

VICENTE MIRANDA, ADMINISTRATOR OF THE INTESTATE ESTATE OF HILARION DYDONGCO, PETITIONER, VS. HON. COURT OF APPEALS, HON. FRANCISCO TANTUICO, JR., JUDGE OF THE COURT OF FIRST INS...*G.R. No. L-33007. June 18, 1976*

Ponente: TEEHANKEE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/74f1438682b4/>**TEEHANKEE, J.:**

The Court sets aside respondent appellate court's decision which unprecedentedly held that respondent judge could four years later and beyond the thirty-day reglementary period change, alter and amend his predecessor's judgment on the merits for recovery of properties with accounting and "promulgate another decision" as if it were a mere interlocutory order or process. When this Court in 1968 held respondents' proposed appeal as "premature" and remanded the case for implementation of the accounting phase as a mere incident and necessary consequence, so that a single appeal could be taken from both aspects of the judgment for recovery of properties and accounting, it was not to reopen the case all over and have respondent judge assume reviewing if not appellate authority over his predecessor's judgment but to have respondent judge enforce, consider and act on the accounting as ordered in the judgment for the completion of the relief therein ordered. For the guidance of the bench and bar, the Court declares as abandoned the doctrine of *Fuentebella vs. Carrascoso* and adopts the opposite rule that judgments for recovery with accounting are final and appealable (without need of awaiting the accounting) and would become final and executory if not appealed within the reglementary period.

From the records of the case,[1] the factual antecedents are undisputed, as follows:

In Special Proceedings No. 2205-R of the Cebu court of first instance for the settlement of the intestate estate of Hilarion Dydongco, deceased, (a Philippine resident who died in China sometime in 1941) petitioner Vicente Miranda was appointed as administrator. In 1962, petitioner as such administrator filed Civil Case No. R-7793 in the same Cebu court of first instance against the private respondents (or their predecessors) for recovery of properties of the decedent alleged to have been fraudulently and in bad faith and in breach of their fiduciary trust, concealed, appropriated and converted as their own by respondents. The suit for recovery had been filed by petitioner-administrator after the principal respondents pursuant to Rule 88, section 6 had been cited by the intestate court to appear and to be examined as to documents, papers, properties, funds and other valuables deposited and left in trust with them by the decedent before his death.[2]

In his complaint for recovery, petitioner-administrator alleged that "prior to and at the time of his death in China sometime in 1941, Hilarion Dydongco, who resided in the Philippines since the beginning of the century, had, in Butuan, Agusan and Cebu City, well-developed and established business and commercial enterprises with substantial bank deposits and about 127 parcels of land or property; that Hilarion Dydongco went to China, in 1934, and, thereafter, became seriously ill; that, at that time, his children, Dy Chun and Dy Suat Hong (both defendants in said case R-7793) as well as Dy Siok Lee (who died subsequently and is not a defendant in case No.

R-7793) and his proteges Dy Bee and Dy Seko were working as his Manager and/or employees in the aforementioned business establishments; that taking advantage of the absence and bad condition of the health of Hilarion Dydongco, particularly of his subsequent death, the defendants therein took over said business, including its assets, goods, merchandise, chattels, machinery, stock-in-trade, cash on hand and in banks, amounts receivable and other properties of the deceased, as well as his store known as 'Dydongco Store,' and its branches, and organized first, a fake partnership with the business name of 'Agusan Commercial Company,' and then the East Mindanao Lumber Co., which operated and did business with the capital, assets, stock-in-trade, merchandise, funds and other property of said deceased; that with funds belonging to the latter, the defendants therein moreover purchased several parcels of land, on one of which a 20-door apartment building was constructed, with funds of the same nature, and let to Chinese tenants and other lessees; that the defendants therein had received and are receiving the rentals, earnings and profits derived from said business and property of the deceased; and that said defendants hold, manage and operate the aforementioned business, properties and income in trust for the Intestate Estate of Hilarion Dydongco, but have not rendered any accounting thereof." [3]

Petitioner-administrator prayed that "judgment be rendered declaring that said business, assets, income and other property, are in the possession and under the management and control of said defendants as mere trustees thereof, and sentencing them to turn over and deliver the same to him, as Administrator of the Intestate Estate of Hilarion Dydongco, as well as to render accounts and to execute the corresponding deeds of conveyance, in addition to paying damages and the costs." [4]

After a protracted trial, Hon. Jose M. Mendoza (as presiding judge in whose court the intestate proceedings for settlement of the decedent's estate were likewise pending) rendered a sixty-nine page decision on July 26, 1965 finding that most of petitioner-administrator's allegations had been duly proven and sentenced respondents (as defendants) to deliver to petitioner-administrator "all properties found by the court to belong to the estate," "to render full, accurate and correct accounting of all the fruits and proceeds of (such) properties" during their period of possession ("from 1935 until the present date") and to pay P60,000-exemplary damages to the two heiresses found to have been defrauded and P30,000-attorney's fees and costs. [5]

Respondents (as defendants) took steps to perfect their appeal from Judge Mendoza's adverse decision within the reglementary thirty-day period. After submitting their record on appeal, however they filed a motion for reconsideration and new trial which was heard and denied per Judge Mendoza's order of October 18, 1965. Respondents thereafter sought to revive their record on appeal and submit additional pages thereof but Judge Mendoza held that their filing of their motion for reconsideration was an abandonment of their proposed earlier appeal and that his decision had become final and executory.

Reconsideration having been denied, herein respondents then filed on December 21, 1965 a petition with this Court for the issuance of writ of certiorari, prohibition and mandamus to annul Judge Mendoza's orders disallowing their appeal with mandatory injunction to give due course to their appeal and this Court meanwhile enjoined the enforcement and execution of the challenged orders. The case was docketed as Dy Chun et al vs. Mendoza. [6]

The Court in its decision of October 4, 1968 in the said case of Dy Chun vs. Mendoza aborted the question of timeliness of respondents' proposed appeal, remarking that "(T)he petition herein and the answer thereto filed by respondents discuss rather extensively the question whether or not petitioners had perfected their appeal in the lower court within the reglementary period. We find it, however, unnecessary to pass upon said question, for the reason presently to be stated."

This Court therein instead ruled that "(A)lthough declaring that most of the properties involved in the litigation

belong to the estate of Hilarion Dydongco, the decision of respondent Judge, dated July 30, 1965, more-over, required petitioners herein to render a 'full, accurate and complete accounting of all the fruits and proceeds' of said properties. After analyzing previous rulings thereon, this Court declared, in *Fuentebella vs. Carrascoso* (G.R. No. 48102, May 27, 1942. See also *Salazar vs. Torres*, L-13711, May 25, 1960; *Zaldarriaga vs. Enriquez*, L-13252, April 29, 1961; *Zaldarriaga vs. Zaldarriaga*, L-13424, May 31, 1961) that a decision of such nature is interlocutory in character, because it does not dispose of the action in its entirety and leaves something to be done to complete the relief sought, and that, accordingly, it is not appealable, until after the adjudications necessary for the completion of said relief shall have been made. Indeed, the very counsel for petitioners herein now accept this view and concede that petitioners' appeal had been taken prematurely." [7]

Hence, this Court therein ordered and adjudged that "this case should be as it is hereby dismissed and the writ prayed for denied, with costs against petitioners herein. The writ of preliminary injunction issued in this case on January 18, 1966, is, accordingly, dissolved." [8]

It should be noted that this Court's judgment of October 4, 1968 in *Dy Chun vs. Mendoza* in dismissing herein respondents' petition and denying the writ of certiorari, prohibition and mandamus prayed for with costs against them (as petitioners therein) on the premise that their appeal should be taken after the rendition of the accounting of all fruits and proceeds of the properties adjudged in Judge Mendoza's decision of July 26, 1965 to belong to the decedent's estate, nevertheless dissolved the writ of preliminary injunction issued earlier on January 18, 1966 enjoining the enforcement and execution of Judge Mendoza's said decision.

The case was remanded to the Cebu court of first instance as the court of origin - for the rendition of "a full, accurate and complete accounting of all the fruits and proceeds" of the properties declared in Judge Mendoza's July 26, 1965 decision to belong to the decedent's estate, i.e. for "the adjudications necessary for the completion of said relief (as granted in the decision)", to use the very language of this Court in *Dy Chun vs. Mendoza*, supra.

This time around, however, Judge Mendoza (who had since been promoted as associate justice of the Court of Appeals and thereafter retired upon reaching the age of seventy) no longer presided the lower court, having been succeeded by respondent Judge Francisco S. Tantuico, Jr. as presiding judge of the lower court (but who likewise - to get ahead of the story - after rendering the questioned amended decision of October 4, 1969 - has since been also promoted on September 21, 1973, to and is presently associate justice of the Court of Appeals).

Back in the court of origin in 1969 after seven years (the case was first filed in 1962), the parties filed several motions following this Court's October 4, 1968 decision in *Dy Chun vs. Mendoza*, as follows:

(1) Petitioner under date of January 29, 1969 filed a motion for execution of the portion of Judge Mendoza's decision ordering respondents (as defendants) to deliver to petitioner all the properties adjudged to belong to the decedent's estate (citing the fact of dismissal of respondents petition for certiorari and mandamus and dissolution of the preliminary injunction enjoining enforcement and execution of Judge Mendoza's decision in *Dy Chun vs. Mendoza*) and for an order directing respondents to render the accounting required in the decision within thirty (30) days. Several pleadings were filed by the parties in opposition and in rejoinder;

(2) Respondents *Dy Chun*, *Vicente Dy Seko*, *Silvestre Dy Hee* and the administrator of the estate of *Nolasco Dycothay* filed under date of March 29, 1969 their urgent motion wherein they prayed that their previous opposition of March 14, 1969 to petitioner's motion for execution be captioned and considered further as a "motion for reconsideration and new trial;" [9] which was in effect a second motion for reconsideration almost four years after Judge Mendoza had denied per his order of October 18, 1965 their first motion for reconsideration of his decision of July 26, 1965; and

(3) Respondents *East Mindanao Lumber Co. Inc.*, *Tan Ho* and *Dy Suat Hong* further filed under date of May 5, 1969 their motion for reconsideration as "a supplement of their motion for reconsideration of the decision

dated July 26, 1965," wherein almost four years afterwards they prayed the lower court "to reconsider and set aside its decision dated July 26, 1965 and to dismiss the complaint"[10] notwithstanding that their first motion for reconsideration to the same end and effect had already been turned down by Judge Mendoza per his order of October 18, 1965 and they had sought to appeal said decision resulting in this Court's 1968 decision in *Dy Chun vs. Mendoza* that their appeal from said decision should await their rendition of accounting for completion of relief and the lower court's action thereon.

Respondent Judge Tantuico who had succeeded Judge Mendoza as presiding judge of the lower court resolved the three motions in a 44-page amended, decision dated October 4, 1969 rendered over four years after his predecessor, Judge Mendoza's original decision of July 26, 1965, as follows:

(1) He denied petitioner's "motion for partial execution of the July 26, 1965 order . . . such a decision being interlocutory in character"[11] , while agreeing with petitioner's contention "that delivery of the properties and accounting of their two fruits are two distinct acts . . . The accounting is not dependent upon delivery . . . ;[12] and ordered delivery of 'all the other properties not affected by [his] amendments' within forty-five days;

(2) He denied as without merit the motion for new trial of respondents *Dy Chun, et al.* as well as their claims therein of lack of jurisdiction of the court to render the judgment;[13] and

(3) He granted a major part of the motion for reconsideration filed by respondents *East Mindanao Lumber Co., Inc.* and without new trial or reception of new or additional evidence reviewed, reversed and set aside his predecessors appreciation of the evidence and pronouncements on the credibility of the witnesses, (who were not heard all by him) and substituted his own appreciation of the evidence and impression of the witnesses' credibility or lack thereof and therefore reversed Judge Mendoza's original decision of July 26, 1965 on three major points involving very valuable properties with an alleged estimated value of P5 million at the filing of the petition in January, 1971[14] on the premise that "interlocutory orders are subject to change in the discretion of the court" and "it is only fit and proper that this court believe in every part of the judgment he is to execute." [15]

Respondent Judge Tantuico thus altered and changed his predecessor Judge Mendoza's original decision of July 26, 1965 in his amended decision of October 4, 1969 by excluding certain valuable properties from the estate of the decedent and absolving certain respondents from the obligation of turning over the possession to petitioner, reversing Judge Mendoza's judgment holding respondent *Dy Suat Hong* to be a builder in bad faith, and reducing the P60,000 exemplary damages to P30,000. (see paragraphs 1, 2, 3 and 7 of the dispositive part of his amended decision as reproduced in the footnote.[16]). Acting on petitioner's motion for rendition of the accounting, he ordered respondents to submit "the written inventory and accounting [of the remaining properties held to belong to the estate of the decedent] to this court within sixty (60) days from receipt of this judgment for approval." (see paragraph 5 of his amended decision[17]). He further fixed a period of forty-five (45) days from receipt of judgment for respondents to deliver to petitioner "all the other properties not affected by the herein amendments and found by the court in the July 26, 1965 judgment to belong to the estate of *Hilarion Dydongco*." (see paragraph 4 of amended decision[18]).

Petitioner assailed in an action for certiorari[19] respondent judge's authority to issue such amended decision substantially changing his predecessor's original decision (which merely awaited the rendition of accounting for completion of the relief therein adjudicated of declaring the properties in possession of respondents to belong to the decedent's estate). The action was referred by this Court to the Court of Appeals, which rendered its challenged decision of September 21, 1970 and resolution of December 23, 1970 denying reconsideration.

Respondent appellate court[20] in its decision correctly if not entirely accurately depicted the parties' conflicting stands thus: "The petitioner's stand . . . is that the first decision that of Judge Mendoza, is not interlocutory in nature, but is one which is final in character and which left nothing to be done except for the requisite matter of

accounting. * * *. On the other hand, the respondents herein maintain that the original decision of the former presiding judge is merely interlocutory in nature, as there remains something also to be done, citing therein for main support of this contention, the decision . . . of the Supreme Court . . . in *Dy Chun vs. Mendoza*." [21]

Respondent appellate court, relying on *Dy Chun vs. Mendoza*, found for respondents, holding that "(I)n view of this ruling of the Supreme Court, expressly declaring that the decision in question of former Judge Jose M. Mendoza is merely interlocutory in character, and that the same is not appealable yet, the issuance therefore of the controversial amended decision of the now respondent Judge Francisco Tantuico, Jr. could hardly be said to have been issued with grave abuse of discretion, much less, without or in excess of jurisdiction. The disputed decision (first) of the former Presiding Judge Jose M. Mendoza, being interlocutory in essence, the succeeding Presiding Judge, therefore, now respondent Judge, has jurisdiction and is clothed with authority to conduct further proceedings, consider additional motions, rule on issues presented by the parties, and finally to issue any orders, processes and promulgate another decision." [22]

In its split resolution denying reconsideration, with Justice Andres Reyes dissenting, respondent appellate court [23] reiterated that as Judge Mendoza's original decision of July 26, 1965 was "still interlocutory," respondent Judge Tantuico had authority to change, alter or amend the decision as he did over four years later per his amended decision of October 4, 1969, citing a court's "inherent power to amend and control its process and orders so as to make them conformable to law and justice." [24]

The decisive issue at bar, then, is whether respondent appellate court correctly read and applied or not this Court's 1968 judgment in *Dy Chun vs. Mendoza*.

Restated otherwise, on the premise of this Court's judgment in *Dy Chun vs. Mendoza* that Judge Mendoza's decision granting petitioner the recovery of the properties which were adjudged to rightfully belong to the decedent's estate and for accounting of the fruits and proceeds thereof was "interlocutory in character" on the doctrine of *Fuentebella vs. Carrascoso* [25] and was "not appealable, until after the adjudications necessary for the completion of said relief shall have been made" (which view respondents through counsel expressly "accepted and conceded") -

Did this mean, as held by the appellate court, that respondent Judge Tantuico as Judge Mendoza's successor had the authority, four years later and beyond the thirty-day reglementary period and for as long as the final accounts have not been rendered and approved by him, to review, revise or reverse the original decision on the merits or to "promulgate another decision" as if it were a mere interlocutory order which affects preliminary or incidental matters and does not determine the dispute between the parties on its merits, or

Rather, did it mean that respondents' appeal from the decision on the merits granting petitioner the principal relief of recovery of real properties (which was final and definitive in character) had to await the rendition of the accounting and the court's approval thereof as a secondary and incidental relief and hence the only remaining or residual authority of the lower court in the premises (no matter whether it be presided by Judge Mendoza, respondent Judge Tantuico or still another presiding judge) was and is to enforce, consider and act on the accounting ordered in the decision, so that respondents' appeal from both aspects of the decision (for recovery of properties with accounting of fruits and proceeds) may then take its course?

I

The Court holds that respondent appellate court misread and misapplied this Court's 1968 judgment in *Dy Chun vs. Mendoza* and erred in holding that respondent Judge Tantuico could change, alter and amend his predecessor's decision on the merits for recovery of properties with accounting as if it were a mere interlocutory order or

process, when all this Court held (applying *Fuentebella*, supra) was that the decision was "not appealable" until after the accounting also ordered was rendered and approved so as to complete the relief granted whereafter respondents' "premature appeal" could then be given due course from both aspects of the decision for recovery of properties and accounting of the fruits. Hence, the only remaining or residual authority of respondent judge in the premises was not to review, revise, or reverse Judge Mendoza's original decision of July 26, 1965 (by substituting his own appreciation of the evidence and impression of the witnesses' credibility or lack thereof from a mere reading of the record for that of Judge Mendoza who tried the case and saw and heard the witnesses first hand) but to enforce, receive and act on the accounting as ordered in the decision for the completion of the relief therein granted.

The Court's holding is founded and based on the controlling case of *Dy Chun vs. Mendoza*, the pertinent provisions of the Rules of Court and their mandate that they "be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding", the very concept of final and definitive judgments as against mere interlocutory orders, and imperative considerations of public policy, stability of judgments, comity of judges of the same or coordinate courts, and of an impersonal and orderly administration of justice and system of adjudication of court litigation, as shall presently be expounded.

1. The original decision of July 26, 1965 of Judge Mendoza is manifestly a judgment determining the merits of the case, in writing personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him and filed with the clerk of court - as defined in and required by Rule 36, section 1.[26] When respondents' appeal therefrom was ruled out of time by Judge Mendoza, and on mandamus this Court in *Dy Chun vs. Mendoza* declared the appeal premature, it remanded the case to the lower court for the completion of the relief awarded in the judgment, viz, for the rendition of the accounting therein also awarded, so that thereafter respondents' "premature appeal" could be given due course from both aspects of the judgment: the principal relief of recovery of the properties in favor of the decedent's estate and the secondary and incidental relief of accounting of the fruits and proceeds of such properties.

2. This Court in thus remanding the case for the rendition of the accounting "for the completion of said relief" awarded in Judge Mendoza's judgment on the merits could not conceivably be misconstrued, as did appellate court, to give respondent judge or whoever presides the lower court carte blanche to exercise reviewing if not supervisory authority over the judicial determination and findings on the merits of his predecessor and to "promulgate another decision" in lieu thereof as if Judge Mendoza's basic decision on the merits were a mere interlocutory order dealing with postponements, extensions, temporary restraining orders or preliminary injunctions, or deferring action on, or denying, motions to dismiss or provisional remedies applied for, instead of a definitive determination of the main dispute between the parties.

There would be no firm and definite basis for the accounting yet to be rendered if the presiding judge or his successor could for as long as the accounting has not yet been rendered revise and amend the decision or "promulgate another decision" and thereby from time to time change and alter the basis for the accounting. Confusion worse compounded could readily ensue and there may be no end in sight where as in the case at bar 127 parcels of land or property[27] are involved in the original complaint filed in 1962 and the trial judge could include or exclude from time to time the lands or properties for which an accounting must be rendered.

3. Hence, it has always been taken for granted from the lead case of *Fuentebella* (and all other cases adhering to it) assuming its applicability here, that the remand of the case to the trial court for rendition of the accounting of the fruits of the properties adjudged in favor of the prevailing party in order to complete the relief and have a single appeal including the accounts was for no other purpose than to render the accounting and by no means to

change, alter, revise or reverse the basic judgment which ordered the accounting in the first place.

No case or precedent can be cited where the trial court, as did respondent judge in the case at bar as sustained by respondent appellate court, departed from the purpose of the remand to receive and act on the accounting as ordered in the basic judgment so that both could be the subject of a single appeal (and instead altered and revised the judgment itself and the bases for the accounting ordered).

4. In the lead case of Fuentebella, respondent (plaintiff) Carrascoso obtained judgment against Fuentebella (as defendant) "to render an accounting of the 216 mining claims belonging to the mining partnership formed between them for payment to him of his participation therein. The court adjudged plaintiff entitled to share in the assets of the partnership and directed the defendant to render, within ten days after notice, an accounting of all the expenses incurred in the acquisition and exploitation of the 216 mining claims aforementioned with a view to determining plaintiff's share therein. Maintaining that the partnership did not own the 216 mining claims but only 9 placer claims acquired from Alejandro C. Quito and associates, defendant appealed to the Court of Appeals without rendering the accounting required in the appealed judgment. Plaintiff thereupon filed a motion in the appellate court praying that the appeal be dismissed on the ground that it was premature, the judgment being merely interlocutory and not final. The Court of Appeals granted the motion and dismissed the appeal." [28] This Court dismissed petitioner's (defendant's) action for mandamus to compel the Court of Appeals to restore his appeal, affirming Carrascoso's contention that the appeal was "premature", holding that "the judgment rendered by the Court of First Instance of Manila declaring plaintiff entitled to share in the assets of the partnership and directing the defendant to render an accounting of the expenses incurred in the purchase and exploitation of the mining claims, is not final but merely interlocutory and, therefore, not appealable." [29]

In the sequel case of Carrascoso vs. Fuentebella, [30] after the lapse of over ten years from the 1942 judgment, ordering Fuentebella to render the accounting within ten days without such accounting even having been rendered, this Court sustained the lower court's dismissal of Carrascoso's action for revival and execution of the judgment in his favor for as long as the accounting had not yet been rendered holding that "at the present stage of the litigation, there is an accounting still to be made, and not until this has been effected and the accounting acted upon can there be a final judgment." In denying Carrascoso's plea that the money judgment in his favor should be satisfied, this Court through Justice Tuason noted that it was through his "vigorous objections that the appeal was declared premature" and he was therefore in estoppel, and pointed out that "the only course open to (him) is follow through the order for accounting and liquidation that the case may be placed in a state to be decided definitely," as follows:

"It is noticed that the plaintiff's complaint makes reference to only two items of the judgment in question, but the pleadings and the briefs do not disclose whether these items are independent of the others or are subject to the results of the accounting which has been ordered. However that may be, this Court's decision declaring the judgment interlocutory made no exceptions and by this decision the defendant's appeal was totally overthrown. In the circumstances, it would hardly be fair to hold that part of the judgment which concerns the payment of P4,295.20 and the delivery of shares of stock was separable from the rest and could or should have been disposed of in the appeal without waiting for decision on the other details of the litigation. It should be noted that it was through the plaintiff's vigorous objections that the appeal was declared premature, and dismissed in its entirety. Having taken that position, plaintiff is at least estopped from asserting that the judgment or some parts of it became executory by reason of the defendant's failure to prosecute his appeal to its final conclusion. As matters stand, it seems obvious that the only course open to the plaintiff is follow through the order for accounting and liquidation that the case may be placed in a state to be decided definitely."

5. In the case at bar, this Court in remanding the case for the rendition of the accounting "for the completion of said relief" awarded in Judge Mendoza's judgment further ordered the dissolution of the preliminary injunction it

had granted against enforcement and execution of his orders declaring his judgment final and executory. This signified that the trial court was left free under Rule 39, section 2 to order execution of his judgment on the merits for recovery of the properties pending appeal. Hence, petitioner after the remand properly filed his motion for execution of the portion of the judgment ordering delivery of the properties, *supra*,^[31] while awaiting the accounting yet to be rendered and acted upon by the trial court. Respondent judge in the exercise of his authority could either grant or deny such motion for execution pending appeal and he opted to deny the same, since he reversed the original decision on three major points but in effect granted the same as to "all other properties not affected by [his] amendments" by ordering their delivery to petitioner within 45 days^[32] (since recovery and delivery of the properties was the principal relief sought by petitioner with the accounting as a mere incident and necessary consequence and without delivery, the accounting of the fruits would be a never-ending process and the case would never be ready for appeal!)

But respondent judge exceeded and went beyond his authority and jurisdiction when he amended his predecessor's judgment on the merits in major particulars and issued an amended decision, and notwithstanding that the case involves properties undisputedly (as far as both judges were concerned) fraudulently concealed, misappropriated and absconded from the decedent's estate (as a consequence of which P60,000-exemplary damages were awarded in Judge Mendoza's original decision and retained in half the amount by respondent judge in his amended decision), ordered the exclusion of several valuable properties from those ordered delivered to the estate on the basis of his own substituted impression (from his reading of the record) of the credibility of witnesses seen, heard and observed by Judge Mendoza as the trial judge and found by the latter to be totally discredited (having shown in the record "their utter disregard and disrespect not only to truth but also to the meaning and value of the oath required of witnesses"^[33] and their being "sadly wanting . . . in their sense of truth, probity and sacredness of an oath. To commit a lie is but human, this court realizes, but to lie brazenly and knowingly is humanly unforgivable"^[34]).

Judge Mendoza had heard respondents-witnesses both in the course of the inquiry conducted by him in the intestate proceedings as to the whereabouts of the estate's properties (Sp. Proc. No. 2205-R)^[35] and at the trial of the case at bar and from their subsequent contradictory and conflicting changes and reversals of their testimony found them to have given false testimony in pursuance of a scheme to conceal and misappropriate properties of the decedent. Respondent judge also agreed with this finding in the main in his amended decision, save for the valuable properties excluded by him from Judge Mendoza's original decision on the basis that the decision was "subject to change in the discretion of the court" and "it is only fit and proper that this court believe in every part of the judgment he is to execute".^[36]

As to the excluded properties, there is no question that respondent judge in ordering their exclusion in his amended decision did so in all good faith and according to his best lights and from his own meticulous reading of the record as discussed in his extended amended decision.

The basic question therefore is one of authority and jurisdiction, whether as erroneously held by respondent appellate court itself, this Court's description of the original decision as "interlocutory in character" and the appeal taken as "premature" clothed respondent judge "with authority to conduct further proceedings, consider additional motions, rule on issues presented by the parties, and finally to issue any orders, processes and promulgate another decision".

The Court holds that there is no precedent nor justification for the course of action sustained by respondent appellate court, since a judge who succeeds another as presiding judge does not assume reviewing and appellate authority over his predecessor's judgment on the merits including the credibility of the witnesses (which is the subject of an appeal to the appellate courts but has been remanded merely to complete the relief of accounting so

that such accounting may be threshed out together with the principal relief of recovery in a single appeal) - and it may be added that the appellate courts on appeal are called upon to review and pass upon a single decision and not two decisions (the original and the amended). And it should deserve merely passing mention that such successor judge (prescinding from the principle of comity of judges) should be equally if not more bound by the settled doctrine binding upon this Court itself and the appellate courts that the trial judge's findings of fact and on the credibility of witnesses are entitled to great weight and respect and will be upheld in the absence of a clear and convincing showing of taint, mistake or arbitrariness.[36a]

There is yet another more important consideration anchored on public policy. The cause of an impersonal and orderly administration of justice and system of adjudication of court litigation would be greatly if not irreparably set back if parties are subjected to the spectacle of one judge's judgment being radically altered, if not reversed, by his successor after four years without any new trial or evidence simply because the successor reads the record in another light than his predecessor who tried the case and chooses to believe witnesses disbelieved by his predecessor. The ideal concept that cases are impersonally tried and adjudicated on the basis of certain well defined rules of evidence, law and jurisprudence (regardless of the personality of the judge and his predilections) subject to review only by higher appellate courts which would pass upon and correct the errors, if any of the trial judge, would thus be dealt a severe blow.

6. Rule 36 on judgments precisely recognizes that judgment at various stages may be rendered when more than one claim for relief is presented in an action (as the present action for recovery of properties with accounting), and thus provides that:

"Section 5. Judgment at various stages - When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered." (Rule 36, italics supplied)

The last part of the above-cited rule is what should have been properly applied by respondent judge in the case at bar: the judgment of July 26, 1965 of Judge Mendoza terminated the action with respect to the claim for recovery of the properties pertaining to the decedent's estate, and the action was yet to proceed with respect to the remaining relief of accounting as ordered in the judgment as well as ordered to be done and completed per the remand of the case by this Court in *Dy Chun vs. Mendoza*. Insofar as Judge Mendoza's judgment granting the claim for recovery of properties was concerned, respondent judge was authorized by the cited Rule to stay enforcement until the rendering of the subsequent judgment on the accounting or prescribe such conditions to secure the benefit of the judgment in favor of the estate represented by petitioner. But the Rule grants him no authority to review, revise, amend, alter or reverse Judge Mendoza's original judgment on the merits ordering the delivery of the properties while awaiting completion of the accounting.

7. Rule 39, section 4 which specifically governs actions for accounting expressly provides that "unless otherwise ordered by the court, a judgment or order directing an accounting in an action, shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal, "as follows:

"Section 4. Injunction, receivership and accounting, not stayed. - Unless otherwise ordered by the court, a judgment in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action, shall not be stayed after its rendition and before an appeal is taken or during the pendency of an

appeal. The trial court, however, in its discretion, when an appeal is taken from a judgment granting, dissolving or denying an injunction, may make an order suspending modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party." (Rule 39)

The pertinent rule accordingly recognizes that in actions involving the rendition of an accounting (as in the case at bar), an appeal may be taken from the judgment ordering the accounting and directs that during the pendency of the appeal or even before the appeal is taken, the rendition of the accounting shall not be stayed, unless otherwise ordered by the trial court. Thus, if the judgment directing an accounting is upheld on appeal, there would be no time lost and the accounting as rendered could be passed upon by the trial court at the stage of execution of judgment: and if the judgment were reversed on appeal, reimbursement of the actual expenses incurred by the successful appellant in rendering the accounting could be awarded.

Here, the rendition of the accounting as a consequence and incident of Judge Mendoza's judgment declaring the properties to belong to the decedent's estate and ordering their delivery to petitioner-administrator was not ordered stayed during the pendency of the appeal taken by respondents. In fact, Judge Mendoza had ruled that the proposed appeal was filed out of time and that his judgment had become final and executory, and the accounting that he ordered would have been rendered at the stage of execution of judgment.

That the cited Rule precisely provides for appeals from a judgment "directing an accounting" as in this case and that such judgment is immediately enforced notwithstanding the taking of an appeal or the pendency of an appeal is lucidly explained by the late Chief Justice Moran thus: "(A)s a general rule, the taking of an appeal stays the execution of the judgment. But such is not the case when the judgment is rendered in an action for injunction, or in a receivership action, or when the judgment is one directing an accounting in an action.

"For this, no special reason need even be invoked. While the trial court could also stay immediate execution in its discretion, its refusal to do so must be established by petitioner to amount to grave abuse thereof." [36b]

It should be noted that the cited Rule recognizes that the judgment "directing an accounting" is appealable, regardless of whether the accounting is the principal relief sought or a mere incident or consequence of the judgment which grants recovery and delivery of absconded properties as the principal relief sought or a mere incident or consequence of the judgment which grants recovery and expressly provides that "a judgment or order directing an accounting in an action, shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal".

It is manifest from the Rule that if a judgment which directs solely an accounting is appealable notwithstanding that it "does not finally dispose of the action" and the accounting has yet to be rendered "to complete the relief sought", much more so is a judgment which orders the recovery or delivery of properties as principal relief and accounting as a mere incident appealable, because the judgment which orders the delivery of properties does finally dispose of the action on its merits.

8. If the basic and original judgment for recovery of properties with accounting could thus be altered at will by the trial judge pending the rendition of the accounting on the misconception that the judgment is "interlocutory", rather than on the merits, litigation for the enforcement of one's rights or redress of grievances would be rendered intolerable and interminable!

Take the present case for recovery of properties of the decedent which dates back to his death in 1941. Petitioner-administrator's action for recovery of the properties with accounting was upheld in Judge Mendoza's original judgment of July 26, 1965. Notwithstanding this Court's 1968 judgment in *Dy Chun vs. Mendoza* remanding the case for rendition of the accounting for completion of the relief, the accounting has not been

rendered almost eleven years later because of respondent judge's amended decision of October 4, 1969 excluding certain valuable properties from the estate and absolving certain respondents from the judgment obligation of delivering them to petitioner.

If we upheld respondent judge's authority to change and alter the basic and original judgment at will for as long as the accounting ordered has not been rendered, then as there is now another judge presiding the trial court since respondent Judge Tantuico's promotion in 1973 to the Court of Appeals,[37] such successor judge of respondent Judge Tantuico must likewise be deemed to have the authority at will to review, revise, change, alter and reverse both the original decision of Judge Mendoza of July 26, 1965 and the amended decision of October 4, 1969 of respondent judge and "promulgate another decision" as per his own criterion of the evidence (and applying respondent judge's same yardstick that it is only "fit and proper" that the presiding judge "believe in every part of the judgment he is to execute") including or excluding certain properties from those ordered returned to the estate, with the frightening consequence that the accounting would never be rendered, the judgment would never be final for purposes of appeal and the litigation would never end! (Witness this case commenced 14 years ago in 1962 for recovery of properties found by both Judge Mendoza and respondent judge to have been fraudulently concealed, misappropriated and absconded from the estate of the decedent who died 35 years ago in 1941!)

As it is now, if the accounting ever got done, there would be two decisions, the original decision of Judge Mendoza and the amended decision of respondent judge, that would be brought up on appeal with the party favored by one decision assailing the other decision. If respondent judge's successors in the lower court were to be permitted also to promulgate still one decision after another as if such decisions on the merits were mere interlocutory orders subject to the judge's control and amendment, there would be as many decisions to be taken up on appeal as there were successor judges inclined to review, revise, and reverse his predecessor's judgment on the evidence and on the law with none of the parties adversely affected able to appeal from any of the fluctuating decisions for as long as the accounting has not been terminated.

9. Imperative and controlling considerations of public policy and of sound practice in the courts to achieve the desideratum of just, speedy and inexpensive determination of every action militate against such a novel and unprecedented situation where a judgment on the merits for recovery of properties would be left dangling and would be considered as "interlocutory" and subject to revision and alteration at will for as long as the accounting ordered as a mere incident and logical consequence has not been rendered and acted upon by the trial court.

This Court, through Justice Carson over sixty-five (65) years ago in *Arnedo vs. Llorente*[38] stressed the utter untenability of such a situation and the "disastrous consequences which would follow the recognition of unbridled power in a court" to change, vacate or amend its judgments at will, when it stated that "controlling and irresistible reasons of public policy and of sound practice in the courts demand that at the risk of occasional error, judgments of courts determining controversies submitted to them should become final at some definite time fixed by law, or by a rule of practice recognized by law, so as to be thereafter beyond the control even of the court which rendered them for the purpose of correcting errors of fact or of law, into which, in the opinion of the court, it may have fallen. The very purpose for which the courts are organized is to put an end to controversy, to decide the questions submitted to the litigants, and to determine the respective rights of the parties. With the full knowledge that courts are not infallible, the litigants submit their respective claims for judgment, and they have a right at some time or other to have final judgment on which they can rely as a final disposition of the issue submitted, and to know that there is an end to the litigation. 'If a vacillating, irresolute judge were allowed to thus keep causes ever within his power, to determine and redetermine them term after term, to bandy his judgments about from one party to the other, and to change his conclusions as freely and as capriciously as a chameleon may change its hues, then litigation might become more tolerable than the wrongs it is intended to redress.' And no

words would be sufficient to portray the disastrous consequences which would follow the recognition of unbridled power in a court which has the misfortune to be presided over by a venal and corrupt judge, to vacate and amend, in matters of substance, final judgments already entered."

10. Respondent appellate court's fallacy lies in its failure to appreciate the substantive fact that Judge Mendoza's sixty-nine-page decision of July 26, 1965 rendered after a full protracted trial (of over three years) wherein he received the full evidence, testimonial and documentary, of the litigants was and is a definitive judgment that decided finally the rights of the parties upon the issue submitted, by granting the remedy sought by the action of recovery with accounting (as a mere incident and logical consequence) of the properties of the decedent's estate.

As restated for the Court by then Associate now Chief Justice Castro in the case of *DBP vs. Tañada*[39] "a definitive judgment (is) one that 'decides finally the rights of the parties upon the issue submitted, by specifically denying or granting the remedy sought by the action.'" Thus, the Court held in said case that the earlier (1958) judgment ordering the RFC (as predecessor of the DBP) to accept respondents' backpay certificates in settlement of their mortgage debt specifically granted the remedy sought by respondents and that the non-specification of the amount chargeable against the backpay certificates (at a discounted rate of 2% per annum in relation to its thirty-year maturity period as provided by Republic Act 897, which was not specified in the judgment) did not make the judgment any less definitive or final. The Court thus adjudged that when respondent *del Mar* filed his motion for execution of the judgment twelve years later (after he had refused previously to negotiate his backpay certificate at its face value) he was already barred by Rule 39, section 6 from seeking execution "by mere motion or to enforce the (judgment) by an independent action."

Similarly, Judge Mendoza's judgment for recovery with accounting of the properties of the decedent's estate was and is a definitive and final judgment on the merits, although almost eleven years later, the accounting ordered has yet to be rendered.

That petitioner-administrator is entitled to recover the properties absconded from the decedent's estate was definitively settled and adjudged in the judgment. Such right of recovery of the properties and corollarily the obligation of respondent to deliver and return the absconded properties to the estate, cannot in any way be affected or prejudiced by the accounting to be rendered by respondents of the fruits and proceeds thereof during the long, long period of time (for almost two generations since 1941) that they wrongfully held possession thereof. The fruits to be accounted for are mere accessories or products of the properties pertaining to the estate, and the rendition and settlement of accounts with respect thereto is a mere incident of the judgment which can be satisfied even at the execution stage.

This simply means that this definitive judgment is no longer subject to change, revision, amendment or reversal but must stand to serve as the basis of the accounting ordered. Otherwise, if it were to be subject to change and amendment for as long as the accounting has not been rendered and approved, the basis for the accounting would never be firmly fixed and there would be no accounting nor completion of the relief nor termination of the litigation since the accounting would not be completed and the appeal would be left hanging and could never be prosecuted for final adjudication by the appellate courts!

11. Respondent judge's fallacy in turn was in his failure to appreciate the vital fact that when this Court in *Dy Chun vs. Mendoza* remanded in 1968 the case to him, it was for the sole purpose of implementing the standing 1965 judgment of Judge Mendoza to render an accounting of the fruits and proceeds of all the properties ordered delivered and returned to the decedent's estate. Respondent judge was to take the case at the stage it was then, namely, to require the accounting on the basis of the standing judgment which was beyond his power of review or amendment; by no means was he to be deemed authorized to go back and review the case all over again and

render another judgment!

This is but in consonance with the constitutional mandate of just and speedy disposition of cases as well as with the Rules of Court which proscribe multiplicity of motions. Here, motions for reconsideration of Judge Mendoza's judgment of July 26, 1965 had been filed by respondents and denied per his order of October 18, 1965 after which respondents sought to appeal the judgment.

Upon remand in 1968 (over four years after Judge Mendoza rendered judgment on the merits for recovery of properties with accounting) of the case for rendition of the accounting for completion of the relief granted in the judgment as per *Dy Chun vs. Mendoza*, respondent judge no longer had jurisdiction (since the thirty-day reglementary period from notice of judgment under Rule 37, section 1 to move for reconsideration or new trial had long expired) to entertain respondents' motions for new trial and reconsideration, much less to set aside the judgment and render an "amended decision". Certainly, a trial judge to whom the case has been remanded to complete the relief awarded by enforcing the accounting - cannot in the guise of holding that the judgment is "interlocutory" because an accounting was ordered and has to be enforced by him entertain second and supplemental motions for reconsideration of and alter or change the judgment and set it at naught!

Even from the strictly procedural point of view, respondent judge was barred by the omnibus motion rule under Rule 15, Section 8 (prescinding from his lack of authority to review or alter the standing judgment on the merits which was already in the stage of appeal but merely remanded for implementation of the accounting phase to complete the relief granted for purposes of a single appeal) from entertaining respondents' motions for new trial and reconsideration, much less to grant them on the very same grounds already previously rejected by his predecessor.

As the now Chief Justice stressed in *Dacanay vs. Alvendia*[40] "[T]he Rules of Court, looking with disfavor on piecemeal argumentation, have provided the omnibus motion rule, whereunder 'A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived'.[41] The salutary purpose of the rule is to obviate multiplicity of motions as well as discourage dilatory pleadings. As we said in *Medran vs. Court of Appeals*, Litigants should not be allowed to reiterate identical motions speculating on the possible change of opinion of the court or of judges thereof.

12. It seems evident that respondent judge's error lay in his misequating Judge Mendoza's 1965 judgment on the merits with "interlocutory orders (that) are subject to change in the discretion of the court"[42] and that respondent appellate court fell into the same error when from this Court's holding in *Dy Chun vs. Mendoza* that Judge Mendoza's 1965 judgment "does not dispose of the action in its entirety and leaves something to be done to complete the relief sought and that accordingly it is not appealable until after the adjudications necessary for the completion of said relief shall have been made"[43] it leapt to the unwarranted conclusion that this Court thereby authorized respondent judge not merely to complete the relief granted by enforcing and resolving the accounting but to amend and cast aside the judgment and "promulgate another decision!"[44] There is no rule of court or precedent in our jurisprudence that would consign judgments on the merits that involve accounting as an incident to the level of interlocutory "process and orders" subject to change, revision and reversal for as long as the accounting has not been rendered and completed.

13. The late Chief Justice Moran, who penned the decision in *Fuentebella*,[45] stated that "(T)he test to ascertain whether or not an order or a judgment is interlocutory or final is: Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final."[46]

The key test to what is "interlocutory" is when there is something more to be done on the merits of the case. It's a more reliable test than that loosely applied in *Fuentebella* that the decision therein for recovery of properties with

accounting is "interlocutory in character because it does not dispose of the action in its entirety and leaves something to be done to complete the relief sought." [47] For strictly speaking, the only stage where nothing more can be done in the trial court to complete the relief sought is after the judgment has been executed, and certainly, no one would contend that all judgments are interlocutory before they are actually executed and satisfied.

The examples of interlocutory matters from our jurisprudence that Moran gives in his treatise deal therefore with interlocutory orders, not judgments, such as orders denying motions for dismissal, for annulment of preliminary attachment or injunction, for alimony pendente lite, for default, etc., since they deal with preliminary matters and trial has yet to be held and judgment on the merits rendered." [48]

In *Halili vs. CIR* [48a] this Court in ruling that the lower court's judgment (ordering the payment of overtime pay although the total amount was yet undetermined and awaited the computation yet to be rendered by the Court Examiner) had already become final and executory for failure of the losing party to appeal therefrom within the reglementary period, dismissed the contention that the judgment was, "interlocutory" and still appealable for as long as the accounting had not been completed by redefining the terms in this wise: "(T)he word interlocutory is defined as 'something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy.' As stated by Bouvier, it is 'something which is done between the commencement and the end of a suit or action which decides some point or matter which, however, is not a final decision of the matter in issue,'" and ruled that "(T)he decision, therefore, is a final adjudication on the main issue submitted to the court and cannot be considered as interlocutory." By the same token, the original 1965 decision was and is a final adjudication on the main issue of ownership and recovery of properties disputed between the parties.

The pertinent provision of Rule 41, section 2 that "only final judgments or orders shall be subject to appeal. No interlocutory or incidental judgment or order shall stay the progress of the action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or another," shows that the judgment rendered definitively by Judge Mendoza after trial and on the merits in favor of petitioner and against respondents (for recovery of the properties with accounting) could not conceivably be classified with interlocutory orders issued by a trial judge on incidental or preliminary matters before or during the course of trial and before judgment on the merits.

14. Here, we have a case of definitive judgment on the merits rendered after trial ordering the recovery of properties as prayed for in petitioner's complaint with payment of exemplary damages and attorney's fees as well as the accounting of the fruits of the properties wrongfully possessed for so long by respondents. The mere incident that accounting since 1941 of the fruits of the properties adjudged to rightfully belong to the decedent's estate has been ordered as a necessary consequence of the judgment on the merits - which is merely to implement the judgment, by no means makes the judgment an interlocutory one subject to change, alteration and reversion at the discretion and will of the trial judge!

The best example of an analogous judgment to that of the case at bar (for recovery with accounting) is a judgment of the court of industrial relations finding a respondent guilty of unfair labor practice and ordering his reinstatement with backwages. Such a judgment has always been considered final for purposes of appeal, with nothing more to be done on the merits. The mere circumstance that the judgment for backwages orders the accounting division of the industrial court to compute and determine the amount of backwages to be paid to petitioner after an examination of the employer's payrolls and after hearings to determine the reinstated worker's earnings elsewhere during the period of his dismissal for purposes of deducting the same from the backwages to be paid him are deemed to be matters of implementation and execution which in no way render the judgment interlocutory or subject to change or reversal at the judge's discretion - although in many instances such

backwages accounting and computation proceedings take much longer (from 1 to 10 years) to finish than the trial and affirmance on appeal of the main action for reinstatement of the worker. (Which is really another compelling reason to allow immediate appeal, for otherwise years will have dragged on during the accounting without the principal question of the worker's right to reinstatement with backwages having been finally resolved on appeal.)

15. There have been cases of interlocutory orders, such as one for payment of alimony pendente lite, which have nevertheless been the subject of appeal, where this Court has refused to stay the progress of the appeal or dismiss it where the objection to the appeal has come too late and is deemed waived. The Court so held in *Salazar vs. Salazar*[49] in affirming, on the merits the appealed order for alimony pendente lite and rejecting the belated motion to dismiss the appeal on the ground of its involving an interlocutory order, that "(T)he motion to dismiss filed by appellee during the pendency of this appeal on the ground that the order appealed from is not appealable because it is merely interlocutory, cannot be entertained. While an order denying or granting alimony pendente lite is interlocutory and consequently non-appealable (*Moran's Comments on the Rules of Court*, Vol. II, 1952 ed., p. 120), however, if appeal is taken therefrom, and no timely objection is interposed thereto, the objection is deemed waived. Thus, when objection is founded on the ground that the judgment appealed from is interlocutory, but the appellee, before making such, objection, has allowed the record on appeal to be approved and printed, and has allowed the appellant to print his brief, such objection is too late and is deemed waived (*Slade-Perkins vs. Perkins*, 57 Phil. 223, 225; *Luenco Martinez vs. Perkins*, 17 Phil. 29, *Moran's Comments on the Rules of Court*, Vol. 1, 1952 ed., p. 987). This is the situation that obtains herein. The motion to dismiss should therefore be denied." [50]

Here, respondents themselves filed an appeal from Judge Mendoza's judgment of July 26, 1965 and the only issue in *Dy Chun vs. Mendoza*, supra, was as to the timeliness of the appeal. No one interposed any objection that the appeal was improper as the judgment was interlocutory, as indeed both respondents and petitioner were agreed that the judgment for recovery with accounting finally resolved the issues between them on the merits and nothing more was left to be done on the merits except to implement the judgment with the delivery of the properties and the accounting of the proceeds thereof.

Respondents obtained a reprieve when this Court in *Dy Chun vs. Mendoza* remanded the case to implement the accounting to complete the relief awarded for purposes of a single appeal from the judgment's award of recovery of properties with accounting and they expressly acceded thereto. This reprieve does not mean that they can now take the contrary and inconsistent stand that the judgment should be considered interlocutory and subject to alteration, revision or reversal. The Court's manifest intent in making the remand was to complete the relief with the accounting so that respondents' appeal may then take its course.

If in *Salazar* a belated objection to an appeal from an interlocutory order (of alimony pendente lite) was deemed a waiver, so much more should respondents be deemed to have waived any belated contrary or inconsistent stand that the very judgment they were appealing was "interlocutory," much less that it was subject to alteration, change or reversal pending the accounting of fruits therein awarded.

Following the ruling in *Salazar* eleven years later in 1953 (rather than the earlier 1942 ruling of *Fuentebella*) the Court should have resolved in *Dy Chun vs. Mendoza* in 1968 respondents' appeal on the merits of Judge Mendoza's 1965 judgment (if it considered respondents' appeal timely) or upheld Judge Mendoza's order ruling that respondents' appeal was filed out of time - since neither petitioner nor respondents had ever presented any objection or afterthought that the judgment sought to be appealed from was "interlocutory" and that the challenged appeal was there-fore "premature". Had this Court so resolved in 1968 the appeal on the merits or the question of timeliness of the appeal, then the parties would not still be here eight years later in 1976 still groping for an end to their litigation dating back to decedent's death in 1941!

The validity of this position may be further shown in this wise: If besides the recovery and exemplary damages, petitioner had sought and been awarded in the judgment a lump sum as actual and compensatory damages (through proof of the value of the properties and their potential earnings) instead of an accounting of the fruits, interest, profits, etc., of the misappropriated and absconded properties, it would be beyond question that such a judgment was final and appealable. That petitioner had sought and been awarded an accounting instead (as another means to determine the actual and compensatory damages suffered by the estate) makes the judgment no less final and appealable. The reason simply is that the principal relief is the recovery of the properties and the damages or accounting is but an incident and consequence. Hence, the judgment for delivery of the properties is final and appealable. If it is affirmed on appeal, then damages or accounting must go with it; otherwise if it is reversed on appeal, then there is no damage or accounting.

But one thing should certainly be clear. Respondents having been granted a reprieve by this Court's 1968 decision in *Dy Chun vs. Mendoza* when they readily embraced and expressly accepted and acceded to the view *motu proprio* raised by this Court that the accounting ordered in the judgment be first enforced and implemented before giving due course to their appeal, so that a single appeal would cover both the recovery and accounting (which thereby aborted the cardinal question of timeliness of their appeal, which Judge Mendoza had already ruled was filed out of time) are estopped and could not now claim after the remand that the adverse judgment against them sentencing them to return the fraudulently absconded properties to the decedent's estate was after all a mere "interlocutory" or fleeting judgment without permanence or finality and subject to change, alteration or reversal at the will and discretion of Judge Mendoza as the trial judge and of respondent judge and of as many other judges as may succeed him in presiding over the lower court for as long as the accounting has not been rendered and acted upon!

II

The Court's reversal of respondent Court of Appeals' decision which upheld respondent judge's amended decision changing and amending substantially his predecessor's judgment on the merits for recovery of properties with accounting on the main ground, *inter alia*, that this Court's 1968 judgment in *Dy Chun vs. Mendoza* was misread and misapplied, since the only remaining or residual authority of respondent judge was to enforce, consider and act on the accounting ordered in the original decision for the completion of the relief therein granted before considering private respondents' proposed appeal, suffices to dispose of the case at bar itself.

The Court, however, deems it proper for the guidance of the bench and bar to now declare as is clearly indicated from the compelling reasons and considerations herein-above stated:

- that the Court considers the better rule to be that stated in *H.E. Heacock Co. vs. American Trading Co.*[51] , to wit, that where the primary purpose of a case is to ascertain and determine who between plaintiff and defendant is the true owner and entitled to the exclusive use of the disputed property, "the judgment . . . rendered by the lower court [is] a judgment on the merits as to those questions, and (that) the order of the court for an accounting was based upon, and is incidental to the judgment on the merits. That is to say, that the judgment . . . (is) a final judgment . . . ; that in this kind of a case an accounting is a mere incident to the judgment; that an appeal lies from the rendition of the judgment as rendered . . ." (as is widely held by a great number of judges and members of the bar, as shown by the cases so decided and filed and still pending with the Court) for the fundamental reasons therein stated that "this is more in harmony with the administration of justice and the spirit and intent of the [Rules]. If on appeal the judgment of the lower court is affirmed, it would not in the least work an injustice to any of the legal rights of [appellee]. On the other hand, if for any reason this court should reverse the judgment of the lower court, the accounting would be a waste of time and money, and might work a material injury to the [appellant];"[51a]and

- that accordingly, the contrary ruling in *Fuentebello vs. Carrascoso*[52] which expressly reversed the *Heacock* case and a line of similar decisions[53] and ruled that such a decision for recovery of property with accounting "is not final but merely interlocutory and therefore not appealable" and subsequent cases adhering to the same[54] must be now in turn abandoned and set aside.

Fuentebella adopted instead the opposite line of conflicting decisions mostly in partition proceedings and exemplified by *Ron vs. Mojica*, 8 Phil. 928 (under the old Code of Civil Procedure) that an order for partition of real property is not final and appealable until after the actual partition of the property as reported by the court-appointed commissioners and approved by the court in its judgment accepting the report. It must be especially noted that such rule governing partitions is now so expressly provided and spelled out in Rule 69 of the Rules of Court, with special reference to sections 1, 2, 3, 6, 7 and 11, to wit, that there must first be a preliminary order for partition of the real estate (section 2) and where the parties-coowners cannot agree, the court-appointed commissioners make a plan of actual partition which must first be passed upon and accepted by the trial court and embodied in a judgment to be rendered by it (section 6 and 11). In partition of cases, it must be further borne in mind that Rule 69, section 1 refers to "a person having the right to compel the partition of real estate", so that the general rule of partition that an appeal will not lie until the partition or distribution proceedings are terminated will not apply where appellant claims exclusive ownership of the whole property and denies the adverse party's right to any partition, as was the ruling in *Villanueva vs. Capistrano* and *Africa vs. Africa*, *supra*,[55] *Fuentebella's* express reversal of these cases must likewise be deemed now also abandoned in view of the Court's expressed preference for the rationale of the *Heacock* case.

The Court's considered opinion is that imperative considerations of public policy and of sound practice in the courts and adherence to the constitutional mandate of simplified, just, speedy and inexpensive determination of every action call for considering such judgments for recovery of property with accounting as final judgments which are duly appealable (and would therefore become final and executory if not appealed within the reglementary period) with the accounting as a mere incident of the judgment to be rendered during the course of the appeal as provided in Rule 39, section 4 or to be implemented at the execution stage upon final affirmance on appeal of the judgment (as in Court of Industrial Relations unfair labor practice cases ordering reinstatement of the worker with accounting, computation and payment of his backwages less earnings elsewhere during his layoff) and that the only reason given in *Fuentebella* for the contrary ruling, viz, "the general harm that would follow from throwing the door open to multiplicity of appeals in a single case" is of lesser import and consequence.

Furthermore, the premise that the accounting portion of the judgment would give rise to a second appeal in the same case is erroneous because taken as a mere incident to the judgment as provided in the cited Rule or as a matter to be implemented in the execution stage, no appeal would lie from the lower court's action approving or disapproving the accounting unless there were gross error, oppression, fraud or grave abuse of discretion amounting to lack of jurisdiction that would be correctible on a special writ of certiorari. It must also be noted that the resort to multiple appeals in a single case has been considerably lessened since the enactment on September 9, 1968 of Republic Act 5440 which did away with the right of appeal to this Court save in the three special cases therein provided[56] and provides only for review on certiorari in this Court of all other final judgments and decree of inferior courts at its judgment and discretion.

ACCORDINGLY, respondent appellate court's decision is set aside and instead judgment is rendered declaring null and void and setting aside respondent judge's amended decision of October 4, 1969 and reinstating the original decision of July 26, 1965. The judge now presiding the Court of First Instance of Cebu in Civil Case No. R-7793 thereof (and whoever may hereafter succeed him) is ordered to proceed forthwith with the implementation of this Court's 1968 judgment in *Dy Chun vs. Mendoza* by making the necessary adjudication within thirty (30)

days from finality of this judgment on the full, accurate and correct accounting of all fruits, interest, profits, assets and properties required of the defendants therein which accounting private respondents (defendants) are hereby ordered to render within thirty (30) days from notice hereof. Good grounds having been set forth and found to order delivery pending appeal of the properties found in the July 26, 1965 judgment to belong to the decedent's estate, private respondents (defendants) are hereby ordered to deliver all such properties to petitioner-administrator within thirty (30) days from finality of this judgment, regardless of any appeal they may take from the said July 26, 1965 judgment and the adjudication that the lower court may make on their accounting (as allowed in *Dy Chun vs. Mendoza*), subject to the provisions of Rule 39, section 3 on stay of execution upon approval of a sufficient supersedeas bond. In view of the reversal herein of the doctrine of *Fuentebella vs. Carrascoso* and the length of time that this dispute between the parties has been pending final determination, private respondents are herein given the option within thirty (30) days from finality of this judgment to take an immediate appeal from the said July 26, 1965 judgment without waiting for the trial court's adjudication on the accounting therein ordered.

With costs against private respondents jointly and severally.

SO ORDERED.

Barredo, J., concurs in a separate opinion.

Makasiar, J., concurs in a separate opinion.

Antonio, Esguerra, Muñoz Palma, and Martin, JJ., concur.

Aquino, J., concurs in Justice Barredo's concurring opinion.

Concepcion Jr., J., is on leave.

[1] Notably, the appellate court's challenged decision of Sept. 21, 1970 and resolution of Dec. 23, 1970 (Annexes A and B, petition); the trial decision of July 26, 1965 (Annex E, petition); and this Court's previous decision of October 4, 1968 involving the same parties in L-25461, *Dy Chun, et al. vs. Hon. Jose M. Mendoza and V. Miranda*, reported in. 25 SCRA 431.

[2] Annex E, petition, pp. 1-2.

[3] Decision in L-25461, *Dy Chun vs. Mendoza*, 25 SCRA 431; emphasis supplied.

[4] *Idem*.

[5] Judge Mendoza's original judgment of July 26, 1965 thus read:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court renders judgment against the defendants and orders defendants to:

"1. Deliver all properties found by the Court to belong to the estate of Hilarion Dydongco, to plaintiff as administrator of the Estate of Hilarion Dydongco;

"2. To render full, accurate and correct accounting of all the fruits and proceeds of the properties which each of the defendants had possessed and which has been found by this Court as properties belonging to the estate of Hilarion Dydongco, from 1935 until the present date;

"3. To render full, accurate and correct accounting of all the fruits, interest, profits and assets as well as properties acquired by the Agusan Commercial Company, New Agusan Commercial Company, East Mindanao Lumber Company, East Mindanao Lumber Co., Inc., from 1935 up to the present date;

“4. To pay by way of exemplary damages, jointly and severally, the sum of P60,000.00 by Dy Sio Pong and Dy Suat Ngo;

“5. To pay counsel for plaintiff, jointly and severally, the sum of P30,000.00 as attorney’s fees, including the cost of this suit.”

[6] 25 SCRA 431, 435.

[7] *Idem* at p. 435; (italics supplied)

[8] *Idem*, italics supplied.

[9] Petition In L-31929, *Miranda vs. Tantuico*, referred to and docketed in Court of Appeals as CA-GR No. 45332-R, Annex K.

[10] *Idem*, Annex L.

[11] Amended decision, Annex D, petition, page 7; italics supplied.

[12] *Idem*, page 5.

[13] *Idem*, pages 7-8.

[14] Petition, page 17, filed on January 11, 1971.

[15] Amended decision, annex D, petition, page 9.

[16] "FOR ALL THE FOREGOING CONSIDERATIONS, this Court amends the July 26, 1965 judgment hereby:

“1. Dismissing the complaint embodied in the first cause of action in the amended complaint against the East Mindanao Lumber Company and the Mindanao Lumber Co., Inc.;

“2. Dismissing the second cause of action of the amended complaint regarding the Plaridel lot, not having been proved and the right to recover the Plaridel property having prescribed;

“3. Declaring that Dy Suat Hong is a builder in good faith on lots Nos. 841-B-4 and 841-B-3;

“4. Ordering the defendants to deliver to the plaintiff as administrator of the Estate of Hilarion Dydongco, within forty-five (45) days from receipt of this judgment all the other properties not affected by the herein amendments and found by the Court in the July 26, 1965 judgment to belong to the Estate of Hilarion Dydongco;

“5. Ordering the defendants who are in possession of the properties found by the Court to belong to the Estate of Hilarion Dydongco to render a full and accurate accounting of all the fruits, assets, proceeds and expenses of said properties including the Agusan Commercial Company and the New Agusan Commercial Company from 1935 until the present date, the written inventory and accounting to be submitted to this Court within sixty (60) days from receipt of this judgment for approval.

“6. Denying the motions for execution, and for new trial and the claim of lack of jurisdiction;

“7. Consistent with the amendments here made, the exemplary damages to be paid to Dy Siu Pong, and Dy Suat Ngo is reduced to P30,000.00 and the attorney’s fees maintained at P30,000.00 both to be paid jointly in equal proportion by the remaining defendants Dy Chun, Dy Suat Hong, Dy Bee, Dy Seko, Tan Ho and Nolasco Dycothay, including the costs of this suit.”

[17] See footnote 16.

[18] See footnote 16.

[19] See footnote 9.

[20] Third special division composed of Rodriguez, Yatco, ponente and Barcelona, JJ.

[21] Annex A, petition, pages 5-6; italics supplied.

[22] *Idem*, page 8; italics supplied.

[23] With Rodriguez, ponente, Cañizares and Barcelona, JJ. voting for the resolution, Reyes, J. dissenting and no vote recorded for Serrano, J.

[24] Rule 135, section 5 (g), mis-cited by the appellate court as Rule 124, sec. 5.

[25] Unreported in Phil. Rep. but reported in XIV Lawyers Journal 305. The decision was penned by Justice Moran on May 27, 1942 for a five-member Supreme Court, composed of Yulo, C.J., Ozaeta, Paras and Bocobo, JJ. The sequel case of Carrascoso vs. Fuentebella is reported in 92 Phil. 948 (April 22, 1953).

[26] *CF. Moran's Rules of Court*, Vol. 2, 1970, ed., pp. 197-204.

[27] *Supra*, at page 2.

[28] XIV Lawyers Journal 305.

[29] *Idem*.

[30] 92 Phil. 948 (April 22, 1953).

[31] At page 6 hereof.

[32] *Supra*, at pages 7 and 8.

[33] Petitioner's brief, page 83.

[34] *Idem*, page 84.

[35] *Supra*, at page 2 hereof.

[36] *Supra* at page 7 hereof. See petitioner's brief, pp. 76, 80, 84, 89, 102, 112, et seq.

[36a] The late Chief Justice Moran thus stresses that "the judge who tries a case in the court below has vastly superior advantages for the ascertain-ment of truth and the detection of falsehood over an appellate court sitting as a court of review. The appellate court can merely follow with the eye the cold words of the witnesses as transcribed upon the records, knowing at the same time, from actual experience, that more or less of what the witness actually did say is always lost in the process of transcribing. * * *. There is an inherent impossibility in determining with any degree of accuracy what credit is justly due to a witness from merely reading the words spoken by him, even if there were no doubt as to the identity of the words. * * *". (*Moran's Rules of Court*, Vol. VI, 1970 ed., p. 146).

[36b] 2 *Moran's Rules of Court*, 1970 Ed. pp. 271-272 and cases cited.

[37] *Supra*, at page 6.

[38] 18 Phil. 257,163; italics supplied, (1911).

[39] L-32532, March 29, 1974.

[40] 30 SCRA 31 (Oct. 31, 1969), per Castro, C.J.; italics supplied.

[41] Rule 15, section 8. See also Rule 37, section 4 providing that "a motion for new trial shall include all grounds then available and those not so included shall be deemed waived. x x x"

[42] Supra, at page 7, hereof.

[43] Supra, at page 5 hereof.

[44] Supra, at page 10; hereof.

[45] Supra, at page 10; see fn. 25.

[46] 2 Moran's Rules of Court, 1970 ed., p. 400.

[47] Supra, at page 5.

[48] Thus, Moran, in Vol. 2 of his treatise, 1970 ed., pp. 399-400, gives the following instances which all deal with interlocutory orders, not judgments: "For instance, an order denying a motion of dismissal founded on lack of jurisdiction and the subsequent motion for reconsideration thereof, is interlocutory because after such denial there are things to be done at the trial court before the case may be said to be completely terminated, such as the filing of the answer, the holding of the trial and the rendition of the judgment on the merits. An order denying a motion for the annulment of a preliminary attachment, or an order denying a petition for alimony pendente lite, or denying a motion for default an order declaring the defendant in default, an order denying or granting preliminary injunctions, or appointing as receiver, or an order denying a motion for relief from an order declaring a defendant in default when no judgment has yet been rendered, or an order setting aside the original judgment rendered pursuant to a compromise agreement and setting the case for trial on the merits, is merely interlocutory, for, after such order is issued there are still many things to be done for a complete disposition of the case. This is without prejudice to the special civil actions for certiorari or prohibition in connection with interlocutory orders issued with excess of jurisdiction or grave abuse of discretion." (Italics supplied).

[48a] 22 SCRA 785, 789, italics supplied.

[49] L-5923, April 29, 1953, per Bautista Angelo, J.; 92 Phil. 1084 (Unreported); italics supplied.

[50] Emphasis supplied.

[51] 53 Phil. 481 (1929); notes in parentheses and emphasis supplied.

[51a] Notes in parentheses and emphasis supplied.

[52] See fn. 25; pp. 13, 23 et seq. hereof.

[53] Africa vs. Africa, 42 Phil. 934; Villanueva vs. Capistrano; Prophylactic Brush Co., et al. vs. Court of Appeals, G.R. No. 46254, Nov. 23, 1938 (Unpublished).

[54] Zaladarriaga vs. Enriquez, 1 SCRA 1188.

[55] See fn. 53 hereof.

[56] The three exceptions are criminal cases involving offenses for which the penalty imposed is death or life imprisonment, naturalization and denaturalization cases and decisions of the Auditor General where appellant is a private person or entity.

CONCURRING OPINION

BARREDO, J.:

I concur in the result, just so this case may be terminated without further delay. The unanimous vote in favor of the judgment herein should discourage any motion for reconsideration. It should be obvious from the result of our voting as reflected in the main opinion and in this separate concurrence that any attempt to have the procedure outlined in the main opinion altered is from the practical standpoint doomed not to be sanctioned. Besides, as to the points of law in dispute, it may be stated that with Justices Fernando 1 and Aquino and myself having actually qualified our votes, the seven unqualified votes supporting the main opinion are, to my mind, not enough to impart full doctrinal status to the pronouncements of the majority.

It is my firm conviction that the holding in *Dy Chun vs. Mendoza*, 25 SCRA 431, which resolved the prelude incident to the case at bar, in the sense that the decision of Judge Mendoza of July 26, 1965 is interlocutory is the law of the case for the purpose of the present controversy. The action of the Court in that case of merely dismissing the petition for mandamus to compel Judge Mendoza to give due course to the appeal of respondents does not constitute, contrary to what is inaccurately stated in the main opinion, a remand of the case to the trial court, if only because neither the case itself nor the records thereof were with this Court then, hence there was nothing to remand in any sense. Much less did this Court's decision qualify in any manner the meaning and import of what it considered to be the interlocutory character of the Mendoza decision, as may be plainly seen in the complete text of Chief Justice Concepcion's decision which I am reproducing in the annex of this opinion.

I hold that as in any other case of an interlocutory order or judgment, the Mendoza decision was subject to modification and even reversed at any time before an appeal therefrom is taken, any adverse resolution of a prior motion for reconsideration thereof notwithstanding. Accustomed as I am to instances wherein the decisions or orders of judges who have either died, resigned or been removed from office, before the finality of said judgments have been either modified or reversed by their successors, upon motions in due course of the parties concerned, I cannot share the view that in rendering his amended decision, Judge Tantuico improperly arrogated unto himself the attributes of a reviewing appellate authority, just because he based his own findings on no more than the same evidence which was before his predecessors. Withal, since not a scintilla of the evidence presented in the court below is before the Court in this proceeding, I consider it unfair for the Court to make reference to Judge Tantuico's amended decision in any manner that might leave the impression that the same is in anyway either capricious or ill considered. Truth to tell, I cannot condemn Judge Tantuico for having acted as he did, because with my own understanding of the law, in the light of the *Fuentebella* ruling before me, I would have probably acted the way he did. Speaking for myself, and judging from the contents and ratiocination of said amended decision, which I have read very carefully, I would say that, contrary to the thrust of the main opinion, the decision of Judge Mendoza ought not to be projected as if it were the last word in the disposition of the questions of fact and law in this case, thereby to enable the appellate court in due time to consider the evidence in this case without feeling hindered by any thought that the Supreme Court intentionally or not, has already formed its opinion as to the correctness of said decision.

Originally, I was resolved to dissent. To be sure, when this case was first deliberated on about five years ago, the consensus among the incumbent justices then, even if not definitely conclusive, was more inclined towards the dismissal of the instant petition, so much so that I was assigned to prepare the main opinion, which I did, as may be seen in the draft thereof, copy of which is hereto attached as Annex A of this separate opinion.

It was only because of the desire of Justice Teehankee, the writer of the present main opinion, to have the case further studied that no final vote was taken. Since then, there have been several changes in the membership of the

Court, and as usually happens in human courts, the consensus remained inconclusive, until Justice Teehankee was able to secure the conformity of six other justices to his draft, at which point, We finally decided to at long last terminate this case before the retirement of Justice Esguerra, hence the marathon session of June 18th last which started at 10:30 o'clock in the morning and continued without any break until past 4:00 o'clock in the afternoon, with the justices partaking of only sandwiches and juices as the discussions, at some points emotional and truly heated, went on. At the final voting, Justice Fernando voted pro hac vice in favor of the judgment, which I understand means, "only for this occasion" or for the purposes of the case at bar only. (See, O by Moreno, p. 374, citing *Bachrach Motor Co. vs. Summers*, 42 Phil. 7.) Justice Aquino also qualified his vote as a concurrence only in the result, and when I voiced the possibility of changing my vote from dissent to concurrence in the result, on the condition that respondents would be allowed to appeal immediately from the Mendoza decision and with the reservation to file this separate opinion, Justice Aquino said he would join me. And since it became obvious then that with only seven votes unqualifiedly supporting the main opinion, I felt that the purported reversal of the Fuentebella doctrine in the main opinion could only have academic worth, I deemed it to be a more practical position for me to definitely give my vote in favor of the result, to the end that, as I have said at the outset, the controversy among the brothers and sisters involved in this case may come to an earlier definite conclusion on the merits, after almost a quarter of century of procedural delays. Anyway, notwithstanding that the procedure actually ordered to be followed in this case hereafter is not in accordance with the Fuentebella ruling, and inasmuch as the Court has agreed to my suggestion that respondents be allowed to appeal immediately, I am satisfied that substantial justice will just the same be ultimately achieved fully, when this case is resolved on the merits by the proper appellate court.

As earlier indicated, I am submitting herewith as Annex A hereof the draft of a decision I prepared more than four years ago when there were less votes in the Court to overturn the Fuentebella ruling. Therein my differences of views with my brethren in the majority now can best be appreciated, particularly as to my position on the law of this particular case and the true and correct concept of an interlocutory order or judgment.

My exercise in matters of adjective law as an active practitioner actually dealing with court procedure all the time, and as an avid student of remedial law before I came to this Court, cautions me against precipitately joining my learned colleagues in making reference, in resolving the main issue of procedure before Us, to the rules on judgments at various stages (Sec. 5 of Rule 36) and immediate execution of judgments directing an accounting (Sec. 4 of Rule 39) and to the ruling in *Arnedo vs. Llorente*, 18 Phil. 257, none of which, to my mind, contemplates the situation in the present case. Surely, the Fuentebella ruling cannot, in my opinion, be in anyway considered as violative of any injunction that cases be speedily and justly disposed of, whether that injunction be deemed as emanating from the Constitution, established jurisprudence or any statutory or moral code.

Likewise, I am not persuaded that the order of immediate execution contained in the judgment herein is in accordance with law, if only because the motion of petitioners in the court below was not premised on Section 2 of Rule 39 but on the insistence of petitioner, despite the *Dy Chun* decision, that the Mendoza decision has already become final and executory, but I cannot disregard the pragmatic consideration that any dissent on my part on this point would be purely academic, considering there are enough votes to carry out the judgment as it is.

I am fully aware of the power of this Court to exempt certain cases from the application of the rules when demanded by the necessity of doing what clearly appears to be a matter of substantial justice to the parties, I honestly believe, however, that there is nothing in the factual situation before Us now that warrants such invocation of Our extraordinary prerogatives. Indeed, I always want to be careful and sparing in departing unequivocal rules and precedents or established doctrines which leave no room for misunderstanding or misconstruction. It is certainly disconcerting to visualize litigants as being players in a game the governing rules

of which are susceptible to being changed in the middle of play, with the referee immediately enforcing the modified rules. Unless it is manifest that denial of substantial justice would result otherwise, the consequent inequity of unnecessarily resorting to such practice is to my mind, beyond debate.

CONCURRING OPINION

MAKASIAR, J.:

I fully concur with the main opinion of Mr. Justice Teehankee. Without intending to detract in any way from Mr. Justice Barredo's recollection of certain incidents in his concurring opinion, I write this brief concurrence to set forth my own recollection thereof after I joined the Court in August, 1970 as follows:

1. During the many past deliberations of the Court on the case, no consensus was reached for dismissal of the instant petition. A tentative consensus in favor of ruling that the original judgment of Judge Mendoza could no longer be amended or modified beyond the thirty-day reglementary period and that the only residual authority of the trial judge under this Court's 1968 judgment in *Dy Chun v. Mendoza* was to enforce the accounting for completion of the relief before the proposed appeal could be given due course was eventually reached.
2. In December, 1974, Justice Teehankee, as agreed, prepared and circulated among the members of the Court his own draft opinion to be considered together with Justice Barredo's draft opinion for dismissal of the petition,
3. In the course of further deliberations, the seven other members of the Court expressed concurrence with Justice Teehankee's draft opinion for the required majority of eight for the rendition of a decision en banc (excluding Justice Fernando, who reserved his vote, and Barredo, and Justice Concepcion who is on leave). The majority further agreed that the Court expressly declare as abandoned the doctrine of *Fuentebella vs. Carrascoso* for the guidance of the bench and bar, and this was incorporated as Part II (pages 27-30) of the main opinion.
4. At the long session of June 18, 1976 when the case was deliberated once more at Justice Barredo's request, and at the end he announced that he would also concur and make the decision unanimous, Justice Fernando gave his concurrence pro hac vice, which to my mind implies that there is now an authoritative statement of doctrine, expressly abandoning as it does, the contrary ruling in the *Fuentebella* case. The governing rules have not been changed "in the middle of play." The Court's decision adhered to the *Fuentebella* case as applied in *Dy Chun vs. Mendoza*, but respondents have been given the option, at Justice Barredo's instance, to file their appeal now instead of waiting for the completion of the accounting, in order to expedite final determination of this long-pending case.

DRAFT OF DECISION

Petition for review of the decision of the Court of Appeals dismissing the petition for certiorari and mandamus filed by the petitioner with the appellate court against respondent judge to annul the amended decision rendered by him and to compel him to order the issuance of a writ of execution of the original decision rendered by his predecessor sentencing private respondents to deliver certain properties to petitioner in order that they may be included as part of the estate of the deceased Hilarion Dydongco and to render an accounting of the fruits and proceeds of said properties, upon the ground that said original decision has already become final and executory.

The antecedent facts may best be stated by quoting the decision of this Court of October 4, 1968 G. R. No. L-25461, penned by former Chief Justice Roberto Concepcion, between practically the same parties and regarding

basically the same issues:

"It appears that as administrator of the Intestate Estate of Hilarion Dydongco, deceased, the settlement of which is the subject matter of Special Proceedings No. 2205-R of the Court of First Instance of Cebu, its Clerk of Court, Vicente Miranda — hereinafter referred to as the Administrator — commenced Civil Case No. R-7793 of the same Court against most of the petitioners herein, namely, Dy Chun, Dy Suat Hong, Dy Bee, Dy Seko, Tan Ho, Nolasco Dycothay (who died later and was substituted by the Administrator of his estate, Jose Kee Dy), Agusan Commercial Company, New Agusan Commercial, East Mindanao Lumber Company, Hiap Bee and East Mindanao Lumber Company, Inc.

'in his amended complaint, Miranda alleged that prior to and at the time of his death in China sometime in 1941, Hilarion Dydongco, who resided in the Philippines since the beginning of the century, had, in Butuan, Agusan and Cebu City, well-developed and established business and commercial enterprises with substantial bank deposits and about 127 parcels of land or property; that Hilarion Dydongco went to China, in 1934, and, thereafter, became seriously ill; that, at that time, his children, Dy Chun and Dy Suat Hong (both defendants in said case R-7793) as well as Dy Siok Lee (who died subsequently and is not a defendant in case No. R-7793) and his proteges Dy Bee and Dy Seko were working as his Manager and/or employees in the aforementioned business establishments, that taking advantage of the absence and bad condition of the health of Hilarion Dydongco, particularly of his subsequent death, the defendants therein (petitioners herein) took over said business, including its assets, goods, merchandise, chattels, machinery, stock-in-trade, cash on hand and in banks, amounts receivable and other properties of the deceased, as well as his store known as 'Dydongco Store', and its branches, and organized first, a fake partnership with the business name of 'Agusan Commercial Company', and then the East Mindanao Lumber Co., which operated and did business with the capital, assets, stock- in-trade, merchandise, funds and other property of said deceased; that with funds belonging to the latter, the defendants therein (petitioners herein) moreover purchased several parcels of land, on one of which a 20-door apartment building was constructed, with funds of the same nature, and let to Chinese tenants and other lessees; that the defendants therein (petitioners herein) had received and are receiving the rentals, earnings and profits derived from said business and property of the deceased; and that said defendants (petitioners herein) hold, manage and operate the aforementioned business, properties and income in trust for the Intestate Estate of Hifarion Dydongco, but have not rendered any accounting thereof.

"The Administrator prayed, therefore, that judgment be rendered declaring that said business, assets, income and other property, are in the possession and under the management and control of said defendants (petitioners herein) as mere trustees thereof, and sentencing them to turn over and deliver the same to him, as Administrator of the Intestate Estate of Hilarion Dydongco, as well as to render accounts and to execute the corresponding deeds of conveyance, in addition to paying damages and the costs. After appropriate proceedings, said Court, presided over by respondent Judge, rendered a decision finding that most of the allegations of the Administrator had been duly proven and, accordingly, sentenced the defendants therein (petitioners herein):

"1. (To) Deliver all properties found by the Court (in the body of its decision) to belong to the estate of Hilarion Dydongco, to plaintiff as administrator of the Estate of Hilarion Dydongco;

"2. To render full, accurate and correct accounting of all the fruits and proceeds of the properties which each of the defendants had possessed and which has been found by this Court as properties belonging to the estate of Hilarion Dydongco, from 1935 until the present date;

"3. To render full, accurate and correct accounting of all the fruits, interest, profits and assets as well as properties acquired by the Agusan Commercial Company, New Agusan Commercial Company, East Mindanao Lumber Company, East Mindanao Lumber Company, Inc., from 1935 up to the present date;

"4. To pay by way of exemplary damages, jointly and severally, the sum of P60,000.00 to Dy Sio Pong and Dy Suat Ngo;

"5. To pay to counsel for plaintiff, jointly and severally the sum of P30,000.00 as attorney's fees, including the cost of this suit.

SO ORDERED.

"Copy of this decision was, on July 30, 1965, served upon the defendants. On August 9, 1965, they filed their notice of appeal and appeal bond and the next day, they submitted their record on appeal. On August 16, 1965, they filed, however, a motion for reconsideration and new trial, which was denied on October 18, 1965. Copy of the order to this effect was served upon them on October 19. On October 26, they filed a notice to the effect that, on October 30, 1965, they would submit for consideration the record on appeal filed on August 10. On November 13, defendants filed additional pages to be attached to said record on appeal, whereas the administrator objected to the approval thereof, upon the ground that the decision was already final and executory. On November 29, respondent Judge issued an order declaring that 'the defendants (petitioners herein) have not perfected their appeal on time' and that the aforementioned decision had, consequently, become final and executory.

"A reconsideration of this order was denied on December 15, 1965, whereupon said defendants — petitioners herein — instituted the present original action for certiorari, prohibition and mandamus, with a writ of preliminary mandatory injunction, against the administrator and respondent Judge, alleging that the latter had acted with grave abuse of discretion amounting to lack of jurisdiction in issuing said orders of November 29 and December 15, 1965, and praying, accordingly, that said orders be declared null and void, and that respondent Judge be directed to give due course to the aforementioned appeal of petitioners herein as defendants in said case No. R7793. Soon after the commencement of these proceedings, or on December 24, 1965, we issued a writ restraining respondents therein, until January 4, 1966, from implementing, enforcing and executing the orders of respondent Judge dated November 29 and December 15, 1965. On January 13, 1966, said writ was incorporated into a writ of preliminary injunction, upon the posting and approval of a bond, filed by the petitioners, in the sum of P5,000.00.

"The petition herein and the answer thereto filed by respondents discuss rather extensively the question whether or not petitioners had perfected their appeal in the lower court within the reglementary period. We find it, however, unnecessary to pass upon said question, for the reason presently to be stated.

"Although declaring that most of the properties involved in the litigation belong to the estate of Hilarion Dydongco, the decision of respondent Judge, dated July 30, 1965, moreover, required petitioners herein to render a 'full, accurate and complete accounting of all the fruits and proceeds' of said properties. After analyzing previous rulings thereon, this Court declared, in *Fuentebella v. Carrascoso*, (G.R. No. 48102, May 27, 1942. See, also, *Salazar v. Torres*, L-13711, May 25, 1960; *Zaldarriagav. Enriquez*, L-13252, April 29, 1961; *Zaldarriaga v. Zaldarriaga*, L-13424, May 31, 1961) that a decision of such nature is interlocutory in character, because it does not dispose of the action in its entirety and leaves something to be done to complete the relief sought, and that, accordingly, it is not appealable, until after the adjudications necessary for the completion of said relief shall have been made. Indeed, the very counsel for petitioners herein now accept this view and concede that petitioners' appeal had been taken prematurely.

"WHEREFORE, this case should be as it is hereby dismissed and the writ prayed for denied, with costs against petitioners herein. The writ of preliminary injunction issued in this case on January 18, 1966, is, accordingly, dissolved. It is so ordered."

After this decision became final, three incidents arose in the court below; (1) motion of petitioner for the execution of the portion of the decision of Judge Mendoza ordering the delivery by defendants of certain properties to plaintiff and to render an accounting within 30 days of the fruits and proceeds of the same during the period of defendants' possession thereof; (2) motion for reconsideration and new trial of the defendants Dy Chun,

Vicente Dy Seko, Silvestre Dy Bee and the Administrator of the Estate of Nolasco Dycothay; and (3) motion for reconsideration of co-defendants East Mindanao Lumber Company, East Mindanao Lumber Co. Inc., Tan Ho and Ty Suat Hong. The trial court denied the first motion and granted partially the motions for reconsideration and new trial as follows:

"1. Dismissing the complaint embodied in the first cause of action in the amended complaint against the East Mindanao Lumber Company and the Mindanao Lumber Co., Inc.;

"2. Dismissing the second cause of action of the amended complaint regarding the Plaridel lot, not having been proved and the right to recover the Plaridel property having prescribed;

"3. Declaring that Dy Suat Hong is a builder in good faith on lots Nos. 841-B-4 and 841-B-3;

"4. Ordering the defendants to deliver to the plaintiff as administrator of the Estate of Hilarion Dydongco, within forty-five (45) days from receipt of this judgment all the other properties not affected by the herein amendments and found by the Court in the July 26, 1965 judgment to belong to the Estate of Hilarion Dydongco;

"5. Ordering the defendants who are in possession of the properties found by the Court to belong to the Estate of Hilarion Dydongco to render a full and accurate accounting of all the fruits, assets, proceeds and expenses of said properties including the Agusan Commercial Company and the New Agusan Commercial Company from 1935 until the present date, the written inventory and accounting to be submitted to this Court within sixty (60) days from receipt of this judgment for approval;

"6. Denying the motions for execution, and for new trial and the claim of lack of jurisdiction;

"7. Consistent with the amendments here made, the exemplary damages to be paid to Dy Siu Pong, and Dy Suat Ngo is reduced to P30,000.00, and the attorney's fees maintained at P30,000.00 both to be paid jointly in equal proportion by the remaining defendants Dy Chu, Dy Suat Hong, Dy Bee, Dy Seko, Tan Ho and Nolasco Dycothay, including the costs of this suit."

In other words, respondent judge reconsidered and set aside or modified the previous decision of Judge Mendoza, and so, against the above judgment, a petition for certiorari was filed with this Court, and We referred the same to the Court of Appeals. In due time and after proper proceedings, the appellate court rendered judgment dismissing the said petition thus:

"In view of this ruling of the Supreme Court, express(ly) declaring that the decision in question of former Judge Jose M. Mendoza is merely interlocutory in character and that the same is not appealable yet, and issuance therefore of the controversial amended decision of the now respondent Judge Francisco Tantuico, Jr. could hardly be said to have been issued with grave abuse of discretion, much less, without or in excess of jurisdiction. The disputed decision (first) of the former Presiding Judge Jose M. Mendoza, being interlocutory in essence, the succeeding Presiding Judge, therefore, now respondent Judge, has jurisdiction and is clothed with authority to conduct further proceedings, consider additional motions, rule on issues presented by the parties, and finally to issue any orders, processes and promulgate another decision. We, therefore rule out the petitioner's other argument that the original decision in the case has already become final and executory, in view of the Supreme Court ruling that said decision is interlocutory, hence unappealable. As the office of certiorari only lies to correct acts of the lower court committed without or in excess of jurisdiction, and with grave abuse of discretion. We find the present petition devoid of merit."

with Justice Andres Reyes dissenting.

A motion for reconsideration thereof was denied, with the same vote, in a resolution reiterating practically the same considerations of the original decision. Petitioner has come to this Court with the following assignment of

errors:

"FIRST ASSIGNED ERROR

THE HONORABLE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT JUDGE, HON. FRANCISCO TANTUICO, JR.,: 'CAN, AS HE DID, AMEND THE DECISION OF THE PRIOR PRESIDING JUDGE OF THE SAME CFI AND THAT IN SO DOING HE ACTED WITHIN HIS JURISDICTION AND ACCORDING TO HIS DUTY AS COURT . . .'

"SECOND ASSIGNED ERROR

THE HONORABLE RESPONDENT COURT OF APPEALS ERRED IN HOLDING THAT THE DECISION (ANNEX 'E') OF NOW RETIRED JUSTICE JOSE M. MENDOZA WHO PRESIDED BRANCH VI, COURT OF FIRST INSTANCE OF CEBU, IS INTERLOCUTORY IN ESSENCE HENCE THE SUCCEEDING PRESIDING JUDGE OF THE SAME COURT 'HAS JURISDICTION AND IS CLOTHED WITH AUTHORITY TO CONDUCT FURTHER PROCEEDINGS, CONSIDER ADDITIONAL MOTIONS, RULE ON ISSUES PRESENTED BY THE PARTIES, AND FINALLY TO ISSUE ANY ORDERS, PROCESSES AND PROMULGATE ANOTHER DECISION.'

"THIRD ASSIGNED ERROR

THE HONORABLE RESPONDENT COURT OF APPEALS ERRED IN NOT CONSIDERING THE PROPRIETY, ETHICAL CONSIDERATION AND QUESTIONS THAT ARE INVOLVED WHEN RESPONDENT JUDGE, HON. FRANCISCO TANTUICO, JR. PROCEEDED TO CLOTHE HIMSELF AND ASSUMED APPELLATE AUTHORITY BY REVIEWING, REVERSING AND SETTING ASIDE THE ORIGINAL DECISION (ANNEX 'E') AND PROMULGATING AN 'AMENDED DECISION 1 (ANNEX 'D') ALL IN GROSS, EVIDENT ABUSE OF JUDICIAL DISCRETION AND WITHOUT BASIS IN LAW, IN FACT AND IN JURISPRUDENCE.

"FOURTH ASSIGNED ERROR

THAT HON. RESPONDENT COURT OF APPEALS ERRED IN NOT CONSIDERING THE FACT THAT BY HOLDING THAT THE DECISION IS INTERLOCUTORY IN ITS ENTIRETY PETITIONER IS DENIED UNJUSTIFIABLY, UNREASONABLY AND WITHOUT DUE PROCESS OF THE RIGHTS OF OWNERSHIP."

The first two assigned errors present no difficulty. In effect, the contention of petitioner is that the decision of Judge Mendoza is not interlocutory. At this stage, We do not believe it is legally possible, much less proper, for the Court to sustain petitioner's pose. Assuming that the disposition of an action of such nature as that filed by petitioner, which is for the recovery of properties allegedly belonging to the estate of a deceased person, with accounting of fruits, profits and proceeds received by private respondents during the period of supposed illegal possession, may be divided into two separate stages, namely, (1) the determination of whether or not the said properties really belong to such estate and (2) the approval of the accounting prayed for, it is very clear from the decision of this Court aforequoted that what was declared therein as interlocutory was precisely the order of Judge Mendoza upholding the estate's right of ownership over the properties in question. This cannot be doubted because at the time the said order was appealed, the second aspect aforementioned regarding the accounting had not yet been started. There is absolutely nothing in the opinion of Chief Justice Concepcion to indicate that the interlocutory character attributed by it to the said order is of the nature now proposed by petitioner to the effect that the tenor and contents of the same may not be modified, altered or amended and that the only remaining authority of the court is to consider and approve the accounting ordered to be made. In other words, whatever merit there may be in petitioner's well presented arguments regarding the need to re-examine the ruling of this

Court in *Fuentebellavs. Carrascoso*, G.R. No. L-48102, May 27, 1942, XIV Lawyers Journal 305, as reiterated and elucidated further in *Zaldarriaga vs. Zaldarriaga*, on April 29, 1961, G.R. No. L-13252, 1 SCRA 1188, this is not the appropriate occasion for such suggested endeavor. In the instant case, We are bound by Our above decision of October 4, 1968 as the law of the case. Definitely, We cannot anymore reverse Our holding that Judge Mendoza's order or decision is interlocutory.

In any event, We are not inclined to go along with petitioner's posture. Relying on the dissertation made by Justice Andres Reyes of the Court of Appeals in his dissenting opinion from the majority decision of the appellate court in this case, petitioner makes a vigorous plea for a re-examination of this Supreme Court's ruling in *Fuentebella vs. Carrascoso*, *supra*, as suggested by the distinguished appellate justice in his critical analysis of said precedent. Brushing aside, as inconsequential in the final disposition of this case, the matter of possible impropriety of a lower collegiate court judge insisting by casting a dissenting vote on the reversal of a ruling of the Supreme Court instead of abiding by it, albeit expressing his disagreement therewith, We are now faced with the task of deciding whether or not to accede to the reexamination suggested. In this connection, it is but proper to note what Mr. Justice Manuel Moran, later on Chief Justice, author of the most commonly cited work on remedial law, entitled *Comments on the Rules of Court*, held for a unanimous Court in *Fuentebella*:

"We would deem, however, the impropriety of the action of no moment and would consider it as an appeal by certiorari had we found merits in petitioner's contention. But we find that defendant's appeal was rightly dismissed. The judgment rendered by the Court of First Instance of Manila declaring plaintiff entitled to share in the assets of the partnership and directing the defendant to render an accounting of the expenses incurred in the purchase and exploitation of the mining claims, is not final but merely interlocutory and, therefore, not appealable.

"Rule 41, Section 2, of the Rules of Court, provides that 'no interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other.' This provision has been taken substantially from Section 123 of our Code of Civil Procedure which recites as follows:

'No interlocutory or incidental ruling, order, or judgment of the Court of First Instance shall stay the progress of an action or proceedings nor shall any ruling, order, or judgment be the subject of appeal to the Supreme Court until final judgment is rendered for one party or the other.'

"In commenting on this article, we observed in *Go Quico v. Municipal Hoard of Manila*, 1 Phil. 502, that in considering the American authorities it must be borne in mind that probably not one of the statutes therein construed contained such strong prohibitions against appeals from interlocutory resolutions as are found in our Article 123. The evils resulting from such appeals under the *Ley de Enjuiciamiento Civil* were well known, it was to cure such evils that this article was adopted. It expressly prohibits appeals not only from interlocutory orders but also from interlocutory judgments. This prohibition is reiterated in Article 143, which says: 'upon the rendition of final judgment disposing of the action, either party shall have the right to perfect a bill of exceptions, x x x.'

"Under the Spanish procedure, appeals could be taken from any interlocutory order or judgment, with the result that in a single case there were so many appeals and the proceedings were so delayed that in many instances parties could not, or hardly, survive the litigation. Either they died before the rendition of the final judgment or, if they survived, the winning party not infrequently found himself sustaining more losses than the benefits he expected to derive from his judgment. This is the judicial irony which Section 123 of our Code of Civil Procedure, now Rule 41, Section 2, of the new Rules of Court, was intended to prevent. The purpose of the provision is to avoid multiplicity of appeals in a single case, and to that effect it prohibits appeal until the case has

been definitely and completely disposed of by the court, that is, until a final judgment is rendered therein.

"We have on several occasions defined what a final order or judgment is as distinguished from what is merely interlocutory. In *Mijia v. Alimorong*, 4 Phil. 572, we said that 'a resolution, order of judgment is appealable when it finally disposes of the legal proceeding pending before it, so that nothing more can be done with it in that court.' This definition has been strictly and uniformly adhered to by this Court in subsequent cases. (CF. *Government v. Bishop o/Nueva Segovia*, 17 Phil. 487, 489; *People v. Macaraig*, 54 Phil. 904, 905). In *Roa v. Mojica*, 8 Phil. 328, the action was for partition of real property and from the judgment rendered designating the persons entitled to participate in the partition, defendant therein appealed. This Court held that the judgment was not final but merely interlocutory. Something had yet to be done for the complete disposal of the action, to wit, the appointment of commissioners of partition if the parties did not come to an amicable partition among themselves, the making of partition by said commissioners, the filing of their report and the rendition of judgment of such report. In *Natividad v. Villarica*, 31 Phil. 172, plaintiff sought to recover his contribution to the partnership formed between him and the defendant. The latter averred that the partnership had been dissolved after due accounting to which plaintiff refused to assent. The trial court rendered judgment declaring the partnership dissolved as of the date therein stated and ordered the defendant to render an accounting. In dismissing defendant's appeal, we held that the judgment did not terminate the case in the Court of First Instance and was, therefore, not appealable until 'the accounts to which plaintiff was entitled to have rendered her were either approved or disapproved.' We reaffirmed this ruling in *Vivencio V. Borja*, 50 Phil. 148, and *Sancho v. Lizarraga*, 55 Phil. 601.

"The foregoing cases supply a clear and unequivocal criterion for determining what a final order or judgment is, as distinguished from what is interlocutory. If the judgment completely disposes of the action, it is final and therefore appealable; if it does not and leaves something to be done for the completion of the relief sought, it is not final and no appeal therefrom will be allowed.

Unfortunately, however, other cases decided by this Court have thrown this rule into confusion and thwarted, undesignedly to be sure, the intent of the law they purport to interpret. Thus, in *Africa vs. Africa*, 42 Phil. 934, the action was for partition of real property, but the defendants alleged exclusive ownership. On the issue thus joined, judgment was rendered declaring plaintiffs and defendants co-owners of the property and ordering that the same be partitioned among them. On appeal, this Court held that the judgment was final and therefore appealable, as it disposed of the claims of the defendants. This ruling was reiterated in *Villanueva v. Capistrano*, 49 Phil. 484. Again, in *Heacock v. American Trading Co.*, 53 Phil. 481 judgment was rendered declaring the trademark therein disputed to belong to the plaintiff, and ordering the defendant to render, within fifteen days, an accounting of the profits it had obtained from the illegal use of the trade-mark. Defendant, without rendering an accounting, interposed an appeal from the judgment. Upon the question as to whether the judgment was final or merely interlocutory, this Court held: in this kind of a case, in particular, and in accord with the weight of authority, we hold that, under the issues made by the pleadings, the primary purpose in both cases was to ascertain and determine who was the true owner and entitled to the exclusive use of the disputed trade-mark, and that the judgment which was rendered by the lower court was a judgment on the merits as to those question, and that the order of the court for an accounting was based upon, and is incidental to, the judgment on the merits. That is to say, that the judgment which the lower court rendered was a final judgment within the meaning of Section 123 of the Code of Civil Procedure; that in this kind of a case an accounting is a mere incident to the judgment; that an appeal lies from the rendition of the judgment as rendered; and that for such reason it was the legal duty of the lower court to sign and certify the bills of exceptions as tendered.' This ruling was reiterated in *Prophylactic Brush Co. et al. v. Court of Appeals et al*, G.R. No. 46254, November 23, 1938 (Unpublished).

"The *Africa* case was distinguished by this Court from the *Mojica* case in that, in the former the defendants alleged exclusive ownership which the defendant in the latter did not. Similarly, the *Heacock* case was

distinguished from that of Villarica in that, while in the latter the accounting was the main action, in the former, it was merely incidental to the question of trade-mark. In both cases (the Africa and the Heacock), the cardinal consideration which apparently induced this Court to a different conclusion from that reached in the other cases is that the judgments rendered therein disposed of the contentions of the respective defendants. We are now convinced that, if we are to achieve the true purpose of Section 123 of Act No. 190, now Rule 41, Section 2, the distinctions thus established are of no consequence and the rationals which induced the conclusion arrived at in the Africa and Heacock cases mistakes the true test of what a final judgment is for purposes of appeal. Whether or not the defendant alleged exclusive ownership in an answer to a complaint for partition, if the judgment therein rendered is for partition, said judgment though disposing of defendant's contention, does not dispose completely of the case. Other proceedings have yet to be taken for the completion of the relief sought, such as, the appointment of commissioner's of partition; the making of the partition by the commissioners; their report to the court; and the rendition of the court's judgment thereon. Likewise, whether or not the action for accounting is the principal one or is merely incidental to another, the judgment requiring such accounting cannot be final. The actual rendition of such account and the judgment of the court thereon are other links in a chain of proceedings essential for the complete termination of the case. And the true test for determining whether an order or judgment is final for purposes of appeal is not whether the judgment disposes of the contentions of the parties, or whether it touches the merits of the case, but whether 'it finally disposes of the legal proceeding, so that nothing more can be done with it on the court where it is determined (*Mejia v. Alimorong*, supra), or in the language of Section 143 of Act No. 190, whether it disposes of the action.' To supply any other criterion is to bring confusion, to what otherwise is a plain and unequivocal rule of law.

'it may be true that actual partition in the Africa case or actual accounting in the Heacock case may greatly prejudice the defendant if, on appeal, the judgment is reversed, for in such eventuality the proceeding for partitioner accounting, which may have been expensive, will have become unnecessary. But a like prejudice may be imagined for the plaintiff in the event of affirmance of the judgment, for then he will have to go back to the trial court for actual partition or accounting with the possibility of a second appeal from the judgment that may be rendered thereon. These possibilities on both sides of the question were, undoubtedly, present in the minds of the lawmakers when Section 123 of Act No. 190 was passed, but they considered the latter as of a graver mischief when, without distinction, they prohibited an appeal from any kind of interlocutory orders or judgments. And we think the choice is not without reason because the affirmance of a judgment is more probable than its reversal by virtue of the presumption of its correctness. (*People v. Wilson*, 52 Phil., 907).

"That the true rule is to prohibit generally and without distinction appeals from any kind of interlocutory orders or judgments, is attested by a consideration of analogous instances where the law entirely ignores the inconveniences to a party wishing to appeal. For example, the defendant, filing a motion to dismiss on the ground that the plaintiff has no capacity to sue, is compelled, if his motion is overruled, to file his answer and proceed to trial so that the court may render a final judgment. If on appeal, the order overruling one motion is reversed, then, certainly, all the proceedings had after the overruling of such motion by the trial court would have been useless and vexatious to the defendant. But may those inconveniences be validly pleaded to support the contention that an appeal lies against the order overruling a motion to dismiss? The reason for the law seems clear, therefore, that even if, in compelling the defendant in the Heacock case for instance, to render an accounting, so much of his commercial secrets would have been unnecessarily revealed should the judgment be thereafter reversed, this private and exceptional loss cannot compare with the general harm that would follow from throwing the door open to a multiplicity of appeals in a single case.

"In the light of these considerations, we reverse the ruling laid down in *Africa v. Africa*, 42 Phil. 934, as reiterated in *VManueva v. Capistrano*, 49 Phil. 460, as well as the ruling laid down in *Heacock v. American Trading Co.*, 53 Phil., 481, as reiterated in *Prophylactic Brush Co. et al. v. Court of Appeals et al.*, G.R. No. 46254, November 23, 1938 (unpublished), and reaffirm the doctrine laid down in *Ron v. Mojica*, 8 Phil. 172, and *Natividad v. Villarica*, 31 Phil. 172 as reiterated in *Vivencio v. Borja*, 50 Phil. 148, and *Sancho v. Lazarraga*, 55 Phil. 601.

"The order of dismissal of petitioner's appeal rendered by the Court of Appeals is hereby affirmed, with costs against petitioner."

In the light of the consideration thus luminously and logically put forth by a member of the Court recognized to be more than ordinarily knowledgeable in matters of procedure, and considering that the arguments adduced by Justice Reyes and petitioner's counsel, which are more or less mere repetitions of those already taken into account in the above opinion, We are loathe to further confuse the bench and the bar with another ruling inconsistent therewith, which would make it patent that the Supreme Court cannot make up its mind on a point of procedure, as to which it should not be uncertain precisely because it promulgated the rules on the matter 1 subsequent already to the conflicting decisions in *Roa vs. Mojica* and the ones that followed it on the one hand, and in *Africa vs. Africa* and the ones that reiterated it, on the other. It is to be presumed that the Court had these two lines of decisions in mind and that in formulating Section 2 of Rule 41 and the other provisions related thereto it meant to remove any doubt as to which line to follow. It was precisely to this end that Mr. Justice Moran elucidated on the true import of the pertinent provisions of the Rules of Court. Indeed, We cannot perceive any cogent reason for returning to the overruled doctrine in *Africa vs. Africa*. If any modification of the *Fuentebella* ruling is believed desirable, it should be done only by amending the corresponding rules, in order that the change may have prospective effect only and proceedings in which the parties and the Court had to adhere to said ruling, it being the prevailing one, may not be placed at a disadvantage merely because they have followed the existing rule and its interpretation by the Supreme Court. For the present, the Court does not contemplate any such modification or amendment of the existing rules.

Withal, in *Zaldarriagavs. Enriquez*, G.R. N ., o. L-13252, April 29, 1961, 1 SCRA 1188, Mr. Justice Arsenio Dizon, who was a well known and respected professor and reviewer of remedial law in many law schools for a long time, explained further that the order recognizing the right of the plaintiff to a partition is not the judgment, for under Section 7 of Rule 71, 2 it is only after hearing (the report of the commissioners) that the court is supposed to render a final judgment. Here is . how Mr. Justice Dizon spoke for a unanimous court in that

"While upon the facts above stated, the respon dent court, in our opinion, erred firstly, in not allowing petitioner to adopt the appeal bond and the record on appeal filed by the other defendants and which court had already approved, and secondly, in sustaining the motion to dismiss filed by respondent Basilia F. Vda. de Zaldarriaga, because (a) the appeal bond and record on appeal filed by other defendants were sufficient for the purposes of the appeal interposed by the herein petitioner, and (b) because the latter filed her separate record on appeal within the extension granted by the lower court itself, still we are constrained to deny the present petition for mandamus to compel the respondent court to give due course to petitioner's appeal, for the reason that the decision from which she and her co- defendants are appealing is not final but interlocutory (*Fuentebella vs. Carrascoso*, G.R. No. L-48102, May 27, 1942). It is true that in *Africa vs. Africa*, 42 Phil. 934 and other cases it was held — contrary to the rule laid down in *Roa vs. Mojica*, 8 Phil. 328; *Rodriguez vs. Ravi I an*, 17 Phil. 63 — that in a partition case where defendant relies on the defense of exclusive ownership, the action becomes one for title and the decision or order directing partition is final, but the ruling to this effect has been expressly reversed in the *Fuentebella* case which, in our opinion, expresses the correct view, considering that a decision or order directing partition is not final because it leaves something more to be done in the trial court for the complete disposition of the case, namely the appointment of commissioners, the proceedings to be had before them, the submission of their report which, according to law, must be set tor hearing. In fact, it is only after said hearing that the court may render a final judgment finally disposing of the action (Rule 71, Section . Rules of Court). Precisely in accordance with this procedure the decision from which petitioner and her co-parties intend to appeal provides for the appointment of the Clerk of Court and Segundo Hipolito as Commissioners 'to make an equitable separation, delineation and partition o f the respective share of the land pertaining to each co-owner, etc.'"

Thus, the only point which We have to determine is whether or not, because of the interlocutory character of said decision or order, the respondent judge acted illegally or in excess of his jurisdiction or with grave abuse of discretion in practically setting aside and modifying the same substantially, upon a review of the record made by him and for the reasons stated in the amended decision. In other words, the broad fundamental issue here revolves around the power of a court relative to an interlocutory order or judgment. In this respect, We need only to recall that in *Manila Electric Co. vs. Arciaga, et al* 50 Phil. 144, this Court explained the nature of an interlocutory order or judgment thus:

"As to the legal question whether or not the decision of this Court revoking the order of the lower court sustaining the demurrer to the complaint constitutes *res judicata*, since the facts involved are the same, it is sufficient to cite the doctrine laid down by the Supreme Court of Arizona in the case of *Reilly vs. Perkins* (56 Pac, 734), which reads as follows:

"The doctrine of *res judicata* amounts simply to this: That a cause of action once finally determined without appeal, between the parties on its merits, cannot afterwards be litigated by new proceedings, either before the same or any other tribunal. It is only, however, a final judgment upon the merits to which this doctrine applies. Until final judgment is reached, the proceedings are subject to change and modification, are imperfect and inchoate, and can avail nothing as a bar until the judgment, with its verify as a record, settles finally and conclusively the questions and issues. An interlocutory order or decree made in the progress of a case is always under the control of the court until the final decision of the suit, and may be modified or rescinded upon sufficient grounds shown at any time before final judgment, (though it be after the term in which the

interlocutory order or decree was given, and is not, therefore, final judgment, to which the doctrine of *res adjudicata* can apply. *Posters vs. Richard Busteed*, 100 Mass.. 412; *Webb vs. Buckelew*, 82 N.Y., 555; *Black, Judgm.* 308.)

"An interlocutory order, overruling a general demurrer to a complaint, is not *res judicata* of its sufficiency to support a judgment for plaintiff, and hence is no bar to the subsequent vacation of such order at a subsequent term, and the entry of judgment on the pleadings in favor of defendant, since the doctrine of *res judicata* applies only to a final judgment on the merits."

Moreover, it must be borne in mind that in the juridical sense, the prayer for accounting or partition in relation to a controversy wherein ownership of property is in issue or where the right to an accounting or to a partition is disputed, is not a mere incident or consequence of the main issue but is one of the reliefs arising from a single cause of action together with the ownership or right to accounting or partition alleged in the complaint. Viewed in this light, it is easy to understand that only a single judgment can be rendered by the court in a case of such nature, for the simple reason that in the same manner that a single cause of action cannot be split in order to be made the subject of more than one complaint or action, the judgment in regard to a single cause of action may not also be split into several parts, each having a final character of its own. It is in the very nature of these kinds of action that some sort of a preliminary finding has to be made before the longer and more complicated matter of accounting or partition is taken up, tried and determined by the court. And because such finding is intended to be merely preliminary, since it is conceivable that the same may be affected by incidents or questions related to the actual accounting or partition, it is but proper and wise to leave room for the court to make such modification, amendments and alteration of its preliminary findings and holdings as it may deem demanded by the circumstances and interests of justice. It is not, therefore, correct to say, as Justice Reyes asserts in his dissenting opinion, that multiplicity of appeals is more tolerable than the impairment of the stability of a judgment, since there is no judgment to speak of but merely a preliminary finding which is not supposed to acquire any stability until the final judgment is rendered. Furthermore, the point of policy underlying the *Fuentebella* ruling as stated in the opinion penned by Chief Justice Moran, is the avoidance of multiple appeals, hence the test of the finality of a judgment is not whether or not it disposes of the contention of the parties or touches on the merits of the case but

whether it finally disposes of the legal proceeding, so that nothing more can be done with it in the court where it is determined or whether it disposes of the action. Accordingly, We cannot accept the theory that the preliminary finding must be considered as beyond reconsideration by the court, even if he should find the same erroneous after a review of the record. And the fact that herein respondent judge was not the one who made the preliminary finding is immaterial, for what the original judge can do, his successor can also do. (*Mercado vs. Ocampo*, 72 Phil. 318).

Thus, We find no error in the following holding in the resolution of the Court of Appeals under review:

"The decision of then Judge Mendoza being still interlocutory, the main issue is whether a presiding Judge of a Court of First Instance acted with grave abuse of discretion amounting to a total lack of jurisdiction in changing or amending a decision which was still. interlocutory, made by the prior presiding Judge of the same Court of First Instance.

"We reiterate our finding that respondent Judge can, as he did, amend the decision of the prior presiding Judge of the same CFI and that in so doing he acted within his jurisdiction and according to his duty as a court, with the inherent power to amend and control his processes and orders so as to make them conform to the law and justice (Sec. 5, Rule 124, Rules of Court). This principle has been decided time and again, with the holding that a presiding judge may amend, modify and correct a decision of a previous presiding judge of the same court where said decision is not yet final and executory (*Daleon vs. CFI of Quezon*, CA-G.R. No. 22416-R, March 31, 1958; *Mercado vs. Ocampo*, 72 Phil. 318; *Dunning & Co. vs. See Pua*, CA-G.R. No. 8325-R, Oct. 26, 1942; *Tan Le Po vs. Amparo*, CA-G.R. No. 5615-R, June 23, 1950; *San Miguel Brewery, Inc. vs. CIR*, 91 Phil. 178).

"On the same point is the case of *Chuakay vs. Herrerias*, CA- G.R. No. 3893-R, June 30, 1952.

It can be done upon evidence received by the former presiding Judge (*People vs. Samson*, CA-G.R. No. 1099-CR, Oct. 29, 1947).

"The respondent Judge having acted within his jurisdiction, any errors in the amended decision promulgated by him would be errors of judgment and not of jurisdiction, hence, correctible by regular appeal and not by the special civil action of certiorari."

IN VIEW OF ALL THE FOREGOING, the decision and resolution of the Court of Appeals under review are affirmed, with costs against petitioner.

[1] Justice Fernando made it clear that at the beginning he was thinking of abstaining, but since there was an evident sentiment for rendering without effect the amended decision of Judge Tantuico, he could concur in the main opinion pro hac vice, just so the eight votes necessary for a judgment may be had.

[2] Section 7 of Rule 69 of the Revised Rules of 1964.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.