The LAWYERS JOURNAL

MANILA, PHILIPPINES

VOLUME XXV | SEPTEMBER 30, 1960 | NUMBER 9

In this issue

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THE LAWYERS JOURNAL is published monthly by Hon. Vicente J. Francisco, former senator and delegate to the Constitutional Convention, practising attorney and president of the Francisco College (formerly Francisco Law School.)

SUBSCRIPTION AND ADVERTISING RATES: Subscription. In the Philippines—₱20.00 for one year; ₱10.00 for 6 months; ₱2.00 per copy. In the United States and foreign countries—$20.00 for one year; $10.00 for 6 months; $2.00 per copy. Advertising: Full page—₱105.00; Half page—₱65.00; One-fourth page—₱45.00; One-eight page—35.00; One-sixteenth page—₱25.00; Back Issues: In the Philippines—₱25.00 — twelve issues; ₱3.00—per issue. In the United States and foreign countries—$25.00—twelve issues; $3.00—per issue. Entered as second class mail matter at the Post Office.

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Editorial:

A TRIBUTE TO JUSTICES MONTEMAYOR AND ENDENCIA

AFTER fruitful years of dedicated service to their country and people, Marceliano Montemayor and Pastor Endencia retired recently as justices of the Supreme Court. Having left brilliant records in the government service, a word or two of commendation is in order. Public servants of their stature, integrity and achievements are entitled to well-deserved praise.

The nation owes Endencia a lot for repeated acts of probity and strength of conviction which he set before our people. During his entire career in the prosecution department of our government—as provincial fiscal in different provinces—as well as in the judiciary, there were times when his independence as a public official was put to the severest test, not just by the man in the street but by individuals who were in a position to ruin his life work and make a perfect mockery of the public service.

As a young provincial fiscal in the Bicol region, for instance, Endencia was actually threatened with political harassment, as only enraged and vindictive politicos are capable of doing. Endencia stubbornly refused to dismiss criminal charges against the proteges of a political mogul of a certain province, charges which had been filed by opposing politicians. At the same time, he also stood his ground, refused to be dictated by the same set of political leaders who had told him to file criminal action against their opponents.

Consequently, Endencia became the target of political persecution. He was strongly denounced by the disgruntled and frustrated politicos to the late President Quezon. But Endencia was not the type of man to be cowed by intimidations. Exasperated, although still determined to fight, the youthful government prosecutor sent to President Quezon—another man of unshakeable conviction—his letter of resignation.

Quezon flatly told Endencia "No!" Instead, he praised the fighting fiscal for bucking the top Bicol politicians and for maintaining the independence and integrity of the prosecution office. As a reward for a magnificent job, Endencia was later promoted to Pangasinan, which was then one of the first class provinces, in so far as assignment of fiscals was concerned.

While serving as secretary of education in 1954, Endencia did not permit himself to be bamboozled by members of Congress. He let it be known to every one of them that he would be courteous to them, that he would consider their recommendations of their proteges for jobs but only on one condition: that they be fully qualified, as required by the Civil Service Bureau.

Endencia's decision in a case of influence peddling is deserving of mention. An influence peddler, one close to the powers that be, who had already received a few thousand pesos for helping a local businessman obtain a dollar allocation license from the Central Bank, sued for the collection of several thousand pesos more. Endencia not only decided the case against the human leech—whose kind is definitely one of the curses of the present administration—but he strongly scored, in the same decision, the evil practice of peddling influence.

JUSTICE MARCELIANO MONTEMAYOR, like his colleague from Mauban, Quezon Province, enhanced the prestige of the judiciary and earned for himself the profound respect of legal practitioners in the places where he once served as judge of the court of first instance.

Montemayor was far from being the colorful and spectacular public servant. And the reason for this is that it's not in his reserved nature to make people sit up and take notice of him. But he was, without the least doubt, the kind of official who could be depended upon, the level-headed, cool, erudite thinker whose decisions were reached only after protracted deliberations and painstaking studies.

As a jurist, Montemayor always demanded of lawyers intellectual honesty and sincerity in the handling of their cases. He did not countenance the too wellknown dilatory tactics among not a few members of the legal profession. He always counselled that lawyers go into the substance of every case—justice—instead of resorting to all sorts of tricks and stratagems and technicalities.

The members of the local bench and bar have not yet forgotten Justice Montemayor's famous and scholarly opinion in the case involving more than a dozen cadastral judges and judges-at-large who were legislated out by a vindictive and politically-inspired and motivated Congress not so long ago. His opinion against the highly objectionable and reprehensible piece of legislation—which he and several other justices declared unconstitutional—is reputed to be a brilliant legal treatise. We quote from his opinion the following passages:

"There can be nothing more destructive of the morale of judges and their sense of security and independence than the possibility or threat of their removal, not thru their own fault and after legal processes, but by the indirect method of abolition of their posts by means of judicial reorganization. Such indirect removal brings to a rude and sudden end their life career, that which for many years had patiently and thru sacrifices been striving for and finally achieved. Under such circumstances, and in that precarious situation, some judges, thoroughly disillusioned, may resign and step out gracefully before being legislated out and notified by the Department of Justice that they have ceased in office, and so should vacate it, and consider the whole thing as a mess and a sorry business and rue the day that they aspired to and worked for a judicial career. Others, determined to stay in the judiciary and unwilling to lose their posts without doing anything about it, may seek help, and approach those in a position to prevent or frustrate the threatened or impending abolition of their posts, or failing in this, see to it that they are retained in the service or are absorbed and re-appointed in the new judicial set up. From then on, could we still say that there is security of judicial tenure, and that we have an independent judiciary?

"There was a time in England when the judge held his judicial office at the pleasure of the King who appointed him. The result was that the judiciary was subservient to the Crown that made and unmade judges. Only with the establishment of the tenure of good behaviour was the independence of the judiciary achieved.

"We can have no independent judiciary if judicial tenure may be shortened or destroyed, by legislative reorganization, however well intentioned and well meant. There is real and grave danger of the judiciary eventually being subservient to a Legislature that thru abolition of judicial posts by means of a judicial reorganization can

(*Continued next page*)

THE STRUGGLE ON REFORMS IN OUR JUDICIAL SYSTEM*

By Justice EDMUNDO S. PICCIO

I was anxious to come here a couple of years ago when the Iloilo Lions, roaring in convention, invited me to be their guest speaker. But the conflict about the date could not be reconciled and I really missed the pleasantries of that much appreciated invitation.

So much so that when your genial Executive Judge Wenceslao Fernan, through Fiscal Consolacion, extended to me your invitation, I said, "This time I will not miss it, rain or shine" And so here I am with my heart on hand, to be with you in fraternal embrace and to congratulate you most profusely for the timeliness and fruitfulness of this convention.

Now-a-days is a far-cry from those, to me, early formative years at the Iloilo Bar during the early 20's. Much of the scene—familiar scene has changed, but the haunting, hallowed memories remained! In the provincial capitol, the court-rooms, where many an interesting legal tilt had been fought, are still there and I could just reminesce on the abilities displayed by the stalwarts of the local bar in those days; on some of the interesting traits of our judges who, ever since, have passed to the great beyond: the thundering eloquent orders of Judge Fernando Salas imposing fines here and there for heavy footsteps in his court-room; Judge Francisco Santamaria, with his inimitable wit and sarcasm and sophistry; Judges Opisso, Alzona and Rovira—looking owlish but respectable!

Apropos to this last—Judge Rovira: I recalled how soon after his transfer to Cebu he made interesting history in connection with the trial of a criminal case. The pre-war Cebu Court of First Instance was then housed along the corner of two important streets in the city. Betwixt the meeting of the two thoroughfares, there was a sign, "Blow your horn upon turning". One morning, the Judge was much annoyed upon hearing a series of horn-blowing; ordered for the apprehension of the driver—who was promptly fined ten pesos, whereupon, said driver, who happened to be a Chinaman, vigorously protested, adding that a week previous he was hailed by the police and later fined for not blowing his horn, and remarked, "What kind of a law is this that fines both for blowing and for not blowing one's horn!" The judge forthwith retaliated, "Go ahead, pay the fine; our laws here are much better than those you have in Mongolia".

It is this self-denying, self-asserting at times inconsistent positions of the law that require an unending process of interpretation, and maybe, construction, in our endeavor for reforms—which must have led Justice Holmes to pronounce, "Law is always approaching, and never reaching, consistency. It is forever adopting new principles from life at one end, and it always retains old ones from history at the other which have not yet been absorbed or sloughed off. It wil become entirely consistent only when it ceases to grow".

Two recognized processes for reforms are by means of legislative enactments and court-made rules. I have it on good authority that in about a year our Supreme Court will release its new Rules of Court. This, I understand, will include portions of the amendments approved by the May, 1958 convention of judges, fiscals and practicing attorneys chairmaned by the then Honorable Justice Secretary Jesus G. Barrera and submitted to the Supreme Court. A cursory examination of the draft reveals that the new rules will be characterized by symmetry, simplicity and practicability and with emphasis upon speed in the administration of Justice. In the aforementioned convention, prominent private law practitioners (Diokno (Jose W.) Alafriz, Jose Feria and Agrava some of them) have taken active part and displayed like the judges and fiscals, in eloquent vain, keen knowledge of the subjects

(*Continued next page*)

**Address delivered before the Municipal Judges and Justices of the Peace Convention in Iloilo City, August 6, 1960.*

A TRIBUTE . . . (Continued from page 257)

unmake judges. And how could a Judiciary, which under a constitutional form of government, is supposed to act as a check against the Legislature for any violation of the Constitution, do so when such Judiciary is subservient to the Legislature it is supposed to check?

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A great jurist once said that a judge shall know everything about the case, but nothing about the parties. That, perhaps was the reason or one of the reasons why Justice is symbolized by a lady holding the scales in one hand and the sword on the other, with a bandage over her eyes—meaning that to her the merits and only the merits of the case as weighed in the scales are everything, and the parties thereto are nothing, to be utterly disregarded and ignored. But if as in the present case judges are made to realize that they may be legislated out of office under the guise of a well-intentioned reorganization, could we blame the lady with the scales and the sword, if as a measure of precaution and so as not to jeopardize her tenure of office she would now and then peep thru the bandage over her eyes and see if, in case of an adverse decision, any of the parties before her are in a position to work for a reorganization and eventual termination of her tenure of office, or, in case of a favorable decision, to help frustrate the threatened reorganization or if carried out, to work for her retention in or reappoint to the judiciary in the new judicial set up.

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"If that is the law, then the members of the Constitutional Convention have gravely blundered into building what they intended to be a permanent and lasting independent judiciary on the sands of the desert or of the foreshore, easy prey and subject to wind and wave. But to me that is not the law, or the way the constitutional provision should be interpreted. That could not be the result of the prolonged efforts and labors of those who wrote and signed that instrument. Properly interpreted I believe that thru section 9 Article VIII, they really built an independent judiciary on solid rock that can withstand wind and tide, with judges who can afford to be independent minded and fearless because not even the most hostile Legislature or the strongest administration may touch, much less destroy their tenure of office."

The majority of the justices ruled that the law was a direct violation of the Constitution but unfortunately there were not enough of them to constitute two-thirds of the total number of justices of our highest tribunal.

Justices Marceliano Montemayor and Pastor Endencia are now private citizens, having completed the great work which took the best years of their lives. But these two men can look back with immense pride to the tasks they have accomplished with honor and distinction.

passed upon and a solicitous desire to help improve our judicial system. It is a healthy sign that our Bar takes an absorbing, deepening interest in this crusade for all kinds of improvements in the administration of justice in our jurisdiction, because the Bar and the public, perforce, shall have the administration of justice that they deserve.

It may be of general public interest to consider the salient aspects of that convention. The draft report of the measures discussed, adopted and later submitted to the Supreme Court was the result of a painstaking but interesting discussion both in the general convention and later, in the deliberations of the sub-committees. The court rules on substantive laws, procedure and special civil actions were divided into groups and assigned to various sub-committees.

Among the interesting topics discussed was that on "appeal". There were those who held the view that an appeal, being merely a statutory and not a constitutional right, may be curtailed as in England where even a judgment of conviction for life in a criminal case, may not be carried on appeal to the House of Lords (the highest judicial court when sitting as such) unless the Attorney-General certifies that such appeal is meritorious. The suggestion, however, was successfully blocked from further discussion. Nevertheless, if after an exhaustive study, appeals in our jurisdiction could be curtailed to some extent, some improvements may be attained—that is, in the ultimate objective—the speedy and unhampered dispensation of justice. This, of course, without curtailing the need for an exhaustive study of the issues in a particular case, no matter how trivial. For an important issue might be involved in a small case. One obvious obstacle in adopting the rule, however, seems to lie in determining when is a case important and when not.

Then there is the consideration we would be willing or unwilling to cede to the so-called "technicalities"—strict adherence to which at times borders on fetishism. Herein lies the crux of the problem—the unending conflict between substance and form.

This problem would nonetheless be so difficult of solution if the Court were allowed a broader field to construe the law. But we are always reminded of the somewhat fossilized principle that Courts of Justice are there only to interpret, not to construe the law. And some Judges become too fearful about construing the law that they allow themselves to be led into the painful task of strict, at times, blind interpretation, and refuse to blow life into what might otherwise be an anachronism in the law. If the majority opinion in the Genato case of long ago did not reasonably construe the law (on theft), notwithstanding the brilliant dissent of Justice Moreland, what might have been the fate ever since of the invisible, intangible "electric current" as a property, may nowadays be the subject of wild conjectures.

More elasticity and flexibility in the interpretation and application of our procedural laws is what we need if we were to accelerate the speed with which such cases are disposed of. In pleadings, for instance, amendments should be allowed at any stage of the proceedings, and in any action pending in Court, and that amendments be allowed, to some extent, even to change the form of action. I would stretch the rule a little further by "allowing an amendment even after judgment or verdict for plaintiff, without a new trial, when the verdict would not be affected by the amendment had it been made before trial", and that if a party is entitled to relief on a writ of error-certiorari, mandamus, prohibition, or injunction—he should not be denied that relief simply because he mistook one special remedy for the other. In such way, we shall not be curtailing substance's bosing over form.

A simple, workable and efficient procedure such as could be well understood by the people, minus "that labyrinth of technicalities" which Chief Justice Vanderbilt referred to as "intricate nonsense", is what we need nowadays when our people are wont to clamor for a prompt administration of justice. "Half the labor of the Bar", someone has remarked, "was bestowed upon questions of pleadings and the Lawyer who mistook his form of action sometimes lost his case from that cause alone. The merits of the case were often wholly lost sight of and never brought to trial."

I would like to repeat my congratulations for your having decided to hold this convention because under the prevailing social climate in our jurisdiction, there would seem to be need, if possible, of at least an annual conference of the judges of our scattered lower courts to which may be invited the Chief Justice, the Presiding Justice, and the Associate Justices of the Supreme Court and the Court of Appeals as guest-speakers, for an exchange of impressions. The expenses to be incurred for such convention, however, constitute a problem.

The annual appearance of the President to deliver his annual message before the joint session of Congress is sanctioned by the constitution as not altogether inimical to the so-called separation of powers. I beg to suggest that this practice be extended to the Chief Justice of our Supreme Court, at least on such occasions where the constitutionality of an important pending law might be at issue. In such eventuality, the constitutionality of a pending bill might be determined beforehand—which will prevent, possibly, a future protracted litigation on that issue, once it has been approved by Congress. In other words, some sort of a prediction should be had in order to avoid such eventuality.

Let me likewise suggest the creation of a judicial council to be composed of representatives from the bench, the bar and the public (which may include civic organizations and the press) as well as the Executive and the Legislature Departments—if this is possible.

The old practice of assigning judges-at-large in the court of first instance from one court to another—which before had earned the sobrequet of "rigodon de Jueces"—was not altogether without merits. For barring motives of political interest and with proper safeguards, such arrangement would work for a more speedy administration of justice in those judicial districts where dockets may be clogged. To some extent we have such regulation at present, but perhaps, because of the difficulties attendant to the assignment, the practice is not resorted to.

Because under our prevailing set-up, while some judges in smaller districts where cases are not abundant can take it easy and wallow in pastimes, others in busier, bigger judicial districts sweat it out, and still with their dockets clogged.

Of late, the local Federation of Bar Association has expressed or reflected the collective sentiment of private practitioners on the slow process in the administration of justice in our jurisdiction and attacked the Department of Justice for its alleged inability to resist political interference in the appointment of fiscals and judges upon which they lay most of the blame for the alleged incompetence of those called upon to administer justice. A newspaper editorial likewise reflected the suggestion of some who would have the Supreme Court exercise the power to nominate or appoint judges instead of the Chief Executive.

Our own experience during the last half century may well serve as the basis for the pros and cons on this assertion. It is deemed necessary, withal to look back to the experience and the adopted systems—both Anglo-Saxon and American—in their peoples', like our own, unending quest for a good administration of justice.

During the 18th century, till the early days of the 19th, it would have raised eyebrows to have considered appointments and promotion to the bench of men whose political views were in conflict with those of the administration. At least this was the ex-

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perience in England, Scotland and Ireland. "The all pervading impact of politics on appointments in those days", said former Chief of Justice of England, Lord Goddard, "may be illustrated by a passage in one of Professor Dicey's books, an author well-known on both sides of the Atlantic when he said that the greatest service that monument of incapacity and jobbery, the Duke of New Castle, so long Prime Minister to George II ever did, was to persuade the King not to appoint Sir William Blackstone Regius Professor of Civil Law at Oxford, because he was not sure of his politics."

The great seer that was President Lincoln, whose insight into the inner character and qualities of man was incomparable, entirely forgot himself and politics when it came to the selection of men for important public offices—one of the most difficult problems in political philosophy. Upon Chief Justice Roger Tanney's death, by general consensus, the most eminent name to fill the vacant post was that of Salmon P. Chase, former Secretary of the Treasury in Lincoln's administration. But Chase was critical, even contemptuous of Lincoln, yet contrary to all expectations, Lincoln placed the interest of the nation above everything else and appointed him.

While judicial assets and not political capacity should be the guiding criterion in the selection and appointment of judges, still there is no sense in preventing one from occupying a judicial position simply because he has had somehow, in some way, a prominent participation in politics. Some of the great names in the American judiciary—Taft, Hughes, Warren, not to mention Chief Justice Marshall himself who was among the top leaders of the Federalists, were prominent in politics before their judicial appointments. In our case, we have Gregorio Araneta, Recto, Laurel, Imperial who have been in our high court. Also our incumbent Supreme Court Chief Justice Ricardo Paras who has had a stint as Representative from Marinduque, and Supreme Court Justice Alejo Labador, Representative from Zambales, both of whom have eminent judicial career. And in all these cases it was the Chief Executive of the nation who appointed them.

There is not, in the least, an intention to blindly imitate what is there in other judicial systems, yet, when it comes to administering justice, it is the English, and for that matter, the American judicial system that attracts us first. Because it is of common knowledge that it is in England where the administration of justice has, with lingering pride, attained the highest level of efficiency and achievements. And yet, there they are not much concerned about the so-called "separation of powers" such as we are very particular about in our own jurisdiction, as well as in the United States. While strictly adhering to their age-long practice of selecting their judicial appointees from among the barristers as much as possible, some of these appointees are at the same time members of the Parliament. The Attorney-General and the Solicitor General are almost always members of the House of Commons where they "take part in piloting intricate bills and thus make decisions on matters connected with the laws of the nation". As long as these prospective appointees are competent lawyers and reveal a judicial temperament, it is considered quite a wrong practice for them to be excluded from judicial appointments simply because they have been in the Parliament and support the government on behalf of their respective political parties.

On matters of judicial appointments, the Supreme Court as the highest pansophic dispenser of justice, evidently, would be an excellent source, yet in a democratic set-up like ours, especially in important offices the ideal concept of loyalty is involved. And this loyalty—not blind loyalty in common parlance—may be scattered within certain lower brackets, yet, the same should, however, be pyramided up toward a single entity—the President—because the Presidency is the symbolic embodiment of the nation and that it is to the nation that in the last analysis we altogether owe our accumulated loyalties.

Without elaborating on the source or sources from where to draw candidates for appointments to the judiciary, granting that their academic preparation is sufficient, much, however, would depend upon the character and the spirit of self-discipline and self-sacrifice and patriotism of the appointee. Time is of the essence. We must learn to wait. For we are young and independent nation with over 300 years of the Spanish and later the American domination as a background. Some of the vestiges of colonial thinking still linger in our veins and we are not to be blamed for that. It would take generations, at least a hundred years of independent thinking to instill in the blood of any race that reverence for the law that all times and under any circumstances, is expected of every good citizen.

Some lessons may be derived from what a respectable Japanese citizen said in a friendly chat: "The average Filipino public official is intelligent. But in matters of official performance—if someone goes, for instance to the Chief of Police of a city or a municipality, as a general practice, he summons his sergeant who in turn orders a policeman to study and decide them!" While travelling in Tokyo, a few years ago, I tendered a U.S. $20.00 traveling check to a store attendant for some purchases. He politely demurred, adding "please have this converted into yens in the nearest bank so our government could have it discounted".

As I have humbly stated previously, much would depend upon the character, self-discipline and patriotism of our people—and eventuallly everything, including our administration of justice, shall proceed accordingly. For after all, a judicial system or any governmental system cannot rise above what we would want it to be.

NEW QUALIFICATIONS FOR FISCALS MADE

Additional qualification for provincial fiscals are provided by Republic Act 2527 (House No. 3920). The new law amends section 1673 of the revised administrative code.

To be eligible for appointment as provincial fisacl, a person shall:

1) Be a citizen of the Philippines who has been duly admitted to practice in the courts of the country, and has been in actual practice for at least six years prior to his appointment, or has held during a like period, within the Philippines, the office of clerk of court, law clerk in a bureau of the national government, or an office requiring the services of a lawyer; and

2) Be able to speak, write the Spanish language or the English language and, being conversant with one, he shall have at least a fair knowledge of the other;

No person shall hold the office of city fiscal, or assistant city fiscal of Manila, provincial fiscal, or assistant provincial fiscal after he attains the age of 65 years; and after the thirty-first day of December, 1932, any city fiscal or assistant city fiscal of Manila, provincial fiscal or assistant provincial fiscal over 65 years of age shall vacate his office.

The new law further amends section 1674 of the revised administrative code, as amended, insofar as it concerns the number of assistant provincial fiscals in the province of Ilocos Sur.

This particular amendment increases the assistant provincial fiscals of the province to six.

THE CASE OF THE SUSPENSION OF CONGRESSMAN SERGIO OSMEÑA, JR.

Senator LORENZO TAÑADA*

Many people have asked me—in the past two or three weeks —what my views are on the suspension of Congressman Sergio Osmeña, Jr. The questions raised by the Osmeña case are actually not very difficult to answer or to resolve. What is more difficult, is to convince the people you talk to that those answers are impartial and even impersonal, and quite uninfluenced by one's own political inclinations or sympathies.

I would like to discuss the Osmeña case with you, today, but, as much as possible, I would like to discuss it as a student of constitutional law, that is impartially and academically.

It is contended by many—among whom are distinguished members of the Senate and the Bar that the disciplinary action taken by the House against Osmeña was illegal and unconstitutional. Their defense is principally this—that Mr. Osmeña's controversial speech was delivered on the floor of the House and what is delivered on the floor of Congress is invested with the sacred mantle of Parliamentary privilege.

It is claimed that the privilege of parliamentary immunity exists with no limits whatever, that it is absolute, that therefore a Congressman or a Senator can say anything at all that may please him at the moment—provided, of course, he takes care to say it within the four walls of Congress—and he shall then be free of any responsibility whatever for what he may have said —whether this be true or untrue, sober or absurd, fair or foul, seemly or obscene. To hold any view to the contrary is, in the eyes of Mr. Osmeña's defenders, "legally unsound."

Many authorities have been cited to prove that this is the correct view—that Mr. Osmeña is immune from any kind of accountability for what he has said. On examination, all these citations tend to prove, indeed, that Mr. Osmeña is safe from all liability for damages or otherwise outside Congress. But is this the point in issue?

Everybody admits that no one, not even the President himself, can prosecute Mr. Osmeña for the remarks he has made against the President. *What is in question is whether Congress*

(*Continued next page*)

* *Speech delivered before the Baguio Rotary Club on August 20, 1960.*

Senator FRANCISCO RODRIGO*

My colleague and very good friend, Senator Lorenzo M. Tañada, speaking before the Rotary Club of Baguio City, defended and justified the action of the House of Representatives in suspending your Congressman, Honorable Sergio Osmeña, for a period of 15 months. I am glad that Senator Tañada finally came out with a stand on this vital and transcendental constitutional question, though somewhat belatedly. Senator Tañada is considered an authority on constitutional law, and his opinion will certainly help crystallize some definite principles on this issue. I wish that other recognized authorities on the subject would likewise express their views so that out of the ferment of divergent opinions we may distill some clear precipitate of correct legal doctrines.

The Issue Taken Up By Senator Tañada.

Now, I shall discuss the issue taken up by Senator Tañada.

As I said in the beginning, the only issue discussed by him is as follows: "What is in question is whether Congress itself can discipline a member for speech unbecoming a Congressman and a Representative of the people of the Philippines."'

Let me clarify our stand on this point.

We do not contest the power of either House of Congress to "punish its members". No lawyer or even law student would contest this, because there is a specific provision in our Constitution regarding this point, namely Article VI, Section 10 (3) which reads as follows:

> "(3) Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds of all its Members, expel a Member."

It was therefore a waste of time and effort for Senator Tañada to belabor this point, because it is obvious and nobody denies it.

The pertinent question is: What is the *specific ground* stated by the constitution for which a member may be punished?

Senator Tañada claims that he may be punished "for speech *unbecoming* a Congressman and a Representative of the people

(*Continued next page*)

* *Portion of the speech delivered in answer to Senator Lorenzo Tañada before the Rotary Club of Cebu City on August 25, 1960, squarely dwelling on the issue raised by Senator Tañada.*

Congressman FELICISIMO OCAMPO*

There are two complementary provisions in the Constitution that must be considered. Section 10 (3) of Article VI provides: "Each House may determine the rules of its proceedings, *punish its Members for disorderly behavior*, and, with the concurrence of two-thirds of all its Members, expel a Member." Then Section 15 of the same article provides: "The Senators and Members of the House of Representatives shall in all cassa except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of the Congress, and in going to and returning from the same, *and for any speech or debate therein, they shall not be questioned in any other place.*" The pertinent parts of these two sections are the underlined portions, that is, the power of each House to punish its Members for disorderly behavior, and the guaranty that for any speech or debate therein they shall not be questioned in any other place.

I had opposed the suspension of Mr. Osmeña for fifteen months on two grounds, namely: That this controversial speech was within the range of the legislative function and could not by any manner serve as a basis for punishment as for disorderly behavior; and that the House has no constitional power to suspend a Member for fifteen months.

I shall first address myself to the first ground of my objection.

The question of whether or not either House of Congress has the constitutional power to suspend a member in the exercise of its power to punish for disorderly behavior, is not new. It was presented and decided in Alejandrino vs. Quezon, 46, Phil. 83, in 1924. On February 5, 1924, the Philippine Senate adopted a resolution suspending Senator Jose Alejandrino for one year beginning January 1st of that year, for having assaulted Senator Vicente de Vera. The resolution reads:

> "Resolved: That the Honorable Jose Alejandrino, Senator for the Twelfth District, be as he is hereby, declared guilty of disorderly conduct and flagrant violation of the privileges of the Senate for having treacherously assaulted the Honor-

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* Due to space limitation, some parts of this speech which do not meet the issue raised in the speech of Sen. Tañada have been omitted.

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itself can discipline a member for speech unbecoming a Congressman and a Representative of the people of the Philippines.

Is a Congressman really absolutely immune for all that he may say and do in Congress even from disciplinary action by Congress itself? There has been no single authority cited to demonstrate that he is. The citations prove indeed, that, to quote one, "members of Congress are absolutely immune from liability for damage done by their acts or speech, even though knowingly false or wrong." But this is not the immunity we speak of now. *We are discussing the immunity a Congressman is claimed to have even from Congressional disciplinary action.*

The authorities upholding the disciplinary power of Congress are on the other hand weighty and numerous.

Let us begin with the Constitution itself. What does it provide regarding the parliamentary privilege of freedom of speech?

The pertinent Constitutional provision on this is found in the last clause of Sec. 15, Article VI. which reads, "...and for any speech or debate therein, they (Senators and Members of the House of Representatives) shall not be questioned in any other place."

Much importance is attached by some to the word "shall," which they take to mean mandatory and so indicating the absoluteness of the privilege. But this again confuses the question because the privilege *is* absolute *insofar as immunity from liability outside Congress is concerned.* The more important phrase seems to be the very last one, namely, *"in any other place."* This in itself seems to be clear enough indication or proof that Congressmen may rightly be questioned in Congress for a speech or debate they may make therein. To deny this would be to take away all meaning from the word *other* in the phrase "in any other place."

But then perhaps, it may be argued, the meaning of the phrase is that a Congressman may be questioned on the floor by other Congressmen, but not punished or otherwise disciplined by Congress for what he may state. This contention, however, would have the effect of placing two separate and distinct meanings on the word *questioned*, one meaning for "questioning" outside Congress and another for "questioning" within the halls of Congress. If being questioned outside Congress does not simply mean being asked to elucidate or clarify a statement but also being held accountable or liable for one's statements, it must have the same meaning when applied to "questioning" which under the Constitution is impliedly but unmistakably permitted within the halls

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of the Philippines." I regret that I cannot agree with this.

The constitution is explicit that either House may "punish its members for *disorderly behavior.*" The constitution has limited the exercise of said power to that one ground, *disorderly behavior.* Congress may not punish a member of any other ground.

While it may be debatable whether or not either House, by a vote of 2/3 of all its members, may expel a member for any reason besides disorderly behavior, there can be no doubt that any other punishment, aside from expulsion, can only have for its basis "disorderly behavior".

> "However, to the Senate and the House of Representatives, respectively, is granted the power to 'punish its members for disorderly behavior and, with the concurrence of two-thirds, expel an elective member.' (Organic Act, sec. 18.) Either House may thus punish an appointive member for disorderly behavior. Neither House may expel an appointive member for any reason." (Alejandrino v. Quezon, 46 Phil. 96.)

Now, in the case of Congressman Osmeña, where the penalty imposed was not expulsion but suspension it is very evident that the only ground allowed by the constitution for the imposition of said penalty is "disorderly behavior,"

What is "disorderly behavior"? In the case of Commonwealth vs. Barry, it was decided that to punish an officer for "disorderly behavior" *such misbehavior must be such as affects the performance of his duties or the legal or ordinary procedure of the body of which he is a member, and not disorderly behavior which affects his character as a private individual.* (See Alejandrino vs. Quezon, Supra, p. 102; Underscoring supplied).

The question to be answered therefore is: Did the privilege speech of Congressman Osmeña "affect the performance of his duties or the legal or ordinary procedure of the body of which he is a member"? The records show that it did not. Therefore his speech did not constitute disorderly behavior, and it is not within the power of the House to punish him for it.

The following quotation from Corpus Juris Secundum is also very pertinent:

> "No act is punishable unless it is of a nature to *obstruct the performance of the duties of the legislature* (Jurney v. MacCracken. App. D.C. 55 S.Ct. 375, 294 U.S. 125, 79 L. Ed. 802); and hence there is no power where there is no legislative duty to be performed (Jurney v. MacCracken, supra), or where the *act complained of is not a char-*

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> able Vicente de Vera, Senator for the Sixth District on the occasion of certain phrases being uttered by the latter in the course of the debate regarding the credentials of said Mr. Alejandrino;
>
> "Resolved, further: That the Honorable Jose Alejandrino be, as he is hereby, deprived of all his prerogatives, privileges and emoluments as such Senator during one year from the first of January, nineteen hundred and twenty-four;
>
> "And resolved, lastly: That the said Honorable Jose Alejandrino, being a Senator appointed by the Governor-General of these Islands, a copy of this resolution be furnished said Governor-General for his information."

Senator Alejandrino questioned the validity of his suspension in the Supreme Court, and that highest tribunal ruled that the Senate as a body did not have the constitutional power to suspend a member. Said the Court:

> "It is noteworty that the Congress of the United States has not in all its long history suspended a member. And the reason is obvious. Punishment by way of reprimand or fine vindicates the outraged dignity of the House without depriving the constituency of representation; expulsion, when permissible, likewise vindicates the honor of the legislative body while giving to the constituency an opportunity to elect anew;

but suspension deprives the electoral district of representation without that district being afforded any means by which to fill the vacancy. By suspension, the seat remains filled but the occupant is silenced. Suspension for one year is equivalent to qualified expulsion or removal."

While the Court refused to intervene in deference to the principle of separation of powers, it called attention to the desirability of preserving due respect for the Constitution. Thus:

> "While what has just been said may be unnecessary for a correct decision, it is inserted so that the vital question argued with so much ability may not pass entirely unnoticed, and so that there may be at least an indication of the attitude of the court as a restraining force, with respect to the checks and balances of government. The Supreme Court, out of respect for the Upper House of a coordinate branch of government, takes no affirmative action. But the perfection of the entire system suggests the thought that no action should be taken elsewhere which would constitute, or even seem to constitute, disregard for the Constitution."

I have always believed that close adherence to settled principles is indispensable to the reality and vitality of constitutional government. And the Congress should be first to realize that necessity. If we could violate the fundamental law with impunity,

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of Congress. In other words, a Congressman, while he cannot be held to account for his Congressional statements outside Congress, can rightly be held so accountable by Congress itself.

This sense becomes clear when we recall the origin of the parliamentary privilege of free speech. The centuries long struggle between the English Parliament and the Monarchy is a fact no doubt well known to you. You may remember the climax of this struggle when Charles II, angered by attacks made against him in the House by five members of Parliament tried to break into the Commons, accompanied, according to the *Journal of the House*, by "a Great Multitude of Men, armed in a Warlike Manner with Halberds, Swords, and Pistols...to the Great Terror and Disturbance of the Members then Sitting." He demanded the surrender of the five Royal critics. And the Speaker of the House, Lenthall, came forth from the Chamber to face his King and answer his demand with these famous words, "May it please your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here."

This point in history marked the beginning of the era of parliamentary supremacy. But Lenthall's words themselves suggest to us the self-imposed limit on that supremacy—it was not a total blindness nor a total dumbness that he was asserting for Parliament against the demands of his King, but the blindness and the dumbness that the House itself was "pleased to direct."

What was being asserted therefore was not that the five Members who had outraged their King were in their own right supreme, but that the body, Parliament, was supreme; that these Members enjoyed privileges, because Parliament possessed those privileges before them; that these Members were in a sense sovereign and immune, because Parliament by a prior and original right was sovereign and immune.

And so, shortly afterwards, as a result of the bloodless Revolution of 1688, there was enshrined in the English Bill of Rights of 1689 the great privilege: "That the freedom of speech and debates on proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament." (Art.9)

Commenting on this Article of the Bill of Rights, the celebrated British authority on Parliament, Sir Thomas Erskine May, notes that "Recognition of the right of each House itself to adjudicate upon the conduct of its Members in their Parliamentary capacity may be found in this Article... This provision not only protects freedom of speech in Parliament from outside interference *but also indicates the method by which it may be controlled, by*

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voter to obstruct the legislative process (Jurney v. MacCracken, supra; Marshal v. Gordon, supra)" (91 CJS. 37-38; Underscoring supplied.)

Our own Supreme Court, in the case of Arnault v. Nazareno, 85 Phil., 57, said the following:

> "In Marshal v. Gordon, the question presented was whether the House has the power under the Constitution to deal with the conduct of the district attorney in writing a vexatious letter as a contempt of its authority, and to inflict punishment upon the writer for such contempt, as a matter of legislative power. The court held that the House had no such power *because the writing of the letter did not endanger the preservation of the House to carry out its legislative authority.*" (Marshal v. Gordon, 243 U.S. 521; 61 L. ed., 881; Underscoring supplied)

On the basis of this ruling, the question to be answered, in the case of Congressman Osmeña is: Did his speech "obstruct the performance of legislative duty and x x x endanger the preservation of the House to carry out its legislative authority"? Obviously not. Therefore, the House was without constitutional authority to punish him for his speech.

What I just expounded are the express provision of our constitution and pronouncement by our Supreme Court and by recognized authorities on the subject. But Senator Tañada, much to my surprise, expounds the principle that "Congress itself can discipline a member for speech *unbecoming* a Congressman and a Representative of the people of the Philippines". This principle makes me shudder because it is fraught with very dangerous implications.

The definition of the word *"unbecoming"*, according to Websters International Dictionary is: "Not becoming; unsuitable; indecorous; improper."

Does Senator Tañada mean to say that a member of Congress can be punished, nay, suspended, merely because he uttered something "unsuitable, indecorous and improper"? Let us not forgot that what is "indecorous, unsuitable and improper" is not necessarily immoral or essentially wrong. In fact, standards of propriety and decorum can and do vary among persons imbued with the same moral and ethical values. And who will decide whether or not certain utterances of a member of Congress are indecorous and improper?

If we were to follow such a dangerous policy, then every member of Congress, especially those who are in the minority,

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we can never expect from our people the trust and faith which that sacred instrument needs for its stability. These were the thoughts that crowded into my mind when I voted against the suspension of Mr. Osmeña.

I now proceed to my second ground of objection.

There seems to be no disagreement between the distinguished Senator and myself as to the legal proposition that the freedom of speech and debate, invested by the Constitution on members of Congress, is not without limit. What I only do not see in his long discussion is any *line of demarcation between what is subject to punishment by the House* and *what is free.* I would not confine, and authorities and precedents do not confine, the disciplinary power of each House only to physical misbehavior. In other words, "disorderly behavior" does not mean only physical misbehavior.

Without attempting to rise to the heights of erudition, and to dig into dusty tomes, for after all the meaning and extent of parliamentary immunity have long ago become crystallized and settled, I find in Cooley's Constitutional Limitations, pp. 190, 191, 7th ed., a comprehensive statement of the rule and its limitations. Says Judge Cooley:

> "Each house had also the power to punish members for disorderly behavior, and other contempts of its authority, as well as to expel a member for any cause which seems to the body to render it unfit that he continue to occupy one of its seats. This power is generally enumerated in the constitution among those which the two houses may exercise, but it need not be specified in that instrument, *since it would exist whether expressly conferred or not.* It is 'a necessary and incidental power to enable the house to perform its high functions, and it is necessary to the safety of the state. It is a power of protection. A member may be physically, mentally, or morally wholly unfit; he may be affected with a contagious disease, or insane, or noisy, violent, and disorderly, *or in the habit of using profane, obscene, and abusive language.*'
>
> And, 'independently or parliamentary customs and usages, our legislative houses have the power to protect themselves by the punishment and expulsion of a member;' and the courts cannot inquire into the justice of the decision, or even so much as examine the proceedings to see whether or not the proper opportunity for defense was furnished."

We must then accept that the habit of using profane, obscene or abusive language by a member of Congress on the floor of that body would justify the House concerned in punishing him as for disorderly behavior. Mr. Osmeña's controversial speech on the floor of the House was not charged to be abusive? To abuse is "to wrong in speech, reproach coarsely, disparage, revile, malign"

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each House over its own members.'

Now, we must remark on the striking similarity of the declaration, "That the freedom of speech and debates on proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament," and our own Constitutional provision on the same privilege: "...and for every speech or debate therein they shall not be questioned in any other place."

"In any court or place *out of Parliament*," in any other place," "but *as the House is pleased to direct me, whose servant I am here*"—these hold the key to the true meaning of the parliamentary privilege of free speech. The privilege exists for each member because the privilege is necessary to the proper exercise of the vital functions of Parliament or Congress in a democracy. It is necessary because in order that legislation may be expedient and effective the discussion and debate leading to it must be free and fearless, and so, immune from liability for damages or otherwise outside the legislature.

The intent behind the privilege was, and is that free discussion or debate ought to lead towards the making of wise laws. The purpose of parliamentary free speech is therefore quite clear; that it serve the function of Congress, and primarily this function is the making of laws. *When this purpose is obviously not served and yet the privilege is made use of, there is an abuse of the privilege.* Now when there is such an abuse, although the member is yet protected from accountability outside the House, he becomes answerable to the House itself for *conduct unbecoming a member thereof.*

This is, first of all, common sense. Congress must have authority over its own members to ensure that they conduct themselves with dignity and decorum. The members cannot have rights and privileges superior to those of the body of which they are only members. The body rules the members. The members are nothing except in relation to the body. When a member so behaves that he brings shame to the House, the House is in its right to protect itself by punishing the culprit. To assert otherwise is to encourage disorder and anarchy in Congress, and sooner or later the degradation of that body, and ultimately, the very destruction of the privilege which is claimed to be defended. If we were to decide today that a Representative or a Senator may in Congress state any thing at all that he may please—gossip, libel, slander, treason, obscenity—what value do you suppose would still attach to "privilege speeches" twenty years from today? They would be completely discredited and despised and Congress would

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will always be under a constant threat and danger of being punished for statements which, in his own judgment, are proper, but which, in the biased and hostile judgment of the controlling majority are "unbecoming."

I scrutinized the authorities cited in the speech of Senator Tañada as well as other authorities available to me, but I did not see any pronouncement to the effect that Congress can discipline a member merely for a "speech *unbecoming* a Congressman".

I venture to say that if this "Tañada Principle" were to be strictly followed in Congress today, and the uniform penalty imposed were suspension, there would not be enough members left to constitute a quorum.

Abuse of the Privilege.

Senator Tañada unnecessarily belabored another point, namely the abuse of "parliamentary immunity".

This was not at all necessary, because all of us are against abusing this privilege. But abuse of a right is no argument for denying the right itself. Almost anything in this world can be abused. But there are certain rights which are better abused than curtailed.

An example is the immunity of newspapermen against compulsion to reveal the source of their news. No doubt, this right has been abused by some. But the consequent evil if this right is curtailed is greater, much greater, than to make allowance for its occasional abuse.

Consider the predicament of every member of Congress, especially those who are in the minority, if the Osmeña case were to be established as a precedent. Each one of us will have to weigh every sentence, every phrase and every word that we utter in the floor of Congress. We in the minority will especially be most careful in saying anything that might hurt the sensibilities of the President of the land, whose tremendous powers give him a commanding influence upon the members of Congress. For if we should attack him, he can make him weight bear upon our colleagues to punish and suspend us—and, after accomplishing his purpose, give those who meekly bowed to his desire an "appreciation banquet" at the Lapu-Lapu.

And the most tormenting aspect of the situation is that we will be investigated, judged and punished by our own prosecutors. This was what happened to Congressman Osmeña who was investigated by a 15-man committee, eleven (11) of whom were members of the party that expelled him; and condemned by the

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(See note to People vs. King, 48 A.L.R. 747).

To my way of thinking, a speech on the floor of the House can be abusive only if, apart from the resentment of those thereby offended, it goes absolutely beyond the range of the legislative function. For then, the offending member ceases to be a representative of the people, in which capacity they have clothed him with the immunity, the better to represent and protect their interests.

We have largely patterned our Constitution from the Constitution of the United States and the various states thereof. Section 5 of the Federal Constitution provides: "Each House may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two thirds, expel a Member." Section 6 provides: "x x x, and for any speech or debate in either House, they (Senators and Representatives) shall not be questioned in any other place."

The Federal Supreme Court had occasion to trace the source of the foregoing provisions in 1880 in Kilborn vs. Thompson, 103 U.S. 168, saying that "While the framers of the Constitution did not adopt the *lex et consuetudo* of the English Parliament, as a whole, they did incorporate such parts of it, and with it such privileges of Parliament, as they thought proper to be applied to the two Houses of Congress." The Court then referred with approval to the illuminating discussion of the Supreme Court of Massachusetts in the early case of Coffin vs. Coffin, 4 Mass. 1, decided in 1808. In this case the Court said:

"In considering this article, it appears to me that the privilege secured by it is not so much the privilege of the House as an organized body, as of each individual member composing it, who is entitled to this privilege, even against the declared will of the house. *For he does not hold this privilege at the pleasure of this house, but derives it from the will of the people, expressed in the constitution, which is paramount to the will of either of both branches of legislature.* In this respect, the privilege here secured resembles other privileges attached to each member by another part of the constitution, by which he is exempted from arrest on means (or original) process during his going to, returning from, or attending the General Court. *Of these privileges, thus secured to each member, he cannot be deprived by a resolve of the house, or by an act of legislature.*

"These privileges are thus secured, not with the intention of protecting the members against prosecution for their own benefit, but to support the rights of the people, by enabling their representatives to execute the functions of their office without fear of prosecutions, civil or criminal."

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be turned to little more than a fish market. But, you may retort, worse speeches have been uttered in the past, on the very same floor of Congress. I ask you then, in turn: Does not this fact, which is, unfortunately, too true, have some bearing as well on that other fact, also unfortunately, too true, the fact of the diminishing esteem over the years that our people have held for Congress?

This is, secondly, parliamentary practise and tradition.

As early as the sixteenth century, the Speaker's Petition on behalf of the House before the opening of Parliament in England, after "laying claim by humble Petition to His Majesty to all their ancient and undoubted rights and privileges; especially to freedom of speech in debate..." proceeded to qualify this with the words, "that if any should chance of that lower House to offend or not to do or say as should become him or if any should offend any of them being called to that his highness court: *that they themselves might (according to the ancient customs) have the punishment of them.*" (Sir Thomas Smith: De Republica Anglorum; p. 52)

This was confirmed in 1621 when the Commons, in a protestation against claims of the King of England, affirmed that "every Member had freedom from all impeachment, imprisonment or molestation, *other than by censure of the House* itself, for or concerning any bill, speaking, reasoning, or declaring of any matter or matters touching the Parliament or Parliamentary business."

It is, finally, settled jurisprudence of at least three and a half centuries standing. I call your attention again to the last part of the Speaker's Petition in the 16th century: "...that they themselves (the House itself) might (according to the ancient customs) have the punishment of them." On this same point, Sir Thomas Erskine May, whom I have before cited, in his "Treatise of the Law, Privileges, Proceedings, and Usage of Parliament" remarks, "But this freedom from external influence or interference does not involve any unrestrained license of speech within the walls of the House . . . *The cases in which members have been called to account and punished for offensive words spoken before the House are too numerous to mention.* Some have been admonished, others imprisoned, and in the Commons, some have been expelled . . ." (underscoring supplied).

Lord Campion, for eleven years Clerk of the House of Commons, writes, "Freedom of speech has been one of the most cherished privileges of parliament from early times . . . Such a privilege is essential to the independence of parliament and to the

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members of the House, an overwhelming majority of whom could not afford to defy the wishes of the president who happens to wield the powers that can build or destroy their political fortunes.

The very penalty itself imposed upon Congressman Osmeña is the most eloquent proof of the arbitrary abuse of the "power to punish a member." *Suspension for fifteen months.* Why fifteen months? This is most unnatural. One month, six months or one year is natural—but not fifteen months. Is it perhaps because there are fifteen members of the committee, and they allocated the punishment among themselves at one month per member? This is ridiculous. The only plausible reason for this extraordinary period of suspension is to completely deprive Congressman Osmeña, whose suspension is up to October 1961 (a month before elections), of any chance to attend any subsequent session of Congress, whether regular or special, and thereby insure that he is not afforded a chance to deliver another "Message to Garcia". I honestly have not come across a more patent case of muzzling a representative of the people.

To come back to the point, Senator Tañada who waxed eloquent about his concern over individual abuses of "parliamentary immunity" seems to have ignored the more serious abuses by a regimented majority controlled by a vindictive president.

I should not leave this point without giving you the following quotations from the book "Constitution of the Philippines" by Tañada and Fernando:

> "What was deemed even more significant by Justice Frankfurter was that the legislative freedom was so carefully protected by the framers of the constitution at a time when Jefferson impressed fear of legislative excess." (Tenney v. Brandhove, 341 U.S. 367); Tañada and Fernando, Vol. II, 871.
>
> "In order to enable and encourage a representative of the public to discharge his public trust with firmness and success, it is indispensably necessary that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense." (Tenney v. Brandhove, supra) Tañada and Fernando, Vol. II, 872.
>
> "To paraphrase a leading case in point, this particular provision ought not to be construed strictly but liberally, that the full design of it may be answered." Tañada and Fernando, Vol. II 872 (paraphrasing Coffin v. Coffin, 4

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Admittedly as may be gleaned from the foregoing passages, the privilege of speech and debate is primarily intended to protect a lawmaker from civil or criminal prosecution for whatever he may say in the exercise thereof, thereby enabling him to discharge his legislative functions with firmness and success. He may defame; he may incite people and colleagues to sedition or even to revolution and treason; but he cannot be held accountable in the courts unless, as the Federal Supreme Court intimated in Kilborn vs. Thompson, "we could suppose the members of these bodies so far to forget their high functions and the noble instrument under which they act as to imitate the Long Parliament in the execution of the Chief Magistrate of the Nation, or to follow the example of the French Assembly in assuming the function of a court for capital punishment."

But while the primary purpose of the freedom of speech and debate is to shelter a member of Congress against civil or criminal harassment outside of it, it does not follow that either House may take or curtail it in the exercise of their power to punish for disorderly behavior. Here, I submit, a distinction must be made.

When a member of Congress in a speech or debate on the floor disparages, reviles or maligns another person, whether a co-member or not, for no other purpose than to satisfy his rage or feeling of hate, he ceases to discharge the high functions of his office, and while he may not be held to account by the offended party outside Congress, he is amenable to the disciplinary power of the House to which he belongs for his abuse of the privilege, amounting to disorderly behavior.

But when he speaks on a matter that is within the range of legislation or upon which the legislative process may be called upon to operate, his speech may occasion offense to others, may disparage or revile or malign them, and yet his colleagues in the House may not constitutionally punish him. The reason is obvious. The purpose of parliamentary immunity would be defeated if a Senator or Congressman, while free from harassing actions in courts for their legislative utterances, are to labor under constant fear or apprehension that their colleagues in Congress could substitute a more punitive measure in the form of punishment or expulsion. The freedom of speech and debate would be a myth.

No one has ever believed or asserted that the duties of a lawmaker require him to back up every thing he says in speech or debate with evidence that can stand before a court or any impartial body. He may have information of an evil perpetrated by public officials, requiring legislative correction or action, but does not at the moment possess enough proof that can satisfy an unbiased mind. It is his right, nay, his duty, to bring that condition of affairs to the attention of his colleagues so that

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protection of members of the discharge of their duties. But, while it protects members from molestation elsewhere, it leaves them open to censure or other punishment by the House itself whenever they abuse their privilege and transgress the rules of orderly debate." In another work, the same author repeats, "A member remains accountable to the House itself for words spoken in debate. In old days members were punished by imprisonment and even expulsion. Now the milder penalties provided by the Rules of the House (i.e., suspension, admonition, reprimand) usually suffice . . ."

In the Encyclopaedia of Parliament (written by Norman Wilding and Philip Laundy, Cassell & Co., 1955), we read, "The importance of the privilege today lies in the immunity it confers upon the Members of Parliament from the laws of slander. All members are, however, subject to the discipline of the House itself and it is their bounden duty not to abuse the privilege."

In 'the British Approach to Politics," written by Michael Stewart, (George Allen and Unwin Ltd., 1956): "Offensive expressions are forbidden and the natural rules of civilized debate must be observed."

In "A Parliamentary Dictionary" prepared by L. A. Abraham, Principal Clerk of Committees, House of Commons and S. C. Hawtrey, Senior Clerk in the Journal Office, House of Commons: "The right of freedom of speech does not mean that a member can say anything he likes in the House whenever he likes..."; "members are expected to observe moderation of language in debate, and a number of words and expressions have at various times been decided by the Speaker to be "unparliamentary..."; "the use of unparliamentary language leads to an immediate demand by the chair for a withdrawal; and a refusal on the part of the member to comply with such a demand is a *serious* breach of order." (Italics supplied).

In "What Goes on Beneath Big Ben," Charles Bateman, Chief of the Parliamentary Staff of "Daily Telegraph" and Past Chairman of the Press Gallery and of the Lobby Journalists, observes: "It does not follow that personal comment is completely unbridled. The Commons has its own code of good manners and fair play..."

American authorities to the same effect are not lacking. In Cochran v. Couzens (42 F. 2nd 783), which has been cited in Mr. Osmeña's own defense, the Supreme Court of the United States after expounding the basis of the rule of immunity granted members of the United States Congress, concludes "The (Constitutional) provision is, therefore, grounded on public policy and should be liberally construed" but in the next sentence, the Court takes care to point out that, "Presumably legislators will be restrained in the exercise of such privilege by the responsibilities of their office. *Moreover, in the event of their failure in that regard, they will be subject to discipline by their colleagues.*" (Emphasis supplied.)

In Barsky v. U.S. (167 F 2nd 250), also cited in Mr. Osmeña's defense, the Court indicates two possible remedies against abuses of Congressional privileges commited either individually or by committees, remedies which the Court declared were available without violation of the rule of absolute immunity outside Congress, thus: "The remedy for unseemly conduct, if any, by Committees of Congress, is for Congress or for the people; it is political and not judicial." The Court then cited the ruling of Mr. Justice Frankfurter in U.S. v. Lovett (328 U.S. 303) who in turn was citing the famed American jurist, Oliver Wendel Holmes in his decision in Missouri K. & T. Ry. of Texas v. May, (1944 US 267). Mr. Justice Holmes' words have a particular relevance to the present case where the abuse of a privilege has resulted in injury to the good name of a citizen, indeed several citizens of this Republic. Mr. Holmes wrote, "It must be remembered that *legislatures are ultimate guardians of the liberties and welfare of the people* in quite as great a degree as the courts."

This then is the conclusion we must draw: Every Senator and every Representative is confessedly immune, and immune absolutely, from liability outside of Congress for anything he may do or say in Congress. But because, this immunity is not granted capriciously, but for a purpose, the immunity can be abused, as *when it is availed of purely for personal partisan ends which have no honest relation to the legislative process or the ends of good government and, particularly, when this abuse does injury to the character of other persons.* In such cases, the House concerned has all the right to correct the abuse and discipline the erring Member to maintain the dignity of its proceedings and preserve its own good name, and this correction may take place even after the abuse has already been committed and consummated, because the purpose of the disciplnie is not merely preventive but corrective and exemplary to ensure that no similar abuses are repeated in the future. (Jurney v. MacCracken, App. D.C. 55 S. Ct. 375).

But may not this authority of the House to punish members

(*Continued next page*)

CONG. OCAMPO . . .

remedial measures may be taken. It is for the precise purpose of determining the solid basis for wise legislation that *the power of legislative inquiry*, with corresponding power to punish for contempt, *has been recognized to be an indispensable part of the legislative function.* In that inquiry, the Congress or either House thereof, will have full occasion to find out the existence or non-existence of the evil sought to be remedied or prevented. If the facts gathered or brought out do not warrant any legislative action, the matter will be dropped. *But has anyone conceived that the Senator or Congressman who initiated the inquiry renders himself punishable by his colleagues for failure to prove his charges or the truth of his information?*

The Constitution provides for the removal of the President, Vice President, members of the Supreme Court, members of the Commission on Elections, and the Auditor General only by impeachment on certain specified grounds, among which is bribery. On the House of Representatives is lodged the power of initiating the proceeding by adopting the articles of impeachment, while on the Senate is lodged the power of sitting in judgment of the accused. While impeachment proceedings do not involve the making of any law, they are nevertheless a part of the legislative function under the Constitution.

If a member of the House in speech or debate charges an impeachable official of the Republic with bribery on information received from constituents or friends, without proof on hand at the moment, *he certainly exercises a part of the legislative function, and his actuation cannot be considered abusive.* He may be asked or required by the House to submit the proofs he has, and it is his duty to co-operate. But it is a very dangerous doctrine to hold that if he fails to prove his charges he may be punished or expelled as for disorderly behavior. If this were the rule, minority members of both Houses of Congress would have to be certain at every instance that for everything they say on the floor, that may reflect on others, they have admissible proofs to show the truth. The parliamentary right of speech and debate had not been conceived in that light.

Who is to judge whether a language used in speech or debate is profane, obscene or abusive? Of course, the chamber itself where it is delivered. And as Judge Cooley said, "the courts cannot inquire into the justice of the decision, or even so much as examine the proceedings to see whether or not the proper opportunity for defense was furnished." This exclusive power of decision would all the more counsel us to go slow in laying down a precedent that can be easily abused. After all, as Justice Malcolm once said, "The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and an unjust accusation; the wound can be assuaged with the balm of a clear conscience." #

SEN. TAÑADA . . .

be itself abused so as effectively to nullify the freedom of speech and debate of members belonging, let us say, to the minority? This is, of course, possible. But it is possibility we must accept under the scheme of government that we have adopted, under which each branch of government is supreme in its own sphere. It has rightly been written, "...that each House has exclusive jurisdiction over its own internal proceedings . . . and though the courts do not consider that the decisions of the Houses are binding on them, they admit that no appeal lies to them from the decision of either House that a given act constitutes a breach of its privileges...To this extent, therefore, each House is the sole judge of its privileges..." (Parliamentary Dictionary, pp. 146-147).

The House is hence the "sole judge of its privileges" and in judging these, it may indeed abuse its authority. But will it in fact do so? I personally have the strong feeling about Congress that, though it may be composed of sometimes unedifying personalities, when acting together as a body, it becomes invested with a dignity and a good sense which makes the possibility of this abuse remote. We might as well argue—in a similar vein —that Congress can pass a law which, though quite constitutional, is grievously injurious to the country. This would be well within the legislative powers of Congress. But has Congress ever passed such an obviously bad law, or allowed such a law to remain long on its statute books?

Another point we might take into account is that Congress itself is accountable to one last authority, the sovereign people who can very effectively, through the polls, express their displeasure over any such abuses that may be committed by Congress as a body and punish the political party responsible for such abuses.

But now, consider on the other hand the possible, even probable, consequences of allowing Congressmen a wholly untrammeled freedom of speech. What is to stop one Member from taking the floor one day and directing calumnies against a bitter personal or political enemy, who might be the President of the country, or an ordinary citizen? Or what is to prevent him from uttering obscenities or otherwise making a mockery and a ridicule of what ought, after all, to be the august and noble institution of Congress? Can this be covered by the congressional privilege of speech and debate?

Those who would uphold the privilege by claiming for it a total immunity do it a great disservice in fact, because in effect they defend its abuse and nothing hastens the ultimate destruction of a right more effectively than its abuse.

I should like to conclude this speech by reflecting briefly on the nature of a privilege in general. The idea of a *privilege* seems to connote a certain distinction, a recognition of a certain loftiness in a person, a certain aristocracy. Privileges are conferred on men because they are adjudged worthy to carry those privileges with honor and good grace, to keep true to them in word and deed and spirit.

The great parliamentary privileges bestowed upon Senators and Representatives—like the freedom of speech and debate we have here discussed at some length, and freedom from arrest during sessions—reflect some of the most vital principles of our system of politics and government. They are vested in presumably select men and women. They are given or perhaps more exactly, lent,—to grace the person while he holds a very high office, to invest him with the dignity and authority required by the nature of his responsibilties.

On matters of such high moment, it seems rash to quibble over words or fret over legalistic interpretations that take no account of their larger implications. We cannot agree that the great and historic privilege of free meant to be a cloak to conceal or protect ill will and foul play, to defend personal jealousies or to abet vulgarity in speech or conduct.

All is not fair, after all, in love or war or politics. Decent men expect and demand gallantry and fair play even in the "sordid" field of politics. Criticism of one's political opponents must be just and reasonable,—accusations must be supported by proofs. Politics cannot simply mean a battle of wild words and wilder charges. There are rules to be followed, decencies to be observed. There is room in this "sordid" game for honor and chivalry.

If there were not, then the successful politician would have to be the man who whips up the baser passions of people by hurling spectacular charges he can never prove, crying scandal and doom but offering nothing substantial as an alternative policy or program of government. *This man is no crusader, for a crusader fights with clean hands and a clean mind, nor a martyr for a martyr suffers, and is rarely a popular hero at the moment of his martyrdom. Such a man is no statesman. He is just a demagogue.*

If this is the only way to fight graft and corruption in the government today, then I believe you and I can not enlist in this fight. The problems of our country are numerous enough and mortifying enough for any sensible citizen to want to add to them the other problems that demagoguery must sooner or later bring in its train—like mass bewilderment and loss of confidence in the democratic processes, a general disgust and disenchantment with government as a whole. When a man consciously and deliberately pretends to fight graft and corruption in this fashion, aware of its possible consequences, then is he really fighting graft and corruption or merely fighting his own personal struggle for political power?

But there is another way to fight governmental graft and corruption. It is the long way, the tedious, undramatic way. But it is the just way; the way of democracy, the way of due process—charges precisely if *unspectacularly* made, proofs presented, a fair hearing and a judgment on the merits. We can understand the impatience of our people for clean government. We have not had it before we became independent. We do not have it now. But having chosen, at the birth of our nation, the way of freedom and democracy, we are under grave obligation to submit at all times but most specially *in trying times*, to submit, I repeat, to the long and tedious and undramatic processes of freedom and democracy. It is the very length and tediousness and sobriety of these processes that assure us their justice—justice, which is at the very basis of freedom.—#

SEN. RODRIGO . . . (*Continued from page* 265)

Mass. 1)

The Remedy

Senator Tañada claimed in his speech that, unless Congress itself disciplines its members who abuse their parliamentary privilege, the members of Congress might run riot and ultimately destroy the prestige of Congress. This is not quite accurate to my mind. First of all, the erring member can be put to shame right on the floor of Congress by his colleagues who can call him down for his improper and unsavory remarks. Secondly, the members of our vigilant press can and will expose and castigate him before the people. Thirdly, our people themselves will resent his remarks and penalize him by denying him their votes, if they believe that what he said is injustified—like they did to Congressman Bengzon after he hurled a scurrilous charge against the late President Magsaysay.

In brief, the safeguard against such abuses, within the framework of our constitutional democracy, is what Justice Frankfurter said in the case of Tenney vs. Brandhove, 341 U.S. 367 (quoted in Constitution of the Philippines by Tañada and Fernando, Vol. II, p. 876): "Self-discipline and the voters must be the ultimate reliance for discouraging or correcting such abuses."

UNITED STATES SUPREME COURT
Advance Opinion

OHIO EX REL. EATON, Appellant,
v
PRICE, Chief of Police
—US—, 4 L ed 2d 1708, 80 S Ct—
(No. 30)
Argued April 19, 1960. Decided June 27, 1960.

SUMMARY

The appellant was committed to jail, to wait trial on charges of having violated an Ohio municipal ordinance authorizing housing inspectors, upon showing appropriate identification, to enter dwellings and requiring the owners or occupants to give such inspectors free access to the dwellings. The Ohio Common Pleas Court, finding the ordinance unconstitutional, discharged appellant from custody; but the Court of Appeals of Ohio reversed (105 Ohio App 376, 6 O Ops 2d 153, 152 NE2d 776), and its judgment was upheld by the Supreme Court of Ohio. (168 Ohio St 123, 5 O Ops 2nd 377, 151 NE2d 523.)

On appeal, the Supreme Court of the United States affirmed by an equally divided court.

BRENNAN, J., with the concurrence of WARREN, Ch. J., and BLACK and DOUGLAS, JJ., expressed the view that the ordinance was unconstitutional.

HEADNOTES

Classified to U.S. Supreme Court Digest, Annotated

Search and Seizure sec. 25—Warrant—house inspection.

1. Judgment of the Supreme Court of Ohio holding that a constitutional provision prohibiting unreasonable searches and seizures was not violated by a municipal ordinance authorizing a housing inspector to make inspections of dwellings and requiring the owner or occupant, on pain of penalties, to give the inspector free access to the dwelling, without a warrant, affirmed by an equally divided court.

Courts sec. 772—precedents—equal division.

2. A judgment of the Supreme Court of the United States rendered by an equally divided court is without force as precedent. (From separate opinion by Brennan, J., Warren, Ch. J., and Black and Douglas, JJ.)

Courts sec. 775—precedents—divided court.

3. A single decision of the Supreme Court of the United States, by a closely divided court, unsupported by the confirmation of time, cannot check the course of constitutional adjudication in the court. (From separate opinion by Brennan, Jr., Warren, Ch. J., and Black and Douglas, JJ.)

APPEARANCES OF COUNSEL

Greene Chandler Furman and **Elbert E. Blakely** argued the cause for appellant.

Charler S. Rhyne and **Joseph P. Duffy** argued the cause for appellee.

OPINION OF THE COURT

Per Curiam.

The judgment is affirmed by an equally divided Court.

Mr. Justice Stewart took no part in the consideration or decision of this case.

SEPARATE OPINION

Mr. Justice Brennan, with whom The Chief Justice, Mr. Justice Black, and Mr. Justice *Douglas* join.

The judgment of the Ohio Supreme Court in this is being affirmed ex necessitate, by an equally divided Court. Four of the Justices participating are of opinion that the judgment should be affirmed, while we four think it should be reversed. Accordingly, the judgment is without force as precedent. The Antelope (US) 10 Wheat 66, 126 6 L ed 268, 282; Etting v Bank of United States (US) 11 Wheat 59, 78, 6 L ed 419, 423. In such circumstances, as those leading cases indicate, the usual practice is not to express any opinion, for such an expression is unnecessary where nothing is settled. But in this case even before the cause was argued, four Justices made public record of their votes to affirm the judgment, and their basis therefor. 360 US 246, 248, 249. These four Justices stated that they were "of the view that this case is controlled by, and should be affirmed on the authority of Frank v. Maryland, 359 U. S. 360." Their opinion further states that they deemed "the decision in the Maryland case to be completed controlling upon the Ohio decision." In a longer opinion, one of the four Justices developed his views on the merits further. 360 US, at 249, 250. The usual practice of not expressing opinions upon an equal division has the salutary force of preventing the identification of the Justices holding the differing views as to the issue, and this may well enable the next case presenting it to be approached with less commitment. But the action we have described prevents this from being the case here: and so the reason for the usual practice is not applicable. Accordingly, since argument has been had, and votes on the merits are now in order, we express our opinion.

This case involves Earl Taylor, who is in his sixties and has been working at his trade of plumber for 40 years, and the home at 130 Henry Street, in Dayton, Ohio, which he and his wife bought and in which they have lived for over a decade. He describes it as a little cottage, all on one floor, with a front room and a middle room, two bedrooms, a dining room and a little utility room, and a bathroom and little kitchen at the back. What was evidently Taylor's first involvement with the criminal law occurred in this fashion. One day three men who were housing inspectors came to his door, and said they wanted to come in the house and go through the house and inspect the inside of the house. They had no credentials, only a sheet of yellow note paper, and Taylor said to them, "You have nothing to show me you have got a right to go through my house." The response was, "We don't have to have, according to the law passed four years ago." Replied Taylor, "That don't show me that you got anything in there that you want for inspection, and, further, I don't have nothing in my house that has to be inspected." The man said, "Well, you know, according to this ordinance, that we got a right to go through your house and inspect your house." "No, I don't think you have, unless you got a search warrant," answered Taylor. This has been his position ever since, and it is the issue that divides us.

The men went away, but later there was a second attempt to gain access to Taylor's house, and a telephone call to the same end. Taylor said, "I don't see what right that you got coming into my house. Until you show me in writing, or some kind of facts, that you got a right to come into my house and inspect the house, I will not let you in." The third time the men came, there were two of them. One had some sort of credential with a photo on it. Neither had a warrant of any kind. One said the housing inspector wanted to inspect Taylor's house. Taylor said, "What do you have in there that you want to inspect? I have nothing in my house for inspection." He was told: "We have a right to come in your house, go through your house, inspect the whole inside of your house." Taylor's reaction to this was: "You have nothing wrote down on paper. You don't have a thing to show me you are going to come in there to inspect anything, and as far as that goes you aren't coming in unless you have a search warrant to get in." The men never came back with a search warrant, but as they left, one said. "If you ain't going to let us in, we are entitled to get in, and if you don't let us in, I am going to leave it up to the prosecutor." Whereupon Taylor said: "I don't care what you do. You aren't coming in." Taylor later

testified that then the man "walked over and got in his car and that was the end of it."

But it was not. Taylor and his wife each received through the mail a registered letter from the city prosecutor, notifying them to appear at his office to answer a complaint against them. They did not appear; whereupon the police came to Taylor's home, and finally served him with a warrant—a warrant to appear in court to answer criminal charges brought against him for failing to admit the inspectors to his home. He appeared in court and was held for trial; and not being then able to make bond of $1,000, he was committed to jail, to await trial on the charges, which could have resulted in a fine of $200 and an incarceration of 30 days for each day's recalcitrance. One Eaton, an attorney, filed a petition for habeas corpus on Taylor's behalf in the State Common Pleas Court. The Common Pleas Court found the ordinance unconstitutional, and discharged Taylor from custody; but the Court of Appeals reversed, 105 Ohio App 376, 6 Ohio Ops 2d 1953, 152 NE2d 776, and its judgment was upheld by the Ohio Supreme Court. 168 Ohio St 123, 5 Ohio Ops 2d 377, 151 NE2d 523. We noted probable jurisdiction. 360 US 246, 3 L ed 2d 1200, 79 S Ct 978.

The municipal ordinance in question provides numerous requirements for dwellings, deemed by the city to be appropriate in the interests of the public health, safety and comfort. Several of the requirements apply to private dwelling houses, such as the Taylors. None of these requirements is at all questioned here. What is questioned is the ordinance provision, Code of General Ordinances 806-30, authorizing the Housing Inspector to enter at any reasonable hour any dwelling whatsoever, and commanding the owner or occupant to give him free access at any reasonable hour for the purpose of his inspection. It was armed with the naked authority of this provision, and not with any warrant (the ordinance provides for none) that the inspectors approached Taylor's door, even after he had made clear to them his intent not to admit them on this basis. Neither before a magistrate empowered to issue warrants, nor in this proceeding, have the inspectors offered any justification for their entry. They have not shown any probable cause for grounds to believe that a prescribed condition existed within the cottage, or even that they had suspicion or complaint thereof. They have not shown that they desired to make the inspection in pursuance of a regular, routinized spot check of individual homes, or in pursuance of a planned blanket check of all the homes in a particular neighborhood, or the like. These might be said to be the usual reasons which would impel inspectors to seek to gain admittance to a private dwelling; but none of them is shown by the record to have been present. Most significantly, on the initial recalcitrance of Taylor, the inspectors were not required to, and did not, repair before any independent magistrate to demonstrate to him their reasons for wanting to gain access to Taylor's cottage, and to obtain his warrant for their entry—the authorization on which Taylor was insisting. The judgment below is, on this record, bottomed on the proposition that the inspectors have the right to enter a private dwelling, and the householder can be bound under criminal penalties to admit them, though there is demonstration neither of reason to believe there exists an improper condition within the dwelling, nor of the existence of any plan of inspection, apart from such a belief, which would include the inspection of the dwelling in question. We think that affirmance of this judgment would reduce the protection of the householder "against unreasonable searches" to the vanishing point.

In support of the judgment below, much reliance at the bar has been put on Frank v. Maryland, 359 US 360, 3 L ed 2d 877, 79 S Ct 804. We would not be candid to say that on its own facts we have become reconciled to that judgment. To us, it remains "the dubious pronouncement of a gravely divided Court." Cooper v Aaron, 358 US 1, 24, 3 L ed 2d 5, 22, 78 S Ct 1401 (concurring opinion). "A single decision, by a closely divided court, unsupported by the confirmation of time, cannot check" the course of constitutional adjudication here. See Kovacs v Cooper, 336 US 77, 89, 93 L ed 513, 523, 69 S Ct 448, 10 ALR2d 608 (concurring opinion). We continue to go with Judge Prettyman in District of Columbia v Little, 85 App DC 242, 178 F2d 13, 17, 13 ALR2d 954, affd on other grounds 339 US 1, 94 L ed 599, 70 S Ct 468, that: "To say that a man suspected of crime has a right to protection against search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity." Nothing demonstrated in the Frank Case indicates otherwise to us. But the present case goes much further than Frank; and as to the reasonableness of searches, it has been stressed that factual differences may weight heavily. Go-Bart Importing Co. v United States, 282 US 344, 357, 75 L ed 374, 382, 51 S Ct 153. The search in Frank was for the nesting place of rats. There were ample grounds on the part of the inspecting officer to believe its existence in the house. There had been complaint of rats in the neighborhood; and an external inpection of the house in question revealed that it was "in an extreme state of decay" and that behind it there was a pile of "rodent feces mixed with straw and trash and debris to approximately half a ton." See 359 US, at 361. The case was decided by the narrowest of divisions; and one member of the majority found it necessary to express in a concurring opinion that the sole purpose of the search was an attempt to "locate the habitat of disease-carrying rodents known to be somewhere in the immediate area." 359 US, at 373. There was no case of a "systematic area-by-area search" before the Court, and although certain remarks were made as applicable to such a search, 359 US, at 372, their character as dicta is patent. Thus, even accepting the judgment in Frank, of such expressions the classic language of Justice Brandeis, dissenting in Jaybird Min. Co. v. Weir, 271 US 609, 619, 70 L ed 1112, 117, 46 S Ct 592, can be said again: "It is a peculiar virtue of our system of law that the process of inclusion and exclusion, so often employed in developing a rule, is not allowed to end with its enunciation and that an expression in an opinion yields later to the impact of facts unforeseen."

In this case we pass beyond the situation in Frank, where the inspector was looking for a specific violation, and where he had, and was able to demonstrate, considerable grounds to believe it existed in Frank's house. Here it would appear from Taylor's testmiony that, even without a warrant, if a specific matter was cited to him by the inspector, he would have permitted the inspection in that regard. On the contrary, Frank's denial of access was described as based on "a rarely voiced denial of any official justification for seeking to enter his home." 359 US, at 366. There then was a specific demand for inspection, met by a refusal on the broadest of grounds. Here we have the most general of demands, supported hereby no particularized justification, either directed at the conditions in Taylor's cottage, or in terms of some over-all systematic plan which would include it. This is met not by an attitude of defiance, but by a request by the householder that a specific authorization be furnished him. Not a search warrant, but a criminal complaint is the upshot. We would grossly tone down the protection afforded the householder by the Constitution were we to put an authoritative sanction on the judgment that condemns his refusal.

Much argument is made of the need of the authorities to perform inspections on a "spot check" or on an area-by-area basis. The judgment below cannot be said to present this problem, because there was no evidence that this in fact was what was being done; that the inspectors in fact were proceeding according to a reasonable plan of one sort or another. For all that appears here,

the inspectors could have been acting in accordance with no particular plan of spot checks or area-by-area searches which could be justified as "reasonable," and which would give probable cause for entry; their action could have been based on caprice or on personal or political spite. It hardly contradicts experience to suggest that the practical administration of local government in this country can be infected with such motives. Building inspection ordinances can lend themselves readily to such abuse. We do not at all say this to be the case here, and Taylor has made no proof of it, to be sure; but that simply points up the issue. The inspectors have not been required to make any justification for their entry. The judgment below upholds the charges as sufficient as based on a demand for entry without any such justification.

But if we were to assume that the inspectors were proceeding according to a plan, and even if evidence of the plan were put in at the trial, we think that the result should be the same. The time to make such justification is not in the criminal proceeding, after the householder has acted at his peril in denying access. The time to make it is in advance of prosecution, and the place before a magistrate empowered to issue warrants, which will put the seal of legitimacy—the seal the Constitution specifically provides for—on the demand of the inspectors, if indeed it is a reasonable one. Such a warrant need not be sought except where the householder does not consent. This is precisely the procedure followed by England in this particular area, see Public Health Act. 1936, 26 Geo 5, & 1 Edw 8, c. 49, 287(2); and no complaint is heard that this stultifies enforcement there of the regulation of the public health and safety. Certainly with this procedure available—the procedure of antecedent justification before a magistrate that is central to the Fourth Amendment, see McDonald v United States, 335 US 451, 455, 456, 92 L ed 153, 69 S Ct 191—there is no need to be satisfied with lesser standards in this area. Cf. Dean Milk Co v Madison, 340 US 349, 95 L ed 329, 71 S Ct 295. The public interest in the cleanliness and adequacy of the dwellings of the people is great. So too is the public interest that the tools of counterfeiting and the paraphernalia of the illicit narcotics traffic not remain active. On an adequate and appropriate showing in particular cases, the privacy of the home must bow before these interests of the public. But none of these interests provides an open sesame to those who enforce them. The Fourth Amendment's procedure establishes the way in which these general public interests are to be brought into specific focus to require the individual householder to open his door.

It has been suggested that if the Fourth Amedment's requirement of a search warrant is acknowledged to be applicable here, the result will be a general watering-down of the standards for the issuance of search warrants. For it is said that since it is agreed that a warrant for a health and safety inspection can be made on a showing quite different in kind from that which would, for example, justify a search for narcotics, magistrates will become lax generally in issuing warrants. The suggested preventive for this laxity is a drastic one: dispense with warrants for these inspections. We cannot believe that here it is necessary thus to burn down the house to roast the pig. To be sure, the showing that will justify a housing inspction to check compliance with health and safety regulations is different from that which would justify a search for narcotics. But we should not assume that magistrates will become so obtuse as not to bear this in mind. Search warrants to look for counterfeting equipment, for example, are not issued on a showing of probable cause to believe the existence of an untaxed still. To each specific warrant, an appropriate specific showing is necessary. This can scarcely be thought to tax the capacities of the magistrate. And of course where the rule prevails that evidence obtained in violation of the constitutional guarantee is not admissible, there will be judicial review of the magistrate's action if the fruits of a search are tendered in evidence.

Apart from the very significant factual distinctions presented by this case from the Frank Case, there is another reason why we would reverse the judgment here. It has now become clear that the Frank decision may have turned in substantial part on the positing of a distinction between the affirmative guaranty of privacy against official incursion raised by the Fourth Amendment against federal action, and that raised by the Due Process Clause of the Fourteenth against state action. The concurring opinion of one of the majority in that sharply divided decision indicates some concern in that respect. 359 US, at 373. After the greatest consideration, this Court in Wolf v Colorado, 338 US 25, 27, 93 L ed 1782, 1785, 69 S Ct 1359, declared: "The security of one's privacy against arbitrary intrusion by the police—which is at the core of the Fourth Amendment—is basic to a free society. It is therefore implicit in the concept of ordered liberty, and as such enforceable against the State through the Due Process Clause." It is now clear that part of the majority of the Court in the Frank case does not subscribe to the clear import of that statement. Elkins v. United States, 4 L ed 2d 1669, 1694 (dissenting opinion). But the Wolf statement continues to be the ruling doctrine in this Court. Elkins v. United States, 4 L ed 2d 1669. The guarantees are of the same dimension, matters of enforcement such as the exclusionary rule, aside.

The classic debate on the import of the Fourteenth Amendment's Due Process Clause as to the applicability of the Bill of Rights to the States we submit, does not even involve the theory that the matter is one for the judges to solve on an ad hoc basis, according to their over-all reaction to particular cases. Some of us have expressed the conviction that the preferable view of the Fourteenth Amendment is that it makes the guarantees of the Bill of Rights generally enforceable against the States. See Adamson v. California, 332 US 46, 68, 91 L ed 1903, 1917, 67 S Ct 1672, 171 ALR 1223 (dissenting opinion). But to them, as well as to us, who have neither accepted nor rejected that view, it is clear that the celebrated passage of Justice Cardozo's opinion in Palko v. Connecticut, 302 US 319, 323-325, 82 L ed 288, 290-292, 58 S Ct 149, can have no common ground with the view of the Wolf Case that a minority of the Court now expounds. And see Adamson v. California, supra (332 US at 85, 86, 89) (dissenting opinion). For the Palko opinion refers to "a process of absorption," 302 US, at 326, of specific Bill of Rights guarantees in the Fourteenth Amendment's standard. It is not a license to the judiciary to administer a watered-down, subjective version of the individual guarantees of the Bill of Rights, when state cases come before us. To be sure, the contrary view has been urged, occasionally with success; the right to counsel was put on an ad hoc basis, Betts v. Brady, 316 US 455, 86 L ed 1595, 62 S Ct 1252, despite what seems the clear implication to the contrary in Palko, 302 US, at 324; and recently the surprising suggestion has even been made (never by the Court) that the freedom of speech and of the press may be secured by the Fourteenth Amendment with less vigor than it is secured by the First. See Beauharnais v. Illinois, 343 US 250, 288, 96 L ed 919, 944, 72 S Ct 725 (dissenting opinion); Roth v. United States, 354 US 476, 505, 506, 1 L ed 2d 1498, 1518, 1918, 77 St Ct 1304 (separate opinion); Smith v. California, 361 US 147, 169, 4 L ed 2d 205, 220, 80 S Ct 215 (separate opinion).

In Elkins today we have rejected such a view of the affirmative guarantees of the Fourth Amendment. The opinion of the Court in Frank is very likely a product of such a rejected approach. For that reason, even if it were on all fours with the present case, it should not be followed, and the judgment below should be reversed.

I

M. B. Florentino & Co., Ltd., Petitioner, vs. Johnlo Trading Company, and Lipsett Pacific Corporation, Respondents, G. R. No. L-8388, June 30, 1960, BARRERA, J.

1. CIVIL PROCEDURE; DEFAULT; APPEAL.—It is a well-settled rule that a defendant who has been declared in default loses not only his right to be heard in court, but also the right to appeal from the judgment on the merits. Since the defaulting defendant can not appeal from the decision, upon expiration of the period within which an appeal may be instituted, the decision as to him shall become final and executory and, even in case of appeal by the other defendants, shall remain undisturbed.
2. ID.; ID.; FINALITY OF JUDGMENT.—The law gives even a defaulting party certain degree of protection in the sense that plaintiff, despite the absence of the defendant, is still required to substantiate his allegations in the complaint and the court is directed to render judgment and grant relief as thus proved; but this rule can not override the cardinal principle regarding finality of judgment.
3. ID.; ID.; ID.—Where, as in the case at bar, the judgment rendered by the trial court against a defaulting defendant has become final and executory, the appellate court is not justified in setting aside and modifying said judgment on the ground that the trial court erred in its appreciation of the evidence admitted during the hearing and overlooked certain proofs in favor of the defaulting defendant.

Diaz & Baigas, for petitioners.

J. A. Walfson, for the respondents.

DECISION

This is a petition to review by certiorari the decision of the Court of Appeals (in CA-G. R. No. 11343-R).

In a complaint filed in the Court of First Instance of La Union against Johnlo Trading Company (hereinafter referred to as JOHNLO) and Lipsett Pacific Corporation (hereinafter referred to as LIPSETT), both foreign corporations doing business in the Philippines, M. B. Florentino & Co., Ltd. sought recovery from the former, under the first cause of action, the sum of ₱14,304.19, with legal interest thereon from August 18, 1949 until fully paid, representing unpaid charges for the loading, hauling and stevedoring services allegedly rendered by plaintiff for said defendant pursuant to their contracts of June 30, July 22, and November 15, 1948. Under its second cause of action, plaintiff prayed for the rescission of the contract entered into by defendant corporations on October 3, 1949, by virtue of which JOHNLO sold, transferred and conveyed unto LIPSETT, its sister corporation in consideration of the sum of ₱100.00, *all* its properties and equipment in the Philippines, it being charged that such contract was executed to defraud plaintiff and other creditors of JOHNLO. Plaintiff also claimed for damages, allegedly suffered by reason of JOHNLO's refusal to pay the charges due the said company, amounting to ₱10,000.00, and for attorney's fees in the sum of ₱2,000.00.

Defendant LIPSETT timely filed an answer denying the allegations in both the first and second causes of action. Defendant JOHNLO, however, which was served summons through Charles T. Balcoff, failed to file an answer and upon plaintiff's motion was declared in default. Said defendant's motion to lift the order of default having been denied, the question of the regularity and sufficiency of the service of summons on Charles T. Balcoff, who disclaimed being JOHNLO's representative or agent in the Philippines, was raised before this Court in a petition for certiorari (G. R. No. L-3987). In our decision of May 18, 1951, it was held that the service of summons for JOHNLO upon Charles T. Balcoff, who had previously been acting for said foreign corporation in a representative capacity, may be considered as sufficient under Section 14, Rule 7 of the Rules of Court. Subsequently, JOHNLO filed in the lower court a motion for relief from the order of default, which motion was denied on July 25, 1951.

On September 30, 1952, the lower court after due trial rendered judgment (1) ordering defendant JOHNLO, under the first cause of action, to pay to plaintiff, for unpaid services rendered to said defendant, the sum of ₱14,304.19, with legal interest thereon from August 18, 1949, plus damages in the sum of ₱8,000.00 and another ₱2,000.00 as attorney's fees; and (2) declaring the deed of sale dated October 3, 1949, executed by JOHNLO in favor of LIPSETT, fraudulent for lack of adequate consideration and, hence, null and void, and accordingly directing the attachment of the sum of ₱25,000.00, which was considered exclusive property of JOHNLO, from the bank deposit of LIPSETT to be paid to plaintiff. Defendant LIPSETT was further required to pay plaintiff the sum of ₱5,000.00 as damages. Both defendants filed notice to appeal the decision to the Court of Appeals. Plaintiff, however, moved for the dismissal of the appeal of defendant JOHNLO on the ground that, having been declared in default and having failed to cause the lifting of the said default order, and defendant had no personality to appeal from the decision on the merits. This motion was sustained by the lower court and JOHNLO's appeal was, consequently, disapproved.

Passing upon the appeal interposed by defendant LIPSETT, the Court of Appeals ruled that the evidence, Exhibit C, upon which the lower court's finding that plaintiff was underpaid by 1490.84 long tons, amounting to ₱15,578.88, was based, was incompetent for being hearsay; thus, the appealed decision was modified by holding JOHNLO liable only for the sum of ₱3,108.74 (for the services in connection with the 19.53 long tons shipped by S. S. Aspesis Nomikos), plus damages in the sum of ₱3,000.00. The contract between JOHNLO and LIPSETT was declared invalid only to the extent of the properties involved therein necessary to cover the aforementioned amounts. It is this decision of the Court of Appeals that M. B. Florentino & Co., Ltd., asks this Court to review by means of the instant petition for certiorari.

There is no question that by orders of November 14, 1952 and February 27, 1953, the lower court disapproved JOHNLO's notice of appeal, which orders, needless to say, already became final. It is clear, therefore, that the appeal in the Court of Appeals concerned merely the issues and defenses peculiar to defendant LIPSETT. As aforestated, however, the Court of Appeals not only passed upon the validity of the contract between LIPSETT and JOHNLO but took cognizance of the evidence and issues relative to the liability of JOHNLO. Herein petitioner now claims that the Court of Appeals erred:

> 1. In modifying the judgment of the trial court in this case, insofar as said judgment affected and bound a defendant who did not appeal and who, in fact, was, by reason of its default, barred form interposing an appeal, and
>
> 2. In modifying the judgment of the trial court in this case on the basis of its finding that the petitioner's Exhibit "C" is incompetent and inadmissible hearsay evidence.

The rule is well-settled that a defendant who has been declared in default loses not only his right to be heard in court, but also the right to appeal from the judgment on the merits. (Lim Toco v. Go Fay, G. R. No. L-1423, Jan. 31, 1948; 45 Off. Gaz. No. 8, p. 3350.)(1) Thus, as the defaulting defendant can not appeal from the decision, upon expiration of the period within which an appeal may be instituted, the decision as to him shall become final and executory and, even in case of appeal by the other defendants,

(1) Reiterated in Gequillana v. Buenaventura, L-2184, September 1, 1958; Son v. Melendres, L-3824, May 16, 1951; Reyes v. Roman Catholic Archbishop of Manila, L-3607, April 20, 1951.

shall remain undisturbed. (Municipality of Orion v. Concha, 50 Phil. 679.) It is true that an exception to this rule exists, that is—

> "x x x. If the judgment can only be sustained upon the liability of the one who appeals and the liability of the other cojudgment debtors depends solely upon the question of whether or not the appellant is liable, and the judgment is revoked as to that appellant, then the result of his appeal will inure to the benefit of all." (Municipality of Orion v. *supra*, citing 4 C.J. 1184.)

This situation is not obtaining in the instant case.

As stated before, the complaint against JOHNLO alone, under the first cause of action, was based on contracts between plaintiff and said defendant, of which contracts defendant LIPSETT had no interest or participation whatsoever. LIPSETT was only included as a defendant, under the second cause of action, because it is a party to the contract plaintiff claims to have been executed to defraud the creditors of JOHNLO. It is clear therefrom that a declaration of the liability of defendant JOHNLO for unpaid charges, under the first cause of action, does not necessarily affect the rights of LIPSETT who, to exculpate itself from any liability under the second cause of action, must only establish that the transfer of JOHNLO's properties to said corporation was valid. The resolution of LIPSETT's appeal from the adverse decision of the lower court, therefore, does not necessitate a reappraisal of the evidence upon which the judgment, finding defendant JOHNLO liable to pay plaintiffs claims was based. The evidence tending to establish the liability of JOHNLO to plaintiff has nothing to do and is different and independent of the evidence regarding the transfer of JOHNLO's properties to LIPSETT, and vice-versa. A judgment against JOHNLO can not affect LIPSETT if the transfer is valid. On the other hand, a judgment in favor or aaginst LIPSETT will have no bearing on JOHNLO's liability to plaintiff. In other words, the only connecting link between the two causes of action is that the first establishes plaintiff as a creditor (the amount is absolutely immaterial) of JOHNLO which qualifies plaintiff to seek the relief under the second cause of action. It would have been a different matter had the appeal been instituted by JOHNLO. Any reversal of the decision affecting JOHNLO's liability will necessarily benefit LIPSETT, because if plaintiff's claim against the former can not be established, the second cause of action would consequently fail. It would then be immaterial whether the transfer of JOHNLO's properties to LIPSETT was valid or not.

Respondents, nevertheless, maintain that the Court of Appeals has jurisdiction to review the evidence even as between plaintiff and defendant JOHNLO considering that the lower court allowed LIPSETT to present proof touching upon the liability of JOHNLO under the first cause of action, and that LIPSETT had appealed not only from the portion of the judgment concerning the validity of the contract, but from the entire decision. This contention is without merit.

The mere fact that the lower court admitted such evidence, presumably over the objection of plaintiff, did not make LIPSETT a party under the first cause of action nor did it operate to lift the order of default against JOHNLO and restore its standing in court. In fact, the trial, in disposing of the case on the merits, disregarded such evidence in its final decision.

Admittedly, the law gives even a defaulting party certain degree of protection; hence, plaintiff, despite the absence of the defendant, is still required to substantiate its allegations in the complaint and the court is directed to render judgment and grant relief as thus proved. (Sec. 6, Rule 35; Sudeco v. Sande, L-4226, April 28, 1952). But this rule can not override the cardinal principle regarding finality of judgment (Sec. 2, Rule 35). Granting, therefore, *arguendo*, that the court *a quo* erred in its appreciation of the evidence admitted during the hearing and overlooked certain proofs in favor of the defaulting defendant, such fact does not justify the appellate court's setting aside and modifying a judgment against such defendant which, after the lapse of 30 days from notice thereof, becomes final and executory.

WHEREFORE, and in view of the foregoing considerations, the decision of the Court of Appeals insofar as it reduces the liability of JOHNLO is hereby set aside, and the judgment of the court *a quo* on the matter reinstated. In all other respects, the decision appealed from is affirmed. With costs against the respondents.

SO ORDERED.

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

Padilla and Gutierrez David. JJ., took no part.

II

Republic of the Philippines, Plaintiff-Appellee, vs. Lucas P. Paredes, et al., Defendants, Globe Assurance Company Inc., Defendant-Appellant, G. R. No. L-12546, May 20, 1960, MONTEMAYOR, J.

1. CIVIL PROCEDURE; PURPOSE OF FILING OF CROSS-CLAIM.—The filing of a cross-claim as provided for in Sections 2 and 8, Rule 10 of the Rules of Court, is for the purpose of settling in a single proceeding all the claims of the different parties against each other in the case in order to avoid multiplicity of suits.
2. ID.; CROSS-CLAIM; DETERMINATION OF CROSS-CLAIM BY APPELLATE COURT.—Since in the case at bar, the notice of appeal, appeal bond and record on appeal were all filed within the reglementary period, the judgment of the trial court which did not include in it the determination of the cross-claim was still open to appeal to the Supreme Court, which by reason of its appellate jurisdiction could and should correct said judgment by passing upon the cross-claim.

DECISION

The Globe Assurance Company, Inc. is appealing the decision of the Court of First Instance of Manila in Civil Case No. 20689 for the latter's failure or refusal to render judgment on its cross-claim.

On September 20, 1956, plaintiff Republic of the Philippines commenced an action against defendants Lucas P. Paredes, Aurora C. Paredes and appellant Globe Assurance Company for the recovery of the amount of ₱48,529.19, representing unpaid taxes and for the confiscation of Globe Bond No. 1226, issued by the defendants in favor of the Bureau of Internal Revenue. In its amended answer which was accepted by the trial court, appellant company included a cross-claim against Lucas and Aurora, alleging that they had bound themselves to indemnify it (company) for any damages which it may sustain as a result of the execution of said bond, and praying that in case judgment was rendered against it on the complaint of plaintiff, Lucas and Aurora be condemned in the same judgment jointly and severally to indemnify it in the same amount as that of the judgment.

Lucas and Aurora were declared in default and evidence against them was presented by plaintiff. Appellant company likewise presented its evidence on the cross-claim against Lucas and Aurora. The case between the plaintiff-appellee and defendant-appellant was submitted on a question of law. After hearing, the trial court on March 28, 1957 rendered a decision without however any judgment on appellant's cross-claim. For purposes of reference, we reproduce the said decision:

> "This is an action presented by the Republic of the Philippines to collect from the defendants the amount of ₱48,529.13 for back taxes.
>
> "The evidence in this case shows that on January 22, 1955, the defendants Lucas P. Paredes and Aurora C. Paredes executed an ordinary bond for the payment of taxes in favor of the Republic of the Philippines in the amount of ₱53,529.13. This bond was furnished by the defendant Globe Assurance Company, Inc. The condition of the said bond is that the defendant will pay to the Republic of the Philippines the amount above-stated, representing the income tax obligation of defendant spouses Lucas P. Paredes and Aurora C. Paredes, including the corresponding surcharges and interests and

that in default thereof, the Globe Assurance Company, Inc. assumed and promised to pay the said amount. With the exception of the initial payment of ₱5,000.00 the defendants Lucas P. Paredes and Aurora C. Paredes have made no further payment to the Republic of the Philippines. By reason thereof they are still indebted to the plaintiff in the amount of ₱48,529.13. Demands have been made upon the defendants to pay the said obligation but they have failed up to the present to pay the same.

"IN VIEW OF THE FOREGOING, judgment is hereby rendered in favor of the plaintiff and against the defendants, ordering the defendants Lucas P. Paredes and Aurora C. Paredes to pay to the Republic of the Philippines the amount of ₱48,529.13, plus interest, and that in case of their failure to do so, the bond furnished by defendant Globe Assurance Company, Inc., Globe Bond No. 1226, is hereby ordered confiscated and forfeited in favor of the plaintiff. With costs against defendants."

On May 2, 1957, within the reglementary period, appellant filed a notice of appeal, an appeal bond and a motion to extend the period within which to file the record on appeal. On May 7, 1957, appellant filed a motion for reconsideration of the decision, praying that the court render judgment on its cross-claim. On May 15, 1957, the trial court granted the motion for extension but denied the motion for reconsideration on the ground that it was filed out of time. The appeal was taken directly to this Court.

Appellant assigns only one error, namely, "the lower court erred in refusing to render judgment on the cross-claim of defendant-appellant". The Solicitor General filed no brief for the appellee, Republic of the Philippines, on the ground that whatever be the outcome of appellant's appeal, its adjudicated rights would not be affected.

Although appellant is appealing the judgment of the trial court, nevertheless, it does not either in its brief or in its memorandum in lieu of oral argument, question the said judgment in so far as it orders confiscation of its bond in the event its codefendants Lucas and Aurora fail to pay the same judgment credit. It does not controvert the decision in favor of the plaintiff. Its main argument or contention is that the trial court should have rendered judgment on its cross-claim against its codefendants and specially after its attention was called to said error by its motion for reconsideration. It admits that said motion was filed beyond the thirty day period. It contends, however, that the court could still act on said motion and render judgment on the cross-claim for the reason that its appeal had not yet been perfected at the time because the record on appeal had not yet been filed and approved. Moreover, it claims that since there was no written or verbal judgment on his cross-claim, it could properly ask that judgment be rendered thereon, even if the decision in the main case had already become final.

It is clear that the trial court erred in not passing upon and determining the cross-claim. The filing of a cross-claim is provided for in Rule 10, Sections 2 and 8 of the Rules of Court, the purpose being to settle in a single proceeding all the claims of the different parties against each other in the case in order to avoid multiplicity of suits. And appellant evidently did just that to avoid multiplicity of suits; otherwise, it would have had to file a separate action against its codefendants for indemnity for any damages arising from the execution of the bond. In fact, the filing of the cross-claim was permitted by the trial court. Inasmuch as the codefendants were declared in default, the evidence presented by the defendant-appellant was not controverted, and the case was submitted on a question of law. It was just a question of examining the exhibits presented by the defendant-appellant, which were the bond itself, the paragraph on indemnity, and the payment of interest in case of delay, in payment, as well as the different letters of demand made by the defendant-appellant on its codefendants. We are willing to presume that the trial court merely overlooked or forgot the cross-claim, concentrating its attention on the main case or on the claim of the Republic of the Philippines against the three defendants.

As to what the trial court could have done to correct this error, the members of this Tribunal are not in complete agreement. Some believe that it could have corrected its error or omission after its attention was called to it by the motion for reconsideration. True, said motion was filed more than thirty days after notification of judgment. However, it was still within the discretion and jurisdiction of said court to amend its decision, considering that the record on appeal had not yet been approved, the record being still in its custody and it had not yet lost jurisdiction over the case.

> "And since judges are human, susceptible to mistakes, and they are bound to administer justice in accordance with law, they are given the inherent power of amending their orders or judgments so as to make them conformable to law and justice, and they can do so before they lose their jurisdiction of the case, that is before the time to appeal has expired and appeal has been perfected." (Moran, Comments on the Rules of Court, Vol. 3, 1957 ed., pp. 603-04, and authorities cited therein).

Other members of the Tribunal, however, are of the opinion that after the expiration of the thirty days after notification of the judgment, the latter had become final and the trial court was powerless to correct its error by modifying the judgment so as to include in it the determination of the cross-claim, this, despite the fact that the appeal had not yet been perfected because the approval of the record on appeal was still lacking, and that consequently, the records of the case were still in the custody of the court. All the members, however, are unanimous in the holding that inasmuch as the notice of appeal, the corresponding appeal bond and the record on appeal were all filed within the reglementary period, the said judgment was still open to appeal to this Tribunal, which by reason of its appellate jurisdiction could and should correct the error. Instead of remanding the case to the trial court so that it may correct its error by passing judgemnt on the cross-claim, to save time, the case being about four years old, and in the interest of justice, we propose to make the correction ourselves.

IN VIEW OF THE FOREGOING, the appealed decision is hereby modified by adding the following paragraph:

On the cross-claim of appellant, judgment is hereby rendered ordering defendants Lucas P. Paredes and Aurora C. Paredes to pay appellant jointly and severally the amount equivalent to 15% of the judgment as indemnity for damages, plus interest thereon at 12% interest per annum on said indemnity, from the date this judgment becomes final, plus costs. And in the event that appellant pays the judgment debt to the Republic of the Philippines, defendants Lucas P. Paredes and Aurora C. Paredes are also hereby ordered jointly and severally to reimburse appellant the amount so paid. Defendants Lucas P. Paredes and Aurora C. Paredes will pay the costs in both instances.

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

III

Operator's Inc., Petitioner, vs. National Labor Union, Respondent, G. R. No. L-15073, May 26, 1960, BAUTISTA ANGELO, J.

LABOR LAW; CIRCUMSTANCES SHOWING JUSTIFIED DISMISSAL OF EMPLOYEES; VIOLATION OF STANDING POLICY OF COMPANY.—In the case at bar, R, employee, left her employment without previous permission of the manager and stayed away for about one month and half contrary to the standing policy of the company that before leaving she must obtain previous permission. This requirement is reasonable, its purpose being to enable the management to make the necessary adjustment in order that the work may not be paralyzed. The court found that the elopement of R is not justification for violating the standing policy of the company which R knew. Furthermore, when she returned to work after such long absence the management did not exactly turn her away but merely required her to file a new application

because of its belief that she had already abandoned her work, another requirement which is reasonable, but she refused, and instead instituted the present action charging the company with unfair labor practice. Such attitude is reprehensible and justifies her separation from the service.

Rafael Dinglasan, for the petitioner.
Eulogio R. Lerum, for the respondent.

This is a petition for review by way of appeal from a decision of the Court of Industrial Relations penned by Hon. Judge Baltazar M. Villanueva which dismisses the complaint for unfair labor practice filed by complainant union against respondent, while on the other hand, orders the immediate reinstatement of Rosalia Ricohermoso without backpay to her former position and without loss of rights and diminution of privileges.

The facts as found by the industrial court are: Rosalia Ricohermoso was a daily wage worker of the Operator's Inc. having been employed by it since January 27, 1954; that on April 8, 1957, she absented herself from work without first obtaining permission from the management because she eloped; that on May 21, 1957, she reported for work but was asked by the manager to file a new application form so that she could be re-admitted; that Rosalia Ricohermoso refused to follow the suggestion because she would be a newcomer and she wanted to be reinstated to her old position; and that she refused to work since then, whereupon the National Labor Union, of which Rosalia is a member, filed a complaint for unfair labor practice against the company alleging, among other things, that Rosalia was dismissed on May 21, 1957 for being a member of said union and for having participated in the petition for the removal of respondent's forewoman, Florentina Wi.

Respondent corporation answered the complaint specifically denying the charge of unfair labor practice and alleging as special defense that because Rosalia absented herself from work without previous permission on April 8, 1957 and failed to report for work on the following days, the management considered her to have abandoned her job thus justifying the company in employing another worker to replace her.

After trial, the industrial court found that the evidence of the complainant on the charge of unfair labor practice is "shadowy and unsubstantial" and dismissed the same. However, having found that there was no *animus* of abandonment on her part but that her absence was merely due to her elopement, and that if she was not able to continue working it was not because she was dismissed but because of the requirement that she file a new application for employment which she refused, the industrial court ordered her reinstatement without loss of rights and diminution of privileges as stated in the early part of this decision. Hence the present appeal.

The errors assigned by petitioner are: (1) that the lower court erred in holding that the continuous absence of Rosalia Ricohermoso did not constitute abandonment of her work but was merely due to her sudden elopement and intervening weakness and affection; and (2) that the lower court erred in ordering her immediate reinstatement to her former position without loss of rights and diminution of privileges.

After finding that the management has not committed any act of unfair labor practice when it considered Rosalia as having abandoned her employment for having left the same without first obtaining permission from the manager as required by a standing policy of the company, the industrial court made the following comment:

> "The truth of the matter is that Ricohermoso was required to file an application for employment on that day because of her absence from April 8, 1957 to May 21, 1957. When she was absent on those days without previous permission from management, she was considered as having abandoned her employment. In fact she admitted having been absent for those days without obtaining previous permission from management because she eloped and went to Apalit, Pampanga. She justified her absences by declaring that after the elopement she was sick of influenza and small pox. But this is no justification for violating a standing policy of respondent of which herself knew. This policy was that before any employee could take a leave of absence, he must first secure permission from the management a day in advance."

As it would appear, notwithstanding the conclusion of the court that Rosalia's absence without first obtaining the permission of the manager is not a justification for violating a standing policy of the company because she eloped with the man she loved, yet it ordered her reinstatement without backpay, because she did so in response to an overpowering impulse of love. Thus, the industrial court commented: "As rational part of creation, we are all subject to the Divine Command that we must grow and multiply to cover the earth. Hence, we are subjected to the ommipotent sway of instinctive love and mating for our survival. And to this universal cycle of life, Rosalia Ricohermoso, like anyone of us, is no exception."

With this conclusion we disagree, for it is inconsistent with the finding that Rosalia left her employment without previous permission of the manager and stayed away for about one month and a half contrary to the standing policy of the company that before leaving she must obtain previous permission. This requirement is reasonable, its purpose being undoubtedly to enable the management to make the necessary adjustment in order that the work may not be paralyzed. The court itself found that the elopement of Rosalia is "no justification for violating a standing policy of respondent which she herself knew." But this is not all. When she returned to work after such long absence the management did not exactly turn her away but merely required her to file a new application because of its belief that she had already abandoned her work. another requirement which we find reasonable, but she refused, and instad she instituted the present action charging the company with unfair labor practice. Such attitude is indeed reprehensible and, in our opinion, justifies her separation from the service.

At this point, we find it fitting to quote what this Court has said in a similar case: "But much as we should expand beyond economic orthodoxy, we hold that an employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest. The law in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer" (San Miguel Brewery, Inc. v. National Labor Union, et al., G. R. No. L-7905, July 30, 1955).

Wherefore, the decision appealed from is modified in the sense that Rosalia Ricohermoso is not entitled to reinstatement. No costs.

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

IV

Maria C. Vda. de Lapore, Plaintiff-appellant, vs. Natividad L. Pascual, joined by her husband, Demetrio Pascual, Defendants-appellees, G. R. No. L-12679, April 27, 1960, Gutierrez David, J.

LAND REGISTRATION LAW; CONCLUSIVENESS OF DECREE CONFIRMING A PARTY'S TITLE AS TO MATTERS INVOLVED IN REGISTRATION PROCEEDINGS.—The rule is settled that a decree entered by the land registration court confirming a party's title to the parcel of land applied for and directing its registration in his name, is conclusive not only on the questions actually contested and determined but upon

all matters that might have been litigated and decided in the registration proceedings.

Conrado A. Banzon, for plaintiff-appellant.

Panfilo B. Villanueva, for defendant-appellee.

DECISION

Direct appeal to this Court from an order of the Court of First Instance of Negros Occidental, dismissing plaintiff's complaint on the ground that it is barred by prior judgment.

It appears that on January 28, 1954, plaintiff Maria C. Vda. de Lapore executed a "Deed of Sale with Right to Repurchase" by virtue of which she sold Lot. No. 435-2, formerly a portion of Lot No. 435, Cadastral Survey of Bacolod, to herein defendant Natividad L. Pascual, the same to be repurchased on or before January 28, 1955. As plaintiff failed to exercise her right to repurchase within the period stipulated, the vendee Natividad L. Pascual instituted proceedings in the land registration court for consolidation and confirmance of title to the lot in question in her name. (Cadastral Case No. 2, G.L.R.O. No. 55.) The hearing of the petition was, upon agreement of the parties, postponed a number of times with a view to enabling the vendor Maria C. Vda. de Lapore to pay the repurchase price. The said vendor, however, failed to do so, and when the petition was last called for hearing on December 15, 1956—about a year from the filing thereof—neither she nor her counsel appeared. On that same date, the court issues an order consolidating title to the lot in dispute in the name of the petitioner, herein defendant Natividad L. Pascual, and directing the Register of Deeds of the province of Negros Occidental to issue the corresponding certificate of title in her name.

On February 22, 1957, after the order in the registration proceedings had become final and executory, Maria C. Vda. de Lapore filed the present complaint in the court below to annul the "Deed of Sale with Right to Repurchase" on the ground that it was fictitious, the real agreement between the parties being one of mortgage.

Instead of answering, the defendant Natividad L. Pascual, assisted by her husband Demetrio Pascual, filed a motion to dismiss, alleging that the complaint was barred by prior judgment.

Plaintiff opposed the motion, but the lower court, after hearing, overruled the opposition and, on April 29, 1957, issued an order dismissing the complaint. From that order, plaintiff took the present appeal.

The rule is settled that a decree entered by the land registration court confirming a party's title to the parcel of land applied for and directing its registration in his name, is conclusive not only on the question actually contested and determined but upon all matters that might have been litigated and decided in the registration proceedings. (Dizon et al. vs. Banues, G. R. No. L-10222, August 29, 1958.) Needless to say, the estoppel applies to defenses available therein which are sought to be used in another action as the foundation of a claim for relief. In the case at bar, the legality and validity of the "Deed of Sale with Pacto de Retro" should have been assailed in the land registration proceedings by the appellant. This she failed to do. What is more, she was given ample opportunity to repurchase the land in question, but she did not avail herself of such opportunity. She did not even appear at the hearing of the case. And when the land registration court entered a decree consolidating and confirming title in the name of herein appellee Natividad L. Pascual, appellant did not even appeal therefrom, thereby allowing it to become final. In the circumstances, we do not think the count below erred in dismissing the present complaint.

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

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

V

The University of the Philippines and Concepcion D. Anonas, Petitioners, vs. Court of Industrial Relations, The University of the Philippines Employees Welfare Association (UPEWA), Fabiana Borines, Epifania Abijay and Alicia Ebalo, Respondents, G.R. No. L-15416, April 28, 1960, Gutierrez David, J.

1. LABOR LAW: UNFAIR LABOR PRACTICE; JURISDICTION; UNIVERSITY OF THE PHILIPPINES DOES NOT FALL UNDER THE JURISDICTION OF COURT OF INDUSTRIAL RELATIONS.—The University of the Philippines is maintained by the government and performs a legitimate government function; it declares no dividend and is not a corporation created for profit but an institution of higher education and therefore not an industrial or business organization. Consequently, the Court of Industrial Relation has no jurisdiction to hear and determine the complaint for unfair labor practice filed against said university.
2. ID.; TEMPORARY EMPLOYEES MAY BE SEPARATED FROM EMPLOYMENT WITHOUT SHOWING THAT TERMINATION IS FOR CAUSE.—In the case at bar, since it clearly appears from the face of the complaint that the complaining union members were merely temporary employees whose period of employment has terminated, their separation from the service is justified. It is a settled rule that one who holds a temporary appointment has no fixed tenure of office and as such his employment can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause.

Actg. Sol. Gen. Guillermo E. Torres & Sol. Camilo D. Quiazon, for the petitioners.

Eulogio R. Lerum, for the respondents.

DECISION

This is a petition for certiorari with preliminary injunction to annual certain orders of the respondent Court of Industrial Relations and to restrain it from further proceeding in the action for unfair labor practice pending before it on the ground of lack of jurisdiction. Giving due course to the petition, this Court ordered the issuance of the writ of preliminary injuction prayed for without bond.

The action for unfair labor practice in the court below was, upon complaint of the respondent labor union and its complaining members, Fabiana Borines, Epifania Abijay and Alicia Abaio, filed by an acting prosecutor of the Industrial Court against herein petitioners University of the Philippines and Concepcion Anonas, the matron and officer-in-charge of the UP Women's South Dormitory at the University compound in Diliman, Quezon City. The complaint alleged that said University and matron discriminated against the three aforenamed union members in regard to their hire and tenure of employment by not "reappointing" them in retaliation to their demands for better working conditions.

Answering the complaint, the petitioners University and Concepcion Anonas, through counsel, denied the charge of unfair labor practice and alleged that the employment of the complaining union members as helpers in the UP Women's South Dormitory was temporary and that they were not reappointed because of negligence in the performance of their duties, insubordination and disloyalty, as found by an investigating committee. Thereafter, before the case could be heard, the said petitioners filed a motion to dismiss the case on the ground of lack of jurisdiction, it being alleged that the University of the Philippines is an agency of the State performing governmental functions, and that, at any rate, it is a non-profit organization and therefore not subject to the operation of Republic Act No. 875. The motion, however, was denied. Entering appearance as counsel for herein petitioners, the Solicitor General filed a motion for reconsideration of the court's order denying the motion to dismiss, but the Industrial Court *in banc* resolved to deny it for having been filed beyond the 5-day reglementary period as provided for its rules. Reconsideration of that resolution having been also denied, petitioners brought the case to this Court through the present petition for certiorari, contending that the University of the Philippines does not fall under the jurisdiction of the Court

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COURT OF INDUSTRIAL RELATIONS
DECISION

United Pepsi-Cola Sales Organization (PAFLU), complainants vs. Pepsi-Cola Bottling Company of the Philippines, William Yonan, George Anadale and Pepsi-Cola Labor Unity, respondents, Case No. 1294-*ULP, August* 22, 1960, *JOSE S. BAUTISTA, Presiding Judge (CIR).*

1. LABOR LAW; CERTIFICATION ELECTION; COLLECTIVE BARGAINING AGREEMENT.—A Company was justified and perfectly within its legal right to defer the negotiation and conclusion of a new collective bargaining contract with the union, pending the outcome of the certification election case filed with the Court of Industrial Relations, for to do otherwise, will in effect violate the provisions of Republic Act No. 875, particularly Section 12, paragraph (b) thereof. From the moment the petition for certification election was filed before this Court, the question of majority representation was placed into doubt.
2. ID; ID; ID.—In the case at bar, the Company could not enter into said agreement without verifying first as to which union possesses the majority representation and with more reason, it could not enter into a new collective bargaining with complainant union, when upon the expiration of its agreement with the company, a certification election filed by various contending unions is pending before the Court of Industrial Relations.
3. ID; REFUSAL TO BARGAIN; UNFAIR LABOR PRACTICE. —In the instant case, it can not be said that the company refused to bargain in good faith with the union for it is clearly established that the company not only answered all communications relative to the union's proposals, but also attended conference called upon by the Conciliation Service of the Dept. of Labor to thresh out their differences. The company's reasons in rejecting the proposals of the union are sound and reasonable.
4. ID; REFUSAL TO BARGAIN DISTINGUISHED FROM REFUSAL TO ENTER INTO COLLECTIVE BARGAINING; UNFAIR LABOR PRACTICE.—A distinction should be established between the term refusal to bargain and refusal to enter into a collective baragining agreement provided in Sec. 6 in relation to Sections 13 and 14 of Republic Act 875. In the present case, the company promptly answered all communications and readily met with representatives of the union and therefore, the charge of refusal to bargain would not stand. As to the refusal to enter into a collective bargaining agreement pending the termination of a certification election case, the law is clear. The company could not be forced or compelled into an agreement with the union if it honestly believed that in doing so, it would prejudiced its rights and interests, or when the terms of the proposals are excessive and unreasonable. The company could go to the extent of rejecting any proposals presented by the union if it believes in good faith that the proposal is unjust, still it could not be charged of unfair labor practice, provided it answers the communications of the union within the prescribed period and confers with the union's representatives. What is contemplated by the law in making refusal to bargain an unfair labor practice is when a given proposal is presented by a certain union and the company deliberately fails to answer such proposal and refuses to meet and confer with the union in a bargaining table conference. There could not be unfair labor practice for the non-acceptance by the company the union's proposals in the case at bar.
5. ID; STRIKE; WHEN DISMISSAL OF STRIKES LEGAL.—In the case at bar, it was established that respondent GA requested the president of the union to advice the strikers to report for work, but they did not; that several supervisors of the company went to see the strikers to ask them to report for work, but they refused unless the company concludes a collective bargaining agreement; that the unreasonable demands by the union was implemented by intimidation, coercion and violence by striking members against the properties and non-striking personnel of the company and that in order that the operation of the plant and business of the company would not be paralyzed, GA had no other alternative but to dismiss the strikers who refused to return to work. These acts do not constitute unfair labor practice. On the contrary, the strikers refused to reurn to work unless their demands, which are unreasonable, be granted by the company. The dismissal of the strikers who refused to return was, therefore, legal and proper.
6. ID: ID; STRIKE CHARACTERIZED BY COERSION, INTIMIDATION AND VIOLENCE ILLEGAL.—The strike of April 16, 1957 in the present case could not be considered within the orbit of the legal right to strike for it was characterized by coercion, intimidation and violence perpetrated by the striking members of the union against the persons of the non-striking employees and officials of the company and the company's properties. Neither can it be considered that the purpose and means employed therein were reasonable and justifiable.
7. ID; ID; ID.—The strikers formed a solid human wall to prevent the free entrance and exist of company vehicles; they barricaded themselves in front of the company's vehicles to block the same from going in and out of the company's premises; drivers who tried to bring in and out said vehicles were stoned, beaten with wooden clubs, spat upon, assaulted with fist blows, mauled and manhandled and were threatened and insulted with offensive language; company's vehicle and properties were damage as a result of the rocks thrown by the strikers. *Held*: Under the foregoing fact and circumstance, the conclusion is that the purpose and means employed by the striking members of the union in pursuing the strike are unreasonable and illegal, consequently, the dismissal of the striking employees was with justifiable cause. Since the striko was pursued without sufficient justification, coupled with violence committed by participating employees against the persons and properties of the company, the law cannot extend its protection to the strikers from the consequences of their acts.

Cipriano Cid & Associates, for complainants.
Vicente J. Francisco, for respondents.
Cesar C. Rey, for respondent union.

DECISION

Complainant United Pepsi-Cola Sales Organization (PAFLU), through the Acting Prosecutor of the Court, charges the above-named respondents of unfair labor practices as set forth and defined in Section 4 (a), paragraphs 1, 2, 3, 4, and 6 of Republic Act 875, specifically committed as follows:

"xxx xxx xxx

"2. That on March, 1957, a charge was filed with this Court against respondents for unfair labor practice which is docketed as Case No. 1260-ULP, for interference with the union activities of said complainant;

3. That after the filing of said charge, conferences were supposed to be held before the Conciliation Service of the Department of Labor, but not a representative of respondent company appeared at said office to proceed with the conference;

4. That on or about March 9, 1957 and continuing thereafter, William Yonan, sales manager of respondent company, told the members of complainant union like Casimiro Santos, Manuel Valdez, Enrique Regalado, Ernesto Perio, Rafael Rodriguez, Epifanio Luna, Alejandro Sabasa, to join the Pepsi-Cola Labor Union;

5. That also on March 9, 1957, William Yonan and other supervisors of respondent company distributed application forms of the Pepsi-Cola Labor Union to the members of complainant union and asked them to join the Pepsi-Cola Labor Union;

6. That because of respondent's continuous interference, illegal assistance to the Pepsi-Cola Labor Union, and refusal to bargain with complainant union, the latter went on strike on April 17, 1957;

7. That while the members of complainant union were on strike the supervisors of respondent company like Alfredo Calileo, Elias Jerreos, Oscar Buan, Eliseo Gandete, and Jose Ramos, through orders of Mr. Yonan, approached said members to convince them to go back to work and also went to their homes and threatened them of dismissal if they did not go back to work;

8. That because of the refusal of the union members to return to work during the strike, the respondent company wrote on April 27, 1957 a letter to the President of the union to the effect that all members of the union are dismissed from work effective April 16, 1957; and

9. That respondent company in favoring the Pepsi-Cola Labor Union gives leaves to the members of said union, and denies the same right to the members of complainant union."

Praying that respondents be declared guilty of unfair labor practices as charged; that they be ordered to cease and desist from such unfair labor practices; dissolving the respondent union and to do such affirmative actions as will effectuate the provisions of the Industrial Peace Act.

Answering, respondent Pepsi-Cola Labor Unity denied all the material allegations in the complaint, and prayed that the complaint be dismissed.

Upon being required to answer, respondent Pepsi-Cola Bottling Company of the Philippines, William Yonan and George Anadale, denied each and every pertinent allegations contained in paragraphs 3, 4, 5, 6, 7 and 8 of the complaint and averred in substance, that there is no such Pepsi-Cola Labor Unity; that it has always been the long standing policy of the company not to interfere or intervene in any manner whatsoever in the union activities of its workers and employees, nor its respondent officials to order its supervisors to do acts imputed against them; and that the alleged grounds of dismissals of the members of complainant union are not those mentioned in the complaint but those embodied in the respondent company's letter to the President of complainant union under date of April 27, 1957, wherein it provided among other things, that since April 16, 1957, the members of complainant union failed to report for work without any justifiable reason notwithstanding notice given to them through its president Jerry Miranda; that since April 16, 1957 and continuously thereafter, the members of complainant union have prevented by means of force, violence and intimidation the non-striking employees of respondent company from entering its premises, which resulted in a complete cessation of respondent company's business and in which period, the company's products are most salable, thereby causing it irreparable injuries.

By way of counterclaim, respondent prayed that complainant union be ordered to pay the sum ₱15,000.00 as damages and ₱5,000.00 as attorney's fees.

During the hearing of this case, complainant move to withdraw its charge of company domination against respondent union and strike out and delete from the record all the testimonies of its witnesses regarding such charge. This motion was reiterated by complainant in the subsequent hearings that followed.

From the pleadings as well as the evidence adduced, the issues to be resolved in this case are as follows:

1. Whether or not respondents had refused to bargain in good faith with complainant union.

2. Whether or not respondents had interferred with and/or coerced the members of complainant in their union affiliations and/or actvities.

3. Whether or not the dismissal of the striking memebrs of complainant union was with justifiable cause or for unfair labor practices alleged by the said union.

Complainant United Pepsi-Cola Sales Organization, (UPSO), hereinafter referred to as UNION is a legitimate labor organization, comprising of employees and laborers working in the Sales & Advertising Department of the respondent Pepsi-Cola Bottling Company of the Philippines, and an affiliate of the Philippine Associations of Free Labor Union, hereinafter called the PAFLU for short. The Secretary General of the PAFLU is a certain Henry Santos, and the President of the UNION is Jerry Miranda, a salesman of the respondent company. While the respondent Pepsi-Cola Bottling Company of the Philippines, to be hereinafter name COMPANY is a business entity existing and operating under and by virtue of the laws of the Philippines, engaged in the business of bottling and selling soft drinks; and respondents George A. Anadale and William Yonan are its President & General Manager and Manager of the Sales and Advertising Department, respectively.

The UNION presented its president Gerry Miranda and board member Francisco Mendoza, tending to establish that the company had refused to meet and confer with the UNION's respresentatives relative to its proposals for the renewal of their collective bargaining agreement.

The record however, undisputedly show that there are four legitimate labor organization existing in the Company, namely: the Bottling Workers & Employees Association of the Philippines (FFW), Pepsi-Cola Labor Unity, Pepsi-Cola Employees Union of the Philippines, and the union. Each of these labor unions claims that they have a collective bargaining agreement with the COMPANY and that they constitute the sole and exclusive bargaining representatives of a given unit in the said company. But however, the record is bare of proof that those unions claiming to be the exclusive bargaining agent of the employees in a certain unit of the company were certified to by this Court, or a certification election has been conducted designating those unions to be the certified sole bargaining representative in their respective or given employer unit.

The Bottling Workers & Employees Association of the Philippines (FFW) claims that out of the more or less two hundred employees of the COMPANY a great majority of whom are its members, consisting of bottlers, checkers, security guards, mechanics, yardman, including those employees holding supervisory positions. While, the Pepsi-Cola Labor Unity, maintains that it is the exclusive collective bargaining agent of all the regular and permanent workers in the Bottling, Carpentry, Painting, Motor Pool, General Yard, Forklift and Mechanic Departments in the main office and provincial warehouses of the COMPANY, pursuant to the collective bargaining contract concluded by and between it and the company on November 28, 1956. Whereas, the Pepsi-Cola Employees Union of the Philippines, avers that it executed a collective bargaining agreement with the COMPANY on October 11, 1956, thereby designating it as the sole collective bargaining agent of all employees of the Accounting, Personnel, Bodega, Checker, Cashier, security Departments of the said company, including those other employees who are its members. On the other hand, the United Pepsi-Cola Sales Organization (UNION) alleges, that by virtue of the collective bargaining contract it entered with the COMPANY on February 22, 1956, it became the exclusive bargaining representative of all the employees and workers in the Sales and Advertising Department of said company; that it has also members in the other departments of said company.

It further appears that the collective bargaining agreement concluded by and between the COMPANY and the UNION was to expire on February 22, 1957. On November 28, 1956, the Bottling Workers & Employees Association of the Philippines (FFW), filed a petition for certification election before this Court and docketed as Case No. 410-MC, and praying that it be certified to as the sole and exclusive bargaining agent of all employees of the COMPANY. An answer thereto was accordingly filed by said company on December 18, 1956. Meanwhile, on February 12, 1957, the UNION filed a petition for intervention, alleging that it joins

the petitioner Bottling Workers & Employees Association of the Philippines (FFW), with regards to its petition in order to determine the appropriate bargaining representative of the employees of the company. This was followd by motions for intervention filed by the Pepsi-Cola Labor Unity and the Pepsi-Cola Employees Union of the Philippines, alleging that the appropriate bargaining unit should be the main plant of the respondent Pepsi-Cola Bottling Company of the Philippines. The UNION in its petition for intervention prays that the Court order it as one of the contending unions in the said certification election.

Following those turn of events, and while the afore-mentioned certification election was pending for hearing, the UNION sent a letter to the COMPANY on January 23, 1957, requesting the latter to conclude a new collective bargaining contract and attached thereto was a set of proposals and/or labor demands. Subsequent to the receipt of said letter of proposals, the COMPANY through its president and general manager George Anadale readily made a corresponding reply on January 30, 1957, asking for more time to study, evaluate and consider said proposals because of pressure of work since he (Anadale) had only been recently appointed to his position. Said proposals were followed by two letters of the UNION and the PAFLU, respectively, urging company's representatives to confer with the UNION'S representatives in order to discuss the said proposals. To those letters, the COMPANY through its afore-cited president and general manager responded on March 5, 1957, evpressing its belief that it was not proper for the company to hold such conference in order to take up the afore-described proposals, due to the pending case for certification election (Case No. 410-MC) filed before this Court and the same being scheduled for hearing in the middle part of March 1957. On March 6, 1957, George Anadale received communication from the PAFLU through its Executive Secretary Henry Santos, demanding that the COMPANY should make a reply to their proposals, and charging the said company in intentionally delaying and avoiding its duty to bargain, with a warning that should the COMPANY fail to comply with such demands, the UNION would be constrained to take the necessary steps to protect its members. Replying to such letter, the COMPANY by its president and general manager stated that for the moment there was nothing that could be done, the most that the parties could no is to wait for the decision of the Court in he certification election case, as to which union is to be certified as the exclusive bargaining agent of all its employees; that if the complainant (UNION) being one of the intervenors in that case comes out as the union representing the majority of all the non-supervisory employees of the company, the COMPANY will enter into an agreement with said union without any hesitation.

Thereafter, on March 11, 1957, the UNION through its president Jerry Miranda, filed a notice of strike with the Department of Labor, alleging as ground thereof, the refusal of the COMPANY to bargain with the UNION in having allegedly refused to sit down in a bargaining table conference regarding its proposals.

That notwithstanding the notice of strike, several conferences in the Conciliation Service of the Department of Labor took place. At the conference held on March 4, 1957, no agreement was attained because the parties stuck to their respective contentions. The UNION through its representative stated that they were ready to stage a strike even before the expiration of the 30 day cooling-off period in the event the COMPANY refuses to discuss the terms of their proposals. While the COMPANY through its counsel manifested that, what inhibits it from taking the UNION'S proposal was the pending certification election case before this Court. During the subsequent conferences held in the Conciliation Servise of the Dapartment of Labor on March 26, 1957 and April 5, 1957, the COMPANY through counsel submitted to the conciliator a letter-memorandums reiterating their previous stand in declining to consider the UNION'S proposal for the renewal of their collective bargaining agreement. Aside from the previous reasons adduced by the COMPANY in its reluctance and apprehension in deferring the negotiation to the union's proposal, it also argues that two of the other contending unions have still unexpired collective bargaining agreement with it; that if the COMPANY enters into a collective bargaining agreement with the UNION pending a certification election case, it might be charged by the other contending unions for unfair labor practice; that there is a pending charge (Case No. 899-ULP) brought by the Pepsi-Cola Sales & Advertising Union against the COMPANY for having allegedly initiated and dominated the herein complainant (UNION), and for this reason, the COMPANY should be endangering itself if it will negotiate and enter into a collective bargaining agreement with it, and to buttress its argument, the COMPANY cited the case of National Labor Union v. Zip Venetian Blind, Case No. 1028-ULP and 1041-ULP.

In view of the stalemate and impasse in the negotiation and/or for reasons, which will be discussed hereafter, the members of the UNION, on April 16, 1957 staged a strike and picketed the premises of COMPANY up to May 15, 1957.

From the above undisputed facts gathered, it can be readily discerned that the COMPANY was justified and perfectly within its legal right to defer the negotiation and conclusion of a new collective bagaining contract with the UNION, pending the outcome of the certification election case filed with this Court. To do otherwise, will in effect violate the provisions of Republic Act 875, particularly Section 12, paragraph (b) thereof which provides:

> "Whenever a question arises concerning the representation of employees the Court may investigate such controversy and certify to the parties in writing the name of the labor organization that has been designated or selected for the appropriate bargaining unit. In any such investigation the Court shall provide for a speedy and appropriate hearing upon due notice. *If there is any reasonable doubt as to whom the employees have chosen as their representative for purposes of collective bargaining, the Court shall order a secret ballot to be ascertain who is the freely chosen representative of the employee at which balloting representatives of the contending parties shall have the right to attend as inspectors. Such balloting shall be known as a "certification election."* The organization receiving the majority of votes cast in such election shall be certified as the exclusive bargaining representative of such employee." (Underlining our)

It should be emphasized that from the moment the petition for certification election (Case No. 410-MC) was filed before this Court the question of majority representation was placed into doubt. With more reason such as in this particular case, where no specific union existing in the COMPANY has been certified to by this Court to be the exclusive bargaining representative of all the employees in said COMPANY, the COMPANY could not completely disregard or ignore the said pending certification election case for fear of running counter to the afore-quoted provision of Republic Act 875. The COMPANY was, so to say, playing safe in inhibiting or declining to commit itself in entering into a new collective bargaining agreement with the UNION for fear of getting involved into a tight situation, which later on, it could not extricate itself from. If the COMPANY unknowingly, enters into an agreement prior to the termination of the pending certification election, he consequential effects are that, it may be made an unwilling party to a multiplicity of suit, such as, it might be declared in contempt of court for obstructing or delaying the administration of justice, or it might be charged of initiating and dominating a particular union, or the validity of the collective bargaining agreement might be questioned or subjected to attack by the other contending unions. The COMPANY therefore, tried its best to meet and bargain in good faith with the UNION, in spite of being faced by a dilemma not of its own making.

Moreover, from the afore-cited provisions of the Industrial Peace Act, this Court could not shrink from its duty to order a certification election when it is in doubt as to the issue of majority representation. The COMPANY in like manner, could not enter into said agreement without cautiously verifying first as to which union possesses the majority representation, the COMPANY with more reason, could not enter into a new collective bargaining agreement with the UNION, when before the expiration of its agreement with the COMPANY, a certification election filed by various contending unions is pending before this Court. This view finds

support in the case of PLDT Employees Union v. Philippine Long Distance Telephone Company and Free Telephone Workers Union (PAFLU), G. R. No. L-6138, promulgated August 20, 1955, citing Werne Op. Cit pp. 28-29, citing several cases, to wit:

> "A contract which provides for automatic renewal in the absence of notice by one of the contracting parties of the intention to alter, modify or terminate it prior to a specified period preceding the termination date, will operate as a bar *to an election. However, this rule does not apply where a contracting union has given timely notice to the employer or filed a petition with the Board reasonably prior to the specified date for automatic renewal.*" (UNDERSCORING SUPPLIED)

From the context of this authority and the facts as shown in the case at bar, it could be safely stated that the issue in the instant case squarely dovetails with the case cited.

Furthermore, it could not be said in this regard that the COMPANY has refused to bargain in good faith wtih the UNION. Apparently, it is clearly established by the record that the former not only answered all communications relative to the latter's proposals, but also attended conference called upon by the Conciliation Service of the Department of Labor to thresh out their differences. On the contrary, the COMPANY's reasons in rejecting the proposals brought forth by the UNION are believed to be sound and reasonable.

Lastly, a distinction or demarcation line should be established between the term refusal to bargain and refusal to enter into a collective bargaining agreement provided in Section 6 in relation to Sections 13 and 14 of Republic Act 875. As already discussed above, the COMPANY promptly answered all the communications and readily met with the representatives of the UNION, so that any charge of refusal to bargain in this score would not stand. With respect to the aspect of refusal to enter into a collective bargaining agreement pending the termination of the certification election case, the law is clear. The COMPANY could not be forced or compelled into an agreement with the UNION if it honestly believed that in so doing it would prejudice its rights and interests, or when the terms of the proposals are excessive and unreasonable. The COMPANY could go to the extent of rejecting any proposal presented by the UNION if it believes in good faith that the proposal is unjust, still it could not be charged of unfair labor practice, provided it answers the communications of UNION within the prescribed period and confers with the UNION'S representatives. What is contemplated by the law in making refusal to bargain an unfair labor practice is when a given proposal is presented by a certain union and the company deliberately fails to answer such proposal and refuses to meet and confer with the union in a bargaining table conference. In the instant case, there could not be unfair labor practice for the non acceptance by the COMPANY the union's proposal. This belief is in full accord with the blow quoted citations, to wit:

> "It must be stressed that the duty to bargain collectively does not convey with it the duty to reach an agreement, because the essence of collective bargaining agreement is that either party shall be free to decide whether proposal made to it are satisfactory." (Teller's Labor Dispute and Collective Bargaining p. 897).

> "The mere fact that it is made an obligation on the part of the employer to bargain collectively does not mean that the law intends to compel the making of an agreement between the parties. Section 13 of Republic Act 875, states that the duty to bargain collectively does not compel any party to agree to a proposal or to make concession." (Citing Francisco's Labor Laws 2d. ed. p. 119).

Anent the second issue, the UNION from the very allegations of its complaint in this case, and the testimony of its president Gerry Miranda, contends that between the months of February, March and April, 1957 just before the strike of April 16, 1957, the following members, namely: Rodolfo Libuna, Rodolfo Soriano, Ruperto Sayco, Rufino Libuna, Eduardo Marquez, Pelagio Tiamzon, Eduardo Marquez, and others were urged and coerced by respondent William Yonan into resigning with the UNION and joining the Pepsi-Cola Labor Unity. This witness also declared that the aforementioned members were also promised better positions by respondent Yonan if they wound secede from the UNION and join the Pepsi-Cola Labor Unity. On the other hand, respondent Yonan denied such imputations.

The Court observes that not even one of those allegedly coerced members was even presented by the UNION if really there was truth in the charged of interference and coercion in the union affiliation and/or activities of the above-mentioned members levelled against respondent Yonan. Miranda also testified that he does not remember the supervisor who coerced the said members. What compelling reason or outside force could have prevented those union members from testifying, when their very rights and interests are involved. If indeed there is a scintilla of truth as to their charge, they should be the very first ones to show interest or initiative in prosecuting their case. The Court could not help but expressed its doubt in the motive of the UNION from desisting to present the supposed individual aggrieved parties. The testimony of the UNION president that the alleged acts of interference against the members in questioned were only based on their verbal reports submitted to him and that he has no personal knowledge of the same. The Court opines that the alleged unfair labor practice stemmed from the verbal report of those subject members does not carry much probative value or weight. The testimony of witness Miranda in the opinion of this Court is merely coroborative and does not satisfy the thirst for substantial evidence rule.

As regards to the testimony of the UNION'S board member Francisco Mendoza that on March 28, 1957, respondent William Yonan gave him a blank application membership form and was told to resign and join the Pepsi-Cola Labor Unity, was uncorroborated by anyone of the four witnesses whom Mendoza claimed were present in that incident. On the other hand, respondent Yonan was able to prove that the same assertion of Mendoza was not incorporated in the complaint in this case, but incorporated in a prior case against the respondents (Case No. 1260-ULP), which case was dismissed by this Court. On top of this, not even one of those persons testified to by Mendoza to have been allegedly given blank application forms in favor of the Pepsi-Cola Labor Unity were ever presented to substantiate the UNION'S charge contained in Paragraph 5 of the complaint in this case. It is also worthwhile mentioning that witness for the UNION Gerry Miranda on cross-examination admitted that he does not remember the members of the UNION who were allegedly given blank application forms. He also admitted that he does not remember either whether Francisco Mendoza was offered better position by Yonan provided the former would resign from the UNION.

With respect to the charge that respondent William Yonan offered Gerry Miranda a higher position if he would resign from the UNION, respondents were able to prove that sometime on February 1956, the COMPANY was in need of a supervisor in its warehouse at San Pablo City. At that time the manner of choosing the supervisor was done by the supervisors themselves by selecting the most capable salesman for promotion. The supervisors selected Miranda among the salesman to fill in the vacancy, but Miranda turned down the offer because, according to him he (Miranda) was a candidate in the forthcoming UNION election. Because of this, a certain salesman by the name of Pablo Herrera was given that position, being the second choice. This fact was never controverted by the UNION. Witness for the UNION, Miranda asserted that he made a written reply to the offer of promotion, but unfortunately failed to produce a copy of said reply.

Another factor that militates against the claim of the UNION that since February, 1957 there were already reports received from its members regarding the acts of interference and coercion committed against them by the management of the COMPANY, it is strange, why the supposed acts were never incorporated or included in the notice of strike of March 11, 1957. One noticeable and glaring fact, is that the only ground alluded to by the UNION in filing the said notice of strike was the alleged refusal of the respondents to bargain in good faith with the UNION. This con-

tention strengthens the argument against the UNION when Miranda further admitted that on March 11, 1957 before he signed the notice of strike he had already called the attention of Henry Santos about the non-inclusion of the facts of unfair labor practice allegedly committed by respondents.

The UNION maintained that during the strike, the supervisors of the COMPANY through the orders of respondent William Yonan, approached its members and convinced them to go back to work and also went to the extent of going to their homes and threatened them with dismissal, if they did not return to work; that because of the refusal of said members to report for work while on strike, the COMPANY in a letter addressed to the president of the UNION advised them that they were dismissed from work effective April 16, 1957. William Yonan, however, testified that it was general manager George A. Anadale, who issued the orders to the supervisors to see and convince the striking workers to go back to work, because Anadale wanted to resume the operation of the plant and business of the COMPANY, unfortunately, they refused to return unless the COMPANY entered into a collective bargaining agreement with the UNION; that since they refused to return to work they were dismissed form their jobs; and that thereafter, many strikers went to see Anadale and pleaded for reinstatement and around sixty two of them were readmitted by the COMPANY between the period of May 2, 1957 to November 1, 1957. (Exhibit 7-deposition-Yonan). The testimony of William Yonan was corroborated by George A. Anadale and Juan Anasco-the personnel manager of the COMPANY. George Anadale declared that in their conference with the UNION'S representatives at the Conciliation Service of the Department of Labor on April 22, 1957, he requested the UNION president Gerry Miranda to advice the strikers to report for work but they did not; that several supervisors of the COMPANY went to see the strikers many times upon his instructions to ask them to report for work, but they refused unless the COMPANY concludes a collective bargaining agreement with the UNION; that the refusal of the strikers to return to work was unjust and unreasonable because, all he asked was the deferment of the negotiation and conclusion of the collective bargaining agreement requested by the UNION until the Court of Industrial Relations shall have decided the certification election pending before it; that the UNION wanted the COMPANY to accept that condition precedent preparatory to the return to work of its striking members; and that the unreasonable demands of the UNION was implemented by intimidation, coercion and violence perpetrated by striking members against the properties and non-striking personnel of the COMPANY; that in order that the operation of the plant and business of the COMPANY would not be paralyzed, he had no other alternative but to dismiss them; that on the first day of May, 1957, the COMPANY decided to resume the operation of its plants and business and since the salesman and drivers who were on strike refused to return to work, the COMPANY placed an ad in the Manila Times and Daily Mirror issue of May 2, 1957 and May 3, 1957 (Exhibits 80, 81 & 82) that it needed the services of salesmen and drivers; that after the publication of said ads, many strikers went to see him and pleaded for reinstatement after explaining that they never intended to harm the business of the COMPANY that they had to obey the orders of Miranda, the UNION president; that he (Anadale) made it clear to them that the UNION went on strike because of the refusal of the COMPANY to meet their unreasonable demands and these strikers countered that they don't care about the collective bargaining agreement, and all they wanted was their jobs in order to support their families, and knowing from experience that in many cases workers were victims of the ill advise of irresponsible labor leaders, so that he had to give them due allowance for their shortcomings by accepting them back to work and as a matter of fact up to the present, they are still working with the COMPANY.

The Court feels that the afore-described acts do not constitute unfair labor practice. On the contrary, the strikers refused to return to work unless their demand be granted by the COMPANY, which demand are unreasonable as seen in the light of the discussions on the matter in the preceding paragraphs. The dismissal of the strikers who refused to return was therefore legal and proper.

The UNION through its witnesses Gerry Miranda and Francisco Mendoza endeavored to establish that when the members of the union staged a strike on April 16, 1957, the principal cause of said strike was no longer the alleged refusal of the COMPANY to bargain in good faith with the said union as adverted to in the notice of strike filed with the Department of Labor, but the acts of unfair labor practices supposedly committed by the COMPANY'S officials against said members. Having already found out that the alleged acts of unfair labor practices alluded to by the UNION not to be supported by substantial evidence, the Court is more inclined to believe that the strike was mainly due to alleged charge of refusal to bargain. This belief if predicated on the admission by Gerry Miranda, the UNION'S president that three or four days before he signed the notice of strike, he called the attention of Henry Santos of the PAFLU about the non inclusion of the alleged acts of interference of the COMPANY'S officials but for no reason at all nothing was done about it. Furthermore, it would be amiss to say that the alleged acts of interference which were supposedly perpetrated as early as February 1957 were never incorporated in the notice of stkire-it is indeed very striking.

Incidentally and parenthetically, from the testimonies as well as document evidence on record, the strike of April 16, 1957 could not be considered within the orbit of the legal right to strike for it was characterized by coercion, intimidation and violence perpetrated by the striking members of the UNION against the persons of the non-striking employees and officials of the COMPANY, and the COMPANY'S properties. Neither could it be said that the purpose and means employed therein were reasonable and justifiable as already discussed earlier and the evidence on record shows otherwise.

The record discloses that the strikers and picketeers formed a solid human wall to block the ingress and egress of the officials and non-striking employees of the COMPANY (Exhibits 1 to 7 depositions). To prevent these officials and non-striking employees from entering the COMPANY'S premises and report for work, the strikers resorted to threat, intimidation and violence by using wooden clubs, handles of placards, fist, stones, itching powder and offensive language, and in so doing injuries were inflicted upon the persons of the said officials and employees which resulted in their confinement at the Lourdes Hospital for treatment, namely: Benedicto Chupongco, Rafael Crame, Jon Elordi, Bartolome Gloria, Andres Marcelino, Vicente Villegas, Jose Echevarris, German Sevilla, Pablo Berlegan, Pablo Villanueva and William Yonan. This fact remained uncontradicted. (See Exhibits 8, 9, 10, 11, 12, 13, 14, 15, 16, 16-A, 17, 17-A depositions: testimonies of William Yonan George Anadale, Benedicto Chupongco, Rafael Crame, and Bartolome Gloria). The record also show that the strikers and picketers formed a solid human wall in order to prevent the free entrance and exit of company vehicles; that the strikers and picketers barricaded themselves in front of COMPANY'S vehicles also to block the same from going in and out of the COMPANY'S premises. The drivers who tried to bring in or out those vehicles were stoned, beaten with wooden clubs, spat upon, assaulted with fist blows, mauled and manhandled. Others were threatened and insulted with offensive language. COMPANY'S vehicles and properties were damaged as a result of the rocks hurled by the strikers and left exposed to the elements because they were prevented by the strikers and picketers from entering the premises of the COMPANY. (Exhibits 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 84, 85, 86, 87 and 88 depositions). Cirilo Villanueva, a witsess for the UNION even admitted that there were unlawful acts and violence committed in the picket line. Under the foregoing fact and circumstance, the inevitable conclusion is that, the purpose and means employed by the striking members of the UNION in pursuing the strike are unreasonable and illegal, consequently, it could be stated that the dismissal of the striking employees was with justifiable cause. And since the strike was pursued without sufficient justification, coupled with the violence committed by participating employees against the persons and properties of the COMPANY, the law therefore cannot extend its mantle of protection to the strikers from

(*Continued on page 282*)

REPUBLIC ACT

(REPUBLIC ACT NO. 3019)

ANTI-GRAFT AND CORRUPT PRACTICES ACT

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

SECTION 1. *Statement of policy.*—It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.

SEC. 2. *Definition of terms.*—As used in this Act, the term—

(a) "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

(c) "Receiving any gift" includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive.

(d) "Person" includes natural and juridical persons, unless the context indicates otherwise.

SEC. 3. *Corrupt practices of public officers.*—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercise of discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong.

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified, in the discretion of the Court, from transacting business in any form with the Government.

SEC. 4. *Prohibition on private individuals.*—(a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

SEC. 5. *Prohibition on certain relatives.*—It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or

application with the Government: *Provided*, That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession.

SEC. 6 *Prohibition on Members of Congress.*—It shall be unlawful hereafter for any Member of the Congress, during the term for which he has been elected, to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.

The provision of this section shall apply to any other public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution, and acquires or receives any such interest during his incumbency.

It shall likewise be unlawful for such member of Congress or other public officer, who having such interest prior to the approval of such law or resolution authored or recommended by him, continues for thirty days after such approval to retain such interest.

SEC. 7. *Statement of assets and liabilities.*—Every public officer, within thirty days after the approval of this Act or after assumpting office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statements in the following months of January.

SEC. 8. *Dismissal due to unexplained wealth.*—If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.

SEC. 9. *Penalties for violations.*—(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unxplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.

(b) Any public officer violating any of the provisions of Section 7 of this Act shall be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment not exceeding one year, or by both such fine and imprisonment, at the discretion of the Court.

The violation of said section proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.

SEC. 10. *Competent court.*—Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the proper Court of First Instance.

SEC. 11. *Prescription of offenses.*—All offenses punishable under this Act shall prescribe in ten years.

SEC. 12. *Termination of office.*—No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under this Act or under the provisions of the Revised Penal Code on bribery.

SEC. 13. *Suspension and loss of benefits.*—Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

SEC. 14. *Exception.*—Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act.

Nothing in this Act shall be interpreted to prejudice or prohibit the practice of any profession, lawful trade or occupation by any private person or by any public officer who under the law may legitimately practice his profession, trade or occupation, during his incumbency, except where the practice of such profession, trade or occupation involves conspiracy with any other person or public official to commit any of the violations penalized in this Act.

SEC. 15. *Separability clause.*—If any provision of this Act or the application of such provision to any person or circumstances is declared invalid, the remainder of the Act or the application of such provision to other person or circumstances shall not be affected by such declaration.

SEC. 16. *Effectivity.*—This Act shall take effect on its approval, but for the purpose of determining unexplained wealth, all property acquired by a public officer since he assumed office shall be taken into consideration.

Approved, August 17. 1960.

C.I.R. . . . *(Continued from page 280)*

the consequences of their acts. (National Labor Union, et al. v. Philippine Match Factory. 70 Phil., 300; Almeda, et al., v. Court of Industrial Relations et al., G. R. No. L-7425; National Labor Union v. CIR and Manila Gas Corporation, 40 O. G., 37; Luzon Marine Department Union v. Roldan, et al., G. R. No. L-7155, May 30, 1960; and Philippine Education Co., Inc. v. CIR, and Union of Philippine Education Employees (NLU), G. R. No. L-7156, May 31, 1955.

Upon the basis of the findings of facts, evidence and conclusions arrived at, the Court finds that the version of respondent COMPANY is more worthy of credence. While complainant UNION'S claim is not clearly and substantially borne out by the facts and evidence of the case.

IN VIEW WHEREOF, let this case be, as it is hereby, DISMISSED.

THE ANTI-GRAFT LAW IN SIMPLE TERMS*

By Sen. ARTURO M. TOLENTINO

Coverage of Law

1. The law took effect on August 17, 1960. Only acts committed from and after that date are penalized. If the prohibited act took place before that date, the law cannot be applied to it. But when a public officer is investigated for unexplained wealth, all property acquired by him since he assumed office will be taken into account even if he acquired such property before August 17, 1960.

2. All officials and employees of the government, whether elective or appointive, receiving compensation, even nominal, are covered by the law.[1] These include those who are in the national and local governments, in the government-owned or controlled corporations, and in any other instrumentality or agency of the government.

3. The offenses penalized by this law are in addition to the crimes of public officers already punished under the Revised Penal Code, such as bribery.

Receiving Gifts

4. A public officer is permitted to receive unsolicited gifts of small or insignificant value given as an ordinary token of gratitude or friendship according to local customs or usage.

5. Gifts which are excessive in value are prohibited, even if given on the occasion of some family celebration, like a birthday or wedding anniversary, or on some national festivity, like Christmas.

6. What is a gift of small value and what is excessive will depend upon the circumstances. Ultimately, it is the court, in case of prosecution, which will decide whether the gift is of small value or is excessive under the circumstances.

7. Whether the gift is big or small, the public officer will be liable, if it is given or received in consideration of his office or for him to do or refrain from doing something in the discharge of his official duties. This would be bribery punished by the Revised Penal Code.

8. A public officer who is prohibited to receive a gift is also prohibited to receive gifts for any member of his family or relatives within the fourth civil degree. This would include gifts to his parents and grandparents, children and grandchildren, brothers and sisters, nephews and nieces, and first cousins. Neither can he receive gifts for the spouse of any of these relatives.

9. A public officer is permitted to receive gifts of any value from members of his immediate family.

Official Misconduct

10. There are acts punished by this law in which it is not necessary that the public officer should have profited or benefited. The acts in themselves are considered inimical to public interest and are thus penalized, even if the public officer receives no benefit. Thus—

(a) It is unlawful for a public officer to induce or influence another public officer to commit an offense or a violation of regulations in connection with the latter's official duties. The public officer who allows himself to be so induced or influenced is also criminally liable.

Example: A Cabinet member persuades the director of forestry to grant a timber license to an alien. Under the Constitution and the laws, an alien cannot exploit our natural resources. Both the Cabinet member and the director are liable, even if neither received any gift or benefit from the alien.

(b) It is unlawful for a public officer, in the discharge of his functions, to cause undue injury or give unwarranted benefits to any person, through manifest partiality, evident bad faith, or gross negligence.

Example: In the exercise of their discretion, the Reparation Commissioners grant to only one applicant 20 fishing boats from reparations, and turn down without cause four other applicants who have the same qualifications as the favored one.

(c) It is unlawful for a public officer to enter, on behalf of the Government, into any contract manifestly or grossly disadvantageous to the Government.

Example: The PHHC directors approve a contract in which the PHHC purchases a piece of land at P5 per square meter when the prevailing market value of the land is P.75 per square meter.

(d) It is unlawful for any public officer to grant a license permit, privilege or benefit to any person who is not qualified for or is not legally entitled to it, or to one who is a mere dummy of one who is not so qualified or entitled.

Example: The director of lands grants a homestead patent to an alien who is not qualified to acquire public lands, or to a Filipino who is a dummy of such alien.

(e) It is unlawful for a public officer, who has acquired valuable confidential information, to make a premature release of such information or to release it to unauthorized person. The person who urges him to make such unauthorized release will also be liable.

Example: A member of the Tariff Commission, knowing that there is already a decision to make a change in the tariff rates of certain goods, gives advance information of this decision to some merchants.

Corruption

11. Some of the acts or omissions punished by this law are akin to bribery in that the public officer benefits directly or indirectly in connection with his own official functions. Thus—

(a) When a public officer has to intervene in a contract or transaction between the Government and any other person it is unlawful for him to receive any gift or benefit in connection with such contract or transaction. He is prohibited to receive such gift or benefit even through an intermediary, or for another person. He is liable, even if he did not ask for the gift or benefit received by him. The giver of the gift or benefit is also liable. If a public officer asks for the gift or benefit, directly or indirectly, even if it is not given to him, he becomes also liable.

Example: The Department of National Defense conducts a public bidding for hats and shoes of soldiers. The bidding is under the supervision of a committee which will decide which bid shall be accepted. The secretary of the department will have to pass upon the decision of the committee. If such secretary accepts or requests any gift from any bidder, directly or indirectly, he becomes liable, even if the contract is not awarded to such bidder.

(b) When a public officer has before him a matter affecting a private business enterprise, he cannot accept enployment in such enterprise during the pendency of the matter before him

*Taken from the *Philippine Free Press*, September 17 and October 1, 1960 issues.

[1] In the Senate-approved version of the bill, even those who do not receive any compensation were covered, but upon insistence of the House of Representatives in the conference committee, the application of the law was limited to those who receive compensation.

and for a period of one year after its termination. Neither can he place any member of his family in such employment during that period. The one giving the employment is also liable.

The public officer, however, is not liable if he has no intervention in the employment of the member of his family. The law does not apply to employment secured before August 17, 1960.

(c) It is unlawful for a public officer to delay action on any matter pending before him for the purpose of obtaining any pecuniary benefit from any interested person, or for the purpose of favoring or discriminating against another interested party.

Influence Peddling

12. If a public officer helps any person to get a government license or permit, it is unlawful for him to accept or request any gift or material benefit for such help. He is liable even if he requests or receives such gift or benefit through an intermediary or for another person. The person giving it is also liable.

Example: A congressman writes to the Central Bank to recommend approval of the dollar license of a businessman. After the license is granted, he collects 10% of the allocation.

13. If the public officer acts in the exercise of a profession on a matter requiring professional knowledge, he is not liable if he receives compensation for his services.

Example: A congressman appears as counsel for a transportation company, before the Public Service Commission to secure a certificate to operate some trucks along a certain route.

Conflict of Interest

14. This law seeks to prevent a conflict between public interest and private interests of a public officer. It is not necessary that the public officer should have actually taken advantage of his position to serve his personal interests. The purpose of the law is to avoid the possibility that he might do so. Thus —

(a) It is unlawful for a public officer to have some pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity.

Example: The secretary of agriculture and natural resources cannot have any interest in timber concession or pasture land lease, presented to him for approval.

(b) It is unlawful for any member of a board to have any interest in any transaction or act requiring the approval of the board, even if he abstains from voting or votes against approval.

Example: A member of the board of directors of the Philippine National Bank cannot have an interest in any application for a loan which has to be approved by the board.

15. The prohibited interest may be direct or indirect. Indirect interest includes owning shares in a corporation. A public officer has an indirect interest in the business of his spouse.

16. The mere possibility that in the future a public officer may have to act upon a contract or transaction or business of an enterprise in which he has an interest, does not violate the law. It is necessary that the contract or transaction in which the public officer has an interest actually comes before him or before the board of which he is a member, for official action.

Law-Makers

17. In addition to the prohibitions explained in the Sept. 17 issue, which apply to all public officials, except those serving without compensation, there are also special prohibitions applicable only to those who intervene in the making of laws. Thus—

(a) It is unlawful for any member of Congress to have a direct or indirect financial interest in any contract with the government, or in any franchise or special privilege granted by the Congress during his term of office.

Examples. A senator who is an engineer cannot contract with the Department of Public Works and Communications to undertake the construction of roads, bridges, etc. A congressman cannot become a stockholder in a corporation granted a radio franchise by the Congress during his term of office.

(b) When a member of Congress is the author of any law or resolution which directly and particularly benefits a specific business enterprise, he cannot acquire any personal pecuniary interest in that enterprise during his term. If he had already such interest when he presented the bill or resolution, he must give up that interest within 30 days after the approval of such bill or resolution.

Example: The Congress passes a law appropriating a certain amount as subsidy for an airplane company. The author of that law cannot have even a share of stock in that airplane company.

(c) If the President, a department secretary, a bureau director, or any other public officer has recommended the initiation in Congress of such a bill or resolution benefiting a particular enterprise, he is also prohibited, just like the member of Congress who presents it from having an interest in such enterprise during his incumbency.

Example: The mayor of a city recommends to the President a bill which grants a corporation in that city the privilege of running a gambling casino. The President sends the bill to Congress, recommending approval. A congressman presents the bill as author. The mayor, the President, and the congressman cannot acquire any stock or other interest in the corporation so benefited.

Private Persons

18. When a public official has to intervene in some business transaction, contract or application of any person with the government, it is unlawful for his relatives and friends to request or receive any gift or benefit from such person, on the strength of their closeness to the public official concerned.

19. Relatives who are prohibited to do this include the spouse of the public officer, his children and grandchildren, his parents and grandparents, his brothers and sisters, and his nephews and nieces. The spouse of any of these relatives is also prohibited.

20. Friends who are prohibited to do this include all those who are sufficiently intimate with the public officer as to have free access to him, such as compadres, personal physicians, girl friends, professional associates, etc.

Example: An appointment to a civil service position is pending with the commissioner of civil service. If his godson receives a piece of jewelry from the applicant because of his closeness to the commissioner, that godson becomes criminally liable, even if actually he does nothing to secure the approval of the appointment.

21. Any private person who induces any public officer to commit any act constituting graft or corruption practice punished under this law (those explained in the Sept. 17 issue), becomes liable just like the public officer.

Certain Relatives

22. In addition to the foregoing prohibitions on private persons, which apply to everyone, there is a special prohibition applicable to certain relatives of the President, the Vice-President, the President of the Senate, and the Speaker of the House of Representatives.

23. The relatives covered by the special prohibition are the spouse and relatives within the third degree of such officials. The third degree relatives include the parents and grandparents, children and grandchildren, brothers and sisters, nephews and nieces, uncles and aunts. The spouses of these relatives are also included in the prohibition.

24. These relatives cannot intervene, directly or indirectly, in

any business, transaction, contract or application with the government, even if they do not receive any gift or benefit for such intervention.

Examples: The First Lady cannot recommend to any public official the appointment of anyone to some position in the government. A brother of the Vice-President cannot help anyone secure a dollar allocation in the Central Bank. A son of the Senate President cannot buy or borrow bulls from the Bureau of Animal Industry, or help anyone to do so. A nephew of the Speaker cannot sell office furniture or equipment to government offices.

25. The prohibition does not apply to relatives who, even before the assumption of office of such President, Vice-President, Senate President, or Speaker, had already been dealing with the government in some line of business.

Example: Before Mr. X is elected President, his brother Y has already been furnishing construction materials to the government because he is engaged in this business and he has been entering bids for such materials. The election of X as President will not disqualify Y from continuing in such business dealings with the government.

26. These relatives may file applications for themselves, the approval of which is not purely discretionary, but depends upon compliance with requisites provided by law or regulations. But they cannot assist or intervene for others in such applications.

Example: An application for homestead, or an application for civil service examinations.

27. If these relatives are themselves public officials, their dealings in an official capacity with other government agencies are not prohibited.

Example: The son of the Senate President is the chairman of the board of directors of a government corporation. As such chairman, he can enter into contracts on behalf of his corporation with any other government agency.

28. There are public officers who, under the Constitution and other laws, are allowed to practice their profession, trade or occupation. Their right to such practice is not curtailed by this law.

29. Professions are those which are regulated by law, such as law, medicine, engineering, pharmacy, etc. Trades or occupations are those for which the government grants licenses or permits, such as merchandizing, importing, exporting, manufacturing, etc.

30. Not all activities of a professional are within the practice of his profession. The test is whether his professional knowledge is needed in the particular activity in question. Influence peddling is not a profession.

Example: A brother of the President is a lawyer and has opened a law office. As such, he can represent his clients in competent courts or before administrative bodies. He can *prepare* contracts between his clients and government corporations. All these are within the practice of law; his legal knowledge is needed here.

But if he simply follows up and secures the approval of a dollar allocation, or of a timber concession or obtains a pardon for a convict, or represents a bidder for a government contract, these acts are not within the practice of law.

Financial Statements

31. Statements of assets and liabilities must be filed at stated periods by all public officers, who receive any amount of compensation, allowance or per diems, and private persons are not required to file such statements.

32. The first statements were to be filed not later than September 16, 1960, by those already in office. Those entering the government service after September 16, 1960, have 30 days after assuming office in which to file their first statements.

33. The next statements are to be filed within the month of January of every other year thereafter. Thus, the next statements will be filed in January, 1962. The last statements are to be filed upon the termination of office or employment.

34. The statements of department heads are filed with the Office of the President; those of members and employees of Congress are filed with the corresponding secretary of each House; those of the members and employees of the Supreme Court are filed with the Office of the Chief Justic; and those of all other officers and employees are filed with the office of the corresponding department head.

35. The statement must be under oath. It must contain the following: (1) a list of the properties of the public officer and their values, including bank deposits; (2) the amounts of his debts and obligations; (3) the amounts and sources of his income in the next preceding calendar year; (4) the amount of his personal and family expenses during that preceding year; and (5) the amount of income taxes paid during that preceding year.

36. Failure to file the statement, or the filing of a false statement, is a ground for dismissal or removal of the public officer or employee. He may also be criminally prosecuted.

Unexplained Wealth

37. If a public officer is found to have an amount of property or money manifestly out of proportion to his salary and other lawful income, and he cannot explain the legitimate source of that wealth, such unexplained wealth is subject to confiscation by the government. All property acquired by him since he assumed office will be taken into account.

38. In determining the wealth of a public officer, property placed in the name of his spouse, ascendants, descendants, relatives and other persons, but in fact acquired by him, are to be included.

39. For the purpose of determining unexplained wealth, the bank deposits of the public officer can be looked into, in spite of the law making such deposits secret and confidential. For other purpose, however, such as in prosecutions for bribery or influence peddling, or income tax cases, bank deposits are still secret.

40. Possession of unexplained wealth is a ground for dismissal or removal of the public officer or employee.

Penalties

41. For not filing the statement of assets and liabilities at the time required by law, or for filing a statement containing false information, the penalty in a criminal prosecution is either a fine from ₱100 to ₱1,000, or imprisonment of not more than one year, or both such fine and imprisonment, at the discretion of the court.

42. For all other violations of this law, whether committed by public officers or by private persons, the penalty includes: (1) imprisonment from one to ten years, (2) the confiscation by the government of any prohibited interest or unexplained wealth, (3) perpetual disqualification from public office, and (4) the return to the complainant of any money or property he may have given to the guilty person.

Miscellaneous

43. When a public officer is under investigation or prosecution for bribery or any violation of this law, he cannot be allowed to resign or retire. This is true, whether the investigation is criminal or administrative.

44. The moment the fiscal files a criminal case in court against a public officer for bribery or the violation of this law, he shall be suspended from office. If he is finally convicted, he loses all retirement and gratuity benefits given by any law. If he is acquitted, he is reinstated and given all the salaries and benefits he failed to receive while he was under suspension. But if administrative proceedings have also been filed against him, he will remain suspended, in spite of the acquittal in the criminal case, until he is also cleared in the administrative investigation or allowed under some other law to return to office.

45. Criminal cases for violations of this law may be filed in court at any time within ten years from the commission of the offense.

1960 BAR EXAMINATION QUESTIONS

CIVIL LAW

I. a) When did the Civil Code of the Philippines take effect? Discuss.

b) State two new rights or causes of action created by the new Civil Code.

c) State two subjects which were regulated by the old Civil Code but which have been omitted by the new Civil Code.

II. a) How does the conjugal partnership differ from an ordinary partnership?

b) How does the conjugal partnership differ from co-ownership?

III. Pedro Perez, husband of Maria Cruz, contracted tuberculosis in January of 1951. His illness became worse and on September 10, 1952 he could hardly move and could not leave his bed. On that date, the wife, Maria Cruz, eloped with Juan Perez, Pedro's brother, and both went to live in the house of Maria's father. Since then Juan and Maria lived and treated each other as husband and wife. Pedro Perez died in January 1, 1953. His wife, Maria, stayed away and did not even attend his funeral. Then on June 17, 1953, Maria gave birth to a baby boy named Jose Perez. Was Jose Perez a legitimate child? Give reasons for your answer.

IV. a) What is the period of prescription under the new Civil Code for the following causes of action: (1) Action upon an oral contract; (2) action for annulment of a subsequent marriage contracted in the mistaken belief that the consort in the former marriage was dead.

b) A cause of action accrued on January 10, 1949. The complaint to enforce the same was filed in Court on November 6, 1956. Assuming that under the old Code of Civil Procedure (Act 190) said cause of action prescribes in ten years, but under the new Civil Code it prescribes in only six years, should the action filed in Court be considered now barred by extinctive prescription or not? Give reasons for your answer.

V. A constructed a house on land belonging to B in the belief that the land was his own. Upon discovering the fact, B demanded that A should pay him the value of the land, but A failed to do so.

a) Did A's failure to pay automatically make B the owner of the house by right of accession? Give reasons.

b) What remedies are available to the parties, Discuss.

VI. An agent with general powers of administration, leased to another person two parcels of land belonging to the principal; one for five years at ₱500 payable annually and the other without a fixed term at ₱100 a month payable monthly. The agent, desirous of improving the financial condition of his principal's business, sold another piece of land belonging to his principal, for double the price that appeared in an inventory prepared by the principal before going abroad. Are the three contracts valid and binding upon the principal? Give reasons for your answer.

VII. a) Decedent A left an estate worth ₱30,000, after paying his obligations. He is survived by two legitimate children (B and C), one natural child (D), two illegitimate children not natural (E and F) and the surviving spouse (G). In his lifetime the deceased A had donated ₱10,000 to his son B. Liquidate the estate and decide the legitime and actual share of each surviving heir, giving the substance of the legal provisions on which your computation is based.

b) Decedent X, born illegitimate, is survived by only an illegitimate brother Y, and by Z, an illegitimate child of another illegitimate brother, who died ahead of X. State whether or not Z has any rights in the intestate succession of X, giving the substance of the legal principles applicable.

VIII. a) Explain the various meanings of the term "FRAUD" as used in the Civil Code in relation to obligations and contracts, and give illustrative examples of each.

b) What do you understand by "continuous possession of status of a (natural) child" as used in the Civil Code? Explain and illustrate with examples.

IX. In a collision between a public service passenger bus and a freight truck, one of the bus passengers suffered physical injuries. Both drivers were at fault, and the passengers filed suit against the owners of both vehicles in a single action. Each defendant sets up the defense that he exercised the diligence of a good father of a family in the selection and supervision of the respective driver.

a) Are both defenses good if duly proved? Give your reasons.

b) Is plaintiff entitled to recover moral damages? Reasons.

c) If the defenses are not proved, will the defendants be solidarily liable or not? Reasons for your answer.

X. a) After securing, through collective bargaining, a closed shop contract, the union demands the dismissal of all employees who are not members of the union, regardless of the date such non union employees were hired, whether before or after the contract. Is the union's demand proper? Reasons for you answer.

b) A guard of X Company is injured, while on duty, by the automobile of one of the customers of the company. He filed a claim under the Workmen's Compensation Act and wins an award of ₱3,000. Believing that the amount is not enough to compensate his injuries, the guard files a suit for damages against the owner of the automobile. If the latter was really at fault, is the action tenable? Decide with reasons.

LAND REGISTRATION AND MORTGAGES

I. (a) What do you understand by judicial confirmation of an imperfect title? (b) Is there at present a law fixing the date when an application of this kind can be filled? If so, what is the deadline?

II. (a) In voluntary dealing with registered lands, what is the operative act that conveys or binds the land? What documents are required to be presented in the office of the Register of Deeds? (b) When is a voluntary deed considered registered? (c) In involuntary dealings, what documents are required to be presented for registration in order to convey and bind the property? State briefly the difference in the registration proceedings of a voluntary dealing from one that is involuntary.

III. (a) The Register of Deeds doubts if a document you have presented is acceptable for registration. To whom should be Register of Deeds refer the matter for consultation? In the event the resolution is against the registration, can you appeal? State briefly the steps you should follow. (b) Is a lease contract in favor of an alien for 25 years of a titled land acceptable for registration? Is it not covered by the constitutional prohibition regarding acquisition of real property by aliens?

IV. (a) A property was wrongfully or erroneously registered in another person's name. Two years after the entry of the decree, the rightful owner discovered the registration. What is the remedy of the owner? Is the action subject to prescription? If so, what is the period of prescription? (b) Distinguish briefly constructive fraud from actual fraud. In an action for reconveyance or damages on the ground that the property was erroneously registered in the name of the defendant, what kind of fraud should be proven in order that the action may prosper?

V. "A", "B" and "C" are co-owners of a titled land in the proportion of 1/3 each. "A" died. Juan Momez, posing as his only heir, sold the participation of "A" to Guillermo Perez, who in turn sold the same portion to Enrique Fajardo. The sales to Perez and Fajardo were registered and noted on the title and duplicate, but no new titles were issued to Perez and Fajardo. Two years after the sale to Fajardo, Francisco Heredia, the rightful

heir of "A", filed an action against Perez and Fajardo seeking the annulment of the deeds of sale. Perez and Fajardo claim that they are innocent purchasers for value. The evidence is clear that Gomez was an impostor. Is the defense of Perez and Fajardo tenable? Why?

VI. Pedro Reyes, registered owner of a parcel of land, sold one-half (½) of the immovable property to "B". The deed was not registered. Reyes died leaving three sons: Juan, Marcos and Antonio. Upon the death of Reyes, his sons instituted intestate proceeding for the settlement and distribution of his estate including the titled land one-half of which had been sold to "B". The entire parcel of land was adjudicated to the three brothers. Later, Marcos and Antonio sold their share to their brother Juan, and a new certificate of title was issued to Juan as the sole owner of the whole land. "B" filed an action for reconveyance of the one-half (½) of the property. Is the action of "B" tenable? Explain your answer briefly.

VII. (a) On July 1, 1942 Marcos Heras sold his agricultural land to Juan Go, a Chinese. On September 4, 1942, during the enemy occupation, the Government of the Philippines approved a law prohibiting the acquisition of lands by aliens. In 1946, Juan Go filed a petition for registration. The Director of Lands opposed the petition on the ground that the Constitution of the Philippines does not allow aliens to acquire agricultural land. Is the opposition tenable? Give your reasons for your answer. (b) A titled owner is desirous of mortgaging his land to an alien. May the alien accept a mortgage on the land? Are there any limitations imposed by law on his right as mortgagee?

VIII. As a result of a previous ordinary registration proceeding a lot was registered in the name of "A" who is described as a widower. In a cadastral proceedings instituted subsequently, can "A" ask the cadastral court that his title be cancelled, and, in lieu thereof, another title be issued in his name and that of his children? Suppose the land is mortgaged to "C" and the deed is noted in the title of "A", can "A" ask the cadastral court to issue the title without the incumbrance on the ground that the obligation is already paid? In case an opposition is filed by the mortgagee who alleges that the obligation has not been paid, has the cadastral court jurisdiction to decide the issue?

IX. (a) In a mortgage contract it is stated that the immovable property mortgaged consists of a parcel of land with a three door "accesoria". Before the obligation became due, the owner added two doors to his "accesoria". On account of the owner's failure to pay his obligation, foreclosure proceeding was instituted against him. The mortgagor in his answer claimed that the two doors should be excluded from the proceeding. Is the claim tenable? Why? (b) In 1930 "A" mortgaged his titled land to "B" to secure a loan payable within four (4) years. The deed was properly registered. In 1948 "B" filed foreclosure proceedings for failure of "A" to pay his obligation. "A" asked for the dismissal of the complaint on the ground that the action has prescribed. "B" countered that, according to law, "no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession" and since the mortgage is noted in the title, the action is not subject to prescription. Is this contention tenable? Why?

X. (a) What is the concept embodied in the new Civil Code with regard to chattel mortgage? (b) Can a house of strong materials constructed on rented land be the subject of a chattel mortgage? (c) A house constructed on rented land was considered by the parties in a chattel mortgage contract as personal property. In case of foreclosure, can the sheriff sell the house as personal property at the auction sale?

SUPREME COURT . . . *(Continued from page 275)*

of Industrial Relations, and that, furthermore, the complaint does not state a cause of action.

We find the petition to be meritorious.

The University of the Philippines was established "to provide advanced instruction in literature, philosophy, the sciences, and arts, and to give professional and technical training." (Act 1870, sec. 2.) Performing as it does a legitimate government function, the University is maintained by the Government. It declares no dividends, and is, obviously, not a corporation created for profit but an institution of higher education and therefore not an industrial or business organization. In the case of Boy Scouts of the Philippines vs. Araos (G. R. No. L-10091, promulgated January 29, 1958), this Court held that—

> "x x x our labor legislation from Commonwealth Act No. 103, creating the Court of Industrial Relations, down through the Eight Hour Labor Law, to the Industrial Peace Act, was intended by the Legislature to apply only to industrial employment and to govern the relations between employers engaged in industry and occupations for purposes of profit and gain, and their industrial employees, but not to organizations and entities which are organized, operated, and maintained not for profit or gain, but for elevated and lofty purposes, such as, charity, social service, education and instruction, hospital and medical service, the encouragement and promotion of character, patriotism and kindred virtues in the youth of the nation, etc.
>
> "In conclusion, we find and hold that Rep. Act No. 875, particularly, that portion thereof, regarding labor disputes and unfair labor practice, does not apply to the Boy Scouts of the Philippines, and consequently, the Court of Industrial Relations had no jurisdiction to entertain and decide the action or petition filed by respondent Araos. x x x."

The above ruling has been reiterated in our decision in the recent case of University of Santo Tomas vs. Villanueva etc. et al. (G. R. No. L-13748, promulgated October 30, 1959) and in the cases cited therein. Following the said ruling, it is obvious that the Industrial Court has no jurisdiction to hear and determine the complaint for unfair labor practice filed against herein petitioners.

In addition to the patent lack of jurisdiction of the respondent court, the complaint for unfair labor practice should be dismissed for failure to state a valid cause of action. According to the said complaint, petitioner Concepcion Anonas "notified said complainants that she had lost her confidence in them, for which reason, she did not recommend the renewal of their appointments which were supposed to be made on June 1, 1956." It also alleged that the refusal of petitioner Anonas "to recommend the reappointment of the three complainants-employees was just a mere retaliation x x x." It clearly appearing upon the face of the complaint that the complaining uninon members were merely temporary employees whose period of employment has terminated, their separation from the service is, therefore, justified. Settled is the rule that one who holds a temporary appointment has no fixed tenure of office and as his employment can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause. (Mendoza vs. Canzon, G. R. No. L-104663, April 12, 1953; University of the Philippines et al. vs. CIR et al. G. R. No. L-13054, December 20, 1958.)

In view of the foregoing, the petition for certiorari is granted. The orders complained of are set aside and the complaint for unfair labor practice against the petitioners is dismissed, with costs against respondents other than the respondent court.

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

Barrera, J., took no part.

INTERNATIONAL COMMISSION OF JURISTS

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ESSAY CONTEST ON

The role of the lawyer in the economic and social development of his country within the framework of the Rule of Law

In order to encourage law students and young lawyers interested in the problems of the Rule of Law, the International Commission of Jurists—a non-governmental organization in Consultative Status with the United Nations Economic and Social Council—announces an international essay contest on the theme: "The Role of the Lawyer in the Economic and Social Development of His Country Within the Framework of the Rule of Law."

Regulations

1. *Subject*

Essays may be written on the theme in general or on any specific national or international aspect decided upon by the entrant. The essays submitted should deal with the impact on each other of the need for economic and social development and the promotion and preservation of fundamental freedoms under law. There should be a discussion of the question whether the Rule of Law is properly to be seen as solely a defence against infringements of the fundamental freedoms or whether it requires a positive attempt by lawyers—in the broad sense of the term, i.e., judges, teachers of law and practising lawyers—to promote simultaneously the conditions in which man's legitimate social, economic, educational and cultural aspirations may be fulfilled. The essay should be prepared in a publishable form, with proper citation of relevant material.

2. *Closing Date*

Entries must be received at the Geneva offices of the Commission not later than December 31, 1960.

3. *Eligibility*

The entrants must belong to one of the following categories:

a) Persons certified by their respective Dean, Tutor, or other responsible officer as registered students in a recognised school or faculty of law, or in a school or faculty of political and/or social science where instruction and examination in law forms part of the curriculum leading to a degree;

b) Persons who have graduated in law or in a subject which included an examination in law not earlier than 1957;

c) Persons reading for the Bar or otherwise undergoing formal instruction, as required in each particular country with a view to becoming qualified as a judge or to practice law.

In case of doubt as to the eligibility the Adjudication Committee shall decide in the last resort.

4. *Languages*

Entries may be written in English, French, German or Spanish.

5. *Form of submission*

Entries must be typewritten, double-spaced, on one side of the page only and submitted in five copies.

6. *Length*

Entries should contain a minimum of 10,000 words.

7. *Adjudication*

Entries will be judged by an Adjudication Committee of distinguished judges, academic lawyers and practitioners drawn from different countries as follows: MAURICE AYDALOT, Procureur Général, Court of Appeal, Paris; ROBERT R. BOWIE, Director, Center for International Affairs, Harvard University; FREDE CASTBERG, Professor of Law and former Rector of the University of Oslo; MANUEL G. ESCOBEDO, Lawyer, former President of (Barra Mexicana); JEAN GRAVEN, President of the Court of Cassation, Geneva; C. J. HAMSON, Professor of Comparative Law, University of Cambridge; Mr. Justice W. B. van LARE, Judge, Court of Appeal, Accra; R. P. MOOKERJEE, Dean of the Faculty of Law, University of Calcutta, former Judge, High Court of Calcutta; L. A. SHERIDAN, Professor and Head of the Department of Law, University of Malaya, Singapore. National committees consisting of distinguished jurists may be appointed to judge national entries for submission as final entries to the international committee.

8. *Awards*

First prize:	Cash award of	2,000 Swiss francs;
Second prize:	Cash award of	1,000 Swiss francs;
3rd & 4th prize:	Two cash awards of	500 Swiss francs;

Winning entries as well as those receiving honorable mention will be published in the Journal or in another publication of the Commission.

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In view of the present difficulty of locating the office of practicing attorneys, the Journal publishes this directory to acquaint not only their clients but also the public of their address. Lawyers may avail themselves of this service upon payment of Two Pesos for each issue of this publication or Six Pesos for one year—12 issues—payable in advance.

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