On this score the respondent judge's action on Lastrilla's motion should be declared as in excess of jurisdiction, which even amounted to want of jurisdiction, considering specially that Dorfe and Asturias, and the defendants themselves, had undoubtedly *the right to be heard — but they were not notified.*[4]

Why was it necessary to hear them on the merits of Lastrilla's motion?

Because Dorfe and Asturias might be unwilling to recognize the validity of Lastrilla's purchase, or, if valid, they may want him not to forsake the partnership that might have some obligations in connection with the partnership properties. And what is more important, if the motion is granted, when the time for redemption comes, Dorfe and Asturias will receive from redemptioners seventeen per cent (17%) *less than the amount* they had paid for the same properties.

The defendants Arnold Hall and Jean Roxas, eyeing Lastrilla's financial assets, might also oppose the substitution by Lastrilla of Fred Brown, the judgment against them being *joint and several.* They might entertain misgivings about Brown's slipping out of their common predicament thru the disposal of his shares.

Lastly, all the defendants would have reasonable motives to object to the delivery of 17% of the proceeds to Lastrilla, because it is so much money deducted, and for which the plaintiffs *might ask another levy* on their other holdings or resources. Supposing of course, there was no fraudulent collusion among them.

Now, these varied interests of necessity make Dorfe, Asturias and the defendants *indispensable parties* to the motion of Lastrilla — granting it was a step allowable under our regulations on execution. Yet these parties were not notified, and obviously took no part in the proceedings on the motion.

> "A valid judgment cannot be rendered where there is a want of necessary parties, and a court cannot properly adjudicate matters involved in a suit when necessary and indispensable parties to the proceedings are not before it." (49 C. J. S. 67.)
>
> "Indispensable parties are those without whom the action cannot be finally determined. In a case for recovery of real property, the defendant alleged in his answer that he was occupying the property as a tenant of a third person. This third person is an indispensable party, for, without him, any judgment which the plaintiff might obtain against the tenant *would have no effectiveness,* for it would not be binding upon, and cannot be executed against, the defendant's landlord, against whom the plaintiff has to file another action if he desires to recover the property effectively. In an action for partition of property, each co-owner is an indispensable party, for without him *no valid judgment for partition* may be rendered." (Moran, Comments, 1952 9d. Vol. I, p. 56.) (Underscoring supplied.)

Wherefore, the orders of the court recognizing Lastrilla's right and ordering payment to him of a part of the proceeds were patently erroneous, because they were promulgated in excess or outside of its jurisdiction. For this reason the respondents' argument resting on plaintiffs' failure to appeal from the orders on time, although ordinarily decisive, carries no persuasive force in this instance.

For as the former Chief Justice Moran has summarized in his Comments, 1952 9d. Vol. II, p. 168 —

> "x x x And in those instances wherein the lower court has acted without jurisdiction over the subject-matter, or where the order or judgment complained of is a patent nullity, courts have gone even as far as to disregard completely the question of petitioner's fault, the reason being, undoubtedly, that acts performed with absolute want of jurisdiction over the subject-matter are void *ab initio* and cannot be validated by consent, express or implied, of the parties. Thus, the Supreme Court granted a petition for certiorari and set aside an order reopening a cadastral case five years after the judgment rendered therein had become final. In another case, the Court set aside an order amending a judgment six years after such judgment acquired a definitive character. And still in another case, an order granting a review of a decree of registration issued more than a year ago had been declared null and void. In all these cases the existence of the right to appeal has been disregarded. In a probate case, a judgment according to its own recitals was rendered without any trial or hearing, and the Supreme Court, in granting certiorari, said that the judgment was by its own recitals a patent nullity, which should be set aside though an appeal was available but was not availed of. x x x"

(4) True, Lastrilla was attorney for defendants, but he was careful in all his motions on the matter to sign "in his own representation" or "for himself and in his behalf."

Invoking our ruling in Melocotones v. Court of First Instance, 57 Phil. 144, wherein we applied the theory of laches to petitioners' 3-year delay in requesting certiorari, the respondents point out that whereas the orders complained of herein were issued in June 13, 1951 and August 14, 1951 this special civil action was not filed until August 1952. It should be observed that the order of June 13 was superseded by that of August 14, 1951. The last order merely declared "que el 17% de las propiedades vendidas en publica subasta pertenece al Sr. Lastrilla y este tiene derecho a dicha porcion." This does not necessarily mean that 17% of *the money had to be delivered to him.* It could mean, as hereinbefore indicated, that the purchasers of the property (Dorfe and Asturias) had to recognize Lastrilla's ownership. It was only on *April 16, 1952* (Annex N) that the court issued an order directing the sheriff "to turn over" to Lastrilla "17% of the total proceeds of the auction sale". There is the order that actually prejudiced the petitioners herein, and they fought it until the last order of July 10, 1952 (Annex Q). Surely a month's delay may not be regarded as laches.

In view of the foregoing, it is our opinion, and we so hold that all orders of the respondent judge requiring delivery of 17% of the proceeds of the auction sale to respondent Olegario Lastrilla are null and void; and the costs of this suit shall be taxed against the latter. The preliminary injunction heretofore issued is made permanent. So ordered.

Paras, Feria, Pablo, Tuazon, Montemayor, Reyes, Jugo, Bautista Angelo and *Labrador,* J. J., concur.

VII

Tomasa V. Bulos Vda. de Tecson, as administratrix of the testate estate of the deceased Pablo Tecson Ocampo, versus Benjamin, et al., all surnamed Tecson, G. R. No. L-5233, September 30, 1953.

CIVIL PROCEDURE; PETITION FOR RELIEF FROM JUDGMENTS. — While a petition for relief as a rule is addressed to the sound discretion of the court, however, when it appears that a party has a good and meritorious defense and it would be unjust and unfair to deny him his day in court, equity demands that the exercise of judicial discretion be reconsidered if there are good reasons that warrant it.

Castillo and Guevara and Lc-O, Feria and Manglapus for appellants.
Claro M. Recto for appellee.

D E C I S I O N

BAUTISTA ANGELO, J.:

The incident involved in this appeal stems from an action for forcible entry originally commenced on June 12, 1941 in the Justice of the Peace Court of San Antonio, Nueva Ecija, by Tomasa V. Bulos Vda. de Tecson in her capacity as administratrix of the estate of the deceased Pablo Tecson Ocampo against defendants-appellants.

In that case, defendants filed a written answer. After trial, the court dismissed the case. From the decision plaintiff appealed to the Court of First Instance of Nueva Ecija, and the case was docketed as Civil Case No. 8889.

Having failed to answer the complaint within the time prescribed in Section 1, Rule 15, of the Rules of Court, defendants, on motion of plaintiff, were declared in default and thereafter plaintiff presented her evidence. On October 9, 1941, a judgment by default was rendered against defendants, and on October 10, 1941, copy of the decision was served on defendants' counsel.

Three days after receipt of copy of the decision, or on October 13, 1941, counsel for defendants filed a written manifestation stating that he would file a petition to set aside the decision by default but that he needed more time to do so to enable him to gather evidence

and prepare the necessary affidavits of merit in support of the petition. This was done on October 16, 1941. Plaintiff filed an opposition to the petition for relief. Then war broke out and no action was taken on the petition.

After liberation, counsel for defendants took steps to have the petition for relief acted upon by the court. The petition was set for hearing several times, but before action thereon could be taken, both parties agreed in a joint action to have the hearing cancelled as they would merely file a memoranda in support of their contentions. These memoranda having been submitted, the court issued an order denying the petition. From this order defendants took the case directly to this Court stating that their appeal "is based merely on questions of law."

The preliminary question which should be threshed out before we come to the main issue is whether this appeal should be determined considering merely the findings of fact of the lower court in the order subject of appeal. Counsel for appellee sustains the affirmative view because, he contends, appellants have stated in their notice of appeal that their "appeal is based merely on questions of law" which means that they cannot discuss any fact or circumstance other than those found by the lower court. Counsel for appellants sustain the contrary view contending that the facts brought out in their pleadings and affidavits of merit stand undisputed and so they can now be considered.

It appears that on October 13, 1941, or three days from receipt of copy of the decision by default, counsel for defendants filed an urgent manifestation stating that he would presently file a petition for relief but that he wanted more time to gather data and prepare the requisite affidavits of merit in support of the petition, and in effect he filed the petition three days thereafter attaching thereto four affidavits of merit. Said petition shows the following facts: The notice intended for defendants requiring them to answer was received by one Mariano Linao, an employee of a business firm named Lawyers' Printers. The office of defendants' counsel was located in the same room occupied in part by said firm, whose manager was one Marcos Suñiga. The personnel of the law office of counsel for defendants merely consisted of three, namely, Atty. Gaudencio B. Talahib, one typist and a messenger. When the notice of the court reached the office of counsel, only Mariano Linao was present, who signed the return card and placed the letter on a table. The messenger of defendants' counsel was out to attend to some errand but when he returned Linao left without calling his attention to the letter. Both Atty. Castillo, defendants' counsel, as well as his assistant, Atty. Talahib, were also out attending to some professional engagement. The notice never came to the knowledge of defendants' counsel until he received, to his surprise, copy of the decision by default. Immediately he took steps to file a petition for relief. This petition was set for hearing several times, but the hearing was never held, as the parties agreed to submit memoranda in support of their contentions. And one of the points stressed in the petition was that defendants had a good and meritorious defense.

Considering that the petition for relief did not go thru the process of a hearing, because both parties agreed to submit memoranda in support of their contentions, which implies that they waived their privilege to submit evidence, the logical consequence is that plaintiff, or her counsel, is deemed to have admitted the truth of all material and relevant allegations appearing in the petition, as well as in the affidavits of merit, and to have submitted the case upon those allegations. As this court aptly said, "One who prays for judgment on the pleadings without offering proof as to the truth of his own allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings." (Evangelista v. De la Rosa, 42 O. G. 2100; Aquino v. Blanco, 45 O. G. 2080.)

The facts concerning the petition for relief not being disputed, we are inclined to sustain the view of appellants' counsel that for purposes of this appeal we may take into account not only the findings of fact made by the lower court but all other relevant and material facts appearing in the pleadings to determine if said findings are proper, just and warranted.

The lower court found, among other things, that the facts contained in the petition give a picture of a law office poorly organized and directed; a law office with one assistant, one messenger and one typist, still court notices are received by a stranger who signs for them; the allegation of counsel for the defendants that during or around the period he was very busy at the trial of many cases, as correctly answered by the plaintiff, is no excuse for the default entered in this case," and after stating that "plaintiff is as entitled as the defendants for the speedy termination of the case," the court, based on said findings, denied the petition for relief.

While a petition for relief as a rule is addressed to the sound discretion of the court, however, when it appears that a party has a good and meritorious defense and it would be unjust and unfair to deny him his day in court, equity demands that the exercise of judicial discretion be reconsidered if there are good reasons that warrant it. Here these reasons exist if only all the facts are considered. Note that counsel did not lose time in putting things aright when he came to note that something was wrong. Upon receipt of copy of the decision of the court, which came to him as a surprise, he immediately gave notice of his desire to file a petition for relief, which he did in no time, attaching to his petition four affidavits of merit. These documents show that defendants had a good and meritorious defense and outline the circumstances which resulted in the failure of their counsel to answer within the reglamentary period. They show that counsel was sharing office with a business firm and that because of an unfortunate coincidence the notice to answer was served on an employee of the firm. That such coincidence can happen cannot be denied. It is one of these things that can happen in the ordinary course of business. It may be an act of negligence for Mariano Linao not to give the notice to the messenger of defendants' counsel, or an act of negligence for the messenger to leave the office without leaving a substitute, but it cannot be denied that that negligence is excusable because there was no deliberate intent on their part to cause inconvenience to the court, or delay the administration of justice. On the other hand, there is no showing that counsel is guilty of any attempt to delay the proceedings, or of any act of bad faith or inexcusable negligence which may warrant disciplinary action; on the contrary, it is the first time that he has been placed in a predicament where his client has been declared in default. These considerations warrant that the case be reopened and defendants be given one more opportunity to answer and present their evidence.

Wherefore, the order appealed from is hereby set aside. The petition for relief of defendants is granted and defendants are given ten (10) days from notice to answer the complaint, without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Labrador, J.J., concur.

Pablo, J., took no part.

VIII

Hernando Pabilonia and Romeo Pabilonia, Petitioners, vs. Hon. Vicente Santiago, Judge Court of First Instance of Quezon Province, Branch II; Antonia Abas and Panfilo Nagar, Respondents; G. R. No. L-5110; July 29, 1953;

Court of Industrial Relations; it has no power to modify an award confirmed by Supreme Court.—While Sec. 17 of Commonwealth Act No. 103 as amended apparently authorizes the Court of Industrial Relations to modify an award at any time during its effectiveness, there is nothing in the wording to suggest that the Court of Industrial Relations may modify an award that has been affirmed by the Supreme Court after an order for the execution of that award has already become final.

Potenciano A. Magtibay for petitioners.

G. N. Trinidad for respondents.

D E C I S I O N

REYES, *J.*:

The petitioners in these two cases challenge the validity and seek the annulment of an order of the Court of Industrial Relations by which that court gave to a motion for modification of a judgment that had already become final. Though differing in form — one (G. R. No. L-6265) an appeal by certiorari — the two cases are but one in substance and purpose, and should be adjudicated together. This decision is, therefore, rendered for the adjudication of both.

It appears that, on November 23, 1946, the Court of Industrial Relations awarded wage increases to the laborers of Dee C. Chuan & Sons, Inc., a Philippine corporation in the lumber business, the laborers being then represented by the Kaisahan ng Manggagawa sa