II

Trinidad Semira et als., Petitioners vs. Juan Enriquez et als., Respondents, G. R. No. L-2582, February 27, 1951.

1. *APPEALS; MANDAMUS TO COMPEL ALLOWANCE OF APPEAL; CORRECTION OF ERROR IN RECORD.* — Where the appellant timely called the attention of the trial court to a misstatement contained in its order denying appellant's motion for reconsideration, and timely filed a motion for 15 days' extension of the period for perfection of an appeal, it would be unfair and unjust for the trial court not to act on both motions for three months and then to rule that the decision in the case had become final and executory for the error was merely clerical and the period to appeal had expired even if the appellant was granted the 15-day extension. The appellant might have resorted to too technical a move, but this circumstances did not dispense with the duty of the trial judge to straighten out the record of the case for all purposes. The appellant is expected to file a record on appeal containing pertinent pleadings, motions and orders which are correct; and it cannot rightfully be contended that he is ready to do so before the said order denying reconsideration is changed in the sense indicated in the appellant's motion for correction.

2. *APPEALS; MOTIONS WHICH CAN BE HEARED EX PARTE; CORRECTION OF ERROR IN RECORD.* — Although the appellant set his motion for correction for hearing five days after the 30-day period for perfection of appeal, the trial judge could and should have acted thereon on shorter notice not only because he could dispose of it on his own motion (sec. 4, Rule 26) but because the motion might be heard *ex parte* in view of the nature of the order sought and the short period left for perfecting the appeal (Moya vs. Barton, 43 Off. Gaz., 836). Although litigants are not justified in taking for granted that their motions would be granted (Bonoan and Yabut vs. Ventura et al., 43 Off. Gaz., 4602), the courts are bound to act—in proper cases—on all motions with sufficient dispatch necessary to allow the parties to avail themselves of proper remedies. This is implied in the mandate that "justice shall be impartially administered without necessary delay" (sec. 1, Rule 124). The inherent power of the court "to amend and control its process and orders so as to make them conformable to law and justice" (sec. 5, Rule 124) carries the concomitant duty to correct its orders on its own initiative or upon motion of the parties. This duty is not affected by the nature of the error sought to be corrected.

Potenciano A. Magtibay for petitioners.
Respondent Judge in his own behalf.
Antonio L. Azores for respondents *Azores*.

DECISION

PARAS, *J.*:

In civil case No. 43 of the Court of First Instance of Batangas between Trinidad Semira and Isidoro G. Mercado, as plaintiffs, and Bienvenido Azores, Apolonia Azores, Manuel Azores, Juana Azores, Jose R. Azores, Sinforosa Azores, Antonio Azores and Norberta Azores, as defendants, judgment was rendered in favor of the latter on July 7, 1944, notice of which was received by counsel for plaintiffs on August 7, 1944. On August 30, 1944, counsel for plaintiffs filed a motion for reconsideration. On May 26, 1948, after the record had been reconstituted, the Court of First Instance of Batangas denied the motion for reconsideration, notice of which was received by counsel for plaintiffs on June 21, 1948. On June 5, 1948, that is, before receipt of the notice of denial, counsel for plaintiffs filed a motion for an extension of fifteen days within which to perfect an appeal in case the motion for reconsideration should be denied. In the resolution of May 26, 1949, the Court made it appear that the defendants filed the motion for reconsideration and the plaintiffs filed an opposition thereto, when the fact was that the plaintiffs filed the motion and the defendants filed the opposition. In view of this mistake, the plaintiff filed, on the same day he received the order of denial, a motion for correction which was set for hearing on July 3, 1948. Failing to receive notice of any action either on the motion for extension or on the motion for correction, counsel for plaintiffs sent a letter of inquiry to the clerk of court. Thus prompted, the court issued an order dated September 25, 1948 — received by plaintiffs on October 2, 1948, — holding that the judgment of July 7, 1944, had become final and executory for plaintiff's failure to perfect their appeal on time even if the motion for an extension of fifteen days was granted, the motion for correction filed by plaintiffs on June 21, 1943, not having suspended the time for appeal.

A petition for mandamus was filed by the plaintiffs against the Judge of the Court of First Instance of Batangas as sole respondent, to compel judicial action on the motion for correction, to set aside the order of September 25, 1948, and to have the time for appeal declared suspended. In our resolution of March 23, 1950, we directed the petitioners to amend their petition by impleading as respondents the defendants in civil case No. 43; and the case is now before us upon the corresponding amended petition and the answer thereto.

In our resolution of March 23, 1950, penned by Mr. Justice Padilla, the following decisive pronouncement was made: "The petitioner, plaintiffs in the case in the court below, were entitled to expect action by the respondent court on their petitions for extension of time to perfect the appeal and for correction of the order of 26 May 1948. The respondent court was in duty bound to decide and resolve the two petitions and it is unfair for it to declare without first complying with its duty to resolve and decide the petitions for extension of time to perfect the appeal and for correction of the aforesaid order of 26 May 1948."

When the petitioners filed on August 30, 1944, the motion for reconsideration, they had seven days out of the reglementary 30-day period for appeal. They also had the same seven days when their motion for an extension of fifteen days was filed on June 5, 1948. On June 21, 1948, when the petitioners received notice of the order of the respondent Judge denying their motion for reconsideration and when they filed their motion for correction, they still had said seven days to perfect an appeal. Although the petitioners set their motion for correction for hearing on July 3, 1948, the respondent Judge could and should have acted thereon on shorter notice not only because he could dis-

(1) U.S. vs. Melad, 27 Phil. 448; People vs. Cabrera, 43 Phil. 64.

pose of it on his own motion (Sec. 4, Rule 26) but because the motion might be heard *ex parte*, in view of the nature of the order sought and the short period left for perfecting the appeal (Moya vs. Barton, 43 O. G. 836). Although litigants are not justified in taking for granted that their motions would be granted (Bonoan and Yabut vs. Ventura, et al., 43 O. G. 4602), the courts are bound to act — in proper cases — on motions with sufficient dispatch necessary to allow the parties to avail themselves of proper remedies. This is implied in the mandate that "justice shall be impartially administered without unnecessary delay." (Section 1, Rule 124.)

The inherent power of the court "to amend and control its process and orders so as to make them conformable to law and justice," (Sec. 5, Rule 124), carries the concomitant duty to correct its orders on its own initiative or upon motion of the parties. This duty is not affected by the nature of the error sought to be corrected. In the case at bar, the petitioners timely called the attention of the respondent Judge to the misstatement contained in his order of May 26, 1948, and, more timely still, filed the motion for an extension of fifteen days to perfect an appeal. The respondent Judge, in his order of September 25, 1948, admitted that, for unknown reasons, he was not able to dispose of the two motions sooner, but ruled in the same breadth that the judgment of July 7, 1944, had become final and executory because the error was merely clerical and the period to appeal had expired even if the petitioners were granted 15-day extension. The unfairness and injustice of this ruling are obvious from the fact that, while the respondent Judge in effect admitted the necessity of swift action on petitioners' motions, the petitioners are made to suffer the consequences of his inaction.

The petitioners might have resorted to too technical a move, but this circumstance did not dispense with the duty of the respondent Judge to straighten out the record of the case for all purposes. The petitioners are expected to file a record on appeal containing pertinent pleadings, motions and orders which are correct; and it cannot rightly be contended that they are ready to do so before the order of the respondent Judge of May 26, 1948, is changed in the sense indicated in petitioners' motion for correction.

Wherefore, the respondent Judge is hereby directed to correct the misstatement appearing in his order of May 26, 1948, as pointed out in this opinion. The petitioners have seven days from notice of the order affecting the necessary corrections within which to perfect, if it is so desired, an appeal from the judgment in civil case No. 43 dated July 7, 1944. So ordered with costs against the respondents other than the respondent Judge.

Moran, Feria, Pablo, Bengzon, Padilla; Tuason; Reyes; Jugo; and *Bautista Angelo.* — *J.J.* concur.

MONTEMAYOR, *J.*, dissenting:

With all due respect to the learned opinion of the majority, I am constrained to dissent. I cannot give my assent to further prolonging this old case to the prejudice of the defendants in Civil Case No. 43 of the Court of First Instance of Batangas, who obtained a judgment in their favor as far back as July, 1944, all because of a clerical and immaterial error that had crept into, not the judgment or decision, but only the order denying the motion for reconsideration. Of course, none of the parties could be blamed for the loss of the records of the case thereafter, but I am impressed by the claim of counsel for the respondents, based on the record, that as early as August, 1945, the Clerk of Court of Batangas had sent out notices of the loss of the records, and that reconstitution was set for hearing on November 19, 1946, but that due to the numerous petitions for postponement and extension of time, filed by plaintiffs-petitioners' counsel, the hearing dragged on and no action could be taken on the motion for reconsideration until May 26, 1948, when the order of denial was rendered.

The record shows that the hearing for reconstitution set on November 19, 1946, was not held due to a motion for continuance filed by plaintiffs-petitioners. On January 21, 1947, the reconstitution was again set for hearing on February 11, 1947, but upon motion for continuance by plaintiffs-petitioners' counsel, the same was re-set on February 26, 1947. Then followed various motions by plaintiffs-petitioners for extension of time which defendants-respondents termed "dilatory tactics", which resulted in a court notice of hearing dated April 13, 1948, once more setting the hearing on May 11th of the same year. But on the latter date still another petition for postponement on behalf of the plaintiffs was filed. The last reconstitution hearing was finally held on May 26, 1948.

I agree with the trial court that the decision in this case rendered on July 7, 1944 has become final. The motion for extension of the period within which to perfect an appeal did not suspend the running of the 30-day period (Alejandro v. Endencia, 64 Phil. 325); neither did the petition for correction suspend the period for perfecting an appeal. It may be that in some cases where the error or mistake sought to be corrected is serious and prejudicial, and may mislead the parties and the courts, especially the appellate tribunal to which the case is sought to be elevated on appeal, a petition for correction may suspend the period; but in the present case, the error consisting in mere transposition of the parties, mistakenly attributing to the defendants the motion for reconsideration, and imputing to the plaintiffs the opposition thereto, when it should be the other way, is a mere oversight, a clerical error, unsubstantial, immaterial and harmless, which can neither prejudice nor mislead anyone. There was only one motion for reconsideration of the decision in the whole record, and that was filed by the plaintiffs; and there was only one opposition thereto, and that was filed by the defendants. What is more, the order mentions the date of each pleading. So there was no possibility of misleading anybody. The error was trivial and was known to the plaintiffs. So, what prejudice or harm could have such an error produced on them?

I am not in favor of courts' giving too much importance to errors of this kind, — clerical and unsubstantial, and allowing them to unduly prolong or even paralyze court proceedings, especially when, as in the present case, there is reason to believe that the motion for correction was part of a design to delay such proceedings. The defendants who obtained a favorable judgment as far back as 1944, and who have repeatedly complained to the trial court against the numerous petitions for postponement filed by the plaintiffs, in my opinion, have reason to term them as they did, "dilatory tactics", and the trial court would appear to have realized it and sympathized with said defendants; and it seems that its order of September 25, 1948, declaring the period of appeal to have long expired because the petition for correction of the error did not suspend the running of the period for appeal, was partly influenced by such realization. Said the trial court on this point:

> "Indeed, defendants have time and again objected to the dilatory tactics adopted by the plaintiffs."

The majority opinion seems to attribute the fault in not acting upon the motion for correction promptly, to the respondent Judge and inferentially, and in part bases the judgment on that supposed fault or negligence. In justice to the respondent Judge it should be stated that the fault or negligence, if any, may not be laid at his door. According to his answer dated November 24, 1948, when the motion for correction was filed by the plaintiffs on June 21, 1948, in the Court of First Instance of Batangas, Judge Enriquez was not in the province of Batangas because he was then holding court sessions in the provinces of Mindoro and Marinduque during the months of June and July of that year. The following month of August, respondent Judge was assigned to hold sessions in Batangas, Batangas. It seems that there are two court branches in the province of Batangas, one holding sessions in the City of Lipa and the other in the town of Batangas. The petition for correction was filed and kept in the Lipa branch. Naturally, respondent Judge knew nothing about it. It was only when counsel for the plaintiffs made an inquiry from the Clerk of Court in Lipa in September, 1948, that is, about three months after he filed his motion for correction, that said court official

sent the petition for correction to the respondent Judge in Batangas, on September 24, 1948, and the respondent Judge acting on it immediately, issued his order the following day, September 25, 1948. Why the plaintiffs or their counsel did not follow up their petition for correction or even their petition for extension of time, so as to insure prompt action, is not explained.

In conclusion, I hold that a petition for correction of a clerical, harmless, immaterial and non-prejudicial error in a decision or order, which error can neither prejudice nor mislead anybody, cannot and should not be allowed to suspend the period for perfecting the appeal.