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.

DECISION

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

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