nounce, even although the proposed amendment embraces matter which ought clearly to have been so pronounced." (Freeman on Judgments, Vol. I, Sec. 142, pp. 274-275.)

The change ordered by the Court of Appeals was made when the judgment was already being executed; and it can not be said to merely correct a clerical error because it provides for a contract of lease of nine years and three months duration, from November 10, 1950, which is different from one of ten years from December 1, 1941, excluding the period from September 1, 1942 to August 31, 1947. The modification is, however, sought to be justified by two circumstances, namely, the withdrawal by the lessor of the amount of ₱10,922.30, which amount, together with sums previously received, total ₱14,000, and which is the rental for a full ten year term, and the injustice caused to lessee because he was not placed in possession from September 1, 1947 but only on November 10, 1950, when the court ordered the execution of the judgment.

The reasons given above are not entirely without value or merit; but while they may entitle the lessee to some remedy, the one given in the appealed decision flies in the teeth of the pro-procedural principle of the finality of judgments. When the decision of the Court of Appeals on the first appeal was rendered, modification thereof should have been sought by proper application to the court, in the sense that the period to be excluded from the ten-year period of the lease (fixed by the judgment of the Court of First Instance to begin on September 1, 1942 and end on August 31, 1947) be extended up to the date when the land was to be actually placed in the possession of the lessee. This full period should be excluded in the computation of the ten-year lease because the delay in lessee's taking possession was attributable to the lessor's fault. Whether the failure of the lessee to secure this modification in the original judgment as above indicated is due to the oversight of the party, or of the court, or of both, the omission or mistake certainly could no longer be remedied by modification of the judgment after it had become final and executory.

As to the acceptance by the lessor of the full amount of the price of the lease for a full ten year period, from which acceptance the judgment infers an acquiescence in a lease for fully ten years from November 10, 1950 (the date when lessee was placed in possession after judgment), it must be stated that as such act of acceptance was made after the date of the final judgment, it may not be permitted to justify its modification, or change, or correction. Said act of acceptance may create new rights in relation to the judgment, but the remedy to enforce such rights is not a modification of the judgment, or its correction, but a new suit or action in which the new issue of its (acceptance) supposed existence and effects shall be tried and decided.

The judgment appealed from should be as it hereby is, reversed, and the orders of the Court of First Instance of January 18, 1951 and March 13, 1951, affirmed, without costs.

So ordered.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo; and *Bautista Angelo, JJ.*, concur.

XXVII

Robustiano Caragao, et als., Petitioners, vs. Hon. Cirilo C. Maceren et al., Respondents, G. R. No. L-4665, October 17, 1952, Labrador, J.:

1. CIVIL PROCEDURE; EXECUTION OF JUDGMENT PENDING APPEAL IN SPITE OF SUPERSEDEAS BOND. — The general rule is that the execution of a judgment is stayed by the perfection of an appeal. While provisions are inserted in the Rules to forestall cases in which an executed judgment is reversed on appeal, the execution of the judgment is the exception, not the rule. And so execution may issue only "upon good reasons stated in the order." The grounds for the granting of the execution must be good grounds. (Aguilos v. Barrios, et al., G.R. No. 47816, 72 Phil. 285.) It follows that when the court has already granted a stay of execution, upon the adverse party's filing a supersedeas bond, the circumstances justifying execution in spite of the supersedeas bond must be paramount; they should outweigh the security offered by the supersedeas bond. In this last case, only compelling reasons of urgency or justice can justify the execution.

2. IBID; IBID. — The "good reason" stated in the order subject of this proceeding is "the better preservation and protection of the property." But we find from the record that the properties are three parcels of land. And we are at a loss to understand how and why they could be better preserved if in the hands of the petitioners, who already have titles thereto, and as there is nothing to indicate that they were acquired in bad faith, the presumption arises that the purchasers are possessors in good faith. It seems, therefore, that the execution of the judgment, after the giving of the supersedeas bond, can not be justified, there being no urgent or compelling reasons for granting the same.

Jose P. Laurel and *Laurel & Salonga* *Arsenio Suazo* for petitiones.

Alex Albert, Margarito G. Añana and *Proculo B. Fuentes* for respondents.

DECISION

LABRADOR, J.:

This is a special action of certiorari to annul and set aside an order for immediate execution issued on March 3, 1951, by the Honorable Cirilo Maceren, judge of the Court of First Instance of Davao, in Civil Case No. 288 of that court entitled G. P. Sebellino, as Administrator of the Estate of Jose Caragao V. Robustiano Caragao, et al. In the jugdment rendered after trial the court found that petitioner herein Robustiano Caragao had secured the transfer to himself of three parcels of land, registered in the name of the intestate Jose Caragao under certificates of title Nos. 331, 608, and 2715, which he sold to his co-petitioners in this proceeding, the first to Isabel Garcia and Bartolome Hernandez, the second to Josefa Caragao, and the third to Gorgonia Jayme. As a result of the conveyances the lands, according to the decision, are now registered in the name of the purchasers under Transfer Certificates of Title Nos. 206, 207, and 208. The court, however, found that the intestate had left a daughter by the name of Laureana Caragao by his first wife named Catalina Baligya, and it, therefore, ordered the cancellation of the new transfer certificates of title in the names of the petitioners, and the issuance of new ones in lieu thereof in the name of Jose Caragao, deceased, and that defendants vacate the lands and pay Jose Caragao's share in the products thereof in the amount of ₱6,000. (Annex A.)

The judgment was rendered on December 28, 1950, and on January 6, 1951, the plaintiff moved for the immediate execution of the judgment (Annex B). Opposition to the motion was registered by the defendants (Annex C). On February 3, 1951, the court granted the motion for immediate execution, but upon motion for reconsideration, it set aside its first order by another dated February 10, 1951, which, in part, reads as follows:

> x x x. It appearing that the plaintiff offers no objection to the filing of the supersedeas bond to answer for damages, the order of the court dated February 3, 1951, is hereby set aside and defendants are ordered to file a bond of ₱6,000 to answer for damages.

The defendants seem to have filed the bond, but opposition to

this was registered by the plaintiff on the ground that it was insufficient, and the latter thereupon filed a counterbond for ₱10,000. Subsequently, the plaintiff also filed a motion for reconsideration dated February 20, 1951, praying that the original order for the execution of the judgment be reinstated. On March 2, 1951, the court set aside its order of February 10, 1951, and directed anew the issuance of an execution, thus:

> x x x. It having been shown that the property would be properly taken care of and administered by the plaintiff herein for the better preservation and protection of same and inasmuch as the issuance of a writ of execution having been determined in its order of February 3, 1951, the order of this court dated February 10, 1951, is hereby set aside, and let execution issue in this case upon filing by the plaintiff of a bond in the total sum of ₱8,000, and an additional bond of ₱1,000 to be filed by the plaintiff G. P. Sebellino as embodied in the order of this court of February 3, 1951.

It is against this order that the present action is filed, petitioners contending that after the filing of the supersedeas bond, the execution of the judgment could not be justified by the reason expressed in the order, i.e., that the property could be better preserved or protected in the possession of the plaintiff.

The general rule is that the execution of a judgment is stayed by the perfection of an appeal. While provisions are inserted in the Rules to forestall cases in which an executed judgment is reversed on appeal, the execution of the judgment is the exception, not the rule. And so execution may issue only "upon good reasons stated in the order." The grounds for the granting of the execution must be good grounds. (Aguilos v. Barrios, et al G. R. No. 47816, 72 Phil. 285.) It follows that when the court has already granted a stay of execution, upon the adverse party's filing a supersedeas bond, the circumstances justifying execution in spite of the supersedeas bond must be paramount; they should outweigh the security offered by the supersedeas bond. In this last case, only compelling reasons of urgency or justice can justify the execution. (Ibid.)

The "good reason" stated in the order subject of this proceeding is "the better preservation and protectoin of the property." But we find from the record that the properties are three parcels of land. And we are at a loss to understand how and why they could be better preserved if in the hands of the administrator. Besides, the judgment shows that the lands are in the hands of the petitioners, who already have titles thereto, and as there is nothing to indicate that they were acquired in bad faith, the presumption arises that the purchasers are possessors in good faith. It seems, therefore, that the execution of the judgment, after the giving of the supersedeas bond, can not be justified, there being no urgent or compelling reasons for granting the same. We, therefore, hold that the execution was granted with grave abuse of discretion.

The petition is, therefore, granted, and the order of the respondent judge of March 2, 1951, is set aside, and that of February 10, 1951, revived. With costs against the respondents.

Paras, Pablo, Bengzon, Padilla, Montemayor, Jugo, and *Bautista Angelo, JJ.*, concur.

XXVIII

Vicenta Ylanan, Plaintiff-Appellee vs. Aquilino O. Mercado, Defendant-Appellant, G. R. No. L-6089, April 20, 1954. Labrador, J.

CIVIL PROCEDURE; PRO FORMA MOTION FOR NEW TRIAL OR RECONSIDERATION. — Where the motion for reconsideration was based on the claim that the finding of the trial court as to the authenticity of the disputed signature, Exhibit "A", was not justified by the evidence submitted which is the testimony of the expert witness denying such authenticity, and said motion points out why the finding of the court is not justified by the evidence, said motion is clearly not a *pro forma* motion for new trial or reconsideration.

Salvadora A. Logroño for appellant.
Pablo Alfeche for appellee.

DECISION

LABRADOR, *J.*:

This is an appeal from an order of the Court of First Instance of Cebu dismissing the above-entitled case, which had been appealed to said court from the municipal court of Cebu City. The appeal was certified to this Court by the Court of Appeals on the ground that only questions of law are raised in the appeal.

The action brought in the municipal court of Cebu City seeks to recover from the defendant the sum of ₱180.50, the balance of the value of furniture and other goods sold and delivered by the plaintiff to the defendant. The main issue of fact involved in the trial was the authenticity of the signature of one Aquilino O. Mercado to Exhibit A. Judgment was entered in said court in favor of the plaintiff and against the defendant for the sum of ₱180.50 as prayed for in the complaint. The decision was rendered on November 18, 1949, and the defendant received notice thereof on November 21, 1949. On December 2, 1949, defendant presented a motion for the reconsideration of the decision, alleging that the same was not justified in view of the fact that the signature to Exhibit A is forged, according to the testimony of an expert witness. It was also alleged that for the sake of justice and equity the court should order the National Bureau of Investigation to examine the disputed signature in Exhibit A. This motion for reconsideration was denied, and the defendant appealed to the Court of First Instance. The appeal was perfected within fourteen days if the period of time taken by the court in deciding the motion for reconsideration is not taken into account. After the defendant had filed an answer in the Court of First Instance, plaintiff moved to dismiss the appeal on the ground that it was filed beyond the period prescribed in the rules. In support thereof it was claimed that the motion for reconsideration filed in the municipal court was a *pro forma* motion, which did not suspend the period for perfecting the appeal. The Court of First Instance sustained the motion to dismiss the appeal, holding that the ground on which the motion for reconsideration is based is not one of those required for a motion for new trial under Section 1 of Rule 37 of the Rules of Court.

The only question at issue in this Court is whether the motion for reconsideration filed in the municipal court is a *pro forma* motion. The question must be decided in the negative. The motion was based on the claim that the finding of the trial court as to the authenticity of the disputed signature to Exhibit A was not justified by the evidence submitted, which is the testimony of the expert witness denying such authenticity. This is a motion which points out why the finding of the court is not justified by the evidence, and is clearly not a *pro forma* motion for new trial or reconsideration. The Court of First Instance erred in holding that it did not suspend the period for perfecting the appeal.

The order of dismissal is hereby reversed, and the case is ordered remanded to the Court of First Instance for further proceedings.

Paras, Pablo, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and *Diokno, JJ.*, concur.
Mr. Justice Padilla took no part.