THE JUDICIARY ACT OF 1948

(With Annotations)

[CONTINUED FROM LAST ISSUE]

SEC. 46. *Clerks and other subordinate employees of Courts of First Instance.* — Clerks, deputy clerks, assistants, and other subordinate employees of Courts of First Instance shall, for administrative purposes, belong to the Department of Justice; but in the performance of their duties they shall be subject to the supervision of the Judges of the courts to which they respectively pertain.

The clerks of Courts of First Instance shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. No person shall be appointed clerk of court unless he is duly authorized to practice law in the Philippines: *Provided, however,* That this requirement shall not affect persons who, at the date of the approval of this Act, are holding the position of clerk of court, nor those who have previously qualified in the Civil Service examination for said position;

The clerk of a Court of First Instance may, by special written deputization approved by the judge, authorize any suitable person to act as his special deputy and in such capacity to perform such functions as may be specified in the authority granted.

NOTES

1. Appointment of subordinate employees.
2. Clerks of court departments.
3. Duties of clerk to judge.
4. Acts under direction.
5. Matters requiring judge's approval.
6. Function of judge performed by clerk.
7. Clerk of court has no authority to refuse admission of record on appeal.
8. Clerk of Court as commissioner to receive evidence.
9. Oath of Clerk of Court as commissioner.
10. Officer of Court may be punished for contempt.
11. Compensation.
12. Negligence of Court's personnel.
13. Liability.

1. APPOINTMENT OF SUBORDINATE EMPLOYEES.

Where a statute vests the appointive power in an official other than the judge, such enactment controls. However, under particular statutory regulations the court may have the power to recom-

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EQUITY . . . *(Continued from page 230)*

"Art. 1254. If the obligation has been substantially performed in good faith, the obligor may recover as though there had been a strict and complete fulfillment, less damages suffered by the obligee."

4. *Immoral Acts.*—Article 23 provides as follows:

"Art. 23. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

This provision has been taken from article 826 of the German Civil Code, with a certain modification, by adding "good customs" and "public policy."

An illustration of the scope of article 23 is the following: A man seduces a 19-year old girl who becomes pregnant. Under the Revised Penal Code there is no crime inasmuch as the girl is above 18 years of age. Therefore, no damages can be recovered by her. But by article 23 she can recover damages, because the defendant is guilty of a willful and immoral act, although positive law has not been violated.

The above article brings within the sphere of statutory law all immoral acts wilfully committed which cause damage, but which are not denounced by any statute. This provision fills innumerable gaps in our codes and statutes, which of course cannot foresee every wrongful deed.

5. *Unjust Enrichment.* — The ancient doctrine against unjust enrichment is restated in article 24, which reads thus:

"Art. 24. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

Although the present Civil Code implements the above doctrine in some instances, still it does not formulate a principle on this point. Hence, the need of article 24. The maxim concerning unjust enrichment finds a manifestation (among other subjects) in the additional quasi-contracts under the new Code. Here are three examples of unjust enrichment, for which the new Civil Code offers solutions under the principle of quasi-contracts:

"Art. 2188. When during a fire, flood, storm, or other calamity, property is saved from destruction by another person without the knowledge of the owner, the latter is bound to pay the former just compensation."

Art. 2189. When the government, upon the failure of any person to comply with health or safety regulations concernig property, undertakes to do the necessary work, even over his objection, he shall be liable to pay the expenses."

Art. 2195. Any person who is constrained to pay the taxes of another shall be entitled to reimbursement from the later."

6. *Damages.*—The new Civil Code awards moral damages. The usual objection to the giving of moral damages is that they cannot be pecuniarily estimated. This is purely a technical argument. Justice should be done by adjudicating some amount of damage, which should be left to the discretion of the court.

7. *Illegal Contracts.*—Finally, there is a general principle that when both parties are to blame neither may enforce the same. However, the new Civil Code makes certain exceptions: For example, articles 1434 to 1436 provide:

"Art. 1434. When money is paid or property delivered for an illegal purpose, the contract may be repudiated by one of the parties before the purpose has been accomplished, or before any damage has been caused to a third person. In such case, the courts may, if the public interest will thus be subserved, allow the party repudiating the contract to recover the money or property."

"Art. 1435. Where one of the parties to an illegal contract is incapable of giving consent, the courts may, if the interest of justice so demands, allow recovery of money or property delivered by the incapacitated person."

"Art. 1436. When the agreement is not illegal *per se* but is merely prohibited, and the prohibition by the law is designed for the protection of the plaintiff, he may, if public policy is thereby enhanced, recover what he has paid or delivered."

CONCLUSION

The foregoing brief exposition, I hope, will give an idea of how the new Civil Code strives to temper the rigor of legalism in order that justice may triumph. After all, the paramount aim of the courts is to do justice, which should not be defeated by any technicality, or by the letter of the law.

mend a person for the appointment, or may determine the number of attendants, or may require the appointment of as many as are necessary. Moreover, a court may appoint attendants when a peculiar emergency demands, or where the agency vested by law with the power of appointment neglects or refuses to perform its duty; although the right to appoint under such circumstances is only coextensive with the necessity and ceases with it. *21 C.J.S. 219.*

2. CLERKS OF COURT DEPARTMENTS.

Where a court is divided into departments each constituting a separate court, the clerk of each department is regarded as the clerk of that court. *14 C.J.S. 1217.*

3. DUTIES OF CLERK TO JUDGE.

While the duties of a clerk to a judge are not defined by law, they are clearly of a personal, and mainly of a confidential, nature. *Ibid, 1242.*

4. ACTS UNDER DIRECTION.

"The clerk of the court is a mere ministerial officer, who can only act upon the direction of the court, and must find authority in the decision in order to enter judgment." *Marc vs. Pinkard, 230 N.Y.S. 765, 766, 133 Misc. 83.*

Attendants and assistants must act in accordance with the judge's direction, regardless of the instructions of any other person. *21 C.J.S. 221.*

Judges could require deputy court attendants to assist sheriff or other county officer. *Hansman vs. Thomas, 234 N.Y.S. 581, 134 Misc. 75.*

In the performance of his duties as the ministerial officer of the court, he is subject to the control of the court; and if he fails or refuses to perform any of such duties, when directed so to do by the court he may be punished for contempt. On the other hand, a clerk cannot be summarily compelled, by a court other than the one of which he is clerk, to do a certain act; nor can the clerk of an inferior court be punished by an appellate court which has not acquired jurisdiction of the cause in which the clerk was derelict in the performance of his duty; nor is he obligated to perform acts not falling within the scope of his official duties. A merely ministerial act may be performed by the clerk in term time without an order of the court. *14 C.J.S. 1248.*

5. MATTERS REQUIRING JUDGE'S APPROVAL.

In matters which the clerk is required to submit to the judge for approval, it will be presumed that they were done under the sanction and direction of the judge; and in such case the clerk is responsible only where he refuses to discharge his duty when requested by the judge, or where he is guilty of fraud in collusion with the judge. *Ibid, p. 1250.*

6. FUNCTION OF JUDGE PERFORMED BY CLERK.

The attempted performance by the clerk of any function of the judge during his absence, even though done by his direction, is void; but an objection that the clerk, in performing a particular function, was usurping judicial powers is not available on collateral attack. *Ibid, p. 1243.*

7. CLERK OF COURT HAS NO AUTHORITY TO REFUSE ADMISSION OF RECORD ON APPEAL.

A clerk of Court has no legal ground for refusing admission of any erroneous or incomplete record on appeal. It is within the province of the judge and not of the clerk to approve or reject that record if its defects could not be cured. *Malicse vs. Mañalac et al.,* CA-G.R. No. 868-R, promulgated June 4, 1947.

8. CLERK OF COURT AS COMMISSIONER TO RECEIVE EVIDENCE.

Para el nombramiento del Escribano como comisionado para recibir pruebas sobre cuenta final de administración, no hace falta el convenio por escrito de las partes, no siendo de aplicación los artículos 135 y 136 del Código de procedimiento civil. *Escueta vs. Lumague,* CA-G.R. No. 284, promulgated June 30, 1938.

9. OATH OF CLERK OF COURT AS COMMISSIONER.

El artículo 602 del Código de Procedimiento Civil probee que, cuando el Juez lo ordene, el Escribano puede recibir todas las pruebas referentes a las cuentas de los albaceas, administradores y fideicomisarios, y es su deber transmitir al Juez, a la mayor brevedad, su informe, cuentas y pruebas, y en el caso de que el Juez se lo haya ordenado, incluira en el necesario prestar juramento, porque se entiende que, como Escribano, ya ha jurado. *Escueta vs. Lumagui,* CA-G.R. No. 284, promulgated June 30, 1938.

10. OFFICER OF COURT MAY BE PUNISHED FOR CONTEMPT.

An officer of the court may be guilty of contempt under article 232 of the Code of Civil Procedure although the act committed by him is not connected with any specific judicial proceeding then pending in the court. *In the matter of Jones,* 9 Phil. 347.

11. COMPENSATION.

Where the right to compensation is dependent on statute, an attendant is not entitled to receive compensation not provided for by the statute, or to receive more than the amount fixed or determined by the statute; and services required of him for which he is not specifically paid must be considered compensated for by the payment received for other services. *21 C.J.S. 222.*

One who claims "fees for services must be able to put his finger on some statute expressly allowing the fees he claims, and, if he is unable to do so, he is not entitled to the fees." *State vs. Police Comrs. Bd.,* 82 S. W. 960, 962, 108 Mo. App. 98.

12. NEGLIGENCE OF COURT'S PERSONNEL.

Jamoral was not the receiving clerk in the office of the Clerk of Court and there is no evidence that he had ever filed the questioned record on appeal. Conceding that he failed to comply with the attorney's instructions and neglected to file the record of appeal on time it can not be denied that this document was in the hands of an employee of the Clerk's Office, and under the circumstances it could be highly unfair to hold appellant responsible for the neglect of the personnel of the court. *Malicse vs. Mañalac et al.,* CA-G.R. No. 868, promulgated June 4, 1947.

13. LIABILITY.

A court attendant may be held accountable in a civil suit for damages resulting from negligence in the performance of his legal duties; and a suit may be brought against a former attendant in his individual capacity after he has gone out of office. *21 C.J.S. 221.*

SEC. 47. *Permanent station of clerk of court.* — The permanent station of a clerk of court shall be at the permanent residence of the District Judge presiding in the court.

NOTES

1. Place of performance. 2. Abolition of court.

1. PLACE OF PERFORMANCE.

In the absence of any statute to that effect, a ministerial act of a clerk is not void, although performed away from his office or even outside of his county; and ministerial acts need not be performed in court to be valid. Where a recognizance is required to be taken by the court, the clerk has no authority to take it out of court. *14 C.J.S. 1249.*

2. ABOLITION OF COURT.

Where a court is abolished the office of clerk falls with it; and so, where by statute the jurisdiction of one court is transferred to another, the clerk of the former ceases to have any official powers; and the clerk of the court to which the jurisdiction is transferred usually succeeds to the powers, duties, emoluments, and liabilities of the clerk of the superseded court. *Ibid, p. 1213.*

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On abolition of a court, the clerk of the court acquiring the jurisdiction of the abolished court is under a duty to take charge of all records of such abolished court. *Ibid, p. 1246.*

SEC. 48. *Provincial officer as ex-officio clerk of court.* — When the Secretary of Justice shall deem such action advisable, he may direct that the duties of the clerk of court shall be performed by a provincial officer or employee as *ex-officio* clerk of court, in which case the salary of said employee or officer as clerk of court, *ex-officio,* shall be fixed by the provincial board and shall be equitably distributed by said board with the approval of the Secretary of Justice between the national government and the provincial government.

NOTES

1. Deputy clerk may be an ex officio clerk.
2. Salary of ex officio clerk.

1. DEPUTY CLERK MAY BE AN EX OFFICIO CLERK.

A deputy county clerk may be an ex officio clerk of another court. *14 C.J.S. 1267.*

2. SALARY OF EX OFFICIO CLERK.

Another official acting as ex officio clerk of court has been held entitled to compensation for such ex officio services. *Ibid, p. 1227.*

Circuit court clerk acting as ex officio clerk of chancery court is entitled only to the compensation granted him as clerk of the circuit court. *Goode vs. Union County,* 76 S. W. 2d 100, 189 Ark. 1123.

City secretary receiving maximum compensation for such office is entitled to receive additional compensation for services as ex officio clerk of corporation court. *City of Texarkana v. Floyd,* Civ. App., 59 S. W. 2d 449.

SEC. 49. *Judicial districts.* — Judicial districts for Courts of First Instance in the Philippines are constituted as follows:

The First Judicial District shall consist of the Provinces of Cagayan, Batanes, Isabela, and Nueva Viscaya, and the Subprovince of Ifugao;

The Second Judicial District, of the Provinces of Ilocos Norte, Ilocos Sur, Abra, City of Baguio, Mountain Province except the Subprovince of Ifugao, and La Union;

The Third Judicial District, of the Provinces of Pangasinan and Zambales, and the City of Dagupan;

The Fourth Judicial District, of the Provinces of Nueva Ecija and Tarlac;

The Fifth Judicial District, of the Provinces of Pampanga, Bataan, and Bulacan;

The Sixth Judicial District, of the City of Manila;

The Seventh Judicial District, of the Province of Rizal, Quezon City and Rizal City, the Province of Cavite, City of Cavite, the City of Tagaytay, and the Province of Palawan;

The Eighth Judicial District, of the Province of Laguna, the City of San Pablo, the Province of Batangas, the City of Lipa, and the Provinces of Mindoro and Marinduque;

The Ninth Judicial District, of the Provinces of Quezon and Camarines Norte;

The Tenth Judicial District, of the Provinces of Camarines Sur, Albay, Catanduanes, Sorsogon, Masbate, and Romblon;

The Eleventh Judicial District, of the Provinces of Capiz and Iloilo, the City of Iloilo and the Province of Antique;

The Twelfth Judicial District, of the Province of Occidental Negros, the City of Bacolod, the Province of Oriental Negros, and the Subprovince of Siquijor;

The Thirteenth Judicial District, of the Provinces of Samar and Leyte, and the City of Ormoc;

The Fourteenth Judicial District, of the Province of Cebu, the City of Cebu and the Province of Bohol;

The Fifteenth Judicial District, of the Provinces of Surigao, Agusan, Oriental Misamis, Bukidnon, and Lanao; and

The Sixteenth Judicial District, of the Province of Davao, the City of Davao, the Provinces of Cotabato and Occidental Misamis, the Province of Zamboanga and Zamboanga City, and the Province of Sulu.

NOTES

1. Judges are appointed for respective districts.
2. Judicial lottery.
3. Effect of increasing number of districts.

1. JUDGES ARE APPOINTED FOR RESPECTIVE DISTRICTS.

When, in pursuance of the power vested in the Governor-General and the Philippine Senate, judges of first instance are selected for positions on the bench, the appointments so made are for specific offices. Judges of first instance are not appointed judges of first instance of the Philippine Islands but are appointed judges of the Courts of First Instance of the respective Judicial Districts of the Philippine Islands. They hold these positions of judges of first instance of definite districts until they either resign, reach the age of retirement, or are removed through impeachment proceedings. The intention of the law is to recognize separate and distinct judicial offices. (Borromeo vs. Mariano (1921), 41 Phil., 322; Act No. 2347 in force when Organic Act enacted; Administrative Code of 1917, secs. 128, 146, 153, 154, etc.; Act No. 2941.) *Concepcion vs. Paredes,* 42 Phil. 599.

2. JUDICIAL LOTTERY.

In his official oath of office, Judge Concepcion swore to "faithfully and impartially discharge and perform all the duties incumbent upon me as Judge, Ninth Judicial District, Manila, according to the best of my ability and understanding, agreeably to the laws of the Philippine Islands." Pedro Concepcion, as such judge of first instance for the city of Manila, had jurisdiction only in the judicial district comprehending the metropolis. But, if the judicial lottery had been held, as planned, on March 15, 1921, Pedro Concepcion would have been removed from Manila and would have had to proceed to another district. Having determined by lot to which district he would be assigned, either one of two contingencies must happen; either Pedro Concepcion, judge of First Instance of the city of Manila by valid appointment of the Governor-General, by and with the advice and consent of the Philippine Senate, would go to another district than that to which he was appointed, pursuant to the certification of the Secretary of Justice, or he would go to the new district pursuant to a new appointment by the Governor-General, by and with the advice and consent of the Philippine Senate. Following the first horn of the dilemma would result in a violation of the law, for there can be no valid appointment to an office so long as the appointing power, in this instance the Governor-General and the Philippine Senate, and not the Secretary of

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Justice, is not exercised. And the second horn of the dilemma would reach the same result, for instead of an exercise of judgment by the Governor-General and the Philippine Senate, they would be required to perform merely a ministerial act and to register approval of an appointment determined by chance.

The law before us would require a drawing of lots for judicial positions, while the organic law would require selection for judicial positions by the Governor-General with the assent of the Philippine Senate. Chance has been substituted for executive judgment. Appointment by lot is not appointment by the Governor-General. Appointment by lot is not appointment with the advice and consent of the Philippine Senate. To leave the selection of a person for a given judicial office to lot is not to appoint, but is to gamble with the office. To such a method we cannot give the seal of our approval. *Ibid.*

3. EFFECT OF INCREASING NUMBER OF DISTRICTS.

If, as has already been seen, jurisdiction is the power with which judges are invested to try civil and criminal cases and to decide them or render judgment in accordance with the law, the increase in the number of districts in the judicial division of the territory of the Philippine Islands and the formation of each of these new districts by a larger or smaller number of provinces than those assigned to each district by Act No. 140 and the other Acts mentioned above, as well as changes in the designation of some of those districts and of some of the provinces comprised in the former district for others finally designated in Act No. 2347, and the reduction in some of the new districts, according to the same Act, of the number of provinces comprised, to the extent that the Fourteenth Judicial District should include only the Province of Tayabas, which, with the Province of Batangas had formed the Seventh, Judicial District under Act No. 501 and prior thereto under Act No. 140 the Sixth District, along with the Provinces of Laguna, Cavite, Principe and Infanta, and Polillo Island, do not constitute limitation or increase of the jurisdiction of those courts, because the power and authority to hear, try, and decide civil and criminal cases pertaining to each court are always the same, and what was increased or diminished by said Act No. 2347 was the place wherein said jurisdiction is exercised or the exercise of the jurisdiction itself with reference to the place in which it is publicly manifested. *Conchada vs. Drector of Prisons*, 31 Phil. 94.

SEC. 50. *Judges of First Instance for Judicial Districts.* — Four judges shall be commissioned for the First Judicial District. Two judges shall preside over the Courts of First Instance of Cagayan and Batanes, and shall be known as judges of the first and second branches thereof, respectively, the judge of the second branch to preside also over the Court of First Instance of Batanes; one judge shall preside over the Court of First Instance of Isabela; and one judge shall preside over the Court of First Instance of Nueva Viscaya and the Sub-province of Ifugao.

Four judges shall be commissioned for the Second Judicial District. One judge shall preside over the Court of First Instance of Ilocos Norte; one judge shall preside over the Courts of First Instance of Ilocos Sur and Abra; one judge shall preside over the Courts of First Instance of the City of Baguio and Mountain Province except the Sub-province of Ifugao; and another judge shall preside over the Court of First Instance of La Union.

Four judges shall be commissioned for the Third Judicial District. They shall preside over the Court of First Instance of Pangasinan and shall be known as judges of the first, second, third and fourth branches thereof, respectively; one judge shall preside over the Court of First Instance of Lingayen to be known as the judge of the first branch; one judge shall preside over the Court of First Instance of the City of Dagupan and shall be known as the judge of the second branch; one judge shall preside over the Court of First Instance of Tayug and shall be known as the judge of the third branch; and one judge shall preside over the Court of First Instance of Lingayen to be known as the judge of the fourth branch who shall also preside over the Court of First Instance of Zambales, the judge of the fourth branch to preside also over the Court of First Instance of Zambales.

Three judges shall be commissioned for the Fourth Judicial District. Two judges shall preside over the Court of First Instance of Nueva Ecija and shall be known as judges of the first and second branches thereof, respectively; and one judge shall preside over the Court of First Instance of Tarlac.

Four judges shall be commissioned for the Fifth Judicial District. Two judges shall preside over the Court of First Instance of Pampanga and shall be known as judges of the first and second branches thereof, respectively, the judge of the second branch, to preside also over the Court of First Instance of Bataan; and two judges shall preside over the Court of First Instance of Bulacan and shall be known as judges of the first and second branches thereof, respectively.

Ten judges shall be commissioned for the Sixth Judicial District. They shall preside over the Courts of First Instance of Manila and shall be known as judges of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth and tenth branches, respectively.

Five judges shall be commissioned for the Seventh Judicial District. Three judges shall preside over the Court of First Instance of the Province of Rizal, Quezon City and Rizal City and shall be known as judges of the first, second and third branches thereof, respectively; and two judges shall preside over the Court of First Instance of the Province of Cavite and the Cities of Cavite and Tagaytay, and shall be known as judges of the first and second branches thereof, respectively, the judge of the second branch to preside also over the Court of First Instance of Palawan.

Five judges shall be commissioned for the Eighth Judicial District. Two judges shall preside over the Court of First Instance of Laguna and the City of San Pablo, and shall be known as judges of the first and second branches thereof, respectively; two judges shall preside over the Court of First Instance of Batangas and the City of Lipa, and shall be known as judges of the first and second branches thereof, respectively; and one judge shall preside over the Courts of First Instance of Mindoro and Marinduque.

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Three judges shall be commissioned for the Ninth Judicial District. They shall preside over the Court of First Instance of Quezon and shall be known as judges

of the first, second and third branches thereof, respectively, the judge of the third branch to preside also over the Court of First Instance of Camarines Norte.

Six judges shall be commissioned for the Tenth Judicial District. Two judges shall preside over the Court of First Instance of Camarines Sur and shall be known as judges of the first and second branches thereof, respectively; two judges shall preside over the Courts of First Instance of Albay and Catanduanes and shall be known as judges of the first and second branches thereof; one judge shall preside over the Court of First Instance of the Province of Sorsogon; and one judge shall preside over the Courts of First Instance of Masbate and Romblon.

Five judges shall be commissioned for the Eleventh Judicial District. Two judges shall preside over the Court of First Instance of Capiz and shall be known as judges of the first and second branches and three judges shall preside over the Court of First Instance of the Province of Iloilo and the City of Iloilo, and shall be known as judges of the first, second and third branches thereof, respectively, the judge of the third branch to preside also over the Court of First Instance of Antique.

Four judges shall be commissioned for the Twelfth Judicial District. Three judges shall preside over the Court of First Instance of Occidental Negros and the City of Bacolod, and shall be known as judges of the first, second and third branches thereof, respectively; and one judge shall preside over the Courts of First Instance of Oriental Negros and the Subprovince of Siquijor.

Six judges shall be commissioned for the Thirteenth Judicial District. Three judges shall preside over the Court of First Instance of Samar and shall be known as judges of the first, second and third branches thereof, respectively; and three judges shall preside over the Court of First Instance of Leyte and the City of Ormoc, and shall be known as judges of the first, second and third branches thereof, respectively.

Four judges shall be commissioned for the Fourteenth Judicial District. Three judges shall preside over the Court of First Instance of the Province of Cebu and the City of Cebu, and shall be known as judges of the first, second and third branches thereof, respectively; and one judge shall preside over the Court of First Instance of Bohol.

Three judges shall be commissioned for the Fifteenth Judicial District. One judge shall preside over the Courts of First Instance of Surigao and Agusan; one judge shall preside over the Courts of First Instance of Oriental Misamis and Bukidnon; one judge shall preside over the Court of First Instance of Lanao.

Four judges shall be commissioned for the Sixteenth Judicial District. One judge shall preside over the Court of First Instance of Davao; one judge shall preside over the Court of First Instance of Cotabato; one judge shall preside over the Courts of First Instance of Occidental Misamis and Zamboanga Province; and one judge shall preside over the Court of First Instance of Zamboanga City and Sulu.

SEC. 51. *Detail of judge to another district or province.*—Whenever a judge stationed in any province or branch of a court of a province should certify to the Secretary of Justice that the condition of the docket in his court is such as to require the assistance of an additional judge, or when there is any vacancy in any court or branch of a court in a province, and there is no judge-at-large available to be assigned to said court, the Secretary of Justice may, in the interest of justice, and for a period of not more than three months, assign any judge of any other court or province within the same judicial district, whose docket permits his temporary absence from said court, to hold sessions in the court needing such assistance, or where such vacancy exists. No district judge shall be assigned to hold sessions in a province other than that to which he is appointed without the approval of the Supreme Court being first had and obtained.

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1. CONSTITUTIONAL PROVISION.

No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court. The Congress shall by law determine the residence of judges of inferior courts. *Sec. 7, Art. VIII, Constitution of the Philippines.*

Section 7 of Art. VIII of the Constitution refers to transfer from one judicial district to another and never prohibit the appointment or designation of a judge of Court of First Instance or any other judge from being appointed temporarily or permanently with his consent to court of different grade and make up. *People vs. Carlos,* G.R. No. L-239, promulgated June 30, 1947.

2. CONSTRUCTION OF STATUTE.

A statute providing for judges of one district to hold court in another district is generally considered as remedial and should be liberally construed with a view to promoting the ends of justice. General rules have been applied in the construction of constitutional provisions extending the territorial jurisdiction of judges. *48 C.J.S. 1027.*

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The provision of the constitution that the legislature may provide by law that a judge of one district may discharge duties of a judge of any other district not his own when convenience or public interest may require applies where district judge is disabled or accumulation of business is such that he is unable to take care of it. *State ex rel. Thompson v. Day,* 273 N. W. 684, 200 Minn. 77.

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court in another circuit should be entered of record in minutes of latter court. *Forcum v. Symmes,* 133 So. 88, 101 Fla. 1266.

5. JUDGE HOLDING COURT IN ANOTHER DISTRICT.

A judge holding court in another district becomes a constituent part of the local court. If the local court consists of only one judge, the visiting judge is not considered as an associate or coordinate judge with the local judge but is the court itself, and has the same powers or the right to exercise the same powers as the regular judge. Whenever the visiting judge enters on the trial of a case he, for the purpose of that case, has all the power and authority of the judge of the local district, and he may make all such orders as may be required for the determination of the case, and his authority continues until the motions after the trial are disposed of, although the regular judge appears and hold court. *48 C.J.S. 1028.*

6. CONSENT OF JUDGE.

If, therefore, anyone could refuse appointment as a judge of first instance to a particular district, when once appointment to this district is accepted, he has exactly the same right to refuse an appointment to another district. No other person could be placed in the position of this Judge of First Instance since another rule of public officers is, that an appointment may not be made to an office which is not vacant. (29 Cyc., 1373) In our judgment, the language of the proviso to section 155 of the Administrative Code, interpreted with reference to the law of public officers, does not empower the Governor-General to force upon the judge of one district an appointment to another district against his will, thereby removing him from his district.

Certainly, if a judge could be transferred from one district of the Philippine Islands to another, without his consent, it would require no great amount of imagination to conceive how this power could be used to discipline the judge or as an indirect means of removal. A judge who had, by a decision, incurred the ill-will of an attorney or official, could, by the insistence of the disgruntled party, be removed from one district, demoted, and transferred to another district, at possibly a loss of salary, all without the consent of the judicial officer. The only recourse of the judicial officer who should desire to maintain his self-respect, would be to vacate the office and leave the service. Unless we wish to nullify the impeachment section of the Administrative Code, and thus possibly to encroach upon the jurisdiction conferred upon the Supreme Court by the Organic Law, section 155 must be interpreted so as to make it consistent therewith. *Borromeo vs. Mariano,* 41 Phil. 322.

7. DECISION RENDERED BY JUDGE WHO HEARD EVIDENCE.

Section 13 of Act No. 867 provides as follows:

"*Judges in certain cases authorized to sign final judgment when out of territorial jurisdiction of court.*—Whenever a Judge of a Court of First Instance or a Justice of the Supreme Court shall hold a session, special or regular, of the Court of First Instance of any province, and shall thereafter leave the province in which the court was held without having entered judgment in all the cases which were heard at such session, it shall be lawful for him, if the case was heard and duly argued or an opportunity given for argument to the parties or their counsel in the proper province, to prepare his judgment after he has left the province and to send the same back properly signed to the clerk of the court, to be entered in the court as of the day when the same was received by the Clerk, in the same manner as if the judge had been present in court to direct the entry of the judgment: *Provided, however,* That no judgment shall be valid unless the same was signed by the judge while within the jurisdiction of the Philippine Islands. Whenever a judge shall prepare and sign his judgment beyond the jurisdiction of the court of which it is to be a judgment, he shall inclose the same in an envelope and direct it to the clerk of the proper court and send the same by registered mail."

The policy of the government is evidenced by the wording of the amended section 155 of the Administrative Code. The detail of a district judge to another district is permitted to advance "the public interest and the speedy administration of justice." Obviously, the public interest and the speedy administration of justice will be best served if the judge who heard the evidence renders the decision. It might well happen that the full extent of the six months' period (now three months) would be used by the trial judge to receive the evidence, giving him no opportunity to promulgate decisions, with the result that all the mountain of evidence would be left for the perusal of a judge who did not hear the witnesses—a result which should be dodged, if it be legally feasible.

The law does not mean to authorize a judge to try a case and then deprive him of the power to render his decision after he has taken cognizance of it. The legislative purpose was not to make the judge holding a special term of court a mere referee for another judge. *Delfino vs. Paredes and Vargas,* 48 Phil. 645.

8. JUDGE TRYING CASE NEED NOT BE THE SAME JUDICIAL OFFICER TO DECIDE IT.

It is not necessary that the judge who tried the case be the same judicial officer to decide it. Sometimes, it is a practical impossibility that that be done. The judge trying a case may die, resign, be disabled, or be transferred to another court before finishing the trial. In that case, another judge may continue and terminate the trial and it is sufficient if he be appraised of the evidence already presented by a reading of the transcript of the testimonies already introduced, in the manner as appellate courts review evidence on appeal. *People vs. Samsano,* CA-G.R. No. 1099-R, promulgated Oct. 29, 1947.

A judge is authorized to decide questions of fact upon evidence which was not taken by him (Ortiz vs. Aramburo, 8 Phil. 98-100). Courts of record rely upon the transcript of the stenographic notes taken during the hearing in deciding questions of fact. The transcripts of the stenographic notes taken during the hearing of the instant case having been certified by the official court stenographer to be true and correct, are worthy of consideration and are prima facie evidence of the proceeding herein (Co Piteo vs. Yulo, 8 Phil. 544; Sec. 35, Rule 123, Rules of Court), in the absence of any indication why the notes are incomplete or what portions thereof are distorted. *Garcia vs. Puentevella & Puentevella vs. Garcia,* CA-G.R. Nos. 734-R & 735-R, promulgated Dec. 16, 1947.

9. CASES DECIDED AFTER TRANSFER OF JUDGE TO ANOTHER PROVINCE OR DISTRICT.

The trial judge decided the case after he had been transferred to another judicial district than that in which the venue was laid. *Held,* that the fact that he signed the decision as judge of the district to which he was transferred is not in itself sufficient to overcome the presumption that "a court, or judge acting as such, whether in the Philippine Islands or elsewhere, was acting in the lawful exercise of his jurisdiction." (Subsec. 15, sec. 334 Code of Civil Procedure.) *Herederos de Esquieres vs. Director of Lands,* 53 Phil. 727.

The only point of law raised by the appellants is that at the time of signing the appealed judgment, Judge Platon, who tried the case, had been appointed judge of the Court of First Instance of the Province of Albay; that he therefore had no jurisdiction of the case at that time; and that the judgment consequently is null and void.

There is, as far as we can see, no merit in this contention. The presumption is "that a court, or judge acting as such, whether in the Philippine Islands or elsewhere, was acting in the lawful exercise of his jurisdiction" (subsec. 15, sec. 334, Code of Civ. Proc.) and there is no sufficient evidence in the record to rebut this presumption. It is true that the judge signed as judge of the Court of First Instance of Albay but for all we know, he may have been authorized by the Secretary of Justice, under section 155 of the Administrative Code, to finish the trial of the case after his appointment to the district of Albay and, if so, the judgment is valid. *Nañagas vs. Municipality of San Narciso,* 53 Phil. 719.

court in another circuit should be entered of record in minutes of latter court. *Forcum v. Symmes,* 133 So. 88, 101 Fla. 1266.

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6. CONSENT OF JUDGE.

If, therefore, anyone could refuse appointment as a judge of first instance to a particular district, when once appointment to this district is accepted, he has exactly the same right to refuse an appointment to another district. No other person could be placed in the position of this Judge of First Instance since another rule of public officers is, that an appointment may not be made to an office which is not vacant. (29 Cyc., 1373) In our judgment, the language of the proviso to section 155 of the Administrative Code, interpreted with reference to the law of public officers, does not empower the Governor-General to force upon the judge of one district an appointment to another district against his will, thereby removing him from his district.

Certainly, if a judge could be transferred from one district of the Philippine Islands to another, without his consent, it would require no great amount of imagination to conceive how this power could be used to discipline the judge or as an indirect means of removal. A judge who had, by a decision, incurred the ill-will of an attorney or official, could, by the insistence of the disgruntled party, be removed from one district, demoted, and transferred to another district, at possibly a loss of salary, all without the consent of the judicial officer. The only recourse of the judicial officer who should desire to maintain his self-respect, would be to vacate the office and leave the service. Unless we wish to nullify the impeachment section of the Administrative Code, and thus possibly to encroach upon the jurisdiction conferred upon the Supreme Court by the Organic Law, section 155 must be interpreted so as to make it consistent therewith. *Borromeo vs. Mariano,* 41 Phil. 322.

7. DECISION RENDERED BY JUDGE WHO HEARD EVIDENCE.

Section 13 of Act No. 867 provides as follows:

"*Judges in certain cases authorized to sign final judgment when out of territorial jurisdiction of court.*—Whenever a Judge of a Court of First Instance or a Justice of the Supreme Court shall hold a session, special or regular, of the Court of First Instance of any province, and shall thereafter leave the province in which the court was held without having entered judgment in all the cases which were heard at such session, it shall be lawful for him, if the case was heard and duly argued or an opportunity given for argument to the parties or their counsel in the proper province, to prepare his judgment after he has left the province and to send the same back properly signed to the clerk of the court, to be entered in the court as of the day when the same was received by the Clerk, in the same manner as if the judge had been present in court to direct the entry of the judgment: *Provided, however,* That no judgment shall be valid unless the same was signed by the judge while within the jurisdiction of the Philippine Islands. Whenever a judge shall prepare and sign his judgment beyond the jurisdiction of the court of which it is to be a judgment, he shall inclose the same in an envelope and direct it to the clerk of the proper court and send the same by registered mail."

The policy of the government is evidenced by the wording of the amended section 155 of the Administrative Code. The detail of a district judge to another district is permitted to advance "the public interest and the speedy administration of justice." Obviously, the public interest and the speedy administration of justice will be best served if the judge who heard the evidence renders the decision. It might well happen that the full extent of the six months' period (now three months) would be used by the trial judge to receive the evidence, giving him no opportunity to promulgate decisions, with the result that all the mountain of evidence would be left for the perusal of a judge who did not hear the witnesses—a result which should be dodged, if it be legally feasible.

The law does not mean to authorize a judge to try a case and then deprive him of the power to render his decision after he has taken cognizance of it. The legislative purpose was not to make the judge holding a special term of court a mere referee for another judge. *Delfino vs. Paredes and Vargas,* 48 Phil. 645.

8. JUDGE TRYING CASE NEED NOT BE THE SAME JUDICIAL OFFICER TO DECIDE IT.

It is not necessary that the judge who tried the case be the same judicial officer to decide it. Sometimes, it is a practical impossibility that that be done. The judge trying a case may die, resign, be disabled, or be transferred to another court before finishing the trial. In that case, another judge may continue and terminate the trial and it is sufficient if he be appraised of the evidence already presented by a reading of the transcript of the testimonies already introduced, in the manner as appellate courts review evidence on appeal. *People vs. Samsano,* CA-G.R. No. 1099-R, promulgated Oct. 29, 1947.

A judge is authorized to decide questions of fact upon evidence which was not taken by him (Ortiz vs. Aramburo, 8 Phil. 98-100). Courts of record rely upon the transcript of the stenographic notes taken during the hearing in deciding questions of fact. The transcripts of the stenographic notes taken during the hearing of the instant case having been certified by the official court stenographer to be true and correct, are worthy of consideration and are prima facie evidence of the proceeding herein (Co Piteo vs. Yulo, 8 Phil. 544; Sec. 35, Rule 123, Rules of Court), in the absence of any indication why the notes are incomplete or what portions thereof are distorted. *Garcia vs. Puentevella & Puentevella vs. Garcia,* CA-G.R. Nos. 734-R & 735-R, promulgated Dec. 16, 1947.

9. CASES DECIDED AFTER TRANSFER OF JUDGE TO ANOTHER PROVINCE OR DISTRICT.

The trial judge decided the case after he had been transferred to another judicial district than that in which the venue was laid. *Held,* that the fact that he signed the decision as judge of the district to which he was transferred is not in itself sufficient to overcome the presumption that "a court, or judge acting as such, whether in the Philippine Islands or elsewhere, was acting in the lawful exercise of his jurisdiction." (Subsec. 15, sec. 334 Code of Civil Procedure.) *Herederos de Esquieres vs. Director of Lands,* 53 Phil. 727.

The only point of law raised by the appellants is that at the time of signing the appealed judgment, Judge Platon, who tried the case, had been appointed judge of the Court of First Instance of the Province of Albay; that he therefore had no jurisdiction of the case at that time; and that the judgment consequently is null and void.

There is, as far as we can see, no merit in this contention. The presumption is "that a court, or judge acting as such, whether in the Philippine Islands or elsewhere, was acting in the lawful exercise of his jurisdiction" (subsec. 15, sec. 334, Code of Civ. Proc.) and there is no sufficient evidence in the record to rebut this presumption. It is true that the judge signed as judge of the Court of First Instance of Albay but for all we know, he may have been authorized by the Secretary of Justice, under section 155 of the Administrative Code, to finish the trial of the case after his appointment to the district of Albay and, if so, the judgment is valid. *Nañagas vs. Municipality of San Narciso,* 53 Phil. 719.

Section 13 of Act No. 867 permits a Judge of First Instance who shall hold a session, special or regular, without having entered judgment in all of the cases which were heard, to prepare and render his judgment after he has left the province. It would be logical to suppose that the Legislature in enacting Act No. 3107 amendatory of section 155 of the Administrative Code had in mind section 13 of Act No. 867 and desired both the new and the old provisions to interblend. *Delfino vs. Paredes and Vargas,* 48 Phil. 645.

Where a cause was submitted, after proof taken, with opportunity to the attorneys to be heard, but oral argument was waived, permission being given to file written memoranda later, the judge could subsequently prepare and sign his decision after leaving the province, the trial judge having been specially assigned for duty during the vacation period. (Sec. 13, Act No. 867.) *Baguinguito v. Rivera,* 56 Phil. 423.

If Judge Summers had been the permanent district judge of Tarlac and before he rendered the decision in this case had been appointed permanent district judge of Cavite and had dictated the decision without any authority or redesignation by the Secretary of Justice, it is clear that the decision in this case would be null and void. However, this is not the case. Judge Summers was a cadastral judge (41 Off. Gaz. No. 4, p. 271) and as such was vested with general jurisdiction throughout the Philippine Islands by paragraph 3 of Executive Order No. 395 issued by the President of the Commonwealth on 24 December 1941 under the emergency powers conferred upon him by Commonwealth Act No. 671. Cadastral judges, therefore, have the same general jurisdiction over the whole country as judges-at-large. Consequently, the ruling laid down in the case of Alarcon versus Kasilag (40 Off. Gaz. 11th Supplement, p. 203) with regard to judges-at-large is perfectly applicable to cadastral Judge Ricardo Summers. In this case it was held that "A judge-at-large who tried a case in one province can even after being designated to act in another province, render decision in the case." (Alarcon vs. Kasilag, 40 Off. Gaz., 11th Supplement, p. 203). *People vs. Salvador Mata, et al.,* CA-G.R. No. 45-R, promulgated July 11, 1947.

De conformidad con la Constitucion del Commonwealth (Art. VIII, Sec. 7), la Ley 867 (Art. 13) y los Reglamentos de los Tribunales (Regla 124, par. 9) los Jueces de Primera Instancia podian decidir causas en una provincia distinta de aquella en donde vieron y fueron sometidas a su fallo (Baguinguito vs. Rivera, 56 Phil. 423). Pero estas leyes y reglamentos fueron afectados por la Orden Ejecutiva No. 4, que como estructura fundamental del Gobierno de la Comision Ejecutiva, ha puesto a la absoluta discrecion y autoridad del Comisionado de Justicia el traslado y la designacion de jueces de Primera Instancia. Se este alto funcionario, en interes del servicio publico, como en el presente caso, podia trasladar y designar a los Jueces de un distrito a otro y de una provincia a otra, que es lo mas, con razon podia autorizarles a decidir causas en un distrito o provincia distinto de aquel en que vieron y a su fallo fueron sometidas, que es lo menos. *Zulaybar et al. vs. Placente et al.,* CA-G.R. No. 690-R, promulgated Nov. 19, 1947.

A judge-at-large who tried a case on one province can, even after being designated to act in another province, render decision in the case. *Alarcon v. Kasilag,* Eleventh Suppl., 40 Off. Gaz., p. 203.

Cuando no se trata de una mera ausencia del Juez del distrito donde ha celebrado la vista, sino de su traslado a otro distrito en virtud de un nuevo nombramiento, dicho Juez "pierde toda su autoridad judicial o derecho a continuan con la resolución o decisión de una causa, en cualquier forma, después de dicho traslado." *Aquino et al vs. Valdez et al.,* CA-G.R. No. 845, promulgated Jan. 28, 1938.

La vista conjunta de los dos asuntos se llevó a cabo ante el Juez sentenciador los dias 28 de Julio de 1933, 19 de enero, 1.o, 4 y 17 de marzo; 29 de agosto; 7 y 19 de septiembre de 1934, y terminó el 28 de este último mes y año. El citado Juez sentenciador fué nombrado Juez de Primera Instancia de otra provincia, el 8 de noviembre de 1934, y prestó el juramento de rigor el 12 de noviembre de 1934, y desde entonces pasó a celebrar sesiones en dicho Juzgado, pero el 21 de enero de 1936 se traslado a la provincia anterior, y allá dictó entonces la sentencia objeto ahora de alzada. Con posterioridad al nombramiento y juramento del Honorable Juez, como Juez de Primera Instancia de la otra provincia, el Departamento de Justicia expidió una Orden Administrativa, autorizando "al Honorable Juez del Undécimo Distrito Judicial, para que celebro sesiones en el Municipio de Pasig, Provincia de Rizal, desde el 28 de octubre de 1935, o tan pronto despues como fuese practicable, con el fin de ver y fallar toda clase de asuntos." *Se declara:* Habida consideración de estas circunstancias, y bajo la autoridad que le confirió la orden Administrativa arriba citada, el citado Juez sentenciador tenía, competencia y jurisdicción para dictar la sentencia apelada. *Roxas vs. Velerio y otros; Roxas vs. Dominguez y otros,* CA-G.R. Nos. 902 and 903, promulgated June 13, 1939.

Cuando se presentan los informes de las partes después que el Juez que vió el asunto hubo prestado juramento como Juez de Primera Instancia de otro distrito y se dicta la decisión después de haber él prestado el juramento de su nuevo cargo, no era aplicable a dicho caso la facultad conferida por el Departamento de Justicia, para fallar en Manila o en Sta. Cruz, La Laguna, los asuntos cuyas vistas se hayan terminado ante él en Pásig, Rizal. *Arranz vs. Albano,* CA-G.R. No. 2046, promulgated Sept. 29, 1937.

El apelante no discute su culpabilidad ni cuestiona la pena que se le ha impuesto, pero alega que la sentencia apelada es ilegal y nula porque la dicto el Juez R. A. C. que a la sazón había sido nombrado Juez de guardia en la Provincia de Bulacan. Ocurrió que el referido Juez había sido realmente designado para dicha provincia durante los meses de abril y mayo de 1940 en virtud de la Orden Administrativa No. 28 del Departamento de Justicia; más, resulta que dicha orden administrativa fué enmendada por la No. 32 del 11 de marzo de 1940 que destinó al mencionado Juez para que prestara servicios, como Juez de guardia, en la Ciudad de Manila durante el mes de mayo del mismo año en que se celebró la vista del asunto y se dictó la sentencia condenatoria apelada. De este dato se infiere que la pretensión del apelante al efecto de que el Juez que le juzgó carecia de jurisdicción, no es meritoria. *Pueblo contra Conwi,* 40 Off. Gaz., Fourteenth Suppl., p. 166.

10. NECESSITY OF AUTHORITY TO ACT ON A PENDING CASE.

Section 51 of Act No. 136 provides that the Supreme Court may direct any judge of the Court of First Instance to hold a term or part of a term of court in any Court of First Instance not in his district. Section 52 provides that a judge of any Court of First Instance may hold court in any province at the request of the judge thereof, or upon the direction of the Chief Executive. It is not claimed that any order was ever made in accordance with either of these sections. At the time the judgment was signed the judge who signed it was therefore not the judge of the Court of First Instance of Sorsogon, and was not authorized to act in any cases pending in that court by direction of any competent authority.

The Solicitor-General relies upon Act No. 575, carried forward and now appearing as sections 13 and 14 of Act No. 867. Those sections authorize a judge of the Court of First Instance, in any case which he has tried, to sign the judgment outside of his province or district. There is nothing in the law, nor in the case of the United States vs. Domingo Baluyut (3 Off. Ga., 676), which construed the law, which in any way indicates that a judgment would be valid which was signed outside of the district or province by a person who is not the judge of the court in which the action is pending, or has not been authorized to hold a court therein in accordance with said sections 51 and 52. *U.S. vs. Soler et al,* 6 Phil. 321.

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A judge of first instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action. The former is not required to hear the parties, if and when a reading of the record convinces him that the order should be revoked because improperly granted or that it should be disapproved. *Ong Su Han vs. Gutierrez David et al.* XIII Lawyers Journal, 441.

12. Effectivity of the law.

On April 16, 1923, as appears from the Official Gazette, the Secretary of Justice authorized and instructed the Honorable George R. Harvey, Judge of First Instance of the Ninth Judicial District, to hold a special term of court in the City of Baguio, Mountain Province, beginning May 2, 1923. (Administrative Order No. 43, 21 Off. Gaz., p. 893.) Acting under the authority granted by the order of the Secretary of Justice, Judge Harvey proceeded to hear the case of Askay vs. Cosalan, without protest from anyone until after an adverse decision for the plaintiff and until after Judge Harvey had left the district.

The point which plaintiff now presses is that Act No. 3107, amendatory of section 155 of the Administrative Code, which authorizes a Judge of First Instance to be detailed by the Secretary of Justice to temporary duty, for a period which shall in no case exceed six months, (now three months) in a district or province other than his own, for the purpose of trying all kinds of cases, excepting criminal and election cases, was not in force until fifteen days after the completion of the publication of the statute in the Official Gazette, or not until August 3, 1923. Plaintiff relies on section 11 of the Administrative Code, which in part reads: "A statute passed by the Philippine Legislature shall, *in the absence of special provision*, take effect at the beginning of the fifteenth day after the completion of the publication of the statute in the Official Gazette, the date of issue being excluded."

Now turning to Act No. 3107, its final section provides that "this act shall take effect on its approval." The Act was approved on March 17, 1923. Obviously, therefore, there being a special provision in Act No. 3107, it applies to the exclusion of the general provision contained in the Administrative Code.

Recalling, therefore, that Act No. 3107 went into effect on March 17, 1923, and that it was subsequent thereto, on April 16, 1923, that Judge Harvey was authorized to hold court at Baguio, beginning with May 2, 1923, appellant's argument along this line is found to be without persuasive merit. *Askay vs. Cosalan*, 46 Phil. 179.

13. Certiorari.

Where a decision of a judge assigned to temporary duty is held null and void by another judge, certiorari is the appropriate remedy. *Delfino vs. Paredes and Vargas*, 48 Phil. 645.

Sec. 52. *Permanent Stations of District Judges.* — The permanent station of judges of the Sixth Judicial District shall be in the City of Manila.

In other judicial districts, the permanent stations of the Judges shall be as follows:

For the First Judicial District, the judge of the first branch of the Court of First Instance of Cagayan shall be stationed in the municipality of Tuguegarao, same province; the judge of the second branch, in the municipality of Aparri, same province; one judge shall be stationed in the municipality of Ilagan, Province of Isabela; and another judge, in the municipality of Bayombong, Province of Nueva Viscaya.

For the Second Judicial District, one judge shall be stationed in the municipality of Laoag, Province of Ilocos Norte; one judge, in the municipality of Vigan, Province of Ilocos Sur; one judge, in the City of Baguio, Mountain Province; and one judge, in the municipality of San Fernando, Province of La Union.

For the Third Judicial District, one judge shall be stationed in the municipality of Lingayen, Province of Pangasinan, one judge shall be stationed in the City of Dagupan, same province; and one judge in the municipality of Iba, Province of Zambales, and one in the municipality of Tayug.

For the Fourth Judicial District, two judges shall be stationed in the municipality of Cabanatuan, Province of Nueva Ecija, and one judge in the municipality of Tarlac, Province of Tarlac.

For the Fifth Judicial District, two judges shall be stationed in the municipality of San Fernando, Province of Pampanga; and two judges, in the municipality of Malolos, Province of Bulacan.

For the Seventh Judicial District, the judge of the first branch of the Court of First Instance of Rizal shall be stationed in the municipality of Pasig, same province; that of the second branch, in Rizal City; and that of the third branch, in Quezon City; and two judges, in the City of Cavite, Province of Cavite.

For the Eighth Judicial District, two judges shall be stationed in the municipality of Santa Cruz, Province of Laguna; the judge of the first branch of the Court of First Instance of Batangas shall be stationed in the municipality of Batangas, and that of the second branch in the City of Lipa, same province; and one judge, in the municipality of Calapan, Province of Mindoro.

For the Ninth Judicial District, the three judges shall be stationed in the municipality of Lucena, Province of Quezon.

For the Tenth Judicial District, two judges shall be stationed in the municipality of Naga, Province of Camarines Sur; one judge, in the municipality of Legaspi, Province of Albay; one judge, in the municipality of Sorsogon, Province of Sorsogon; and one judge, in the municipality of Masbate, Province of Masbate.

For the Eleventh Judicial District, one judge shall be stationed in the municipality of Capiz and one in the municipality of Calivo, Province of Capiz; and three judges, in the City of Iloilo, Province of Iloilo.

For the Twelfth Judicial District, three judges shall be stationed in the City of Bacolod, Province of Occidental Negros; one judge, in the municipality of Dumaguete, Province of Oriental Negros.

For the Thirteenth Judicial District, the judge of first branch of the Court of First Instance of Samar shall be stationed in the municipality of Catbalogan, Province of Samar; the judge of the second branch, in

del mismo Juzgado en que estaba pendiente el asunto y tenía jurisdicción para reconsiderar la resolución dictada por el Juez Paredes, a quien sustituyó, de la misma manera y en la misma extensión en que éste hubiera podido hacerlo, si no hubiese sido trasladado a otro Juzgado y hubiese seguido siendo Juez del Juzgado de Primera Instancia de Nueva Ecija. *Cojuangco contra Pablo y Sawit y otros*, 40 Off. Gaz., Sixth Suppl. p. 212.

A judge of first instance is not legally prevented from revoking the interlocutory order of another judge in the very litigation subsequently assigned to him for judicial action. The former is not required to hear the parties, if and when a reading of the record convinces him that the order should be revoked because improperly granted or that it should be disapproved. *Ong Su Han vs. Gutierrez David et al.* XIII Lawyers Journal, 441.

12. Effectivity of the law.

On April 16, 1923, as appears from the Official Gazette, the Secretary of Justice authorized and instructed the Honorable George R. Harvey, Judge of First Instance of the Ninth Judicial District, to hold a special term of court in the City of Baguio, Mountain Province, beginning May 2, 1923. (Administrative Order No. 43, 21 Off. Gaz., p. 893.) Acting under the authority granted by the order of the Secretary of Justice, Judge Harvey proceeded to hear the case of Askay vs. Cosalan, without protest from anyone until after an adverse decision for the plaintiff and until after Judge Harvey had left the district.

The point which plaintiff now presses is that Act No. 3107, amendatory of section 155 of the Administrative Code, which authorizes a Judge of First Instance to be detailed by the Secretary of Justice to temporary duty, for a period which shall in no case exceed six months, (now three months) in a district or province other than his own, for the purpose of trying all kinds of cases, excepting criminal and election cases, was not in force until fifteen days after the completion of the publication of the statute in the Official Gazette, or not until August 3, 1923. Plaintiff relies on section 11 of the Administrative Code, which in part reads: "A statute passed by the Philippine Legislature shall, *in the absence of special provision*, take effect at the beginning of the fifteenth day after the completion of the publication of the statute in the Official Gazette, the date of issue being excluded."

Now turning to Act No. 3107, its final section provides that "this act shall take effect on its approval." The Act was approved on March 17, 1923. Obviously, therefore, there being a special provision in Act No. 3107, it applies to the exclusion of the general provision contained in the Administrative Code.

Recalling, therefore, that Act No. 3107 went into effect on March 17, 1923, and that it was subsequent thereto, on April 16, 1923, that Judge Harvey was authorized to hold court at Baguio, beginning with May 2, 1923, appellant's argument along this line is found to be without persuasive merit. *Askay vs. Cosalan*, 46 Phil. 179.

13. Certiorari.

Where a decision of a judge assigned to temporary duty is held null and void by another judge, certiorari is the appropriate remedy. *Delfino vs. Paredes and Vargas*, 48 Phil. 645.

Sec. 52. *Permanent Stations of District Judges.* — The permanent station of judges of the Sixth Judicial District shall be in the City of Manila.

In other judicial districts, the permanent stations of the Judges shall be as follows:

For the First Judicial District, the judge of the first branch of the Court of First Instance of Cagayan shall be stationed in the municipality of Tuguegarao, same province; the judge of the second branch, in the municipality of Aparri, same province; one judge shall be stationed in the municipality of Ilagan, Province of Isabela; and another judge, in the municipality of Bayombong, Province of Nueva Viscaya.

For the Second Judicial District, one judge shall be stationed in the municipality of Laoag, Province of Ilocos Norte; one judge, in the municipality of Vigan, Province of Ilocos Sur; one judge, in the City of Baguio, Mountain Province; and one judge, in the municipality of San Fernando, Province of La Union.

For the Third Judicial District, one judge shall be stationed in the municipality of Lingayen, Province of Pangasinan, one judge shall be stationed in the City of Dagupan, same province; and one judge in the municipality of Iba, Province of Zambales, and one in the municipality of Tayug.

For the Fourth Judicial District, two judges shall be stationed in the municipality of Cabanatuan, Province of Nueva Ecija, and one judge in the municipality of Tarlac, Province of Tarlac.

For the Fifth Judicial District, two judges shall be stationed in the municipality of San Fernando, Province of Pampanga; and two judges, in the municipality of Malolos, Province of Bulacan.

For the Seventh Judicial District, the judge of the first branch of the Court of First Instance of Rizal shall be stationed in the municipality of Pasig, same province; that of the second branch, in Rizal City; and that of the third branch, in Quezon City; and two judges, in the City of Cavite, Province of Cavite.

For the Eighth Judicial District, two judges shall be stationed in the municipality of Santa Cruz, Province of Laguna; the judge of the first branch of the Court of First Instance of Batangas shall be stationed in the municipality of Batangas, and that of the second branch in the City of Lipa, same province; and one judge, in the municipality of Calapan, Province of Mindoro.

For the Ninth Judicial District, the three judges shall be stationed in the municipality of Lucena, Province of Quezon.

For the Tenth Judicial District, two judges shall be stationed in the municipality of Naga, Province of Camarines Sur; one judge, in the municipality of Legaspi, Province of Albay; one judge, in the municipality of Sorsogon, Province of Sorsogon; and one judge, in the municipality of Masbate, Province of Masbate.

For the Eleventh Judicial District, one judge shall be stationed in the municipality of Capiz and one in the municipality of Calivo, Province of Capiz; and three judges, in the City of Iloilo, Province of Iloilo.

For the Twelfth Judicial District, three judges shall be stationed in the City of Bacolod, Province of Occidental Negros; one judge, in the municipality of Dumaguete, Province of Oriental Negros.

For the Thirteenth Judicial District, the judge of first branch of the Court of First Instance of Samar shall be stationed in the municipality of Catbalogan, Province of Samar; the judge of the second branch, in

the municipality of Borongan, same province; and the judge of the third branch, in the municipality of Laoang, same province; the judge of the first branch of the Court of First Instance of Leyte shall be stationed in the municipality of Tacloban, Province of Leyte; the judge of the second branch, in the municipality of Maasin and the City of Ormoc, same province; and the judge of the third branch, in the municipality of Baybay, same province.

For the Fourteenth Judicial District, three judges shall be stationed in the City of Cebu, Province of Cebu; and one judge, in the municipality of Tagbilaran, Province of Bohol.

For the Fifteenth Judicial District, one judge shall be stationed in the municipality of Surigao, Province of Surigao; one judge, in the municipality of Cagayan, Province of Oriental Misamis; one judge, in the municipality of Dansalan, Province of Lanao.

For the Sixteenth Judicial District, one judge shall be stationed in the City of Davao, Province of Davao; one judge, in the municipality of Cotabato, Province of Cotabato; one judge, in the municipality of Oroquieta, Province of Occidental Misamis; and one judge, in the City of Zamboanga.

SEC. 53. *Judges-at-Large and Cadastral Judges.*—In addition to the District Judges mentioned in Section forty-nine hereof there shall also be appointed eighteen Judges-at-Large and fifteen Cadastral Judges who shall not be assigned permanently to any judicial district and who shall render duty in such district or province as may from time to time, be designated by the Department Head.

NOTES

1. Authority of the Secretary of Justice to transfer cases.
2. Order transferring cases.

1. AUTHORITY OF THE SECRETARY OF JUSTICE TO TRANSFER CASES.

Upon examining the pertinent provisions of law, we discover no reason to doubt that the Secretary of Justice has lawfully exercised his administrative authority in requesting Judge Pablo to assume charge of criminal case No. 9743, with the result that the case is now lawfully pending before said judge. In the first place, the supervision over Courts of First Instance, in the administrative sense, is vested by law in the Department of Justice, which is presided over by the Secretary of Justice (Adm. Code, secs. 84, 76); and among the specific administrative powers conferred upon a department head is that of giving instructions, not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department (Adm. Code, Sec. 79 (B), as amended by sec. 2, Act No. 2803). In the second place, by another provision of the Code, it is declared that the Auxiliary Judges of First Instance shall, at the direction of the Secretary of Justice, assist any District Judge (Adm. Code, Sec. 157, as amended by sec. 1, Act No. 3107). But the Courts of First Instance are chiefly occupied with the hearing and determination of causes; and it is obvious that the assistance to be rendered by Auxiliary Judges of First Instance must consist mainly in the work of hearing and determining causes. The Secretary of Justice, under the provisions above cited, consequently has the power to authorize or direct the Auxiliary Judge to assume cognizance of, and try any particular case pending before a Judge of First Instance, when, in the opinion of the Secretary, such step is required for the "harmonious and efficient administration" of the work of the court. Whether or not such a condition exists, with respect to a particular case, as to require the exercise of this power, is a matter exclusively for the determination of the Secretary. *Rafols vs. Pablo*, 52 Phil. 375.

2. ORDER TRANSFERRING CASES.

From a copy of an order of August 18, 1928, made by Judge De la Rama — which may or may not be properly before us — we gather that in the latter part of June, 1928, Judge De la Rama, before whom the case had been pending, made an order transferring case No. 9743 to Judge Pablo, the Auxiliary Judge, but said order having been lost, the order of August 18, 1928, was made by Judge De la Rama confirming and ratifying said lost order. Whether or not any such order of transfer was actually made by Judge De la Rama we consider of no moment, since if the Secretary of Justice had authority to direct the transfer of the case to the Auxiliary Judge, and the latter has in fact assumed cognizance of the case, even without the participation of Judge De la Rama, no order of transfer by Judge De la Rama would be necessary. The assumption of jurisdiction over the case by Judge Pablo, in response to the request of the Secretary of Justice, is equivalent to a transfer by direction of the Secretary. *Ibid.*

SEC. 54. *Places and times of holding court.*—For the Sixth Judicial District, court shall be held in the City of Manila. In other districts, court shall be held at the capitals or places in which the respective judges are permanently stationed, except as hereinafter provided. Sessions of court shall be convened on all working days when there are cases ready for trial or other court business to be dispatched.

In the following districts, court shall also be held at the places and times hereinbelow specified:

First Judicial District: At Santo Domingo de Basco, Province of Batanes, on the first Tuesday of March of each year. A special term of court shall also be held once a year, in the municipalities of Ballesteros and Tuao, both of the Province of Cagayan, and at Kiangan, Subprovince of Ifugao, in the discretion of the district judge.

Second Judicial District: At Bangued, Province of Abra on the first Tuesday of January, March, June, and October of each year; at Bontoc, Mountain Province, on the first Tuesday of March, June, and November of each year; and, whenever the interests of justice so require, a special term of court shall be held at Lubuagan, Subprovince of Kalinga.

Seventh Judicial District: At Coron, Province of Palawan, on the first Monday of March and August of each year; at Cuyo, same province, on the second Thursday of March and August of each year; and at Puerto Princesa, same province, on the fourth Wednesday of March and August of each year.

Eighth Judicial District: The Judge shall hold special term at the municipalities of Lubang, Mambonao and San Jose, Province of Mindoro, once every year, as

may be determined by him; at Boac, Province of Marinduque, on the first Tuesday of March, July, September and December of each year.

Ninth Judicial District: At Infanta, Province of Quezon, for the municipalities of Infanta, Casiguran, Baler and Polillo, on the first Tuesday of June of each year; at Daet, Camarines Norte, terms of court shall be held at least six times a year on the dates to be fixed by the district judge.

Tenth Judicial District: At Virac, Province of Catanduanes, on the first Tuesday of March and September of each year; at Romblon, Province of Romblon, on the first Tuesday of January, June, and October of each year; and at Badajos, same province, on the third Tuesday of January, June, and October of each year.

Eleventh Judicial District: At San Jose, Province of Antique, on the first Tuesday of February, June and October of each year; and at Culasi, same province, on the first Tuesday of December of each year.

Twelfth Judicial District: At Larena, Subprovince of Siquijor, on the first Tuesday of August of each year.

Thirteenth Judicial District: The first branch, at Calbayog, Province of Samar, on the first Tuesday of September of each year; and Basey, same province, on the first Tuesday of January of each year; and the second branch, at Oras, same province, on the first Tuesday of July of each year, and the first Tuesday of October of each year in Guiwan; and the third branch, at Catarman, same province, on the first Tuesday of October of each year.

Fifteenth Judical District: At Cantilan, Province of Surigao, on the first Tuesday of August of each year, at Butuan, Province of Agusan, on the first Tuesday of March and October of each year; a special term of court shall also be held once a year in either the municipality of Tandag or the municipality of Hinatuan, Province of Surigao, in the discretion of the district judge; at Mambajao, Province of Oriental Misamis, on the first Tuesday of March of each year. A special term of court shall, likewise, be held, once a year, either in the municipality of Talisayan or in the municipality of Gingoog, Province of Oriental Misamis, in the discretion of the district judge; at Iligan, Province of Lanao, on the first Tuesday of March and October of each year.

Sixteenth Judicial District: At Dipolog, Province of Zamboanga, terms of court shall be held at least three times a year on dates to be fixed by the district judge; at Pagadian, same province, for the municipalities of Pagadian, Margosatubig and Kabasalan, at least once a year; at Jolo, Province of Sulu, terms of court shall be held at least four times a year on dates to be fixed by the district judge; at Baganga and Mati, Province of Davao, and at Glan, Province of Cotabato, terms of court shall be held at least once a year on the dates to be fixed by the district judge.

Notwithstanding the provisions of this section, whenever weather conditions, the condition of the roads or means of transportation, the number of cases or the interest of the administration of justice require it, the Secretary of Justice may advance or postpone the term of court or transfer the place of holding the same to another municipality within the same judicial district; and, in the land registration cases, to any other place more convenient to the parties.

NOTES

1. Place of holding court.
2. Holding sessions in different places.
3. Session held at a time not authorized by law.
4. Mandamus.
5. Powers of court after expiration of term.

1. PLACE OF HOLDING COURT.

To constitute a court there must be a place appointed by law for the administration of justice, and courts must be held at the place provided by law and may not be lawfully held elsewhere. *14 Am. Jur. 269.*

According to a view taken by some of the courts, to hold court and proceed with the trial of cases at a place other than that prescribed by law renders the proceedings absolutely void so as to be the subject of collateral attack. On the other hand, aside from the many cases holding that not even reversible error results under the circumstances enumerated therein, it has been held that the proceedings are not so absolutely void as to be the subject of collateral attack, however irregular they may have been. *Ibid, 269.*

2. HOLDING SESSIONS IN DIFFERENT PLACES.

The respondent Fiscal also alleges that, pursuant to section 161 of the Revised Administrative Code, as recently amended, the criminal case against the petitioner should have been set for trial during the month of September, 1936, in the municipality of Calbayog, because the sessions of the court in said municipality are held on the second Tuesday of said month every year. This defense is without merit because, according to said section, the Court of First Instance of Samar holds sessions in other months in different municipalities, and in Catbalogan, the capital, on the first Tuesday of the months of June and November of each year. There should not have been any obstacle to the trial of the case at the capital when in fact the trials set for August 21, 1936, June 21, and August 21, 1936, were to be held at Catbalogan. On the other hand, the fact that there was but one session at Catbalogan each year should have influenced the definitive holding of the first trial set. Lastly, there was no reason to insist that the case be tried at Calbayog, because it appears that the accused never invoked such right but, on the contrary, he asked that the same be tried at Catbalogan. *Kalaw vs. Apostol, et al.,* 38 Off. Gaz. 464, 64 Phil. 852.

According to section 154 of the Revised Administrative Code, as amended by section 2 of Commonwealth Act No. 145, the judge which took cognizance of said protest has his permanent residence in the province of Cagayan, the capital of which is Tuguegarao. Section 161 of said Code, as amended by section 4 of Act No. 145, provides that the Court of First Instance of Cagayan shall hold session in April yearly on the first Tuesday of January. Except during this period the court shall divide its time for holding sessions between the other places fixed by law, including the capital of the province. Had the court postponed the trial of February 15th for the purpose of holding it in Aparri on March 22, 1938, it would have disregarded the law and employed part of its time for holding sessions in the capital and in the municipalities of Abulog and Tuao. This was undoubtedly the other reason which the trial court took into consideration in denying the postponement of the trial and holding the same in Aparri. When the case was called for hearing for the first time on February 15, 1938 the ballot boxes in pre-

cinct No. 4 were opened and the commissioners for the revision of votes were appointed, one of them being an attorney for the petitioner, said attorney being notified that the hearing would be continued on the 22nd day of the next month and that then the parties would present all the evidence they desire to present. On election cases the parties and their attorneys should cooperate with the court in the prompt disposal of the same because the law directs that said cases be decided within one year. If the petitioner and his attorney desired to cooperate with the court they would have brought along their witnesses to Tuguegarao, or had they wished to save expenses, they would have taken the deposition of said witnesses for presentation at the trial. *Rosal vs. Foronda et al*, 38 Off. Gaz. 3214.

3. Session held at a time not authorized by law.

It is essential to jurisdiction that a court be held at a time authorized by law, and that were a court is held at an unauthorized time, all proceedings therein are void, the express consent of the parties cannot confer jurisdiction upon the court. *14 Am. Jur. 264.*

4. Mandamus.

If a judge captiously refuses to hold court at a time prescribed by law, a writ of mandamus will issue, if a proper application is made by the aggrieved party at a proper time, where it appears that great injury will result from the refusal of the judge and there is no other adequate specific remedy afforded the party aggrieved. *Ibid, 264.*

5. Powers of court after expiration of term.

The theory of the common law of England, that the court could only act within a term, has been entirely abolished by the provisions of section 53 of Act No. 136, which provides that "Courts of First Instance shall be always open, legal holidays and nonjudicial days excepted." At the common law, nothing can be done outside of the term unless the statute authorizes it. Under our law anything can be done outside of the term unless the statute prohibits it. *Gomez Garcia vs. Hipolito et al.*, 2 Phil. 732.

Sec. 55. *Duty of Judges to hold court at permanent station.* — Judges shall hold court at the place of their permanent station, in the case of District Judges, and at the place wherein they may be detailed, in the case of Judges-at-large and Cadastral Judges, not only during the period herein above fixed but also at any other time when there are cases ready for trial or other court business to be dispatched, if he is not engaged elsewhere.

Notes

1. Place for holding sessions.
2. Purpose of the law in fixing place of holding court.
3. Transfer of trial.

1. Place for holding sessions.

Constitutional and valid statutory provisions designating the place for holding court or terms or sessions thereof will be accorded effect, they being mandatory and exclusive of other places; and where the place is so fixed the court cannot lawfully be held at any other place. Proceedings at an unauthorized place are usually held to be void, unless, as is permissible in some, although not other, jurisdictions, the parties consent to the holding of a session in a place other than that appointed. It has been held, however, that under such circumstances the proceedings are not void, the court being a de facto one, or that the proceedings are not absolutely void so as to be vulnerable to collateral attack, especially where the only thing done by the court at an unauthorized place is the hearing of testimony, the remainder of the proceedings being taken at the proper place. *21 C. J. S. 253.*

Court cannot assume vagrant character and hold its sessions at places other than those provided by law. *State v. Canal Const. Co.*, 203 S.W. 704, 134 Ark. 447.

Courts can only exercise their jurisdiction at place fixed by statute or rules of court authorized by statute. *Rouff v. Boyd*, Tex. Civ. App., 16 S. W. 2d 403.

To constitute a court there must be a place appointed by law for the administration of justice, and courts must be held at the place provided by law and may not be lawfully held elsewhere. *14 Am. Jur. 269.*

2. Purpose of the law in fixing place of holding court.

The object of the rule requiring courts to be held at places fixed by law is to obtain certainty and to prevent a failure of justice by reason of parties concerned or affected not knowing the place of holding courts. *Ibid, 270.*

3. Transfer of trial.

A judge has no authority to adjourn the trial to his chambers in another county; and, where the trial is partially had in the latter county, the error is not cured by adjournment the proceedings back to the county in which the trial was started for further trial and decision. *Gould v. Bennett*, 49 How. Pr., N.Y. 57.

Sec. 56. *Special terms of court.* — When so directed by the Department Head, District Judges, Judges-at-large and Cadastral Judges shall hold special terms of court at any time or in any municipality in their respective districts for the transaction of any judicial business.

Notes

1. Taking proof in place not appointed for holding court.

1. Taking proof in place not appointed for holding court.

When it was understood that the testimony of these numerous voters from the first precinct of Bustos would be presented in court, the trial judge, at the request of the contestee and over the objection of the contestant, appointed a date for the taking of their testimony in the municipality of Bustos, of which both parties had due notice; and upon that date his Honor went to that municipality and a great number of said witnesses were there examined. It is now assigned as error that the action of the judge in repairing to the municipality of Bustos was unauthorized and that the judicial acts there done are devoid of legal effect. For this reason the appellant would have us declare that the testimony thus taken cannot be used in this case. This position is in our opinion not well taken. It is true that there is no provision of law directly authorizing a court to repair to a place other than that where the court sits for the purpose of taking the testimony of witnesses, though there is a provision under which the Secretary of Justice may direct a special session of court to be held in any municipality. (Sec. 163, Adm. Code.) It is to be borne in mind, however, that the session of court which was thus held in the municipality of Bustos was held for exclusive purpose of taking the testimony of witnesses and it was held during the probatory term, before the cause was submitted for argument or judicial determination. Under these circumstances the trial judge must be considered to have been acting somewhat in the character of a commissioner to take a deposition; and as it does not appear that he abused his discretion in going to the municipality of Bustos for this purpose the irregularity in so doing was not vital. *Valenzuela vs. Carlos and Lopez de Jesus*, 42 Phil. 428.

Sec. 57. *Authority of District Judge to define territory appurtenant to courts.* — Where court is appointed to be held at more than one place in a district, the District Judge may, with the approval of the Department Head, define the territory over which the

court held at a particular place shall exercise its authority, and cases arising in the territory thus defined shall be triable at such court accordingly. The power herein granted shall be exercised with a view to making the courts readily accessible to the people of the different parts of the district and with a view to making the attendance of litigants and witnesses as inexpensive as possible.

SEC. 58. *Hours of daily sessions of the courts.* — The hours for the daily session of Courts of First Instance shall be from nine to twelve in the morning, and from three to five in the afternoon, except on Saturdays, when a morning session only shall be required; but the judge may extend the hours of session whenever in his judgment it is proper to do so. The judge holding any court may also, in his discretion, order that but one session per day shall be held instead of two, at such hours as he may deem expedient for the convenience both of the court and the public; but the number of hours that the court shall be in session per day shall be not less than five.

NOTES

1. Length of sessions.
2. Simultaneous sessions.
3. Shortening or prolonging sessions.
4. Night session.
5. Duty of judge.
6. Consequences of congested dockets.

1. LENGTH OF SESSIONS.

Sometimes the hours of convening court and the length of the sessions are regarded as matters necessarily in the discretion of the trial judge. However, it is improper for the trial judge to limit sessions to such short periods, such as ten minutes each, as to prevent the prompt dispatch of judicial business and prolong a particular trial for a period of more than two months and compel counsel, litigants, and witnesses to attend court on a great many different days. *21 C. J. S. 250.*

2. SIMULTANEOUS SESSIONS.

Where a court has a more than one judge, simultaneous sessions may sometimes, under constitutional or statutory authority, be held by the different judges. Under such authority there may be at the same time as many sessions in a single county as there are judges therein, including not only resident judges but also judges assigned to the county and those acting pro tempore. Even in the absence of statutory authority, it has been considered that the holding of simultaneous sessions, while an irregularity, does not render the proceedings at one of such sessions void as to a party who actually participated in a trial thereat. Indeed, there would be little or no advantage in having two or more judges if simultaneous sessions could not be held. *21 C. J. S. 251.*

3. SHORTENING OR PROLONGING SESSIONS.

Where the duration of sessions is fixed by constitution or statute, the court has no power to shorten them, although it may prolong or extend them. *Ibid.*

4. NIGHT SESSION.

Holding of night sessions of court is a matter resting in the discretion of the trial judge, and a court of review will not interfere unless it clearly appears that there has been an abuse of the judge's power and that injustice has been done. Sufficient notice of a night session is given by an announcement thereof in open court. *Ibid, 250.*

5. DUTY OF JUDGE.

A judge should display that interest in his office which stops not at the minimum of the day's labors fixed by law, and which ceases not at the expiration of official sessions, but which proceeds diligently on holidays and by artificial light and even into vacation periods. *In re Impeachment of Flordeliza,* 41 Phil. 608.

6. CONSEQUENCES OF CONGESTED DOCKETS.

Congested conditions of court dockets is deplorable and intolerable. It can have no other result than the loss of evidence, the abandonment of cases, and the denial and frequent defeat of justice. It lowers the standards of the courts, and brings them into disrepute. *Ibid.*

SEC. 59. *Clerk's duty to attend session and keep office hours.* — Clerks of court shall be in attendance during the hours of session; and when not so in attendance upon the court they shall keep the same office hours as are prescribed for other Government employees.

SEC. 60. *Division of business among branches of court of Sixth District.* — In the court of First Instance of the Sixth District all business shall be equitably distributed among the judges of the ten branches in such manner as shall be agreed upon by the judges themselves.

The District Judge of the Sixth Judicial District who acts as executive judge thereof shall have supervision over the General Land Registration Office.

Nothing contained in this section and in section sixty-two shall be construed to prevent the temporary designation of judges to act in this district in accordance with section fifty.

NOTES

1. Judicial functions not denied.
2. Proceedings separate and independent.
3. Jurisdiction not conferred by the division and distribution of cases.
4. Effect of failure to apportion business.
5. Party has no right that his case be tried by particular judge.
6. Practice not commended.
7. Cases of particular nature.

1. JUDICIAL FUNCTIONS NOT DENIED.

Since the district court is a court of general jurisdiction, the mere division of judicial duties by agreement of the judges does not in itself deny judicial functions to any judge of that court. *Foley v. Utterback,* 195 N.W. 721, 196 Iowa 956.

2. PROCEEDINGS SEPARATE AND INDEPENDENT.

The proceedings in the various branches of a court must be separate and independent in so far as the trial of causes is concerned. *21 C.J.S. 212.*

3. JURISDICTION NOT CONFERRED BY THE DIVISION AND DISTRIBUTION OF CASES.

El reparto o distribución de causas que de tiempo en tiempo se hace entre los jueces de primera instancia de Manila, mediante acuerdo de los mismos, no es lo que confiere jurisdicción al Juez que conoce y falla una causa en dicho Juzgado. La jurisdicción para conocer y decidir un asunto civil, se confiere al Juzgado, y se determina por la ley, y se adquiere mediante una demanda y el debido emplazamiento al demandado. Teniendo en cuenta estos principios legales, y el hecho de que el demandado fué emplazado de la demanda y compareció y asistió a todas las vistas de esta causa, la jurisdicción del Juzgado de Primera Instancia, ejercida por el Juez S, debidamente nombrado y cualificado para actuar en dicha causa, no puede ponerse en tela de juicio. *Ruiz contra Topacio,* 40 Off. Gaz. Eighth Suppl., p. 201.

4. EFFECT OF FAILURE TO APPORTION BUSINESS.

The failure of the judges to apportion the labor of holding the courts among themselves and to issue an order specifying the terms

to be held by each judge, as required by statute, will not invalidate an indictment found and returned at a term held by one of them in his district. *30 Am. Jur. 746.*

5. PARTY HAS NO RIGHT THAT HIS CASE BE TRIED BY PARTICULAR JUDGE.

Where there are several judges of the same court whose jurisdiction is co-ordinate, litigants have no vested right to try their cases before one of them in preference to another, unless the judge before whom a cause is pending is disqualified on some statutory ground. *Ibid, 745.*

Litigants have the right to have their cases tried before a court held by a judge duly chosen to discharge the judicial functions of the court, but they have no right to have their cases tried before any particular judge. *48 C.J.S. 1008.*

Cases are assigned to the various divisions or departments as provided by statute or rule of court, and a litigant has no inherent right to have a case tried by a particular division or judge. *Ibid., 210.*

6. PRACTICE NOT COMMENDED.

The practice of attempting to maneuver a cause before a particular judge is not commended. *Hilton vs. Mack,* 15 N.Y.S. 2d 187, 257 App. Div. 709.

7. CASES OF PARTICULAR NATURE.

Cases of a particular nature should be assigned to the department designated by statute or rule of court for that type of case, but jurisdiction is not dependent on a proper assignment and an irregularity in an assignment presents no question of jurisdiction in the ordinary sense of a timely objection thereto. An assignment of the first of several identical suits will carry all the others to the same division of the court. *21 C.J.S. 211.*

SEC. 61. *Authority of Court of First Instance of the Sixth Judicial District over administration of its own affairs.*—The Court of First Instance of the Sixth Judicial District shall have the administrative control of all matters affecting the internal operations of the court. This administrative control shall be exercised by the court itself through the clerk of the court. In administrative matters, the clerk of the court shall be under the direction of the court itself. The personnel of the office of the clerk of the Court of First Instance of the Sixth Judicial District shall consist of such officers and employees as may be provided by law. The subordinate employees of said office shall be appointed by the Secretary of Justice upon recommendation of the Chief of the office, the clerk of the court. The said clerk of the court shall receive an annual salary of five thousand one hundred pesos, and with all the employees of his office shall belong, for all purposes, to the Court of First Instance of the Sixth Judicial District.

NOTES

1. Necessity of court attendants.
2. Administrative officer.
3. Control over officers.
4. Delegation of power.
5. Repeated recommendations not necessary.

1. NECESSITY OF COURT ATTENDANTS.

To perform the functions of a court, the presence of the officers constituting the court is necessary. In addition to the judge, or judges, the essential feature of all courts, and, in the case of courts of records, a recording officer, variously known as a "clerk," "prothonotary," or "register," numerous other officers are usually necessary to the existence of a court and the proper transaction of its business. *14 Am. Jur. 261.*

Court attendants are a necessary adjunct to the due and orderly administration of the business of a court. *21 C. J. S. 218.*

Court of general jurisdiction, of record, or of last resort, possesses the inherent power to provide the necessary attendants and assistants as a means of conducting its business with reasonable dispatch, or to provide for assistants charged with the care of its rooms or other like functions, and the court itself may determine the necessity. *Ibid, 219.*

2. ADMINISTRATIVE OFFICER.

The trial judge is an administrative as well as a judicial officer. *Hanson v. Johnson,* 23 P. 2d 333, 143 Or. 532.

Attendants and assistants must act in accordance with the judge's direction, regardless of the instructions of any other person. *21 C. J. S. 221.*

3. CONTROL OVER OFFICERS.

A court has control over its own officers, and has power to protect itself or its members from being disturbed in the exercise of their functions. *14 Am. Jur. 371.*

4. DELEGATION OF POWER.

Many executive or administrative acts performed by judicial officers and many judicial acts performed by ministerial officers are and must be held valid. *Ibid, 392.*

Functions which are essentially executive and administrative in character cannot be delegated to the judiciary. *Ibid, 259.*

5. REPEATED RECOMMENDATIONS NOT NECESSARY.

Judges authorized to recommend court attendants for appointment by county officer need not recommend names to each incoming officer, but the latter mush continue the attendant's names on payroll until attendant is removed. *Hansman v. Thomas,* 234 N. Y. S. 581, 134 Misc. 75.

SEC. 62. *Appointment and qualifications of clerks.*—The clerk and deputy clerk of the Sixth judicial District shall be appointed by the President of the Philippines upon the recommendation of the Secretary of Justice, with the consent of the Commission on Appointments. No person shall be eligible for appointment to either of these positions unless he is duly authorized to practice law in the Philippines.

NOTES

1. Women eligible.
2. Oath of office.

1. WOMEN ELIGIBLE.

If, under the local laws, women are eligible to hold public ministerial offices generally, and there is no express constitutional or statutory provision requiring the clerk of court to be a male, women are eligible to that office even though the word "his" may be used in the statutes referring to the qualification of clerks of the court. *10 Am. Jur. 943.*

2. OATH OF OFFICE.

A legally appointed or elected clerk is not legally qualified until he has taken the oaths prescribed. *10 Am. Jur. 543.*

SEC. 63. *Interchange of Judges.*—The judges of the several branches of the Court of First Instance for the Sixth District may, for their own convenience or the more expeditious accomplishment of business, sit, by interchange, by mutual agreement or by order of the Department Head, in other branches than those to which they severally pertain; and any action or proceeding in one branch may be sent to another branch for trial or determination.

NOTES

1. Judge of one branch may hear case of another branch.
2. Transfer of cases from one branch to another.
3. Request for trial by another judge.
4. Setting aside continuance granted by another judge.

1. JUDGE OF ONE BRANCH MAY HEAR CASE OF ANOTHER BRANCH.

A judge of one branch or department may hear and determine, a cause pending in another department, or make orders in connection therewith, where a necessity therefor arises. *21 C. J. S. 213.*

2. TRANSFER OF CASES FROM ONE BRANCH TO ANOTHER.

A case originally assigned to one division or department may be transferred to another, without notice, unless notice is required by statute, but such transfer does not affect previous orders in the case made in the department to which it then belonged, nor is the jurisdiction of one department affected by the fact that preliminary orders were made in another department. The transfer of a case from one division to another is not a transfer of jurisdiction from one court to another. In accordance with statutory provisions or rules of court, the transfer may be by a judge on his own motion, or it may be by agreement of the judges. The division or judge to whom a case is transferred or reassigned alone has jurisdiction of the case thereafter, except as to matters which have been taken under advisement prior to transfer, and may render judgment. *Ibid.*

3. REQUEST FOR TRIAL BY ANOTHER JUDGE.

Where a case was assigned to a division of the circuit court, the request of the judge of that division that a judge of another division hear the case was held valid and not in violation of the general rule that the division to which a case is assigned has exclusive jurisdiction. *Hargadine-McKittrick Dry Goods Co. v. Garesche,* Mo. 227 S. W. 824.

The authority for the request of one circuit judge that another judge of the same court sit for him being shown, the reason therefor need not be stated in the request. *Ibid.*

4. SETTING ASIDE CONTINUANCE GRANTED BY ANOTHER JUDGE.

A judge to whom a case is regularly assigned for trial has authority in the exercise of his discretion to set aside a continuance granted by another judge and reset the case for trial. *Morris v. McElroy,* 122 So. 608, 219 Ala. 369, denying certiorari 122 So. 606, 23 Ala. App. 96.

SEC. 64. *Convocation of Judges for assistance of Judge hearing land registration matters.* — In matters of special difficulty connected with the registration of land, any judge of the Sixth District concerned may, when he deems such course advisable or necessary, convoke the other nine judges of said court for the purpose of obtaining their advice and assistance. In such case the issue or issues to be decided shall be framed in writing by the said judge and shall be propounded for determination in joint session, with not fewer than three judges present. In case of a tie upon any issue, that view shall prevail which is maintained by the judge hearing the matter.

SEC. 65. *Vacation of Courts of First Instance.* — The yearly vacation of Courts of First Instance shall begin with the first of April and close with the first of June of each year.

NOTES

1. Vacation, defined.
2. Term, defined.
3. Actions.
4. Court shall always be open.

1. VACATION, DEFINED.

A vacation has been defined as "all the time between the end of one term and the beginning of another," and also as "the intermission of judicial proceedings; the recess of courts; the time during which courts are not held." *14 Am. Jur. 269.*

2. TERM, DEFINED.

A term has been defined as "the space of time during which a court holds a session." *Ibid, 265.*

3. ACTIONS.

Actions may be instituted at any time, whether during the session or in vacation of the court. *21 C.J.S. 259.*

4. COURT SHALL ALWAYS BE OPEN.

A statute providing that courts shall always be open for certain purposes does not repeal statutes conferring on judges certain powers to be exercised in vacation or at chambers. *48 C.J.S. 1012.*

SEC. 66. *Assignment of Judges to vacation duty.* — During the month of January of each year the Department Head shall issue an order naming the judges who are to remain on duty during the court vacation of that year; and consistently with the requirements of the judicial service, the assignments shall be so made that no judge shall be assigned to vacation duty, unless upon his own request, with greater frequency than once in three years.

Such order shall specify, in the case of each judge assigned to vacation duty, the territory over which in addition to his own district his authority as vacation judge shall extend, and the assignments shall be so arranged that provision will be made for the exercise of interlocutory jurisdiction, during vacation, in all parts of the Islands.

At least one judge shall always be assigned for vacation duty in the Sixth Judicial District.

The Department Head may from time to time modify his order assigning the judges to vacation duty as newly arising conditions or emergencies may require.

A judge assigned to vacation duty shall not ordinarily be required to hold court during such vacation; but the Department Head may, when in his judgment the emergency shall require, direct any judge assigned to vacation duty to hold during the vacation a special term of court in any district.

NOTES

1. Effect and validity of acts.
2. Power of vacation judge.

1. EFFECT AND VALIDITY OF ACTS.

If a judge otherwise has jurisdiction, and is empowered to act at chambers or in vacation, his acts, in such instances, are as binding as if he were sitting as a court. When properly authorized to act in vacation, an act in vacation is considered as done in term; it has been considered as though made at a term subsequent to the last adjourned term. While it has been held that any act of a judicial nature, except such as may be specifically authorized, done in vacation or out of court are absolutely void, it has also been held

that, when the court has jurisdiction of the suit and of the parties, the proceedings and orders of a judge in vacation are not void and cannot be collaterally attacked. *48 C.J.S. 1014.*

2. Power of vacation judge.

It has been broadly held that a judge at chambers has power to do everything to promote and speed justice to the parties except conduct an actual trial on the merits. *Ibid, 1013.*

The authority of judges in vacation is limited by implication to the matters mentioned in a statutory grant of authority. *30 Am. Jur. 748.*

A judge sitting at chambers or in vacation is not the court, and has no power to make an order which a statute requires to be made by the court. *Ibid.*

A judge having been transferred to another judicial district without having decided a case he had tried, the vacation judge, acting by designation of the Secretary of Justice in the district in which the case is pending, has jurisdiction to decide it. *Roa vs. Director of Lands,* 23 Off. Gaz. 169.

The judges of first instance have power to render and sign judgment after proper trial and after hearing both parties and their attorneys in the respective province, even during vacation, provided that the judge writing the same signs it within the jurisdiction of the Philippine Islands. *Cordovero vs. Villaruz,* 23 Off. Gaz. 1419.

Sec. 67. *Proceedings for removal of judges.* — No District Judge, Judge-at-large or Cadastral Judge shall be separated or removed from office by the President of the Philippines unless sufficient cause shall exist, in the judgment of the Supreme Court, involving serious misconduct or inefficiency, for the removal of said judge from office after the proper proceedings. The Supreme Court of the Philippines is authorized, upon its own motion, or upon information of the Secretary of Justice to conduct an inquiry into the official or personal conduct of any judge appointed under the provisions of this law, and to adopt such rules of procedure in that regard as it may deem proper; and, after such judge shall have been heard in his own defense, the Supreme Court may recommend his removal to the President of the Philippines, who, if he deems that the public interests will be subserved thereby, shall thereupon make the appropriate order for such removal.

The President of the Philippines, upon recommendation of the Supreme Court, may temporarily suspend a judge pending proceedings under this section. In case the judge suspended is acquitted of the cause or causes that gave rise to the investigation, the President of the Philippines shall order the payment to him of the salary, or part thereof, which he did not receive during his suspension, from any available funds for expenses of the judiciary.

The cost and expenses incident to such investigations shall be paid from the funds appropriated for contingent expenses of the judiciary, upon vouchers approved by the Chief Justice of the Supreme Court.

Notes

1. Nature of impeachment proceedings.
2. Grounds for removal.
3. Partiality and negligence.
4. Wilful and intentional wrong-doing.
5. Misconduct.
6. Erroneous decision.
7. Conviction of crime.
8. Accumulated cases.
9. Procedure for impeachment.
10. Evidence.
11. Good faith a defense.
12. Suspension.

1. Nature of impeachment proceedings.

Impeachment proceedings before courts have been said, in other jurisdictions, to be in their nature highly penal in character and to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt. (State *ex rel.* Attorney-General vs. Hasty (1913), 184 Ala., 121; State vs. Hastings (1893), 37 Neb., 96.) *In re Impeachment of Horilleno,* 43 Phil. 212.

Impeachment proceedings are in their nature highly penal in character, and are governed by the rules of law applicable to criminal cases. The charges must therefore be proved beyond a reasonable doubt. *Ibid, Elordeliza,* 44 Phil. 608.

While under some constitutional and statutory provisions it has been held that proceedings for the removal of certain judges under statutory provisions are not criminal in their nature, but are considered special proceedings, and are not governed by rules which obtain in criminal proceedings, under other provisions it has also been held that an impeachment proceeding is of a judicial, and criminal nature and governed by the rules applicable to criminal cases. *48 C.J.S. 979.*

Proceedings for the removal of judges is in its nature highly penal, and is governed by rules of law applicable to criminal prosecutions. *30 Am. Jur. 736.*

2. Grounds for removal.

The grounds for removal of a judge of first instance under Philippine law are two: (1) Serious misconduct and (2) inefficiency. The latter ground is not involved in these proceedings. As to the first, the law provides that "sufficient cause" must exist in the judgment of the Supreme Court involving "serious misconduct." The adjective is "serious"; that is, important, weighty, momentous, and not trifling. The noun is "misconduct;" that is, a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The word "misconduct" implies a wrongful intention and not a mere error of judgment. For serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules. (Lawlor vs. People (1874), 74 Ill., 228; Citizens' Insurance Co. vs. Marsh (1861), 41 Pa., 386; Miller vs. Roby (1880), 9 Neb., 471; Smith vs. Cutler (1883), 10 Wend. (N.Y.), 590; U.S. vs. Warner (1848), 28 Fed. Cas. No. 166643; In re Tighe (1904), 89 N.Y. Supp., 719.) *In re Impeachment of Horrilleno,* 43 Phil. 212.

Among the common grounds for removal are wilful neglect of duty, corruption in office, intemperance to such an extent as unfits him for the discharge of the duties of his office, incompetency, the commission of any offense involving moral turpitude while in office or under color thereof, conviction of a felony or of a misdemeanor involving official misconduct. *30 Am. Jur. 736.*

Particular grounds which have been held to be sufficient to justify removal under the various constitutions and statutes include cause, abandonment of the office, intemperance, incapacity or incompetency, engaging in prohibited business or occupation, acceptance of inconsistent employment, and a lack of one more of the qualifications required to hold the office, such as that the judge shall have engaged in the practice of law for a specified period. A judge cannot be removed solely to reduce judicial expenses or because of a superfluity of judges. *48 C.J.S. 976.*

3. Partiality and negligence.

We have decided to pay no particular attention to the general

charges of partiality and negligence which have been filed against Judge Flordeliza. *In re Impeachment of Flordeliza,* 44 Phil. 608.

4. Wilful and intentional wrongdoing.

As wilful and intentional wrongdoing in receiving compensation has not been demonstrated, we are not prepared to find that sufficient cause exists in our judgment involving serious misconduct or inefficiency as warrants us in recommending the removal of the respondent Judge to the Governor-General. We will take such a step if future derelictions of duty of this character recur. *In re Impeachment of Flordeliza,* 44 Phil. 608.

5. Misconduct.

One of the usual grounds for the removal of a judicial officer is that of his misconduct in office. The misconduct may be that of nonfeasance or malfeasance. In some jurisdictions it has been held that the misconduct or malfeasance must have direct relation to, and be connected with, the performance of official duties, and amount either to maladministration or to wilful and intentional neglect and failure to discharge the duties of the office; but it has also been held that gross misconduct, or conduct involving moral turpitude, will warrant removal even if such conduct is not connected with the office or does not arise out of official duties.

While, under some provisions, it is necessary that the conduct be wilful or corrupt, under others a judge is subject to removal for delinquency in the performance of the duties enjoined by law, without reference to whether or not he acts willfully and corruptly. Wilful neglect of the duties of the office may be a ground for removal. It has been held that a mere breach of good taste will not warrant removal, particularly where there is only an isolated instance thereof. *48 C.J.S. 977.*

6. Erroneous decision.

While a judicial determination or mistake based merely on errors of judgment, and without corrupt or improper motives, will not supply a ground for removal, and this may be true although such errors are numerous, a judicial act based on improper motives, and not on the desire to do justice or properly to perform the duties of the office, may be sufficient ground for removal, even though there is only a single such act. It has been held that a continuity of irregular and illegal acts may show a course of conduct justifying removal, even though a single one of such acts might possibly be considered an error. *Ibid, 976.*

7. Conviction of crime.

Other grounds for the removal of a judicial officer are his violation of, and his conviction for a violation of, the criminal law, at least where the crime involves corruption or gross immorality. In order to justify removal it has been held not to be necessary that the judge committed the crime as an official or during his term of office. Under some provisions it seems that it is not necessary that the conviction be within the state, a conviction in another state being sufficient. *Ibid.*

8. Accumulated cases.

We do find, however, that he has not displayed that interest in his office which stops not at the minimum of the day's labors fixed by law, and which ceases not at the expiration of official sessions, but which proceeds diligently on holidays and by artificial light and even into vacation periods. Only thus can he do his part in the great work of speeding up the administration of justice and of rehabilitating the judiciary in the estimation of the people. The mountain of six or seven hundred pending cases in Sorsogon could be removed by a judge of first instance of alert mind and quick decision, not afraid of work, with the aid of a helpful bar and a sympathetic government. *In re Impeachment of Flordeliza,* 44 Phil. 608.

9. Procedure for impeachment.

The procedure for the impeachment of judges of first instance has heretofore not been well defined. The Supreme Court has not as yet adopted rules of procedure, as it is authorized to do by law. In practice, it is usual for the court to require that charges made against a judge of first instance shall be presented in due form and sworn to; thereafter, to give respondent judge an opportunity to answer; thereafter, if the explanation of the respondent be deemed satisfactory, to file the charges without further annoyance for the judge; while if the charges establish a *prima facie* case, they are referred to the Attorney General who acts for the court in conducting an inquiry into the conduct of the respondent judge. On the conclusion of the Attorney-General's investigation, a hearing is had before the court *en banc* and it sits in judgment to determine if sufficient cause exists involving the serious misconduct or inefficiency of the respondent judge as warrants the court in recommending his removal to the Governor-General. *In re Impeachment of Horrilleno,* 43 Phil. 212.

10. Evidence.

Where the proceedings for the removal of a judge are judicial in nature, the general rules of evidence apply, such as the general rules governing presumptions and burden of proof and the admissibility of evidence. To be sufficient, the evidence to prove the charges against the judge must be clear and convincing. While some authorities have held that the ground for the removal of a judicial officer should be established beyond a reasonable doubt, others have held that the judge's guilt must be established by a fair preponderance of the evidence. *48 C.J.S. 980.*

The provision of law which is authority for this decision is section 173 of the Administrative Code, relating to the removal and suspension of Judges of First Instance. The grounds for removal of a judge of first instance therein provided are two: (1) serious misconduct, and (2) inefficiency. In a recent decision on the general subject of impeachment of judges of first instance, it was said that for serious misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules. *In re Impeachment of Flordeliza,* 44 Phil. 608.

Serious misconduct on the part of Judge Horrilleno has not here been proved by a preponderance of the evidence, much less beyond a reasonable doubt. The most that can be said for the charges made by complainant, would be that the judge may have been careless in the performance of his judicial duties. There is extant absolutely no proof that the respondent judge has acted partially, or maliciously, or corruptly, or arbitrarily, or oppressively. On the contrary, the testimony of the most prominent citizens of Mindanao and Sulu including the Sultan of Sulu, Senator Hadji Butu, Datu Ussman, Governor Charles M. Moore, and practically the entire bar of Zamboanga, Jolo, and Davao is unanimously in favor of the excellent reputation of Judge Horrilleno. Sufficient of the cases tried by Judge Horrilleno have been elevated to this court for all of us to have become conscious of the careful performance of his onerous and responsible duties, and familiar with the excellent quality of his judicial output. We would be remiss ourselves if, knowing of the publicity which has been given to the attacks on the good name of Judge Horrilleno, we should not as publicly announce our faith in his judicial character. Judge Horrilleno justly merits and is granted complete exoneration.

It results that in the judgment of the Supreme Court of the Philippine Islands, sufficient cause does not exist involving serious misconduct or inefficiency on the part of Honorable Antonio Horrilleno, judge of First Instance of the Twenty-sixth Judicial District, as justifies the court in recommending his removal to the Governor-General. *In re Impeachment of Horrilleno,* 43 Phil. 212.

11. Good faith a defense.

That we do not adopt the rather harsh doctrines of these American cases is because the statutes there in question differ from ours and because we are not prepared to say that a judge should be separ-

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The municipal board of canvassers proclaimed Isabelo Lloren municipal-mayor-elect with 1,010 votes, which gave him a majority of 198 votes over Pacito Abrea, who obtained only 812 votes.

Pacito Abrea protested the election of his opponent on four grounds, only the first of which is relied upon by him in this appeal, to wit: "(a) That a total of 417 votes cast in all the precints in said municipality in favor of one Beloy as clearly written in the ballots were credited and read in favor of the above respondent."

In the course of the trial the ballot boxes were opened, and it resulted that 517 votes were cast for the office of municipal mayor in the name of Beloy, 77 votes in the name of Biloy, and 8 votes in the name of Belog.

The trial court found—and its finding is not questioned in this appeal—that it had been clearly proved that the protestee Isabelo A. Lloren was popularly and commonly known in the whole municipality of Inopacan by his nickname Beloy or Biloy; and that the protestant himself proved that before and on the day of the election the protestee distributed sample ballots on which was written the name Beloy on the line corresponding to the office of municipal mayor. The trial court also found that in the said elections in Inopacan there was no other candidate for mayor or any other office who was known by the name Beloy.

Declaring that the votes for municipal mayor in the names of Beloy, Biloy, and Belog had been correctly counted in favor of the protestee, the trial court confirmed the proclamation made by the municipal board of canvassers and declared the protestee municipal-mayor-elect of Inopacan, ordering the protestant to pay the costs. From that judgment the protestant has appealed to this court upon the questions of law which we shall now discuss.

1. Appellant's main contention is that the 602 ballots in which only the nickname Beloy, Biloy, or Belog was voted for municipal mayor should have been rejected, thereby adjudicating only 408 votes to the appellee against the appellant's 812 votes. In other words he contends that all ballots in which only the nickname of the appellee was written were invalid for said candidate. In support of his contention he cites paragraph 9 of section 149 of the Revised Election Code (Republic Act No. 180), approved June 21, 1947, which reads as follows:

"9. The use of the nicknames and appellations of affection and friendship, if accompanied by the name or surname of the candidate, does not annul such vote, except when they were used as a means to identify their respective voters."

The foregoing is one of twenty-three rules for the appreciation of ballots contained in section 149 of the Revised Election Code, the first two rules being the following:

"1. Any ballot where only the Christian name of candidate or only his surname appears is valid for such candidate, if there is no other candidate with the same name or surname for the same office; but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter.

"2. A name or surname incorrectly written which, when read, has a sound equal or similar to the real name or surname of the candidate shall be counted in his favor."

Rule No. 9, which is relied upon by appellant, provides only for the determination of whether a ballot or vote shall or shall not be annulled on the ground that it is marked by means of a nickname. It says that it shall not be annulled on that ground unless the nickname, accompanied by the name or surname of the candidate, was used as a means to identify the voter. It does not say that when a nickname alone is written to identify the candidate voted for the vote is invalid. If it had been the intention of the Congress to annul such vote it would have preserved in the Revised Election Code the provision of a previous election law (Act No. 4203, section 16), which said:

"* * * Nor shall any vote be counted on which the candidate is designated by his nickname or alias, although mention thereof is made on his certificate of candidacy."

The nonincorporation of that provision or rule in the Revised Election Code is indicative of the intention of the Congress to abandon it.

It is not contended by the appellant that the 602 votes in question should be annulled as marked ballots. His contention is that they should not be counted in favor of the appellee because the latter was not sufficiently identified by his nickname Beloy, Biloy or Belog.

We agree, however, with the trial court that the appellee was sufficiently identified by his nickname Beloy or Biloy, first, because such nickname is a derivative, or a contraction, of his Christian name Isabelo; second, because he was popularly and commonly known in the entire municipality of Inopacan by that nickname; and, third, because there was no other candidate for mayor with the same nickname. We do not deem it necessary to decide whether the eight votes for "Belog" are valid or not, because they are immaterial to the result.

Previous to the enactment in 1938 of the Election Code (Commonwealth Act No. 357) the rules were: (1) that ballots bearing the Christian name only or the Christian name and the initial of the surname of one candidate should be rejected as insufficient to identify the person voted for (Cailles vs. Gomez and Barbaza [1921], 42 Phil. 496, 533); and (2) that, for the same reason, votes cast with only the nickname or the familiar name should not be counted in favor of any candidate (Cecilio vs. Tomacruz [1935], 62 Phil. 689). But such rules were changed or abandoned by the legislature when it enacted section 144 of Commonwealth Act No. 357 and, subsequently, section 149 of Republic Act No. 180, which provided rules for the appreciation of ballots. Said section is a compilation in statutory form of most of the doctrines theretofore laid down by the Supreme Court regarding the appreciation of ballots. Rule No. 1 contained in section 149 reverses the doctrine or rule laid down by the Supreme Court regarding the use of the Christian name alone of a candidate by providing that—contrary to said doctrine—any ballot where only the Christian name of a candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office. The purpose of this new rule is to validate the vote provided the name written on the ballot identifies the candidate voted for beyond any question or possible confusion with any other candidate for the same office. Hence, conformably to such purpose we hold that when the nickname of a candidate is a derivative or contraction of his Christian name or of his surname, and if he is popularly and commonly known by

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ated from office where he apparently is acting in good faith, under a misconception of the law. *In re Impeachment of Flordeliza*, 44 Phil. 608.

12. SUSPENSION.

Statutes sometimes authorize the temporary suspension of a judge during the pendency of proceedings for his removal. Such a statute is not in conflict with a constitutional provision fixing the terms of office of judges and providing for their removal for specified causes after a hearing. Notice and a hearing are not essential to due process of law, and are not required where the statute does not provide for them. 30 *Am. Jur. 737.*

(TO BE CONTINUED)