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Editorial

SUGGESTIONS FOR THE BAR EXAMINATIONS

It is perhaps inevitable that, every time the results of the periodic bar examinations are announced, there should be a certain amount of criticism and complaint. Those who were unsuccessful or who were not so successful as they expected to be, among the candidates themselves and the schools that trained them, naturally feel dissatisfied with the present system and the way it is conducted.

We are not concerned now with the necessity or desirability of requiring prospective lawyers to pass a state—supervised examination before admission to the bar. There are many valid arguments for and against it. However, if the present system is to be retained, as in all probability it will be, certain changes may be advisable.

To start with, the schedule of subjects in the examination should be brought up to date. Law has undergone great and significant developments in the past few years, reflecting the evolution of the modern concept of government and the rights and duties of the individual citizen. Our own recent history proves the increasing importance of such subjects as social legislation and taxation and, indeed, the corresponding authorities have given due recognition to their importance by making them separate subjects in the law curriculum. Yet, strangely enough, the Supreme Court has not yet seen fit to give these subjects the emphasis they deserve in the examinations for the bar. Taxation, it is presumed, is lumped with the whole range of political law while social legislation seems to have no place at all, since the Civil Code provisions on torts and the other codal provisions on the contract of employment and the relation of master and servant are woefully inadequate and antiquated. There is no denying the fact that the bulk of our social legislation is contained, not in the codes, but in special laws.

The result of this notable gap in the bar examinations is that the average student, who is understandably concerned mainly with being admitted to the bar, tends to treat these subjects lightly and in passing, as mere incidents of the course. Only by including them as separate subjects for examination, therefore, can the student be compelled to give them the importance they deserve.

This will make, we submit, not only better lawyers but better citizens. At present lawyers tend to leave problems of taxation to accountants because they themselves feel inadequately prepared to handle them. Many a practising attorney has also regretted not having devoted more time to the study of social legislation, which continually increases in complexity and extent. It is indeed regrettable that these two subjects, with which even the ordinary laymen should be familiar if he is to fulfill his duties as a citizen, should be so neglected even by the members of the legal profession, who might otherwise supply the lack with their competent advice.

With reference to the present procedures followed in the examinations, the compensation given to the examiners seems to be inadequate, amounting only, as we are informed, to five hundred pesos for each examiner for the entire tedious and exacting task of preparing fair and balanced questionnaires, attending the various deliberations of the board, and—worst of all—grading the enormous number of papers which are submitted in every examination. Since there are usually about one thousand candidates in each of these tests, the individual examiner can expect to receive a compensation of about fifty centavos for correcting each paper, not to mention his other duties.

The question of compensation may appear to be relatively minor but, upon reflection, its importance will be readily seen. The bar examinations would be obviously of no use whatever if they were not conducted by skilled and successful members of the bar. The latter are naturally extremely busy with the practise of their profession and it is unfair to expect them to devote all their time to the grading of the vast number of papers, at the unattractive rates of compensation now prevailing. They could not be blamed therefore if they should do this work hurriedly, and even with a certain degree of impatience and carelessness, or even if they should delegate the tiresome and boring task to office assistants. This does not seem to be fair either to the candidates or to the examiners themselves.

We have no intention of criticizing the examiners in past tests who doubtless and to all appearances have fulfilled their duties splendidly and at great personal sacrifice. But we do wish to point out that the purposes of the bar examinations would be better served if the work of the examiners is adequately compensated.

In this connection, another change from the present system may also prove desirable. As we understand it, the proceeds of the examinations, derived from the fees paid by the candidates, are now devoted to the expansion of the library of the Supreme Court. That library is unquestionably one of the best and most complete in the country and there is, of course, every reason to keep up its splendid standards.

In stark contrast, however, many, if not most, Courts of First Instance in the Republic are not equipped with even the most elementary treatises and texts; sometimes the libraries of these tribunals are confined to a set of Philippine Reports and Official Gazettes. Since the great proportion of litigation in this country probably begins and ends in these courts, it would seem logical and conducive to the interests of justice to give them also adequate reference sources. If the central government is unable or unwilling to appropriate sufficient funds for this purpose, the Supreme Court would be doing the administration of justice in the Philippines a signal service if it should channel at least part of the proceeds of the bar examinations to this purpose.

One last suggestion. We have never been able to understand the practical necessity of concealing the names of the examiners. Those names inevitably become common knowledge sooner or later and, if the purpose of the secrecy is to avoid the use of unfair influence and pressure on the examiners, it is obvious that that purpose is not effectively served in reality. On the other hand, the present system would seem to imply a reflection on the integrity of the examiners. Surely, if the Supreme Court has sufficient faith in them to appoint them to their posts at all, it should be consistent and extend that faith completely.

At any rate there is no fool-proof guarantee against corruption. If an examiner should desire to take advantage of his position, he could do it under the present system just as easily as he could if his name were not concealed. As it is now, therefore, no assurance of complete integrity is gained while the examinations are allowed to remain in an ambiguous atmosphere of calculation and intrigue.

There is another potent reason why the names of the examiners should be made public before the examinations take place, and that is, to enable the public, particularly the bar candidates, to object to the selection of a particular examiner upon good ground or cause in the same way that the public is enabled, by the publication of the names of the candidates before the examinations, to object to the admission to the bar examinations of any candidate who is unfit to become a member of the bar by reason of moral turpitude.

EQUITY IN THE NEW CIVIL CODE

By JORGE BOCOBO

One of the principal reforms in the new Civil Code is the emphasis laid upon equity and justice as against strict legalism or form. The project recognizes that more significant and more far-reaching than the formulation of legal rules, justice and equity should prevail in any legislation. In working out the rules to be embodied in the proposed Civil Code, the Code Commission drew principally from two sources: (1) the Anglo-American equity jurisprudence and (2) the general principles of natural justice.

Among the branches of Anglo-American equity jurisprudence which are incorporated into the new Civil Code are those relative to implied trusts, estoppel, quieting of title and reformation of instruments. And among the features taken from natural justice are those which relate to natural obligations, reduction of iniquitous penalty, recovery in case of substantial performance, wilfully causing damage in a manner contrary to morals, the doctrine against unjust enrichment (which includes the additional quasi-contracts found in the new Code). the awarding of moral damages, and certain rules relative to illegal contracts.

These various topics will now be discussed briefly.

I. *ANGLO-AMERICAN EQUITY.*

1. *Implied Trusts.*—The subject of implied trusts is a very important one in Anglo-American jurisprudence. It is unknown in the present Civil Code. It is developed in articles 1461, 1462, and articles 1467 to 1477 of the proposed Civil Code. Implied trusts come into being by operation of law. Here are three examples of implied trusts found in articles 1470, 1472 and 1474, which read as follows:

"Art. 1470. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the persons to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him."

"Art. 1472. If two or more persons agree to purchase property and by whom consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each."

"Art. 1474. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him."

2. *Estoppel.*—There seems to be a general impression in the legal profession in the Philippines that estoppel is essentially a part of remedial law. This is an error, because estoppel is a division of both substantive and adjective law in the Anglo-American legal system. The subject of estoppel in its substantive aspect is developed in articles 1451 to 1469 of the proposed Civil Code. Here is an example of estoppel as applied to substantive law:

"Art. 1454. When a person who is the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee."

3. *Quieting of Title.*—The quieting of title is a remedy which is resorted to in American law in order to remove a cloud on title to real property. Article 496 provides:

"Art. 496. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

"An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein."

4. *Reformation of Instruments.*—This is a very important remedy in order to carry out the real intention of the parties to a contract. This subject is dealt with in articles 1379 to 1389 of the draft of the Civil Code. Article 1379 explains the nature of this remedy as follows:

"Art. 1379.—When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct as accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

"If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract."

Article 1385 is of immediate practical value as a remedy against the oppressive practices of many lenders who impose upon borrowers the contract of sale with *pacto de retro*. Said article provides:

"Art. 1385. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper."

II. *GENERAL PRINCIPLES OF JUSTICE.*

The following subjects, among others, are treated of in the proposed Civil Code by way of carrying out general principles of natural justice as against legalism and technicality.

1. *Natural Obligations.*—The present Civil Code has practically abolished the old institution called "natural obligations." The drafters of the Civil Code in force believed that by a careful formulation of the provisions concerning illegal contracts, this problem of natural obligations would be solved. However, the present Civil Code fails to bring out the proper solution when certain cases arise that call for the ancient doctrine of natural obligations. The codes of France, Italy, Germany, Louisiana and Argentina, among others, deal with this subject. The project of Civil Code defines natural obligations as follows:

"Art. 1443. Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. Some natural obligations are set forth in the following articles."

Illustrations of natural obligations are found in articles 1444, 1448 and 1449.

"Art. 1444. When a right to sue upon a civil obligation has lapsed by extinctive prescription, the obligor who voluntarily performs the contract cannot recover what he has delivered or the value of the service he has rendered."

"Art. 1448. When, after an action to enforce a civil obligation has failed, the defendant voluntarily perfoms the obligation, he cannot demand the return of what he has delivered or the payment of the value of the service he has rendered."

"Art. 1449. When a testate or intestate heir voluntarily pays a debt of the decedent exceeding the value of the property which he received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer."

2. *Penalty.*—At the present time, the Civil Code provides for a reduction of the penalty only when there has been a partial or irregular performance of the contract (Art. 1154). However, under the new Code it is not necessary that there should have been a partial or irregular performance. A penalty may be reduced if it is found by the courts to be iniquitous or unconscionable (Art. 1249).

Moreover, article 2247 provides as follows:

"Art. 2247. Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable."

3. *Substantial Performance.*—The new Code does not insist upon a strict fulfillment of the contract, it being sufficient that there has been a substantial performance in good faith, although damages suffered by the obligee are paid. Article 1254 reads as follows:

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THE JUDICIARY ACT OF 1948

(With Annotations)

[CONTINUED FROM LAST ISSUE]

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

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

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

NOTES

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

1. APPOINTMENT OF SUBORDINATE EMPLOYEES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

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

2. CLERKS OF COURT DEPARTMENTS.

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

3. DUTIES OF CLERK TO JUDGE.

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

4. ACTS UNDER DIRECTION.

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

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

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

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

5. MATTERS REQUIRING JUDGE'S APPROVAL.

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

6. FUNCTION OF JUDGE PERFORMED BY CLERK.

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

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

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

8. CLERK OF COURT AS COMMISSIONER TO RECEIVE EVIDENCE.

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

9. OATH OF CLERK OF COURT AS COMMISSIONER.

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

10. OFFICER OF COURT MAY BE PUNISHED FOR CONTEMPT.

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

11. COMPENSATION.

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

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

12. NEGLIGENCE OF COURT'S PERSONNEL.

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

13. LIABILITY.

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

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

NOTES

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

1. PLACE OF PERFORMANCE.

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

2. ABOLITION OF COURT.

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

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

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

NOTES

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

1. DEPUTY CLERK MAY BE AN EX OFFICIO CLERK.

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

2. SALARY OF EX OFFICIO CLERK.

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

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

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

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

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

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

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

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

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

The Sixth Judicial District, of the City of Manila;

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

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

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

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

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

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

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

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

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

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

NOTES

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

1. JUDGES ARE APPOINTED FOR RESPECTIVE DISTRICTS.

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

2. JUDICIAL LOTTERY.

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

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

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

3. EFFECT OF INCREASING NUMBER OF DISTRICTS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES

1. Constitutional provision.
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1. CONSTITUTIONAL PROVISION.

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

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

2. CONSTRUCTION OF STATUTE.

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

3. WHEN A JUDGE MAY BE ASSIGNED TO ANOTHER DISTRICT.

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

4. RECORD OF DESIGNATION.

Executive order designating circuit judge of one circuit to hold

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

5. JUDGE HOLDING COURT IN ANOTHER DISTRICT.

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

6. CONSENT OF JUDGE.

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

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

7. DECISION RENDERED BY JUDGE WHO HEARD EVIDENCE.

Section 13 of Act No. 867 provides as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. JURISDICTION OF A JUDGE TO RECONSIDER THE ORDER ISSUED BY ANOTHER.

El Juez G. F. P. tenia jurisdicción para actuar sobre la reconsideración pedida por E. S. de la resolución del Juez Paredes concediendo la posesión del lote a la recurrente. El Juez Pablo era Juez

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

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

12. EFFECTIVITY OF THE LAW.

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

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

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

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

13. CERTIORARI.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES

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

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

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

2. ORDER TRANSFERRING CASES.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOTES

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

1. PLACE OF HOLDING COURT.

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

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

2. HOLDING SESSIONS IN DIFFERENT PLACES.

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

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

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

3. SESSION HELD AT A TIME NOT AUTHORIZED BY LAW.

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

4. MANDAMUS.

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

5. POWERS OF COURT AFTER EXPIRATION OF TERM.

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

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

NOTES

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

1. PLACE FOR HOLDING SESSIONS.

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

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

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

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

2. PURPOSE OF THE LAW IN FIXING PLACE OF HOLDING COURT.

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

3. TRANSFER OF TRIAL.

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

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

NOTES

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

1. TAKING PROOF IN PLACE NOT APPOINTED FOR HOLDING COURT.

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

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

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

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

NOTES

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

1. LENGTH OF SESSIONS.

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

2. SIMULTANEOUS SESSIONS.

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

3. SHORTENING OR PROLONGING SESSIONS.

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

4. NIGHT SESSION.

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

5. DUTY OF JUDGE.

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

6. CONSEQUENCES OF CONGESTED DOCKETS.

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

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

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

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

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

NOTES

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

1. JUDICIAL FUNCTIONS NOT DENIED.

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

2. PROCEEDINGS SEPARATE AND INDEPENDENT.

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

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

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

4. EFFECT OF FAILURE TO APPORTION BUSINESS.

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

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

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

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

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

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

6. PRACTICE NOT COMMENDED.

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

7. CASES OF PARTICULAR NATURE.

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

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

NOTES

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

1. NECESSITY OF COURT ATTENDANTS.

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

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

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

2. ADMINISTRATIVE OFFICER.

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

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

3. CONTROL OVER OFFICERS.

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

4. DELEGATION OF POWER.

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

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

5. REPEATED RECOMMENDATIONS NOT NECESSARY.

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

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

NOTES

1. Women eligible.
2. Oath of office.

1. WOMEN ELIGIBLE.

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

2. OATH OF OFFICE.

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

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

NOTES

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

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

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

2. TRANSFER OF CASES FROM ONE BRANCH TO ANOTHER.

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

3. REQUEST FOR TRIAL BY ANOTHER JUDGE.

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

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

4. SETTING ASIDE CONTINUANCE GRANTED BY ANOTHER JUDGE.

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

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

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

NOTES

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

1. VACATION, DEFINED.

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

2. TERM, DEFINED.

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

3. ACTIONS.

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

4. COURT SHALL ALWAYS BE OPEN.

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

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

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

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

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

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

NOTES

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

1. EFFECT AND VALIDITY OF ACTS.

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

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

2. POWER OF VACATION JUDGE.

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

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

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

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

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

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

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

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

NOTES

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

1. NATURE OF IMPEACHMENT PROCEEDINGS.

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

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

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

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

2. GROUNDS FOR REMOVAL.

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

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

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

3. PARTIALITY AND NEGLIGENCE.

We have decided to pay no particular attention to the general

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

4. WILFUL AND INTENTIONAL WRONGDOING.

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

5. MISCONDUCT.

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

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

6. ERRONEOUS DECISION.

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

7. CONVICTION OF CRIME.

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

8. ACCUMULATED CASES.

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

9. PROCEDURE FOR IMPEACHMENT.

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

10. EVIDENCE.

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

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

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

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

11. GOOD FAITH A DEFENSE.

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

(Continued on page 248)

I

Pacito Abrea, petitioner-appellant, vs. Isabelo A. Lloren, respondent-appellee, G. R. No. L-2078, October 26, 1948, OZAETA, *J.*

1. ELECTIONS; STATUTES; CONSTRUCTION AND INTERPRETATION; EFFECT OF NONINCORPORATION OF A PROVISION OF PREVIOUS ELECTION LAW IN THE REVISED ELECTION CODE. —The nonincorporation in the Revised Election Code of the provision of a previous election law (Act No. 4203, section 16), which said: "* * * Nor shall any vote be counted on which the candidate is designated by his nickname or alias, although mention thereof is made on his certificate of candidacy," is indicative of the intention of the Congress to abandon it.

2. ID.; BALLOTS; NICKNAMES; CANDIDATE SUFFICIENTLY IDENTIFIED BY NICKNAMES.—Appellee was sufficiently identified by his nickname Beloy or Biloy, first, because such nickname is a derivative, or a contraction of his Christian name Isabelo; second, because he was popularly and commonly known in the entire municipality of Inopacan by that nickname; and, third, because there was no other candidate for mayor with same nickname.

3. ID.; ID.; CANDIDATE SUFFICIENTLY IDENTIFIED BY HIS CHRISTIAN NAME OR SURNAME ONLY; RULES LAID DOWN IN CAILIES VS. GOMES AND BARBAJA, 42 PHIL. 496 AND CECILIO VS. TOMACRUZ, 62 PHIL. 689, CHANGED OR ABANDONED.—Rule No. 1 contained in section 149 of Republic Act No. 180 reverses the doctrine or rule laid down by the Supreme Court regarding the use of the Christian name alone of a candidate by providing that—contrary to said doctrine—any ballot where only the Christian name of a candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office. The purpose of this new rule is to validate the vote provided the name written on the ballot identifies the candidate voted for beyond any question or possible confusion with any other candidate for the same office.

4. ID.; ID.; NICKNAMES; BALLOT BEARING NICKNAME OF CANDIDATE ONLY, VALID. — When the nickname of a candidate is a derivative or contraction of his Christian name or of his surname, and if he is popularly and commonly known by that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office.

5. ID.; ID.; APPRECIATION OF BALLOTS.—A ballot is indicative of the will of the voter. It does not require that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective. At the same time, it is not admissible to say that something was intended which is contrary to what was done; and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded. (Mandac vs. Samonte, 49 Phil. 284)

6. ID.; ID.; NICKNAMES; EVIDENCE; PROOF OF CANDIDATE'S IDENTITY BY NICKNAME. — The protestee had the right to prove that he was popularly and commonly known by his nickname to overcome the contention of the protestant that the use of such nickname on the ballots in question did not sufficiently identify the protestee as the candidate voted for.

7. ID.; ID.; ID.; INQUIRY TO VOTES CAST LIMITED.—The trial court acted properly in limiting the inquiry to the number of votes cast for the protestee with only his nickname written on the ballots, because the basis of the protest was not that the election inspectors had erred in counting all the votes cast for each of the two candidates but that they erred in counting in favor of the protestee 417 votes in which only his nickname was used. No fraud, mistake, or misreading of the ballots was alleged in the protest. The issue presented to the court was confined to whether there were really 417 votes for the protestee in which the nickname Beloy alone was written and whether those votes were valid or not.

PERFECTO, *J.*, concurring:

8 NICKNAMES.—As a general rule, votes cast in nicknames written in isolated ballots, should not be given effect in accordance with paragraph 9, Sec. 149, in connection with Sec. 34 of the Election Code.

9 CLEAR INTENTION OF THE ELECTORATE.—When the evidence on record shows that the nickname written in the ballots express the intention of the electorate to vote for a candidate, that intention must be given effect.

10 CONCLUSIVE EVIDENCE.—The fact that 602 ballots were cast with the names of Beloy, Biloy and Belog, nicknames of the Christian name Isabelo of a candidate, is conclusive evidence that the electorate voted in fact for said candidate.

11. LEGAL TECHNICALITIES.—Legal technicalities should be brushed aside for the sake of the fundamental purpose of popular suffrage: that of giving effect to the will of the people as freely and clearly expressed in the ballots.

12. BASIC PRINCIPLE OF POPULAR SOVEREIGNTY. — Statutory provisions and judicial doctrines on elections are enacted and laid down to insure the determination of the true will of the people in consonance with the basic principle of the Constitution that "sovereignty resides in the people and all government authority emanates from them."

13 THE SUPREME LAW.—All provisions of law and legal doctrines should be interpreted, applied and enforced not to defeat but to give effect to the basic principles of the Constitution. The Constitution is the supreme law and all legal provisions are and should give way to its paramount authority.

Attys. Dominador M. Tan, Braulio G. Alfaro & Conrado G. Abiera and *Dominador M. H. de Joya* for the petitioner-appellant.

Attys. Domingo Veloso and *Castrence Veloso* for the respondent-appellee.

DECISION

OZAETA, *J.*:

In the general elections of November 11, 1947, appellant Pacito Abrea and appellee Isabelo A. Lloren were the candidates for the office of municipal mayor of Inopacan, Leyte. In his certificate of candidacy appellee Isabelo Lloren stated that he was also known by the following names: Isabelo A. Lloren, Isabelo Lloren Abrea, Beloy Lloren, I. Lloren Abrea, Loy Lloren, and Loy Abrea.

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

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

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

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

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

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

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

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

> "1. Any ballot where only the Christian name of candidate or only his surname appears is valid for such candidate, if there is no other candidate with the same name or surname for the same office; but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter.
>
> "2. A name or surname incorrectly written which, when read, has a sound equal or similar to the real name or surname of the candidate shall be counted in his favor."

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

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

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

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

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

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

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

12. SUSPENSION.

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

(TO BE CONTINUED)

that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office. This ruling is in consonance with the wellknown principle of election law which this court reiterated in Mandac vs. Samonte, 49 Phil. 284, 301-302, as follows:

"A ballot is indicative of the will of the voter. It does not require that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective. At the same time, it is not admissible to say that something was intended which is contrary to what was done; and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded."

2. Appellant further contends that "the lower court erred in admitting evidence aliunde to determine the intention of the voter." Counsel in his brief does not specify what evidence he is referring to, nor does he show that it was admitted over his objection and exception. He merely says: "The fact that in its decision the lower court makes a conclusion that the protestee is popularly known in his place by the nicknames already mentioned, presupposes consideration of testimonial evidence to influence its mind in making said conclusion." He evidently refers to the proof upon which the trial court based its finding that the protestee was popularly and commonly known in the whole municipality of Inopacan by the nickname Beloy or Biloy. We do not feel bound to consider the admissibility or inadmissibility of such proof in the absence of any showing that the adverse party duly interposed an objection to its admission. But we think the protestee had the right to prove that he was popularly and commonly known by his nickname to overcome the contention of the protestant that the use of such nickname on the ballots in question did not sufficiently identify the protestee as the candidate voted for.

3. Lastly, appellant contends that the lower court erred in not ordering the recounting of all the votes of the contending candidates.

We think the trial court acted properly in limiting the inquiry to the number of votes cast for the protestee with only his nickname written on the ballots, because the basis of the protest was not that the election inspectors had erred in counting all the votes cast for each of the two candidates but that they erred in counting in favor of the protestee 417 votes in which only his nickname was used. No fraud, mistake, or misreading of the ballots was alleged in the protest. The issue presented to the court was confined to whether there were really 417 votes for the protestee in which the nickname Beloy alone was written and whether those votes were valid or not. If there were at least 417 of such votes and they were not valid, the protestant should win because the protestee's majority was only 198 votes. The inquiry brought out the fact that there were more than 417 of such votes; but as a matter of law the court found that they were valid. We confirm that finding.

The judgment appealed from is affirmed, with costs.

SO ORDERED.

Moran, C. J., Paras, Pablo, Bengzon, Briones, and *Tuason, JJ.*, concur.

Feria, Montemayor and *Reyes, JJ.*, did not take part.

PERFECTO, *J.*, concurring:

Two candidates ran for mayor of Inopacan, Leyte, in the elections of November 11, 1947: Isabelo A. Lloren, Liberal, and Pacita Abrea, Nacionalista. The Liberal candidate was proclaimed elected with 1,010 votes, with majority of 198 against the Nationalista who was credited with 812 votes.

The Nacionalista protested, seeking the annulment of 417 ballots in which Beloy was voted for mayor and were credited as votes for the Liberal candidate.

When the ballot boxes were opened, it was found that the names of Beloy, Biloy and Belog appeared written in the following numbers of ballots: Beloy 517, Biloy 77 and Beloy 8. All these 602 ballots were counted among the 1,010 votes credited to the Liberal candidate.

The Nacionalista candidate contended in the lower court and in this appeal that the 602 ballots with the three nicknames should not be counted as votes for the Liberal candidate, invoking the numerous decisions of the Supreme Court holding that nicknames alone are not sufficient identification of a candidate. "(Molina v. Nuesa, G. R. No. 30548, June 5, 1929, not reported; Alegre v. Perey, G. R. No. 3107, March 26, 1929, not reported; Valenzuela v. Carlos, etc., 42 Phil., 428; Bayona v. Siatong, 56 Phil., 831; Marquez v. Santiago, 57 Phil., 969; Fausto v. Ramos, 61 Phil., 1035; Sarenas v. Generoso, 61 Phil., 459; Cecilio v. Tomacruz, 62 Phil., 693; Coscolluela v. Gaston, 63 Phil., 41; etc.)."

Paragraph 9, Sec. 149, of the Election Code, taken jointly with the provision of Sec. 34 thereof, that provides that "certificates of candidacy shall not contain nicknames of the candidates" and the fact that the nicknames alone in question are not mentioned by the Liberal candidate among the many names he has mentioned in his certificate of candidacy with which he alleged he is known, aside from the long line of decisions of the Supreme Court, appear to support the contention of the Nacionalista candidate. We are of opinion, however, that all these legal reasons must give way to the unmistakable expression of the popular will.

The record of the case offers conclusive evidence that those voters who cast their ballots for the three nicknames in question intended in fact to vote for the Liberal candidate who is known by the electorate, friends and opponents, by the nicknames in question, derivatives of his Christian name and are among the nicknames with which the people call for short those who carry the same Christian name.

It is inconceivable to nullify the votes of so many voters, more than one-half of those who voted for the Liberal candidate, when there is no possible mistake that they have voted for said candidate. While we would not give effect to isolated ballots simply in nicknames, that may refer to persons other than a candidate, in abidance with the legal authorities above mentioned, in this specific case we feel no hesitancy in brushing them aside as ineffective legal technicalities for the sake of the fundamental purpose of popular suffrage: that of giving effect to the will of the people as freely and clearly expressed in the ballots.

Election statutory provisions and judicial doctrines are enacted and laid down to insure the determination of the true will of the people and to give it full effect, in consonance with the basic principle of the Constitution that "sovereignty resides in the people and all government authority emanates from them." (Sec. 1, Art. II.) All provisions of law and legal doctrines should be interpreted, applied and enforced not to defeat that basic principle but to give it full effect. The Constitution is the supreme law and all legal provisions are and should give way to its paramount authority.

We concur in the affirmance of the appealed decision.

II

Froilan Lopez, plaintiff-appellee, vs. Silvestre de Jesus, defendant-appellant, G. R. No. L-334, September 30, 1946, PARAS, *J.*

LEASE; DURATION WHEN NOT STIPULATED; TERMINATION; COMMONWEALTH ACT NO. 689, APPLICABILITY OF; CASE AT BAR. — As the lease did not have a fixed term, it should be considered

as one from month to month (the rental being payable monthly) and to have ceased, without the necessity of special notice, upon the expiration of every month. (Article 1581, Civil Code.) Even if, as contended by the appellant, a novation took place when the appellee increased the rent in June, 1945, the lease was still monthly and terminated after said month. Appellee's election to end the lease was unmistakably made known to the appellant when, on July 2, 1945, the latter was asked to vacate. Consequently, after June, 1945, there was no longer any lease that could be affected by section 1 of Commonwealth Act No. 689, which was enacted only on October 15, 1945.

APPEAL from a judgment of the Court of First Instance of Manila. De la Rosa, J.

The facts are stated in the opinion of the court.

Atty. Arturo Zialcita for defendant-appellant.

Attys. Gamboa & Enverga for plaintiff-appellee.

PARAS, *J.*:

The plaintiff is the owner of an apartment known and identified as No. 2227 Rizal Avenue, Manila. This apartment has been occupied by the defendant since September, 1940, under a verbal contract of lease calling for a monthly rental of ₱35 payable in advance, which was raised by the plaintiff to ₱44 in June, 1945. On April 2, 1945, and again on July 2, 1945, the plaintiff gave notice to the defendant for him to vacate the premises. Defendant's failure to do so led to the filing, on July 1945, by the plaintiff of an action for ejectment in the municipal court of Manila which, after trial, handed down a decision in favor of the plaintiff. The defendant appealed, but the Court of First Instance of Manila, in which the parties submitted a stipulation of facts, rendered a judgment for restitution and the payment of the monthly rental of ₱44 beginning June 1, 1945.

Appealing again, the defendant—through his counsel—argues that the action for ejectment was prematurely instituted and that, at least on equitable considerations, he should be allowed to stay.

Section 1 of Commonwealth Act No. 689 provides that "A lease for the occupation as dwelling of a building or part thereof which is not a room or rooms of an hotel, which does not specify any term, shall be considered of six months' duration counted from the date of occupation by virtue of said lease at the option of the lease." It is now the theory of the appellant that since the period of his lease was not specified, he has the right to remain as lessee for at least six months from June 1, 1945, when the rental was increased to ₱44—an act which resulted in a novation of the original lease.

Counsel for the appellant is mistaken. As the lease did not have a fixed term, it should be considered as one from month to month (the rental being payable monthly) and have ceased, without the necessity of special notice, upon the expiration of every month. (Article 1581, Civil Code.) Even if, as contended by the appellant, a novation took place when the appellee increased the rent in June, 1945, the lease was still monthly and terminated after said month. Appellee's election to end the lease was unmistakenly made known to the appellant when, on July 2, 1945, the latter was asked to vacate. Consequently, after June, 1945, there was no longer any lease that could be affected by section 1 of Commonwealth Act No. 689, which was enacted only on October 15, 1945, even assuming that said law is applicable to a legal relation that came into being prior to its enactment.

From the equitable viewpoint, appellant's case cannot also prosper. He might have been an old tenant now facing the difficulty of finding another house, but this circumstance cannot nullify the legal rights of the appellee and his family who have been admittedly "compelled to live upon the charity of some friend who generously offered them temporary shelter in his house which is overcrowded, to say the least."

The appealed judgment is affirmed, with costs against the appellant. So ordered.

Pablo, Perfecto, Hilado, and *Padilla, JJ.*, concur.

Judgment affirmed.

III

Bienvenido Yap, petitioner-appellee, vs. The Solicitor General, oppositor-appellant, G. R. No. L-1602, September 9, 1948, PERFECTO, *J.*

1. POLITICAL LAW; CITIZENSHIP; NATURALIZATION; DECLARATION OF INTENTION TO BECOME FILIPINO; ORAL EVIDENCE, SUFFICIENCY OF.—Where the records have been lost, oral testimony of the applicant that he had filed his declaration of intention to become a Filipino citizen, is sufficient.
2. ID.; ID.; ID.; CHINESE LAW, NATURALIZATION OF FILIPINOS UNDER.—Under the Chinese Law of citizenship, a copy of which was attached to the record, a Filipino can acquire Chinese citizenship by naturalization.

Atty. R. D. Salcedo for the petitioner-appellee.

The Solicitor General for the oppositor-appellant.

DECISION

PERFECTO, *J.*:

Bienvenido Yap was born of Chinese parentage on May 27, 1918, in Capiz, where he has been continuously residing ever since. He speaks and writes English and Hiligaynon, the Visayan language in the locality. He started his studies in the Capiz Chinese Elementary School and continued in the Capiz High School where he was in the fourth year at the outbreak of the last war. He is married to Gloria Lim, a native, born of a Chinese father and by this union he has two children born in Capiz, Wilfred Yap on May 26, 1944 and Roubin Yap on April 12, 1946. He is engaged in business with an invested capital of ₱10,000.00. During the occupation he rendered services to the guerrillas.

The lower court granted his application for Philippine citizenship.

The Solicitor General raises two questions in this appeal.

He contends, in the first place, that the lower court erred in not finding that the applicant has failed to establish satisfactorily that he had previously filed his declaration of intention to become a citizen of the Philippines and that he is not exempted from the prerequisite of filing said declaration.

Applicant alleged under oath in his petition that he had filed his declaration of intention to become a Filipino citizen with the office of the Solicitor General in 1941, although all the records have been lost by reason of the war. This allegation is not disputed in any answer or objection and is supported by the unrebutted testimony of applicant, who was duly cross-examined in the trial court. This is enough evidence. Appellant's contention that applicant's testimony should be supported by documentary proof is not well taken. There is nothing in the law in support of such requirement.

The second and last question raised by the Solicitor General is that the lower court erred in not finding that applicant has failed to establish that the laws of China grant Filipinos the right to become naturalized citizens thereof.

We find on record Exhibit E, a document supposed to be a copy of the Chinese law of citizenship, where it appears that a Filipino can acquire Chinese citizenship by naturalization. Although we do not see any certification attached to the exhibit, the lower court's decision states that applicant's pronouncement is in a way supported by the fact that Exhibit E carries the dry seal of the Court of First Instance of Cebu. The pronouncement of the lower court has not been disputed, and it can be assumed that when the copy was submitted to the lower court, the latter must have seen a certification attached to

it which might have been misplaced. At any rate, the controversy appears to be academic, considering the fact that at the hearing of this case, counsel for appellant stated that in another case there is such certified copy of the Chinese law where it appears that Filipinos are given the right to acquire Chinese citizenship.

There being no error in the appealed decision, the same is affirmed.

Paras, Pablo, Briones, Feria, Bengzon, Padilla and *Tuason, JJ.*, concur.

IV

Consuelo S. de Garcia, Anastacio U. Garcia, Virginia S. de Meneses and Alfredo Meneses, petitioners, vs. Ambrosio Santos, Judge, Court of First Instance of Rizal, Natividad Reyes and Adriana Reyes, respondents, G. R. No. L-1422, October 17, 1947, PARAS, *J.*

1. INJUNCTION; PRELIMINARY INJUNCTION TO PRESERVE "STATUS QUO."—The respondents had been in material and physical possession of certain lots until January 7, 1947. In December, 1946, they commenced to build four houses of strong materials on said lots and the construction work was suspended only on January 7, 1947, due to the forcible entry of petitioners who thereafter built around the lots a wire fence and placed armed men on the premises to make the ouster of respondents and their laborers effective. *Held*: That petitioners' act may at most be considered as a mere interference with or disturbance of respondents' possession and that the issuance of a preliminary injunction to restore respondents in their *status quo* was proper.

2. ID.; POSSESSION AND CONTROL OF PROPERTY.—Injunction generally will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established by law (Rodulfa vs. Alfonso, G. R. No. L-144, promulgated February 25, 1946, 42 Of. Gaz. 2439).

3. ID.; PRELIMINARY INJUNCTION TO PRESERVE "STATUS QUO."—The sole object of a preliminary injunction is to preserve the *status quo* until the merits can be heard. The *status quo* is the last actual peaceable uncontested *status* which preceded the pending controversy.

4. ID.; COURT; HEARING; JUDGE ACTED AFTER DUE HEARING.—Where injunction was granted by the respondent Judge almost two months after the filing of the complaint, and only after the parties had argued the point in open court and after considering the verified pleadings with their supporting papers, and the petitioners were able to file a motion for reconsideration, which was also denied by the respondent Judge after taking into account all the considerations invoked by the petitioners, the respondent Judge did not act hastily in the matter and without hearing.

Attys. Q. Paredes & Reyes & Castañeda for the petitioners.

Atty. Mariano Albert for the respondents.

DECISION

PARAS, *J.*:

Under date of January 22, 1947, the herein respondents, Natividad Reyes and Adriana Reyes, filed a verified complaint (Civil Case No. 129) in the Court of First Instance of Rizal against the herein petitioners, praying that a writ of preliminary mandatory injunction be issued ordering the petitioners to restore to the respondents the possession of two contiguous lots located in the municipaliy of Pasay, province of Rizal, and to take away the wire fence built around said lots by the petitioners; that after trial said injunction be made permanent; that the petitioners be sentenced to pay ₱20,000 by way of damages, and that the respondents be granted such other remedy as may be proper under the law. The complaint alleges in substance that the respondents acquired the two lots on June 6, 1945, from their former owner, Realty Investments, Inc.; that from such date the respondents have been in possession of the lots; that in December, 1946, the latter began constructing on the lots four houses of strong materials valued at about ₱14.400; that on January 7, 1947, when the houses were about to be finished, the petitioners forcibly entered the lots and ousted therefrom the respondents and the persons constructing the houses; that said petitioners thereafter built around the lots a wire fence and posted armed men on the lots with a view to preventing the respondents and their laborers from entering therein and proceeding with the construction of the houses above mentioned.

Under date of February 1, 1947, the petitioners filed a verified answer in said Civil Case No. 129, alleging in the main that the contract of June 6, 1945, between the Realty Investments, Inc. and the respondents, upon which the latter base their claim of ownership over the lots in question, was a mere contract to sell, which was converted on April 26, 1946, into a conditional contract to buy, which was in turn rescinded on December 19, 1946, by the Realty Investments, Inc.; that the petitioners are the registered owners of the lots, having bought the same from the Realty Investments, Inc. on December 28, 1946; that the petitioners have been in peaceful possession thereof, by themselves and through their predecessor in interest, Pararam Aildos (who transferred to the petitioners his right to buy the lots from the Realty Investments, Inc.), since November, 1941; that the respondents, on or about December 28, 1946, over the opposition of the petitioners and their predecessor in interest, entered the lots and began the construction of the four houses mentioned in the complaint; that it was the mayor of Pasay who ordered the suspension of said construction, and that the persons guarding the premises are members of the Detective and Protective Bureau, Inc., who are merely enforcing the order of said mayor.

Under date of February 1, 1947, the petitioners filed a verified written opposition to the issuance of the writ of preliminary mandatory injunction, based on practically the same allegations contained in their answer.

After a hearing in which the matter was argued at length, the herein respondent Judge of the Court of First Instance of Rizal, Honorable Ambrosio Santos, issued an order dated March 14, 1947, directing the issuance of the writ of preliminary mandatory injunction praved for by the respondents, upon their filing of a bond in the sum of ₱5,000. Petitioners' motion for reconsideration dated March 28, 1946, was denied by the respondent Judge in his order of April 15, 1947. On this latter date, the respondent Judge issued an order approving the bond of ₱5,000 filed by the respondents and directing the issuance of the corresponding writ of preliminary mandatory injunction.

Whereupon, on April 19, 1947, the petitioners instituted the present petition for certiorari with preliminary injunction, praying that the orders of the respondent Judge of March 14 and April 15, 1947, and that the respondent Judge be ordered to set Civil case No. 129 for trial on the merits with a view to determining the question of title and possession over the two lots in question.

The respondent Judge, without attempting to settle the issue relating to the ownership of the lots, found, in his order of March 14, 1947, that the respondent have been in material and physical possession of the lots until January 7, 1947, and that in December, 1946, said respondents commenced to build four houses of strong materials on said lots and the construction work was suspended only on January 7, 1947, due to the forcible entry of the petitioners who thereafter built around the

lots a wire fence and placed armed men on the premises to make the ouster of the respondents and their laborers effective. After a careful examination of the record before us, we find said conclusions to be correct. It is significant that the petitioners admit the existence of a contract in favor of the respondents for the purchase of the lots in question, and that said contract preceded the alleged deeds of sale executed by the Realty Investments, Inc. on December 28, 1946, in favor of the petitioners. More significant still is the stubborn fact that there are actually on the lots four houses of strong materials about to be finished, the construction of which by the respondents in December, 1946, is not denied by the petitioners. These circumstances strongly militate against petitioners' pretense that they had ever been in peaceful possession of the lots prior to that of the herein respondents.

The legal question that arises is whether the issuance of a writ of preliminary mandatory injunction, such as that ordered by the respondent Judge, is proper, in view of the established rule that injunction generally will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established by law. (Rodulfa v. Alfonso, G. R. No. L-144, promulgated February 28, 1946, 42 O. G. 2439, citing earlier cases.)

We are of the opinion that the respondent Judge did not gravely abuse his discretion in granting the injunction. We hereby reiterate the general rule pointed out in Rodulfa v. Alfonso, *supra*, but we consider the case at bar as not falling thereunder. Rather, it is a situation contemplated in the following passages of said decision:

> "But the fact that the petitioner might have been in sporadic possession of all or some of the lands in question, in the last months of 1945, having entered the same, by means of threats and intimidation, will not prevent the issuance of a writ of preliminary injunction in favor of herein respondent, as defendant in said civil case No. 8939, in whose name said lands had been registered under the Torrens System, and who has been in possession thereof, during the last 20 years, as said possession of the petitioner is completely and absolutely illegal.
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> "The sole object of a preliminary injunction is to preserve the *status quo* until the merits can be heard. The *status quo* is the last actual peaceable uncontested *status* which preceded the pending controversy. (Frederick vs. Huber, 180 Pa., 572; 37 Atl., 90.)
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> "In cases involving the issuance of a writ of preliminary injunction, the exercise of sound judicial discretion by the lower court will not generally be interfered with; and the refusal of the trial court to permit the plaintiff in this case to file a counterbond cannot be considered as an abuse of sound judicial consideration, *bearing in mind particularly the admission made by the plaintiff himself that sometime in 1945, or thereabouts, he occupied and took possession of all or some of the lands in question, without waiting for the final decision of the competent courts in said civil case No. 8930. It is a general principle in equity jurisprudence that 'he who comes to equity must come with clean hands.'* (North Negros Sugar Co. *vs.* Hidalgo, 63 Phil., 664.)" Rodulfa v. Alfonso, *supra.*

The action of the petitioners in encircling the lots in question with a wire fence and in guarding the place, may at most be considerd as a mere interference with or disturbance of respondents' possession and, as such, is even of less extent than the possession admittedly held by the petitioners in the case of Rodulfa v. Alfonso, *supra.* We have therefore, a much better instance in which a preliminary injunction may be availed of "to preserve the *status quo* until the merits can be heard." Said *status quo* is the "last actual peaceable and uncontested" possession of the herein respondents which preceded Civil Case No. 129, and certainly not the guarded possession of the petitioners. The necessity of restoring the parties in this case to their former situation is called for by the fact that the suspension of the construction of respondents' houses may result in a much greater damage than the granting of the injunction upon the filing of a bond which can amply indemnify the herein petitioners.

The injunction was granted by the respondent Judge almost two months after the filing of the complaint, and only after the parties had argued the point in open court and after considering the verified pleadings with their supporting papers. Again, the petitioners were able to file a motion for reconsideration, which was also denied by the respondent Judge after taking into account all the considerations invoked by the petitioners. We are thus unable to hold that the respondent Judge acted hastily in the matter and without a hearing. Of course, it was not yet necessary for the respondent Judge to require and receive such evidence as may be sufficient to settle the question of title, which should be decided after the trial on the merits. It is needless to state in this connection that the complaint in Civil Case No. 129 clearly makes out an action to quiet title.

Wherefore, the petition is hereby dismissed with costs against the petitioners. So ordered.

Feria, Pablo, Perfecto, Hilado Bengzon, Briones, Padilla and *Tuason, JJ.*, concur.

Moran, C.J., concurs in the result.

V

People of the Philippines, plaintiff-appellee, vs. Pilar Barrera de Reyes, defendant-appellant, G.R. No. L-397, November 23, 1948, PERFECTO, *J.*

CRIMINAL LAW; TREASON; EVIDENCE; WITNESSES; INHERENTLY IMPROBABLE OR CONTRADICTORY TESTIMONY OF WITNESSES.—Although there were two or more witnesses who testified to an overt act of treason, if their testimonies are contradictory in themselves or inherently improbable, the Court cannot hold that the guilt of the accused has been established beyond reasonable doubt.

Atty. Enrique Ramirez for the defendant-appellant.

The Solicitor General for the plaintiff-appellee.

DECISION

PERFECTO, *J.*:

Pilar Barrera de Reyes appealed against the lower court's judgment finding her guilty of treason and sentencing her, in accordance with the provisions of Article 114 of the Revised Penal Code, *to reclusion perpetua,* with the accessories of the law and to pay a fine in the amount of ₱10,000.00 and the costs.

The prosecution accuses her of having caused, by pointing them to Japanese officers and soldiers, the arrest of three Filipino guerrilla suspects, Pelagio Cabutin, Ignacio Mejia and Alejandro Tan, who, after having been apprehended inside the air raid shelter where they were hiding inside the ruins of the Santa Rosa College, Intramuros, Manila, were tortured and then brought to Fort Santiago where they were killed, the treasonous denunciation having been committed on February 15, 1945.

Two witnesses, Modesta B. Son and her daughter Lourdes B. Son, testified for the prosecution to show appellant's responsibility for the arrest, torture and killing of the three victims of Japanese brutality. According to the two witnesses, on February 5, 1945, all the male residents in Intramuros, about 400 of them, were taken by the Japanese and herded in Fort Santiago, while all the females, about 300, and the children, were herded inside the ruins of Santa Rosa College. The three victims, members of a guerrilla outfit in Laguna, who went to Intramuros to visit their relatives and observe the activities of the Japanese, were among the males who were rounded up, tied, tortured and brought to Fort Santiago on February 5, 1945. On February 9, 1945, they were able to secure permission from a Japanese lieutenant to go out for the purpose of visiting two girls, Rosing and Magdalena, Cabutin's nieces, who were among the women herded in the Santa Rosa College compound. (The statement in the government's brief that the three victims managed to escape is not based on any testimony on record.) Once inside the ruins, Cabutin and companions hid from the Japanese, dug an air raid shelter, covered it with wood and earth, and on top built a shack for Rosing and Magdalena to stay in. The accused, who was living in another shack with

her child and a maid and wherein her husband, a Japanese officer, passed all night from 6 p.m. to 6 a.m., used to make rounds to spy on males hiding in the compound, pretending to barter foodstuffs. On the morning of February 15, 1945, she discovered the presence of the three victims and reported the fact to her husband who, in turn, called three Japanese soldiers and all of them, including the accused, went to the hiding place and the three Japanese soldiers apprehended the three victims and tortured them. The accused told the Japanese officer to take the three guerrillas and bring them to Fort Santiago. The arrest of the three guerrillas took place in the morning, and in the afternoon of the same day the accused told the witness that the three had already been killed. On the following day, February 16, at 11 o'clock, Arcadio Son, Modesta's husband, who was hiding in their shack since February 5, was also taken by the Japanese soldiers, tortured and brought to Fort Santiago, because the accused happened to hear of his presence in the place on February 15, and denounced him then to her husband, the Japanese officer. Arcadio Son never returned since he was brought to Fort Santiago. From February 5 to 20, there were in Santa Rosa College compound many women married to Japanese, all of them spies who used to go around the shacks to look for men in hiding. Those other women peeped into the shack of Arcadio Son three times looking for men.

There is no way of determining with absolute certainty whether Modesta and Lourdes B. Son testified to the truth or not. While the record offers no clue that mother and daughter's testimonies should be imputed to bastard motives, there are flaws in their declarations that preclude us from accepting them at their face value. We notice several contradictions that have not been explained. But even if they can be explained, there are improbabilities in the testimonies, from accepting which conscience recoils. That Cabutin, Mejia and Tan, after having been confined in Fort Santiago since February 5, were on February 9 given permission by a Japanese lieutenant to go out for the exclusive purpose of visiting Cabutin's nieces, Rosing and Magdalena, appears to be fantastic. That the three guerrillas were allowed to go out, that they went out without any Japanese guard or escort, and that, upon their failure to return, the Japanese did not right away comb all places including the Santa Rosa College for their arrest, are things incompatible with the ways of the Japanese. If the Japanese lieutenant could have believed that to visit his nieces was enough reason to allow Cabutin to go out from Fort Santiago, such reason could not be applied in favor of his two companions who had nothing to do with the girls. If the three guerrillas wanted to hide, they could not have been so dumb to go to and stay at the very spot where Rosing and Magdalena were staying, as it would be the logical spot, to anyone's mind, that the Japanese would have search first, because the Japanese lieutenant must have known that to visit the two girls, they must have had to go to their place.

If it is true that the accused had been making daily rounds in order to detect males hiding in the Santa Rosa College compound, it is incomprehensible how it took her six days, from February 9 to February 15, to discover the presence of the guerrilla trio and to denounce them to the Japanese officer. According to Modesta and Lourdes, the air raid shelter dug by the trio was situated at a few meters distance from the shack of the accused. Before the three guerrillas had been able to dig the hole, all of them must have been exposed to the full view of the accused and they remained so while they were working in the excavation, to perform which it would have taken days or many hours. The earth and stones taken from the hole must have been piled on the surface. When the three guerrillas undertook the work of placing wooden planks and earth on top of the shelter and then they built the shack for Rosing and Magdalena, they could have also been seen by the accused. There is no pretence that the accused suffered blindness during the hours and days needed the three guerrillas to complete the whole job.

Modesta's story of the Japanese officer who every night slept with the accused, is surprising. The conduct of the Japanese appears to be that of a civilian employee rather than that of a military officer or, at any rate, of a man enjoying the blessings of undisturbed peace. It is unbelievable that a Japanese officer should leave his garrison for whole nights, and much more at the time when the American Army was already in Manila and was showering bombs and cannon shells in Intramuros.

Modesta would make us believe that the accused made denunciations to the Japanese officer in a way that she could hear them, that the accused was almost ordering the Japanese officer to bring the victims to Fort Santiago, and even bragged that they were already killed. A Filipina in her mind could not have done such things, considering the well-known fact of the overwhelming feeling in our population against the Japanese, and much more on February 15, 1945, when the victorious Americans had already surrounded Intramuros. It would have been suicidal for the accused to have done what Modesta attributes to her because it would have exposed her to reprisal or revenge.

Modesta would make us believe also that the presence of her husband, Arcadio Son, in the compound was discovered by the accused since February 15 and denounced on the same day to the Japanese officer, but the arrest took place only at 11 o'clock the next morning. No Japanese officer could have been so slow as that.

On the other hand, Modesta's assertion that she was outside of her shack when she witnessed the arrest of the guerrilla trio on February 15, is belied by Asuncion Dueñas, a witness for the prosecution, who said that when the three victims were caught by the Japanese, Modesta was during the whole time inside her shelter.

When after liberation, Modesta and her daughter denounced to the authorities the Japanese arrests in the Santa Rosa College ruins, but mentioned the apprehension of the guerrilla trio, but not the arrest of Arcadio Son. They failed to do so twice, first when they made the denunciation to Froilan Bungue, United States Army soldier, and the second time when they were investigated on March 15, at about 10 a.m., by the American CIC at General Solano Street. Modesta's explanation was that at that time her mind was perturbed, and that of Lourdes was that she simply forgot about it. That a husband, a father, had in that way been forgotten by his wife and daughter who, nevertheless, were prompt in remembering the names of three acquaintances or friends, is a thing that cannot fail to cast doubt on the mother and daughter's credibility.

As regards Lourdes, there is her positive testimony that on November 16, 1945, she was beaten by her husband because she said on one occasion that the accused was not the same woman who pointed the three men caught by the Japanese at the Santa Rosa College and killed in Fort Santiago, that her husband told her to point the accused as the one, and that if she should tell again that it was not the accused, he would beat her again. This revelation cannot fail to affect her testimony against the accused.

The defense has shown that since February 11, 1945, the child of the accused had been ill and that she remained all the time attending to said child until it was killed by a shrapnel on February 18, and that it is not true that the accused had any Japanese sleeping with her or committed the acts attributed to her by the witness for the prosecution. A witness for the defense had shown that the witnesses for the prosecution could have confused the accused with other women, with similar features. When Modesta approached Froilan Bungue to denounce the arrests, the accused was not present, and among those arrested by Bungue as a result of the denunciation was one Asuncion Mendoza, while other witnesses testified that among the women spies were two, called by the name of Fely and Perla.

The prosecution has the *onus probandi* in showing the guilt of an accused. "In all criminal prosecutions, the accused shall be presumed to be innocent until the contrary

is proved." (Sec. 1 [17], Art. III of the Constitution.) The evidence of the prosecution in this case does not show beyond all reasonable doubt that the accused has committed the overt act imputed to her. The presumption of innocence in favor of appellant has not be overthrown.

With the reversal of the appealed judgment, appellant Pilar Barrera de Reyes is acquitted and, upon promulgation of this decision, she will be immediately released.

Moran, C.J., Paras, Feria, Bengzon and *Briones, JJ.*, concur.

Reyes, J., takes no part.

TUASON, *J.*, dissenting:

Three-eye-witnesses, not two, testified for the prosecution in this case.

Modesta B. Son testified that on February 5, 1945, the Japanese gathered all the menfolk in Intramuros, bound their hands, and took them to Fort Santiago. She saw about 200 men thus arrested. Pelagio Cabutin, Ignacio Mejia and one Alejandro, whose surname she did not know, were among them. On February 9, they appeared at Sta. Rosa College; they said that they were able to get out because they talked to a Japanese lieutenant. From that time the three men stayed at Sta. Rosa College. They made a hole "deep enough," put planks of wood and galvanized iron sheets on top, and covered these with earth. On top of the covering they built a small shack for Rosing and Magdalena who were Pelagio Cabutin's nieces. The witness does not know whether Magdalena and Rosing were still alive because she had never seen them after liberation. On February 15, Cabutin, Mejia and Alejandro, by the indication of Pilar Barrera Reyes, were found and told to come out of the hole, and after they did, a Japanese officer and three Japanese soldiers slapped, kicked and bayonetted them, after which they were taken to Fort Santiago.

Before that date, the witnesses had known Pilar Barrera Reyes, when she was living at No. 73 Beaterio street. Pilar used to call on witness, landlord. That began as early as February 15, 1944. Pilar Barrera Reyes was then living at No. 50 Legaspi street. She lived with a Japanese officer who used to come to her house day and night. Witness supposed he was an officer because he carried a sword and a pistol.

At Sta. Rosa College, Pilar Barrera Reyes frequently went from shack to shack to barter food. But this was a mere pretext, her purpose being to find out if there were males in the shacks. When she pointed to the Japanese the hideout of Cabutin, Mejia and Alejandro she, the accused, was standing at the door of her shack. Then the Japanese officer fetched three Japanese soldiers. That was the time when the four Japanese arrested Cabutin, Mejia and Alejandro.

Modesta B. Son also testified that Pilar Barrera Reyes had witness' husband, Arcadio San, arrested by the Japanese. That was on the 16th. Pilar informed the Japanese that Arcadio Son was inside the shack. Three Japanese soldiers came, pulled him out, tied and slapped him, and carried him away. This time Pilar Barrera Reyes was in front of the witness' shack when the arrest was made. Arcadio Son, when he was spied by the accused, was inside an air-raid shelter covered with pillows and mats and wearing a woman's dress. The accused happened to see Arcadio Son on February 16 when she was bartering foodstuffs and peeped into the shack.

Lourdes B. Son, Modesta's daughter, 17 years old, testified substantially as follows: On February 5, 1945, the Japanese seized and arrested about 400 men in Intramuros, maltreated them and took them to Fort Santiago. All the women were sent to Sta. Rosa College which had already been destroyed by fire. Among the males taken to Fort Santiago were Pelagio Cabutin, Ignacio Mejia and one Alejandro. About February 9, 1945, these three men appeared at Sta. Rosa. She asked them how they were able to get out and they answered they begged a Japanese officer to let them see and talk to their nieces Rosing and Magdalena. Then they hid themselves in an air-raid shelter. They dug a hole, put wood shafts inside and covered the top with galvanized iron sheets and earth. On top of these, they built a shack for Rosing and Magdalena. On February 15, Pilar Barrera Reyes was bartering rice at every shack. She heard voices in Rosing's shack and appeared surprised. She peeped in through a hole and saw the three men inside. After that she returned to her shack and one-half hour afterward her Japanese husband showed up. To the Japanese Pilar Barrera Reyes pointed the shack where she had heard men's voices. Thereupon the Japanese officer went out and brought back three soldiers. The Japanese removed the iron sheets from the shack and told Magdalena and Rosing to step out. Then they told the three men to come out. Once outside the hole, the three men were tied, slapped, beaten with the butts of guns and fists, stabbed with bayonets and, when they fell, were put back on their feet. While this punishment was being inflicted, Pilar Barrera Reyes was near the Japanese officer. The three men were taken to Fort Santiago and never heard from again.

On February 16, at 9 o'clock, the witness left her family's shack and when she returned she saw her father being tortured by three Japanese soldiers and the Japanese husband of Pilar Barrera Reyes. Her father was bleeding; at that time Pilar Barrera Reyes was beside the Japanese officer. Pilar Barrera Reyes was laughing and saying, "You are hiding yet, probably you are also a guerrilla." (Nagtatago ka pa, marahil ay guerrilla ka rin".)

Asuncion Dueñas testified that on February 5, 1945, she was at the Cathedral with her husband, a cousin, and her three children. From the Cathedral, the women were sent to Sta. Rosa College while the males were taken to Fort Santiago by the Japanese. Among the women at Sta. Rosa College was Pilar Barrera Reyes whose shelter was about three brazas away from hers. In moving to Sta. Rosa College witness first took her three children and told her husband to wait at the Cathedral. Later she came back, put on him her own clothes, covered his head with a kerchief, and accompanied him to Sta. Rosa. On February 15, she saw Pilar Barrera Reyes talking with two Japanese officers who came to her shack. Pilar pointed her shelter to the Japanese and said that a man was hiding there. Then the Japanese officer led her husband out, stripped him of his woman's apparel and the towel with which his head was wrapped, after which they struck him with fists and bayoneted him on the left shoulder. Witness heard Pilar say that it would be better to take him to Fort Santiago because he was hard-headed; he did not want to join the males. This happened about 3 o'clock in the afternoon.

At 11 o'clock a.m. of that day, she also saw Cabutin, Mejia and Alejandro being maltreated by three Japanese. They were tied, slapped, boxed and bayoneted. She heard Pilar tell the Japanese that they had better take the men to Fort Santiago.

Asuncion Dueñas also testified that once, on the 15th, Pilar Barrera Reyes saw her (witness') child crying; that when, in answer to the defendant's question why the baby was crying she said it was its habit to cry most of the time, Pilar remarked that witness should throw the child away. She also testified that on the 25th when they were liberated she and Pilar saw each other again at the San Lazaro Race Track. She said that she knew Modesta for the first time when they met at Sta. Rosa College.

The defense is a complete denial of any complicity, on the part of the accused, in the atrocities stated by government witnesses. Other women cohabiting with Japanese, it was alleged or insinuated, were the spies responsible for those atrocities.

The decision would tear down the testimony of the witnesses for the prosecution on assumed, not established or alleged, facts. On some points it theorizes from premises that are contrary to actual facts; on still others, the conjectures are not, in my judgment, sound even in the realms of speculation and psychology; for the rest, the discussion in the decision is immaterial in the light of defendant's defense or admission.

The Court disbelieves the evidence that Pelagio Cabutin, Ignacio Mejia and Alejandro came out of Fort Santiago with the permission of a Japanese officer. Truly, there is room for doubt as to the permission. We can not say for certain how these three men succeeded in getting out of that camp of

horrors. If we indulge in speculation, the best guess is that they escaped. It is a matter of general knowledge that scores of prisoners were able to do that in those hectic days of Japanese sadism and brutality, perhaps due to the fact that there were too many prisoners there to attend to closely. There was more than a probability that when the men said they had obtained permission of a Japanese officer, they lied. Two of them were mere friends of the Sons, and one was the son of a distant cousin of Modesta. They were in an extremely perilous situation at the time when the carnage was at its worst. Lying men even to immediate members of one's family was demanded by ordinary prudence. Their security from rearrest and almost certain death was undoubtedly enhanced by concealment of the truth that they had fled from Fort Santiago.

There is nothing queer in the testimony that the three men came to Sta. Rosa after escaping from Fort Santiago. That, on the contrary, seemed to be the natural thing for them to do. Where else could they go? When they were marched off to Fort Santiago from the Cathedral, the women including Rosing and Magdalena, their relatives and apparently housemates, were told to go to Sta. Rosa. They did not know, when they decided to come to the latter place, that Pilar Barrera de Reyes, the spy, was there nor that she and her Japanese paramour still sustained sexual relation in those critical days. Pilar Barrera Reyes, according to her testimony, moved to Sta. Rosa after February 5.

We do not share the doubt that Cabutin, Mejia and Alejandro made the hideout when they were caught. The way, as related by the witnesses, the three men dug a hole and concealed themselves in that hole sounds plausible. The whole affair, with materials at hand, could have been finished in a matter of hours; and if the men worked at night, as probably they did, that explains why they were not seen while working by Pilar Barrera Reyes or her Japanese friend. The decision assumed or presumed that Pilar and the Japanese officer were at Sta. Rosa all the time. The evidence shows that the Japanese officer was posted with his company or men at the Sto. Domingo church ruins where he stayed and had to stay most of the time, while it appears that the defendant at times went out of the Sta. Rosa premises. Moreover, the place was crowded with women and children.

From the tone and tenor of the Court's findings and of its ratiocination, it would appear that it brands the accusation as a fabrication out of whole cloth: that the alleged presence and arrest of Cabutin, Mejia and Alejandro at Sta. Rosa were a pure concoction. This supposition is more than the defense dared suggest, and I believe that it is far-fetched. The time when the three witnesses implicated the defendant was early March, 1945. Still stunned by a holocaust; just widowed or orphaned under tragic circumstances; homeless and living on charity, their primary concern was where and how to find food and shelter. They were not in a mood and did not have the motive and the incentive to place upon themselves a new burden and worry by inventing a fantastic story against a woman who, according to that woman, had not done them any wrong. She even denied she knew the witnesses.

These witnesses did not have to use imaginary victims if they merely wanted to send the defendant to prison or to the gallows. It has been seen that Modesta B. Son and Asuncion Dueñas lost their own husbands under circumstances, they said, identical with the arrest, torture and liquidation of Cabutin, Mejia and Alejandro. The torture and arrest of those two men certainly furnished their folk the wherewithal to prosecute the defendant if the witnesses were just after defendant's scalp regardless of defendant's innocence of any connection with the discovery of their husbands' hiding. Yet Arcadio Son's arrest and torture were not made the subject of this information. This, we think, goes to refute the theory that the three women's statements to the authorities concerning the arrests of Cabutin, Mejia and Alejandro were a deliberate falsehood conceived in their imagination for no other reason than to send an innocent woman to her doom.

The truth of the matter is, as has been said, the accused herself has not advanced—at least not openly—the suggestion that the arrest of Cabutin, Mejia and Alejandro at Sta. Rosa College, was a fantasy. On the contrary, her evidence admits that these men were arrested in that college through the betrayal of a woman. Her line of defense is, not that the arrests and tortures were a fake, but that she was not the woman who revealed the three unfortunate men's hideout. It ought to be recorded that Lourdes Son was deceived into signing, or persuaded to sign, a statement prepared and put in evidence by defendant's counsel, in which she was made to say, or made her appear as saying, that she had been taken to the Correctional Institution for Women in Mandaluyong on the 16th of November, 1945, together with a sister of the accused, for the purpose of identifying the latter; that having seen the accused, she (Lourdes) realized that Pilar Barrera Reyes "was not the same woman whom she had seen in Intramuros *pointing out to Japanese soldiers, Pelagio Cabutin, Ignacio Mejia and Alejandro, who were taken by the Japanese officers to some place*"; that she (Lourdes) actually *saw the woman who pointed the above-named Filipinos and heard her say that those three Filipinos are inside a certain air-raid shelter in Intramuros.*" To make that statement Lourdes was taken to Welfareville by one of the defendant's lawyers, her two sisters and a Corporal De Vera, husband of the defendant's elder sister Rosa.

And the accused and her witnesses, at the trial, amplified this thesis. The gist of their testimony is that at Sta. Rosa, two women (neither of them the accused) who cohabited with Japanese officers, disclosed the presence of the three men to the Japanese; that those two women accompanied Japanese officers in their search for men in the Sta. Rosa compound; that the said women resembled the accused, their names sounded like that of the accused, and they could easily be mistaken for the accused; that the accused bore the pet-name of Pil while one of the two women above mentioned was known by the name of Fely and the other's pet-name was Perla. That is the simple issue. This is a simple case of mistaken identity! The government witnesses, according to the accused and her witnesses, got mixed up; Fely and/or Perla, not Pilar, were the traitors.

The question thus boils down to who cohabited with a Japanese officer, accompanied him in his rounds looking for males, and, discovering the hideout of Cabutin, Mejia and Alejandro, led her Japanese paramour to it.

Now, can we believe the yarn that the defendant was a mere victim of an unfortunate confusion?

The evidence that there were three women at Sta. Rosa College who resembled one another in names, in physiognomy and in general appearance, except the hair, which the defense stressed, has all the traces of a fiction. And granting the truth of such a rare coincidence, there was little or no possibility of the three witnesses for the prosecution committing the same mistake under conditions far from being conducive to errors of identity.

The incident occurred in broad daylight in the immediate presence of the witnesses. The arrest of the helpless men and the stabbing and other forms of torture perpetrated on them must have consumed no little time; and such atrocities were committed not once but three times. Only one woman spy was an active participant in the atrocious acts. The witnesses had known the defendant by sight and by name for a long time before they took refuge at Sta. Rosa, and they were with her in that compound for two weeks after the arrest. Being the concubine of a Japanese officer and not by any means shy or of retiring disposition, as can be gathered from the record, she must have been conspicuous and the object of suspicion if not fear. At the Manila Jockey Club the three witnesses and the defendant were together again after liberation until the accused was arrested in connection with the

present charge. In the light of these facts, illusions, associations, suggestions, judgment, trick of the memory could not have penetrated into and influenced the witnesses' observations and caused them to mistake another woman for the defendant.

The record will have to be searched in vain for any ill will that could have induced the three women witnesses to trump up a charge for a capital offense against the defendant. At the most, they were moved by a righteous indignation aroused by the treachery of a Filipino who shamelessly aided and comforted with the enemy both in flesh and the wanton butchery of her people during that reign of terror and tribulations that tried men's souls. Asuncion Dueñas' statement that if the accused had not been arrested she herself might have killed her because of so many people she had betrayed, was a genuine and natural reaction of an aggrieved widow against one who had brought her desolation, misery and suffering. Relating as it does to the very atrocities under investigation, her wrath gives vivid substance and reality to her testimony rather than weighs on her veracity.

The decision cites Exhibit 3—Lourdes Son's statement prepared by one of the defendant's attorneys and signed by Lourdes at the Correctional Institution for Women —to impeach Lourdes' testimony. I may mention that from a leading question asked Modesta Son by defense counsel it also seems that the defendant's attorneys were able to exact from her, in their office, a promise that she would stand by them. Needless to say, this procedure was highly reprehensible and unethical. In one aspect Exhibit 3 and Modesta's promise positively favor the prosecution. The defense's effort to win Modesta and Lourdes Son to its side after they had given evidence against the defendant is indication of its realization that there was truth and gravity in what they knew. And the ease with which the effort succeeded is evidence that the witnesses were not unfriendly, and gives the lie to the contention that they were bent on having the accused punished to the point of being capable of committing intentional injury against her.

Referring, on cross-examination, to Exhibit 3, Lourdes declared that she did not know what it said and insinuated that she was intimidated. While we may discount her testimony that she was threatened by Corporal Vera, we should not overlook the great probability that undue influence was brought to bear upon her and her mother to retract their statements made to the CIC and the prosecutors. They said that when they were summoned by De Vera and defendant's two sisters from their temporary quarters at the Gregorio del Pilar Elementary School to come to the lawyer's office, they thought the government lawyer's office was meant. De Vera's intervention could conceivably have disarmed them of any suspicion of anomaly. De Vera was one of the two non-commission officers who had questioned them at the Manila Jockey Club in March and who, it would seem, arrested the accused. They might not have known that this corporal had married the defendant's elder sister in June and had become defendant's protector. Modesta San and Lourdes San are unlettered.

On its intrinsic merit, Exhibit 3 is of little or no value. I have to admit that Modesta's and Lourdes's testimony is unsatisfactory on what the defendant's attorneys and De Vera told them and on other things that transpired between them. For reasons that can only be left to conjectures counsel did not press the point, which under normal circumstances would be an important bit of proof for the defense. But whatever the case may be, Exhibit 3 and Modesta's promise not to forsake the accused disproves the insinuation of unreasoned hostility. In the face of the proven facts, they do not impair the witnesses' credibility on the main issue. Their statements to the military authorities in March were made spontaneously and, as has been heretofore said, the witnesses had received no inducement and had no reason to prevaricate. If they agreed with the defendant's lawyers to testify according to the tenor of Exhibit 3, their commitment could not be the truth, nor put in doubt the truth of their previous statements to the representatives of the prosecution.

The very character of the supposed mistake supposedly committed by the witness is, I think, its best refutation. As I trust I have shown, mistaken identity was highly remote. The implication of the accused by Modesta, Lourdes and Asuncion to the authorities was either an outright, deliberate falsehood or an absolute truth. There is no room for a middle ground. That it is the truth is inescapable. If Cabutin, Mejia and Alejandro were pointed out to the Japs by a woman, as the defense at least impliedly admits, and if, as the witnesses said the accused was that woman and so declared to the CIC, no amount of subsequent contrary statements can create any doubt as to the accuracy of their first information, unless it could be shown that they had any base motive to wish the defendant harm and to shield the real culprit. There is not the least indication or insinuation of either. To think that the witnesses left unmolested the real informer who was instrumental in the killing of members of their families and friends and trained their bitterness and resentment against a guiltless woman for no reason whatever is highly irrational.

Stripped of all cluttering details, the issue is reduced to the credibility of the opposing witnesses. There are no sufficient grounds for this Court to set aside the unanimous findings of fact of the three experienced judges who saw and heard the witnesses testify.

Montemayor and *Pablo, JJ.*, concur in the foregoing dissenting opinion.

VI

Joaquin Zamora, petitioner, vs. Rafael Dinglasan, Judge, Court of First Instance of Manila, and Isabelo Hilario, respondents, G. R. No. L-750, August 16, 1946, PABLO, *J.*

1. DESAHUCIO; EJECUCION; MORA EN EL PAGO O DEPOSITO DE LOS ALQUILERES; CASO DE AUTOS.—El demandado dejo de depositar los alquileres correspondientes a los meses de abril y mayo. El demandante tenia derecho a pedir la ejecución de la sentencia, y era deber del Juzgado ordenar la ejecución de la sentencia apelada.

2. ID.; ID.; ID.; SUSPENSION DE EJECUCION BAJO LA LEY No. 689, CON SUJECION AL PAGO O DEPOSITO DE LOS ALQUILERES VENCIDOS.—No contiene la Ley No. 689 disposición alguna que justificase la falta de pago o deposito de los alquileres vencidos. Dicha ley cuando existe ya "orden o sentencia ya firme y ejecutoria," autoriza al Juzgado a "suspender la ejecución de semejante orden o sentencia, por el periodo que estime conveniente, que no será mayor de tres meses" (articulo 4) con sujeción a las condiciones prescritas en los articulos 5 y 6. Una de las condiciones de la suspención es "que la persona contra la cual se dicto la sentencia deposite todo el importe de los alquileres por todo el tiempo que dura la suspension o las porciones de dicho importe que el Juzgado ordene de tiempo en tiempo a razon del cual se dictó la sentencia deposite todo alquiler que pago por el mes inmediatamente anterior a la terminación del arrendamiento." Esta ley no protege al que incurre en mora en el pago o deposito de los alquileres.

JUICIO ORIGINAL en el Tribunal Supremo. Mandamus.

Los hechos aparecen relacionados en la decisión del tribunal.

Sres. Padilla, Carlos & *Fernando* en representación del recurrente.

Sr. D. Eusebio Morales en representación del recurrido Hilario.

Nadie compareció en representación del Juez recurrido.

PABLO, *M.:*

En la causa civil No. 1307, titulada "Joaquin Zamora, como administrador, etc. contra Isabelo Hilario, demandado," el Juzgado Municipal de Manila dicto en Enero 14,

1946, sentencia condennando al demandado a desalojar las fincas Nos. 2032, 2032-A y 2034, de la Calle Azcarraga, Manila, ya pagar la renta de ₱170 al mes. El demandado apeló, y el expediente ha sido registrado en el Juzgado de Primera Instancia de Manila como causa civil No. 72180.

En Mayo 29, 1946, el recurrente (demandante en la causa de desahucio) presentó una moción en dicho Juzgado de Primera Instancia pidiendo la ejecución de la sentencia dictada por el Juzgado Municipal de Manila, alegando como razon la falta de pago o depósito por el demandado de los alquileres correspondientes a los meses de Abril y Mayo de 1946. El demandado ha sido notificado de esta moción, y en Mayo 31, esto es, al segundo dia despues de presentada la moción, depositó los citados alquileres en la Escribania del Juzgado.

En Junio 11, despues de considerar los escritos presentados por ambas partes, el Honorable Juez recurrido dicto una orden denegando la moción de ejecución.

En Junio 24 recurrente presentó moción de reconsideración razonada, y al siguiente dia el demandado presentó su escrito oponiendose a la mocón de reconsideración, que fue denegada por el Juzgado de Judio 12.

El recurrente, por medio de una solicitud original de mandamus, y alegando que las ordenes del Juzgado de Junio 11 y Julio 12 de esta año han sido dictadas en contravención de la ley que no tiene otro remedio facil y expedito para obtener la ejecución a que tiene derecho, pide que este Tribunal ordene al recurrido, el Honorable Rafael Dinglasan, como Juez del Juzgado de Primera Instancia de Manila, que expida una orden de ejecución en la causa civil No. 72180.

El articulo de la regla 72 dispone: "si se dictare sentencia contra el demandado, se expedirá inmediatamente la ejecución, a menos que se perfeccionare una apelación y el demandado prestare fianza bastante para suspender la ejecución de dicha sentencia, aprobada por el juez de paz o municipal y otorgada en favor del demandante para el registro de la causa en el Juzgado de Primera Instancia y para el pago de los alquileres, daños y costas hasta que se dicte sentencia definitiva, y a menos que, durante la pendencia de la apelación, el demandado pague periodicamente al demandante o al Juzgado de Primera Instancia la cantidad de los alquileres vencidos, segun el contrato, si lo hubiere, tal y como hubiere estimado en su sentencia el juzgado de paz o municipal, * * *. Si el demandado no hiciere periodicamente los pagos antes mencionados durante la pendencia de la apelación, el Juzgado de Primera Instancia, previa moción del demandante, que se notificara al demandado y previa prueba de falta de pago, ordenará la ejecución de la sentencia apelada;" * * *.

El demandado dejo de depositar los alquileres correspondientes a los meses de Abril y Mayo. El demandante tenia derecho a pedir la ejecución de la sentencia, y era deber del Juzgado ordenar la ejecución de la sentencia apelada. El Reglamento en ingles dice: "shall order the execution of the judgment appealed from."

No contiene la Ley No. 689, disposición alguna que justificase la falta de pago o deposito de los alquileres vencidos. Dicha ley, cuando existe ya "orden o sentencia ya firme y ejecutoria," autoriza al Juzgado a "suspender la ejecución de semejante orden o sentencia, por el periodo que estime conveniente, que no será mayor de tres meses," (articulo 4) con sujeción a las condiciones prescritas en las articulos 5 y 6. Una de las condiciones de la suspensión es "que la persona contra la cual se dictó la sentencia deposite todo el importe de los alquileres por todo el tiempo que dure la suspensión o las porciones de dicho importe que el Juzgado ordene de tiempo en tiempo a razon del alquiler que pagó por el mes inmediatamente anterior a la terminación del arrendamiento." Esta ley no protege al que incurre en mora en el pago o deposito de los alquileres.

Se dicta sentencia ordenando al Honorable Juez recurrido que expida la orden de ejecucion pedida. Sin pronunciamiento sobre costas.

Moran, Pres., Paras, Feria, Perfecto, Hilado, Bengzon, Briones, y *Tuason, MM.,* estan conformes.

Se concede la solicitud.

VII

Patricio H. Gubagaras, plaintiff-appellee, vs. West Coast Life Insurance Company, defendant-appellant, CA-G.R. No. 1628, January, 6, 1949, DE LA ROSA, *J.*

1. INSURANCE; WAR; EFFECT OF NON-PAYMENT OF INSURANCE PREMIUM BY REASON OF WAR. —On August 1, 1940, plaintiff-appellee and his wife were insured by defendant-appellant under a joint endowment policy for twenty years, under which the surviving spouse became the beneficiary. The last premium paid by the insured covered the semester period of August 1, 1941 to February 1, 1942. The Pacific War which started on December 8, 1941, and the occupation of the City of Manila on January 2, 1942, caused the disruption of all means of communication between the capital and other points outside the City of Manila. As a result of this, appellee could not remit to the appellant the premiums due. The wife died on May 30, 1945, in the municipality of Dueñas, province of Iloilo, before the armistice but after the liberation of Iloilo. On June 18 of the same year appellee notified the appellant of her demise and requested for necessary forms to support a claim for the amount of the insurance. Appellant refused to entertain the claim on the ground that appellee having failed to pay the premium due after February 1, 1942, payment of the amount of the insurance was forfeited. *Held*: The defendant-appellant was ordered to pay the amount of the insurance, less the value of the premiums due and unpaid until the death of the wife, with legal interest from the filing of the complaint and costs.

2. ID.; ID.; IMPOSSIBILITY TO PAY PREMIUMS IN THE HOME OFFICE OF INSURER.—Where the policy provides "all premiums are due and payable in advance to the home office of the company in the City of San Francisco, California, U.S.A. . .," but by reason of the war the insured could not pay the premium in the home office, the insured was excused for nonpayment thereof.

3. ID.; FAILURE OF INSURER TO ASSIGN AGENT AT THE RESIDENCE OF THE INSURED.—Where the policy provides that the premiums "may be paid to an authorized agent of the company producing the company's official premium receipt signed by the President, a Vice President or Secretary of the Company, and countersigned by the person receiving the premium," the company is obliged to assign an agent to present receipts of premiums due or to be due, signed by its president, vice president or secretary, and countersigned by the agent, to the insured, in their residents, to collect them.

4. ID.; WAR; JAPANESE MILITARY NOTES; CONSIGNATION; DEPOSIT OF JAPANESE MILITARY NOTES TO PAY PREMIUMS DUE. —If the insured deposited with the Clerk of Court the premiums due, in the Japanese Military Notes, the insurer will not accept the money because it has no value.

5. ID.; CONSTRUCTION AND INTERPRETATION; FAILURE TO DEMAND PAYMENT OR TO PAY PREMIUMS DUE; INSURANCE CONTRACT INTERPRETED IN FAVOR OF INSURED. — Where there are no justifiable reasons to lay the blame on either of the contracting parties for failure either to demand payment or to pay premium due on the policy in question, Article 1105 of the Civil Code should be applied, as it tends to supply the deficiencies in the contract, especially when it is al-

ready the admitted rule that confiscations should be avoided through an interpretation favorable to the insured.

6. ID.; ID.; RIGHTS OF PARTIES IN CASE OF WAR NOT STIPULATED IN INSURANCE CONTRACT.—In life insurance contracts the silence with respect to the rights of the parties thereof in case of war is an omission which should not benefit insurance companies which are the ones who drafted the contract, and they should not be permitted to invoke in their favor their own omissions.

TORRES, *J.*, concurring:

7. ID.; WAR; IMPOSSIBILITY TO PAY PREMIUMS DUE IS AN EXCUSE.—The failure of insured to make payment of premiums due on policy was caused by the stoppage of all means of communication between his place of residence in the province of Iloilo and the City of Manila, where the Philippine offices or agency of the defendant company were established before the war, and it being a matter of common knowledge that the offices of all firms and companies of American nationality have been closed and liquidated by the Japanese Military Administration soon after the beginning of the occupation of these Islands, it would be utterly unreasonable to contend that because of the failure of the insured to pay the premiums due from February 1, 1942, "the policy lapsed without value." *Impossibilium nulla obligatio est* (there is no obligation to do impossible things). (Impossibility is an excuse in the law). These are maxims which are in all fours with the case at bar.

8. ID.; STATUTES; LAW GOVERNING INSURANCE SUPERIOR TO TERMS OF POLICY.—An insurance company organized outside the territory of the Philippines and permitted to transact business in this territory must abide by the provisions of the laws in force in his jurisdiction governing life insurance business. The court, therefore, cannot adhere to the contention of defendant who, in his first assignment of error, contends that "the policy is the law between the parties." The law governing the subject matter of insurance is superior to the terms of the policy.

9. ID.; OBLIGATIONS AND CONTRACTS; VALIDITY AND FULFILLMENT OF CONTRACT OF INSURANCE CANNOT BE LEFT TO THE WILL OF ONE OF THE CONTRACTING PARTIES.—In the absence of specific provisions in the Insurance Law, No. 2427 as amended, a contract of life insurance is governed by the rules of civil law regarding contracts. Thus, if according to Article 1256 of our Civil Code, "the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties," the attitude of defendant in declaring that the policy had lapsed and become worthless on the ground of alleged non-payment of premiums, is utterly unjustified, in that it is contrary to the provisions just quoted which is based on principles of justice, because it not only proclaims the binding nature of the contract as stated in Article 1258 of said Code, but it likewise establishes the principle of equality which is so essential for the contracting parties; it forbids that one of the parties be bound by the terms of the agreement while the other is not.

10. ID.; WAR; LIFE INSURANCE POLICY NOT LAPSE FOR NON-PAYMENT OF PREMIUMS DUE TO WAR.—The life insurance policy did not lapse for non-payment of premiums due to impossibility of payment as a result of war.

11. ID.; PROMPT PAYMENT OF PREMIUM ESSENCE OF CONTRACT OF INSURANCE, EXCEPTION.—Prompt payment of premiums is material and of the essence of the contract of insurance. This must, however, be qualified by taking into consideration the time and circumstances surrounding the act of payment. Not in vain the maxim says: *distingue tempore et concordabis jura* (Distinguish times, and you will make laws agree).

12. ID.; JUDGMENT; DOCTRINE LAID DOWN IN NEW YORK LIFE INSURANCE COMPANY v. STATHAM, 93 U.S. 24, 23 L. ED. 789 NOT CONTROLLING.—Considering that the ruling laid down in the Statham case (New York Life Insurance Company v. Statham, 93 U.S. 24, 23 L. Ed. 789) has been made by the United States Supreme Court about 75 years ago, during the horse and buggy period of the life of the American nation, it cannot be regarded as an overall principle that shall govern the relations between the insurer and the insured in the present age. Granting that, at the time of the promulgation of said decision on October 23, 1876, such ruling was good law, it cannot be accepted as such in the present circumstances of human advancement and progress. Law and jurisprudence, its companies and exponent, are not static like the still waters of a pond; they go hand in hand with the progress and advancement of time; they look after and provide for the needs and welfare of the community.

Attys. Padilla, Carlos & Fernando, for defendant-appellant.

Atty. R. A. Espino, for plaintiff-appellee.

DECISION

DE LA ROSA, *M.*:

Patricio H. Gubagaras reclama el pago de la suma de ₱2,000.00, importe de una póliza expedida por la West Coast Life Insurance Company, de la que él es asegurado y beneficiario, mas la cantidad adicional de ₱600.00, en concepto de daños.

Con efectividad el 1.o de agosto de 1940, Patricio H. Gubagaras y su esposa Maria Labaco, hoy finada, obtuvieron de la West Coast Life Insurance Company la póliza dotal conjunta Exh. A, de veinte años o hasta la muerte de cualquiera de ellos dos, que eran mutuos beneficiarios, por la cantidad de ₱2,000.00, con participación en las ganancias. La última prima pagada por los asegurados comprendía el periodo semestral del 1.o de agosto de 1941 al 1.o de febrero de 1942. La guerra del Pacífico estalló el 8 de diciembre de 1941, y Manila, en donde la compañia tenía su agencia, fué ocupada por las fuerzas invasoras japonesas el 2 de enero de 1942. Con motivo de la paralización de todas las comunicaciones, terrestres, marítimas y aéreas, la prima que vencía el 1.o de febrero de 1942 y las siguientes, durante la guerra, no se pagaron. Labaco falleció el 30 de mayo de 1945, en el municipio de Dueñas, de la provincia de Iloilo, antes del armisticio, pero despues de la liberación de Iloilo por las fuerzas americanas, oficialmente declarada en 22 de marzo de 1945. El 18 de junio de 1945, Gubagaras dirigió a la compañia la carta, copia fotostática de la cual es el Exh. 1, avisándola de la muerte de su esposa y pidiendo al mismo tiempo formularios para probar su muerte y presentar la reclamación correspondiente. La compañia le contestó que, por no haberse pagado la prima debida el 1.o de febrero de 1942, la póliza Exh. A caducó, sin ningun valor (Exh. 2). Despues que se cruzaran otras correspondencias entre las partes, Gubagaras presentó su demanda de autos el 24 de junio de 1946.

La compañia admite sustancialmente los hechos que se acaban de relatar, y contestando a la demanda, alega que la póliza en cuestión provee que

"All premiums are due and payable in advance at the Home Office of the Company in the City of San Francisco, California, U. S. A., but may be paid to an authorized agent of the Company producing the Company's Official premium receipt signed by the President, a Vice President or Secretary of the Company and countersigned by the person receiving the premium. No person has any authority to collect a premium unless he then holds said official receipt. * * * *"

Y entre otras defensas especiales, interpone:

"1. States that the policy in question provides that:

"PAYMENT OF PREMIUM'

* * * * * This policy shall lapse if any premium is not paid as herein provided and no right here-

under shall exist except as herein expressly provided.

2. States that by reason of the non-payment of the premium due on 1 February 1942, and/or thereafter, the policy in question has lapsed, and that accordingly plaintiff's complaint states no cause of action.

By way of

SECOND SPECIAL DEFENSE

1. States that insured are guilty of laches in that they failed to apply for reinstatement of the policy under the clause thereof which reads:—

REINSTATEMENT'

'At any time within five years after default, upon written application by the insured and upon presentation of evidence of insurability satisfactory to the Company, this policy, if not surrendered to the Company, may be reinstated together with any indebtedness in accordance with the loan provisions of the policy, upon payment of the loan interest, and of arrears of premium with interest at the rate of six per cent per annum thereon from their due dates. * * * *" (Expediente de Apelación, pp. 10 y 11)

Aportadas por ambas partes sus pruebas, el Juzgado *a quo*, aplicando al caso el Art. 1106 del Código Civil, que reza:

"Fuera de los casos expresamente mencionados en la ley, y de los en que asi lo declare la obligación, nadie responderá de aquellos sucesos que no hubieran podido preverse, o que, previstos, fueran inevitables."

dictó esta sentencia:

"POR TANTO, el Juzgado dicta decisión en este asunto, condenando a la demandada a pagar al demandante la cantidad de DOS MIL PESOS (₱2,000.00), menos el valor de las primas, no pagadas, devengadas hasta la muerte de la esposa del demandante, que ocurrió el 30 de mayo de 1945, con intereses legales desde la presentación de la demanda, y al pago, ademas, de las costas del juicio."

Atribuyendole cuatro errores a este fallo, la Compañia recurre en alzada a este Tribunal de Apelaciones.

PRIMER ERROR

"THE LOWER COURT ERRED IN NOT HOLDING THAT THE POLICY HAD LAPSED FOR NON-PAYMENT OF PREMIUMS DUE."

Como precedente, se aduce en apoyo de este primer señalamiento de error la decisión dictada el 23 de octubre de 1876 por el Tribunal Supremo de los Estados Unidos en New York Life Insurance Company vs. William C. Statham et al (23 Law Ed. 798), en la que se enunció esta doctrina:

'We are of opinion therefore, first, that as the company elected to insist upon the condition in these cases, the policies in question must be regarded as extinguished by non-payment of the premium, though caused by the existence of the war, and that an action will not lie for the amount insured thereon.

Secondly, that such failure being caused by a public war without default of the assured, they are entitled *ex aequo et bono* to recover the equitable value of the policies with interest from the close of the war."

El Tribunal Supremo, en su primer pronunciamiento, se atuvo a la letra del contrato de seguro, siguiendo esta proposición:

"(1) The right of the parties depend upon the contract, which they themselves made. The court will not interpolate new conditions but will hold the parties to their own agreement."

Basandose en las condiciones del contrato, literalmente interpretadas, el Tribunal lo declaró extinguido, por falta de pago de las primas convenidas, sosteniendo, no obstante, que el asegurado tenía derecho a recobrar el valor equitativo de su póliza, con intereses desde la terminación de la guerra. Si la póliza caducó, por no haberse pagado sus primas, el derecho equitativo reconocido en el asegurado se derivó de un contrato extinguido.

Esta doctrina, que interpreta a la letra las clausulas del contrato y de algun modo la informa el aforismo *dura lex sed lex*, es una barrera que dificulta e impide una clara y explicita redacción de los contratos de seguro de vida.

Guerra ha habido siempre desde los albores de la humanidad, y ha ido desenvolviendose de la lucha entre tribus a la guerra mundial. Su frecuencia es una realidad, y las perturbaciones que produce se dejan sentir profundamente. A raiz de la guerra civil americana, en los Tribunales de los Estados Unidos se ha debatido un número considerable de asuntos de pólizas de seguro de vida, cuyas primas no pudieron pagarse con motivo de la guerra. Con todo, ninguna modificación, que difina los derechos y obligaciones de las partes interesadas, en casos de guerra, se hà conseguido incorporar en los contratos de seguro de vida, porque la decisión en el asunto de Statham, al interpretar literalmente sus clausulas, ha hecho de la guerra un suceso confiscatorio de las primas pagadas por los asegurados, con la anulación de sus derechos, a favor de las compañias aseguradoras.

La póliza de seguro Exh. A, origen de este asunto, contiene esta clausula:

"..... This policy shall lapse if any premium is not paid as herein provided, and no right hereunder shall exist except as herein expressly provided."

Esta clausula es tan lata y vaga que por ella la compañia trata de acaparar para si todos los derechos, y no conceder nada a sus asegurados. Fundandose en ella, se sostiene en el alegato de la apelante:

"THE STATHEM RULE

The leading and controlling case on the legal point under consideration is New York Life Insurance Co. vs. Statham (93 U. S., 24; 23 L. ed. 789). The question involved in the Statham case is identical with the question involved in the present case. In both cases the policy contained the following stipulations: (a) that the premiums must be paid in advance; and (b) that non-payment of any of such premiums will cause the policy to lapse. In both cases the insured did not pay the stipulated premiums and claimed as excuse for such non-payment the impossibility of payment as a result of the war." (pp. 14 y 15)

Segun esto, la póliza expedida en 1851, que motivó la causa de Statham, contenía exactamente las mismas clausulas de la póliza Exh. A de autos, librada 89 años mas tarde, o el 1.o de agosto de 1940. Este estancamiento, de casi un siglo ahora, en un ambiente de contratación que día a día tiende a la mayor mutualidad de los beneficios, es el resultado de la doctrina en el asunto de Statham, que prueba la sabiduria y precisión que extraña la maxima legal de interpretación: la letra mata, el espiritu vivifica.

SEGUNDO ERROR

"THE LOWER COURT ERRED IN HOLDING THAT THE BENEFICIARY CAN RECOVER ON A VALUELESS AND LAPSED POLICY."

En el parrafo 13 de la contestación se acota la clausula de pago de las primas convenida en la póliza Exh. A, que establece dos maneras:

"(a) All premiums are due and payable in advance to the home office of the company in the City of San Francisco, California, U.S.A....."

Como en el caso presente es absurdo suponer que los asegurados, Gubagaras y Labaco, se comprometieran a pagar las primas en la oficina de la compañia en San Francisco, California, aparte de que no era posible cruzar el Pacifico durante la guerra por la paralización completa de las comunicaciones, había que descartar esta primera manera por imposible. Y,

"(b) but may be paid to an authorized agent of the company producing the company's official premium receipt signed by the President, a Vice President or Secretary of the Company, and countersigned by the person receiving the premium."

Por esta segunda manera, la compañia se obligó a nombrar un agente que presente los recibos de las primas vencidas o por vencer, firmados por su presidente, vice presidente o secretario, y contraseñado por el agente, a los asegurados, en la residencia de estos, para su cobro.

Que pasos se han dado por las partes, de acuerdo con esta segunda manera, para efectuar el cobro y pago de la prima que vencía en 1.o de febrero de 1942?

Patricio H. Gubagaras declaró:

Q. Before February 1, 1942, did you make any effort to make payment to the defendant Company?
R. Si, señor.
Q. What did you do?
R. Me vine al post office con el proposito de pagar, pero la oficina de correo ya estaba cerrada.
Q. Where was the post office here in the City of Iloilo then situated at the time?
R. En el edificio de la Aduana.
Q. When did you go to the Custom House Building?
R. Alla a mediados del mes de enero.
Q. In what year?
R. 1942.

* * * * *

Q. Where did you go when you had to return?
R. Volví a Dueñas.
Q. Did you make any further effort after returning to your house?

R. Si, señor.
Q. What did you do?
R. Me fuí a la oficina de correos del municipio de Dueñas para cerciorar si podia remitir correspondencias para Manila.
Q. Were you able to send any correspondence to Manila?
R. No, Señor, porque según el tesorero no se podía ya recibir, porque la ciudad de Manila estaba ocupada por los japoneses.
(t.n.t. pp. 8-10)

Federico A. Pigason, estafetero de la oficina de correos de la ciudad de Iloilo, antes y despues de la guerra, aseveró:

"Q. When was the Post Office in the Province of Iloilo began to open to the public?
R. On July 4, 1945.
Q. Will you please tell us when were the mail facilities for the Municipalities opened after the liberation of the province of Iloilo?
R. After the liberation in the province of Iloilo, the PCAU or the Philippine Civil Affairs Unit tried to facilitate mails in the provinces by means of mail carrier; then when the office was officially opened by the post office on July 4, 1945, we hired the Philippine Railroad and all the buses to bring mails to the Municipalities; and now we have also steamers and airplanes.

Q. What happened to the post office after the bombing of Iloilo on December 18, 1941?
A. You mean this post office of Iloilo in the City of Iloilo? After that, we transferred in La Paz.

* * * * *

"Q. Don't you know if by request through the Army post office mail could be sent from Iloilo to the United States?
A. To the United States we did not have any arrangement, but all mail in Iloilo were delivered to APO 715.
(t.n.t. pp. 2 y 3)

Leonardo Cocjin, Tesorero Municipal y Postmaster del municipio de Dueñas, testificó:

"Q. In the year 1942 or to be exact before the Japanese invasion of the Island of Panay, were you holding the same office in the government?
A. Yes, sir.
Q. And the same place?
A. The same place.
Q. Do you know a person by the name of Maria Labaco in her lifetime?
A. Yes, sir.
Q. Do you know also the plaintiff in this case Patricio H. Gubagaras?
A. Yes, he is the husband of the late Maria Labaco.
Q. Will you please tell the Court if you have seen this person sometime in the month of January, 1942 in Dueñas?
A. So far as I can remember, this couple Patricio Gubagaras and the late Maria Labaco had come to me in my office in Dueñas on or about the last days of January, 1942 with the purpose of inquiring as to whether it was possible during that time to send money by mail.
Q. Do you know to whom did they intend to send money by mail at that time?
A. They tried to send money to the West Coast Life Insurance Company.

* * * * *

Q. Upon inquiring of the couple Patricio Gubagaras, the herein plaintiff and his late wife whether it was possible to send money by mail to West Coast Life Insurance Co., what was your answer?
A. I told them that during that time there was no more facility of transportation between Manila and Iloilo, and besides, the Japanese Forces were occupying the City of Manila; I told them. "It seems to me, to send money to Manila is futile."
(t.n.t. pp. 18-20)

El interes de Gubagaras de hallar un medio de enviar a la agencia de la compañia, en Manila, el importe de la prima que vencia el 1.o de Febrero de 1942, revela su deseo de cumplir con las condiciones de la póliza Exh. A.

De su parte, que medidas ha tomado la compañia para presentar a Gubagaras el recibo, debidamente expedido y contraseñado, hacia esa fecha, 1.o de febrero de 1942?

Gregorio San Jose, superintendente del departamento de reclamaciones de la Compañia, declaró:

"Q. Your Honor please. Will you please tell us what happened to your company on 2 June 1942 (should be January) when Manila was officially occupied by the Japanese Imperial Forces?
A. We were forced upon order of the enemy force to close our business, being an American Company.
Q. Can you tell us if there is any insured from the province of Iloilo who was able to continue paying the premium due from 2 June (should be January) 1942 up to the time of liberation in 1945?
A. There was not a single policy holder who was able to send their premium.
Q. Will you please tell us when was your Manila branch office opened to the public?
A. December 1, 1945.
(t.n.t. pp. 29-30)

En contraste con las gestiones que, hacia fines de enero de 1942, Gubagaras hiciera para encontrar un medio de enviar el importe de la prima que vencía el 1.o del mes siguiente, la compañia nada hizo para cumplir con la obligación que tenía de presentar a los asegurados el recibo de dicha prima, debidamente firmado por su presidente, vice presidente, o secretario, y contraseñado por la persona autorizada para recibir su importe.

Se dirá que, estando la compañia en San Francisco California, allende el Pacifico, a miles de millas de distancia de las costas de Filipinas, con la agencia en Manila cerrada por orden del enemigo, nada humanamente podía hacer. Esta sería, indudablemente una explicación plausible. Mas, si la paralización de las comunicaciones, la orden de cierre de su agencia en Filipinas, dada por el enemigo, la guerra, en una palabra, constituye para la compañia una excusa buena y valida, porque no ha de ser legal y eficaz para el asegurado? Porque las consecuencias de la guerra, que impidieron a ambos contratantes cumplir sus respectivas obligaciones, ha de favorecer a la compañia, que se limitó a cruzarse de brazos, amparandose en la doctrina de la causa de Statham, y ha de imponer el asegurado, sin culpa de su parte, el castigo de la pérdida de todos sus derechos despues de la diligencia que empleara para hallar un medio de cumplir con su obligación de pagar la prima que estaba por vencer?

Despues de la guerra civil americana, con menos motivos, porque los Estados Americanos foreman un territorio compacto y unido, sin mares que los aparten como el gran oceano que separa California y Filipinas, en Hamilton vs. Mutual Life Insurance Co. (11 Federal cases, 351, 358, 359, 360), decidiendo la contención en favor del beneficiario, el Tribunal sostuvo:

"* * * *

"The defense is also set up, that the policy, by its terms, ceased to exist by reason of the non-payment of the annual premium that was due and payable on the 2nd of March, 1862, and that thereby, also, all previous payments made by Goodman became forfeited to the defendants. It is replied, on the part of the plaintiff, to this defense, that the agencies from the state of Alabama in March, 1861, prevented the payment of Goodman of his annual premiums, and thereby waived such payments, all of which became due after the 16th of August, 1861, the act of the defendants having prevented the payments in Alabama, and the effect of the war being to make such payments at New York, by Goodman, unlawful.

"If it was a part of the contract entered into by the defendants, or of their obligations to Goodman under it, that Goodman should have the right to pay his annual premiums to an agent of the defendants in Alabama, and if the defendants were bound to provide in Alabama, during the continuance of the risk on the policy, an agent to receive such premiums then Goodman was not bound to seek any other recipient of such payments than such agent, and was not bound, for want of any such agent, to pay the premiums, directly to the defendants at New York. In the application made in February, 1849, for the policy issued to Mrs. Goodman in March, 1849 Goodman is described as residing in Mobile, Alabama, and as being a wharfinger there. In his application of March, 1858, for the policy of 1858, and in that policy, he is described as of Mobile, in the state of Alabama. All the premiums that he paid, were with the knowledge of the defendants, paid at Mobile, to McCoy, their agent there, and were received by the defendants through and from McCoy. Goodman resided in Mobile from 1835 up to his death, and died at Mobile. In the absence of any notice to the contrary, the defendants must be held to have continued to understand that he continued to reside in Mobile. His application for the policy of 1858 was made through McCoy, at Mobile, the policy was delivered to him through the hands of McCoy, at Mobile, and bears McCoy's signature, as agent at Mobile, the three payments of premiums in 1859,1860 and 1861, were made thru McCoy, at Mobile, and the receipts therefor bear the signature of McCoy as the defendants' agent. The policy contains on its face the words: 'Agents of the company are authorized to receive premiums when due, but not to make, alter, or discharge contracts, or waive forfeitures.' It is contended by the defendants that there was no obligation on them to keep an agent at Mobile or in Alabama. Considering the character of the contract, the circumstances under which it was entered into, the fact that Goodman was, with the knowledge of the defendants, a resident citizen of Alabama at all times, the fact that the contract must be regarded as having been entered into, and continued in operation by the defendants, at least as long as they themselves recognized its continuance, that is, until March 2nd, 1862, with reference to, and in subordination, on their part, to such statute law of the state of Alabama as should be enacted on the subject of their keeping agents in that state,

and the fact that the agency of McCoy, having been continued during the life of the policy up to March, 1861, was then withdrawn, *it must I think, be held, that the defendants were bound to keep in Alabama an agent to whom Goodman could pay his annual premiums, or could, at least, offer or tender payment, such agent to be appointed in conformity with such statute law, and that, if the absence of such agent was all that prevented the payment of such premiums by Goodman, the defendants are estopped from setting up the non-payment of such premiums at the times stipulated therefor as a defense to this suit.*

* * * * *

The evidence shows pecuniary ability and willingness on the part of Goodman to pay the premiums at Mobile, and that the reason why he did not pay them there was the absence of any agent thereof the defendants. I see no legal objection to the evidence on this subject, either as competent, or as sufficient to prove the facts. If the defendants were entitled to the punctual payment of the premiums, as a condition precedent to their continuing liability from year to year, *their prevention of such payment, by the withdrawal of McCoy's agency, and of all other agencies in Alabama, excused Goodman from making the payments punctually, and debars the defendants from setting UP SUCH WANT OF PUNCTUALITY as a defense in this suit.* Williams v. Bank of U. S. 2 Pet. (27 U. S.) 94, 102; Van Buren v. Digges, 11 How. (52 U. S.) 461, 479.

There is no force in the objection, that the defendants could not, during the war, have received from their agent in Alabama any moneys paid to him there as premiums, or that such moneys would have been confiscated in the hands of such agent, if paid to him. If the agent had been provided, Goodman could have tendered the premium, and the agent could have refused to receive it, because he could not remit it, and because it would be confiscated. The rights of Goodman would thus have been preserved, according to the tenor of the contract. The less, if any, which would have ensured to the defendants, was a loss incident to the war, and with which Goodman had no concern, and the apprehension or certainty of which could affect his rights. The unlawfulness of any receipt by the defendants at New York, from Goodman, or any other person in Alabama, during the war, of any money's paid as premiums, cannot affect any rights of Goodman in respect of having the opportunity of paying such premiums in Alabama, or be set up by the defendants as a ground of forfeiture of the policy in respect of such rights.

Under these views, the contract was only suspended during the war. After the end of the war, the right of Goodman to pay the premiums which he had been prevented from paying by the action of the defendants, continued in all respects."

* * *

The withdrawal of the agency of McCoy, and of the other agencies in Alabama, made it unnecessary for Goodman to seek out McCoy or some other person who had been an agent of the defendants in Alabama, and tender the premiums, as due, to him, even though, as would appear from the evidence, McCoy reamined in Alabama, accessible, during a part, at least, of the war. Especially is this so, in view of the fact that Goodman had notice of the revocation of McCoy's agency.

On all these considerations, I am of opinion that *the defendants must be regarded as having prevented Goodman from paying his premiums, as due, in Alabama, where he had a right by the contract to pay them, and, therefore, as having waived such punctual payment; that the policy was not and is not forfeited by reason of the non-payment of premiums; that it is a valid and subsisting policy against the defendants*: and that the plaintiff was, when he brought this suit, in a position to ask the relief prayed for by the bill.

These views recognize fully all the terms of the policy, and do not interpolate in the contract of the parties any provision, by way of excuse for the non-payment, on the stipulated day, of any premium, which is not within the terms of the contract. It is of the essence of every contract, that, if one party to it prevents its performance by the other party, the former cannot be allowed to reap any benefit from the fact of such non-performance. In this case, the prevention by the defendants of performance by Goodman was equivalent to actual performance by Goodman, or to a waiver by the defendants of such performance." (Italics supplied).

Hay, ademas, estos otros precedentes:

"And, although the case cannot be so strongly put, I think it is equally clear that, when the assured was involved in no default, but was at the place when and where payment was to be made, ready and willing to pay, but was prevented by the disability of the company to receive payment, from whatever cause, he having had no agency in producing it, the company is not entitled to claim the forfeiture, or to be relieved from its obligation to pay the sum assured." (The Manhattan Life Insurance Co. v. Warwick, 20 Gratt (Vs.) 614, 3 Am. Rep. 218, 22 O, the Supreme Court of Appeals of Virginia).

"It is urged that the last premium was not paid, and hence the policy became void. If it were not paid, I do not think the consequences claimed would follow. The war suspended this contract, and no forfeiture for non-payment would arise while the war lasted, provided the premiums, with proper interest, were promptly paid on the return of peace." (Sands v. The New York Life Insurance Co. 50 N. Y. 626, 10 Am. Rep. 535, 543) (Italics supplied)

"Then, as according to principle and consistent authority, the contract was not dissolved by the war, how can this court, consistently with the spirit of the literal condition and the facts of the case, adjudge the policy avoided by the inevitable non-payment of premium? Such a decision would seem to be as unreasonble as unjust." (New York Life Insurance Co. v. Clipton, Etc., 7 Bush (Ky.) 179; 3 Am. Rep. 290, 295)

"* * * And, according to a Canadian decision, if a foreign company ceases to do business at the place where the premium is stipulated to be paid, and maintains no known agency there, non-payment is excused. * * * * 3 Couch, Cyclopedia of Insurance Law 2229.

TERCER ERROR

THE LOWER COURT ERRED IN NOT HOLDING THAT THE PLAINTIFF WAS GUILTY OF LACHES DESPITE PLAINTIFF'S DEFAULT IN THE PAYMENT OF PREMIUMS AND FAILURE TO APPLY FOR REINSTATEMENT UNDER THE 'REINSTATEMENT' CLAUSE OF THE POLICY.

Contiendese que durante la guerra Gubagaras y Labaco no han ofrecido ni consignado ante los Tribunales el importe de las primas de su póliza. De haber la compañia operado en Filipinas durante la guerra, hubiera expedido pólizas, completamente saldadas, porque la abundancia de dinero militar japones buscaba inversión. Teniendo esto en cuenta, lo mas probable es que Gubagaras no hubiera dejado de pagar una prima semestral exigua de ₱68.96.

Pero, suponiendo que Gubagaras hubiera consignado, oportunamente, en dinero japones, el importe de las primas que hubieran vencido de la póliza Exh. A, lo aceptaría la Compañia? Ciertamente que no, porque no le daría ningun valor, y aunque valiese algo, sería inaceptable segun la doctrina en el caso de Statham.

Sostienese que, despues de la liberación de la provincia de Iloilo por las fuerzas americanas y antes de la muerte de Labaco, los asegurados no han solicitado la rehabilitación de su póliza Exh. A, ni han hecho nada para pagar a la compañia las primas vencidas de tres años. La provincia de Iloilo fué liberada en 22 de marzo de 1945. Labaco fallecié el 30 de mayo del mismo año. En ese tiempo, la compañia no había habierto aun su agencia en Filipinas. Las oficinas de correos, de la provincia de Iloilo, se reabrieron el 4 de julio de 1945. Todo esto significa que antes de la muerte de Labaco no había facilidades de remitir dinero, porque su envio por giro postal no se habia aun restablecido.

Por otra parte, como dice en su alegato la represntación del apelado, solicitar la rehabilitación de la póliza Exh. A, valdría tanto como admitir que la misma había caducado.

CUARTO ERROR

THE LOWER COURT ERRED IN APPLYING THE PROVISIONS OF ARTICLE 1105 OF THE CIVIL CODE TO THE PRESENT CASE AND CONSTRUING IT TO THE SOLE BENEFIT OF PLAINTIFF.

La representación de la apelante sostiene que, en cuanto a los contratos de seguro, las disposicions generales del Código Civil carecen de aplicación.

En Musgñi vs. West Coast Life Insurance Co. (61 Phil. 864), el Tribunal Supremo sostuvo lo contrario:

"2. Id.; NULLITY; APPLICABILITY OF CIVIL LAW.—When not otherwise specially provided for by the Insurance Law, the contract of life insurance is governed by the general rules of the civil law regarding contracts. ." (Syllabus)

En este asunto, en que no hay motivos justificados para culpar a ninguno de los contratantes por la falta de cobro o pago de las primas de la póliza en cuestión, viene al caso el precepto del Art. 1105 del Código Civil, tendente a suplir deficiencias del contrato, tanto mas cuanto que es ya regla admitida la de evitar confiscaciones, mediante una interpretación favorable a los asegurados.

"The rule applicable to contracts generally, that a written agreement should in case of doubt as to the meaning thereof, be interpreted against the party who has drawn it, is very frequently applied to policies of insurance and constitutes an important rule of construction in such respect, in view of the fact that ordinarily, and in practically all cases, it is the insurer who furnished or prepares the policies used to embody the insurance contracts. The general rule is that terms in an insurance policy, which *are ambiguous, equivocal, or uncertain to the extent that the intention of the parties is not clear* and cannot be aseertained clearly by the application of the ordinary rules of construction *are to be construed strictly in and most strongly against the insurer, and liberally in favor of*

the insured, so as to effect the dominant purpose of indeminity or payment to the insured, *especially where a forfeiture is involved since the forfeiture of insurance policies is not* favored by the courts." [29 Am. Jur. 180, 181] (*Underscoring* supplied)

"The severe hardships to which the insured was formerly subjected under the older concepts of contract law and because of the advantageous economic position of the insurers to impose unfair stipulations and conditions is well known. Comprehensive legislation regulating the activities of insurers, having as its objective the protection of the public and those insured, has become very common in the United States. In keeping with the judicial policy of construing insurance policies in favor of the insured, legislation enacted for the purpose of his protection have usually been liberally construed in favor of the public and the insured. *The law looks with disfavor upon the forfeiture of the rights of the insured, and so statutes protecting and extending those rights are treated with liberality.*" 3 Sutherland Statutory Construction, 3rd ed. sec. 7105, p. 393, 394. See also 45 C. J. S. 387. (Italics supplied.)

"It is a matter of common knowledge that large amounts of money are collected from ignorant persons by companies and associations which adopt high sounding titles and print the amount of benefits they agree to pay in large blackfaced type, following such undertakings by fine print which destroy the substance of the promise. *All provisions, conditions or exceptions which in any way tend to work a forfeiture of the policy would be construed most strongly against those for whose benefit they are inserted, and most favorably toward those against whom they are meant to operate.*" (Standard L and A. Ins. Co. v. Martin, 132 Ind. 376, 33 N. E. 105; McElfresh v. Odd Fellows Acc. Co., 21 Ind. App 557, 52 N. E. 819; 1 Cyc. 243, and cases therein cited.) (United States Benev. Society v. Watson, 1908, 84 N. E. 29, 31)" (Trinidad vs. Orient Protective Assurance Association, 37 Off. Gaz. 2674) (Italics supplied.)

Se puede añadir, que la aplicación del Art. 1105 del Código Civil al caso presente es de estricta justicia, porque en los contratos de seguro sobre la vida el silencio con respecto a los derechos de las partes, en casos de guerra, es una omision—que no debe beneficiar a las compañias aseguradoras, que son las que redactan dichos contratos, y no pueden invocar a su favor sus propias faltas.

La doctrina en el asunto de Statham, que en su segunda parte adjudica al beneficiario el valor equitativo de la póliza, fundandose en el principio *ex aequo et bono,* es en esencia una modalidad del alcance del Art. 1105 del Código Civil, cuyas disposiciones supletorias tienen su aplicación cuando el incumplimiento de los terminos del contrato no pueda en equidad y conciencia atribuirse a culpa o negligencia de cualquiera de los contratantes.

En sus comentarios al Art. 1105 del Codigo Civil, el Sr. Manresa, dice:

"En concreto, se ha declarado por el Tribunal Supremo que constituyen casos de fuerza mayor: . . . . . ; el hecho de la conflagración europea y de la guerra, que trastornó las economías mundiales y privó a las compañias ferroviarias de los medios necessarios (como locomotoras, vagones y carbon ingles), para cumplir exactamente los contratos de trasporte estipulados con los particulares (Sentencia de 2 de febrero de 1926; .") (8 Manresa 90)

Se confirma en todas sus partes la sentencia de que se apela, con las costas a la apelante.

Asi se ordena.

Torres, J., concurs in a separate opinion. *Labrador* and *David, JJ.,* concur.

JUGO, *J.,* dissenting:

Believing that the doctrine laid down by the decision of the Supreme Court of the United States in the case of New York Life Ins. Co. vs. Statham (93 U.S. 24, 23 L. ed. 789) is based on strong and sound reasons and on high authority, I dissent.

(On Oct. 4, 1946 Justice Jugo, then Judge of the Court of First Instance decided the case of Paz Lopez de Constantino vs. Asia Life Ins. Co. (No. 71875) in favor of the Insurance Co. The case is now pending decision by our Supreme Court.)

TORRES, *Pres. J.* concurring:

The essential facts in this controversy, as clearly related in the decision penned by Mr. Justice De la Rosa, are as follows: On August 1, 1940, Patricio H. Gubagaras and his wife, Maria Labaco, were insured by the West Coast Life Insurance Company for the sum of ₱2,000.00. The joint twenty-year endowment policy is sued by the company being a mutual benefit made the surviving spouse the beneficiary of the other and both of them participates in its profits. The premium was payable every six months and the last premium paid covered the semester period ending February 1, 1942. In the meantime, on December 8, 1941, war was declared in the Pacific, and on January 2, 1942, the Japanese invading forces occupied the City of Manila. This caused the disruption and paralyzation of all means of communication between the capital of the Philippines and other points outside of the City of Manila.

Maria Labaco, one of the insured, died in the municipality of Dueñas, province of Iloilo, on May 30, 1945, and on June 18 of the same year, Patricio H. Gubagaras, the surviving spouse and co-insured, notified the company of the death of his wife (Exhibit "1"), and requested that he be furnished with the necessary forms to support a claim for the payment of ₱2,000.-00, the amount of the insurance. The company replied that in view of the failure of the insured to pay the premiums due after February 1, 1942, the policy, Exhibit "A," had lapsed and, therefore, payment was forfeited. After an exchange of correspondence, on June 24, 1946, Gubagaras finally brought in the Court of First Instance of Iloilo the corresponding motion against the West Coast Life Insurance Company.

After proper proceedings, the lower court, in a judgment rendered on January 30, 1947, found for the plaintiff and against the defendant and ordered the latter to pay the former the sum of ₱2,000.-00, from which shall be deducted the total amount of premiums due and remaining unpaid until May 30, 1945, the date of the death of Maria Labaco, with legal interest from the date of the filing of the complaint, and the costs of these proceedings.

In this appeal, the defendant-appellant West Coast Life Insurance Company, assigned several errors allegedly committed by the trial Judge.

The main point raised by counsel is based on the proposition that, contrary to the holding of the lower court, the policy issued by the company to the plaintiff and his deceased wife "had lapsed for non-payment of premiums due."

As previously stated, all means of communication between Manila and the province had been interrupted by the war and the occupation of the City of Manila and other places in the Archipelago by the Japanese forces. The policy, Exhibit "A", was issued by the home office of the West Coast Life Insurance Company located in San Francisco, State of California, U. S. A., through its agency located in the City of Manila. Following the practice of companies authorized to do business in this country, the defendant "sold" the insurance policy, Exhibit "A", to the plaintiff and his deceased wife through its agency established in the City of Manila prior to the advent of the last global war. We may thus take judicial notice of the fact that a foreign insurance company, which has been authorized under the Philippine laws to do business in these Islands, establishes its local office or agency through which it reaches the public in the Philippine Islands to "sell" its policies. It can not be conceived that these persons who, like the plaintiff and his deceased wife, have been locally insured by the defendant, an American company with home office in the City of San Francisco, State of California, U. S. A., would have contacted directly the main office of said company in order to be insured by the latter. In the ordinary course of business in the field of insurance, the applicant is investigated by a local representative of the company and, what is most important, is examined by the company medical officer before his application is submitted to the main or home office for its approval.

In view of what is stated in the preceding paragraph, it is quite safe for me to conclude that the payment of the premiums on the policy in question was not made directly "at the home office of the company in the City of San Francisco, State of California, U. S. A.," as is printed in the policy, but "to an authorized agent of the company," as is likewise stated therein. And I do not say this in vain, because the record supports my point of view in this respect. When the communications between the province of Iloilo and the City of Manila were disrupted and

stopped by the war, the evidence shows that the plaintiff—who jointly with his wife had been paying the premiums up to the 1st of February, 1942 when the Japanese Imperial Forces were already occupying the City of Manila and other parts of the Archipelago—made every possible effort to contact the local agency of the defendant company because he wanted to remit to the Manila office of the defendant the semester premiums due from February 1, 1942. The post-office in the municipality of Dueñas was closed, and he was informed by the municipal treasurer that there was no business transaction with Manila which was then already occupied by the Japanese forces. He went to the City of Iloilo and his inquiries brought the same result; in fact, the postal service in the province of Iloilo was re-established only in July, 1945, after the death of the wife of plaintiff.

In view of all those facts and circumstances, it having been clearly proven that the failure of this plaintiff to make further payment of premiums due on policy Exhibit "A" was caused by the stoppage of all the means of communication between his place of residence in the province of Iloilo and the City of Manila, where the Philippine offices or agency of the defendant company were established before the war, and it being a matter of common knowledge that the offices of all firms and companies of American nationality have been closed and liquidated by the Japanese Military Administration soon after the beginning of the occupation of these Islands, it would be utterly unreasonable to contend that because of the plaintiff's failure to pay the premiums due from February 1, 1942, "the policy lapsed without value" (Exhibit "C" of plaintiff). *Impossibilium nulla obligatio est* (there is no obligation to do impossible things—Wharton L. Lex). *Impotentia excusat lagem* (impossibility is an excuse in the law—Bouvier's Law Dictionary). These are maxims which are in all fours with the case at bar.

It cannot be successfully alleged, and much less proven, that the plaintiff did not do his best to contact the Manila office of the defendant company for the payment of the premiums due beginning from February 1, 1942. The efforts made by him are the best evidence of his earnest and honest intention to comply with his part of the obligation contracted and commitments made by him when he accepted the policy Exhibit "A" issued by the company upon acceptance of his application by the home office. It is not my purpose to state here that the defendant company was at fault when its local office was closed by the Japanese Military Administration. Even if the Japanese Military Administration had permitted the local agency of defendant to transact business during the period of military occupaion, the lack of communication between Manila and the provinces particularly the province of Iloilo, would have just the same resulted in the failure on the part of the plaintiff to remit and the agency of the Company to receive the premium due from February 1, 1942.

In this connection, the evidence of the defendant has strongly endorsed our view in the premises, when by its Exhibit "G", a circular letter dated June 15, 1945, addressed to its "policyholders in the Philippine Islands," the President of the company, among other things, says:

* *

> You will appreciate how impossible it has been for us to communicate with or serve in any way either policyholders or representatives in the Islands. Our Resident Manager and Resident Secretary have but recently arrived in the United States following their liberation from Los Baños and Santo Tomas, and given us a report regarding our former Branch Office in Manila.
>
> We desire to re-open a service office there just as soon as this is permitted and becomes possible. Now and up-to-date policy records are being prepared for this purpose from the original records here in the Home Office, under the supervision of our Resident Manager and Resident Secretary for the Philippines.
>
> Meanwhile, may we have your correct present mailing address, in order that we may furnish you with information as to the present standing of your policy. Please complete the enclosed forms giving such additional information as you desire and return to us in the self-addressed envelope enclosed for this purpose.
>
> This letter is being mailed to all policyholders in the Philippine Islands to their last known mailing address according to our records. No doubt many of our policyholders have been compelled to move during this past three years and there may have been many changes of address. Consequently, some may not receive their copy of this letter and we would appreciate your help by passing its contents on to any such policyholders with whom you may be acquainted."

But, notwithstanding the cordial terms of the above-quoted letter, clearly intended for the resumption of business relations between the company and its prewar patrons, the attitude of the defendant in this controversy is such that it clearly denies the insured all the rights and benefits to which they are entitled under the policy. An insurance company organized outside the territory of the Philippines and permitted to transact business in this territory must abide by the provisions of the laws in force in this jurisdiction governing life insurance business. We, therefore, cannot adhere to the contention of defendant who, in his first assignment of error, contends that "the policy is the law between the parties." The law governing the subject matter of insurance is superior to the terms of the policy.

In Musngi v. West Coast (61 Phil. 864), the Supreme Court held that in the absence of specific provisions in the Insurance Law, No. 2427 as amended, a contract of life insurance is governed by the rules of civil law regarding contracts. Thus, if according to Article 1256 of our Civil Code, "the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties," the attitude of defendant in declaring that the policy Exhibit "A" had lapsed and become worthless on the ground of alleged non-payment of premiums, is utterly unjustified, in that it is contrary to the provisions just quoted which is based on principles of justice, because it not only proclaims the binding nature of the contract as stated in Article 1258 of said Code, but it likewise established the principle of equality which is so essential for the contracting parties; it forbids that one of the parties be bound by the terms of the agreement while the other is not (Manresa, Commentaries on the Spanish Civil Code, 4th ed., Vol. 8, page 556)

Greatly relied by the defendant to support its contention in this case in the so-called Statham doctrine. In the Statham case (New York Life Insurance Company vs. Statham, 93 U.S. 24 23 L. Ed. 789), the Supreme Court of the United States held that "an action cannot be maintained for the amount assured on a policy of life insurance forfeited by nonpayment of the premium, even though the payment was prevented by the existence of the war." The defendant also cites other decisions rendered in New York Life Insurance Company v. Davies (95 U.S. 425, 24 L. Ed. 453; Worthington v. The Charter Oak Life Insurance Company, 41 Conn. 372, 19 Am. Rep. 495; and Dillard v. The Manhattan Life Insurance Company, 44 Ga. 119, 9 Am. Rep. 167); which cases also followed the doctrine in the Statham case. Defendant-appellant contends that since the promulgation of the decision of the United States Supreme Court in the Statham case, there has been no departure from the rule laid down therein, because it has been followed in other cases. However, in the broad field of American Jurisprudence, contrary authority is found which shows that not all the courts of the United States agree with such ruling. In Manhattan Life Insurance Company vs. Warwick (3 Am. Rep., 218, 220), the Supreme Court of Appeals of Virginia, in holding that the life insurance policy did not lapse for non-payment of premiums due to impossibility of payment as a result of war, said the following:

> * If the assured was at the place on the day, where and when payment was to be made, and where he had a right to make payment, ready and prepared to make payment, but was prevented by either of the causes mentioned, it would be unreasonable to say that he had incurred for forfeiture. And I think it is equally clear, upon reason and authority, that the company was not thereby released from its obligation to pay the sum assured. It would be a monstrous perversion of law, and repugnant to our very sense of justice, to say that this company, after having received more than half the sum assured, could by this act determine the policy, hold on to the money they had received, and to say to their confiding victim, 'you may whistle to the winds for your merited reward, notwithstanding you relied upon our covenant and good faith to pay it.'

"And, although the case cannot be so strongly put, I think it is equally clear that, when the assured was involved in no default, but was at the place when and where payment was to be made, ready and willing to pay, but was prevented by the disability of the company to receive payment, from whatever cause, he having had no agency in producing it, the company is not entitled to claim the forfeiture, or to be relieved from its obligation to pay the sum assured."

In this case, the premiums covering the period from the date of the policy up to January 31, 1942, have been paid, and according to the law and the terms of the policy, when the first premium was paid, a full contract of insurance was completed, so that had Maria Labaco died soon after the payment of that first premium and before the next premium became due, the rights of the plaintiff to the sum insured would have become vested, and a full contract of insurance completed. But the events were shaped in a different way. Maria Labaco died after the liberation and during the intervening period, the premiums from February 1, 1942 until her death, were not paid, due, because they could not be paid by reason of the extraordinary circumstances obtaining at that time. But the defendant, clinging stubbornly to the situation thus created thereby, refuses payment of the value of the policy. The Supreme Court of Appeals of Virginia thus said:

" The payment of the first premium covers the whole life-time, and makes a complete vested right to the sum insured, if death takes place before another premium is payable, but if not, it is subject to the payment of further premiums * * * ".

* * *

" * When the first premium is paid a full contract of insurance is completed, subject to conditions peculiar to that class of contracts. The use of the words condition precedent, Baron Martin, in a certain case (Bradford v. Williams, L.R. 7 Exh. 261), said he thought unfortunate; that 'the real question, apart from all technical expression, is, what in each case in the substance of the contract.' So far as the precedent payment of the premium in arrear is concerned it would, of course, have to be made before recovery. Time, also, is of the essence of the contract, and no fault or neglect of the party could excuse a non-payment; but why should not this, like any other contract, be subject to such qualifications and conditions as the law may impose?" (The Mutual Benefit Life Insurance Co. v. Willyard, 18 A. R. 741, 749-750).

It cannot be denied that, as contended by appellant, prompt payment of premiums is material and of the essence of the contract of insurance. This must, however, be qualified by taking into consideration the time and circumstances surrounding the act of payment. Not in vain the maxim says: *distingue tempore et concordabis jura* (Distinguish times, and you will make laws agree, Wharton L. Lex.)

In the light of what has been said in the preceding paragraphs and considering that the ruling laid down in the Statham case has been made by the United States Supreme Court about 75 years ago, during the *horse and buggy* period of the life of the American nation, it cannot be regarded as an over-all principle that shall govern the relations between the insurer and the insured in the present age. Granting that, at the time of the promulgation of said decision on October 23, 1876, such ruling was good law, it cannot be accepted as such in the present circumstances of human advancement and progress. Law and jurisprudence, its companion and exponent, are not static like the still waters of a pond; they go hand in hand with the progress and advancement of time; look after and provide for the needs and welfare of the community.

"Since law is defined as the rule of reason applied to existing conditions, as stated supra note 10, and can remain static only as long as the conditions to which it applies remain static, it is a proper province of the law to interpret human relationship, and to modify, enlarge, and develop with changing conditions of human affairs." (52 C.J.S., 1024)

In the present case, the Statham doctrine, while it gives full protection to the rights of the insurer, it disregards and repudiates the rights of the insured. Such law, and the jurisprudence which interprets and applies it to a given case, cannot be good law, because it does not give the interested party, the plaintiff in his case, the equal protection guaranteed him by the Constitution.

Summing up, therefore, all that has just been said, we do not hesitate to hold that after a thorough consideration of all the angles of this controversy, the events that took place in these Islands as a result of the last war, undeniably constitute *force majeure*, which resulted in mutual disability on the part of the insured to pay the premiums due after February 1, 1942, and on the part of the insurance company to receive such premiums. In defining fortuitous event, Article 1105 of the Civil Code says—"Outside of the cases mentioned in the law and of those in which obligation so declares, no one shall be responsible for events which could not be foreseen, or which having been foreseen were unavoidable."

This situation has brought forth the theory of suspension of the contract of insurance as against that of cancellation of the policy, advocated by the insurance company on the strength of the rules laid down in the Statham case. The theory of suspension was for the first time discussed when the peace terms were being debated in Versailles, to end the First World War. The idea has since gained many supporters; even some life insurance companies adhered to the idea and showed their readiness to abandon the theory of cancellation of the policy. In this connection, Mr. Sidney A. Diamond, special assistant to the Attorney-General of the United States, in an article entitled "The Effect of war on pre-existing contracts involving enemy nationals," published in 53 Yale Law Journal 700, made this significant comment:

"*Contracts suspended.* Contracts held suspended, rather than terminated, by the outbreak of war also fall into groups. The most familiar type is the contract of life insurance. Although there are indications to the contrary, *the overwhelming weight* of authority refuses to treat a life insurance contract as dissolved by war. The rationale is that the contracts are not commercial in nature and require communication between the parties only for payment of premiums, an obligation which can be suspended *until after the war* without serious consequences to either side." (Rejoinder to Appellee's Reply Memorandum, by Ramires & Ortigas, Amici Curiae, p. 59)

Premised on the foregoing, which renders it unnecessary to discuss herein the other points of secondary importance raised by appellant, I hereby fully concur in the main decision rendered in this case.

"It is not he who never fails in his life that is a success; but it is he who rises every time he fails."

ACCEPTANCE SPEECH OF SENATOR VICENTE J. FRANCISCO

"The political campaign that you are going to witness in the next few months is going to be bitter. I ask all of you to keep serene. Let us present the issues involved clearly before the minds of the electorate. We shall fight for principles, not personalities. Let us explain what our party stands for without bitterness or exaggeration. Let us endeavor to bring understanding to the voters by appealing to their instinct of justice and fair play instead of to their fear or weakness. Let us keep intact the dignity of the individual citizen, his absolute right to his opinion. Let us never descend to abuse and calumny, to deceit and cynicism, in order to attain victory."

This is the highlights of the acceptance speech of Senator Vicente J. Francisco delivered on May 12, 1949 at the Convention of the Liberal Party which nominated him candidate for Vice-President.

The full text of Senator Francisco's speech follows:

Delegates and fellow members of the Liberal Party, friends and guests,

Ladies and Gentlemen:

The nomination for Vice President of the Philippines on the Liberal Party ticket and platform which today you have tendered me is both an honor and a challenge. It is a signal honor, because it brings with it the expressed confidence and support of some of the most outstanding citizens and public servants of our country. It is also a challenge, a ringing challenge, to take sides with you in a grim struggle for a better government, a cleaner, more efficient, more popular government. The honor I accept with great humility. The challenge I take up with confidence and determination, conscious as I am of all the obstacles and dangers that must be faced. In accepting this honor and challenge I give you my pledge to fight with you to the end, no matter how it may come, or whatever the cost.

I consider the coming elections as momentous in our history. A number of vital issues are to be decided, but underlying everything is the fundamental one of whether we can have a government that we want, whether the people, making use of their constitutional rights, can bring about in a peaceful manner, the changes that they believe should be instituted. The eyes of the world will be upon us. Critics will not be wanting who will magnify and distort every failing that we have in a vain effort to prove that we have not learned the lessons of self-government. But friends we will also have, friends who will understand us, encourage us, help us keep the spark of the democracy burning brighter and more steadily in this dark part of the troubled world.

It is indeed to be lamented that at such a time as this, political quarrels and disagreements should demand the time and emergencies of some of our most gifted and valuable citizens. When there is so much to be done, when our rehabilitation is barely started, when our war shattered economy has not only to be restored, but also to be buttressed against the threatening storms of a not too distant future, it seems indeed a pity that we cannot find a meeting of the minds, a peaceful solution of the difficulties and discords that split group from group and separate friend from friend.

But the issues involved in this struggle are so fundamental that no compromise is possible. To compromise is to sacrifice principle for expediency. And it is in the very nature of a democracy that when parties disagree over basic philosophies and political thought, the people should be consulted. We shall have shown the world our political maturity when we can bring such issues before the people, discuss all possible sides and implications and obtain a mandate in a peaceful manner.

There are many of you here today who were also present about four years ago when the Liberal Party was born. You will recall the circumstances that forced the founding of the party, how the people demanded peace and order out of the postwar confusion and violence; how they wanted the prompt reestablishment of governmental machinery; how they yearned to return to the peaceful pursuits of peace which the war had so wantonly disrupted. You will remember that the crying need of the hour then was a strong hand, a hand that was not afraid to do what had to be done. And because the people needed him, a great leader arose, Manuel A. Roxas. He gave us the spark of hope when the destruction around us made the strongest falter, he provided the clear voice and the keen vision, he showed us where to go and led the way.

Unfortunately he was snatched from our midst before he could complete his work. But fortunately he left behind him an instrumentality that he had conceived precisely to carry out his program. And most fortunate of all, he left behind him his trusted lieutenant, a man so close to him that their thoughts and ideals were similar, if not identical. By all that is logical and just and right, Jose Avelino, our candidate for President, is the successor of President Roxas, and no amount of specious arguments, no amount of political blackmailing, no amount of personal persecution is going to change that fact.

As I look on you today and remember that you have come from all parts of the country, from all islands and cities and municipalities, bound together by common aims and fired by the same ideal of service, I cannot help but feel a glow of pride at the thought that I belong to the same party, that I am one of you. It is perhaps the measure of the strength of our party that in spite of the death of a leader our organization did not disappear. What better proof of the vitality of the Liberal Party can be more eloquent than the fact that we are held together by ideas and principles instead of personalities? What better manifestation of the broad, solid foundation upon which the Liberal Party is founded than your presence here today, the spokesmen and representatives of farmer and labor, of the trades and professions, of the humble and underprivileged?

What a pity that President Roxas is not here today. He whose first concern was for the forgotten and ignored small "tao" would have smiled with satisfaction at this tremendous gathering here today. He would have been overjoyed to see the familiar faces, the faces of the people that he trusted, the people whose love and loyalty he could depend upon. What pleasure would have been his to know that we have kept not only our identity but also his aims and principles. How justified he would have felt when he learned that we have not compromised conviction for convenience, that we have temporarily lost political control because we had refused to exploit the expediency of accepting the support of a group whose purposes and objectives were alien to ours. He would not have missed the absent ones here today, the insincere and opportunists who placed personal ambitions above the welfare of the organization. On the contrary, President Roxas would have been glad to see that the parting of the ways had come, for now what remains has been tried and tested and its strength demonstrated beyond all doubt.

My friends and fellow members of the Liberal Party, the political campaign that we are going to witness in the next few months is going to be bitter and cruel. No opportunity will be missed by our enemies to sow dissension in our ranks and wreck our organization. To accomplish this, rumors, muck-raking gossips will be utilized. I ask all of you to keep serene. Let us present the issues involved clearly before the minds of the electorate. We shall fight for principles, not personalities. Let us explain what our Party stands for without bitterness or exaggeration. Let us endeavor to bring understanding to the voters by appealing to their instincts of justice and fair play, instead of to their fear or weakness. Let us keep intact the dignity of the individual citizen, his absolute right to his opinion. Let us never descend to abuse and clumny, to deceit and cynicism, in order to attain victory.

Some four years ago the Liberal Party went to the polls under similar circumstances as prevail today. In spite of tremendous difficulties, it scored an overwhelming victory. If we keep the reasons for this victory clearly in mind, if we keep faith with the ideals of our Party, if we appeal to the people as President Roxas would want us to do, I predict that next November's election will result in one of the greatest triumphs of the Liberal Party.

DECISIONS OF THE DIRECTOR OF PATENTS

DEPARTMENT OF COMMERCE AND INDUSTRY

PHILIPPINES PATENT OFFICE
MANILA

DECISIONS OF THE DIRECTOR OF PATENTS IN TRADEMARK CASES

Series of 1949
No. 1
Application No. 985
(Bureau of Commerce)
Filed September 30, 1946

EX PARTE JOSE TAN CHAU
Jose Tan Chau, Petitioner
Petitioner *pro se*

PETITION FOR RECONSIDERATION

DECISION

This is a petition of JOSE TAN CHAU, a citizen of the Republic of China, domiciled in the Philippines, and doing business at Badeo 4, Malabon, in the Province of Rizal, praying that the decision of the Director of Commerce, denying the registration of his trademark LIBERTY, be set aside and that his application be given due course in the Patent Office.

The records of this case show that the petitioner filed with the Director of Commerce on September 30, 1946, an application for the registration under Act No. 666 of the trademark LIBERTY used on *bagoong* and *patis*, which are articles of salty food in general use, derived from small fish. Without giving any definite date, the petitioner alleged in his application that he had employed the trademark "since American liberation" (meaning liberation of Manila by Gen. MacArthur's forces). He further alleged that the trademark was applied to the "bottles or tins containing the goods."

The records further show that, in a brief one-paragraph decision rendered April 23, 1947, the Director of Commerce rejected the application —

> "on the ground that said trademark is identical with the trademark LIBERTY for edible oil, lard, margarine, belonging to *the same class* cc, registered in this Office in favor of Tan Khek Chiok, 538 T. Pinpin, this City, on September 13, 1946, No. Republic 538. Use claimed definitely 'since June 1, 1945.'"

The records disclose that the application of Tan Khek Chiok stated that his trademark LIBERTY was applied to "tins, bottles or other containers containing the goods."

The records also disclose that on May 3, 1947, the applicant filed a motion for reconsideration, upon which the Director of Commerce was unable to act in view of the transfer a short time thereafter of the function of trademark registration from him to the Director of Patents.

The provisions of Act No. 666 upon the authority of which the Director of Commerce refused registration of the petitioner's trademark LIBERTY read as follows:

> "Sec. 13. * * * no alleged trademark shall be registered * which is identical with a registered or known trademark owned by another and appropriated to the same class of merchandise * * *"

This provision is similar to Sec. 5 of the U.S. Trademark Act of 1905, which was in force until the enactment of the Trademark Act of 1946, which is popularly referred to as the Lanham Act. It reads as follows:

> "* *Provided*, That trademarks which are identical with a registered or known trademark owned and in use by another and appropriated to merchandise of the same descriptive properties * * * shall not be registered."

As interpreted by U.S. courts, the phrase "merchandise of the same descriptive properties" means "goods of the same class." Philadelphia Inquirer Co. v. Coe, Comm. of Patents, 55 USPQ 435. The phrase "the same class of merchandise," as used in Sec. 13 of Act No. 666, and "goods of the same descriptive properties," as used in Sec. 5 of the U.S. Act of 1905, have, therefore, the same signification.

As the trademark sought to be registered and the one already registered are admittedly identical, the only question before the Director of Commerce was whether *bagoong* and *patis* on which petitioner's trademark is used, and edible oil, lard, and margarine on which the registered trademark is employed, belong to the *same class of merchandise* or, using the equivalent phrase of the U.S. Act of 1905, whether they are *merchandise of the same descriptive properties*. If they do not belong to the same class, the petitioner's trademark is registrable under the cited section 13 of Act No. 666, and the Director of Commerce was wrong in refusing it registration. But, if they do belong to the same class, the said section prohibits its registration, and the Director of Commerce was right in refusing registration.

United States courts have set up a number of tests by which the question whether or not two items of merchandise are of the same descriptive properties (belong to the same class) may be determined. It is not necessary that the items under consideration pass all the tests, or a majority of them, in order to be adjudged to belong to the same class. These are the tests. If the question in each case is answerable in the affirmative, the goods involved are considered to be of the same descriptive properties (the same class).

1. Can the two items be put under a group capable of general definition, such as groceries, canned goods, men's furnishings? Cheek-Neal Coffee Co. v. Hall Dick Mfg. Co., 40 F (2) 106; Oppenheim, Oberndorf & Co. v. President Suspender Co., 3 F(2) 88; In re Inderrieden Canning Co., 277 Fed. 613.
2. Are the two items used for the same general purpose, as baking soda and baking powder? Layton Pure Food v. Church and Dwight Co., 182 Fed. 35; Emerson Electric v. Emerson Radio & Phonograph Corp., 90 F(2) 331.
3. Are the items capable of conjoint use, as a shirt and a collar button for a shirt? Cluett, Peabody & Co. v. Hartogensis, 41 F(2) 94; Rosenberg Bros. v. Elliot 7 F(2) 962.
4. Are the items sold in the same stores to the same class of customers? Cluett, Peabody & Co. v. Hartogensis; Rosenberg Bros. v. Elliot, *supra*.
5. Are the items marketed by the same method, as in barrels, boxes, cartons, bottles, or tins? Cracker Jack Co. v. Blanton Citrus, 81 F(2) 553.
6. Have the items been manufactured in the past by the same manufacturer? Beech-Nut Packing v. Lorillard Co., 7 F(2) 967; Pittsburgh Brewery v. Ruben 3 F(2) 342.
7. Have the items the same active element or ingredient? Layton Pure Food v. Church & Dwight, *supra;* B. F. Goodrich Co. v. Closgard Wardrobe Co., 37 F(2) 436.
8. Are the items manufactured from the same raw material? Kushner & Gillman v. Mayflower Worsted, 11 F(2) 462; Ralston Purina v. Saniwax Paper, 26 F(2) 941; Denver Gas & Electric v. Alexander Lumber Co., 269 Fed. 859.

Petitioner's *bagoong* and *patis* and the goods of the owner of the registered trademark—edible oil, lard and margarine—

a. belong to the same group capable of a general definition—groceries.
b. are capable of conjoint use—*patis* and *bagoong* and edible oil or lard are often mixed together in the preparation of dishes for the dinner table.
c. are sold in the same stores to the same customers.
d. are marketed by the same method—retailed in bottles or tins.

By one-half of the tests, petitioner's goods and the goods of the owner of the registered trademark are merchandise of the same descriptive properties or, in the words of the cited Sec. 13 of Act No. 666, merchandise of the same class. This being the case, I am of the opinion that the Director of Commerce did not err in refusing registration to petitioner's trademark. There is a rule in trademark law and practice that all doubts are resolved against the newcomer. "The reason for this (rule) is * * * that the field from which a person may select a trademark is practically unlimited, and hence there is no excuse for him impinging upon, or even closely approaching the mark of his business rival * * * (William Waltke & Co. v. Geo. Schaffer & Co., 263 Fed 650). So that, if it be urged that the classification of *bagoong* and *patis* and of edible oil, lard and margarine in the same class is at best doubtful, the decision of the Director of Commerce would still be correct, for he had resolved the doubt against the petitioner, who is the newcomer.

His decision is, therefore, affirmed.

In this connection, it is interesting to note the following decision of the U. S. Commissioner of Patents rendered on April 9, 1947,

interpreting the above cited Sec. 5 of the U.S. Act of 1905:

"This is an appeal from the refusal of the Examiner of Trade Marks to register the notation 'PINE TREE' as a trade mark for 'natural bulk American Cheese.' The application was rejected in view of prior registration of the same mark for canned vegetables and sardines.

"In a carefully prepared and elaborate brief, applicant presents the argument that likelihood of confusion is the 'only acceptable test' in determining whether goods possess the same descriptive properties; and that since confusion is here unlikely, the proposed registration should be granted. But, while such argument might once have been persuasive, it comes too late. For both the Court of Customs and Patent Appeals and the Court of Appeals for the District of Columbia are committed to the rule that identical marks may not be registered for merchandise of the same class, regardless of confusion. In re Laskin Brothers, Inc., 32 C.C.P.A. 820, 146 F. 2d 308 (64 USPQ 225); Philadelphia Inquirer Co. v. Coe, 77 App. D.C. 39, 133 F. 2d 385 (55 USPQ 435). And that cheese and canned goods are broadly of the same descriptive properties, there is no longer room for doubt. W.B. Roddenbery Co. v. Kalich (C.C.P.A.), 158 F. 2d 289, 72 USPQ 138.

"The decision is affirmed." Ex parte Laabs Cheese Co., 73 USPQ 85.

The foregoing decision shows that the law of the United States under the Act of 1905, and the law of the Philippines under Act No. 666 are the same. In both cases, when the mark sought to be registered and the already registered trademark are identical, the only inquiry required to be made is, Do the goods, on which the two identical trademarks are used, belong to the same class? If the inquiry shows that they belong to the same class, then the mark sought to be registered is refused. Any actual difference between the goods of the applicant and the merchandise of the registrant and any consideration that this difference may not actually cause confusion and deceive the purchasers as to the origin of the applicant's goods, are immaterial. If the goods are found to be of the same class, the law, in both countries, simply *presumes* that confusion and deception of the purchasers will follow, and the trademark of the newcomer is refused.

The present trademark law has changed this method of approach to the problem. For comparative purposes I quote in full Sec. 13 of Act No. 666 and the corresponding provision of Republic Act No. 166, which is Sec. 4 (d):

ACT 666

"SEC. 13. The time of the receipt of any such application shall be noted and recorded. But no alleged trade-mark or trade-name shall be registered which is merely the name, quality, or description of the merchandise upon which it is to be used or the geographical place of its production or origin, or which is identical with a registered or known trademark owned by another and appropriated to the same class of merchandise, or which so nearly resembles another person's lawful trade-mark or trade-name as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers. In an application for registration the Director of the Bureau of Commerce and Industry shall decide the presumptive lawfulness of claim to the alleged trademark. (*As amended by Act No. 1407, sec, 3(b), and modified by Act No. 2728.*)"

REPUBLIC ACT 166

"SEC. 4. *Registration of trade-marks, trade-names, and service-marks.*—The owner of a trademark, trade-name or service-mark used to distinguish his goods, business or services from the goods, business or services of others shall have the right to register the same, unless it:

"* * * * * *

"(d) Consists of or comprises a mark or trade-name which so resembles a mark or trade-name registered in the Philippines or a mark or trade-name previously used in the Philippines by another and not abandoned, as to be likely, when applied to or used in connection with the goods, business or service of the applicant, to cause confusion or mistake or to deceive purchasers;"

The foregoing provision of Republic Act No. 166 was taken from Sec. 2 of the U.S. Trademark Act of 1946 (Lanham Act), which replaced the Act of 1905. It reads as follows:

"Sec. 2. No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it—

"* * * * * * *

"(d) Consists of or comprises a mark which so resembles a mark registered in the Patent Office or a mark or tradename previously used in the United States by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive purchasers: * * *"

It will be seen that the new trademark law (Sec. 4(d)) omits all reference to identical trademarks and to the phrase "the same class of merchandise" which are employed in Act No. 666. The new law simply provides that, if the mark sought to be registered is so similar to another's trademark that, when used on the applicant's goods, it would be likely to cause confusion and deception among the buyers of such goods, its registration shall be refused. Because of the omission of the phrase "the same class of merchandise," the inquiry in the new Act, in the case of identical marks, has shifted from "Do the goods of the applicant and those of the owner of the registered trademark belong to the same class of merchandise?" to "Will the concurrent use of the same trademark by the applicant and by the owner of the registered trademark likely to cause confusion and to deceive the buyers, so that they would think the applicant's goods originated from the owner of the registered trademark?"

In determining whether such confusion and deception as to the origin of the applicant's goods are likely to take place, the nature of the trademark used is taken into account. In cases of this kind, U.S. courts have recognized two classes of trademarks—(a) the fanciful, or arbitrary, or arbitrarily coined trademarks, which they term "strong marks"; and (b) marks consisting of common, ordinary, and well known words, which they denominate "weak marks." The courts believe that the liability to confusion as to the origin of the goods of the newcomer in the field is greater when the mark of the first user is fanciful and arbitrary, and less when the first user's mark consists of common, ordinary word. In suits for infringement the courts have accorded greater protection to "strong marks" than to "weak marks." To put it in another way, the courts have been willing to concede to the first user of a "strong mark" a wider range of goods upon which he may place his mark to the exclusion of others. To the first user of a "weak mark" they have been inclined to give only a limited scope. This is especially true when the "weak mark" is being used by a multiplicity of traders for various articles. In such cases, the courts believe that the likelihood of confusion as to the origin of the goods of each trader using the mark is insignificant, and they have usually restricted trademark protection for each trader to the specific goods which each actually manufactures and sells. France Milling v. Washburn-Crosby Co., 7F(2) 304; Pabst Brewing v. Decatur Brewing, 284 Fed. 110; Anheuser-Busch v. Budweiser Malt Products, 295 Fed. 306.

"To take another view of the matter, the degree of exclusiveness of appropriation accorded to the originator of a trade-name often varies with the kind of name he originates. If the name or mark be truly arbitrary, strange, and fanciful, it is more specially and peculiarly significant and suggestive of one man's goods, than when it is frequently used by many and in many differing kinds of business. Of this 'Kodak' is a famous example, and the English courts have prevented one from putting forth Kodak bicycles, at the suit of the originator of the name for a totally different article. Eastman v. Kodak Cycle Co., 15 R.P.C. 105; cf. Re Dunn's Trade-Mark, 7 R.P.C. 311, and Dunlop v. Dunlop, 16 R. P.C. 12. In this court the same influence is seen in Aunt Jemima Mills Co. v. Rigney, 247 F. 407, 159 C.C.A. 461, L.R.A. 1918C, 1039, where the above line of cases is quoted and relied on.

"The phrase 'Gold Medal' is distinctly not in the same class of original, arbitrary, or fanciful words as 'Kodak and 'Aunt Jemima'. It is a laudatory phrase, suggestive of merit, recognized by some organization of authority awarding a prize. It is only allied to some particular business or person by insistent, persistent advertising. Washburn's flour has been so advertised, and the proof is ample that publicity efforts have born fruit, so that Gold Medal flour means among purchasers Washburn's flour. Yet it must always be remembered that there is nothing original about the name per se; it is exactly like the phrase 'Blue Ribbon', and has been as extensively and variously applied. One who devises a new, strange, 'catching' word to describe his wares may and often has by timely suit prevented others from taking his word or set of words to gild the repute of even wholly different goods (cases supra); but one who takes a phrase which is the commonplace of self-praise like 'Blue Ribbon' or 'Gold Medal' must be content with that special field which he labels with so undistinctive a name. Of this Pabst, etc., Co. v. Decatur, etc., Co. (C.C.A.) 284 F. 110; and Anheuser, etc., Co. v. Budweiser, etc., Co. (C.C.A.) 295 F. 306, constitute a perfect illustration. In the first decision Blue Ribbon was restricted to the single product with which plaintiff had associated it, while in the second Budweiser was given a wider sphere of influence. In the present case Washburn has made known by advertising Gold Medal not a line of products, nor any product of a varied business, but one separate, well-known commodity, pure wheat flour, and with that he must be content.

"* * *

"Result is: Washburn, by persistent and pushing use of a well-known and nondistinctive name has on

(Continued on page 269)

JOSE ABAD SANTOS: AN APOTHEOSIS

By ABRAHAM F. SARMIENTO

The selfish principle, that infirmity too often of great as well as of little minds, seemed never to have reached him. It was entirely incompatible with the purity of his taste and the grandeur of his ambition. Everything appeared to be at once extinguished, when it came in competition with his devotion to his country's welfare and glory. He was a most faithful friend to the cause of civil liberty throughout the world, but he was a still greater friend to truth and justice. — CHANCELLOR KENT *speaking of Alexander Hamilton.*

I

Jose Abad Santos was a victim of a wanton war, of pitiless destruction. Like the many other victims, he died in the service of his country. Unlike most of them, however, he chose his manner of dying. And unlike most of them, he could have lived had he wished to. But he preferred to die; his death has now become one of the glorious epics of our age.

At the outbreak of the war, Jose Abad Santos was an Associate Justice of the Supreme Court; he had been continuously serving in that capacity since his appointment on June 18, 1932, interrupted only when he was drafted by President Quezon as Secretary of Justice from December 6, 1938 to May 23, 1941. On December 24, 1941, he was appointed Chief Justice. Concurrently, he performed all the functions pertaining to the Department of Justice, pursuant to Executive Order No. 396, issued on the same date of his appointment. In accordance with the said order which reorganized the Executive Department of the Commonwealth, Chief Justice Abad Santos was also designated acting Secretary of Finance, Agriculture, and Commerce. President Quezon later took him to Corregidor with Vice-President Osmeña, General Basilio Valdes, Major Manuel Nieto, and Father Pacifico Ortiz. While there, Abad Santos assisted President Quezon and the Commonwealth officials with him in disposing of and securing the funds of the Government that were deposited in the vault in Corregidor.

At the inauguration of President Quezon for his second term on December 30, 1941, Chief Justice Abad Santos administered to him in Corregidor the oath of office. Together with Quezon and his party, he stayed in Malinta Tunnel until February 22, 1942, when he left with them by submarine for the Visayas, arriving in Occidental Negros two days later. The presidential party shuttled from place to place as a precautionary pressure, sojourning first at Talisay in the home of Governor Lizares, and from there to the Del Rosario hacienda. Then they moved to a place called Buenos Aires and later to the government sugar mill at Binalbagan. Cognizant of the risk and difficulty of moving in a big group, the party split two ways, the Chief Justice staying most of the while with Vice-President Osmeña.

Jose Abad Santos was in bad health at the time. He was suffering from asthma. Nevertheless, although physically unfit for strenuous duty, he did not relax in his work. He continued indefatigably to discharge the duties of his triple position, i.e., Chief Justice, Secretary of Justice, and Secretary of Finance, Agriculture, and Commerce over the unoccupied territory. The departure of President Quezon for the United States via Australia in the latter part of March, 1942, multiplied not only the tasks of Abad Santos but also the dangers to which he was exposed. The President offered Abad Santos the choice to go with him or to remain in the Philippines. Indeed, the thought of America with its promise of haven at the time of great danger could have enticed the mind of an ordinary man. But Jose Abad Santos was not the common run of men. He told President Quezon: "I prefer to remain, carry on my work here, and stay with my family."

There has been much controversy as to who was appointed by President Quezon to represent him in the Philippines. During the occupation, not a few designing men presumptuously claimed the honor. President Quezon is dead and his lips are forever closed. Nonetheless, he wrote a letter dated March 17, 1942, addressed to Chief Justice Abad Santos. The letter settles the question and belies the claims of opportunists. It reads in full:

March 17, 1942

My dear Chief Justice Santos:

In addition to your duties as Chief Justice and acting Secretary of Finance, Agriculture, and Commerce, I hereby designate you as my delegate with power to act on all matters of government which involve no change in the fundamental policies of my administration of which you are quite familiar. Where circumstances are such as to preclude previous consultation with me, you may act on urgent questions of local administration without my previous approval. In such cases, you are to use your own best judgment and sound discretion.

With reference to the government-owned corporations, you are also authorized to take such steps as will protect the interest of the government either by continuing, curtailing or terminating their operations as circumstances may warrant.

Sincerely yours,

(Sgd.) MANUEL L. QUEZON

The responsibility placed upon Abad Santos was enormous. But he proved equal to the situation. The many years of service to his credit were more than ample preparation for the trust suddenly reposed upon him. At this juncture it is proper to digress and trace briefly his early life.

II

Jose Abad Santos was born in San Fernando, Pampanga, on February 19, 1886, the sixth of the ten children of Vicente Abad Santos and Torribia Basco. When only eighteen years old, he went to America as a government pensionado to complete his education. He studied for sometime in the Santa Clara College at San Jose, California, and then enrolled at Northwestern University where he obtained the degree of Bachelor of Laws. He pursued further studies in the George Washington University, where he was granted the degree of Master of Laws. Upon his return to the Philippines, he became on December 1, 1909, a clerk in the Executive Bureau with a salary of ₱960 per annum.

On July 31, 1914, he was appointed assistant attorney of the Bureau of Justice, after which he became attorney for the Philippine National Bank. He was the technical adviser and ex-officio member of the first Independence Mission to the United States in 1919. In 1922, he served for three months as Under-Secretary of Justice, immediately after which he became the Secretary. Because of the cabinet crisis under the Wood administration, he resigned on July 17, 1923. In 1926 he headed the Philippine Educational Mission to America. He resumed in 1928 the Justice portfolio under Governor-General Stimson, which position he occupied until his appointment to the Supreme Court in 1932.

Jose Abad Santos devoted the best years of his life to the public service. He was President of the Philippine Bar Association and of the Young Men's Christian Association, member of the Abiertas House of Friendship, educational adviser of the Columbian Institute, and Chairman of the Board of Trustees of the Philippine Women's University. He was actively identified with the Protestant movement of the Philippines and was prominent in Masonic circles.

III

And now we go back to the last days of this great man. The nature of his position necessitated communication with the capitals of the different provinces not yet under enemy control. Therefore, he had to travel by ferryboat and car through the length and breadth of Negros, Iloilo, and Cebu. On Ascension Day, April 11, 1942, while traveling somewhere around Carcar, Cebu, with his son, Jose, Jr., Colonel Valeriano of the Philippine Constabulary, and some enlisted men, he and his party met truckloads of soldiers. Unaware that the enemy had landed in the vicinity, they stopped the trucks, thinking all the time that the passengers therein were USAFFE soldiers. Finding out too late that the soldiers were Japanese, Jose Abad

Santos and his companions calmly went down from their cars. They were ordered to surrender. Upon inquiry, Abad Santos identified himself as the Chief Justice of the Philippines. The Japanese confiscated the pistol of Colonel Valeriano and those of the enlisted men. The captives were then taken to the Japanese concentration camp in Cebu City. For the first time, the Japanese learned that Jose Abad Santos was actually the head of the Commonwealth Government. Evidently, because of the importance of their prisoner and fearing rescue or escape, father and son were moved from one camp to another. The senior officers of the Japanese Army in Cebu, General Kawagutsi and Colonel Kawakami, "played the role of high priest and Pontius Pilate," respectively, towards Jose Abad Santos. For almost twenty days, he was subjected to gruelling and mortifying inquisition. The exact nature of the investigation is still shrouded in secrecy. Jose Abad Santos, Jr., the only available witness was never present on the spot whenever his father was interrogated. One significant remark, overheard by the son from his father on one occasion, revealed the man's indomitable courage and unflinching loyalty to a cause he served long and well. He said: "I cannot possibly do that because if I do so I would be violating my oath of allegiance to the United States. What the Japanese asked him to do is still a matter of conjecture. Previously, however, he had been asked to contact General Roxas somewhere in Mindanao who up to that time had not yet surrendered. In all probability, the Japanese wanted him to induce General Roxas to surrender. Apparently, the very idea was revolting to Abad Santos' conscience. There is ground to believe that this demand prompted the utterance of those brave words of defiance by a prisoner in the face of his captor. That refusal cost Jose Abad Santos his life.

On or about May 1, 1942, father and son were taken from Cebu to Mindanao on a Japanese transport which formed part of a convoy sent on a military expedition to Mindanao. They landed at Parang, Cotabato, under fire from the USAFFE. About this last portion of their fateful odyssey, Jose, Jr. relates:

"We were placed together with the troops in one of the landing barges. While we were moving toward the beach, the USAFFE forces entrenched on the shore were firing at the landing barges. At that moment, I recall that my father was standing straight and the Japanese shouted at him: 'Hey! you get down!' and they signalled him to lie low. I also told him but he had an indifferent attitude at that time. After landing, we hiked for about three hours through mud and heavy luggage until we reached the Constabulary barracks at Parang. After one night in Parang, in the afternoon they placed us in a truck. We were not able to proceed farther that day because they had not cleared up the other parts to which they were supposed to be headed."

On or about May 4, 1942, they reached Malabang. For three days father and son were confined in a school house. For three days, they waited for further developments, doing nothing but read whatever they could get hold of.

The fatal stroke of fate was slow in coming. But slow as it was, there was that tragic inevitability, that powerful surge of destiny noticeable even from the dry, humid air of that summer afternoon. At approximately two o'clock in the afternoon of May 7, 1942, the Japanese interpreter, Keiji Fukui, went to the Chief Justice to summon him to the Japanese Headquarters. After a few minutes, Jose Abad Santos returned and called for his son. Both went into a small hut nearby and there the father stoically informed his son: "I have been condemned to be executed." Thereupon, Jose, Jr. broke down and wept. But the father smilingly and affectionately reproved the son: "Don't cry. What is the matter with you? Show these people that you are brave. It is a rare opportunity to die for one's country and not everybody has that chance." What brave words, what sublime soul was thereby revealed by their utterance!

After exhorting all of his family to live up to his name, father and son said a short prayer. In final parting, they embraced each other. And in a few minutes the son heard a volley of shots. Jose Abad Santos was dead, martyr to a very worthy cause.

No less than an enemy, the Japanese interpreter who witnessed the execution, admired the courage and stoical unconcern with which Jose Abad Santos confronted his end. Pointing out later to the son the father's grave, Keiji Fukui remarked: "Your father died a glorious death."

Ostensibly, Jose Abad Santos was executed upon the imputation of having been responsible for the destruction of the bridges and other public works in Cebu. The charge was entirely unfounded, nay malicious. But he was never given an opportunity to disprove the accusation. In truth, the acts imputed to him had nothing to do with his duties; he was a civilian and it is too well-known that demolition activities more properly belonged to the military.

The Filipino people—and the rest of the world—stand aghast at the horror of such brutal sadism. Caught in the cruel circumstance of a violent war, Abad Santos was too rare a man to have been sacrificed at the altar of human destruction. But irreplaceable and rare as he was, his very act of supreme dedication has consigned him to immortality. Jose Abad Santos stands now as a towering monument to the idolatrous devotion of our people to the ideals of democracy, justice, and liberty: a shining obelisk that rises to the altitudes of the skies.

Human justice may not be able to devise a means to avenge fully the crime committed by the Japanese murderers. But at this time, our concern is not so much any more to return in retribution whatever injustice may have been committed; but more, we are interested to perpetuate the things for which he died. For only in doing so may we hope to justify his supreme love to the Fatherland.

Selfishness and demagoguery take advantage of liberty... Free speech voices the appeals of hate and envy as well as those of justice and charity. A free press is made the instrument of cunning, greed, and ambition, as well as the agency of enlightened and independent opinion. How shall we preserve the supremacy of virtue and the soundness of the common judgment? How shall we buttress Democracy? The peril of this Nation is not in any foreign foe! We, the people, are its power, its peril, and its hope!—CHARLES EVANS HUGHES.

PATENTS...

(Continued from page 267)

this record made it a good trade-mark for just what it was applied to, pure or straight wheat flour; to that commodity France never applied the name, but did apply it to a commercially distinct article as he had good right to do.

"Both parties are entitled to be protected in their several businesses. France has not attached Washburn; therefore the latter needs no relief. Washburn has deliberately attached France; therefore the decree below was right, and is affirmed with costs." France Milling co., Inc., v. Washburn-Crosby Co., Inc., 7F(2) 304."

The trademark LIBERTY herein applied for appears to me to belong to the class of "weak marks." It further appears to be of the sub-class which involves employment by a number of traders for different commodities. The records of the Patent Office show that, in addition to Tan Khek Chiok, LIBERTY is registered to four other persons for as many classes of goods—for cornstarch, laundry soap, lemonades and soft drinks, and for the manufacture of bread. In view of these circumstances, I believe that the petitioner's application should be reinstated in the active files of the Patent Office, upon the condition, however, that there be submitted in place of the original application a new one prepared in accordance with the new Act and with the Rules of Practice issued thereunder, the new application to be given proper priority of action, and all fees paid upon the original application to be credited to the new one.

Manila, April 19, 1949.

(Sgd.) CELEDONIO AGRAVA
Director of Patents

AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES

[CONTINUED FROM LAST ISSUE]

BOOK IV

OBLIGATIONS AND CONTRACTS

Title I.—OBLIGATIONS

CHAPTER 1

GENERAL PROVISIONS

ART. 1176. An obligation is a juridical necessity to give, to do or not to do. (n)

ART. 1177. Obligations arise from:
(1) Law;
(2) Contracts;
(3) Quasi-contracts;
(4) Acts or omissions punished by law; and
(5) Quasi-delicts. (1089a)

ART. 1178. Obligations derived from law are not presumed. Only those expressly determined in this Code or in special laws are demandable, and shall be regulated by the precepts of the law which establishes them; and as to what has not been foreseen, by the provisions of this Book. (1090)

ART. 1179. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith. (1091a)

ART. 1180. Obligations derived from quasi-contracts shall be subject to the provisions of Chapter 1, Title XVII, of this Book. (n)

ART. 1181. Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of article 2197, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this Book, regulating damages. (1092a)

ART. 1182. Obligations derived from quasi-delicts shall be governed by the provisions of Chapter 2, Title XVII of this Book, and by special laws. (1093a)

CHAPTER 2

NATURE AND EFFECT OF OBLIGATIONS

ART. 1183. Every person obliged to give something is also obliged to take care of it with the proper diligence of a good father of a family, unless the law or the stipulation of the parties requires another standard of care. (1094a)

ART. 1184. The creditor has a right to the fruits of the thing from the time the obligation to deliver it arises. However, he shall acquire no real right over it until the same has been delivered to him. (1095)

ART. 1185. When what is to be delivered is a determinate thing, the creditor, in addition to the right granted him by article 1190, may compel the debtor to make the delivery.

If the thing is indeterminate or generic, he may ask that the obligation be complied with at the expense of the debtor.

If the obligor delays, or has promised to deliver the same thing to two or more persons who do not have the same interest, he shall be responsible for any fortuitous event until he has effected the delivery. (1096)

ART. 1186. The obligation to give a determinate thing includes that of delivering all its accessions and accessories, even though they may not have been mentioned. (1097a)

ART. 1187. If a person obliged to do something fails to do it, the same shall be executed at his cost.

This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone. (1098)

ART. 1188. When the obligation consists in not doing, and the obligor does what has been forbidden him, it shall also be undone at his expense. (1099a)

ART. 1189. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declares; or

(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins. (1100a)

ART. 1190. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages. (1101)

ART. 1191. Responsibility arising from fraud is demandable in all obligations. Any waiver of an action for future fraud is void. (1102a)

ART. 1192. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances. (1103)

ART. 1193. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1191 and 2221, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required. (1104a)

ART. 1194. Except in cases expressly specified by the law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person, shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable. (1105a)

ART. 1195. Usurious transactions shall be governed by special laws. (n)

ART. 1196. The receipt of the principal by the creditor, without reservation with respect to the interest, shall give rise to the presumption that said interest has been paid.

The receipt of a later installment of a debt without reservation as to prior installments, shall likewise raise the presumption that such installments have been paid. (1110a)

ART. 1197. The creditors, after having pursued the property in possession of the debtor to satisfy their claims, may exercise all the rights and bring all the actions of the latter for the same purpose, save those which are inherent in his person; they may also impugn the acts which the debtor may have done to defraud them. (1111)

ART. 1198. Subject to the laws, all rights acquired in virtue of an obligation are transmissible, if there has been no stipulation to the contrary. (1112)

CHAPTER 3

DIFFERENT KINDS OF OBLIGATIONS

SECTION 1.—*Pure and Conditional Obligations*

ART. 1199. Every obligation whose performance does not depend upon a future or uncertain event or upon a past event unknown to the parties, is demandable at once.

Every obligation which contains a resolutory condition shall also be demandable, without prejudice to the effects of the happening of the event. (1113)

ART. 1200. When the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provision of article 1217. (n)

ART. 1201. In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired, shall depend upon the happening of the event which constitutes the condition. (1114)

ART. 1202. When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void. If it depends upon chance or upon the will of a third person, the obligation shall take effect in conformity with the provisions of this Code. (1115)

ART. 1203. Impossible conditions, those contrary to good customs or public policy and those prohibited by law shall annul the obligation which depends upon them. If the obligation is divisible, that part thereof which is not affected by the impossible or unlawful condition shall be valid.

The condition not to do an impossible thing shall be considered as not having been agreed upon. (1116a)

ART. 1204. The condition that some event happen at a determinate time shall extinguish the obligation as soon as the time expires or if it has become indubitable that the event will not take place. (1117)

ART. 1205. The condition that some event will not happen at a determinate time shall render the obligation effective from the moment the time indicated has elapsed, or if it has become evident that the event cannot occur.

If no time has been fixed, the condition shall be deemed fulfilled at such time as may have probably been contemplated, bearing in mind the nature of the obligation. (1118)

ART. 1206. The condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment. (1119)

ART. 1207. The effects of a conditional obligation to give, once the condition has been fulfilled, shall retroact to the day of the constitution of the obligation. Nevertheless, when the obligation imposes reciprocal prestations upon the parties, the fruits and interests during the pendency of the condition shall be deemed to have been mutually compensated. If the obligation is unilateral, the debtor shall appropriate the fruits and interests received, unless from the nature and circumstances of the obligation it should be inferred that the intention of the person constituting the same was different.

In obligations to do and not to do, the courts shall determine, in each case, the retroactive effect of the condition that has been complied with. (1120)

ART. 1208. The creditor may, before the fulfillment of the condition, bring the appropriate actions for the preservation of his right.

The debtor may recover what during the same time he has paid by mistake in case of a suspensive condition. (1121a)

ART. 1209. When the conditions have been imposed with the intention of suspending the effi-

cacy of an obligation to give, the following rules shall be observed in case of the improvement, loss or determination of the thing during the pendency of the condition:

(1) If the thing is lost without the fault of the debtor, the obligation shall be extinguished;

(2) If the thing is lost through the fault of the debtor, he shall be obliged to pay damages; it is understood that the thing is lost when it perishes, or goes out of commerce, or disappears in such a way that its existence is unknown or it cannot be recovered;

(3) When the thing deteriorates without the fault of the debtor, the impairment is to be borne by the creditor;

(4) If it deteriorates through the fault of the debtor, the creditor may choose between the rescission of the obligation and its fulfillment, with indemnity for damages in either case;

(5) If the thing is improved by its nature, or by time, the improvement shall inure to the benefit of the creditor;

(6) If it is improved at the expense of the debtor, he shall have no other right than that granted to the usufructuary. (1122)

ART. 1210. When the conditions have for their purpose the extinguishment of an obligation to give, the parties, upon the fulfillment of said conditions, shall return to each other what they have received.

In case of the loss, deterioration or improvement of the thing, the provisions which, with respect to the debtor, are laid down in the preceding article shall be applied to the party who is bound to return.

As for obligations to do and not to do, the provisions of the second paragraph of article 1207 shall be observed as regards the effect of the extinguishment of the obligation. (1123)

ART. 1211. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.

This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with articles 1405 and 1408 and the Mortgage Law. (1124)

ART. 1212. In case both parties have committed a breach of the obligation, the liability of the first infractor shall be equitably tempered by the courts. If it cannot be determined which of the parties first violated the contract, the same shall be deemed extinguished, and each shall bear his own damages. (n)

SECTION 2.—*Obligations with a Period*

ART. 1213. Obligations for whose fulfillment a day certain has been fixed, shall be demandable only when that day comes.

Obligations with a resolutory period take effect at once, but terminate upon arrival of the day certain.

A day certain is understood to be that which must necessarily come, although it may not be known when.

If the uncertainty consists in whether the day will come or not, the obligation is conditional, and it shall be regulated by the rules of the preceding Section. (1125a)

ART. 1214. In case of loss, deterioration or improvement of the thing before the arrival of the day certain, the rules in article 1209 shall be observed. (n)

ART. 1215. Anything paid or delivered before the arrival of the period, the obligor being unaware of the period or believing that the obligation has become due and demandable, may be recovered, with the fruits and interests. (1126a)

ART. 1216. Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other. (1127)

ART. 1217. If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof.

The courts shall also fix the duration of the period when it depends upon the will of the debtor.

In every case, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties. Once fixed by the courts, the period cannot be changed by them. (1128a)

ART. 1218. The debtor shall lose every right to make use of the period:

(1) When after the obligation has been contracted, he becomes insolvent, unless he gives a guaranty or security for the debt;

(2) When he does not furnish to the creditor the guaranties or securities which he has promised;

(3) When by his own acts he has impaired said guaranties or securities after their establishment, and when through a fortuitous event they disappear, unless he immediately gives new ones equally satisfactory;

(4) When the debtor violates any undertaking, in consideration of which the creditor agreed to the period;

(5) When the creditor attempts to abscond. (1129a)

SECTION 3.—*Alternative Obligations*

ART. 1219. A person alternatively bound by different prestations shall completely perform one of them.

The creditor cannot be compelled to receive part of one and part of the other undertaking. (1131)

ART. 1220. The right of choice belongs to the debtor, unless it has been expressly granted to the creditor.

The debtor shall have no right to choose those prestations which are impossible, unlawful or which could not have been the object of the obligation. (1132)

ART. 1221. The choice shall produce no effect except from the time it has been communicated. (1133)

ART. 1222. The debtor shall lose the right of choice when among the prestations whereby he is alternatively bound, only one is practicable. (1134)

ART. 1223. If through the creditor's acts the debtor cannot make a choice according to the terms of the obligation, the latter may rescind the contract with damages. (n)

ART. 1224. The creditor shall have a right to indemnity for damages when, through the fault of the debtor, all the things which are alternatively the object of the obligation have been lost, or the compliance of the obligation has become impossible.

The indemnity shall be fixed taking as a basis the value of the last thing which disappeared or that of the service which last became impossible.

Damages other than the value of the last thing or service may also be awarded. (1135a)

ART. 1225. When the choice has been expressly given to the creditor, the obligation shall cease to be alternative from the day when the selection has been communicated to the debtor.

Until then the responsibility of the debtor shall be governed by the following rules:

(1) If one of the things is lost through a fortuitous event, he shall perform the obligation by delivering that which the creditor should choose from among the remainder, or that which remains if only one subsists;

(2) If the loss of one of the things occurs through the fault of the debtor, the creditor may claim any of those subsisting, or the price of that which, through the fault of the former, has disappeared, with a right to damages;

(3) If all the things are lost through the fault of the debtor, the choice by the creditor shall fall upon the price of any one of them, also with indemnity for damages.

The same rules shall be applied to obligations to do or not to do in case one, some or all of the prestations should become impossible. (1136a)

ART. 1226. When only one prestation has been agreed upon, but the obligor may render another in substitution, the obligation is called facultative.

The loss or deterioration of the thing intended as a substitute, through the negligence of the obligor, does not render him liable. But once the substitution has been made, the obligor is liable for the loss of the substitute on account of his delay, negligence or fraud. (n)

SECTION 4.—*Joint and Solidary Obligations*

ART. 1227. The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity. (1137a)

ART. 1228. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits. (1138a)

ART. 1229. If the division is impossible, the right of the creditors may be prejudiced only by their collective acts, and the debt can be enforced only by proceeding against all the debtors. If one of the latter should be insolvent, the others shall not be liable for his share. (1139)

ART. 1230. The indivisibility of an obligation does not necessarily give rise to solidarity. Nor does solidarity of itself imply indivisibility. (n)

ART. 1231. Solidarity may exist although the creditors and the debtors may not be bound in the same manner and by the same periods and conditions. (1140)

ART. 1232. Each one of the solidary creditors may do whatever may be useful to the others, but not anything which may be prejudicial to the latter. (1141a)

ART. 1233. A solidary creditor cannot assign his rights without the consent of the others. (n)

ART. 1234. The debtor may pay any one of the solidary creditors; but if any demand, judicial or extrajudicial, has been made by one of them, payment should be made to him. (1142a)

ART. 1235. Novation, compensation, confusion or remission of the debt, made by any of the solidary creditors or with any of the solidary debtors, shall extinguish the obligation, without prejudice to the provisions of article 1239.

The creditor who may have executed any of these acts, as well as he who collects the debt, shall be liable to the others for the share in the obligation corresponding to them. (1143)

ART. 1236. The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected. (1144a)

ART. 1237. Payment made by one of the solidary debtors extinguishes the obligation. If two or more solidary debtors offer to pay, the creditor may choose which offer to accept.

He who made the payment may claim his codebtors only the share which corresponds to each,

with the interest for the payment already made. If the payment is made before the debt is due, no interest for the intervening period may be demanded.

When one of the solidary debtors cannot, because of his insolvency, reimburse his share to the debtor paying the obligation, such share shall be borne by all his codebtors, in proportion to the debt of each. (1145a)

ART. 1238. Payment by a solidary debtor shall not entitle him to reimbursement from his codebtors if such payment is made after the obligation has prescribed or become illegal. (n)

ART. 1239. The remission made by the creditor of the share which affects one of the solidary debtors does not release the latter from his responsibility towards the codebtors, in case the debt had been totally paid by anyone of them before the remission was effected. (1146a)

ART. 1240. The remission of the whole obligation, obtained by one of the solidary debtors, does not entitle him to reimbursement from his codebtors. (n)

ART. 1241. If the thing has been lost or if the prestation has become impossible without the fault of the solidary debtors, the obligation shall be extinguished.

If there was fault on the part of any one of them, all shall be responsible to the creditor, for the price and the payment of damages and interest, without prejudice to their action, against the guilty or negligent debtor.

If through a fortuitous event, the thing is lost or the performance has become impossible after one of the solidary debtors has incurred in delay through the judicial or extra-judicial demand upon him by the creditor, the provisions of the preceding paragraph shall apply. (1147a)

ART. 1242. A solidary debtor may, in actions filed by the creditor, avail himself of all defenses which are derived from the nature of the obligation and of those which are personal to him, or pertain to his own share. With respect to those which personally belong to the others, he may avail himself thereof only as regards that part of the debt for which the latter are responsible. (1148a)

SECTION 5.—*Divisible and Indivisible Obligations*

ART. 1243. The divisibility or indivisibility of the things that are the object of obligations in which there is only one debtor and only one creditor does not alter or modify the provisions of Chapter 2 of this Title. (1149)

ART. 1244. A joint indivisible obligation gives rise to indemnity for damages from the time anyone of the debtors does not comply with his undertaking. The debtors who may have been ready to fulfill their promises shall not contribute to the indemnity beyond the corresponding portion of the price of the thing or of the value of the service in which the obligation consists. (1150)

ART. 1245. For the purposes of the preceding articles, obligations to give definite things and those which are not susceptible of partial performance shall be deemed to be indivisible.

When the obligation has for its object the execution of a certain number of days of work, the accomplishment of work by metrical units, or analogous things which by their nature are susceptible of partial performance, it shall be divisible.

However, even though the object or service may be physically divisible, an obligation is indivisible if so provided by law or intended by the parties.

In obligations not to do, divisibility or indivisibility shall be determined by the character of the prestation in each particular case. (1151a)

SECTION 6.—*Obligations with a Penal Clause*

ART. 1246. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code. (1152a)

ART. 1247. The debtor cannot exempt himself from the performance of the obligation by paying the penalty, save in the case where this right has been expressly reserved for him. Neither can the creditor demand the fulfillment of the obligation and the satisfaction of the penalty at the same time, unless this right has been clearly granted him. However, if after the creditor has decided to require the fulfillment of the obligation, the performance thereof should become impossible without his fault, the penalty may be enforced. (1153a)

ART. 1248. Proof of actual damages suffered by the creditor is not necessary in order that the penalty may be demanded. (n)

ART. 1249. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. (1154a)

ART. 1250. The nullity of the penal clause does not carry with it that of the principal obligation.

The nullity of the principal obligation carries with it that of the penal clause. (1155)

CHAPTER 4

EXTINGUISHMENT OF OBLIGATIONS

General Provisions

ART. 1251. Obligations are extinguished:

(1) By payment or performance;

(2) By the loss of the thing due;

(3) By the condonation or remission of the debt;

(4) By the confusion or merger of the rights of creditor and debtor;

(5) By compensation;

(6) By novation.

Other causes of extinguishment of obligations, such as annulment, rescission, fulfillment of a resolutory condition, and prescription, are governed elsewhere in this Code. (1156a)

SECTION 1.—*Payment or Performance*

ART. 1252. Payment means not only the delivery of money but also the performance, in any other manner, of an obligation. (n)

ART. 1253. A debt shall not be understood to have been paid unless the thing or service in which the obligation consists has been completely delivered or rendered, as the case may be. (1157)

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

ART. 1255. When the obligee accepts the performance, knowing its incompleteness or irregularity, and without expressing any protest or objection, the obligation is deemed fully complied with. (n)

ART. 1256. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor. (1158a)

ART. 1257. Whoever pays on behalf of the debtor without the knowledge or against the will of the latter, cannot compel the creditor to subrogate him in his rights, such as those arising from a mortgage, guaranty, or penalty. (1159a)

ART. 1258. Payment made by a third person who does not intend to be reimbursed by the debtor is deemed to be a donation, which requires the debtor's consent. But the payment is in any case valid as to the creditor who has accepted it. (n)

ART. 1259. In obligations to give, payment made by one who does not have the free disposal of the thing due and capacity to alienate it shall not be valid, without prejudice to the provisions of article 1447 under the Title on "Natural Obligations." (1160a)

ART. 1260. Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it. (1162a)

ART. 1261. Payment to a person who is incapacitated to administer his property shall be valid if he has kept the thing delivered, or insofar as the payment has been beneficial to him.

Payment made to a third person shall also be valid insofar as it has redounded to the benefit of the creditor. Such benefit to the creditor need not be proved in the following cases:

(1) If after the payment, the third person acquires the creditor's rights;

(2) If the creditor ratifies the payment to the third person;

(3) If by the creditor's conduct, the debtor has been led to believe that the third person had authority to receive the payment. (1163a)

ART. 1262. Payment made in good faith to any person in possession of the credit shall release the debtor. (1164)

ART. 1263. Payment made to the creditor by the debtor after the latter has been judicially ordered to retain the debt shall not be valid. (1165)

ART. 1264. The debtor of a thing cannot compel the creditor to receive a different one, although the latter may be of the same value as, or more valuable than that which is due.

In obligations to do or not to do, an act or forbearance cannot be substituted by another act or forbearance against the obligee's will. (1166a)

ART. 1265. Dation in payment, whereby property is alienated to the creditor in satisfaction of a debt in money, shall be governed by the law of sales. (n)

ART. 1266. When the obligation consists in the delivery of an indeterminate or generic thing, whose quality and circumstances have not been stated, the creditor cannot demand a thing of superior quality. Neither can the debtor deliver a thing of inferior quality. The purpose of the obligation and other circumstances shall be taken into consideration. (1167a)

ART. 1267. Unless it is otherwise stipulated, the extra-judicial expenses required by the payment shall be for the account of the debtor. With regard to judicial costs, the Rules of Court shall govern. (1168a)

ART. 1268. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.

However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter. (1169a)

ART. 1269. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in abeyance. (1170)

ART. 1270. In case an extraordinary inflation or deflation of the currency stipulated should su-

pervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is an agreement to the contrary. (n)

ART. 1271. Payment shall be made in the place designated in the obligation.

There being no express stipulation and if the undertaking is to deliver a determinate thing, the payment shall be made wherever the thing might be at the moment the obligation was constituted.

In any other case the place of payment shall be the domicile of the debtor.

If the debtor changes his domicile in bad faith or after he has incurred in delay, the additional expenses shall be borne by him.

These provisions are without prejudice to venue under the Rules of Court. (1171a)

SUBSECTION 1.—*Application of Payments*

ART. 1272. He who has various debts of the same kind in favor of one and the same creditor, may declare at the time of making the payment, to which of them the same must be applied. Unless the parties so stipulate, or when the application of payment is made by the party for whose benefit the term has been constituted, application shall not be made as to debts which are not yet due.

If the debtor accepts from the creditor a receipt in which an application of the payment is made, the former cannot complain of the same, unless there is a cause for invalidating the contract. (1172a)

ART. 1273. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered. (1173)

ART. 1274. When the payment cannot be applied in accordance with the preceding rules, or if application can not be inferred from other circumstances, the debt which is most onerous to the debtor, among those due, shall be deemed to have been satisfied.

If the debts due are of the same nature and burden, the payment shall be applied to all of them proportionately. .(1174a)

SUBSECTION 2.—*Payment by Cession*

ART. 1275. The debtor may cede or assign his property to his creditors in payment of his debts. This cession, unless there is stipulation to the contrary, shall only release the debtor from responsibility for the net proceeds of the thing assigned. The agreements which, on the effect of the cession, are made between the debtor and his creditors shall be governed by special laws. (1175a)

SUBSECTION 3.—*Tender of Payment and Consignation*

ART. 1276. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignation of the thing or sum due.

Consignation alone shall produce the same effect in the following cases:

(1) When the creditor is absent or unknown, or does not appear at the place of payment;

(2) When he is incapacitated to receive the payment at the time it is due;

(3) When, without just cause, he refuses to give a receipt;

(4) When two or more persons claim the same right to collect;

(5) When the title of the obligation has been lost. (1176a)

ART. 1277. In order that the consignation of the thing due may release the obligor, it must first be announced to the persons interested in the fulfillment of the obligation.

The consignation shall be ineffectual if it is not made strictly in consonance with the provisions which regulate payment. (1177)

ART. 1278. Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.

The consignation having been made, the interested parties shall also be notified thereof. (1178)

ART. 1279. The expenses of consignation, when properly made, shall be charged against the creditor. (1179)

ART. 1280. Once the consignation has been duly made, the debtor may ask the judge to order the cancellation of the obligation.

Before the creditor has accepted the consignation, or before a judicial declaration that the consignation has been properly made, the debtor may withdraw the thing or the sum deposited, allowing the obligation to remain in force. (1180)

ART. 1281. If, the consignation having been made, the creditor should authorize the debtor to withdraw the same, he shall lose every preference which he may have over the thing. The codebtors, guarantors and sureties shall be released. (1181a)

SECTION 2.—*Loss of the Thing Due*

ART. 1282. An obligation which consists in the delivery of a determinate thing shall be extinguished if it should be lost or destroyed without the fault of the debtor, and before he has incurred in delay.

When by law or stipulation, the obligor is liable even for fortuitous events, the loss of the thing does not extinguish the obligation, and he shall be responsible for damages. The same rule applies when the nature of the obligation requires the assumption of risk. (1182a)

ART. 1283. In an obligation to deliver a generic thing, the loss or destruction of anything of the same kind does not extinguish the obligation. (n)

ART. 1284. The courts shall determine whether, under the circumstances, the partial loss of the object of the obligation is so important as to extinguish the obligation. (n)

ART. 1285. Whenever the thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of article 1185. This presumption does not apply in case of earthquake, flood, storm or other natural calamity. (1183a)

ART. 1286. The debtor in obligations to do shall also be released when the prestation becomes legally or physically impossible, without the fault of the obligor. (1184a)

ART. 1287. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part. (n)

ART. 1288. When the debt of a thing certain and determinate proceeds from a criminal offense, the debtor shall not be exempted from the payment of its price, whatever may be the cause for the loss, unless the thing having been offered by him to the person who should receive it, the latter refused without justification to accept it. (1185)

ART. 1289. The obligation having been extinguished by the loss of the thing, the creditor shall have all the rights of action which the debtor may have against third persons by reason of the loss. (1186)

SECTION 3.—*Condonation or Remission of the Debt*

ART. 1290. Condonation or remission is essentially gratuitous, and requires the acceptance by the obligor. It may be made expressly or impliedly.

One and the other kind shall be subject to the rules which govern inofficious donations. Express condonation shall, furthermore, comply with the forms of donation. (1187)

ART. 1291. The delivery of a private document evidencing a credit, made voluntarily by the creditor to the debtor, implies the renunciation of the action which the former had against the latter.

If in order to nullify this waiver it should be claimed to be inofficious, the debtor and his heirs may uphold it by proving that the delivery of the document was made in virtue of payment of the debt. (1188)

ART. 1292. Whenever the private document in which the debt appears is found in the possession of the debtor, it shall be presumed that the creditor delivered it voluntarily, unless the contrary is proved. (1189)

ART. 1293. The renunciation of the principal debt shall extinguish the accessory obligations; but the waiver of the latter shall leave the former in force. (1190)

ART. 1294. It is presumed that the accessory obligation of pledge has been remitted when the thing pledged, after its delivery to the creditor, is found in the possession of the debtor, or of a third person who owns the thing. (1191a)

SECTION 4.—*Confusion or Merger of Rights*

ART. 1295. The obligation is extinguished from the time the characters of creditor and debtor are merged in the same person. (1192a)

ART. 1296. Merger which takes place in the person of the principal debtor or creditor benefits the guarantors. Confusion which takes place in the person of any of the latter does not extinguish the obligation. (1195)

ART. 1297. Confusion does not extinguish a joint obligation except as regards the share corresponding to the creditor or debtor in whom the two characters concur. (1194)

SECTION 5.—*Compensation*

ART. 1298. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other. (1195)

ART. 1299. In order that compensation may be proper, it is necessary:

(1) That each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;

(2) That both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;

(3) That the two debts be due;

(4) That they be liquidated and demandable;

(5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor. (1196)

ART. 1300. Notwithstanding the provisions of the preceding article, the guarantor may set up compensation as regards what the creditor may owe the principal debtor. (1197)

ART. 1301. Compensation may be total or partial. When the two debts are of the same amount, there is a total compensation. (n)

ART. 1302. The parties may agree upon the compensation of debts which are not yet due. (n)

ART. 1303. If one of the parties to a suit over an obligation has a claim for damages against the other, the former may set it off by proving his right to said damages and the amount thereof. (n)

ART. 1304. When one or both debts are rescissible or voidable, they may be compensated against each other before they are judicially rescinded or avoided. (n)

ART. 1305. The debtor who has consented to the assignment of rights made by a creditor in favor of a third person, cannot set up against the assignee the compensation which would pertain to him against the assignor, unless the assignor was notified by the debtor at the time he gave his consent, that he reserved his right to the compensation.

If the creditor communicated the cession to him but the debtor did not consent thereto, the latter may set up the compensation of debts previous to the cession, but not of subsequent ones.

If the assignment is made without the knowledge of the debtor, he may set up the compensation of all credits prior to the same and also later ones until he had knowledge of the assignment. (1198a)

ART. 1306. Compensation takes place by operation of law, even though the debts may be payable at different places, but there shall be an indemnity for expenses of exchange or transportation to the place of payment. (1199a)

ART. 1307. Compensation shall not be proper when one of the debts arises from a depositum or from the obligations of a depositary or of a bailee in commodatum.

Neither can compensation be set up against a creditor who has a claim for support due by gratuitous title, without prejudice to the provisions of paragraph 2 of article 321. (1200a)

ART. 1308. Neither shall there be compensation if one of the debts consists in civil liability arising from a penal offense. (n)

ART. 1309. If a person should have against him several debts which are susceptible of compensation, the rules on the application of payments shall apply to the order of the compensation. (1201)

ART. 1310. When all the requisites mentioned in article 1299 are present, compensation takes effect by operation of law, and extinguishes both debts to the concurrent amount, even though the creditors and debtors are not aware of the compensation. (1202a)

SECTION 6.—*Novation*

ART. 1311. Obligations may be modified by:

(1) Changing their object or principal conditions;

(2) Substituting the person of the debtor;

(3) Subrogating a third person in the rights of the creditor. (1203)

ART. 1312. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and new obligations be on every point incompatible with each other. (1204)

ART. 1313. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1256 and 1257. (1205a)

ART. 1314. If the substitution is without the knowledge or against the will of the debtor, the new debtor's insolvency or non-fulfillment of the obligation shall not give rise to any liability on the part of the original debtor. (n)

ART. 1315. The insolvency of the new debtor, who has been proposed by the original debtor and accepted by the creditor, shall not revive the action of the latter against the original obligor, except when said insolvency was already existing and of public knowledge, or known to the debtor, when he delegated his debt. (1206a)

ART. 1316. When the principal obligation is extinguished in consequence of a novation, accessory obligations may subsist only insofar as they may benefit third persons who did not give their consent. (1207)

ART. 1317. If the new obligation is void, the original one shall subsist, unless the parties intended that the former relation should be extinguished in any event. (n)

ART. 1318. The novation is void if the original obligation was void, except when annulment may be claimed only by the debtor, or when ratification validates acts which are voidable. (1208a)

ART. 1319. If the original obligation was subject to a suspensive or resolutory condition, the new obligation shall be under the same condition, unless it is otherwise stipulated. (n)

ART. 1320. Subrogation of a third person in the rights of the creditor is either legal or conventional. The former is not presumed, except in cases expressly mentioned in this Code; the latter must be clearly established in order that it may take effect. (1209a)

ART. 1321. Conventional subrogation of a third person requires the consent of the original parties and of the third person. (n)

ART. 1322. It is presumed that there is legal subrogation:

(1) When a creditor pays another creditor who is preferred, even without the debtor's knowledge;

(2) When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;

(3) When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share. (1210a)

ART. 1323. Subrogation transfers to the person subrogated the credit with all the rights thereto appertaining, either against the debtor or against third persons, be they guarantors or possessors of mortgages, subject to stipulation in a conventional subrogation. (1212a)

ART. 1324. A creditor, to whom partial payment has been made, may exercise his right for the remainder, and he shall be preferred to the person who has been subrogated in his place in virtue of the partial payment of the same credit. (1213)

Title II.—CONTRACTS

CHAPTER 1

GENERAL PROVISIONS

ART. 1325. A contract is a meeting of minds between two persons whereby one binds himself, with respect to the other, to give something or to render some service. (1254a)

ART. 1326. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. (1255a)

ART. 1327. Innominate contracts shall be regulated by the stipulations of the parties, by the provisions of Titles I and II of this Book, by the rules governing the most analogous nominate contracts, and by the customs of the place. (n)

ART. 1328. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them. (1256a)

ART. 1329. The determination of the performance may be left to a third person, whose decision shall not be binding until it has been made known to both contracting parties. (n)

ART. 1330. The determination shall not be obligatory if it is evidently inequitable. In such case, the courts shall decide what is equitable under the circumstances. (n)

ART. 1331. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person. (1257a)

ART. 1332. In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration laws. (n)

ART. 1333. Creditors are protected in cases of contracts intended to defraud them. (n)

ART. 1334. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party. (n)

ART. 1335. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law. (1258)

ART. 1336. Real contracts, such as deposit, pledge and commodatum, are not perfected until the delivery of the object of the obligation. (n)

ART. 1337. No one may contract in the name of another without being authorized by the latter, or unless he has by law a right to represent him.

A contract entered into in the name of another by one who has no authority or legal representation, or who has acted beyond his powers, shall be unenforceable, unless it is ratified, expressly or impliedly, by the person on whose behalf it has been executed, before it is revoked by the other contracting party. (1259a)

CHAPTER 2

ESSENTIAL REQUISITES OF CONTRACTS

General Provision

ART. 1338. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established. (1261)

SECTION 1.—*Consent*

ART. 1339. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute. A qualified acceptance constitutes a counter-offer.

Acceptance made by letter or telegram does not bind the offerer except from the time it came to his knowledge. The contract, in such a case, is presumed to have been entered into in the place where the offer was made. (1262a)

ART. 1340. An acceptance may be express or implied. (n)

ART. 1341. The person making the offer may fix the time, place, and manner of acceptance, all of which must be complied with. (n)

ART. 1342. An offer made through an agent is accepted from the time acceptance is communicated to him. (n)

ART. 1334. An offer becomes ineffective upon the death, civil interdiction, insanity, or insolvency of either party before acceptance is conveyed. (n)

ART. 1344. When the offerer has allowed the offeree a certain period to accept, the offer may be withdrawn at any time before acceptance by communicating such withdrawal, except when the option is founded upon a consideration, as something paid or promised. (n)

ART. 1345. Unless it appears otherwise, business advertisements of things for sale are not definite offers, but mere invitations to make an offer. (n)

ART. 1346. Advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears. (n)

ART. 1347. The following cannot give consent to a contract:

(1) Unemancipated minors;

(2) Insane or demented persons, and deaf-mutes who do not know how to write. (1263a)

ART. 1348. Contracts entered into during a lucid interval are valid. Contracts agreed to in a state of drunkenness or during a hypnotic spell are voidable. (n)

ART. 1349. The incapacity declared in article 1347 is subject to the modifications determined by law, and is understood to be without prejudice to special disqualifications established in the laws. (1264)

ART. 1350. A contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable. (1265a)

ART. 1351. In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.

Mistake as to the identity or qualifications of one of the parties will vitiate consent.

A simple mistake of account shall give rise to its correction. (1266a)

ART. 1352. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former. (n)

ART. 1353. There is no mistake if the party alleging it knew the doubt, contingency or risk affecting the object of the contract. (n)

ART. 1354. Mistake on a doubtful question of law, or on the construction or application thereof, may vitiate consent. (n)

ART. 1355. There is violence when in order to wrest consent, serious or irresistible force is employed.

There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent.

To determine the degree of the intimidation, the age, sex and condition of the person shall be borne in mind.

A threat to enforce one's claim through competent authority, if the claim is just or legal, does not vitiate consent. (1267a)

ART. 1356. Violence or intimidation shall annul the obligation, although it may have been employed by a third person who did not take part in the contract. (1268)

ART. 1357. There is undue influence when a person takes improper advantage of his power over the will of another, depriving the latter of a reasonable freedom of choice. The following circumstances shall be considered: the confidential, family, spiritual and other relations between the parties, or the fact that the person alleged to have been unduly influenced was suffering from mental weakness, or was ignorant or in financial distress. (n)

ART. 1358. There is fraud when, through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to. (1269)

ART. 1359. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (n)

ART. 1360. The usual exaggeration in trade, when the other party had an opportunity to know the facts, are not in themselves fraudulent. (n)

ART. 1361. A mere expression of an opinion does not signify fraud, unless made by an expert and the other party has relied on the former's special knowledge. (n)

ART. 1362. Misrepresentation by a third person does not vitiate consent, unless such misrepresentation has created substantial mistake. (n)

ART. 1363. Misrepresentation made in good faith is not fraudulent but may constitute error. (n)

ART. 1364. In order that fraud may make a contract voidable, it should be serious and should not have been employed by both contracting parties.

Incidental fraud only obliges the person employing it to pay damages. (1270)

ART. 1365. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement. (n)

ART. 1366. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement. (n)

SECTION 2.—*Object of Contracts*

ART. 1367. All things which are not outside the commerce of men, including future things, may be the object of a contract. All rights which are not intransmissible may also be the object of contracts.

No contract may be entered into upon future inheritance except in cases expressly authorized by law.

All services which are not contrary to law, morals, good customs, public order or public policy may likewise be the object of a contract. (1271a)

ART. 1368. Impossible things or services cannot be the object of contracts. (1272)

ART. 1369. The object of every contract must be determinate as to its kind. The fact that the quantity is not determinate shall not be an obstacle to the existence of the contract, provided it is possible to determine the same, without the need of a new contract between the parties. (1273)

SECTION 3.—*Cause of Contracts*

ART. 1370. In onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other; in remuneratory ones, the service or benefit which is remunerated; and in contracts of pure beneficence, the mere liberality of the benefactor. (1274)

ART 1371. The particular motives of the parties in entering into a contract are different from the cause thereof. (n)

ART. 1372. Contracts without cause, or with unlawful cause, produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy. (1275a)

ART. 1373. The statement of a false cause in contracts shall render them void, if it should not be proved that they were founded upon another cause which is true and lawful. (1276)

ART. 1374. Although the cause is not stated in the contract, it is presumed that it exists and is lawful, unless the debtor proves the contrary. (1277)

ART. 1375. Except in cases specified by law, lesion or inadequacy of cause shall not invalidate a contract, unless there has been fraud, mistake or undue influence. (n)

CHAPTER 3

FORMS OF CONTRACTS

ART. 1376. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised. (1278a)

ART. 1377. If the law requires a document or other special form, as in the acts and contracts enumerated in the following article, the contracting parties may compel each other to observe that form, once the contract has been perfected. This right may be exercised simultaneously with the action upon the contract. (1279a)

ART. 1378. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by articles 1423, No. 2, and 1425;

(2) The cession, repudiation or renunciation of hereditary rights or of those of the conjugal partnership of gains;

(3) The power to administer property, or any other power which has for its object an act appearing or which should appear in a public document, or should prejudice a third person;

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds five hundred pesos must appear in writing, even a private one. But sales of goods, chattels or things in action are governed by articles 1423, No. 2 and 1425. (1280a)

CHAPTER 4

REFORMATION OF INSTRUMENTS (n)

ART. 1379. When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of the parties may ask for the reformation of the instrument to the end that such true intention may be expressed.

If mistake, fraud, inequitable conduct, or accident has prevented a meeting of the minds of the parties, the proper remedy is not reformation of the instrument but annulment of the contract.

ART. 1380. The principles of the general law on the reformation of instruments are hereby adopted insofar as they are not in conflict with the provisions of this Code.

ART. 1381. When a mutual mistake of the parties causes the failure of the instrument to disclose their real agreement, said instrument may be reformed.

ART. 1382. If one party was mistaken and the other acted fraudulently or inequitably in such a way that the instrument does not show their true intention, the former may ask for the reformation of the instrument.

ART. 1383. When one party was mistaken and the other knew or believed that the instrument did not state their real agreement, but concealed that fact from the former, the instrument may be reformed.

ART. 1384. When through the ignorance, lack of skill, negligence or bad faith on the part of the person drafting the instrument or of the clerk or typist, the instrument does not express the true intention of the parties, the courts may order that the instrument be reformed.

ART. 1385. If two parties agree upon the mortgage or pledge of real or personal property, but the instrument states that the property is sold absolutely or with a right of repurchase, reformation of the instrument is proper.

ART. 1386. There shall be no reformation in the following cases:

(1) Simple donations *inter vivos* wherein no condition is imposed;

(2) Wills;

(3) When the real agreement is void.

ART. 1387. When one of the parties has brought an action to enforce the instrument, he cannot subsequently ask for its reformation.

ART. 1388. Reformation may be ordered at the instance of either party or his successors in interest, if the mistake was mutual; otherwise, upon petition of the injured party, or his heirs and assigns.

ART. 1389. The procedure for the reformation of instruments shall be governed by rules of court to be promulgated by the Supreme Court.

CHAPTER 5

INTERPRETATION OF CONTRACTS

ART. 1390. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former. (1281)

ART. 1391. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (1282)

ART. 1392. However general the terms of a contract may be, they shall not be understood to comprehend things that are distinct and cases that are different from those upon which the parties intended to agree. (1283)

ART. 1393. If some stipulation of any contract should admit of several meanings, it shall be understood as bearing that import which is most adequate to render it effectual. (1284)

ART. 1394. The various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. (1285)

ART. 1395. Words which may have different significations shall be understood in that which is most in keeping with the nature and object of the contract. (1286)

ART. 1396. The usage or custom of the place shall be borne in mind in the interpretation of the ambiguities of a contract, and shall fill the omission of stipulations which are ordinarily established. (1287)

ART. 1397. The interpretation of obscure words or stipulations in a contract shall not favor the party who caused the obscurity. (1288)

ART. 1398. When it is absolutely impossible to settle doubts by the rules established in the preceding articles, and the doubts refer to incidental circumstances of a gratuitous contract, the least transmission of rights and interests shall prevail. If the contract is onerous, the doubt shall be settled in favor of the greatest reciprocity of interests.

If the doubts are cast upon the principal object of the contract in such a way that it cannot be known what may have been the intention or will of the parties, the contract shall be null and void. (1289)

ART. 1399. The principles of interpretation stated in Rule 123 of the Rules of Court shall likewise be observed in the construction of contracts. (n)

CHAPTER 6

RESCISSIBLE CONTRACTS

ART. 1400. Contracts validly agreed upon may be rescinded in the cases established by law. (1290)

ART. 1401. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation, if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission. (1291a)

ART. 1402. Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected, are also rescissible. (1292)

ART. 1403. The action for rescission is subsidiary; it cannot be instituted except when the party suffering damage has no other legal means to obtain reparation for the same. (1294)

ART. 1404. Rescission shall be only to the extent necessary to cover the damages caused. (n)

ART. 1405. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.

Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith.

In this case, indemnity for damages may be demanded from the person causing the loss. (1295)

ART. 1406. Rescission referred to in Nos. 1 and 2 of article 1401 shall not take place with respect to contracts approved by the courts. (1296a)

ART. 1407. All contracts by virtue of which the debtor alienates property by gratuitous title are presumed to have been entered into in fraud of creditors, when the donor did not reserve sufficient property to pay all debts contracted before the donation.

Alienations by onerous title are also presumed fraudulent when made by persons against whom some judgment has been rendered in any instance or some writ of attachment has been issued. The decision or attachment need not refer to the property alienated, and need not have been obtained by the party seeking the rescission.

In addition to these presumptions, the design to defraud creditors may be proved in any other manner recognized by the law of evidence. (1297a)

ART. 1408. Whoever acquires in bad faith the things alienated in fraud of creditors, shall indemnify the latter for damages suffered by them on account of the alienation, whenever, due to any cause, it should be impossible for him to return them.

If there are two or more alienations, the first acquirer shall be liable to fine, and so on successively. (1298a)

ART. 1409. The action to claim rescission must be commenced within four years.

For persons under guardianship and for absentees, the period of four years shall not begin until the termination of the former's incapacity, or until the domicile of the latter is known. (1299)

CHAPTER 7

VOIDABLE CONTRACTS

ART. 1410. The following contracts are voidable or annullable, even though there may have been no damage to the contracting parties:

(1) Those where one of the parties is incapable of giving consent to a contract;

(2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence or fraud.

These contracts are binding, unless they are annulled by a proper action in court. They are susceptible of ratification. (n)

ART. 1411. The action for annulment shall be brought within four years.

This period shall begin:

In cases of intimidation, violence or undue influence, from the time the defect of the consent ceases.

In case of mistake or fraud, from the time of the discovery of the same.

And when the action refers to contracts entered into by minors or other incapacitated persons, from the time the guardianship ceases. (1301a)

ART. 1412. Ratification extinguishes the action to annul a voidable contract. (1309a)

ART. 1413. Ratification may be effected expressly or tacitly. It is understood that there is a tacit ratification if, with knowledge of the reason which renders the contract voidable and such reason having ceased, the person who has a right to invoke it should execute an act which necessarily implies an intention to waive his right. (1311a)

ART. 1414. Ratification may be effected by the guardian of the incapacitated person. (n)

ART. 1415. Ratification does not require the conformity of the contracting party who has no right to bring the action for annulment. (1312)

ART. 1416. Ratification cleanses the contract from all its defects from the moment it was constituted. (1313)

ART. 1417. The action for the annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. However, persons who are capable cannot allege the incapacity of those with whom they contracted; nor can those who exerted intimidation, violence, or undue influence, or employed fraud, or caused mistake base their action upon these flaws of the contract. (1302a)

ART. 1418. An obligation having been annulled, the contracting parties shall restore to each other the things which have been the subject matter of the contract, with their fruits, and the price with its interest, except in cases provided by law.

In obligations to render service, the value thereof shall be the basis for damages. (1303a)

ART. 1419. When the defect of the contract consists in the incapacity of one of the parties, the incapacitated person is not obliged to make any restitution except insofar as he has been benefited by the thing or price received by him. (1304)

ART. 1420. Whenever the person obliged by the decree of annulment to return the thing cannot do so because it has been lost through his fault, he shall return the fruits received and the value of the thing at the time of the loss, with interest from the same date. (1307a)

ART. 1421. The action for annulment of contracts shall be extinguished when the thing which is the object thereof is lost through the fraud or fault of the person who has a right to institute the proceedings.

If the right of action is based upon the incapacity of any one of the contracting parties, the loss of the thing shall not be an obstacle to the success of the action, unless said loss took place through the fraud or fault of the plaintiff. (1314a)

ART. 1422. As long as one of the contracting parties does not restore what in virtue of the decree of annulment he is bound to return, the other cannot be compelled to comply with what is incumbent upon him. (1308)

CHAPTER 8

UNENFORCEABLE CONTRACTS (n)

ART. 1423. The following contracts are unenforceable, unless they are ratified:

(1) Those entered into in the name of another person by one who has been given no authority or legal representation, or who has acted beyond his powers;

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

(*a*) An agreement that by its terms is not to be performed within a year from the making thereof;

(*b*) A special promise to answer for the debt, default, or miscarriage of another;

(*c*) An agreement made in consideration of marriage, other than a mutual promise to marry;

(*d*) An agreement for the sale of goods, chattels or things in action, at a price not less than five hundred pesos, unless the buyer accept and receive part of such goods and chattels, or the evidences, or some of them, of such things in action, or pay at the time some part of the purchase money; but when a sale is made by auction and entry is made by the auctioneer in his sales book, at the time of the sale, of the amount and kind of property sold, terms of sale, price, names of the purchasers and person on whose account the sale is made, it is a sufficient memorandum;

(*e*) An agreement for the leasing for a longer perriod than one year, or for the sale of real property or of an interest therein;

(*f*) A representation as to the credit of a third person.

(3) Those where both parties are incapable of giving consent to a contract.

ART. 1424. Unauthorized contracts are governed by article 1337 and the principles of agency in Title X of this Book.

ART. 1425. Contracts infringing the Statute of Frauds, referred to in No. 2 of article 1423, are ratified by the failure to object to the presentation of oral evidence to prove the same, or by the acceptance of benefits under them.

ART. 1426. When a contract is enforceable under the Statute of Frauds, and a public document is necessary for its registration in the Registry of Deeds, the parties may avail themselves of the right under article 1377.

ART. 1427. In a contract where both parties are incapable of giving consent, express or implied ratification by the parent, or guardian, as the case may be, of one of the contracting parties shall give the contract the same effect as if only one of them were incapacitated.

If ratification is made by the parents or guardians, as the case may be, of both contracting parties, the contract shall be validated from the inception.

ART. 1428. Unenforceable contracts cannot be assailed by third persons.

CHAPTER 9

VOID OR INEXISTENT CONTRACTS[1]

ART. 1429. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;

(2) Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

(4) Those whose object is outside the commerce of men;

(5) Those which contemplate an impossible service;

(6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;

(7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[1] New, except articles 1431 and 1432

ART. 1430. The action or defense for the declaration of the inexistence of a contract does not prescribe.

ART. 1431. When the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted. Moreover, the provisions of the Penal Code relative to the disposal of effects or instruments of a crime shall be applicable to the things or the price of the contract.

This rule shall be applicable when only one of the parties is guilty; but the innocent one may claim what he has given, and shall not be bound to comply with his promise. (1305)

ART. 1432. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;

(2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise. (1306)

ART. 1433. Interest paid in excess of the interest allowed by the usury laws may be recovered by the debtor, with interest thereon from the date of the payment.

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

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

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

ART. 1437. When the price of any article or commodity is determined by statute, or by authority of law, any person paying any amount in excess of the maximum price allowed may recover such excess.

ART. 1438. When the law fixes, or authorizes the fixing of the maximum number of hours of labor, and a contract is entered into whereby a laborer undertakes to work longer than the maximum thus fixed, he may demand additional compensation for service rendered beyond the time limit.

ART. 1439. When the law sets, or authorizes the setting of a minimum wage for laborers, and a contract is agreed upon by which a laborer accepts a lower wage, he shall be entitled to recover the deficiency.

ART. 1440. In case of a divisible contract, if the illegal terms can be separated from the legal ones, the latter may be enforced.

ART. 1441. The defense of illegality of contracts is not available to third persons whose interests are not directly affected.

ART. 1442. A contract which is the direct result of a previous illegal contract, is also void and inexistent.

Title III.—NATURAL OBLIGATIONS[1]

ART. 1443. Obligations are civil or natural. Civil obligations give a right of action to compel their performance. Natural obligations, not being based on positive law but on equity and natural law, do not grant a right of action to enforce their performance, but after voluntary fulfillment by the obligor, they authorize the retention of what has been delivered or rendered by reason thereof. Some natural obligations are set forth in the following articles.

ART. 1444. When a right to sue upon a civil obligation has lapsed by extinctive prescription, the obligor who voluntarily performs the contract cannot recover what he has delivered or the value of the service he has rendered.

ART. 1445. When without the knowledge or against the will of the debtor, a third person pays a debt which the obligor is not legally bound to pay because the action thereon has prescribed, but the debtor later voluntarily reimburses the third person, the obligor cannot recover what he has paid.

ART. 1446. When a minor between eighteen and twenty-one years of age who has entered into a contract without the consent of the parent or guardian, after the annulment of the contract voluntarily returns the whole thing or price received, notwithstanding the fact that he has not been benefited thereby, there is no right to demand the thing or price thus returned.

ART. 1447. When a minor between eighteen and twenty-one years of age, who has entered into a contract without the consent of the parent or guardian, voluntarily pays a sum of money or delivers a fungible thing in fulfillment of the obligation, there shall be no right to recover the same from the obligee who has spent or consumed it in good faith. (1160a)

ART. 1448. When, after an action to enforce a civil obligation has failed, the defendant voluntarily performs the obligation, he cannot demand the return of what he has delivered or the payment of the value of the service he has rendered.

ART. 1449. When a testate or intestate heir voluntarily pays a debt of the decedent exceeding the value of the property which he received by will or by the law of intestacy from the estate of the deceased, the payment is valid and cannot be rescinded by the payer.

ART. 1450. When a will is declared void because it has not been executed in accordance with the formalities required by law, but one of the intestate heirs, after the settlement of the debts of the deceased, pays a legacy in compliance with a clause in the defective will, the payment is effective and irrevocable.

Title IV.—ESTOPPEL (n)

ART. 1451. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

ART. 1452. The principles of estoppel are hereby adopted insofar as they are not in conflict with the provisions of this Code, the Code of Commerce, the Rules of Court and special laws.

ART. 1453. Estoppel may be *in pais* or by deed.

ART. 1454. When a person who is not the owner of a thing sells or alienates and delivers it, and later the seller or grantor acquires title thereto, such title passes by operation of law to the buyer or grantee.

ART. 1455. If a person in representation of another sells or alienates a thing, the former cannot subsequently set up his own title as against the buyer or grantee.

[1] New, except article 1447.

ART. 1456. A lessee or a bailee is estopped from asserting title to the thing leased or received, as against the lessor or bailor.

ART. 1457. When in a contract between third persons concerning immovable property, one of them is misled by a person with respect to the ownership or real right over the real estate, the latter is precluded from asserting his legal title or interest therein, provided all these requisites are present:

(1) There must be fraudulent representation or wrongful concealment of facts known to the party estopped;

(2) The party precluded must intend that the other should act upon the facts as misrepresented;

(3) The party misled must have been unaware of the true facts; and

(4) The party defrauded must have acted in accordance with the misrepresentation.

ART. 1458. One who has allowed another to assume apparent ownership of personal property for the purpose of making any transfer of it, cannot, if he received the sum for which a pledge has been constituted, set up his own title to defeat the pledge of the property, made by the other to a pledgee who received the same in good faith and for value.

ART. 1459. Estoppel is effective only as between the parties thereto or their successors in interest.

Title V.—TRUSTS (n)

CHAPTER 1

GENERAL PROVISIONS

ART. 1460. A person who establishes a trust is called the trustor; one in whom confidence is reposed as regards property for the benefit of another person is known as the trustee; and the person for whose benefit the trust has been created is referred to as the beneficiary.

ART. 1461. Trusts are either express or implied. Express trusts are created by the intention of the trustor or of the parties. Implied trusts come into being by operation of law.

ART. 1462. The principles of the general law of trusts, insofar as they are not in conflict with this Code, the Code of Commerce, the Rules of Court and special laws are hereby adopted.

CHAPTER 2

EXPRESS TRUSTS

ART. 1463. No express trusts concerning an immovable or any interest therein may be proved by parol evidence.

ART. 1464. No particular words are required for the creation of an express trust, it being sufficient that a trust is clearly intended.

ART. 1465. No trust shall fail because the trustee appointed declines the designation, unless the contrary should appear in the instrument constituting the trust.

ART. 1466. Acceptance by the beneficiary is necessary. Nevertheless, if the trust imposes no onerous condition upon the beneficiary, his acceptance shall be presumed, if there is no proof to the contrary.

CHAPTER 3

IMPLIED TRUSTS

ART. 1467. The enumeration of the following cases of implied trust does not exclude others established by the general law of trust, but the limitation laid down in article 1462 shall be applicable.

ART. 1468. There is an implied trust when property is sold, and the legal estate is granted to one party but the price is paid by another for the purpose of having the beneficial interest of the property. The former is the trustee, while the latter is the beneficiary. However, if the person to whom the title is conveyed is a child, legitimate or illegitimate, of the one paying the price of the sale, no trust is implied by law, it being disputably presumed that there is a gift in favor of the child.

ART. 1469. There is also an implied trust when a donation is made to a person but it appears that although the legal estate is transmitted to the donee, he nevertheless is either to have no beneficial interest or only a part thereof.

ART. 1470. If the price of a sale of property is loaned or paid by one person for the benefit of another and the conveyance is made to the lender or payor to secure the payment of the debt, a trust arises by operation of law in favor of the person to whom the money is loaned or for whom it is paid. The latter may redeem the property and compel a conveyance thereof to him.

ART. 1471. When land passes by succession to any person and he causes the legal title to be put in the name of another, a trust is established by implication of law for the benefit of the true owner.

ART. 1472. If two or more persons agree to purchase property and by common consent the legal title is taken in the name of one of them for the benefit of all, a trust is created by force of law in favor of the others in proportion to the interest of each.

ART. 1473. When property is conveyed to a person in reliance upon his declared intention to hold it for, or transfer it to another or the grantor, there is an implied trust in favor of the person whose benefit is contemplated.

ART. 1474. If an absolute conveyance of property is made in order to secure the performance of an obligation of the grantor toward the grantee, a trust by virtue of law is established. If the fulfillment of the obligation is offered by the grantor when it becomes due, he may demand the reconveyance of the property to him.

ART. 1475. When any trustee, guardian or other person holding a fiduciary relationship uses trust funds for the purchase of property and causes the conveyance to be made to him or to a third person, a trust is established by operation of law in favor of the person to whom the funds belong.

ART. 1476. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

ART. 1477. An implied trust may be proved by oral evidence.

Title VI.—SALES

CHAPTER 1

NATURE AND FORM OF THE CONTRACT

ART. 1478. By the contract of sale one of the contracting parties obligate himself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

A contract of sale may be absolute or conditional. (1445a)

ART. 1479. The thing must be licit and the vendor must have a right to transfer the ownership thereof at the time it is delivered. (n)

ART. 1480. A thing is determinate when it is particularly designated or physically segregated from all others of the same class.

The requisite that a thing be determinate is satisfied if at the time the contract is entered into, the thing is capable of being made determinate without the necessity of a new or further agreement between the parties. (n)

ART. 1481. Things having a potential existence may be the object of the contract of sale.

The efficacy of the sale of a mere hope or expectancy is deemed subject to the condition that the thing will come into existence.

The sale of a vain hope or expectancy is void. (n)

ART. 1482. The goods which form the subject of a contract of sale may be either existing goods, owned or possessed by the seller, or goods to be manufactured, raised, or acquired by the seller after the perfection of the contract of sale, in this Title called "future goods."

There may be a contract of sale of goods, whose acquisition by the seller depends upon a contingency which may or may not happen. (n)

ART. 1483. The sole owner of a thing may sell an undivided interest therein. (n)

ART. 1484. In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from goods of the same kind and quality, unless a contrary intent appears. (n)

ART. 1485. Things subject to a resolutory condition may be the object of the contract of sale. (n)

ART. 1486. In construing a contract containing provisions characteristic of both the contract of sale and of the contract of agency to sell, the essential clauses of the whole instrument shall be considered. (n)

ART. 1487. A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work. (n)

ART. 1488. If the consideration of the contract consists partly in money, and partly in another thing, the transaction shall be characterized by the manifest intention of the parties. If such intention does not clearly appear, it shall be considered a barter if the value of the thing given as a part of the consideration exceeds the amount of the money or its equivalent; otherwise, it is a sale. (1446a)

ART. 1489. In order that the price may be considered certain, it shall be sufficient that it be so with reference to another thing certain, or that the determination thereof be left to the judgment of a specified person or persons.

Should such person or persons be unable or unwilling to fix it, the contract shall be inefficacious, unless the parties subsequently agree upon the price.

If the third person or persons acted in bad faith or by mistake, the courts may fix the price.

Where such third person or persons are prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed the seller or the buyer, as the case may be. (1447a)

ART. 1490. Gross inadequacy of price does not affect a contract of sale, except as it may indicate a defect in the consent, or that the parties really intended a donation or some other act or contract. (n)

ART. 1491. If the price is simulated, the sale is void, but the act may be shown to have been in reality a donation, or some other act or contract. (n)

ART. 1492. The price of securities, grain, liquids, and other things shall also be considered certain, when the price fixed is that which the thing sold would have on a definite day, or in particular exchange or maket, or when an amount is fixed above or below the price on such day, or in such exchange or market, provided said amount be certain. (1448)

ART. 1493. The fixing of the price can never be left to the discretion of one of the parties. How-

ever, if the price fixed by one of the parties accepted by the other, the sale is perfected. (1449a)

ART. 1494. Where the price cannot be determined in accordance with the preceding articles, or in any other manner, the contract is ineffacious. However, if the thing or any part thereof has been delivered to and appropriated by the buyer, he must pay a reasonable price therefor. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. (n)

ART. 1495. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts. (1450a)

ART. 1496. In case of a sale by auction:

(1) Where goods are put up for sale by auction in lots, each lot is subject of a separate contract of sale.

(2) A sale by auction is perfected when the auctioneer announces its perfection by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

(3) A right to bid may be reserved expressly by or on behalf of the seller, unless otherwise provided by law or by stipulation.

(4) Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer, to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any other person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. (n)

ART. 1497. The ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof. (n)

ART. 1498. The parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price. (n)

ART. 1499. A promise to buy and sell a determinate thing for a price certain is reciprocally demandable.

An accepted unilateral promise to buy or sell a determinate thing for a price certain is binding upon the promisor if the promise is supported by a consideration distinct from the price. (1451a)

ART. 1500. Any injury to or benefit from the thing sold, after the contract has been perfected, from the moment of the perfection of the contract to the time of delivery, shall be governed by articles 1183 to 1185, and 1282.

This rule shall apply to the sale of fungible things, made independently and for a single price, or without consideration of their weight, number, or measure.

Should fungible things be sold for a price fixed according to weight, number, or measure, the risk shall not be imputed to the vendee until they have been weighed, counted, or measured, and delivered, unless the latter has incurred in delay. (1452a)

ART. 1501. In a contract of sale of goods by description, or by sample, the contract may be rescinded if the bulk of the goods delivered do not correspond with the description or the sample, and if the contract be by sample as well as by description, it is not sufficient that the bulk of goods correspond with the sample if they do not also correspond with the description.

The buyer shall have a reasonable opportunity of comparing the bulk with the description or the sample. (n)

ART. 1502. Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract. (1454a)

ART. 1503. Subject to the provisions of the Statute of Frauds and of any other applicable statute, a contract of sale may be made in writing, or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties. (n)

ART. 1504. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:

(1) Exact fulfillment of the obligation, should the vendee fail to pay;

(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;

(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void. (1454-A-a)

ART. 1505. The preceding article shall be applied to contracts purporting to be leases of personal property with option to buy, when the lessor has deprived the lessee of the possession or enjoyment of the thing. (1454-A-a)

ART. 1506. In the cases referred to in the two preceding articles, a stipulation that the installments or rents paid shall not be returned to the vendee or lessee shall be valid insofar as the same may not be unconscionable under the circumstances. (n)

ART. 1507. The expenses for the execution and registration of the sale shall be borne by the vendor, unless there is a stipulation to the contrary. (1455a)

ART. 1508. The expropriation of property for public use is governed by special laws. (1456)

CHAPTER 2

CAPACITY TO BUY OR SELL

ART. 1509. All persons who are authorized in this Code to obligate themselves, may enter into a contract of sale, saving the modifications contained in the following articles.

Where necessaries are sold and delivered to a minor or other person without capacity to act, he must pay a reasonable price therefor. Necessaries are those referred to in article 310. (1457a)

ART. 1510. The husband and the wife cannot sell property to each other, except:

(1) When a separation of property was agreed upon in the marriage settlements; or

(2) When there has been a judicial separation of property under article 211. (1458a)

ART. 1511. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:

(1) The guardian, the property of the person or persons who may be under his guardianship;

(2) Agents, the property whose administration or sale may have been intrusted to them, unless the consent of the principal has been given;

(3) Executors and administrators, the property of the estate under administrations;

(4) Public officers and employees, the property of the State or of any subdivision thereof, or of any government owned or controlled corporation, or institution, the administration of which has been instrusted to them; this provision shall apply to judges and government experts who, in any manner whatsoever, take part in the sale;

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession;

(6) Any others specially disqualified by law. (1459a)

ART. 1512. The prohibitions in the two preceding articles are applicable to sales in legal redemption, compromises and renunciations. (n)

CHAPTER 3

EFFECTS OF THE CONTRACT WHEN THE THING SOLD HAS BEEN LOST

ART. 1513. If at the time the contract of sale is perfected, the thing which is the object of the contract has been entirely lost, the contract shall be without any effect.

But if the thing should have been lost in part only, the vendee may choose between withdrawing from the contract and demanding the remaining part, paying its price in proportion to the total sum agreed upon. (1460a)

ART. 1514. Where the parties purport a sale of specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale:

(1) As avoided; or

(2) As valid in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the agreed price for the goods in which the ownership will pass, if the sale was divisible.

CHAPTER 4

OBLIGATIONS OF THE VENDOR

SECTION 1.—*General Provisions*

ART. 1515. The vendor is bound to transfer the ownership of and deliver, as well as warrant the thing which is the object of the sale. (1461a)

ART. 1516. The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in articles 1517 to 1521, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee. (n)

SECTION 2.—*Delivery of the Thing Sold*

ART. 1517. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee. (1462a)

ART. 1518. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept. (1463a)

ART. 1519. The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason. (1463a)

ART. 1520. There may also be tradition *constitutum possessorium*. (n)

ART. 1521. With respect to incorporeal property, the provisions of the first paragraph of article 1518 shall govern. In any other case wherein said provisions are not applicable, the placing of the titles of ownership in the possession of the vendee or the use by the vendee of his rights, with the vendor's consent, shall be understood as a delivery. (1464)

ART. 1522. When goods are delivered to the buyer "on sale or return" to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer on delivery, but he may revest the ownership in the seller by returning or tendering the goods within the time fixed in the contrat, or, if no time has been fixed, within a reasonable time. (n)

When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the ownership therein passes to the buyer:

(1) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(2) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact. (n)

ART. 1523. Where there is a contract of sale of specific goods, the seller may, by the terms of the contract, reserve the right of possession or ownership in the goods until certain conditions have been fulfilled. The right of possession or ownership may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier of other bailee for the purpose of transmission to the buyer.

Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

Where goods are shipped, and by the bill of lading the goods are deliverable to order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the ownership in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. (n)

ART. 1524. Unless otherwise agreed, the goods remain at the seller's risk until the ownership therein is transferred to the buyer, but when the ownership therein is transferred to the buyer the goods are at the buyer's risk whether actual delivery has been made or not, except that:

(1) Where delivery of the goods has been made to the buyer or to a bailee for the buyer, in pursuance of the contract and the ownership in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery;

(2) Where actual delivery has been delayed through the fault of either the buyer or seller the goods are at the risk of the party in fault. (n)

ART. 1525. Subject to the provisions of this Title, where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

Nothing in this Title, however, shall affect:

(1) The provisions of any factors' acts, recording laws, or any other provision of law enabling the apparent owner of goods to dispose of them as if he were the true owner thereof;

(2) The validity of any contract of sale under statutory power of sale or under the order of a court of competent jurisdiction;

(3) Purchases made in a merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and special laws. (n)

ART. 1526. Where the seller of goods has a voidable title thereto, but his title has not been voided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. (n)

ART. 1527. A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. (n)

ART. 1528. A negotiable document of title may be negotiated by delivery:

(1) Where by the terms of the document the carrier, warehouseman, or other bailee isuing the same undertakes to deliver the goods to the bearer; or

(2) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to the bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee. (n)

ART. 1529. A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiations may be made in like manner. (n)

ART. 1530. If a document of title which contains an undertaking by a carrier, warehouseman or other bailee to deliver the goods to bearer, to a specified person or order of a specified person or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable" or the like, such document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this Title. But nothing in this Title contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title or placing thereon the words "not negotiable," "non-negotiable," or the like. (n)

ART. 1531. A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable document cannot be negotiated and the indorsement of such a document gives the transferee no additional right. (n)

ART. 1532. A negotiable document of title may be negotiated:

(1) By the owner thereof; or

(2) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery. (n)

ART. 1533. A person to whom a negotiable document of title has been duly negotiated acquires thereby:

(1) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value; and

(2) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. (n)

ART. 1534. A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor.

If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document.

Prior to the notification to such bailee by the transferor or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor. (n)

ART. 1535. Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. (n)

ART. 1536. A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

(1) That the document is genuine;

(2) That he has a legal right to negotiate or transfer it;

(3) That he has knowledge of no fact which would impair the validity or worth of the document; and

(4) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. (n)

ART. 1537. The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. (n)

ART. 1538. The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor in good faith without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress or conversion. (n)

ART. 1539. If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in possession of such bailee, be attached by garnishment or otherwise or be levied under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. (n)

ART. 1540. A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (n)

ART. 1541. Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he has one, and if not his residence; but in case of a contract of sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

Where by a contract of sale the seller is bound to send the goods to the buyer, but no time for sending, them is fixed, the seller is bound to send them within a reasonable time.

Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf.

Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. (n)

ART. 1542. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at the contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest.

In the preceding two paragraphs, if the subject matter is indivisible, the buyer may reject the whole of the goods.

The provisions of this article are subject to any usage of trade, special agreement, or course of dealing between the parties. (n)

ART. 1543. Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in article 1523, first, second and third paragraphs, or unless a contrary intent appears.

Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. (n)

ART. 1544. The vendor shall not be bound to deliver the thing sold, if the vendee has not paid him the price, or if no period for the payment has been fixed in the contract. (1466)

ART. 1545. The seller of goods is deemed to be an unpaid seller within the meaning of this Title:

(1) When the whole of the price has not been paid or tendered;

(2) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

In articles 1545 to 1555 the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for the price, or any other person who is in the position of a seller. (n)

ART. 1546. Subject to the provisions of this Title, notwithstanding that the ownership in the goods may have passed to the buyer, the unpaid seller of goods, as such, has:

(1) A lien on the goods or right to retain them for the price while he is in possession of them;

(2) In case of the insolvency of the buyer, a right of stopping the goods *in transitu* after he has parted with the possession of them;

(3) A right of resale as limited by this Title;

(4) A right to rescind the sale as likewise limited by this Title.

Where the ownership in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage *in transitu* where the ownership has passed to the buyer. (n)

ART. 1547. Subject to the provisions of this Title, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(1) Where the goods have been sold without any stipulation as to credit;

(2) Where the goods have been sold on credit, but the term of credit has expired;

(3) Where the buyer becomes insolvent.

The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. (n)

ART. 1548. Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. (n)

ART. 1549. The unpaid seller of goods loses his lien thereon:

(1) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the ownership in the goods or the right to the possession thereof;

(2) When the buyer or his agent lawfully obtain possession of the goods;

(3) By waiver thereof.

The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. (n)

ART. 1550. Subject to the provisions of this Title, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them *in transitu*, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. (n)

ART. 1551. Goods are in transit within the meaning of the preceding article:

(1) From the time when they are delivered to a carrier by land, water, or air, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(2) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

Goods are no longer in transit within the meaning of the preceding article:

(1) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(2) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that further destination for the goods may have been indicated by the buyer;

(3) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

If the goods are delivered to a ship, freight train, truck, or airplane chartered by the buyer, it is a question depending on the circumstances of the particular case, whether they are in the possession of the carrier as such or as agent of the buyer.

If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped *in transitu*, unless such part delivery has been under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. (n)

ART. 1552. The unpaid seller may exercise his right of stoppage *in transitu* either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

When notice of stoppage *in transitu* is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation. (n)

ART. 1553. Where the goods are of perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price for an unreasonable time, an unpaid seller having a right of lien or having stopped the goods *in transitu* may resell the goods.

He shall not thereafter be liable to the original buyer upon the contract of sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract of sale.

Where a resale is made, as authorized in this article, the buyer acquires a good title as against the original buyer.

It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract of sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default for an unreasonable time before the resale was made.

It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. He cannot, however, directly or indirectly buy the goods. (n)

ART. 1554. An unpaid seller having the right of lien or having stopped the goods *in transitu*, may rescind the transfer of title and resume the ownership in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price for an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract of sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract.

The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer, but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default for an unreasonable time before the right of rescission was asserted. (n)

ART. 1555. Subject to the provision of this Title, the unpaid seller's right of lien or stoppage *in transitu* is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto.

If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage *in transitu* shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage *in transitu*. (n)

ART. 1556. The vendor is not bound to deliver the thing sold in case the vendee should lose the right to make use of the term as provided in article 1218. (1467a)

ART. 1557. The vendor is bound to deliver the thing sold and its accessions and accessories in the condition in which they were upon the perfection of the contract.

All the fruits shall pertain to the vendee from the day on which the contract was perfected. (1468a)

ART. 1558. In case of loss, deterioration or improvement of the thing before its delivery, the rules in article 1209 shall be observed, the vendor being considered the debtor.

ART. 1559. The obligation to deliver the thing sold includes that of placing in the control of the vendee all that is mentioned in the contract, in conformity with the following rules:

If the sale of real estate should be made with a statement of its area, at the rate of a certain price for a unit of measure or number, the vendor shall be obliged to deliver to the vendee, if the latter should demand it, all that may have been stated in the contract; but, should this be not possible, the vendee may choose between a proportional reduction of the price and the rescission of the contract, provided that, in the latter case, the lack in the area be not less than one-tenth of that stated.

The same shall be done, even when the area is the same, if any part of the immovable is not of the quality specified in the contract.

The rescission, in this case, shall only take place at the will of the vendee, when the inferior value of the thing sold exceeds one-tenth of the price agreed upon.

Nevertheless, if the vendee would not have bought the immovable had he known of its smaller area or inferior quality, he may rescind the sale. (1469a)

ART. 1560. If, in the case of the preceding article, there in a greater area or number in the immovable than that stated in the contract, the vendee may accept the area included in the contract and reject the rest. If he accepts the whole area, he must pay for the same at the contract rate. (1470a)

ART. 1561. The provisions of the two preceding articles shall apply to judicial sales. (n)

ART. 1562. In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or less area or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated. (1471)

ART. 1563. The actions arising from articles 1559 and 1562 shall prescribe in six months, counted from the day of delivery. (1472a)

ART. 1564. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith. (1473)

SECTION 3.—*Conditions and Warranties*

ART. 1565. Where the obligation of either party to a contract of sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

Where the ownership in the thing has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing. (n)

ART. 1566. Any affirmation of fact or any promise by the seller relating to the thing is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases the thing relying thereon. No affirmation of the value of the thing, nor any statement purporting to be a statement of the seller's opinion only, shall be construed as a warranty, unless the seller made such affirmation or statement as an expert and it was relied upon by the buyer. (n)

ART. 1567. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has a right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

This article shall not, however, be held to render liable a sheriff, auctioneer, mortgage, pledgee, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest. (n)

SUBSECTION 1.—*Warranty in Case of Eviction*

ART. 1568. Eviction shall take place whenever by a final judgment based on a right prior to the sale or an act imputable to the vendor, the vendee is deprived of the whole or of a part of the thing purchased.

The vendor shall answer for the eviction even though nothing has been said in the contract on the subject.

The contracting parties, however, may increase, diminish, or suppress this legal obligation of the vendor. (1475a)

ART. 1569. The vendee need not appeal from the decision in order that the vendor may become liable for eviction. (n)

ART. 1570. When adverse possession had been commenced before the sale but the prescriptive period is completed after the transfer, the vendor shall not be liable for eviction. (n)

ART. 1571. If the property is sold for nonpayment of taxes due and not made known to the vendee before the sale, the vendor is liable for eviction. (n)

ART. 1572. The judgment debtor is also responsible for eviction in judicial sales, unless it is otherwise decreed in the judgment. (n)

ART. 1573. Any stipulation exempting the vendor from the obligation to answer for eviction shall be void, if he acted in bad faith.

ART. 1574. If the vendee has renounced the right to warranty in case of eviction, and eviction should take place, the vendor shall only pay the value which the thing sold had at the time of the eviction. Should the vendee have made the waiver with knowledge of the risks of eviction and assumed its consequences, the vendor shall not be liable. (1477)

ART. 1575. When the warranty has been agreed upon or nothing has been stipulated on this point, in case eviction occurs, the vendee shall have the right to demand of the vendor:

(1) The return of the value which the thing sold had at the time of the eviction, be it greater or less than the price of the sale;

(2) The income or fruits, if he has been ordered to deliver them to the party who won the suit against him;

(3) The costs of the suit which caused the eviction, and, in a proper case, those of the suit brought against the vendor for the warranty;

(4) The expenses of the contract, if the vendee has paid them;

(5) The damages and interests, and ornamental expenses, if the sale was made in bad faith. (1478)

ART. 1576. Should the vendee lose, by reason of the eviction, a part of the thing sold of such importance, in relation to the whole, that he would

not have bought it without said part, he may demand the rescission of the contract; but with the obligation to return the thing without other encumbrances than those which it had when he acquired it.

He may exercise this right of action, instead of enforcing the vendor's liability for eviction.

The same rule shall be observed when two or more things have been jointly sold for a lump sum, or for a separate price for each of them, if it should clearly appear that the vendee would not have purchased one without the other. (1479a)

ART. 1577. The warranty cannot be enforced until a final judgment has been rendered, whereby the vendee loses the thing acquired or a part thereof. (1480)

ART. 1578. The vendor shall not be obliged to make good the proper warranty, unless he is summoned in the suit for eviction at the instance of the vendee. (1481a)

ART. 1579. The defendant vendee shall ask, within the time fixed in the Rules of Court for answering the complaint, that the vendor be made a co-defendant. (1482a)

ART. 1580. If the immovable sold should be encumbered with any non-apparent burden or servitude, not mentioned in the agreement, of such a nature that it must be presumed that the vendee would not have acquired it had he been aware thereof, he may ask for the rescission of the contract, unless he should prefer the appropriate indemnity. Neither right can be exercised if the non-apparent burden or servitude is recorded in the Registry of Property, unless there is an express warranty that the thing is free from all burdens and encumbrances.

Within one year, to be computed from the execution of the deed, the vendee may bring the action for rescission, or sue for damages.

One year having elapsed, he may only bring an action for damages within an equal period, to be counted from the date on which he discovered the burden or servitude. (1483a)

SUBSECTION 2.—*Warranty Against Hidden Defects of or Encumbrances Upon the Thing Sold*

ART. 1581. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known them. (1484a)

ART. 1582. In a sale of goods, there is an implied warranty or condition as to the quality or fitness of the goods, as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose;

(2) Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality. (n)

ART. 1583. In the case of contract of sale of a specified article under its patent or other trade name, there is no warranty as to its fitness for any particular purpose, unless there is a stipulation to the contrary. (n)

ART. 1584. An implied warranty or condition as to the quality or fitness for a particular purpose may be annexed by the usage of trade. (n)

ART. 1585. In the case of a contract of sale by sample, if the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. (n)

ART. 1586. The vendor is responsible to the vendee for any hidden faults or defects in the thing sold, even though he was not aware thereof.

This provision shall not apply if the contrary has been stipulated, and the vendor was not aware of the hidden faults or defects in the thing sold. (1485)

ART. 1587. In the cases of articles 1581, 1582, 1584, 1585 and 1586, the vendee may elect between withdrawing from the contract and demanding a proportionate reduction of the price, with damages in either case. (1486a)

ART. 1588. If the thing sold should be lost in consequence of the hidden faults, and the vendor was aware of them, he shall bear the loss, and shall be obliged to return the price and refund the expenses of the contract, with damages. If he was not aware of them, he shall only return the price and interest thereon, and reimburse the expenses of the contract which the vendee might have paid. (1487a)

ART. 1589. If the thing sold had any hidden fault at the time of the sale, and should thereafter be lost by a fortuitous event or through the fault of the vendee, the latter may demand of the vendor the price which he paid, less the value which the thing had when it was lost.

If the vendor acted in bad faith, he shall pay damages to the vendee. (1488a)

ART. 1590. The preceding articles of this Subsection shall be applicable to judicial sales except that the judgment debtor shall not be liable for damages. (1489a)

ART. 1591. Actions arising from the provisions of the preceding ten articles shall be barred after six months, from the delivery of the thing sold. (1490)

ART. 1592. If two or more ainmals are sold together, whether for a lump sum or for a separate price for each of them, the redhibitory defect of one shall only give rise to its redhibition, and not that of the others; unless it should appear that the vendee would not have purchased the sound animal or animals without the defective one.

The latter case shall be presumed when a team, yoke, pair, or set is bought, even if a separate price has been fixed for each one of the animals composing the same. (1491)

ART. 1593. The provisions of the preceding article with respect to the sale of animals shall in like manner be applicable to the sale of other things. (1492)

ART. 1594. There is no warranty against hidden defects of animals sold at fairs or at public auctions, or of livestock sold as condemned. (1493a)

ART. 1595. The sale of animals suffering from contagious diseases shall be void.

A contract of sale of animals shall also be void if the use or service for which they are acquired has been stated in the contract, and they are found to be unfit therefor. (1494a)

ART. 1596. If the hidden defect of animals, even in case a professional inspection has been made, should be of such a nature that expert knowledge is not sufficient to discover it, the defect shall be considered as redhibitory.

But if the veterinarian, through ignorance or bad faith, should fail to discover or disclose it, he shall be liable for damages. (1495)

ART. 1597. The redhibitory action, based on the faults or defects of animals, must be brought within forty days from the date of their delivery to the vendee.

This action can only be exercised with respect to faults and defects which are determined by law or by local customs. (1496a)

ART. 1598. If the animal should die within three days after its purchase, the vendor shall be liable, if the disease which caused the death existed at the time of the contract. (1497a)

ART. 1599. If the sale be rescinded, the ainmal shall be returned in the condition in which it was sold and delivered, the vendee being answerable for any injury due to his negligence, and not arising from the redhibitory fault or defect. (1498)

ART. 1600. In the sale of animals with redhibitory defects, the vendee shall enjoy the right mentioned in article 1587; but he must make use thereof within the same period which has been fixed for the exercise of the redhibitory action. (1499)

ART. 1601. The form of sale of large cattle shall be governed by special laws. (n)

(To be Continued)

THE BENCH AND BAR IN NEWS

DEAN JORGE BOCOBO

JUDGE CEFERINO DE LOS SANTOS

Most men must wait until they are dead to get the proper recognition of their greatness or the just reward of their labors. In the Philippines there are those who may not even get a fair appraisal of their work and their death will only hasten the obliteration of the little impression they would cause upon their generation.

Either of these may be the fate of Dean Jorge Bocobo, moralist, scholar, publicist, thinker, educator. For as an outstanding moral crusader, his preachings have been like the "small voice of one crying in the wilderness" made feeble by the indifference of his time and unacceptable because of his principles that run counter to the standards of his generation. But the saving grace has been that he has always confined himself within the realms of reason refusing as he does to complicate his views through sophistry. For that matter, whenever he denounces a wrong or fights an injustice, he is brutally frank and uncompromising.

As a thinker, ironically, Dean Bocobo is level-headed to the extent that he is practical. This speaks well of the influence of his American education that in later years afforded him the proper perspective in the monumental task of codifying Philippine laws and in the drafting of the social security measures now pending in Congress.

At the age of 62, Dean Bocobo can look back to the three decades of his professorial career during which period he had made more lawyers than most of the living law professors in the Philippines. And justly he can look back with pride and count among his students in those early years of his teaching at the College of Law, University of the Philippines, the late President Manuel Roxas, President Elpidio Quirino, Dr. Jose P. Laurel, Justices Cesar Bengzon, Marceliano Montemayor and Alexander Reyes of the Supreme Court and Secretary of Justice Sabino Padilla.

As educator, he was for five years President of the University of the Philippines followed by two years in the cabinet of the late President Quezon as Secretary of Public Instruction. During those years he had introduced numerous reforms in the field of education in which he laid emphasis to the preservation of the high culture and virtues of the Filipinos — "that refined test for art and the broadening knowledge of the classics." As the head of the State university he always dreamed of inculcating a "generous estimate of loveliness and the sublime meaning of life which comes of a soundly developed artistic taste and a communion with writers of the classics."

Dr. Bocobo is a prolific writer and a forceful speaker. His articles have appeared in big metropolitan newspapers and magazines

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The evolution of penal laws of all civilized peoples is based on the philosophy that penalties are meted out by the courts of justice, first, as punishment for crimes and, second, as indirect instruments of reform for the benefit of society. In both cases society is protected with the imposition of penalties commensurate to the crime committed.

This is the contention of Judge Ceferino de los Santos, presiding judge of the third branch, Court of First Instance of Rizal and located in Quezon City, in defending the imposition of capital punishment for the crime of murder with all the aggravating circumstances proven in open court.

"Much as I am averse to the imposition of death penalty," Judge De los Santos expostulates in answer to a question propounded by the LAWYERS JOURNAL, "law is law and its supremacy must be respected." The honorable judge of Rizal recalls how in a recent attempt in Great Britain to suspend for five years the application of capital punishment the Primate of England, the Archbishop of Canterbury, opposed the move which if successful would mean a further rise in crime in the empire, in the opinion of the head of the English church.

It must be recalled that Hon. De los Santos was the first judge after liberation to promulgate a verdict of death penalty which he imposed upon two murderers in Ilocos Sur in a case that reverberated throughout the country. And for a punishment to serve as a deterrent to crime, it must be severe enough to scare even the hardened criminals, he says.

On the other hand, Judge De los Santos also holds that the state should implement its general program of education with the tempering effects of social justice through extensive social services to make up for the inequalities in opportunities which have something to do with the degree of criminology obtaining in any community.

Judge De los Santos was a prominent member of the House of Representatives before his appointment to the judiciary on August 5, 1946. He represented the fourth district of Iloilo having been elected to the office in November 1941.

During the occupation, the judge joined the civil government of the resistance movement as judge of first instance by virtue of a radiogram advice from Washington by the late President Manuel L. Quezon. He continued in his post up to March 18, 1945, when the liberation forces landed in Iloilo.

An interesting incident occurred during Judge De los Santos' incumbency as judge of first instance in Panay. Sometime in 1944

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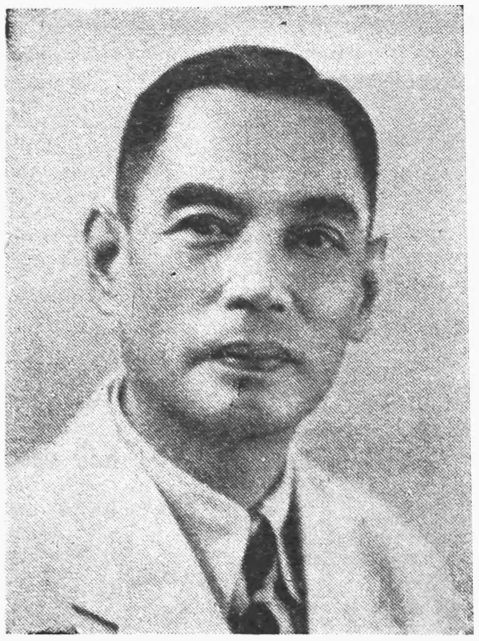

DIRECTOR CELEDONIO S. AGRAVA

DIRECTOR EUSTAQUIO BALAGTAS

Several months ago, an organization devoted to exploiting the creative talents of local inventors and artists, went on record to lament the fact that the patent attorney, who is an inevitable institution in American business life, is still an unfamiliar figure in the Philippine scene. It was further said that the budding genius is virtually left unprotected at the mercy of corrupt tradesmen who would steal or copy the product of his inventiveness for a get-rich-quick harvest of profits.

Under the situation, the inventor becomes a "babe in the woods" but for the protecting arm, long outstretched on a ceaseless vigil, of the Patent Office of which Atty. Celedonio S. Agrava, a friendly and well-read lawyer in his early fifties, is the director.

The story of the Patent Office would be practically commonplace without mentioning the uphill task of Atty. Agrava who, on August 15, 1947, by drafting the organization chart and rules, gave impetus to its existence. In a run-about way of speaking, the Patent Office, which he has nursed from its fledgeling stage, is Director Agrava's baby.

Drawing authority from a committee appointed by the Secretary of Justice in accordance with the provisions of Republic Acts Nos. 165 (Patents), 166 (Trademarks), and 167 (Copyrights), Atty. Agrava had to start on a frugal budget of ₱82,560 which was surely not much in helping meet the financial difficulties of his trail-blazing work. Notwithstanding this setback, the Patent Office passed the blueprint stage by the middle part of 1947 and, as a fitting consideration of his endeavors, the late President Roxas appointed Atty. Agrava *ad interim* Director of Patents on August 18, 1947.

But the well-deserved reward has not gone into his head as witnessed by his apparent hesistancy to ruminate upon his early struggles as the "founding father" of an entity dedicated to the economic well-being of the country. To do so, as he puts it, would be "chewing the cud of one's own accomplishment." He becomes quite vocal though when the ambitious program of his office to hasten the commercial coming of age of the country is brought up; his current obsession is to open the eyes of the public to the importance, from the economic point of view, of stimulating the creative faculties of the country by assuring inventors protection in their rights. However, casual remark about his role in this planning for an industrial millennium would draw a reticent response. This trait brings out the retiring quality in his demeanor.

Atty. Agrava considers his educational background historic in the sense that it is filled with significant acquaintanceship. At the University of the Philippines, his esteemed alma mater where he received his A.B. and LL.B. degrees in 1915 and 1918, respectively,

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Politics is the same everywhere. The candidate who knows his constituents more intimately than the other does—can call them by the first name, pat them in the back and show concern over their problems, can win their support. That is Director Eustaquio C. Balagtas, of the Bureau of Prisons and former member of the Municipal Board of Manila, who had been in the city council continuously for twenty-one years. But Hon. Balagtas has other assets besides those common traits of a successful politician. He is a fighter and a conscientious law-maker so much so that even Manila's electorate, unquestionably the most intelligent group of voters in the Philippines, had found it advantageous to send him every election back to the city council. Administrations have changed in Manila several times since 1922, when he was elected for the first time, but he always managed to keep his seat in the city council.

An experienced City Father that he is, Hon. Balagtas had always a figure to reckon with in the Municipal Board where he was president for two times. Very well versed in city government, he knows how to get things done and how to do them speedily and properly. He has quite a wonderful memory and a fondness for statistics, and he could not be fooled by his colleagues.

Another advantage of Director Balagtas is the fact that he is a lawyer by profession and his knowledge of law enables him to stand out prominent in the many activities that he has undertaken in a wide field of politics and otherwise.

When the first world war broke out Atty. Balagtas was a captain in the historic organization, the Philippine National Guards. Imposing in personality, commanding in voice and tough in appearance, he carries himself with considerable respect. But despite this impressiveness, Director Balagtas has that amiablesness that draws people close to him and to make him friends who stick by him through thick and thin. In fact he has developed that personal relationship that has qualified him for leadership in numerous group undertakings. Continuously for 16 years, from 1922 to 1938, he was Superintendent of the Philippine Carnival and Exposition which require a lot of tact in dealing with the public. But nobody could have discharged his duties more successfully than he did.

As a lawyer, Director Balagtas has had very limited practice. He had handled mostly criminal cases in which he had almost always rendered his services free. But he feels glad that he is a lawyer because, he says, there are really some people, even in the city of Manila, who can not afford to pay for legal services and that is the time when he can come to their help.

Atty. Balagtas at first did not plan to study law. He took it up only at night while employed with the Bureau of Commerce and

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DEAN BOCOBO... *(Continued from page 284)*

as his views on current political topics and legal subjects have been sought by editors and publishers. His longer works consist of books and treatises on civil law; also "Streams of Life" (a series of essays on moral and social topics), "The Radiant Symbol" (a book of plays and short stories) and "Freedom and Dignity" (a book on the Philippine independence movement).

At present he is Chairman of the Code Commission. He is the principal author of the proposed Civil Code, which is now being discussed in the Philippine Congress. The draft of the Civil Code proposes many significant changes in the present Code, which is the Spanish Civil Code of 1889. Among the reforms recommended are: (1) the liberalization of women's rights, (2) the implementation of social justice, (3) the consolidation of the family, (4) the elevation of Filipino customs to the category of law, (5) supremacy of justice and equity over strict legalism, (6) strengthening of democracy, and (7) exaltation of human personality.

A distinguished member of the legal profession and of the Philippine bar, Jorge Bocobo was born 62 years ago in the town of Gerona, province of Tarlac. He was educated in the private and public schools of the town during the Spanish regime. When the Americans arrived, he continued his education under the new American teachers. In 1903 he was one of the first group of Filipino pensionados sent by the Philippine government to the United States to continue their studies.

Atty. Bocobo graduated from the law school of Indiana University. Upon his return to the Philippines he was appointed a law clerk in the Executive Bureau of the insular government until 1911. He was admitted to the Philippine bar in 1913, although he actually began to teach in the College of Law of the University of the Philippines two years before. He remained as professor of civil law until he became President of the University of the Philippines. That was after he had served 17 years as dean of the College of Law.

Dr. Bocobo is an honorary member of the Spanish Academy of Legislation and Jurisprudence, and holds the honorary degree of Doctor of Laws from the University of Southern California. —I.T.R.

JUDGE DE LOS SANTOS... *(Continued from page 284)*

he sentenced a certain Talabon for a term for a crime of murder. But because of the continuous activities of the enemy and of the guerrilla forces the judge could not promulgate a formal written decision.

"I was unable to comply with my duty as judge then," says Hon. De los Santos in retrospect, "because of the fighting in Iloilo when the guerrillas surrounded the city for over a month up to the time of the arrival of the Americans. On the landing of Gen. MacArthur's forces, I was immediately ordered by the PCAU to vacate my office and to surrender all court records to the reinstated judges.

"Talabon, who was all the time under custody, filed a writ of habeas corpus against the provincial warden. In a Supreme Court decision penned by Justice Gregorio Perfecto, I was criticized for not promulgating a written verdict. However, I refrained from answering the justice's cutting remarks, which I could have done so, but, instead, I kept silent knowing full well that the records and minutes of the controversial case will bear me out in dignity and contained self-respect."

Teaching law at the same time at a local university, Judge De los Santos still finds time reading literary and legal classics for which reason he has a broad cultural background. A forceful speaker and entertaining conversationalist, he has quite a dominating personality which an eminent psychologist ascribes to intellectual maturity. He believes that lawyers would be more proficient should they hold at least an A.B. degree before proceeding to a law school. He also advises the reading of legal publications like the LAWYERS JOURNAL which, he says, is useful to both judges and law practitioners. Reading books and publications of this kind with articles written by authorities, besides decisions and public laws that are regular features in every issue, gives a lawyer or judge the profundity essential to the career of law, philosophizes the Quezon City judge.

Born in the prosperous town of Pototan, Iloilo, on August 26, 1892, Judge De los Santos went to grade school in the Instituto de Molo and later proceeded to the Iloilo Provincial High School where he finished his secondary education. Proceeding to Manila thereafter, he enrolled in the Philippine Law School from where he obtained his LL.B. in 1924. In the same year he was admitted to the Philippine Bar following which he practised law for 21 years.

Hon. De los Santos believes that the administration of justice in the Philippines today may be made more expeditious should judges of the court of first instance be given lawyers as secretaries who can help them in their work, particularly in researching, thus enabling the judge to dispose of cases faster.—I.T.R.

DIRECTOR AGRAVA... *(Continued from page 285)*

he rubbed shoulders with present-day personalities of the bench like Justices Alejo Labrador, Jose Ma. Paredes and Dionisio de Leon of the Court of Appeals, Judge Ramon San Jose of the Manila Court of First Instance, Solicitor General Felix A. Bautista and City Fiscal Eugenio Angeles.

Having taken the three-year law course for non-working students, he was required in accordance with the then prevailing practice, to undergo a year of apprenticeship before being permitted to take the bar examinations (he took it at the law offices of former Justice Mariano H. de Joya and WDC Commissioner Francisco Delgado).

In August, 1919, he hurdled the last roadblock to his being a full-fledged lawyer. Adding another leaf to his academic laurels is a Master of Arts in Economics degree which he obtained from the graduate school of Yale University in June, 1927.

Director Agrava has a petulant distaste for lobbying in any way or purpose. He sincerely believes that by asking someone to pull the strings for his advancement or in order to obtain better attention and increased appropriations for his office, would eventually hamstrung the functions of his organization, losing its independence in the bargain, as it pays obeisance to the whim of its patron. Stressing this aversion, he elaborates: "My point in refraining from lobbying is to feel free in pursuing my work like a bird out of a cage and, mind you, with my conscience clean, I sleep well at night."

One common plaint of the Patent Office is the glaring lack of qualified hands to perform its multifarious activities. It is a matter of common knowledge that the organization is sorely undermanned. As of this writing, out of the 152 pending patent applications, only 4 patents have been issued because there are but three men—the director and two engineers—who handle the intricate job.

Another headache of the office are 1,000 new trademark applications together with more than 1,500 petitions for the issuance of new certificate under the post liberation trademark law which are to be processed and acted upon by a staff of five men. A lawyer and an assistant handles applications for copyrights.

The daily grind has not made Director Agrava an eager beaver. He spontaneously, without offending, disengages himself from the mechanics of talking shop and deal on a variety of subjects in a lighter vein. This elasticity in his nature has not made a mental robot out of the man. His co-workers state that he can more than hold his own on any controversial ground of culture. This aspect

s for being of the Pate. Office
entors and writers to such an ex-
g to entrust their brain-children to
ardency of their applications. It is a
workers to have their suspicions easily
manifestation of interest in their work by
stranger. One favorite tale among patent
Street is about the eccentric inventor of a
wanted himself strapped to his contrivance
archives of the government pending the is-
patent in his name. His reason was that "I came from a village of horse-traders; I do not trust anybody."

In relating this anecdote, Director Agrava was perhaps unaware that by the sizeable number of applications for patents and trademarks that pour daily into his office, one can tell that the man radiates the essential stock-in-trade that keeps the machinery going. This virtue is confidence. His kindly appearance, accentuated by thick-rimmed glasses, outwardly shows a personality that is identical to that of a cleric or a college professor. Either way, he could be the repository of a trust. This fact is said to be one of the uninventoried assets of the Patent Office.

In the course of his duties, Director Agrava every now and then pauses to ponder whether he has found the right job considering that in his youth, the practice of law had been the beckoning "lighthouse" in his plans. Law has always fascinated him and now as he sits comfortably in his swivel chair, he wonders a lot and becomes introspective. Looking over gadgets and plans is indeed a far

But he invariably finds consolation in the
.at his early ambition and his present work travel towards the
same destination which is public service.

Director Agrava was born in Manila fifty-five years ago on March 3.—M. S. Jr.

DIRECTOR BALAGTAS... *(Continued from page 285)*

Industry where he was, from 1919 to 1923, assistant commercial agent. From 1918 to 1919 he was instructor in military science at the University of the Philippines. From 1920 to 1922 he was instructor, also in military science, at the National University.

Director Balagtas was born 52 years ago in Iba, the capital of Zambales. He finished his elementary and part of his high school education in his home province, after which, like most ambitious youth, he came to Manila. He entered the Manila High School from where he graduated his secondary education and then proceeded to the University of the Philippines.

When the University of Manila offered the combined law and business administration course, he was attracted by the new curriculum and took it for five years. He is a holder of A.B., LL.B. and B.B.A. degrees. He was admitted to the Philippine Bar in 1927.

Atty. Balagtas is a member of more than a dozen national organizations and several semi-government commissions. He is also a member of civic, social and religious associations, among which are the Caballeros de Rizal and the Knights of Columbus. He is one of the few who can be relied upon to organize parades, mass meetings and rallies.

He plays very good golf.—I.T.R.

"THE LAW GOVERNING LABOR DISPUTES IN THE PHILIPPINES"

Former Justice Laurel, in his foreword to the book on "The Law Governing Labor Disputes In The Philippines" of Senator Vicente J. Francisco, said the following, among other things:

"I have read with consuming interest this book of Senator Vicente J. Francisco on the different aspects of the labor question and, because it seeks to throw light on the varied forces which are working to shape here, as in other parts of the world, a new way of life that is 'collective in its economic basis, democratic in its political control of all who serve society by their work, and individualistic in the unfettered achievement of the creative workers,' I am convinced that, through it, we have fallen heir to a masterly contribution to our growing legal literature. The reader, I am sure, will find interpersed within its pages a rich reservoir of indispensable source material, compiled with exhaustive thoroughness and analyzed with such discriminating taste and comprehension that belongs only to men of the caliber and stature of the distinguished author who is not only a jurist but also a man of letters, an experienced practitioner, legislator, and scholar. I, therefore, take this opportunity to recommend it to the members of the bench and the bar and to the general public, and to congratulate Senator Francisco for this singular valuable service to the community."

LAWYERS' DIRECTORY

(In view of the present difficulty of locating the offices of practicing attorneys, the Journal publishes this directory to acquaint not only their clients but also the public of their addresses. Lawyers may avail themselves of this service upon payment of Two Pesos for each issue of this publication.)

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