manglapus within the same estate proceeding and not in an independent ordinary action.

HELD: YES (this case is based on the old rules of court).

From the admitted fact that the probate court had already approved the project of partition without any reservation as to payment of debts, funeral charges, expenses of administration, allowances to the widow, or inheritance tax, it would appear that the estate was ready for distribution, pursuant to Rule 91, section 1 (now Rule 90 section 1). Neither party has made any representation to the contrary in this case.

The very fact that petitioners lodged an action for legal redemption with the Court of First Instance of Batangas by commencing a civil case carries with it an implied but necessary admission on the part of said petitioners that the sale to respondent Vda. de Manglapus of the shares of Sixto and Natalia was valid. The sale was duly approved by the probate court. By the effects of that sale and its approval by the probate court the purchaser stepped into the shoes of the sellers for the purposes of the distribution of the estate, and Rule 91, section 1 (now Rule 90 section 1), confers upon such purchaser, among other rights, the right to *demand* and *recover* the share purchased by her not only from the executor or administrator, but also from *any other person* having the same in his possession.

It is evident that the probate court, having the custody and control of the entire estate, is the most logical authority to effectuate this provision within the same estate proceeding, said proceeding being the most convenient one in which this power and function of the court can be exercised and performed without the necessity of requiring the parties to undergo the inconvenience, delay and expense of having to commence and litigate an entirely different action. There can be no question that if the executor or administrator has the possession of the share to be delivered the probate court would have jurisdiction within the same estate proceeding to order him to deliver that possession to the person entitled thereto, and we see no reason, legal or equitable, for denying the same power to the probate court to be exercised within the same estate proceeding if the share to be delivered happens to be in the possession of "any other person," especially when "such other person" is one of the heirs themselves who are already under the jurisdiction of the probate court in the same estate proceeding.

[1] This case is also assigned under Rule 90 Section 1-3. There is no discussion relevant to Rule 89 section 8-9. If you want to check the original using lawphil, the case was promulgated on August 31, 1946.

TORRES VS. ENCARNACION[2]

89 PHIL 678 (1951)

FACTS:

Commissioners appointed by the court in the settlement of the intestate estate of Marcelo de Borja submitted a project of partition in which the land in question, which is and was then in the possession of the herein petitioners, was included

as property of the estate and assigned to one Miguel B. Dayco, one of Marcelo de Borja's heirs. Over the objection of the petitioners, surviving children of Quintin de Borja who was one of Marcelo's children, the proposed partition was approved and affirmed by the SC on appeal. Petitioners assert exclusive ownership over the land and questioned the jurisdiction of the probate court to order delivery of the land.

ISSUE: w/n the respondent judge, presiding the probate court, had jurisdiction to order the delivery of the possession of the land to the administrator within the same estate proceeding and not in an independent ordinary action.

HELD: Yes.

SC held, quoting *De Jesus vs. Daza,* that the probate court, having the custody and control of the entire estate, is the most logical authority to effectuate this provision within the same estate proceeding, said proceeding being the most convenient one in which this power and function of the court can be exercised and performed without the necessity if requiring the parties to undergo the inconvenience, delay and expense of having to commence and litigate an entirely different action. There can be no question of the share to be delivered the probate court would have jurisdiction within the same estate proceeding to order him to deliver that possession to the person entitled thereto, and we see no reason, legal or equitable, for denying the same power to the probate court to be exercised within the same estate proceeding if the share to be delivered happens to be in the possession of 'any other person,' especially when 'such other person' is one of the heirs themselves who are already under the jurisdiction of the probate court in the same estate proceeding.

The petitioners are also bound by the approved partition by virtue of estoppel. The partition here had not only been approved and thus become a judgment of the court, but distribution of the petitioners had received the property assigned to them or their father's estate. And this was not all. As the administrator had refused, on technical grounds, to turn over to them their or their father's share, they moved for and secured from the probate court an order for the execution of the partition unduly delaying the closing of the estate. In the face of what they have done, they are precluded from attacking the validity of the partition or any part of it. A party cannot be allowed to reap the fruits of a partition, agreement or judgment and repudiate what does not suit him. The court had only the partition to examine, to see if the questioned land was included therein. The inclusion being shown, and there being no allegation that the inclusion was effected through improper means or without the petitioners' knowledge, the partition barred any further litigation on said title and operated to bring the property under the control and jurisdiction of the court for proper disposition according to the tenor of the partition.

[2] This case is also assigned under Rule 90 Section 1-3. There is no discussion relevant to Rule 89 Section 8-9.

ARROYO VS. GERONA

54 PHIL 909 (1930)

FACTS:

In the course of the intestate proceedings of the estate of Concepcion Gerona, Ignacio Arroyo filed an application alleging that Victor, Jacoba, Patricia, Ciriaca, and Clara, surnamed Gerona, being all of age, executed an agreement of partition and adjudication of the estate of Concepcion Gerona by virtue of which they assigned to the applicant all the estate of the late Concepcion Gerona, renouncing whatever rights they had or might have thereafter to said property in favor of the applicant, in consideration of other property ceded to them by said agreement. For which reason Ignacio Arroyo prayed the court to declare him to be the sole assignee or successor and heir of the late

Concepcion Gerona. The court granted the application but subsequently stayed the execution pending the consent of one Maria Geronima.

Thereafter, counsel for Jacoba, Ciriaca, Clara, and Patricia, surnamed Gerona, petitioned the court to annul the agreement and thereby rendering nugatory the order of the court granting the application of Ignacio. The court held that it is not competent to act on the petition and such should be the subject of a separate action.

ISSUE: Can the court that approved the agreement of partition dated annul said agreement and vacate the order approving it on the ground of fraud?

HELD: YES.

The court which possessed jurisdiction to approve said agreement of partition may disapprove or annul it. An agreement of partition made by heirs who are all of age, certainly binds all of them, especially when judicially approved. But this does not mean that none of the participants may thereafter ask for the annulment or rescission of the agreement upon discovering that fraud, deceit, mistake, or some other defect has vitiated the consent given, provided the action is brought within the statutory period. Of course, if the estate has passed to the heirs by virtue of the agreement of partition, there is nothing to administer and the intestate proceedings must be deemed terminated. But if the agreement of partition be successfully impugned, if it be shown that fraud was practiced in the compromise between the parties, then an administrator may properly be appointed to take charge of the estate with a view to its just distribution in accordance with the law.

All demands and claims filed by any heir, legatee, or party in interest to a testate or intestate succession, shall be acted upon and decided in the same special proceedings, and not in a separate action, and the judge who has jurisdiction over the administration of the inheritance, and who, when the time comes, will be called upon to divide and adjudicate it to the interested parties, shall take cognizance of all such questions. The court that approved the partition and the agreement in ratification thereof may annul both whenever, as it is here alleged, the approval was obtained by deceit or fraud, and the petition must be filed in the course of the intestate proceedings, for it is generally admitted that probate courts are authorized to vacate any decree or judgment procured by fraud, not only while he proceedings in the course of which it was issued are pending, but even, as in this case, within a reasonable time thereafter.

(R86, S8-9, #6 & R90, S1-3, #13)

EDUARDA BENEDICTO V. JULIO JAVELLANA

10 Phil. 197 (1908)

FACTS: Maximino Jalandoni, brother of testator Maximo Jalandoni, petitioned that the administrator, Julio Javellana, be directed to pay him P985.

Maximino alleged that according to the will, half of hacienda "Lantad", situated in Silay, Negros Occidental, had been bequeathed to him. The said gift was subject to the payment of certain debts and expenses of the estate only with respect to the products of the years 1903 and 1904. Maximino avers that those had already been paid.

Half of the said hacienda was sold and P985, as proceeds of the sale, remained in Javellana to meet any lawful claim.

Maximino contends the portion inherited by the “heirs” Francisco Jalandoni and Sofia Jalandoni was more than enough to pay the other debts and expenses of the estate. Owing to Maximino’s death, Eduarda Benedicto substituted him as a party.

Javellana averred that: a complaint should have been filed

against the other legatees and not the administrator alone; the Jalandonis should not be considered as heirs but as legatees thus they are in the same position as Maximino; and the obligation to pay all the debts was imposed on the entire inheritance and not any particular property nor on any determined party in interest named in the will.

The lower court granted the motion filed by Maximino.

ISSUE: Whether or not the motion should be dismissed.

HELD: YES. Maximo Jalandoni left no lawful ascendants or descendants having any direct claim as hereditary successors. The testator has distributed all his property in legacies.

Considering that all those who are benefited thereby have not received from the testator a universal succession to his estate they should be considered merely as legatees.

Respect for the will of a testator constitutes the principal basis for the correct interpretation of all of the clauses of the will; the words and provisions therein written must be plainly construed in order to avoid a violation of his intentions and real purpose.

The testator imposed on his estate the obligation to pay his debts with the products of the same, and has prescribed the manner in which such shall be done until all obligations are extinguished. Article 1027 of the Civil Code states that the administrator can not pay the legacies until all the creditors had been paid.

Section 728 of the Code of Civil Procedure provides that if the testator makes provision by his will, or designates the estate to be appropriated for the payment of his debts they shall be paid according to the provisions of the will. If the provision is not sufficient, such part of the estate of the testator, as is not disposed of by will, shall be appropriated for that purpose.

The debts and expenses of the estate must be paid pro rata by the legatees in the manner provided in the will, or in accordance with the Code of Civil Procedure.

Any challenge to the validity of a will must be acted upon and decided within the same special proceedings not in a separate action and the same judge having jurisdiction in the administration of the estate shall take cognizance of the question raised, inasmuch as when the day comes he will be called upon to make distribution and adjudication of the property to the interested parties.

(R86, S8-9, #7)

ANTONIO QUIRINO V. Hon. GROSPE & GOINGCO

169 SCRA 702 (1989)

(SC RESOLUTION. N.B. The background facts & issues were not provided, even in the original, since this was not a full-blown decision. Thus, the facts in the Resolution seem vague. Nonetheless, useful portions are included herein.)

For resolution are the separate motions for reconsideration of the decision of the Supreme Court:

Motion for Reconsideration of Juan F. Gomez.

Claims for attorney's fees (equivalent to 12% of 1/3 of the estate of Don Alfonso Castellvi) and transportation & representation expenses may not be properly charged against the estate. The claims did not inure to the benefit of Don Alfonso or his estate.

The term "claims" is generally construed to mean debts or demands of a pecuniary nature which could have been enforced against the deceased in his lifetime or liability

contracted by the deceased before his death.

Motion for Reconsideration of Jesus T. David.

The claim for attorney's fees is for services rendered for the benefit of Doña Carmen Castellvi, and not for the benefit of Don Alfonso or his estate. Only claims which could have been enforced against the deceased in his lifetime are allowed to be presented against his estate, with the exception of funeral expenses, expenses for the last sickness and ordinary administration expenses.

As to the alleged attachment and levy of Doña Carmen's alleged administratrix' fees and share in the estate of Don Alfonso, the same cannot be given force and effect in the special proceedings for the settlement of Don Alfonso's estate.

The subject of settlement is not the estate of Doña Carmen. The respondent court is one of limited jurisdiction and has no authority to decide the claims that may be properly paid out of the funds of Doña Carmen's estate. Such must be determined in separate proceedings before the court with jurisdiction in settling her estate.

Motion for Reconsideration of the Raquiza children.

Where the monetary claim against the administrator has a relation to his acts of administration in the ordinary course thereof, such claims can be presented for payment with the court where a special proceeding for the settlement of the estate is pending, although said claims were not incurred by the deceased during his lifetime and collectible after his death.

This is so because both administration and administrator is under the direct supervision and authority of the court.

Motion for Reconsideration of Antonio Quirino.

Natividad Castellvi-Raquiza and Doña Carmen (as administratrix of the estate of Don Alfonso) had given their conformity to the award of attorney's fees to Atty. Mendoza. Petitioner is estopped from questioning said award.

Insofar as payment of service fees to Exequiel Floro, the same was allowed for services rendered by claimant for the benefit of the estate of Don Alfonso and the same falls under the category of "administration expense" which may be paid out of the funds of the estate. The heirs of Don Alfonso had dropped their opposition to said claim thus they are barred from questioning the same.

Omnibus Motion for Early Resolution and Immediate Release for Funds by the Raquiza Children.

The movants seek approval for the release of the amount to take care of the burial expenses incurred upon the death of Natividad Castellvi-Raquiza. Said motion for release of funds was previously presented and subsequently denied.

What movants are actually praying of this Court is to reverse the order of denial of their motion for release of funds. Before a review can be made of said order of denial, they should have filed a proper petition before this Court and not a mere motion.

The motions for reconsideration are DENIED.

(R87, S1 & 9-10, #1)

PAULA V. ESCAY, ET. AL.

97 Phil. 617 (1955)

FACTS: Jose Escay and Rufina de Paula, administratrix of the estate of the late Victor Gaston, entered into a contract of lease over Hacienda Puyas No. 1. Escay stood as the lessee and Paula, the lessor. The contract of lease was executed

with the court's approval.

Under the contract of lease the administratrix was obliged to deliver to Escay 10% of the sugar, rice and corn produced from the Hacienda from 1943 until the full sum of P7,000 - the estimated cost of the property transferred to the estate - was fully covered.

Escay filed his claim averring that the administratrix was indebted to him for P5,418.31 as principal and P2,682.06 as interest.

The administratrix opposed the claim contending that: the court sitting in probate has no jurisdiction to entertain the claim, especially the same is being controverted; the claim is not chargeable against the estate but against the administratrix in her personal capacity since there was an overpayment of rentals; and she was not given the opportunity to contest the claim's correctness.

The lower court ruled in favor of Escay.

ISSUES: (1) Whether or not the court has the jurisdiction to consider the claim in the administration proceedings.

(2) Whether or not the claim should be chargeable against the administratrix in her personal capacity.

(3) Whether or not the amounts in the claim may still be controverted.

HELD: (1) YES. The claim is an ordinary demand for the payment of the balance of an account due under a contract of lease entered into by the administratrix under the court's approval.

In our judicial system, there is only one grade of court of general jurisdiction invested with power to take cognizance of all kinds of cases. There are no probate courts dedicated to the trial of probate cases alone.

The practice has been for demands against administrators to be presented in the court of first instance where the special proceeding of administration is pending, if the demand has relation to an act of administration and in the ordinary course thereof.

It can be seen in this case that as the lease contract was entered into by the administratrix with the approval of the court in the ordinary course of administration and with the court's approval in the administration proceedings, to consider the claim in the same proceedings may not be denied for the claim purpose to make the administratrix comply with the obligations contracted in the course of administration with the court's consent and approval.

The claimant is not prohibited from filing an independent action to recover the claim, but the existence of such a remedy is not a bar to the remedy that he had pursued in this case.

(2) YES. The consideration of the claim in the administration proceedings, however, does not necessarily mean that the administratrix may not be held personally liable for the excess.

The mere fact that the court in passing upon the claim may order the administratrix to pay the full amount of the demand, does not mean that the total amount which she is compelled to pay could be chargeable against the said estate under administration.

The court in ordering payment of the excess amount over the rentals would hold the administratrix personally responsible therefor. This however do not deprive the court of power to consider the claim; and the administratrix is estopped from denying that the amounts received in excess of the true rentals were received by her in such capacity.

One who contracts with another in a representative capacity cannot claim that amounts received by her in said representative capacity are due from her in another capacity.

(3) NO. As to the correctness of the amounts stated in the claim, the administratrix never offered to disprove them. The administratrix should have indicated the items the correctness of which she wanted to deny. Thus all the items were deemed admitted.

(R87, S1, #2)

REPUBLIC V. LEONOR DE LA RAMA, ET AL.

124 Phil. 1493 (1966)

FACTS: The estate of the late Esteban de la Rama was the subject of Special Proceedings. The executor-administrator, Eliseo Hervas, filed the income tax returns of the estate for 1950 and paid the corresponding income tax.

The BIR later claimed that there had been received by the estate in 1950 from the De la Rama Steamship Company, Inc. cash dividends amounting to P86,800, which amount was not declared.

The BIR then made an assessment of the deficiency income tax against the estate. The Collector of Internal Revenue wrote Lourdes de la Rama-Osmeña and informed her of the assessment and asked payment thereof.

Lourdes' counsel contended that his client did not represent the estate, and that the assessment should be sent to Leonor de la Rama (pointed to by said counsel as the administratrix). Thereafter, a letter was sent to Leonor.

Despite the subsequent letters sent to both Lourdes and Leonor, the deficiency income tax remained unpaid.

The Republic filed a complaint against the heirs of Esteban seeking to collect from each heir their share in the income tax liability of the estate.

The defendants averred that: no cash dividends had been paid to the estate; Leonor had never been administratrix; and that the executor of the estate, Eliseo Hervas, had never been given notice of the assessment, consequently the assessment had never become final.

On the other hand, the plaintiff argued that the dividends of P86,000 were applied to the obligation of the estate to De la Rama Steamship Co. and that the crediting of accounts in the books of the company constituted constructive receipt by the estate or the heirs of the dividends. Thus, such dividends were taxable income.

The lower court dismissed the complaint.

ISSUES: (1) Whether or not the income was constructively received by the estate or the heirs of the late Esteban de la Rama.

(2) Whether or not the service of the assessment on Lourdes and Leonor de la Rama was valid.

(3) Whether or not the assessment had long become final.

HELD: (1) NO. It is not disputed that the dividends in question were not actually paid either to the estate or to the heirs.

It does not even appear that De la Rama Steamship Co. had ever filed a claim against the estate in connection with that indebtedness. The existence & the validity of the debt are in dispute.

If there had been such indebtedness, the Court will agree with plaintiff that the offsetting of the dividends against such indebtedness amounted to constructive delivery. But no proof

to that effect has been presented.

Under the National Internal Revenue Code, income tax is assessed on income that has been received. Sec. 56 also requires receipt of income by an estate before income tax can be assessed. Thus, no income tax can be assessed from income not received.

There was no basis for the assessment of the income tax, the assessment itself and the sending of notices would neither have basis, and so no legal effect would be produced.

(2) NO. The estate was still under the administration of Eliseo Hervas as regards the collection of said dividends. The administrator was the representative of the estate whose duty it was to pay the taxes and assessments due to the Government.

In this case, notice was first sent to Lourdes and later to Leonor, neither of whom had authority to represent the estate.

Tax must be collected from the estate of the deceased, and it is the administrator who is under obligation to pay such claim. The notice of assessment should have been sent to the administrator.

(3) NO. Notice was not sent to the taxpayer for the purpose of giving effect to the assessment, and said notice could not produce any effect. It appearing that the person liable for the payment of the tax did not receive the assessment, such could not become final.

(R87, S1, #3)

MELGAR V. Hon. BUENVIAJE

179 SCRA 196 (1989)

FACTS: A vehicular accident happened in Polangui, Albay, where a passenger bus owned by Felicidad Balla and driven by Domingo Casin swerved to the left lane and collided with a Ford Fiera owned by Mateo Lim Relucio and driven by Ruben Lim Relucio.

Felicidad’s vehicle then swerved further to the left this time colliding head-on-with a passenger bus owned by Benjamin Flores and driven by Fabian Prades.

As a result of the accident Felicidad Balla, Domingo Casin, Ruben Lim Relucio and Fabian Prades died on the spot.

Spouses Oscar and Victoria Prades, as the only surviving forced heirs of Fabian Prades, filed a complaint against the children of Felicidad for damages. The complaint alleged that Felicidad did not observe the required diligence in the selection her employee and allowed her driver to drive recklessly.

The defendants moved to dismiss and averred that it is incorrect to hold the children liable for the alleged negligence of the deceased and to consider suing the heirs of the deceased the same as suing the estate of said deceased person.

The defendants contend that the creditor should institute the proper intestate proceedings in which he may be able to interpose his claim pursuant to Section 21 of Rule 3 of the Rules of Court.

Respondent court denied the motion to dismiss. Petitioners filed a motion for reconsideration stating that a distinction should be made between a suit against Felicidad’s estate and a personal action against Felicidad’s children.

The private respondents amended the title of their complaint by naming as defendants the Estate of the late Felicidad Balla as represented by the children named in the

original complaint.

The lower court denied the MR and admitted the amended complaint.

ISSUE: Whether or not the court may entertain a suit for damages arising from the death of a person, filed against the estate of another deceased person as represented by the heirs.

HELD: YES. Section 5 Rule 86 of the Rules of Court provides for the actions that are abated by death. This case is not among those enumerated thus actions for damages caused by the tortious conduct of the defendant survive the death of the latter.

The action can therefore be properly brought under Section 1, Rule 87 of the Rules of Court. Hence, the inclusion of the "estate of Felicidad Balla" in the amended complaint as defendant.

But the point of controversy is on the fact that no estate proceedings exist since Felicidad's children had not filed any proceedings for the settlement of her estate.

While petitioners may have correctly moved for the case's dismissal and private respondents have corrected the deficiency by filing an amended complaint, the action would still be futile for there are no steps taken towards the settlement of Felicidad's estate, nor has an executor or administrator been appointed.

From a statement made by the petitioners that insinuates that the deceased left no assets, it is reasonable to believe that the petitioners will not take any step to expedite the early settlement of the estate if only to defeat the damage suit against the estate.

Under the circumstances the absence of an estate proceeding may be avoided by requiring the heirs to take the deceased's place.

In case of unreasonable delay in the appointment of an executor or administrator or in case where the heirs resort to an extrajudicial settlement of the estate, the court may allow the heirs of the deceased to be substituted for the deceased.

Case No. 4 Rule 87, Sec 1

G.R. No. L-51151 July 24, 1981

ROMUALDEZ, et.al, plaintiffs-appellees, vs. **TIGLAO, et.al,** defendant-appellant.

Facts: On March 15, 1960, Romualdez and others sued Antonio Tiglao together with Felisa and other guarantors for the payment of unpaid rentals for the lease of a hacienda and its sugar quota. The lower court ruled in favor of Romualdez and ordered the defendants to pay the former yet the judgment remained unsatisfied. Another case was filed by Romualdez to revive the said judgment. In the meantime, Felisa had died and her estate, represented by Maningning, was settled in the CFI of Rizal.

The administratrix questioned the jurisdiction of the court *a quo* to entertain the suit to revive judgment. She invoked Sec. 1 of Rule 87 of the Rules of Court that, "No action upon a claim for the recovery of money or debt or interest thereon shall be commenced against the executor or administrator; ... " TC still ruled in favor of Romualdez.

Issue: Whether or not the action is one for the recovery of a sum of money so that it is barred by Sec. I of Rule 87 of the Rules of Court and that the remedy of the appellees is to present their claim in Special Proc. No. Q-10731 of the Court of First Instance of Rizal.

Held: The original judgment which was rendered on May 31, 1960, has become stale because of its non-execution after the lapse of five years. Accordingly, it cannot be presented against the Estate of Felisa Tiglao unless it is first revived by action. This is precisely why the appellees have instituted the second suit whose object is not to make the Estate of Felisa

Tiglao pay the sums of money adjudged in the first judgment but merely to keep alive said judgment so that the sums therein awarded can be presented as claims against the estate.

Case No. 1 Rule 87 Sec 2

G.R. No. L-4369 October 30, 1951

JAVIER vs.**ARANETA, et.al.**

Facts: In 1948, Araneta, in his capacity as executor of the estate of Angela S. Tuason, offered to sell to the Rural Progress Administration (RPA) a portion of the estate consisting of seven (7) has. The Board of RPA decided to acquire the property at the price of P7 per square meter. Araneta accepted the terms but made a condition that all squatters and tenants who have no written contracts with the estate will be moved to the segregated portion of 7 has. The negotiation did not go any further. On December 10, 1948, Araneta filed an action for forcible entry against Javier in the municipal court of Manila. TC rendered judgment in favor of Araneta. CFI affirmed the decision of the MTC with the addition that the defendant should remove her house and other constructions she had erected on the land in question. Appeal dismissed on the ground that it was filed beyond the reglementary period. Javier sued out for a writ of *certiorari* with the SC seeking the annulment of the decision, but the petition was dismissed for lack of merit. The motion to suspend the order of execution was likewise denied.

Before the decision of the SC has become final, a petition was filed in this court praying that the damages suffered by Javier. SC directed the trial court to make a finding of the damages allegedly suffered the same. TC denied the claim for damages because of the death of Lucia Javier, the claim should have been filed against the estate of the latter.

Issue: Whether or not the trial court was correct to deny the claim for damages on account of the death of Javier and said that the claim should be filed against the estate of the latter

Held: No. This result only obtains if the claim is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, but not when the claim is for damages for an injury to person or property. In the present proceeding, the claim for damages has arisen, not while the action was pending in the Court of First Instance, but after the case had been decided by the Supreme Court. Moreover, the claim of respondent is nor merely for money or debt but for damages to said respondent. Thus, Chief Justice Moran, commenting on section 1, Rule 3, says: "The above section has now removed doubts by expressly providing that the action should be discontinued upon defendant's death if it is for the recovery of money, debt, or interest thereon, while, on the other hand, in Rule 88, section 1, it is provided that *actions to recover damages for injury to person or property*, real or personal, may be maintained against the executor or administrator of the deceased."

On the other hand, under Rule 3, section 17, Rules of Court, when a party dies and the claim is not thereby extinguished, the court shall order the legal representative of the deceased, of the heirs, to be substituted for him within a period of 30 days, or within such time as may be granted. Here, it appears that no step has so far been taken relative to the settlement of the estate, nor an executor or administrator of the estate has been appointed. This deficiency may be obviated by making the heirs take the place of the deceased.

Case No. 2 Rule 87 Sec 2

G.R. No. L-6636 August 2, 1954

CABUYAO vs. **DOMINGO CAAGBAY, ET AL**

Facts: Cabuyao alleged that he is the "lone compulsory heir" of the spouses Prudencio Cabuyao and Dominga Caagbay, who died leaving the eleven (11) parcels of land, and that, although plaintiff had adjudicated said properties to himself pursuant to section 1 of Rule 74 of the Rules of Court, the corresponding transfer certificates of title could not be issued

in his name because the original owner's duplicate certificates were being withheld by the defendants,who had also taken possession of said parcels of land, and would continue unlawfully using the same and committing acts of dispossession thereof, unless enjoined by the court.

Plaintiff filed, on June 12, 1952, an amended complaint, which the defendants sought to dismiss upon the ground that "plaintiff has no legal capacity to sue," there being no allegation that "plaintiff had been judicially declared lone compulsory heir" of the deceased spouses Prudencio Cabuyao and Dominga Caagbay. It is not denied, that the lands in dispute belongs originally to the spouses Prudencio Cabuyao and Dominga Caagbay, who were legally married; that plaintiff Damaso Cabuyao is their "lone" legitimate child; and that the defendants are nephews and nieces of Dominga Caagbay, except of Defendant Domingo Caagbay, who is her brother. TC dismissed the case as no action can be maintained until a judicial declaration of heirship has been legally secured. MR denied.

Issue: Whether or not under the foregoing facts, which, for purpose of this appeal, must be assumed to be true, plaintiff has a cause of action to recover the properties in dispute and to quiet his alleged title thereto

Held: The right to assert a cause of action as an alleged heir, although he has not been judicially declared to be so, has been acknowledged in a number of subsequent cases. The property of the deceased, both real and personal, became the *property of the heir by the mere fact of death* of his predecessor in interest, and he could deal with it in precisely the same way in which the deceased could have dealt with it, subject only to the limitations which by law or by contract were imposed upon the deceased himself. ... (Suiliong and Co. vs. Marine Insurance Co., Ltd., et al., 12 Phil., 13, 19.)

Case No. 3 Rule 87 Sec 2

GR No. 31328-R February 27, 1965

Banacihan, et.al. v. Alibodbod, et.al.

Facts: Lot No. 14, located in Barrio Aplaya, Sta. Rosa, Laguna, was owned by Eulalio Almodovar, who acquired it from the Bureau of Lands. Upon his death,the lot was trasmitted in equal shares, by operation of law, to his 2 surviving children, Dionisio and Felipa. When Dionisio died, half of his share of the lot was transmitted to his son, and when Felipa died, half of her share of the lot was transmitted to her children Rufo, Feliciano, Benito and Carmen Bancihan.

On May 3, 1950, co-owner Ladislao, who was in possession of the land, executed a public instrument which was, in form, a sale of the land for the orice of P500 in favor of Sps. Alibodbod and Felisa Libas. Vendees immediately took possession of the land. The lawyer of the Bancihans wrote Alibodbod informing the same that they owned 1/2 of the lot and that they demanded recovery of their share. Receiving no reply, Banacihans and Ladislao filed a revindicatory action against the Alibodbods. Case dismissed.

Issue: Whether or not the TC erred in finding that the Banacihans' action to recover was premature

Held: Yes. The transmission of the inheritance to the heirs is from the moment of death and it is not necessary that they be declared as HEIRS before they can exercise the right to bring a revindicatory action in their own names against the possessor or holder of a piece of land inherited by them.

Case no. 4 Rule 87 Sec 2

G.R. No. L-25049 August 30, 1968

RAMIREZ, et.al. vs. **BALTAZAR, et.al.**

Facts: On January 6,1959, Victoriana Eguaras single, made and executed a real estate mortgage over a parcel of land, owned by her in fee simple, as security for a loan of P2,170.00 in favor of the spouses Artemio Baltazar and Susana Flores.

When the mortagagor died, the mortgagees filed a petition for the intestate proceedings of her estate in the CFI of Laguna, wherein said mortgages, as petitioners, alleged that Filemon Ramirez and Monica Ramirez are the heirs of the

deceased. Filemon was appointed administrator of the estate; however, having failed to qualify, the court appointed Artemio Diawan, then a deputy clerk of court, administrator of the estate who, in due time, qualified for the office.

On 19 April 1961, Sps. Baltazar filed a complaint for foreclosure of the aforesaid mortgage, against Artemio Diawan, in his capacity as administrator of the estate. The latter failed to answer and was thereafter declared in default. Order was made to foreclose the property and sell the same within 90 days. The highest bidders were the Baltazar's.

The Ramirezes and Jose Eguaras, the former being the heirs named in the petition for intestate proceedings, sought to annul the foreclosure of the mortgage by the Baltazars and Artemio Diawan, in his capacity as administrator of the estate of Victoriana Eguaras.

The defendants spouses, Artemio Baltazar and Susana Flores, filed a motion to dismiss the complaint on the ground that the plaintiffs have no legal capacity to sue; defendant Diawan likewise moved to dismiss on two grounds: that plaintiffs have no legal capacity to sue and that the complaint states no cause of action. TC ruled in favor of defendants. MR denied.

Issue: Whether or not the court erred

Held: Yes. There is no question that the rights to succession are automatically transmitted to the heirs from the moment of the death of the decedent. In *Pascual vs. Pascual*, it was ruled that although heirs have no legal standing in court upon the commencement of testate or intestate proceedings, this rule admits of an exception as "when the administrator fails or refuses to act in which event the heirs may act in his place."

Since the ground for the present action to annul the aforesaid foreclosure proceedings is the fraud resulting from such insidious machinations and collusion in which the administrator has allegedly participated, it would be farfetched to expect the said administrator himself to file the action in behalf of the estate. And who else but the heirs, who have an interest to assert and to protect, would bring the action? Inevitably, this case should fall under the exception, rather than the general rule that pending proceedings for the settlement of the estate, the heirs have no right to commence an action arising out of the rights belonging to the deceased.

Case No. 3 Rule 87 Sec 2

GR No. 31328-R February 27, 1965

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On May 3, 1950, co-owner Ladislao, who was in possession of the land, executed a public instrument which was, in form, a sale of the land for the orice of P500 in favor of Sps. Alibodbod and Felisa Libas. Vendees immediately took possession of the land. The lawyer of the Bancihans wrote Alibodbod informing the same that they owned 1/2 of the lot and that they demanded recovery of their share. Receiving no reply, Banacihans and Ladislao filed a revindicatory action against the Alibodbods. Case dismissed.

Issue: Whether or not the TC erred in finding that the Banacihans' action to recover was premature

Held: Yes. The transmission of the inheritance to the heirs is from the moment of death and it is not necessary that they be declared as HEIRS before they can exercise the right to bring a revindicatory action in their own names against the possessor or holder of a piece of land inherited by them.

Paula's Part
1. Lao vs. Deo 90 P 868
- wrong citation

2. Del Rosario vs. Del Rosario 2 P 321

FACTS:
Dona Honorata Del Rosario died leaving a last will. In the ninth clause, the testatrix bequeathed the sum of P3000 to her nephews Enrique Gloria and Ramon Del Rosario in equal parts. Don Ramon Del Rosario, one of the persons mentioned in the will, brought an action against Don Clemente del Rosario, the executor, for the payment of his share in the legacy.

ISSUE and RESOLUTIONS:
a. **W/N Ramon, the legatee, can demand the payment of his legacy from Don Clemente, the executor?**
Yes. Where the will authorizes the executor to pay legacies, expressly or by natural inference, action will lie by the legatee against the executor to compel allowance and payment thereof. The powers given to the executor by the will of Dona Honorata are contained in the 14th clause which is as follows, "At her death they shall take possession of all such goods and things as may be her property, and are hereby authorized fully and as required by law to prepare and inventory of said property, and to effect the division and partition of the estate among her heirs." If the executor was not authorized to pay these legacies, the heirs must pay them. The important power of making the partition was attempted to be given to he executors. In view of this considerations and a study of the whole will, we hold that the executors are given power to pay the legacies.
Note that in an action to compel payment of legacies the defense that an inventory is being formed or that creditors have not been paid must be set up in the answer in order to be availed of.

b. **W/N the executor has power to make partition?**
No. Though such power is expressly given by the will, said provision is void under the terms of article 1057 of the civil code which is as follows, " The testator may, by an act inter vivos or cause mortis, intrust the mere power of making the division after his death to any person who is not one of the coheirs." Article 1057 prohibited an heir from being *contador* for the very reason that the partition should be made impartially. In this case, Don Clemente, the executor, against whom the action was directed, was also named as an heir pursuant to the 7th clause of her will.
Although tne executor has no power to make the partition, the heirs can do so. The plaintiff is not bound to remain a coowner with the other heirs. Being a legatee of an aliquot part, he has the right to seek a partition that an heir has. But in so seeking it he must make parties to his suit all persons interested in the estate. This he has not done in this suit, and he consequently is not entitled to the partition ordered by the court below.

3. Lopez vs. Olbes 15 P 540

FACTS:
On October 13, 1908, Ricardo Lopez et al. brought suit against Adolfo Olbes, the testamentary executor of the deceased Martina Lopez (the mother of Ricardo and grandmother of the other plaintiffs), alleging in their complaint that Martina executed a public instrument whereby she donated to plaintiffs a parcel of hemp land situated at the place called Ali, in the pueblo of Guinobatan, Albay and that the said Olbes, as executor, claimed to have rights of ownership and possession to the said land adverse to those then held by the plaintiffs, inasmuch as the said estate still continued to belong to the deceased Martina Lopez and was then in charge of a trustee by virtue of an agreement had between the attorneys of the executor and the plaintiff Ricardo, and of the order issued by the court in the aforesaid probate proceedings. The complaint concluded by asking that judgment be rendered in the latter's favor and against the defendant for the ownership and possession of the said land.
The defendant filed a demurrer in writing alleging that

the plaintiffs, as the heirs or donees could not maintain any suit against the testamentary executor to recover the title or possession of the land so long as the court had not adjudicated the estate to them or until the time allowed for paying the debts should have expired, unless they be given possession of the said land by the executor. The trial court sustained the demurrer of the defendant and dismissed the case.

ISSUE:
W/N the plaintiffs have the right of ownership and possession over the parcel of hemp land?

HELD:
Yes. The action exercised by Ricardo et al is based on the rights which as such donees had acquired by virtue of the donation inter vivos made by Martina Lopez during her lifetime on favor of plaintiffs by an instrument the donor, a donation expressly accepted on the same date by the donees and of which acceptance the donor was also informed on the same date; wherefore, these requirements of the law having been complied with, it is unquestionable that the dominion over the land donated was properly transmitted to the donees who in fact and by operation of law acquired the ownership of the property, as customarily occurs in all contracts of transfer of dominion.

Property of the testate estate of the deceased Martina Lopez is not here concerned. During her lifetime she gave away the land mentioned, in the exercise pertained to her as owner. By virtue of the said donation the sole and true owners of the land donated are the plaintiffs, so long as said donation is not proven null, inefficacious, or irregular. All the questions which by reason of the same are raised by the interested parties must be heard in a regular trial and decided by a final judgment absolutely independent of the probate proceedings concerning the estate of the deceased, who was the previous owner of the land concerned; and therefore the complaint of the donees should not have been dismissed, but the trial should have been proceeded with to final judgment.

4. Velasquez vs. William George et al 125 S 456

FACTS:
Maria Velasquez Vda. De George and her children appealed from the decision of the CFI of Bulacan, which dismissed their complaint for lack of jurisdiction. Plaintiffs are the widow and legitimate children of the late Benjamin George whose estate is under intestate proceedings. In their complaint, plaintiffs alleged that the 5 defendant-mortgagors (D-Mors) are officers of the Islan Associates Inc. Andres Munoz, aside from being the treasurer-director of said corp., was also appointed and qualified as administrator of the estate of Benjamin George in the above special proceedings. In life, the latter owned 64.8% or 636 shares out of 980 shares of stock in the corp. Without prior approval from the probate court and without notice to the heirs and their counsel, the D-Mors executed a Deed of First Real Estate Mortgage (DFREM) in favor of the defendant-mortgagee (D-Mee) Erlinda Villanueva, covering 3 parcels of land owned by Island Assoc. In said Deed, the D-Mors also expressly waived their right to redeem the said parcels. Subsequently, a power of atty (POA) was executed by the D-Mors in favor of Villanueva whereby the latter was given full power and authority to cede, transfer and convey the parcels of land within the reglementary period provided by law for redemption. A certificate of sale (CS) was executed in favor of Villanueva after she submitted the highest bids at the public Auction. This led to the execution of a Deed of Sale and Affidavit of Consolidation of Ownership (ACO) by virtue of which TCTs covering the 3 parcels were cancelled and new TCTs were issued in favor of Villanueva.

Plaintiffs therefore filed a complaint for the annulment of the DFREM, POA, CS, ACO and the new TCTs. Villanueva contends that the plaintiffs-appellants have no capacity to file the complaint because the general rule laid down in R87, sec3 of the Rules of Court states that only the administrator or executor of the estate may bring actions of such nature as the one in the case at bar. The only exception is when the executor or administrator is unwilling or fails or refuses to act, which exception does not apply in the present case. TC dismissed the complaint.

ISSUE:
W/N the plaintiffs-appellants have the capacity to file the complaint?

HELD:
Yes. The contention that the proper party to file the complaint is the administrator of the estate of Benjamin George is without merit. The administrator, Andres Munoz, is the same person charged by the plaintiffs-appellants to have voted in the Board of Directors without securing the proper authority from the probate court to which he is accountable as administrator. In *Ramirez vs Baltazar* we ruled that since the ground for the present action to annul the aforesaid foreclosure proceedings is the fraud resulting from such insidious machinations and collusion in which the administrator has allegedly participated, it would be far fetched to expect the said administrator himself to file the action in behalf of the estate. And who else but the heirs, who have an interest to assert and to protect, would bring the action? Inevitably, this case should fall under the exception, rather than the general rule that pending proceedings for the settlement of the estate, the heirs have no right to commence an action arising out of the rights belonging to the deceased." The case at bar falls under such an exception.

5. Gochan vs. Young 354 S 207

FACTS:
Felix Gochan Sr.'s daughter, Alice, mother of herein respondents, inherited 50 shares of stock in Gochan Realty from the former. Alice died leaving the 50 share to her husband, John Young Sr. In 1962, the RTC of Cebu adjudicated 6?14 of these shares to her children. Having earned dividends, these stocks numbered 179 by September 20, 1979. Five days later, at which time all the children had reached the age of majority, their father John, Sr. Requested Gochan Realty to partition the shares of his late wife by canceling the stock certificates in his name and issuing in lieu thereof, new stock certificates in the names of his children. Gochan Realty refused citing as reason the right of first refusal granted to the remaining stockholders by the Articles of Incorporation. John, Sr. died leaving the shares to the respondents. On Feb 8, 1994, Cecilia Gochan Uy and Miguel uy filed a complaint with the SEC for issuance of shares of stock to the rightful owners, nullification of shares of stocks and reconveyance of property impressed with trust, accounting etc. against respondents.

Petitioners moved to dismiss the complaint alleging that (1) SEC has no jurisdiction and (2) the respondents were not the real parties-in-interest and had no capacity to sue.

ISSUES and RESOLUTIONS:
a. W/N SEC has jurisdiction?

No. In view of the effectivity of RA 8799, the case should be remanded to the proper regional trial court, not to the SEC.

b. W/N the respondents had the capacity to sue?

Yes. Petitioners claim that "when the estate is under administration, suits for the recovery or protection of the property or rights of the deceased may be brought only by the administrator or executor as approved by court" The rules relative to this matter (particularly section3 of Rule 3 and Sec2 of Rule 87 of the Rules of Court) do not, however, make any such categorical and confining statement. While permitting and executor or administrator to represent or to bring suits on behalf of the deceased, the said rules do not prohibit the heirs from representing the deceased. These rules are easily applicable to cases in which an administrator has already been appointed. But no rule categorically addresses the situation in which special proceedings for the settlement of an estate have already been instituted, yet no administrator has been appointed. In such instances, the heirs cannot be expected to wait for the appointment of an administrator; then wait further to see if the administrator appointed would care enough to file a suit to protect the rights and the interests of the deceased; and in the meantime do nothing while the rights and the properties of the decedent are violated or dissipated.

For the protection of the interests of the decedents, this court has in previous instances recognized the heirs as

proper representatives of the decedent, even when there is already an administrator appointed by the court. When no administrator has been appointed, as in this case, there is all the more reason to recognize the heirs as the proper representatives of the deceased. Since the Rules do not specifically prohibit them from representing the deceased, and since no administrator had as yet been appointed at the time of the institution of the complaint with the SEC, we see nothing wrong with the fact that it was the heirs of John Young Sr. who represented his estate in the case filed before the SEC.

EMIL'S PART

Rule 87 Sections 4-5

GIL CALIMBAS (as administrator of the deceased Mortgagee Anselma Angeles) vs. SEVERINA PAGUIO (Mortgagor)

An administrator of the estate of a deceased person may, without special authority of the probate court, bring an action on behalf of the estate to foreclose a mortgage or enforce payment of a debt.

FACTS: This case is a foreclosure proceeding instituted by the Plaintiff-Administrator Calimbas in behalf of the estate of the deceased Anselma Angeles.

The complaint alleges that Calimbas is the duly appointed administrator of the estate of the deceased Angeles and that the defendant Severina Paguio was indebted to the deceased in the amount of P5,694, drawing interest at the rate of P369 per annum as evidenced by a document executed by the defendant on said date in favor of the deceased; that the interest on the debt from January 2, 1914, to January 2, 1923, amounting to the sum of P3,564 is still due and unpaid; that to secure the debt, with interest, a mortgage upon the property described in certificate of title No. 1044 of the registry of deeds of the Province of Bataan was given and which property consists of lot No. 905 of the cadaster of the municipality of Pilar; that the said mortgage is registered and entered upon said certificate of title No. 1044; that the original of the document evidencing the mortgage is in the possession of the defendant according to the information and belief of the plaintiff and that notwithstanding a diligent search no copy or duplicate of said document has been found in the office of the clerk of the Court of First Instance, or in the office of the register of deeds of said province, or in the General Land Registration Office, or in the Philippine Library and Museum; and that the defendant has paid no part of the interest thereon subsequent to January 2, 1914.

Defendant Paguio in her answer denies generally the allegations of the complaint. She also filed a demurrer, one of the grounds being that the plaintiff Calimbas does not have the legal capacity to bring the action.

ISSUE (Relevant to Rule 87 Section 5 of our present rules): WoN Calimbas had the authority to bring the action to foreclose the mortgage even in the absence of an express authority from the probate court?

HELD: Calimbas has authority.

An administrator need not obtain special authority from a court before bringing an action such as the present on behalf of the estate under administration; he is expressly authorized to do so by section 702 of the Code of Civil Procedure.

Rule 87 Section 6

INTESTATE ESTATE OF THE DECEASED GELACIO SEBIAL. BENJAMINA SEBIAL, petitioner-appellee, vs. ROBERTA SEBIAL, JULIANO SEBIAL and HEIRS OF BALBINA SEBIAL, oppositors-appellants.

Matters affecting property under the administration may be taken cognizance of by the probate court in the course of the intestate proceedings provided that the interest of third persons are not prejudiced. However, the third person to whom the decedent's assets had been fraudulently conveyed

may be cited to appear in court and may be examined under oath as to how they came into the possession of the decedent's assets but a separate action is necessary to recover said assets.

FACTS: Gelacio Sebial died intestate in 1943 in Pinamungajan Cebu. According to the appellants, Gelacio Sebial, by his first wife Leoncia Manikis, who allegedly died in 1919, begot three children named Roberta, Balbina and Juliano. By his second wife, Dolores Enad, whom he allegedly married in 1927, he supposedly begot six children named Benjamina, Valentina, Ciriaco, Gregoria, Esperanza and Luciano.

Benjamina Sebial filed a petition for settlement and prayed that she be appointed administratrix thereof. Roberta Sebial opposed the petition on the ground that the estate of Gelacio Sebial had already been partitioned among his children and that, if an administration proceeding was necessary, she, Roberta Sebial, a resident of Guimbawian, a remote mountain barrio of Pinamungajan, where the decedent's estate was supposedly located, should be the one appointed administratrix and not Benjamina Sebial, a housemaid working at Talisay, Cebu which is about seventy kilometers away from Pinamungajan. In a supplemental opposition the children of the first marriage contended that the remedy of Benjamina Sebial was an action to rescind the partition.

The lower court appointed Benjamina Sebial as administratrix. It found that the descedent left an estate consisting of lands with an area of twenty-one hectares, valued at more than six thousand pesos, and that the alleged partition of the decedent's estate was invalid and ineffective.

The oppositors moved for the reconsideration of the order appointing Benjamina Sebial as administratrix. They insisted that the decedent's estate had been partitioned on August 29, 1945.

On April 27, 1961 Benjamina Sebial filed an inventory and appraisal of the decedent's estate allegedly consisting of seven unregistered parcels of land. The oppositors registered their opposition to the inventory on the ground that the seven parcels of land enumerated in the inventory no longer formed part of the decedent's estate.

On May 6, 1961, the administratrix filed a motion to require Lorenzo Rematado, Demetrio Camillo and the spouses Roberta Sebial and Lazaro Recuelo to deliver to her the parcels of land.

The lower court required the administratrix to furnish the court with another inventory. The administratrix reproduced her earlier inventory but added two houses allegedly received by the children of the first marriage. An opposition was interposed to the said inventory.

Oppositors-appellants appealed from the two orders of the probate court both dated December 11, 1961, one approving the amended inventory of the decedent's estate filed by the duly appointed administratrix and the other directing the heirs or persons in possession of certain properties of the estate to deliver them to the administratrix. Oppositors-appellants claim, among many points, that the valuation of the inventoried properties were fake, fictitious and fantastic; that the inventory is not supported by documentary evidence; and that an ordinary civil action is necessary to recover the lands in possession of third persons.

ISSUE (relevant to Section 6 Rule 87 of the present rules):

Whether an ordinary civil action for recovery of property and not an administration proceeding is the proper remedy, considering oppositors' allegation that the estate of Gelacio Sebial was partitioned in 1945 and that some of his heirs had already sold their respective shares

HELD: The probate court should ascertain what assets constituted the estate of Gelacio Sebial, what happened to those assets and whether the children of the second marriage (the petitioner was a child of the second marriage and the principal oppositor was a child of first marriage) could still have a share, howsoever small, in the decedent's estate.

The said order is erroneous and should be set aside because the probate court failed to receive evidence as to the ownership of the said parcels of land. The general rule is that

questions of title to property cannot be passed upon in a testate or intestate proceeding. However, when the parties are all heirs of the decedent, it is optional upon them to submit to the probate court the question of title to property and, when so submitted, the probate court may definitely pass judgment thereon.

Lorenzo Rematado and Lazaro Recuelo are not heirs of the decedent. They are third persons. The rule is that matters affecting property under administration may be taken cognizance of by the probate court in the course of the intestate proceeding provided that the interests of third persons are not prejudiced.

However, third persons to whom the decedent's assets had been fraudulently conveyed may be cited to appear in court and be examined under oath as to how they came into the possession of the decedent's assets (Sec. 6, Rule 87, Rules of Court) but a separate action would be necessary to recover the said assets.

The probate court should receive evidence on the discordant contentions of the parties as to the assets of decedent's estate, the valuations thereof and the rights of the transferees of some of the assets.

The probate court should require the parties to present further proofs on the ownership of the seven parcels of land and the materials of the two houses enumerated in the amended inventory of November 17, 1961, on the alleged partition effected in 1945 and on the allegations in oppositors' inventory dated November 7, 1961.

Probate court's order set aside. Case remanded for further proceedings.

BETTY CHUA, JENNIFER CHUA-LOCSIN, BENISON CHUA AND BALDWIN CHUA vs. ABSOLUTE MANAGEMENT CORPORATION, CA

Third persons to whom the decedent's assets had been conveyed may be cited to appear in court and examined under oath as to how they came into possession of the decedent's assets. In case of fraudulent conveyances, a separate action is necessary to recover these assets.

FACTS: Betty T. Chua was appointed as administratrix of the intestate estate of the deceased Jose L. Chua. Thereafter, she submitted to the trial court an inventory of all the real and personal properties of the deceased. Absolute Management Corporation, one of the creditors of the deceased, filed a claim against the estate of the deceased in the amount of P63.7M. As administratrix, Betty T. Chua tentatively accepted said amount as correct, with a statement that it shall be reduced or adjusted as evidence may warrant.

Absolute Management Corporation noticed that the deceased's shares of stocks with Ayala Sales Corporation and Ayala Construction Supply, Inc. were not included in the inventory of assets. As a consequence, it filed a motion to require Betty T. Chua to explain why she did not report these shares of stocks in the inventory. Through a reply, Betty T. Chua alleged that these shares had already been assigned and transferred to other parties prior to the death of her husband, Jose L. Chua. She attached to her reply the deeds of assignment which allegedly constituted proofs of transfer. Judge Dumatol accepted the explanation as meritorious.

Absolute Management Corporation, suspecting that the documents attached to Betty T. Chua's reply were spurious and simulated, filed a motion for the examination of the supposed transferees based on Section 6, Rule 87.

Private respondents opposed the motion on the ground that this provision bears no application to the case. On February 7, 2000, Judge Dumatol issued the assailed order, denying the motion of the corporation as it was seen as a mere fishing expedition on its part. CA reversed, allowing the motion.

ISSUE: whether the Court of Appeals correctly ordered the trial court to give due course to the Motion for Examination

HELD: CA was correct.

Section 6 of Rule 87 seeks to secure evidence from persons suspected of having possession or knowledge of the

properties left by a deceased person, or of having concealed, embezzled or conveyed any of the properties of the deceased.

The court which acquires jurisdiction over the properties of a deceased person through the filing of the corresponding proceedings has supervision and control over these properties. The trial court has the inherent duty to see to it that the inventory of the administrator lists all the properties, rights and credits which the law requires the administrator to include in his inventory. In compliance with this duty, the court also has the inherent power to determine what properties, rights and credits of the deceased the administrator should include or exclude in the inventory. An heir or person interested in the properties of a deceased may call the court's attention that certain properties, rights or credits are left out from the inventory. In such a case, it is likewise the court's duty to hear the observations of such party. The court has the power to determine if such observations deserve attention and if such properties belong *prima facie* to the estate.

However, in such proceedings the trial court has no authority to decide whether the properties, real or personal, belong to the estate or to the persons examined. If after such examination there is good reason to believe that the person examined is keeping properties belonging to the estate, then the administrator should file an ordinary action in court to recover the same. Inclusion of certain shares of stock by the administrator in the inventory does not automatically deprive the assignees of their shares. They have a right to be heard on the question of ownership, when that property is properly presented to the court.

In the present case, some of the transferees of the shares of stock do not appear to be heirs of the decedent. Neither do they appear to be parties to the intestate proceedings. Third persons to whom the decedent's assets had been conveyed may be cited to appear in court and examined under oath as to how they came into possession of the decedent's assets. In case of fraudulent conveyances, a separate action is necessary to recover these assets.

Taken in this light, there is no reason why the trial court should disallow the examination of the alleged transferees of the shares of stocks. This is only for purposes of eliciting information or securing evidence from persons suspected of concealing or conveying some of the decedent's properties to the prejudice of creditors. Petitioners' admission that these persons are the decedent's assignees does not automatically negate concealment of the decedent's assets on their part. The assignment might be simulated so as to place the shares beyond the reach of creditors. In case the shares are eventually included in the estate, this inventory is merely provisional and is not determinative of the issue of ownership. A separate action is necessary for determination of ownership and recovery of possession.

RULE 87 Section 7

MARIA LOPEZ, widow of Joaquin Garcia Guerrero, petitioner-appellee, vs. LEONOR GARCIA LOPEZ, opponent-appellant.

All persons who come into possession of property belonging to any decedent are liable therefor and accountable to the lawful administrator when the estate is finally drawn into judicial administration; and this responsibility extends to the restoration of the fruits, increase, and accessions of such property as well as to the surrender of its proceed , where it has been sold, or exchanged, and to compensation for its value where it has been appropriated, converted or consumed.

FACTS: On March 31, 1901, Joaquin Garcia Guerrero died in the City of Manila, leaving a surviving widow, Maria Lopez y Coejilo, and seven children. Many years prior to his death, the deceased had executed a Will in accordance with the requirements of article 694 of the Civil Code then in force in these Islands. However, nothing was done for many years after his death looking to the establishment of the will and the judicial distribution of the estate thereunder. On the contrary the parties in interest, the widow and children of the deceased, desiring to keep the property together, entered into an agreement, dated February 15 1902 wherein they recognized their common ownership of the property and all

agreed not to seek a division for two years from that date. On May 7, 1904, the property being still undivided, Maria Garcia Lopez (hija), sold her interest in her father's estate to her coheirs for the sum of P13,186.

On March 31, 1905, another document was executed by the widow and heirs, except Maria Garcia Lopez (hija), similar to that of February 15, 1902, all again recognizing the existence of the community estate and agreeing to postpone the division for a period of five years from March 31, 1905. On March 15, 1911, Ignacio Garcia Lopez sold his interest as heir to his coheirs for the sum of P24,500.

On December 15, 1914, the widow, Maria Lopez y Coejilo, filed in CFI Manila a petition for the probate of her husband's will, which was duly proved and allowed by the court, the applicant being appointed administratrix of the decedent’s estate.

On January 22, 1915, the widow and all the heirs except the two who had parted with their interest executed a document by which they transferred to Leonor Lopez Garcia certain properties described in the document in payment of her share in the undivided property; and in return Leonor Lopez Garcia renounced her right to intervene in the settlement of the estate of the testator, particularly, the right of objecting to the accounts which might be rendered for the period of administration beginning January 1, 1915. It was, however, also stipulated in said document that the widow should render an accounting of the administration of the property from the death of the testator, i.e from March 31, 1901, to December 31, 1914, the accounts to be presented in the course of the testamentary proceedings, and that she should pay to Leonor Lopez Garcia what the court might find to be still due her from the estate. Accordingly, on April 24, 1915, the administratrix, Maria Lopez, presented her account of her administration of the property for the period between April 1901 and December 31, 1914.

Leonor Lopez Garcia filed certain objections to the account thus presented. The attorney for the administratrix took the position that the court was without jurisdiction to pass upon the account and was incompetent to entertain the objections. The trial court acceded to his view and ordered the account to be returned to the administratrix. From this order Leonor Garcia Lopez appealed.

ISSUE: whether the court wherein an administration is pending has the power to require a judicial administrator to account for acts done in the capacity of manager or administrator

HELD: Yes. The court has jurisdiction and that it was error in the present case for the trial court to refuse to consider the account in question in connection with the exceptions presented thereto.

It is of no moment that during the period covered by this accounting the accountable party, now formal administratrix, was acting as manager of the estate by agreement among all the parties then having an interest in the estate. When the estate of a deceased person is brought into judicial administration every person having any of the property of the decedent in his hands is required to surrender it to the lawful executor or administrator, and any one who may have squandered assets of the estate or converted the same to his own use is liable to answer for the value thereof. There can in the nature of things be absolutely no exception to this rule for it is inherent in the general jurisdiction of the Court of First Instance "in all matters relating to the settlement of estates." (Sec. 599, Code Civ. Proc.) It cannot be doubted that if the person managing this estate during the period mentioned had been some other than the present administratrix, it would have been the duty of the latter to require such person to account.

It is true that section 672 of the Code of Civil Procedure, which deals with the annual accounting by the administrator, contemplates that he shall account only for such property as may come to his hands as administrator; but this has nothing to do with the initial accounting which should be required of an administrator with respect to property which may have come to his hands as manager prior to the issuance of letters of administration. The accounting, under such circumstances, is necessary to determine what assets pertain to the estate and in this way to establish the initial responsibility of the

administrator.

We deem it, however, proper to add that if, as appears to be the case, Maria Lopez, widow, acted as manager of the property in question by consent of the heirs in interest, who have acquiesced in her management and expressly or tacitly conceded to her a scale of remuneration different from or greater than that which the law would allow to a duly authorized administrator, said heirs would necessarily be bound thereby. In other words, the extent of the accountant's responsibility is, in the absence of bad faith, to be discovered in the agreement of the parties in interest deducible from their contract, in relation with all the circumstances of the case. As may readily be discerned, a person called to account under conditions of this kind might find himself at a great disadvantage, if held rigorously responsible without regard to the special conditions under which the administration was conducted. The failure of the heirs during so great a period to attempt to hold their mother accountable in court is, to say the least, indicative of their acquiescence in the general character of her administration; and the stipulation in the contract of January 22, 1915, that she should be liable to account is not to be taken as depriving her of any defense, arising from agreement or acquiescence of the parties or from lapse of time, which she would be otherwise entitled to interpose.

The heirs, other than the objector, Leonor, are satisfied with what has been done. The liability of the accountant is in any event limited to the proportional interest of Leonor in the balance found due from the administratrix to the estate when the process of accounting is finished.

RULE 78 Section 8

EUGEN MARSCHALL, as judicial administrator of the estate of Walter Toehl, deceased, plaintiff-appellant, vs. CARL ANTHOLTZ, ET AL., defendants. CARL ANTHOLTZ, appellant.

The manager of the oil mill who applies the proceeds of sales to the payment of debts contracted in running the factory does not become liable for double the value of the property sold, as for embezzlement or alienation of property pertaining to the estate of a deceased person under section 711 of the Code of Civil Procedure. This section contemplates an embezzlement or alienation which causes the estate to lose the property converted by the wrongdoer; and it is not applicable to the acts of a manger of a going concern who applies the proceeds of the manufactured product to the expenses incurred in running the business.

FACTS: This action was instituted in the CFI-Manila by Eugen Marschall, as administrator of Walter Toehl, deceased, against Carl Antholtz and A. Murray & Co., Ltd., for the purpose of recovering a parcel of land in Santa Ana, Manila, with the buildings, improvements, and machinery thereon, consisting of an oil mill with its appurtenances, and to obtain a decree annulling the Torrens title covering said land and improvements, with pronouncement to the effect that said property pertains to the estate of Walter Toehl, deceased, subject to a certain mortgage thereon, and to recover the value of the reasonable use and occupation of said property from October 2, 1926, as well as to obtain an accounting from the defendant Carl Antholtz for the use of said property and the proceeds of oil mill products sold by him, with further appropriate general relief. The defendants answered with a general denial and cross-complaint wherein.

Toehl was the Manila Manager of Behn Meyer & Co. Antholtz was a chemist and oil technologist. Toehl owns a parcel of land in Sta. Ana, and in order to use the property in some profitable way, Toehl entered into an agreement with Antholtz. The agreement between them was that Toehl would furnish the capital necessary for the business, which was estimated at P25,000, and Antholtz would act as Toehl's agent and manger at a salary of P500 per month. Toehl, being then employed by Behn Meyer, chose not to use his name in his business with Antholtz; he instead allowed Antholtz to operate the business under Antholtz’s own name. Antholtz installed for Toehl a factory for the manufacture of coconut oil on the property mentioned, and he proceeded thereafter to operate the concern in his own name. On different dates in the early months of 1926 Antholtz received from Toehl the sum of P13,000 which was invested in the

concern.

The business was apparently undercapitalized, and it became necessary to borrow money. Toehl decided to establish the business in corporate from with a capital, consisting of the land and building, already registered in the name of Toehl, and the machinery, then being used in the business by Antholtz. At this time Antholtz happened to be the owner and holder of all the certificates of stock of a corporation known as A. Murray & Co., Ltd., a concern without capital, which had totally ceased to function. Its shares, therefore, were no longer of any value. With the consent of Antholtz, Toehl assumed possession of the documents relating to this corporation with a view to reviving it as corporate owner of the oil plant above-mentioned. Having obtained possession of the certificates of stock issued in the name of Antholtz, Toehl marked said shares as canceled and prepared a new certificate of stock for 496 shares in the name of his wife, Josefa Toehl. Four other several shares were either issued, or intended to be issued, in blank, to four directors of the intended corporation, but they were endorsed and delivered to Mrs. Toehl. In order to start this old corporation on its way as a solvent concern, Toehl transferred to it the parcel of land above-mentioned, with the factory and machinery established thereon. For the purposes of this step the factory was valued at P30,000, and the machinery at P20,000. That Toehl was the prime mover and actor in these steps is clearly apparent from the uncontradicted testimony of Antholtz and documents introduced in evidence as exhibits. Toehl died before the rehabilitation of A. Murray & Co., Ltd., was completed, but a conveyance was executed by Toehl placing the land, with improvements, in the name of A. Murray & Co., Ltd., and the Torrens title to the property now stands in the name of said company. Meanwhile Antholtz was operating the oil mill under his contract with Toehl.

After Toehl's death, or shortly prior thereto, it was found that he was short in his accounts with Behn, Meyer & Co., H. Mij., to the extent of about P150,000; and a claim for approximately this amount has been allowed by the committee on claims in the estate of Toehl in administration. There appears to have been only one other creditor of his estate, whose claim is small in amount. After Toehl's death the then manager of Behn, Meyer & Co., H. Mij., procured Eugen Marschall to be appointed administrator of the estate, and the present action was instituted by him to recover possession of the oil mill property above-mentioned and to hold Antholtz personally liable for certain personal property pertaining to the oil mill and products of the same which have been sold by Antholtz in the continuation of his duties as manger.

The plaintiff's case supposes that Toehl and Antholtz were in collusion and that the latter was cognizant of the fact that the money which Toehl had put into the oil business in Santa Ana had been feloniously embezzled by Toehl from his employer. As a consequence of this supposed collusion, it is insisted for the plaintiff that Antholtz is liable for everything which Toehl had taken from Behn, Meyer & Co., H. Mij., and placed in the oil mill business, as well as for the proceeds of the things sold by Antholtz after the death of Toehl. The trial court found, and we concur in this conclusion, that there is no sufficient proof of collusion between Antholtz and Toehl in the matter of the misappropriation of any of the funds of Behn, Meyer & Co., H. Mij.

ISSUE: Whether Antholtz is liable for the proceeds proceeds of certain effects sold by him after the death of Toehl, as well as the proceeds of the output of the mill while Antholtz continued in the management.

HELD: No.

In section 711 of the Code of Civil Procedure it is declared that if any person, before the granting of letters testamentary or of administration on the estate of a deceased person, embezzles, or alienates, any of the effects of such deceased person, such person shall be liable to an action in favor of the executor or administrator of such estate for double the value of the property sold, embezzled, or alienated, to be recovered for the benefit of the estate.

But this provision has reference primarily to funds that are lost by embezzlement or alienation, and it cannot be understood as making the manger of a going concern liable

for proceeds of sales applied by him to the proper uses of the business, as occurred in this case. The proof shows that the personal property other than the products of the mill, sold by Antholtz in the manner mentioned, was sold with the consent of the manager of Behn, Meyer & Co., H. Mij., and with the consent of the administrator of Walter Toehl, and the proceeds of these sales, as well as the proceeds of the products of the mill, were applied by Antholtz to the obligations incurred by him in running the business, without the improper diversion of a single cent.

It certainly would have been astonishing for Toehl to have communicated to his own employee the fact that the capital advanced for the use in the oil mill business had been abstracted by Toehl from the coffers of Behn, Meyer & CO., H. Mij. It seems to us that the slightest that Toehl would be particularly careful not to put himself at the mercy of his manager by revealing to him the fact that the capital invested was being wrongfully obtained by Toehl; and a review of the evidence leads us to believe, as the trial judge found, that Antholtz was wholly innocent of any guilty participation in the embezzlements committed by Toehl.

(We do not have the next five cases yet because they were assigned to Marquez but I forgot he's taking Specpro under Justice De Leon—tet)

CARLO HERMOSISIMA'S PART

PAVIA vs. DE LA ROSA

Facts:
The deceased Pablo Linart e Iturralde named as executor Francisco Granada e Iturralde. In said will Carmen Linart y Pavia was made the only universal heir. Owing to the death of the testator, Jose de la Rosa was substituted as executor and took possession of the property of the estate. Rafaela Pavia, in her own behalf and as guardian of Carmen, executed a power of attorney I behalf of Jose de la Rosa. Jose de la Rosa accepted the power of attorney and proceeded to administer the estate in a careless manner resulting in loss and damage to Carmen. Later Jose de la Rosa died leaving as his only heirs Babiana and Salud de la Rosa. Babiana and Salud received and accepted from the estate of Jose the inheritance without benefit of inventory and received and divided among themselves, as such heirs, all of the estate. Babiana and Salud were then sued by Carmen through Rafaela to recover the losses sustained by Carmen due to Jose's mismanagement of the estate.

Issue:
Whether or not the filing of the suit against Babiana and Salud was proper?

Held:
No. In accordance with the provisions of the aforesaid Act No. 190, it is understood that testate or intestate succession is always accepted with the benefit of inventory, and the heirs, even after taking possession of the estate of the deceased, do not make themselves responsible for the debts of the deceased with their own property, but solely with that property coming from the testate or intestate succession of the deceased.

The Code of Civil Procedure now in force makes necessary the opening of a testate or intestate succession immediately after the death of the person whose estate is to be administered, the appointment of an executor or administrator, the taking of an inventory of the estate, and the appointment of two or more commissioners for the appraisal of the properties of the estate and deciding as to the claims against such estate.

The extrajudicial division of an estate among heirs of legal age without the intervention of the courts will take effect only in accordance with the terms and conditions provided in sections 596 and 597 of the Code of Civil Procedure.

Pursuant to the provisions contained in Part II of this code the only entity that can lawfully represent a testate or intestate succession of a deceased person is the executor or administrator appointed by the court, charged to care for,

maintain, and administer the estate of the deceased.

The heir legally succeeds the deceased from whom he derives his right and title, but only after the liquidation of the estate, the payment of the debts of same, and the adjudication of the residue of the estate of the deceased, and in the meantime the only person in charge by law to attend to all claims against the estate of the deceased debtor is the executor or administrator appointed by a competent court.

From the above it appears evident that whatever may be the right of action on the part of Rafaela Pavia and the minor, Carmen Linart, the latter represented by the former as guardian, as to the obligations assumed by Jose, now deceased, it must be prosecuted against the executor or administrator of the estate of said deceased Jose, whose executor or administrator is at this time the only representative of the estate or intestate succession of said deceased.

MAGBANUA vs. AKOL

Facts:
On August 24, 1917, Julio Magbanua died intestate in the municipality of Pototan, Province of Iloilo. No intestate proceedings had been instituted until April 1, 1935, when a petition was filed in the Court of First Instance of Iloilo by one Raynalda Magbanua, who alleged to be an acknowledged natural daughter of the deceased Julio Magbanua, together with her husband, Segundo Bernasol. Atty. Akol was appointed administrator while Doromal was appointed co-administrator. Gedang and Flores were appointed as commissioners. Later, Mario Magbanua and his wife, Priscila Magbanua, filed with the committee a claim against the deceased Julio Magbanua. The committee disallowed the claim, on the ground that , in accordance with section 43 of the Code of Civil Procedure, it had prescribed. The CFI affirmed the resolution on the ground of laches.

Issue:
Whether or not the right of the spouses to claim from the estate has prescribed?

Held:
Yes. In Ledesma vs. McLachlin, decided November 23, 1938, this court again intimated that section 642 of the Code of Civil Procedure authorizes a creditor to institute an intestate proceeding through the appointment of an administrator for the purpose of collecting his credit.

The spouses cannot recover upon their claim, it appearing that more than eighteen years had elapsed after the death of their debtor and before the institution of the latter's intestate proceedings.

LIZARRAGA vs. ABADA

Facts:
Francisco Caponong died in October, 1906, owing the plaintiffs(Lizarraga) a sum of money. His widow, Felicisima Abada, was appointed administratrix of the estate, commissioners to appraise the estate and to pass on the claims against the estate were duly appointed, and plaintiffs presented their claim which was allowed by the commissioners in the sum of P12,783.74. The administratrix leased the hacienda to Hilario Zayco for a term of years but afterwards she married Vicente Alvarez, one of the defendants, and the lease was transferred to Alvarez by Zayco. Seven years after the death of Caponong, the plaintiffs herein filed a suit against Abada personally and as administratrix of the estate of Caponong, alleging that Francisco Caponong owed the plaintiffs the sum of P62,437.15. The guardian of the minor children of Francisco Caponong asked permission of the court to intervene in that suit, and this being granted, he denied the claim under oath, and alleged that the estate of Francisco did not owe plaintiffs anything. Later, a compromise agreement was entered into between Lizarraga on the one hand and the administratrix and the guardian on the other. In that agreement properties

of the estate were mortgaged to secure the payment of the debt. As some installments were not paid plaintiffs had receivers appointed to take charge of the properties mortgaged and defendants were ousted from the property they were occupying.

Issue:
a) Whether or not the P68,000 can be considered an administration expense?
b) Whether or not the mortgage of properties belonging to the estate to secure debts of the estate was valid?

Held:
a) No. The expenses of administration should be those necessary for the management of the property, for protecting it against destruction or deterioration, and possibly for the production of fruits; but the sum expended by an administrator of an extensive administration of the estates of the decedent can not be considered "expenses of administration."

b) No. That the estate grants no power to an administrator to borrow money upon a mortgage of the real estate of the decedent is not controverted. Indeed, such an act would be contrary to the policy and purposes of the administration which aims to close up, and not to continue an estate.

Although the mortgage was one made by the administrator and approved by the court, still the approval can not render valid the void acts of an administrator.

GODOY vs. ORELLANO

Facts:
Felisa Pangilinan, administratrix of the estate of Julio Orellno, executed a document in favor of Godoy giving the latter the option to buy a dredge for the consideration of P1,000. The condition was that Godoy was to pay the whole price of the dredge within twenty days. The option was granted in accordance with the power of attorney executed by her coowners who reserved the right to ratify whatever sale might be made, or option granted by Pangilinan. The coowners did not ratify the option contract. Before the expiration of twenty days, the appellee was ready to make complete payment of the price, but Felisa failed to deliver the dredge. Godoy then sued Felisa and her coowners who were his brothers at the same time for the delivery of the dredge to him upon payment of the sum of P9,000; to pay him the sum of P10,000 as damages, and to return to the plaintiff the sum of P1,000 should the carrying out of the sale become impossible.

Issue:
Whether or not the sale of the dredge which the parties knew belonged to the estate of the deceased was valid?

Held:
No. A sale and conveyance by executors without an order of the probate court, under a will devising property to them in trust, but not authorizing any sale of the realty, otherwise than by a direction to pay the debts of the testator, is void, and passes no title to the purchasers. A sale by an administrator of the personal property of the estate, without the authority of an order of court, or of a will, or under an order of court which is void for want of jurisdiction, does not confer on the purchaser a title which is available against a succeeding administrator.

ESTATE OF GAMBOA vs. FLORANZA

Facts:
A claim was being filed against the estate of Gamboa by Jaucian for P2,720. The commissioners allowed the claim and in their report they said that this claim was secured by a mortgage on real estate and expressed an opinion as to the preferential rights to which this creditor and another mortgage creditor would be entitled in the distribution of the proceeds of the sale. The administrator then presented a petition to the court in which he referred to the report of the commissioners that it appeared that some of the creditors were mortgage creditors, and asked that the court appoint a day for a hearing upon the question as to the preference

which these creditors enjoyed. After this, the court, apparently without hearing any of the parties interested, made an order directing the administrator to present a motion asking for an order directing the sale of the mortgaged property; that the mortgage debt be paid from the proceeds of the sale, and that what remained be distributed among the other creditors. This is one of the orders appealed from. Later the administrator presented a petition in compliance with the order. The court then ordered, without any notice to the parties and without hearing, that the mortgaged property be sold and the proceeds thereof to be applied to satisfy the debt due to Jaucian. Floranza, another creditor, challenged these orders.

Issue:
Whether or not these orders must be reversed?

Held:
Yes. Commissioners appointed to hear evidence with respect to claims in proceedings for the settlement of the estate of a deceased person, have no jurisdiction to determine the question of priority in the payment of such claims.

A court, in the exercise of its probate jurisdiction, has no power to allow the sale of a specific piece of real estate for the purpose of paying off a mortgage lien thereon.

An order made by a court, in probate proceedings, for the sale of property belonging to the estate of a deceased person, is void when no notice of the hearing upon the petition for such sale is given, as required by section 722 of the code of Civil Procedure.

(Gumabon)
(Eis')
(Peng)

NATCHER vs. CA
366 SCRA 385

Spouses Graciano del Rosario and Graciana Esguerra were registered owners of a parcel of land located in Manila and covered by Transfer Certificate of Title No. 11889. Upon the death of Graciana, Graciano, together with his six children, entered into an extrajudicial settlement of Graciana's estate adjudicating and dividing among themselves the real property subject of TCT No. 11889. Under the agreement, Graciano received 8/14 share while each of the six children received 1/14 share of the said property.

Graciano's share was further subdivided into two separate lots. Graciano sold the first lot to a third person but retained ownership over the second lot. Graciano later on married herein petitioner Patricia Natcher. During their marriage, Graciano sold the 2nd lot to his wife Patricia. Graciano died leaving his second wife Patricia and his six children by his first marriage, as heirs.

In a complaint filed before the RTC of Manila, herein private respondents alleged that upon Graciano's death, petitioner Natcher, through the employment of fraud, misrepresentation and forgery, acquired the 2nd lot by making it appear that Graciano executed a Deed of Sale in favor herein petitioner.

After trial, the RTC of Manila rendered a decision holding that the deed of sale executed by the late Graciano del Rosario in favor of Patricia Natcher is prohibited by law and thus a complete nullity. It also held that although the deed of sale cannot be regarded as such or as a donation, it may however be regarded as an extension of advance inheritance of Patricia Natcher being a compulsory heir of the deceased.

On appeal, the CA reversed and set aside the lower court's decision. Aggrieved, herein petitioner seeks refuge under our protective mantle through the expediency of Rule 45 of the Rules of Court and assails the appellate court's decision "for being contrary to law and the facts of the case."

ISSUE:

WON the RTC, acting as a court of general jurisdiction in an action for reconveyance annulment of title with damages, adjudicate matters relating to the settlement of the estate of a deceased person particularly on questions as to advancement of property made by the decedent to any of the

heirs?

HELD:

NO, the RTC exceeded its jurisdiction. The SC concured with the CA and found no merit in the instant petition. Matters which involve settlement and distribution of the estate of the decedent fall within the exclusive province of the probate court in the exercise of its limited jurisdiction.

Thus, under Section 2, Rule 90 of the Rules of Court, questions as to advancement made or alleged to have been made by the deceased to any heir may be heard and determined by the **court having jurisdiction of the estate proceedings;** and the final order of the court thereon shall be binding on the person raising the questions and on the heir.

While it may be true that the Rules used the word "may", it is nevertheless clear that the same provision contemplates a probate court when it speaks of the "court having jurisdiction of the estate proceedings".

Corollarily, the RTC in the instant case, acting in its general jurisdiction, is devoid of authority to render an adjudication and resolve the issue of advancement of the real property in favor of herein petitioner Natcher, inasmuch as Civil Case No. 471075 for reconveyance and annulment of title with damages is not, to our mind, the proper vehicle to thresh out said question. Moreover, under the present circumstances, the RTC of Manila, Branch 55 was not properly constituted as a probate court so as to validly pass upon the question of advancement made by the decedent Graciano Del Rosario to his wife, herein petitioner Natcher.

The assailed decision of the CA was affirmed and the instant petition was dismissed for lack of merit.

RUIZ vs. CA
252 SCRA 541

Hilario M. Ruiz executed a holographic will naming as his heirs his only son, Edmond Ruiz, his adopted daughter, private respondent Maria Pilar Ruiz Montes, and his three grand daughters who were all children of Edmond Ruiz. The testator bequeathed to his heirs substantial cash, personal and real properties and named Edmond Ruiz executor of his estate.

Hilario Ruiz died. Immediately thereafter, the cash component of his estate was distributed among Edmond Ruiz and private respondents in accordance with the decedent's will. For unbeknown reasons, Edmond, the named executor, did not take any action for the probate of his father's holographic will.

Four years after the testator's death, it was private respondent Maria Pilar Ruiz Montes who filed before the RTC a petition for the probate and approval of Hilario Ruiz's will and for the issuance of letters testamentary to Edmond Ruiz. Surprisingly, Edmond opposed the petition on the ground that the will was executed under undue influence.

One of the properties of the estate - the house and lot at Valle Verde - was leased out by Edmond Ruiz to third persons. The probate court ordered Edmond to deposit with the Branch Clerk of Court the rental deposit and payments totalling P540,000.00 representing the one-year lease of the Valle Verde property. In compliance, Edmond turned over the amount of P348,583.56, representing the balance of the rent after deducting P191,416.14 for repair and maintenance expenses on the estate.

Edmond moved for the release of P50,000.00 to pay the real estate taxes on the real properties of the estate. The probate court approved the release of P7,722 .00. Edmond withdrew his opposition to the probate of the will. Consequently, the probate court admitted the will to probate and ordered the issuance of letters testamentary to Edmond conditioned upon the filing of a bond in the amount of P50,000.00. The letters testamentary were issued.

Petitioner Testate Estate of Hilario Ruiz, with Edmond Ruiz as executor, filed an "Ex-Parte Motion for Release of Funds." It prayed for the release of the rent payments deposited with the Branch Clerk of Court. The probate court ordered the release of the funds to Edmond but only "such amount as may be necessary to cover the expenses of administration and allowances for support" of the testator's three granddaughters subject to collation and deductible from their share in the inheritance. The court, however, held in

abeyance the release of the titles to respondent Mones and the three granddaughters until the lapse of six months from the date of first publication of the notice to creditors.

Petitioner assailed this order before the CA. Finding no grave abuse of discretion on the part of respondent judge, the appellate court dismissed the petition and sustained the probate court's order in a decision. Hence, this petition.

ISSUE:

WON the probate court, after admitting the will to probate but before payment of the estate's debts and obligations, has the authority: (1) to grant an allowance from the funds of the estate for the support of the testator's grandchildren; (2) to order the release of the titles to certain heirs; and (3) to grant possession of all properties of the estate to the executor of the will.

HELD:

Grandchildren are not entitled to provisional support from the funds of the decedent's estate. The law clearly limits the allowance to "widow and children" and does not extend it to the deceased's grandchildren, regardless of their minority or incapacity. It was error, therefore, for the appellate court to sustain the probate court's order granting an allowance to the grandchildren of the testator pending settlement of his estate.

Respondent courts also erred when they ordered the release of the titles of the bequeathed properties to private respondents six months after the date of first publication of notice to creditors.

And Rule 90 provides that:

"Sec. 1. When order for distribution of residue made. - When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above-mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."

In the case at bar, the probate court ordered the release of the titles to the Valle Verde property and the Blue Ridge apartments to the private respondents after the lapse of six months from the date of first publication of the notice to creditors. The questioned order speaks of "notice" to creditors, not payment of debts and obligations. Hilario Ruiz allegedly left no debts when he died but the taxes on his estate had not hitherto been paid, much less ascertained. The estate tax is one of those obligations that must be paid before distribution of the estate.

If not yet paid, the rule requires that the distributees post a bond or make such provisions as to meet the said tax obligation in proportion to their respective shares in the inheritance. Notably, at the time the order was issued the properties of the estate had not yet been inventoried and appraised.

GOVERNMENT OF THE P.I. vs. PAMINTUAN
55 Phil 13

This is an appeal taken by the Government of the Philippine Islands from the judgment of the Court of First. Instance of Manila dismissing its complaint and absolving the defendants, without costs.

Florentino Pamintuan, represented by J. V. Ramirez or his attorney-in-fact charged with the administration of his property, filed income-tax return for the year 1919, paying the amount of P672.99 on the basis of said return, and the additional sum of P151.01 as a result of a subsequent assessment received from the Collector of Internal Revenue.

Florentino Pamintuan died leaving the defendants herein as his heirs. Intestate proceedings were instituted in the Court of First Instance of Manila The defendants herein inherited from the deceased Florentino Pamintuan in the following proportions: Tomasa Pamintuan inherited 0.0571 per cent of the decedent's estate and the other defendants 0.0784 per cent each according to the partition approved by the court in civil case No. 27948.

During the pendency of the intestate proceedings, the administrator filed income-tax returns for the estate of the deceased corresponding to the years 1925 and 1926.

Subsequent to the distribution of the decedents's estate to the defendants herein, the plaintiff discovered the fact that the deceased Florentino Famintuan has not paid the amount of four hundred and sixty-two pesos (P462) as additional income tax and surcharge for the calendar year 1919

ISSUE:

WON the defendants are liable?

HELD:

YES, they are liable. The administration proceedings of the late Florentino Pamintuan having been closed, and his estate distributed among his heirs, the defendants herein, the latter are responsible for the payment of the income tax here in question in proportion to the share of each in said estate

Heirs are not required to respond with their own property for the debts of their deceased ancestors. But even after the partition of an estate, heirs and distributees are liable individually for the payment of all lawful outstanding claims against the estate in proportion to the amount or value of the property they have respectively received from the estate. The hereditary property consists only of that part which remains after the settlement of all lawful claims against the estate, for the settlement of which the entire estate is first liable. The heirs cannot, by any act of their own or by agreement among themselves, reduce the creditors' security for the payment of their claims.

Wherefore, let the defendants pay the plaintiff the sum of P462, Judgment reversed.

VERA vs. NAVARRO
79 SCRA 408 (1977)

FACTS:

This is a petition for certiorari, prohibition and mandamus filed by BIR Commissioner Vera against CFI Judge Navarro in relation to the 3 orders issued by Navarro in the Special Proceeding "In the Matter of the Testate Estate of Elsie M. Gaches - Bienvenido Tan, Executor," allegedly issued in GADLEJ.

Elsie Gaches died without any issue. In her will, she made several dispositions to the following persons: her sister, driver, lavandero, and the balance of the estate after all the dispositions is to be given, in equal share to Eribal, the cook/caretaker/companion/driver, and Abanto, the special nurse/companion/secretary/cook of Gaches. Judge Tan filed a petition for the probate of the will. He was appointed by the court as the executor, without a bond.

The lawyer of Eribal and Abanto, and Judge Tan filed a petition for authority to make advance inheritance, allowances and fees to the heirs and legatees instituted in the will, as well as to the lawyers involved in the proceeding, claiming that the estate is very liquid, thus the government will be amply protected despite the advance payments prayed for. Judge Navarro granted the petition. The BIR Commissioner filed a petition for the revocation of the orders of the probate court allowing for the said advance payments and for the appointment of a co-administrator to represent the government. It seems that the court denied this petition.

Thereafter, Judge Tan submitted a final accounting and project of partition to the probate court. Judge Navarro approved the same, on the condition that Eribal and Abanto shall be responsible for all the taxes which may be due the government arising from the transactions involving the estate, and Bauer, Gaches' sister in the US to whom she left all her properties in the US, shall be responsible for all the US taxes pertaining to her share in the estate.

The Commissioner issued warrants of garnishment against the funds of the estate in PNB, OBM and PBC. Upon motion of the lawyer of Eribal and Abanto, the probate court ordered for

the lifting of the said warrants.
The BIR Commissioner filed this present petition, claiming that the judge committed GADLEJ in issuing the orders because the distributive shares of an heir can only be paid after the full payment of the death taxes, and that as provided by Rule 90 Sec. 1, while a partial distribution of the estate may be allowed, a bond must be filed by the distributees to secure the payment of transfer taxes.
Judge Tan, the executor, claimed that the estate has sufficient assets with which to pay the taxes being claimed by the government.

ISSUE:
WON JUDGE NAVARRO COMMITTED GADLEJ IN ISSUING THE ORDERS ALLOWING FOR THE ADVANCE PAYMENTS?
SHOULD THE HEREIN RESPONDENT HEIRS BE REQUIRED TO PAY FIRST THE INHERITANCE TAX BEFORE THE PROBATE COURT MAY AUTHORIZE THE DELIVERY OF THE HEREDITARY SHARE PERTAINING TO EACH OF THEM?

HELD:
SC held that Judge Navarro committed GADLEJ when he allowed for the said advance payments. Rule 90 Sec.1 provides that "No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs."
Under the provisions of the aforequoted Rule, the distribution of a decedent's assets may only be ordered under any of the following three circumstances, namely, (1) when the inheritance tax, among others, is paid; (2) when a sufficient bond is given to meet the payment of the inheritance tax and all do other obligations of the nature enumerated in the above-cited provision; or (3) when the payment of the said tax and all the other obligations mentioned in the said Rule has been provided for.
None of these three cases, insofar as the satisfaction of the inheritance tax due from the estate a concerned, were present when the questioned orders were issued in the case at bar.
Although the approval of the advance payments was on the condition that the taxes will be taken cared of by the heirs, there was no proof, other than the statement of the counsel of the heirs that the said claims of the government was adequately provided for. The probate court should have checked first the nature and condition of the assets of the estate and its adequacy in satisfying the claims of the government. There is also no evidence that a sufficient bond was filed to meet the tax obligations of the estate.
Nevertheless, the issue in this case had been rendered academic by the supervening events. Apparently, the counsel for Eribal and Abanto made a compromise payment for the settlement of the deficiency estate taxes. The BIR duly accepted and approved the said compromise payment.

SALVADOR vs. STA. MARIA
20 SCRA 603

Seven parcels of titled land and two parcels of untitled land, situated in Bigaa, Bulacan, were owned by Celestino Salvador. He executed a deed of sale over them in favor of the spouses Alfonso Salvador and Anatolia Halili. Alleging that the sale was void for lack of consideration, he filed against said vendees, a suit for reconveyance of said parcels of land.

Celestino Salvador died, testate. As his alleged heirs, 21 persons substituted as plaintiffs in the action for reconveyance. The Court of Appeals affirmed the reconveyance judgment, with the correction that reconveyance be in favor of the 21 heirs substituted as plaintiffs therein.

About three years later, one of the parcels of land involved, Lot 6, was sold so that with its proceeds debtors who filed claims may be paid. The 21 substituted heirs filed with the SC the present special civil action for certiorari with preliminary injunction to assail the order to pay the debts of the estate with the P41,184.00 proceeds of the sale of Lot 6.

ISSUE:

WON the parcels of land and the proceeds of the sale of one of them, properties of the estate or not?

HELD:

YES, the parcels of land form part of the estate. It is a settled point of law that the right of heirs to specific distributive shares of inheritance does not become finally determinable until all the debts of the estate are paid. Until then, in the face of said claims, their rights cannot be enforced, are inchoate, and subject to the existence of a residue after payment of the debts

Petitioners do not question the existence of the debts abovementioned. They only contend that the properties involved having been ordered by final judgment reconveyed to them, not to the estate, the same are not properties of the estate but their own, and thus, not liable for debts of the estate.

Said contention is self-refuting. Petitioners rely for their rights on their alleged character as heirs of Celestino; as such, they were substituted in the reconveyance case; the reconveyance to them was reconveyance to them as heirs of Celestino Salvador. It follows that the properties they claim are, even by their own reasoning, part of Celestino's estate. Their right thereto as allegedly his heirs would arise only if said parcels of land are part of the estate of Celestino, not otherwise. Their having received the same, therefore, in the reconveyance action, was perforce in trust for the estate, subject to its obligations. They cannot distribute said properties among themselves as substituted heirs without the debts of the estate being first satisfied.

(Borja's)

Rule 90, Sections 1-3

Lopez v. Olbes, 15 Phil 540

Facts:
Lopez filed a civil case in court for the possession of a parcel of land against Olbes, the executor of the estate of the deceased Martina Lopez based on the deed of donation the latter executed which the formed accepted on the same date. During the deceased lifetime, she executed a deed donated of the subject parcel of land in favor of Ricardo Lopez which the latter accepted on the same date. Martina Lopez was informed of the acceptance. Olbes, the executor, claimed to have rights of ownership and possession to the aforementioned parcel of land on the ground that the parcel of land still belong to the estate of Martina Lopez and was then in charge of a trustee of the executor and the plaintiff Ricardo Lopez, and of the order of the court. Olbes filed a demurrer. The lower court sustained the demurrer.

Issue(s): 1) Whether the subject parcel of land still belonged to the estate of the deceased?
2.) Whether a demurrer challenging the validity of a donation be filed in a probate proceeding?

Held:

1) No. A thing donated is no longer the property of the deceased donor, nor does it form part of the hereditary estate, but belongs to the donee until by executory judgment the donation be declared null and irregular.
2) No. Questions arising to the nullity or irregular nature of a donation, and which affect its validity and force, or some excess which may require reduction, must be argued and decided in accordance with law at a regular trial and by a final judgment, and not by a ruling upon a demurrer.

De Jesus v. Daza, 77 SCRA 152

Facts:
Petitioners pray for certiorari and mandamus for the return of possession of two parcel of lands. Petitioners are testamentary heirs of the deceased Gavino de Jesus. A project of partition was approved by the court. After learning of the sale, the petitioners instituted an action for legal redemption.

Issue(s): 1) whether or not the respondent judge, presiding the probate proceedings, had jurisdiction to order the delivery of the possession of the aforesaid parcels of land within the same estate proceeding and not in an independent ordinary action?
2) whether the purchaser has a right of possession over the property?
3) whether the petitioners have a right of redemption?

Held:
1) Yes. The probate court has jurisdiction, within the testate proceeding, to order the delivery of the possession of a portion of the inheritance to the person who has bought it from the heirs within the same estate proceeding upon petition of the buyer and notice to the other interested parties.
2) Yes. The right of the purchaser is absolute until and unless resolved by the timely and valid exercise of the right of redemption.
3) The sale took place after the approval of the probate court of the order of partition. But even supposing supposing that the approval of the sale was made after the sale, still the approval related back to the date of the project of partition.

Santos v. Aranzanso, 116 SCRA 1

Facts:
This is a petition to challenge the legality of the decree of adoption in favor of Paulina Santos and Aurora Santos on the grounds that the application for adoption was not signed by both adopting parents and by natural parents; and the judgment was procured through and by means of fraud.

Issue:
1) Whether the validity if the adoption could be assailed collaterally in intestate proceedings?
2) Whether the CFI has jurisdiction over the petition?

Held:
1) No. The validity of the adoption cannot be assailed collaterally in an intestate proceedings.
2) No. Exclusive original jurisdiction over adoption and annulment of adoption cases lies with the Juvenile and Domestic Relations Court (JDRC) and not the Court of First Instance.

Ngo The Hua v. Chung Kiat Hua, 9 SCRA 113

Facts:
This is an appeal from the order of the Court of First Instance of Rizal appointing Chung Kiat Hua as administrator of the estate of the deceased Chung Liu.

Ngo The Hua, claiming to be the spouse of the deceased, filed a petition to be appointed administratix of the estate of the aforementioned deceased. The petition was opposed by the children of the deceased claiming that Ngo Hua is morally and physically unfit to execute the duties of the trust as administratix, and that the she and the deceased procured an absolute divorce in Taiwan. The lower court found that Ngo Hua and the deceased were validly divorced in Taipei. The court issued an order appointing Chung Kiat Hua as administrator instead.

Issue:
Whether or not the lower court erred in passing upon the validity of the divorce obtained by Ngo Hua and the deceased and upon the filiation of the oppositors?

Held:
No. It is well settled that the declaration of heirs shall only take place after all the debts, expenses and taxes have been paid. A cursory reading of the pertinent section discloses that what the court is enjoined from doing is the assignment or distribution of the residue of the deceased's estate before the above-mentioned obligations chargeable to the estate are first paid. Nowhere from the said section may it be inferred that the court cannot make a declaration of heirs prior to the satisfaction of these obligations. It is to be noted, however, that the court in making the appointment of the administrator

did not purport to make a declaration of heirs.

Jimoga-on v. Belmonte, 84 Phil 545

Facts:
This is an appeal from the order of Court of First Instane of Negros Occidental appointing Apolonia Jimoga-on as administratix of the estate of Marcelino Belmonte, and failing to adjudge the movants-appellants Julita and Ulpiano Belmonte to be acknowledged natural children of Marceio Belmonte and to appoint Julita Belmonte as administratix of the properties acquired by the deceased before his marriage to Apolonio Jimoga-on.

Issue: Whether or not the lower court erred in not making an adjudication to the effect that they are acknowledged natural children of the deceased?

Held:
The petition does not hold merit. First, the matter so far taken up by the lower court was limited to the appointment of the judicial administratix. In other words, while no jurisdiction was made on the status of the appellants, this fact does not preclude future action on the point. And second, while the jurisdiction of the probate court includes the power to entertain the acknowledged by the decedent, it is only after, and not before, the payment of all debts, funeral charges, expenses of administration, allowance to the widow, and inheritance tax shall have been effected that the court should make a declaration of heirs or of such persons as are entitled by law to the residue.

(rachelle's)
PHILIPPINE SAVINGS BANK, petitioner, vs. **HON. GREGORIO T. LANTIN**, Presiding Judge, Court of First Instance of Manila, Branch VII, and **CANDIDO RAMOS**, respondents
[G.R. No. L-33929. September 2, 1983.]

Facts:
Involved in this case is a duplex-apartment house on a lot situated at San Diego Street, Sampaloc, Manila, and owned by the spouses Filomeno and Socorro Tabligan.
The duplex-apartment house was built for the spouses by private respondent Candido Ramos, a duly licensed architect and building contractor, at a total cost of P32,927.00. The spouses paid private respondent the sum of P7,139.00 only. Hence, the latter used his own money, P25,788.50 in all, to finish the construction of the duplex-apartment. Later on, the spouses got a loan from Philippine Savings Bank (PSB) and they mortgaged the said apartment. At the time the mortgages were registered in 1967, the titles were clean from any encumbrance. The spouses failed to pay. In 1969, the bank foreclosed the property. However, prior to that, year 1968, the architect filed a collection suit against the spouses. A judgment was rendered in favor of the architect. In 1970, the bank consolidated ownership.
As the spouses did not have any properties to satisfy the judgment in Civil Case No. 69228, the private respondent addressed a letter to the petitioner for the delivery to him (private respondent) of his pro-rata share in the value of the duplex-apartment in accordance with Article 2242 of the Civil Code. The petitioner refused to pay the pro-rata value prompting the private respondent to file the instant action. As earlier stated, a decision was rendered in favor of the private respondent.
The parties are agreed that the only issue is whether or not the private respondent is entitled to claim a pro-rata share in the value of the property in question.
The bank states that the proceeding before the court could not apply Article 2242 because in order to do so, there must first be foreclosure proceedings or other insolvency proceedings. Consequently, it is argued that private respondent's unpaid contractor's claim did not acquire the character of a statutory lien equal to the petitioner's registered mortgage.
Upon the other hand, private respondent Ramos maintains that the proceedings had before the court below can qualify as a general liquidation of the estate of the spouses Tabligan because the only existing property of said spouses is the property subject matter of this litigation.

I: WON a collection suit, with only 2 creditors, can be qualified as a settlement of a decedent's estate thereby allowing the application of Art 2242?

H:

The proceedings in the court below do not partake of the nature of the insolvency proceedings or settlement of a decedent's estate. The action filed by Ramos was only to collect the unpaid cost of the construction of the duplex apartment. It is far from being a general liquidation of the estate of the Tabligan spouses.

Insolvency proceedings and settlement of a decedent's estate are both proceedings in rem which are binding against the whole world. All persons having interest in the subject matter involved, whether they were notified or not, are equally bound. Consequently, a liquidation of similar import or "other equivalent general liquidation' must also necessarily be a proceeding in rem so that all interested persons whether known to the parties or not may be bound by such proceeding.

In the case at bar, although the lower court found that "there were no known creditors other than the plaintiff and the defendant herein", this can not be conclusive. It will not bar other creditors in the event they show up and present their claims against the petitioner bank, claiming that they also have preferred liens against the property involved. Consequently, Transfer Certificate of Title No. 101864 issued in favor of the bank which is supposed to be indefeasible would remain constantly unstable and questionable. Such could not have been the intention of Article 2243 of the Civil Code although it considers claims and credits under Article 2242 as statutory liens.

Respondent Ramos admitted in the partial stipulation of facts submitted by both parties that at the time of the loans to the spouses, the petitioner's bank had no actual or constructive knowledge of any lien against the property in question. The duplex apartment house was built for P32,927.00. The spouses Tabligan borrowed P35,000.00 for the construction of the apartment house. The bank could not have known of any contractor's lien because, as far as it was concerned, it financed the entire construction even if the stated purpose of the loans was only to "complete" the construction.

Since the action filed by the private respondent is not one which can be considered as "equivalent general liquidation" having the same import as an insolvency or settlement of the decedent's estate proceeding, the well established principle must be applied that a purchaser in good faith and for value takes registered land free from liens and encumbrances other than statutory liens and those recorded in the Certificate of Title. It is an admitted fact that at the time the deeds of real estate mortgage in favor of the petitioner bank were constituted, the transfer certificate of title of the spouses Tabligan was free from any recorded lien and encumbrances, so that the only registered liens in the title were deeds in favor of the petitioner.

MARTINA RAMOS, ET AL., plaintiffs-appellants,
vs.
CARIDAD ORTUZAR, ET AL., defendants-appellants.
(G.R. No. L-3299 August 29, 1951)

Facts:

Percy A. Hill, an American and retired officer of the Philippine Constabulary, cohabited with Martina Ramos in Munoz, then a barrio of San Juan de Guimba, province of Nueva Ecija, from 1905 to 1914 and had with her six children, two of whom are Richard Hill and Marvin Hill and the others died in infancy. He started acquiring lands by purchase or homestead and improving and cultivating them until at the time of his death on July 23, 1937, his holdings were worth over P100,000.

In 1914, Percy A. Hill canonically married an American woman by the name of Helen Livingstone and of that union three children were born, all of whom now reside in the United States. Helen Livingstone died in 1922, and in 1924, Hill married Caridad Ortuzar by whom he had one daughter. It is Caridad Ortuzar and all the children had by her and Helen Livingstone. Another defendant in the case was Maximo Bustos, who purchased the property sold by the heirs of Hill.

On September 3, 1937, proceedings for the settlement of Percy A. Hill's estate were commenced and Caridad Ortuzar was appointed administratrix. During the Intestate proceedings, Marvin and Richard Hill intervened claiming to be the deceased's children. The court conducted a hearing as to the rights of the two but declared in order that they are not rightful heirs of Hill, thereby excluding them from participating in the distribution of the estate. Marving and Richard failed to appeal the dedcision.

By order of the court, the administratrix on April 2, 1940 submitted an accounting and a project of partition, and both of these having been approved, distribution of the estate was made accordingly and the estate was closed. On March 27, 1947, the declared heirs and distributes (Caridad Ortuzar, her daughter and the deceased's children by Helen Livingstone) sold six tracts of land left by Hill to Maximo Bustos for P120,000, this being the sale which the trial court would annul.

Six years after the partition, Martina came before the CFI claiming that she was the lawful wife and her children were the legitimate kids of the deceased. The CFI decided against her because no certificate of marriage was produced and no record was made in the civil registry. The court also found out that during the duration of the alleged marriage, the deceased came to Martina and introduced another wife. Because of this, Martina asked the deceased to have another house constructed for her right in front of their old house. The court said that this act of a lawful wife is unbelievable because why would she instantly give up her right to use the house that the two of them built together.

I: WON Martina, after six years could still raise the issues already answered by the CFI in the special proceedings?

Held:
As to *res adjudicata*. It has been seen that Percy A Hill died on July 23, 1937, after which, on September 3 of the same year, intestate proceedings for the settlement of his estate (Civil Code No. 7686) were begun. And as also stated, the record of these proceedings have disappeared from the files of the court, however, the court "docket for special proceedings cases" was not lost or destroyed. The entries on pages 204, 205 and 207 of this book, pieced together, reveal these facts: In Percy A. Hill's intestate proceedings, Richard and Marvin Hill intervened, or sought to intervene, on the allegation that they were the deceased's legitimate sons entitled to share in the inheritance. Before intervention was allowed, the Hill brothers were required to establish their right and interest in the estate as a forced heirs (this covers both natural, legitimate, illegitimate) and to this end formal hearing was held and testimony, consisting of 18 pages, was taken. After the hearing, the petition to intervene was denied, whereupon the would be intervenors took steps to appeal was disapproved. (Although the reasons for the disapproval is not shown in the entries, extraneous evidence states that the record on appeal was filed out of time.) There being no other matters to attend to the administratrix submitted a final accounting and a project of partition by order of the court, both were in due time approved, the partition was carried out, and the expediente was closed.

Supplementing the entries aforesaid are two other documents: Exhibit "3", the project of partition, dated April 30, 1940, approving the partition. The project of partition stated that Percy A. Hill had married twice, included all the properties of which hill died seized, designated as Hill's sole heirs all the defendants in the present action, and assigned to them the residue of the estate after all the expenses and obligations were paid.

It thus appears beyond doubt that all the facts raised in the present suit were alleged, discussed, and definitely adjudicated in the expediente of Hill's intestate. The only instance that we can think of in which a party interested in a probate proceeding may have a final liquidation set aside is when he is left out by reason of circumstances beyond his control or through mistake or inadvertence not imputable to negligence. Even then, the better practice to secure relief is reopening of the same case by proper motion within the reglementary period, instead of an independent action of the

effect of which if successful, would be, as in the instant case, for another court or judge to throw out a decision or order already final and executed and reshuffle properties long ago distributed and disposed of.

In re estate of Engracio Orense, deceased.
EUGENIA M. SANTOS, VIUDA DE ORENSE, petitioner-appellant,
vs.
THE ROMAN CATHOLIC BISHOP OF NUEVA CACERES, opponent-appellee
(G.R. No. L-21289 April 5, 1924)

Facts:

The deceased left a will, according to which six parcels of land were left to the Roman Catholic Church as trustee for various purposes, subject to a life estate in favor of the appellant who, in the absence of descendants, ascendants and collateral heirs of the deceased, was made his universal testamentary heir.

The will was probated on March 6, 1919, and the appellant was appointed executrix. The administratrix told the court that the estate owed Pacific Commercial Company some money for the purchase of several equipment to be used in the electric light plant in Guiobatan (deceased was granted a franchise during his lifetime). She asked the court to allow her to either sell or mortgage some liberty bonds or to get a loan. The court granted her authority to do either of the two.
On November 20, 1919, appellant who had then been appointed administratrix with the will annexed, filed a motion with the court of First Instance asking that the declaration of heirs made by the testator in his will be confirmed, and that a commission be appointed to make a nominal division of the estate, the word "nominal" being used because, according to the terms of the will, all of the property was to remain in possession of the appellant in usufruct. This motion was granted by order of December 31, 1919, the court declaring the appellant the universal heir of the testator and providing that the various legatees under the will should not take possession of their respective legacies during the lifetime of the appellant or while "the debts of the deceased occasioned by the establishment of the electric light plant in Guinobatan remained unpaid." In the same order the court also appointed a commissioner to partition the estate in accordance with the will and declared that the purpose of the partition was to secure the termination of the testamentary proceedings and have the interests of the parties recorded in the registry of deeds.

After the partition, the appellant came to court again. This time she was asking for the sale of several parcels of land that was awarded to the Roman Chatholic Church in order to answer of several debts. She even presented an indorsement from the parish priest. After the request was approved she came to court again asking for a license to sell several other properties. At this point the RCC opposed alleging first, that the court already lost jurisdiction to decide over the properties after it awarded the partition which was recorder in the Register of Deeds and second, that the license given to the appellant was not valid.

I: WON the appeal to the grant of the license to sell, being filed more than a year after it was issued, was filed out of time? (NO)
WON the court still had jurisdiction to grant the license to sell? (None)

H: 1) The order granting a license can be appealed because such order was of a character which gave judgment on all the issues. However, the appeal being filed more than a year later must be questioned together with the second issue.

2) At the time of the granting of the license, a distribution of the estate of the deceased had been made, the order of distribution had become final and the title to the estate in remainder devised to the Roman Catholic Church had become vested. As far as the title to the property was concerned, the administration proceedings were then terminated and the court had lost its jurisdiction in respect thereto. There might still be a lien on the property for the debts of the deceased

and the legitimate expenses of administration, but it seems obvious that the court could have no jurisdiction to foreclose this lien and order the property sold unless some sort of notice was given the holder of the title. No notice, neither actual nor constructive, was given in the present case. It does not even appear that the order of sale was recorded in the office of the registry of deeds as required by subsection 7 of section 722 of the Code of Civil Procedure. The order of sale was therefore void for want of jurisdiction in the court and could be vacated at any time before it had been acted upon and a sale made and confirmed.

DY KIU, deceased. DY CAY, administrator of the estate of DY KIU, deceased, appellant,
vs.
CROSSFIELD & O'BRIEN, appellees
(G.R. No. L-12375 August 30, 1918)

Facts:
A Chinaman by the name of Dy Cay was appointed administrator of the estate of the Chinaman Dy Kiu, deceased. The administrator desired to prosecute an action against the firm of Dy Buncio & Co. for the liquidation of the partnership business in which the deceased had been interested. To initiate and push the necessary legal proceedings, the administrator, apparently under authority from the court, entered into a contract with Attorneys Crossfield & O'Brien with the agreement that they will give 10% of what can be collected from the company, as payment, to the firm.

Crossfield and O'Brien contracted with a certain Macleod to determine the share of Dy Kiu in the company. Their contract, which was signed by the other partners, also stated that each will be bound by the findings of Macleod and that the other partners were to be given the opportunity to purchased the shares of Dy Kiu in order to prevent liquidation. The contract was signed by Crossfield and O'Brien in behalf of the estate. Macleod's findings revealed that the deceased owned 40,636 of the partnership. After this was released, the administrator said that he was not bound by the contract because he neither signed nor authorized it.

I: (1) Whether section 145 of the Code of Civil Procedure, as amended by Act No. 2347, relating to new trials, should be construed as fixing a time limit within which a judge of first instance can set aside a judgment and grant a new trial

(2) whether the law firm of Crossfield & O'Brien should be paid for their professional services in certain intestate proceedings on a *quantum meruit* basis or on the basis of the terms of the contract with their client.

H: 1) The first assignment of error reads: "The court erred in its order dated August 17, 1916, in revoking, setting aside, and modifying the order of March 31, 1916, after the time had elapsed in which the court had jurisdiction to revoke, set aside or modify said order of March 31, 1916."
The right of a defeated party to have an error in a judgment corrected should not be taken away from him by a mere delay on the part of the judge in deciding the motion, a delay for which the defeated party would in no way be responsible. (See Santos *vs.* Villafuerte [1906], 5 Phil., 739.) The time during which a court considers a motion to set aside a judgment or for a new trial should not be counted in determining the statutory period. To say that all motions of this character must be decided within thirty days after notice of a decision, regardless of their importance or difficulty, or of the time of submission, would be subversive of justice. If the provision of law is to be held rigid and mandatory, the effect will be to require many motions to be decided without due consideration, a result which will defeat the spirit of the code. (*See* Gomer *vs.* Chaffe [1880], 5 Colo., 383.) Actually applying these views to our present facts, since the motion was presented in time, the court even after the expiration of the thirty day period had jurisdiction to consider the motion and to modify or set aside its judgment

2) The second and third assignments of error assail the action of the Court in allowing Crossfield & O'Brien the full amount provided for in the contract, as attorney's fees.

The contract executed by the administrator and Attorneys Crossfield & O'Brien was valid and reasonable. The attorneys, having performed the task assigned to them, should receive the payment expressly authorized.

The order of the Court of First Instance of August 17, 1916, is affirmed, with costs against appellant. So ordered.

JUANITA LOPEZ GUILAS, petitioner,
vs.
JUDGE OF THE COURT OF FIRST INSTANCE OF PAMPANGA AND ALEJANDRO LOPEZ respondents .
(G.R. No. L-26695 January 31, 1972)

Facts:
In a Resolution dated October 26, 1953 in Sp. Proc. No. 894 entitled "En el Asunto de la Adopcion de la Menor Juanita Lopez y Limson", herein petitioner Juanita Lopez, then single and now married to Federico Guilas, was declared legally adopted daughter and legal heir of the spouses Jacinta and Alejandro. After adopting legally herein petitioner Juanita Lopez, the testatrix Doña Jacinta did not execute another will or codicil so as to include Juanita Lopez as one of her heirs.

Nevertheless, in a project of partition dated March 19, 1960 executed by both Alejandro Lopez and Juanita Lopez Guilas, the right of Juanita Lopez to inherit from Jacinta was recognized and Lots Nos. 3368 and 3441. In an order dated April 23, 1960, the lower court approved the said project of partition and directed that the records of the case be sent to the archives, upon payment of the estate and inheritance taxes. On April 10, 1964, herein petitioner Juanita Lopez-Guilas filed a separate ordinary action to set aside and annul the project of partition on the ground of lesion, perpetration and fraud, and pray further that Alejandro Lopez be ordered to submit a statement of accounts of all the crops and to deliver immediately to Juanita lots nos. 3368 and 3441 of the Bacolor Cadastre, which were allocated to her under the project of partition.

Alejandro Lopez claims that, by virtue of the order dated April 23, 1960 which approved the project of partition submitted by both Alejandro and Juanita and directed that the records of the case be archived upon payment of the estate and inheritance taxes, and the order of December 15, 1960 which "ordered closed and terminated the present case", the testate proceedings had already been closed and terminated; and that he ceased as a consequence to be the executor of the estate of the deceased; and that Juanita Lopez is guilty of laches and negligence in filing the petition of the delivery of her share 4 years after such closure of the estate, when she could have filed a petition for relief of judgment within sixty (60) days from December 15, 1960 under Rule 38 of the old Rules of Court.

Juanita contends that the actual delivery and distribution of the hereditary shares to the heirs, and not the order of the court declaring as closed and terminated the proceedings, determines the termination of the probate proceedings citing Intestate estate of Mercedes Cano, Timbol vs. Cano, where it was ruled that "the probate court loses jurisdiction of an estate under administration only after the payment of all the taxes, and after the remaining estate is delivered to the heirs entitled to receive the same". That the executor Alejandro is estopped from opposing her petition because he was the one who prepared, filed and secured court approval of, the aforesaid project of partition, which she seeks to be implemented. Lastly, she said that she is not guilty of laches, because when she filed on July 20, 1964, her petition for he delivery of her share allocated to her under the project of partition, less than 3 years had elapsed from August 28, 1961 when the amended project of partition was approved, which is within the 5-year period for the execution of judgment by motion

I: WON the court already lost jurisdiction upon issuance of the order? (NO)

H: The probate court loses jurisdiction of an estate under administration only after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same. The finality of the approval of the project of partition by itself alone does not terminate the probate proceeding. As long as the order of the distribution of the estate has not been complied with, the probate proceedings cannot be

deemed closed and terminated because a judicial partition is not final and conclusive and does not prevent the heir from bringing an action to obtain his share, provided the prescriptive period therefor has not elapsed. The better practice, however, for the heir who has not received his share, is to demand his share through a proper motion in the same probate or administration proceedings, or for re-opening of the probate or administrative proceedings if it had already been closed, and not through an independent action, which would be tried by another court or Judge which may thus reverse a decision or order of the probate on intestate court already final and executed and re-shuffle properties long ago distributed and disposed of.

Section 1 of Rule 90 of the Revised Rules of Court of 1964 as worded, which secures for the heirs or legatees the right to "demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession".

WHEREFORE, judgment is hereby rendered directing:

(a) the Register of Deeds of Pampanga to cancel TCT No. 26638-R covering the aforesaid lots Nos. 3368 and 3441 of the Bacolor Cadastre and to issue anew Transfer Certificate of Title covering the said two lots in the name of herein petitioner Juanita Lopez Guilas; and

(b) the respondent Alejandro Lopez

(1) to deliver to herein petitioner Juanita Lopez Guilas the possession of lots Nos. 3368 and 3441;

(2) to deliver and/or pay to herein, petitioner all the rents, crops or income collected by him from said lots Nos. 3368 and 3441 from April 23, 1960 until the possession of the two aforementioned lots is actually delivered to her, or their value based on the current market price.

Quion etc. vs. Claridad et al. January 30, 1943
[GRN 48541 January 30, 1943]

VALERIANA QUION, ETC., plaintiffs and appellees, vs. VICENTE CLARIDAD ET AL., defendants. VICENTE CLARIDAD, GODOFREDO FAMY and EULALIA CLARIDAD, appellants.

FACTS:
In the intestate proceedings of a deceased, prosecuted by appellants, the latter knowingly concealed the fact that said deceased left a second wife with whom he had two children, namely, herein appellees.

ISSUES:
(1) WON heirs by the 2nd marriage may inherit – YES
(2) WON intestate proceedings could be reopened after the expiration of the two-year period fixed in sections 597 and 598 of the Code of Civil Procedure. – YES

HELD/RATIO:
(1)The trial court in a subsequent action brought by appellees to recover their legal participations in the deceased's estate, correctly declared said appellees co-owners of the estate in question to the extent of one-half thereof, with right to its possession.

(2)There is no merit in appellants' claim that the intestate proceedings could no longer be reopened after the expiration of the twoyear period fixed in sections 597 and 598 of the Code of Civil Procedure. It suffices to state that this is an action by the heirs of the deceased by his second marriage whose dominion over their share in the inheritance was automatically and by operation of law vested in them upon the death of said deceased, subject only to the lien of the latter's creditors, for the purpose of obtaining relief on the ground of fraud, which action may be brought within four years after the discovery of the fraud, in accordance with section 43 of the Code of Civil Procedure.

Mari and Evangelista vs. Bonilla and Ordañez March 19, 1949

FACTS:

Casimiro Evangelista is a registered owner of a parcel of land (homestead) as evidenced by Original Certificate of Title No. 4905, of the register of deeds of Nueva Ecija, consisting of 7.0652 hectares, more or less situated at Valdefuente, Cabanatuan, Nueva Ecija. He was married to Leonida Mari, plaintiff herein on February 7, 1920 at Rizal, Nueva Ecija, and during their marriage and while living together as spouses, they begot two children, Caridad and Deogracias Evangelista. He died intestate.

On January 10, 1944, Deogracias Evangelista alleging to be the only heir of Casimiro Evangelista, executed a declaration of heirship known as Doe. No. 9, Page 30, Book No. 18, of Notary Public, Carlos M. Ferrer. For the sum of P2,400, Deogracias Evangelista sold on the same date, the property in question to the defendants, spouses, Isaac Bonilla and Silvina Ordafiez. Original certificate of title No. 4905 was cancelled and in lieu thereof transfer certificate of title No. 19991 was issued to the spouses.

This action was brought to recover Leonida Mari and Caridad Evangelista's combined 3/4, share in the parcel of land sold by Deogracias.

The defendants did not know that Leonida Mari is the mother of Deogracias Evangelista at the time when he bought the land as Deogracias Evangelista was living with his grandfather, Matias Evangelista; and that Caridad Evangelista was living with her mother, Leonida Mari;

ISSUES:
(1) WON good faith is a defense for the spouses – NO
(2) WON the judicial partition in favor of Deogracias bound Leonida Mari and Caridad Evangelista. – NO

HELD/RATIO:

(1) Good faith affords protection only to purchasers for value from the registered owner. Deogracias Evangelista, defendants' grantor, is not a registered owner. The land was and still is registered in the name of Casimiro Evangelista. In no way does the certificate of title state that Deogracias owned the land; consequently defendants cannot summon to their aid the theory of indefeasibility of Torrens title. There is nothing in the certificate and in the circumstances of the transaction which warrant. them in supposing that they needed not looked beyond the title. If anything, it should have put them on their guard, cautioned them to ascertain and verify that the vendor was the only heir of his father, that there was no debt, and that the latter was the sole owner of the parcel.

(2) If, as is probably the case, defendants relied on the court's order adjudicating to Deogracias Evangelista the entire estate in the distribution held under Rule 74 of the Rules of Court, their innocence avails them less as against the true owners of the land.

That was a summary settlement made on the faith and strength of the distributee's self-serving affidavit; and section 4 of the above-mentioned rule provides that, "If it shall appear at anytime within two years after the settlement and distribution of an estate * * * that an heir or other person has been unduly deprived of his lawful participation in the estate, such heir or other person may compel the settlement of the estate in the court in the manner herein provided for the purpose of satisfying such participation." Far from shielding defendants against loss, the adjudication and the rule under which it was made gave them a clear warning that they were acting at their peril. "A judicial partition in probate proceedings does not bind the heirs who were not parties thereto. No partition, judicial or extrajudicial, could add one iota or particle to the interest which the partitioners had during the joint possession.

Partition is of the nature of a conveyance of ownership, and certainly none of the co-owners may convey to the others more than his own true right. A judicial partition in probate proceedings is not final and conclusive, and not being of such definitive character as to stop all means of redress for a co-heir who has been deprived of his lawful share, such co-heir may still, within the prescriptive period, bring an action for

reivindicacion in the province where any of the real property of the deceased may be situated. Broad perspectives of public policy are set out in the opinion of the court in support of the wisdom of allowing a co-heir the benefits of the law of prescription even after a partition, judicial or extrajudicial, has been had." (Lajom vs. Viola, 73 Phil., 563.)

Austria vs. The Heirs the late Antonio Ventenilla
September 19, 1956

FACTS:
Appeal from the orders of the Court of First Instance of Pangasinan dated October 16 and November 28, 1950, denying appellants' motion in Civil Case No. 237 (Testate Estate of the Deceased Antonio Ventenilla) to remove administratrix Alejandra Austria from office and appoint a new administrator in her place.

HELD/RATIO:
The appeal is without merit. The proceedings for the settlement of the estate of the deceased and the issues now raised by appellants had been settled and decided by the court's order of October .3, 1910.

Under Act 190, an express order of closure after the estate had been distributed among the heirs was a mere formality for the termination of the proceedings.

Order affirmed, with costs against appellants.
Reyes, J.B.L., J.,ponente.

THE HEIRS OF THE LATE JESUS FRAN and CARMEN MEJIA RODRIGUEZ vs. **HON. BERNARDO LL. SALAS, CONCEPCION MEJIA ESPINA and MARIA MEJIA GANDIONGCO**
FACTS:
Remedios M. Vda. de Tiosejo, a widow, died on 10 July 1972 in Cebu City with neither descendants nor ascendants; she left real and personal properties located in Cebu City, Ormoc City and Puerto Bello, Merida, Leyte. Earlier, on 23 April 1972, she executed a last will and testament **3** wherein she bequeathed to her collateral relatives (brothers, sisters, nephews and nieces) all her properties, and designated Rosario Tan or, upon the latter's death, Jesus Fran, as executor to serve without bond. Instrumental witnesses to the will were Nazario Pacquiao, Alcio Demerre and Primo Miro.
On 15 July 1972, Jesus Fran filed a petition with the Court of First instance of Cebu for the probate of Remedios' last will and testament. The case was raffled to the original Branch VIII thereof which was then presided over by Judge Antonio D. Cinco.
The petition alleged that Rosario Tan is not physically well and, therefore, will not be assuming the position of administratrix. Tan signed a waiver in favor of Jesus Fran on the third page of the said petition. The probate court issued an order setting the petition for hearing on 18 September 1972. Meanwhile, on 31 July 1972, the court appointed petitioner Jesus Fran as special administrator.

On 10 August 1972, the private respondents, who are sisters of the deceased, filed a manifestation **5** alleging that they needed time to study the petition because some heirs who are entitled to receive their respective shares have been intentionally omitted therein, and praying that they be given ample time to file their opposition, after which the hearing be reset to another date.
Private respondents did not file any opposition. Instead, they filed on 18 September 1972 a "Withdrawal of Opposition to the Allowance of Probateof the Will" wherein they expressly manifested, with their "full knowledge and consent that . . . they have no objection of (sic) the allowance of the . . . will of the late Remedios Mejia Vda. de Tiosejo," and that they have "no objection to the issuance of letters testamentary in favor of petitioner, Dr. Jesus Fran."

No other party filed an opposition. The petition thus became uncontested.
On 13 November 1972, the probate court rendered a decision admitting to probate the will of the testatrix, Remedios Mejia Vda. de Tiosejo, and appointing petitioner Fran as executor

thereof.

After the hearing on the Project of Partition, the court issued its Order of 10 September 1973 approving the same, declaring the parties therein as the only heirs entitled to the estate of Remedios Mejia Vda. de Tiosejo, directing the administrator to deliver to the said parties their respective shares and decreeing the proceedings closed.

Thereafter, the aforesaid Branch VIII of the Court of First Instance of Cebu was converted to a Juvenile and Domestic Relations Court. On November 1978, by virtue of Presidential Decree No. 1439, Branch XVII (Davao City) of the Court of First Instance of Cebu, presided over by herein respondent Judge, was officially transferred to Cebu City and renumbered as Branch VIII.

On 1 October 1979, private respondents filed with the new Branch VIII an Omnibus Motion for Reconsideration of the probate judgment of 13 November 1972 and the Order of partition of 10 September 1973, in said motion, they ask the court to declare the proceedings still open and admit their opposition to the allowance of the will, which they filed on 1 October 1979. They allege that: (a) they were not furnished with a copy of the will; (b) the will is a forgery; (c) they were not notified of any resolution or order on their manifestation requesting time within which to file their opposition, or of the order authorizing the clerk of court to receive the evidence for the petitioner, or of the order closing the proceedings; (d) the reception of evidence by the clerk of court was void per the ruling in *Lim Tanhu vs. Ramolete*; (e) the project of partition contains no notice of hearing and they were not notified thereof; (f) the petitioner signed the project of partition as administrator and not as executor, thereby proving that the decedent died intestate; (g) the petitioner did not submit any accounting as required by law; and (h) the petitioner never distributed the estate to the devisees and legatees.

In a detailed opposition to the above Omnibus Motion for Reconsideration, petitioner Fran refuted all the protestations of private respondents. Notwithstanding petitioners' objections, respondent Judge issued on 26 February 1980 an Order setting for hearing the said Omnibus Motion for Reconsideration on 8 April 1980 so that "the witnesses and the exhibits (may be) properly ventilated." **17**

ISSUES:

(1) WON private respondents are estopped – YES

(2) WON formal notice was necessary – NO

(3) WON the probate judgment of 13 November 1972, long final and undisturbed by any attempt to unsettle it, had inevitably passed beyond the reach of the court below to annul or set the same aside, by mere motion, on the ground that the will is a forgery – YES

(4) WON the non-distribution of the estate is a ground for the re-opening of the testate proceedings -- NO

HELD:

We do not hesitate to rule that the respondent Judge committed grave abuse of discretion amounting to lack of jurisdiction when he granted the Omnibus Motion for Reconsideration and thereafter set aside the probate judgment of 13 November 1972 in Sp. Proc. No. 3309-R, declared the subject will of the testatrix a forgery, nullified the testamentary dispositions therein and ordered the conversion of the testate proceedings into one of intestacy.

(1)It is not disputed that private respondents filed on the day of the initial hearing of the petition their "Withdrawal of Opposition To Allowance of Probate (sic) Will" wherein they unequivocally state that they have no objection to the allowance of the will. For all legal intents and purposes, they became proponents of the same.

After the probate court rendered its decision on 13 November 1972, and there having been no claim presented despite publication of notice to creditors, petitioner Fran submitted a Project of Partition which private respondent Maria M. Vda. de Gandiongco voluntarily signed and to which private respondent Espina expressed her conformity through a certification filed with the probate court.

(2)Assuming for the sake of argument that private respondents did not receive a formal notice of the decision as they claim in their Omnibus Motion for Reconsideration, these acts nevertheless constitute indubitable proof of their prior actual knowledge of the same.

A formal notice would have been an idle ceremony. In testate proceedings, a decision logically precedes the project of partition, which is normally an implementation of the will and

is among the last operative acts to terminate the proceedings. If private respondents did not have actual knowledge of the decision, they should have desisted from performing the above acts and instead demanded from petitioner Fran the fulfillment of his alleged promise to show them the will.

The same conclusion refutes and defeats the plea that they were not notified of the order authorizing the Clerk of Court to receive the evidence and that the Clerk of Court did not notify them of the date of the reception of evidence. Besides, such plea must fail because private respondents were present when the court dictated the said order.

(3) The probate judgment of 13 November 1972, long final and undisturbed by any attempt to unsettle it, had inevitably passed beyond the reach of the court below to annul or set the same aside, by mere motion, on the ground that the will is a forgery. Settled is the rule that the decree of probate is conclusive with respect to the due execution of the will and it cannot be impugned on any of the grounds authorized by law, except that of fraud, in any separate or independent action or proceeding. We wish also to advert to the related doctrine which holds that final judgments are entitled to respect and should not be disturbed; otherwise, there would be a wavering of trust in the courts. In *Lee Bun Ting vs. Aligaen*, this Court had the occasion to state the rationale of this doctrine, thus: Reasons of public policy, judicial orderliness, economy and judicial time and the interests of litigants, as well as the peace and order of society, all require that stability be accorded the solemn and final judgments of the courts or tribunals of competent jurisdiction. This is so even if the decision is incorrect or, in criminal cases, the penalty imposed is erroneous.

(4) The non-distribution of the estate, which is vigorously denied by the petitioners, is not a ground for the re-opening of the testate proceedings. A seasonable motion for execution should have been filed. In *De Jesus vs. Daza*, this Court ruled that if the executor or administrator has possession of the share to be delivered, the probate court would have jurisdiction within the same estate proceeding to order him to transfer that possession to the person entitled thereto. This is authorized under Section 1, Rule 90 of the Rules of Court. However, if no motion for execution is filed within the reglementary period, a separate action for the recovery of the shares would be in order. As We see it, the attack of 10 September 1973 on the Order was just a clever ploy to give asemblance of strength and substance to the Omnibus Motion for Reconsideration by depicting therein a probate court committing a series of fatal, substantive and procedural blunders, which We find to be imaginary, if not deliberately fabricated.

Rule 90 Sec 1-3

Torres, et.al. vs. Encarnacion and de Borja

Facts:

The petitioners contest the jurisdiction of the respondent Judge to issue the order herein sought to be reviewed directing them to deliver to the administrator of the intestate estate of Marcelo de Borja, a certain parcel of land which is in petitioners' possession and to which they assert exclusive ownership.

It appears that in the above-entitled intestate estate, the commissioners appointed by the court submitted a project of partition, in which the land in question, which was in the possession of petitioners, surviving children of Quintin de Borja who was one of Marcelo's children, was included as property of the estate and assigned to one Miguel B. Dayco, one of Marcelo de Borja's heirs. Over the objection of the petitioners, the proposed partition was approved in February, 1946, and the order of approval on appeal was affirmed by this Court in 1949.

Issue: W/N herein petitioners can question the validity of partition entered into and already approved by the court

Held: No. The partition here had not only been approved and thus become a judgment of the court, but distribution of the estate in pursuance of the partition had been fully carried out except as to land now in dispute, and the petitioners had

received the property assigned to them or their father's estate. The court had only the partition to examine, to see if the questioned land was included therein. The inclusion being shown, and there being no allegation that the inclusion was effected through improper means or without the petitioners' knowledge, **the partition barred any further litigation on said title and operated to bring the property under the control and jurisdiction of the court for proper disposition according to the tenor of the partition.**

The petitioners are in estoppel. In the face of what they have done, they are precluded from attacking the validity of the partition or any part of it. A party can not, in law and in good conscience, be allowed to reap the fruits of a partition, agreement or judgment and repudiate what does not suit him.

Rule 91 Sec 1

THE MUNICIPAL COUNCIL OF SAN PEDRO, LAGUNA, ET AL., vs. COLEGIO DE SAN JOSE, INC., ET AL.

Facts:

This is an appeal from the order of the Court which denied the petition for escheat filed by the said petitioners, with the costs against the latter.

This case was commenced in the said by a petition filed by the petitioners in behalf of the municipality of San Pedro, Province of Laguna, wherein they claim the Hacienda de San Pedro Tunasa by the right of escheat.

Issue: W/N COLEGIO DE SAN JOSE, INC., ET AL. may be parties to the case? Yes.

W/N the land is proper subject of escheat? No.

Ratio:

The sworn petition which gave rise to the proceeding is based upon the provisions of section 750 and 751 of the Code of Civil Procedure, the English text of which reads:

SEC. 750. *Procedure when person dies intestate without heirs*. — When a person dies intestate, seized of real or personal property in the Philippines Islands, leaving no heir or person by law entitled to the same, the president and municipal council of the municipality where the deceased last resided, if he was an inhabitant of these Islands, or of the municipality in which he had estate, if he resided out of the Islands, may, on behalf of the municipality, the file a petition with the Court of First Instance of the province for an inquisition in the premises...

SEC. 751. *Decree of the court in such case*. — If, at the time appointed for the that purpose, the court that the person died intestate, seized of real or personal property in the Islands, leaving no heirs or person entitled to the same and no sufficient cause is shown to the contrary, the court shall order and decree that the estate of the deceased in these Islands, after the payment of just debts and charges, shall escheat...

Escheat, under sections 750 and 751, is a proceeding whereby the real and personal property of a deceased person become the property of the State upon his death without leaving any will or legal heirs. It is not an ordinary action contemplated by section 1 of the Code of Civil Procedure, but a special proceeding in accordance with the said section. The proceeding, as provided by section 750, should be commenced by petition and not by complaint.

In a special proceeding for escheat under section 750 and 751 the petitioner is not the sole and exclusive interested party. Any person alleging to have a direct right or interest in the property sought to be escheated is likewise and interest and necessary party and may appear and oppose the petition for escheat. In the present case the Colegio de San Jose, Inc., and Carlos Young appeared alleging to have a material interest in the Hacienda de San Pedro Tunasa; and the former

because it claims to be the exclusive owner of the hacienda, and the latter because he claim to be the lessee thereof under a contract legality entered with the former.

According to the allegations of the petition, the petitioners base their right to the escheat upon the fact that the temporal properties of the Father of the Society of Jesus, among them, the Hacienda de San Pedro Tunasan, were confiscated by order of the King of Spain and passed from then on to the Crown of Spain. If the hacienda de San Pedro Tunasan,, which is the only property sought to be escheated and adjudicated to the municipality of San Pedro, has already passed to the ownership of the Commonwealth of the Philippines, it is evident that the petitioners cannot claim that the same be escheated to the said municipality, because it is no longer the case of real property owned by a deceased person who has not left any heirs or person who may legality claim it, these being the conditions required by section 750 and without which a petition for escheat should not lie from the moment the hacienda was confiscated by the Kingdom of Spain, the same ceased to be the property of the children of Esteban Rodriguez de Figueroa, the Colegio de San Jose or the Jesuit Father, and became the property of the Commonwealth of the Philippines by virtue of the transfer under the Treaty of Paris, alleged in the petition.

VICENTE TAN vs. CITY OF DAVAO

Facts:

This involves what is probably now a valuable lot in Davao whose owner, Domina Garcia, left for China with her entire family in 1923 and never returned.

The spouses Cornelia Pizarro and Baltazar Garcia, during their lifetime, were residents of Davao. As they were childless, they adopted Dominga Garcia who eventually married a Chinaman, Tan Seng alias Seng Yap, with whom she had three children, Vicenta, Mariano, and Luis. In 1923, they emigrated to Canton, China.

According to the petitioner, Dominga Garcia died intestate in 1955. She left in the Philippines a 1,966-square-meter lot on Claveria Street, Townsite of Davao, District of Davao, registered in her name. Since her departure for China with her family, neither she, nor her husband, nor any of their children has returned to the Philippines to claim the lot.

The controversy centers on whether Dominga's daughter, Vicenta Tan, is alive in China or in Hongkong, as alleged by Pizarro who tried to prove it through: (1) supposed pictures of the missing heir; (2) an Extrajudicial Settlement and Adjudication of Dominga's Estate allegedly executed by Vicenta in Hongkong on May 27, 1966; and (3) a Special Power of Attorney that she supposedly signed (thumbmarked) in favor of Pizarro on the same date also in Hongkong.

Pizarro testified that his aunt Cornelia Pizarro gave him the papers pertaining to the land and told him to take care of it before she died in 1936.

With respect to the argument that only the Republic of the Philippines, represented by the Solicitor-General, may file the escheat petition under Section 1, Rule 91 of the Revised (1964) Rules of Court, the Appellate Court correctly ruled that the case did not come under Rule 91 because the petition was filed on September 12,1962, when the applicable rule was still Rule 92 of the 1940 Rules of Court which provided:

Sec. 1. *When and by whom,petition filed*.—When a person dies intestate, seized of real or personal property in the Philippines, leaving no heirs or person by law entitled to the same, the *municipality or city* where the deceased last resided, if he resided in the Philippines, or the *municipality or city* in which he had estate if he resided out of the Philippines, may file a petition in the court of first instance of the province setting forth the facts, and praying that the estate of the deceased be declared escheated.

Rule 91 of the Revised rules of Court, which provides that

only the Republic of the Philippines, through the Solicitor General, may commence escheat proceedings, did not take effect until January 1, 1964. Although the escheat proceedings were still pending then, the Revised Rules of Court could not be applied to the petition because to do so would work injustice to the City of Davao. Rule 144 of the 1964 Rules of Court contains this "saving" clause:

These rules shall take effect on January 1, 1964. They shall govern all cases brought after they take effect, and also all further proceedings in cases pending, *except to the extent that in the opinion of the court, their application would not be feasible or would work injustice*, in which event the former procedure shall apply.

The Court of Appeals should have dismissed the appeal of Vicenta Tan and Ramon Pizarro earlier because the records show that Vicenta was never a party in the escheat proceedings. Vicenta Tan, if she still exists, was never served with summons extra-territorially under Section 17, Rule 14 of the Rules of Court. She never appeared in the trial court by herself, or counsel and never filed a pleading therein, hence, she never submitted to the court's jurisdiction.

Every action must be prosecuted and defended in the name of the real party-in-interest. Ramon Pizarro, the alleged administrator of Dominga Garcia's property, was not a real party in interest. He had no personality to oppose the escheat petition.

The Court of Appeals did not err in affirming the trial court's ruling that Dominga Garcia and her heirs may be presumed dead in the escheat proceedings as they are, in effect, proceedings to settle her estate. Indeed, while a petition instituted for the *sole* purpose of securing a judicial declaration that a person is presumptively dead cannot be entertained if that were the only question or matter involved in the case, the courts are not barred from declaring an absentee presumptively dead as an incident of, or in connection with, an action or proceeding for the settlement of the intestate estate of such absentee.

Petition denied.

REPUBLIC OF THE PHILIPPINES vs. COURT OF FIRST INSTANCE OF MANILA, BRANCH XIII…

Facts:

Pursuant to Section 2 of Act No. 3936, otherwise known as the Unclaimed Balance Law, some 31 banks including herein private respondent Pres. Roxas Rural Bank forwarded to the Treasurer of the Philippines in January of 1968 separate statements under oath by their respective managing officers of all deposits and credits held by them in favor, or in the names of such depositors or creditors known to be dead, or who have not been heard from, or who have not made further deposits or withdrawals during the preceding ten years or more. In the sworn statement submitted by private respondent Bank, only two (2) names appeared: Jesus Ydirin with a balance of P126.54 and Leonora Trumpeta with a deposit of P62.91.

Thereafter, or on July 25, 1968, the Republic of the Philippines instituted before the CFI of Manila a complaint for escheat against the aforesaid 31 banks, including herein private respondent. Likewise named defendants therein were the individual depositors and/or creditors reported in the sworn statements and listed in Annex "A" of the complaint.

Issues:

1. Whether or not Pres. Roxas Rural Bank is a real party in interest in the escheat proceedings or in Civil Case No. 73707 of the Court of First Instance of Manila. YES

2. Whether or not Section 2(b), Rule 4 of the Revised Rules of Court on venue, likewise, governs escheat proceedings instituted by the Republic in the Court of First Instance of

Manila. NO

Ratio:

A "real party in interest" has been defined as the party who would be benefitted or injured by the judgment of the suit or the party entitled to avail of the suit. There can be no doubt that private respondent bank falls under this definition for the escheat of the dormant deposits in favor of the government would necessarily deprive said bank of the use of such deposits. It is in this sense that it stands to be "injured by the judgment of the suit;" and it is for this reason that Section 3 of Act No. 3936 specifically provides that the bank shall be joined as a party in the action for escheat, thus:

Section 3. Whenever the Attorney General shall be informed of such unclaimed balances, he shall commence an action or actions in the name of the People of the Philippines in the Court of First Instance of the province where the bank is *located, in which shall be joined as parties* the bank and such creditors or depositors. All or any member of such creditors or depositors or banks, may be included in one action. (Emphasis supplied.)

Anent the second issue raised, suffice it to say that Section 2(b) of Rule 4 of the Revised Rules of Court cannot govern escheat proceedings principally because said section refers to personal actions. Escheat proceedings are actions in rem which must be brought in the province or city where the *rem* in this case the dormant deposits, is located.

(Cecille's part

(Leo)

Rules 92- 97

Case 6:
Nario v Phil. American Life Insurance Co.

Facts:
Mrs. Alejandra Santos-Mario was issued by the Philippine American Life Insurance Co. a life insurance policy under a 20-yr endowment plan w/ a face value of P5K wherein she designated her husband Delfin Nario and son Ernesto Nario, as her irrevocable beneficiaries. She applied for a loan on the policy for school expenses of her son w/ consent of husband. Insurance Company denied application as it lacks court authorization in a competent guardianship proceeding.
Mrs. Nario surrendered the policy & demanded its cash value. Insurance Co denied on same ground. Sps Nario brought suit against Insurance Co.

Insurance Co alleges that inasmuch as the policy loan application & the surrender of the policy involved acts of disposition & alienation of the property rights of the minor, said acts are not within the powers of the legal administrator hence mere consent given by the father-guardian for & in behalf of the minor son w/o any court authority was not a sufficient compliance of the law.

Issue:
WON policy loan application & surrender of policy involved acts of disposition & alienation of the property rights of the minor or mere acts of administration or management.

Held:
Policy loan application & surrender of policy involved acts of disposition & alienation of the property rights of the minor. Said acts involve incurring or termination of contractual obligations. Judicial authorization is necessary. As legal administrator, the father or mother can perform only acts of administration or management. Parents have no authority to carry out acts of disposition or alienation of the child's real or personal property without judicial authorization.

Case 7:
Damasa Lafarga, et al. v. Bruno Lafarga

Facts:

Bruno Laforga, defendant, admits that parcels of land the subject matter of the claim belong to plaintiffs but alleges that he is in possession of them through delivery of plaintiff Damasa Laforga on a mortgage. Trial court ordered defendant to deliver land upon being reimbursed.

Record discloses that agreement was executed solely & exclusively by plaintiff Damasa Laforga, grandmother of other plaintiffs who are still minors. Damasa Laforga was not the legal representative of the said minors at the time of the execution of the agreement & evidently acted merely as their grandmother.

Issue:

WON grandparents can mortgage property of minors.

Held:

A grandmother of minor children acting merely as such or even as guardian ad litem has no authority to mortgage property belonging to minor children. A mortgage executed by her is void & does not bind the children.

Judgment appealed from is reversed in so far as it declares that the plaintiff minors must pay the sum to defendant. The right is reserved to defendant to prosecute his claim against Damasa Laforga in manner & form provided by law.

Case 8

Ledesma Hermanos v. Castro

Facts:

Anacleta Cortes Vda. De Castro filed an objection in a land registration proceeding wherein Teodoro Sison sought to have his title registered. Later on convinced of her right, Ambrosio Sison, who had acquired the rights of his brother Teodoro, entered into an agreement w/ her whereby she & her sons Francisco & Fernando Castro, waived their rights to the land in consideration of P14K. Ambrosio sold his right to Ledesma Brothers.

Opponents-appellants Ines, Concepcion and Dolores Castro, are sisters of Francisco and Fernando Castro & children of Anacleta Cortes Vda. De Castro, who at the time of agreement were minors under the guardianship of their mother.

Issue:

WON a transaction may be made by a guardian w/o competent authority.

Held:

At the time the transaction was made, the opponents-appellants were minors & subject to guardianship & inasmuch as it does not appear that at the time the agreement was entered into their guardian & mother acted in behalf of said minor children, not that she had authority from the court to that end, as required by section 569 of the Code of Civil Procedure, that agreement is null & void in so far as said minors are concerned, & does not affect their rights.

Case 9

Reyes v. Lucia Milagros Barretto-Datu

Facts:

This is an action to recover ½ share in the fishpond being the share of Tirso Reyes's wards as minor heirs of the deceased Salud Barretto, widow of Tirso.

Bibliano Barretto was married to Maria Gerardo who acquired a vast estate during their lifetime. When Bibliano Barretto died, he left his share of these properties to Salud Barretto, mother of plaintiff's wards, and Lucia Milagros Barretto. The usufruct of the fishpond was reserved for his widow, Maria Gerardo. She was appointed administratrix & prepared a project of partition approved by CFI. Salud Barretto took immediate possession of her share & secured issuance of titles in her name.

When Maria Gerardo died, it was discovered that she had executed 2 wills: first, instituting Salud & Milagros as her heirs; second, revoking the first & instituting all her properties in favor of Milagros Barretto alone. Later will was allowed. Having lost fight for a share in the estate of Maria Gerardo, plaintiff falls back upon remnant of estate of deceased

Bibiano Barretto in usufruct to his widow.

Defendant contends that the project of partition from w/c Salud acquired the fishpond in question is void ab inito & Salud did not acquire any valid title thereto, & that the court did not acquire any jurisdiction of the person of the defendant who was then a minor.

Held:

Partition wherein an instituted heir who was later found not to be the decedent's child was included is valid.
A distribution in the decedent's will made according to his will should be respected. The fact that one of the distributes was a minor at the time the court issued the decree of distribution does not imply that the court had no jurisdiction to enter the decree of distribution. The proceeding for the settlement of a decedent's estate is a proceeding in rem. It is binding on the distributee who was represented by her mother as guardian.

Case 10
Visaya, et al. v. Suguitan, et al.
Facts:

Suguitan brought suit against Juana Bayaua for repurchase of land. The action ended in a compromise whereby Juana Bayaua agreed to reconvey the land. Compromise was approved by the court. As Bayaua refused later to accept the repurchase prices, the deed of reconveyance was ordered executed by the Clerk of Court. Appellants, children & heirs of the late Modesto Visaya, initiated the present action to have the compromise & judgment set aside insofar as it concerns their ½ interest inherited from the deceased father.

Held:

When the original purchaser of the land, Modesto Visaya, dies his children immediately acquired his interest therein by operation of law; & that interest was independent of that of their mother Juana Bayaua. The right of repurchase had to be exercised against appellant as well as against their mother. Not having done so, the compromise as well as the judgment by consent cannot affect the right of appellants, who were not parties to the suit. A compromise has always been deemed equivalent to an alienation & not administration.

Lindain v. Court of Appeals

Facts:

While petitioners were still minors, they already owned a parcel of land registered under their names. Their mother Dolores, acting as their guardian sold the land for P2,000 to the respondents Spouses Ila. The respondents purchased the lot upon assurance of their counsel that the property could be sold without the written authority of the court since its value was less than P2,000. Petitioners filed a complaint for annulment of the sale of the registered land, contending that the sale was null and void because it was made without judicial authority or court approval. On the other hand, the respondents argued that there was no need to obtain prior court approval since the value of the property was less than P2,000 and that the right of the petitioners to rescind the contract has already prescribed. The Regional Trial Court declared the sale null and void but the Court of Appeals reversed the lower court decision.

Issue:
Whether or not a parent, acting as administrator of the property of his/her minor children can dispose of the children's property without any judicial approval.

Held:

No. Court approval is necessary because the Rules of Court provide that the parent, acting as legal administrator of his/her minor children's property only has powers of possession and management. Prior to any sale, mortgage, encumbrance or other disposition of property, court authority and approval are necessary regardless of the amount involved.

The spouses' allegation that they are purchasers in good faith is not credible as they knew from the start that their vendor, the petitioners' mother, could not validly convey to them the property of her minor children without prior court approval.

Nery v. Lorenzo

Facts:

The real property in question previously belonged to Florentino Ferrer and his siblings Agueda, Tomasa, Silvestra and Meliton. When Florentino died, a deed of absolute sale was executed in favor of Leoncio Lorenzo, the child of Agueda by Agueda, Tomasa and the children of Meliton. Leoncio became a co-owner and acquired the participation of the sellers equivalent to ¾ undivided part of the land. Silvestra, who did not sell her ¼ undivided portion, upon her demise passed her share to her nearest relatives, the children of her sister Tomasa.

Bienvenida, the spouse of Leoncio, despite this knowledge, managed to sell the property to Nery without the consent of the successors-in-interests of Silvestra. In the guardianship proceedings, Bienvenida misrepresented that the parcel of land belonged to her minor children. Thus, she was granted authority to sell it.

In the guardianship proceedings that were instituted, the lower court declared that it did not acquire jurisdiction over the minors who were not notified of the proceedings. Jurisdiction was likewise not acquired over the property of the minors as the inventory submitted failed to declare that the minors had any real property. Thus, the sale of the property to Nery cannot be considered as valid.

Issue:

Whether or not the court validly acquired jurisdiction over the guardianship proceedings.

Held:

The court never validly acquired jurisdiction over the proceedings. According to the Rules of Court, service of notice upon the minor is required if he or she is above 14 years of age. Without such notice, the court acquires no jurisdiction to appoint a guardian. The jurisdictional infirmity in this case was too patent to be overcome. It is the duty of the State, acting as parens patriae to protect the rights of persons or individuals who because of age or incapacity are in an unfavorable position, vis-à-vis other parties.

On the other hand, petitioner Nery, a member of the bar could not have been unaware that his vendor, Bienvenida could not sell to him more than she rightfully could dispose of.

Gorostiaga v. Sarte

Facts:

Nine days prior to the institution of an action for recovery of a sum of money against defendant Sarte, a petition for guardianship was filed with the lower court in favor of the defendant due to her incompetence to manage her estate by reason of her physical and mental incapacity. The petition for guardianship was granted by the court.

It appears from the evidence presented that during all the proceedings in the case for recovery of money, from the time of the filing of the complaint to the rendition of the judgment, the defendant was physically and mentally unfit to manage her affairs. It likewise appears that since no summons and notices of the proceedings were served upon her and her guardian because no guardian was then appointed, the court never acquired jurisdiction over her person.

Issue:

Whether or not the proceedings against defendant is null and void for lack of jurisdiction over her person.

Held:

The proceedings are null and void. The appearance of an attorney in behalf of the defendant before the lower court created a presumption that the attorney had authority. However, this disputable presumption was rebutted by a court order declaring the defendant physically and mentally unfit to manage her estate. Aside from that, defendant had never been in court except when her guardian filed a motion to quash all the proceedings due to lack of jurisdiction. It is the duty of the court to set aside all the proceedings, take the necessary steps to acquire jurisdiction and grant a new trial

when it appears that after judgment, the lack of jurisdiction was clearly shown and no waiver was executed.

Francisco v. Court of Appeals

Facts:
Feliciano Francisco was the duly appointed guardian of the incompetent Estefania San Pedro. Pelagio, a first cousin of Estefania petitioned the court for the removal of Feliciano as the guardian and his appointment instead. Pelagio claimed that Feliciano failed to submit an inventory of the estate and render an accounting. The court ordered the retirement of Feliciano as guardian due to his old age and required him to nominate a replacement. The court thereafter granted the execution pending appeal of its decision and appointed Pelagio as the new guardian despite the fact that he was five years older than the previous guardian. The Court of Appeals affirmed the decision of the lower court.

Issue:
Whether or not the lower court committed grave abuse of discretion by ordering the removal of Feliciano as guardian due to his advanced age.

Held:
The lower court correctly ordered the retirement of Feliciano as guardian. A guardianship proceeding is instituted for the benefit and welfare of the ward. In the selection of a guardian, the court may consider the financial situation, the physical condition, the morals, character and conduct, and the present and past history of a prospective appointee as well as the probability of his being able to exercise the powers and duties of guardian for the full period during which guardianship will be necessary. Feliciano, at the age of 72 cannot fulfill the responsibilities of a guardian anymore, as evidenced by his delay in accounting and inventory of the ward's property. To sustain petitioner as guardian would be detrimental to the ward. While age alone is not a controlling criterion in determining a person's fitness or qualification to be appointed or be retained as guardian, it may be a factor for consideration.

Uy and Jardeleza v. Court of Appeals

Facts:

Dr. Ernesto Jardeleza suffered a stroke which left him comatose. His son Teodoro upon learning that a real estate property of his parents was about to be sold, filed a petition in court claiming that there was a need for the appointment of a guardian to administer his father's properties due to his present physical and mental incapacity. A few days later, Gilda, the spouse of Ernesto filed a petition regarding the declaration of incapacity of Ernesto, assumption of sole powers of administration of conjugal properties and authorization to sell the same. According to her, medical treatment and hospitalization expenses were piling up, thus requiring the need to urgently sell real estate property. The lower court granted Gilda's petition, declaring Ernesto incapacitated and authorized her to assume the role of administrator of the conjugal properties and sell real properties. Pending the motion for reconsideration filed by Teodoro, Gilda was able to sell a parcel of land belonging to the conjugal properties to her daughter Glenda. The lower court subsequently approved the deed of absolute sale. However, the Court of Appeals reversed the decision.

Issue:
Whether or not Gilda Jardeleza as the wife of Ernesto Jardeleza, who suffered a stroke that rendered him comatose, may assume sole powers of administration of the conjugal property under Article 124 of the Family Code and dispose of a parcel of land with the approval of the court in a summary proceeding.

Held:
Article 124 of the Family Code does not apply in the case at bar. When the non-consenting spouse is incapacitated or incompetent to give consent, the proper remedy is a judicial guardianship proceeding under Rule 93 of the Rules of Court. The spouse who desires to sell real property as an administrator of the conjugal property must observe the

procedure provided for in Rule 95 of the Rules of Court, not the summary judicial proceedings under the Family Code.

The trial court did not comply with the procedure under the Revised Rules of Court. A notice of the petition was not served to the incapacitated spouse. Neither was he required to show cause why the petition should be granted. Absent an opportunity to be heard, the decision rendered by the trial court is void for lack of due process.