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-

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

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

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

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

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

(1) Sec. 9, Rule 15.

V

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

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

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

DECISION

TUASON, *J.*:

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

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

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

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

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

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

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

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

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

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