graph 1, had been completely installed at the beginning of the month of February, 1947, at the "APBA" building Calape, Bohol, and since then the said show house begun its operation;

4. That upon inquiry, the plaintiff was informed and so allege that the "APBA" Cinematographic Shows Inc., has never been registered, hence Dumadag and Jumamuy who acted as the president and general manager respectively are the once made as party defendants;

Plaintiff did not include the members of the unregistered corporation as parties defendants, and so they were not summoned. On September 14, 1953, the court *a quo* entered the order complained of, which is as follows:

The association represented by defendants Pedro Dumadag and Esmenio Jumamuy, is not included as party defendant in the fourth amended complaint. It is a legal requirement that any action should be brought against the real party in interest.

In view of the opposition filed by the defendants Pedro Dumadag and Esmenio Jumamuy, the court denies the admission of plaintiff's fourth amended complaint dated February 17, 1953, and objected to on the date of the trial.

The fourth amended complaint (paragraph 2, supra) alleges that defendants, purporting to be the president and general manager of the unregistered corporation, leased the theatrical equipments from the plaintiff, petitioner herein. Said defendants, according to the complaint, did not enter into the contract in the name or on behalf of the corporation; consequently, the law applicable is Article 287 of the Code of Commerce, which provides;

Art. 287. A contract entered into by the factor in his own name shall bind him directly to the person with whom it was made; but if the transaction was made for the account of the principal, the other contracting party may bring his action either against the factor or against the principal.

The opposition of the respondents to the admission of the fourth amended complaint is procedural in nature, i.e., that notwithstanding the fact that the APBA was not registered, all its members should be included as parties defendants as provided in section 15 of Rule 3 of the Rules of Court. The trial court was of the opinion that the inclusion of the members was necessary as it considered them as "real parties in interest." In this respect, the trial court committed an error as the rule requiring real parties to be impleaded is applicable to parties plaintiffs, not to parties defendants.

It is the absolute prerogative of the plaintiff to choose the theory upon which he predicates his right of action, or the parties he desires to sue without dictation or imposition by the court or the adverse party. If he makes a mistake in the choice of his right of action, or in that of the parties against whom he seeks to enforce it, that is his own concern as he alone suffers therefrom. Granting that the members of the unregistered corporation may be held responsible, partly or wholly, for the agreement entered into by the officers who acted for the corporation, the fact remains that the plaintiff in the case at bar chose not to implead them, suing the officers alone. If the officers desire to implead them and make them equally responsible in the action, their remedy is by means of a third party complaint, in accordance with Rule 12 of the Rules of Court. But they can not compel the plaintiff to choose his defendants. He may not, at his own expense, be forced to implead any one who, under adverse party's theory, is to answer for the defendants' liability. Neither may the court compel him to furnish the means by which defendants may avoid or mitigate their liability. This was in effect what counsel for respondents wanted to compel the petitioner to do, and which the court was persuaded to do force the plaintiff to include the members of the unregistered corporation as parties defendants and when plaintiff refused to do so, it registered his fourth amended complaint.

The court's order, in so far as it demands the inclusion of the members of the unregistered corporation, has evidently been induced by a confusion between an indispensable party and a party jointly or ultimately responsible for the obligation which is the subject of an action. The members of the unregistered corporation could be responsible for the rental of the equipments jointly with their officers. But the complaint specifically alleges that said officers entered into the contract by themselves, hence the presence of the members is not essential to the final determination of the issue presented, the evident intent of the complaint being to make the officers directly responsible. (Article 287, Code of Commerce, supra.) The alleged responsibility of the members of the corporation for the contract to the officers, who acted as their agents, is not in issue and need not be determined in the action to fix the responsibility of the officers to plaintiff's intestate, hence said members are not indispensable in the action instituted.

We find that the trial court abused its discretion in refusing to admit plaintiff's fourth amended complaint. The writ prayed for is hereby granted, the order complained of reversed, and the complaint ordered admitted, and the court *a quo* is hereby directed to proceed thereon according to the rules. With costs against respondents Pedro Dumadag and Esmenio Jumamuy.

Paras, Pablo, Bengzon, Padilla, Montemayor, Alex Reyes, Jugo, Bautista Angelo, Concepcion and *J. B. L. Reyes, J.J.*, concur.

XI

The People of the Philippines, Plaintiff-Appellee, vs. Antonio Samaniego y Young alias Sy Liong Bok alias Tony, Defendant-Appellant, No. L-6085, June 11, 1954, Concepcion, J.

The People of the Philippines, Plaintiff-Appellee, vs. Ong Ing alias Cresencio Ong, and Alfredo Torres y Sagaysay, Defendant-Appellant, No. L-6086, June 11, 1954, Concepcion, J.

1. EVIDENCE; "RES INTER ALIOS ACTA". — The testimonies of peace officers for the prosecution in other criminal cases which were dismissed upon the ground that the confessions obtained by them, in connection with those cases, were tainted with irregularities are *res inter alios acta* and are not admissible in evidence.

2. ID.; ID.; ALIBI. — The uncorroborated testimony of one of the appellants that he was sick at home, when the offense charged was committed, cannot offset the positive testimony of witnesses who saw him near the scene of the crime.

3. ID.; CRIMINAL PROCEDURE; NEW TRIAL; NEWLY DISCOVERED EVIDENCE. — Where the alleged newly discovered evidence merely tends to corroborate appellants' alibi to the effect that they were not present at the scene of the crime and could not have participated in its commission, the motion for new trial should be denied.

4. ID.; ID.; ID.; EVIDENCE INSUFFICIENT TO OFFSET THAT FOR THE PROSECUTION WHICH HAS BEEN POSITIVELY ESTABLISHED. — The testimony of the new witness for the appellants to the effect that they were the authors of the crime charged and that no other persons could have committed it can not offset the positive testimonies of two unbiased witnesses for the prosecution that they have seen the appellants at the place of the occurrence at about the time of the perpetration of the offense charged, testimonies which were partly corroborated by one of the appellants himself.

Sixto S. J. Carlos, Guillermo S. Santos, Eleuterio S. Abad, and *Constantino B. Acosta* for the defendants and appellants.

Gaudencio C. Cabacungan for defendant Antonio Samaniego.

Solicitor General Juan R. Liwag and *Assistant Solicitor General Francisco Carreon* for the plaintiff and appellee.

DECISION

CONCEPCION, *J.*:

On April 28, 1950, at about 11:00 p.m., the dead body of Ong Tin Hui was found gagged and blindfolded in the Oxford Shoe

Emporium, at No. 329 Carriedo Street, Manila, where he was working, with his wrists tied and a cord around his neck. The medical examiner found, on said body, the following:

"Lacerations, auricular and occipital arteries and veins.

Lacerations, superficial, cerebral veins, basal portion, brain.

Marked congestion and edema, lungs, bilateral.
Old pleural adhesions, lungs, right.

Congestion, spleen.

Congestion, pancreas.

Congestion, kidneys, bilateral.

Hemorrhages, diffuse, hubdural and subarachnoid, specially base, brain.

Fracture, cribiform plate, ethmoid bone of cranium.

Wounds, lacerated, multiple (2) forehead.

Wounds, lacerated, temporal region, left.

Wound, lacerated. splitting, extermalacar, pinna, left.

Wounds, (2) lacerated, with extensive, contusion, scalp, posterior occipital region, head, left.

Wounds, lacerated, multiple (2) extensive, scalp, with contusion hematoma, occipital-parietail region, posterior head, right.

Tight-gag, mouth, and tight blind fold (piece of cloth), face.

Strangulation by cord, neck.

Tight cord around both forearms and wrist joints.

Cause of Death: Asphyxia and diffuse subarachnoid hemorrhage specially over the base of the brain due to suffocation by tight gagging of the mouth and whole face with cloth, and multiple laceration injuries by blows on the head and face:" (Appellants' brief, p. 31).

The peace officers who investigated the matter were tipped that Ong Tin Hui had an enemy by the name of Go Tay, whose brother-in-law, Ong Ing, had the reputation of being a tough guy and was unemployed. Upon questioning, Ong Ing, who, sometime later on, was seen loitering around Carriedo Street, stated that, at about the time of the occurrence, he had seen Alfredo Torres, one Antonio Tan and a Filipino whose name he did not know, coming from the Oxford Shoe store. Hence, Alfredo Torres, whose whereabouts were located with the assistance of Ong Ing, was arrested. Upon investigation, Torres, in turn, declared that Ong Ing had participated in the commission of the crime. When Ong Ing and Alfredo Torres were made to face one another, they mutually recriminated and incriminated each other. Moreover, Torres, Ong Ing *alias* Cresencio Ong and Go Tay made their respective statements in writing, Exhibits X, W and Y, implicating one Tony. Upon examination of the pictures of police characters in the files of the Police Department, Ong Ing and Torres identified the picture of one bearing the name of Antonio Tan, as that of Tony. Antonio Tan turned out to be known, also, as Antonio Samaniego, *alias* Sy Liong Tok, who, on June 15, 1930, was arrested in Mapirac, Naga, Camarines Sur, where he went late in May, 1950. Upon being questioned by the police, Samaniego declared substantially, that he was merely posted, as guard, at the door of the Oxford Shoe Emporium, during the commission of the crime charged, and that thereafter, he received from Alfredo Torres a certain sum of money as his share of the loot. Samaniego, likewise signed the statement Exhibit CC.

As a consequence, three criminal cases for robbery and homicide were instituted in the Court of First Instance of Manila, namely: Case No. 12734, against Ong Ing and Alfredo Torres y Sagaysay; Case No. 12941, against Antonio Samaniego; and Case No. 13031, against Ang Tu alias Go Tay. After entering a plea of "not guilty," which was subsequently withdrawn, Ong Ing was allowed to plead, in lieu thereof, and, after being carefully informed by the court of the serious nature of the charge and of the possible consequences of his contemplated step, did plead, "guilty," with the understanding that he would introduce evidence on the presence of some mitigating circumstances. Upon the presentation of said evidence, Ong Ing was sentenced to life imprisonment, with the accessory penalties prescribed by law, to indemnify the heirs of the deceased Ong Tin Hui in the sum of ₱5,000, without subsidiary imprisonment in case of insolvency, and to pay one-half of the costs -- which sentence is now being served by him. In due course, the Court of First Instance subsequently rendered a decision convicting Alfredo Torres and Antonio Samaniego, as principal and as accomplice, respectively, of the crime charged, and sentencing the former to life imprisonment, and the latter to an indeterminate penalty ranging from 8 years and 1 day of *prision mayor* to 14 years, 8 months and 1 day of *reclusion temporal*, with the accessory penalties provided by law and to jointly and severally indemnify the heirs of the deceased Ong Tin Hui in the sum of ₱5,000 and the Oxford Shoe Emporium in the sum of ₱104, and, Alfredo Torres to pay one-half of the costs in case No. 12734, and Antonio Samaniego the costs in case No. 12941, and acquitting Ang Tu *alias* Go Tay upon the ground of insufficiency of evidence, with costs *de oficio* in case No. 13031. Torres and Samaniego have appealed from said decision.

It is not disputed that the Oxford Shoe Emporium was burglarized and Ong Tin Hui killed therein by the thieves in the evening of April 28, 1950. The only question for determination in this case are: (1) whether appellants formed part of the group that perpetrated the offense, and (2) in the affirmative case, the nature of their participation therein. The evidence thereon consists of the following:

(a) Ong Ing, *alias* Cresencio Ong, testified that, pursuant to instructions of Ang Tu, *alias Go Tay*, who begged him to look for thugs to kill Ong Tin Hui, he (Ong Ing) sought appellants herein; that Ong Ing gave Samaniego the sum of ₱200, which had come from Ang Tu; that, upon hearing of the latter's plan, Samaniego remarked that Ong Tin Hui should really be killed, he being his (Samaniego's) creditor; that both appellants agreed to go to the Oxford Shoe Emporium in the evening of April 28, 1950; that on the way thereto, said evening, Samaniego suggested the advisability of finding a good excuse to knock at the door, in order that his companions could enter the store; that upon arrival thereat, Samaniego knocked at the door, which was opened by Ong Tin Hui; that, thereupon, Torres, another Filipino and one Chinese, whose name was not given, entered the store; that the unnamed Filipino expressed the wish to go to the toilet, for which reason Ong Tin Hui led him to said place; that, thereupon, the former struck the latter, from behind, with a piece of wood; that Torres tied the hands of Ong Tin Hui, whom Torres and the other Filipino dragged to the kitchen; that when Torres and his companions left the store, they stated that Ong Tin Hui was dead already; and that, soon later, they went to the house of Torres at Grace Park, where the loot of ₱104 was divided.

(b) Nazario Aquino and Apolinario Ablaza, watchman and inspector, respectively, of the PAMA Special Watchmen Agency, declared that, on April 28, 1950, between 10:00 and 11:00 p.m., Aquino saw Torres at Bazar 51 in Carriedo Street, whereas Ablaza met said appellant near the Alcazar Building, in the same street; that Aquino chatted with Torres, who said that soon he could buy whatever he needed, for he would get his backpay; that Torres was perspiring and his hair was ruffled when Ablaza saw him; that, that evening, Aquino, likewise, saw appellant Samaniego, with four companions, at the corner of Carriedo and P. Gomez streets, and this was admitted by Samaniego; and that Samaniego greeted him on that occasion.

(c) In his extrajudicial statement (Exhibit C), Torres declared that, pursuant to a previous understanding, he, Samaniego, Ong Ing, and others gathered at the Cliners Restaurant, where it was agreed that Torres would disuade the special watchman from patroling the vicinity of the Oxford Shoe Emporium; that Samaniego knocked at its door at about 10:45 p.m.; that while Samaniego and Torres

stood on guard outside, Ong Ing, the unnamed Filipino, and another Chinaman, entered the store; that after leaving the store, the group proceeded to the house of Torres, where the stolen money was divided; and that the blood stains found in his trousers and coat (Exhibits M and N), must have been caused by the unnamed Filipino, who had blood in his hands.

(d) Detective Lieutenant Enrique Morales and Detective Corporal Jose Sto. Tomas, testified that upon investigation, Samaniego stated that he was merely posted at the door of the Oxford Shoe Emporium during the occurrence.

(e) In his extrajudicial confession (Exhibit CC), Samaniego declared that he had known Ong Tin Hui since August 1949, because the Oxford Emporium was behind the store where said appellant used to work; that he was not inside the Oxford Shoe Emporium, but merely stood on guard at its door when the crime was committed; that Ong Ing gave him P200, which came from Ang Tu, in order to induce him to kill Ong Tin Hui; and that, after the occurrence, he received P23 or P24 as his share of the loot.

(f) In his extrajudicial statement (Exhibits W and AA), Ong Ing said that, in addition to agreeing to participate in the commission of the crime, Samaniego had suggested that it be perpetrated on a Friday; that it was Samaniego who knocked at the door of the Oxford Shoe Emporium in order that his companions could enter the store; and that Torres was one of those who participated in the commission of the crime charged.

(g) In Exhibits X and BB, the extrajudicial confessions of Torres, stated that besides knocking at the door of the Oxford Shoe Emporium, Samaniego received P26 as his share of the stolen money. Torres likewise identified Samaniego's picture, Exhibit J.

(h) The sales book Exhibit S, and the cash slip booklet and cash slips of the Oxford Shoe Emporium (Exhibits S, T, T-1 to T-16, U and U-1 to U-13), show that the sales made in said store on April 28, amounted, at least, to P104.00, thus corroborating the foregoing evidence on the amount of money taken from said store and divided among those who perpetrated the offense charged.

Appellants claim that the aforementioned statements were secured from them by members of the police department through duress. In the language, however, of His Honor, the Trial Judge, this pretense cannot be sustained, for:

> "First, the written statements of Torres and Samaniego, taken by question and answer, are too rich in details which only they themselves could furnish. It will be readily seen that in their respective statements each of these two defendants attempted as best he could to minimize the gravity of his participation in the crime. This is specially true in the case of Samaniego — the more intelligent of the two — who had finished the second year course in Commerce. If really the Police officers tortured the two defendants and manufactured their statements, the court has no doubt that the responsibility of the latter would have been placed in black and white in their respective statements.
>
> "Second, another proof of weight against the claim of torture is the case of defendant Go Tay alias Ang Tu alias Kiko. The known theory of the police is that Go Tay was the instigator of the crime. In the eyes of the police, he was the whale; Torres and Samaniego, compared to Go Tay, were but mere winnows. A written statement of Go Tay (Exhibit Y) was taken. The statement Exhibit Y reflects all that Go Tay really stated to the investigator. Go Tay said so in court. No inculpatory answer appears therein. This shows that the police officers did not inject into that statement facts which would bring about the conviction of this principal defendant. Yet, when Go Tay afterwards changed his mind and refused to sign the statement, no force was exerted against him — it remained unsigned.
>
> "Third, in the case of Torres, he himself stated in court that he did not sign a document presented to him whenever he did not want to. (Tr. pp. 1077-1079).
>
> "Fourth, in the case of Samaniego, the court observed that he speaks Tagalog rather fluently. (Tr. p. 1309). He reads and writes English. He can not say that he did not know the contents of his own statement, because if he reads English and he speaks Tagalog, undoubtedly he could read Tagalog words." (Decision, pp. 50-51, appellants' brief). (Brief of the Solicitor General, pp. 10-11).

Appellants insist that the testimonies of Lieutenant Morales and Detectives Sto. Tomas, Walker, Alday and Gorospe, to the that said statements were made freely and voluntarily, do not deserve credence, said peace officers having testified for the prosecution in other criminal cases which were eventually dismissed upon the ground that the confessions obtained by them, in connection with these cases, were tainted with irregularities. But, the evidence sought to be introduced by the defense, in support of its aforementioned pretense, was not admitted by the lower court, and the ruling thereof is not assailed in appellants' brief. At any rate, what those witnesses did or said in relation to other cases is *res inter alios acta* and, as such, irrelevant to the case at bar.

Appellants have set up their respective *alibis*. Torres said that he was sick at home, when the offense charged was committed. Obviously, his uncorroborated testimony cannot offset the incriminating evidence already adverted to, particularly considering the positive testimony of Aquino and Ablaza, who saw him at Carriedo Street, near the scene of the occurrence, at about the time of the perpetration of the crime. As regards Samaniego's *alibi*, we fully agree with the view of the lower court thereon, which we quote from the decision appealed from:

> "Weaker still is the *alibi* of defendant Samaniego. Samaniego testified in court that he went to Quiapo Church at around 8:30 in the evening of April 28, 1950; that after a few minutes there he went out and passed by Calle Carriedo; that he then proceeded to Avenida Rizal where he purchased a newspaper and thereafter went to Cine Capitol; and that he left the show before 11 o'clock in the evening. This admission of Samaniego by itself alone is sufficient to overcome his defense of *alibi*. The reason is that he could have been in the scene of the crime at the time of the commission thereof." (Appellants' brief, p. 50).

It is clear from the foregoing that the lower court has not erred in rejecting said alibis and in convicting appellants herein as above stated.

In a motion filed before this Court, during the pendency of the present appeal, appellants pray for a new trial upon the ground of newly discovered evidence consisting of the testimony of Narciso de la Cruz and Enrique Mojica, whose joint affidavit is attached to said motion as Annex C. Affiants declare therein that they are serving sentences, De la Cruz, of imprisonment for 20 years, for the crime of robbery with homicide, and Mojica of imprisonment for 17 years, for robbery; that they are the assasins of Ang Tin Hui; that no other persons have committed said crime; and that they perpetrated the same at the instigation of Ong Tu *alias* Go Tay.

Upon careful consideration of said motion for new trial, we are clearly of the opinion, and so hold, that the same should be, as it is hereby, denied, for:

1) The allegedly newly discovered evidence is merely corroborative of appellants' *alibis*. It merely tries to strengthen appellants' evidence to the effect that they were not present at the scene of the crime and could not have participated, therefore, in its commission.

2) Even if introduced in evidence, the testimony of Narciso De la Cruz and Enrique Mojica would not, in all probability, affect the result of the case. Considering the source of said testimony; the fact that the presence of appellants at the place of the occurrence, at about the time of the perpetration of the offense charged, has been positively estabilshed by the testimony of two unbiased witnesses, Nazario Aquino and Apolinario Ablaza, who were partly corroborated by the testimony of appellant Samaniego; and the circumstance that, credence cannot be given to the testimony of

said affiants without assuming that Ong Ing had pleaded guilty of, and is willingly serving sentence for, a crime he had not committed, the allegedly newly discovered evidence is, to our mind, insufficient to effect the evidence for the prosecution, or even to create a reasonable doubt on appellants' guilt. Moreover, as we said in case G. R. No. L-5849, entitled "People vs. Buluran," decided May 24, 1954:

"x x x for some time now this Court has been receiving, in connections with criminal cases pending before it, a number of motions for new trial, similar to the one under consideration, based upon affidavits of prisoners — either serving sentences (like Torio and Lao) or merely under preventive detention, pending final disposition of the charges against them — who, in a sudden display of concern for the dictates of their conscience — to which they consistently turned deaf ears in the past — assume responsibility for crimes of which others have been found guilty by competent courts. Although one might, at first, be impressed by said affidavits — particularly if resort thereto had not become so frequent as to be no longer an uncommon occurrence — it is not difficult, on second thought, to realize how desperate men — such as those already adverted to — could be induced, or could even offer, to make such affidavits, for a monetary consideration, which would be of some help to the usually needy family of the affiants. At any rate, the risks they assume thereby are, in many cases, purely theoretical, not only because of the possibility, if not probability, of establishing (in connection with the crime for which responsibility is assumed) a legitimate *alibi* — in some cases it may be proven positively that the affiants could not have committed said offenses, because they were actually confined in prison at the time of the occurrence — but, also, because the evidence already introduced by the prosecution may be too strong to be offset by a reproduction on the witness stand of the contents of said affidavits."

Wherefore, the decision appealed from is hereby affirmed, the same being in accordance with the facts and the law, with costs against the appellants.

IT IS SO ORDERED.

Paras, C.J., and *Pablo, J.*, concur.

XII

S. N. Picornell & Co., Plaintiff-Appellee, vs. Jose M. Cordova, Defendant-Appellant, G. R. No. L-6338, August 11, 1954, *J. B. L. Reyes, J.*

1. JUDGMENTS; WHEN JUDGMENT BECOMES FINAL; PERIOD OF LIMITATIONS BEGINS FROM DATE OF ENTRY OF FINAL JUDGMENT. — An appealed judgment of a Court of First Instance in an original prewar case does not become final until it is affirmed by the Court of Appeals, precisely because of the appeal interposed therein; hence the period of limitation does not begin to run until after the Court of Appeals denies the motion to reconsider and final judgment is entered (old Civil Code Art. 1971; new Civil Code Art. 1152).

2. ACTIONS; ACTION TO REVIVE JUDGMENT, WHEN BARRED BY PERIOD OF LIMITATIONS. — In this case, from the date the final judgment was entered until the present proceedings were commenced on January 16, 1950, less than ten years have elapsed, so that the action to revive the judgment has not yet become barred (sec. 43, Act 190; 31 Am. Jur. p. 486).

3. ID.; DEFENSES; MORATORIUM ACT, NO LONGER A DEFENSE. — Republic Act No. 342, known as the Moratorium Act, having been declared unconstitutional, by this Court in Rutter vs. Esteban (49 Off. Gaz., No. 5, p. 1807), it may no longer be invoked as a defense.

Fulgencio Vega for defendant and appellant.

Ross, Selph, Carrascoso & Janda and *Delfin L. Gonzales* for plaintiff and appellee.

DECISION

REYES, J. B. L., *J.*:

This is an appeal from the judgment rendered on November 15, 1950, by the Court of First Instance of Manila in its Civil Case No. 10115, reviving a prewar judgment (Civil Case No. 51265) against the defendant-appellant José M. Cordova and sentencing him to pay the plaintiff-appellee the sum of ₱12,060.63, plus interest thereon at the legal rate from May 27, 1941, until full payment; with the proviso that the judgment shall not be enforced until the expiration of the moratorium period fixed by Republic Act 342.

The material facts are as follows: In Civil Case No. 51265 of the Court of First Instance of Manila, the appellant José M. Cordova was sentenced on March 4, 1939, to pay the firm of Hair & Picornell the amount of ₱12,715.41 plus interest at the legal rate from May 4, 1937 and costs (Exh. B). Cordova appealed to the Court of Appeals, where the decision of the Court of First Instance was affirmed on December 27, 1940 (CA-GR No. 5471) (Exh. C). A motion for reconsideration was denied on February 7, 1941, and the parties were notified thereof on February 11, 1941 (Exh. D). Thereafter, the judgment became final and executory. Execution was issued; several properties of the defendant were levied upon and sold, and the proceeds applied in partial satisfaction of the judgment, but there remained an unpaid balance of ₱12,060.63 (Exh. E, F, G).

Subsequently, the interest of Hair & Picornell in the judgment was assigned to appellee S. W. Picornell & Co. (Exh. H). The latter, on January 16, 1950, commenced the present action (No. 10115) to revive the judgment in case No. 51265; but Cordova defended on two grounds: (1) that the action had prescribed; and (2) that the action against him was not maintainable in view of the provisions of sec. 2, of Republic Act No. 342, since he (Cordova) had filed a claim with the Philippine War Damage Commission, bearing No. 978113 (Exh. I). Both defenses were disallowed by the Court of First Instance, which rendered judgment as described in the first paragraph of this decision. Cordova duly appealed to the Court of Appeals, but the latter certified the case to this Court, as involving only questions of law.

Clearly, the appeal is without merit. The judgment of the Court of First Instance in the original prewar case, No. 51265, did not become final until it was affirmed by the Court of Appeals, precisely because of the appeal interposed by appellant Cordova; hence the period of limitation did not begin to run until final judgment was entered, after the Court of Appeals had denied Cordova's motion to reconsider on February 7, 1941 (old Civil Code Art. 1971; new Civil Code Art. 1152). From the latter date until the present proceedings were commenced on January 16, 1950, less than ten years have elapsed, so that the action to revive the judgment has not yet become barred (Sec. 43, Act 190; 31 Am. Jur. s. 846).

As to the defense based on the Moratorium Act, R. A. No. 342, our decision in Rutter vs. Esteban (1953), 49 O. G. (No. 5) p. 1807, declaring the continued operation of said Act to be unconstitutional, is conclusive, that it may no longer be invoked as a defense.

Wherefore, the decision appealed from is affirmed, except as to the proviso suspending execution of the judgment until eight years after the settlement of appellant's war damage claim. Said condtion is hereby annulled and set aside, in accordance with our ruling in the Rutter case.

Paras, Pablo, Bengzon, Padilla, Montemayor, Alex Reyes, Jugo, Bautista Angelo, Labrador and *Concepcion, J.J.*, concur.

XIII

Brigido Lobrin, Plaintiff and Appellee, vs. Singer Sewing Machine Company, Defendant and Appellant, No. 5751, *November* 6, 1940, *Tuason, J.*

WORKMEN'S COMPENSATION ACT, SECTION 6; INTERPRETATION; INJURED EMPLOYEE CANNOT RECOVER