of his property, the first remedy granted is that of restitution of the thing taken away. If restitution can not be made, the law allows the offended party the next best thing, reparation. The Spanish jurist Viada, commenting on this provision of the law says:

> "En las causas por robo, jurto, etc., en que no hayan sido recuperados durante el proceso los objetos de dichos delitos, be condenarse a los reos a su restitucion, o, en su defecto, a la indemnizacion correspondiente en la cantidad en que hayan sido valorados o tasados por los peritos; x x." (3 Viada 6).

Reparation may not be made by the delivery of a similar thing (same amount, kind or species and quality), because the value of the thing taken may have decreased since the offended party was deprived thereof. Reparation, therefore, should consist of the price of the thing taken, as fixed by the court (Art. 106, Revised Penal Code).

In the case at bar, the court considered the payment of ₱600 as the next best thing, if the property taken could not be returned. No valid objection can be raised against this decision; money is the standard of value, and, except in financial crises, it does not fluctuate in value as much as merchandise or things, especially those bought and sold in the ordinary course of commerce. In any case, the judgment of the Court of Appeals ordering restitution, or the payment of the value of the property taken, is now final and executory and can no longer be subject to modification.

The appeal is hereby dismissed, with costs against accused-appellants.

So ordered.

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

XX

Re: Transfer Certificate of Title No. 14123, *Tirso T. Reyes, as guardian of the minors, Azucena, Flor-De-Lis and Tirso, Jr., all surnamed Reyes y Barretto, Petitioners-Appellees versus Milagros Barretto-Datu, Oppositor-Appellant, G. R. No. L-5549, February* 26, 1954.

1. FINAL JUDGMENTS; DIFFERENT WAYS OF ATTACKING THEIR VALIDITY. — Under our rules of procedure, the validity of a judgment or order of the court, which has become final and executory, may be attacked only by a direct action or proceeding to annul the same, or by motion in another case if, in the latter case, the court had no jurisdiction to enter the order or pronounce the judgment (Sec. 44, Rule 39 of the Rules of Court). The first proceeding is a direct attack against the order or judgment, because it is not incidental to, but is the main object of, the proceeding. The other one is the collateral attack, in which the purpose of the proceedings is to obtain some relief, other than the vacation or setting aside of the judgment, and the attack is only an incident. (I Freeman on Judgments, Sec. 306, pp. 607-608.) A third manner is by a petition for relief from the judgment or order as authorized by the statutes or by the rules, such as those expressly provided in Rule 38 of the Rules of Court, but in this case it is to be noted that the relief is granted by express statutory authority in the same action or proceeding in which the judgment or order was entered. In the case at bar, we are not concerned with a relief falling under this third class, because the project of partition was approved in the testate proceedings in the year 1949, whereas the petition in this case is in a registration proceeding and was filed in the year 1951.

2. ID.; ID.; CASE AT BAR. — In the case at bar, the respondent Lucia Milagros Barretto is objecting to the petition by the second method, the collateral attack. When a judgment is sought to be assailed in this manner, the rule is that the attack must be based not on mere errors or defects in the order or judgments. There and there alone can it meet with any meaand void, because the court had no power or authority to grant the relief, or no jurisdiction over the subject matter or over the parties or both. (Ibid. Sec. 326, p. 650).

3. ID.; ID.; PRINCIPLES GOVERNING COLLATERAL ATTACK. — In cases of collateral attack, the principles that apply have been stated as follows:

> "The legitimate province of collateral impeachment is void judgments. There and there alone can it meet with any measure of success. Decision after decision bears this import: In every case the field of collateral inquiry is narrowed down to the single issue concerning the void character of the judgment and the assailant is called upon to satisfy the court that such is the fact. To compass his purpose of overthrowing the judgment, it is not enough that he show a mistaken or erroneous decision or a record disclosing non-jurisdictional irregularities in the proceedings leading up to the judgment. He must go beyond this and show to the court, generally from the fact of the record itself, that the judgment complained of is utterly void. If he can do that his attack will succeed for the cases leave no doubt respecting the right of a litigant to collaterally impeach a judgment that he can prove to be void." (I Freeman on Judgments, Sec. 322, p. 642.)

4. ID.; ID.; WHEN LACK OF JURISDICTION OF THE COURT MAY BE A GROUND FOR COLLATERAL ATTACK. — The doctrine that the question of jurisdiction is to be determined by the record alone, thereby excluding extraneous proof seems to be the natural unavoidable result of that stamp of authenticity which, from the earliest times, was placed upon the record, and which gave it such uncontrollable credit and verity that no plea, proof, or averment could be heard to the contrary. x x x. Any other rule, x x x, would be disastrous in its results, since to permit the court's records to be contradicted or varied by evidence dehors would render such records of no avail and definite sentence would afford but slight protection to the rights of parties once solemnly adjudicated. x x x. (I Freeman on Judgments, Sec. 376, p. 789.)

Deogracias T. Reyes and *Virgilio Anz. Cruz* for appellant.
Calanog and *Alafriz* for appellee.

DECISION

LABRADOR, *J.*:

This is an appeal prosecuted in this Court against two orders of the Court of First Instance of Bulacan, issued in Case No. 116, G. L. R. O. Rec. No. 12908, requiring the oppositor-appellant Lucia Milagros Barretto to surrender Transfer Certificate of Title No. 14123, issued in the name of Bibiano Barretto, so that the same may be cancelled and a new one issued in lieu thereof in the name of Azucena, Flor-de-lis and Tirso, Jr., all surnamed Reyes, co-owners of an undivided one-half share, and Lucia Milagros Barretto as the owner of the other half. The circumstances leading to the issuance of the said orders may be briefly stated as follows:

Bibiano Barretto died on February 18, 1936, and in the testate proceedings for the settlement of his estate, Salud Barretto and Lucia Milagros Barretto were declared as his children and heirs. Lucia Milagros Barretto was at that time a minor, 15 years of age, and proceedings were instituted in the same court (Case No. 49881) for the appointment of her guardian. In the testate proceedings a project of partition was submitted, which was signed by Salud Barretto, Lucia Milagros Barretto (minor) and Maria Gerardo (surviving spouse), the latter signing "on her behalf and as guardian for the Minor, Milagros Barretto." This project of partition was approved by the court. It was filed in the Office of the Register of Deeds of Bulacan on May 22, 1940 but the transfer certificate of title over the property in question was never cancelled. His widow, Maria Gerardo, died on March 5, 1948, and in the testate proceedings for the settlement of her estate, Lucia Milagros Barretto submitted a will purporting to be of said deceased for probate, in accordance with which Maria Gerardo had only one child with the deceased Bibiano Barretto, namely. Lucia Milagros Barretto. This will submitted by Lucia Milagros Barretto was declared to be the last will and testament of the deceased Maria Gerardo.

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Reyes presented the petition for the cancellation of the transfer certificate of title in the name of Bibiano Barretto on March 19, 1951 in Case No. 116, G. L. R. O. Record No. 12908. Lucia Milagros Barretto filed an opposition, claiming (a) that the project of partition approved by the court in the proceedings for the settlement of the estate of Bibiano Barretto is null and void, because it appears therefrom that Lucia Milagros Barretto was a minor at the time she signed the said project of partition, and Maria Gerardo was not authorized to sign said project on her (Milagros Barretto's) behalf; and (b) that in accordance with the will of the deceased Maria Gerardo, Salud Barretto was not a daughter of Bibiano Barretto and Maria Gerardo, because only Lucia Milagros Barretto was the daughter of the said spouse. The lower court overruled the above objections and issued the orders mentioned above; so Lucia Milagros Barretto prosecuted this appeal.

Under our rules of procedures, the validity of a judgment or order of the court, which has become final and executory, may be attacked only by a direct action or proceeding to annul the same, or by motion in another case if, in the latter case, the court had no jurisdiction to enter the order or pronounce the judgment (Sec. 44, Rule 39 of the Rules of Court). The first proceeding is a direct attack against the order or judgment, because it is not incidental to, but is the main object of, the proceeding. The other one is the collateral attack, in which the purpose of the proceeding is to obtain some relief, other than the vacation or setting aside of the judgment, and the attack is only an incident. (I Freeman on Judgments, Sec. 306, pp. 607-608.)

A third manner is by a petition for relief from the judgment or order as authorized by the statutes or by the rules, such as those expressly provided in Rule 38 of the Rules of Court, but in this case it is to be noted that the relief is granted by express statutory authority in the same action or proceeding in which the judgment or order was entered. In the case at bar, we are not concerned with a relief falling under this third class, because the project of partition was approved in the testate proceedings in the year 1939, whereas the petition in this case is in a registration proceeding and was filed in the year 1951.

In the case at bar, the respondent Lucia Milagros Barretto is objecting to the petition by the second method, the collateral attack. When a judgment is sought to be assailed in this manner, the rule is that the attack must be based not on mere errors or defects in the order or judgment, but on the ground that the judgment or order is null and void, because the court had no power or authority to grant the relief, or no jurisdiction over the subject matter or over the parties or both. (Ibid, Sec. 326, p. 650.) In cases of collateral attack, the principles that apply have been stated as follows:

> "The legitimate province of collateral impeachment is void judgment. There and there alone can it meet with any measure of success. Decision after decision bears this import: In every case the field of collateral inquiry is narrowed down to the single issue concerning the void character of the judgment and the assailant is called upon to satisfy the court that such is the fact. To compass his purpose of overthrowing the judgment, it is not enough that he show a mistaken or erroneous decision or a record disclosing non-jurisdictional irregularities in the proceedings leading up to the judgment. He must go beyond this and show to the court, generally from the fact of the record itself, that the judgment complained of its utterly void. If he can do that his attack will succeed for the cases leave on doubt respecting the right of a litigant to collaterally impeach a judgment that he can prove to be void." (I Freeman on Judgments, Sec. 322, p. 642.)

Is the order approving the project of partition absolutely null and void, and if so, does the invalidating cause appear on the face of said project or of the record? It is argued that Lucia Milagros Barretto was a minor when she signed the partition, and that Maria Gerardo was not her judicially appointed guardian. The claim is not true. Maria Gerardo signed as guardian of the minor, and her authority to sign can not be questioned (Secs. 3 and 5, Rule 97, Rules of Court). The mere statement in the project of partition that the guardianship proceedings of the minor Lucia Milagros Barretto are *pending* in the court, does not mean that the guardian had not yet been appointed; it meant that the guardianship proceedings had not yet been terminated, and as a guardianship proceedings begin with the appointment of a guardian, Maria Gerardo must have been already appointed when she signed the project of partition. There is, therefore, no irregularity or defect or error in the project of partition, apparent on the record of the testate proceedings, which shows that Maria Gerardo had no power or authority to sign the project of partition as guardian of the minor Lucia Milagros Barretto, and, consequently, no ground for the contention that the order approving the project of partition is absolutely null and void and may be attacked collaterally in these proceedings.

That Salud Barretto is not a daughter of the deceased Bibiano Barretto, because Maria Gerardo in her will stated that her only daughter with the said deceased husband of hers is Lucia Milagros Barretto, does not appear from the project of partition or from the record of the case wherein the partition was issued. It appears in a will submitted in another case. This new fact alleged in the opposition may not be considered in this registration case, as it tends to support a collateral attack which, as indicated above, is not permitted. The reasons for this rule of exclusion have been expressed in the following words:

> "The doctrine that the question of jurisdiction is to be determined by the record alone, thereby excluding extraneous proof seems to be the natural unavoidable result of that stamp of authenticity which, from the earliest times, was placed upon the 'record,' and which gave it such 'uncontrollable credit and verity that no plea, proof, or averment could be heard to the contrary.' x x x. Any other rule, x x x, would be disastrous in its results, since to permit the court's records to be contradicted or varied by evidence dehors would render such records of no avail and definite sentences would afford but slight protection to the rights of parties once solemnly adjudicated. Finding no error in the orders appealed from, we hereby affirm them, with costs against the oppositor-appellant.
> x x x." (I Freeman on Judgments, Sec. 376, p. 789.)

So ordered.

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

Mr. Justice Concepcion and *Mr. Justice Diokno* did not take part.

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of the Revised Administrative Code. I believe that this ruling applies to the instant case.

It is true that Executive Order No. 490 did not expressly provide that the first mayor, vice-mayor and councilors of the Municipality of Balingoan, Oriental Misamis, who were appointed by the President were to hold office until their successors would have been elected and qualified in the next regular election. But the determining factor is not the terms of the executive order or the appointments, but the provision of Section 10, *ante*. This section makes no distinction between municipal officers chosen by election and those chosen by appointment, and now appears to have been intended. In the absence of any express or implied provision to the contrary, it must be concluded that the tenure of all offices created by said Section 10 is the same in all cases. There is no plausible support for the theory that the Congress did not intend to place appointive officers of new municipalities on the same level as elective ones.

It is accordingly my opinion that the incumbent municipal mayor of Balingoan, Oriental Misamis, may not be removed from office except for any of the causes prescribed in Section 2188 of the Revised Administrative Code.

Respectfully,
(Sgd.) PEDRO TUASON
Secretary of Justice