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

ISSUANCE OF NEW TRANSFER CERTIFICATE OF TITLE. — When the register of deeds refused the inscription of a deed of sale and the issuance of a new transfer certificate of title, the petition of the interested party for an order of the court to reverse the decision of the register of deeds must be filed in the original case in which the decree of registration of the land sold was entered and it should bear the same title. This is necessary to make it clear that the petition invoking the provisions of the Land Registration Act, particularly Section 112 thereof, is not an ordinary civil action.

Josefino de Alban for appellants.

Mauro Verzosa for appellee.

D E C I S I O N

MONTEMAYOR, J.:

Pursuant to a decree of August 24, 1917, FRANZ VOGEL was declared the owner of about 865 hectares of land called "HACIENDA SAN FERNANDO" in the municipality of Tumauini, Isabela, and Original Certificate of Title (O.C.T.- No. A-84 was issued in his name. After his death, ELIAS OCAMPO NAVARRO was appointed Special Administrator of his estate in Special Proceedings No. 87. Pursuant to a court order dated June 13, 1925, authorizing him to sell at public auction the properties of the estate, Navarro on January 4, 1926, sold the Hacienda San Fernando to JOH LOHMAN, as the highest bidder, for the sum of ₱25,000.00. On March 9, 1926, Navarro issued the corresponding certificate of sale (Exh. C), and by virtue thereof, Transfer Certificate of Title (T.C.T.) No. 127 was issued to Joh. Lohman on the same date. On June 18, 1948 Joh. Lohman thru a Deed of Absolute Sale (Exhibit D) sold the same hacienda or estate to petitioner-appellee SATURNINO MOLDERO for the sum of ₱85,000.00.

When appellee Moldero presented his deed of sale at the Office of the Register of Deeds of Isabela, the Register apparently entertained doubts about the property of accepting the deed for record and issuing a new Transfer Certificate of Title, because of the fact that despite the sale of the hacienda in 1926 in favor of Lohman by the Special Administrator of the estate of Vogel, O.C.T. No. A-84 remained uncancelled; neither was the sale in favor of Lohman noted at the back of said original certificate of title. Furthermore, T.C.T. No. 127 in favor of Lohman was not entered in the Book of Certificates of Title in the Office of the Register of Deeds. So, the Register of Deeds elevated the case to the VIIth Branch of the Court of First Instance of Manila in *consulta*. After a study of the case the Judge of said branch rendered an opinion informing the Register of Deeds of Isabela that the deed of sale in favor of Moldero cannot be accepted for record without an order of the Isabela court.

Mr. Moldero then filed a petition in said court, entitled: "Peticion sobre la cancelacion de un certificado de titulo y de la expedicion de un nuevo certificado de transferencia de un titulo de un terreno. SATURNINO MOLDERO, Solicitante." In said petition he asked the court to order the cancellation of O.C.T. No. A-84, the entry of T.C.T. No. 127 in the Book of Transfer Certificates of Title, its cancellation and the issuance of a new Transfer Certificate of Title in his favor. After trial during which Moldero presented evidence in support of his petition, the Court of Isabela found that the failure to cancel Original Certificate of Title No. A-84 was a mere oversight on the part of the Register of Deeds, and that as a matter of fact, the corresponding annotation —

> "Cancelado: Vease Certificado No. 127 del Tomo 5 del Libro de Certificados de Transferencia."

in long hand appeared on the left margin of said O.C.T. No. A-84, already initialed by the Clerk, only that the Register of Deeds failed to sign said annotation. The court further found that the failure to annotate the deed of sale (Exhibit C) at the back of O.C.T. No. A-84 was also an oversight on the part of the Register of Deeds, and finding that Joh. Lohman was the registered owner of the land covered by T.C.T. No. 127, and that he had sold the property to Saturnino Moldero on June 18, 1948 by virtue of a deed of sale (Exhibit D) which in the opinion of the court was registerable, said court ordered the Register of Deeds to cancel O.C.T. No. A-84; to annotate the deed of sale at the back of T.C.T. No. 127, cancel said Transfer Certificate and issue in lieu thereof another Transfer Certificate of Title in the name of Moldero. This order was dated March 30, 1950.

On September 30, 1950, Leonor Vogel *alias* Sister Angelica of the S. Heart, and Angela Vogel, *alias* Sister Marie du Rosaire, filed a petition for relief from the said order of the court, alleging that they were two of the four children of Franz Vogel, the other two being Florencio Vogel and Luisa Vogel; that because of the failure of petitioner Moldero to notify them personally, or to publish notice of his petition and of the hearing thereof in the Official Gazette or in some newspaper of general circulation, they had no knowledge of said petition and of the hearing, until after March 30, 1950; that they had a substantial cause of action against the petition of Moldero because O.C.T. No. A-84 in favor of their father Franz Vogel was never cancelled, and that since its issuance their father had had no legal transaction with Joh. Lohman warranting the issuance of T.C.T. No. 127, and so they prayed that the order of the Court of March 30, 1950, be set aside. Acting upon said petition, the Isabela court in its order of November 11, 1950, denied it. We are reproducing the pertinent portion of the order which sets forth the views of the lower court.

> "It was fully proven during the hearing of Moldero's petition that Elias Ocampo Navarro as administrator of the estate of the deceased Franz Vogel, in Special Proceeding No. 87, on January 4, 1926, sold the land covered by Original Certificate of Title No. A-84, in favor of Joh. Lohman, who secured Transfer Certificate of Title No. T-127. The Register of Deeds of Isabela, through inadvertance, issued Certificate of Title No. T-127 in the name of Joh. Lohman. Parenthetically, herein movants Leonor Vogel and Angela Vogel did not object to the sale executed by the Judicial Administrator of the estate of their deceased father. On June 18, 1948, Joh. Lohman sold the land to Saturnino Moldero, but when the corresponding papers were presented to the Register of Deeds of Isabela for registration and corresponding cancellation of Original Certificate of Title No. A-84 and Transfer Certificate of Title No. T-127 in the name of Joh. Lohman, said official refused to act on the matter because the original certificate was still uncancelled and the original of the transfer certificate was missing.
>
> "The petition of Saturnino Moldero was filed pursuant to an opinion of the Executive Judge of the Court of First Instance of Manila with whom the Register of Deeds of Isabela made proper consultation. The outcome thereof is stated in the order of this Court of March 30, 1950.
>
> "It will be observed, therefore, that the herein petitioners Leonor Vogel and Angela Vogel have never been parties to the present proceeding. They cannot assert their right to notice when they were not parties to the case. As to the lack of publication of the petition of Saturnino Moldero or of the notice of hearing thereof, the contention merits no serious consideration. The order sought to be reconsidered or set aside was issued merely to correct an omission of the office of the Register of Deeds. The publication contemplated is not necessary nor required.
>
> "It may be stated that the claim asserted by Leonor Vogel and Angela Vogel cannot be well substantiated in this case but in a separate action wherein all rights of parties may be fully determined."

From that order of denial of their petition for relief, Leonor Vogel and Angela Vogel appealed to this Tribunal. From all that has been stated, based on the record of the case, there is ground to believe and to find that by virtue of an order of the probate court authorizing the sale of the properties of the estate of Franz Vogel way back in 1925, the following year the Special Administrator sold the Hacienda San Fernando, the land now involved in this case, to Joh. Lohman as the highest bidder; that T.C.T. No. 127 was issued in the name of Lohman but through oversight on the part of the Register of Deeds, O.C.T. No. A-84 was not cancelled; neither was the certificate of sale by the special administrator entered at the back thereof; neither was Transfer Certificate of Title No. 127 entered in the Book of Transfer Certificates of Title in the Office of the Register of Deeds. We agree with the Isabela court that these were involuntary omissions of the Register of Deeds which can be corrected by court order without notifying the heirs of Franz Vogel, two of whom are the herein appellants. The order denying the peti-

tion for relief of the appellants was therefore warranted.

As far as the record of this case is concerned, there seems to be no ground for doubting the regularity of the sale of the estate in favor of Lohman in 1926. The appellants do not question and they even indirectly admit that since 1926 when the estate was sold to Lohman, the latter had taken possession and had held it until 1948 when he sold it to petitioner-appellee Moldero. It was not shown that the heirs of Franz Vogel ever opposed or objected to the sale of the estate of their father by the special administrator to Lohman. It is not explained why since 1926 up to the present time, a period of about twenty-seven years, appellants had allowed the said hacienda to be occupied and enjoyed by Lohman and later by Moldero. However, the two other children of Franz Vogel named Florencio and Luisa were not included in the petition for relief or in this appeal. On the contrary, Luisa made an affidavit (Exhibit 2) saying that as daughter and heir of Franz Vogel she acknowledges the sale of the hacienda to Lohman whom she recognizes as the registered owner, and that she renounces all claim over the estate. These facts and circumstances do not favor the contention of the appellants. However, should they believe that they have a good cause of action and feel that they can prove that the sales made to Lohman and to Moldero were illegal and void, they could file a separate and independent action as suggested by the trial court.

But there is one point raised by appellants, which tho not decisive, merits consideration, were it only for the correction of the record and for the guidance of petitioners under Sec. 112 and other sections of the Land Registration Act. Appellants contend that the trial court had no jurisdiction over the petition of appellee Moldero because said petition was not filed and entitled in the original case in which the decree of registration was entered. The contention is correct. The petition should have been filed in the original case in which the decree of registration of August 24, 1917 was entered, and it should bear the same title. The appellee, however, answers that the reason for not filing the petition in the original registration case was that the records of said case have been lost, presumably during the last Pacific War. The explanation is satisfactory, but at least the petition could and should have been entitled in said original case, this to make it clear that the present petition invoking the provisions of the Land Registration Act, particularly Sec. 112 thereof, is not an ordinary civil action. (Cavan vs. Mislizenus, 48 Phil. 632).

In view of the foregoing, and with the understanding that petitioner-appellee Moldero will be directed to entitle his original petition and his motions, in the original registration case where the decree of registration of Hacienda San Fernando was entered, the order appealed from is hereby affirmed. No costs.

Paras, Pablo, Bengzon, Padilla, Tuason, Reyes, Jugo, Angelo; Labrador concur.

XI

In the matter of the petition for naturalization of Leoncio Ho Benluy, petitioner-appellant, vs. Republic of the Philippines, oppositor-appellee, G. R. No. L-5522, Dec. 21, 1953.

1. NATURALIZATION: APPLICANT GUILTY OF VIOLATION OF THE REVISED ELECTION CODE. — A foreigner who violates Sec. 56 of the Revised Election Code which prohibits foreigners from actively participating in any election is forever barred from becoming a Filipino citizen.

D E C I S I O N

MONTEMAYOR, J.:

The appellant LEONCIO HO BENLUY, a Chinese citizen, filed an application for naturalization in 1951. There was no opposition to the application on the part of the Government. At the hearing the applicant presented evidence in support of his application, including two character witnesses, one of them Atty. Marcial M. Anastacio, a resident of Obando, Bulacan. With one exception Benluy proved that he possessed all the qualifications for Philippine citizenship and none of the disqualifications, and the trial court so found. The exception is that Atty. Anastacio, one of his witnesses, in his endeavor, even enthusiasm to prove that the applicant had identified himself with the Filipinos, helped them when asked and was very congenial and friendly, said that Benluy even took part in two electoral campaigns in Bulacan, not only persuading some voters connected with his business but also contributing to the campaign fund of the Liberal Party. Said the trial court on this point:

> "To prove that the applicant is a strong believer in our constitution and in what is called 'free enterprise,' this witness emphasized this affirmation by stating that the applicant even went to the extent of taking active part during the election, so much so that he (applicant) gave financial contribution to be spent in the election campaign to this witness who, during the elections of 1947 and 1949, was the Campaign Manager of the Liberal Party in the municipality of Obando, Bulacan; that the applicant, aside from giving financial help during the said elections of 1947 and 1949 which amounted to ₱200.00 and ₱500.00 on two occassions, went with the witness to Obondo to talk personally with his sub-agents in said municipality, and due to this intervention of the applicant said sub-agents supported the party of Mr. Anastacio."

This evidence about the part played by the applicant in the past elections alerted the representative of the Solicitor General and after the trial he filed a strong written opposition to the granting of the application, resulting in the trial court denying the application for naturalization. Benluy is now appealing from that decision.

Considering the circumstances under which the evidence of applicant's political activities was presented, namely, that it did not come from the opposition or any other party but himself and through his own witness, we were at the beginning inclined not to attach much importance to that phase of his residence in the Philippines and association with the Filipinos. He was never prosecuted for that violation of the Election Code and even if the Government were now inclined to prosecute him, the offense has already prescribed. Furthermore, as already stated, in all other respects the applicant has established his qualifications and the absence of any disqualifications. However, the law is clear. Section 56 of the Revised Election Code reads —

> "Section 56. Active intervention of foreigners. — No foreigner shall aid any candidate, directly or indirectly, or take part in or to influence in any manner any election."

Under section 183 of the same Code, the violation is considered a serious election offense and under section 185 it is penalized with imprisonment of not less than one year and one day but not more than five years and in case of a foreigner, shall in addition be sentenced to deportation for not less than five years but not more than ten years, to be enforced after the prison term has been served. These provisions of the Revised Election Code may not be taken lightly, much less ignored. They were intended to discourage foreigners from taking active part in or otherwise interfering with our elections, under penalty not only of imprisonment but also deportation. It might well be that as already stated, the evidence about this violation of the election law was given by his own witness who in all likelihood gave it in good faith and in all friendship to the applicant to bolster the latter's application for naturalization, without realizing that by said declaration he was forever closing the door to Benluy's ever becoming a Filipino citizen. But the law must be applied and enforced. It is merely a piece of bad luck for him. From the standpoint of the Government however, it was fortunate that said evidence was brought up, thereby preventing the granting of Philippine citizenship to a foreigner who tho even in his ignorance of the law and at the instance of his Filipino friend, violated one of the important provisions of our election law. The decision appealed from is hereby affirmed, with costs.

Paras, C.J., Pablo, Bengson, Padilla, Tuason, Reyes, Jugo, Bautista Angelo, and Labrador, concur.

XII

Victoriano Capio, petitioner-appellee, vs. Fernando Capio, oppositor-appellant, G. R. No. L-5761, Dec. 21, 1953.

1. LAND REGISTRATION; WHEN JUDGMENT THEREOF BECOMES FINAL AND INCONTROVERTIBLE. — In numerous decisions, some of the latest being Afallo and Pinaroc v. Rosauro, 60 Phil. 622 and Valmonte v. Nable, G. R. No. L-2842, December 29, 1949, 47 O. G. 2917, we have held that the ajudication of land