medical certificate of a competent physician.

Going now to the other circumstances, the merits of the cause of action of the plaintiff, the pleadings show that the plaintiff has a certificate of title by reason of the grant of a free patent to him; that the land subject of the action is covered by the patent and the certificate of title; and that the same land is in the possession of the defendant. Not to allow plaintiff an opportunity to present his side of the case would certainly result in a clear injustice to plaintiff. As a matter of fact the decision in itself, which dismisses the action of the plaintiff, causes him an injustice because by an error of the judge, plaintiff has been deprived of the right to possess a certain portion of his titled property. The court reasons out that a certain resolution of the Director of Lands has cancelled the certificate of title. That is a matter which should have been threshed out at the trial or hearing of the case.

At this stage of the proceedings we must remind judges and counsel that the rules of precedure are not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure substantial justice. (Rule 1, Sec. 2) If a technical and rigid enforcement of the rules is made, their aim would be defeated. In the case at bar, it appears that the rules which are merely secondary in importance are made to override the ends of justice; the technical rules had been misapplied to the prejudice of the substantial right of a party.

For the foregoing considerations, the decision and the proceedings in the court below are hereby set aside and the case remanded to said court for further preceedings in accordance herewith. No costs.

Bengzon, Padilla, Bautista Angelo, Concepcion, J.B.L. Reyes, Paredes and De Leon, JJ., concurred.

II

Enrique Icasiano, Plaintiff-Appellee vs. Felisa Icasiano, Defendant-Appellant G.R. No. L-16592, October 27, 1961, *Concepcion, J.*

1. COUNTERCLAIM; ORDER DISMISSING IT INTERLOCUTORY; WHEN APPEALABLE.— The order granting plaintiff's motion to dismiss a counterclaim is interlocutory in nature and, hence, not appealable, until after judgment shall have been rendered on plaintiff's complaint.
2. COMPENSATION; REQUISITES.— When all the requisites mentioned in Article 1279 of the Civil Code are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors are not aware of the compensation.
3. COUNTERCLAIM; MAY BE SET UP TO REDUCE MONEY CLAIM BY PLAINTIFF.— Counterclaim may be set up, not so much to obtain a money judgment against plaintiff, as by way of set-off, to reduce the sum collectible by the latter, if successful, to the extent of the concurrent amount (Moore's Federal Practice, Vol. 1, pp. 695-696) (See also Wisdom vs. Guess Drycleaning Co., 5 Fed. Supl., 762-767).

Jaime R. Nuevas for the plaintiff-appellee.
Jose W. Diokno for the defendant-appellant.

D E C I S I O N

Appeal from an order of the Court of First Instance of Manila granting plaintiff's motion to dismiss defendant's first counterclaim and dismissing the latter.

The facts are simple enough. In his complaint, dated July 31, 1959, plaintiff Enrique Icasiano sought to recover ₱20,000, plus interest and attorney's fees, from the defendant, Felisa Icasiano. Within the reglementary period, or on November 9, 1959, the latter filed an answer admitting some allegations of the complaint, denying other allegations thereof and setting up special defenses, as well as two (2) counterclaims — one for the sum of ₱150.00 allegedly borrowed by plaintiff from the defendant, and another for moral and exemplary damages, attorney's fees and expenses of litigation, allegedly suffered and incurred by the defendant in consequence of this suit, in such sum as the court may find just and reasonable.

On November 17, 1959, plaintiff moved (a) to dismiss the first counterclaim; (b) to strike out paragraph (2) of defendant's answer; and (c) to set the case for hearing on the merits. Despite defendant's objection thereto, on December 7, 1959, the lower court granted the first prayer, denied the second prayer and set the case for hearing on a stated date. Notice of the order to this effect was served on the defendant on December 17, 1959, who, three (3) days later, filed her notice of appeal and appeal bond. Plaintiff countered with a motion to strike out defendant's appeal "in so far as said notice refers to the setting for hearing of the above entitled case on January 7, 1960, at 8:30 a.m., for the simple reason that said order, in so far as it sets a date for the hearing of the above entitled case is interlocutory and, therefore, not appealable, and for the further reason that the intended appeal from said setting order is plainly frivolous and interposed only for the purpose of delay". This motion was denied in an order dated December 19, 1959, which allowed defendant's appeal "from the order of December 7, 1959, insofar as it orders the dismissal of defendant's first counterclaim, and setting the hearing of this case on January 7, 1960, at 8:30 a.m." Upon denial by the lower court of plaintiff's motion for reconsideration of its last order, defendant filed her record on appeal, which after its amendment, was approved "there being no opposition thereto."

Sometimes after the transmittal of the amended record on appeal to this Court, or on February 4, 1960, plaintiff filed a motion to dismiss the appeal upon the ground that defendant's appeal "from the order of the trial court dated December 7, 1959, dismissing her first counterclaim is manifestly and palpably frivolous" and that her appeal from said order insofar as it set the case for hearing is "ostensibly dilatory, aside from the fact that such setting order is interlocutory and, therefore, not immediately appealable". This motion was denied by a resolution of this Court dated February 17, 1960. We, likewise, denied plaintiff's motion for reconsideration of said resolution.

The main issue in this appeal is whether or not the lower court erred in holding itself without jurisdiction to entertain defendant's first counterclaim. Before passing upon the merits of such question, it should be noted, however, that the order granting plaintiff's motion to dismiss said counterclaim is interlocutory in nature, and, hence, not appealable, until after judgment shall have been rendered on plaintiff's complaint (Cuano, et al. vs. Monteblanco, et al., L-14871, April 29, 1961; Villasin vs. Seven-Up Bottling Co. of the Philippines, L-13501, April 28, 1960; Caldera, et al. vs. Balcueba, et al., 84 Phil. 304).

However, plaintiff did not object to defendant's appeal from said order, except *insofar only as it set the case for hearing*. In other words, it acquiesced to said appeal as regard the dismissal of the aforementioned counterclaim. In fact, plaintiff interposed no objection to defendant's amended record on appeal. Hence, even if the lower court should have disapproved it, for the reason that said order of dismissal is interlocutory in character, its order approving the amended record on appeal entailed, at most, an error of judgment that does not affect our jurisdiction to entertain the appeal (Gatmaitan vs. Medina, L-14400, August 5, 1960; Salazar vs. Salazar, L-5823, April 29, 1953). It may not be amiss to add that the allegation in the motion, filed by plaintiff with this Court to dismiss the appeal, to the effect that the same is frivolous insofar as it seeks a review of the order dismissing defendant's first counterclaim, has no merit, not only because a party can not be barred upon such ground from appealing by writ of error, but, also, because we find that the lower court had erred in issuing the order complained of.

Indeed, regardless of whether the court of first instance may entertain counterclaims for less than ₱5,000, it must be noted that

Articles 1278, 1279, and 1286 and 1290 of our Civil Code read:

"ART. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other."

"ART. 1279. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor."

"ART. 1286. Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment."

"ART. 1290. When all the requisites mentioned in article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation."

Pursuant to these provisions, defendant would have been entitled to deduct from plaintiff's claims of ₱20,000 — if the latter were established — the sum of ₱150 involved in her first counterclaim, if the allegation thereof were true, *even if no such counterclaim had been set up in her answer*, for "when all the requisites mentioned in Article 1279 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of"' — and, hence, did not plead — "the compensation". Moreover, it is clear from the record before us that said counterclaim was set up, not so much to obtain a money judgment against plaintiff, as by way of set-off, to reduce the sum collectible by the latter, if successful to the extent of the concurrent amount (Moore's Federal Practice, Vol. 1, pp. 695-696) (See, also, Wisdom vs. Guess Drycleaning Co., 5 Fed. Supl., 762-767).

WHEREFORE, the order appealed from is hereby reversed, insofar as it dismisses defendant's first counterclaim, and the case, is, accordingly, remanded to the lower court for further proceedings, not inconsistent with this decision, with costs against plaintiff-appellee, Enrique Icasiano.

IT SO ORDERED.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, J.B.L. Reyes, Paredes and De Leon, JJ., concurred.

Barrera and Dizon, JJ., took no part.

III

Delfin Mercader, Petitioner, vs. Hon. Francisco Valila of the Justice of the Peace Court of Bobon, Samar and Amancio Balite, Respondents, G.R. No. L-16118, February 16, 1961, Bengzon, J.

1. LIBEL; VENUE FOR CRIMINAL ACTION AND CIVIL ACTION FOR DAMAGES.— The criminal and civil action for damages in cases of written defamations shall be filed simultaneously or separately with the Court of First Instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense. Where the libel is published, circulated, displayed or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the Court of First Instance thereof. (Art. 360, Rev. Penal Code, as amended by Rep. Act 1289).

2. ID.; VENUE OF CRIMINAL COMPLAINT WHERE LIBEL IS CIRCULATED IN PROVINCE OR CITY WHERE NEITHER OFFENDED PARTY NOR OFFENDER RESIDES.— Petitioner here maintains that even if the justice of the peace courts have jurisdiction to conduct preliminary investigations, the venue was improperly laid in Bobon, because neither the complainant nor the defendant resided there. Article 360 of the Revised Penal Code as amended by Republic Act 1289 provides that where the libel is published or circulated in a province or city wherein neither the offended party nor the offender resides, the action may be brought therein; and the complaint herein questioned, alleges that the libel had been *published and circulated in Bobon and other municipalities of Samar*. Bobon and Samar, therefore, constituted proper venue.

D E C I S I O N

On April 20, 1959, Amancio Balite, filed with the justice of the peace court of Bobon, Samar, a criminal complaint for libel against Delfin Mercader. After making the preliminary examination, the judge issued the corresponding warrant of arrest. The accused moved to dismiss for lack of jurisdiction and cause of action. Upon denial thereof, the accused filed in September 1959, this petition for certiorari, based mainly on the alleged want of jurisdiction of the aforesaid inferior court.

In ordinary circumstances, the petition would have been dismissed, without prejudice to its presentation before the local court of first instance. But at that time there were pending before this Tribunal some cases involving the jurisdiction, or lack of jurisdiction, of justices of the peace over criminal libel, in the light of Republic Act 1289, approved June 15, 1955.(1) So, we gave due course to this petition. In his answer, the respondent judge explained that he had taken cognizance of the case for purposes of preliminary investigation. In fact, he stated, as the accused had failed to attend the hearing, and there was *prima facie* evidence, he forwarded the *expediente* to the court of first instance for the trial on the merits.

The controversy is thus reduced to the question whether the inferior courts may, after the passage of Republic Act 1289, entertain criminal complaints for written defamation, not for trial on the merits, but for purposes of preliminary investigation. It is contended by those who would deny such authority, that Republic Act 1289 had the effect of depriving justice of the peace courts of their power even to conduct preliminary investigations in the matter of libel or written defamation. The question has been decided in the affirmative in People v. Olarte, L-13027, June 30, 1960. Through Mr. Justice Concepcion, this Court said:

> "Can we justly hold that by fixing for said offense a penalty falling under the original jurisdiction of courts of first instance, the framers of section 2 of Act No. 277 had evinced the intent,, either to establish an exception to the provisions of Act No. 194, authorizing every justice of the peace, to make preliminary investigation of any crime alleged to have been committed within his municipality, jurisdiction to hear and determine which is by law x x x vested in the judges of Courts of First Instance,' or to divest justice of the peace of such authority, as regards the crime of libel?"

(1) Amending Art. 360 of the Revised Penal Code to read as follows:

"x x x The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the Court of First Instance of the province or city where any of the accused or any of the offended parties resides at the time of the commission of the offense; Provided, however, that where the libel is published, circulated, displayed or exhibited in a province or city wherein neither the offender nor the offended party resides the civil and criminal actions may be brought in the Court of First Instance thereof. x x x."