

JOSE S. MATUTE, PETITIONER, VS. THE COURT OF APPEALS (THIRD DIVISION) AND MATIAS S. MATUTE, RESPONDENTS.*G.R. No. L-26751. January 31, 1969*

Ponente: CASTRO, J.

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The present three petitions for certiorari with preliminary injunction (L-26751, L-26085 and L-26106) were separately inter-posed within the short span of five months by Jose S. Matute, one of the fifteen heirs to the Amadeo Matute Olave estate. Because these petitions are intertwined in several material aspects and arose from a common environmental setting - the intra-fraternal strife among the Matute heirs which has unduly delayed for more than a decade the settlement of the Matute estate - this Court has decided to embody in a single decision the independently discussed resolutions of the issues raised in the said petitions.

L-26751

Although the petition in L-26751 was filed the latest (October 27, 1966), we shall dispose of it first because our pronouncements and observations in this case have direct and concrete relevance to the other two.

The antecedent events trace their origin to August 20, 1965 when Carlos S. Matute, one of the Matute heirs and a full-blood brother of both the petitioner and the herein respondent Matias S. Matute, filed in special proceeding 25876 (settlement of the Matute estate) a petition praying for the removal of Matias as co-administrator and his (Carlos') appointment in such capacity. Carlos alleged that "for a period of more than two years from the date of his appointment (on May 29, 1963), said Matias S. Matute has neglected to render a true, just and complete account of his administration," and that he "is not only incompetent but also negligent in his management of the estate under his charge consisting of five haciendas on account of a criminal charge for murder filed against him which is occupying most of his time."

The respondent Matias claims that he forthwith interposed an opposition to the aforesaid petition, and the record discloses that he later filed an amended opposition dated August 25, 1965 wherein he contended

"1. That the allegation ... that the herein co-administrator for the two years of his administration, 1963 and 1964, did not render any accounting is completely without basis and false, because the records show that under date of May 20, 1964, he submitted to this Honorable Court with copies furnished to all the parties concerned, including Carlos S. Matute, his accounting for 1963, that on Feb. 8, 1965, he filed his accounting for 1964, which accounts for 1963 and 1964 have been approved by majority of the heirs composing 63% interests in the estate as shown by the attached manifestation. ...

"2. That his competence to act as administrator has been established to the satisfaction of this Honorable Court as evidenced by his appointment by a fixed, final and executory order dated May 29, 1963; and Carlos S. Matute is now estopped from denying his [Matias S. Matute's] competence and qualification by reason of his failure to object to the appointment of herein Judicial Administrator at the time application was made therefor;

"3. ... The records of the pertinent case in the Court of First Instance of Davao will easily discover that the 'criminal charge' supported by perjured testimony is nothing but a trumped-up affair initiated by persons intent on intimidating the herein Judicial Administrator into betraying his sworn duty to protect and safeguard the interest of the Estate. The records of the said case will also reveal that it has not occupied any time at all of the herein Judicial Administrator, for aside from a single hearing last December 1964 on his application for bail ... no hearing has been held on the said case up to the present."

Subsequently, Matias filed a memorandum dated September 12, 1965 in support of his foregoing opposition.

On September 21, 1965 the heirs Agustina Matute Candelario, Elena Matute Candelario and Amadeo Matute Candelario and their mother and legatee Anunciacion Candelario, moved for the immediate appointment of Agustina Matute Candelario, Carlos S. Matute and Jose S. Matute, herein petitioner, as joint co-administrators or anyone of them in place of Matias S. Matute, whose removal they also sought together with the ouster of the general administrator Carlos V. Matute, on the following additional grounds:

1. Despite the vast resources and income of the estate, the present administrators have failed to pay even the annual real property tax for the years 1964 and 1965;
2. The financial statements of both administrators were not properly signed and authenticated by a certified public accountant, and do not contain the exact entries as filed by former administrators containing the daily and monthly entries of receipts and disbursements;
3. Both administrators have deliberately failed to file their inventories and statements of accounts on time, and did so only when ordered by the probate court;
4. Both administrators have made unauthorized disbursements as shown by their financial statements; and
5. The probate court has discretion to remove the administrator.

It appears that during the reception of evidence conducted on December 29, 1965 by the probate court (Branch IV of the Court of First Instance of Manila with Honorable Emigdio Nietes as the then presiding judge), Carlos S. Matute and the Candelario -Matute heirs submitted their respective lists of exhibits in support of their motion to oust Matias. On January 8, 1966 Matias filed a written objection to the admission of the movants' exhibits on the ground that the same were hearsay, self-serving, irrelevant and/ or mere photostatic copies of supposed originals which were never properly identified nor shown in court. Four days later, or on January 12, 1966, the counsel for Matias filed with leave of court a "Motion to Dismiss and/or Demurrer to Evidence" which avers that "there is no sufficient evidence on record to justify and support the motions for the removal of the herein co-administrator Matias S. Matute." In the same motion, said counsel reserved the right to introduce evidence in behalf of his client should the foregoing motion be denied.

On January 31, 1966 the probate court issued an order, the dispositive portion of which reads:

"FOR ALL THE FOREGOING, the Court hereby removes co-administrator, Matias S. Matute, as such co-administrator of the estate and orders him to submit a final accounting of his administration together with his past administration accounts which have not been approved, and, in his stead appoints Jose S. Matute, a brother by the same mother of Matias S. Matute, as co-administrator, who is hereby required to put up a bond of P15,000.00, and thereafter immediately qualify in his commission and assume the responsibility of co-administrator...."

Forthwith, Matias interposed with the Court of Appeals a petition for certiorari with preliminary mandatory injunction (CA-G.R. 37039-R) dated February 1, 1966, praying that the aforesaid order of January 31, 1966 be set aside as a nullity for having decreed his removal without due process and the appointment of Jose S. Matute

without the requisite hearing.

On March 4, 1966 the Court of Appeals gave due course to the aforesaid petition and resolved to grant a writ of preliminary injunction against Jose S. Matute and the Honorable Judge Emigdio Nietes, respondents in CA-G.R. 37039-R, conditioned on the filing of a P1,000 bond by the therein petitioner Matias, the respondent herein. On March 22, 1966 Jose S. Matute moved for the dismissal of the abovementioned petition on the ground that the Court of Appeals does not have jurisdiction to take cognizance of the same since the value of the estate involved is more than P200,000. He further contended that the value of the Amadeo Matute Olave estate for purposes of jurisdiction had already been resolved in CA-G.R. 35124-R where the Court of Appeals refused to take jurisdiction over a petition for certiorari contesting the appointment of Matias Matute as co-administrator, on the ground that the value of the Matute estate was placed at P2,132,282.72 as evidenced by a "Compromise Agreement" dated April 12, 1956 which was duly signed by all of the heirs.

Despite repeated urgent motions filed by Jose S. Matute praying that the Court of Appeals resolve with dispatch the issue of jurisdiction, the said appellate tribunal instead required then respondent Jose S. Matute to answer, which he did. However, on October 27, 1966 herein petitioner Jose S. Matute interposed the instant petition for certiorari with preliminary injunction against the Court of Appeals and Matias Matute, challenging the jurisdiction of the respondent Court of Appeals upon two basic contentions:

"The Court of Appeals has no jurisdiction to entertain, give due course, and much more to issue a writ of preliminary injunction, against the petitioner, Jose S. Matute, and respondent Judge Emigdio Nietes in CA-G.R. No. 37039-R x x x because the estate of Amadeo Matute Olave is worth more than P200,000.00; and

"The same Court of Appeals in CA-G.R. No. 35124--R, on January 27, 1965, special fourth division, has ruled that the Court of Appeals has no jurisdiction on the estate of Amadeo Matute Olave in the matter of the appointment and removal of its administrators."

The respondent Matias Matute does not controvert the petitioner's claim that the value of the estate of their deceased father exceeds P200,000. He maintains, however, that the respondent Court of Appeals has jurisdiction over CA-G.R. 37039-R "because the subject matter involved is merely x x x the right to collect the (monthly) rentals due the Estate in the sum of P5,000.00" pursuant to a contract of lease which he executed in favor of one Maria-no Nasser covering five haciendas of the estate under his separate administration.

The foregoing assertion does not merit credence. A searching review of the record - from the initial petition filed by Carlos Matute to oust the respondent as co-administrator up to the latter's petition for certiorari filed with the Court of Appeals impugning the validity of the abovementioned order of January 31, 1966 which removed him as co-administrator and appointed the petitioner in his place - reveals no single pleading, statement, contention, reference or even inference which would justify the respondent's pretension that the instant controversy is a mere contest over the right to collect a P5,000 rental. In bold contrast, the record vividly chronicles the controversy as a bitter fight for co-administration: the removal of the respondent as co-administrator and the appointment of anyone of the movants and the herein petitioner as new co-administrator. Indeed, the principal conflict gravitates over the right to co-administer the vast Amadeo Matute Olave-estate. This is the same issue underlying the respondent's abovementioned petition in CA-G.R.37039-R. The respondent's prayer in said petition unmistakably indicates that the dispute pertains to the right to co-administer in general, not the mere authority to collect a P5,000 monthly rental. The said prayer reads:

"1. That an ex-parte writ of preliminary mandatory injunction be issued enjoining and/or prohibiting the respondent Judge from approving the administrator's bond that will be filed by respondent Jose S. Matute and in issuing the letters of administration of the latter, and from issuing Orders incidental and/ or connected with the exercise and performance of acts of administration of said respondent Jose S. Matute; likewise enjoin-

and prohibiting respondent Jose S. Matute himself, and/or through his counsels, agents and re-presentatives from taking physical possession of the different haciendas under the exclusive administration and management of herein petitioner and from performing and exercising acts of a duly and legally appointed administrator, upon filing a bond in such amount that this Honorable Tribunal may fix;

"2. That the Order of the respondent Judge dated January 31, 1966, removing herein petitioner as co-administrator of the Estate of Amadeo Olave and appointing respondent Jose S. Matute as co-administrator without presentation of evidence, be declared null and void and of no force and effect. x x x"

In fine, the pith of the controversy is the right to co-administer the entire estate. In this regard, the ruling in *Fernandez, et al. vs. Maravilla*[1] is determinative of the jurisdictional issue posed here. In said case, this Court ruled that in a contest for the administration of an estate, the amount in controversy is deemed to be the value of the whole estate, which total value should be the proper basis of the jurisdictional amount. Consequently, the Court proceeded to conclude that the Court of Appeals does not have jurisdiction to issue writs of certiorari and preliminary injunction prayed for in a petition concerning a conflict over administration arising as an incident in the main probate or settlement proceeding if in the first place the principal case or proceeding falls outside its appellate jurisdiction considering the total value of the subject estate. This Court in the aforesaid *Maravilla* case elaborated thus:

"The Court of Appeals, in the decision appealed from, assumed jurisdiction over the present case on the theory that 'the amount in controversy relative to the appointment of Eliezar Lopez as special co-administrator to protect the interests of the respondents (herein petitioners) is only P90,000.00 more or less, i.e., one fourth of the conjugal property' (of respondent and the deceased Digna Maravilla) which, as per inventory submitted by the respondent as special administrator, is valued at P362,424.90. This theory is untenable. Note that the proceedings had on the appointment of Eliezar Lopez as special co-administrator are merely incidental to the probate or testate proceedings of the deceased Digna Maravilla.

x x x x

That the Court of Appeals has no appellate jurisdiction over the said testate proceedings cannot be doubted, considering the properties therein involved are valued at P362,434.00, as per inventory of the special administrator."

"* * * Not having appellate jurisdiction over the proceedings in probate (CA-G.R. No. 27478-R), considering that the amount involved therein is more than P200,00.00, the Court of Appeals cannot also have original jurisdiction to grant the writs of certiorari and prohibition prayed for by respondent in the instant case, which are merely incidental thereto. * * *

"Note also that the present proceedings under review were for the annulment of the appointment of Eliezar Lopez as special co-administrator and to restrain the probate court from removing respondent as special administration. It is therefore, a contest for the administration of the estate and, consequently, the amount or value of the assets of the whole estate is the value in controversy (4 C.J.S. 204). It appearing that the value of the estate in dispute is much more than P200,000.00, the Court of Appeals clearly had no original jurisdiction to issue the writs in question." (underscoring supplied)

Like in the aforesaid *Maravilla* case, the instant intra-fraternal controversy involves a contest over administration, an incident in the settlement of the vast Matute estate. Considering that the value of the said estate is more than P200,000, and considering further that as enunciated in the *Maravilla* case the total value of the subject estate determines the jurisdictional amount anent disputes over administration arising as incidents in a probate or settlement proceeding, like the case at bar, then it is indubitable that the respondent Court of Appeals does not have jurisdiction over CA-G.R. 37039-R nor the judicial authority to grant the writs of certiorari and

prohibition prayed for therein.

Herein respondent insists, however, that even granting that the actual controversy pertains to administration, such con-tested administration does not encompass the whole estate but is limited to the collection of a P5,000 monthly rental, which sum should be the basis of the jurisdictional amount, not the value of the whole estate. In support of his thesis, the respondent alleges that during his incumbency as co-administrator, five haciendas in Davao belonging to the estate of his deceased father were con-signed to his separate administration; that in his capacity as co-administrator he leased on February 10, 1965 said haciendas to one Mariano Nasser for P5,000 a month; that by virtue of the said lease contract, the possession, management and administration of the said properties were transferred to the lessee until the ex-piration of the contract; that consequently, only the collection of the monthly rental of P5,000 remains as the subject of adminis-tration.

The foregoing contention of the respondent is patently untenable.

1. The averment of the respondent that the controversy centers on the collection of the alleged P5,000 monthly rental and that the contest over administration is limited thereto, does not find any support in the record.
2. The rule remains that the jurisdictional amount is de-termined by the total value of the estate, not by the value of the particular property or portion of the estate subject to administra-tion, since the question of administration is merely incidental to the principal proceeding for the settlement and distribution of the whole estate.
3. The respondent's impression that a co-administrator's trust and responsibility are circumscribed and delimited by the size and value of the particular property or portion of the estate subject to his separate administration, is erroneous. Although a co-administrator is designated to administer a portion of the es-tate, he is no less an administrator of the whole because his judi-cious management of a mere parcel enhances the value of the entire estate, while his inefficient or corrupt administration there-of necessarily diminishes the value of the whole estate. More-over, when two or more administrators are appointed to admi-nister separate parts of a large estate they are not to discharge their functions in distant isolation but in close cooperation so as to safeguard and promote the general interests of the entire estate. The teaching in *Sison vs. Teodoro*[2] is of positive relevance. In the said case, the probate court charged against the entire estate the compensation of an administrator who was assigned as judicial administrator representing the interests of one of the two heiresses. The other heiress whose interest was represented by the executor opposed the award on the ground that the said administrator had not rendered service to the estate but only to his wife, the heiress whom he represented. On appeal, this Court upheld the award and dismissed the opposition:

"This argument erroneously assumes that because Carlos Moran Sison was 'judicial administrator representing the interests of Priscila F. Sison' he was such administrator 'solely for the purpose of protecting Priscila's interests,' and not to protect those of the estate. No words are needed to explain that in general, the interest of the heir coincides with those of the estate - the bigger the estate the better for the heir. There-fore to protect the interest of heiress Priscila usually meant to favor the interest of the estate (sic) x x x. Again, the argument presumes that an administrator appointed by the Court for the purpose of giving representation to designated heirs, is not deemed administrator of the estate. This assumption has no legal foundation, because it is admitted practice, where the estate is large, to appoint two or more administrators of such estate to have different interests represented and satisfied, and furthermore, to have such repre-sentatives work in harmony for the best interests of such estate. (In *re Drew's Estate*, 236 N.W. 701, 2 C.J. p. 1183)" (underscoring supplied)

Verily, therefore, the scope of a co-administrator's trust encompasses the entire estate and is co-extensive in effect with those of the other administrators; consequently, the value of the entire estate should be the proper basis of the jurisdictional amount irrespective of the value of the particular property or assets of the estate which are the objects of a separate administration pending the settlement proceedings.

In view of all the foregoing, we are of the consensus that the respondent Court of Appeals has no jurisdiction to take cognizance of CA -G.R. 37039-R, and consequently was without power to issue or grant the writs of certiorari and prohibition prayed for in said case.

Notwithstanding that the herein petitioner delimited the is-sue, as set forth in his petition for certiorari, to one of jurisdiction of the respondent Court of Appeals over CA-G.R. 37039-R, in subsequent pleadings and manifestations, however, the parties herein mutually expanded the issue to include the question of the legality of the controverted order of January 31, 1966 in CA-G.R. 37039-R. As a matter of fact, the respondent, in a "Petition to Resolve" dated July 18, 1967, prayed "that a decision on the merits in this case be now rendered." To this manifestation, the petitioner replied "that he has no objection, as in fact, he also prays that this case be decided at the earliest by the Highest Tribunal."

Since the respondent Court of Appeals does not have jurisdiction over CA-G.R. 37039-R, we are of the considered opinion that this Court can forestall further delay in the already protracted proceedings regarding the settlement of the Matute estate if it now proceeds to resolve the issue of legality of the abovementioned disputed order, rather than wait for the parties to come anew on a separate petition in quest for a verdict on the said is-sue. Moreover, both the petitioner and the respondent private party have manifested and elaborated their respective views on this issue and prayed and pressed for a decision thereon.

We shall now discuss separately the twin aspects of the foregoing controverted order, namely, (1) the removal of the respondent as co-administrator of the Matute estate, and (2) the appointment of the petitioner as the new co-administrator.

The respondent contends that the disputed order removing him as co-administrator is a patent nullity for the following reasons:

- (1) He was removed in wanton disregard of due process of law because the probate judge arbitrarily deprived him of his day in court;
- (2) The evidence adduced by the movants is manifestly insufficient, if not devoid of probative value, to warrant his removal; and
- (3) He was removed not on the grounds specifically invoked by the movants but for causes discovered *motu proprio* by the probate judge in the records of special proceeding 25876 and without affording him the opportunity to rebut the findings of the said judge.

Upon the other hand, the petitioner advances the following reasons in support of the order of removal:

- (1) The probate judge accorded the respondent all the opportunity to adduce his evidence but the latter resorted to dilatory tactics such as filing a "motion to dismiss or demurrer to evidence;"
- (2) The evidences presented to sustain the removal of the respondent are incontrovertible since aside from being documentary, they are parts of the record of special proceeding 25876; and
- (3) The evidence on record conclusively supports the findings of the probate judge.

The settled rule is that the removal of an administrator under section 2 of Rule 82 lies within the discretion of the court appointing him. As aptly expressed in one case,[3] "The sufficiency of any ground for removal should thus be determined by the said court, whose sensibilities are, in the first place, affected by any act or omission on the part of the administrator not conformable to or in disregard of the rules or the orders of the court." Consequently, appellate tribunals are disinclined to interfere with the action taken by a probate court in the matter of the removal of an executor or administrator unless positive error or gross abuse of discretion is shown.[4]

In the case at bar, we are constrained, however, to nullify the disputed order of removal because it is indubitable that the probate judge ousted the respondent from his trust without affording him the full benefit of a day in court, thus denying him his cardinal right to due process.

It appears that shortly after the reception of evidence for the movants Carlos Matute and the Candelario-Matute heirs, the respondent filed on January 8, 1966 a verified objection to the admission in evidence of the movants' exhibits on the ground that the same were hearsay, self-serving, irrelevant and/or mere photostatic copies of supposed originals which were never properly identified nor produced in court. Four days later, or on January 12, 1966, the respondent filed with leave of court a "Motion to Dismiss and/or Demurrer to Evidence," the pertinent and material portion of which reads:

"* * * considering the specific objection to each exhibit contained in said Objections to Admission of Movants' Exhibits and considering further the ruling of this Honorable Court in open court that pleadings filed in this case are evidence only of the fact of their filing and not of the truth of the statements contained therein and considering still further the fact that no competent single witness was presented by movants in support of their respective contentions, we submit that there is no sufficient evidence on record to justify and support the motions for removal of the herein co-administrator Matias S. Matute and in the light of the authorities hereinbelow cited, the motions to remove Matias S. Matute must be dismissed for insufficiency of evidence:

x x x x"

"* * * However, in the remote possibility that this instant motion be denied by this Honorable Court, the herein co-administrator expressly reserves his right to present his own evidence * * * at least five (5) days from the receipt of said denial * * *." (underscoring supplied)

Instead of resolving the foregoing motion, the probate judge issued the controverted order removing the respondent as co-administrator without giving him the opportunity to adduce his own evidence despite his explicit reservation that he be afforded the chance to introduce evidence in his behalf in the event of denial of his motion to dismiss and/or demurrer to evidence. We are of the view that the above actuation of the probate judge constituted grave abuse of discretion which dooms his improvident order as a nullity. In fact, even without the respondent's reservation, it was the bounden duty of the probate judge to schedule the presentation and reception of the respondent's evidence before disposing of the case on the merits because only the movants at that time had presented their evidence. This duty is projected into bolder relief if we consider, which we must, that the aforesaid motion is in form as well as in substance a demurrer to evidence allowed by Rule 35, by virtue of which the defendant does not lose his right to offer evidence in the event that his motion is denied. Said Rule states

"After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief." (emphasis supplied)

The application of the abovesited Rule in special proceedings, like the case at bar, is authorized by section 2 of Rule 72 which directs that in the "absence of special provisions, the rules provided for in ordinary civil actions shall be, as far as practicable, applicable in special proceedings."

But what is patently censurable is the actuation of the probate judge in removing the respondent, not on the strength of the evidence adduced by the movants (not a single exhibit or document introduced by the movants was specifically cited in the disputed order as a justification of the respondent's ouster), but on the basis of his (judge's) findings, which he *motu proprio* gleaned from the records of special proceeding 25876, without affording the respondent an opportunity to controvert said findings or in the very least to explain why he should not be removed on the basis thereof.

The probate judge did find, as essayed in his disputed order, that the respondent "has shown indifference to his duties as such co-administrator of the estate" as evidenced by:

- (1) the disapproval of his 1964 account by the probate court in an order dated January 5, 1966 due to his "non-appearance and non-submission of evidence to sustain his account on the date set for the presentation of the same;"
- (2) the considerable decrease in the income of the properties under his charge, as reflected in said 1964 account, which circumstance "does not speak well of his diligence and attention to the administration of said properties;" and
- (3) the failure of said 1964 account to disclose the number of calves born during the accounting period, "thereby indicating a palpable omission of fact which directly reduced the value of the income or the increase of the assets of the estate."

But, significantly, the movants did not specifically invoke the aforesaid grounds in support of their petition to oust the respondent. All of the said grounds, which in the mind of the probate judge exposed the supposed indifference and incompetence of the respondent in the discharge of his trust, are based on alleged defects of the respondent's 1964 account. Under these circumstances, it behooved the probate judge to inform the respondent of his findings before ordering the latter's removal. We concede that the probate judge enjoys a wide latitude of discretion in the matter of the removal of executors and administrators and he can cause their ouster at his own instance. However, before they are deprived of their office they must be given the full benefit of a day in court, an opportunity not accorded to the respondent herein.

Without forgetting such patent denial of due process, which rendered the order of removal a nullity, let us examine the merits of the probate judge's *motu proprio* findings to determine whether they warrant the ouster of the respondent.

As proof, of the respondent's "indifference" in the discharge of his duties, the probate judge cited the court's order of January 5, 1966 disapproving the respondent's 1964 account for his failure to personally appear on the date set for the submission of evidence in support of the said account. It must be emphasized, however, that the respondent, two days before the issuance of the aforesaid order removing him as co-administrator, seasonably moved for the reconsideration of the aforesaid order of January 5, 1966 on the ground that his failure to personally attend the scheduled hearing was due to illness on his part. Evidently, when the probate court decreed the removal of the respondent, the order disapproving his 1964 account, which was used as one of the principal justifications for his removal as co-administrator, was not yet final as it was still subject to possible reconsideration. As a matter of fact, on February 19, 1966 the same probate judge set aside the aforesaid order of January 5, 1966, thus:

"Considering that it will be to the benefit of all the parties concerned if former co-administrator Matias S. Matute will be allowed to substantiate the accounting which he submitted to this Court but which was disapproved on January 5, 1966 for his failure to personally appear at the hearing held for the purpose of substantiating said accounting, his motion for reconsideration filed on January 28, 1966 is hereby granted and the order dated January 5, 1966 disapproving the accounting submitted by Matias S. Matute is set aside."
(emphasis supplied)

With the order of January 5, 1966 thus revoked, the probate judge's conclusion that the respondent was "indifferent" to his duties as co-administrator as evidenced by the disapproval of his 1964 account loses its principal basis.

Again using the 1964 account of the respondent as basis of his finding that the respondent was guilty of disinterest in the discharge of his trust, the probate judge stressed that "a verification of said accounting shows that the income of the properties under his (respondent's) charge were very much reduced which does not speak well of his diligence and attention to the administration of the said properties," and that said account failed to report the number of "offspring of the cattle during the period of accounting belonging to the estate, thereby indicating a palpable omission of fact which directly reduced the value of the income or increase of the assets of the estate." It is pertinent to emphasize here that the said 1964 account is still pending approval, hence it was premature to use alleged defects in said account as grounds for the removal of the respondent. If it is now ruled that the respondent is unfit to continue as co-administrator because of the alleged infirmities in his account for 1964, the respondent will be greatly prejudiced in the event that said account is finally approved and the said defects are found to be nonexistent or so trivial as not to affect the general validity and veracity of the account. Assuming, however, that the probate judge correctly observed that the said account reflects a big reduction in the income of the haciendas under the separate administration of the respondent, this fact alone does not justify the conclusion that the latter did not exercise due care and zeal. There is no proof that the decrease in income had been caused by the respondent's willful negligence or dishonesty. Needless to stress, varied factors, some beyond the control of an administrator, may cause the diminution of an estate's income.

Anent the failure to report the number of calves born during the accounting period, granting that the same is true, there is however no evidence on record to prove that the said omission was deliberate or designed to prejudice the estate. It could have been either an honest mistake or mere inadvertence. In the absence of competent proof to the contrary, good faith must be presumed. The probate judge should have required the respondent to explain the said omission instead of branding outright said omission as "palpable."

In his excursion into the records of special proceeding 25876, the probate judge also found a copy of a so-called "Compliance" submitted by the respondent which reported "a very staggering amount of over One Million Pesos supposedly given to the heirs" as advances. The probate judge proceeded to observe that the "record does not show that the said advances to the heirs were authorized by the Court in the amounts made to appear in the 'Compliance.'" He added that a "verification of the record will show that may be part of this amount supposedly paid by the co-administrator to the heirs were authorized by the Court but a greater volume of the same was obviously not authorized." On account of this particular finding, the probate court concluded, without equivocation, that the respondent had been acting without previous authority from the probate court. Unfortunately again, the respondent was not afforded the opportunity to present his side and if possible to controvert the said finding or correct the impressions of the judge. Hearing the respondent on this point is imperative because, like the other grounds upon which the probate judge anchored the order of removal, it was not put in issue by the movants, neither was a copy of said "Compliance" submitted in evidence. It bears emphasis that if there were unauthorized payments of advances to some heirs or simulated grants as the probate judge appears to theorize, then it is most surprising why the prejudiced Matute heirs, litigation-prone as they are, did not impugn the so-called "Compliance." Furthermore, not one of the movants interested in the removal of the respondent specifically charged the latter with unauthorized or fictitious payments of advances. It should also be noted that the said "Compliance" was submitted by the respondent in response to the probate court's order for the submission of "a list of the heirs who have personally received the advances from the administration," not from the respondent alone. It stands to reason, therefore, that the said "Compliance" could very well be a cumulative list of all the advances given and received by the Matute heirs from the several administrators of the Matute estate since 1955. In the absence of concrete evidence that the said "staggering amount" of over a million pesos in advances was disbursed by the respondent alone during his beleaguered term which commenced only in 1963, we have no recourse but to jettison the adverse conclusion of the probate judge. What the probate judge should

have done was to afford Matias the chance to explain and substantiate the facts and the figures appearing in the aforesaid "Compliance," which unfortunately does not form part of the record before us. The respondent asserts that if only the probate judge "took pains to examine fully the voluminous records of the Matute estate, and as reflected in the very 'Compliance' submitted to the Court x x any disbursement given to the heirs by all the administrators of the Estate were by virtue of the several Orders of the Probate Court issued upon joint motion of all the heirs for their monthly maintenance and support."

It likewise appears that the respondent was removed partly due to his failure to pay the inheritance and estate taxes. In this regard, it bears emphasis that the failure to pay the taxes due from the estate is per se not a compelling reason for the removal of an administrator, for "it may be true that the respondent administrator failed to pay all the taxes due from the estate, but said failure may be due to lack of funds, and not to a wilful omission.[5] "In the case at bar there is no evidence that the non-payment of taxes was wilful. On the contrary, the respondent alleged, and this was unchallenged by the movants, that while the previous administrators left the taxes unpaid, he had paid the real property taxes in Davao covering the years 1954 to 1966.

We now come to the second part of the controverted order - the appointment of the petitioner as co-administrator vice the respondent. Since the removal of Matias was done with inordinate haste and without due process, aside from the fact that the grounds upon which he was removed have no evidentiary justification, the same is void, and, consequently, there is no vacancy to which the petitioner could be appointed.

Even granting arguendo that the removal of Matias is free from infirmity, this Court is not prepared to sustain the validity of the appointment of the petitioner in place of the former. To start with, the record does not disclose that any hearing was conducted, much less that notices were sent to the other heirs and interested parties, anent the petition for the appointment of Jose S. Matute, among others, as co-administrator vice Matias S. Matute. In this regard, it is pertinent to observe that any hearing conducted by the probate court was confined solely to the primary prayers of the separate petitions of Carlos S. Matute and the Candelario-Matute heirs seeking the ouster of Matias S. Matute. The corollary prayers contained in the same petitions for the appointment of Carlos S. Matute, Jose S. Matute and Agustina Matute Candelario or anyone of them as Co-administrator were never even considered at any of the hearings. The requirement of a hearing and the notification to all the known heirs and other interested parties as to the date thereof is essential to the validity of the proceeding for the appointment of an administrator "in order that no person may be deprived of his right or property without due process of law." (Eusebio vs. Valmores, 97 Phil. 163) Moreover, a hearing is necessary in order to fully determine the suitability of the applicant to the trust, by giving him the opportunity to prove his qualifications and affording oppositors, if any, to contest the said application.

The provision of Rule 83 that if "there is no remaining executor or administrator, administration may be granted to any suitable person," cannot be used to justify the institution of Jose S. Matute even without a hearing, because such institution has no factual basis considering that there was a general administrator (Carlos V. Matute) who remained in charge of the affairs of the Matute estate after the removal of Matias S. Matute. The above-cited provision evidently envisions a situation when after the removal of the incumbent administrator no one is left to administer the estate, thus empowering the probate court, as a matter of necessity, to name a temporary administrator (or caretaker), pending the appointment of a new administrator after due hearing. Such circumstance does not obtain in the case at bar.

Upon the foregoing disquisition, we hold that the respondent Court of Appeals was without jurisdiction over CA -G.R. 37039-R, and that the controverted order of January 31, 1966 is a nullity and must therefore be set aside in its entirety.

L-26085

L-26085 is a petition for certiorari with preliminary injunction interposed on May 19, 1966 by the same petitioner Jose S. Matute, praying that the controverted order of default dated April 16, 1966, judgment by default dated April 23, 1966 and order of execution dated May 3, 1966, all issued by the Court of First Instance of Davao, be set aside.

The sequence of events, like in L-26751, commenced with the issuance by the probate court (Court of First Instance of Manila) of the order of January 31, 1966 removing Matias S. Matute as co-administrator and replacing him with Jose S. Matute. Armed with the letters of co-administration awarded to him on February 3, 1966, Jose attempted to take possession of and exercise administration over the five haciendas La Union, Sigaboy, Mon-serrat, Colatinan and Pundaguitan, all belonging to the Matute estate and situated in Governor Generoso, Davao. Said five haciendas were previously assigned to the separate administration of the deposed co-administrator, Matias S. Matute.

Mariano Nasser, herein plaintiff-respondent, who was in actual possession of the said haciendas, opposed the projected takeover by the defendant-petitioner Jose S. Matute on the ground that the said properties were leased to him as of February 10, 1965 by Matias S. Matute in the latter's capacity as co-administrator. Subsequently, on February 15, 1966, Nasser instituted civil case 4968 in the Court of First Instance of Davao, a complaint for injunction, alleging that the defendant-petitioner was forcibly wresting possession of the said haciendas with the aid of hired goons, and praying that the said defendant-petitioner be enjoined from taking physical possession, management and administration of the aforesaid five haciendas. On February 16, 1966 the court a quo issued a writ of preliminary injunction ex parte, prohibiting "Jose S. Matute and/or his counsels, agents, representatives or employees from taking physical possession, management and administration" of the abovementioned properties.

On February 23, 1966, seven days after he received on February 16, 1966, the summons in civil case 4968, the defendant-petitioner moved to dismiss the aforesaid complaint for injunction and to dissolve the ex parte writ of injunction. Said motion to dismiss was predicated mainly on the contention that the court a quo did not have jurisdiction over the subject haciendas considering that the same "are properties in custodia legis under the jurisdiction of the Probate Court of Manila, in Sp. Proc. No. 25876 since 1955 up to the present time," and consequently the probate court has exclusive jurisdiction over all cases, like the one at bar, involving possession and administration of the aforesaid haciendas. In the same motion to dismiss, the defendant-petitioner averred that the alleged contract of lease is simulated and fictitious for which reason not even a copy of the said contract was attached to the complaint, and that granting that such a contract was actually executed, the same is invalid as it was never approved by the probate court. On February 28, 1966 the defendant-petitioner was furnished a copy of the plaintiff-respondent's opposition to the abovementioned motion to dismiss and to lift the ex parte writ of injunction.

Failing to receive any notice of a court resolution on his client's Motion to dismiss during the period of about 1-1/2 months after the filing of the said motion, the defendant-petitioner's counsel on April 11, 1966 wrote the clerk of court of the court a quo, requesting that any resolution or order of the trial court be mailed to him by airmail at his expense, instead of by surface mail, in order to minimize postal delay. Sometime between April 11 and 19, 1966, the said counsel also dispatched an emissary to Davao to inquire about the status of civil case 4968. After personal verification of the record, the said emissary reported to the defendant-petitioner's counsel that the abovementioned motion to dismiss had been denied by the court a quo in an order dated March 31, 1966. It was also discovered from the record that the plaintiff-respondent's counsel had been sent a copy of the order of denial on the very day it was rendered (March 31, 1966) but the record was silent as to the mailing of the corresponding copy for the defendant-petitioner's counsel, which copy until then had not been received by the

latter. Forthwith, on April 19, 1966, although he had not yet been furnished his copy of the said order of denial, defendant-petitioner's counsel interposed the requisite answer with counter-claim. Then on April 23, 1966 he filed a manifestation calling the attention of the court a quo that as of the said date he had not received a copy of the order denying his client's motion to dismiss. It was only two days later, or on April 25, 1966, that the said counsel claims, uncontroverted by the respondent Judge and the plaintiff-respondent, that he received his copy of the aforesaid order.

In a "Motion to Strike" dated April 26, 1966, the plaintiff-respondent urged that the aforementioned answer with counter-claim be stricken from the record on the grounds that on April 16, 1966 the court a quo had declared defendant-petitioner in default for failure to answer the complaint in civil case 4928 and that subsequently, on April 23, 1966, a judgment by default had been entered against the latter.

Immediately after receipt on May 5, 1966 of a copy of the said "Motion to Strike," the defendant-petitioner filed his opposition, asserting that it was legally impossible to declare him in default as of April 16, 1966 for failure to file his responsive pleading, considering that it was only after the said date, that is, on April 25, 1966, that he received, through his counsel, a copy of the order denying his motion to dismiss. On the same day, May 5, 1966, the defendant-petitioner's counsel dispatched a rush telegram to the clerk of court of the Court of First Instance of Davao inquiring whether the trial court had really rendered the order of default dated April 16, 1966 and the subsequent judgment by default dated April 23, 1966, copies of which had not been received by him. On the following day, May 6, 1966, the defendant-petitioner filed an "Urgent Motion to Investigate the Office of the Clerk of Court for Mailing Discrepancy."

The defendant-petitioner's counsel claims - and this is not controverted by the respondent Judge and the plaintiff-respondent that it was only on May 17, 1966 that he received a copy of the judgment by default and at the same time a copy of the order of execution dated May 3, 1966, and that a copy of the order of default had never been furnished him.

Because of the impending execution of the judgment by default with the following dispositive portion -

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiff and against the defendant confirming the right of the plaintiff to the possession of the premises leased in his favor by the judicial administrator, Matias S. Matute and the injunction against the defendant issued in this case is hereby declared permanent and defendant is hereby permanently enjoined from interfering in the peaceful possession of the plaintiff over the haciendas La Union, Sigaboy, Monserrat, Colatinan and Pundaguitan of the estate of Amadeo Matute Olave, all situated in Governor Generoso, Davao and from doing any act of taking any step against the peaceful possession of said properties by the plaintiff. The defendant is likewise ordered to pay the plaintiff the amount of P50,000.00 as attorney's fees due and payable to plaintiff's counsel for filing this action; P2,400.00 a month beginning February, 1966, representing monthly salaries of security guards employed by the plaintiff in the haciendas leased plus P7,000.00 representing transportation, hotel and representation expenses incurred by the plaintiff for plaintiff's counsel and another P700.00 representing the year-ly premiums on the injunction bond filed by plaintiff,"

the defendant-petitioner interposed the instant petition for certiorari with preliminary injunction to annul the order of default, the judgment by default, and the order of execution, and to restrain the execution of the aforesaid judgment pending the resolution of the instant petition.

On May 23, 1966 this Court granted the writ of preliminary injunction prayed for, conditioned on the petitioner's posting a bond of P5,000, which he did on June 4, 1966.

We are of the consensus that the herein petition should be granted.

Rule 11, section 1 of the Revised Rules of Court gives the defendant a period of fifteen (15) days after service of summons within which to file his answer and serve a copy thereof upon the plaintiff, unless a different period is fixed by the court. However, within the period of time for pleading, the defendant is entitled to move for dismissal of the action on any of the grounds enumerated in Rule 16. If the motion to dismiss is denied or if determination thereof is deferred, the movant shall file his answer with-in the period prescribed by Rule 11, computed from the time he receives notice of the denial or deferment, unless the court pro-vides a different period (Rule 16, section 4). In other words, the period for filing a responsive pleading commence to run all over again from the time the defendant receives notice of the denial of his motion to dismiss.[6]

Reverting to the case at bar, the defendant-petitioner was served with summons in connection with civil case 4968 on Feb-ruary 16, 1966, hence he had until March 3, 1966 to file his res-ponsive pleading. Instead of filing an answer, he seasonably inter-posed a motion to dismiss on February 23, 1966. Although the aforesaid motion to dismiss was denied as early as March 31, 1966, he received notice of the denial, through his counsel of re-cord, only on April 25, 1966, a fact not traversed by either the respondent Judge or the plaintiff-respondent. Consequently, the defendant-petitioner had fifteen (15) days from April 25, 1966, or up to May 10, 1966, to file his answer.

The delay in the mailing of a copy of the order of denial to the defendant-petitioner's counsel was confirmed by the court a quo in a report rendered after an investigation of the office of the clerk of court upon urgent motion of the defendant-petitioner. The report reads in part:

"From its investigation of the employee in charge of Civil Cases, the Court found out that, indeed, there was a delay in the mailing of the Order of this Court dated March 31, 1966 to counsel for the defendant, Atty. Antonio Enrile Inton. This Court, however, is convinced of the sincerity of the reasons given by the employee concerned, and that is: that her failure to cause to be mailed the copy intended for Atty. Antonio Enrile Inton on the same date that she caused to be mailed the copy for Atty. Paterno Canlas (plaintiff-respondent's counsel) was purely a case of an honest mistake and inadvertence on her part owing to the volume of her work; the affidavit of the employee in charge of Civil Cases being hereto attached."

The affidavit of the employee concerned mentioned in the above-quoted portion of the report clearly admits the delay, thus:

"That due to the fact that I am the only one handling matters relative to Civil Cases and, be-cause of the volume of my work in the office, I must have inadvertently misplaced the envelope containing a copy of the Order intended for Atty. Antonio Enrile Inton, and only discovered by (my) mistake on April 14, 1966, when I went over some papers contained in the drawer of my table;

"That upon discovery of the said envelope containing the copy of the order dated March 31, 1966, among the papers in my table drawer, I forthwith sent the same to the one in charge of mailing and who mailed the same on April 16, 1966, by registered air mail special delivery, as evi-denced by Registry Receipt No. 26897 now attach-ed to the records of this case." (emphasis supplied)

It is unmistakable from the foregoing exposition that when the defendant-petitioner was declared in default on April 16, 1966 the time for filing his answer had not yet even commenced to run anew because on the said date his counsel had not yet received notice of the denial of the motion to dismiss. The order of denial was received only on April 25, 1966, or definitely after April 16, 1966, the day when a copy of the said order was mailed to the defendant-petitioner's counsel and when the defendant-petitioner was declared in default.

No further elaboration is needed to show that the trial judge acted in excess of jurisdiction when he declared the defen-dant-petitioner in default. Consequently, the herein controverted order of default is a patent nullity, an infirmity which likewise afflicts, necessarily, the subsequent judgment by default and the order of execution.

It is not amiss to say that, at the very least, the defendant-petitioner's motion to dismiss should have been considered as an answer, since it raised issues on the merits of the case, such as the invalidity of the alleged contract of lease. Consequently, the defendant-petitioner should have been notified of the hearing, and failure to give him an opportunity to appear in the court below tainted the subsequent proceedings not only with irregularity but also with illegality. It follows, therefore, that the petitioner was incorrectly declared in default, and the holding of the trial of the case on the merits in his absences, without due notice to him, was a denial of due process.[7]

In opposing the instant petition, the plaintiff-respondent contends that the remedy of the defendant-petitioner is not a petition for certiorari but an ordinary appeal pursuant to Rule 41, section 2, paragraph 3 which reads:

"A party who has been declared in default may likewise appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition for relief to set aside the order of default has been presented by him in accordance with rule 38."

We do not agree. The remedy provided for in the above-quoted rule is properly, though not exclusively, available to a defendant who has been validly declared in default. It does not preclude a defendant who has been illegally declared in default from pursuing a more speedy and efficacious remedy, like a petition for certiorari to have the judgment by default set aside as a nullity.

It should be emphasized that a defendant who is properly declared in default is differently situated from one who is improvidently declared in default. The former irreparably loses his right to participate in the trial, while the latter retains such right and may exercise the same after having the order of default and the subsequent judgment by default annulled and the case re-manded to the court of origin. Moreover the former is limited to the remedy set forth in section 2, paragraph 3 of Rule 41 by virtue of which he can contest only the judgment by default on the designated ground that it is contrary to the evidence or the law; the latter, however, has the option to avail of the same remedy or to forthwith interpose a petition for certiorari seeking the nullification of the order of default even before the promulgation of a judgment by default, or in the event that the latter has been rendered, to have both court decrees - the order of default and the judgment by default - declared void. The defendant-petitioner's choice of the latter course of action is correct for he controverts the judgment by default not on the ground that it is not supported by evidence or it is contrary to law, but on the ground that it is intrinsically void for having been rendered pursuant to a patently invalid order of default.

Granting, however, that an appeal is open to the defendant-petitioner, the same is no longer an adequate and speedy remedy considering that the court a quo had already ordered the issuance of a writ of execution and the carrying out of such writ loomed as a great probability. This is in consonance with the doctrine enunciated in *Vda. de Saludes vs. Pajarillo and Bautista*[8] wherein this Court held that an "appeal under the circumstances was not an adequate remedy there being an order of execution issued by the municipal court." Hence, the rule that certiorari does not lie when there is an appeal is relaxed where, as in the instant case, the trial court had already ordered the issuance of a writ of execution.[9]

The plaintiff-respondent also argues that the instant petition should be denied for failure of the defendant-petitioner to move for a reconsideration of the challenged decrees so as to afford the court a quo the chance to emend its errors. While as a matter of policy a motion for reconsideration in the lower court has often been considered a condition sine qua non for the granting of a writ of certiorari, this rule does not apply "where the proceeding in which the error occurred is a patent nullity,"[10] or where "the deprivation of petitioner's fundamental right to due process x x x taints the proceedings against him in the court below not only with irregularity but with nullity,"[11] or when special circumstances warrant immediate and more direct action.[12] The fact that the defendant-petitioner had been deprived of due process, taken together with the circumstance that a writ of execution had already been issued, perforce takes this case outside of the purview of the rule

requiring a previous motion for reconsideration.

The nullity of the challenged orders relieves the defendant-petitioner from paying the damages assessed against him by the court a quo; however, it does not entitle him to pursue further his claim of possession and administration over the abovementioned five haciendas, considering that we have declared in L-26751 that his appointment as co-administrator is void.

In view of the foregoing disquisition, the controverted order of default, judgment by default and order of execution should be annulled and set aside.

L-26106

L-26106 is another petition for certiorari with preliminary injunction instituted on May 25, 1966 by Jose S. Matute (the same petitioner in L-26751 and L-26085) and his brother Luis S. Matute,[13] praying for the nullification of the following orders of the Court of First Instance of Davao:

1. The order of February 15, 1966 dismissing with prejudice civil case 4252, a complaint filed by Matias S. Matute in behalf of the Matute estate for the annulment of a compromise agreement and for the reconveyance of certain properties, in which case Jose and Luis Matute appeared as intervenors in alliance with the plaintiff estate;
2. The order of March 29, 1966 declaring in default the intervenors in civil case 4252 for failure to answer the defendant Paterno Canlas' counterclaim, and adjudging them to jointly and severally pay the sum of P100,000 in damages to the said Canlas; and
3. The order of April 12, 1966 directing the issuance of a writ of execution against the intervenors to enforce the abovementioned judgment by default.

The factual milieu follows:

On February 5, 1966 Matias S. Matute, in his capacity as co-administrator, instituted in the name of the Matute estate civil case 4252 praying for, among others, (1) the annulment of the compromise agreement dated November 26, 1962 entered into between the co-administrator Julian V. Matute and Atty. Paterno R. Canlas, one of the defendants-respondents herein, in full settlement of the latter's claim for attorney's fees against the decedent Amadeo Matute Olave; (2) the nullification of the compromise judgment of December 5, 1962 approving the aforesaid compromise agreement; (3) the voiding of the deed of conveyance and assignment of rights dated December 20, 1962 by virtue of which the said Julian Matute transferred to Canlas several parcels of land belonging to the Matute estate pursuant to the compromise judgment; (4) the annulment of the deed of conveyance covering the said parcels of land executed on February 20, 1963 by Canlas in favor of Daniel Rivera, Sr., also one of the defendants-respondents; (5) the nullification of the unregistered deeds of mortgages, both dated July 19, 1963, over said properties executed by Rivera in favor of Pablo del Rosario and Nicanor Vergara, also defendants-respondents herein; and (6) the reconveyance of the said properties.

The aforesaid complaint was anchored on the grounds that (1) the compromise agreement was entered into in fraud of the Matute estate; (2) Julian Matute, as a mere co-administrator, had no authority to enter into the said compromise agreement without the consent of the then general administrator, Don Celestino Alonzo; (3) the compromise agreement was approved by the Court of First Instance of Manila (Branch X) without notice to the heirs and the general administrator; and (4) the said agreement had neither prior nor subsequent approval of the probate court which has custody of the parcels of land involved in the said agreement.

The defendant-respondent Canlas subsequently interposed a motion to dismiss dated February 24, 1964 predicated

on the ground of res judicata, among others. Anent the issue res judicata, said motion to dismiss averred:

"The records of Civil Case No. 14208, enti-tled 'Rosario Matute, et al. v. Amadeo Matute Ola-ve', Court of First Instance of Manila, Branch X, will show that on December 5, 1962, the Honorable Judge Jose L. Moya, Presiding Judge of Branch X, of the Court of First Instance of Manila, rendered a Compromise Judgment x x x pursuant to a Com-promise Agreement x x x entered into between de-fendant Paterno R. Canlas and the Estate of Amadeo Matute Olave, duly represented by the General Ad-ministrator of the Estate, the late Julian V. Matute and his counsel of record in said Civil Case No. 14208, Atty. Marcelo Rafols Javier involving the attorney's fees of defendant Paterno R. Canlas in said Civil Case No. 14208, secured with a charg-ing lien on the properties involved herein. Pursuant to said Compromise Judgment, the said Julian V. Matute, as General Administrator of the Estate of his deceased father, Amadeo Matute Olave, trans-ferred and conveyed the properties involved herein which were ordered to be sold by the Probate Court of Manila for only P144,000.00, in favor of defendant Paterno R. Canlas as full payment of his attorney's fees in Civil Case No. 14208 in the amount of P200,000.00 agreed upon in the Compromise Agreement. The said Compromise Judgment of December 5, 1962 is immediately final and not appealable and has the effect and authority of Res-Judicata in this case filed by co-administrator, Ma-tias S. Matute, on behalf of the Estate, without authority of his general administrator, Carlos V. Ma-tute, who filed a Motion to Dismiss the complaint in this case.

x x x x

"That the records of Civil Case No. 14208 will show that after the Compromise Judgment was rendered on December 5, 1962, a Petition for Re-lief to set aside the said Compromise Judgment was filed by two (2) of the heirs and full-blooded sisters of plaintiff co-administrator, Matias S. Ma-tute, namely, Rosario and Trinidad Suazo Matute on June 6, 1963, on grounds of (a) fraud and (b) lack of the probate court's approval to the Compromise Agreement, the very same grounds alleged in the present Complaint of plaintiff Estate, a copy of the Petition for Relief is hereto attached as Annex 'C' of this Motion to Dismiss. That on June 13, 1963, herein defendant Paterno R. Canlas filed his Oppo-sition to Petition for Relief, and, on June 26, 1963, a Supplementary Opposition to Petition for Relief and refuting all the above issues raised in the Petition for Relief, copies of which are hereto attached as Annexes 'D' and 'E'. Rosario and Trinidad Suazo Matute filed Reply and defendant Paterno R. Canlas filed his Rejoinder on July 8, 1963 attaching therewith the letter-conformity to the Compro-mise Judgment of co administrator, Matias S. Matute, copies of which are hereto attached as Annex-es 'F' and 'F-1' of this Motion to Dismiss. That on July 13, 1963, Branch X of the Court of First Ins-tance of Manila, taking cognizance of Civil Case No. 14208, rightfully denied the Petition for Relief on all the grounds stated in our Opposition to the Petition for Relief, Supplementary Opposition, etc., and Rejoinder, a copy of which order is hereto attached as Annex 'G' of this Motion to Dismiss."

In other words, it is the basic contention of Canlas that both the compromise judgment of December 5, 1962 rendered by the Court of First Instance of Manila (Branch X)[14] and the order of the same court dated July 13, 1963 denying the aforecited petition for relief from judgment which sought the setting aside of the said compro-mise judgment, bar by virtue of res judicata the prosecution of the abovemeioned civil case 4252 which seeks anew the annul-ment of the said compromise judgment on practically the same grounds invoked in the aforesaid petition for relief, which grounds were justifiably denied by the competent court.

It appears that on the same day Canlas filed his motion to dismiss, the general administrator and heir, Carlos V. Matute, filed his own motion to dismiss dated February 15, 1964, stating among other things, that he had never authorized his co-adminis-trator, Matias Matute, to file civil case 4252 in the name of the estate and that said complaint was filed without legal authority and is prejudicial to the interests of the estate as it would only entail unnecessary litigation expenses. He presented his written conformity to the compromise judgment in his capacity as the succeeding general administrator.

On February 27, 1964 the defendants-respondents Daniel Rivera, Sr., Pablo del Rosario and Nicanor Vergara filed

their own joint motion to dismiss, alleging among other things that they were innocent transferees and mortgagees for value of the properties subject matter of the complaint and adopted as their own the motions to dismiss filed by Canlas and Carlos V. Matute.

On April 11, 1964 the Honorable Judge Vicente N. Cusi, Jr., executive judge of the Court of First Instance of Davao, is-sued an order deferring to after the trial the final hearing and determination of the motions to dismiss since the grounds al-legged therein "do not appear to be indubitable." From this order, the defendants moved for a reconsideration which was denied on January 16, 1965.

Meanwhile, on August 17, 1964 Jose and Luis Matute filed a motion to intervene, asking that they be allowed to adopt the complaint of the plaintiff-estate. Said motion was granted on September 5, 1964.

After the aforesaid rejection of the defendants' motion for reconsideration of the order denying their separate motions to dismiss, Canlas filed on February 15, 1965 his answer ad caute-lam, traversing the material allegations of the complaint in ci-vil case 4252 and interposing the grounds stated in his motion to dismiss as affirmative defenses. He also filed a counterclaim for damages in the amount of P100,000 jointly against Matias Ma-tute, for filing the "frivolous and unfounded" action in the name of the estate, and Jose and Luis Matute, for intervening in the case. All three were charged in their personal capacities. On the same date, the other defendants, Rivera, del Rosario and Verga-ra, filed their own answer ad cautelam, denying the essential averments of the complaint having relevance to them and adopting the affirmative defenses interposed by Canlas. Said defendants similarly interposed a counterclaim of P50,000 for damages, di-rected against the plaintiff-estate.

On March 1, 1965 Matias Matute, representing the plain-tiff-estate, filed the corresponding answers to the foregoing coun-terclaims. The answer to Canlas' counterclaim specifically denied

"that the above-entitled case is patently frivolous and unfounded and was instituted in bad faith and calculated to merely harass the defendant in order to satisfy the personal revenge, hatred and vindic-tiveness of the co-administrator Matias S. Matute, representing the plaintiff estate, and intervenors Jose S. Matute and Luis S. Matute, the truth being that the complaint in the above-entitled case was instituted precisely to prevent defendants from ille-gally and fraudulently transforming and conveying to themselves valuable properties of plaintiff estate worth more than P500,000.00;"

and disclaimed any

"knowledge of any actual, moral and consequential damage having been suffered by defendant Paterno R. Canlas."

Meanwhile, upon motion of the counsels for the defendants, Judge Cusi ordered on August 28, 1965 the reshuffle of civil case 4252 in accordance with section 7, Rule 22 of the Rules of Court. Eventually, the case was transferred to the sala of Judge Vicente P. Bullecer, the respondent judge herein.

On January 22, 1966 Canlas filed a "Motion to Resolve: I. Motion to Dismiss; II. Supplementary and/or Second Motion to Dismiss."

On February 3, 1966 Jose Matute interposed an urgent ex parte motion for substitution as representative of the plaintiff?estate in place of Matias Matute, citing the order of January 31, 1966 of the probate court of Manila which appointed him as co-administrator in place of Matias Matute.

Subsequently, Matias Matute filed in behalf of the plaintiff-estate a motion to withdraw and/or dismiss with prejudice the complaint in civil case 4252, which, it will be recalled, he him-self instituted in the name of the Matute estate. The following grounds were advanced to justify the said motion:

"That after a thorough study of the documents presented by the parties in this case, the under-signed Judicial Administrator realized that he has expressly ratified and confirmed any and all contracts and compromise for attorney's fees that his co-administrator Julian V. Matute has already entered into with the defendant Atty. Paterno R. Canlas in his capacity as co-administrator of the said testacy;

"That the causes of action of the above-entitled complaint against the defendants were based and predicated from the compromise agreement entered into between co-administrator Julian V. Matute and the defendant Paterno R. Canlas on December 2, 1962 and which compromise agreement was approved by Judge Jose Moya, pre-siding Judge of Branch X of the Court of First Instance of Manila, in Civil Case No. 14208 entitled Rosario S. Matute et al. vs. Amadeo Matute Olave, etc., in the Compromise Judgment dated December 5, 1962."

On February 15, 1966 the respondent Judge dismissed with prejudice the aforesaid complaint. The order of dismissal reads:

"The records show that this action was filed by Matias S. Matute in his capacity as co-administrator of the Estate of Amadeo Matute Olave appointed in Sp. Proc. No. 25876, Probate Court of Manila, to annul a compromise judgment awarding attorney's fees to defendant Atty. Paterno R. Canlas and rendered in Civil Case No. 14208, Court of First Instance of Manila.

"Pending incidents in this case, are the motion to dismiss and supplementary motion to dismiss on the ground of res judicata filed by the defendants and adopted by the General Administrator of the Estate, Carlos V. Matute, and the heirs Maria Luisa Matute, Conchita V. Matute, Carlos S. Matute, Ramos S. Matute, Eduarda S. Matute and Mrs. Cecilia Villanueva Matute.

"It appears now that the co-administrator Matias S. Matute who filed this action in the name of the Estate of Don Amadeo Matute Olave filed a motion to withdraw and/or dismiss dated January 8, 1966 and verified before the acting Clerk of Court of Appeals stating that he is withdrawing the Complaint he filed in this case and prays this Court to dismiss it with prejudice and further ratifying and expressing conformity to the compromise judgment subject matter of the complaint rendered in the Civil Case 14208, Court of First Instance of Manila.

"As prayed for in defendants' motion to dismiss and supplementary action (motion) to dismiss, the action filed in this case is hereby dismissed with prejudice without cost to plaintiff." (emphasis supplied)

On March 12, 1966 the respondent Judge issued another order declaring that "all the other incidents pending in this case are hereby terminated and closed." (emphasis supplied) Said order reads:

"Considering the order of this Court dated February 15, 1966 dismissing this case with prejudice on the ground of res judicata in view of the final order of July 31, 1963 issued by the Court of First Instance of Manila, Branch X, in Civil Case No. 14208, as alleged in the defendants' motion to dismiss and supplementary motion to dismiss; and considering further that the co-administrator Matias S. Matute who filed the complaint in this case in the name of the plaintiff Estate has withdrawn and/ or prayed for the dismissal of this case with prejudice, and considering furthermore, that the said Order of this Court of February 15, 1966 is now fixed and final, all the other incidents pending in this case are hereby terminated and closed."

However, on March 29, 1966 the respondent Judge promulgated an order declaring in default both the intervenors and the plaintiff estate, the former for failure to answer Canlas' counter-claim and the latter for failure to respond to the other defendants' separate counterclaim. The same decree included a judgment by default condemning the intervenors to jointly and severally pay the sum of P100,000 as damages to Canlas and likewise sentencing the plaintiff estate to indemnify the other defendants Rivera, del Rosario and Vergara in the sum of P50,000. Subsequently, on April 12, 1966 the respondent Judge ordered the issuance of a writ of execution to

enforce the aforesaid judgment by default.

Hence, the interposition by the intervenors of the instant petition for certiorari with preliminary injunction.

Anent the order of February 15, 1966 dismissing with pre-judice civil case 4252, the intervenors-petitioners (now Jose Matute alone, as the other petitioner, Luis Matute, has already with-drawn) contend that the said order is a nullity as it was predicated on a void motion to dismiss and/ or withdraw filed by Matias Matute on February 14, 1966, two weeks after the latter had been re-moved as co-administrator by the probate court in an order dated January 31, 1966. It is further maintained that when Matias Matute interposed the aforesaid motion to dismiss and/or to withdraw, he had no more authority to represent the Matute estate as a consequence of his ouster as co-administrator. The foregoing argument is irredeemably foreclosed by our explicit ruling in L-26751 setting aside the abovementioned order of January 31, 1966 and de-claring as void the removal of Matias Matute and the appointment of the herein intervenor-petitioner Jose S. Matute as the new co-administrator. Granting, therefore, that the controverted order of dismissal was rendered on account of Matias Matute's afore-said motion which was filed in behalf of the plaintiff estate, the validity of such dismissal order cannot be challenged on the ground that the movant (Matias Matute) lacked the capacity to represent the plaintiff estate considering that his personality and authority as co-administrator remained unimpaired because the order of January 31, 1966 is a nullity.

However, the intervenor-petitioner is of the mistaken impression that the disputed order of dismissal was based on Matias Matute's motion to dismiss and/ or to withdraw. As correctly pointed out by the defendants-respondents, the said order was anchored on their own motion to dismiss and supplementary motion to dismiss. Although both the motions of the co-administrator in representation of the plaintiff estate and of the defendants, either of which could justify the dismissal of the complaint in Civil case 4252, were prominently mentioned in the body of the said controverted order, the unequivocal import of the dispositive portion of said decree, however, is that the dismissal was predicated on the defendants' motion to dismiss and supplementary motion to dismiss, thus:

"As prayed for in defendants' motion to dismiss and supplementary action to dismiss, the action filed in this case is hereby dismissed with pre-judice without cost to plaintiff." (emphasis supplied)

Moreover, both the order of March 12, 1966 declaring the termination of all other incidents in civil case 4252 and the order of April 11, 1966 denying the intervenors' motion for reconsideration, categorically affirm that the disputed order of dismissal was anchored on the defendants' motion to dismiss on the ground of res judicata. The order of April 11, 1966 specifically declares that the dismissal of civil case 4252 was based

"... on the ground of res judicata invoked by the defendants in their Motion to Dismiss and Supplementary Motion to Dismiss for the reason that the Compromise Judgment rendered in Civil Case No. 14208, Court of First Instance of Manila, sought to be annulled in this case, and the Order of July 31, 1963 denying the Petition for Relief in Civil Case No. 14208 and settling all the issues raised in the Complaint, have both the force and effect of res judicata."

Undeniably, the aforesaid order of dismissal with pre-judice adjudicated civil case 4252 upon the merits. Since there is no showing that the respondent judge issued the said order with grave abuse of discretion or without or in excess of jurisdiction, an ordinary appeal, then, not a petition for certiorari, was the proper remedy available to the intervenors Jose and Luis Matute who claim to be aggrieved by the dismissal. But having failed to seasonably appeal from the aforesaid order of dismissal, the herein intervenor-petitioner cannot avail of a petition for certiorari as a substitute remedy^[15] to challenge the said order, which in the meantime had already become final.

The pretension of the intervenor-petitioner that his inability to appeal on time was due to the failure of the court a quo to furnish him a copy of the order of dismissal is a spurious, if not an utterly perfidious, claim. To begin

with, when the herein intervenor-petitioner and his brother Luis filed their motion to intervene on August 17, 1964, they were not represented by counsel, but they failed to disclose their respective addresses or at least the address of one of them, contrary to the requirement of section 5 of Rule 7 that a "party who is not represented by an attorney shall sign his pleadings and state his address." (emphasis supplied) Consequently, if the pertinent Orders and notices were not sent to the intervenors, it was because of their failure to disclose their mailing addresses. At all events, since the Intervenor-petitioners virtually allied with the plaintiff estate by adopting in toto the latter's complaint without filing a separate complaint in intervention, it is not without justification to rule, considering the particular circumstances obtaining, that notice to the plaintiff estate should be deemed sufficient notice to the intervenors. Moreover, it is of record that both Attys. Wenceslao Laureta and Robert Porter, who appeared on February 7, 1966 as counsels for the intervenor Jose S. Matute in his capacity as alleged co-administrator by virtue of the abovesaid order of the probate court dated January 31, 1966, were duly furnished with copies of all orders of the court a quo subsequent to their appearance. Hence, the order of dismissal dated February 15, 1966, the lower court reported, after an investigation of the deputy clerk of court for alleged mailing discrepancies upon motion of the intervenors, that copies of the said order were "each mailed to and received by Attys. Wenceslao Laureta and Robert E. Porter on March 18 and 3, 1966, respectively, per registry return cards duly attached to the records of this case." In other words, the intervenor-petitioner Jose S. Matute was furnished, through counsel, a copy of the order of dismissal at the earliest on March 3, 1966 when Atty. Porter received a copy of the order. After a lapse of twenty-three (23) days from the receipt of the said copy, Attys. Laureta and Porter filed on March 26, 1966 a motion for reconsideration of the order of dismissal. Hence, when the said motion was filed, the intervenor-petitioner had still seven (7) days to perfect an appeal. Subsequently, on April 11, 1966, the court a quo denied the aforesaid motion for reconsideration. Separate copies of said denial were received by Atty. Laureta on April 16, 1966 and by Atty. Porter on April 18, 1966, respectively, as per registry receipts 25870 and 25872 and delivery No. 69785 and the reply-telegram dated July 2, 1966 from the Bureau of Posts addressed to the respondent Judge. From April 16, 1966 the intervenor-petitioner still had seven (7) days or up to April 23, 1966 to perfect an appeal. However, it was only on April 25, 1966 that the requisite notice of appeal and appeal bond were filed while the record on appeal was filed much later, on May 26, 1966, clearly way beyond the reglementary period.

The intervenor-petitioner contends however, that it was only on April 25, 1966 that he received notice of the dismissal of civil case 4252 and on the very same day he caused the filing of the necessary notice of appeal and appeal bond. Conceding that the foregoing assertion is correct, the intervenor-petitioner's projected appeal was still out of time since the requisite record on appeal was filed only on May 26, 1966, or thirty-one days from April 25, 1966.

In passing, it is pertinent to note that the dismissal of the complaint in civil case 4252, after the issues were joined with the filing of the responsive pleadings, upon the defendants' motion to resolve a pending motion to dismiss, the resolution of which had been previously deferred until after the trial by virtue of an order of the same court under another judge, is a procedural deviation from the standard sequence of trial in accordance with which the court a quo after the requisite answers were filed, should have proceeded with the trial on the merits, and only thereafter resolved the motion to dismiss as was the import of the order of deferment. Nevertheless, it is relevant to emphasize, on the other hand, that an order deferring the resolution of a motion to dismiss, being an interlocutory order, may be altered or revoked by the trial court during the pendency of the main action. It is settled that 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 x x x." [16] Of similar import is the ruling of this Court declaring that "it is rudimentary that such (interlocutory) orders are subject to change in the discretion of the court." [17] Moreover,

one of the inherent powers of the court is "To amend and control its process and orders so as to make them conformable to law and justice." [18] In the language of Chief Justice Moran, paraphrasing the ruling in *Veluz vs. Justice of the Peace of Sariaya*, [19] since judges are human, susceptible to mistakes, and are bound to administer justice in accordance with law, they are given the inherent power of amending their orders or judgments so as to make them conformable to law and justice, and they can do so before they lose their jurisdiction of the case, that is before the time to appeal has expired and no appeal has been perfected. [20] And in the abovesited *Veluz* case, this Court held that "If the trial court should discover or be convinced that it had committed an error in its judgment, or had done an injustice, before the same has become final, it may, upon its own motion or upon a motion of the parties, correct such error in order to do justice between the parties. ... It would seem to be the very height of absurdity to prohibit a trial judge from correcting an error, mistake, or injustice which is called to his attention before he has lost control of his judgment." Corollarily, it has also been held "that a judge of first instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action." [21]

In view of the foregoing rulings, it is then enough to say that the abovementioned order of deferment, issued by the Honorable Judge Vicente Cusi, Jr., to whose sala civil case 4252 was originally assigned, is interlocutory in nature, and as such, the court a quo, through the now respondent Judge Vicente Bullecer, had the power to set it aside, as it did by finally deciding the pending motion to dismiss on the ground of *res judicata*. Moreover, as previously stated, there is no evidence to show that the respondent Judge, in issuing the order of dismissal, acted with grave abuse of discretion or without or in excess of jurisdiction.

We now come to the challenged order of default and judgment by default, both contained in the abovementioned order dated March 29, 1966. Attacking the validity of the said order of default, the intervenor-petitioner claims that the respondent Judge failed to consider that Matias Matute, representing the plaintiff estate, filed on time an answer dated March 1, 1965 traversing the allegations of Canlas' counterclaim, which answer inured to the benefit of not only Matias Matute but also to the intervenors who were jointly impleaded as defendants in the said counterclaim. The defendant-respondent Canlas, on the other hand, while not denying receipt of the aforesaid answer to his counterclaim, contends that the herein intervenor-petitioner's failure to personally answer said counterclaim is fatal and that he could not take refuge under the answer interposed by Matias Matute.

We are of the considered opinion that the herein disputed order of default is illegal and void, and, consequently, the controverted judgment by default and order of execution were improvidently issued.

1. The counterclaim interposed by Canlas raised a common cause of action for damages against Matias Matute, as the representative of the plaintiff estate, and Jose and Luis Matute, as intervenors in civil case 4252, all in their personal capacities. The counterclaim reads:

"That for instituting this patently frivolous and unfounded action in bad faith calculated to merely harass answering defendant Paterno R. Canlas in order to satisfy the personal revenge, hatred and vindictiveness of the co-administrator, Matias S. Matute, representing the plaintiff Estate, and the intervenors Jose S. Matute and Luis S. Matute, defendant Paterno R. Canlas suffered actual, moral and consequential damages in the total amount of P100,000.00, for which plaintiff Matias S. Matute and intervenors Jose S. Matute and Luis S. Matute should be held personally liable." (emphasis supplied)

Having been thus jointly charged to pay the abovestated damages, the brothers Matias, Jose and Luis Matute could validly file a common responsive pleading, as in effect they did when Matias Matute filed an answer to the aforesaid counterclaim, the receipt of which Canlas admits. It is significant to note that the said answer does not only deny the charge against Matias Matute but as well as negates the claim against the intervenors.

2. Moreover, having successfully prayed for the resolution of his pending motion to dismiss, even after the issues had been joined with the filing of his answer, the defendant-respondent Canlas is deemed to have abandoned his counterclaim and voluntarily reverted himself to the time when he initially interposed his motion to dismiss prior to the filing of his answer with counter claim. Thus, when the complaint in civil case 4252 was dismissed on the basis of Canlas' motion, the entire proceeding was inevitably terminated and there was nothing more to adjudge. In fact, the termination of all the pending incidents in civil case 4252 was subsequently decreed by the respondent Judge himself in the orders of March 12, 1966 and April 11, 1966. Consequently, the respondent Judge, to say the least, acted in excess of jurisdiction when he is-sued, after having dismissed the principal complaint, the herein controverted order of default and judgment by default for then there was nothing left to be adjudicated. Said decrees having been rendered in excess of jurisdiction, certiorari will lie to have then annulled.

In view of the foregoing discussion, the finality of the order of dismissal should be upheld, while the disputed order of default, judgment by default and order of execution should be declared void and set aside.

The motion interposed on June 14, 1966 by the herein intervenor-petitioner, in his alleged capacity as co-administrator, in behalf of the Amadeo Matute Olave estate, praying that the said estate be allowed to adopt the instant petition for certiorari with preliminary injunction and be admitted as co-petitioner, the resolution of which we had previously deferred should therefore be denied on the ground that the intervenor-petitioner has no legal personality to represent the Matute estate considering that his appointment as co-administrator has been voided. Nevertheless, it is our considered view that the declaration of total nullity of the abovementioned judgment by default shall perforce bar the execution against the Matute estate of that portion of the said void judgment which condemns it to pay the sum of P50,000 in damages to the defendants-respondents Rivera, del Rosario and Vergara.

ACCORDINGLY, (1) in L-26751 the petition for certiorari is hereby granted; the respondent Court of Appeals is adjudged as without jurisdiction over CA-G.R. 37039-R; the probate court's controverted order of January 31, 1966 is hereby set aside in its entirety, thereby maintaining the respondent Matias S. Matute in his trust as co-administrator of the Amadeo Matute Olave estate; (2) in L-26085 the petition for certiorari is hereby granted; the order of default dated April 16, 1966, the judgment by default dated April 23, 1966, and the order of execution dated May 3, 1966, all issued in excess of jurisdiction by the respondent Judge of the Court of First Instance of Davao, are set aside; and (3) in L-26106 the petition for certiorari is hereby denied in so far as it seeks to nullify the final order of dismissal dated February 15, 1966; the order of default and judgment by default dated March 29, 1966 and the order of execution dated April 12, 1966, all similarly issued in excess of jurisdiction by the same respondent Judge are set aside. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] L-18799, March 31, 1964

[2] L-8039, January 28, 1957.

[3] *Degala vs. Ceniza and Umipig*, 78 Phil. 791.

[4] *Borromeo vs. Borromeo*, 97 Phil. 549.

[5] *Supra*, see note 3

- [6] Francisco, Revised Rules of Court (1965 ed.), Vol. 1, p. 703
- [7] See *Epang vs. Ortin de Layco*, 97 Phil. 24.
- [8] 78 Phil. 754.
- [9] See *Woodcraft Works Ltd. vs. Moscoso, et al.*, 92 Phil. 1021; *Liwanag, et al. vs. Castillo*, 106 Phil. 375.
- [10] *Director of Lands vs. Santamaria and Javellana*, 44 Phil. 594.
- [11] *Luzon Surety Co. vs. Marbella, et al.*, L-16088, September 30, 1960.
- [12] *Uy Chu vs. Imperial and Uy Du*, 44 Phil. 27; *Matutina vs. BusIon, et al.*, L-14637, August 24, 1960.
- [13] On November 10, 1967 this Court granted Luis Matute's petition, to withdraw as petitioner, without pronouncement on the facts alleged by him to justify said withdrawal
- [14] The jurisdiction of the Court of First Instance of Manila (Branch X) over civil case 14208 anent Atty. Canlas' claim for attorney's fees secured by a charging lien, against the pretended authority of the probate court, was upheld by this Court in *Testamentaria de Don Amadeo Matute Olave vs. Canlas, et al.*, (G.R. L-12709, February 28, 1962).
- [15] *Lopez vs. Alvendia*, L-20697, December 24, 1964; *Casilan, et al. vs. Hon. Filomeno B. Ibanez, et al.*, L-19968-69, October 31, 1962; *Francisco, et al. vs. Hon. Hermogenes Caluag, et al.*, L-15365, December 26, 1961; *Paringit vs. Hon. Honorato Masakayan, et al.*, L-16578, July 31, 1961; see also *Ong Sit vs. Piccio*, 79 Phil. 785; *Gonzales vs. Salas*, 49 Phil. 1.
- [16] *Manila Electric Co. vs. Artiaga and Greene*, 50 Phil. 144, cit-ing *Reilly vs. Perkins*, 56 Pac., 734.
- [17] *Roxas vs. Zandueta*, 57 Phil. 14; see also *Gonzales vs. Gonzales*, 81 Phil. 38.
- [18] Rule 135, Section 5(g)
- [19] 42 Phil. 557.
- [20] 6 Moran (1963 edition), p. 180.
- [21] *Ong Su Han vs. Gutierrez David*, 76 Phil. 546; see also *Roxas vs. Zandueta*, 57 Phil. 14; *Caluya vs. Ramos*, 79 Phil. 640.

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