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Editorials:

ABUSE OF THE PRIVILEGED HOUR

So much internal heat has recently been generated by politics that no less than two major explosions erupted in Congress during the last days of its special session. The detonation, if we may use the same figure of speech, was such that it was heard not only through the length and breadth of the Philippines but also abroad to the evident embarrassment of the entire Filipino people. Both occurred in the Hall of the House of Representatives and partook of the same nature: privileged speech, or the use of the privileged hour.

The first was the privileged "Letter to Garcia" by Congressman Sergio Osmeña, Jr., accusing President Carlos P. Garcia of having received somewhere 10 million pesos' bribe for his veto on the Rice and Corn Nationalization Bill. The second was the valedictory address of Congressman Cipriano Primicias, Jr., who is scheduled to be ousted soon if he is not yet ousted, impugning the honesty and integrity of three members of the Supreme Court, Justices Padilla, Labrador and Angelo Bautista, who, in compliance with Article VI, Section 11, of the Constitution, form a vital part of the House Electoral Tribunal upon designation of the Chief Justice.

For the first time after Liberation, three members of the highest tribunal of the land were attacked on the floor of the House of Representatives for no other reason than that in a decision of six to three they declared that young Primicias, who later attacked them under the mantel of parliamentary immunity, had not been duly elected. Primicias pointed out no error committed by the three jurists he was accusing or that they had erred in their judgment; it was apparently enough to him that they were appointed Supreme Court justices by Liberal Presidents, and that the senior member who presides over the House Electoral Tribunal is allegedly his father's "political arch-rival" in Pangasinan.

With all the recklessness and abandon of one sure that what he was saying was absolutely privileged and that he could not be held accountable for it, Congressman Primicias even forgot that he was casting a reflection on the Chief Justice who under the Constitution is directly responsible for the designation of the three Justices in the House Electoral Tribunal. He gave vent to his anger and disappointment by charging that because they voted with the three Liberal members and not with the three Nacionalistas, they made themselves "unworthy to remain as members of the Supreme Court from which they should voluntarily get out or get thrown out."

The language used, in our opinion, was not only violent and improper but wholly unparliamentary and it's a pity that the congressman from Pangasinan used it. In the same vein, we believe that, in the absence of any proof or evidence, the charges hurled against the Justices

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COMPENSATION FOR COUNSEL DE OFICIO

In the convention of judges held in May, 1958, Ex-Senator Vicente J. Francisco suggested the giving of compensation to counsel de oficio, *as part of his overall proposal to improve the administration of justice in the Philippines. He pointed out that "almost every day, we see courts appointing counsel* de oficio *for accused who appear without lawyer. These lawyers* de oficio *are required to render service for the defense of the accused as a necessary service for the maintenance of public justice. They are not paid anything for such service. It is said that the remuneration of such extra work must be found in the general income of his profession of which it is one of the incidents. This view is not consistent with sound public policy. If the State pays to convict its guilty subjects, it should also pay counsel to acquit those who are innocent. The State of New York pays the appointed attorney in capital offenses* $1,000.00. *It is suggested, therefore, that attorneys* de oficio *receive remuneration from the Government. Only in very rare cases do attorneys* de oficio *render their services with enthusiasm. They usually ask for postponement of trial because they have to attend to cases for which their services have been paid. By giving remuneration to such lawyers, we will help many young lawyers make a living out of their profession. As everybody knows, the law profession is overcrowded and many lawyers cannot live on what they earn from their practice, and eventually they are compelled to accept positions as clerks, police officers or civil service men."*

Congress recently (August 1, 1959) *enacted into law Ex-Senator Francisco's proposal and is now embodied in Republic Act No. 2613, amending Republic Act 296, the pertinent portion of which reads as follows:*

> *"SEC. 6.* Disposition of moneys paid into court. *— All moneys accruing to the Government in the Supreme Court, in the Court of Appeals, and in the Courts of First Instance, including fees, fines, forfeitures, costs, or other miscellaneous receipts, and all trust or depository funds paid into such courts shall be received by the corresponding clerk of court and, in the absence of special provision shall be paid by him into the National Treasury to the credit of the proper account or fund and under such regulations as shall be prescribed by the Auditor General: Provided, however,* That twenty per cent of all fees collected shall be set aside as special fund for the compensation of attorneys *de oficio* as may be provided for in the rules of court."

Unfortunately, however, the laudable objective of the law has thus far remained unattained because no provision in the Rules of Court has yet been made for its implementation, as required by the Act. The enactment of implementing rules is therefore imperative.

PRESIDENT EISENHOWER'S ADDRESS

TO CONGRESS *

I am keenly sensible of the high honor this assembled body has paid to me and to my country by inviting me to be present here and to address this body, a body representing the political leadership of a great republic in the Asian sector. I am indeed overwhelmed by your kindness and I can say only "Mabuhay!" (Applause).

You will understand the flood of memories that swept over me on coming back to this land, where I feel that I am revisiting an old home and old friends and renewing ties of long standing.

Here my wife and I spent four happy years, making friendships that we shall ever cherish. Here our son went to school and grew into young manhood. Here I saw the first beginnings of this Republic and worked with men whose vision of greatness for the people of the Philippines has been matched by its realization.

Through many days I could talk of life as I knew it here a quarter of a century ago. For hours on end I could make comparisons of what was in those days and what is now. But I have only minutes in which I can address myself to the subject.

Even in the short space I have been here, however, I have been struck by the vigor and progress that is evident everywhere. I see around me a city reconstructed out of the havoc and destruction of a world war. I know of the Binga Dam; and the Maria Cristina Power and Industrial Complex; the Mindanao highway system; rural electrification; the disappearance of epidemic diseases; the amazing growth of Manila industry.

Everywhere is inespable physical evidence of energy and dedication and a surging faith in the future. But of deeper significance is the creation here of a functioning democracy—a sovereign people directing their own destinies; a sovereign people concerned with their responsibilities in the community of nations. Those responsibilities you have discharged magnificently even as you toiled to rebuild and to glorify your own land.

Certainly, we Americans salute Philippine participation in the Korean war; the example set the whole free world by the Filipino nurses and doctors who went to Laos and Vietnam on Operation Brotherhood; your contribution to SEATO and the defense of your neighbors against aggression; your charter membership and dynamic leadership in the United Nations; your active efforts to achieve closer cultural and economic relations with other Southeast Asian countries.

The stature of the Republic of the Philippines on the world scene is the creation of its own people—of their skill; their imagination; their courage; and above all, their commitment to freedom. But their aspirations would have gone unrealized were they not animated by a spirit of nationalism, of a patriotic love of their own land and its independence, which united and directed them and their efforts.

This spirit was described by your late great leader and my personal friend, Manuel Quezon, when he with great eloquence said: "Rightly conceived, felt and practised, nationalism is a tremendous force for good. It strengthens and solidifies a nation. It preserves the best traditions of the past and adds zest to the ambition of enlarging the inheritance of the people. It is, therefore, a dynamic urge for continuous self-improvement. In fine, it enriches the sum total of mankind's cultural, moral, and material possessions through the individual and characteristic contribution of each people."

Significantly, President Quezon had this caution to offer. "So long as the nationalistic sentiment is not fostered to the point where a people forgets that it forms a part of the human family; that the good of mankind should be the ultimate aim of each and every nation; and that conflicting national interests are only temporary; and that there is always a just formula for adjusting them—nationalism then he said, is a noble, elevating and most beneficial sentiment."

In these words of clarity and timeless wisdom, President Quezon spoke a message forever applicable to human affairs, particularly fitted to the circumstances of this era.

Nationalism is a mighty and a relentless force. No conspiracy of power, no compusion of arms can stifle it forever. The constructive nationalism defined by President Quezon is a noble, persistent, fiery inspiration; essential to the development of a young nation. Within this ideal my own country since its earliest days has striven to achieve the American dream and destiny. We respect this quality in our sister nation.

Communist leaders fear constructive nationalism as a mortal foe. This fear is evident in the continuing efforts of the Communist conspiracy to penetrate nationalists' movements, to pervert them, and to pirate them for their own evil objectives.

To dominate—if they can—the eternal impulse of national patriotism, they use force and threats of force, subversion and bribery, propaganda and spurious promises. They deny the dignity of men and have subjected many millions to the execution of master plans dictated in faraway places.

Communism demands subservience to a single ideology, to a straight jacket of ideas and approaches and methods. Freedom of individuals or nations, to them is intolerable. But free men, free nations, make their own rules to fit their own needs within a universally accepted frame of justice and law.

Under freedom, thriving sovereign nations of diverse political, economic and social systems are the basic healthy cells that make up a thriving world community. Freedom and independence for each is in the interest of all.

For that very reason—in our own enlightened self-interest in the interest of all our friends—the purpose of American assistance programs is to protect the right of nations to develop the political and social institution of their own choice. None, we believe, should have to accept the extremist solutions under the

* Text of the address by President Dwight D. Eisenhower before a special joint session of the Senate and the House of Representatives, Manila, the Philippines, June 15, 1960.

ABUSE . . . (*Continued from page* 161)

were utterly false and irresponsible. We agree with an English writer when he remarked that a judge or a justice puts off his relations to anybody when he puts on his robes, and that no judge however honest and prudent is above criticism. But precisely because judges fall within the purview of public criticism, utmost care should always be taken, because of the delicate nature of their position, that whatever is said against them is based on solid fact and not on spite. And when a congressman in a priviliged speech attacks them right in the hall of the congress, where they cannot defend themselves, his parliamentary immunity makes it an obligation of honor for him to exercise such privilege with the fullest sense of responsibility.

whip of hunger, or the threat of armed attack and domination.

We, free, self-governing peoples readily accept the fact that there is a great variety of social, political, and economic systems in the world, and we accept the further fact that there is no single best way of life that answers the needs of everyone everywhere.

The American way satisfies the United States. We think it best for us.

But the United States need not believe that all should imitate us. What we do have in common with the free nations in Asia, Africa, Europe and Latin America are basic and weighty convictions, more important than differences of speech and color and culture.

Some of these convictions are: that man is a being capable of making his own decisions; that all people should be given a fair opportunity to use their God-given talents, to be worthy heirs of their fathers, to fulfill their destiny as children of God; that voluntary cooperation among groups and nations is vastly preferable to cooperation by force—indeed, voluntary cooperation is the only fruitful kind of effort in the long run.

True enough, in a too lengthy period of history, some European nations seemed convinced that they were assigned the mission of controlling the continents. But always powerful voices within these countries attacked the policy of their own governments. And we of the American Republics—twenty-one independent nations, once European colonies—denied in arms and in battle died there because true nationalism was a more potent force.

Since 1945, thirty-three lands that were once subject to Western control have peaceably achieved self-determination. These countries have a population of almost a billion people. During the same period, twelve countries in the Sino-Soviet sphere have been forcibly deprived of their independence. The question might be asked: Who are today the colonialists?

The basic antagonism of the Communist system to anything which it cannot control is the single, most important cause of the tension between the free nations in all their variety on the one hand, and, on the other, the rigidly controlled led Communist bloc.

One purpose of the Communist system's propaganda is to obscure these true facts. Right now, the principal target is the United States of America. The United States is painted as an imperialistic seeker of limitless power over all the peoples of the world, using them as pawns on the chess-board of war, exploiting them and their resources to enrich our own economy, degrading them to a role of beggarly dependence.

The existence, the prosperity, the prestige of the Republic of the Philippines proves the falsity of those charges. You, as a people, know that our American Republic is no empire of tyranny. Your leaders repeatedly have so testified before the world. But for a few minutes I should like to speak to you on what America stands for: what it stood for before I became President and what it will continue to stand for after I have left office.

More important than any one year, any one incident, or any one man is the role we have played through our whole history—the role we shall continue to play so long as our Republic endures.

Two hundred years lacking sixteen, have passed since our forefathers proclaimed to the world the truths they held self-evident; that all men are created equal; that they are endowed with inalienable rights to life, liberty and the pursuit of happiness; that governments are instituted among men to secure these rights, deriving their just powers only from the consent of the governed.

On the day of that proclamation, you and we and scores of other now free nations were colonies. Mankind everywhere was engaged in a bitter struggle for bare survival. Only a few by the accident of birth enjoyed ease without back-breaking toil. Naked power, more often than not, was the decisive element in human affairs. Most men died young after an all too short life of poverty.

Since then, free men—using their rights, embracing their opportunities, daring to venture and to risk, recognizing that justice and good will fortify strength—have transformed the world.

The wilderness and jungle of nature have been conquered. The mysteries of the universe are being unlocked. The powers of the elements have been harnessed for human benefits. The ancient tyrannies of hunger and disease and ignorance have been relentlessly reduced in their domains.

The evil of our forebears' time were manifold and entrenched and often accepted without murmur. But to free men who saw in their fellow men the image of God, who recognized in themselves a capacity to transform their circumstances and environment—to such free men, these evils were unbearable.

Not all these evils were vanquished at the first assault. Indeed, many still survive. Not always was success persistently prosecuted to ultimate triumph. Free men, however mighty their inspiration, are humanly frail.

At times they may be fearful when they should be girding and bracing themselves for more vigorous effort; trading words when they would be working; bickering over trifles when they should be uniting on essentials; rioting when they should be calmly planning. Often they may dissipate their energies in futile and wasteful exercise. Often they are mistaken or for a while misled. Being human these things are true about all of us. Nevertheless, the resources of free men living in free communities, cooperating with their neighbors at home and overseas, constitute the mightiest creative temporal force on earth.

In your sister Republic of the United States, the greatest achievement of our history is that our rebels against colonialism against subjection, against tyranny, were the first in this era to raise the banner of freedom and decent nationalism, to carry it beyond your own shores, and to honor it everywhere.

What we stood for in 1776, when we were fighting for our own freedom, we still stand for in 1960.

To maintain our stand for peace and friendship and freedom among the nations, the United States must remain strong and faithful to its friends, making clear that propaganda pressures, rocket rattling and even open aggression are bound to fail.

Beyond the guarantees of American strength, we seek to expand a collective security. SEATO demonstrates what can be accomplished. Since its inception not one inch of free Southeast Asia territory has been lost to an aggressor.

Collective security must be based on all fields of human endeavor, requiring cooperation and mutual exchange in the areas of politics, economics, culture and science. We believe in the expansion of relations between nations as a step toward more formal regional cooperation. In accord with this belief, we support the initiative taken by the Government of the Philippines during the past several years in establishing closer ties with its neighbors.

Patience, forebearance, integrity, an enduring trust, must between our two countries characterize our mutual relations. Never, I pray, will the United States because of its favored position in size and numbers and wealth, attempt to dictate or to exercise any unfair pressure of any kind, or to forget or to ignore the Republic of the Philippines—its equal in sovereignty dignity. (applause) And never, I pray, will the Philippines deem it advantageous either at home or abroad or to make a whipping boy of the United States. (applause). Each of us proudly recognizes the other as a sovereign equal.

My friends, at this point, I just want to interpolate one simple thought; in the cooperative efforts for own security, for advancing the standards of living, of peoples, for everything that

PRESIDENT EISENHOWER'S SPEECH

ON THE EVE OF HIS DEPARTURE*

Mr. President, you, on behalf of the Filipino people, have just bestowed a great honor upon me.

Proudly, I accept, in the name of the American people, the award of Rajah in the Ancient Order of Sikatuna.

My friends, this Luneta was for more than four years the scene of my habitual evening walks. To this day it lives in memory as one of the most pleasant — even indeed one of the most romantic spots — I have known in this entire world. (Applause) Leaving the front entrance of the Manila Hotel of an evening I could walk to the right to view the busy docks where Philippine commerce with the world was loaded and unloaded. From here, looking across the peaceful waters of Manila Bay, I could see the gorgeous sunsets over Mariveles. Walking toward the Club of the Army and the Navy, and looking down toward the city itself, I nearly always paused for a moment before the statue of the great Jose Rizal before returning to my quarters. One thing that made those evening promenades so pleasant, so meaningful, was the deep sense of feeling I had of Philippine-American friendship.

To you, assembled before this platform — to Filipinos and Americans everywhere and to those who are gone from among us — is due the credit of having forged our close friendship in war and in peace. (Applause)

Now, upon both our peoples still rest the grave responsibility of working together tirelessly in the promotion of liberty and world peace.

The voluntary association of free peoples produces — from the sharing of common ideals of justice, equality and liberty — a strength and moral fiber which tyrannies never attain by coercion, control and oppression. Such tyrannies can, of course, concentrate upon a single objective the toil of millions upon millions of men and women; working endless hours; denied even the smallest happiness of human living; sometimes whipped, sometimes cajoled, always treated as robots bereft of human dignity. For a space of years, particularly if the peoples they regiment have known little of freedom or of a decent prosperity, such dictatorships may seem to achieve marvels. But in their denial of human dignity— their destruction of individual self-esteem — they write the eventual doom of their system.

Long before many of us here today were born, a great Filipino, Jose Rizal, in vivid and eloquent language, foretold the eruption of these tyrannies and predicted their ultimate fate. He said:

"Deprive a man of his dignity, and you not only deprive him of his moral strength but you also make him useless even for those that wish to make use of him. Every creature has its stimulus, its mainspring. Man's is his self-esteem. Take it away from him and he is a corpse..."

Now, tyrannies of many sorts still exist in the world. All are rejected by free men. Some authoritarian governments, being narrow in ambition, content themselves with local and confined dominance. Others are blatant in their boasts of eventual supremacy over continents and even the world; constant in their boast that eventually they will bury all systems of freedom.

That boast will never come true. Even in the lands that Communists now master with an iron rule, the eternal aspiration of humanity cannot be forever suppressed. The truth enunciated by Jose Rizal is universal in its application. But tyrannies, before their fated deterioration and disappearance, can, sometimes for many years, engulf and enslave free people unable to resist them.

In that knowledge, the free world — two-thirds of the earth's population — step by step moves towards a more effective partnership that freedom, human dignity, the noble heritages of many centuries may withstand successfully all aggression.

Some nations are still reluctant to commit themselves fully; others are divided on commitments already made, or of bribe; possibly confused by propaganda and threat — oppose even the most obviously profitable associations. But most stand firmly together.

The free world must increase in strength — in military defenses, in economic growth, in spiritual dedication. Thus the free world will withstand aggressive pressures, and move ever forward in its search for enduring peace.

Your government has recently reaffirmed your determination to stand steadfast by joining only two weeks ago in the communique issued in Washington by the Council of Ministers of the eight nations of SEATO. They stated clearly that:

"The Council availed itself of this timely opportunity to re-emphasize the firm unity of purpose of the member countries of SEATO and their determination to maintain and develop, both individually and collectively, their peace and security in the Treaty Area."

May I say here that the United States is proud, indeed, is thankful to be so closely associated and so staunchly allied with the Philippines both in SEATO and in the Mutual Defense Treaty between our two countries. (Applause)

But in this world of continuing tension and yearnings for social change, it is insufficient that the free world stand static in its defense of freedom.

We must, all of us, move ahead with imagination and positive

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* Remarks by President Dwight D. Eisenhower at public reception at Luneta, June 16, 1960.

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we do together, there is of course differences in the ability of each nation to make contributions. Each of us, as an individual, is different from every other individual. Physically, mentally, in the possession of world goods, we are somewhat different but I submit, members of the Congress, that there is one field where no man, no one, no nation need take a secondary place, and that is, in moral leadership. The spirit of a people does not—is not—to be measured by its size or its riches or even its age. It is something that comes from the heart, and from the very smallest nation can come some of the great ideas, particularly those great inspirational ideas that inspire men to strive always upward and onward. Therefore, when I say there are two nations that are sovereign equals, I mean it in just that spirit in the sense that we (applause) that you have just as much to contribute to the world and to yourselves and to freedom as the greatest and most powerful nation in the world. (Applause).

Finally, in the great cause of peace and friendship and freedom, we who are joined together will succeed. The eternal aspirations, purposes, ideals of humanity inspire and hearten and urge us to success.

But we face repeated challenges; endless temptations to relax, continuous campaigns of propaganda and threat. Let us stand more firmly together against them all, and so doing and with God's help we shall be great and (prolong applause) good friends.

I

National Shipyard and Steel Corporation, Petitioner, vs. Court of Industrial Relations, Jose Abiday et al., Respondents, G.R. No. L-13888, April 29, 1960, Bengzon, J.

LABOR LAW; WHEN COURT OF INDUSTRIAL RELATIONS HAS JURISDICTION OVER CLAIMS FOR OVERTIME COMPENSATION. — In the case at bar, the controversy between 39 employees and the NASSCO over payment for work in excess of eight hours, including Sundays, legal holidays and nighttime, may properly be regarded to be within the scope of the powers of the Industrial Court, since it is practically a labor dispute that may lead to conflict between the employees and the management. If the claimants were not actual employees of the NASSCO, as for example, they have severed their connection with it or were dismissed, but do not insist on reinstatement, their claim for overtime compensation would become simply a monetary demand properly cognizable by the regular courts and not by the Court of Industrial Relations.

Simeon M. Gopengco & Lorenzo R. Mosqueda, for the petitioner.

Onofre P. Guevara, for the respondents.

Alfredo Salas, for the respondent Court C.I.R.

DECISION

As stated in petitioner's memorandum in lieu of oral argument, the question in this case is whether the Court of Industrial Relations has jurisdiction to take cognizance of monetary claims for overtime work.

The facts are:

On April 15, 1957, Jose Abiday and 38 other persons, all employees of the National Shipyard and Steel Corporation — NASSCO for short — filed with the said Court, a petition for additional compensation due to overtime services rendered. They alleged they had been required by the Corporation to work, and worked, on Sundays and legal holidays, at nighttime, and more than eight hours a day, without receiving extra wages.

Resisting the claim, the Corporation challenged the Court's jurisdiction.

After trial, the Court on November 22, 1957, entered an order requiring additional compensation for such overtime work. It also directed the Examiner of the Court to compute from the books and records of the Corporation the amounts truly owing to each of the claimants.

A motion for reconsideration was denied. Then on February 14, 1958, the Court Examiner rendered a partial report. Over the Corporation's opposition, the Court approved such report and accordingly directed execution of its order to pay.

Whereupon NASSCO announced its intention to appeal for review to this Supreme Court; and on April 2, 1958, it filed a petition (G.R. No. L-13732) submitting the following issues:

"1. Does the Court of Industrial Relations have the jurisdiction after the passage and effectivity of the Industrial Peace Act (Republic Act No. 875) on June 17, 1953, over money claim for alleged unpaid overtime compensation? and

2. Is the "Order" of the Court of Industrial Relations which directs the Court Examiner to compute and report to the court the amount of overtime compensation of the claimants a decision which becomes final when no appeal is interposed therefrom within the reglamentary period?

Denying the jurisdiction of the Industrial Court, NASSCO cited several decisions of this Tribunal which at first glance, sustained its position. However, in view of other decisions upholding such jurisdiction, the petition for review was on April 11, 1958, dismissed *for lack of merit*. A motion for reconsideration failed.

Thereafter, on May 16, 1958, after the said dismissal of NASSCO's petition, the Court Examiner presented to the Industrial Court another partial report of the additional compensation to which the claimant-employees were entitled for overtime work. NASSCO filed its opposition, but it was overruled partly because it was filed beyond the five-day period provided by the Rules of Court; partly because the matter of payment and the computation of overtime pay had been practically approved by the Supreme Court when it dismissed the petition in G. R. No. L-13732; and principally because the opposition to the Report [1] did not rest on any valid foundation.

Consequently, on June 14, 1958, NASSCO submitted this new petition for review by writ of certiorari, against the same parties impleaded in G.R. No. L-13732 and raising the same question of jurisdiction of the Industrial Court. Besides, it alleged that its opposition to the additional Report had been set aside in pursuance of a Rule of the Industrial Court, which — petitioner contends — is either non-existing or illegal.

This petition was given due course because of the allegations concerning the five-day period. Upon careful consideration, however, it appears that the objection to the Report [2] turned out to be without factual basis.

Realizing its slim chance to prevail on question of fact, petitioner finally limited its contention to the question of jurisdiction. However, that point was the principal isssue in G.R. No. L-13732, between the same parties arising from the same particular controversy before the Industrial Court; and we ruled by our resolution of April 14, 1958, that petitioner's petition on the matter had *no merit*. That resolution having become final, is now the law of the case; and the implementation of the order thereby upheld, may not be blocked by this second petition.

At any rate, we think that this controversy between 39 employees and the NASSCO over payment for work in excess of eight hours, including Sundays, legal holidays and nighttime, may properly be regarded to be within the scope of the powers of the Industrial Court, since it is practically a labor dispute that may lead to conflict between the employees and the management.

If the claimants were not actual employees of the NASSCO— e.g. they have severed their connection with it or were dismissed, but do not insist on reinstatement — their claim for overtime compensation would become simply a monetary demand properly cognizable by the regular courts.

The petition for review is denied. The order appealed from is affirmed.

Paras, C.J., Bautista Angelo, Labrador, Concepcion, Endencia and Gutierrez David, JJ., concurred.

Padilla, Montemayor and Barrera, JJ., took no part.

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(1) The computation of wages was inexact, and there were deductions to be made, etc.

(2) See footnote No. 1.

II

Price Stabilization Corporation, Petitioner, vs. Court of Industrial Relations and Prisco Workers' Union, et al., G.R. No. L-13806, May 23, 1960, Barrera, J.

1. LABOR LAW; OVERTIME COMPENSATION; JURISDICTION. — Where the employer-employee relationship is still existing or is sought to be reestablished because of its wrongful severance, as where the employee seeks reinstatement, the Court of Industrial Relations has jurisdiction over all claims arising out of, or in connection with the employment, such as those related to the Minimum Wage Law and the Eight-Hour Labor Law. After the termination of the relationship and no reinstatement is sought, such claims become mere money claims, and come within the jurisdiction of the regular courts.

2. CIVIL LAW; CONTRACTS; RATIFICATION. — In the case at bar, a contract of employment exists between petitioner and and claimants-respondents, and that pursuant to the terms thereof, the latter are to render 8 hours labor. When petitioner's official required respondents to render an additional hour work, and the respondents had to comply, a supplemental contractual obligation was created both under the terms of the original contract of employment and of the Eight Hour Labor Law, such that additional work was to be compensated. That the memorandum giving rise to this situation was originally unauthorized did not make it illegal to the extent of not being capable of ratification by the duly authorized official of petitioner corporation.

DECISION

This is a petition for review by certiorari taken by the Price Stabilization Corporation (PRISCO) from the decision of the Court of Industrial Relations (in case No. 840-V[67]) of December 27, 1957.

It appears that under date of February 15, 1955, respondent PRISCO Workers' Union, a labor organization duly registered with the Department of Labor, filed with respondent court, a petition praying that herein petitioner-employer PRISCO be ordered to pay its present employees, claimants-members of the said Union, their basic pay and at least 25% additional compensation for one hour overtime work they had previously rendered as security guards of petitioner, from April 17, 1958 to January 13, 1954, and the additional compensation of at least 25% for the work they have been rendering on Sundays and legal holidays, from March 7, 1954 and on.

On March 15, 1955, the petitioner filed an answer denying respondent Union's claim for payment of one hour overtime work, asserting that such overtime, if rendered, not having been authorized; although some of the said claimants had rendered work on Sundays and legal holidays, the same had already been paid from March 6, 1954; and finally alleging that the said claim for work on Sundays and legal holidays had already been withdrawn.

The case was thereafter heard and. after hearing, respondent court on December 27, 1957, issued an order requiring petitioner to pay the said claimants, members of respondent Union, their basic pay and 25% additional compensation for the one hour overtime work they had rendered from April 16, 1953 to January 13, 1954. However, for lack of evidence and in view of a petition signed by 59 of the 131 claimants withdrawing their claim for pay for work performed on Sundays and legal holidays, the court dismissed the second claim.

On January 8, 1958, petitioner corporation filed a motion for reconsideration of said order, which motion was resolved by respondent court, *en banc*, as follows: 2 judges voting for straight denial; 2 judges voting for the setting aside of the order as null and void on the ground of lack of jurisdiction; and 1 judge concurring in the denial of the motion for reconsideration, on the ground that the question of lack of jurisdiction has not been raised in the pleading. As a result, petitioner corporation has filed this present petition.

There are 2 questions of law to be determined in this case, to wit: (1) whether respondent court had jurisdiction over the present claim for overtime pay filed by respondent Union; and (2) whether the same court correctly applied Articles 1393 and 1396 of the new Civil Code to the case.

As to the first question, there still seems to be some lack of clear and definite understanding of the jurisdiction of the Court of Industrial Relations, with regards to money claims of laborers or employees against their employers The fact that in the present case the judges themselves of the Court of Industrial Relations, are divided on this matter, attests to the existence of such misapprehension. It is well therefore to review some of the leading decided cases touching on this point, for the purpose of clarifying this fundamental question.

In the PAFLU v. Tan case, (1) we held that the Court of Industrial Relations has jurisdiction over cases (1) when the labor dispute affects an industry which is indispensable to the national interest and is so certified by the President to the industrial court (Sec. 10, Rep. Act No. 875); (2) when the controversy refers to minimum wage under the Minimum Wage Law (Rep. Act No. 602); (3) when it involves hours of employment under the Eight-Hour Labor Law (Com. Act No. 444); and (4) when it involves an unfair labor practice (Sec. 5-a, Rep. Act No. 875).

Later, in the case of Detective and Protective Bureau Incorporated v, Felipe Guevara, et al., (2) involving claims for refund of deductions from respondents' salaries, payment of additional compensation for work performed on Sundays and holidays, and for night work, and grant of vacation and sick leave pay this Court held that the Court of Industrial Relations had jurisdiction, inasmuch as the claimants were all employees of the Detective and Protective Bureau, Inc. at the time of the filing of their claims in Case No. 764-V in the Court of Industrial Relations. To the same effect is the case of Isaac Peral Bowling Alley v. United Employees Welfare Association, et al. (G.R. No. L-9831, prom. October 30, 1957).

Subsequently, in the case of Santiago Aguilar v. Jose Salumbides (G.R. No. L-10124, prom. December 28, 1957), this Court declared that the Court of Industrial Relations had no longer jurisdiction to hear and determine the claims of ex-employees against their former employer for overtime, wage differential, and separation pays.

Again, in the cases of Roman Catholic Archbishop of Manila v. Yanzon, et al. (G.R. No. L-12341) and Elizalde & Co., Inc. v. Yanzon, et al. (G.R. No. L-12345) jointly decided on April 30, 1958, this Court, in a unanimous opinion, declared:

> "In the present case, it is apparent that the petition below is simply for the collection of unpaid salaries and wages alleged to be due for services rendered years ago. No labor dispute appears to be presently involved since the petition itself indicatts that the employment has long terminated and petitioners are not asking that they be reinstated. Clearly, the petition does not fall under any of the cases enumerated in the law as coming within the jurisdiction of the Industrial Court, so that it was an error for that court not to have ordered its dismissal.
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> "Indeed, even under Commonwealth Act No. 103, as amended by Com. Act No. 559, the court below could not have taken cognizance of the present case. For in order for that court to acquire jurisdiction under that law, the requisites mentioned in section 4 thereof must all be present,

(1) G.R. No. L-9115, prom. August 31, 1956, 52 O.G. 5835.
(2) G.R. No. L-8738, prom. May 31, 1957.

one of them being that there must be an industrial or agricultural dispute which is causing or likely to cause a strike or lockout. With the employment already terminated years ago, this last mentioned requisite cannot be supposed to still exist."

Then came the decision in the NASSCO v. Almin, et al. case (G.R. No. L-9055, prom. November 28. 1958) in which this Court upheld again the jurisdiction of the Court of Industrial Relations to hear and determine the claim of respondents at the time presently and actually in the employ of the petitioner — for overtime compensation for work they were then rendering since 1950 on Sundays and holidays and even at night.

On the same theory, this Tribunal, in the Chua Workers' Union (NLU v. City Automotive Company, et al. case,(3) where the claimants for differential and overtime pays were former employees of the respondent company, ruled that the Court of Industrial Relations had no jurisdiction.

The latest case is that of Monares v. CNS Enterprises, et al. (G.R. No. L-11749, prom. May 29. 1959) in which this Court, speaking through the Chief Justice, held that the Court of Industrial Relations and not the Court of First Instance, has jurisdiction where the claimant, although no longer in the service of the employer, seeks in his petition the payment of differential and overtime pay and his *reinstatement*.

Analyzing these cases, the underlying principle, it will be noted in all of them, though not stated in express terms, is that where the employer-employee relationship is still existing or is sought to be reestablished because of its wrongful severance (as where the employer seeks reinstatement), the Court of Industrial Relations has jurisdiction over all claims arising out of, or in connection with the employment, such as those related to the Minimum Wage Law and the Eight-Hour Labor Law. After the termination of the relationship and no reinstatement is sought such claims become mere money claims, and come within the jurisdiction of the regular courts.

We are aware that in 2 cases,(4) some statements implying a different view have been made, but we now hold and declare the principle set forth in the next preceding paragraph as the one governing all cases of this nature.

It appearing that in the present case, the respondent-claimants are, or at least were, at the time of presenting their claims, actually in the employ of herein petitioner, the Court of Industrial Relations correctly took cognizance of the case.

In respect of the second issue, it appears that claimants-security guards have been employed and required to observe a 24-hour guard duty divided into 3 shifts of 8 hours each. On April 15, 1953, the Assistant Chief Security Officer of petitioner-corporation, acting for the Chief Security Officer, issued a Memorandum (Annex A), directing the security guards to report for duty 1 hour in advance of the usual time for guard work. Pursuant thereto, claimants had been rendering such overtime work until January 13, 1954, when the order was revoked after a change of management.

Petitioner, however, contends that said memorandum of the Assistant Chief Security Officer was issued without authority and, therefore, it is not bound to pay for the alleged overtime. But, as found by respondent court, shortly after the enforcement of the aforementioned memorandum, the security guards protested to the management of petitioner corporation, more particularly to Mr. Santiago de la Cruz, General Manager, Atty. Graciano Borja, Director, and Mr. Espiritu, Director. Instead of revoking said memorandum on the ground that it was unauthorized by the management, General Manager De la Cruz told the security guards that the reason why it was being enforced, was to discipline them and that their work was only light and that 1 hour was of no importance. This, the lower court held, amounted to a tacit ratification of the memorandum, on the part of the said official who, as claimed by petitioner itself, had the power to validly act for it. (See also Sec. 6, Exec. Order No. 350 series of 1950.) Hence, the lower court concluded, applying the provisions of Articles 1393 and 1396(5) of the new Civil Code, that any defect, if any, which said memorandum of the Assistant Chief Security Officer may have at the time it was constituted was, therefore, corrected.

But petitioner urges that Articles 1393 and 1396 refer to voidable contracts and the questioned memorandum is not such a contract but an order issued by one not authorized and, therefore, is illegal and cannot be ratified tacitly.

This view is without merit. There is no question that a contract of employment exists between petitioner and claimants-respondents, and that pursuant to the terms thereof, the latter are to render 8 hours labor. When petitioner's official required respondents to render an additional hour work, and the respondents had to comply (as non-compliance was punishable and actually punished with disciplinary action), a supplemental contractual obligation was created both under the terms of the original contract of employment and of the Eight-Hour Labor Law, that such additional work was to be compensated. That the memorandum giving rise to this situation was originally unauthorized did not make it illegal to the extent of not being capable of ratification by the duly authorized official, the General Manager of petitioner corporation. Hence, the lower court correctly applied Articles 1393 and 1396, upon the facts found by it in this case and amply supported by the record.

WHEREFORE, finding no error in the decision appealed from and the resolution upholding it, the same are hereby affirmed, with costs against the petitioner.

SO ORDERED.

Paras, C.J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion and Gutierrez David, JJ., concurred.

J.B.L. Reyes, J., on leave, took no part.

III

Margarita Leyson Laurente, Administratrix-Appellee, vs. Eliseo Caunca, Movant-Appellant, G. R. No. L-14677, April 29 1960, Bautista Angelo, J.

1. ATTORNEY'S FEES; REASONABLE AWARD OF ATTORNEY'S FEES. — In the case at bar, although the services of appellant to the estate were not considered to the satisfaction of the heir and of the court, yet the court decided to award as attorney's fees the sum of ₱1,700.00, in addition to the sum of ₱80000 already received by him from the former administrator. This award is reasonable considering that the value of the gross assets of the estate only amounts to ₱15,973.65.

2. ID.; WHEN ATTORNEY'S FEES SHOULD NOT BE CHARGED AGAINST THE ESTATE. — Where the contract calls for payment of attorney's fees for services *C* may render personally to the administratix *M*, the latter should be the one liable for such services and not the estate, although such services redounded indirectly to the benefit of the estate.

(3) G.R. No. L-11655, prom. April 29, 1959.

(4) Mindanao Bus Employees Labor Union (PLUM) v. Mindanao Bus Co., et al., G.R. No. L-9795, prom. December 28, 1957; Gomez v. North Camarines Lumber Co., Inc., G.R. No. L-11945, prom. August 18, 1958.

(5) "ART. 1393. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right."

"ART. 1396. Ratification cleanses the contract from all its defects from the moment it was constituted."

Fidel J. Silva, for administratrix-appellee.
Eliseo Caunca, for movant-appellant.

DECISION

Honofre Leyson died in the City of Manila on December 18, 1946 leaving no will but real and personal properties worth ₱30,275.89. He died single. He left neither ascendant nor descendant, but was survived by Margarita Leyson Laurente, daughter of a sister who predied the deceased.

On March 4, 1947, one Justa Gomes, cousin of the deceased, instituted intestate proceedings for the settlement of his estate praying that she be appointed special administratrix and alleging that she was the only nearest collateral relative that survived the deceased. In view of opposition to her appointment on the part of Margarita Leyson Laurente, in order not to delay the appointment of a regular administrator, on December 8, 1947, Pablo M. Silva and Victorio L. Rodriguez were appointed joint administrators, though before their appointment Justa Gomes was allowed to act as special administratix. On January 6, 1948, the court issued an order requiring all persons having claims against the estate to file the same with the clerk of court within six months from first publication, which order was publish in a newspaper on January 10, 17 and 24, 1948.

Then a series of incidents had taken place relative to the claim of Justa Gomes for compensation as special administratrix as well as the claim of her counsel Atty. Pablo M. Silva for attorney's fees, including the incident relative to the appointment of the Philippines National Bank as regular administrator, as enumerated in appellant's brief, which reached not only the Court of Appeals but the Supreme Court. These incidents are cited as instances showing the extent of the services rendered by appellant redounding to the benefit of the estate. Other incidents refer to the claims of Justa Gomes that she was a partner of the deceased in acquiring the assets left by him upon his death, which was also opposed by appellant in representation of his client. Then came several attempts made by Atty. Pablo M. Silva on behalf of Justa Gomes to deprive Margarita Leyson Laurente of her right to inherit the properties which culminated in the denial of the claim of Gomes and in the declaration of said Margarita as the sole heiress of the estate. In all these incidents appellant intervened as counsel of heiress Margarita.

,On July 27, 1954, appellant filed an amended motion with the court praying that his attorney's fees for services rendered not only in behalf of Margarita Leyson but of the estate be fixed at ₱5,000.00 considering the volume of work performed and the extent of the services rendered by him not only for the benefit of his client but also for that of the estate without prejudice of deducting from said amount the sum already advanced to him as partial payment of his services. On August 9, 1955, the administratrix and sole heiress of the estate, who was appellant's former client, filed a vigorous opposition alleging, among other things, that appellant has already collected the sum of ₱800.00 from the estate as attorney's fees with prior authority of the court while he also colected the sum of ₱1,700.00 from the former administrator without authority of court, which latter amount forms part of the funds of the estate which were squandered by former administrator in connivance with appellant, so that, in her opinion, appellant was only entitled to the sum of ₱800.00 as attorney's fees, for which reason she prayed that he be ordered to return to the estate the sum of ₱1,700.00 he received without sanction of the court. In said written opposition, the administratrix makes a narration of several incidents wherein appellant has participated but where he has proven to be remiss in the performance of his duties as counsel.

On June 5, 1958, the court issued an order wherein, insofar as the claim of appellant is concerned, it states: "Regarding the fees of Atty. Eliseo Caunca, this Court hereby award said attorney the amount of ₱1,700.00 as fees for services rendered for and in behalf of the estate, which amount of ₱1,700.00 has already been paid to him by the former administrator Victorio L. Rodriguez." Dissatisfied with this order, he interposed the present appeal.

It appears that in contracting his services as counsel of Margarita Leyson Laurente who claims to be the sole heiress of the estate of Honofre Leyson, appellant entered into a written contract with said Margarita to the effect that if after the services had been rendered she would get nothing, counsel would also get nothing, but if she would secure what she wanted which is to be declared as the sole heiress of the estate, then counsel would be given reasonable fees. Later, however, this contract was amended by fixing his professional fees at ₱3,000.00 which contract is now made the basis of appellant's claim. But because of the extra services he claims to have rendered to Margarita, as well as to the estate, he filed the present amended claim praying that his attorney's fees be increased to ₱5,000.00 which, as already stated, was strongly objected to by the present administratrix who is the very client who contracted his services and with whom he executed the contract abovementioned.

The question to be determined is whether the trial court acted correctly in awarding to appellant as attorney's fees only this amount of ₱1,700.00 which he has already received from the former administrator.

We are inclined to uphold the affirmative. In the first place, the contract he entered into with Margarita Leyson Laurente was in connection with the services he rendered to the latter for the purpose of enablng her to be declared as the sole heiress of the estate. Margarita was forced to enter into such contract in view of the claim of Justa Gomes that she was the only nearest surviving relative of the deceased who was entitled to inherit exclusively his property. In effect, all the services rendered by him were in furtherance of Margarita's interest although indirectly they redounded to the benefit of the estate.

On the other hand, the record shows that in the course of the proceedings relative to the settlement of the estate, when Victorio L. Rodriguez was appointed as co-administrator, appellant also acted as his counsel, even if in doing so he had to act adversely to the interest of his client Margarita, and for his services to such administrator, he was paid as attorney's fees with prior authority of the court the sum of ₱800.00. In addition, as the record shows, he was also paid by said administrator the sum of ₱1,700.00, without authority of court, which, as claimed, was taken from the funds belonging to the estate which were squandered by said administrator in the course of his administration. And although his services to the estate apparently were not considered to the satisfaction of the heir and of the court, yet the latter decided to award as attorney's fees the sum of ₱1,700.00, in addition to the sum of ₱800.00 already received by him from the former administrator. After examining the record of this case, and considering that the value of the gross assets of the estate, according to the inventory submitted by the administratrix, only amounts to ₱15,193.65, we are the opinion that this award is reasonable.

While it may be true that appellant has rendered services to Margarita Leyson Laurente, the present administratrix, in many incidents which redounded to her benefits, altho indirectly to the benefit of the estate, we believe that the fees for such services should be charged not against the estate but against Margarita herself. This is in accordance with the contract he has entered into with her which was presented as evidence. The contract calls for payment of attorney's fees for services he may render personally to Margarita. The latter, therefore, should be the one liable for such services.

Wherefore, the order appealed from insofar as the fees of appellant is concerned, is affirmed, without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concurred.

IV

Cesar Robles and Elisa G. de Robles, Petitioners, vs. Donato Timario, Consuelo S. de Timario, and the Court of First Instance of Camarines Sur, Respondents, G.R. No. L-13911, April 28, 1960, Labrador, J.

1. COURTS; POWER OF COURTS TO AMEND THEIR JUDGMENTS CAN NOT BE INVOKED TO CORRECT AN OVERSIGHT OR ERROR. — In the case at bar, there was an oversight on the part of the judge and of the Court of Appeals in not including an order for the payment of interest, and a parallel neglect of counsel for the plaintiff-appellee in not seeking a modification of the judgment in either court by the inclusion of the interest on the amount of the judgment. There was a judicial oversight which counsel has neglected to remedy both in the Court of First Instance and in the Court of Appeals. The situation is one in which an oversight is sought to be remedied by claiming an ambiguity not apparent in the dispositive part. While it was within the power or duty of both the Court of First Instance and the Court of Appeals to have rendered judgment for the interest on the amount of the judgment, neither of said courts had noted or remedied the omission. The general power of courts to amend their judgments or orders to make them conformable to justice, can not be invoked to correct an oversight or error, as a judicial error may not be considered as a mere ambiguity, curable without a proper proceeding filed before the judgment had become final.

2. ID.; ID. — In the present case, considering that the dispositive part of both the decision of the Court of First Instance and of the Court of Appeals, contain no provision on the interest to be paid on the judgment, it is beyond the power of the respondent court to issue a writ of execution for the payment of the principal obligation with the interest thereon, because the amount of the interest was not included in both judgments.

Montemayor, J., dissenting:

3. ID.; DISPOSITIVE PART OF FINAL DECISION CAN BE CORRECTED WHEN IT DOES NOT REFLECT THE DECISION ITSELF. — There is nothing sacred in the dispositive part of a final decision which precludes its being touched, amended, corrected and clarified, when it clearly appears that said dispositive part does not reflect and embody as it should the decision itself. The dispositive part merely consolidates and expresses briefly the body of the decision and its conclusion and gives it due course. If it makes a mistake, clerical or otherwise, through oversight, omission, that mistake could and should, in the interest of justice, be stricken down as an intruder that has no reason to be there and the corresponding correction immediately effected. Otherwise, courts of justice would fail in their mission and the responsibility to administer real, substantial justice or as near it as is possible, to the parties on the merits of their claims and defenses, if said court place too much emphasis on and adhere too closely to the technicalities of the law.

4. ID.; ID.; TRIAL COURT SHOULD BE ALLOWED TO CORRECT ITS OWN ERROR. — Ordinarily, the judgment in a case contained in the dispositive part should be respected and followed, specially when it has become final, but when, as in the case at bar, there is a manifest error or omission which substantially affects the rights of one of the parties, and the trial court which had committed that error itself is disposed and wants to correct its error or omission, the Supreme Court should disregard technicalities and allow the trial court to correct its own error.

5. ID.; ID.; FINAL DECISION MUST BE ENFORCED IN ITS ENTIRETY. — A final decision must be enforced faithfully, fully and in its entirety and courts can not enforce the payment of legal interest for another action for enforcement. Otherwise, that would mean multiplicity of suits because the winning party would have to bring another action to enforce that part of the decision regarding payment of the interest which was involuntary omitted in the enforcing decision.

DECISION

The records of this case disclose that on May 12, 1955, decision was rendered by Hon. T. Surtida, Judge of the Court of First Instance of Camarines Sur in Civil Case No. 2516, Consuelo J. Timario, plaintiff, vs. Cesar Robles and Elisa G. de Robles, defendants, declaring that the defendants are indebted to the plaintiff in the sum of ₱9,218,00, with interest at legal rate from the filing of the action until the amount is fully paid. The judgment was not appealed and so it became final. The decision had been rendered on a complaint filed on November 9, 1953, but the extended period of redemption of the land which had been sold with right to repurchase and which was then subject of the suit did not expire until January 6, 1954. However, no objection was interposed on the ground that the cause of action did not exist at the time of the filing of the complaint, so the objection that the action was premature was waived.

On June 14, 1955, the plaintiff brought another civil action against the same defendants in the same court (civil case No. 3015), alleging the existence of the judgment above alluded to and praying that the amount of the judgment (for the sum of ₱9,218.00, with legal interest from November 9, 1953 until the full amount is paid) as well as the costs, be paid by the defendants to the plaintiff. In this latter case, the Court of First Instance rendered judgment on October 17, 1955, ordering the defendants to pay plaintiff "the sum of ₱9,218.00 with costs against them." No order for the payment of interest was made in the decision, although the court made reference to its own decision in Civil Case No. 2516, declaring defendants indebted to plaintiff in the amount of ₱9,218.00, together with legal interest thereon from November 9, 1953. This second case, Civil Case No. 3015, was appealed from the Court of First Instance to the Court of Appeals. The appellate court rendered judgment affirming the decision of the lower court in the following terms:

> "WHEREFORE, the decision appealed from is hereby affirmed, with double costs against the appellants, the present appeal being frivolous and manifestly intended for delay (Section 3, Rule 131, Rules of Court)." (Annex "B")

The case having been remanded to the Court of First Instance for execution, the judge thereof on November 9, 1957, issued an order for execution to issue, including double the amount of the costs, in accordance with the confirmatory decision of the appellate court (Annex C). On December 14, 1957, the order was amended to read as follows:

> "The writ of execution is hereby amended by including therein the legal interest in the sum of ₱9,218.00 from November 9, 1953 until fully paid and by doubling only the cost in the Court of Appeals." (Annex "D").

A motion to reconsider this amending order was denied, for the alleged reason that in paragraph 1 of the decision, defendants were ordered to pay interest. Hence the case was brought to this Court upon petition for certiorari, petitioner alleging that the Court of First Instance acted without or in excess of its jurisdiction in ordering the amendment of the writ of execution, which amendment has altered or changed the decision in Civil Case No. 3015, which had become final and executory long before the amendment. On the filing of the petition, We ordered that the petition be given due course and that a writ of preliminary injunction issue to prevent the Sheriff of Camarines Sur from continuing the sale of the properties of the petitioner under the writ of execution.

The respondents herein have filed an answer to the petition

for certiorari, alleging that the inclusion of the legal interest in the order sought to be set aside is in accordance with the decision of the court in Civil Case No. 3516, and that the omission of the legal interest in the dispositive part of the subsequent case was a mere oversight which had made the decision ambiguous and subject to clarification, such that an amendment is necessary in order to make the judgment conform with the pleadings and the evidence as disclosed in the record itself.

The authorities cited by the respondents are the cases of Locsin vs. Paredes and Hodges, 63 Phil. 87, Velez vs. Martinez and Chacon, 63 Phil. 231, Beltran vs. Reyes, 55 Phil. 1004, and Ralla vs. Director of Lands, 46 O.G. No. 115487, and the citations in 49 C.J.S. Sec. 436, pp. 863-864; 867-868. In the first case of Locsin vs. Paredes and Hodges, *supra*, it was found that the word "severally" was omitted in the decision the amendment of which was sought, and it was decided therein that the omission of the word "severally" in the judgment created an ambiguity which may be clarified even after the decision had become final. Note that the omission of the word "severally" actually created an ambiguity in the body of the decision. In the case of Velez vs. Martinez and Chacon, *supra*, Velez was sued in his capacity as administrator of the estate, but in the judgment he was personally made to pay for the amount of the judgment. The judgment reads as follows:

> " 'In view of the foregoing, it is hereby ordered that the herein defendant give to the herein plaintiff Ramon Chacon the possession of the land described in the complaint heading this case and to turn over, furthermore, to the said plaintiff the amount of P1,326.54 with interest at 6 per cent per annum from March 30, 1930, until fully paid, without costs. It is so ordered."

A writ of execution was issued by virtue of the judgment, and proceedings having been taken to prevent its enforcement against Velez in his capacity as administrator, the judgment is not against him personally but in his capacity as administrator. We held in that case that the order issued by the judge was rendered beyond his authority and that the execution issued by virtue of the order was also null and void.

In the first case cited, Locsin vs. Paredes and Hodges, we declared there was ambiguity in the judgment, which ambiguity could be remedied by amendment, a situation which does not appear in the case at bar, in which no ambiguity exists at all. The second case of Velez vs. Martinez and Chacon is also no authority for the case at bar. The action was to annul an order and a writ of execution issued in pursuance thereto; it was not a mere amendment of a final judgment. Neither can it therefore, be applicable to the case at bar. So also all the cases of Beltran vs. Reyes, *supra*, and Ralla vs. Director of Lands, *supra*, wherein ambiguous statements in the decision needed interpretation, and such ambiguities authorized inquiry into the body of the decision for the purpose of clarification.

In the case at bar, no ambiguity of any kind exists in the dispositive part of the judgment. The dispositive part of the judgment rendered in Civil Case No. 3015, both by the Court of First Instance and the Court of Appeals, absolutely makes no mention of any interest on the amount of the judgment, hence there is no ambiguity to be clarified from the statements made in the body of the decision. What actually happened in the case at bar is an oversight on the part of the judge and the Court of Appeals, in not including an order for the payment of interest and a parallel neglect on the part of counsel for the plaintiff-appellee in not seeking a modification of the judgment in either court by the inclusion of the interest on the amount of the judgment. There was a judicial oversight which counsel has neglected to remedy both in the Court of First Instance and in the Court of Appeals. The situation is one in which an oversight is sought to be remedied by claiming an ambiguity not apparent in the dispositive part. While it was within the power or within the duty of both the Court of First Instance and the Court of Appeals to have rendered judgment for the interest on the amount of the judgment, neither of said courts had noted or remedied the omission. The general power of courts to amend their judgments or orders to make them conformable to justice, can not be invoked to correct an oversight or error as a judicial error may not be considered as a mere ambiguity, curable without a proper proceeding filed before the judgment had become final. The situation in the case at bar is covered by Freeman on Judgments, quoted by Us in the case of Marasigan vs. Ronquillo, G.R. No. L-5810, prom. January 18, 1954.

> "The general power to correct clerical errors and omissions does not authorize the court to repair its own inaction, to make the record and judgment say what the court did not adjudge, although it had a clear right to do so. The court cannot under the guise of correcting its record put upon it an order or judgment it never made or rendered, or add something to either which was not originally included although it might and should have so ordered or adjudged in the first instance. It cannot thus repair its own lapses and omissions to do what it could legally and properly have done at the right time. A court's mistake in leaving out of its decision something which it ought to have put in, and something in issue of which it intended but failed to dispose, is a judicial error, not a mere clerical misprision, and cannot be corrected by adding to the entered judgment the omitted matter on the theory of making the entry conform to the actual judgment entered." (Freeman on Judgments, Sec. 141, Vol. I, p. 273).
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> "But the failure of the court to render judgment according to law must not be treated as a clerical misprision. Where there is nothing to show that the judgment entered is not the judgment ordered by the court, it cannot be amended. On the one hand, it is certain that proceedings for the amendment of judgments ought never to be permitted to become revisory or appellate in their nature; ought never to be the means of modifying or enlarging the judgment or the judgment record, so that it shall express something which the court did not pronounce, even although the proposed amendment embraces matter which ought clearly to have been so pronounced." (Freeman on Judgments, Vol. I, Sec. 142, pp. 274-275).

A case in point was decided by this Court in Jabon, et al., vs. Alo, et al., G.R. No. L-1094, prom. August 7, 1952. In this latter case, the court declared plaintiff owner of the portions of the land in question, but no directive was made in the said judgment to put plaintiff in possession of the said portions adjudicated to him. After lapse of more than one year since the decision had become final, plaintiff moved for a modification of the dispositive part of the decision by including therein an order directing defendants to vacate the portons of the land in question. We held that the dispositive part of the decision can no longer be modified as prayed for. The authorities cited in the memorandum filed by the petitioner seem to be in point. They are as follows:

> "The only portion of the decision that becomes the subject of execution is that ordained or decreed in the dispositive part. Whatever may be found in the body of the decision can only be considered as part of the reasons or conclusions of the Court and while they may serve as guide or enlightenment to determine the *ratio decidendi*, what is controlling is what appears in the dispositive part of the decision." (Rosario Nery Edwards, et al., vs. Jose Arce et al., 12 Off. Gaz., 2337).
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> "The Court should not require the collection of interest when the judgment on which it is issued does not give it, and interest is not allowed by statute. This has been held

to be the rule even where interest on judgment is allowed by statute, if the judgment does not include it." (33 C.J.S. No. 75b, p. 216).

Considering that the dispositive part of both of the decisions of the Court of First Instance in Civil Case No. 3015, and of the Court of Appeals in CA G.R. No. 17320-R, contain no provision on the interest to be paid on the judgment, we hold that it is beyond the power of the respondent court to issues a writ of execution for the payment of the principal obligation with the interest thereon, because the amount of the interest was not included in both judgments of the Court of First Instance and the Court of Appeals.

WHEREFORE, the order sought to be reviewed is hereby set aside. The injunction issued by Us is hereby declared permanent, with costs against the respondent Donato Timario and Consuelo S. de Timario.

Paras, C.J., Bengzon, Bautista Angelo, Concepcion, and Gutierrez David, JJ., concurred.

Montemayor, J., dissenting:

It is with deep regret that I feel myself constrained to dissent from the learned majority opinion penned by Mr. Justice Labrador. It is an opinion comprehensive and well written and states the facts of the case correctly and fully. Only that, in my opinion, it suffers from a flaw in that it perhaps unwittingly permits a miscarriage of justice by sticking too closely and strictly to the rules and to the technicalities of the law, overlooking the justice and the relief that respondent Donato Timario and Consuelo S. de Timario fully deserve.

Respondent obtained a judgment which has long become final, against petitioners on May 12, 1955 for the sum of P9,218.00 *with interest at the legal rate from the filing of the action*, that is to say, from November 9, 1953. There is absolutely no question that the obligation was for P9,218.00 with *legal interest*. Respondents brought the present action to enforce said judgment for the payment of P9,218.00 with legal interest. The trial court in its decision made reference to this former, final decision, calling for the payment of P9,218.00 with legal interest and it approved and granted the enforcement, only that in the dispositive part of the decision, it involuntarily omitted or forgot the payment of legal interest. It was a clear oversight or involuntary omission. Even the majority opinion says so when it stated, "what actually happened in the case at bar is oversight on the part of the judge and of the Court of Appeals, in not including an order for the payment of interest."

Shall we allow a party to suffer actual, real and substantial injustice and be deprived of the payment of interest even at the legal rate, which interest has been declared, sanctioned and determined in a final decision, the courts have overlooked, omitted and forgotten to mention the payment of said legal interest?

There is, in my opinion, nothing sacred or sacrament in the dispositive part of a final decision which precludes its being touched, amended, corrected and clarified, when it clearly appears that said dispositive part does not reflect and embody as it should the decision itself. The dispositive part merely consolidates and expresses briefly the body of the decision and its conclusion, and gives it due course. If it makes a mistake, clerical or otherwise, through oversight, omission, etc., that mistake could and should, in the interest of justice be stricken down as an outlaw or intruder that has no reason to be there, and the corresponding correction or clarification immediately effected. Otherwise, courts of justice would fail in their mission and the responsibility to administer real, substantial justice or as near it as is possible, to the parties on the merit of their claims and defenses, if said courts place too much emphasis on and adhere too closely to technicalities of the law.

Supposing that in the present case, although the final decision sought to be enforced called for the payment of P9,218.00, the dispositive part of the present decision, although in its body it made reference as it did to and correctly stated the said amount of P9,218.00, through oversight or clerical error, placed the comma between the figures 2 and 1 and added one zero after 8, followed by the decimal point, so as to make the sum P92,180.00 instead, and the trial court and the Court of Appeals and the parties, through oversight, carelessness or overconfidence had allowed said decision with the erroneous dispositive part to become final and conclusive. Surely, that kind of error would not entitle the respondents to receive P92,180.00 instead of P9,218.00, neither could it compel the petitioners to pay the said clearly incorrect and erroneous amount. In that case, this High Tribunal would intervene, examine the record of the case, examine the body of the decision, strike down the error in the dispositive part and make it conform to the body of the decision and the merits of the case as found by the trial court. The noble edifice of the administration of justice would not long stand and endure if judicial errors unintentionally committed through oversight, are allowed to undermine it. And this danger could be effectively avoided and prevented by a more liberal interpretation and application of the law. The Rules of Court themselves provide for a liberal construction of the same, saying that the rules shall be construed liberally in order to promote their objective and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding.

In the first case cited by the majority opinion, Locsin vs. Paredes and Hodges, 63 Phil. 87, the decision of the trial court omitted the word "severally", and yet when this Tribunal found out even after said decision had become final, that the obligation was not only joint but several, we ignored the omission and allowed the trial court to cure it by considering that the omitted word "severally" was actually contained in the decision. Although the decision in that case was already final, still we virtually modified it by practically allowing the insertion of the word "severally", which word was not there in the first place, in order to make the decision conform to the merits of the case, although we said that it was to clarify the ambiguity in the dispositive part. Why could not we in the present case cure the error or omission committed by inserting as it were the phrase, "with interest at the legal rate from the filing of the action", knowing that the respondents are fully entitled to said legal interest and the petitioners liable to pay it on the basis of the final decision being enforced. That would clear the ambiguity. But the majority opinion says that there is no ambiguity in the present case. I believe there is, because whereas the dispositive part makes no mention of the payment of interest, the decision sought to be enforced provides for said payment of interest, and the very body of the present decision refers to said payment of interest and in effect grants and approves its enforcement.

Again, in the case of Velez vs. Martinez and Chacon, 63 Phil. 231, cited and discussed in the majority opinion, the trial court in its decision sought to hold the defendant personally responsible for the payment of a certain amount with interest. In order to correct the error and administer justice, we had to examine the record of the case and when we found that the defendant was sued not in his personal capacity but as administrator, we held that the trial court could not hold him personally responsible but only as an administrator. In other words, to administer justice in that case, we went through and beyond, even ignored the dispositive part of a trial court's final decision and after examining the record, we in effect modified the dispositive part of said final decision so as to conform to the record and the merits of the case.

I agree with the majority that ordinarily, the judgment in a case contained in the dispositive part should be respected and followed, specially when it has become final, but when, as in the present case, there is a manifest error or omission which sub-

stantially affect the rights of one of the parties, and the trial court which had committed that error itself is disposed and wants to correct its error or omission, we should disregard technicalities and allow the trial court to correct its own error. In trying to do so, the trial court in its order of January 15, 1958, said:

"Although the dispositive part of the decision does not order the defendants to pay interest on the sum of ₱9,218.00, nevertheless, in paragraph 1 of the decision it clearly appears that the defendants were ordered to pay legal interest on the said sum. For this reason, the motion to set aside the order of this court of December 14, 1957 ordering payment of said interest is denied."

However, we through the majority opinion decline and refuse to allow said trial court to make correction of its involuntary error. And to my mind, there lies the whole trouble, nay, the tragedy of the whole unfortunate situation.

Another point of view suggests itself. As already stated, the present action was brought merely to enforce the first or final decision which called for the payment of ₱9,218.00 and *the payment of legal interest*. Since the present decision authorizes said enforcement, may it or can it in the process of enforcement modify the final decision to be enforced by increasing or diminishing the amount or omitting *the payment of legal interest*? I do not believe so. It must enforce the final decision if it at all, faithfully, fully and in its entirety. It cannot enforce the payment of the amount and leave the payment of legal interest for another action for enforcement. In other words, a final decision may not be enforced by means of or through a subsequent decision, piecemeal. Otherwise, that would mean multiplicity of suits because the winning party would have to bring another action to enforce that part of the decision regarding payment of the interest which was involuntarily omitted in the enforcing decision. This, in my opinion, is another reason why the dispositive part of the present decision should be clarified and made to conform to the body of the decision and the record of the case by considering as included in said dispositive part, the payment of legal interest.

The amount involved in the legal interest is quite substantial. It is interest at the legal rate from November 9, 1953 on the rather considerable amount of ₱9,218.00. The respondents who were adjudged by final decision liable for said amount and interest have delayed the said payment and even had taken the case on appeal to the Court of Appeals, which court declared the appeal to be frivolous and condemned them to pay double costs. By the time this decision becomes final, almost seven years will have passed from November 9, 1953. The interest on ₱9,218.00 for that period at the legal interest would be quite substantial and with the majority opinion, we shall be depriving respondents of that, in my opinion, unjustly, merely on technical grounds.

In conclusion, I hold that an error committed through oversight in the dispositive part of a decision may be corrected even if the latter has become final, in order to conform to the body of the decision, this, in order to serve the interests of justice; that where as in the present case, the error was really unintentional because the body of the decision as to the amount of the judgment and the payment of legal interest, is clear, and the trial court that committed the error realizes it and to make amends, wants to correct the error, it should be allowed to do so by this Tribunal; that where as in the present case, the decision in question and the dispositive part thereof merely seek to enforce a prior final judgment, said final decision must stand in its entirety and integrity without any alteration, amendment, increase or diminution of the amount involved including the payment of interest, and the decision enforcing the same must enforce it fully, in its entirety, and it may not intentionally or otherwise, modify, alter, diminish or increase the amount of the judgment. Neither may it enforce the prior judgment only partially or piecemeal so as to leave the enforcement of the rest of the judgment to a subsequent action for that would mean multiplicity of suits.

For the foregoing reasons, I dissent.

V

Standard-Vacuum Oil Co., Petitioner, vs. Anita Tan and The Court of Appeals, Respondents, G. R. No. L-13048, Feb. 27, 1960, Gutierrez David, J.

CIVIL LAW; ARTICLES 1902 AND 1903 OF OLD CIVIL CODE CONSTRUED. — The liability of the employer under articles 1902 and 1903 of the old Civil Code is primary and direct, based upon his own negligence (culpa aquiliana) and not on that of his employees or servants.

Ross, Selp, Carrascosa & Janda, for petitioner.

Alberto R. de Joya, for respondent.

DECISION

On May 3, 1949, Julito Sto. Domingo and Igmidio Rico, employees of the Standard Vacuum Oil Company (hereinafter referred to as STANVAC), were delivering gasoline from a tank truck trailer to the Rural Transit Co. at its garage at Rizal Avenue Extension, City of Manila. While the gasoline was being discharged to a subterranean tank, the discharge hose suddenly caught fire. It spread to the rear part of the tank truck, and as somebody shouted, "Fire! fire!" Sto. Domingo, who was then busy writing his report inside the cab of the truck, went down to investigate. He saw that his helper, Rico, had already removed the hose and closed the cap screw of the tank. Obeying the signal of Rico, who sustained burns on his face, Sto. Domingo drove out the truck from the gasoline section compound towards Rizal Avenue Extension. But upon reaching the street, he abandoned the truck without setting its parking brake. Consequently, the vehicle continued moving to the opposite side of the street causing three houses on that side — one of them belonging to Anita Tan — to be burned and destroyed.

Julito Sto. Domingo and Igmidio Rico were subsequently charged with arson through reckless imprudence in the Court of First Instance of Manila. Both were, however, acquitted after due trial because their negligence was proven and nobody knew what caused or started the fire, it being "an unfortunate accident."

Anita Tan then filed a complaint in the Court of First Instance of Manila against STANVAC, Julito Sto. Domingo and Igmidio Rico, seeking to recover the sum of ₱12,000.00 which was the cost of the construction and repair of her house, plus legal interests. This complaint was later amended to ask for actual and moral damages and to include as defendant the Rural Transit Company. Upon defendants' motion, the complaint was dismissed. But on appeal, the order of dismissal was affirmed by this Court only with respect to defendants Sto. Domingo and Rico, and reversed with regard to the other two defendants. (Anita Tan vs. Standard Vacuum Oil Co. et al., G.R. No. L-4160, July 29, 1951.)

In the court *a quo* after the case had been remanded, the complaint was finally amended to include additional party defendants and to substitute the name of Rural Transit Co. with Bachrach Motor Co., Inc., it having been found that the former was but a garage and gasoline station owned and operated by the latter.

After the issues had been joined and several hearings held, the trial court rendered judgment, the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, an alternative and conditional judgment is hereby rendered as follows:

"1. Under the first cause of action for *culpa aquiliana*, the defendants Standard Vacuum Oil Company and the Bachrach Motor Company are hereby ordered to pay the plaintiff, jointly and severally, (a) the sum of ₱10,630.80 for what plaintiff has spent in the reconstruction of her house No. 2540, Rizal Avenue Extension, this City, with interest thereon at the rate of 6% per annum from January 6, 1950, the date of the filing of the original complaint in this case; (b)

₱2,700.00 for rentals which she failed to receive while said house was under construction; (c) ₱1,000.00 for moral damages; (d) fifteen per cent (15%) of the amounts mentioned in (a), (b) and (c) of this paragrph for attorney's fees; and (d) to pay the costs;

"2. Under the second cause of action and in pursuance of the provisions of Art. 101, 2nd par. of the Revised Penal Code, defendants Pilar T. Bautista, Milagros G. Tinio, and the Heirs of the deceased Inocencio Gochangco, to wit, Severina L. Gochangco, Conrado Gochangco, Segundina Alcazar and Noemi G. Palma (these heirs as one), are hereby ordered to pay plaintiff the same amounts which appear in No. 1 of the dispositive part of this decision in proportion to the values of their respective properties as above set forth but, if this judgment is executed against them and they do pay, their payment shall be without prejudice to seek proportional reimbursement from defendants Gloria Posadas Arkonel nad the Bachrach Motor Company, whose properties have also been saved from the conflagration;

"3. Plaintiff shall not be entitled to both of the remedies mentioned in Nos. 1 and 2 hereof, nor can the defendants in either number seek reimbursement from those in the other."

From that judgment, the two defendant companies appealed to the Court of Appeals. On September 18, 1957, that court renddered its decision absolving Bachrach Motor Co. Inc., from any liability. but affirming the appealed judgment with respect to STANVAC, with the modification that it shall pay plaintiff Anita Tan only the amount of ₱13,036.00, plus legal interest. STANVAC in due time filed a motion for reconsideration, but the same having been denied, it filed the present petition for review on certiorari.

The Court of Appeals in the decision complained of expressly found that "the record of the case showing that if the fire that gutted the house of Anita Tan was not caused by Sto. Domingo's and Rico's criminal negligence, evidently it was so caused by their fault and lack of equanimity in the presence of the fire which suddenly and for unknown reason sparked in the discharge hose and which could have been put out by the proper and opportune use of the fire extinguishers with which the tank-trailer was equipped." It also found that there was negligence on the part of the employer, herein petitioner STANVAC itself, in the direction or supervision of its two employees. To better show the acts or omissions constituting the fault or negligence of petitioner and its two employees, the pertinent portion of the decision of the Court of Appeals is hereunder quoted as follows:

"It is admitted that the Rural Transit Station had a shaded portion and an open cemented space. The main opening ot its subterranean tank was nearer the shaded part than Rizal Avenue Extension. It is presumed that during the discharge operation the tank-trailer was parked in the middle of the open space which had an area of 65 feet (Exh. 'Q'). Hence, had the tank-trailer truck been left in that open sapce, appellee's house would not have been burned nor would an explosion of the underground tank have occurred because, according to Sto. Domingo himself, when he drove the truck out of the street, Rico had already removed the hose from the opening of said tank and closed it with the cap screw (t.s.n., p. 100 Santiago). This conclusion is fully sustained by then Acting Deputy Chief of the Manila Fire Department, Braulio Aloña who, when asked if the subterranean tank would have exploded had not the tank-trailer been removed from the place where it caught fire, categorically answered, 'No, Señor, no explotaria.' (t.s.n., p. 9 — Quimpo.)

"It is likewise admitted that the two fire extinguishers which the tank-trailer carried (appellant's brief, p. 24) were not detached and put to use by Sto. Domingo and Rico. Instead in open violation of condition No. 8 of the Permit for the Transportation of Combustible by Tank Truck (Exh. 'X-2') — which provides that 'whenever refilling or filling work is conducted, fire extinguisher must be on hand and readied for fire emergency by an experienced operator until the fill or discharge operation is completed' —Sto. Domingo went into the cab of the truck to write his report while Rico watch with empty hands the unloading of the gasoline. Had both employees of the appellant oil company complied with the condition just quoted by closely observing the discharge operation with the fire extinquishers in their hands ready for use, they could have used these instruments instantly and would certainly have been able to put out the spark that ignited the hose during the discharge operation — just as the foreman of the Rural Transit Station succeeded in putting out the fire at the mouth of the underground tank by the proper usage of the station's only extinguisher.

"The above transcribed condition speaks of an 'experienced operator' who must use and operate the fire extinguisher. Yet, Sto. Domingo, who, according to appellant's evidence had some training and took periodic refresher course on the proper way of making delivery of its highly inflamable products by means of tank-trailer, including the use and operation of the fire extinguisher, did not personally attend to the discharge of the gasoline but entrusted this very delicate and most risky task to Igmidio Rico, who had no training at all — or if he had some, it was not proven during the trial.

"While the dischharge of the gasoline to the underground tank was undertaken, there were many persons waiting for the passenger truck 'about two or three meters' from the tank-trailer truck, milling about it (t.s.n., pp. 9 and 10 — Garcia). Even Sto. Domingo admitted that when he stopped writing and turned around because of the shout of 'fire' fire! he saw a woman at the left side of his truck who run towards a bus inside the Rural Transit garage (Exh. 'N-2'). It was indeed lack of foresight, bordering on culpable negligence, on the part of Sto. Domingo and Rico to have allowed many persons to roam around near the tank-trailer while the discharge of the gasoline was under way, considering the high volatility and inflammability of this liquid.

"Sixta Lazaro, who lived directly across the street from the Rural Transit Station, declared: 'On May 3 1949, between 3 and 3:20 o'clock in the afternoon I was picking clothes stretched under the sun and I heard somebody shouting "sunog, sunog" "(fire, fire"). When I turned my head to look at the direction from which the shout came, I saw inside the garage of the Rural Transit Company a green truck discharging gasoline, with the rear part already aflame. I went to our bathroom to see better what was happening. I saw the driver started the truck perhaps to drive it out from the premises but before the truck reached the street the driver jumped out from his seat. I saw the truck coming right to the direction of our house so I picked up my boy about two years old and I went downstairs. We have just reached downstairs when I heard the truck was jummed at the ditch infront of our house.' (t.s.n., pp. 21 and 22, Garcia). According to this witness, after the driver jumped out, 'the truck continued in motion' (t.s.n., p. 26 — Garcia) and the flame at the rear part of the truck was still 'about one foot high from the bottom of the tank' (t.s.n., p. 28 — Garcia) in a place marked as circle 1 in Exhibit 'D'. Evidently, Sto Domingo was seized with panic and abandoned the truck without setting its parking brake and without using the fire extinquisher which was 'placed on the usual place on the side of the truck' (t.s.n., p. 25 — Garcia). Had he stopped the truck on the western side of Rizal Avenue Extension and operated the fire extinguisher instead of running away from the scene of occurrence, most probably he could

rear part of the tank-trailer was only about one foot high.

"The facts narrated in the five preceding paragraphs prove that the employees of appellant oil company did not exercise special care and diligence required by the exceptional character of the work they were undertaking on May 3, 1949, in the course of their employment in the service of appellant oil company.

"Another equally unmeritorious contention of appellant oil company is that the trial court erred in holding that this appellant was negligent in not having appropriately instructed its employees.

"It is of common knowledge that gasoline is a highly volatile and combustible liquid. For this reason, aside from the requirements that tank-trailers should have drag chains or other flexible metallic devices long enough to reach the ground; that it should use only electric lights with fuses or automatic circuit breakers; that smoking is absolutely prohibited during deliveries or when the tank is being filled; and others (Exh. 'N-2'), the owners or sellers of said liquid must properly instruct their laborers and employees charged with the delivery or handling of the liquid on how to manipulate the fire extinguishers so that they may instantly put out any spark. They should likewise be given the location of the nearest fire alarm for immediate notification of the fire department if the spark assumes proportions greater than can be extinguished by the small hand apparatus. It has not been shown that Igmidio Rico received any such instruction or training from appellant; and Julito Sto. Domingo, who undersent some training, testified that during his training period and three years of service, he was not instructed on the usage and shown the locations of the fire alarms in the vicinity of the stations where he used to deliver gasoline, neither was he given by appellant any sketch or map to show the locations of said fire alarms (t.s.n., pp. 31 and 32 — Boaqiña). Thus, he was not able to locate any fire alarm during his ten-minute laborious search. Had an early warning from Sto. Domingo been received by the fire department, the destruction of appellee's house might have been prevented by the prompt action of the firemen.

"On the other hand, appellant oil company knew of the practice of Sto. Domingo of writing his reports in the cab of the truck during discharge operations, and yet appellant oil company did not advise him against it nor prohibit him from doing it (t.s.n., pp. 60, 63 and 64 — Santiago). Had appellant ordered Sto. Domingo to stop this practice and instructed him to personally attend to the discharge of the gasoline with the fire extinguisher ready, he would indubitably have been able to check the fire at its inception, taking into account his special training which Rico did not have.

"Obviously, those considerations frustrate appellants's attempt to exculpate itself under the last paragraph of Article 1903 of the old Civil Code, by trying to futilely prove that it exercised the diligence of a good father of a family to prevent the damage to appellee's property."

Counsel for petitioner STANVAC contends that since its employees Sto. Domingo and Rico had previously been found by competent court to be not negligent — referring to the court acquitting them in the criminal case for arson thru reckless imprudence — said petitioner cannot now be held liable for damages. The contention, in our opinion, cannot be sustained. It is admitted that respondent Anita Tan sought to hold STANVAC liable under Articles 1902 and 1903 of the old Civil Code, the law in force at the time the fire in question occurred. Under those articles, the liability of the employer is primary and direct, based upon his own negligence (culpa aquiliana) and not on that of his employees or servants. (Cangco vs. Manila Railroad Co., 38 Phil. 768.) The present proceeding, therefore, is entirely unrelated to the judgment in the criminal case where petitioner's two employees were acquitted because their criminal negligence was not proved and the cause of the fire could not be determined. Parenthetically, after the trial court had ordered the dismissal of respondent Anita Tan's complaint, this Court on appeal reversed that order as to STANVAC and authorized the proceedings against said company, which was sued "not precisely because of the negligent acts of its two employees but because of acts of its own which might have contributed to the fire that destroyed the house of plaintiff (herein respondent Anita Tan)." Continuing, this Court further observed that —

> "x x x The complaint contains definite allegations of negligent acts properly attributable to the company which if proven and not refuted may serve as basis of its civil liability. Thus, in paragraph 5 of the first cause of action, it is expressly alleged that this company, through its employees, failed to take the necessary precautions or measures to insure safety and avoid harm to persons and damage to property as well as to observe that decree of care, precaution and vigilance which the circumstances justly demanded, thereby causing the gasoline they were unloading to catch fire. The precautions or measures which this company has allegedly failed to take to prevent fire are not clearly stated, but they are matters of evidence which need not now be determined. Suffice it to say that such allegation furnishes enough basis for a cause of action against this company. x x x."

Taking great pains in minutely scrutinizing the allegations in the complaint counsel for petitioners avers that STANVAC was merely referred to herein as the employer and was not at all charged with negligence. Be that as it may, it is undisputed that no objection was made to the presentation of evidence as to the negligence acts of STANVAC during the trial of the case. As a matter of fact, it even tried to overcome that evidence of its own tending to show that it had employed the diligence of a good father of a family to prevent the damage. The issue, therefore, regarding the negligence of petitioner STANVAC — even assuming that the complaint does not really contain allegations of negligent acts properly attributable to it — must be considered as it if had been raised in the pleadings. And the Court of Appeals, whose factual findings are final and conclusive upon this Court, having found that petitioner company did fail to take necesary precautions or measures to prevent fire, and that the fire that destroyed respondent Anita Tan's house could have been avoided had petitioner exercised due care in the supervision or control of its employees, the appellate court's ruling on its liability cannot now be disturbed .

In view of the foregoing, the decision sought to be reviewed is hereby affirmed, with costs against petitioner.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, J. B. L. Reyes, Endencia and Barrera, JJ., concurred.

VI

The People of the Philippines, Plaintiff-Appellee, vs. Buenaventura Buling, Defendant-Appllant, G. R. No. L-13315, April 27, 1960, Labrador, J.

1. CRIMINAL PROCEDURE; DOUBLE JEOPARDY; CASE AT BAR. — On December 7, 1956, defendant was charged in the justice of the peace court with less serious physical injuries, the complaint alleging that the injuries of the offended party would require medical attendance and incapacitate him from 10 to 15 days. Accused pleaded guilty and served fully the sentence. The injuries did not heal within the said period, so the Provincial Fiscal filed a second information against the defendant for serious physical injuries with the Court of First Instance, alleging that the injuries would require medical attendance and incapacitate the offended party

have checked the fire and prevented the burning of appellee's house, because even at that moment the fire in the from 1-1/2 months to 2-1/2 months. Defendant having been convicted of serious physical injuries, appealed. *Issue*: Whether the prosecution and conviction of defendant for less serious physical injuries is a bar to the second prosecution for serious physical injuries. *Held*: Since no new supervening fact has existed or occurred which has transformed the offense from less serious physical injuries, the prosecution and conviction of defendant for less serious physical injuries is a bar to the second prosecution for serious physical injuries.

2. ID.; ID.; ID. — In the case at bar, the new finding of fracture which lengthened the period of healing of the wound was due to the very superficial and inconclusive examination made on December 10, 1956. Had an x-ray examination taken at the time, the fracture would have certainly been disclosed. The wound causing the delay in healing was already in existence at the time of the first examination, but said delay was caused by the very superficial examination then made. No supervening fact had occurred and, therefore, the general rule on double jeopardy should be applied.

Francisco A. Puray, for defendant-appellant.

Asst. Sol. General Esmeraldo Umali and Sol. Emerito M. Salvu, for plaintiff-appellee.

DECISION

Appeal from a judgment of the Court of First Instance of Leyte, Hon. Gaudencio Gloribel, presiding, finding the accused Buenaventura Buling guilty of serious physical injuries and sentencing him to imprisonment of four months of arresto mayor, as minimum, to one year of prison correccional, as maximum, to indemnify the offended party.

The following uncontroverted facts appear in the record: On December 7, 1956, the accused was charged in the Justice of the Peace Court of Cabalian, Leyte, with the crime of less serious physical injuries for having inflicted wounds on complaining witness Isidro Balaba, which according to the complaint would require medical attendance for a period from 10 to 15 days and will incapacitate the said Isidro Balaba from the performance of his customary labors for the same period of time." The accused pleaded guilty to the complaint and was on December 8, 1957 found guilty of the crime charged and sentenced to 1 month and 1 day of arresto mayor and to pay damages to the offended party in the sum of ₱20.00, with subsidiary imprisonment in case of insolvency. On the same day he began to serve his sentence and has fully served the same.

However, Balaba's injuries did not heal within the period estimated, and so on February 20, 1957, the Provincial Fiscal filed an information against the accused before the Court of First Instance of Leyte, charging him of serious physical injuries. The information alleges that the wounds inflicted by the accused on Isidro Balaba require medical attendance and incapacitated him for a period of 1-/12 months to 2-1/2 months. After trial the accused was found guilty of serious physical injuries and sentenced in the manner indicated in the first paragraph hereof. This is the decision now sought to be set aside and reversed in this appeal.

The only question for resolution by this Court is, whether the prosecution and conviction of Balaba for less serious physical injuries is a bar to the second prosecution for serious physical injuries.

Two conflicting doctrine on double jeopardy have been enunciated by this Court, one in the case of People Tarok, 73 Phil. 260 and People vs. Villasis, 81 Phil. 881, and the other, in the cases of Melo vs. People, 85 Phil. 766, People vs. Manolong, 85, Phil. 829 and People vs. Petilla, L-5070, prom. December 29, 1952. But in Melo vs. People, *supra*, we expressly repealed our ruling in the case of People vs. Tarok, *supra*, and followed in the case of People vs. Villasis, *supra*. In the Melo vs. People case, we stated the ruling to be that:

> "x x x Stating it in another form, the rule is that "where after the first prosecution a new fact supervenes for which the defendant is responsible, which changes the character of the offense and, together with the facts existing at the time, constitutes a new and distinct offense" (15 Am. Jur, 66), the accused cannot be said to be in second jeopardy if indicted for the new offense." (85 Philippine Reports, pp: 769-770).

Do the facts in the case at bar justify the application of the new ruling? In other words, has a new fact supervened, like death in the case of Melo vs. People, which changes the character of the offense into one which was not in existence at the time the case for less serious physical injuries was filed? We do not believe that a new fact supervened, or that a new fact has come into existence. What happened is that the first physician that examined the wounds of the offended party certified on December 10, 1956 that the injury was as follows: "wound, incised, wrist, lateral, right, 3/4 inch long, sutured" and that the same would take from 10 to 15 days to heal and incapacitated (the wounded man) for the same period of time from his usual work (Exh. 3). It was on the basis of this certificate that on December 8, 1956, defendant-appellant was found guilty of less serious physical injuries and sentenced to imprisonment of 1 month and 1 day of *arresto mayor*, etc.

But on January 18, 1957, another physician examined the offended party, taking an X-ray picture of the arm of the offended party which had been wounded. The examination discloses, according to the physician, the following injuries:

> "Old stab wound 4 inches long. With infection, distal end arms, right. X-ray plate finding after one month and 12 days — Fracture old oblique, incomplete distal end, radius right, with slight calus." (Exh. "E").

and the certification is to the effect that treatment will take from 1-1/2 months to 2-1/2 months barring complications.

Counsel for the appellant claims that no fact had supervened in the case at bar, as a result of which another offense had been committed. It is argued that the injury and the condition thereof was the same when the first examination was made on December 10, 1956, as when the examination was made on January 18, 1957, and that if any new fact had been disclosed in the latter examination failure of this new fact to be disclosed in the previous examination may be attributed to the incompetence on the part of the examining physician. We find much reason in this argument. What happened is no X-ray examination of the wounded hand was made during the first examination, which was merely superficial. The physician who made the first examination could not have seen the fracture at the distal end of the right arm, and this could only be apparent or visible by X-ray photography.

Under the circumstances above indicated, we are inclined to agree with the contention made on behalf of appellant that no new supervening fact has existed or occurred, which has transformed the offense from less serious physical injuries to serious physical injuries.

But the Solicitor General cites the case of People vs. Manolong, *supra*, and argues that our ruling in said case should apply to the case at bar, for the reason that in the said case the first crime with which the accused was charged was less serious physical injuries and the second one was serious physical injuries and yet we held that there was no jeopardy. We have carefully examined this case and have found that the first examination made of the offended party showed injuries which would take from 20 to 30 days to heal, whereas the subsequent examination disclosed that the wound of the offended party would require medical attendance and incapacitate him for labor for a period of 90 days, "causing deformity and the loss of the use of said member". No finding was made in the first examination that the injuries had caused deformity and the loss of the use of the right hand.

As nothing was mentioned in the first medical certificate about the deformity and the loss of the use of the right hand, we presume that such fact was not apparent or could not have been discernible at the time the first examination was made. The course (not the length) of the healing of an injury may not be determined before hand; it can only be definitely known after the period of healing has ended. That is the reason why the court considered that there was a supervening fact occurring since the filing of the original information.

But such circumstances do not exist in the case at bar. If the X-ray examination discloses the existence of a fracture on January 17, 1957, that fracture must have existed when the first examination was made on December 10 1956. There is, therefore, no new or supervening fact that could be said to have developed or arisen since the filing of the original action, which would justify the application of the ruling enunciated by us in the cases of Melo vs. People and People vs. Manolong, *supra*. We attribute the new finding of fracture, which evidently lengthened the period of healing of the wound, to the very superficial and inconclusive examination made on December 10, 1956. Had an X-ray examination taken at the time, the fracture would have certainly been disclosed. The wound causing the delay in healing was already in existence at the time of the first examination, but said delay was caused by the very superficial examination then made. As we have stated, we find therefore that no supervening fact had occurred which justifies the application of the rule in the case of Melo vs. People and People vs. Manolong, for which reason we are constrained to apply the general rule of double jeopardy.

We take this opportunity to invite the attention of the prosecuting officers that before filing informations for physical injuries, thorough physical and medical examinations of the injuries should first be made to avoid instances, like the present, where by reason of the important Constitutional provision of double jeopardy, the accused can not be held to answer for the graver offense committed.

The decision appealed from is hereby reversed. The judgment of conviction is set aside and the defendant-appellant acquitted of the charge of serious physical injuries.

Without costs.

Paras, C.J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concurred.

VII

Valentin Castillo, Plaintiff-Appellee, vs. Arturo Samonte, Defendant-Appellant, G. R. No. L-13146, Jan. 30, 1960, Barrera, J.

1. CIVIL LAW; ARTICLE 1088 NEW CIVIL CODE CONSTRUED. — Reimbursement to the purchaser within the period of one month from the notice in writing as provided for in Article 1088 of the New Civil Code is a requisite or condition precedent to the exercise of the right of legal redemption. The bringing of an action in court is the remedy to enforce that right in case the purchaser refuses the redemption.

2. ID.; RIGHT OF LEGAL REDEMPTION; WHEN IT MAY BE EXERCISED. — The right of legal redemption must be done within the one-month period whereas the bringing of an action in court to enforce said right must be done within the prescriptive period provided in the Statute of Limitations. A redemptioner who has offered to redeem the property within the 30-day period fixed by Article 1088 of the new Civil Code may thereafter bring an action to enforce the redemption, but if the said period is allowed to elapse before the right is availed of, the action to enforce the redemption will not prosper, even if brought within the ordinary prescriptive period.

DECISION

Arturo Samonte has interposed this appeal from the decision of the Court of First Instance of Bulacan (in Civil Case No. 1424), directing him to reconvey, under the terms of Article 1088 of the new Civil Code, certain property and pay attorney's fees to plaintiff-appellee Valentin Castillo.

Defendant specifically took this appeal directly to this Court stating in his notice of appeal and prayer for approval of the record on appeal that "esta apelacion envuelve tan solamente cuestion de derecho". In view thereof, he is bound by the findings of fact of the court *a quo*, and this court will, therefore, decide this appeal purely on the question of law raised.(1)

The facts, as found by the trial court, are that Romualda Meneses was, during her lifetime, the owner of the unregistered land in question located at Bambang, Bulacan, Bulacan, with an approximate area of 394 square meters. Upon her demise, she left as compulsory heirs the plaintiff herein and his brothers and sisters Gregorio, Amando, Jose, and Melencia, (2) all surnamed Castillo. Said property remained undivided as the heirs did not partition the inherited estate either judicially or extra-judicially. On July 13, 1953, one of the heirs, Gregorio Castillo, without giving any notice in writing to his co-heirs, including plaintiff herein, sold for P1,000.00 his undivided interest in the property to defendant who, on July 16, 1953, succeeded in registering the deed of sale (Exh. 2) with the Register of Deeds of Bulacan. Sometime in September, 1956, when the place was surveyed cadastrally, plaintiff learned for the first time about the sale and forthwith (on September 15, 1956), he offered to redeem the property from defendant, but the latter refused to re-sell the same to him. Plaintiff, therefore, on December 19, 1956, filed a complaint in the above-mentioned court praying that defendant be ordered to re-sell the property to him.

On September 6, 1957, the court rendered a decision, the dispositive part of which reads as follows:

> "FOR ALL THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment in favor of the plaintiff and against the defendant, ordering the latter to reconvey or transfer the portion of the property in question to the plaintiff herein, upon the payment by the latter to the former of the amount of ONE THOUSAND PESOS (P1,000.00), which is the consideration of the sale made by Gregorio Castillo in favor of the defendant; to pay the plaintiff the amount of TWO HUNDRED PESOS (P200.00) as attorney's fees, and the costs of this action".

Defendant, in this appeal, claims that the court *a quo*, erred: (1) in not ordering the heir-vendor Gregorio Castillo to be included either party plaintiff or party defendant in the case; (2) in upholding defendant's right to redeem the property subject to the controversy; and (3) in awarding to plaintiff attorney's fees.

As to the first assigned error, the trial court had no obligation to order the inclusion of the vendor either as a party plaintiff or party defendant in the case, because while he may be a necessary party, still he is not indispensable in the sense that the matter before it could not be completely adjudicated without him. The deed of sale in favor of appellant clearly states that what is being sold is an undivided 1/5 portion of the land jointly owned by the vendor and his brothers and nephew. The vendee-appellant is, therefore, conclusively presumed to know the law that under such circumstances, the co-heirs are entitled to redeem the portion being sold within 30 days from notice in writing of the sale, under Article 1088 of the New Civil Code. In effect, he is a vendee with notice of the right of redemption by the vendor's co-heirs.

(1) Sec. 3, Rule 42, Rules of Court; Millar v. Nadres, 74 Phil. 307.

(2) Now deceased and represented by her only son Gregorio Asuncion.

Moreover, if the vendee-appellant believed he had a claim against the vendor by reason of the warranty, it was his duty to have filed a third-party complaint against the latter pursuant to Section 1, Rule 12, of the Rules of Court, which states:

"SECTION 1. *Claim against one not a party to an action.* — When a defendant claims to be entitled against a person not a party to the action, hereinafter called the third-party defendant, to contribution, indemnity, subrogation or any other relief, in respect of the plaintiff's claim, he may file, with leave of court, against such person a pleading which shall state the nature of his claim and shall be called the third-party complaint."

In respect of the second assigned error, Article 1088 of the Civil Code, provides:

"ART. 1088. Should any of the heirs sell his hereditary rights to a stranger before the partition, any or all the co-heirs may be subrogated to the rights of the purchaser by reimbursing him for the price of the sale, provided they do so *within the period of one month from the time they were notified in writing of the sale by the vendor.*" (Emphasis supplied.)

From the facts found by the trial court, it is indisputable that plaintiff is entitled to redeem the hereditary right over the 1/5 undivided share sold by his brother Gregorio Castillo to herein defendant-appellant. The only remaining question is whether plaintiff exercised his right within the period prescribed in the law.

It is admitted that plaintiff, as co-heir, has never been notified *in writing* of the sale made by his brother, Gregorio Castillo. Nor were the other co-heirs. But defendant-appellant argues that the registration of the deed of sale (Exh. 2) on July 16, 1953, with the Register of Deeds of Bulacan, was sufficient notice of the sale under the provisions of Section 51 of Act No. 496 (Land Registration Act), which reads:

"SEC. 51. Every conveyance, mortgage, lease, lien, attachment, order, decree, instrument, or entry *affecting registered land* which would under existing laws, if recorded, filed or entered in the office of the register of deeds, affect the real estate to which it relates shall, if registered, filed, or entered in the office of the register of deeds in the province or city where the real estate to which such instrument relates lies, be notice to all persons from the time such registering, filing or entering." (Emphasis supplied.)

But the above-quoted provision of the statute applies only to *registered lands*, and has no application whatsoever to the instant case, for the reason that the property herein involved is, admittedly, unregistered land.[3] In this connection, the court *a quo* correctly observed that "Both the letter and spirit of the New Civil Code argue against any attempt to widen the scope of the notice specified in Article 1088 by including therein any other kind of notice, such as verbal or by registration. If the intention of the law had been to include verbal notice or any other means of information as sufficient to give the effect of this notice, then there would have been no necessity or reason to specify in Article 1088 of the New Civil Code that the said notice or information was sufficient.[4]

It is nevertheless urged by appellant that since appellee admits having learned about the sale in September, 1956, and filed his complaint only in December of the same year, or after a lapse of three months, his action has already prescribed, arguing that actual knowledge constitutes and supplies the written notice required by Article 1088 of the new Civil Code. In the view we take in this case, we need not now decide whether actual knowledge will dispense with the notice in writing mentioned in the law. Suffice it to note that herein appellee, upon learning of the sale in September, 1956, within 30 days thereafter (specifically on the 15th of the same month), offered to repurchase the property from the appellant. This, in our opinion established his right to redeem, and *he could bring an action in court to enforce the right of redemption at any time thereafter provided it is not barred by the Statute of Limitations.*

Interpreting a similar provision in Article 1524[5] of the old Civil Code, this Court held that the same was not a prescriptive period, and stated:

"x x x the right of legal redemption and the right to commence actions are of an entirely different nature. The first creates a substantive right which, in the absence of the article, would never exist; the second *restricts the period in which a cause of action may be asserted.*" (Sempio v. Del Rosario, 44 Phil. 1, at 3).

To the same effect is the case of Villasor v. Medel et al. (46 Off. Gaz. [Supp. 10] 344, 348) where this Court, speaking through Mr. Justice Tuason further stated:

"x x x An action seeks to assert a fundamental, primary right of which the plaintiff has been unlawfully deprived, or to redress a wrong which has been inflicted; legal redemption is in nature of a mere privilege created by law partly for reasons of public policy and partly for the benefit and convenience of the redemptioner, to afford him a way out of what might be a disagreeable or inconvenient association into which he has been thrust. (10 Manresa, 4th ed., 317)"

It would seem clear from the above that the *reimbursement to the purchaser within the period of one month from the notice in writing* is a requisite or *condition precedent* to the exercise of the right of legal redemption; *the bringing of an action in court is the remedy to enforce that right in case the purchaser refuses the redemption.* The first must be done within the month-period; the second within the prescriptive period provided in the Statute of Limitations. If a redemptioner, therefore, *has offered to redeem* the property within the period fixed, he *has complied* with the condition prescribed by the law, and may thereafter bring an action to enforce the redemption. *If, on the other hand, the period is allowed to lapse before the right is made use of, then the action to enforce the redemption will not prosper, even if brought within the ordinary prescriptive period.*[6]

The case of Asuncion v. Jacob et al. decided by the Court of Appeals (48 Off. Gaz., 2786) and cited by defendant-appellant is not authority to support his submission that the complaint for redemption must be filed within the one month period especially where it appears that such a statement was a mere obiter not supported by the finding that the complaint in that case was filed after a lapse of fourteen (14) years from the time the redemptioner was informed of the sale.

Regarding the last assigned error, defendant cites as authority the case of Jimenez v. Bucoy (G. R. No. L-10221, prom. February 28, 1958). In said case, as in the instant case, the lower court awarded attorney's fees to plaintiff without explaining why it made the award. Disapproving said award, on appeal, we stated as follows:

"Under the new Civil Code, attorney's fees and expenses of litigation may be awarded in this case if 'defendant acted in gross and evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim' or 'where the court deems it just and equitable that attorney's fees be recovered' (Art. 2208, Civil Code). These are — if ap-

(3) There is no registration of title to speak of relative to such kind of lands. (Ventura, Land Titles and Deeds [4th Ed.] 270.)

(4) Art. 1067, old Civil Code; Hernaez v. Hernaez, 32 Phil. 214.

(5) Now Article 1623 of the New Civil Code.

(6) V. Tolentino, Civil Code of the Philippines (1959 Ed.), 163, 164.

plicable — some of the exceptions to the general rule that in the absence of stipulation no attorney's fees shall be awarded.

"The trial court did not explain why it ordered payment of counsel fees. Needless to say, it is desirable that the decision should state the reason why such award is made, bearing in mind that it must necessarily rest on an exceptional situation. Unless of course the text of the decision plainly shows the case to fall into one of the exceptions, for instance 'in actions for legal support,' 'when exemplary damages are awarded,' etc. x x x If the trial judge considered it 'just and equitable' to require payment of attorney's fees because the defense x x x proved to be untenable in view of this Court's applicable rulings, it would be error to uphold his view. *Otherwise, every time a defendant loses, attorney's fees would follow as a matter of course.* Under the articles above cited, even a clearly untenable defense would be no ground for awarding attorney's fees unless it amounted to 'gross and evident bad faith." (Emphasis supplied.)

In conformity with the above ruling and, since in the instant case, it does not appear that defendant had acted in gross and evident bad faith in refusing plaintiff's offer to redeem the property in question, or that there are in the text of the appealed decision reasonable or equitable reasons for allowing the award of attorney's fees to plaintiff, we are constrained to disallow the same.

WHEREFORE, modified as above indicated, the judgment of the court *a quo* is affirmed in all respects, with costs against the defendant-appellant.

SO ORDERED.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepcion, J. B. L. Reyes, Endencia and Gutierrez David, JJ., concurred.

XIII

In the Matter of the Testate Estate of Petronila Tampoy, Deceased, vs. Diosdada Albesastine, Petitioner-Appellant, G. R. No. L-14322, February 25, 1960, Bautista Angelo, J.

1. CIVIL LAW; WILLS; A WILL WHICH DOES NOT BEAR THUMBMARK OF TESTATRIX ON ITS FIRST PAGE CANNOT BE ADMITTED TO PROBATE — Section 618 of Act 190, as amended, requires that the testator sign the will and each and every page thereof in the presence of the witnesses, and that the latter sign the will and each and every page thereof in the presence of the testator and of each other, which requirement should be expressed in the attestation clause. This requirement is mandatory, for failure to comply with it is fatal to the validity of the will. In the case at bar, the will suffers from a fatal defect because it does not bear the thumbmark of the testatrix on its first page even if it bears the signature of the three instrumental witnesses and, therefore, fails to comply with the law and cannot be admitted to probate.

DECISION

This concerns the probate of a document which purports to be the last will and testament of one Petronila Tampoy. After the petition was published in accordance with law and petitioner had presented oral documentary evidence, the trial court denied the petition on the ground that the left hand margin of the first page of the will does not bear the thumbmark of the testatrix. Petitioner appealed from this ruling but the Court of Appeals certified the case to us because it involves purely a question of law.

The facts of this case as found by the trial court are as follows:

"De las pruebas resulta que Petronila Tampoy, ya viuda y sin hijos, rogo a Bonifacio Miñoza que la leyera el testamento Exhibito A y la explicara su contenido en su casa en la calle San Miguel, del municipio de Argao, provincia de Cebu, on 19 de noviembre de 1939, y asi lo hizo Bonifacio Miñoza en presencia de los tres testigos instrumentales, Rosario K. Chan, Mauricio de la Peña y Simeon Omboy, y despues de conformarse con el contenido del testamento, ella rogo a Bonifacio Miñoza, que escribiera su nombre al pie del testamento, en la pagina segunda, y asi lo hizo Bonifacio Miñoza, y despues ella estampo su marca digital entre su nombre y appellido en presencia de todos y cada uno de los tres testigos instrumentales, Rosario K. Chan, Mauricio de la Peña y Simeon Omboy y de Bonifacio Miñoza, y despues, Bonifacio Minoza firmo tambien al pie del testamento, en la pagina 2, en presencia de la testadora y de todos y cada uno de los tres testigos arriba nombrados. La testadora asi como Bonifacio Miñoza no firmaron, sin embargo, en la margen izquieda ni en ninguna parte de la primera pagina del testamento que se halla compuesto de dos paginas. Todos y cada uno de los tres testigos instrumentales, Rosario K. Chan, Mauricio de la Peña y Simeon Omboy, firmaron al pie de la clausula de atestiguamiento que esta escrita en la pagina segunda del testamento y en la margen izquierda de la misma pagina 2 y de la pagina primera en presencia de la testadora, de Bonifacio Miñoza, del abogado Rintenar y de cada uno de ellos. El testamento fue otorgado por la testadora libre y expontaneamente, sin haber sido amenazada, forzada o intimidada, y sin haberse ejecido sobre ella influencia indebida, estando la misma en plano uso de sus facultades mentales y disfrutando de buena salud. El testadora fallecio en su casa on Argao on 22 de febrero de 1957 (Vease certificado de defuncion Exhibito B). La heredera instituida en el testamento, Carmen Alberastino, murio dos semanas despues que la testadora, o sea, en 7 de Marzo de 1957, dejando a su madre, la solicitante Diosdada Alberastine."

The above facts are not controverted, there being no opposition to the probate of the will. However, the trial court denied the petition on the ground that the first page of the will does not bear the thumbmark of the testatrix. Petitioner now prays that this ruling be set aside for the reason that, although the first page of the will does not bear the thumbmark of the testatrix, the same however expresses her true intention to give the property to her whose claim remains undisputed. She wishes to emphasize that no one has filed any opposition to the probate of the will and that while the first page does not bear the thumbmark of the testatrix, the second however bears her thumbmark and both pages were signed by the three testimonial witnesses. Moreover, despite the fact that the petition for probate is unopposed, the three testimonial witnesses testified and manifested to the court that the document expresses the true and voluntary will of the deceased.

This contention cannot be sustained as it runs counter to the express provision of the law. Thus, Section 618 of Act. 190, as amended, requires that the testator sign the will and each and every page thereof in the presence of the witnesses, and that the latter sign the will and each and every page thereof in the presence of the testator and of each other, which requirement should be expressed in the attestation clause. This requirement is mandatory, for failure to comply with it is fatal to the validity of the will (Rodriguez v. Alcala, 55 Phil., 150). Thus it has been held that "Statutes prescribing the formalities to be observed in the execution of wills are very strictly construed. As stated in 40 Cyc., at page 1097, 'A will must be executed in accordance with the statutory requirements; otherwise it is entire-

ly void.' All these requirements stand as of equal importance and must be observed, and courts cannot supply the defective execution of a will. No power or discretion is vested in them, either to superadd other conditions or dispense with those enumerated in the statutes"(Uy Coque v. Navas L. Sioca, 43 Phil., 405, 407; *See also* Saño v. Quintana, 48 Phil., 506; Gumban v. Gorecho, 50 Phil., 30; Quinto v. Morata, 54 Phil., 481).

Since the will in question suffers from the fatal defect that it does not bear the thumbmark of the testatrix on its first page even if it bears the signature of the three instrumental witnesses, we cannot escape the conclusion that the same fails to comply with the law and, therefore, cannot be admitted to probate.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Paras, C.J., Bengzon, Montemayor, Labrador, Concepcion, J.B.L. Reyes, Endencia, Barrera and Gutierrez David, JJ., concurred.

IX

Vicente Jimenez, et al., Plaintiffs-Appellants, vs. Carmelo S. Camara, et al., Defendants-Appellees, G. R. No. L-14718, March 30, 1960, *Barrera, J.*

1. CIVIL PROCEDURE; ACTIONS; WHERE BREACH OF CONTRACT IS TOTAL. — The rule is that where the covenant or contract is entire and the breach total, there can be only one action.

2. ID.; ALL MATTERS ARISING OUT OF CONTROVERSY TO BE DETERMINED IN ONE AND SAME SUIT; PURPOSE. — When a trial is had, it is intended that all matters growing out of the controversy are to be finally determined in one and the same suit so as to prevent a multiplicity of actions and to prevent the possibility of one part of the cause being tried before one judge which would unnecessarily harrass the parties and produce needless litigations and accumulate costs.

Enrique E. Marino, for plaintiffs-appellants.
Benedicto, Sumbingco & Associates, for defendants-appellees.

DECISION

This is an appeal, certified to this Court by the Court of Appeals, from the order of the Court of First Instance of Negros Occidental (in Civil Case No. 3362), dismissing plaintiffs' complaint to compel defendant Carmelo S. Camara to execute the necessary deeds of conveyance of 17 parcels of land in favor of plaintiffs.

Plaintiffs Vicente Jimenez, Arturo Jimenez and Filomeno Jimenez, together with four others were originally the registered co-owners of the 24 lots, situated in Isabela, Bago and La Carlota, Negros Occidental. All 24 lots were mortgaged to the Philippine National Bank. Due to the owners-mortgagors' failure to pay their indebtedness on time, the said bank foreclosed the mortgage and acquired the said properties in public action, subject to redemption. The mortgagors renounced their rights of redemption in favor of one Adriano Golez, who appointed Vicente Jimenez, one of herein plaintiffs, as his attorney-in-fact.

In order to redeem said properties from the Philippine National Bank, Adriano Golez and said Vicente Jimenez obtained the intervention and services of defendant Carmelo S. Camara, and on December 29, 1931, a document entitled "Escritura de Compromiso de Venta" (Annex A) was duly executed by said bank in favor of Camara, wherein the former promised to sell to the latter all its rights and interests in the mortgaged properties for the sum of P55,160.00. To give effectivity to said contract, the conformity of the judgment debtors, was necessary; and this conformity was given, subject to the condition that defendant Camara should reconvey to Adriano Golez whatever rights and interests Camara may acquire from the Philippine National Bank over said properties.

Simultaneously with the execution of said contract (Annex A), the previous owners-mortgagors ceded and renounced all their rights, interests, and participations on the redemption of said properties in favor of Adriano Golez. On December 31, 1931, Golez and his attorney-in-fact Vicente Jimenez, with the conformity of the previous owners-mortgagors executed a contract of lease known as "Escritura de Arrendamiento" (Annex B), in favor of defendant Camara over seven (7) of the 24 lots for a period of 8 agricultural years, with 2 years option, and ending with agricultural year 1941-1942. With the execution of the aforementioned contracts (Annexes A and B), the possession, control, use and enjoyment of the 7 leased lots comprising Haciendas Buenavista and Aurelia were delivered to Camara. The other properties (17) lots situated in Bago and La Carlota remained in possession of plaintiffs.

By virtue of said contracts (Annexes A and B), Camara, on January 25, 1945, paid the entire obligation of the mortgaged properties to the Philippine National Bank, in the amount of P34,541.18 as the balance of said debt, plus interest. As a consequence of said payment (totalling P55,160.00), said bank, on January 3, 1946, executed a document of absolute sale known as "Escritura de Venta Definitiva" *on all of the aforesaid properties* in favor of Camara. Thereafter, Camara caused to be registered in his name all the said 24 lots in the Office of the Register of Deeds, without notice to plaintiffs, notwithstanding his commitment under said contracts, Annexes A and B, to re-transfer and reconvey all said properties to Adriano Golez, or to his assigns, successors-in-interests and/or cessioners, the contract of lease (Annex B) having terminated on November 1, 1942.

Because of Camara's refusal to relinquish possession of the 7 lots comprising Hacienda Buenavita and Aurelia notwithstanding the expiration of the lease, a complaint was filed with the Court of First Instance of Negros Occidental on March 16, 1946, docketed in said court as Civil Case No. 306, entitled "Adriano Golez, plaintiff vs. Carmelo S. Camara, defendant". In this case, the true import of the lease contract as well as the resulting relationship between the parties, was put in issue. From the decision of the lower court in that case, plaintiff appealed to this Court (G.R. No. L-4460), and on October 31, 1953, we promulgated a decision in which we said:

> "From all the circumstances and equities of the case, we are led to the conclusion that the relation between the appellant and the appellee was in effect one whereby the appellee accommodated the appellant in the sense that he assumed the obligation of paying the price necessary to redeem the undivided portions of Haciendas Aurelia and Buenavista from the Philippine National Bank, under the terms hereinbefore already noted, namely, that P5,516.00 was the down payment and the balance was payable by annual instalments of 1,000 piculs of sugar to the bank. The appellee, in return, was given by the appellant a leasehold over the two farms, in addition to the possession of the portions already acquired by the bank, with the right of course to receive and enjoy the produce thereof, after deducting only 1,000 piculs of sugar to be delivered to the bank yearly beginning with the crop year 1932-1933. No other rental was paid to the owners. Besides, the appellant admits his obligation to pay compound interest of twelve per cent on the sum of P5,516.00, representing the down payment made by the appellee to the bank and on other amounts paid upon account of the purchase price.
>
> " x x x
>
> "There is now no question as to the right of the appellant to redeem the properties in question from the appellee, the latter not having appealed, and the only point that

arises refers to the amount which the appellant has to pay. From the foregoing observations we are inclined to hold that the appellant should pay to the appellee the sum of ₱5,516.00, less ₱3,560.00 already paid on said item, or ₱1,956.00, with 12 per cent interest compounded annually from January, 1932, (it being admitted under appellant's evidence — transcript, pp. 37-388 — that the sum of ₱3,5600 was paid at the commencement of the lease contract executed on December 31, 1931), plus the sum of ₱55,541.18. The latter amount, which was paid by the appellee on January 24, 1945, in Japanese Military notes must be reduced to actual Philipine currency under the Ballantyne Scale, since said disbursement could have been repaid in the same currency by the appellant during the Japanese occupation. After being so reduced, it shall also bear compound interest of twelve per cent per annum from January 24, 1945,

" x x x

"Wherefore, it being understood that the appellant is indebted to the appellee upon account of the repurchase price of the land in question only in the sums of ₱1,956.00, with twelve per cent compound interest from January, 1932, and ₱296.18 with compound interest of twelve per cent from January 24, 1945, which indebtedness should first be settled by the appellant before he is entitled to a conveyance of the land in question, the appealed judgment is in all other respects affirmed, except further that the 90-day period fixed therein shall be computed from the date this decision becomes final.

"So ordered without costs."

In compliance with said decision of this Court, Adriano Golez, on March 26, 1954, through his attorney-in-fact Vicente Jimenez, deposited with the Clerk of Court of the Court of First Instance of Negros Occidental the sum of ₱386.33 in cash and ₱25,000.00 in P.N.B. Cashier's check or a total of ₱25,386.33. Thereupon, two questions arose again in the lower court (1) whether the deposit in check was valid, and (2) whether Camara was under obligation to reconvey to Golez only the 7 lots under lease or all the 24 lots acquired by him from the Philippine National Bank in virtue of the contracts Annexes A and B. The trial court sustained the validity of the deposit and also ordered the reconveyance of the 24 lots. Camara appealed from this order and again the case reached this Court.

Pending this appeal in this Court, (in G.R. No. L-9160) the present plaintiffs-appellants, as assignees of Golez. filed the instant case (No. 3364) on March 12, 1955, in the Court of First Instance of Occidental Negros against the same Camara, praying, *inter alia*, that defendant be orderd to execute the necessary deeds of conveyance in their favor of the remaining 17 lots acquired by Camara from the Philippine National Bank in the manner already narrated. On August 8, 1955, defendant filed a motion to dismiss, on the grounds that (1) the complaint states no cause of action, and (2) the action is violative of the rule on splitting a cause of action under Section 3 and 4, Rule 2 of the Rules of Court.

Resolving said motion to dismiss and the opposition thereto filed by defendant on August 18, 1955, the court, on August 31, 1955, issued an order dismissing plaintiffs' complaint, sustaining the view that since plaintiffs' predecessor-in-interest (Adriano Golez), in the previous case No. 306 against the same defendant, sought the recovery of 7 of the lots mentioned in Annex B in pursuance to the terms thereof, where he, (Golez) could have also demanded the conveyance of the other 17 lots covered by the same contract Annex B relied upon by the plaintiffs in the present case, the instant action constitutes but a part of the former and, consequently, violates the rule against splitting a cause of action. From this order of dismissal, the plaintiffs have taken the appeal now before us.

We do not believe the lower court committed an error in dismissing the complaint upon the ground stated by it. The cause of action in the previous case No. 306 arose out of the violation of the terms of the contract Annex B by the defendant Camara.

Plaintiffs' cause of action in this case No. 3364 is predicated likewise in the alleged infringement of the same Annex B by the same defendant Camara. Present plaintiffs are successors-in-interest of Golez, plaintiff in the first case. There is only one delict or wrong upon which both complaints are based.

Plaintiffs, however, argue that there is no splitting of a cause of action because the issue involved in said Civil Case No. 306 was recovery of possession of Haciendas Buenavista and Aurelia, after the lease contract (Annex B) expired which defendant refused to surrender to Adriano Golez, whereas the issue in the present case in the reconveyance of the titles of the 17 lots mentioned in the "Escritura de Compromiso de Venta" (Annex A). This is not exactly the case. The two contracts are not separate from or independent of each other. They are both part of a single transaction; to carry out and facilitate the redemption from the Philippine National Bank of the mortgaged properties. The lease contract was resorted to provide a mode of payment to the bank by the delivery of 1,000 piculs of sugar a year, which is the agreed rental of 7 of the mortgaged lots. In fine, both actions are founded on one and the same contract, and the rule is that where the covenant or contract is entire and the breach total, there can be only one action. (Blossom & Co. v. Manila Gas Corporation. 55 Phil. 226.) When a trial is had, it is intended that all matters growing out of the controversy are to be finally determined in one and the same suit. The object is to prevent a multiplicity of actions and to prevent the possibility of one part of the cause being tried before one judge which would unnecessarily harass the parties and produce needless litigations and accumulate costs. (Pascua v. Sideco, 24 Phil. 26; Strong v. Gutierrez Repide, 22 Phil. 9.)

There is another reason why the questioned order of the court *a quo* must be upheld. Earlier in this opinion, we adverted to the appeal taken by Camara from an order of the trial court in Case No. 306, directing him to reconvey to Golez all the 24 lots in question. That appeal (G.R. No. L-9160, entitled "Adriano Golez, plaintiff-appellee vs. Carmelo S. Camara, defendant appellant"), was decided by this Court on April 30, 1957, wherein we held that —

> "It is clear from the foregoing facts that *Camara is bound to convey to Golez, not only the interest of Isidoro Jimenez, Aurelia Jimenez and Vicente Jimenez Yamzon in the seven* (7) *lots constituting the Haciendas Aurelia and Buenavista, but, also, the other seventeen* (17) *lots described in the 'promise to sell' and in the contract of lease above-mentioned.*
>
> "It is true that the sale at public auction of the share of Isidro Jimenez, Aurelia Jimenez and Vicente Yamzon, in said *haciendas*, was the factor responsible for the intervention of Camara in the contracts already adverted to. This fact, and the circumstances that the property leased to Camara were said haciendas, explain the emphasis given thereto in the pleaddings and in the former decisions of the Court of First Instance and of this Court. Again, the issues then submitted for determination revolved on the amount to be paid by Golez to Camara, which hinged primarily on the interpretation of said 'escritura de arrendamiento; thus focussing attention on said contract of lease and on the property leased — *Haciendas* Aurelia and Buenavista.

"However, neither said 'compromiso de venta', nor the aforementioned 'escritura de arrendamiento,' was limited to a contract of lease. The former involved, also, a cession of the right of redemption, which, although ostensibly made (in the promise to sell) in favor of Camara, turns out, in the language of the contract of lease — which was *part of one whole scheme* agreed upon by the parties — to be 'por y para el Sr. Adriano Golez'. The latter (contract of lease) contained, also, a promise to assign or sell in favor of Golez. *In any event, said 'compromiso de venta' expressly referred, not only to said haciendas, but, also, to the seventeen* (17) *other lots therein described. Similarly, the aforementioned 'escritura de arrendamiento' explicitly states that one of the considerations therefor is said 'compromiso de venta' of twenty-four* (24) *lots, the identification number of, and the location, area, and the interest held in each of which are specified therein.* Said deed of lease, moreover, stipulates clearly that 'una vez hecho el pago de la cantidad dicha al citado Banco Nacional Filipino, *dichas propiedades cubiertas por dicha escritura de compromiso de venta* x x x estaran *todas entregada y en posesion del* x x x Sr. Adriano Golez.' In the the light of the foregoing, and considering that the decision of this Court of October 3, 1953 (G.R. No. L-4460), and that of the former decision of the lower court, fixing the amount to be paid by Golez, obviously regarded that payment thereof is a condition precedent to, or the consideration for the conveyance undertaken to be made by Camara, *there is no doubt in our mind that the phrase 'land in question' used in the dispositive part of our aforementioned decision, referred to the twenty-four* (24) *lots described in both deeds, and that Camara is bound to convey said twenty-four* (24) *lots to Golez.*" (Emphasis supplied.)

In the light of the above ruling by this Court, it is clear that the question involved in the instant case has become moot or *res adjudicata*.

WHEREFORE, finding no reversible error in the order of the court *a quo*, the same is hereby affirmed, with costs against the plaintiffs-appellants, without prejudice to their right, as assignees of Adriano Golez, to enforce the decision of this Court in G.R. No. L-9160 above referred to.

SO ORDERED.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, J. B. L. Reyes and Gutierrez David, JJ., concurred.

X

Insurance Company of North America, Plaintiff-Appellee, vs. Philippine Ports Terminal, Inc., Defendant-Appellant, G. R. No. L-14133, April 18, 1960, Montemayor, J.

1. CIVIL PROCEDURE; REMANDING OF CASE FOR FURTHER PROCEEDINGS; COURT OF ORIGIN SHOULD NOTIFY PARTIES OF RECEIPT OF APPEALED CASE.— The Rules of Court are silent as to whether or not a court of origin whose case is taken to a higher court on appeal and which case is later remanded to it for further proceedings, has the duty to notify the parties of the receipt of said case in order to resume the interrupted proceedings. Reason and justice indicate if not ordain that the court of origin should notify the parties because, without such notice, the parties would not know when to proceed or resume proceedings, and file other necessary pleadings in order to continue the case until its termination. The notification of the decision of the appellate court to the parties is neither adequate nor sufficient for this purpose.

2. ID.; ID.; DATE OF NOTIFICATION AS BASIS FOR COMMENCEMENT OF PERIODS FOR FILING PLEADINGS. — The parties have a right to be notified by the Clerk of Court as to the date of receipt of the case by the court of origin and it is only on that date of notification that the parties are officially informed that court proceedings are being resumed because the jurisdiction of the trial court over the case which it had lost temporarily in view of the appeal, has once again been re-acquired because of the remanding to it by the appellate tribunal. Only from that date of notification will the different periods for filing pleadings, such as, answer to the complaint, answer to the counterclaim, would begin to run or continue to run.

3. ID.; CIRCUMSTANCES SHOWING DENIAL OF DAY IN COURT; WHEN COURT PROCEEDINGS MAY BE CONSIDERED VOID. — In the case at bar, defendant was not given its day in court for the purpose of answering the complaint after the dismissal of the same at its instance had been set aside by the appellate tribunal; it was not apprised of the ex-parte petition for default, of the order of default, setting the case for hearing, and of the decision itself. The granting or denial of a petition for relief, under such circumstance does not rest upon the discretion of the trial court. Petitioner as a matter of right is entitled to it and the court proceedings starting from the order of default to the decision itself may be considered void and of no effect and not binding upon the petitioner.

DECISION

This is an appeal from the order of the Court of First Instance of Manila in Civil Case No. 16658, denying defendant's petition for relief, for supposed lack of merit.

The facts in this case are not in dispute. Sometime in September 1949, the Henry W. Peabody & Co. of California shipped on the SS President Van Buren one case of machine knives consigned to the Central Sawmill, Inc. of Manila. Plaintiff Insurance Company of North America, later referred to as insurance company, insured the shipment. The merchandise was supposedly discharged into the custody of defendant Philippine Ports Terminal, Inc., then the contractor and operator of the arrastre service at the Port of Manila. It was claimed that said shipment was never delivered to the consignee, as a result of which, the insurance company was held answerable therefor, presumably paid the value thereof, and was later subrogated to the rights and interest of the consignee. So, the insurance company filed the present Civil Case No. 16658 on May 28, 1952, in the Court of First Instance of Manila, to recover from the defendant the amount paid by it, plus ₱1,000.00 as attorney's fees, and the costs of the suit.

On the twelfth day from service of a copy of the complaint, defendant Ports Terminal filed a motion to dismiss on the ground that the cause of action had already prescribed, pursuant to the provisions of Public Act 521 of the 7th United States Congress, known as "Carriage of Goods by Sea Act", which had been made applicable to the Philippines by Commonwealth Act. No. 65. The trial court granted the motion to dismiss and on June 30, 1952, issued an order dismissing the complaint. From said order of dismissal, plaintiff insurance company appealed to us on a question of law, the appeal being docketed as G. R. No. L-6420.

On July 18, 1955, this Tribunal promulgated a decision reversing the appealed order of dismissal on the ground that the Carriage of Goods by Sea Act, which provides that the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the good or the date when the goods should have been delivered, did not apply to and could not be invoked by defendant Ports Terminal for the reason that it was not a carrier. Our decision directed that the case be remanded to the court of origin for further proceedings. A copy of our decision was received by defendant Ports Terminal on July 21, 1955.

The case was eventually remanded to the trial court which received the case on September 14, 1955. The clerk of said court on September 16, 1955 notified counsel for plaintiff insurance company of the fact that he had received the case from the Supreme Court. However, according to counsel for defendant Ports Terminal, not denied by counsel for the plaintiff, and not shown to be otherwise by the record of the case, neither defendant Ports Terminal nor its counsel was notified by the clerk of court of origin of the remanding of the case by the Supreme Court to the trial court and receipt by the latter of said case.

On December 12, 1955, plaintiff insurance company, through counsel, filed an ex-parte petition for default against the defendant on the ground that from the time the case was received by the trial court on September 16, 1955 from the Supreme Court, defendant had not answered plaintiff's complaint. The trial court found the ex-parte petition for default well founded and by order of December 17, 1955, declared defendant in default and set the case for hearing on December 27, 1955 for the reception of plaintiff's evidence. On March 20, 1956, on the basis of evidence presented by the plaintiff, the trial court rendered its decision, ordering the defendant to pay plaintiff ₱3,796.00 with legal interest from the date of the filing of the complaint, plus the sum of ₱1,000 as attorney's fees, and costs. Neither the defendant nor its counsel was notified of the petition for default filed by the plaintiff, of the order of default itself which set the case for hearing for the reception of evidence of plaintiff, and of the court's decision.

According to defendant's counsel, it was only sometime in the second week of April, 1958, when Enrique M. Belo of the law firm acting as counsel for defendant, in the course of a telephone conversation with Josefino Corpus, counsel for the plaintiff, that he learned that the judgment had been rendered by the trial court against the defendant. Upon verification of the records of the case, counsel for defendant found that a decision had in fact been rendered by the trial court on March 20, 1956, and that defendant had been declared in default in an order dated December 17, 1955, in pursuance of an ex-parte petition for default filed on December 12, 1955 by counsel for plaintiff. This explains why defendant filed the petition for relief from judgment only on April 18, 1958. In support of said petition for relief, defendant's counsel alleged that neither he nor his client was ever notified by the clerk of court that the case had been remanded to and received by the trial court from the Supreme Court, as a result of which, he failed to file defendant's answer within the reglamentary period, and that no notice was ever received of the ex-parte petition for default, the order of default and the decision rendered.

The legal question involved in this case is one of first impression. We do not recall having had a similar case brought before us. The Rules of Court are silent as to whether or not a court of origin whose case is taken to a higher court on appeal and which case is later remanded to it for further proceedings, has the duty to notify the parties of the receipt of said case in order to resume the interrupted proceedings. Reason and justice, in our opinion, indicate if not ordain that the court of origin should notify the parties; otherwise, said parties without such notice would not know when to proceed or resume proceedings, and file other necessary pleadings in order to continue the case until its termination. Notification of the decision of the appellate court to the parties is neither adequate nor sufficient for this purpose. It is true that by said notification, the parties are advised of the decision of the appellate court, either affirming, reversing, or modifying the appealed decision or order, and that the case would eventually be remanded to the trial court. But when? The remanding or return of a case is bound to take time because the same cannot be done until the decision of the appellate tribunal becomes final, and before it becomes final, the appellate court may have occasion to rule upon motions for reconsideration by either party, and for which the movants may ask for extension of time; and not infrequently, more than one motion for reconsideration is filed. So, the parties are not in a position to know when the case is actually returned to and received by the court of origin. It would be too much to expect the parties of their counsel to go to the trial court everyday to find out if the case has already been returned. Consequently, they have a right to be notified thereof by the Clerk of Court. It is only on that date of notification that the parties are officially informed that court proceedings are being resumed because the jurisdiction of the trial court over the case which it had lost temporarily because of the appeal, has once again been reacquired because of the remanding to it by the appellate tribunal. Only from that date of notification will the different periods for filing pleadings, such as, answer to the complaint, answer to the counterclaim, etc., would begin to run or continue to run.

In the present case, defendant Ports Terminal was not given its day in court for the purpose of answering the complaint after the dismissal of the same at its instance had been set aside by the appellate tribunal. It was not apprised of the ex-parte petition for default, of the order of default, setting the case for hearing to receive evidence for the plaintiff, and of the decision itself. The granting or denial of a petition for relief, under such circumstances, does not rest upon the discretion of the trial court. The petitioner as a matter of right is entitled to it; and the court proceedings starting from the order of default to the decision itself may be considered void and of no effect and not binding upon the petitioner. (1)

IN VIEW OF THE FOREGOING, we find and hold that the appealed order of default and the decision rendered by the lower court are null and void. The order denying the petition for relief is reversed. The case is hereby remanded to the court of origin for further procedings, with the understanding that the defendant-apelant be allowed to file its answer within a reasonable time. Plaintiff-appellee will pay the costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, J. B. L. Reyes, Barrera and Gutierrez David, JJ., concurred.

XI

Horacio Guanzon, Petitioner vs. Francisco Aragon, Hon. Guillermo Romero and The Prov. Sheriff of Rizal, Respondents G. R. No. L-14436, March 21, 1960, Bautista Angelo, J.

CIVIL PROCEDURE; PETITION FOR RELIEF; FAILURE TO OBSERVE PROCEDURE PRESCRIBED IN SECTION 24, RULE 127 OF RULES OF COURT CANNOT BE CONSIDERED EXCUSABLE NEGLIGENCE. — Under section 24, Rule 127 of the Rules of Court, an attorney may only retire from a case either by the written consent of his client or by permission of the Court, after due notice and hearing, in which event the attorney should see to it that the name of the new attorney be recorded in the case. Failure to observe such procedure cannot be considered as excusable negligence on the part of counsel, much less a basis for relief within the meaning of Rule 38 of the Rules of Court.

Ramon C. Fernandez, for petitioner.

Delgado, Florez & Macapagal, for respondent.

DECISION

On September 21, 1957, Francisco Aragon brought an action against Horacio Guanzon before the Justice of the Peace Court of Parañaque, Rizal, praying that the latter be ejected from the land mentioned in the complaint. In due time, Guanzon filed his answer to the complaint. Meantime, one Pablo Lozada moved to intervene claiming to be entitled to the ownership and possession of the property and when the motion was denied, Lozada instituted an action for mandamus before the Court of First Instance of Rizal. This action was dismissed, the court sustaining

(1) Valerio vs. Tan, G.R. No. L-8446, Sept. 19, 1955.

the order of the justice of the peace court denying the intervention.

Despite the mandamus case, the ejectment case was continued wherein Aragon completed the presentation of his evidence. Then the trial was suspended on Guanzon's petition, its continuation having been set for March 4, 1958 for the reception of Guanzon's evidence. Of this hearing Guanzon's counsel, Atty. Cesar Leuterio, was duly notified, but despite said notification neither Guanzon nor his counsel appeared as a consequence of which the Justice of the Peace Court of Parañaque considered the case submitted for decision. Accordingly, on April 30, 1958, the court rendered decision ordering Guanzon to vacate the land in question and to restore its possession to Aragon, declaring Guanzon to be a builder in bad faith, and ordering furthermore Guanzon to pay the sum of ₱100.00 a month as rental, plus the sum of ₱200.00 as attorney's fees, with costs.

On June 11, 1958, Guanzon's counsel received a copy of the decision, and when the same became final and executory, Aragon asked for a writ of execution. Acceding to the request, the justice of the peace court issued the writ, and the provincial sheriff set a date for the sale at public auction of the building standing on the land.

On August 6, 1958, a few days before the scheduled sale, Guanzon filed with the Court of First Instance of Rizal a petition for relief from the judgment of the justice of the peace court with a prayer for preliminary injunction. This petition was given due course, the court requiring Aragon to file his answer, but upon a motion for reconsideration wherein Aragon moved for the dismissal of the petition, the lower court, after proper hearing, resolved to deny the petition for relief on the ground that the reasons alleged therein do not constitute excusable negligence as to warrant the reopening of the case before the Justice of the Peace Court of Parañaque. Hence the present appeal.

In the petition for relief filed by appellant for the reopening of the case before the Justice of the Peace Court of Parañaque, he set forth the following reasons as justification; that he did not appear in the continuation of the hearing of the case set for March 4, 1958 because he was not notified thereof either by the court or by his counsel due to the circumstances stated in the latter's affidavit; that he could not appeal from the decision rendered by the justice of the peace court because he came to know thereof only on July 30, 1958 when he received a notice from the provincial sheriff that his property will be sold at public auction on August 14, 1958 to satisfy the judgment; that because of the above circumstances he was not able to present his evidence and so he was deprived of his day in court; that his petition was filed within 60 days after he learned of the decision and within 6 months after the same was entered; and that he has a good and substantial defense, to wit; that he constructed a semi-complete building on the lots in question on the strength of a contract of partnership he entered into with one Pablo Lozada who contributed thereto the lots aforsaid as his capital and who claimed to be entitled thereto by virtue of an agreement to sell executed in his favor by the Director of Lands, appellant believing in good faith that Lozada was the owner thereof, and that the question of ownership of the land was still the subject of litigation between Aragon and Lozada in the Office of the President of the Philippines.

On the other hand, the failure of appellant's counsel to notify him of the date of the continuation of the hearing as well as to furnish him with a copy of the decision appears explained by counsel in affidavit attached to the petition for relief, which explanation appellant claims to be his justification for the reopening of the case. The affidavit contains the following averments: that after the initial hearing of this case before the justice of the Peace Court of Parañaque, appellant took all the papers of the case from the affiant and turned them over to Atty. Eliseo Tenza so that the latter may prepare the necessary pleadings for the mandamus case appellant wants filed before the Court of First Instance of Rizal; that because of the employment of Atty. Tenza as additional counsel and the fact that the papers of the case were taken by appellant, affiant had the impression that appellant has already terminated his services; that when on March 8, 1958 he received a notice from the court that the continuation of the hearing would take place on March 4, 1958, he went to the clerk of court to inquire whether Atty. Tenza was also notified of the hearing and when he received an affirmative answer, he felt that his appearance at the hearing was no longer necessary; that on June 11, 1958, he received a copy of the decision of the justice of the peace court and when he failed to contact appellant, he merely notified one Ponciano Sevilla, a responsible employee of appellant, whom he instructed to relay to appellant the information that the court had rendered an adverse decision against him, and Sevilla assured him that he will transmit the message to appellant.

Ponciano Sevilla, in turn, stated the following in his affidavit of merit: that on June 13, 1958, he received a telephone call from Atty. Cesar Leuterio instructing him to transmit a message to appellant to the effect that the Justice of the Peace Court of Parañaque rendered an adverse decision against him; and that he wrote the instruction on a piece of paper and placed it on his counter, but unfortunately the same was lost; and that because when he received the telephone call he had many customers and was busy attending to thm, he was not able to relay the message to appellant until July 30, 1958 when appellant made an inquiry regarding said telephone call.

In considering the foregoing circumstances as not sufficient to constitute excusable negligence within the spirit of Rule 38, the trial court made the following observation:

> "The petitioner mainly relies on the ground of excusable negligence for his petition for relief from the judgment. The petition states that petitioner Guanzon did not appear in the continuation of the trial of Civil Case No. 464 on March 4, 1958 because he did not know of said hearing as he was not notified of it either by the Clerk of the Justice of the Peace Court of Parañaque or by his counsel Atty. Cesar Leuterio. The failure of petitioner Guanzon to appear in the hearing of Civil Case No. 464 held on March 4, 1958 because he was not notified of said hearing by the Clerk of the Justice of the Peace did not constitute excusable negligence because there is no duty on the part of the Court to notify him of the hearing as he was represened by his counsel of record, Atty. Cesar Leuterio, to whom notice of hearing was sent.
>
> Thera was neither excusable negligence when Guanzon failed to attend the hearing in the Justice of the Peace Court because his lawyer Atty. Cesar Leuterio did not notify him of said hearing. Notification of hearing to Atty. Leuterio was sufficient (Sec. 2, Rule 27, Rules of Court). If the presence of Guanzon was essential in the trial of March 4, 1958, then his counsel, Atty. Leuterio, would certainly have knowledge of this circumstance and he should have notified his client of said hearing. Atty. Leuterio attempted to explain that he did not notify Guanzon of the date of hearing nor did he appear at said hearing because he was of the honest belief that his services as the lawyer of Guanzon had already been terminated by the latter. But a lawyer, of ordinary prudence knows that the relief of the counsel of record a case could only be effected in the modes outlined in Section 24 of Rule 127 of the Rules of Court and Atty. Leuterio had not been retired as counsel for Guanzon in any of the modes so specified in said Section 24. His assumption that he was already relieved as counsel for Guanzon had therefore no legal basis so that his failure to appear at the hearing was no omission which an ordinary prudent lawyer under the circumstances would not have committed and hence his said failure constituted gross negligence." (Record on Appeal, pp. 75-77)

There is nothing in the foregoing observation from which we

can infer that the trial court acted erroneously or with abuse of discretion. On the contrary we find it to be in accordance with the law and to be supported by the circumstances surrounding the failure to appear of appellant as well as of his counsel in the continuation of the hearing of the case. Indeed, the claim of appellant's counsel that he failed to notify his client of the hearing because when appellant took from him the papers of the case to institute the mandamus case in the Court of First Instance of Rizal he got the impression that appellant has already terminated their relation as attorney and client is untenable, for it runs counter to the mode prescribed in Section 24 of Rule 127 which provides that an attorney may only retire from a case either by the written consent of his client or by permission of the court, after due notice and hearing, in which event the attorney should see to it that the name of the new attorney be recorded in the case. Verily, failure to observe such procedure cannot be considered as excusable negligence on the part of counsel, much less a basis for relief within the meaning of Rule 38.

The claim of counsel that his failure to notify his client is due to the information given him by the clerk of court that Atty. Eliseo Tenza was also notified of the continuation of the hearing cannot be entertained for, aside from the reasons stated above, it appears that Atty. Tenza was the attorney of record of intervenor Pablo Lozada. He was only employed by appellant when the latter decided to institute mandamus proceedings to secure the admission of Lozada's petition for intervention on the ejectment case.

It is true that one of the factors that may be considered in determining the sufficiency of the circumstances that may justify the grant of a petition for relief is that the petitioner has a good and valid defense which, if considered, may have the effect of reversing or altering the nature of the decision. This upon the theory that a petition for relief is addressed to the sound discretion of the court. But here the alleged good and substantial defense set up by appellant is that he entered into a partnership contract with one Pablo Lozada who claims to be the owner of the land on which he erected a semi-complete building and that the ownership of said lot was still pending determination in the Office of the President when appellant filed his petition for relief, which claim is not correct, for the record shows that when said petition was filed the administrative case between Lozada and appellee has already been *finally* passed upon by said office. Thus, from the record it appears that on *April* 5, 1957 the Office of the President decided the case *adversely to Lozada* by virtue of the appeal taken by Aragon from the decision of the Secretary of Agriculture and Natural Resources, while the motion for reconsideration filed by Lozada was denied by said office on April 11, 1958 (Annex A). On the other hand, the record shows that the petition for relief from judgment was filed by appellant on August 6, 1958 and the same was denied on August 20. 1958.

We find, therefore, no plausible reason for disturbing the action taken by the trial court considering that the alleged special defense, even if considered, could not have the effect of altering the nature of the decision of said justice of the peace.

"But it should be noted that the granting or denial of a motion for new trial is, as a general rule, discretionary with the courts, whose judgment should not be disturbed unless there is clear showing of abuse of discretion. In the instant case, we find that the lower court did not abuse its discretion. While it is true that the failure of the defendants to appear is due to inadvertence or mistake on the part of an employee which ordinary prudence could not have guarded against, we should not lose sight of the fact that the lower court deemed it wise to deny the motion because it considered futile and unsubstantial the defense set up by the defendant which, even if proven, could not have the effect of altering the nature of the decision. In this respect we agree with the trial court." (Miranda vs. Legaspi, et al., 48 O.G. No. 11, p. 4822.)

Wherefore, the order appealed from is affirmed, with costs against appellant.

Paras, C. J., Bengzon, Montemayor, Labrador, Concepcion, Endencia and Gutierrez David, JJ., concurred.

J. B. L. Reyes, J., concurred in the result.

Barrera, J., took no part.

XII

David Inco, et al., Petitioner, vs. Godofredo Enriquez, Respondent, G. R. No. L-13367, Feb. 29, 1960, *Reyes, J. B. L., J.*

1. CIVIL LAW; DOCTRINE OF PARI DELICTO. — Where the parties to a contract are in *pari delicto*, the contract cannot be set aside or enforced by either party and the courts will leave the parties where it finds them.

2. ID.; POWER OF COURT TO FIX PERIOD OF LEASE. — The mere absence of a provision under Article 1687 of the new Civil Code authorizing the court to fix a term where the rental is payable yearly does not prevent the court of power to fix periods under the general rule of article 1197 of the same Code, especially where the contract is basically a compromise to settle contradictory claims and not an ordinary lease.

Ramos, Constantino & Pineda, for petitioners.

Salonga, Ordonez, Gonzales & Associates, for respondent.

DECISION

This is a petition for certiorari to review the decision of the Court of Appeals in CA-G. R. No. 19207-R.

For several years prior to 1944, Eduvigis Aquino was the lessee of Lots Nos. 16-B and 17, Block 3 of the "Capellania de Concepcion", better known as the Tambobong Estate, and the owner of a house of strong materials built thereon. On April 10, 1944, she (Aquino) sold the said house, together with the leasehold rights, to the spouses David Inco and Leonor Constantino, petitioners herein. In the contract of sale, it further appears that of the aforementioned lots, Andres Ochanco, Julio Sanchez, Narciso Cruz, Moises Mangali and Florentino Magkalas had their own respective residential houses as sub-tenants of Aquino. In 1946, respondent Godofredo Enriquez purchased from Narciso Cruz the latter's house which he thenceforth occupied to the present.

Sometime in 1947, the landed property constituting the Tambobong Estate was acquired by the National Government for subdivision and resale to tenants pursuant to Republic Act 1400. Both petitioners and respondent seem to have been desirous of purchasing the lots afore-described from the Government. On May 6, 1952, however, petitioner David Inco, as Party of the First Part, and respondent Godofredo Enriquez and Acasia Santos, as Parties of the Second Part, entered into a contract of lease and waiver (Exhibit C or 3), whereby petitioner Inco agreed to allow respondent Enriquez to continue occupying the area possessed by him as long as respondent paid to Inco the sum of ₱1.00 a month or ₱12.00 a year as rental. In exchange, respondent Enriquez executed an affidavit (Exhibit D or 4) whereby he renounced whatever rights he had to buy the portion of the lot occupied by him in order that Inco might acquire the entire lot.

As a result of the agreement, Transfer Certificate of Title No. 36877 was thereafter issued to Inco and his wife. Informed of this fact, respondent Enriquez sought to have the contract of lease annotated at the back of the title. The Registrar of Deeds, however, refused to effect the annotation, on the ground that it did not bear the approval of the Department Secretary. Awakened by that action of the Registrar, petitioners declined to accept further payment of rentals, and on May 16, 1955, initiated an action in the Court of First Instance of Rizal to have the lease con-

tract declared null and void or else to have the court fix the duration of the same.

From the decision of the trial court adjudging the contract of lease to be a nullity, respondent Enriquez appealed to the Court of Appeals. The latter modified the judgment by upholding the validity of the lease and fixing a term of ten years, counted from May 16, 1955, for its duration.

The spouses Inco, in their petition for certiorari, aver that the contract of lease is a nullity, and that the Court of Appeals had no authority to fix a period.

Petitioners base their first contention on the propositions that (1) the contract of lease lacks the written consent and approval of the Secretary of Agriculture and Natural Resources; and that (2) it is void without the consent of the wife of David Inco.

Reliance is placed on paagraph 16 of Administrative Order No. R-3 on Landed Estates (which took effect on November 15, 1951, having been published in the Official Gazette for December, 1951, Vol. 47, No. 12, p. 6075) providing:

"*Prohibition to Alienate.* — The appellant shall not sell, assign, encumber, mortgage, or transfer, his right under the agreement to sell or in the property subject thereof without first obtaining the written consent of the Secretary of Agriculture and Natural Resources and this condition shall subsist until the lapse of 5 years from the date of the execution of the final deed of sale in his favor and shall be annotated as an encumbrance on the certificate of title of the property that may be issued in his favor."

And also upon paragraph 18 of the same order:

"Any sale, assignment, encumbrance, mortgage, or transfer made in violation of the provisions of the next two preceding paragraphs hereof is null and void, and shall be sufficient ground for the Secretary of Agriculture and Natural Resources to cancel the deed of sale and to order the reversion of the land to the government and the forfeiture of whatever payments made on account thereof. In case, however, a deed of sale has already been issued, the violation of the said provisions shall be sufficient ground for the Secretary of Agriculture and Natural Resources to take appropriate action in court with a view to obtaining the reversion of the land involved to the government. All lands reverted to the government shall be disposed of as vacant lot."

But the Court of Appeals held that said paragraphs notwithstanding, the action for annulment could prosper because the parties are in *pari delicto* and hence, the contract cannot be set aside or enforced by either party; for under the said doctrine, the courts will leave the parties where it finds them.

Petitioner Inco, however, urges that the application of the *pari delicto* doctrine is not unlimited, in that whenever public policy is considered as advanced by allowing either party to sue for relief against the transaction, the rule does not apply.

It may well be argued that the contract did not violate the administrative regulations invoked, since it was concluded before the government recognized Inco's preferential right to the lot. But even disregarding this aspect of the case, we believe that the Court of Appeals correctly applied the *pari delicto* rule, and that petitioner Inco and his wife cannot invoke furtherance of the public policy in order to escape from it. Undeniably, petitioners would not have obtained a certificate of title over the entire lot, at least without protracted litigation, had not the spouses Enriquez agreed to give up their own claims over the portion they occupied. It is equally obvious that the sole consideration for the withdrawal of the Enriquezes from the field was Inco's promise to allow them to remain in possession at a nominal rental. To annul this covenant now would deprive the Enriquezes of any benefit thereunder, after the Incos had reaped full advantage from it. Without any possibility of a return to the *status quo ante*, the annulment would practically amount to a fraud upon the respondents Enriquez. Such a result would not further public policy but defy all justice and equity. The interests of society demand that bad faith and fraud be severely repressed, and the Courts cannot consent to their futherance, directly or indirectly.

It is noteworthy that the prohibition against alienations of the lots in the Tambobong estate is primarily designed to protect the occupants from being rendered homeless through improvidence, ignorance, or sheer necessity. These dangers do not flow from the maintenance of the contract now before us. Neither party will be deprived of a homestead, their respective houses being erected on different portions of the lot. Furthermore, the decision of the Court of Appeals limits the tenure of respondent Enriquez to ten years, and the ultimate reversion of the entire lot to the registered owner is thereby assured. Thus construed, the contract is not utimately violative of the purposes of the statute and there is no reason, therefore, why equity should not prevavil.

The *pari delicto* rule applies equally well to the wife, Leonora Constantino. Although not a signatory to the contract of lease and waiver, she has sufficiently manifested by affirmative acts her unequivocal concurrence to the contract in controversy (Dee Montederanos vs. Ynopoy, 54 Phil. 457; La Urbana vs. Villasor, 59 Phil. 644). She and her husband benefited from the transaction and continuously received the agreed rentals paid by the respondent from the execution of the contract until 1955. Acceptance of benefits raises a strong presumption of knowledge and consent.

Appellants argue that Article 1687 of the new Civil Code does not authorize the Court to fix a term where the rental is payable yearly. The mere absence of a provision under Article 1687 does not prevent the court of power to fix periods under the general rule of Article 1197, since this contract was basically a compromise to settle contradictory claims and not an ordinary lease.

WHEREFORE, we find no error in the judgment of the Court of Appeals, and hereby affirm it, with costs against petitioners David Inco and his wife, Leonora Constantino.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia and Barrera, JJ., concurred.

Gutierrez David, J., took no part.

Padilla, J., on leave, took no part.

XIII

Maxima Acierto, et al., Petitioners, vs. Victorina G. de Laperal, et al., Respondents, G. R. No. L-15966, April 29, 1960, Bautista Angelo, J.

1. CIVIL PROCEDURE; PERFECTED APPEAL OPERATES TO VACATE THE JUDGMENT OF INFERIOR COURT, EXCEPTION. — The rule that a perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly entered in the court of first instance shall stand *de novo* upon its merits in accordance with the regular procedure in that court as though the same had never been tried before and had been originally there commenced, applies only to ordinary actions, and not to cases of ejectement which are governed by Section 8, Rule 72 of the Rules of Court which sets out a particular procedure that may be deemed to be an exception to the provision of Section 9 of Rule 40.
2. SPECIAL CIVIL ACTION; SECTION 8, RULE 72 OF RULES OF COURT CONSTRUED. — It is settled that under Section 8, Rule 72 of the Rules of Court, when the judgment is in favor of plaintiff, it is required that it be executed immediately in order to prevent further damages to him caused by the loss of his possession.
3. ID.; ID.; HOW DEFENDANT MAY STAY THE EXECUTION OF JUDGMENT. — The defendant may stay the

execution of the judgment (a) by perfecting his appeal and filing a supersedeas bond; and (b) by paying from time to time either to the plaintiff or to the court of first instance, during the pendency of the appeal, the amounts of rents or the reasonable value of the use and occupation of the property as fixed by the justice of the peace, or the municipal court in its judgment.

4. ID.; ID. — The provision of Section 8, taken in relation to that of Section 9, Rule 72 of the Rules of Court, is mandatory.

DECISION

On February 16, 1959, Maxima Acierto, et al. filed before the Municipal Court of Manila against Roberto Laperal and his wife an action praying that they be allowed to deposit the rentals of the premises they were occupying with the court pending termination of the action, that the court declare that the need for the construction of a building on the occupied premises is not a ground for ejectment under the law, and that it fix a longer period of lease between the parties considering the circumstances obtaining under Article 1683 of the new Civil Code.

Defendants, in their answer, admitted the existence of the lease agreement, but alleged that the same is on a month to month basis, and that on September 1, 1958, plaintiffs were notified to vacate the premises occupied by them but they refused and in view of such refusal defendants gave plaintiffs the requisite 15 days notice to vacate with the warning that if they fail to comply with the demand an action for ejectment would be filed against them. Defendant set up a counterclaim asking for ejectment of plaintiffs.

On April 11, 1959, after trial, the court rendered judgment ordering plaintiffs to vacate the premises occupied by them and each to pay the monthly rental at the rate therein specified from December, 1958 until they shall have surrendered their possession to defendants. In due time, plaintiffs appealed to the court of first instance.

The appeal having been given due course, the court set the case for hearing on June 2, 1959, notice thereof having been received by counsel for plaintiffs on May 26, 1959. On May 29, 1959, plaintiffs' counsel filed a motion for postponement alleging that he had a trial in Castellejos, Zambales on June 2 and 3, 1959, but due to the fact that said motion was not set for hearing by movant and no proof was presented of the allegations contained therein, the court denied the motion and declared the appeal abandoned. From this order, plaintiffs appealed to the Supreme Court.

On August 1, 1959, defendants filed a petition for execution of the judgment of the municipal court in view of plaintiffs' failure to deposit the rentals which they were sentenced to pay as required by the rules, which petition was granted on August 20, 1959. And their motion for reconsideration having been denied, plaintiffs interpreted the present petition for certiorari alleging that respondent judge has acted without or in excess of his jurisdiction.

The only issue posed in this petition is whether the appeal taken by plaintiffs from the decision of the Municipal Court of Manila to the court of first instance had the effect of vacating said decision as is the case in ordinary actions as provided for in Section 9, Rule 40, of the Rules of Court.

While in an ordinary action a perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly entered in the court of first instance shall stand *de novo* upon its merits in accordance with the regular procedure in that court as though the same had never been tried before and had been originally there commenced (Section 9, Rule 40), this rule only applies to ordinary actions, and not to cases of ejectment which are governed by Section 8, Rule 72. This rule sets out a particular procedure that may be deemed to be an exception to the provisions of Section 9, Rule 40 (Torres v. Ocampo, 80 Phil., 36; Taguilimot v. Makalintal, 47 O.G., 2318).

Thus, it has been held that under said Section 8, Rule 72, when the judgment is in favor of plaintiff, it is required that it be executed immediately in order to prevent further damages to him caused by the loss of his possession (Pascua v. Nable, 71 Phil., 186; Yu Tiong Tay v. Barrios, 79 Phil., 597; Sumintac v. Court, 71 Phil., 445; Arcilla v. Del Rosario, 74 Phil., 445). The defendant may, however, stay the execution (a) by perfecting his appeal and filing a supersedeas bond; and (b) by paying from time to time either to the plaintiff or to the court of first instance, during the pendency of the appeal, the amounts of rents or the reasonable value of the use and occupation of the properyty as fixed by the justice of the peace, or the municipal court in its judgment (Sections 8, Rule 72).

This is the situation herein obtained. Plaintiffs failed not only to put up a supersedeas bond but to deposit the rentals that had become due with the clerk of court thus forcing defendants to petition for a writ of execution. It has been held that the provision of Section 8, taken in relation to that of Section 9, Rule 72 is mandatory (Arcilla v. Del Rosario, *supra;* Cunanan v. Rodas, 78 Phil., 800).

It is true that plaintiffs claim that the action they have instituted is for consignation with a view to securing a judicial declaration that the use of the premises for the construction of a building is not legal ground for ejectment, and is not for illegal detainer, but it is likewise true that defendants have put up as a special defense the fact that plaintiffs had been notified to vacate the premises after having been given the requisite notice and that, as they failed to do so, they prayed that an order of ejectment be entered against them. This relief was granted by the inferior court. In fact, said special defense was considered by the trial court as partaking of the nature of ejectment.

Considering the law and jurisprudence on the matter, we find no plausible reason for entertaining the claim of petitioners that the trial court committed a grave abuse of discretion in issuing the writ of execution prayed for by respondents.

Wherefore, petition is denied, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concurred.

XIV

Alberto Inesin, Eulogio Torneto and Felix Waga, Petitioners, vs. The Hon. Mateo Canonoy, in his capacity as District Judge of the Court of First Instance of Zamboanga del Sur, and Vicenta Benodin, Respondents, G.R. No. L-13231, February 29, 1960, Labrador, J.

CIVIL PROCEDURE; NOTICE OF HEARING; WHEN MOTION FOR RECONSIDERATION WITHOUT NOTICE OF HEARING CANNOT BE CONSIDERED AS MERE SCRAP OF PAPER. — In the case at bar, although the the motion for reconsideration to set aside the judgment was not accompanied by a notice of the date set for the hearing of the motion, said motion cannot be considered as a mere scrap of paper which did not suspend the period of appeal, considering that the session in Pagadian, Zamboanga del Sur, are not continuous throughout the year but only once a year to be fixed by the district judge and the attorney for the movant could not set the motion for hearing, not knowing on what date or in what month the next yearly session in Pagadian was to take place.

Vicenzo A. Sagun, for petitioners.

Bersales & Bersales, for respondents.

DECISION

This is an original action for certiorari and prohibition filed with us to reverse an order of the Court of First Instance of Zamboanga del Sur, Hon. Mateo Canonoy, presiding, setting aside a previous order of the court dated December 29, 196, dismissing an action instituted by herein respondent Vicenta Benodin against the herein petitioners, Alberto Inesin, Eulogio Torneto and Felix Waga which is civil case No. 194 of the Court of First Instance of Zamboanga del Sur, Pagadian.

In said civil case No. 194 herein respondent Benodin brought action against petitioners Inesin, Torneto and Waga to recover from them damages for serious physical injuries suffered by plaintiff for having been thrown out of a *tartanilla* in which she was riding, which was struck from behind by a bus owned and operated by Alberto Inesin and Euligio Torneto, and driven recklessly by Felix Waga. Upon receiving the summons counsel for defendants moved to dismiss the complaint by reason of the fact that a final judgment had already been previously rendered between the same parties for the same cause of action and that Waga has not been shown to have any relation with his other co-defendants. The motion was set for hearing on September 27, 1955. The court granted the motion and dismissed the action on the ground that the driver of the bus had been prosecuted in the justice of the peace court of Pagadian for negligence, and found guilty, and in said case plaintiff Vicente Benodin had not reserved the right to institute an independent civil action.

The record shows that counsel for defendants received copy of the order of dismissal on October 7, 1955 and on October 31, they presented a motion for the reconsideration of the order of dismissal. The motion for reconsideration does not give notice of the day set for the hearing thereof, but on December 6, 1956, such notice was presented asking the clerk of court to set the motion for reconsideration for hearing on December 22, 1956. The motion was opposed because it contained no notice of hearing and it, therefore, should be considered as a mere scrap of paper which did not affect the running of the period for the judgment to become final. On December 29, 1956, the court below granted the motion for reconsideration and set aside the order of dismissal. Thereupon attorney for defendants presented a motion to reconsider the order which is set forth above but the court denied this motion for reconsideration on January 15, 1957.

In the case at bar it is the claim of the petitioners before us that as the motion for reconsideration, submitted by the defendant in the court below to set aside the judgment, was not accompanied by a notice of the date set for the hearing of the motion, said motion should be considered as a mere scrap of paper and did not produce the effect of suspending the period of appeal. So, it is claimed that the judge below, in setting aside the order of dismissal, acted in excess of his jurisdiction.

It is to be noted that the Court of First Instance holds its sessions in Pagadian, Zamboanga del Sur, only once a year on the dates to be fixed by the district judge (Sec. 161, Rev. Adm. Code, superceeded by Sec. 54 of Republic Act No. 296). As the sessions in Pagadian are not continuous throughout the year, and since it is not shown that at the time respondents herein presented the motion to reconsider the order of dismissal the judge of the Court of First Instance had already set a date for the next term, attorney for the movant, respondent herein, could not set the motion for hearing, not knowing on what date or in what month the next yearly session in Pagadian was to take place. It is true that the attorney for the respondent could have set the motion for hearing on the first day of the term, asking the clerk of court to set it for hearing on that date, but the failure to adopt such a step could not have meant negligence or neglect on the part of attorney for the movants, for said attorney had the alternative to set the motion for hearing as soon as the judge has fixed the following term of the court in that municipality. Under the rules which we have enjoined to be interpreted liberally, and under the circumstances, we are not prepared to declare that the motion, which was accepted by the clerk of court, without the designation of the date for its hearing, was a mere scrap of paper. Judging from the order of the respondent court, the next sessions after the sessions in September, 1955, must have taken place in October, 1956, when the motion for reconsideration in question was set for hearing by counsel for the movant-respondent. Perhaps it was only in December, 1956 that the plaintiffs had been apprized that the court was going to hold its term of court during the month of December, 1956 and it was on the sixth day of that month that said attorney for the plaintiff, respondent herein, promptly notified the clerk and the adverse party of the date of said hearing. The judge, who should know this special provision of the Judiciary Act on the holding of sessions in Pagadian, denied the motion to strike out the motion for reconsideration for failure to contain a notice of the date of hearing, and he must have taken into account the fact that there is only one term of the court in Pagadian.

Wherefore, the petition should be, as it hereby, denied, without costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, J. B. L. Reyes, Endencia, Barrera and Gutierrez David, JJ., concurred.

XV

Jose Bernabe & Co., Inc., Plaintiff-Appellant, vs. Delgado Brothers, Inc., Defendant-Appellee, G.R. No. L-14360, February 29, 1960, Barrera, J.

CIVIL LAW; CONTRACTS; EFFECT OF ACCEPTANCE OF BENEFITS OF A CONTRACT. — When a third person accepts the benefits of a contract, he is also bound to accept the concomitant obligations corresponding thereto.

Perez Cardenas, for plaintiff-appellant.

Leocadio de Asis, for defendant-appellee.

DECISION

Plaintiff-appellant Jose Bernabe & Co., owner of a shipment of machine spare parts unloaded into the custody of defendant-appellee Delgado Brothers, Inc., as arrastre operator in the Port of Manila, filed in the Court of First Instance of Manila (in Civil Case No. 30615) a complaint against appellee, seeking to recover from the latter the sum of ₱2,855.00, representing the replacement value of a diesel machine flywheel damaged, allegedly, while in the custody of appellee. Appellee in his answer denied liability therefor, and on the date of the hearing, the case was submitted upon the following.

"STIPULATION OF FACTS

"COME NOW the parties in the above-entitled case, through their respective counsel, and to this Honorable Court respectfully submit the following Stipulations of Facts:

"1. That plaintiff is the owner of a shipment consisting of machine spare parts unloaded from the S.S. 'BENCLEUCH' in the Port of Manila, under Registry No. 1434, Bill of Lading No. 22, which arrived in Manila on December 5, 1955;

"2. That at the time the S.S. 'BENCLEUCH' arrived in Manila and unloaded her cargo, the defendant was the arrastre contractor for the Port of Manila and, as such, in charge of receiving cargo unloaded from vessels unto the piers, and delivery of same to consignee or their duly authorized representatives, pursuant to and subject to the Management Contract entered into between the Bureau of Customs and herein defendant a copy of which is hereto attached, marked ANNEX 'A' and made a part hereof. The parties stipulate, however, that plaintiff is not a signatory to the said Management Contract;

"3. That the aforementioned shipment included a Diesel Engine GL913 (FLYWHEEL FOR TANGYE) which was unloaded from the S.S. 'BENCLEUCH' and was received

at nighttime by defendant in the course of its arrastre operations unerated and unpacked and in apparent good order condition, and the corresponding clean Tally Sheet therefore was issued, as per attached ANNEX 'B';

"4. That at the time plaintiff's representative broker appeared before the defendant to take delivery of said shipment consigned to plaintiff, said representative requested for a Bad Order Examination of the Flywheel which inspection was conducted by a representative of the defendant in the presence of plaintiff's representative and the result of the examination appears in the B.O. Examination Report hereto attached, marked ANNEX 'C';

"5. That as a result of the findings of the B.O. Examination of the Flywheel in question, plaintiff's representative filed a Formal Claim on December 28, 1955 in further reference to claim under Ref. 8193-E-12-55;

"6. That plaintiff's representative or broker took delivery of the Flywheel in question from the defendant by signing and presenting permit to deliver imported goods with Entry No. 99075, File No. 5100, and in reverse side of which there appears the following notice in rubber stamp, to wit:

'IMPORTANT NOTICE

'This permit is presented subject to all the terms and conditions of the Management Contract between the Bureau of Customs and Delgado Brothers, Inc., dated October 21, 1950, and amendments thereof or alterations thereof, particularly but not limited to Paragraph 15 thereof limiting the Company's liability to ₱500.00 per package, unless the value of the goods is otherwise specified, declared or manifested and the corresponding arrastre charges have been paid; providing exemptions or restrictions from liability unless suit is brought within one (1) year from the date of the arrival of the goods or from the date when the claim for the value of the goods has been rejected, provided each claim is filed with the Company within 15 days from date of arrival of goods.'

a photostatic copy of which is hereto attached and marked ANNEX 'D' hereof;

"7. That upon the presentation of the permit to deliver imported goods with the defendant, herein defendant issued a Gate Pass, No. 36051, and in which there appears the following printed words, to wit:

'The undersigned, duly authorized to respectively represent the Bureau of Customs the above named CONSIGNEE and the Arrastre Service Operator hereby certify to the correctness of the above description of the goods covered by this Gate Pass. Issuance of this Gate Pass constitutes delivery to and receipt by CONSIGNEE of the goods as described herein, subject to all the terms and conditions contained in the Management Contract between the Bureau of Customs and Delgado Brothers, Inc., dated October 21, 1950, and all amendments thereto or alterations thereof, particularly but not limited to Paragraph 15 thereof limiting the company's liability to ₱500.00 per package, unless the value of the goods is otherwise specified or manifested, providing exemptions from liability unless suit is brought within one (1) year from the date when the claim for the value of the goods has been rejected, provided such claim is filed with the Company within 15 days from the date of the arrival of the goods.'

a photostatic copy of which is hereto attached and marked ANNEX 'E'.

"The Gate Pass containing the above notation was also duly signed by plaintiff's representative or broker.

"8. That the parties herein reserve the right to present evidence on points not covered by the above Stipulation of Facts;

"9. That the parties herein reserve the right to present simultaneous memoranda within thirty days from receipt of order admitting the Stipulation of Facts."

Subsequently, the parties submitted a "Supplemental Stipulation of Facts", as follows:

"SUPPLEMENTAL STIPULATION OF FACTS

"COME NOW the parties in the above-entitled case, and in accordance with the commitment made in open court on December 18, 1956, respectfully submit this Supplemental Stipulation of Facts:

"1. That the parties admit that, as to the replacement cost of Flywheel GL-913, had plaintiff presented a witness, he would have identified the attached Letter, dated December 15, 1956, of the Pacific Exchange Corporation giving quotation of replacement cost, and which letter is hereof;

"2. That to date plaintiff has not as yet received the replacement for the Flywheel."

On the basis of the foregoing Stipulation and Supplemental Stipulation of Facts, the court rendered decision which, in part, reads:

"The Court is of the opinion that the plaintiff is bound by the provisions of the management contract. As a matter of fact, it complied with such provisions as were necessary for it to take delivery of the cargo. Plaintiff should not take advantage of the management contract when it suits him to do so, and reject its provisions when it thinks otherwise.

"The management contract provides for a liability of not more than ₱500.00. This being the case, defendant is only liable to this amount.

"IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defendant, ordering the latter to pay to the former, the amount of ₱500.00, plus 25% of this amount as attorney's fees. Defendant shall also pay the costs."

Not satisfied with said decision plaintiff appealed to the Court of Appeals, but said court, in its resolution dated August 5, 1958, elevated the case to us, on the ground that it involves only question of law.

The pivotal issue presented by the appeal is whether the provisions of Paragraph 15 of the Management Contract between appellee and the Bureau of Customs, limiting appellee's liability to ₱500.00 per package of merchandise, unless the value thereof is otherwise specified or manifested and the corresponding arrastre charges had been paid, are binding upon plaintiff-appellant, despite the fact that the latter was never a signatory to the contract.

Paragraph 15 of the Management Contract in question, reads in part, as follows:

"15. It is further understood and strictly agreed that the CONTRACTOR (appellee) shall at its own expense handle all merchandise upon or over said piers, wharves and other designated places, and at its own expense perform all work undertaken by it hereunder diligently and in a skillful workmanlike and efficient manner; and the CONTRACTOR (appellee) shall be solely responsible as an independent contractor for, and promptly pay to the steamship company, consignee, consignor, or other interested party or parties the invoice value of each package but which in no case shall be more than five hundred pesos (₱500.00) for each package, unless the value is otherwise specified or manifested, and the corresponding arrastre charges had been paid, including all da-

mages that may be suffered on account of loss, destruction, or damage of any merchandise while in the custody or under the control of the CONTRACTOR (appellee) upon any pier, wharf or other designated place under the supervision of the BUREAU, x x x." (Emphasis supplied.)

In support of appellant's contention that the above contractual provision (the intrinsic validity of which is not questioned in this case) is not binding upon it, reliance is placed on the provisions of Article 1311 of the Civil Code, reading thus:

"Art. 1311. Contracts take effect only between the parties their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

"If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person."

Appellant argues, that in the light of the above-quoted article contracts are binding and enforceable only between the parties, their assigns and heirs, the only exception being a third person not a party thereto, in whose favor a benefit is clearly and deliberately conferred. Although appellant admits that the aforementioned Management Contract contains provisions "benefitting persons not parties thereto for said contract pertains to serving the public (sic)", and that "anyone desiring to avail of such services has the right to demand it despite the fact that he was not a party to the Management Contract", it claims, nevertheless, that such third parties can not be bound by stipulations and conditions thereunder which are onerous or prejudicial to them.

Appellant's argument does not accord with and is not justified by the spirit (if not the letter) of the law. When a third person accepts the benefits of a contract, he is also bound to accept the concomitant obligations corresponding thereto. As the lower court correctly observed: "Plaintiff should not take advantage of the management contract when it suits him to do so, and reject its provisions when it thinks otherwise."

Appellant, further, contends that the contractual obligation in the aforequoted paragraph 15 of the Management Contract limiting appellee's liability is arbitrary, unjust, and unreasonable being practically forced upon it, since there was absolutely no way for it to receive the imported cargo except by engaging appellee's services as sole operator of the arrastre service in the port of Manila. Its consent, it is claimed was not voluntary, and hence, not valid.

In answer, it may be stated that appellant could adequately protect itself, by simply specifying or manifesting the actual value of the imported cargo in the various documents required of it under the law,(1) and paying the corresponding arrastre charges of the same, pursuant to the provisions of said paragraph 15, and of the "Important Notice" contained in the Delivery Permit and Gate Pass which its representative or broker accepts, signs, and utilizes, upon taking delivery of the imported cargo from appellee arrastre operator, in which event, the latter expressly binds itself and undertakes to reimburse appellant the actual value of the cargo, in case of its damage, destruction, or loss while under its custody. If appellant failed to state the value of merchandise in any of these documents required by law before he cleared its goods, and paid only the arrastre charge based on a lesser value, it can not in justice now demand the full undeclared value.

We find, therefore, that Paragraph 15 of the Management Contract is binding upon the herein plaintiff-appellant. Decsion appealed from is hereby affirmed, with costs against the plaintiff-appellant.

SO ORDERED.

Bengzon, Montemayor, Bautista Angelo, Labrador, J.B.L. Reyes and Endencia, JJ., concurred.

Padilla, J. on leave, took no part.

(1) Import entry (Sec. 1267, Rev. Adm. Code; written declaration (Sec. 1268-6, in connection with Secs. 1269 and 1271, Rev. Adm. Code).

XVI

Vicente Bareng, Petitoner, vs. The Hon. Court of Appeals, Patrocinio Alegria and Agustin Ruiz, Respondents, G. R. No. L-12973, April 25, 1960, Reyes, J. B. L., J.

1. CIVIL LAW; PAYMENT OF LEGAL INTEREST. — In the case at bar, petitioner was in default on the unpaid balance of the price of the equipment in question from the date of the filing of the complaint by A, and under Article 2209 of the New Civil Code, he must pay legal interests thereon from said date.
2. ID.; LIQUIDATED INDEBTEDNESS. — Where the indebtedness is liquidated, the obligation to pay any unpaid balance thereof did not cease to be liquidated and determined simply because the vendor and the vendee, in a suit for collection, disagreed as to its amount.

Carlos P. Bareng, for petitioner.

Ruiz, Ruiz, Ruiz & Ruiz, for respondents.

DECISION

Appeal by certiorari from that portion of the judgment of the Court of Appeals in C.A.-G.R. No. 12496-N sentencing petitioner Vicente Bareng to pay respondent Patrocinio Alegria, in addition to the amount of ₱3,600 representing his indebtedness to the latter, "sus interes legales desde la presentación de este demanda."

The facts insofar as material to this appeal, may be summarized as follows:

On November 29, 1951, petitioner Bareng purchased from respondent Alegria the cinematographic equipment installed at the Pioneer (now Rosamil) Theater in Laoag, Ilocos Norte, for the sum of P15,000, P10,000 of which was paid, and for the balance, Bareng signed four promissory notes falling due on the following dates: P1,000 on December 15, 1951; P1,500 on February 15, 1952; P1,500 on March 15, 1952; and P1,000 on April, 1952.

The first promissory note was duly paid by petitioner. On February 12, 1952, shortly before the second note fell due, the other respondent Agustin Ruiz informed petitioner that he was a co-owner of the equipment in question, and several days thereafter, Ruiz sent petitioner a telegram instructing him to suspend payments to Alegria of the balance of the price as he was not agreeable to the sale. On the same day, Alegria sought to collect upon the second note, but petitioner refused to pay on account of Ruiz' claims. Only P400 was paid on the second note and thereafter, petitioner refused to make any more payments to Alegria until the latter had settled his dispute with Ruiz.

On March 31, 1952, Ruiz filed suit against Alegria and petitioner Bareng (Civ. Case No. 1327) for his share in the price of the cinema equipment in question. On May 21, 1952, Alegria and Ruiz reached a compromise in the case, wherein the former recognized the latter as co-owner of the equipment sold to petitioner, and promised to pay him 2/3 of whatever amount he could recover from the latter. Whereupon, on May 28, 1952, Alegria sued Bareng for the amount of P13,500 allegedly representing the unpaid balance of the price of said equipment. Bareng answered the complaint, alleging that only P3,600 had not been paid on the price of the equipment in question, prayed for the rescission of the sale for supposed violation by Alegria of certain express warranties as to the quality of the equipment, and asked for payment of damages for alleged violation of Alegria's warranty of title. After a joint trial of the two cases, the lower court rend-

ered judgment declaring Alegria and Ruiz co-owners of the cinema equipment in question in Civil Case No. 1527; and dismissing Civil Case No. 1554, without prejudice to the co-owners' filing another actions against petitioner Bareng for the balance of the price of said equipment. On appeal to the Court of Appeals by both parties, the decision of the court *a quo* was reversed and instead, Bareng was ordered in Civil Case No. 1554 to pay Alegria the sum of P3,600 plus legal interests from the filing of the complaint; and in Civil Case No. 1527, Alegria was ordered to pay Ruiz 2/3 of the total amount he would recover from Bareng in Civil Case No. 1554. Not agreeable to that part of the decision making him liable for legal interests on the principal amount due to Alegria, Bareng, as already stated, appealed to this Court.

Petitioner Bareng claims he is not liable to pay interest to Alegria because he was justified in suspending payment of the balance of the price of the equipment in question from the time he learned of Ruiz' adverse claims over said equipment. In fact, Bareng adds, even the Court of Appeals found that "bajo dichas circumtancias, la actitud del demando Vicente Bareng de suspender el pago de aquel saldo de P3,600.00 estuvo justificado".

The right of a vendee to suspend payment of the price of the thing sold in the face of any danger that he might be disturbed in its possession or ownership is conferred by Article 1590, New Civil Code, to wit:

> "Art. 1590. Should the vendee be disturbed in the possession or ownership of the thing acquired, or should he have reasonable grounds to fear such disturbance, by a vindicatory action or a foreclosure of mortgage, he may suspend the payment of the price until the vendor has caused the disturbance or danger to cease, unless the latter gives security for the return of the price in a proper case, or it has been stipulated that, notwithstanding any such contingency, the vendee shall be bound to make the payment. A mere set of trespass shall not authorize the suspension of the payment of the price."

There is no question that, as found by the Court of Appeals, petitioner Bareng had the right to suspend payment of the balance of the price of the cinema equipment in question to his vendor, respondent Alegria, from the time he was informed by Ruis of the latter's claims of co-ownership thereof, especially upon his receipt of Ruiz' telegram wherein the latter asserted that he was not agreable to the sale. Nevertheless, said right of Bareng ended as soon as "the vendor has caused the disturbance or danger to cease". In this case, respondent Alegria had caused the disturbance or danger to petitioner's ownership or possession to cease when he (Alegria) reached a compromise with Ruiz in Civil Case No. 1527 whereby Ruiz expressed his conformity to the sale to Bareng, subject to the payment of his share in the price by Alegria. Petitioner Bareng cannot claim that he was not aware of this compromise agreement between the two owners, because he was a party-defendant in Civil Case No. 1527. From the time Alegria and Ruiz reached this settlement, there was no longer any danger or threat to Bareng's ownership and full enjoyment of the equipment he bought from Alegria. And it was by virtue of this settlement that Alegria, two days later, sued petitioner for the unpaid balance of the price of said equipment. In his answer to Alegria's complaint, petitioner admitted his indebtedness to Alegria in the amount of P3,600, yet he did not tender payment of said amount nor did he deposit the same in court, but instead sought to have the sale rescinded upon claims of violation of warranties by Alegria that the Court of Appeals found not to have been proved or established. It is clear, therefore, that petitioner Bareng was in default on the unpaid balance of the price of the equipment in question from the date of the filing of the complaint by Alegria, and under Article 2209 of the Civil Code, he must pay legal interests hereon from said date.

Petitioner also argues that his indebtedness to respondent Alegria was unliquidated until its amount was fixed by the Court of Appeals at P3,600.00, and that consequently, he cannot be made answerable for interests on the amount due before judgment in the Court of Appeals. The argument is completely untenable. The price of the equipment in question under petitioner and Alegria's contract of sale was determined and known, hence, liquidated; and the obligation to pay any unpaid balance thereof did not cause to be liquidated and determined simply because vendor and vendee, in the suit for collection, disagreed as to its amount. If petitioner had wanted to free himself from any responsibility for interest on the amount he had always acknowledged he still owed his vendor, he should have deposited the same in Court at the very start of the action.

As for the other errors raised by petitioner in his brief, we need not consider them because they were not raised in the petition for review and are, therefore, considered waived.

WHEREFORE, the decision appealed from is affirmed *in toto*, with costs against petitioner Vicente Bareng.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Barrera and Gutierrez David, JJ., concurred.

XVII

Pedro C. Camus, Petitioner, vs. The Hon. Court of Appeals, Hon. Eduardo D. Enriquez, Judge of the Court of First Instance of Negros Occidental, and Leon G. Moya, Respondents, G. R. No. L-13125, February 13, 1960, Reyes, J. B. L., J.

1. CIVIL LAW; OBLIGATIONS; PAYMENT BY ONE OF THE SOLIDARY CO-DEBTORS. — In the case at bar, the payment by the surety to appellee extinguished the obligation of the two solidary co-debtors to appellee and the juridical tie between the creditor and the solidary debtors was dissolved and, therefore, there is no more need to maintain appellant's appeal from the decision of the lower court ordering him and his co-debtor to pay their obligation to the appellee.
2. APPEAL; WHEN APPEAL MAY BE DISMISSED. — Where it would serve no useful purpose to decide the appeal because no actual relief or practical result can follow therefrom, the appeal will be dismissed.

Deogracias T. Reyes & Luison & Cruz, for petitioner.
Delgado, Flores & Macapagal, for respondents.

DECISION

On July 13, 1956, herein respondent Leon G. Moya sued petitioner Pedro C. Camus and the Luzon Surety Co., In. in the Court of First Instance of Negros Occidental for the payment of a promissory note in the sum of P2,500, signed by Camus and guaranteed by a surety bond of the Luzon Surety Co., Inc. At the trial, petitioner Camus failed to appear; whereupon, the court heard plaintiff's evidence and rendered judgment condemning the defendants to pay, jointly and severally, the amount claimed by plaintiff. Camus sought reconsideration of the judgment and a new trial, alleging, *inter alia*, that he had a good defense to the complaint, namely, usury; and when the court denied both, he filed his notice of appeal, record on appeal, and appeal bond. Said appeal was, however, disallowed by the court because Camus' motion for reconsideration and new trial was found to be *pro forma*. Camus applied to the Court of Appeals for a writ of mandamus to have his appeal allowed, but the latter court sustained the disallowance thereof by the trial court. From this judgment, Camus appealed to this Court by certiorari.

After the filing of appellant's brief, appellee Moya moved to dismiss the present appeal for the reason that appellant's co-defendant, the Luzon Surety Co., Inc., had already paid the judgment of the court below in his favor, so that the issues in this case had become academic; and waived the filing of an appellee's

brief. Consideration of the motion for dismissal was deferred by us until the case is set for deliberation on the merits.

We find no necessity to go into the merits of the appeal, for, upon a careful consideration of the reasons adduced in appellee's motion to dismiss, we agree that the appeal should be dismissed.

Appellant does not deny that his co-defendant and solidary co-debtor, the Luzon Surety Co., Inc., had already paid the judgment of the lower court during the pendency of his petition for mandamus in the Court of Appeals. Article 1217, New Civil Code, provides that "payment made by one of the solidary debtors extinguishes the obligation". The payment by the Luzon Surety Co., Inc. to appellee, therefore, extinguished the obligation of the two solidary co-debtors to appellee Moya, and the judicial tie between the creditors on the one hand, and the solidary debtors, on the other, was dissolved thereby. For this reason, there is no more need to maintain appellant Camus' appeal from the decision of the lower court ordering him and his co-debtor to pay their obligation to appellee Moya. Whatever controversy remains from here on is solely between the two co-debtors.

Appellant argues, however, that the payment made by his co-debtor was premature and, therefore, did not extinguish the principal obligation. We can not see how said payment can be premature when the obligation of appellant Camus and the surety company to appellee was based on a promissory note that was long overdue when the complaint was filed. Even assuming that appellant's only alleged defense of usury to the complaint is true, the same does not in any way affect the maturity and demandability of the debt but if sustained would only reduce the creditor's recovery. There is no question, of course, that the payment by appellant's co-debtor to appellee did not extinguish his defense of usury, which he may still set up against his co-debtor when he is sued by the latter; but until the surety company files such action against appellant, it is purely an academic matter whether appellant is entitled to such defense or not.

Appellant also urges that the Luzon Surety Co., Inc. should be substituted as plaintiff in this action to avoid multiplicity of suits. We have no power to order such substitution, since the surety company has not even intervened or shown any interest in these proceedings relative to appellant's right to appeal from the lower court's judgment. Neither we nor appellant can dictate the step which the surety company may choose to take against appellant for the protection of its interests.

Finally, appellant claims that the dismissal of this case would necessitate the filing of another action by him against the appellee for the recovery of whatever usurious interest the latter had exacted from him. The claim is completely untenable. Appellant can file such action against appellee only if he had already paid his indebtedness to the latter plus the alleged usurious interest. But it was precisely his failure to pay that compelled the appellee to sue him for payment of the debt, and appellant's defense of usury, even if true, would, as already stated, only reduce his liability to his creditor, but would not entitle him to recover any amounts from the latter. And even if appellant's solidary co-debtor, the surety company, had paid appellee more than it should (granting *arguendo* that the promissory note sued upon represented capital plus usurious interest, as appellant claims), such overpayment gives appellant no cause of action to collect from appellee what his solidary co-debtor had overpaid the latter, but his defense of usury would only serve to reduce his liability when he is sued by the surety company.

All in all, we agree with appellee that it would serve no useful purpose to still decide the present appeal, since no actual relief or practical result can follow therefrom. As we held in Velasco vs. Rosemberg, 29 Phil. 212, "if pending an appeal, an event occurs to grant any relief", and "similarly, where a litigation has ceased to be between parties having an adverse interest, *the appeal will be dismissed.*"

As to the merits of the case, suffice it to point out that appellant Camus has not appended to his petition for review any copy of his motion for new trial in the Court of First Instance, and without it, this Coure is in no position to say that the Court of Appeals committed error in declaring it insufficient and *pro forma.*

WHEREFORE, the present appeal is dismissed. Costs against appellant Pedro Camus.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera and Gutierrez David,

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PRES. EISENHOWER SPEECH . . . (*Continued from page* 164) programs to improve conditions in which human freedom can flourish.

We must, collectively and individually, strive for a world in which the rule of law replaces the rule of force.

Your country and mine have reaffirmed our faith in the principles of the United Nations Charter. We share a common desire to settle international disputes by peaceful means. The task is not an easy one. Communist intransigency at the conference table, whenever they do agree to sit at one, makes the attainment of an equitable agreement most difficult. Moreover, the record of Communist violations of agreements is long. The continuation of Communist provocations, subversion, and terrorism while negotiations are underway serves only to compound the difficulty of arriving at peaceful settlements.

But we shall never close the door to peaceful negotiations. All of us, all free nations always hold out the hand of friendship as long as it is grasped in honesty and integrity. We shall continue to make it clear that reason and common sense must prevail over senseless antagonism and distorted misunderstandings and propaganda. The arms race must be brought under control and the nuclear menace that is poised in delicate suspension over the heads of all mankind must be eliminated. This, I am convinced, can be done, without appeasement or surrender, by continuing a course of patient, resourceful and businesslike dealings with the Soviet leaders.

The goal of a world peace in friendship with freedom is so worth the attaining that every feasible and honorable avenue must be explored. The support, understanding and participation of all who cherish freedom is essential to this noblest endeavor in history. The Philippine contribution will be mighty in its impact on the future.

And now my friends I cannot close without attempting once more to express my very deep appreciation of all the cordial hospitality and friendliness that has been exhibited to me and to all the members of my party during my too brief stay in this lovely country. We know that in greeting us along the highway or in a magnificent crowd such as this, you are really expressing your basic affection for the American people. (Applause) And I assure you, all of you, as the spokesman of the American people that their concern for you, your fate, your future, your well-being, their affections for you is equally deep with yours.

Thank you. (Applause).

UNDERSTANDING JUVENILE DELINQUENCY

By LEE R. STEINER

In his fascinating and instructive book, *Good Behaviour*, Sir Harold Nicholson, famous English biographer and authority on diplomacy, makes some pertinent observations which are occasionally curious if not humorous. Says he, speaking of American manners:

"It seems strange to me . . . that whereas American adults sometimes seem to be inhibited by conventions which have long been discarded in the Old World, American children and adolescents are accorded a license without bond or bound. The adulation accorded to children and young boys and girls is to our minds bewildering. The pert, pampered and loud-voiced infants of the Great Republic are for us almost incomprehensible as the bunching, petting, dare-seeking boys and girls of the universities and colleges."

This revealing passage from an admittedly keen and judicious observer flashed before us as we ploughed through the well-documented book, *Understanding Juvenile Delinquency*, published in the United States of America, by Lee R. Steiner whose picture adorns the back cover. The author, we gather, is not only a certified psychologist, but is also a recognized psychoanalyst and consultant in personal problems. She thus had already access to those intimate problems with which American teen-agers are faced today to the bafflement and disappointment of their parents, who, in their doting fondness, have spared the rod and spoiled the child.

An American reviewer describes Mrs. Steiner's recent publication as a "brutally frank" and "hard-hitting" treatise or diagnosis. It is more than that. It is sometimes diagnostically as shocking in its factuality as it is in its clinical frankness. It calls a spade a spade for want of a worse name. In her passion for truth and accuracy, she quotes a word which, banned by Webster as well as Oxford Dictionary, we saw printed for the first time.

Some modern novelists in their attempt to appear realistic and photographic might have used the word. Still we have always wondered, possibly in our conservatism or provincialism, what constructive purpose its use could serve or accomplish. Determined no doubt to be always factual and accurate as becomes a scientist, the author copiously quotes from reports that could easily fall under the category of pornographic, however noble or lofty might have been her motive or intention.

Over a decade ago, juvenile delinquency was at best a legal terminology with hardly any clear meaning or evil connotation to the reading public. That was particularly true in the Philippines where the influence of the home, salutary and unquestioned, as well as of the school and the church, was then strong. If the man in the street happened to read the expression or hear about it, it left him no impression; he merely shrugged his shoulders as if it were none of his or his family's concern. Today, it conveys an increasingly serious and alarming social and domestic problem in the United States and to a limited extent in the Philippines, especially in the chartered cities where vice and crime are becoming rampant.

What seems to have inspired Mrs. Steiner to publish the result of her study and research is that juvenile delinquency has broken and continues to break many a peaceful and happy home. At the same time, it has left a long trail of blood and tears from victims and relatives. What causes juvenile delinquency? Why has it spread terror across the land from Maine to California as well in the Philippines through the baneful influence of cheap magazines? Is it symptomatic of the breakdown of the home, the school and the church? Has the bad example of well-meaning but seemingly irresponsible parents anything to do with it?

The last seems to be the opinion of Dr. H. H. Remmers of Purdue University. According to Mrs. Steiner, he has "drawn the conclusion after years of research that the difficulty is not so much with the young as with the pattern their elders are setting — a pattern of meaningless activity and boredom." The same authority holds that young people have "a more accurate appraisal of the adult world than vice-versa." This reverses the stand taken by a famed English writer who said to a young man, "You think we (old men) are fools; but we know that you are."

What is the solution? The author views the whole matter quite pessimistically. She quotes Dr. Jacques M. May, Vice-President of the National Organization for Mentally Ill Children, as saying that the problem of juvenile delinquency "will not be solved by more policemen, only by more unbiased scientist exploring the depths of the cells." And far from improving the situation, many of the judges presiding over juvenile courts in the States are blamed for making it worse.

"Instead of using psychiatric knowledge to make the young person's life easier," complains Mrs. Steiner, "some of these maladjusted judges use it as one more weapon of sadism. Actually, many of these judges who bandy around the psychiatric lingo don't want anything to do with psychiatrists. In private, they will tell you that they think psychiatrists are dopes. And many psychiatrists return the compliment by belittling judges."

Understanding evidently holds the key to the whole problem, but how can one attain understanding when the authorities themselves, scientific and otherwise, do not or cannot understand one another, much less the unfortunate patients who are brought before them for treatment?

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