tiffs having intervened and joined the defendants in the former case, the subject matter involved in both cases being the same parcel of land and the cause of action being ejectment (*reivindicacion*).

The fact that damages were awarded to the then plaintiff against the then defendants and intervenors negatives the latter's right to claim damages in the present case, for such award is inconsistent with the claim that they were in possession of the parcel of land in good faith and are entitled to recover what they spent for clearing, cultivating and planting the parcel of land and the fruits which they failed to reap or harvest therein or their value.

The contention that a counterclaim for expenses incurred in clearing and cultivating the parcel of land and planting coconut and other fruit-bearing trees therein could not have been set up in the former case because that would have been inconsistent with or would have weakened the claim that they were entitled to the parcel of land, is without merit, because "A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one cause of action or defense or in separate causes of action or defenses." (1) Hence, the plaintiffs herein and intervenors in the former case could have set up the claim that they were entitled to the parcel of land and alternatively that, assuming (hypothetically) that they were not entitled to the parcel of land, at least they were entitled as possessors in good faith to the coconut and other fruit-bearing trees planted by them in the parcel of land and their fruits or their value.

The order appealed from is affirmed, wtih costs against the appellants.

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

(1) Sec. 9, Rule 15.

V

Pabilonia et al., Petitioners, vs. Santiago et al., Respondents, G. R. No. L-5110, July 29, 1953.

RULES OF COURT; SPECIAL ADMINISTRATOR; AUTHORITY TO SELL PROPERTY TO RAISE MONEY TO PAY DEBTS.—While Sections 1 and 2 of Rule 81 and Section 8 of Rule 87 specify the cases in which a special administrator shall be appointed and the duties which they in general are to perform, Section 2 of Rule 81 expressly authoritizes him to sell "such perishable and other property as the court orders sold." Further, debts which a special administrator may not be sued for may be settled and satisfied by him if "expressly ordered by the court to do so." (Golingco vs. Calleja, et al., 69 Phil. 446.) If the court may authorize a special administrator to pay debts, it seems to follow that it may authorize him to sell property to raise the money to pay the debts.

Potenciano A. Magtibay for petitioners.
G. N. Trinidad for respondents.

DECISION

TUASON, *J.*:

This is an original petition to compel the Hon. Vicente Santiago, Judge of the Court of First Instance of Quezon, to approve and certify petitioners' record on appeal filed in special proceeding No. 2387 of that court. The proposed appeal is from an order entered in those proceedings on June 20, 1951, whereby Panfilo Nagar, as judicial administrator, was "ordered to execute another deed of sale of the property referred to and described in transfer certificate of title No. 2992 in favor of Antonia Abas under the terms and conditions which appear in the amended deed of sale of January 30, 1936 *mutatis mutandis*, subject to the approval of the Court." The respondent judge held that the sale mentioned in his order was final and execution of the deed ministerial on the part of the court.

To properly understand the status of the sale being impugned it is necessary to recite the salient circumstances under which it was made.

This sale dates as far back as the inception of the above-mentioned special proceedings in 1953. It was executed in due form by and at the behest of Pedro Pabilonia as special administrator, who was the surviving spouse of the deceased and father of the present petitioners, both of whom were then minors. Initiator of those proceedings, Pabilonia not only asked for authority to sell the questioned property but named the price of sale (P2,600) and the person to whom the sale was to be made, Antonia Abas, aunt of his deceased wife. Regarding the necessity for the sale, Pabilonia alleged that the property was mortgaged to the Philippine National Bank; that the mortgage was overdue and the mortgagee was threatening to foreclose it; that on account of the prevailing financial depression the obligation could not be met with the income derived from the land, which was the only asset of the estate; etc., etc.

Pabilonia's recommendation was granted without any modification following which a deed was executed by him in strict accordance with his recommendation and the court's order. But the court thought, for the first time, when the deed of sale was submitted for confirmation, that a regular administrator and not a special administrator like Pabilonia should sign the instrument if the same was to be valid. Consequently, on February 20, 1936, it withheld its approval of the said sale "por ahora" pending the "conversion" of the special administrator into a regular one. To this end, presumably, the court directed Pabilonia to apply for appointment as regular administrator.

In the meanwhile, Pabilonia delivered the possession of the land to the buyer, who since then has been paying the mortgage debt to the Philippine National Bank under a new arrangement reached with the creditor. For all the records would show, the mortgage may have been paid off completely by now.

For the reason, so it seems, that the buyer had already entered upon the possession of the land, novated the contract of mortgage with the Bank, and there was no other property to administer and no other obligation to settle, Pabilonia and Abas lost interest in the appointment of a regular administrator. As a result of their inaction the court, now presided by another judge, dismissed the proceedings on June 20, 1939, "por falta de gestion" by the parties.

Nevertheless, on May 28, 1947, Pabilonia and Antonia Abas made a joint motion for the reinstatement of the *expediente*. That motion was promptly granted, whereupon Pabilonia asked that he be appointed regular administrator to carry out the court's order of January 1936, and he was so appointed on June 6, 1947. But for reasons which can be guessed in the light of his subsequent actions, Pabilonia refused to qualify and proposed a brother-in-law, Leon Abrigo, in his place. Antonia Abas was not agreeable to Abrigo's appointment and nominated Panfilo Nagar.

Now entered the present petitioners, Pabilonia's children who had become of age. With their father they opposed Nagar's appointment, insisting on the appointment of their candidate, branded the sale to Abas as invalid, and sought to recover the possession of the property from the buyer. After considerable wrangling between the parties the court overruled the petitioners' objections and denied their prayers, and on June 9, 1950, issued to Nagar letters of administration "con todos los derechos y obligaciones anexos al cargo." The herein petitioners took steps to appeal from that order, but later gave up the idea.

On January 30, 1951, after the petitioners' appeal was withdrawn, Nagar filed a motion praying that the deed executed by Pabilonia as special administrator on January 30, 1936, be approved or, if this be not possible, that he be authorized to execute a new document with the same terms. It was upon this motion that the order quoted at the outset of this decision and from which petitioners now seek to appeal was made.

It will be seen from the foregoing narration of facts that the sale executed by Pabilonia on January 30, 1936, has never been disapproved, set aside, or modified. Upon the contrary, it was assumed to be valid in every respect except that it was deemed that a regular administrator should have made the sale. All these long years the appointment of such administrator was distinctly understood by the parties and the court to be the only unfinished matter to be attended to, and Panfilo Nagar's appointment and the court's order for him to execute a new deed exactly like that signed by the former administrator were nothing more than in furtherance of that

understanding. Except, therefore, for that appointment and the court's final approval, and as far as the estate was concerned, the right of the buyer was complete, absolute and incontestable. Not only was the sale made in pursuance of the special administrator's motion, but the parties have fully complied with its terms. Under the circumstances, only want of any of the essential elements of a contract can give the petitioners the right to stop the court's confirmation of the transaction. The petitioners have not submitted a copy of the record on appeal, nor other supporting papers except excerpts thereof or of some of them, and we are not informed of the exact basis of their objection to the sale.

As a matter of fact, we incline to the opinion that the conveyance made by the special administrator was valid and effective and that there was no necessity of appointing a regular administrator to ratify it or execute a new deed. While Sections 1 and 2 of Rule 81 and Section 8 of Rule 87 specify the cases in which a special administrator shall be appointed and the duties which they in general are to perform, Section 2 of Rule 81 expressly authorizes him to sell "such perishable and other property as the court orders sold." Further, debts which a special administrator may not be sued for may be settled and satisfied by him if "expressly ordered by the court to do so." (Golingco vs. Calleja, et al., 69 Phil. 446.) If the court may authorize a special administrator to pay debts, it seems to follow that it may authorize him to sell property to raise the money to pay the debts. Here there was a debt to pay and there was an order to sell the only property of the intestate for the purpose of paying that debt.

The court finds no merit in the application and, accordingly, denies it, with costs against the petitioners.

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

VI

Manila Trading and Supply Co., Petitioner-Appellant, vs. Register of Deeds of Manila, Respondent-Appellee, G. R. No. L-5623, Jan. 28, 1954.

LAND REGISTRATION; CERTIFICATE OF TITLE; ANNOTATION THEREON OF OWNERSHIP OF IMPROVEMENTS; CASE AT BAR. — The Manila Trading and Supply Co., a corporation, is the lessee of three parcels of land in the Port Area, Manila, belonging to the Philippine Government, such lease having been recorded on the Government's Certificate of Title No. 4939. The structures built by said company upon the lots were destroyed during the last war; but after liberation, it erected new buildings that cost over a million pesos. Thereafter, on April 12, 1951 it requested the Manila Court of First Instance to require the Register of Deeds to enter and annotate, on Certificate of Title No. 4948, its Declaration of Property Ownership of such valuable improvements. The court granted the request. Then the Register of Deeds demanded payment of ₱1308.00 for the assurance fund pursuant to section 99 of Act No. 496. The company refused to pay, and applied to the court for relief thru a petition-consultation. The attorney for appellant insists here that section 99 is inapplicable, because the matter is not original registration of "land," nor entry of a certificate showing title as registered owners in heirs or devisees. The Legislature knew, he argues, that "buildings" and "improvements" are not "land." *Held*: Upon examination of the whole Land Registration Act we are satisfied that "land" as used in section 99 includes buildings. For one thing the same section uses "real estate" as synonymous with land. And buildings are "real estate" (Sec. 334, Civil Code; Art. 415, New Civil Code; Republica de Filipinas v. Ceniza, L-4169, Dec. 17, 1951). For another, although entitled "*Land* Registration," the Act (496) permits the registration of interests therein, improvements, and buildings. Of course the building may not be registered separately and independently from the parcel on which it is constructed, as aptly observed by Chief Justice Arellano in 1909. But "buildings" are registerable just the same under the *Land* Registration System. It seems clear that having expressly permitted in its initial sections (sec. 2) the registration of title "to land or buildings or an interest therein" and declared that the proceedings shall be *in rem* against the land and the buildings and improvements thereon, the statute (Act 496) used in subsequent provisions the word "land" as a short term equivalent "to land or buildings or improvements" to avoid frequent repetition of "buildings and improvements." Unless, of course, a different interpretation is required by the intent or the terms of the provision itself, which is not the case of section 99. On the contrary, to consider buildings as within its range would be entirely in line with its purpose because as rightly pointed out by His Honor, it would be unfair for petitioner to enjoy the protection of the assurance fund even if it refuses to contribute to its maintenance.

Ross, Selph, Carrascoso and *Janda* for petitioner-appellant. *Solicitor General Juan R. Liwag* and *Solicitor Jose G. Bautista* for appellee.

DECISION

BENGZON, *J.*:

The issue for adjudication is whether the owner of building erected on premises leased from another person is required to contribute to the assurance fund when he petitions for annotation of his ownership on the corresponding certificate of Torrens title.

The facts are simple: The Manila Trading and Supply Co., a corporation, is the lessee of three parcels of land in the Port Area, Manila, belonging to the Philippine Government, such lease having been recorded on the Government's Certificate of Title No. 4939. The structures built by said company upon the lots were destroyed during the last war; but after liberation, it erected new buildings that cost over a million pesos. Thereafter, on April 12, 1951 it requested the Manila Court of First Instance to require the Register of Deeds to enter and annotate, on Certificate of Title No. 4948, its Declaration of Property Ownership of such valuable improvements. The court granted the request [1]. Then the Register of Deeds demanded payment of ₱1308.00 for the assurance fund pursuant to section 99 of Act No. 496. The company refused to pay, and applied to the court for relief thru a petition-consultation. The Register of Deeds was upheld. Hence this appeal.

Section 99 provides in part:

"Upon the original registration of land under this Act, and also upon the entry of a certificate showing title as registered owners in heirs or devises, there shall be paid to the register of deeds one-tenth of one percentum of the assessed value of the real estate on the basis of the last assessment for municipal taxation, as an assurance fund. x x x"

The Honorable Ramon R. San Jose, Judge, approving the Register's action explained:

"x x x considerando que la anotacion de la citada orden, juntamente con el expresado affidavit, en el Certificado de Titulo No. 4938 de Gobierno de Filipinas, crea un interes en el terreno descrito en el referido titulo sobre todo en el presente caso en que consta inscrito un contrato de arrendamiento del terreno entre el Gobierno y la dueña de los edificios, este Juzgado es de opinion que la cuestion discutida cae de lleno bajo las disposiciones legales que hablan no solamente de terreno, sino tambien de 'real estate' y de 'interes' en el terreno y dan proteccion a los que, sin negligencia suya, pierdan irreivindicablemente su derecho, interes o participacion, en el terreno y/o las mejoras existentes en el mismo. Es injusto que la recurrente tenga la proteccion de sus edificios bajo el fondo de aseguro y no haga su contribuccion al mismo. x x x."

The attorney for appellant insists here that section 99 is inapplicable, because the matter is not original registration of "land," nor entry of a certificate showing title as registered owners in heirs or devisees. The Legislature knew, he argues, that "buildings" and

(1) The petition is permissible under sec. 112 Act 496 and protects the rights of lessee (Atkins Kroll & Co. v. Domingo, 46 Phil. 362)