said affiants without assuming that Ong Ing had pleaded guilty of, and is willingly serving sentence for, a crime he had not committed, the allegedly newly discovered evidence is, to our mind, insufficient to effect the evidence for the prosecution, or even to create a reasonable doubt on appellants' guilt. Moreover, as we said in case G. R. No. L-5849, entitled "People vs. Buluran," decided May 24, 1954:

"x x x for some time now this Court has been receiving, in connections with criminal cases pending before it, a number of motions for new trial, similar to the one under consideration, based upon affidavits of prisoners — either serving sentences (like Torio and Lao) or merely under preventive detention, pending final disposition of the charges against them — who, in a sudden display of concern for the dictates of their conscience — to which they consistently turned deaf ears in the past — assume responsibility for crimes of which others have been found guilty by competent courts. Although one might, at first, be impressed by said affidavits — particularly if resort thereto had not become so frequent as to be no longer an uncommon occurrence — it is not difficult, on second thought, to realize how desperate men — such as those already adverted to — could be induced, or could even offer, to make such affidavits, for a monetary consideration, which would be of some help to the usually needy family of the affiants. At any rate, the risks they assume thereby are, in many cases, purely theoretical, not only because of the possibility, if not probability, of establishing (in connection with the crime for which responsibility is assumed) a legitimate *alibi* — in some cases it may be proven positively that the affiants could not have committed said offenses, because they were actually confined in prison at the time of the occurrence — but, also, because the evidence already introduced by the prosecution may be too strong to be offset by a reproduction on the witness stand of the contents of said affidavits."

Wherefore, the decision appealed from is hereby affirmed, the same being in accordance with the facts and the law, with costs against the appellants.

IT IS SO ORDERED.

Paras, C.J., and *Pablo, J.*, concur.

XII

S. N. Picornell & Co., Plaintiff-Appellee, vs. Jose M. Cordova, Defendant-Appellant, G. R. No. L-6338, August 11, 1954, *J. B. L. Reyes, J.*

1. JUDGMENTS; WHEN JUDGMENT BECOMES FINAL; PERIOD OF LIMITATIONS BEGINS FROM DATE OF ENTRY OF FINAL JUDGMENT. — An appealed judgment of a Court of First Instance in an original prewar case does not become final until it is affirmed by the Court of Appeals, precisely because of the appeal interposed therein; hence the period of limitation does not begin to run until after the Court of Appeals denies the motion to reconsider and final judgment is entered (old Civil Code Art. 1971; new Civil Code Art. 1152).

2. ACTIONS; ACTION TO REVIVE JUDGMENT, WHEN BARRED BY PERIOD OF LIMITATIONS. — In this case, from the date the final judgment was entered until the present proceedings were commenced on January 16, 1950, less than ten years have elapsed, so that the action to revive the judgment has not yet become barred (sec. 43, Act 190; 31 Am. Jur. p. 486).

3. ID.; DEFENSES; MORATORIUM ACT, NO LONGER A DEFENSE. — Republic Act No. 342, known as the Moratorium Act, having been declared unconstitutional, by this Court in Rutter vs. Esteban (49 Off. Gaz., No. 5, p. 1807), it may no longer be invoked as a defense.

Fulgencio Vega for defendant and appellant.

Ross, Selph, Carrascoso & Janda and *Delfin L. Gonzales* for plaintiff and appellee.

DECISION

REYES, J. B. L., *J.*:

This is an appeal from the judgment rendered on November 15, 1950, by the Court of First Instance of Manila in its Civil Case No. 10115, reviving a prewar judgment (Civil Case No. 51265) against the defendant-appellant José M. Cordova and sentencing him to pay the plaintiff-appellee the sum of ₱12,060.63, plus interest thereon at the legal rate from May 27, 1941, until full payment; with the proviso that the judgment shall not be enforced until the expiration of the moratorium period fixed by Republic Act 342.

The material facts are as follows: In Civil Case No. 51265 of the Court of First Instance of Manila, the appellant José M. Cordova was sentenced on March 4, 1939, to pay the firm of Hair & Picornell the amount of ₱12,715.41 plus interest at the legal rate from May 4, 1937 and costs (Exh. B). Cordova appealed to the Court of Appeals, where the decision of the Court of First Instance was affirmed on December 27, 1940 (CA-GR No. 5471) (Exh. C). A motion for reconsideration was denied on February 7, 1941, and the parties were notified thereof on February 11, 1941 (Exh. D). Thereafter, the judgment became final and executory. Execution was issued; several properties of the defendant were levied upon and sold, and the proceeds applied in partial satisfaction of the judgment, but there remained an unpaid balance of ₱12,060.63 (Exh. E, F, G).

Subsequently, the interest of Hair & Picornell in the judgment was assigned to appellee S. W. Picornell & Co. (Exh. H). The latter, on January 16, 1950, commenced the present action (No. 10115) to revive the judgment in case No. 51265; but Cordova defended on two grounds: (1) that the action had prescribed; and (2) that the action against him was not maintainable in view of the provisions of sec. 2, of Republic Act No. 342, since he (Cordova) had filed a claim with the Philippine War Damage Commission, bearing No. 978113 (Exh. I). Both defenses were disallowed by the Court of First Instance, which rendered judgment as described in the first paragraph of this decision. Cordova duly appealed to the Court of Appeals, but the latter certified the case to this Court, as involving only questions of law.

Clearly, the appeal is without merit. The judgment of the Court of First Instance in the original prewar case, No. 51265, did not become final until it was affirmed by the Court of Appeals, precisely because of the appeal interposed by appellant Cordova; hence the period of limitation did not begin to run until final judgment was entered, after the Court of Appeals had denied Cordova's motion to reconsider on February 7, 1941 (old Civil Code Art. 1971; new Civil Code Art. 1152). From the latter date until the present proceedings were commenced on January 16, 1950, less than ten years have elapsed, so that the action to revive the judgment has not yet become barred (Sec. 43, Act 190; 31 Am. Jur. s. 846).

As to the defense based on the Moratorium Act, R. A. No. 342, our decision in Rutter vs. Esteban (1953), 49 O. G. (No. 5) p. 1807, declaring the continued operation of said Act to be unconstitutional, is conclusive, that it may no longer be invoked as a defense.

Wherefore, the decision appealed from is affirmed, except as to the proviso suspending execution of the judgment until eight years after the settlement of appellant's war damage claim. Said condtion is hereby annulled and set aside, in accordance with our ruling in the Rutter case.

Paras, Pablo, Bengzon, Padilla, Montemayor, Alex Reyes, Jugo, Bautista Angelo, Labrador and *Concepcion, J.J.*, concur.

XIII

Brigido Lobrin, Plaintiff and Appellee, vs. Singer Sewing Machine Company, Defendant and Appellant, No. 5751, *November* 6, 1940, *Tuason, J.*

WORKMEN'S COMPENSATION ACT, SECTION 6; INTERPRETATION; INJURED EMPLOYEE CANNOT RECOVER

BOTH DAMAGES AND COMPENSATION; RIGHT OF ELECTION; EFFECT OF ELECTION.—Under section 6 of the Workmen's Compensation Act, "an employee injured under circumstances as to afford him a right to compensation as against his employer, and also to impose a liability in damages on a third person, has a right to elect whether he will seek compensation or damages; he cannot recover both damages and compensation, cannot elect to take compensation and also to bring an action against a third person, and cannot proceed concurrently at common law for damages and under the compensation act for compensation. It has broadly been stated that when a binding election is made, it is final."

William F. Mueller for appellant.
Tomas P. Panganiban for appellee.

DECISION

TUASON, *J.*:

On and prior to December 4, 1937, Brigido Lobrin, plaintiff-appellee, was employed by Singer Sewing Machine Company, defendant-appellant, as assistant supervising agent with official station in the Province of Nueva Ecija and with a salary of ₱30 a week, plus ₱7.50 weekly for traveling expenses. On the above-mentioned date, while plaintiff was traveling in the performance of his duties on a Rural Transit jitney bus owned by the Bachrach Motor Company, Inc., that vehicle collided with a freight truck, as a result of which plaintiff sustained injuries and was taken to the provincial hospital of Nueva Ecija by William H. Beedle, plaintiff's immediate superior. As there was no X-Ray apparatus in that hospital, plaintiff transferred to the Philippine General Hospital on December 11, 1937. During his stay in the latter hospital and for sometime during his convalescence outside, defendant paid plaintiff his salary, the total amount thus paid being ₱570.

In the meantime, under date of February 10, 1938, plaintiff received from the Bachrach Motor Company, Inc., ₱2,000 "in full settlement of all claims and demands, and rights of action which" he might have against that firm, and in consideration thereof released the Bachrach Motor Company "from all obligations now existing or that may hereafter arise in my favor by reason of the said damages and injuries by me sustained."

Subsequently plaintiff brought this action against Singer Sewing Machine Company and was awarded a total compensation of ₱1,772.82 besides ₱2,286.96 for medical and hospital expenses, or a total of ₱4,059.78 from which were deducted the ₱570 which plaintiff had received from defendant as wages and the ₱2,000 paid him by the Bachrach Motor Company.

Defendant-appellant resisted payment in the court below on various grounds, one of which, now reiterated in this instance, is that "the settlement made by plaintiff with the Bachrach Motor Company, Inc., for all damages suffered, released defendant from any liability for payment of compensation." This defense, from our view of it, disposes of the whole case.

Section 6 of the Workmen's Compensation Act:

"Sec. 6. *Liability of third person.* — In case an employee suffers an injury for which compensation is due under this Act by any other person besides his employer, it shall be optional with such injured employee either to claim compensation from his employer, under this Act, or sue such other person for damages, in accordance with law; and in case compensation is claimed and allowed in accordance with this Act, the employer who paid such compensation or was found liable to pay the same, shall succeed the injured employee to the right of recovering from such person what he paid; Provided, that in case the employer recovers from such third person damages in excess of those paid or allowed under this Act, such excess shall be delivered to the injured employee or any other person entitled thereto, after deduction of the expenses of the employer and the costs of the proceedings. The sum paid by the employer for compensation or the amount of compensation to which the employee or his dependents are entitled under the provisions of the Act, shall not be admissible as evidence in any damage suit or action."

Referring to provisions like these, 71 C. J. 1533, 1534, says that "an employee injured under such circumstances as to afford him a right to compensation as against his employer, and also to impose a liability in damages on a third person, has a right to elect whether he will seek compensation or damages; he cannot elect to take compensation and also to bring an action against a third person, and cannot proceed concurrently at common law for damages and under the compensation act for compensation. It has broadly been stated that when a binding election is made, it is final."

On page 928 of the same work and volume, it is said that "an employee, by his election to take damages without action and to release the third person, exercises his option to proceed against the third person, and his claim for compensation is barred."

Commenting on section 6 of the English Compensation Act of 1906, after which ours is modelled, Labatt says in his treaties on Master and Servant:

"The acceptance of payments by the injured workman from a person other than the employer, who was alleged to be liable for negligence, although such liability is not admitted, precludes the workman, under section 6, sub-section 1, from obtaining compensation from the employer." (5 Labatt's Master and Servant, 2nd Edition, p. 5441.)

Plaintiff-appellee makes the point that "the third party against whom the plaintiff may exercise the option granted under section 6 of the Workmen's Compensation Act" is the driver of the freight truck. He argues that the Bachrach Motor Company, Inc., paid plaintiff ₱2,000 "not necessarily because the said company was guilty of causing injuries to the plaintiff, but because, whether or not guilty, it is liable for operating as a common carrier, to passengers sustaining injuries while on board any of its passenger trucks, although the injuries would not have been sustained were it not for the negligence or wrongful acts of another party."

This contention cannot be sustained. To start with, Beedle's testimony that plaintiff told him the chauffeur of the Rural Transit jitney was going too fast, thus blaming that driver, was not denied. Counsel's statement in his brief and memorandum that the operator of the freight truck has been prosecuted and convicted finds no support whatsoever in the evidence.

Even if it were true that the freight truck driver was to blame for the accident, and that the Bachrach Motor Company was liable regardless of whether or not it was free from negligence — a point which we need not attempt to decide—still that company clearly falls within the meaning of "other person" as this term is used in section 6 of the Workmen's Compensation Act. The reason for this is that the Bachrach Motor Company's liability arose out of the same accident that produced the defendant's liability, and that the employee can recover either damages or compensation, but not both.

If defendant had the right to be subrogated to plaintiff's right of action against the Bachrach Motor Company, plaintiff by electing to accept a settlement from that company has closed the door to defendant to proceed against it, and under the doctrine of estoppel by election, should be precluded from now asserting, to defendant's prejudice, a position inconsistent with that taken by him before.

Plaintiff insinuates that defendants can still go after the driver of the freight truck, but he ignores the fact that even if this driver could be held liable for plaintiff's injuries, that said driver is in all probability insolvent.

Plaintiff has not been prejudiced by his election to seek damages instead of compensation. The amounts he has already received are more than he would have been entitled to as compensation under the Workmen's Compensation Act. For his evidence is insufficient to prove that he paid Dr. Abuel and Dr. Abuel's widow ₱1,500. He has not shown the nature and quantum of Dr. Abuel's services. His own evidence seems to exclude the possibility that the services rendered by Dr. Abuel were worth ₱1,500. He was

confined in the Philippine General Hospital for only eighteen days and, according to Exhibit B-8, he underwent only two minor operations, one on December 13, 1937, and one on February 19, 1938. In other words, if plaintiff had choosen to sue defendant for compensation, an action which would have subrogated defendant into plaintiff's right of action against the Bachrach Motor Company or any other person responsible for his injuries, such compensation would have been less than the amount he has actually received from both the Bachrach Motor Company and the defendant, namely ₱2,570.

Upon all the foregoing consideration, the appealed decision is reversed and the action dismissed, with costs against plaintiff-appellee.

Bengzon, Padilla, Lopez Vito. and *Alex Reyes, J.J.*, concur

Judgment reversed.

XIV

Gliceria Rosete, Plaintiff-Appellee, vs. Provincial Sheriff of Zambales, Simplicio Yap and Corazon Yap, DefendantsAppellants. G. R. No. L-6335, July 31, 1954, Bautista Angelo, J.

EXECUTION; REDEMPTION BY WIFE OF CONJUGAL PROPERTY SOLD ON EXECUTION; REDEEMED PROPERTY BECOMES PARAPHERNAL. — Inasmuch as the wife redeemed two parcels of land belonging to the conjugal partnership which were sold on execution, with money obtained by her from her father, the two parcels of land has become paraphernal and as such is beyond the reach of further execution. (Section 23 of Rule 39; 1 Moran, Comments on the Rules of Court, 1952 ed., pp. 841-842; article 1596, old Civil Code; Hepfner vs. Orton, 12 Pac., 486; Taylor vs. Taylor, 92 So., 109; Malone vs. Nelson, 167 So., 714.) She has acquired it by right of redemption as successor in interest of her husband. It has ceased to be the property of the judgment debtor. It can no longer therefore be the subject of execution under a judgment exlusively affecting the personal liability of the latter.

Ricardo N. Agbunag for the defendants and appellee.
Jorge A. Pascua for the plaintiff and appellee.

DECISION

BAUTISTA ANGELO, *J.*:

In Criminal Case No. 2897 for murder of the Court of First Instance of Zambales, Epifanio Fularon was convicted and sentenced to indemnify the heirs of the victim in the amount of ₱2,000.

On February 10, 1949, to satisfy said indemnity, a writ of execution was issued and the sheriff levied upon four parcels of land belonging to the conjugal partnership of Epifanio Fularon and Gliceria Rosete. These parcels of land were sold at public auction as required by the rules for the sum of ₱1,385.00, leaving an unsatisfied balance of ₱739.34.

On March 8, 1950, Gliceria Rosete redeemed two of the four parcels of land which were sold at public auction for the sum of ₱879.80, the sheriff having executed in her favor the corresponding deed of repurchase.

On April 10, 1950, an alias execution was issued to satisfy the balance of the indemnity and the sheriff levied upon the two parcels of land which were redeemed by Gliceria Rosete and set a date for their sale. Prior to the arrival of this date, however, Gliceria Rosete filed a case for injunction to restrain the sheriff from carrying out the sale praying at the same time for a writ of preliminary injunction. This writ was issued upon the filing of the requisite bond but was later dissolved upon a motion filed by defendants who put up a counter-bond.

The dissolution of the injunction enabled the sheriff to carry out the sale as orginally scheduled and the property was sold to one Raymundo de Jesus for the sum of ₱970. This development prompted the plaintiff to amend her complaint by praying therein, among other things, that the sale carried out by the sheriff be declared null and void. After due trial, wherein the parties practically agreed on the material facts pertinent to the issue, the court rendered decision declaring the sale null and void. The defendants appealed, and the case was certified to this Court on the plea that the appeal involves purely questions of law.

The question to be decided is whether the sale made by the sheriff on May 9, 1950 of the two parcels of land which were redeemed by Gliceria Rosete in the exercise of her right of redemption is valid it appearing that they formed part of the four parcels of land belonging to the conjugal partnership which were originally sold to satisfy the same judgment of indemnity awarded in the criminal case. The lower court declared the sale null and void on the strength of the ruling laid down in the case of Lichauco v. Olegario, 43 Phil. 540, and this finding is now disputed by the appellants.

In the case above adverted to, Lichauco obtained a judgment against Olegario for the sum of ₱72,766.37. To satisfy this judgment, certain real estate belonging to Olegario was levied in execution and at the sale Lichauco bid for it for the sum of ₱10,000. Olegario, on the same day, sold his right of redemption to his cousin Dalmacio. Later, Lichauco asked for an alias writ of execution and the sheriff proceeded with the sale of the right of redemption of Olegario whereas Lichauco himself bid for the sum of ₱10,-000. As Lichauco failed to register the sale owing to the fact that the sale executed by Olegario in favor of his cousin was already recorded, Lichauco brought the matter to court to test the validity of the latter sale. One of the issues raised was, "Whether or not Faustino Lichauco, as an execution creditor and purchaser at the auction in question was entitled, after his judgment had thus been executed but not wholly satisfied, to have it executed again by levying upon the right of redemption over said properties." The court ruled that this cannot be done for it would render nugatory the means secured by law to an execution debtor to avoid the sale of his property made at an auction under execution. Said this Court:

> "We, therefore, find that the plaintiff, as a judgment creditor, was not, and is not, entitled, after an execution has been levied upon the real properties in question by virtue of the judgment in his favor, to have another execution levied upon the same properties by virtue of the same judgment to reach the right of redemption which the execution debtor and his privies retained over them."

Inasmuch as the Lichauco case refers to the levy and sale of the right of redemption belonging to a judgment debtor and not to the levy of the very property which has been the subject of execution for the satisfaction of the same judgment, it is now contended that it cannot be considered as a precedent in the present case for here the second levy was effected on the same property subject of the original execution. But this argument falls on its own weight when we consider the following conclusion of the court, "x x x what we wish to declare is that a judgment by virtue of which a property is sold at public auction *can have no further effect* on such property." (Underlining supplied)

Nevertheless, when this case came up for discussion some members of the Court expressed doubt as to the applicability of the Lichauco case considering that it does not decide squarely whether the same property may be levied on an alias execution if it is reacquired by the judgment debtor in the exercise of his right of redemption, and as on this matter the requisite majority could not be obtained the inquiry turned to another issue which for purposes of this case is sufficient to decide the controversy.

The issue is: Since it appears that plaintiff redeemed the two parcels of land in question with money obtained by her from her father, has the property become paraphernal and as such is