Kahoy sa Filipinas and the CLO. On July 23, 1948, following a strike staged by the laborers, that court again awarded them wage increases coupled with vacation and sick leave with pay. Taken to the Supreme Court by a writ of certiorari, this latter award was affirmed *in toto* on January 28, 1950. The company, however, filed a motion for reconsideration, and pending determination of this motion in the Supreme Court, the company filed another motion, dated March 31, 1950, in the Court of Industrial Relations asking for a modification of both the award of November 23, 1946 and that of July 23, 1948, on the grounds that conditions had changed since those awards were amde due to losses suffered by the company in 1948 and 1949, the down trend in the cost of living, and the reduction of wages in other lumber companies. This motion for modification was docketed as case No. 71-V(6), but consideration thereof was suspended pending the resolution of the motion for reconsideration in the Supreme Court.

On July 3, 1950, the Supreme Court denied the motion for reconsideration, and its decision having been declared final and executory on July 6, the present petitioners filed a motion in the Court of Industrial Relations asking for the execution of the judgment. The company agreed to the execution with respect to the wage increases for 1947 but objected with respect to the wage increases for 1948, 1949 and 1950 for reasons already alleged in its motion for modification.

The motion for execution and the motion for modification were heard together — each being considered a reply to the other — and thereafter the Court of Industrial Relations, under date of Nov. 24, 1950, rendered an order declaring itself without authority to modify an award for an increase of wages "for the period of the pendency of the appeal in the Supreme Court" and ordering the corresponding writ of execution to be issued "in accordance with the decision of July 23, 1948 x x x." Reconsideration of this order having been denied, the company petitioned the Supreme Court for a writ of certiorari (G.R. No. L-4680) to have the order annulled. But the petition was dismissed for lack of merit, and the dismissal became final on May 25, 1951.

That was the status of the case when the Court of Industrial Relations, at the instance of the Company, issued the order of May 29, 1952, by which that court gave course to the motion for modification of the award that had already become final by ordering an examination of the company's books of account and other pertinent record to ascertain "its financial condition for the years 1948, 1949 and 1950" so as "to enable the Court to determine the justice, equity and substantial merits of the case concerning the modification of the award of July 23, 1948 x x x." It is this order that the laborers brought to this Court for review after the court below, with two of its judges dissenting, had refused to reconsider it.

At the time the order was issued, the award was already on its way to being executed as the amounts due the laborers thereunder had already been computed by the court examiner and were then being discussed in court. The laborers, therefore, maintain that the award could no longer be modified so that the order giving course to the motion for modification was a nullity.

Brushing aside all technicalities, the broad question presented for determination is whether the Court of Industrial Relations may modify an award that has been affirmed by the Supreme Court after a order for the execution of that award has already become final.

Section 17 of Commonwealth Act No. 103, as amended reads:

> "Sec. 17. *Limit of effectiveness of award.* — An award, order or decision of the Court shall be valid and effective during the time therein specified. In the absence of such specification, any party or both parties to a controversy may terminate the effectiveness of an award, order or decision after three years have elapsed from the date of said award, order or decision by giving notice to that effect to the Court: *Provided, however*, that any time during the effectiveness of an award, order or decision, the Court may, on application of an interested party, and after due hearing, alter, modify in whole or in part, or set aside any such award, order or decision, or reopen any question involved therein."

While the above section apparently authorizes the modification of an award at any time during its effectiveness, there is nothing in its wording to suggest that such modification may be authorized even after the order for the execution of the award has already become final — with respect, of course, to the period that had already elapsed at the time the order was issued. To read such authority into the law would make of litigations between capital and labor an endless affair, with the Industrial Court acting like a modern Penelope, who puts off her suitors by unraveling every night what she has woven by day. Such a result could not have been contemplated by the Act creating said court.

Conformably to the above, the order complained of is annulled and set aside insofar as it affects or retards the execution of the award of July 23, 1948 for the years 1948, 1949 and 1950. So ordered.

Ricardo Paras, Guillermo F. Pablo, Cesar Bengzon, Sabino Padilla, Pedro Tuason, Marceliano R. Montemayor, Fernando Jugo, Felix Bautista Angelo, Alejo Labrador, concur.

IX

Ner J. Lopez, versus Lucia Y. Matias Vda. de Tinio and the Hon. Judge Guillermo R. Cabrera, of the Municipal Court of Manila, Branch III, G. R. No. L-6005, promulgated on December 29, 1953.

APPEAL; DENIAL OF MOTION TO DISMISS NOT APPEALABLE. — A denial of a motion to dismiss a complaint is an interlocutory order and as such not appealable nor can be the subject of certiorari. After an adverse judgment of a municipal court, the defendant may appeal. This is his remedy.

Jover, Ledesma and Puno for petitioner-appellant.
Reyes and Nuñez for respondents.

D E C I S I O N

PADILLA, J.:

In a detainer action Lucia Y. Matias Vda de Tinio sought to dispossess Ner J. Lopez of a lot located on Evangelista street, Manila, for failure to pay the stipulated rentals. A motion to dismiss the complaint on the ground that it states no cause of action was denied. Whereupon, the defendant in the detainer case filed in the Court of First Instance a petition for a writ of certiorari with preliminary injunction. The Court denied the petition and from the order denying it he has appealed.

That the municipal court of Manila has jurisdiction to try and decide the action for detainer brought by the appellee Lucia Y. Matias Vda. de Tinio against the appellant cannot be disputed. It does not appear that the appellee attached to her complaint the conract of lease, upon which the appellant relies to ask for the dismissal of the complaint. Jurisdiction is conferred by law and whether a court has jurisdiction over an action brought to it is ascertained from and determined upon the ultimate material facts pleaded in the complaint. Matters of defense such as the one raised by the appellant may be pleaded in his answer. After issues have been joined the court must proceed to hear the evidence of both parties and render judgment. It is well-settled in this jurisdiction that a denial of a motion to dismiss a complaint is an interlocutory order and not appealable. As heretofore stated, there is no question that the municipal court of Manila has jurisdiction over an action for detainer, and if the denial of a motion to dismiss cannot be appealed because it is interlocutory, much less would a petition for a writ of certiorari lie. After an adverse judgment by the municipal court the defendant may appeal. That is his remedy and not the extraordinary one for a writ of certiorari.

The judgment appealed from is affirmed, with costs against the appellant.

Paras, C.J., Bengzon, Jugo, Pablo, Tuason, Bautista Angelo, and Labrador, concur.
Montemayor, J., took no part.

X

Leonor Vogel, alias Sister Angelica of the S. Heart, and Angela Vogel, alias Sister Marie Du Rosaire, versus Saturnino Moldero, G. R. No. L-4972, September 25, 1953.

LAND REGISTRATION; REGISTER OF DEEDS; RECOURSE WHEN DEED OF SALE IS REFUSED INSCRIPTION AND