

J. Y. Interpretation No.135 (June 22, 1973) *

ISSUE: In a civil or criminal action where the judgment of a lower court is erroneously reversed, vacated, or remanded by a court of appeal, may the party file an appeal, motion for a new trial, or petition for extraordinary appeal, or seek other legal remedies?

RELEVANT LAWS:

Article 444 of the Code of Civil Procedure (民事訴訟法第四百四十四條) ; Articles 367 and 395 of the Code of Criminal Procedure (刑事訴訟法第三百六十七條、第三百九十五條) .

KEYWORDS:

Reverse (廢棄) , vacate (撤銷) , remanded for further proceeding (發回更審) .**

HOLDING: In a civil or criminal action where the judgment of a lower court is erroneously reversed, vacated, or remanded for further proceeding by a court of appeal despite the fact that no objection to such lower court judgment has been raised or, even though an

解釋文：民刑事訴訟案件下級法院之判決，當事人不得聲明不服而提出不服之聲明，或未提出不服之聲明而上級法院誤予廢棄或撤銷發回更審者，該項上級法院之判決及發回更審後之判決，均屬重大違背法令，固不生效力，惟既具有判決之形式，得分別依上訴、

* Translated by Raymond T. Chu.

** Contents within frame, not part of the original text, are added for reference purpose only.

objection has been raised, the judgment is not legally objectionable, the decision entered by the court of appeal or the decision rendered upon such further proceeding constitutes a material violation of the law and shall be null and void. Such decision being a judgment pro forma, however, the matter may be dealt with pursuant to such legal proceedings as appeal, new trial, and extraordinary appeal, and other legal remedies.

REASONING: In a civil or criminal action where a party raises an objection to the judgment of the lower court in spite of the law that no objection is permissible to such judgment, and the appellate court, which is bound to dismiss the appeal under Article 444 of the Code of Civil Procedure or, as the case may require, Articles 367 and 395 of the Code of Criminal Procedure, has erred in reversing or remanding such lower court judgment, or has so erred in the absence of any objection made to the lower court judgment, the decision entered by the court of appeal or the decision rendered upon further proceeding

再審、非常上訴及其他法定程序辦理。

解釋理由書：當事人對於民刑事案件下級法院之判決，不得聲明不服而提出不服之聲明。上級法院依民事訴訟法第四百四十四條或刑事訴訟法第三百六十七條、第三百九十五條之規定，原應予以駁回而竟誤將下級法院之判決予以廢棄或撤銷發回更審；又當事人對於下級法院之判決並未提出不服之聲明而上級法院誤予廢棄或撤銷發回更審者，該項上級法院判決及發回更審後之判決均屬重大違背法令，固不生效力，惟既具有判決之形式，未確定者得依上訴程序辦理，已確定者得分別依再審、非常上訴及其他法定程序辦理之。

constitutes a material violation of the law and shall be null and void. Such decision being a judgment pro forma, however, the matter may be dealt with pursuant to appeal procedure if the judgment has not become irrevocable or following such procedures as a new trial, extraordinary appeal, and other legal remedies if the judgment has become irrevocable.

Justice Shi-Ding Chin filed dissenting opinion.

Justice Shih-Ron Chen filed dissenting opinion.

Justice Shueh-Teng Lee filed dissenting opinion.

Justice Ji-Jong Wang filed dissenting opinion.

本號解釋金大法官世鼎、陳大法官世榮、李大法官學燈與王大法官之侑分別提出不同意見書。