the buyer of the property in question, though married to a Chinese at the time of the sale, subsequently recovered her Filipino citizenship after the death of her husband.

III

Philippine International Fair, Inc., et al., Petitioners vs. Fidel Ibañez, et al., Respondents, G. R. No. L-6448, February 25, 1954.

1. CERTIORARI: INTERLOCUTORY ORDER.—Although an order denying a motion to dismiss a complaint on the ground of lack of jurisdiction is interlocutory, still if it is clear that the trial court lacks jurisdiction a higher court of competent jurisdiction would be justified in issuing a writ of certiorari and prohibition, for the proceedings in the court below would be a nullity and waste of time.

2. IBID; IBID.—In the absence of a clear showing that the respondent court lacks jurisdiction over the case which involves an actionable wrong or a tortious act, the time-honored rule that from an interlocutory order an appeal does not lie must be adhered to. If from an interlocutory order an appeal does not lie, an extraordinary legal remedy cannot be resorted to have the order reviewed by a higher court.

Victoriano Yamzon for petitioners.
Cornelio T. Villareal, Antonio L. Gregorio and *P. P. Gallardo* for respondents.

DECISION

PADILLA, *J.*:

This is a petition for a writ of certiorari and prohibition. As prayed for a writ of preliminary injunction was issued.

The facts pleaded in the petition are: The Philippines International Fair, Inc. announced and published through daily newspapers the holding of an essay contest entitled "500 Years of Philippine Progress" under the rules which read as follows:

1. The subject of this contest is: "500 Years of Philippine Progress."

2. The length of the essay should be not less than 800 words nor more than 1,000 words.

3. The essay must be a formal type and should be historically correct.

4. The contest is open to everybody, regardless of sex, age, and religion—except to members of the staff of the Philippines International Fair, Inc.

5. The contest opens July 1, 1952, and closes August 30, 1952.

6. Each of the 10 Manila daily newspapers will offer cash prize of ₱200 in the name of the Philippines International Fair, Inc. and a certificate of merit to the first prize winners.

7. Each newspaper running the contest will select and appoint a Jury to determine the winning essay.

8. All first prize winners in the different newspapers are automatically eligible to the Grand Prize of ₱500 and a diploma to be presented by the Philippines International Fair, Inc.

9. The Director General of the Philippines International Fair will select and appoint a Jury of three members, including the Chairman, to determine the winner of the Grand Prize.

10. The grand prize winning essay becomes the property of the Fair, and will be printed in the Official Program of the 1953 Philippines International Fair.

11. Newspaper editors may formulate their own rules and regulations provided these do not conflict with those of the Fair. (Exhibit A.)

Ten newspapers responded to the call and organized preliminary contests. The newspapers certified their respective winners to the Director General of the Philippines International Fair, Inc., who appointed the judges to pass upon and examine the various essays certified to by the newspapers as the winning essays in the preliminary contests. After study of the various essays submitted the board of judges adjudged Enrique Fernandez Lumba, representing *La Opinion*, as winner of the final contest and transmitted its findings to the Director General of the Philippines International Fair, Inc. Upon learning of the result of the contest and the award made by the board of judges, Ponciano B. Jacinto filed a complaint in the Court of First Instance of Manila (civil case No. 18255) where the validity of the award by the board of judges was drawn into question and the respondent court issued a writ of preliminary injunction upon the filing of a bond in the sum of ₱1,000.

The Philippines International Fair, Inc., Luis Montilla, Federico Mangahas and Juan Collas answered the complaint and set up these special defenses: (1) that the subject matter complained of is not of such a character as would allow legally the Court to intervene and that for that reason the Court of First Instance of Manila has no jurisdiction over the subject matter of the action and (2) that the complaint states no cause of action. Simeon G. del Rosario filed a petition for leave to intervene and filed his complaint in intervention. The defendants set up in their answer to the complaint in intervention the same special defenses. The plaintiff and intervenor asked that the case be set for a preliminary hearing on the legal issues raised in the first special defense to the complaints, the defendants invoking the rule laid down in the case of Ramon Felipe, Sr. vs. Hon. Jose N. Leuterio, G. R. No. L-4606, 30 May 1952. After hearing, the respondent court ruled that it had jurisdiction of the case. A motion for reconsideration was denied. The writ of preliminary injunction was dissolved upon the filing by the defendants of a counter bond in the sum of ₱5,000 to answer for any damage which plaintiff Ponciano B. Jacinto and intervenor Simeon G. del Rosario might suffer by reason of the continuance of the deefndants' actions complained of. The hearing on the merits of the case was set for 29 January 1953 at 8:30 a.m., of which the parties were duly notified.

The petitioners, defendants in the case pending in the respondent court, contend that the jurisdiction attempted to be exercised by the respondent court is contrary to law. And as there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law to prevent the respondent court from proceeding with the trial of the case, they pray for a writ of preliminary injunction and after hearing for a writ of certiorari and prohibition to enjoin the respondent court from trying or hearing civil case No. 18255.

In their answer the respondents allege and claim that in the essay contest in question there was an offer and acceptance which constitute the consent or meeting of the minds of the contracting parties; there was the essay contest, an object certain or the subject matter of the contract; and the prize of ₱500, a diploma to be presented by the Philippines International Fair, Inc. and the printing of the winning essay in the official program of the 1953 Philippines International Fair were the cause or consideration of the contract; that the provisions or rules of the essay contest were not complied with, because the winning essay was written in Spanish and it contained 1,864 words, whereas the essay chosen by the committee as winning was written in English and contained less than 1,000 words; that in the Felipe-Leuterio case the attempt to revise the award was made because one of the judges admitted he had committed a mistake in grading, whereas in this case the board of judges made the award in violation of the rules promulgated for the contest; that in the Felipe-Leuterio case it was a mere error, whereas in this case it was a commission of a clear, palpable and manifest wrong, in clear abuse of authority and in gross violation of the rights of respondent Ponciano B. Jacinto, who was the first prize winner in three newspapers, namely, *Bagong Buhay*, Evening News and Star Reporter; and that a wrongful award was made in this case.

Although an order denying a motion to dismiss a complaint on the ground of lack of jurisdiction is interlocutory, still if it is clear that the trial court lacks jurisdiction a higher court of competent jurisdiction would be justified in issuing a writ of certiorari and prohibition, for the proceedings in the court below would be a nullity and waste of time. But the facts alleged in the complaint filed in the respondent court, if proved, constitute an actionable wrong or a tortious act committed by the respondent board of judges. In the absence of a clear showing that the respondent court lacks jurisdiction over the case which involves an actionable wrong or a tortious act, the time-honored rule that from an interlocutory order

an appeal does not lie must be adhered to. If from an interlocutory order an appeal does not lie, an extraordinary legal remedy cannot be resorted to have the order reviewed by a higher court.

The petition for a writ of certiorari and prohibition is denied and the writ of preliminary injunction heretofore issued discharged, without pronouncement as to costs.

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

IV

Ruperta Camara et als., Plaintiffs-Appellants vs. Celestino Aguilar et als., Defendants-Appellees, G. R. No. L-6337, March 12, 1954.

JUDGMENT; RES ADJUDICATA. — A brought an action for ejectment against N, which involved a parcel of land allegedly possessed in good faith by RC, NC, ZC, AC, SC, & RC, who intervened in the case for ejectment against N. The Court rendered judgment declaring N owner of the land in question and ordered defendants and intervenors to pay damages. Subsequently, RC, NC, ZC, SC & RC filed another action seeking to recover damages for the money they spent in cultivating the land which was awarded to A, and for the fruits which they failed to harvest therefrom or their value. *HELD*: (1) This action is barred by the prior judgment because there is identity of parties, the same subject matter and the same cause of action, as provided for in section 45, Rule 39, the herein plaintiffs 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.

(2) The fact that damages were awarded to the then plaintiff against the then defendants and intervenors in the former case 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 the parcel of land and the fruits they failed to reap or harvest therein or their value.

(3) 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." 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.

H. B. Arandia for appellants.
Alfredo Bonus for appellees.

DECISION

PADILLA, *J.*:

This is an action to recover the sum of ₱300 for clearing a parcel of land described in the complaint, and of ₱750 for its cultivation, caring and preservation of the coconut trees and other fruit-bearing trees planted therein. The plaintiffs further pray that the defendants jointly and severally be ordered to pay them the sum of ₱10,100 representing the value of the coconut trees and other fruit-bearing trees planted in the parcel of land or that they be declared entitled to pay to the defendants the reasonable value of the parcel of land.

The plaintiffs allege that they are all of age except Rebeca Camara for whom her sister Ruperta was appointed guardian *ad litem;* that they are the children of the late Severino Camara who since 1915 had been in continuous and uninterrupted possession of a parcel of land situated in the barrio of Balubad, municipality of Atimonan, province of Quezon, formerly Tayabas, containing an area of 5 hectares, more or less, and bounded on the North by the land of Catalino Velasco, on the East by the land of Jose Camara 1.o, on the South by the lands of Santiago Villamorel and Antonio Saniel, and on the West by the land of Antonio Marquez; that the parcel of land was inherited by Severino Camara from his parents Paulino Camara and Modesta Villamorel; that the late Severino Camara and his wife Vicenta Nera represented to their children, the plaintiffs herein, that said parcel of land belonged exclusively to him; that the plaintiffs and their husbands helped cultivate and improve the parcel of land during the time Severino Camara was in possession thereof and spent the amount sought to be recovered by them for planting 1,500 coconut and other fruit-bearing trees; that after the death of Severino Camara the plaintiffs became the true, exclusive and absolute owner of the parcel of land and improvements thereon; that Fausto Aguilar brought an action for ejectment (*reivindicacion*) against Vicenta Nera involving the parcel of land described above (civil case No. 4835) and on 26 January 1949 the Court of First Instance rendered judgment in said case, the dispositive part of which reads as follows:

> IN VIEW OF THE FOREGOING CONSIDERATIONS, the Court hereby declares the herein plaintiff to be the absolute owner of the land in question (the above described parcel of land) which is more particularly described in the complaint and Exhibits "A" and "B," and orders the herein defendant and intervenors to immediately restore possession of said land to the plaintiff, to pay said plaintiff the sum of ₱1,200 which is the value of the harvest of the products on said land obtained by them from 1941 up to the filing of this complaint, and to pay the costs of the proceeding. For lack of merits, the counterclaim and the third party claim are hereby dismissed;

that on 21 October 1950 the Court of Appeals rendered judgment in said case, the dispositive part of which is as follows:

> Upon the question of damages we agree with the trial court that the preponderance of the evidence shows that the property in question may yield, at most, ₱200 per year, but appellee's right to collect damages on that account should start only from the date of the filing of the complaint on December 24, 1947, or from the year 1948.
>
> Upon all the foregoing, we are of the opinion, and so hold that the trial court did not commit the errors assigned in appellants' brief.
>
> WHEREFORE, modified as above indicated, the appealed judgment is hereby affirmed, with costs;

that they together with their deceased father Severino Camara were possessors in good faith of the parcel of land; that for that reason they are entitled to be reimbursed and paid by the defendants for the trees they planted in the parcel of land; that the defendant Celestino Aguilar is the son of the late Fausto Aguilar, plaintiff in civil case No. 4835 referred to, and the other defendant, Purificacion Villamiel, is the widow of the late Isidro Aguilar, another son of the late Fausto Aguilar and the three minor defendants are children of the deceased Isidro Aguilar and his wife Purificacion Villamiel who represents them as their guardian *ad litem.*

A motion to dismiss the complaint was filed on the ground that the judgment rendered in civil case No. 4835, which was affirmed by the Court of Appeals with a modification only as above stated, bars the bringing of the present action, for the plaintiffs herein were intervenors in the former case (No. 4835).

The Court dismissed the complaint on the ground that the action brought in this case had been adjudged in civil case No. 4835 and that the complaint states no cause of action. Hence the appeal.

The appellants contend that the question of damages was not passed upon in the former case. The court below, however, held that this action is barred by the prior judgment because there is identity of parties, the same subject matter and the same cause of action, as provided for in section 45, Rule 39, the herein plain-