SUPREME COURT DECISIONS

In the Matter of the Petitions for Admission to the Bar of Unsuccessful Candidates of 1946 to 1950, promulgated, March 18th, 1954, Diokno, J.

1. BAR FLUNKERS' ACT; — REPUBLIC ACT NO. 972; ILLEGALITY OF ITS OBJECTIVE. — By its declared objective, the law is contrary to public interest because it qualifies 1,094 law graduates who confessedly had inadequate preparation for the practice of the law profession, as was exactly found by this Tribunal in the aforesaid examinations. The public interest demands of the legal profession adequate preparation and efficiency, precisely more so as legal problems evolved by the times become more difficult.

   An adequate legal profession is one of the vital requisites for the practice of law that should be developed constantly and maintained firmly. To the legal profession is entrusted the protection of property, life, honor and civil liberties. To approve officially of these inadequately prepared individuals, to dedicate themselves to such a delicate mission is to create a serious social danger.

2. IBID; IBID. — There is no identical case of similar background as the Bar Flunkers' Act in the Anglo Saxon legal history that can be invoked to support the validity of said act. We cannot find a case in which the validity of a similar law has been sustained, while there are cases which support its invalidity. The law has no precedent in its favor. The case of Cooper (22 N.Y. 81) cited by the petitioners is of complete inapplicability with the case at bar.

3. ATTORNEYS-AT-LAW; THEIR ADMISSION, SUSPENSION AND DISBARMENT. — In the judicial legal system from which ours has been evolved, the admission, suspension, disbarment and reinstatement of attorneys at law in the practice of the profession and their supervision have been indisputably a judicial function and responsibility.

4. IBID; IBID. — This function requires (1) previous established rules and principles, (2) concrete facts, whether past or present, affecting determinate individuals, and (3) decision as to whether these facts are governed by the rules and principles; in effect, a judicial function of the highest degree. And it becomes more indisputably judicial, and not legislative, if previous judicial resolutions on the petitions of these same individuals are attempted to be revoked or modified.

5. CONSTITUTIONAL LAW; DISTINCTION BETWEEN THE FUNCTIONS OF THE JUDICIAL AND LEGISLATIVE DEPARTMENTS OF THE GOVERNMENT. — The distinction between the functions of the legislative and the judicial departments is that it is the province of the legislature to establish rules that shall regulate and govern in matters of transactions occurring subsequent to the legislative action, while the judiciary determines rights and obligations with reference to transactions that are past or conditions that exist at the time of the exercise of judicial power, and the distinction is a vital one and not subject to alteration or change either by legislative action or by judicial decrees.

6. IBID; SECTION 13, ART. VIII OF THE CONSTITUTION CONSTRUED. — Section 13, Article VIII of the Constitution has not conferred in Congress and the Supreme Court equal responsibilities concerning the admission to the practice of law. The primary power and responsibility which the Constitution recognizes, continue to reside in this Court. Had congress found that this Court has not promulgated any rule on the matter, it would have nothing over which to exercise the power granted to it. Congress may repeal, alter and supplement the rules promulgated by this Court, but the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys at law and their supervision remain vested in the Supreme Court. The power to repeal, alter and supplement the rules does not signify nor permit that Congress substitute or take the place of this Tribunal in the exercise of its primary power on the matter. The Constitution does not say nor mean that Congress may admit, suspend, disbar or reinstate directly attorneys at law, or a determinate group of individuals to the practice of law. Its power is limited to repeal, modify or supplement the existing rules on the matter, if according to its judgment the need for a better service of the legal profession requires it. But this power does not relieve this Court of its responsibility to admit, suspend, disbar and reinstate attorneys at law and supervise the practice of the legal profession.

7. IBID; IBID. — Being coordinate and independent branches, the power to promulgate and enforce rules for the admission to the practice of law and the concurrent power to repeal, alter and supplement them may and should be exercised with the respect that each owes to the other, giving careful consideration to the responsibility which the nature of each department requires. These powers have existed together for centuries without diminution on each part; the harmonious delimitation being found in that the legislature may and should examine if the existing rules on the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training and responsibility.

8. IBID; IBID. — The legislature may, by means of repeal, amendment or supplemental rules, fill up any deficiency that it may find, and the judicial power, which has the inherent responsibility for a good and efficient administration of justice and the supervision of the practice of the legal profession, should consider these reforms as the minimum standards for the elevation of the profession, and see to it that with these reforms the lofty objective that is desired in the exercise of its traditional duty of admitting, suspending, disbarring and reinstating attorneys at law is realized.

9. BAR FLUNKERS' BILL ACT; ITS UNCONSTITUTIONALITY ON ACCOUNT OF ITS RETROACTIVITY. — To defend the disputed law from being unconstitutional on account of its retroactivity, it is argued that it is curative, and that in such form it is constitutional. What Congress lamented is that the Court did not consider 69.5% obtained by those candidates who failed in 1946 to 1952 as sufficient to qualify them to practice of law. Hence, it is the lack of will or defect of judgment of the Court that is being cured, and to complete the cure of this infirmity, the effectivity of the disputed law is being extended up to the years 1953, 1954 and 1955, increasing each year the general average by one per cent, with the order that said candidates be admitted to the Bar. This purpose, manifest in the said law, is the best proof that what the law attempts to amend and correct are not the rules promulgated, but the will or judgment of the Court, by means of simply taking its place. This is doing directly what the Tribunal should have done during those years according to the judgment of Congress. In other words, the power exercised was not to repeal, alter or supplement the rules, which continue in force. What was done was to stop or suspend them. And this power is not included in what the Constitution has granted to Congress, because it falls within the power to apply the rules. This power corresponds to the judiciary, to which such duty has been confided.

10. IBID; ARTICLE 2 OF THE LAW IS UNCONSTITUTIONAL —In this case, however, the fatal defect is that the article is not expressed in the title of the Act. While this law according to its title will have temporary effect only from 1946 to 1955, the text of article 2 establishes a permanent system for an indefinite time. This is contrary to Sec. 21(1), Art. VI of the Constitution, which vitiates and annuls article 2 completely; and because it is inseparable from article 1, it is obvious that its nullity affects the entire law.

11. CONSTITUTIONAL LAW; WHEN LAWS ARE UNCONSTITUTIONAL. — Laws are unconstitutional on the following grounds: first, because they are not within the legislative powers of Congress to enact, or Congress has exceeded its powers; second, because they create or establish arbitrary methods or forms that infringe constitutional principles; and third, because their purpose or effects violate the constitution or its basic principles. As has already been seen, the con-

tested law suffers from these fatal defects.

LABRADOR, J., concurring and dissenting.

1. ATTORNEYS AT LAW; THE RIGHT TO ADMIT MEMBERS TO THE BAR IS THE EXCLUSIVE PRIVLEGE OF THE SUPREME COURT. — The right to admit members to the Bar is, and has always been, the exclusive privilege of this Court, because lawyers are members of the Court and only this Court should be allowed to determine admission thereto in the interest of the principle of the separation of powers. The power to admit is judicial in the sense that discretion is used in its exercise.

2. IBID; THE POWER TO ADMIT MEMBERS TO THE BAR DISTINGUISHED FROM THE POWER TO PROMULGATE RULES WHICH REGULATE ADMISSION. — This power should be distinguished from the power to promulgate rules which regulate admission. It is only this power (to promulgate amendments to the rules) that is given in the Constitution to the Congress, not the exercise of the discretion to admit or not to admit. Thus, the rules on the holding of examination, the qualifications of applicants, the passing grades, etc. are within the scope of the legislative power.

3. IBID; POWER TO DETERMINE WHEN A CANDIDATE HAS MADE OR NOT THE PASSING GRADE. — The power to determine when a candidate has made or has not made the required grade is judicial, and lies completely with this Court.

4. BAR FLUNKERS' ACT; ITS UNCONSTITUTIONALITY. — The Act under consideration is an exercise of the judicial function, and lies beyond the scope of congressional prerogative of amending the rules. To say that candidates who obtain a general average of 72% in 1953, 73% in 1954, and 74% in 1955 should be considered as having passed the examination, is to mean exercise of the privilege and discretion lodged in this Court. It is a mandate to the tribunal to pass candidates for different years with grades lower than the passing mark. No reason is necessary to show that it is an arrogation of the Court's judicial authority and discretion.

5. IBID; THE ACT IS DISCRIMINATORY. — It is furthermore objectionable as discriminatory. Why should those taking the examinations in 1953, 1954 and 1955 be allowed to have the privilege of a lower passing grade, while those taking earlier or later are not?

PARAS, C.J., dissenting.

1. ATTORNEYS AT LAW; POWER TO REGULATE THE ADMISSION TO THE PRACTICE OF LAW. — All discussions in support of the proposition that the power to regulate the admission to the practice of law is inherently judicial, are immaterial, because the subject is now governed by Article VIII, Section 13 of the Constitution. Under this Constitutional provision, while the Supreme Court has the power to promulgate rules concerning the admission to the practice of law, the Congress has the power to repeal, alter or supplement said rules. Little intelligence is necessary to see that the power of the Supreme Court and the Congress to regulate the admission to the practice of law is concurrent.

2. BAR FLUNKERS' ACT; ITS CONSTITUTIONALITY. — The opponents of Republic Act No. 972 argue that this Act, in so far as it covers bar examinations held prior to its approval, is unconstitutional, because it sets aside the final resolutions of the Supreme Court refusing to admit to the practice of law the various petitioners, thereby resulting in a legislative encroachment upon the judicial power. In my opinion this view is erroneous. In the first place, resolutions on the rejection of bar candidates do not have the finality of decisions in justiciable cases where the Rules of Court expressly fix certain periods after which they become executory and unalterable. Resolutions on bar matters, specially on motions for reconsiderations filed by flunkers in any given year, are subject to revision by this Court at any time, regardless of the period within which the motions were filed, and this has been the practice heretofore. The obvious reason is that bar examinations and admission to the practice of law may be deemed as a judicial function only because said matters happen to be entrusted, under the Constitution and our Rules of Court, to the Supreme Court. There is no judicial function involved, in the strict and constitutional sense of the word, because bar examinations and the admission to the practice of law, unlike justiciable cases, do not affect opposing litigants. It is no more than the function of other examining boards.

3. IBID; THE RETROACTIVITY OF THIS ACT DOES NOT MAKE IT UNCONSTITUTIONAL. — Retroactive laws are not prohibited by the Constitution, except only when they would be *ex post facto*, would impair obligations and contracts or vested rights, or would deny due process and equal protection of the law. Republic Act No. 972 certainly is not an *ex post facto* enactment, does not impair any obligation and contract or vested right, and denies to no one the right to due process and equal protection of the law.

4. IBID; THE ACT IS A MERE CURATIVE STATUTE. — It is a mere curative statute intended to correct certain obvious inequalities arising from the adoption by this Court of different passing general averages in certain years.

5. IBID; THE ACT IS NOT DISCRIMINATORY. — Neither can it be said that bar candidates prior to July 4, 1946, are being discriminated against, because we no longer have any record of those who might have failed before the war, apart from the circumstance that 75 per cent had always been the passing mark during said period. It may also be that there are no pre-war bar candidates similarly situated as those benefited by Republic Act No. 972. At any rate, in the matter of classification the reasonableness must be determined by the legislative body. It is proper to recall that the Congress held public hearings, and we can fairly suppose that the classification adopted in the Act reflects good legislative judgment derived from the facts and circumstances then brought out.

...

6. IBID; THE ACT DOES NOT CONSTITUTE AN ENCROACHMENT UPON THE JUDGMENT OF THE SUPREME COURT. — As regards the alleged interference in or encroachment upon the judgment of this Court by the Legislative Department, it is sufficient to state that, if there is any interference at all, it is one expressly sanctioned by the Constitution. Besides, interference in judicial adjudication prohibited by the Constitution is essentially aimed at protecting rights of litigants that have already been vested or acquired in virtue of decisions of courts, not merely for the empty purpose of creating appearances of separation and equality among the three branches of the Government. Republic Act No. 972 has not produced a case involving two parties and decided by the Court in favor of one and against the other. Needless to say, the statute will not affect the previous resolutions passing bar candidates who had obtained the general average prescribed by section 14 of Rule 127.

7. CONSTITUTIONAL LAW; WHEN A LAW MAY BE HELD OBJECTIONABLE AS UNCONSTITUTIONAL. — A law would be objectionable and unconstitutional if, for instance it would provide that those who have been admitted to the bar after July 4, 1946, whose general average is below 80 per cent, will not be allowed to practice law, because said statute would then destroy a right already acquired under previous resolutions of this Court, namely, the bar admission of those whose general averages were from 75 to 79 per cent.

8. SUPREME COURT; ITS RULE-MAKING POWER. — Under its rule making power it may pass a resolution amending Section 14 of Rule 127 by reducing the passing average to 70% effective several years before the date of the resolution. Indeed, when this Court on July 15, 1948 allowed to pass all candidates who obtained a general average of 69 per cent or more and on April 28, 1949 those who obtained a general average of 70 per cent or more, irrespective of whether they filed petitions for reconsideration, it in effect amended section 14 of Rule 127 retroactively, because during the examinations held in August 1947 and August 1948, said section (fixing the general

average at 75 per cent) was supposed to be in force.

9. SUPREME COURT AND CONGRESS; THEIR CONCURRENT POWER TO REGULATE THE ADMISSION TO THE PRACTICE OF LAW. — It stands to reason, if we are to admit that the Supreme Court and the Congress have concurrent power to regulate the admission to the practice of law, that the latter may validly pass a retroactive rule fixing the passing general average.

I would, however, not go to the extent of admitting that the Congress, in the exercise of its concurrent power to repeal, alter or supplement the Rules of Court regarding the admission to the practice of law, may act in an arbitrary or capricious manner, in the same way that this Court may not do so. We are thus left in the situation, incidental to a democracy, where we can and should only hope that the right men are put in the right places in our Government.

10. BAR FLUNKERS' ACT; NOT ARBITRARY OR CAPRICIOUS. — Republic Act. No. 972 cannot be assailed on the ground that it is unreasonable, arbitrary or capricious, since this Court had already adopted as passing averages 69 per cent for the 1947 bar examinations and 70 per cent for the 1948 examinations.

11. IBID; ITS WISDOM CANNOT BE INQUIRED INTO BY THE COURTS. — We should not inquire into the wisdom of the law, since this is a matter that is addressed to the judgment of the legislators. This Court in many instances had doubted the propriety of legislative enactments, and yet it has consistently refrained from nullifying them solely on that ground.

12. IBID; ACT NOT AGAINST PUBLIC INTEREST. — To say that the admission of the bar candidates benefited under Republic Act No. 972 is against public interest, is to assume that the matter of whether said Act is beneficial or harmful to the general public was not considered by the Congress. As already stated, the Congress held public hearings, and we are bound to assume that the legislators, loyal, as do the members of this Court, to their oath of office, had taken all the circumstances into account before passing the Act. On the question of public interest I may observe that the Congress, representing the people who elected them, should be more qualified to make an appraisal. I am inclined to accept Republic Act No. 972 as an expression of the will of the people through their duly elected representatives.

Miguel R. Cornejo, Jose M. Aruego, Irineo M. Cabrera, Tomas S. Macasaet, Mariano H. de Joya, Buenaventura Evangelista, Vicente Pelaez, Socorro Tirona Liwag and *Antonio Enrile Inton* for petitioners.

Solicitor General Juan R. Liwag and *Solicitor Felix V. Makasiar* for the Government.

Vicente J. Francisco, Arturo A. Alafriz, Enrique M. Fernando, Vicente Abad Santos, Carlos A. Barrios and *Roman Ozaeta* as *amici curiae.*

RESOLUTION

DIOKNO, *J.*:

In recent years few controversial issues have aroused so much public interest and concern as Republic Act No. 972, popularly known as the "Bar Flunkers' Act" of 1953. Under the Rules of Court governing admission to the bar, "in order that a candidate [for admission to the Bar] may be deemed to have passed his examinations successfully, he must have obtained a general average of 75% in all subjects, without falling below 50% in any subject." (Rule 127, Sec. 14, Rules of Court). Nevertheless, considering the varying difficulties of the different bar examinations held since 1946 and the varying degree of strictness with which the examination papers were graded, this Court passed and admitted to the bar those candidates who had obtained an average of only 72% in 1946, 69% in 1947, 70% in 1948, and 74% in 1949. In 1950 to 1953, the 74% was raised to 75%.

Believing themselves as fully qualified to practice law as those reconsidered and passed by this Court, and feeling conscious of having been discriminated against (See Explanatory Note to R. A. No. 972), unsuccessful candidates who obtained averages of a few percentage lower than those admitted to the Bar agitated in Congress for, and secured in 1951 the passage of Senate Bill No. 12 which, among others, reduced the passing general average in bar examinations to 70% effective since 1946. The President requested the views of this Court on the bill. Complying with that request, seven members of the Court subscribed to and submitted written comments adverse thereto, and shortly thereafter the President vetoed it. Congress did not override the vote. Instead, it approved Senate Bill No. 371, embodying substantially the provisions of the vetoed bill. Although the members of this Court reiterated their unfavorable views on the matter, the President allowed the bill to become a law on June 21, 1953 without his signature. The law, which incidentally was enacted in an election year, reads in full as follows:

REPUBLIC ACT No. 972

AN ACT TO FIX THE PASSING MARKS FOR BAR EXAMINATIONS FROM NINETEEN HUNDRED AND FORTY-SIX UP TO AND INCLUDING NINETEEN HUNDRED AND FIFTY-FIVE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Notwithstanding the provisions of section fourteen, Rule Numbered One hundred and twenty-seven of the Rules of Court, any bar candidate who obtained a general average of seventy per cent in any bar examinations after July fourth, nineteen hundred and forty-six up to the August nineteen hundred and fifty-one bar examinations; seventy-one per cent in the nineteen hundred and fifty-two bar examinations; seventy-two per cent in the nineteen hundred and fifty-three bar examinations; seventy-three per cent in the nineteen hundred and fifty-four bar examinations; seventy-four per cent in the nineteen hundred and fifty-five bar examinations without a candidate obtaining a grade below fifty per cent in any subject, shall be allowed to take and subscribe the corresponding oath of office as member of the Philippine Bar: *Provided, however,* That for the purpose of this Act, any exact one-half or more of a fraction, shall be considered as one and included as part of the next whole number.

SEC. 2. Any bar candidate who obtained a grade of seventy-five per cent in any subject in any bar examination after July fourth, ninteen hundred and forty-six shall be deemed to have passed in such subject or subjects and such grade or grades shall be included in computing the passing general averages that said candidate may obtain in any subsequent examinations that he may take.

SEC. 3. This Act shall take effect upon its approval.

Enacted on June 21, 1953, without the Executive approval.

After its approval, many of the unsuccessful postwar candidates filed petitions for admission to the bar invoking its provisions, while others whose motions for the revision of their examination papers were still pending also invoked the aforesaid law as an additional ground for admission. There are also others who have sought simply the reconsideration of their grades without, however, invoking the law in question. To avoid injustice to individual petitioners, the Court first reviewed the motions for reconsideration, irrespective of whether or not they had invoked Republic Act No. 792. Unfortunately, the Court has found no reason to revise their grades. If they are to be admitted to the bar, it must be pursuant to Republic Act No. 972 which, if declared valid, should be applied equally to all concerned whether they have filed petitions or not. A complete list of the petitioners, properly classified, affected by this decision, as well as a more detailed account of the history of Republic Act No. 972, are appended to this decision as Annexes I and II. And to realize more readily the effects of the law, the following statistical data are set forth:

(1) The unsuccessful bar candidates who are to be benefited by section 1 of Republic Act No. 972 total 1,168, classified as follows:

Year of Examinations	Total of candiates who took the examination	Total of those who failed	Candidates benefited by Republic Act No. 972
1946 (August)	206	121	18
1946 (November)	477	228	43
1947	749	840	0
1948	899	409	11
1949	1,218	532	164
1950	1.316	893	26
1951	2.068	879	196
1952	2 738	1,033	426
1953	2.555	986	284
Totals	12,230	5,421	1,168

Of the aforesaid 1,168 candidates, 92 have passed in subsequent examinations, and only 586 have filed either motions for admission to the bar pursuant to said Republic Act, or mere motions for reconsideration.

(2) In addition, some other 18 successful candidates are to be benefited by Section 2 of said Republic Act. These candidates had each taken from two to five different examinations, but failed to obtain a passing average in any of them. Consolidating, however, their highest grades in different subjects in previous examinations, with their latest marks, they would be sufficient to reach the passing average as provided for by Republic Act 972.

(3) The total number of candidates to be benefited by this Republic Act is therefore 1,094, of which only 604 have filed petitions. Of these 604 petitioners, 33 who failed in 1946 to 1951 had individually presented motions for reconsideration which were denied, while 125 unsuccessful candidates of 1952, and 56 of 1953, had presented similar motions, which are still pending because they could be favorably affected by Republic Act No. 972, — although, as has been already stated, this Tribunal finds no sufficient reasons to reconsider their grades.

UNCONSTITUTIONALITY OF REPUBLIC ACT NO. 972

Having been called upon to enforce a law of farreaching effects on the practice of the legal profession and the administration of justice, and because some doubts have been expressed as to its validity, the Court set the hearing of the aforementioned petitions for admission on the sole question of whether or not Republic Act No. 972 is constitutional.

We have been enlightened in the study of this question by the brilliant assistance of the members of the bar who have amply argued, orally and in writing, on the various aspects in which the question may be gleaned. The valuable studies of Messrs. E. Voltaire Garcia, Vicente J. Francisco, Vicente Pelaez and Buenaventura Evangelista, in favor of the validity of the law, and of the U. P. Women Lawyers' Circle, the Solicitor General, Messrs. Arturo A. Alafriz, Enrique M. Fernando, Vicente Abad Santos, Carlos A. Barrios, Vicente del Rosario, Juan de Blancaflor, Mamerto V. Gonzales and Roman Ozaeta, against it, aside from the memoranda of counsel for petitioners, Messrs. Jose M. Aruego, M. H. de Joya, Miguel R. Cornejo and Antonio Enrile Inton, and of petitioners Cabrera, Macasaet and Galema, themselves, has greatly helped us in this task. The legal researchers of the Court have exhausted almost all Philippine and American jurisprudence on the matter. The question has been the object of intense deliberation for a long time by the Tribunal, and finally, after the voting, the preparation of the majority opinion was assigned to a new member in order to place it as humanly as possible above all suspicion of prejudice or partiality.

Republic Act No. 972 has for its object, according to its author, to admit to the Bar, those candidates who suffered from insufficiency of reading materials and inadequate preparation. Quoting a portion of the Explanatory Note of the proposed bill, its author Honorable Senator Pablo Angeles David stated:

> "The reason for relaxing the standard 75% passing grade is the tremendous handicap which students during the years immediately after the Japanese occupation has to overcome such as the insufficiency of reading materials and the inadequacy of the preparation of students who took up law soon after the liberation."

Of the 9,675 candidates who took the examinations from 1946 to 1952, 5,236 passed. And now it is claimed that in addition 604 candidates be admitted (which in reality total 1,094), because they suffered from "insufficiency of reading materials" and of "inadequacy of preparation".

By its declared objective, the law is contrary to public interest because it qualifies 1,094 law graduates who confessedly had inadequate preparation for the practice of the profession, as was exactly found by this Tribunal in the aforesaid examinations. The public interest demands of the legal profession adequate preparation and efficiency, precisely more so as legal problems evolved by the times become more difficult. An adequate legal preparation is one of the vital requisites for the practice of law that should be developed constantly and maintained firmly. To the legal profession is entrusted the protection of property, life, honor and civil liberties. To approve officially of these inadequately prepared individuals to dedicate themselves to such a delicate mission is to create a serious social danger.

Moreover, the statement that there was an insufficiency of legal reading materials is grossly exaggerated. There were abundant materials. Decisions of this Court alone in mimeographed copies were made available to the public during these years and private enterprises had also published them in monthly magazines and annual digests. The Official Gazette had been published continuously. Books and magazines published abroad have entered without restriction since 1945. Many law books, some with even revised and enlarged editions have been printed locally during these periods. A new set of Philippine Reports began to be published since 1946, which continued to be supplemented by the addition of new volumes. These are facts of public knowledge.

Notwithstanding all these, if the law in question is valid, it has to be enforced.

The question is not new in its fundamental aspect or from the point of view of applicable principles, but the resolution of the question would have been easier had an identical case of similar background been picked out from the jurisdiction we daily consult. Is there any precedent in the long Anglo-Saxon legal history, from which has been directly derived the judicial system established here with its lofty ideals by the Congress of the United States, and which we have preserved and attempted to improve, or in our contemporaneous juridical history of more than half a century? From the citations of those defending the law, we can not find a case in which the validity of a similar law had been sustained, while those against its validity cite, among others, the cases of Day (In re Day, 54 NE 646), of Cannon (State v. Cannon, 240 NW 441), the opinion of the Supreme Court of Massachusetts in 1932 (81 ALR 1061), of Guariña (24 Phil. 37), aside from the opinion of the President which is expressed in his veto of the original bill and which the proponent of the contested law respects.

This law has no precedent in its favor. When similar laws in other countries had been promulgated, the judiciary immediately declared them without force or effect. It is not within our power to offer a precedent to uphold the disputed law.

To be exact, we ought to state here that we have examined carefully the case that has been cited to us as a favorable precedent of the law — that of Cooper (22 NY 81), where the Court of Appeals of New York revoked the decision of the Supreme Court of that State, denying the petition of Cooper to be admitted to the practice of law under the provisions of a statute concerning the school of law of Columbia College promulgated on April 7, 1860, which was declared by the Court of Appeals to be consistent with the Constitution of the state of New York.

It appears that the Constitution of New York at that time provided:

> "They (*i.e.*, the judges) shall not hold any other office of public trust. All votes for either of them for any elective office except that of the Court of Appeals, given by the Legislature or the people, shall be void. They shall not exercise any power of appointment to public office. Any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this State." (p. 93).

According to the Court of Appeals, the object of the constitutional precept is as follows:

> "Attorneys, solicitors, etc., were public officers; the power of appointing them had previously rested with the judges, and this was the principal appointing power which they possessed. The convention was evidently dissatisfied with the manner in which this power had been exercised, and with the restrictions which the judges had imposed upon admission to practice before them. The prohibitory clause in the section quoted was aimed directly at this power and the insertions of the provision respecting the admission of attor-

neys; in this particular section of the Constitution, evidently arose from its connection with the object of this prohibitory clause. There is nothing indicative of confidence in the courts or of a disposition to preserve any portion of their power over this subject, unless the Supreme Court is right in the inference it draws from the use of the word 'admission' in the action referred to. It is urged that the admission spoken of must be by the court; that to admit means to grant leave, and that the power of granting necessarily implies the power of refusing, and of course the right of determining whether the applicant possesses the requisite qualifications to entitle him to admission.

"These positions may all be conceded, without affecting the validity of the act." (p. 93).

Now, with respect to the law of April 7, 1860, the decision seems to indicate that it provided that the possession of a diploma of the school of law of Columbia College conferring the degree of Bachelor of Laws was evidence of the legal qualifications that the constitution required of applicants for admission to the Bar. The decision does not however quote the text of the law, which we cannot find in any public or accessible private library in the country.

In the case of Cooper, *supra*, to make the law consistent with the Constitution of New York, the Court of Appeals said of the object of the law:

"The motive for passing the act in question is apparent. Columbia College being an institution of established reputation, and having a law department under the charge of able professors, the students in which department were not only subjected to a formal examination by the law committee of the institution, but to a certain definite period of study before being entitled to a diploma as graduates, the Legislature evidently, and no doubt justly, considered this examination, together with the preliminary study required by the act, as fully equivalent as a test of legal acquirements, to the ordinary examination by the court; and as rendering the latter examination, to which no definite period of preliminary study was essential, unnecessary and burdensome.

"The act was obviously passed with reference to the learning and ability of the applicant, and for the mere purpose of substituting the examination by the law committee of the college for that of the court. It could have had no other object, and hence no greater scope should be given to its provisions. We cannot suppose that the Legislature designed entirely to dispense with the plain and explicit requirements of the Constitution; and the act contains nothing whatever to indicate an intention that the authorities of the college should inquire as to the age, citizenship, etc., of the students before granting a diploma. The only rational interpretation of which the act admits is, that it was intended to make the college diploma competent evidence as to the legal attainments of the applicant, and nothing else. To this extent alone it operates as a modification of pre-existing statutes, and it is to be read in connection with those statutes and with the Constitution itself in order to determine the present condition of the law on the subject." (p. 39).

x x x x x x x

"The Legislature has not taken from the court its jurisdiction over the question of admission, that has simply prescribed what shall be competent evidence in certain cases upon that question." (p. 93)

From the foregoing, the complete inapplicability of the case of Cooper with that at bar may be clearly seen. Please note only the following distinctions:

(1) The law of New York does not require that any candidate of Columbia College who failed in the bar examinations be admitted to the practice of law.

(2) The law of New York, according to the very decision of Cooper, has not taken from the court its jurisdiction over the question of admission of attorneys-at-law; in effect, it does not decree the admission of any lawyer.

(3) The Constitution of New York at that time and that of the Philippines are entirely different on the matter of admission to the practice of law.

In the judicial system from which ours has been evolved, the admission, suspension, disbarment and reinstatement of attorneys at law in the practice of the profession and their supervision have been indisputably a judicial function and responsibility. Because of this attribute, its continuous and zealous possession and exercise by the judicial power have been demonstrated during more than six centuries, which certainly "constitutes the most solid of titles." Even considering the power granted to Congress by our Constitution to repeal, alter and supplement the rules promulgated by this Court regarding the admission to the practice of law, to our judgment the proposition that the admission, suspension, disbarment and reinstatement of attorneys at law is unacceptable. This function requires (1) previously established rules and principles, (2) concrete facts, whether past or present, affecting determinate individuals, and (3) decision as to whether these facts are governed by the rules and principles; in effect, a judicial function of the highest degree. And it becomes more undisputably judicial, and not legislative, if previous judicial resolutions on the petitions of these same individuals are attempted to be revoked or modified.

We have said that in the judicial system from which ours has been derived, the act of admitting, suspending, disbarring and reinstating attorneys at law in the practice of the profession is concededly judicial. A comprehensive and conscientious study of this matter had been undertaken in the case of State v. Cannon (1932) 240 NW 441, in which the validity of a legislative enactment providing that Cannon be permitted to practice before the courts was discussed. From the text of this decision we quote the following paragraphs:

"This statute presents an assertion of legislative power without parallel in the history of the English speaking people so far as we have been able to ascertain. There has been much uncertainty as to the extent of the power of the Legislature to prescribe the ultimate qualifications of attorneys at law, but in England and in every state of the Union the act of admitting an attorney at law has been expressly committed to the courts, and the act of admission has always been regarded as a judicial function. This act purports to constitute Mr. Cannon an attorney at law, and in this respect it stands alone as an assertion of legislative power. (p. 444).

"No greater responsibility rests upon this court than that of preserving in form and substance the exact form of government set up by the people. (p, 444).

"Under the Constitution all legislative power is vested in a Senate and Assembly. Section 1, art. 4. In so far as the prescribing of qualifications for admission to the bar are legislative in character, the legislature is acting within its constitutional authority when it sets up and prescribes such qualifications. (p. 444)

"But when the Legislature has prescribed those qualifications which in its judgment will serve the purpose of legitimate legislative solicitude, is the power of the court to impose other and further exactions and qualifications foreclosed or exhausted? (p. 444)

"Under our Constitution the judicial and legislative departments are distinct, independent, and coordinate branches of the government. Neither branch enjoys all the powers of sovereignty, but each is supreme in that branch of sovereignty which properly belongs to its department. Neither department should so act as to embarrass the other in the discharge of its respective functions. That was the scheme and thought of the people in setting upon the form of government under which we exist. State v. Hastings. 10 Wis. 525; Attorney General ex rel. Bashford v. Barstow, 4 Wis. 567. (p. 445)

"The judicial department of government is responsible

for the plans upon which the administration of justice is maintained. Its responsibility in this respect is exclusive. By committing a portion of the powers of sovereignty to the judicial department of our state government, under a scheme which it was supposed rendered it immune from embarrassment or interference by any other department of government, the courts cannot escape responsibility for the manner in which the powers of sovereignty thus committed to the judicial department are exercised. (p. 445)

"The relation of the bar to the courts is a peculiar and intimate relationship. The bar is an attache of the courts. The quality of justice dispensed by the courts depends in no small degree upon the integrity of its bar. An unfaithful bar may easily bring scandal and reproach to the administration of justice and bring the courts themselves into disrepute. (p. 445)

"Through all time courts have exercised a direct and severe supervision over their bars, at least in the English speaking countries." (p. 445)

After explaining the history of the case, the Court ends thus:

"Our conclusion may be epitomized as follows: For more than six centuries prior to the adoption of our Constitution, the courts of England, concedely subordinate to Parliament since the Revolution of 1688, had exercised the right of determining who should be admitted to the practice of law, which, as was said in Matter of the Sergeants at Law, 6 Bingham's New Cases 235, 'constitutes the most solid of all titles.' If the courts and the judicial power be regarded as an entity, the power to determine who should be admitted to practice law is a constituent element of that entity. It may be difficult to isolate that element and say with assurance that it is either a part of the inherent power of the court, or an essential element of the judicial power exercised by the court, but that it is a power belonging to the judicial entity cannot be denied. Our people borrowed from England this judicial entity and made of it a separate, independent, and coordinate branch of the government. They took this institution along with the power traditionally exercised to determine who should constitute its attorneys at law. There is no express provision in the Constitution which indicates an intent that this traditional power of the judicial department should in any manner be subject to legislative control. Perhaps the dominant thought of the framers of our constitution was to make the three great departments of government separate and independent of one another. The idea that the Legislature might embarrass the judicial department by prescribing inadequate qualifications for attorneys at law is inconsistent with the dominant purpose of making the judicial independent of the legislative department, and such a purpose should not be inferred in the absence of express constitutional provision. While the Legislature may legislate with respect to the qualifications of attorneys, its power in that respect does not rest upon any power possessed by it to deal exclusively with the subject of the qualifications of attorneys, but is incidental merely to its general and unquestioned power to protect the public interest. When it does legislate fixing a standard of qualifications required of attorneys at law in order that public interests may be protected, such qualifications constitute only a minimum standard and limit the class from which the court must make its selection. Such legislative qualifications do not constitute the ultimate qualifications beyond which the court cannot go in fixing additional qualifications deemed necessary by the course for the proper administration of judicial functions. There is no legislative power to compel courts to admit to their bars persons deemed by them unfit to exercise the prerogatives of an attorney at law." (p450)

"Furthermore, it is an unlawful attempt to exercise the power of appointment. It is quite likely true that the Legislature may exercise the power of appointment when it is in pursuance of a legislative function. However, the authorities are well-nigh unanimous that the power to admit attorneys to the practice of law is a judicial function. In all of the states, except New Jersey (In re Raisch, 83 N.J. Eq. 82, 90 A. 12), so far as our investigation reveals, attorneys receive their formal license to practice law by their admission as members of the bar of the court so admitting. Cor. Jur. 572; Ex parte Secombe, 19 How. 9, 15 L. Ed. 565; Ex parte Garland, 4 Wall 333, 18 L. Ed. 366; Randall v. Brigham, 7 Wall. 52, 19 L. Ed. 285; Hanson v. Grattan, 84 Kan. 843, 115 P. 646, 34 L.R.A. 519; Danforth v. Egan, 23 S. D. 43, 119 N.W. 1021, 139 Am. St. Rep. 1030, 20 Ann. Cas. 418.

"The power of admitting an attorney to practice having been perpetually exercised by the courts, it having been so generally held that the act of a court in admitting an attorney to practice is the judgment of the court, and an attempt as this on the part of the Legislature to confer such right upon any one being most exceedingly uncommon, it seems clear that the licensing of an attorney is and always has been a purely judicial function, no matter where the power to determine the qualifications may reside." (p. 451)

In that same year of 1932, the Supreme Court of Massachusetts, in answering a consultation of the Senate of that State, 180 NE 725, said:

"It is indispensable to the administration of justice and to interpretation of the laws that there be members of the bar of sufficient ability, adequate learning and sound moral character. This arises from the need of enlightened assistance to the honest, and restraining authority over the knavish, litigant. It is highly important, also, that the public be protected from incompetent and vicious practitioners, whose opportunity for doing mischief is wide. It was said by Cardozo, C. J., in People ex rel. Karlin v. Culkin, 242 N. Y. 465, 470, 471, 162 N. E. 487, 489, 60 A. L. R. 851: 'Membership in the bar is a privilege burdened with conditions.' One is admitted to the bar 'for something more than private gain.' He becomes 'an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice. His co-operation with the court is due 'whenever justice would be imperiled if co-operation was withheld.' Without such attorneys at law the judicial department of government would be hampered in the performance of its duties. That has been the history of attorneys under the common law, both in this country and in England. Admission to practice as an attorney at law is almost without exception conceded to be a judicial function. Petition to that end is filed in courts, as are other proceedings invoking judicial action. Admission to the bar is accomplished and made open and notorious by a decision of the court entered upon its records. The establishment by the Constitution of the judicial department conferred authority necessary to the exercise of its powers as a co-ordinate department of government. It is an inherent power of such a department of government ultimately to determine the qualifications of those to be admitted to practice in its courts, for assisting in its work, and to protect itself in this respect from the unfit, those lacking in sufficient learning, and those not possessing good moral character. Chief Justice Taney stated succinctly and with finality in Ex parte Secombe, 19 How. 9, 13, 15 L. Ed. 565, 'It has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counselor, and for what cause he ought to be removed.'" (p. 727)

In the case of Day and others who collectively filed a petition to secure license to practice the legal profession by virtue of a law of the state (In re Day, 54 NE 646), the court said in part:

"In the case of Ex parte Garland, 4 Wall, 333, 18 L. Ed. 366, the court, holding the test oath for attorneys to be unconstitutional, explained the nature of the attorney's office as follows: 'They are officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal

learning and fair private character. It has always been the general practice in this country to obtain this evidence by an examination of the parties. In this court the fact of the admission of such officers in the highest court of the states to which they, respectively, belong, for three years preceding their application, is regarded as sufficient evidence of the possession of the requisite legal learning, and the statement of counsel moving their admission sufficient evidence that their private and professional character is fair. The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counselors, and are entitled to appear as such and conduct causes therein From its entry the parties become officers of the court, and are responsible to it for professional misconduct They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded. Ex parte Hoyfron, 7 How. (Miss. 127; Fletcher v. Daingerfield, 20 Cal. 430. Their admission or their exclusion is not the exercise of a mere ministerial power. It is the exercise of judicial power, and has been so held in numerous cases. It was so held by the court of appeals of New York in the matter of the application of Cooper for admission. Re Cooper 22 N. Y. 81. 'Attorneys and Counselors,' said that court, 'are not only officers of the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature; and hence their appointment may, with propriety, be intrusted to the court, and the latter, in performing his duty, may very justly considered as engaged in the exercise of their appropriate judicial functions.' " (pp. 650-651).

We quote from other cases, the following pertinent portions:

"Admission to practice of law is almost without exception conceded everywhere to be the exercise of a judicial function, and this opinion need not be burdened with citations on this point. Admission to practice have also been held to be the exercise of one of the inherent powers of the court." —Re Bruen, 102 Wash. 472, 172 Pac. 906.

"Admission to the practice of law is the exercise of a judicial function, and is an inherent power of the court." — A. C. Brydonjack v. State Bar of California, 281 Pac. 1018; See Annotation on Power of Legislature respecting admission to bar, 66 A. L. R. 1512.

On this matter there is certainly a clear distinction between the functions of the judicial and legislative departments of the government.

"The distinction between the functions of the legislative and the judicial departments is that it is the province of the legislature to establish rules that shall regulate and govern in matters of transactions occuring subsequent to the legislative action, while the judiciary determines rights and obligations with reference to transactions that are past or conditions that exist at the time of the exercise of judicial power, and the distinction is a vital one and not subject to alteration or change either by legislative action or by judicial decrees.

"The judiciary cannot consent that its province shall be invaded by either of the other departments of the government." — 16 C.J.S. Constitutional Law, p. 299.

"If the legislature cannot thus indirectly control the action of the courts, by requiring of them a construction of the law according to its own views, it is very plain it cannot do so directly, by settling aside their judgments, compelling them to grant new trials, ordering the discharge of offenders, or directing what particular steps shall be taken in the progress of a judicial inquiry." — Cooley's Constitutional Limitations, 192.

In decreeing that bar candidates who obtained in the bar examinations of 1946 to 1952, a general average of 70% without falling below 50% in any subject, be admitted in mass to the practice of law, the disputed law is not a legislation; it is a judgment — a judgment revoking those promulgated by this Court during the aforecited years affecting the bar candidates concerned; and although this Court certainly can revoke these judgments even now, for justiciable reasons, it is no less certain that only this Court, and not the legislative nor executive department, that may do so. Any attempt on the part of any of these departments would be a clear usurpation of its functions, as is the case with the law in question.

That the Constitution has conferred on Congress the power to repeal, alter or supplement the rules promulgated by this Tribunal, concerning the admission to the practice of law, is no valid argument. Section 13 Article VIII of the Constitution provides:

"Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines." —Constitution of the Philippines, Art. VIII, Sec. 13.

It will be noted that the Constitution has not conferred on Congress and this Tribunal equal responsibilities concerning the admission to the practice of law. The primary power and responsibility which the Constitution recognizes, continue to reside in this Court. Had Congress found that this Court has not promulgated any rule on the matter, it would have nothing over which to exercise the power granted to it. Congress may repeal, alter and supplement the rules promulgated by this Court, but the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys at law and their supervision remain vested in the Supreme Court.. The power to repeal, alter and supplement the rules does not signify nor permit that Congress substitute or take the place of this Tribunal in the exercise of its primary power on the matter. The Constitution does not say nor mean that Congress may admit, suspend, disbar or reinstate directly attorneys at law, or a determinate group of individuals to the practice of law. Its power is limited to repeal, modify or supplement the existing rules on the matter, if according to its judgment the need for a better service of the legal profession requires it. But this power does not relieve this Court of its responsibility to admit, suspend, disbar and reinstate attorneys at law and supervise the practice of the legal profession.

Being coordinate and independent branches, the power to promulgate and enforce rules for the admission to the practice of law and the concurrent power to repeal, alter and supplement them may and should be exercised with the respect that each owes to the other, giving careful consideration to the responsibility which the nature of each department requires. These power have existed together for centuries without diminution on each part, the harmonious delimitation being found in that the legislature may and should examine if the existing rules on the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training and responsibility. The legislature may, by means of repeal, amendment or supplemental rules, fill up any deficiency that it may find, and the judicial power, which has the inherent responsibility for a good and efficient administration of justice and the supervision of the practice of the legal profession, should consider these reforms as the minimum standards for the elevation of the profession, and see to it that with these reforms the lofty objective that is desired in the exercise of its traditional duty of admitting, suspending disbarring and reinstateing attorneys at law is realized. They are powers which, exercised within their proper constitutional limits, are not repugnant, but rather complementary to each other in attaining the establishment of a Bar that would respond to the increasing and

exacting necessities of the administration of justice.

The case of Guariña (1913) 24 Phil. 37, illustrates our criterion. Guariña took the examinations and failed by a few points to obtain the general average. A recently enacted law provided that one who had been appointed to the position of Fiscal may be admitted to the practice of law without a previous examination. The Government appointed Guariña and he discharged the duties of Fiscal in a remote province. This Tribunal refused to give his license without previous examination. The Court said:

> "Relying upon the provisions of section 2 of Act No. 1597, the applicant in this case seeks admission to the bar, without taking the prescribed examination, on the ground that he holds the office of provincial fiscal for the Province of Batanes.
>
> "Section 2 of Act No. 1597, enacted February 28, 1907, is as follows:
>
> "Sec. 2 Paragraph one of section thirteen of Act Numbered One Hundred and ninety, entitled 'An Act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands,' is hereby amended to read as follows:
>
> " '1. Those who have been duly licensed under the laws and orders of the Islands under the sovereignty of Spain or of the United States and are in good and regular standing as members of the bar of the Philippine Islands at the time of the adoption of this code: *Provided,* That any person who, prior to the passage of this Act, or at any time thereafter, shall have held, under the authority of the United States, the position of justice of the Supreme Court, judge of the Court of First Instance, or judge or associate judge of the Court of Land Registration, of the Philippine Islands, or the position of Attorney-General, Solicitor-General, Assistant Attorney-General, assistant attorney in the office of the Attorney-General, prosecuting attorney for the city of Manila, assistant prosecuting attorney for the City of Manila, city attorney of Manila, assistant city attorney of Manila, provincial fiscal, attorney for the Moro Province, or assistant attorney for the Moro Province, may be licensed to practice law in the courts of the Philippine Islands without an examination, upon motion before the Supreme Court and establishing such fact to the satisfaction of said court.' "
>
> "The records of this court disclose that on a former occasion this applicant took, and failed to pass the prescribed examination. The report of the examining board, dated March 23, 1907, shows that he received an average of only 71 per cent in the various branches of legal learning upon which he was examined, thus falling four points short of the required percentage of 75. We would be delinquent in the performance of our duty to the public and to the bar, if, in the face of this affirmative indication of the deficiency of the applicant in the required qualifications of learning in the law at the time when he presented his former application for admission to the bar, we should grant him a license to practice law in the courts of these Islands, without first satisfying ourselves that despite his failure to pass the examination on that occasion, he now 'possesses the necessary qualifications of learning and ability.'
>
> "But it is contended that under the provisions of the above-cited statute the applicant is entitled as of right to be admitted to the bar without taking the prescribed examination 'upon motion before the Supreme Court' accompanied by satisfactory proof that he has held and now holds the office of provincial fiscal of the Province of Batanes. It is urged that having in mind the object which the legislator apparently sought to attain in enacting the above-cited amendment to the earlier statute, and in view of the context generally and especially of the fact that the amendment was inserted as a proviso in that section of the original Act which specifically provides for the admission of certain candidates without examination, the clause 'may be licensed to practice law in the courts of the Philippine Islands without any examination.' It is contended that this mandatory construction is imperatively required in order to give effect to the apparent intention of the legislator, and to the candidate's claim *de jure* to have the power exercised."

And after copying article 9 of Act of July 1, 1902 of the Congress of the United States, articles 2, 16 and 17 of Act No. 136, and articles 13 to 16 of Act 190, the Court continued:

> "Manifestly, the jurisdiction thus conferred upon this court by the Commission and confirmed to it by the Act of Congress would be limited and restricted, and in a case such as that under consideration wholly destroyed, by giving the word 'may,' as used in the above citation from Act No. 1597, as mandatory rather than a permissive effect. But any Act of the Commission which has the effect of setting at naught in whole or in part the Act of Congress of July 1, 1902, or of any Act of Congress prescribing, defining or limiting the power conferred upon the Commission is to that extent invalid and void, as transcending its rightful limits and authority.

Speaking on the application of the law to those who were appointed to the positions enumerated, and with particular emphasis in the case of Guariña, the Court held:

> "In the various cases wherein applications for admission to the bar under the provisions of this statute have been considered heretofore, we have accepted the fact that such appointments had been made as satisfactory evidence of the qualifications of the applicant. But in all of those cases we had reason to believe that the applicants had been practicing attorneys prior to the date of their appointment.
>
> "In the case under consideration, however, it affirmatively appears that the applicant was not and never had been practicing attorney in this or any other jurisdiction prior to the date of his appointment as provincial fiscal, and it further affirmatively appears that he was deficient in the required qualifications at the time when he last applied for admission to the bar.
>
> "In the light of this affirmatively proof of his deficiency on that occasion, we do not think that his appointment to the office of provincial fiscal is in itself satisfactory proof of his possession of the necessary qualifications of learning and ability. We conclude therefore that this application for license to practice in the courts of the Philippines should be denied.
>
> "In view, however, of the fact that when he took the examination he fell only four points short of the necessary grade to entitle him to a license to practice; and in view also of the fact that since that time he had held the responsible office of governor of the Province of Sorsogon and presumably gave evidence of such marked ability in the performance of the duties of that office that the Chief Executive, with the consent and approval of the Philippine Commission, sought, to retain him in the Government service by appointing him to the office of provincial fiscal, we think we would be justified under the above-cited provision of Act No. 1597 in waiving in his case the ordinary examination prescribed by general rule, provided he offers satisfactory evidence of his proficiency in a special examination which will be given him by a committee of the court upon his application therefor, without prejudice to his right, if he desires so to do, to present himself at any of the ordinary examinations prescribed by general rule." — (In re Guariña, pp. 48-49.)

It is obvious, therefore, that the ultimate power to grant license for the practice of law belongs exclusively to this Court, and the law passed by Congress on the matter is of permissive character, or as other authorities say, merely to fix the minimum conditions for the license.

The law in question, like those in the case of Day and Cannon, has been found also to suffer from the fatal defect of being a class legislation, and that if it has intended to make a classification, it is arbitrary and unreasonable.

In the case of Day, a law enacted on February 21, 1899 re-

quired of the Supreme Court, until December 31 of that year, to grant license for the practice of law to those students who began studying before November 4, 1897, and had studied for two years and presented a diploma issued by a school of law, or to those who had studied in a law office and would pass an examination, or to those who had studied for three years if they commenced their studies after the aforementioned date. The Supreme Court declared that this law was unconstitutional being, among others, a class legislation. The court said:

"This is an application to this court for admision to the bar of this state by virtue of diplomas from law schools issued to the applicants. The act of the general assembly passed in 1899, under which the application is made, is entitled 'An act to amend section 1 of an act entitled "An act to revise the law in relation to attorneys and counselors," approved March 28, 1874, in force July 1, 1874.' The amendment, so far as it appears in the enacting clause, consists in the addition to the section of the following: "And every applicant for a license who shall comply with the rules of the supreme court in regard to admission to the bar in force at the time such applicant commenced the study of law, either in a law office or a law school or college, shall be granted a license under this act notwithstanding any subsequent changes in said rules.' " — In re Day et al., 54 N.E. p. 646.

x x x. "After said provision there is a double proviso. one branch of which is that up to December 31, 1899, this court shall grant a license of admittance to the bar to the holder of every diploma regularly issued by any law school regularly organized under the laws of this state, whose regular course of law studies is two years, and requiring an attendance by the student of at least 36 weeks in each of such years, and showing that the student began the study of law prior to November 4, 1897, and accompanied with the usual proofs of good moral character. The other branch of the proviso is that any student who has studied law for two years in a law office, or part of such time in a law office, 'and part in the aforesaid law school,' and whose course of study began prior to November 4, 1897, shall be admitted upon a satisfactory examination by the examining board in the branches now required by the rules of this court. If the right to admission exists at all, it is by virtue of the proviso, which, it is claimed, confers substantial rights and privileges upon the persons named therein, and establishes rules of legislative creation for their admission to the bar." (p. 647.)

"Considering the proviso, however, as an enactment, it is clearly special legislation, prohibited by the constitution, and invalid as such. If the legislature had any right to admit attorneys to practice in the courts and take part in the administration of justice, and could prescribe the character of evidence which should be received by the court as conclusive of the requisite learning and ability of persons to practice law, it could only be done by a general law, and not by granting special and exclusive privileges to certain persons or classes of persons. Const. art. 4, section 2. The right to practice law is a privilege, and a license for that purpose makes the holder an officer of the court, and confers upon him the right to appear for litigants, to argue causes, and to collect fees therefor, and creates certain exemptions, such as from jury service and arrest on civil process while attending court. The law conferring such privilege must be general in its operation. No doubt the legislature, in framing an enactment for that purpose, may classify persons so long as the law establishing classes in general, and has some reasonable relation to the end sought. There must be some difference which furnished a reasonable basis for different legislation as to the different classes, and not a purely arbitrary one, having no just relation to the subject of the legislation. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62; Ritchie v. People, 155 Ill. 98, 40 N.E. 454; Railroad Co. v. Ellis, 165 U. S. 150, 17 Sup. 255.

"The length of time a physician has practiced, and the skill acquired by experience, may furnish a basis for classification (Williams v. People, 121 Ill. 84, 11 N.E. 881); but the place where such physician has resided and practiced his profession cannot furnish such basis, and is an arbitrary discrimination, making an enactment based upon it void (State v. Pennoyer, 65 N.E. 113, 18 Atl. 878). Here the legislature undertakes to say what shall serve as a test of fitness for the profession of the law, and, plainly, any classification must have some reference to learning, character, or ability to engage in such practice. The proviso is limited, first, to a class of persons who began the study of law prior to November 4, 1897. This class is subdivided into two classes — First, those presenting diplomas issued by any law school of this state before December 31, 1899; and, second, those who studied law for the period of two years in a law office, or part of the time in a law school and part in a law office, who are to be admitted upon examination in the subjects specified in the present rules of this court, and as to this latter subdivision there seems to be no limit of time for making application for admission. As to both classes, the conditions of the rules are dispensed with, and as between the two different conditions and limits of time are fixed. No course of study is prescribed for the law school, but a diploma granted upon the completion of any sort of course its managers may prescribe is made all-sufficient. Can there be anything with relation to the qualifications or fitness of persons to practice law resting upon the mere date of November 4, 1897, which will furnish a basis of classification? Plainly not. Those who began the study of law November 4th could qualify themselves to practice in two years as well as those who began on the 3rd. The classes named in the proviso need spend only two years in study, while those who commenced the next day must spend three years, although they would complete two years before the time limit. The one who commenced on the 3rd. if possessed of a diploma, is to be admitted without examination before December 31, 1899, and without any prescribed course of study, while as to the other the prescribed course must be pursued, and the diploma is utterly useless. Such classification cannot rest upon any natural reason, or bear any just relation to the subject sought, and none is suggested. The proviso is for the sole purpose of bestowing privileges upon certain defined persons. (pp. 647-648.)

In the case of Cannon above cited, State v. Cannon, 240 N. W. 441, where the legislature attempted by law to reinstate Cannon to the practice of law, the court also held with regards to its aspect of being a class legislation:

"But the statute is invalid for another reason. If it be granted that the legislature has power to prescribe ultimately and definitely the qualifications upon which courts must admit and license those applying as attorneys at law, that power can not be exercised in the manner here attempted. That power must be exercised through general laws which will apply to all alike and accord equal opportunity to all. Speaking of the right of the Legislature to exact qualifications of those desiring to pursue chosen callings, Mr. Justice Field in the case of Dent v. West Virginia, 129 U. S. 114, 121, 9 S. Ct. 232, 233 32 L. Ed. 626, said: 'It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex, and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are all open to every one on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the 'estate' acquired in them—that is, the right to continue their prosecution —is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken. It is fundamental under our sys-

tem of government that all similarly situated and possessing equal qualifications shall enjoy equal opportunities. Even statutes regulating the practice of medicine, requiring examinations to establish the possession on the part of the application of his proper qualifications before he may be licensed to practice, have been challenged, and courts have seriously considered whether the exemption from such examinations of those practicing in the state at the time of the enactment of the law rendered such law unconstitutional because of infringement upon this general principle. State v. Thomas Call, 121 N.C. 643, 28 S.E. 517; see, also, The State ex rel. Winkler v. Rosenberg, 101 Wis. 172, 76 N.W. 345; State v. Whitcom, 122 Wis. 118, 99 N.W. 468.

"This law singles out Mr. Cannon and assumes to confer upon him the right to practice law and to constitute him an officer of this Court as a mere matter of legislative grace or favor. It is not material that he had once established his right to practice law and that one time he possessed the requisite learning and other qualifications to entitle him to that right. That fact in no manner affect the power of the Legislature to select from the great body of the public an individual upon whom it would confer its favors.

"A statute of the state of Minnesota (Laws 1929, c. 424) commanded the Supreme Court to admit to the practice of law, without examination, all who had 'serve in the military or naval forces of the United States during the World War and received an honorable discharge therefrom and who (were disabled therein or thereby within the purview of the Act of Congress approved June 7th, 1924, known as 'World War Veteran's Act, 1924 and whose disability is rated at least ten per cent thereunder at the time of the passage of this Act." This Act was held unconstitutional on the ground that it clearly violated the quality clauses of the constitution of that state. In re Application of George W. Humphrey, 178 Minn. 331, 227 N.W. 179

A good summary of a classification constitutionally acceptable is explained in 12 Am. Jur. 151-153 as follows:

"The general rule is well settled by unanimity of the authorities that a classification to be valid must rest upon material differences between the persons included in it and those excluded and, furthermore, must be based upon substantial distinctions. As the rule has sometimes avoid the constitutional prohibition, must be founded upon pertinent and real difference, as distinguished from irrelevant and artificial once. Therefore, any law that is made applicable to one class of citizens only must be based on some substantial difference between the situation of that class and other individuals to which it does not apply and must rest on some reason on which it can be defended. In other words, there must be such a difference between the situation and circumstances of all the members of the class and the situation and circumstances of all other members of the state in relation to the subjects of the discriminatory legislation as presents a just and natural reason for the difference made in their liabilities and burdens and in their rights and privileges. A law is not general because it operates on all within a class unless there is a substantial reason why it is made to operate on that class only, and not generally on all." (12 Am. Jur. pp. 151-153.)

Pursuant to the law in question, those who, without a grade below 50% in any subject, have obtained a general average of 69.5% in the bar examinations in 1946 to 1951, 70.5% in 1952, 71.5% in 1953, and those who will obtain 72.5% in 1954, and 73.5% in 1955, will be permitted to take and subscribe the corresponding oath of office as members of the Bar, notwithstanding that the Rules require a minimum general average of 75%, which has been invariably followed since 1950. Is there any motive of the nature indicated by the above-mentioned authorities, for this classification? If there is none, and none has been given, then the classification is fatally defective.

It was indicated that those who failed in 1944, 1941 or the years before, with the general average indicated, were not included because the Tribunal has no record of the unsuccessful candidates of those years. This fact does not justify the unexplained classification of unsuccessful candidates by years, from 1946-1951, 1952, 1953, 1954, 1955. Neither is the exclusion of those who failed before said years under the same conditions justified. The fact that this Court has no record of examinations prior to 1946 does not signify that none concerned may prove by some other means his right to an equal consideration.

To defend the disputed law from being declared unconstitutional on account of its retroactivity, it is argued that it is curative, and that in such form it is constitutional. What does Rep. Act 972 intend to cure? Only from 1946 to 1949 were there cases in which the Tribunal permitted admission to the bar of candidates who did not obtain the general average of 75%; in 1946 those who obtained only 72%; in 1947 all those who had 69% or more; in 1948, 70% and in 1949, 74%; and in 1950 to 1953, those who obtained 74%, which was considered by the Rules, by reason of circumstances deemed to be sufficiently justifiable. These changes in the passing averages during those years were all that could be objected to or criticized. Now, is it desired to undo what had been done—cancel the license that was issued to those who did not obtain the prescribed 75%? Certainly not. The disputed law clearly does not propose to do so. Concededly, it approves what has been done by his Tribunal. What Congress lamented is that the Court did not consider 69.5% obtained by those candidates who failed in 1946 to 1952 as sufficient to qualify them to practice law. Hence, it is the lack of will or defect of judgment of the Court that is being cured, and to complete the cure of this infirmity, the effectivity of the disputed law is being extended up to the years 1953, 1954 and 1955, increasing each year the general average by one per cent, with the order that said candidates be admitted to the Bar. This purpose, manifest in the said law, is the best proof that what the law attempts to amend and correct are not the rules promulgated, but the will or judgment of the Court, by means of simply taking its place. This is doing directly what the Tribunal should have done during those years according to the judgment of Congress. In other words, the power exercised was not to repeal, alter or supplement the rules, which continue in force. What was done was to stop or suspend them. And this power is not included in what the Constitution has granted to Congress, because it falls within the power to apply the rules. This power corresponds to the judiciary, to which such duty has been confided.

Article 2 of the law in question permits partial passing of examinations, at indefinite intervals. The grave defect of this system is that it does not take into account that the laws and jurisprudence are not stationary, and when a candidate finally receives his certificate, it may happen that the existing laws and jurisprudence are already different, seriously affecting in this manner his usefulness. The system that the said law prescribes was used in the first bar examinations of this country, but was abandoned for this and other disadvantages. In this case, however, the fatal defect is that the article is not expressed in the title of the Act. While this law according to its title will have temporary effect only from 1946 to 1955, the text article 2 establishes a permanent system for an indefinite time. This is contrary to Sec. 21(1), Art. VI of the Constitution, which vitiates and annuls article 2 completely; and because it is inseparable from article 1, it is obvious that its nullity affects the entire law.

Laws are unconstitutional on the following grounds: first, because they are not within the legislative powers of Congress to enact, or Congress has exceeded its powers; second, because they create or establish arbitrary methods or forms that infringe constitutional principles; and third, because their purposes or effects violate the Constitution or its basic principles. As has already been seen, the contested law suffers from there fatal defects.

Summarizing, we are of the opinion and hereby declare that Republic Act No. 972 is unconstitutional and, therefore, void, and

without any force nor effect for the following reasons, to wit:

1. Because its declared purpose is to admit 810 candidates who failed in the bar examinations of 1946-1952, and who, it admits, are certainly inadequately prepared to practice law, as was exactly found by this Court in the aforesaid years. It decrees the admission to the Bar of these candidates, depriving this Tribunal of the opportunity to determine if they are at present already prepared to become members of the Bar. It obliges the Tribunal to perform something contrary to reason and in an arbitrary manner. This is a manifest encroachment on the constitutional responsibility of the Supreme Court.

2. Because it is, in effect, a judgment revoking the resolution of this Court on the petitions of these 810 candidates, without having examined their respective examination papers, and although it is admitted that this Tribunal may reconsider said resolution at any time for justifiable reasons, only this Court and no other may revise and alter them. In attempting to do it directly, Republic Act No. 972 violated the Constitution.

3. By the disputed law, Congress has exceeded its legislative power to repeal, alter and supplement the rules on admission to the Bar. Such additional or amendatory rules are, as they ought to be, intended to regulate acts subsequent to its promulgation and should tend to improve and elevate the practice of law, and this Tribunal shall consider these rules as minimum norms towards that end in the admission, suspension, disbarment and reinstatement of lawyers to the Bar, inasmuch as a good bar assists immensely in the daily performance of judicial functions and is essential to a worthy administration of justice. It is therefore the primary and inherent prerogative of the Supreme Court to render the ultimate decision on who may be admitted and may continue in the practice of law according to existing rules.

4. The reason advanced for the pretended classification of candidates, which the law makes, is contrary to facts which are of general knowledge and does not justify the admission to the Bar of law students inadequately prepared. The pretended classification is arbitrary. It is undoubtedly a class legislation.

5. Article 2 of Republic Act No. 972 is not embraced in the title of the law, contrary to what the Constitution enjoins, and being inseparable from the provisions of Article 1, the entire law is void.

6. Lacking in eight votes to declare the nullity of that part of article 1 referring to the examinations of 1953 to 1955, said part of article 1, insofar as it concerns the examinations in those years, shall continue in force.

RESOLUTION

Upon the mature deliberation by this Court, after hearing and availing of the magnificent and impassioned discussion of the contested law by our Chief Justice at the opening and close of the debate among the members of the Court, and after hearing the judicious observations of two of our beloved colleagues who since the beginning have announced their decision not to take part in the voting, we, the eight members of the Court who subscribe to this decision have voted and resolved, and have decided for the Court, and under the authority of the same:

1. That (a) the portion of article 1 of Republic Act No. 972 referring to the examinations of 1946 to 1952, and (b) all of article 2 of said law are unconstitutional and, therefore, void and without force and effect.

2. That, for lack of unanimity in the eight Justices, that part of article 1 which refers to the examinations subsequent to the approval of the law, that is from 1953 to 1955 inclusive, is valid and shall continue to be in force, in conformity with section 10 Art. VII of the Constitution.

Consequently, (1) all the above-mentioned petitions of the candidates who failed in the examinations of 1946 to 1952 inclusive are denied, and (2) all candidates who in the examinations of 1953 obtained a general average of 71.5% or more, without having a grade below 50% in any subject, are considered as having passed, whether they have filed petitions for admission or not. After this decision has become final, they shall be permitted to take and subscribe the corresponding oath of office as members of the Bar on the date or dates that the Chief Justice may set.

So ordered.

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

Chief Justice Paras dissents in a separate opinion.

Messrs. Justices Bautista Angelo and *Concepcion* did not take part in the voting in this case.

LABRADOR, J., concurring and dissenting:

The right to admit members to the Bar is, and has always been, the exclusive privilege of this Court, because lawyers are members of the Court and only this Court should be allowed to determine admission thereto in the interest of the principle of the separation of powers. The power to admit is judicial in the sense that discretion is used in its exercise. This power should be distinguished from the power to promulgate rules which regulate admission. It is only this power (to promulgate amendments to the rules) that is given in the Constitution to the Congress, not the exercise of the discretion to admit or not to admit. Thus the rules on the holding of examination, the qualifications of applicants, the passing grades, etc. are within the scope of the legislative power. But the power to determine when a candidate has made or has not made the required grade is judicial, and lies completely with this Court.

I hold that the act under consideration is an exercise of the judicial function, and lies beyond the scope of the congressional prerogative of amending the rules. To say that candidates who obtaind a general average of 72% in 1953, 73% in 1954, and 74% in 1955 should be considered as having passed the examination, is to mean exercise of the privilege and discretion lodged in this Court. It is a mandate to the tribunal to pass candidates for different years with grades lower than the passing mark. No reasoning is necessary to show that it is an arrogation of the Court's judicial authority and discretion. It is furthermore objectionable as discriminatory. Why should those taking the examinations in 1953, 1954, and 1955 be allowed to have the privilege of a lower passing grade, while those taking earlier or later are not?

I vote that the act *in toto* be declared unconstitutional, because it is not embraced within the rule-making power of Congress, because it is an undue interference with the power of this Court to admit members thereof, and because it is discriminatory.

PARAS, *C.J.*, *dissenting:*

Under section 14 of Rule 127, in order that a bar candidate "may be deemed to have passed his examinations successfully, he must have obtained a general average of 75 per cent in all subjects, without falling below 50 per cent in any subject." This passing mark has always been adhered to, with certain exception presently to be specified.

With reference to the bar examinations given in August, 1946, the original list of successful candidates included only those who obtained a general average of 75 per cent or more. Upon motion for reconsideration, however, 12 candidates with general averages ranging from 72 to 73 per cent were raised to 75 per cent by resolution of December 18, 1946. In the examinations of November, 1946, the list first released containing the names of successful candidates covered only those who obtained a general average of 75 per cent or more; but, upon motion for reconsideration, 19 candidates with a general average of 72 per cent were raised to 75 per cent by resolution of March 31, 1947. This would indicate that in the original list of successful candidates those having a general average of 73 per cent or more but below 75 per cent were included. After the original list of 1947 successful bar candidates had been released, and on motion for reconsideration, all candidates with a general average of 69 per cent were allowed to pass by resolution of July 15, 1948. With respect to the bar examinations held in August, 1948, in addition to the original list of successful bar candidates, all those who obtained a general average of 70 per cent or more, irrespective of the grades in any one subject and irrespective of whether they filed petitions for reconsideration, were allowed to pass by resolution of April 28, 1949. Thus, for the year 1947 the Court in effect made 69 per cent

as the passing average, and for the year 1948 70 per cent; and this amounted, without being noticed perhaps, to an amendment of section 14 of Rule 127.

Numerous flunkers in the bar examinations held subsequent to 1948, whose general averages mostly ranged from 69 to 73 per cent, filed motions for reconsideration, invoking the precedents set by this Court in 1947 and 1948, but said motions were uniformly denied.

In the year 1951, the Congress, after public hearings where law deans and professors, practising attorneys, presidents of bar associations, and law graduates appeared and argued lengthily *pro* or *con*, approved a bill providing, among others, for the reduction of the passing general average from 75 per cent to 70 per cent, retroactive to any bar examination held after July 4, 1946. This bill was vetoed by the President mainly in view of an unfavorable comment of Justices Padilla, Tuason, Montemayor, Reyes, Bautista and Jugo. In 1953, the Congress passed another bill similar to the previous bill vetoed by the President, with the important difference that in the later bill the provisions in the first bill regarding (1) the supervision and regulation by the Supreme Court of the study of law, (2) the inclusion of Social Legislation and Taxation as new bar subjects, (3) the publication of names of the bar examiners before the holding of the examinations, and (4) the equal division among the examiners of all admission fees paid by bar applicants, were eliminated. This second bill was allowed to become a law, Republic Act No. 972, by the President by merely not signing it within the required period; and in doing so the President gave due respect to the will of the Congress which, speaking for the people, chose to repass the bill first vetoed by him.

Under Republic Act No. 972, any bar candidate who obtained a general average of 70 per cent in any examinations after July 4, 1946 up to August 1951; 71 per cent in the 1952 bar examinations; 72 per cent in 1953 bar examinations; 73 per cent in the 1954 bar examinations; and 74 per cent in the 1955 bar examinations, without obtaining a grade below 50 per cent in any subject, shall be allowed to pass. Said Act also provides that any bar candidate who obtained a grade of 75 per cent in any subject in any examination after July 4, 1946, shall be deemed to have passed in such subject or subjects and such grade or grades shall be included in computing the passing general average that said candidate may obtain in any subsequent examinations.

Numerous candidates who had taken the bar examinations previous to the approval of Republic Act No. 972 and failed to obtain the necessary passing average, filed with this Court mass or separate petitions, praying that they be admitted to the practice of law under and by virtue of said Act, upon the allegation that they have obtained the general averages prescribed therein. In virtue of the resolution of July 6, 1953, this Court held on July 11, 1953 a hearing on said petitions, and members of the bar, especially authorized representatives of bar associations, were invited to argue or submit memoranda as *amici curiae*, the reason alleged for said hearing being that some doubt had "been expressed on the constitutionality of Republic Act No. 972 in so far as it affects past bar examinations and the matter" involved "a new question of public interest."

All discussions in support of the proposition that the power to regulate the admission to the practice of law is inherently judicial, are immaterial, because the subject is now governed by the Constitution which in Article VIII, section 13, provides as follows:

> "The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines."

Under this constitutional provision, while the Supreme Court has the power to promulgate rules concerning the admission to the practice of law, the Congress has the power to repeal, alter or supplement said rules. Little intelligence is necessary to see that the power of the Supreme Court and the Congress to regulate the admission to the practice of law is concurrent.

The opponents of Republic Act No. 972 argue that this Act, in so far as it covers bar examinations held prior to its approval, is unconstitutional, because it sets aside the final resolutions of the Supreme Court refusing to admit to the practice of law the various petitioners, thereby resulting in a legislative encroachment upon the judicial power. In my opinion this view is erroneous. In the first place, resolutions on the rejection of bar candidates do not have the finality of decisions in justiciable cases where the Rules of Court expressly fix certain periods after which they become executory and unalterable. Resolutions on bar matters, specially on motions for reconsiderations filed by flunkers in any given year, are subject to revision by this Court at any time, regardless of the period within which the motions were filed, and this has been the practice heretofore. The obvious reason is that bar examinations and admission to the practice of law may be deemed as a judicial function only because said matters happen to be entrusted, under the Constitution and our Rules of Court, to the Supreme Court. There is no judicial function involved, in the strict and constitutional sense of the word, because bar examinations and the admission to the practice of law, unlike justiciable cases, do not affect opposing litigants. It is no more than the function of other examining boards. In the second place, retroactive laws are not prohibited by the Constitution, except only when they would be *ex post facto*, would impair obligations and contracts or vested rights, or would deny due process and equal protection of the law. Republic Act No. 972 certainly is not an *ex post facto* enactment, does not impair any obligation and contract or vested right, and denies to no one the right to due process and equal protection of the law. On the other hand, it is a mere curative statute intended to correct certain obvious inequalities arising from the adoption by this Court of different passing general averages in certain years.

Neither can it be said that bar candidates prior to July 4, 1946, are being discriminated against, because we no longer have any record of those who might have failed before the war, apart from the circumstance that 75 per cent had always been the passing mark during said period. It may also be that there are no pre-war bar candidates similarly situated as those benefited by Republic Act No. 972. At any rate, in the matter of classification, the reasonableness must be determined by the legislative body. It is proper to recall that the Congress held public hearings, and we can fairly suppose that the classification adopted in the Act reflects good legislative judgment derived from the facts and circumstances then brought out.

As regards the alleged interference in or encroachment upon the judgment of this Court by the Legislative Department, it is sufficient to state that, if there is any interference at all, it is one expressly sanctioned by the Constitution. Besides, interference in judicial adjudication prohibited by the Constitution is essentially aimed at protecting rights of litigants that have already been vested or acquired in virtue of decisions of courts, not merely for the empty purpose of creating appearances of separation and quality among the three branches of the Government. Republic Act No. 972 has not produced a case involving two parties and decided by the Court in favor of one and against the other. Needless to say, the statute will not affect the previous resolutions passing bar candidates who had obtained the general average prescribed by section 14 of Rule 127. A law would be objectionable and unconstitutional if, for instance, it would provide that those who have been admitted to the bar after July 4, 1946, whose general average is below 80 per cent, will not be allowed to practice law, because said statute would then destroy a right already acquired under previous resolutions of this Court, namely, the bar admission of those whose general averages were from 75 to 79 per cent.

Without fear of contradiction, I think the Supreme Court, in the exercise of its rule-making power conferred by the Constitution, may pass a resolution amending section 14 of Rule 127 by reducing

the passing average to 70 per cent, effective several years before the date of the resolution. Indeed, when this Court on July 15, 1948 allowed to pass all candidates who obtained a general average of 69 per cent or more and on April 28, 1949 those who obtained a general average of 70 per cent or more, irrespective of whether they filed petitions for reconsideration, it in effect amended section 14 of Rule 127 retroactively, because during the examinations held in August 1947 and August 1948, said section (fixing the general average at 75 per cent) was supposed to be in force. It stands to reason, if we are to admit that the Supreme Court and the Congress have concurrent power to regulate the admission to the practice of law, that the latter may validly pass a retroactive rule fixing the passing general average.

Republic Act No. 972 cannot be assailed on the ground that it is unreasonable, arbitrary or capricious, since this Court had already adopted as passing averages 69 per cent for the 1947 bar examinations and 70 per cent for the 1948 examinations. Any way, we should not inquire into the wisdom of the law, since this is a matter that is addressed to the judgment of the legislators. This Court in many instances had doubted the propriety of legislative enactments, and yet it has consistently refrained from nulifying them solely on that ground.

To say that the admission of the bar candidates benefited under Republic Act No. 972 is against public interest, is to assume that the matter of whether said Act is beneficial or harmful to the general public was not considered by the Congress. As already stated, the Congress held public hearings, and we are bound to assume that the legislators, loyal, as do the members of this Court, to their oath of office, had taken all the circumstances into account before passing the Act. On the question of public interest I may observe that the Congress, representing the people who elected them, should be more qualified to make an appraisal. I am inclined to accept Republic Act No. 972 as an expression of the will of the people through their duly elected representatives.

I would, however, not go to the extent of admitting that the Congress, in the exercise of its concurrent power to repeal, alter or supplement the Rules of Court regarding the admission to the practice of law, may act in an arbitrary or capricious manner, in the same way that this Court may not do so. We are thus left in the situation, incidental to a democracy, where we can and should only hope that the right men are put in the right places in our Government.

Wherefore, I hold that Republic Act No. 972 is constitutional and should therefore be given effect in its entirety.

II

The People of the Philippines, Plaintiff-Appellee, vs. Juanito Dasig, et al., Defendants-Appellants, G. R. No. L-5275, August 25. 1953.

1. EVIDENCE; "FALSUS IN UNO, FALSUS IN OMNIBUS"; RULE EXPLAINED.—The rule is not a mandatory rule of evidence, but rather a permissible one which allows the jury or court to draw the inference or not to draw it as circumstances may best warrant.
2. ID; ID.—Professor Wigmore criticizes the broad rule as unsound, because not true to human nature; that because a person tells a single lie, he is lying throughout his whole testimony, or that there is strong possibility that he is so lying. The reason for it is that once a person knowingly and deliberately states a falsehood in one material aspect. he must have done so as to the rest. But it is also clear that the rule has its limitations, for when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted. Because though a person may err in memory or in observation in one or more respects, he may have told the truth as to others. (III Wigmore, Secs. 1009-1015, pp. 674- 83.)
3. ID; LIMITATIONS OF THE "FALSUS IN UNO, FALSUS IN OMNIBUS" RULE.—The maxim should not apply in the case at bar for three reasons. First, there is sufficient corroboration on many grounds of the testimony. Second, the mistakes are not on the very material points. Third, the errors do not arise from an apparent desire to pervert the truth, but from innocent mistakes and the desire of the witness to exculpate himself though not completely.

Domingo L. Vergara and *Perfecta de Vera* for appellants.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Ramon L. Avanceña* for appellee.

DECISION

LABRADOR, *J.*:

Defendants in the above-entitled case appeal from a judgment of the Court of First Instance of Isabela, finding them guilty of the crime of robbery with homicide, and sentencing them to *reclusion perpetua*, to indemnify jointly and severally the heirs of Norberto Ramil, in the sum of ₱4,000.00, and the complainant, Jacinta Galasinao, in the sum of ₱190.00, and to pay the costs of the prosecution.

The record discloses that in the evening of December 23, 1949, at about midnight, while Norberto Ramil and his wife, Jacinta Galasinao, and their daughter and son, Segunda and Domingo, respectively, were sleeping in their house situated not far away from the municipal building of Antatet (now Luna), Province of Isabela, the said spouses were suddenly awakened by the barking of dogs and the grunting of pigs. Ramil got up and walked quietly towards a window, to find out what the dogs were barking at, but just then two persons who had entered the house faced him. The wife heard these persons talking in whispers and saw them in front. She lighted a lamp, and as she did so the two intruders levelled their guns at her husband and demanded from him to produce his pistol. As the husband could not produce any pistol and said he had none at all, they fired at him. He used his two hands to protect himself but to no avail. As he received the shots, he fell down in a stooping position and then slumped on the floor, face downwards. The wife and her two children, who had already been awakened, cried for help, but the intruders levelled their guns at them, commanding them to keep quiet and threatening to kill if they did not do so. For fear, they had to stop. The intruders then went inside the bedroom and ransacked the contents of the trunk which contained their valuables. ₱10.00 in cash and jewels worth ₱180.00 were taken away.

The Chief of Police of Atatet, who lived around twenty meters away from the house of Ramil, heard three pistol shots, so he repaired to the municipal building to fetch one of his policemen, then they passed by the house of the Mayor, and together with him they proceeded to the house of Ramil. When they reached it the robbers were already gone. They found Ramil already dead with gunshot wounds on the left eye, in the right breast, at the back, and at the left index finger. They questioned the wife, who recounted to them what had happened. The Chief of Police found a fired bullet, caliber 32, inside the trunk, four empty 22-caliber cartridges near the dead body, three empty 32-caliber shells, one near the broken box inside the bedroom and the other two five meters away from the house of the deceased, and three 45-caliber empty shells under the house just below the dead body. The following day, a physician of Antatet performed an autopsy on the dead body of Ramil and he found four gunshot wounds in the places already indicated above. When he opened the chest cavity, he discovered a 22-caliber slug right at the heart.

The above facts are not contradicted. The evidence, upon which the judgment of conviction is based, consists of the testimony of one, Jose Mallillin, that of Andres Bumanglag, which in part corroborates Mallillin's testimony, and the findings of a ballistic expert of the Philippine Constabulary to the effect that the empty 32-caliber cartridges found under the house of Ramil had been fired from the Llama auto-pistol possessed by, and licensed in the name of Mallillin, and that the 32-caliber slug, Exhibit "C", which was found inside the trunk, had also been fired therefrom. These findings were based on the fact that the striations found in the said bullet are identical with and congruent to those which he fired from the same Llama auto-pistol, and the pin marks at the empty 32-caliber cartridges are identical with and congruent to that found at an empty cartridges fired from the same pistol.

Mallillin was formerly a school teacher of Antatet and had resided there, but on the date of the robbery he was living in a contiguous town, Cauayan. He testified as follows: On the evening in question, while he was on his way home, he saw four persons near a check point, and as he passed by, two of them got

hold of him and a third snatched his pistol away and compelled him to follow them. The four were later recognized by him to be the defendants Balbino Gabuni, Juanito Dasig and Marcelino Dayao, and Sergio Eduardo. They boarded a jeep, which was parked near the road and in which there were two others whom Mallillin did not recognize, and then they drove to the junction of the Cabatuan-Antatet roads. Here they all went down and walked towards Antatet.

When the party was around 100 meters from the municipal building, he saw his companions talking to Andres Bumanglag. Taking Bumanglag aside, he informed the latter that he had been held up. Upon Mallillin's suggestion, his companions asked Bumanglag how the house of Ramil could be entered, and the latter answered that it could be done through a window near the wall. They also asked further information from him, and thereafter he was allowed to go away, but with the warning that if he would squeal, he would be put to death.

After Bumanglag had left, they went to a place around fifty meters from the house of Ramil, the intended victim. Here they waited till about midnight when they approached the house. Gabuni then ordered Mallillin to stay in a place beside the road. Dasig and Eduardo then gave him their shoes for him to keep, while the five, including the two unknown persons, approached the house. Dasig and Eduardo entered the house through the window, while Gabuni stayed at the door in front. Gabuni gave his carbine to Dayao and Mallillin's Llama pistol to Dasig, while Eduardo held a .22 caliber pistol.

Five minutes after the three had gone up the house, Mallillin heard three shots. Then he heard a voice calling for help. He got frightened, so he hurriedly went away bound for Cauayan. While still in Antatet, he heard the policeman of Antatet exchange shots with his companions. He arrived at Cauayan at about one o'clock. At around 4:30 that morning, Sergio Eduardo called at his house and asked for their shoes, and as he went away, he warned Mallillin not to squeal, otherwise he would be killed. Mallillin asked for his pistol and was informed that it was with Marcelino Dayao. That same morning he went to Dayao and got it from the latter. Juanito Dasig also called at his house that same morning, warning him that if he would squeal, he would be in a bad fix, informing him further that their two companions whom Mallillin had not recognized, had gone to Manila to fetch some more of their companions until they reach as many as twenty.

The above is Mallillin's version. He was apprehended by the authorities on December 31, 1949. Four days before his arrest, he further said, he had decided after consultation with his wife, to go to the chief of police of Cauayan to ask him to accompany him to Cabatuan, where he was going to relate all that had happened, but that it so happened that when he saw the chief of police, the latter had no time to hear him as he was going away and was then ready with his baggage to go to Manila.

When Mallillin was taken to the Constabulary barracks on December 31, 1949, he had a talk with Lieutenant Panis of the Constabulary. Panis promised him that he would be used as a state witness if he would disclose all that he knew about the robbery. With this promise Mallillin made a complete disclosure of the above facts to Lieutenant Panis. His statement was put in writing, although it was not sworn to before the justice of the peace until January 3, 1950. His affidavit was introduced at the trial as Exhibit 4-Gabuni, Exhibit 3-Dasig-Dayao, and contains substantially the same facts testified to by him during the trial.

The testimony of Andres Bumanglag is to the effect that that same evening, he had been playing guitar with two companions at the house of one Labog, and that when they went home and as they were approaching his house, he was suddenly held up by two persons. When brought to a group to which the two belonged, he recognized Mallillin, Gabuni, chief of police of Cauayan, and Dasig. He was asked about the number of policemen of Antatet, the arms that they had. the caliber of the arms, and persons who had firearms. Finally, they asked him to draw a sketch of the house of Norberto Ramil and its position in relation to the house of the mayor, as well as the position of the window through which entrance could be gained into the house. Bumanglag was very much frightened because, at the beginning when he refused to answer the questions that they asked him, he was kicked and threatened by the group. Besides, Mallillin had informed him that he himself had been held up, and that he should tell what they asked him, otherwise both of them would be killed. After getting all the information that they desired, Bumanglag was allowed to go home. A few minutes after he went to bed he heard some shots, and stray bullets hit his house and a kapok tree nearby, so he and his family had to go down the house to seek shelter from stray bullets.

On January 3, 1950, Andres Bumanglag also made an affidavit before Lieutenant Panis, which was sworn to by him before the justice of the peace of Antatet. In this affidavit, Exhibit 5-Gabuni, he mentions the fact that before the robbery a group of persons, four of whom were armed, came and asked information from him about the house of Norberto Ramil, and that on that occasion he also saw Mallillin with them, who told him that he was also held up by the group.

The trial court gave credit to the testimonies of Mallillin and Bumanglag as above outlined, and together with the identification made by the wife of Ramil of one of the appellants by the latter's stature, and on the further ground that the cartridges and some of the bullets found in the premises had been fired from the Llama pistol of Mallillin, held that the crime of robbery with homicide had been committed by the accused-appellants herein, and sentenced them as above indicated.

In this court the attorneys for the appellants contend that inasmuch as Mallillin's confession was obtained by a promise made by Constabulary Lieutenant Panis that Mallillin would be excluded from the information and made a State witness, Mallillin's confession is not admissible against him and neither should it be admissible against the appellants herein. It is evident that counsel misunderstands the application of the principle in evidence that a confession secured through promise of immunity is not admissible. The evidence submitted against the appellants is not the confession made by Mallillin; it is his testimony given in open court. There is, therefore, no occasion to invoke the principle of evidence in question.

The most important claim of the defendants-appellants is that inasmuch as Mallillin was an accomplice in the crime and his testimony contains flaws in many particulars, the maxim *falsus in uno falsus in omnibus* should be applied to the whole of his testimony, and the judgment of conviction would then have no leg to stand on. There are certainly many points or particulars in Mallillin's testimony which can not stand careful scrutiny. First of all, we have the supposed compulsion or hold-up which he claims he was subjected to. Mallillin admits that the defendants-appellants had been his companions in various games, like poker, "pekyo", etc. Then there is the circumstance that the supposed hold-up took place in the center of the town. According to some defense witnesses, Mallillin had also been telling of robberies that might take place in town. It is not unreasonable, therefore, to conclude that Mallillin was not an unwilling companion in the commission of the crime.

But, on the other hand, we find that his testimony is corroborated by evidence worthy of credit. That he was present on the occasion of the robbery can not be denied, because his Llama pistol was proven to have been fired at the scene of the robbery, as cartridges and bullets proved to have been fired from the said pistol had been found in the house where the robbery was committed. And the fact that appellants had been companions of Mallillin in many gambling games points to the close acquaintance between them and their unity of purpose as well. While his story that it was not he who furnished the data about the climbing of the house can not be believed, as he must have known the house and its surroundings, his statement that Juanito Dasig and Sergio Eduardo were the ones who went inside the house is corroborated by the inmates of the house to the effect that only two of the robbers entered the house.

Again, the testimony about the different arms used, a carbine in the possession of Dayao, a pistol given Eduardo by Gabuni — these facts are corroborated by the finding of .22 caliber slugs and empty shells in the heart of the victim and in the house and

in the premises. The testimony of Mallillin that Gabuni carried a .45 caliber pistol, which was his service pistol as chief of police, is also untrue because the examination of the .45 caliber bullet found in the premises shows that it was not fired from the service pistol of Gabuni. But Mallillin's assertion may be due to an innocent error on his part. He perhaps thought that the pistol that Gabuni carried was his service pistol. But Gabuni may have planned to avoid identification by using a firearm different from that which he used as member of the police force.

Then there is the corroboration of the testimony of Mallillin given by Andres Bumanglag, whom the trial court considered as a trustworthy witness. We find nothing from the record which would justify us in reversing the appraisal of the above testimony and the credit given this corroborating witness by the trial court.

It has been stated that the rule (*falsus in uno, falsus in omnibus*) invoked is not a mandatory rule of evidence, but rather a permissible one, which allows the jury or the court to draw the inference or not to draw it as circumstances may best warrant. (70 C.J. 783.) The unbelievable allegation of Mallillin, that he was forced into joining the band against his will, arises from the natural desire of an accomplice to shift the blame to his co-conspirators and exculpate himself; while his assertion that the gun Gabuni carried was his service pistol may be an innocent mistake on Mallillin's part. His claim that it was Bumanglag who indicated where access to the victim's house may be had may also be untrue, because Mallillin had been said to have been in the house. Do these flaws and defects render his testimony wholly inadmissible under the rule invoked?

We take advantage of this opportunity to explain the true scope of of this much invoked and abuse rule (of *falsus in uno, falsus in omnibus.*) Professor Wigmore states that this rule ceased to be the rule in England as early as the beginning of the eighteenth century. He criticizes the broad rule as unsound, because not true to human nature; that because a person tells a single lie, he is lying throughout his whole testimony, or that there is strong possibility that he is so lying. The reason for it is that once a person knowingly and deliberately states a falsehood in one material aspect, he must have done so as to the rest. But it is also clear that the rule has its limitations, for when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted. Because though a person may err in memory or in observation in one or more respects, he may have told the truth as to others. (III Wigmore, Secs. 1009-1015, pp. 647-683.) There, are, therefore, these requirments for the application of the rule, i.e., that the false testimony is as to a material point, and that there should be a conscious and deliberate intention to falsify. (Lyric Film Exchange Inc. vs. Cowper, 1937, 36 O. G. 1642.)

The rule is also carefully considered in the case of The Santisima Trinidad, 7 Wheat. 283, 5 L. Ld. 454, thus:

> "Where a party speaks to a fact in respect to which he cannot be presumed liable to mistake, as in relation to the country of his birth, or his being in a vessel on a particular place, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood; and courts of justice under such circumstances, are bound upon principles of law and morality and justice to apply the mixim falsus in uno, falsus in omnibus. What ground of judicial belief can there be left when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood?"

In the case of Godair v. Ham National Bank, 80 N.E., 407, the Supreme Court of Illinois made the following very illuminating expression of the scope of the rule:

> "As to the second criticism, it has uniformly been held by this Court that the maxim, 'Falsus in uno falsus in omnibus,' should only be applied in cases where a witness has knowingly and willfully given false testimony. Chittenden v. Evans, 41 Ill. 251; City of Chicago v. Smith, 48 Ill. 107; United States Express Co. v. Hutchins, 58 Ill. 44; Pope v. Dodson, Id. 360 Guliher v. People, 82 Ill. 145; Swan v. People, 98 Ill. 610; Hoge v. People, 117 Ill. 35, 6 N.E. 796; Freeman v. Easly 117 Ill. 317, 7 N. E. 856; Overtoom v. Chicago & Eastern Illinois Railroad Co., 81 Ill. 323, 54 N. E. 898; Matthews v. Granger, 196 Ill. 164, 63 N. E. 658."
>
> "In City of Chicago v. Smith, *supra*, on page 108 of 48 Ill., it was said: 'As to the eight instructions asked by the defendant and refused, we are of opinion, under the authority of the case of Brennan v. People, 15 Ill. 511, it should not have been given. There the court say it does not follow, merely because a witness makes an untrue statement, that his entire testimony is to be disregarded. This must depend on the motive of the witness. If he intentionally swears falsely as to one matter, the jury may properly reject his whole testimony as unworthy of credit. But, if he makes a false statement through mistake or misapprehension, they ought not to disregard his testimony altogether. The maxim, 'Falsus in uno falsus in omnibus,' should only be applied in cases where a witness willfully and knowingly gives false testimony."
>
> "And in Pope v. Dodson, *supra*, on page 365 of 58 Ill.: 'The tenth instruction in the series given for appellee is palpably erroneous. It told the jury that ,if the witness Lovely, 'has sworn falsely in any material statement,' the jury might disregard her entire statement except so far as it was corroborated. A witness cannot be discredited simply on the ground of an erroneous statement. It is only where the statements of a witness are willfully and corruptly false in regard to material facts that the jury are authorized to discredit the entire testimony. The most candid witness may innocently make an incorrect statement, and it would be monstrous to hold that his entire testimony, for that reason, should be disregarded.' This statement was quoted with approval in Matthews v Granger, *supra*, on page 72 of 196 Ill., on page 661 of 63 N.E."
>
> "In Guliher v. People, supra, the court instructed the jury that, if they believed the defendant had 'been contradicted on a material point,' then the jury had the right to disregard his whole testimony unless corroborated by other testimony. The court said (page 146 of 82 Ill.): 'The instruction was clearly erroneous. When analyzed, it plainly tells the jury that 'if they believe, from the evidence, that Alfred F. Foote has been contradicted on a material point, then the jury have a rignt to disregard his whole testimony unless corroborated by other testimony.' This is not the law . . . . If the witness, whether defendant or otherwise, is shown, by proof, to have sworn willfully and knowingly false on any material matter, his evidence may be rejected so far as it is not corroborated . . . . The mere fact, however, that he is contradicted as to some material matter is not enough to warrant the rejection of his evidence altogether.' "
>
> "In Overtoom v. Chicago & Eastern Illinois Railroad Co., *supra*, the court instructed the jury that 'if they believe any witness has testified falsely, then the jury may disregard such witness' testimony except in so far as it may have been corroborated.' In disposing of this instruction the court said (page 330 of 181 Ill., page 901 of 54 N.E.): 'A witness may have testified falsely upon some matter inquired about from forgetfulness or honest mistake, and in such case the jury would not be authorized to disregard his entire testimony, whether corroborated or not. It is the corrupt motive, or the giving of false testimony knowing it to be false, that authorizes a jury to disregard the testimony of a witness and the court to so instruct them.' "

With the above limitations of the rule in mind, it is clear that the maxim should not apply in the case at bar, for three reasons. First, there is sufficient corroboration on many grounds of the testimony. Second, the mistakes are not on the very material points. Third, the errors do not arise from an apparent desire to pervert the truth, but from innocent mistakes and the desire of the witness to exculpate himself though not completely.

The next legal question to decide is whether the credible evidence submitted, together with that adduced on behalf of the defendants, proves beyond reasonable doubt that it was the three appellants who participated in the commission of the crime. The evidence submitted by the appellants of their defenses of alibi are not satisfactory to use. That presented by appellant Juanito Dasig, which consists of the testimony of a nurse, that on the night

in question Dasig was in his house because his wife was suffering from stomach ache, is not satisfactory for the reason that the nurses did not positively state that the date when she went to attend Dasig's wife was December 23, 1949. This date was included in the leading questions propounded by counsel for appellants, where the date is insidiously joined with another fact and witness' affirmative answer may refer to the more important fact contained in the answer, not to the date. Thus, the first question asked was as follows:

> Q Do you remember having attended to the wife of Juanito Dasig sometime or around December 23, 1949?
> A Yes, sir.
> (t.s.n., p. 174)

The affirmative answer may well mean that she did actually attend, and may not imply that she did so on December 23, 1949. Another question asked was:

> Q How many days previous to that trip of yours on December 24, 1949? Was it the day previous?
> A Previous.
> (t.s.n., p. 176)

This question is a leading question. The witness also connects the night of the robbery with a trip supposedly made by her with one Dr. Modales. But as to this occasion of the trip, her answer as to the date is also ambiguous, thus:

> Q Do you remember the date of that trip of yours with Dr. Modales when you left him in Antatet?
> A *It seems to me* it was on December 24, 1949.
> (t.s.n., p. 175; underscoring ours)

On cross-examination, however, this witness testified that she never keeps a record of the cases that she attends to every day, and on being asked what cases she attended in December, 1949, she answered that she can not tell unless she saw her record. Its date, therefore, December 23, 1949, was not remembered by her but put into her mind by the leading question of counsel. To convince the court that the attendance took place on December 23rd, it was necessary for her to have shown that that date appeared in the record that she kept.

The alibi presented by Gabuni is to the effect that on December 23, he and Sergeant Tamani were together the whole day and evening, and during the evening Gabuni stayed at home. That Gabuni and Sergeant Tamani should stay in a barrio two kilometers away, on patrol, from nine in the morning to six in the evening, or fully nine hours, is hard to understand. For them to spend four more hours drinking and eating together in a restaurant, evidently without their returning to their offices to report the results of their supposed mission, is still harder to believe. But for them to eat again at the home of Gabuni, after they had already eaten in a restaurant, is the height of improbability. Gabuni must have been on vacation that day, not on duty. If Gabuni was really and actually on patrol on that day, why was not the police blotter submitted? But even if the above story, improbable as it is, were assumed to be true, and his claim that he was at his house at ten in the evening and woke up at six in the morning, also true, it is still not impossible for him to have gone down the house after ten o'clock in the evening to join in the commission of the robbery, and come back at home in time to be there and wake up at six o'clock in the following morning.

Neither can the defense of alibi presented by appellant Marcelino Dayao stand the test of careful scrutiny. That Dayao was with his witnesses on certain days and on the occasions mentioned, in the case of witness Silverio Anies and Juana Molina on the occasion of the presentation of the latter's claim, and in the case of witness Daniel Yuson on the occasion of a night of gambling, may be assumed to be true. But their assertion that it was on the precise date, December 23, 1949, that they saw or were with Dayao is difficult to believe. Human memory on dates or days is frail, and unless the day is an extraordinary or unusual one for the witness, there is no reasonable assurance of its correctness. Dayao's witness did not prove that some extraordinary or unusual thing had happened on that day, that would have made them remember it. As to Anies, the presentation of claims is admitted by him to be a common occurrence, such that he had to admit he can not remember the dates when other similar applicants saw him. As to witness Yuson, the playing of mahjong was also a common pastime. Neither Anies nor Yuson presented any writing or book entry where the event or occasion they mentioned took place. The trial court did not believe their testimony, and we are unable to find that its conclusion is not borne out by human experience.

Having found that sufficient admissible evidence, worthy of credit, has been adduced to prove beyond reasonable doubt that the defendants-appellants were the ones who perpetrated the robbery in question, and the evidence with which they sought to prove their defenses of alibi having been found to be unsatisfactory, we must affirm, as we hereby affirm, the judgment appealed from, with costs against the appellants.

So ordered.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and *Bautista Angelo. — J.J.* concur.

III

Leopoldo Gonzales, Petitioner, vs. Hon. Secretary of Labor, et al., Respondents, G. R. No. L-6409, February 5, 1954.

EVIDENCE; WHEN THE PRIVILEGE AGAINST SELF-INCRIMINATION CAN BE INVOKED; CASE AT BAR. — G filed with the Wage Administration Service a claim for overtime pay in the total sum of ₱13,212.59 against his employer S. To establish his claim, G had S summoned to the witness stand and put under oath. But before any question could be propounded to him, S invoked his constitutional right not to be compelled to be a witness against himself, calling attention to the fact that the law on overtime pay provides a penalty for its violation. HELD: As stated in Jones on Evidence (Vol. 6, pp. 4926-4927), a person who has been summoned to testify "cannot decline to appear, nor can he decline to be sworn as a witness" and "no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and, generally speaking, at that time only, the claim of privilege may properly be interposed."

Petitioner in his own behalf.

Anastacio R. Teodoro, Solicitor General Juan R. Liwag and *Assistant Solicitor General Francisco Carreon* for respondents.

DECISION

REYES, *J.*:

On June 23, 1952, the petitioner Leopoldo Gonzales filed with the Wage Administration Service a claim for overtime pay in the total sum of ₱13,212.59 against his employer, the respondent Sy Kot. Upon the case being submitted to the WAS (Wage Administration Service) for investigation and arbitration, the claimant, to establish his claim, had Sy Kot summoned to the witness stand and put under oath. But before any question could be propounded to him, Sy Kot invoked his constitutional right not to be compelled to be a witness against himself, calling attention to the fact that the law on overtime pay provides a penalty for its violation. Considering the point well taken, the investigator ordered Sy Kot's withdrawal from the witness stand. The ruling was, upon appeal, sustained by the Secretary of Labor in his decision of November 17, 1952.

Suing for a writ of certiorari, petitioner asks that the ruling be annulled, contending that the same is illegal and arbitrary and made with grave abuse of discretion.

Except in criminal cases, there is no rule prohibiting a party litigant from utilizing his adversary as a witness. As a matter of fact, section 83 of Rule 123, Rules of Court, expressly authorizes a party to call an adverse party to the witness stand and interrogate him. This rule is, of course, subject to the constitutional injunction not to compel any person to testify against himself. But it is established that the privilege against self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for a criminating answer is propounded. This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in Jones on Evidence (Vol. 6, pp. 9426-4927), a person who has been summoned to testify "cannot decline to appear, nor can he decline to be sworn as a witness" and "no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and, generally speaking, at that time only, the claim of privilege may properly be interposed."

The point raised by the Solicitor General on behalf of the

respondent Secretary of Labor that petitioner's remedy is to appeal to the President of the Philippines is not well taken. Section 7 of the law creating the WAS (Rep. Act No. 602) expressly authorizes any person aggrieved by an order of the Secretary of Labor to obtain a review of such order in the Supreme Court.

Wherefore, the petition is granted and the ruling or order complained of annulled and set aside. Without costs.

Paras, Pablo, Bengzon, Padilla, Montemayor, Jugo; Bautista Angelo and *Labrador. — J.J., concur.*

IV

Nieves Duran Embate, Plaintiff-Appellee, versus Rafael F. Penolio Defendant-Appellant, G. R. No. L-4942, promulgated on September 23, 1953, *per Labrador, J.*

1. CONTEMPT FOR FAILURE TO COMPLY WITH AN ORDER OF THE COURT GRANTING ALIMONY; CASE AT BAR. — A motion for contempt was filed because of the defendant's failure to pay the alimony for his child as ordered by the court. The defendant filed his answer to the motion alleging that he was out of work for sometime and that he was earning only ₱150.00 a month and that plaintiff had received some war damage compensation. The court did not hear the motion upon request of the parties who alleged that there was a possible amicable settlement of their differences. Thereafter plaintiff's attorney set the motion for contempt for hearing, giving notice thereof by registered mail to the defendant's counsel. The defendant did not appear at the hearing. The court issued an order giving him 48 hours to comply with the order directing him to support his child or be placed under arrest. A motion for reconsideration of the order was filed by the defendant alleging that he was not able to attend the hearing for the motion for contempt because he was informed by the clerk of court that the judge thereof was on vacation and therefore he did not have an opportunity to be heard before entering the order of contempt. A hearing for this motion for reconsideration was held. Thereafter the court denied the same. *Held*: The appellant was given an opportunity to answer and he did file one. Then the motion to declare him for contempt was set for hearing by the appellee in accordance with the rules of court. It is not necessary that the court itself order the motion to be set for hearing, as the pre-requisite therefor, because the notice given by the parties was sufficient. As the motion was heard after this notice, it cannot be said that the hearing was held without due process of law. What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard.
2. JUDGMENT AWARDING SUPPORT; AMICABLE SETTLEMENT. — A judgment awarding support may be modified. But any attempt at amicable settlement thereon after the final judgment of support, cannot *per se* suspend said final judgment.
3. JUDGMENT; ITS ENFORCEABILITY. — Judgments are final and solemn pronouncements made after trial and deliberation, and the rights and obligations fixed therein may not be modified except in the same form and manner in which they are arrived at; and while they stand unmodified they must be enforced and respected by the parties.

Felixberto M. Serrano for appellant.
Paz V. Inocencio for appellee.

DECISION

LABRADOR, *J.*: ,

This is an appeal against an order of the Court of First Instance of Rizal, ordering defendant-appellant to pay plaintiff-appellee or deposit with its clerk of court of ₱712.62 within the period of forty eight hours, otherwise he will be placed under arrest until he complies with the order.

Plaintiff brought this suit to secure support for a minor six years of age, a natural child of plaintiff and defendant, who had lived together as common-law husband and wife from January, 1943 to January, 1949. In 1949 defendant abandoned plaintiff and the child, married another woman, and since then failed to give support to the child. The record discloses that defendant had to be summoned by publication, as his whereabouts could not be located. It does not appear from the record of the case that the summons was published, or that the defendant ever filed any answer, but on September 28, 1949 judgment was rendered by the court *a quo* ordering the defendant to give the child a monthly support of ₱75 beginning January 10, 1949. The defendant received copy of this decision on January 23, 1950, and appears to have given to plaintiff for the maintenance of the child the sum of ₱290 up to January 16, 1951. On this date, plaintiff presented a "motion for contempt" to require defendant to pay her ₱560, which she had contracted as an indebtedness to support the child. The motion was called for hearing on January 27, 1951, but its consideration was postponed in the court's order "until further assignment or petition of either of the parties," "who are on the way to a possible amicable settlement of their differences."

On February 6, 1951, plaintiff's attorney petitioned the court that the "motion for contempt" be set for hearing on February 24, 1951, and pursuant thereto the court, on February 22, 1951, set the case for hearing on February 24, 1951 and ordered the defendant to answer the motion on the same date. The defendant filed his answer on the day fixed, alleging that he was in no position to give support to the child because he was out of work for some time, that he was earning only ₱150 a month, and that plaintiff had received some war damage compensation. The court did not then resolve the motion, but granted a postponement "until further petition of either of the parties or until further assignment", upon agreement of the parties, "who need more time within which to consider a possible amicable settlement of their differences."

On April 20, 1951 plaintiff's attorney petitioned the clerk of court to set the motion for contempt for hearing on April 25, 1951, giving notice thereof by registered mail to defendant's counsel. At the same time, she caused the Manager of the San Miguel Brewery, under whom defendant was working, to be summoned as a witness. On April 25, 1951, the court entered the order now appealed from, requiring the defendant to pay ₱712.62 within 48 hours, or be placed under arrest. Motion to set aside this order was filed by defendant's counsel on April 26, 1951. It is stated in this motion that counsel did not believe that the motion was going to be heard as the clerk of court had informed him that, in all probability, the motion was not to be called for hearing because of the absence of the presiding judge, who was on vacation. The motion also claims that the judgment granting support had been suspended temporarily by the court pending the amicable settlement, and that the defendant should have been afforded opportunity to be present, the notice to set the motion for hearing not being sufficient to give this opportunity, but that a court order setting the case for hearing should previously have been issued. This motion was heard, and on April 28, 1951 the court denied it. The defendant has appealed against the order of April 25, 1951 to raise only questions of law.

One contention of the appellant is that the order of the trial court of April 25, 1951 was issued without due process of law, for the reason that the respondent was not given an opportunity to be heard, and the order was issued without any lawful hearing. It is argued that the request of counsel for plaintiff that his motion be heard did not *per se* authorize the court to hear the case as prayed for. We find no merit in this argument. First, the appellant was given an opportunity to answer, and he did file one. Then the motion to declare him in contempt was set for hearing by the appellee, notice of the same being made in accordance with Section 4, 5 and 6 of Rule 26 of the Rules of Court. It is not necessary that the court itself order the motion to be set for hearing, as a pre-requisite therefor, because the notice given by the party was sufficient. As the motion was heard after this notice, and strictly in compliance with the above provisions of the Rules of Court, it can not be said that the hearing was held without due process of law. What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard. Besides, the adverse party was heard on his motion for reconsideration; this constitutes sufficient opportunity to be heard (Borja, et al. vs. Tan, etc. et al., G. R. No. L-6108, promulgated on May 25, 1953.)

It is also contended that, inasmuch as there were attempts to effect an amicable settlement, the judgment of the court awarding ₱712.62 to the plaintiff should be considered suspended until the court declares that such settlement can not be arrived at. In support of this contention, it is argued that a judgment for sup-

port may be modified any time and, therefore, may be reduced or increased, and that it becomes necessary for the court, before enforcing any judgment for support, to give the respondent full opportunity to be heard. It is true that a judgment awarding support may be modified. But any attempt at amicable settlement thereon, after a final judgment of support, can not *per se* suspend said final judgment. It is superfluous for us to consider the objection as to lack of opportunity, because, as above shown, such opportunity was given in accordance with the rules.

As far as respondent is concerned, the purpose that he sought by the amicable settlement seems to be a reduction of the amount fixed as support for the minor, on the ground that his salary was insufficient. But the trial judge heard the respondent's employer and was not impressed by respondent's excuse, and found that the amicable settlement was part of delaying tactics employed by respondent. But whatever purpose any of the parties may have had, the judgment, which had already become final and executory and was actually sought to be enforced, even if it was a support judgment, could not be considered suspended by the attempt at amicable settlement. The fact that it was suggested by the judge did not mean that the judgment should be modified. His evident intention in making the suggestion was to prevent friction between the parties and delay, and encourage expeditious payment of the support. Judgments are formal and solemn pronouncements made after trial and deliberation, and the rights and obligations fixed therein may not be modified except in the same form and manner in which they are arrived at; and while they stand unmodified they must be enforced and respected by the parties

It should be noted that by the proceedings in this appeal, the respondent has secured what he had wanted, a delay in the enforcement of the order to grant immediate support. More than two years have now elapsed, since he was ordered to pay the support within forty eight hours. Further delay would cause an injustice.

The appeal is hereby dismissed and the order affirmed, with costs against respondent.

So ordered.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo. — J.J. concur.

V

Valentin Aligarbes, Plaintiff-Appellant, vs. Juan Aguilar, et al., Defendants-Appellees, G. R. No. L-5736, January 30, 1954.

1. APPEAL; MOTION TO APPEAL IN FORMA PAUPERIS; CASE AT BAR. — The justice of the peace court of Gandara. Samar, allowed A to sue as pauper in a forcible entry case. After due hearing, the complaint was dismissed. Within the reglementary period he filed a motion to appeal in *forma pauperis*, together with a notice of appeal to the Court of First Instance. The justice of the peace by written order of July 25, 1950, declared he had no authority to permit the plaintiff to litigate as pauper on appeal and that such permission may only be granted by the Court of First Instance. However, the same judge "transmitted" the records to the superior court "for its proper determination in the premises." The Court of First Instance held that because neither the required fee for docketing the case was paid nor an order from it to docket the same without fee obtained, the docketing was illegal, it being in contravention of the provisions of law. HELD: The justice of the peace had the authority to permit A to appeal as pauper. Wherefore, his mistake as to the extent of his powers should not prejudice herein plaintiff. Where failure of appellants to file an appeal bond on time is due to an error of the justice of the peace, they will not be deprived of their right to be heard in the Court of First Instance.
2. RULES OF PROCEDURE; WHEN LITERAL OBSERVANCE THEREOF CAN BE OVERLOOKED. — The lapse in the literal observance of a rule of procedure can be overlooked when it does not involve public policy and arises from an honest mistake.

Fernando de los Santos for appelant.

Alfredo M. Sabater for appellee.

DECISION

BENGZON, J.

The justice of the peace court of Gandara, Samar, allowed the plaintiff Valentin Aligarbes to sue as pauper in a forcible entry case. After due hearing, the complaint was dismissed. Within the reglementary period he filed a motion to appeal in *forma pauperis*, together with a notice of appeal to the court of first instance. The justice of the peace by written order of July 25, 1950, declared he had no authority to permit the plaintiff to litigate as pauper on appeal and that such permission may only be granted by the court of first instance. However the same judge "transmitted" the records to the superior court "for its proper determination in the premises".

On August 3, 1950 the clerk of the Samar court of first instance addressed to the defendants a letter of the following tenor:

> "In accordance with the provisions of Act 3171 in relation with Section 7, Rule 40. of the Rules of Court, you are hereby notified that the above-entitled civil case has been entered on this date in the docket of this court in view of the appeal taken by the plaintiff from the decision of the Justice of the Peace of Gandara, Samar.
>
> "In view hereof, you are required to file before this court your answer to the complaint or any other pleadings therein within fifteen (15) days from receipt of this notice. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.
>
> "Witness the Honorable Fidel Fernandez, Judge of said court, this 3rd day of August, 1950."

The defendants duly answered. During the hearing and while the plaintiff was testifying, the trial judge issued this order:

> "This case was appealed from the Justice of the peace Court of Gandara. No docket fees were paid by the appelant on the ground that he presented a motion before the Justice of the Peace Court that he be allowed to appeal this case as pauper. The Justice of the Peace Court, in its order remanded this case to this court but with injunction that such petition to appeal as pauper be presented before this Court of First Instance who has the authority to consider it. Such was not done. The required fee for docketing this case was not paid. Neither was an order from this court to docket the same without fee obtained.
>
> "But in spite of the failure to pay the fee and to obtain the order of this court, the case was docketed.
>
> "This court is of the opinion and so holds that the docketing was illegal, it being in contravention of the provisions of law.
>
> "Inasmuch as the period for appeal has already expired, to return this case to the Justice of the Peace Court of origin, or to allow the plaintiff to pay the docketing fee or secure the order from this Court to allow it a pauper's appeal would be void as this Court has not acquired jurisdiction over this case. The judgment of the Justice of the Peace Court has already become final.
>
> "Therefore, the court orders that this case be returned to the Justice of the Peace Court of Gandara for the execution of the judgment."

His motion for reconsideration having been denied, the plaintiff interposed this petition for review, which the court *a quo* subsequently certified as a pauper's appeal.

The expediente clearly shows the appellant's lack of means. And, in view of the constitutional mandate that poverty shall not deny any person free access to the courts, we are impelled to hold that under the circumstances it was a mistaken exercise of discretion to dismiss the case for non-payment of fees.

The justice of the peace granted permission to litigate as pauper by virtue of sec. 22 Rule 3 of the Rules of Court under which said officer could have subsequently excused the poor litigant from compliance with the requisites involving payment of money to perfect his appeal (Lacson v. Tabarres 68 Phil. 317). In other words the justice of the peace had the authority to permit Alegarbes to appeal as pauper. Wherefore, his mistake as to the extent of his powers should not prejudice herein plaintiff. [1] True, the Lacson decision says the appellant should also ask permission from the court of first instance to continue or substantiate his appeal in *forma pauperis*; but Alegarbes probably thought it unnecessary to take further steps, the clerk having already docketed the cause without payments of fees as shown by the letter requiring de-

fendants to answer.

Supposing then that, strictly speaking, the controversy was not before the court due to non-payment of fees, "the lapse in the literal observance of a rule of procedure could be overlooked as it did not involve public policy, and arose from an honest mistake"[2].

It would now be unfair to hold that the decision of the justice of the peace has become final. The plaintiff took all the steps necessary to perfect his appeal; and it was only thru the error of said officer, and of the clerk of court that the matter of court fees has not been attended to. There being no question as to appellant's inability to pay, he should be afforded opportunity to comply with procedural requirements to enable him to prosecute his suit.

In view of the foregoing, the record will be returned so that the justice of the peace may pass on the petition to appeal as pauper, and the court of first instance may also act thereafter, upon request by the litigant for exemption from payment of fees. So ordered, without costs.

Paras, Pablo, Padilla, Montemayor, Reyes, Jugo and Bautista Angelo. J.J. concur

Mr. Justice Labrador took no part.

(1) Where failure of appellants to file an appeal bond on time is due to an error of the justice of the peace they will not be deprived of their right to be heard in the court of first instance. (Alandy v. San Jose 45 O.G. No. 7 p. 2829)

(2) (Ethel case and Minna Hartz v. Jugo 43 O.G. No. 11, 4620)

VI

Marvel Building Corporation et als., Plaintiffs-Appellees, vs. Saturnino David, in his capacity as Collector, Bureau of Internal Revenue, Defendant-Appellant, G. R. No. L-5081, Feb. 24, 1954.

1. EVIDENCE; TESTIMONY OF HANDWRITING EXPERT MUST BE RECEIVED WITH CAUTION.—Attempt was also made by the plaintiffs to show by expert evidence that the endorsement could have been superimposed, i.e., that the signatures made on other papers and these were pasted and thereafter the documents photographed. Judicial experience is to the effect that expert witnesses can always be obtained for both sides of an issue, most likely because expert witnesses are no longer impermeable to the influence of fees (II Wigmore, Sec. 563 (2), p. 646). And if parties are capable of paying fees, expert opinion should be received with caution.
2. ID; WHERE THE OPINION OF THE EXPERTS SHOWS MERE POSSIBILITY THAT THE DISPUTED SIGNATURE IS NOT GENUINE AND IS CONTRADICTED BY VARIOUS CIRCUMSTANCES.—In the case at bar, the opinion on the supposed superimposition was merely a *possibility*, and we note various circumstances which prove that the signatures were not superimposed and corroborate defendant's claim that they were genuine. In the first place, the printed endorsement contains a very heavy line at the bottom for the signature of the endorsee. This line in almost all of the endorsements is as clear as the printed letters above it, and at the points where the letters of the signature extend down and traverse it (the line), there is no indication that the line is covered by a superimposed paper. Again in these places both the signatures and the lines are clear and distinct where they cross one another. Had there been superimpositions the above features could not have been possible.

Solicitor General for appellant.

Rosendo J. Tansinsin for appellees.

DECISION

LABRADOR, *J.*:

This action was brought by plaintiffs as stockholders of the Marvel Building Corporation to enjoin the defendant Collector of Internal Revenue from selling at public auction various properties described in the complaint, including three parcels of land, with the buildings situated thereon, known as the Aguinaldo Building, the Wise Building, and the Dewey Boulevard-Padre Faura Mansion, all registered in the name of said corporation. Said properties were seized and distrained by defendant to collect war profits taxes assessed against plaintiff Maria B. Castro (Exh. B). Plaintiffs allege that the said three properties (lands and buildings) belong to the Marvel Building Corporation and not to Maria B. Castro, while the defendant claims that Maria B. Castro is the true and sole owner of all the subscribed stock of the Marvel Building Corporation, including those appearing to have been subscribed and paid for by the other members, and consequently said Maria B. Castro is also the true and exclusive owner of the properties seized. The trial court held that the evidence, which is mostly circumstantial, fails to show to its satisfaction that Maria B. Castro is the true owner of all the stock certificates of the corporation, because the evidence is susceptible of two interpretations and an interpretation may not be made which would deprive one of property without due process of law.

It appears that on September 15, 1950, the Secretary of Finance, upon consideration of the report of a special committee assigned to study the war profits tax case of Mrs. Maria B. Castro, recommended the collection of ₱3,593,950.78 as war profits taxes for the latter, and on September 22, 1953 the President instructed the Collector that steps be taken to collect the same (Exhs. 114, 114-A to 114-D). Pursuant thereto various properties, including the three above mentioned, were seized by the Collector of Internal Revenue on October 31, 1950. On November 13, 1950, the original complaint in this case was filed. After trial, the Court of First Instance of Manila rendered judgment ordering the release of the properties mentioned, and enjoined the Collector of Internal Revenue from selling the same. The Collector of Internal Revenue has appealed to this Court against the judgment.

The following facts are not disputed, or are satisfactorily proved by the evidence:

The Articles of Incorporation of the Marvel Building Corporation is dated February 12, 1947 and according to it the capital tock is ₱2,000,000, of which ₱1,025,000 was (at the time of incorporation) subscribed and paid for by the following incorporators:

Maria B. Castro	250	shares —	₱250,000.00
Amado A. Yatco	100	" —	100,000.00
Santiago Tan	100	" —	100,000.00
Jose T. Lopez	90	" —	90,000.00
Benita Lamagna	90	" —	90,000.00
C. S. Gonzales	80	" —	80,000.00
Maria Cristobal	70	" —	70,000.00
Segundo Esguerra, Sr.	75	" —	75,000.00
Ramon Sangalang	70	" —	70,000.00
Maximo Cristobal	55	" —	55,000.00
Antonio Cristobal	45	" —	45,000.00
			₱1,025,000.00

Maria B. Castro was elected President and Maximo Cristobal, Secretary-Treasurer (Exh. A).

The Wise Building was purchased on September 4, 1946, the purchase being made in the name of Dolores Trinidad, wife of Amado A. Yatco (Exh. V), and the Aguinaldo Building, on January 17, 1947, in the name of Segundo Esguerra, Sr. (Exh. M). Both buildings were purchased for ₱1,800,000, but as the corporation had only ₱1,025,000, the balance of the purchase price was obtained as loans from the Insular Life Assurance Co., Ltd., and the Philippine Guaranty Co., Inc. (Exh. C).

Of the incorporators of the Marvel Building Corporation, Maximo Cristobal and Antonio Cristobal are half-brothers of Maria B. Castro, Maria Cristobal is a half-sister, and Segundo Esguerra, Sr. a brother-in-law, husband of Maria Cristobal, Maria B. Castro's half-sister. Maximo B. Cristobal did not file any income tax returns before the year 1946, except for the years 1939 and 1940, but in these years he was exempt from the tax. He has not filed any war profits tax return (Exh. 54). Antonio Cristobal, Segundo Esguerra, Sr. and Jose T. Lopez did not file any income tax returns for the years prior to 1946, and neither did they file any war profits tax returns (Exh. 52). Maria Cristobal filed income tax returns for the years 1929 to 1942, but they were exempt from the tax (Exh. 53). Benita A. Lamagna did not file any income tax returns prior to 1945, except for 1942 which was exempt. She did not file any war profits tax (Exh. 55). Ramon M. Sangalang did not file income tax returns up to 1945, except for the years 1936, 1937, 1938, 1939 and 1940. He has not filed any war profits tax return (Exh. 56). Santiago Tan did not file any income tax returns prior to 1945, except for the years 1938, 1939, 1940 and 1942, but all of these were exempt. He did not file any war profits tax return (Exh. 57). Amado A. Yatco did not file income tax returns prior to 1945, except for the years 1937, 1938, 1939, 1941 and 1942, but these were exempt. He did not file any war profits tax

return (Exh. 58).

Antonio Cristobal's income in 1946 was ₱15,630, and in 1947, ₱4,550 (Exhs. 59-60); Maximo B. Cristobal's income in 1946 is ₱19,759.10, in 1947, ₱9,773.47 (Exhs. 61-62); Segundo Esguerra's income in 1946 is ₱5,550, in 1947, ₱7,754.32 (Exhs. 63-64); Jose T. Lopez's income in 1946 is ₱20,785, in 1947, ₱14,302.77 (Exhs. 69-70); Benita A. Lamagna's income in 1945 is ₱1,559, in 1946, ₱6,463.36, in 1947, ₱6,189.79 and her husband's income in 1947 is ₱10 825.53 (Exhs. 65-68); Ramon M. Sangalang's income in 1945 is ₱5,500, in 1946, ₱18,300.00 (Exhs. 71-72); Santiago Tan's income in 1945 is ₱456, in 1946, ₱9,167.95, and in 1947, ₱7,620.11 (Exhs. 73-75); and Amado Yatco's income in 945 is ₱12,600, in 1946, ₱23,960, and in 1947, ₱11,160 (Exhs. 76-78).

In October, 1945 Maria B. Castro, Nicasio Yatco, Maxima Cristobal de Esguerra, Maria Cristobal Lopez and Maximo Cristobal organized the Maria B. Castro, Inc. with a capital stock of ₱100,000, of which Maria B. Castro subscribed for ₱99,600 and all the others for ₱100 each. This was increased in 1950 to ₱500,000 and Maria B. Castro subscribed ₱76,000 and the others ₱1,000 each (Exh. 126).

It does not appear that the stockholders or the board of directors of the Marvel Building Corporation have ever held a business meeting, for no books thereof or minutes of meeting were ever mentioned by the officers thereof or presented by them at the trial. The by-laws of the corporation, if any had ever been approved, has not been presented. Neither does it appear that any report of the affairs of the corporation has been made, either of its transactions or accounts.

From the book of accounts of the corporation, advances to the Marvel Building Corporation of ₱125,000 were made by Maria B. Castro in 1947, ₱102,916.05 in 1948, and ₱160,910.96 in 1949 (Exh 118).

The main issue involved in these proceedings is: Is Maria B. Castro the owner of all the shares of stock of the Marvel Building Corporation and the other stockholders mere dummies of hers?

The most important evidence presented by the Collector of Internal Revenue to prove his claim that Maria B. Castro is the sole and exclusive owner of the shares of stock of the Marvel Building Corporation is the supposed endorsement in blank of the shares of stock issued in the name of the other incorporators, and the possession thereof by Maria B. Castro. The existence of said endorsed certificates was testified to by witnesses Felipe Aquino, internal revenue examiner, Antonio Mariano, examiner, and Crispin Llamado, Under-Secretary of Finance, who declared as follows: Towards the end of the year 1948 and about the beginning of the year 1949, while Aquino and Mariano were examining the books and papers of the Marvel Building Corporation at its place of business, which books and papers were furnished by its Secretary, Maximo Cristobal, they came across an envelope containing eleven stock certificates, bound together by an Acco fastener, which (certificates) corresponded in number and in amount on their face to the subscriptions of the stockholders; that all the certificates, except that in the name of Maria B. Castro, were endorsed in blank by the subscribers; that as the two revenue agents could not agree what to do with the certificates, Aquino brought them to Undersecretary of Finance Llamado, who thereupon suggested that photostatic copies thereof be taken; that this was done, and the photostatic copies placed by him in his office safe; that Aquino returned the certificates that same day after the photostatic copies had been taken; that the photostatic copies taken are exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13; and that in July, 1950, copy-cat copies of the above photostats were taken, and said copy-cats are Exhibits 40-49.

Julio Llamado, bookkeeper of the Marvel Building Corporation from 1947 to May, 1948, also testified that he is the one who had prepared the original certificates, putting therein the number of shares in words in handprint; that the originals were given to him by Maria B. Castro for comparison with the articles of incorporation; that they were not yet signed by the President and by the Secretary-Treasurer when he had the certificates; and that after the checking he returned all of them to Mrs. Castro. He recognized the photostats, Exhibits 4 to 13 as photostats of the said originals. He also declared that he also prepared a set of stock certificates, similar to the certificates which were copied in he photostats, filling the blanks for the name of the stockholder, the number of shares, and the date of issue, and that the certificates he had prepared are Exhibits H, H-1 to H-7 and J (Exhs. 30-38). This set of certificates was made by him first and the set of which photostats were taken, a few days later.

The plaintiffs offered a half-hearted denial of the existence of the endorsed blank certificates, Maximo Cristobal, secretary of the corporation, saying that no investigation was ever made by Aquino and Mariano in which said certificates were discovered by the latter. They, however, vigorously attack the credibility of the witnesses for the defendant, imputing to the Llamados, enmity against Maria B. Castro, and to Aquino and Mariano, a very doubtful conduct in not divulging the existence of the certificates either to Lobrin, Chief Income Tax Examiner, or to the Collector of Internal Revenue, both their immediate chiefs. Reliance is also placed on a certificate, Exh. ", wherein Aquino and others declare that the certificates (Exhs. 30 to 38, or H. H-1 to H-7 and J) were regular and were not endorsed when the same were examined. In connection with this certificates examined were Exhs. 30 to 38, the existence or character of which are not disputed. But the statement contains nothing to the effect that the above certificates were the only ones in existence, according to their knowledge. Again the certificate was issued for an examination in September 1949, not by Aquino and Mariano at the end of 1948 or the beginning of 1948. It can not, therefore, discredit the testimonies of the defendant's witnesses.

As to the supposed enmity of the Llamados towards the plaintiff Maria B. Castro, we note that, supposing that there really was such enmity, it does not appear that it was of such magnitude or force as could have induced the Llamados to lie or fabricate evidence against her. It seems that the Llamados and Maria B. Castro were close friends way back in 1947 and up to 1949; but that at the time of the trial the friendship had been marred by misunderstandings. We believe that in 1948 and 1949 the Llamados were trusted friends of Maria B. Castro, and this explains why they had knowledge of her secret transactions. The younger Llamado even made advances for the hand of Maria B. Castro's daughter, and this at the time when as a bookkeeper he was entrusted with checking up the certificates of stock. When the older Llamado kept secret the existence of the endorsed certificates, the friendship between the two families was yet intact, hence, the existence of the endorsed certificates must have been kept to himself by the older Llamado. All the above circumstances reinforce our belief that the Llamados had personal knowledge of the facts they testified to, and the existence of this knowledge in turn renders improbable plaintiffs' claim that their testimonies were biased.

Attempt was also made by the plaintiffs to show by expert evidence that the endorsement could have been superimposed, i. e., that the signatures made on other papers and these were pasted and thereafter the documents photographed. Judicial experience is to the effect that expert witnesses can always be obtained for both sides of an issue, most likely because expert witnesses are no longer impermeable to the influence of fees (II Wigmore, Sec. 563 (2), p. 646). And if parties are capable of paying fees, expert opinion should be received with caution. In the case at bar, the opinion on the supposed superimposition was merely a *possibility*, and we note various circumstances which prove that the signatures were not superimposed and corroborate defendant's claim that they were genuine. In the first place, the printed endorsement contains a very heavy line at the bottom for the signature of the endorsee. This line in almost all of the endorsements is as clear as the printed letters above it, and at the points where the letters of the signature extend down and traverse it (the line), there is no indication that the line is covered by a superimposed paper. Again in these places both the signatures and the lines are clear and distinct where they cross one another. Had there been superimpositions the above features could not have been possible. In the second place, Maria B. Castro admitted having signed 25 stock certificates, but only eleven were issued (t.s.n., p. 662). No explanation is given by her why she had to sign as many as 25 forms when there were only eleven subscribers and eleven forms to be filed. This circumstance corroborate the young Llamado's declaration that two sets of certificates had been prepared. The nineteen issued must be Exhs. H, H-1 to H-7 and J., or Nos. 30 to 38,

and the stock certificates endorsed whose photostatic copies are Exhs. 4 to 13. It is to be remembered also, that it is a common practice among unscrupulous merchants to carry two sets of books, one set for themselves and another to be shown to tax collectors. This practice could not have been unknown to Maria B. Castro, who apparently had been able to evade the payment of her war profits taxes. These circumstances, coupled with the testimony of Julio Llamado that two sets of certificates were given to him for checking, show to an impartial mind the existence of the set of certificates endorsed in blank, thus confirming the testimonies of the defendant's witnesses, Aquino, Mariano and Crispin Llamado, and thus discrediting the obviously partial testimony of the expert presented by plaintiffs. The genuineness of the signatures on the endorsements is not disputed. How could the defendant have secured these genuine signatures? Plaintiffs offer no explanation for this, although they do not question them. It follows that the genuine signatures must have been made on the stock certificates themselves.

Next in importance among the evidence submitted by the defendant collector to prove his contention that Maria B. Castro is the sole owner of the shares of stock of the Marvel Building Corporation, is the fact that the other stockholders did not have incomes in such amounts, during the time of the organization of the corporation in 1947, or immediately thereto, as to enable them to pay in full for their supposed subscriptions. This fact is proved by their income tax returns, or the absence thereof. Let us take Amado A. Yatco as an example. Before 1945 his return were exempt from the tax, in 1945 he had ₱12,600 and in 1946, ₱23,000. He has four children. How could he have paid ₱100,000 in 1945 and 1946? Santiago Tan who also contributed ₱100,000 had no appreciable income before 1946, and in this year an income of only ₱9,167.95. Jose T. Lopez also did not file any income tax returns before 1940 and in 1946 he had an income of only ₱20,784, whereas he is supposed to have subscribed ₱90,000 worth of stock early in 1947. Benita Lamagna had no returns either up to 1945, except in 1942, which was exempt, and in 1945 she had an income of ₱1,550 and in 1946, ₱6,463.36. In the same situation are all the others, and besides, brothers and sisters and brother-in-law of Maria B. Castro. On the other hand, Maria B. Castro had been found to have made enormous gains or profits in her business such that the taxes thereon were assessed at around ₱3,000,000. There was, therefore, a *prime facie* case made out by the defendant collector that Maria B. Castro had furnished all the money that the Marvel Building Corporation had.

In order to meet the above evidence only three of the plaintiffs testified, namely, Maximo Cristobal, the corporation's secretary, who made the general assertion on the witness stand that the other stockholders paid for their shares in full, Maria B. Castro, who stated that payments of the subscriptions were made to her, and C. S. Gonzales, who admitted that Maria B. Castro paid for his subscription. After a careful study of the above testimonies, however, we find them subject to various objections. Maximo Cristobal declared that he issued provisional receipts for the subscriptions supposedly paid to him in 1946; but none of the supposed receipts was presented. If the subscriptions were really received by him, big as the amounts were, he would have been able to tell specifically, by dates and in fixed amounts, when and how the payments were made. The general assertion of alleged payments, without the concrete days and amounts of payment, are, according to our experience, positive indications of untruthfulness, for when a witness testifies to a fact that actually occurs, the act is concretely stated and no generalization is made.

With respect to Maria B. Castro's testimony, we find it to be as untruthful as that of Cristobal. She declared that the payments of the subscriptions took place between July and December, 1946, and that said payments were first deposited by her in the National City Bank of New York. A study of her account in said bank (Exh. 82), however, fails to show the alleged deposit of the subscriptions during the year 1946 (See Exhs. 83-112). This fact completely belies her assertion. As to the testimony of C. S. Gonzales that Maria B. Castro advanced his subscription, there is nothing in the evidence to corroborate it, and the circumstances show otherwise. If he had really been a stockholder and Maria B. Castro advanced his subscription, the agreement between him and Castro should have been put in writing, the amount advanced being quite considerable (₱80,000), and it appearing further that Gonzales is no close relative or confidant of Castro.

Lastly, it is significant that the plaintiffs, the supposed subscribers, who should have come to court to assert that they actually paid for their subscriptions, and are not mere dummies, did not do so. They could not have afforded such a costly indifference, valued at from ₱70,000 to ₱100,000 each, if they were not actual dummies. This failure on their part to take the witness stand to deny or refute the charge that they were mere dummies is to us of utmost significance. What could have been easier to disprove the charge that they were dummies, than for them to come to court and show their receipts and testify on the payments they have made on their subscriptions? This they, however, refused to do. They had it in their power to rebut the charges, but they chose to keep silent. The non-production of evidence that would naturally have been produced by an honest and therefore fearless claimant permits the inference that its tenor is unfavorable to the party's cause (II Wigmore, Sec. 285, p. 162). A party's silence to adverse testimony is equivalent to an admission of its truth (Ibid, Sec. 289, p. 175).

Our consideration of the evidence submitted on both sides leads us to a conclusion exactly opposite that arrived at by the trial court. In general the evidence offered by the plaintiffs is testimonial and direct evidence, easy of fabrication; that offered by defendant, documentary and circumstantial, not only difficult of fabrication but in most cases found in the possession of plaintiffs. There is very little room for choice as between the two. The circumstantial evidence is not only convincing; it is conclusive. The existence of endorsed certificates, discovered by the internal revenue agents between 1948 and 1949 in the possession of the Secretary-Treasurer, the fact that twenty five certificates were signed by the president of the corporation, for no justifiable reason, the fact that two sets of certificates were issued, the undisputed fact that Maria B. Castro had made enormous profits and, therefore, had a motive to hide them to evade the payment of taxes, the fact that the other subscribers had no incomes of sufficient magnitude to justify their big subscriptions, the fact that the subscriptions were not receipted for and deposited but were kept by Maria B. Castro herself, the fact that the stockholders or the directors never appeared to have ever met to discuss the business of the corporation, the fact that Maria B. Castro advanced big sums of money to the corporation without any previous arrangement or accounting, and the fact that the books of accounts were kept as if they belonged to Maria B. Castro alone — these facts are of patent and potent significance. What are their necessary implications? Maria B. Castro would not have asked to endorse their stock certificates, or be keeping these in her possession, if they were really the owners. They never would have consented that Maria B. Castro keep the funds without receipts or accounting, nor that she manages the business without their knowledge or concurrence, were they owners of the stocks in their own rights. Each and every one of the facts all set forth above, in the same manner, is inconsistent with the claim that the stockholders, other than Maria B. Castro, owned their shares in their own right. On the other hand, each and every one of them, and all of them, can point to no other conclusion than that Maria B. Castro was the sole and exclusive owner of the shares and that they were only her dummies.

In our opinion, the facts and circumstances duly set forth above, all of which have been proved to our satisfaction prove, conclusively and beyond reasonable doubt (Sec. 98, Rule 123 of the Rules of Court and Sec. 42 of the Provisional Law for the application of the Penal Code) that Maria B. Castro is the sole and exclusive owner of all the shares of stock of the Marvel Building Corporation and that the other partners are her dummies.

Wherefore, the judgment appealed from should be, as it hereby is, reversed and the action filed by plaintiffs-appellees, dismissed, with costs against plaintiffs-appellees.

So ordered.

Paras, Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, J.J., concur.

Justice Reyes took no part.

Eugenio Aquino, Petitioner, vs. Eulogio F. de Guzman, Judge of the Court of First Instance, Dagupan City, and Emiliana Mendoza, Respondents, G. R. No. L-5763, Sept. 28, 1953

PLEADING AND PRACTICE; APPEAL; CASE AT BAR. — This registration case has been tried by the judge jointly with a civil case, because the parties in the latter are the same as those of the registration case, and both parties in both cases were represented by the same attorneys. One single decision was entered in both cases. Judgment having been rendered against the petitioner in both cases, the attorney presented on June 19, 1951 a notice of appeal for both cases and a joint record on appeal for both cases also, and deposited an appeal bond. The appeal bond was receipted for in the civil case on June 30, 1951. No bond was deposited for the appeal in the land registration case until August 1, 1951. The record on appeal was approved but the court gave course only to the appeal in the civil case. Objection to the appeal in the registration case was presented and this was sustained by the court. *Held*: The contention that since the notice on appeal and the record on appeal were embodied together in a single document in both cases, the certification of the record on appeal in the civil case necessarily included that of the registration case, because the record on appeal in one case is inseparable from that of the other, is entirely without merit. The physical embodiment of both records on appeal into one single document does not make the two cases one, or relieve the petitioner of the obligation to file a bond in the other. The identities of both cases are preserved; the oneness of the record on appeal does not modify the nature of one or the other, or merge the registration case into the civil case.

Severino Dagdag for petitioner.

Primicias, Abad, Mencias & Castillo for respondents.

DECISION

LABRADOR, *J.*:

This is an original petition instituted in this court to compel the Court of First Instance of Pangasinan, Judge F. de Guzman, presiding, to allow the petitioner's appeal against its judgment in Land Registration Case No. 302, G.L.R.O. Record No. 1173 to the Court of Appeals. The record discloses that this case was tried by said judge jointly with Civil Case No. 10965, because the parties in the latter are the same as those of the registration case, and both parties in both cases were represented by the same attorneys. One single decision was entered in both cases. Judgment having been rendered against the petitioner in both cases, his attorney presented on June 19, 1951, a notice of appeal for both and a joint record on appeal for both cases also (bearing titles of both cases) and deposited an appeal bond of ₱60. This appeal bond was receipted for in the Civil Case No. 10965 on June 30, 1951 (Annex 4 of answer.) No bond was deposited for the appeal in the Land registration case until August 1, 1951 (Annex 5 of answer.) The record on appeal was approved, but the court gave course only to the appeal in the civil case. Objection to the appeal in the registration case was presented and this was sustained by the court, whereupon the present action was filed in this court.

The petitioner contends that since the notice of appeal and the record on appeal were embodied together in single documents in both cases, the certification of the record on appeal in the civil case necessarily included that of the registration case, because the record on appeal in one case is inseparable from that in the other. The contention is entirely without merit. The physical embodiment of both records on appeal into one single document does not make the two cases one, or relieve the petitioner of the obligation to file a bond in the other. The identities of both cases are preserved; the oneness of the record on appeal does not modify the nature of one or the other, or merge the registration case into the civil case.

But while we hold that there is no error of law committed by the court *a quo* in dismissing the appeal in the registration case, there are potent reasons why, in the exercise of its discretion, it should have decreed otherwise. One is the fact that the civil case is entirely dependent upon the registration case; no recovery of possession can be decreed in favor of, and no damages can accrue to, the plaintiff unless he is declared the owner of the property subject of both cases. When defendant, therefore, questioned plaintiff's right to the possession and to damages, he must have meant to question plaintiff's title to the property. The other reason is the fact that as the two cases were so inextricably related to each other, and they were tried jointly, and only one joint record on appeal presented, appellant's attorney or his client or both may have overlooked the need of filing two bonds, or thought that one was sufficient without the other. This constitutes an excusable oversight. Under these circumstances, the filing of the bond in 60 days should have been excused and the appeal in the civil case given due course and relief granted as authorized under the provisions of Rule 38. The petition is hereby granted, but petitioner should pay the costs.

Paras, Pablo, Bengzon. Padilla, Tuason, Montemayor, Reyes, Jugo and Bautista Angelo, J.J., concur.

VIII

Ty Kong Tin, Petitioner-Appellee, vs. Republic of the Philippines, Oppositor-Appellant, G. R. No. L-5609, February 5, 1954.

CIVIL CODE; CHANGE OR CORRECTION OF ENTRY IN THE CIVIL REGISTER; CASE AT BAR. — T filed a petition in the court of first instance alleging that all his children were born in Manila whose births were duly reported to the Civil Register by the midwife or doctor who had attended their births. By submitting the report it was made to appear therein that the citizenship of T was "Chinese" instead of "Filipino"; that the mistake were committed by the midwife or doctor without the knowledge or consent of T; therefore he prays that an order be issued directing the Civil Register to correct the pertinent portion of the civil register by making it appear therein that the petitioner as well as his children are Filipino citizens and not Chinese citizens as authorized by Article 412 of the new Civil Code. *HELD*: It is our opinion that the petition under consideration does not merely call for a correction of a clerical error. It involves a matter which concerns the citizenship not only of petitioner but of his children. It is therefore an important controversial matter which can and should only be threshed out in an appropriate action. The philosophy behind this requirement lies in the fact that "the books making up the civil register and all documents relating thereto shall be considered public documents and shall be prima facie evidence of the facts therein contained" (Article 410, new Civil Code, and if the entries in the civil register could be corrected or changed through a mere summary proceeding and not through an appropriate action wherein all parties who may be affected by the entries are notified or represented, we would set wide open the door to fraud or other mischief the consequence of which might be detrimental and far reaching.

DECISION

BAUTISTA ANGELO, *J.*:

This is a petition filed by Ty Kong Tin to correct certain mistakes which had allegedly been committed in the civil register of the Civil Registrar of the City of Manila concerning his citizenship.

On May 9, 1951, petitioner filed in the Court of First Instance of Manila a petition alleging that he is a Filipino citizen duly licensed to practice law in the Philippines; that all his children were born in the City of Manila whose births were duly reported to the civil registrar by the midwife or doctor who had attended their births but in submitting the report it was made to appear therein that the citizenship of petitioner was "Chinese" instead of "Filipino"; that the aforesaid mistakes were committed by the midwife or doctor without the knowledge or consent of petitioner who became aware thereof only when he asked for a certified copy of the birth certificates of his children; and, therefore, he prays that an order be issued directing the civil registrar to correct the pertinent portion of the civil register by making it appear therein that petitioner as well as his children are Filipino citizens and not Chinese citizens, as authorized by article 412 of the new Civil Code.

The Civil Registrar of Manila ,in his answer, states that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the petition but he has no ob-

jection to making the required correction provided he is so ordered by the court.

The court set the petition for hearing not after ordering petitioner to serve a copy thereof on the Solicitor General for whatever action he may deem proper to take in the premises. After the hearing was held, the Solicitor General submitted a written opposition wherein he asks that the petition be denied on the ground that petitioner has failed to present satisfactory and convincing evidence in support of his claim that he is a Filipino citizen.

Issues having been joined, the court rendered decision overruling the opposition of the Solicitor General and holding that the evidence presented by petitioner sufficienty establishes the claim that he and his children are Filipino citizens, and, consequently, it ordered the Civil Registrar of Manila to make the necessary correction in his register as prayed for in the petition. From this decision the Solicitor General has appealed.

When the case came up for discussion before the members of this Court, the issue that became the center of controversy revolved around the interpretation of the provisions of article 412 of the new Civil Code under which the petition under consideration was filed. This article provides that "No entry in a civil register shall be changed or corrected, without judicial order." The bone of contention was the extent or scope of the matters that may be changed or corrected as contemplated in said legal provision. After a mature deliberation, the opinion was reached that what was contemplated therein are mere corrections of mistakes that are clerical in nature and not those which may affect the civil status or the nationality or citizenship of the persons involved. If the purpose of the petition is merely to correct a clerical error then the court may issue an order in order that the error or mistake may be corrected. If it refers to a substantial change, which affects the status or citizenship of a party, the matter should be threshed out in a proper action depending upon the nature of the issue involved. Such action can be found at random in our suubstantive and remedial laws the implementation of which will naturally depend upon the factors and circumstances that might arise affecting the interested parties. This opinion is predicated upon the theory that the procedure contemplated in article 412 is summary in nature which cannot cover cases involving controversial issues.

It is our opinion that the petition under consideration does not merely call for a correction of a clerical error. It involves a matter which concerns the citizenship not only of petitioner but of his children. It is therefore an important controversial matter which can and should only be threshed out in an appropriate action. The philosophy behind this requirement lies in the fact that "the books making up the civil register and all documents and shall be prima facie evidence of the facts therein contained." (Article 410, new Civil Code), and if the entries in the civil register could be corrected or changed through a mere summary proceeding and not through an appropriate action wherein all parties who may be affected by the entries are notified or represented, we would set wide open the door to fraud or other mischief the consequence of which might be detrimental and far reaching. It is for these reasons that the law has placed the necessary safeguards to forestall such eventuality that even on matters which call for a correction of clerical mistakes the intervention of the courts was found necessary. This is an innovation not originally found in the law which placed this matter exclusively upon the sound judgment and discretion of the civil registrars. This was found by Congress unwise and risky in view of the far reaching importance of the subjects covered by the civil register. And under the present innovation the law even exacts civil liability from the civil registrar for any unauthorized alteration, which shows the concern of Congress in maintaining the integrity and genuineness of the entries contained in our civil registers (Article 411, new Civil Code).

The foregoing make it unnecessary for us to consider the issues raised by the Solicitor General in the present appeal.

Wherefore, the decision appealed from is reversed. The petition is dismissed without pronouncement as to costs.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Labrador. concur

IX

Secretary of Public Works and Communications, Secretary of Finance and Executive Secretary, petitioners, versus Hon. Bienvenido Tan, Judge of the Court of First Instance of Rizal, The Provincial Board of Rizal, Narciso G. Isidro, Respondents, G.R. No. L-5987, promulgated, Nov. 25, 1953, Jugo, J.

RULES OF COURT; INJUNCTION TO RESTRAIN THE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS FROM CONTINUING THE COLLECTION OF TOLLS ON A BRIDGE.—Where the Court of First Instance issued the writ of preliminary injunction prayed for in the complaint, restraining the Secretary of Public Works and Communications, Secretary of Finance and Executive Secretary from continuing the collection of tolls on a bridge because the cost of the same plus 4% interest per annum had been fully recovered from the tolls collected up to the filing of the complaint, a fact which is asserted by the Provincial Board of Rizal and not denied by any interested party, the court did not exceed its jurisdiction or abuse its discretion in issuing the writ of injunction.

DECISION

JUGO, *J.*:

The Marikina Toll Bridge was constructed under the provisions of Act No. 3500. The pertinent provisions of said Act are as follows:

"SECTION 1. The sum of five million pesos is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated, to constitute a revolving fund for the construction of permanent bridges on interprovincial or intercoastal roads in the Philippines, which shall be expended under the supervision of the Secretary of Commerce and Communications. Said bridges shall be declared toll bridges for a period not exceeding fifteen years and tolls shall be collected from all traffic using such bridges in accordance with rates to be fixed by a board composed of the Secretary of Commerce and Communications as chairman, the Secretary of Finance, and the Insular Auditor, as members: *Provided, however,* That no toll charges shall be collected from pedestrians.

xx xx xx xx xx xx

SEC. 4. When the total cost of a bridge, plus interest of four per centum per annum, is fully recovered, the board created in section one of this Act shall so certify to the Governor-General who, by means of an Executive Order, shall turn over the bridge to the provincial board concerned and order the collection of tolls to be discontinued. The cost of maintaining bridges financed under the provisions hereof shall be charged to the road and bridge fund of the province in which said bridges are situated."

On March 4, 1952, Narciso G. Isidro filed a complaint in the Court of First Instance of Rizal against the petitioners herein, the Secretary of Public Works and Communications, the Secretary of Finance and the Executive Secretary, and the Provincial Treasurer and the District Engineer of Rizal, alleging, among other things, that he is an operator of several buses with proper certificates of public convenience which pass over said bridge in their trips from Manila to Marikina and *vice versa,* and that the defendants (petitioners herein), have been collecting tolls for the use of said bridge; that the period of fifteen years had passed since the construction of said bridge and that the cost of the same plus 4% interest per annum had been fully recovered from the tolls collected up to the filing of the complaint, and praying that a writ of preliminary injunction be issued restraining the defendants from continuing the collection of tolls, and that an order be issued requiring the defendants to certify to the President of the Philippines that the cost of the construction of said bridge had been fully recovered from the tolls collected. The Provincial Board of Rizal as an interested party filed a complaint in intervention, making substantially the same allegations and the same prayer as Narciso G. Isidro.

The Secretary of Public Works and Communications, the Secretary of Finance and the Executive Secretary filed an answer in the Court of First Instance alleging in substance that the money borrowed from the Agricultural and Industrial Bank for the con-

struction of said bridge had not yet been fully paid.

The respondent Court of First Instance issued the writ of preliminary injunction prayed for in the complaint of Isidro, restraining the defendants, their representatives etc., from continuing the collection of tolls on said bridge, upon the filing by the plaintiff of a bond in the sum of ₱2,000.00. The defendants (petitioners herein), have filed a petition in this Court for a writ of certiorari, praying that a preliminary injunction be issued prohibiting the enforcement of the preliminary injunction issued by the Court of First Instance and that after hearing said injunction be declared null and void.

It should be borne in mind that the lower court has not yet tried the case on the merits and has not yet rendered a final judgment, the only question before us being whether the court acted in excess of its jurisdiction or with abuse of its discretion in issuing said writ of preliminary injunction. In this connection, it should be considered that the Provincial Board of Rizal alleges that the total cost of bridge plus 4% interest per annum had been recovered with excess from the tolls already collected and that the period of fifteen years from the opening of the bridge had elapsed since the year 1945. However, the petitioners raise the technical point that it is not within the authority of the defendant officers to order the discontinuance of the collection of tolls but only to certify to the (Governor-General) President of the Philippines that the cost of the bridge plus 4% interest had already been recovered.

In the first place, more than fifteen years had elapsed since the opening of the bridge and this fact does not require any certification In the second place. the above-mentioned board has failed to comply with its ministerial duty to certify to the President the fact that the cost of the bridge plus 4% interest per annum has been recovered with excess, a fact which is asserted by the Provincial Board of Rizal and not seriously denied by any party. The allegation of the defendants (petitioners herein), in their answer that the money borrowed from the Agricultural and Industrial Bank to construct the bridge, has not been fully paid, if true, is immaterial, for it would not be the fault of the plaintiff Isidro that the toll collections had not been turned over to the said bank or its successor, in payment of the alleged debt. It would appear, therefore, from the allegations in the pleadings that the respondent Judge did not exceed his jurisdiction or abuse his discretion in issuing the writ of injunction above-mentioned.

Without prejudice to the holding of the trial on the merits in the court below and the rendition of final judgment by it, the petition for the writ of certiorari is hereby denied without costs.

It is so ordered.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor; Reyes; Bautista Angelo and *Labrado, J.J.*, concur.

X

Catalina de los Santos, Plaintiff-Appellee, vs. Roman Catholic Church of Midsayap et als., Defendants-Appellants, G. R. No. L-6088, *February* 25, 1954.

1. PUBLIC LAND; SALE OF LAND COVERED BY A HOMESTEAD PATENT BEFORE THE EXPIRATION OF FIVE YEARS FROM THE DATE OF ISSUANCE OF PATENT; ITS NULLITY. — Where a land covered by a homestead patent is sold before the expiration of five years from the date of the issuance of the patent such sale is null and void.
2. IBID; IBID; APPROVAL OF THE SALE BY THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES; REGISTRATION OF THE DEED OF SALE. — The approval of such sale by the Secretary of Agriculture and Natural Resources does not validate it although the approval was obtained more than ten years from the date of the issuance of the patent, nor the fact that the deed of sale was registered in the office of the Register of Deeds also more than ten years after the issuance of the patent. The approval of the Secretary of Agriculture and Natural Resources regarding the sale of land covered by a homestead patent is merely a formality which the law requires if the sale is effected after the term of five years but before the expiration of a period of 25 years for the purpose of testing the validity of the sale on constitutional grounds. But, as ruled by the Supreme Court, the absence of such formality will not render the transaction null and void.
3. IBID; MANDATORY CHARACTER OF THE LAW. — The provision of the law which prohibits the sale or incumbrance of the homestead within five years after the grant of the patent is mandatory and cannot be obviated even if official approval is granted beyond the expiration of that period, because the purpose of the law is to promote a definite public policy, which is "to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him." (Pascua v. Talens, 45 O. G., No. 9. (Supplement) 413.)
4. IBID; PURPOSE OF THE SALE IS IMMATERIAL. — The claim that the sale of land covered by a homestead patent which was sold before the expiration of five years after the issuance of the patent can be validated because it was made for the purpose of being dedicated solely to educational and charitable purposes is unmeritorious.
5. IBID; SECTION 121 OF COMMONWEALTH ACT NO. 141 CONSTRUED. — It is true that under section 121, Commonwealth Act No. 141, a corporation, association, or partnership may acquire any land granted as homestead if the sale is done with the consent of the grantee and the approval of the Secretary of Agriculture and Natural Resources and is solely for commercial. industrial. educational, religious, or charitable purposes, or for a right of way, and apparently there is no limitation therein as to the time within which such acquisition may be made. But this provision should be interpreted as a mere authority granted to a corporation, association or partnership to acquire a portion of public land and not as an unbridled license to acquire without restriction for such would be giving an advantage to an entity over an individual which finds no legal justification. It is our opinion that the authority granted by section 121 should be interpreted as subject to the condition prescribed in section 118, namely, that the acquisition should be after the period of five years from the date of the issuance of the patent.
6. IBID; PRINCIPLE OF PARI DELICTO NOT ABSOLUTE. — Where the principle of *pari delicto* is invoked by the defendants because the homesteaders sold the land before the expiration of five years after the issuance of the patent the said principle may not be invoked in this case considering the philosophy and the policy behind the approval of the Public Land Act. The principle underlying *pari delicto* as known here and in the United States is not absolute in its application. It recognizes certain exceptions one of them being when its enforcement or application runs counter to an avowed fundamental policy or to public interest. As stated by us in the Rellosa case, "This doctrine is subject to one important limitation, namely, 'whenever public policy is considered advanced by allowing either party to sue for relief against the transaction." (Rellosa v. Gaw Chee Hun. R. R. No. L-1411.)
7. IBID; PRINCIPLE OF PARI DELICTO NOT APPLICABLE TO THE CASE AT BAR. — Ordinarily the principle of *pari delicto* would apply to the appellee who desires to nullify a transaction which was done in violation of the law because the predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality (8 Manresa 4th ed., pp. 717-718), but because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated (Pascual v. Talens, *supra*). This right cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve" (Gonzalo Puyat and Sons, Inc. v. Pantalcon de las Ama, et al., 74 Phil.,3).

DECISION

BAUTISTA ANGELO, *J.*:

On December 9, 1938, a homestead patent covering a tract of land situated in the municipality of Midsayap, province of Cotabato, was granted to Julio Sarabillo and on March 17, 1939, Original Certificate of Title No. RP-269 (1674) was issued in his favor. On December 31, 1940. Julio Sarabillo sold two hectares of said land to the Roman Catholic Church of Midsayap for the sum of ₱800 to be dedicated to educational and charitable purposes. It was expressly agreed upon that the sale was subject to the

approval of the Secretary of Agriculture and Natural Resources.

In December, 1947, a request for said approval was submitted in behalf of the Roman Catholic Church by Rev. Fr. Gerard Mongeau stating therein that the land would be used solely for educational and charitable purposes. The sale was approved on March 26, 1949, and on March 29, 1950, the deed of sale was registered in the Office of the Register of Deeds for the province of Cotabato. No new title was issued in favor of the Roman Catholic Church although the deed was annotated on the back of the title issued to the homesteader.

In the meantime, Julio Sarabillo died and intestate proceedings were instituted for the settlement of his estate and Catalina de los Santos was appointed administratrix of the estate. And having found in the course of her administration that the sale of the land to the Roman Catholic Church was made in violation of section 118 of Commonwealth Act No. 141, the administratrix instituted the present action in the Court of First Instance of Cotabato praying that the sale be declared null and void and of no legal effect.

In their answer defendants claim that the sale is legal and valid it having been executed for educational and charitable purposes and approved by the Secretary of Agriculture and Natural Resources. They further claim that, even if it be declared null and void, its immediate effect would be not the return of the land to appellee but the reversion of the property to the State as ordained by law. Defendants also set up as a defense the doctrine of *pari delicto*.

As a preliminary step, the court, upon petition of counsel for defendants, directed the clerk of court, assisted by a representative of both parties, to appraise the value of the improvements existing on the controverted land and to submit to the court a report of his findings. This was done, the clerk of court reporting that the value of the improvements was ₱601.

After the parties had submitted the case on the pleadings, in addition to the report of the clerk of court as to the value of the improvements existing on the land, the court rendered decision declaring the sale null and void and ordering the plaintiff to reimburse to the defendants the sum of ₱800 which was paid as purchase price, plus the additional sum of ₱601 as value of the improvements, both sums to bear interest at 6 per cent per annum from the date of the complaint, and ordering defendants to vacate the land in question. Dissatisfied with this decision, the case was taken to the Court of Appeals but it was later certified to this Court on the ground that the appeal merely involves questions of law.

It appears that the patent covering the tract of land which includes the portion now disputed in this appeal was issued to the late Julio Sarabillo on December 9, 1938, and the sale of the portion of two hectares to the Roman Catholic Church took place on December 31, 1940. This shows that the sale was made before the expiration of the period of five years from the date of the issuance of the patent and as such is null and void it being in contravention of section 118 of Commonwealth Act No. 141. The fact that it was expressly stipulated in the deed of sale that it was subject to the approval of the Secretary of Agriculture and Natural Resources and the approval was sought and obtained on March 26, 1949, or more than ten years after the date of the issuance of the patent, or the fact that the deed of sale was registered in the office of the Register of Deeds only on March 29, 1930 and was annotated on the back of the title on that date, cannot have the effect of validating the sale for the reason that the approval of the Secretary of Agriculture and Natural Resources does not have any valid curative effect. That approval is merely a formality which the law requires if the sale is effected after the term of five years but before the expiration of a period of 25 years for the purpose of testing the validity of the sale on constitutional grounds. But, as was ruled by this Court, the absence of such formality will not render the transaction null and void (Evangelista v. Montano, G. R. No. L-5567). What is important is the period within which the sale is executed. The provision of the law which prohibits the sale or encumbrance of the homestead within five years after the grant of the patent is mandatory. This cannot be obviated even if official approval is granted beyond the expiration of that period, because the purpose of the law is to promote a definite public policy, which is "to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him." (Pascua v. Talens, 45 O. G., No. 9, (Supplement) 413.)

The claim that the sale can be validated because it was made with the avowed aim that the property would be dedicated solely to educational and charitable purposes is likewise unmeritorious even considering the law invoked by counsel for appellants in favor of its validity. It is true that under section 121, Commonwealth Act No. 141, a corporation, association, or partnership may acquire any land granted as homestead if the sale is done with the consent of the grantee and the approval of the Secretary of Agriculture and Natural Resources and is solely for commercial, industrial, educational, religious, or charitable purposes, or for a right of way, and apparently there is no limitation therein as to the time within which such acquisition may be made. But this provision should be interpreted as a mere authority granted to a corporation, association or partnership to acquire a portion of the public land and not as an unbridled license to acquire without restriction for such would be giving an advantage to an entity over an individual which finds no legal justification. It is our opinion that the authority granted by section 121 should be interpreted as subject to the condition prescribed in section 118, namely, that the acquisition should be after the period of five years from the date of the issuance of the patent.

But appellants now contend that even if it be declared that the sale made to them by the homesteader is null and void yet its immediate effect would be not the return of the land to appellee but rather its reversion to the State wherein the Government is the interested party. (Sction 124 of the Public Land Act). Appellants further claim that the present action cannot be maintained by the appellee under the principle of *pari delicto*.

The principles thus invoked by appellants are correct and cannot be disputed. They are recognized not only by our law but by our jurisprudence. Section 124 of the Public Land Act indeed provides that any acquisition, conveyance or transfer executed in violation of any of its provisions shall be null and void and shall produce the effect of annulling and cancelling the grant or patent and cause the reversion of the property to the State, and the principle of *pari delicto* has been applied by this Court in a number of cases wherein the parties to a transaction have proven to be guilty of having effected the transaction with knowledge of the cause of its invalidity. (Bough and Bough v. Cantiveros and Hanopol, 40 Phil., 210, 216; Rellosa v. Gaw Chee Hun, G. R. No. L-1411; Trinidad Gonzaga de Cabauatan v. Uy Hoo, et al., G. R. No. ---2207; Caoile v. Yu Chiao Peng, G. R. No. L-4068; Talento, et al. v. Makiki, et al., G. R. No. L-3529.) But we doubt if these principles can now be invoked considering the philosophy and the policy behind the approval of the Public Land Act. The principle underlying *pari delicto* as known here and in the United States is not absolute in its application. It recognizes certain exceptions one of them being when its enforcement or application runs counter to an avowed fundamental policy or to public interest. As stated by us in the Rellosa case. "This doctrine is subject to one important limitation, namely, 'whenever public policy is considered advanced by allowing either party to sue for relief against the transaction.'" (Rellosa v. Gaw Chee Hun, G. R. No. L-1411.)

The case under consideration comes within the exception above adverted to. Here appellee desires to nullify a transaction which was done in violation of the law. Ordinarily the principle of *pari delicto* would apply to her because her predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality (8 Manresa 4th ed., pp. 717-718), but because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated (Pascua v. Talens, *supra*). This right cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve" (Gonzalo Puyat and Sons, Inc. v. Pantaleon de las Ama, et al., 74 Phil., 3). We are, therefore, constrained to hold that appellee can maintain the present action it being in furtherance of this fundamental aim of our homestead law.

As regards the contention that because the immediate effect of

(*Continued on page* 202)

pose, the application for the loan, supporting such application with the required evidence of the availability of the applicants funds for such project equivalent to at least ten *per centum* of the approved estimated cost of the project.

SEC. 5. *Construction work.*—The approved work on any project shall be undertaken by the applicant under the technical supervision of the Director of Public Works, who shall certify periodically to the quality of the work and the percentage of completion of the project: *Provided,* That no certification for less than ten *per centum* of the total cost of the work shall be released by the Director for the purpose of releasing sums from the Revolving Fund, pursuant to section six hereof.

SEC. 6. *Release of funds.*—Upon the approval by the Secretary of Public Works and Communications of the application for loan executed pursuant to sections three and four hereof, he shall forthwith authorize the construction of the project, transfer the approved sum to the credit of the Director of Public Works, and advise the Director to supervise the work therein, charging the expenses of such supervision against the funds of the project: *Provided,* That in no case shall such cost of supervision exceed two per centum of the actual cost of the project.

Upon completion of at least fifteen *per centum* of the work and at every ten per cent progress thereafter, the Director of Public Works shall certify such accomplishments to the Secretary of Public Works and Communications and shall release to the credit of the applicant the amount corresponding and equal to the certified amount of work accomplished.

SEC. 7. *Amortization of loan.*—Loans shall be garanteed by a first lien on a sufficient amount of the crop of the applicant and shall be redeemed in ten equal annual installments with interest at four *per centum per annum.* The amortization payments shall be due and payable on or before thirty days after the crop has been harvested.

SEC. 8. *Accruals.*—All moneys collected pursuant to the provisions of this Act, less such amount as may have been spent by the Director of Public Works to defray the expenses of supervising the work on authorized projects, shall accrue to the "Irrigation Revolving Fund."

Approved, June 20, 1953.

REPUBLIC ACT NO. 833

AN ACT AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO LEASE FOR A PERIOD NOT EXCEEDING NINETY-NINE YEARS TO THE UNITED STATES OF AMERICA THE TRACT OF LAND KNOWN AS THE "PLAZA MILITAR" LOCATED IN THE CITY OF MANILA, PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The President of the Philippines, subject to such terms and conditions as he may deem just and advisable in the national interest, is hereby authorized to lease for a period not exceeding ninety-nine years to the United States of America, for diplomatic or consular purposes, the following portions of the tract o fland located in the District of Malate, City of Manila, Philippines, known as the "Plaza Militar" described as follows:

1. Parcel 1, which consists of portions of lots Nos. 3 and 16 Block No. 501, of Manila Cadastre, bounded on the northwest by the proposed extension of Herran Street; on the northwest by M. H. del Pilar Street as proposed to be widened; on the southeast by the extension of Militar Street; and on the southwest by the Dewey Boulevard as proposed to be widened, containing an area of 12,000 square meters, more or less; and

2. Parcel 2, which consists of Block No. 502, Manila Cadastre, bounded on the northwest by Herran Street as proposed to be widened; on the northeast by Mabini Street as proposed to be widened; on the southeast by Calle Militar as proposed to be widened; and on the southwest by M. H. del Pilar Street, as proposed to be widened, containing an area of 12,407.8 square meters, more or less.

SEC. 2. The Director of Lands shall make the survey as soon as possible of the parcels of land which are authorized to be transferred by this Act.

SEC. 3. It shall be a condition of the lease agreement that in the event the United States of America find no more need for the land, for diplomatic or consular purposes, the lease shall be terminated and the land shall revert to the possession of the Republic of the Philippines, together with the improvements therein.

SEC. 4. The registration of such instruments as may be necessary to carry out the provisions of this Act shall be exempt from registration or other fees.

SEC. 5. This Act shall take effect upon its approval.

Approved, August 14, 1952.

REPUBLIC ACT NO. 783

AN ACT TO AMEND PARAGRAPH ONE HUNDRED FORTY-SEVEN, CLASS IX, OF SECTION EIGHT OF THE PHILIPPINE TARIFF ACT OF 1909, BY PROVIDING EXEMPTION OF NEWSPRINT FROM CUSTOMS DUTY IN CERTAIN CASES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Paragraph numbered one hundred and forty-seven, Class IX of section eight of the Philippine Tariff Act of nineteen hundred and nine as continued in force and effect by Republic Act Numbered Three, is amended to read as follows:

"147. Printing paper, white or colored, suitable for books not printed or otherwise elaborated, and sand, glass, emery, carborundum, and similar papers, and sheathing and roofing paper, ten per centum ad valorem: *Provided,* That printing paper, white or colored, suitable for newspapers, not printed otherwise elaborated, whenever imported by or for publishers for exclusive use in the publication of newspapers, shall be exempt from payment of duty.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 21, 1952.

SUPREME COURT . . . (*Continued from page 195*)

the nullification of the sale is the reversion of the property to the State appellee is not the proper party to institute it but the State itself,— that is a point which we do not have, and do not propose, to decide. That is a matter between the State and the Grantee of the homestead, or his heirs. What is important to consider now is who of the parties is the better entitled to the possession of the land while the government does not take steps to assert its title to the homestead. Upon annulment of the sale, the purchaser's claim is reduced to the purchase price and its interest. As against the vendor or his heirs, the purchaser is no more entitled to keep the land than any intruder. Such is the situation of the appellants. Their right to remain in possession of the land is no better than that of appellee and, therefore, they should not be allowed to remain in it to the prejudice of appellee during and until the government takes steps toward its reversion to the State. (See Castro v. Orpiano, G. O. No. L-4094, November 29, 1951.)

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

Paras, Pablo, Bengzon, Montemayor, Jugo and *Labrador, J.J.;* concur.