

RECONSTITUTION OF COURT AND OFFICIAL RECORDS GENERALLY*

PUBLIC ACT NO. 3110
(Effective March 19, 1923)

Section 1. *Records of Court of First Instance destroyed; duty of clerk.*

As soon as practicable after the occurrence of any fire or other public calamity resulting in the loss of all or part of the records of judicial proceedings on file in the office of the clerk of a Court of First Instance, said officer shall send a notice by registered mail to the Secretary of Justice, the Attorney-General, the Director of Lands, the Chief of the General Land Registration Office, the clerk of the Supreme Court, the judge of the province, the register of deeds of the province, the provincial fiscal, and all lawyers who may be interested, stating the date on which such fire or public calamity occurred and whether the loss or destruction was total or partial, and giving a brief list of the proceedings not affected in case the loss or destruction was partial.

REFERENCES: In general, see 34 Am Jur, Lost Papers and Records.

ANNOTATIONS

1. *This Act inapplicable to Public Service Commission records.*

Reconstitution of records of proceedings before the Public Service Commission is governed by the provisions of Commonwealth Act No. 146, not by this Act. *Re Gregorio*, 77 Phil. 906.

2. *Failure to give required notices.*

Where it does not appear that any of the notices required by Section 1, 2, and 3 of this Act were given in connection with reconstitution of the records of a case, the lack of notice to the adverse party and non-compliance with the statutory requirements vitiate the reconstitution proceedings and render an order declaring the record reconstitution ineffective. *Reyes v. Pecson, Phil., 47 Off. Gaz. 6133* (¶L-2879, 1950).

Section 2. — *Notice to persons interested....*

Upon receipt of the notice mentioned in the preceding section, the court shall issue or cause to be issued a general notice which shall be addressed and sent by registered mail to the lawyers and officers mentioned in the preceding section and to such other persons as might be interested, advising them of the destruction of the records, with a brief list of the proceedings not affected in case the destruction was partial, and of the time fixed by this Act for the reconstitution of the destroyed records.

This notice shall also be published in the Official Gazette and in one of the newspapers most widely read in the province, once a week, for four consecutive weeks.

ANNOTATIONS

1. *Effect of failure to give required notices.*

Where it does not appear that any of the notices required by Sections 1, 2, and 3 of this Act were given in connection with reconstitution of the records of a case, the lack of notice to the adverse party and non-compliance with the statutory requirements vitiate the reconstitution proceedings and render an order declaring the record reconstituted ineffective. *Reyes v. Pecson, Phil. 47 Off. Gaz. 6133* (¶L-2879, 1950)

Section 3. — *Application to reconstitute record in civil case; notice to others interested.*

The parties to civil cases, or their counsels, shall appear and file, within thirty days after having been notified in accordance

* In view of the numerous requests from our subscribers, particularly those from the provinces of Cavite and Abra whose court records were destroyed by fire, we are publishing herein the Law on Reconstitution of Court and Official Records.

with the next preceding section, an application for the reconstitution of the records in which they are interested, and the clerk of court, upon receiving such application, shall send notice to all parties interested, or their counsels, of the day, hour, and place when the Court will proceed to the reconstitution, requesting them to present, on said day and hour, and at said place, all copies of motions, decrees, orders, and other documents in their possession, having reference to the record or records to be reconstituted.

ANNOTATIONS

1. *Nature and purpose of reconstitution proceedings.*

Proceedings for the reconstitution of judicial records are not, strictly speaking, judicial, but rather administrative in character, the main purpose being to see that a judicial record is restored to status quo and no issue affecting the merits being involved. *Rodrigo v. Cantor, Phil. (¶L-4398, 1952).*

2. *Remedy made available to any interested party.*

Where the records of an action or proceeding have been destroyed, the remedy of any interested party is to file a proper petition for reconstitution. *Jamora v. Blanco, 68 Phil. 497, 44 Off. Gaz. 3832* (¶L-1131, 1947).

3. *Inability to produce any part of the record; sufficiency of mere statement concerning it.*

Where the party seeking reconstitution of the record in a case wherein the records have been destroyed is unable to locate or produce the pleadings, orders, and other documents, or authentic copies thereof, or to obtain an agreement on the facts from the other party as contemplated by § 4 of this Act, his mere "statement" as to what the pleadings were, and the like, cannot be accepted, and the only course open is a new trial on new pleadings and proceedings as contemplated by § 30, *de Carrangcong v. Cojuangco, Phil. (¶L-3761, 1951).*

4. *Reconstitution ineffective unless required notice given.*

Where it does not appear that any of the notices required by Sections 1, 2, and 3 of this Act were given in connection with reconstitution of the records of a case, the lack of notice to the adverse party and non-compliance with the statutory requirements vitiate the reconstitution proceedings and render an order declaring the record reconstituted ineffective. *Reyes v. Pecson, Phil. 47 Off. Gaz. 6133* (¶L-2879, 1950).

Section 4. — *Method of re-establishing record in civil case.*

Civil cases pending trial shall be reconstituted by means of copies presented and certified under oath as correct by the counsels or the parties interested. In case it is impossible to find a copy of a motion, decree, order, document, or other proceeding of vital importance for the reconstitution of the record, the same may be replaced by an agreement on the facts entered into between the counsels or the parties interested, which shall be reduced to writing and attached to the proper record.

ANNOTATIONS

1. *Limited objective of reconstitution proceedings.*

2. *Sufficient basis for reconstitution.*

3. *Proceeding on recollection alone, without reconstituting the record.*

4. *Admission of additional documents and papers.*

5. *Proceedings subsequent to judgment as subject to reconstitution.*

1. *Limited objective of reconstitution proceedings.*

In a proceedings for reconstitution of the record of a case, the

concern of the court and of the parties is that the documents presented as a basis for reconstitution are authentic and really part of the record, not question of law as to their effect, which still remain open. *Gonzales v. Yeip*, 77 Phil. 661.

2. *Sufficient basis for reconstitution.*

Reconstitution does not necessarily require verbatim copies of all parts of the record in question, and parts of it may be supplied by stipulation of the parties, if they can agree, or by findings of the court clearly showing that some required step, such as the service of notice of judgment on the attorney for the defeated party, was duly had. *Deliva v. Surtiva*, Phil. 48 Off. Gaz. 4389 (#L-4614, 1952).

3. *Proceeding on recollection alone, without reconstituting of records.*

Where the records in pending intestate proceedings were destroyed when the court house burned, and the parties to the proceedings, though given ample opportunity both by the court of first instance and the Supreme Court to reconstitute the records, made no attempt to do so and instead instituted and diligently went ahead with entirely new proceedings, it was beyond the power of the court of first instance to reinstate the old proceedings and insist upon going ahead therewith on the basis of the clerk's recollection of the records. *Valenzuela v. de Aguilar*, Phil. 47 Off. Gaz. 730, 747 (# L-L-2262 and L-2480, 1949).

4. *Admission of additional documents and papers.*

In connection with reconstitution of the destroyed records in a case, it is within the discretion of the judge to allow readmission of documents and papers not originally produced by the interested parties because of circumstances beyond their control, in order that the record may be completed and real justice done. *Rodrigo v. Cantor*, Phil. (#L-4398, 1952).

5. *Proceedings subsequent to judgment as subject to reconstitution.*

It is inferable from # # 4 and 7 of this Act that judicial records may be reconstituted without exception, and there is accordingly no merit in a contention that proceedings subsequent to judgment may not be reconstituted. *Erlanger & Galingier, Inc. v. Ezconde*, Phil. (#L-4792, 1953).

Section 5. — *Procedure if parties unable to agree.*

In case the counsels or parties are unable to come to an argument, the Court shall determine what may be proper in the interest of equity and justice, and may also consider the proceeding in question as non-existent and reconstitute only that part of the record which can stand without such proceeding, and continue proceeding upon the record so reconstituted.

ANNOTATIONS

1. *Admission as amounting to agreement.*

In a reconstitution proceeding, an admission made by one of the parties to the effect that there had been judgment and execution of judgment is not nullified by the circumstance that it is made without prejudice to challenging the validity of the proceeding. *Azotes v. Flanco*, 78 Phil. 739, 47 Off. Gaz. 488 (#L-962, 1947).

Section 6 — *Testimony already taken.*

Testimony of witnesses taken in civil cases shall be reconstituted by means of an authentic copy thereof or a new transcript of the stenographic notes. If no authentic copy can be obtained and the stenographic notes have also been destroyed, the cases shall be tried de novo as if called for trial for the first time.

ANNOTATIONS

1. *Additional testimony.*

In view of # # 6 and 7 of this Act it was held that where the record of a case was destroyed by fire but an authentic copy of the original decision was in existence, the evidence was to be reconstructed by retaking only testimony of those who testified at the original hearing, and it was no abuse of discretion to deny an application for introduction of the testimony of additional witnesses. *Madalang v. Court of First Instance of Romblon* an *dMalbas* (1926) 49 Phil. 487.

Sec. 7. — *Decision.*

If a civil case has already been decided, the decision shall be reconstituted by means of an authentic copy. In case an authentic copy cannot be found, the Court shall make a new decision, as if the case had never been decided.

ANNOTATIONS

1. *Unauthenticated copy of decision as basis for execution.*

It was error for a judge of First Instance to order execution of a judgment merely on the basis of an unauthenticated copy of what purported to be the judgment, the original records in the case having been destroyed, but authenticated copies being in existence of notice of appeal and bond on appeal to the Court of Appeals, without satisfactory proof of the final and executive nature of the judgment. *Ibañez v. Barrios*, 77 Phil. 186 (1946).

2. *Discretion to deny taking of additional testimony where authentic copy of decision produced.*

An authentic copy of a decision, the original of which was destroyed by fire, being available, it was no abuse of discretion for the court, after reconstructing the decision from such copy, to deny an application for the introduction of testimony of additional witnesses. *Madalang v. Court of First Instance of Romblon* and *Malbas* (1926) 49 Phil. 487.

3. *Reconstitution of proceedings subsequent to judgment.*

It is inferable from # # 4 and 7 of this Act that judicial records may be reconstituted without exception, and there is accordingly no merit in a contention that proceedings subsequent to judgment may not be reconstituted. *Erlanger & Galingier, Inc. v. Ezconde*, Phil. (#L-4792, 1953).

Section 8. — *Records in special proceedings.*

Special proceedings shall be reconstituted in the same manner as ordinary civil cases, with the sole addition that a copy of the statement to be made by the parties or their counsel, setting forth the status of the proceedings at the time when the fire or other public calamity occurred, shall be attached to the reconstituted record.

Section 9. — *Records in land registration proceedings.*....

Registration proceedings pending the issuance of a decree shall be reconstituted by means of copies furnished by the Chief of the General Land Registration Office. It shall be the duty of this officer, immediately upon receipt of the notice provided for in section one of this Act, to directly certified true copies of all destroyed registration proceedings pending at the time of the destruction, and of all decrees destroyed, to be sent to the clerk of the Court of First Instance concerned.

CROSS-REFERENCE: Later legislation as to reconstitution of land title certificates. see # 94 et seq. infra.

ANNOTATIONS

1. *No reconstitution of owner's certificate unless shown to be lost or destroyed.*

Where it was not contended that the owner's duplicate certificate of title to the property in question was lost or destroyed, no useful purpose would be served by instituting proceedings under Act No. 3110, as amended by Republic Act No. 26, for the reconstitution of documents which were lost or destroyed after submission to the Register of Deeds of Manila for registration, as they could not be registered, under # 57 of Act No. 496, without production of the owner's duplicate title certificate for cancellation, as sought by independent suit. *Henson v. J. K. Pickering & Co., Phil.*, (#L-3440, 1951).

Section 10. — *Records in cadastral proceedings.*

Pending cadastral cases shall be reconstituted as follows:

The Court shall issue an order directing the persons interested to file anew their replies, for which purpose reasonable time may be allowed. The order shall be published in the Official Gazette and by local notices during a period fixed in said order.

Immediately upon receipt of the notice provided for in section one of this Act, the chief of the General Land Registration Office

shall cause duly certified true copies of all destroyed cadastral proceedings to be sent to the clerk of the Court concerned.

The new replies filed by the parties interested and the copies furnished by the General Land Registration Office shall form the reconstituted record.

Section 11. — *Official cooperation in re-establishing records in land cases.*

The Director of Lands shall cooperate with the Chief of the General Land Registration Office in furnishing copies of the plans, certificates, reports, and other documents necessary for the reconstitution of destroyed registration or cadastral proceedings. The expense of the reconstitution of such records shall be reimbursable to said Bureau and office out of the public calamity or emergency funds.

Section 12. — *Inability to reconstitute record in land cases; procedure.*

In case there is anything in the registration or cadastral proceedings which cannot be reconstituted by means of the procedure provided for in sections nine and ten hereof and which is of vital importance to the interested parties, the reconstitution procedure established for ordinary civil cases shall be used.

Section 13. — *Criminal case records.*

Pending criminal actions shall be reconstituted by means of copies filed by the fiscal and the counsel for the defendant or the defendant himself, or certified by them under oath as being correct, and whatever cannot be reconstituted in this manner shall be reconstructed by means of the supplementary procedure provided for the reconstitution of ordinary civil cases.

ANNOTATIONS

1. *Right of counsel for offended party to seek reconstitution.*

With respect to a charge of adultery instituted during the Japanese occupation, the record having been destroyed, the attorney for the offended party was entitled to apply for reconstitution of the record so that the proceedings could go forward. *Herrero v. Diaz*, 75 Phil. 489.

Section 14. — *Testimony or documentary evidence in criminal case destroyed.*

The testimony of witnesses, if any has already been taken, shall be reconstituted by means of an authentic copy thereof or by a new transcript of the stenographic notes; but if it is impossible to obtain an authentic copy of the evidence and if the stenographic notes have been destroyed, the case shall be heard anew as if it had never been tried.

Documentary evidence shall be replaced by secondary evidence.

Section 15. — *Decision in criminal case.*

If the case has already been decided, the decision shall be reconstituted by means of authentic copy. If an authentic copy is not obtainable, the case shall be decided anew, as if it had never been decided.

Section 16. — *Evidence of preliminary investigation.*

A duly certified copy of the proper entries of the docket of the justice of the peace court concerned shall be attached to the reconstituted record and shall be sufficient evidence that a preliminary investigation was held.

Section 17. — *Fiscal's records destroyed; duties; recourse to other records.*

In case the records of the office of the provincial fiscal have also been destroyed, said provincial fiscal shall ascertain the criminal actions pending in the Court of First Instance and may for this purpose make use of the data obtainable from the dockets of the justice of the peace courts of the province, the reports of the provincial commander of the Constabulary; the records of the warden of the provincial jail and of the municipal police, and from any other sources that might be of assistance to him in the investigation.

Section 18. — *Investigation of facts; making up reconstituted record.*

The provincial fiscal shall investigate the facts in each pending criminal action, and if he should find sufficient merits to sustain the action, he shall without loss of time file the proper information which, after being registered, shall, together with a certified copy of the proper entries in the docket of the justice of the peace court concerned, if any, form the reconstituted record, which shall be used as point of departure in the continuation of the proceedings.

Section 19. — *Motion to dismiss, when authorized; procedure.*

If the provincial fiscal does not find sufficient merits to sustain the accusation, he shall present to the court a motion for dismissal, specifying all the facts of the case and all steps taken by him in the investigation required in section seventeen hereof. This motion for dismissal, after being registered, shall, together with a certified copy of the proper entries in the docket of the justice of the peace court concerned, if any, form the reconstituted record, which shall be used as point of departure in the continuation of the proceedings.

Sec. 20. — *Evidence already taken; reproduction of information.*

If the provincial fiscal finds that evidence has already been taken in the case, which has not been destroyed or which can be reproduced by a new transcription of the proper stenographic notes, he may, in view of such evidence, enter into an agreement with the defendants or their counsel, the Court, in view of the evidence, shall determine in what terms the information shall be reproduced and shall give the defendants an opportunity to file a demurrer against the information so reproduced or introduce additional evidence.

If the defendants have no counsel and state to the Court that they desire one, the court shall assign to them a counsel who shall represent them in the proceedings for the reproduction of the information.

Section 21. — *Procedure on reproduced information.*

Upon the reproduction of the information in the manner set forth in the next preceding section, the defendant shall be informed thereof, and if he enters a plea of not guilty, the proper hearing shall be held, in which shall be admitted all evidence previously introduced and such additional evidence, if any, as may be lawfully offered by the parties.

Section 22. — *Decision of case.*

If the case has already been decided, the decision shall be reconstituted by means of an authentic copy, and in case it is impossible to obtain an authentic copy, the case shall be decided anew, as if had never been decided anew, as if it had never been decided.

Section 23. *Preferred cases.*

The provincial fiscal shall give absolute preference to the reconstitution of criminal actions in which the defendants are confined awaiting decision, and shall act with all possible dispatch.

Section 24. — *Formal requirements for reproduced informations.*

All informations reproduced by the provincial fiscal shall be entitled "Reproduced Information," and at the end thereof shall appear the date on which they were actually reproduced and a statement to the effect that they were reproduced in accordance with the provisions of this Act.

Section 25. — *Records on appeal or for review; use of copies if available.*

The records of civil actions, special proceedings, and registration and cadastral proceedings which at the time of their destruction were ready to be sent to the Supreme Court of the Philippine Islands on appeal, shall be reconstituted by means of an authentic copy of the bill of exceptions or appeal record, which, together with the reconstituted evidence, shall form the reconstituted record for the purposes of the appeal.

Section 26. — *Procedure in other cases.*

If it is not possible to obtain an authentic copy of the bill of exceptions or appeal record, or if the evidence cannot be reconstituted, the records referred to in the next preceding section shall be reconstituted by means of the other procedure established in the

preceding sections.

Section 27. — *Criminal appeals.*

The records of criminal actions which at the time of their destruction were ready to be sent to the Supreme Court of these Islands on appeal, shall be reconstituted in the manner established in sections thirteen to twenty-four. At any event, if there shall be any question as to the appeal record or the time within which the same was filed, the court may authorize the defendant to reproduce it within a reasonable time.

Section 28. *Original docket entries, controlling effect.*

In case it has been possible to save or preserve the dockets of the clerk's office relative to the civil actions, registration and cadastral proceedings, criminal actions, and special proceedings, destroyed, which were pending at the time of their destruction, the entries in said dockets shall be proof of the judicial proceedings therein made of record and shall prevail over any agreement entered into between the parties or their counsels.

Section 29. — *Failure to seek reconstitution of record; right to file new actions.*

In case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the six months next following the date on which they were given notice in accordance with section two hereof, they shall be understood to have waived the reconstitution and may file their respective actions anew without being entitled to claim the benefits of section thirty-one hereof.

ANNOTATIONS

1. *Duty to seek reconstitution rests on both parties.*

Once the record of a case is destroyed or lost, the duty of having the same reconstituted devolves upon both parties, so that the omission of one party alone to ask for reconstitution should not be construed as an abandonment of the case. *Lichauco v. Lucero, Phil., 47 Off Gaz 3544* (##L-2944, 1950).

The duty to ask for reconstitution of destroyed records in a case rests upon both parties, and although, during the time when the record could have been reconstituted, no adequate steps were taken by either party to that end, defendant was not entitled to invoke the rule of estoppel by judgment against plaintiff by reason of his failure to have the record on appeal from such judgment reconstituted. In such a situation, this section applies. *Claridad v. Novella, Phil.* (##L-4207, 1912).

2. *Cases pending on appeal.*

This Act is divided into parts dealing with reconstitution of records at various stages of the proceedings. Where the records in a court of first instance remain intact, but the records on an attempted appeal were destroyed, the parties are not remitted, under this section, to a new trial, but only to a new appeal, and it is error to dismiss the appeal on the score that the record was not reconstituted in time. *Nacua v. Intestate Estate of Ato, — Phil., —* (##L-4933, 1953), modifying prior decisions.

Where a case was pending on appeal to the Court of Appeals at the time of destruction of the records, and only those in the Court of Appeals were destroyed, not the records of the court of first instance, which remain intact and available, the parties are not remitted to a new action, but only to reconstitution of the appeal or a new appeal. *Nacua v. Ato, Phil., 49 Off Gaz 3353* (##L-4933, 1953).

Where a pre-war case was pending on appeal from one judgment therein to the Court of Appeals at the time the record was destroyed, either party could seek reconstitution of the record and it was not incumbent on one of them to make such an application any more than it was on another. If no one made application within the allotted time, the judgment failed to become final because of pendency of the appeal, the right to reconstitution must be considered waived, and the parties were remitted to new litigation. *Ambat v. Director of Lands, Phil., 49 Off Gaz 129* (##L-5042, 1953).

3. *Criminal cases.*

Where the records are destroyed in a criminal case, it is as

much the duty of the accused as it is of the prosecution to see that they are reconstituted and that the case is disposed of; and if the accused takes no steps to this end, he is not in a position to complain of want of a speedy trial, nor, the case never having been decided or disposed of, that he is placed in double jeopardy by reconstitution of the records and going ahead with the prosecution on the part of the fiscal. *People v. Dagatan, Phil.* (##L-4396, 1951).

4. *Motion to dismiss reconstitution proceedings as abandonment.*

A motion to dismiss proceedings for the reconstitution of the record in a case does not necessarily amount to abandonment of an appeal from the judgment in such case. Section 29 of this Act does not remit the parties to a new action if reconstitution proceedings are started in due time and the pleadings and decision are produced, merely because oral and documentary evidence is missing; the proper procedure in such case is to move the appellate court to remand the case for new trial under, #64. *Medina v. Bernabe, Phil.* (##L-03036, 1949).

Section 30. — *New action if record cannot be reconstituted.*

When it shall not be possible to reconstitute a destroyed judicial record by means of the procedure established in this Act or for any reason not herein provided for, the interested parties may file their actions anew, upon payment of the proper fees, and such actions shall be registered as new actions and shall be treated as such.

ANNOTATIONS

1. *When new action sanctioned or required by this section.*

The commencement of a new proceeding should not be countenanced unless it is definitely demonstrated that the lost judicial records cannot be sufficiently reconstituted. *Abellera v. Garcia, Phil., 47 Off Gaz 2908* (##L-2404, 1949).

When the record in a pending case has been destroyed and cannot be reconstituted, the only practical solution is to permit the filing of a new action, as provided in this section. *Maca-pinlae v. Court of Appeals, Phil.* (##L-02400, 1950).

2. *Inadequacy of attempt to reconstitute record.*

Where the court finds an attempt to reconstitute the record in a pending action insufficient for failure to produce the pleadings or other pertinent documents, or authentic copies hereof, or obtain an agreement on the facts, the plaintiff's mere statement, in a so-called "complaint" in new proceedings under # 30 of this Act, as to what the former pleadings contained and what transpired up to the time of destruction of the records, will not suffice as a basis for further action, *de Carungcong v. Cojuangco Phil.* (##L-3761, 1951).

Section 31. — *Limitations and prescription period if records destroyed.*

For all legal effects, the time that has elapsed from the initiation of the destroyed record until the date when its reconstitution was declared impossible, shall not be counted against the interested party or his heirs and other successors in interest.

ANNOTATIONS

1. *Prior action as tolling limitations where record destroyed.*

The effect of a prior action commenced on the same cause of action as tolling the statute of limitations is lost where the record in such case is destroyed prior to final termination and not reconstituted or reinstated, as the prior action must, for that reason, be considered as abandoned and as though it had never existed. *Jarder v. Jarder, Phil.* (##L-4626, 1952).

Section 32. — *Registration and docketing of reconstituted cases.*

All reconstituted civil and criminal actions and special proceedings and those initiated anew after the calamity, shall be registered and entered in the respective docket and shall be numbered consecutively in the chronological order of their reconstitution and filing. Reconstituted cases shall be numbered with figures preceded by a dash and capital letter R.

ANNOTATIONS

1. *Appealability of order reconstituting record*

An order for restitution of the record in a case is interlocutory and not appealable. *Fuentebella v. Ocampo*, 80 Phil., 552; 45 Off Gaz Supp. 9 p. 178 (#L-1762, 1948).

Section 33. — *Restoration to original status where possible.*

In case it has been possible to save or preserve the dockets of the civil and criminal actions and special proceedings, the reconstituted records shall be numbered as they were in said dockets, with the sole addition of a dash and a capital letter R, preceding their respective numbers, and without prejudice to their being registered and entered in the "Docket of Reconstituted Cases" prescribed in section thirty-five hereof.

ANNOTATIONS

1. *Restitution of record as precluding relief from judgment.*

Restitution of the record in a case does not preclude a party from seeking relief from the judgment therein in the manner provided by the Rules of Court. *Gonzales v. Ysip*, 77 Phil., 661.

Section 34. — *Land registration and cadastral proceedings.*

Reconstituted registration and cadastral proceedings shall be registered and entered in their respective docket under the same numbers they had before the calamity occurred with the sole addition of a dash and a capital letter R, preceding their respective numbers.

Records of a like nature presented after the calamity shall take the numbers of the destroyed and reconstituted records.

Section 35. — *Special docket.*

Independently from the ordinary dockets for all criminal and civil actions and special proceedings reconstituted or newly filed, the clerk of the court shall open a special docket for all reconstituted cases which shall be denominated "Docket of Reconstituted Cases."

Section 36. — *Certification of special docket.*

On the first pages of the "Docket of Reconstituted Cases," the clerk of the court shall spread a certificate setting forth that notice was duly given as required in sections one and two of this Act, transcribing the same in full, and shall paste thereon a copy of the publication in a newspaper of the notice prescribed in section two, with the statement that such publication was also made in the Official Gazette, and specifying the volume and page number.

Section 37. — *Notations to appear in special docket.*

All civil and criminal actions and special proceedings reconstituted in accordance with this Act shall be registered and entered in the "Docket of Reconstituted Cases" and shall be given the same numbers under which they appear in their respective ordinary dockets, and in the entry of each case mention shall be made of the agreements and all other proceedings had for the restitution of the record, and, if possible, the register number which it bore before the fire or public calamity shall be stated.

Section 38. — *Docketing of registration and cadastral proceedings.*

Reconstituted registration and cadastral proceedings shall not be registered or entered, but briefly noted in the "Docket of Reconstituted Cases."

Section 39. — *Notations in special docket if record not reconstituted.*

In case of the failure of the restitution of a record, the clerk of the court shall make a statement of this effect in the "Docket of Reconstituted Cases," setting forth all the proceedings had and the order of the court declaring such restitution to have failed.

Section 40. — *Where restitution proceedings to be docketed.*

The proceedings for the continuation of the reconstituted record shall not be spread upon the "Docket of Reconstituted Cases," but upon the respective ordinary dockets.

Section 41. — *Suspension of terms on destruction of records.*

All terms fixed by law or regulation shall cease to run from the date of the destruction of the records and shall only begin to run again on the date when the parties or their counsels shall have received from the clerk of the court notice to the effect that

the records have been reconstituted.

ANNOTATIONS

1. *"Terms" referred to.*

The provision of this section that all terms shall begin to run on the date the parties have notice that the record has been reconstituted refers to the terms fixed by law which were already running when destruction of the record occurred. *Velasquez v. Ysip* 79 Phil 645, 45 Off Gaz 2079 (#L-1469, 1947)

Section 42. — *Renewal of bonds.*

All bonds executed in civil and criminal cases and special proceedings shall be renewed as soon as the respective cases have been duly reconstituted.

Section 43. — *Partial destruction of judicial records, application of Act.*

In case of the partial loss or destruction of a judicial record, the destroyed portion may be reconstituted in accordance with the provisions of this Act.

ANNOTATIONS

1. *Restitution of entire record not necessary.*

It is not necessary, for restitution of a destroyed record, that all the papers be reconstituted, and it was accordingly not error for a court of first instance, to which an ejection case had been appealed, to hold that the record was sufficiently reconstituted on the basis of a copy of the decision, without reference to the pleading and other papers. *San Jose v. de Venecia*, 79 Phil 646, 45 Off Gaz 2073 (#L-1154, 1947).

Although 888 out of 906 exhibits used in connection with trial of a case were destroyed by fire and could not be reconstituted, where such destruction took place after decision in the lower court and while the case was pending on appeal, and the findings of fact of the lower court were undisputed, it was unnecessary to resort to a new action and the appeal could be proceeded with. *Grey v. Insular Lumber Co.*, Phil., 49 Off. Gaz 4387 (#638, 1953)

Section 44. — *Records destroyed or lost other than by fire or public calamity, application of Act.*

Judicial records destroyed or lost from causes other than fire or public calamity may also be reconstituted in accordance with the provisions of this Act.

Section 45. — *Other provisions not repealed.*

Nothing contained in this Act shall be construed to repeal or modify the provisions of section three hundred and twenty-one of Act Numbered One hundred and ninety.

Section 46. — *Clerk of court's duty to note names of stenographers and send copies of criminal decisions to provincial fiscal.*

It shall be the duty of the clerk of the court to state in the proper dockets and in the minutes of the sessions of the court the names of the stenographers who have taken note of the evidence introduced in the cases tried, and to send to the provincial fiscal full copies of the decisions rendered by the court in criminal actions.

Section 47. — *Provincial fiscal to keep copies of informations and decisions.*

It shall be the duty of the provincial fiscal to keep authentic copies of all informations filed by him and of all decisions sent to him by the clerk of the court.

Section 48. — *Justice of the peace court records destroyed; procedure generally.*

Justice of the peace courts, in reconstituting the records of cases pending in said courts and destroyed by fire or any other public calamity, shall follow substantially and wherever possible, the procedure established for the reconstitution of records in the Courts of First Instance.

Section 49. — *Notice to be given.*

Justice of the peace courts shall not be required to issue the notice provided for in section one hereof, but that provided for in section two, which shall be addressed and sent by registered mail to the provincial board, the provincial fiscal, the provincial com-

mander of the Constabulary, the municipal president and councilors, the local health officer, the municipal treasurer, the chief of police, and the barrio lieutenants.

Provisions referred to: See Secs. 1, 2, this Title.

Section 50. — Posting and publication of notice.

Copies of this notice shall be posted for ten consecutive days in three public places of the *poblacion* of the municipality, and in three public places in each and all of the barrios of the municipality.

Such notice shall, moreover, be published by *bandillo* during the ten days mentioned in the next preceding section in the *poblacion* of the municipality and in each and all of the barrios thereof.

Section 51. — Time to apply for reconstitution of records.

The parties to civil actions or their counsels shall be given ten days' time for applying for the reconstitution of the records of the cases in which they may be interested.

Section 52. — Duties of prosecuting officer.

The duties imposed upon the provincial fiscal shall, with regard to the reconstitution of criminal actions pending in the justice of the peace courts, be imposed upon the proper prosecuting officer.

Section 53. — Special docket for reconstituted cases not required.

It shall not be necessary for justice of the peace courts to open a special docket for reconstituted cases.

Section 54. — Supreme Court records destroyed; general notice to be given.

As soon as practicable after the occurrence of any fire or other public calamity resulting in the loss of all or part of the records of judicial proceedings on file in the Supreme Court, the clerk of said Court shall send a notice by registered mail to the Governor-General, the Justices of the Supreme Court, the Secretary of Justice, the Attorney-General, all Courts of First Instance, the Director of Lands, the Chief of the General Land Registration Office, the Fiscal of the City of Manila, the provincial fiscals, and all lawyers who may be interested, stating the date on which such fire or public calamity occurred and whether the loss or destruction was total or partial, and giving a brief list of the proceedings not affected in case the loss or destruction was partial.

Section 55. — Notice to persons interested.

Upon receipt of the notice mentioned in the preceding section, the Chief Justice of the Supreme Court shall issue or cause to be issued a general notice which shall be addressed and sent by registered mail to the lawyers and officers mentioned in the preceding section, advising them of the destruction of the records of the Supreme Court, with a brief list of the proceedings not affected in case the destruction was partial, and of the time fixed by this Act for the reconstitution of the destroyed records.

This notice shall also be published in the Official Gazette and in one of the newspapers most widely read in these Islands, once a week during eight consecutive weeks.

Section 56. — Original cases pending before court.

Application for the reconstitution of the records of cases of the original jurisdiction of the Supreme Court shall be made within six months from the month in which the interested parties were notified in accordance with the next preceding section, and such reconstitution shall be accomplished by the same procedure as established for the reconstitution of cases pending in the Courts of First Instance.

Section 57. — Various civil proceedings.

Parties interested in any civil action, registration or cadastral proceeding, or special proceeding appealed to the Supreme Court may apply for the reconstitution thereof by filing, within six months' time, a petition accompanied by a printed copy of the bill of exceptions or appeal record.

Section 58. — Notice on receipt of petition to reconstitute record.

Upon receipt of the petition mentioned in the next preceding section, the clerk of the Supreme Court shall notify all interested parties and their respective counsels of the day, hour, and place

at which the Supreme Court or its commissioner will proceed to the reconstitution, and on said day and hour and at said place, the parties or their counsels shall present to the Supreme Court or its commissioner all papers they may have in their possession relative to the cases to be reconstituted.

Section 59. — Bases for making up the record.

The case may be reconstituted by means of an authentic printed copy of the bill of exceptions or appeal record, a copy of the briefs if any have already been presented, an authentic copy of the transcript of the stenographic notes of the testimony taken, an authentic copy of the judgment if any has already been rendered by the Supreme Court, and copies of the resolution, writs, and other documents of vital importance.

Destroyed documentary evidence shall be reconstituted by means of secondary evidence which may be presented to any judge of the Supreme Court or any other officer commissioned by said Court, who may be the judge of the Court of First Instance from which the case came.

ANNOTATIONS

1. Prescribed bases for record as exclusive.

By providing, in # 59, for reconstitution of the judgment and resolution of the Supreme Court by means of an authentic copy, and in # 60 that if no copy can be found the parties shall substitute an agreement in lieu thereof, all other means of reconstituting such a record are excluded. *Francisco v. de Borja, Phil., (#L-1854, 1951).*

Section 60. — Agreements of parties and procedure in absence thereof.

If no copy of any resolution, writs or other document of vital importance can be filed or found, the parties shall substitute an agreement in lieu thereof, and in default of such agreement, the Supreme Court shall determine what may be proper in the interest of equity and justice and may even consider the proceeding or document in question as non-existent and reconstitute only that part of the case which can stand without such proceeding or document and continue the proceeding on the basis of the record so reconstituted.

ANNOTATIONS

1. This, and the preceding, section as prescribing exclusive methods.

By providing, in #59, for reconstitution of the judgment and resolution of the Supreme Court by means of an authentic copy, and in #60 that if no copy can be found the parties shall substitute an agreement in lieu thereof, all other means of reconstituting such a record are excluded. *Francisco v. Borja, Phil., (#L-1854, 1951).*

2. Insufficient basis for reconstitution.

The record of a case which was pending on appeal to the Court of Appeals at the time the records were destroyed could not be declared reconstituted generally, or even for the special purpose of showing the judgment which defendants alleged to have satisfied by making a consignment of Japanese war notes, where all that could be resurrected was certain papers relating to the attempted consignment and some miscellaneous documents, without any of the pleadings, evidence, decision, or briefs. *China Insurance & Surety Co. v. Berkenkotter, Phil., 46 Off. Gaz 5466 (#CA-332; 1949).*

Section 61. — New decision, when required.

If an authentic copy of the decision rendered by the Supreme Court is not obtainable, the case shall be decided anew.

Section 62. — New briefs, when required.

If it is not possible to obtain authentic copies of the briefs already filed and the case was pending decision at the time of the calamity, or if it is necessary to decide it anew, the Supreme Court shall order new briefs to be submitted and may grant reasonable time therefor.

Section 63. — New bill of exceptions or record.

If an authentic printed copy of the bill of exceptions or ap-

peal record is not obtainable or if the bill of exceptions or appeal record presented were about to be printed at the time of the destruction, the Supreme Court shall direct the Court of First Instance concerned to order the preparation of a new bill of exceptions or appeal record and may grant reasonable time therefor.

Section 64. — *New transcript or retaking of testimony.*

If an authentic copy of the transcript of the stenographic notes of the testimony taken cannot be filed, the Supreme Court shall direct the proper stenographer to make another transcription. And if the stenographic notes taken by the stenographer have also been destroyed, the Supreme Court shall direct the proper Court of First Instance to proceed to hear the case anew, which shall then be considered as ready for a hearing in said Court of First Instance.

ANNOTATIONS

1. Demand for new trial.

Where the record, including the transcript of testimony, is destroyed pending appeal from an order overruling a motion for new trial in a civil case, and the case will be heard before a different judge if a new trial is granted and some of the original witnesses will not be available, the Supreme Court could properly limit the scope of a new trial, if it grants one, but need not restrict the issues and may, if it sees fit, remand the cause for new trial generally. *De Almaro v. Ibañez, Phil., 46 Off Gaz Supp 1, p. 390. (¶L-2547; 1948).*

2. Demand for evidence does not sanction new proceeding.

Where the transcript of evidence had been lost or destroyed and the Court of Appeals returned the case under this section to permit the plaintiff to reconstitute the evidence, the plaintiff had no authority to start a new proceeding without attempting to reconstitute the evidence. *Abellera v. Garcia, Phil., 47 Off Gaz 2908 (¶L-2404; 1949).*

3. New decision on remand.

This section governs reconstitution of the record and further proceedings where the record in a civil is lost or destroyed while the case is pending on appeal. If a new trial is being sought, the transcript of testimony has been destroyed, and a different judge, without any recollection of the testimony, will preside at the new trial, and some of the original witnesses are no longer available, new and additional witnesses may be allowed and the court must render a new decision. *de Almaro v Ibañez, Phil., 46 46 Off Gaz Supp 1, p. 390 (¶L-2547; 1948).*

4. Motion to dismiss reconstitution proceedings as abandonment of appeal.

A motion to dismiss proceedings for the reconstitution of the record in a case does not necessarily amount to abandonment of an appeal from the judgment in such case. Section 29 of this Act does not remit the parties to a new action if reconstitution proceedings are stated in due time and the pleadings and decision are produced, merely because oral and documentary evidence is missing; the proper procedure in such case is to move the appellate court to remand the case for new trial under #64. *Medina v. Benabe, Phil., (¶L-3036, 1949).*

Section 65. — *Decision not appealable or already final.*

If the decision rendered by the Supreme Court is not appealable or has already become final, an authentic copy of such decision shall be proof of its contents and shall form the reconstituted record, without prejudice to attaching thereto such copies as may be obtainable of the bill of exceptions or appeal record and the briefs filed.

Section 66. — *Criminal cases.*

Upon receipt of the notice provided for in sections fifty-four and fifty-five hereof, the Courts of First Instance shall cause a complete list to be made of all criminal actions appealed to the Supreme Court, which list shall contain the names of the stenographers who have reported each case. Copies of this list shall be sent to the provincial fiscal, the Attorney-General, and the clerk of the Supreme Court.

Section 67. — *Reconstitution by Court of First Instance.*

Upon the preparation of the list provided for in the next preceding section, the Courts of First Instance shall proceed to reconstitute all criminal actions included in said list, in accordance with the rule and procedure established in sections thirteen to forty-five hereof, and every time they declare any record reconstituted or its reconstitution a failure, they shall report the same to the Supreme Court.

Section 68. — *Sending up of reconstituted record.*

As soon as the reconstituted record is ready to be submitted to the Supreme Court on appeal, the proper clerk of court shall send it, in accordance with the existing legal procedure, to the clerk of the Supreme Court, for further appeal proceedings.

Section 69. — *What to constitute record in case of reconstitution.*

In case the Court of First Instance is successful in restoring the record to the condition in which it was when forwarded under appeal, such record, together with an authentic copy of the briefs, if any have been filed, and with an authentic copy of the decision, if any has been rendered by the Supreme Court, shall form the reconstituted record in the Supreme Court.

Section 70. — *New decision, when required.*

If an authentic copy of the decision rendered by the Supreme Court is not obtainable, the case shall be decided anew.

Section 71. — *New Briefs in certain instances.*

If authentic copies of the briefs filed are not obtainable and the case was pending decision at the time of the calamity, or if it is necessary to decide it anew, the Supreme Court shall direct new briefs to be filed and may allow a reasonable time for this purpose.

Section 72. — *Cases already decided.*

If a criminal action has already been decided by the Supreme Court and the decision has become final or is not appealable, an authentic copy thereof shall be proof of its contents and shall form the reconstituted record, without prejudice to copies of the information, the decision of the court below, and the briefs filed being attached to it.

Section 73. — *Procedure after record reconstituted.*

Civil and criminal actions, registration and cadastral proceedings, and special proceedings pending appeal to the Supreme Court of the United States shall be reconstituted in accordance with the rules and procedure provided for in the preceding sections, and the appeal shall take its course as soon as the reconstituted record is ready for it.

Section 74. — *Time extensions.*

In case there is any question as to the appeal record or the time within which the same was filed, the Supreme Court may authorize its reproduction within such time as it may deem reasonable.

Section 75. — *Register of deeds' records destroyed; reporting.*

When, as result of a fire or other public calamity, the documents, books, and files of the office of the register of deeds are destroyed, the register of deeds shall report such fact immediately to the Chief of the General Land Registration Office and shall, if possible, forward to the same a list of the register books, decrees, and certificates of title destroyed.

Section 76. — *Chief of Land Registration Office to provide copies.*

The chief of the General Land Registration Office shall send or cause to be sent to the register of deeds copies of the destroyed registration decrees and certificates of title.

HISTORY: Sections 76, 77, and 89 of this Act have been declared "inoperative insofar as they provide for the reconstitution of certificates of title" by RA 26 #26, eff. Sept. 25, 1946.

Section 77. — *Notice to owners of registered property.*

Upon receipt of the copies mentioned in the next preceding section, the register of deeds shall cause to be published in the Official Gazette and in one of the papers most widely read in the Philippine Islands, and in the Province, if any, for a period

of six months, a notice to all owners of property registered under the Torrens system, requiring them to present in the office of the register of deeds copies of the original certificates of title or certificates of transfer in their possession, in order that the annotation made upon the same may be spread upon the copies received from the General Land Registration Office, and upon such new certificates of transfer as may be issued.

HISTORY: This section and the preceding one were declared "inoperative insofar as they provide for the reconstitution of certificates of title" by RA 26 #25, eff Sept. 25, 1946.

Section 78. — New notations on back of reconstituted documents.

The register of deeds shall not make any new annotation upon the back of any reconstituted certificate of title or certificate of transfer, until the previous annotations have been transcribed thereon.

Section 79. — Notice to chattel mortgage holders.

The register of deeds shall cause to be published, in the manner mentioned in section seventy-seven, a notice to holders of chattel mortgages to present such copies of documents relative to the same as they may have, in the office of the register of deeds.

Section 80. — Re-entry of such mortgages.

Upon the presentation of the copies mentioned in the next preceding section, the register of deeds shall enter them anew in the book of records of chattel mortgages, under Act Numbered Fifteen hundred and eight, under the date appearing on said copies.

Section 81. — Numbering of subsequent mortgage entries.

The register of deeds shall use a book of records of chattel mortgages separate from the one he shall open for the registration of new mortgages, filed after the fire or public calamity, and shall register the new mortgages in chronological order, beginning with number one, unless it has been possible to save the book of records of chattel mortgages, in which case the existing enumeration shall be followed in future entries.

Section 82. — Same procedure for certain other entries.

The register of deeds shall adopt the same rules and procedure for the reconstitution of entries made under Act Numbered Twenty-eight hundred and thirty-seven and Act Numbered Twelve hundred and twenty-eight, and amendments thereof.

Acts referred to: PA 2837 is an Act amending a prior Act with respect to lands not registered under the Land Registration Act. The reference to PA 1228 is apparently an error, as that is a special Act revaluing the property of one individual only.

Section 83. — Entries under Spanish Mortgage Law

With regard to entries made under the Spanish Mortgage Law, the register of deeds shall cause to be published, in the manner mentioned in section seventy-seven hereof, a notice to all persons having in their possession any instrument registered under said law, requiring them to present the same at the office of the register of deeds, for re-registration.

Section 84. — Numbering.

Entries made in accordance with the Spanish Mortgage Law shall be given the same numbers as appear at the foot of the instrument.

Section 85. — New book for reconstituted registrations

The register of deeds shall open a record book for reconstituted registrations.

Section 86. — Notations concerning reconstituted entries.

It shall not be necessary for the register of deeds, upon extending the reconstituted entries to make any entry in the entry

book; but in the column for remarks or at the foot of each reconstituted entry he shall put a note setting forth that such entry has been reconstituted in accordance with this Act.

Section 87. — No fees.

The register of deeds shall not charge any fees whatsoever for the reconstitution of entries.

Section 88. — Force and effect on reconstituted entries.

Reconstituted entries shall have the same validity and legal effects as the original entries.

Section 89. — Original documents to be produced if possible.

For the purposes of the reconstitution of the documents of the office of the register of deeds, the latter shall, whenever possible, require the interested parties to present the original documents, and shall make a copy thereof, which shall be certified correct and authentic and made in accordance with this Act.

HISTORY: This section and Section 76 and 77 of PA 3110 were declared "inoperative insofar as they provide for the reconstitution of certificates of title" by RA 26 #25, eff Sept. 25, 1946.

Section 90. — Filing of certified copies of originals and force as evidence.

Copies so made and certified shall be filed in the proper envelopes or bundles and shall have the same validity and legal effects as their originals.

Section 91. — Regulations, instructions and records to be issued.

The Supreme Court, the Secretary of Justice, the Attorney General, and the Chief of the General Land Registration Office shall issue regulations, circulars, and instructions, and prescribe the books and banks necessary to carry into effect the provisions of this Act, and shall promulgate the rules and take the measures necessary to avoid future destruction of the judicial records and the books or documents of the office of the register of deeds.

REPUBLIC ACT NO. 441

(Effective June 7, 1950)

Section 1. — Extension of time to reconstitute court records destroyed by war.

Notwithstanding the provisions of Act Numbered Three Thousand one hundred and ten, the party or parties interested in any case pending in the courts the records of which have been destroyed by reason of the last Pacific war may file a petition for the reconstitution of such records within one year from the date of the approval of this Act.

ANNOTATIONS

1. *Liberal construction; application to partially completed reconstitution proceedings.*

The fact that a motion for reopening a reconstitution of the records in a case was not made within the time originally prescribed by law was immaterial in view of Republic Act No. 441, extending for one year the period to take steps for reconstitution of records destroyed by the war, as that Act, being remedial, is to be liberally construed as extending not merely the time to start original reconstitution proceedings, but also applications for completion of partially reconstituted records. *Rodrigo v. Cantor, Phil.*, (#L-4398, 1952)

Section 2. — Procedure.

The procedure, requirements and all other incidents of such reconstitution shall be governed by the provisions of Act Numbered Three thousand one hundred and ten.