

# THE NEW RULES OF COURT

[CONTINUED]

## RULE 26 MOTIONS

SECTION 1. *Motion defined.*—Every application for an order not included in a judgment, may be called a motion.

SEC. 2. *Motion must be in writing.*—All motions shall be made in writing except motions for continuance made in the presence of the adverse party, or those made in the course of a hearing or trial.

SEC. 3. *Contents.*—A motion shall state the order sought to be obtained and the grounds upon which it is based, and shall be accompanied by supporting affidavits and other papers.

SEC. 4. *Notice.*—Notice of a motion shall be served by the applicant to all parties concerned, at least three days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, especially on matters which the court may dispose of on its own motion.

SEC. 5. *Contents of notice.*—The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion.

SEC. 6. *Proof of service, to be filed with motion.*—No motion shall be acted upon by the court, without proof of service of the notice thereof.

SEC. 7. *Motion day.*—The first hours of the morning session of the court every Saturday of each week shall be devoted to hearing motions, unless, for special reasons, the court shall fix another day for the hearing of any particular motion.

SEC. 8. *Omnibus motion.*—A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

SEC. 9. *Form.*—The rules applicable to pleadings shall also apply to all motions so far as concerns caption, signing and other matters of form.

## RULE 27

### SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

SECTION 1. *Filing with the court, defined.*—The filing of pleadings, appearances, motions, notices, orders and other papers with the court as required by these rules shall be made by filing them with the clerk of the court. The date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court.

SEC. 2. *Papers to be filed and served.*—Every order required by its terms to be served, every pleading subsequent to the complaint, every written motion other than one which may be heard *ex-parte*, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected thereby. If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court. Where one attorney appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

SEC. 3. *Modes of service.*—Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

SEC. 4. *Personal service.*—Service of the papers may be made by delivering personally a copy to the party or his attorney, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's

or attorney's residence, if known, with a person of sufficient discretion to receive the same.

SEC. 5. *Service by mail.*—Service may also be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his attorney at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten days if unclaimed.

SEC. 6. *Substituted service.*—If personal service or service by mail cannot be made under the two preceding sections, the office and place of residence of the party or his attorney being unknown, service may be made by delivering the copy to the clerk of court, with a proof of failure of personal service and service by mail. The service is complete at the time of such delivery.

SEC. 7. *Service of final orders or judgments.*—Final orders or judgments shall be served either personally or by registered mail.

SEC. 8. *Completeness of service.*—Personal service is complete upon actual delivery. Service by mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time.

SEC. 9. *When service not necessary.*—No service of papers shall be necessary on a party in default except when he files a motion to set aside the order of default, in which event he is entitled to notice of all further proceedings.

SEC. 10. *Proof of service.*—Proof of personal service shall consist of a written admission of the party served, or the affidavit of the party serving, containing a full statement of the date, place and manner of the service. If the service is by mail, proof thereof shall consist of an affidavit of the person mailing, together with the registry receipt issued by the mailing office if the letter has been registered. The registry return card shall be filed immediately upon receipt thereof by the sender, or in lieu thereof the letter unclaimed together with the certified or sworn copy of the notice given by the postmaster to addressee.

## RULE 28

### COMPUTATION OF TIME

SECTION 1. *How to compute time.*—In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the time shall run until the end of the next day which is neither a Sunday nor a holiday.

## RULE 29

### SUBPOENA

SECTION 1. *Subpoena and subpoena duces tecum.*—Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or the trial of an action or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition. It may also require him to bring with him any books, documents, or other things under his control, in which case it is called a subpoena duces tecum.

SEC. 2. *By whom shall be issued.*—The subpoena shall be issued by the court or judge before whom the witness is required to attend, or by the judge of the Court of First Instance of the province or any judge of the municipality or city where the deposition is to be taken or the investigation is to be conducted, or by any Justice of the Supreme Court or Court of Appeals in any case pending within the Philippines. If a prisoner, not confined in a municipal jail, is required to attend before an inferior

court, the Judge of the Court of First Instance of the province where the inferior court is sitting, or any Justice of the Court of Appeals or of the Supreme Court may issue the subpoena.

SEC. 3. *Form and contents*.—A subpoena shall be signed by the clerk under the seal of the court, or by the judge if his court has no clerk. It shall state the name of the court and the title of the action or investigation, shall be directed to the person whose attendance is required, and shall contain a reasonable description of the books, documents or things therein demanded, which must appear *prima facie* sufficiently relevant.

SEC. 4. *Quashing a subpoena duces tecum*.—The court upon motion made promptly and in any event at or before the time specified in the subpoena *duces tecum* for compliance therewith, may (a) quash the subpoena if it is unreasonable and oppressive or (b) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers or things.

SEC. 5. *Sufficient authority*.—Proof of service of a notice to take a deposition, as provided in sections 15 and 25 of Rule 18, constitutes a sufficient authorization for the issuance of subpoenas for the persons named therein by the clerk of the Court of First Instance for the province, or by the judge of the municipality or city, in which the deposition is to be taken. The clerk shall not, however, issue a subpoena *duces tecum* to any such person without an order of the court.

SEC. 6. *Service*.—Service of a subpoena shall be made by the sheriff, by his deputy, or by any other person specially authorized who is not a party and is not less than 18 years of age. The original shall be exhibited and a copy thereof delivered to the person named therein, tendering to him the fees for one day's attendance and the mileage allowed by these rules, except that, when a subpoena is issued by or on behalf of the Commonwealth of the Philippines or an officer or agency thereof, the tender need not be made. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

SEC. 7. *Service when witness is concealed*.—If it is shown by affidavit that a witness is concealed in a building or vessel so as to prevent the service upon him of a subpoena and that his testimony or the things demanded from him are material, the court or judge issuing the subpoena may issue an order authorizing the sheriff or his deputy or the person specially authorized to serve, to break into the building or vessel where the witness is concealed for the purpose of carrying the service into effect.

SEC. 8. *Service of subpoena upon a prisoner*.—If the witness required to attend is a prisoner, the subpoena shall be served upon the officer having the management of the jail, who in turn shall serve it upon the prisoner.

SEC. 9. *Witness not bound by subpoena*.—A witness is not bound to attend as such before any court, judge, or other officer out of the province in which he resides, unless the distance be less than 50 kilometers from his place of residence to the place of trial by the usual course of travel. A prisoner cannot be removed from the province where he is serving sentence.

SEC. 10. *Personal presence in court*.—A person present in court before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpoena issued by such court or officer.

SEC. 11. *Compelling attendance*.—In case of failure of a witness to attend, the court or judge issuing the subpoena, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the province, or his deputy, to arrest the witness and bring him before the court or officer where his attendance is required, and the costs of such warrant and seizure of such witness shall be paid by the witness if the authority issuing it shall determine that his failure to answer the subpoena was willful and without just excuse.

SEC. 12. *Contempt*.—Failure by any person without adequate excuse to obey a subpoena served upon him shall be deemed a contempt of the court from which the subpoena is issued.

## RULE 30 DISMISSAL OF ACTIONS

SECTION 1. *Dismissal by the plaintiff*.—An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.

SEC. 2. *By order of the court*.—Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class action shall not be dismissed or compromised without the approval of the court.

SEC. 3. *Failure to prosecute*.—When plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.

SEC. 4. *Effect of dismissal on other grounds*.—Unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits.

SEC. 5. *Dismissal of counterclaim, cross-claim, or third-party claim*.—The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to section 1 of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

## RULE 31 CALENDAR AND ADJOURNMENTS

SECTION 1. *When issue joined*.—Upon the filing of the last pleading, the case shall be included in the trial calendar of the court.

SEC. 2. *Trial calendar*.—The clerk of court shall have a calendar of the cases ready for trial; but he must prepare a special calendar for preferential cases including *habeas corpus* and election cases, those arising from the Employers' Liability Act and Workmen's Compensation Act, and actions of special nature.

SEC. 3. *Notice of trial*.—Upon entry of a case in the corresponding trial calendar the clerk shall fix a date for trial and shall cause a notice thereof to be served upon the parties.

SEC. 4. *Adjournments and postponements*.—A court may adjourn a trial from day to day, and to any stated time, as the expeditious and convenient transaction of business may require, but shall have no power to adjourn a trial for a longer period than one month for each adjournment, nor more than three months in all, except when authorized in writing by the Chief Justice.

SEC. 5. *Requisites of motion to postpone trial for absence of evidence*.—A motion to postpone a trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality of evidence expected to be obtained, and that due diligence has been used to procure it. But if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

SEC. 6. *Requisites of motion to postpone trial for illness of party*.—A motion to postpone a trial on the ground of illness of a party may be granted if it appears upon affidavit that the

presence of such party at the trial is indispensable and that the character of his illness is such as to render his nonattendance excusable.

RULE 32  
CONSOLIDATION OR SEVERANCE

SECTION 1. *Consolidation*.—When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

SEC. 2. *Separate trials*.—The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

RULE 33  
TRIAL

SECTION 1. *Order of trial*.—Subject to the provisions of section 2 of Rule 32, and unless the judge, for special reasons, otherwise directs, the order of trial shall be as follows:

(a) The plaintiff must produce the evidence on his part;

(b) The defendant shall then offer evidence in support of his defense, counterclaim, cross-claim and third-party claim;

(c) The third-party defendant, if any, shall introduce evidence of his defense, counterclaim, cross-claim and third-party claim;

(d) The fourth, etc., party, if any, shall introduce evidence of the material facts by him pleaded;

(e) The parties against whom any counter-claim or cross-claim has been pleaded, shall introduce evidence in support of their defense, in the order to be prescribed by the court;

(f) The parties may then respectively offer rebutting evidence only, unless the court, for good reasons, in the furtherance of justice, permits them to offer evidence upon their original case;

(g) When the evidence is concluded, unless the parties agree to submit the cause without argument, the plaintiff or his counsel may make the opening argument, the defendant, third-party defendant, and fourth, etc., party, or their respective counsel, may follow successively, and the plaintiff or his counsel may conclude the argument. Two counsel may, if desired, be heard upon each side, but in the order herein prescribed;

(h) If several defendants or third-party defendants, having separate defenses, appear by different counsel, the court must determine their relative order in the evidence and argument, but in any event the plaintiff is entitled to the opening and closing argument.

SEC. 2. *Agreed statement of facts*.—The parties to any action may agree, in writing, upon the facts involved in the litigation, and require the judgment of the court upon the questions of law arising from the facts agreed upon, without the introduction of evidence.

SEC. 3. *Statements of judge*.—During the hearing or trial of a case any statement made by the judge with reference to the case, or to any of the parties thereto, witnesses or attorneys, shall be made of record in the stenographic notes if requested by either of the parties.

RULE 34  
TRIAL BY COMMISSIONER

SECTION 1. *Reference by consent*.—By written consent of both parties, filed with the clerk, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court. As used in these rules the word "commissioner" includes a referee, an auditor, and an examiner.

SEC. 2. *Reference ordered on motion*.—When the parties do, not consent, the court may, upon the application of either, or

of its own motion, direct a reference to a commissioner in the following cases:

(a) When the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue, or any specific question involved therein;

(b) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect;

(c) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or of carrying a judgment or order into effect.

SEC. 3. *Order of reference, powers of the commissioner*.—When a reference is made, the clerk shall forthwith furnish the commissioner with a copy of the order of reference. The order may specify or limit the powers of the commissioner, and may direct him to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only, and may fix the date for beginning and closing the hearings and for the filing of his report. Subject to the specifications and limitations stated in the order, the commissioner has and shall exercise the power to regulate the proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may issue subpoenas and subpoenas *duces tecum*, swear witnesses, and unless otherwise provided in the order of reference he may rule upon the admissibility of evidence. The trial or hearing before him shall proceed in all respects as though the same had been before the court.

SEC. 4. *Oath of commissioner*.—Before entering upon his duties the commissioner shall be sworn to a faithful and honest performance thereof.

SEC. 5. *Proceedings before commissioner*.—Upon receipt of the order of reference unless otherwise provided therein, the commissioner shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 10 days after the date of the order of reference and shall notify the parties or their attorneys.

SEC. 6. *Failure of parties to appear before commissioner*.—If a party fails to appear at the time and place appointed, the commissioner may proceed *ex parte* or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party or his attorney of the adjournment.

SEC. 7. *Refusal of witness*.—The refusal of a witness to obey a subpoena issued by the commissioner or to give evidence before him, shall be deemed a contempt of the court who appointed the commissioner.

SEC. 8. *Commissioner shall avoid delays*.—It is the duty of the commissioner to proceed with all reasonable diligence. Either party, on notice to the parties and commissioner, may apply to the court for an order requiring the commissioner to speed up the proceedings and to make his report.

SEC. 9. *Report of commissioner*.—Upon the completion of the trial or hearing or proceeding before the commissioner, he shall file with the court his report in writing upon the matters submitted to him by the order of reference. When his powers are not specified or limited, he shall set forth his findings of fact and conclusions of law in his report. He shall attach thereto in all cases, all exhibits, affidavits, depositions, papers and the transcript, if any, of the evidence presented before him.

SEC. 10. *Notice to parties of the filing of report*.—Upon the filing of the report, the parties shall be notified by the clerk, and they shall be allowed ten days within which to signify grounds of objections to the findings of the report, if they so desire. Objections to the report based upon grounds which were available to the parties during the proceedings before the commissioner, other than objections to the findings and conclusions therein set forth, shall not be considered by the court unless they were made before the commissioner.

SEC. 11. *Hearing upon report*.—Upon the expiration of the period of ten days referred to in the preceding section, the report

shall be set for hearing, after which the court shall render judgment by adopting, modifying, or rejecting the report in whole or in part or it may receive further evidence or may remit it with instructions.

SEC. 12. *Stipulation as to findings.*—When the parties stipulate that a commissioner's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

SEC. 13. *Compensation of commissioner.*—The court shall allow the commissioner such reasonable compensation as the circumstances of the case warrant, to be taxed as costs against the defeated party, or apportioned, as justice requires.

**RULE 35**  
**JUDGMENTS, ORDERS AND ENTRY THEREOF**

SECTION 1. *How judgment rendered.*—Except those of inferior courts, all judgments determining the merits of cases shall be in writing personally and directly prepared by the judge, and signed by him, stating clearly and distinctly the facts and the law on which it is based, and filed with the clerk of the court.

SEC. 2. *When and how judgments and orders entered.*—If no appeal or motion to set aside is filed within the time provided in these rules, the judgment or order shall be entered by the clerk. The notation of the judgment or order in the book of entries of judgments shall constitute its entry. The notation shall contain the dispositive part of the judgment or order and shall be signed by the clerk, with a certificate that such judgment or order has become final and executory.

SEC. 3. *Judgment for or against one of several parties.*—Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and the court may, when justice requires it, conclusively determine the ultimate rights of the parties on each side, as between themselves, and may require such parties to file adversary pleadings as between themselves.

SEC. 4. *Several judgments.*—In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

SEC. 5. *Judgment at various stages.*—When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

SEC. 6. *Judgment by default.*—If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff, order judgment against the defendant by default, and thereupon the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. This provision applies where no answer is made, within the period provided in these rules, to a counterclaim, cross-claim, or third-party complaint.

SEC. 7. *Judgment when some defendants answer, and others make default.*—When a complaint states a common cause of action against several defendants, some of whom answer, and the others make default, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented by the parties in court. The same procedure applies when a common cause of action is pleaded in a counterclaim, cross-claim and third-party claim.

SEC. 8. *Judgment against association or person under a name or style.*—When judgment is entered against two or more persons

sued as an association, the judgment shall set out the individual or proper name or names, if known.

SEC. 9. *Extent of relief to be awarded.*—A judgment entered by default shall not exceed the amount or be different in kind from that prayed for in the demand for judgment. In other cases the judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

SEC. 10. *Judgment on the pleadings.*—Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading, except in actions for annulment of marriage or divorce wherein the material facts alleged in the complaint shall always be proved.

**RULE 36**  
**SUMMARY JUDGMENTS**

SECTION 1. *Summary judgment for claimant.*—A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the pleading in answer thereto has been served, move with affidavits for a summary judgment in his favor upon all or any part thereof.

SEC. 2. *Summary judgment for defending party.*—A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with supporting affidavits for a summary judgment in his favor as to all or any part thereof.

SEC. 3. *Motion and proceedings thereon.*—The motion shall be served at least ten days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

SEC. 4. *Case not fully adjudicated on motion.*—If on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

SEC. 5. *Form of affidavits; further testimony.*—Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

SEC. 6. *Affidavits in bad faith.*—Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith, or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees and any offending party or attorney may be adjudged guilty of contempt.

**RULE 37**  
**NEW TRIAL**

SECTION 1. *When and for what causes new trial may be*

sought.—Within thirty days after notice of the judgment in an action, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result;

(c) Because excessive damages have been awarded, or the evidence was insufficient to justify the decision, or it is against the law.

SEC. 2. *Method of procedure in motions for new trial.*—The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant of the adverse party.

When the motion is made for the causes mentioned in subdivisions (a) and (b) of the preceding section, it shall be proved in the manner provided for proof of motions. Affidavit or affidavits of merits shall also be attached to a motion for the cause mentioned in subdivision (a) which may be rebutted by counter-affidavits.

When the motion is made upon the cause mentioned in subdivision (c) of the preceding section, it shall point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

SEC. 3. *When motion for new trial may be granted or denied.*—The trial court may set aside the judgment and grant a new trial, upon such terms as may be just, or may deny the motion. If the motion is made upon the cause mentioned in subsection (c), section 1 of this rule, and the court finds its judgment to be contrary to evidence or law, it may amend such judgment accordingly without granting a new trial, unless the court deems the introduction of additional evidence advisable.

SEC. 4. *Second motion for new trial.*—Grounds for new trial which can properly be alleged in a motion, are deemed waived if not alleged therein. A second motion for new trial may be allowed if based on a ground not existing when the first motion was made and may be filed within the time herein provided excluding the time during which the first motion has been pending.

SEC. 5. *Effect of granting of motion for new trial.*—If a new trial be granted in accordance with the provisions of this rule, the original judgment shall be vacated, and the action shall stand for trial *de novo*; but the recorded evidence taken upon the former trial so far as the same is material and competent to establish the issues, shall be used upon the new trial without retaking the same.

SEC. 6. *Partial new trials.*—If the grounds for a motion under this rule appear to the court to affect the issues as to only a part, or less than all of the matter controversy or only one, or less than all, of the parties to it, the court may, if such issues are severable from the rest, order a new trial as to such issues without interfering with the judgment upon the rest.

SEC. 7. *Effect of order for partial new trial.*—When less than all of the issues are ordered retried, the court may either enter final judgment as to the rest, or stay the entry of final judgment until after the new trial.

### RULE 38

#### RELIEF FROM JUDGMENTS, ORDERS, OR OTHER PROCEEDINGS

SECTION 1. *Petition to Court of First Instance for relief from judgment of inferior court.*—When a judgment is rendered by an inferior court, and a party to the case, by fraud, accident,

mistake, or excusable negligence, has been unjustly deprived of a hearing therein, or has been prevented from taking an appeal, he may file a petition in the Court of First Instance of the province in which the original judgment was rendered, praying that such judgment be set aside and the case tried upon its merits.

SEC. 2. *Petition to Court of First Instance for relief from judgment or other proceeding thereof.*—When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court praying that the judgment, order, or proceeding be set aside.

SEC. 3. *When petition filed; contents and verification.*—A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be, which he may prove if his petition is granted.

SEC. 4. *Order to file an answer.*—If the petition is sufficient in form and substance to justify such process, the court in which it is filed, or a judge thereof, shall issue an order requiring those against whom the petition is filed to answer the same within fifteen days from the receipt thereof, which order shall be served in such manner as the court may direct, together with copies of the petition.

SEC. 5. *Preliminary injunction pending proceedings.*—The court in which the petition is filed, or a judge thereof, may grant such preliminary injunction as may be necessary for the preservation of the rights of the parties pending the proceeding, upon the filing by the petitioner of a bond to the adverse party conditioned that if the petition is dismissed, or the petitioner fails on the trial of the case upon its merits, he will pay the adverse party all damages and costs that may be awarded to him by reason of the issuance of such injunction or the other proceedings following the petition; but such injunction shall not operate to discharge or release bail, or to extinguish any lien which the adverse party may have acquired upon the property of the petitioner.

SEC. 6. *Proceedings after answer is filed.*—Once the answer is filed, or the time for its filing has expired, the court shall hear the case, and if after such hearing, the court finds that the allegations of the petition are not true, the petition shall be dismissed; but if it finds said allegations to be true, it shall order the judgment, order, or other proceeding complained of to be set aside, upon such terms as may be just, and shall try the principal case upon its merits.

SEC. 7. *How trial upon the merits had.*—Where the judgment set aside is that of a Court of First Instance, such court shall proceed to hear and determine the case as if a timely motion for a new trial had been granted therein. Where the judgment set aside is that of an inferior court, the trial in the Court of First Instance shall be as if the case had been regularly brought up by appeal, and the judge of the inferior court may be required by the Court of First Instance to attend and produce at the trial all the papers in the original case.

SEC. 8. *Appeal.*—The order of the court setting aside the judgment, order or proceeding is not appealable until a final judgment is rendered upon the merits in the principal case.

### RULE 39

#### EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

SECTION 1. *Execution as of right.*—Execution shall issue upon a final judgment or order upon the expiration of the time to appeal when no appeal has been perfected.

SEC. 2. *Execution discretionary.*—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special

order. If a record on appeal is filed thereafter, the special order shall be included therein. Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellee, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part.

SEC. 3. *Execution of supersedeas bond.*—The bond given under the preceding section may be executed on motion before the trial court after the case is remanded to it by the appellate court.

SEC. 4. *Injunction, receivership and patent accounting, not stayed.*—Unless otherwise ordered by the court, an interlocutory or final judgment in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed after an appeal is perfected or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from an interlocutory or final judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party, subject to the power of the appellate court or of a justice thereof to the same effect.

SEC. 5. *Effect of reversal of judgment executed.*—Where the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances.

SEC. 6. *Execution by motion or by independent action.*—A judgment may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

SEC. 7. *Execution in case of death of party.*—Where a party dies after the entry of the judgment or order, execution thereon may issue, or one already issued may be enforced in the following cases:

(a) In case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest;

(b) In case of the death of the judgment debtor, against his executor or administrator or successor in interest, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon;

(c) In case of the death of the judgment debtor after execution is actually levied upon any of his property, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the corresponding executor or administrator for any surplus in his hands.

SEC. 8. *Issuance, form and requisites of execution.*—The execution must issue in the name of the Commonwealth of the Philippines from the court in which the judgment or order is entered; must intelligibly refer to such judgment or order, stating the court, province, and municipality where it is of record, and the amount actually due thereon if it be for money; and must require the sheriff or other proper officer to whom it is directed substantially as follows:

(a) If the execution be against the property of the judgment debtor, to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property;

(b) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants, or trustees, to satisfy the judgment with interest, out of such property;

(c) If it be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment, the material parts of which shall be recited in the execution;

(d) If it be for the delivery of the possession of real or

personal property, to deliver the possession of the same, describing it, to the party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property.

SEC. 9. *Writ of execution of special judgment.*—When a judgment requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property, a certified copy of the judgment shall be attached to the writ of execution and may be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeyed such judgment.

SEC. 10. *Judgment for specific acts; vesting title.*—If a judgment directs a party to execute a conveyance of land, or to deliver deeds or other documents, or to perform any other specific act, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is within the Philippines, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment shall have the force and effect of a conveyance executed in due form of law.

SEC. 11. *Return of execution.*—The execution may be made returnable, to the clerk or judge of the court issuing it, at any time not less than ten nor more than sixty days after its receipt by the officer, who must set forth in writing on its back the whole of his proceedings by virtue thereof, and file it with the clerk or judge to be preserved with the other papers in the case. A certified copy of the record, in the execution book kept by the clerk, of an execution by virtue of which real property has been sold, or of the officer's return thereon, shall be evidence of the contents of the originals whenever they, or any part thereof, have been lost or destroyed.

SEC. 12. *Property exempt from execution.*—Except as otherwise expressly provided by these rules, the following property, and no other, shall be exempt from execution:

(a) The debtor's homestead, in which he resides, and land necessarily used in connection therewith, both not exceeding in value three hundred pesos;

(b) Tools and implements necessarily used by him in his trade or employment;

(c) Two horses, or two cows, or two carabaos, or other beasts of burden, such as the debtor may select, not exceeding three hundred pesos in value, and necessarily used by him in his ordinary occupation;

(d) His necessary clothing, and that of all his family;

(e) Household furniture and utensils necessary for housekeeping, and used for that purpose by the debtor, such as the debtor may select, of a value not exceeding two hundred pesos;

(f) Provisions for individual or family use sufficient for three months;

(g) Professional libraries of attorneys, judges, physicians, pharmacists, dentists, engineers, surveyors, clergymen, school teachers, and music teachers not exceeding five hundred pesos in value.

(h) One fishing boat and net, not exceeding the total value of one hundred pesos, the property of any fisherman, by the lawful use of which he earns a livelihood;

(i) So much of the earnings of the debtor for his personal services within the month preceding the levy as are necessary for the support of his family;

(j) Lettered gravestones;

(k) All monies, benefits, privileges, or annuities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred pesos, and if they exceed that sum a like exemption shall exist which shall

bear the same proportion to the moneys, benefits, privileges, and annuities so accruing or growing out of such insurance that said five hundred pesos bears to the whole annual premiums paid.

But no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage thereon.

**SEC. 13. How execution for the delivery or restitution of property enforced.**—The officer must enforce an execution for the delivery or restitution of property by placing the plaintiff in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the costs, damages, rents, and profits included in the execution. However, the officer shall not destroy, demolish or remove the improvements made by the defendant or his agent on the property, except by special order of the court, which order may only issue upon petition of the plaintiff after due hearing and upon the defendant's failure to remove the improvements within a reasonable time to be fixed by the court.

**SEC. 14. How execution against the property enforced.**—The officer must enforce an execution against the property by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there is sufficient, and selling the same, and paying to the plaintiff, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as is amply sufficient to satisfy the judgment and costs. Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied on in like manner and with like effect as under an order of attachment.

**SEC. 15. Proceedings where property claimed by third person.**—If property levied on be claimed by any other person than the defendant or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on, and, in case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. The officer is not liable for damages, for the taking or keeping of such property, to any such third person unless such claim is made and unless the action for damages be brought within one hundred twenty days from the date of the filing of the bond. But nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action. When, however, the plaintiff, or the person in whose favor the writ of execution runs, is the Commonwealth of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or attaching officer is sued for damages as a result of the attachment, he shall be represented by the Solicitor-General and if held liable therefor, the actual damages adjudged by the court shall be paid by the Insular Treasurer out of such funds as may be appropriated for the purpose.

**SEC. 16. Notice of sale of property on execution.**—Before the sale of property on execution, notice thereof must be given as follows:

(a) In case of perishable property, by posting written no-

tice of the time and place of the sale in three public places in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

(b) In case of other personal property, by posting a similar notice in three public places in the municipality or city where the sale is to take place, for not less than five nor more than ten days;

(c) In case of real property, by posting a similar notice particularly describing the property for twenty days in three public places in the municipality or city where the property is situated, and also where the property is to be sold, and, if the assessed value of the property exceeds four hundred pesos, by publishing a copy of the notice once a week, for the same period, in some newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the province in both the English and Spanish languages, then a like publication for a like period shall be made in one newspaper published in the English language, and in one published in the Spanish language.

**SEC. 17. Penalty for selling without notice, or removing or defacing notice.**—An officer selling without the notice prescribed by the last preceding section shall forfeit five hundred pesos to any party injured thereby, in addition to his actual damages, both to be recovered in a single proper action; and a person willfully removing or defacing the notice posted, if done before the sale, or before the satisfaction of the judgment if it be satisfied before the sale, shall forfeit five hundred pesos to any person injured by reason thereof, to be recovered in any proper action.

**SEC. 18. No sale if judgment and costs paid.**—At any time before the sale of property on execution the judgment debtor may prevent the sale by paying the amount required by the execution and the costs that have been incurred therein.

**SEC. 19. How property sold on execution. Who may direct manner and order of sale.**—All sales of property under execution must be made at public auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the sale and in such parcels as are likely to bring the highest price. The judgment debtor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer holding the execution, nor his deputy, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale.

**SEC. 20. Refusal of purchaser to pay.**—If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property to the highest bidder and shall not be responsible for any loss occasioned thereby; but the court may order the refusing purchaser to pay into court the amount of such loss, with costs, and may punish him for contempt if he disobeys the order. The amount of such payment shall be for the benefit of the person entitled to the proceeds of the execution, unless the execution has been fully satisfied, in which even such proceeds shall be for the benefit of the judgment debtor. When a purchaser refuses to pay, the officer may thereafter reject any subsequent bid of such person.

**SEC. 21. Adjournment of sale.**—By written consent of debtor and creditor, the officer may adjourn any sale upon execution to any date agreed upon in writing by the parties. Without such agreement he may adjourn the sale from day to day, if it becomes necessary to do so for lack of time to complete the sale on the day fixed in the notice.

**SEC. 22. Conveyance to purchaser of personal property capable of manual delivery.**—When the purchaser of any personal property, capable of manual delivery, pays the purchase money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of sale. Such conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

**SEC. 23. Conveyance to purchaser of personal property not capable of manual delivery.**—When the purchaser of any personal property, not capable of manual delivery, pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day that the execution or attachment was levied.

**SEC. 24. Effect of sale of real property. Certificate there-of given to purchaser and filed with registrar.**—Upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided. The officer must give to the purchaser a certificate of sale containing:

- (a) A particular description of the real property sold;
- (b) The price paid for each distinct lot or parcel;
- (c) The whole price by him paid;
- (d) The date when the right of redemption expires.

A duplicate of such certificate must be filed by the officer in the office of the registrar of deeds of the province.

**SEC. 25. Who may redeem real property so sold.**—Property sold subject to redemption, as provided in the last preceding section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

- (a) The judgment debtor, or his successor in interest in the whole or any part of the property;
- (b) A creditor having a lien by attachment, judgment, or mortgage on the property sold, or on some part thereof, subsequent to that under which the property was sold. Such redeeming creditor is termed a redemptioner.

**SEC. 26. Time and manner of, and amounts payable on, successive redemptions. Notice to be given and filed.**—The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve months after the sale, on paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. If the property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with two per centum thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such last-named amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with two per centum thereon in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest. Written notice of any redemption must be given to the officer who made the sale and a duplicate filed with the registrar of deeds of the province, and if any assessments or taxes are paid by the re-

demptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registrar of deeds; if such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens.

**SEC. 27. Effect of redemption by judgment debtor, and a certificate to be delivered and recorded thereupon. To whom payments on redemption made.**—If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner, whereupon the effect of the sale is terminated and he is restored to his estate, and the person to whom the payment is made must execute and deliver to him a certificate of redemption acknowledged or approved before a notary public or other officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the registrar of deeds of the province in which the property is situated, and the registrar of deeds must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale.

**SEC. 28. Proof required of redemptioner.**—A redemptioner must produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the officer:

- (a) A copy of the judgment or order under which he claims the right to redeem, certified by the clerk or judge of the court wherein the judgment is docketed; or, if he redeem upon a mortgage or other lien, a memorandum of the record thereof, certified by the registrar of deeds;
- (b) A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;
- (c) An affidavit by himself or his agent, showing the amount then actually due on the lien.

**SEC. 29. Manner of using premises pending redemption. Waste restrained.**—Until the expiration of the time allowed for redemption, the court may, as in other proper cases, restrain the commission of waste on the property by injunction, on the application of the purchaser or the judgment creditor, with or without notice; but it is not waste for the person in possession of the property at the time of the sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or reasonably to use wood or timber on the property therefor, or for fuel for his family, while he occupies the property.

**SEC. 30. Rents and profits pending redemption. Statement thereof and credit therefor on redemption.**—The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive the rents of the property sold or the value of the use and occupation thereof when such property is in the possession of a tenant. But when any such rents and profits have been received by the judgment creditor or purchaser, or by a redemptioner, or by the assignee of either of them, from property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and, if a later redemptioner or the judgment debtor, before the expiration of the time allowed for such redemption demands in writing of such creditor, purchaser, or prior redemptioner, or his assigns, a written and verified statement of the amounts of the rents and profits thus received, the period of redemption is extended five days after such demand is complied with and such sworn statement given to such later redemptioner or debtor. If such statement is not so given within one month from and after such demand, such redemptioner or debtor may bring an action to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.



**Sec. 31. Deed and possession to be given at expiration of redemption period. By whom executed or given.**—If no redemption be made within twelve months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property; or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to the conveyance and possession; but in all cases the judgment debtor shall have the entire period of twelve months from the date of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the later case shall have the same validity as though the officer making the sale had continued in office and executed it. The possession shall be given by the same officer if no third parties are actually holding the property adversely to the judgment debtor.

**Sec. 32. When purchaser of property may recover price from judgment creditor. When he may have judgment revived.**—If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or because the judgment has been reversed or set aside, or because a third person has vindicated his claim to the property, he may in a proper action recover the price paid, with interest, from the judgment creditor. If the purchaser of property at such official sale, or his successor in interest, fail to recover possession in consequence of irregularities in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived shall have the same force and effect as would an original judgment of the date of the revival and no more.

**Sec. 33. Right to contribution or reimbursement.**—When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel a contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal.

**Sec. 34. Examination of judgment debtor when execution returned unsatisfied.**—When an execution issued in accordance with law against property of a judgment debtor, or any one of several debtors in the same judgment, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from a judge of the Court of First Instance of the province in which the judgment was rendered or from which the execution was returned, requiring such judgment debtor to appear and answer concerning his property and income before such judge of the Court of First Instance, or before a commissioner appointed by him, at a specified time and place; and such proceedings may thereupon be had for the application of the property and income of the judgment debtor toward the satisfaction of the judgment. But no judgment debtor shall be so required to appear before a judge of first instance or commissioner out of the province in which such debtor resides or is found.

**Sec. 35. Examination of debtor of judgment debtor.**—After the return of an execution against the property of a judgment debtor, or of one of the several debtors in the same judgment, unsatisfied in whole or in part, and upon proof, by affidavit of a party or otherwise, to the satisfaction of the judge, that a person, corporation, or other legal entity has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person, corporation, or other legal entity, or any

officer or member thereof, to appear before the judge, or a commissioner appointed by him, at a time and place within the province in which the order is served, to answer concerning the same. The service of the order shall bind all credits due the judgment debtor and all money and property of the judgment debtor in the possession or in the control of such person, corporation, or legal entity from the time of service; and the judge may also require notice of such proceedings to be given to any party to the action in such manner as he may deem proper.

**Sec. 36. Conduct of examination and enforcing attendance.**—Examinations had in accordance with the two preceding sections shall not be unduly prolonged, but the proceedings may be adjourned from time to time, until they are completed. If the examination is before a commissioner, he must take it in writing and certify it to the judge. All examinations and answers before a judge or commissioner must be on oath, and when a corporation or other legal entity answers it must be on the oath of an officer or agent thereof. A party or other person may be compelled, by an order or subpoena, to attend before the judge or commissioner to testify, and upon failure to obey such order or subpoena, or to be sworn, or to answer as a witness, or to subscribe his deposition, may be punished for contempt as in other cases.

**Sec. 37. Debtor may pay execution against creditor.**—After an execution against property has issued, a person indebted to the judgment debtor may pay to the officer holding the execution the amount of his debt or so much thereof as may be necessary to satisfy the execution, and the officer's receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment creditor on the execution.

**Sec. 38. Order for application of property and income to satisfaction of judgment.**—The judge may order any property of the judgment debtor, or money due him, not exempt from execution, in the hands of either himself or other person, or of a corporation or other legal entity, to be applied to the satisfaction of the judgment, subject to any prior rights of the holders of such property; and if, upon an investigation of his current income and expense, it appears that the earnings of the judgment debtor for his personal services are more than is necessary for the support of his family, the judge may order that he pay the judgment in fixed monthly installments, and upon his failure to pay any such installment when due without good excuse may punish him for contempt.

**Sec. 39. Appointment and bond of receiver.**—The judge may, by order, appoint the sheriff, or other proper officer or person, receiver of the property of the judgment debtor; and he may also, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt from execution. If a bonded officer be appointed receiver, he and his sureties shall be liable on his official bond as such receiver, but if another person be appointed he shall give a bond as receiver as in other cases.

**Sec. 40. When and how ascertainable interest of judgment debtor in real estate sold.**—If it appears that the judgment debtor has an interest in real estate, in the province in which proceedings are had, as mortgagor or mortgagee, or otherwise, and his interest can be ascertained as between himself and the person holding the legal estate, or the person having a lien on or interest in the same without controversy as to the interest of such person holding such legal estate or interest therein, or lien on the same, the receiver may be ordered to sell and convey such real estate or the interest of the debtor therein; and such sale shall be conducted in all respects in the same manner as is provided for the sale of real estate upon execution, and the proceedings thereon shall be approved by the court before the execution of the deed.

**Sec. 41. Proceedings when indebtedness denied or another person claims the property.**—If it appears that a person or corporation, alleged to have property of the judgment debtor or to be indebted to him claims an interest in the property adverse

to him or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment, and may punish disobedience of such order as for contempt. Such order may be modified or vacated by the judge granting the same, or by the court in which the action is brought, at any time, upon such terms as may be just.

Sec. 42. *When satisfaction of judgment entered by clerk or judge.*—Satisfaction of a judgment shall be entered by the clerk or judge in his docket, and in his judgment book if it be the judgment of a superior court, upon the return of an execution satisfied, or upon the filing of an admission of the satisfaction of the judgment executed and acknowledged in the same manner as a conveyance of real property by the judgment creditor, or by the attorney of the judgment creditor unless a revocation of his authority is filed, or upon the indorsement of such admission by the judgment creditor or his attorney on the face of the record of the judgment.

Sec. 43. *When admission of satisfaction, or entry of satisfaction without admission, ordered.*—Whenever a judgment is satisfied in fact, otherwise than upon an execution, the judgment creditor of his attorney must execute and acknowledge, or indorse, an admission of the satisfaction as provided in the last preceding section, and after notice and upon motion the court may order either the judgment creditor or attorney so to do, or may order the entry of satisfaction to be made without it.

Sec. 44. *Effect of judgment.*—The effect of a judgment or final order rendered by a court of judge of the Philippines or of the United States, or of any State or Territory of the United States, having jurisdiction to pronounce the judgment or order, may be as follows:

(a) In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title of the thing, the will or administration, or the condition or relation of the

person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator, or intestate;

(b) In other cases the judgment so ordered is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity.

Sec. 45. *What is deemed to have been adjudged.*—That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Sec. 46. *When principal bound by judgment against surety.*—When the party is bound by a record, and such party stands in the relation of surety for another, the latter is also bound from the time that he has notice of the action or proceeding, and an opportunity at the surety's request to join in the defense.

Sec. 47. *Effect of record of a court of the United States.*—The effect of a judicial record of a court of the United States or of a court of one of the States or territories of the United States, is the same in the Philippines as in the United States, or in the State or territory where it was made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a guardian, or executor, or administrator does not extend beyond the jurisdiction of the Government under which he was invested with his authority.

Sec. 48. *Effect of foreign judgments.*—The effect of a judgment of any other tribunal of a foreign country, having jurisdiction to pronounce the judgment, is as follows:

(a) In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing;

(b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

[TO BE CONTINUED]

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#### 14. Courts Having Jurisdiction in Industrial Disputes.

1. *The Court of Industrial Relations.*<sup>147</sup> The Court of Industrial Relations shall have power to decide and settle disputes between laborers and employers if these requisites exist:

a. The dispute must be one causing or likely to cause a strike or lockout;

b. The dispute must be due to differences as regards wages, shares or compensation, hours of work or conditions of employment;

c. The number of employees or laborers involved in the dispute must exceed thirty;

d. The industrial dispute is submitted to the Court by the Secretary of Labor, or by any or both of the parties to the controversy certified by the Secretary of Labor as existing and proper to be dealt with by the court for the sake of public interest.

These requisites may be gathered from the words of Section 4, Commonwealth Act No. 219. One should note that there seems to be a conflict between this Section and Section 1 of the same Act. The latter seem to bestow jurisdiction on the Court of Industrial Relations "to decide and settle any question, matter or dispute" between em-

ployees and employer, which is not the case under Section 4. This contradiction is to be settled by regarding Section 1 as a general provision and Section 4 as particular provision, and then, apply the rule of statutory construction that when a general provision conflicts with a particular provision the latter shall prevail.

2. *Other Courts.* The organization of the Court of Industrial Relations did not have the effect of depriving ordinary Courts of Justice the jurisdiction of deciding in-

dustrial conflicts. This fact is very evident upon reading Commonwealth Act No. 103. In the first place, the act never uses the work "exclusive" or its equivalent when it designated the powers and duties of the Court of Industrial Relations; furthermore, only cases which received the certification of the Secretary of Labor may be heard by the court; as such, the act admits the conclusion that cases without such certification are still within the jurisdiction of the ordinary courts of the Philippines.

#### CONCEPT OF LIBERTY

Liberty does not import "an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. \* \* \* There is, of course, a sphere within which the individual may assert the supremacy of his own will, and rightfully dispute the authority of any human government—especially of any free government existing under a written Constitution—to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members, the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint to be enforced by reasonable regulations, as the safety of the general public may demand." (Harlan, J., in *Jacobsen v. Massachusetts* [1905] 197 U. S., 11.) [Cited by Justice Malcolm in *Rubi v. Provincial Board of Mindoro*, 39 Phil., 660, 704-705.]

<sup>147</sup> Organized under Commonwealth Act. No. 103.