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THE DESCENT TO A DICTATORSHIP*

By GEORGE W. MAXEY

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IT is a happy coincidence that the meeting that directly led to the Philadelphia Constitutional Convention was a meeting of the representatives of five states held on September 11, 1786, in Maryland, and 152 years later almost to the exact date, news from Maryland demonstrated that the majority of American voters are still free men and that the United States is not yet ready to descend to a dictatorship. On September 11, 1786, the Maryland meeting was good news and on September 12, 1938, the report of the Maryland vote was in a double sense "glad Tydings." The defense of constitutional government rises above politics or partisanship and because of that fact I feel justified in speaking here.

"Easy is the descent into hell." That a dictatorship is hell is self-evident. Refugees who recently escaped from the German dictatorship to the Swiss Republic knelt with a prayer of thanks and kissed the free soil. Not long ago the Russian dictator executed the Admiral of the Russian Navy, the Superintendent of the Russian Naval Academy and many others, and a little before that he did corresponding jobs on the army High Command. Stalin possesses the all-time Russian record for assassinations. He "has slain his tens of thousands." Germany is a cruel despotism. In both countries people are regimented by brutal bureaucracies, lied to by a controlled radio and press, and convinced by bullets. Ship captains find it unnecessary when their ships touch Russian or German ports to take precautions against desertions. Desertions are numerous only in the ports of free countries. Sailors have an unerring instinct for a good land.

In Russia and Germany there are 240,000,000 human beings living under terrorism. Hundreds of thousands of them are in prison camps. Fifty thousand Austrians have been imprisoned or exiled because of their race. Chancellor Schuschnigg is to be tried for treason because he was loyal to his own country. Many have found in suicide the only escape from intolerable tyranny.

In Germany there is a secret tribunal with spies everywhere. When a German finds that this tribunal is making inquiries about him, it is said that "he puts a pistol to his head," no matter how blameless he may be. Defense is useless, for Hitler proclaims his belief in periodic purges. Hitler's right-hand man is "Iron Hermann" Goering. He expressed his idea of his official duty when he said: "I am in the habit of shooting from time to time and if I sometimes make mistakes, at least I have shot." This savage dictatorship has destroyed German freedom, made Germany medieval in its barbarism and today world peace is subject to the whim of a man who but fifteen years ago was a paper-hanger. It's too bad he didn't remain one. The descent from the Germany of Bismarck and Von Bulow, of Rathenau and Stresemann to the Germany of Hitler and Goering has been a descent into barbarism.

If the assaults being made on our Constitution are not emphatically repelled, this Republic will make the same descent. The German people were warned against Hitler. They were told that this "cheap Austrian demagogue," as he was then characterized, would take away their liberties if he were entrusted with power. The warnings were ignored. Germans thought "it could not happen" there. Von Hindenburg took Hitler so lightly six years ago that he said he would get rid of him by putting him to work licking the backs of Hindenburg postage stamps. Today the once despised demagogue holds in his hands the lives of 75,000,000 people and menaces the welfare of the world. Edmund Burke was right when he said that "early and provident fear is the mother of safety." If the Germans had feared Hitler a little more when they had a chance to vote him out, they wouldn't have to fear him so much now when they have no chance to vote at all.

The road descending to a dictatorship is an old one. Plato and Aristotle described it twenty-three centuries ago. There is no mystery about the science of government. The greatest intellects have illumined that subject and all history confirms their conclusions. Aristotle said that a democracy unrestrained by constitutional limitations was "a state in which everything, even the law, depended on the multitude set up as a tyrant and governed by a few declamatory speakers." James Madison had the same thought in 1787 when he described *unrestrained* democracies as "spectacles of turbulence, short in their lives and violent in their deaths."

Human character is the stuff states are made of and it has never changed. The ambitions and vanities of men of today are all described in ancient literature. In Homer's story of the Trojan Horse, he told how the hostile Greeks got into Troy by being concealed in a device that appeared to be something other than what it was. If he were living today and saw the devices used to introduce deadly evils into this Republic, he would say the deceptiveness if the few and the gullibility of the many had not changed in 3,000 years.

Fortunately for us Americans those statesmen who met in Philadelphia 151 years ago knew human history, human nature and the conclusions of all the political philosophers. John Locke's "Treatise on Government," and Montesquieu's "Spirit of the Laws," declaring that the separation of governmental powers is the only safeguard against tyranny, were well known to these men. Madison and Hamilton and Wilson had studied the records of all republics. Franklin was there and he was one of the wisest men of the ages. The convention's presiding officer was George Washington, whom Gladstone pronounced, "the purest figure in history." Washington's life and character personify just resistance to the abuse of power. He often declared: "Arbitrary, irresponsible power cannot be entrusted to human minds."

These nation builders were practical men. None of them had ever learned to walk by being carried or sought remuneration through indolence. Whatever they possessed they had struggled for. They had liberty only because they had fought for it.

After the Revolution the need of the hour was government. There are two kinds: autocratic and democratic. Americans had fought off one autocratic government and did not want another. They wanted "a government of the people," and such a government means the rule of neither a man nor a mob. A free spirit abhors both anarchy and chains. Mindful of the lessons of the past, these men were eager to protect human liberty by constitutional safeguards. Republics descend to dictatorships only when people forget the past and are blind to the present and indifferent to the future.

Napoleon said that it was easier to make a plan of campaign than to execute it. Our Constitution was a plan of campaign against autocracy. The plan was executed successfully for nearly 150 years. If the plan is failing now, it is because the American people have lost their capacity for self-government. Our constitutional guarantees become "poor, poor dumb mouths" only when character no longer stands behind them. The plans of Napoleon succeeded only when he had men with character to execute them. His perfect plan for the Battle of Waterloo was wrecked by a single subordinate.

*Speech delivered in Chicago, Ill., on September 23, 1938, under the auspices of The Union League Club of Chicago.

Nations have been ruined by one man alone. Place the government in the hands of a single individual and you endow him with unlimited capacity for evil, which he is likely to exercise. Proof of this is found in the European dictatorships of today.

> "A thousand years scarce serve to form a state,
> An hour may lay it in the dust; and when
> Can man its shatter'd splendor renovate?"

Our Constitution has been declared to be "the greatest document ever struck off at one time by the mind of man." Like all works of superior minds, it is not complex but simple. It has four basic principles, which until recent years had the whole-hearted allegiance of every American statesman. No man ever takes official authority here without first making a solemn covenant with God and his country to be faithful to the fundamental law. To take that oath and then attempt to undermine the fundamental law is not only perjury, it is treason—treason to the most sacred trust human hands can hold. Infidelity to the Constitution is infidelity to freedom. Heretofore, however much political rivals in America might have differed on policies, they did not differ in their devotion to the fundamental law. In June, 1861, Stephen A. Douglas lay dying in this city. He and Abraham Lincoln had been long-time rivals in the politics of Illinois and recent rivals for the presidency. The defeated and dying Douglas, when asked by his wife if he had a farewell message for his sons, said: "Yes, tell them to support the Constitution of the United States."

What are these four basic principles of the Constitution? They are: (1) The federal government shall keep to its sphere and the states to their proper spheres of government. (2) No official shall be entrusted with autocratic power. (3) Unrestrained power shall never be lodged anywhere, not in the President, not in the Congress, not even in a majority of the American people. (4) There shall be maintained an absolutely independent judiciary. In our constitutional system the United States Supreme Court is the "power of gravity" which holds to its assigned "orbit" every "planet" of government. As long as these basic principles of the Constitution are *un*violated, there can be no dictatorship. A certain sign of a dictatorship-complex in any public official is his scorn of these principles. Within the past few years these principles of sound, democratic government have been flouted in the "New Russia", the "New Germany", and the "New Deal".

The first act of the German dictator was to abolish home rule and to concentrate all power in Berlin. In his first speech as Chancellor in February, 1933, Hitler said the German provinces were "the historical corner-stones of the German Empire," and he would respect them. Within a year he broke that pledge and appointed commissioners to rule the provinces. Thereafter local rights and then individual rights quickly disappeared. The federal republic of Germany had become a centralized autocracy. Insisting that he had done all this by legal means, Hitler called himself "Legality Adolf." Exactly five months after he had centralized all authority in himself he carried out his blood purge, murdering several hundred men and one woman. These people were murdered because they were critical of Hitler's policies. Willi Schmidt, the Munich press chief, was one of the victims. He had criticized Hitler. The gang of executioners first shot the wrong Willi Schmidt, a musician, and then discovering their mistake, went back and shot the other. Thus two men were killed to get rid of one critic. Another victim of the blood purge of June 30th was Dr. Klausener, Under-Secretary of the Ministry of Transport and Chief of the Rhenish Catholic Party. He was shot at his desk. Two of Von Papen's secretaries were killed at their desks. The story of the murders of July 30, 1934, is one of the most grisly stories in history.

How fares federalism in the U. S. A.? On June 7th last, Senator King of Utah declared on the floor of the Senate that "local self-government lies at the very foundation of a free country" but that "if present policies continue, the states will become mere shells out of which all life has departed." The handmaiden of liberty is home rule. It is what Ireland fought for and at last secured after 700 tragic years. Home rule is what the despotism of Russia and the imperialism of old Germany denied the Polish people after Poland's cruel dismemberment. Our states as autonomous commonwealths are being rapidly destroyed. In the domain of taxation, Governor Lehman of New York pointed out that the Federal Government is exhausting the sources of the state's financial support and reducing the states to "vassals." This practice has made it necessary for governors to go to the President seeking donations from the federal treasury—a treasury whose only source of supply is the savings of the American people. A state that has to solicit alms from a central government is no longer sovereign. It has lost even its self-respect.

The second basic command of the Constitution: Entrust no official with autocratic power, has been scorned during recent years. No such concentration of power in the hands of the Executive as now exists has ever before been seen in this Republic. Never before has this been a one-man country. Washington's refusal of a third term, Jefferson's refusal of a third term, Coolidge's refusal of a third term, were all based on the principle that it must always be demonstrated that this is not a one-man country. Jefferson declared that the two-term-only precedent set by Washington was "sound and salutary," that it is as much a president's "duty to lay down his charge at a proper time as to have borne it faithfully." He added: "If some termination to the service of the Chief Magistrate be not fixed by the Constitution or supplied by practice, his office nominally for years, will in fact become for life; and history shows how easy that degenerates into an inheritance." A one-man country soon becomes a dictatorship no matter what its governmental form.

The placing in the hands of the President, of billions of dollars to be spent as he sees fit and where he sees fit, clothes him with dictatorial power. Millions of individuals are on the federal pay roll and it is conceded that 90 per cent of them vote as the President wills. As these voters have other voters in their families, it follows that the President has, through his control of jobs, a control over the electorate which is utterly repugnant to a free expression of the public will. "Priming the pump" has become a mere euphemism for pumping the primaries. The greatest work-master in American history is now attempting to become the greatest vote-master in American history.

Senator Byrd has recently declared that there are today 7,000,000 direct and 32,000,000 indirect recipients of federal funds. The gratitude of the recipients of such funds is translated into votes for the man from whom they seem to think the funds come. We have seen recently the spectacle of the President going into a state to solicit votes for his candidate for the United States Senate and his first utterance upon reaching that state was to promise the voters that he would spend $14,000,000 of public money on bridge-building in that state. If he had succeeded in his purpose to fill the Senate with marionettes, this nation in its descent to a dictatorship would have "touched bottom." President Washington rebuked a man who asked him merely to express his wishes in the selection of a certain congressman.

> Washington, "thou shouldst be living at this hour,
> America hath need of thee: she hath become a fen
> Of stagnant waters...
> Oh! raise us up, return to us again;
> And give us manners, virtue, freedom, power!"

President James Buchanan and Senator Stephen A. Douglas were political enemies, though members of the same party, but there is no record of Buchanan asking the people of Illinois to defeat Douglas when he ran for the United States Senate in 1858. President Jackson and John C. Calhoun were political enemies, though members of the same party, but there is no record of Jackson attempting to bring

about the termination of Calhoun's senatorial career. The respective independence of the Executive, the Legislature and the Judiciary is the corner-stone of American constitutional government, and that the voters of Maryland, South Carolina and Georgia and other states have recently reasserted their independence in defiance of presidential interference is the most hopeful thing that has happened in this country since the court-packing plan and the reorganization plan were killed by courageous Senators and Congressmen. This defiance of the President transcended all party considerations; it was a manifestation of old-fashioned Americanism. It would have delighted equally Hamilton and Jefferson, Lincoln and Douglas, Grover Cleveland and Theodore Roosevelt. At the last session of Congress a senator known as a presidential "yes man" introduced a bill to penalize any newspaper for publishing a falsehood. As some governmental bureaucrat would be the judge of the falsity of an article challenged, that law would have destroyed the liberty of the press. The original N. R. A. had a press licensing measure attached to it. It required a fight to kill it.

Napoleon III was elected President of France and in a few years he had subverted the Constitution he had sworn to support and became an hereditary Emperor. Read what the historian Lecky says about the methods Napoleon III employed to acquire arbitrary power. Possibly you will notice a present-day parallelism. This is what Lecky says in his "Democracy and Liberty" of Napoleon III and his political "technique": "Every official from the highest to the lowest was turned into an electioneering agent. All the powers of administration were systematically employed in directing votes. Each constituency was taught that its prospect of obtaining roads or bridges or harbors or other local advantages depended on its support of the government and if the official candidate succeeded he would have the power of distributing among his supporters innumerable small government places, privileges and homes.... The legislators were elected by universal suffrage yet the government (because of its control of the voters) became an almost absolute despotism." He describes the government of Napoleon III as "a government with no real constitutional freedom, no liberty of the press and no liberty of public meeting." The Encyclopedia Britannica, 14th ed., says of Napoleon III: "His was the government of cheap bread, great public works and holidays." History records that Napoleon III's grandiose schemes brought ruin to his country. The disastrous Franco-Prussian War, followed by the Paris Commune, in which there were 20,000 executions, and colossal destruction of property, was the fruit of his lust for power. The Franco-Prussian War, which this dictator caused, led, with its Alsace-Lorraine aftermath, to the World War of 1914. Such are the fruits of dictatorship.

We have in this country now an executive whose personal power is greater than the head of any constitutional state ever possessed. This power is based almost exclusively on the fact that Congress has given him a blank check on virtually unlimited public funds. These funds are used to increase and perpetuate executive power. This power generated by public funds was almost sufficient to enable the President to pack the Supreme Court so that it would be but the echo of his will, and thereby destroy our constitutional government.

How about the third command: Never permit unrestrained power to be lodged anywhere, not even in a majority? This principle has not yet been destroyed but it has been disdained. Men now in power have declared that there should be no curb on the popular will as expressed by a majority. This means that neither an individual nor a minority has any rights which the majority are bound to respect. It means the yielding of principle to what seems like temporary expediency. It means abject surrender to the pressure of prejudice or emotion. No nation is worthy to be called a republic where majority rule is not restricted by constitutional minority protection. Otherwise the passion or the caprice of the majority at any time is the supreme law of the land, and no man's life, liberty or property is secure. In a genuine *constitutional* government the law and not the mob, rules, and whatever the majority may in a moment of madness or excitement demand must yield to the intelligent and sober judgment the organic law embodies. Freedom does not long survive where the law of force supplants the force of law. A ship that is steered by the hurricane soon becomes a ship-wreck. A great navigator consults his charts and adheres to the established principles of navigation. Real statesmen and fearless judges ofttimes have to stem the torrent. They go with the tide only when the tide sets in the right direction. Every great American President at times breasted the popular tide. This was particularly true of Washington and Lincoln and Cleveland. Their quest was for the path not of popularity but of right, and when they found that path they travelled it without fear. They never counted voices of approval, they weighted them, and to them the most weighty voices were those of intelligence and conscience. The insatiable appetite that certain men in power have for popular applause is the chief cause of the evils that now beset the world. Anyone who eleven days ago heard on the radio, the German dictator's speech to a howling mob of fanatical supporters can understand what the intoxication of applause does to petty men clothed with great power. They care not what happens to their country *tomorrow* so long as they are cheered *today*. An excited state of the public mind has no more relation to the public's reflective judgment than a cloudburst has to the beneficence of rain. Where a Constitution like ours is maintained and laws respected there is always "an appeal from Philip drunk to Philip sober."

The fourth basic principle of the Constitution is: Maintain an independent judiciary. Everywhere cowed courts have meant an enslaved people. In his march to absolutism every dictator has destroyed the independence of the judiciary. Before Hitler had been in Austria 72 hours, he revoked the commissions of independent judges and put puppets in their places, exactly as he had done in Germany. Napoleon III did the same thing in his march to absolutism in France. Victor Hugo graphically tells that story.

The proposal last year to pack the Supreme Court was avowedly to make that court validate any law the President wanted. The success of that scheme would have ended this constitutional Republic. Josiah W. Bailey, North Carolina's able and courageous Senator, said in an address on June 20th last, that the President's court-packing plan was "a direct attack upon the independence of the judiciary, for the express purpose of having the court uphold as within the power of Congress, acts passed at the instance of the President, which according to every decision of the court in similar cases have been uniformly held to be beyond the power of Congress." Senator Bailey added: "No president takes an oath to support the Constitution *as he understands it*. He must accept the *court's* interpretation or be *over* the Constitution and not *under* it." Senator Bailey characterized the court-packing proposal "as a blow against the process of democracy most essential to its existence—the constitutional check on Executive and Legislative power," and said: "I am appalled when I consider that labor and struggle was required to repel an attack that in any other period would have at once disgraced those who made it."

Senator Wheeler of Montana on March 10, 1937, stated that the President's purpose in adding six new justices to the Supreme Court was to make that court "subservient to his will." Carter Glass said on March 29, 1937: "No threat to representative democracy since the foundation of this Republic has exceeded in its evil portents this attempt to pack the Supreme Court of the United States and thus destroy the purity and independence of this tribunal of last resort." The Senators who saved the Supreme Court should be honored alongside the signers of the Declaration of Independence. When the Chief Executive of any country can dictate to its Congress and to its courts, he is in fact *a dictator* no matter what may be his title.

If he claims that his dictatorship is "benevolent," he is claiming an impossibility, for a "benevolent dictatorship" is as much a contradiction in terms as "patriotic treason." Absolute power transforms its possessor into a tyrant no matter how benevolent his original nature. "Power breeds arrogance and arrogance corrupteth the understanding heart." Any American who consents to giving the Chief Executive dictatorial powers either doesn't know or care what he is doing or is a slave in his soul. If Americans are to continue to *enjoy* the protection of the Constitution, they must be vigilant and resolute to *defend* it.

But violation of the Constitution is not the only route to a dictatorship. A nation can squander itself into a collapse which leads to chaos and then to a dictatorship. No limit on governmental spending was imposed by the Constitution, for it was assumed that the people would not permit themselves to be reduced to insolvency by spendthrifts in public office. Since the British Parliament won the right to control the British purse, it has more than once refused to open it at the behest of the king. Whenever a British king has gone to Parliament for money he has gone humbly, with his hat and not his scepter in his hand. Governmental extravagance and the excessive taxation it entails have always been the heralds of social disorder and economic anarchy. Taine in his "Ancient Regime" said: "During the decline of the Roman Empire so enormous was the weight of taxation, that the laborer broke down, plains became deserts and woods grew where the plow had been." Herbert Spencer said: "When the French Revolution was approaching, public burdens were so heavy that many farms remained uncultivated and deserted, one quarter of the soil was lying waste and in some provinces one-half was in heath." When a nation's annual tax bill reaches more than 20 per cent of the national income, it is time to put up danger signals. Benjamin Franklin declared that for a government to take from its people one-tenth of its income in taxes would be "hard and oppressive." A government that costs a country more than 20 per cent of its national income is leading it to debt repudiation in the form of inflation or depreciation of currency, to be followed by social disorder and economic chaos. Today the annual cost of federal, state and local government is eighteen billions of dollars or about 30 per cent of our national income. The public debt of no other people in history ever equalled the present public debt of the United States, including the debts of states, countries and municipalities. The total is in round numbers $60,000,000,000.

The federal deficit during the current fiscal year is now running at the rate of four billions of dollars. This equals the cost of the Civil War. As we cannot endure a 30 per cent tax collection, we have resorted to borrowing which means taxes *deferred* and with interest. The increase in the national debt by the present administration is a sum equalling nearly fifteen dollars a minute from the birth of Christ to the present day. In one of his last public utterances Senator Robinson said in the Senate on June 18, 1937: "Gentlemen may laugh about a $36,000,000,000 debt but with all my refined and expansive sense of humor, I find it impossible to laugh about it." That debt has increased 11 per cent since Senator Robinson uttered those words and by June 1, 1939, it will be forty billions of dollars. Carter Glass said last June: "This country is in a state of irretrievable bankruptcy." The present leader of the majority in the United States Senate was interviewed a few weeks ago about the federal deficit. He said (as reported): "I don't agree that there is no alternative other than heavy taxation. If money is needed, it will have to be found." As to where he expects to "find" the money he gives no clue. Possibly he expects to find it "at the foot of the rainbow." A crew which glides down the Niagara River in a canoe, attentive only to the alluring prospect on the shore and hoping to "find" land, is headed for catastrophe. When Mr. Roosevelt was a candidate for President in 1932, he said: "If the nation, like a spendthrift throws discretion to the winds and is willing to make no sacrifice at all in spending, if it extends its taxing to the limit of the people's power to pay and continues to pile up deficits, it is on the road to *bankruptcy*." This nation is now nearer by fifteen billions of dollars to bankruptcy than it was when that admonition was uttered. The expenditures for the national government during the year before he spoke those words were $4,091,000,000. This year they are over $9,000,000,000. Great Britain was in the World War fifty-one months, she has a population only one-third as large as ours and she has 740 inhabitants to every square mile of land while we have only 41, yet on June 8, 1935, her Prime Minister was able to announce that her budget was balanced, her taxes were cut by $60,000,000, that public confidence had been restored, trade revived and that the number of people in employment there was the highest ever recorded in the history of that country. That is another example of the fact that statesmanship cooperates with natural forces and cures the ills of the body-economic while quackery meddles with nature and either kills the patient or cause a devastating relapse.

The Thirteen Colonies went to war on the proposition: "Taxation without representation is tyranny." We now have a taxation with representation that is a tyranny for worse than that which drove the Colonists to revolt. Montesquieu said, and all history proves it, that "the effect of excessive taxation is slavery." It makes thrift useless and paralyzes the initiative of a people. Today Americans are in the name of taxation having their accumulations confiscated and their daily earnings devoured. Public officials who would impoverish and strangle the industrial life of the nation were never dreamed of by the men who established this Republic.

The Constitution provides that private property shall not be taken for public use without just compensation. The colossal and corroding waste of public funds on every hand is proof that the present-day taxpayer is not getting "just compensation" for the property taken from him. The Constitution specifically mentions life, liberty and property as being the subjects of its protection. Today the government is not conserving property, it is consuming it. It's only a short step from taking property to taking liberty. Andrew Jackson said in his Farewell Address, March 4, 1837: "There is no power conferred on the Federal Government so liable to abuse as the taxing power. Congress has no right to take money from the people unless money is required to execute some of the specific powers entrusted to the government."

Another cause of the collapse of republics is their overloading. When a government takes on more responsibilities than any government can discharge successfully, it is courting chaos. The German republic collapsed because it undertook to satisfy too many human wants. This collapse made "Hitlerism" possible. Society and government are two different things and from the confusion of them comes the folly of fanatics. Society involves all human relationships, and only limited areas are a legitimate field for government. No government possesses the wisdom or power of Providence. Putting a man into office does not make him a superman. Even supermen are "super" only in special lines, and, in government, they have been few. The men who aspire to the role of Providence in controlling society have usually been failures in their private lives. They seem to think that mating mediocrity with public office begets genius. It is not so. The association is more likely to beget these "twins": *delusions of grandeur* and *an ambition to administer civilization*. The geniuses in government have been men who understood government's natural limitations—understood that while government's capacity for good is limited, its capacity for evil is unlimited—understood that while any "quack" can kill, the greatest physician can cure only when he coöperates with Nature's healing processes. Jefferson's best known dictum is "that government governs best which governs least." Spengler said that Bismarck was a statesman of the first rank, for in his statesmanship "his high policy was the art of the possible."

That most profound analyst, Gustave Le Bon, says that "the basic philosophy of the French Revolution was that a society may be remade in all its parts by means of institutions. The lawmakers of that day resolved to break with the past, found a new era, fix prices and legislate for the human race. They wanted to annihilate the past but in the end they were annihilated. Their faith in the power of laws and institutions was absolute. After ten years of violence and destruction and burning and pillage and massacre their impotence was revealed so startingly that they fell into universal reprobation. The possibility of remaking society by means of laws has been given the lie by observation and experience." Woodrow Wilson must have had such remakers of society in mind when he said here in Chicago in 1909: "The men who are dangerous are the men who propound theories which will make a new pattern for society and a new model for the universe. These are the men who are not to be trusted."

The decisive test of any law is not its objective but its workability. The doctors who bled George Washington "meant well" but they killed their patient. The League of Nations had a noble objective but it hasn't worked. It did harm. England depended too much upon it and neglected rearmament. No pilot of a ship of State dare ignore the rocks and reefs of reality. Marshal Foch was a realist and said that world peace would come only when the ambitions of nations no longer clashed and peace lodged in all human hearts. Treaties cannot guarantee peace and laws cannot create prosperity. No law can kill the profit motive or the instinct to possess property and no law can restore business confidence and enterprise in a country whose public officials are constantly attacking capital. In all countries and in all ages scared capital means idle capital and idle capital means idle men. To have employees there must be employers. It has been recently said that "every man in the United States who possesses property of any kind is afraid of being robbed and almost certain of being ruined. The only uncertainty is whether the robbing will be accomplished through taxation, inflation, confiscation or all three." An attack on capital is an attack on something produced by liberty. Only free men have capital. A slave has no property, he is property. We have men in high station who denounce communism and yet foster practices that are leading directly to it. Every attack on capital, every policy that squeezes value out of property and interferes with its use, are steps toward communism. He who rails against success and excellence has in himself the making of a communist. He is certainly giving communism "aid and comfort."

If multiplicity of laws made for prosperity, American prosperity would be unparalleled. No other nation can rival us in multiplicity of laws. There is a law prohibiting even the interstate shipping of a potato if it's less than 1-1/2 inches in diameter. Our bureaucracy is the world's bulkiest. There are 1,000,000 employees on the federal government's civil pay roll. Since July 1, 1933, the government built 664 new office buildings outside of Washington at a cost of $239,000,000 and three years later it was leasing 11,842 other buildings, all as office space for its employees. The floor space of buildings owned and leased by the government outside of Washington is the equivalent of fifty-two Empire State buildings. Government agencies became so numerous in the District of Columbia that some had to go to Baltimore for office space. This huge bureaucracy has functioned so wastefully that, according to Senator Byrd of Virginia, it built dwellings in Virginia at a cost of $8,000 which local builders agreed to reproduce for $900. The government built elsewhere 15,000 homes at a cost of $16,000 each, which puts them beyond the reach of the tenants they were built for. The multitude of laws and our colossal taxes have mired American business into stagnation. Enterprise thrives only in freedom. The expensive "New Deal" remedies have had no more curative effects on the depression than cosmetics have on character. The United States had periodic depressions before 1929 and so did every other country in the world. The records prove that depressions here and elsewhere lasted on an average of five and sixtenths years and then prosperity returned. In 1838 at about the bottom of the four-year depression of that period the national debt was less than half of what it had been five years before. When President Van Buren was urged to take measures of relief which he deemed unsound, he said in a message to Congress on September 4, 1837: "All communities are apt to look to government for too much . . . especially at periods of distress. The framers of our Constitution acted on a sounder principle. They wisely judged that the less government interferes with private pursuits the better. It is not its object to repair by grants of money or legislation in favor of particular pursuits, losses not incurred in the public service. This would be to use the property of some for the benefit of others. It never assuming even for a well-meant object, such powers as were not designated to be conferred upon it, we shall in reality do most for the general welfare." The depression of 1873 lasted six years. When President Hayes took office in 1877, he described the country's industrial condition as one of "prostration." But he adhered to sound principles during his four-year term and when he turned the country over to his successor in 1881, the latter was able to announce that "the prosperity which now prevails is without parallel in any history." During President Hayes' term the national debt had been reduced by $64,000,000. The depression of 1893 both here and abroad, which lasted five years, was characterized by the then Governor of the Bank of England as "the most severe financial disturbance of the century." Yet President Cleveland declared that the American people "can be assured of safety only as long as the nation's solvency is unsuspected," and with dauntless courage he held the country to sound financial policies, and the country moved forward under President McKinley to another era of unparalleled prosperity, and during that entire five-year depression period the national debt was not increased as much as it is now increased in two weeks.

Why has the 1929 depression been extended to nearly ten years and the national indebtedness increased nearly twenty billion dollars while other depressions ended in about five years without any substantial increase in the national debt? The difference is the difference between sound statesmanship and reckless experimentation in the treatment of the ills of the body-economic. There is no other explanation. It is asserted that we recovered from former depressions because we had an "open frontier." It is assumed that as soon as men became idle they took up free Western lands and became prosperous. Those who remember earlier depressions do not recall any such exodus from Eastern homes to Western homesteads. Two-thirds of the 1891 decade were depression years. Our population then increased by 13,046,861. The trans-Mississippi area increased in population by only 3,936,561 men, women and children. Our population increase by immigration during that decade was 3,687,564, mostly adult male laborers. The millions then out of work were obviously not absorbed by the free lands of the West.

Political and economic delusions are as old as those of alchemy and witchcraft and youth-restoring potions. Ponce de Leon led his men on a well-financed quest for "the fountain of eternal youth" but it ended in disaster for him and his followers. In 1880, David A. Wells, a profound economist, said of schemes to end financial ills and create prosperity by legislation: "Their authors think they have discovered something new in the domain of economic truth but the record of the past shows that all such schemes are but repetitions of old imbecilities. Those who war on natural laws meet failure and disaster."

The American billions entrusted to empirics for investment have yielded no dividends but disappointment. The statistical Year Book of 1937-38 just issued by the League of Nations shows that during the world-wide depression starting late in 1929 the United States has made the poorest record for recovery of all the nations on the globe. Taking the industrial production 1929 as the basis and representing it by the figure 100, Great Britain's industrial

production is now 124, Sweden's 146, and the United States is 64, which is far the lowest of the seventeen nations reporting.

Occasionally some American who goes to Russia or Germany on a visit professes to like what he finds there, though I observe that he doesn't stay there. If he wants to understand a dictatorship in all its phases, let him seek out the families of those whom dictators have murdered and imprisoned; let him think of the 800,000 Jews of Germany and Austria who have been despoiled of their possessions and denied the right to practice their professions or otherwise earn their daily bread simply because of their race; let him consult the clerics and nuns who have been cast into prison for exercising freedom of religion. Let him interview the editors who have been imprisoned or exiled for exercising freedom of speech. If any one contemplates the peace and order found in dictatorships, he should recall the words of the Czar who, after confiscating the property of Poles and jailing and executing them by the thousands, proclaimed: "Peace reigns in Warsaw."

The dictator type is well known. Washington and Lincoln were not of the type, for they possessed no vanity. Napoleon said that the leaders of the French Revolution were all animated by vanity. A dictator craves adulation, is always sure that his talents and virtues surpass those of others, and he feels that to question his judgment is treason. Dictators are self-righteous, self-confident and arrogant. Their test of political ethics is political consort with them. The dictator Robespierre is described by historians as a "a man of mediocre intelligence, incapable of grasping realities, crafty and dissimulating, his prevailing note being pride and vanity." His method was to kill those who did not conform to his views.

Dictators are also jealous men. They brook no rivals and are intolerant of intellectual equals or superiors. Stalin killed off his equals and superiors and Hitler has done the same. Robespierre and Danton were friends and allies in the early stages of the French Revolution, but when Robespierre became powerful enough to do so, he guillotined Danton. Both Le Bon and Michelet say that Robespierre "put his associates to death because he was jealous of their talents, which eclipsed his." The typical demagogue-dictator is

> "In friendship false, implacable in hate
> Resolved to ruin or rule the state."

Demagogues succeed only in an atmosphere of emotion. Since hate is the most powerful of all emotions, they engender it. The easiest hate to engender is class hatred. It is also the most fatal to the welfare of nations. James Bryce said that "class war is a menace to mankind and the heaviest blow ever directed against democracy." In stirring up class warfare the demagogue always selects some minority group as the object of hate. In France of the 1790's it was the nobility, in Russia the aristocracy and in Germany the Jews. In America it is the "economic royalists." An "economic royalist" appears to be something evil to have in the country but nice to have in the family. The demagogue first deludes the people with an exaggerated belief in the power of government to promote human welfare and happiness and he then foments revolutions to achieve impossibilities, hoping that in the social upheaval he will be cast up in the role of dictator. The world today is a witness to a dictator's power for evil.

It is characteristic of would-be dictators that they always disclaim any intention of *being* dictators. Even Julius Caesar put "the proffered crown aside" while at the same time he was looting the Roman treasury to increase and perpetuate his power. No dictator today even wears that title. We had a dictator in an American state a few years ago who rejoiced in the title of "Kingfish." His sense of humor which led him to exploit that title did not prevent him from attempting to suppress in his state, along with individual liberties, the liberty of the press, which attempt was frustrated by the Supreme Court of the United States.

When demagogues with their "catch words" and seductive illusions and false promises acquire the dictatorial power their vanity covets, they proceed by force to convert majority into totality, to war on liberty, and to make all non-conformity a crime. This has happened in Russia, in Germany and in Spain. In Madrid thirty thousand executions have taken place, yet three years ago our Minister there wrote that no serious disorder was threatened. But the seeds of class hatred had been sown and the harvest of blood was reaped when the smouldering passions were released and legal and social restraints cast off. In the late 1780's France was acclaimed the most civilized nation in the world. A few years later in the fury of class warfare, the heads of kings, nobles and laboring men were cut off with perfect "equality" and French rivers ran incarnadine to the sea. The demagogues who started all this perished too. One of history's most dramatic moments was when Danton, on the scaffold, asked pardon of God and man for the part he had taken in fomenting the French Revolution.

Aristotle said: "All dictators begin as demagogues." Demosthenes said: "To guard against tyrants is the first duty of a people who desire to remain free." All history teaches that if the social stream is permitted, when lashed into torrential rage, to forsake its channel and leap its barriers, it will spread devastation far and wide before its force is spent.

> "Laws are vain by which we right enjoy,
> If power unquestioned can those laws destroy."

Such are the lessons of the past. "Shall all these things be washed in the waters of Lethe and forgotten?" Or shall Americans "wake up" before it is too late, and standing shoulder to shoulder regardless of party, maintain the restraints of law and order and repel every attempted breach of the Constitution?

THE LEGITIME OF ACKNOWLEDGED NATURAL CHILDREN AS SOLE AND CONCURRING FORCED HEIRS IN INTESTATE SUCCESSION

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THE CIVIL CODE defines natural children as those born out of wedlock of parents who, at the time of the conception of such children, could have legally married each other. As they are born out of wedlock, they are, therefore, illegitimate children.

Natural children are either acknowledged or unacknowledged. When either or both of their parents recognize them as their children, it is said that they are acknowledged natural children. In the absence of such recognition, they are considered as unacknowledged natural children.

Unacknowledged natural children are not entitled to any right whatsoever against their putative parents except, perhaps, the right to compel acknowledgment when they have proper grounds therefor according to law. Acknowledged natural children, on the other hand, are entitled to certain rights against their acknowledging parents among which is the right to inherit as the forced heirs of the latter. The difference lies on the ground that unacknowledged natural children are legally without parents against whom such right may be asserted—a natural and physical impossibility which by fiction the law makes as possible for purposes of public policy.

In the law of succession, acknowledged natural children may either be the sole or concurring forced heirs of the acknowledging parent. They are said to be the sole heirs of such parent when the latter died without leaving legitimate descendants or ascendants. In which case, Article 939 of the Civil Code provides that they succeed to the entire inheritance without prejudice, however, to the right of the surviving spouse of the deceased according to law. When, however, they survive with legitimate descendants or ascendants of the deceased parent who acknowledged them, such children are said to be concurring forced heirs of such parent.

When the acknowledged natural children concur with the legitimate ascendants of the acknowledging parent, Article 841 of the Civil Code provides that such children are entitled to one-half of the estate of the deceased, which share is to be taken from the half available for free disposal. This is understood, however, to be without prejudice to the legitime of the surviving spouse, which consists of the usufruct of one-third of the inheritance to be taken also from the half available for free disposal, according to Article 836 of the Code. So that, when the spouse survives with the acknowledged natural children together with the legitimate ascendants of the deceased, whatever is lacking to complete the legitime of the children shall be allotted to them only in naked ownership as long as the surviving spouse lives.

When, however, the acknowledged natural children concur with the legitimate descendants of the acknowledging parent, Article 840 of the Civil Code lays down the rule that each of the acknowledged natural children is entitled to a share equal to one-half of that which pertains to each of the legitimate children not bettered, provided that it be comprised within the one-third part for free disposal from which it must be taken after deducting the burial and funeral expenses. Sanchez Roman, explaining this rule, said that the equality refers both to quantity as well as to quality. (6 Sanchez Roman, 901-908). This opinion of the distinguished commentator is also the opinion of our Supreme Court expressed in the case of *In re* Tad-Y, 46 Phil. 557.

However, Article 834 of the Civil Code provides that when the deceased is survived by his widow or her widower who, at the time of his or her death is not divorced or is so due to his or her fault, such widow or widower shall be entitled in usufruct to a portion of the estate of the deceased equal to that which pertains as legitime to each of the legitimate children or descendants not bettered. And if only one legitimate child or descendant survives, the widow or widower shall be entitled in usufruct to the third portion of the estate destined for betterment, the former retaining the naked ownership until dominion is consolidated in him by the death of the surviving spouse.

Let us now assume that the deceased died intestate leaving his widow and two children, one legitimate and the other acknowledged natural child. Applying the rule, the acknowledged natural child gets as his share a portion of the inheritance equal to one-half in quantity and in quality to that which pertains to the legitimate child, which share is to be taken from the free portion. In this case, the share of the natural child is equal to one-third of the entire inheritance and, therefore, consumes the entire free portion, which constitutes one-third of the entire estate. The legitime of the widow, consisting in usufruct, is to be taken from the third portion of the estate available for betterment and, in this case, consumes entirely that portion. The legitimate child gets the naked ownership of that same portion and in full ownership the third remaining part or the short legitime. But will the natural child get the entire free portion in full ownership? Manresa answers the question in the affirmative. He says:

"La concurrencia del cónyuge supérstite no influye en la legitima del hijo natural en los casos normales en que debe gravar el tercio de la mejora." (6 Manresa, 597).

Sanchez Roman, on the other hand, is of different opinion. He says:

"Si existiere viudo, pero no mejora, la cuota viudal consistirá en el usufructo del segundo tercio, destinado por la ley á mejora, reduciéndose la legitima del hijo ó descendiente legitimo que le represente á un tercio de la herencia en pleno dominio, y el otro, cuyo usufructo se adjudica al viudo, en nuda propiedad (art. 834 2.o párrafo, y 840); haciendose, por necesaria analogia, distinción semejante en el doble concepto de aplicación de bienes en pago de la legitima al hijo natural, la mitad de cuyo importe se le adjudicará en pleno dominio, y la otra mitad en nuda propiedad, y el usufructo de esta segunda mitad quedará de libre disposición y se consolidará á la muerte del cónyuge viudo." (6 Sanchez Roman, 901).

This opinion finds explanation in the fact that if the acknowledged natural child gets as his share the entire free third in full ownership, then he gets more than what the law gives him; that is, one-half in quantity and in quality to that which the legitimate child not bettered gets as his legitime. And in this case, the legitimate child gets his share one-half of which is in naked ownership and the other half in full ownership. Therefore, in order to maintain the proportion established by law, Sanchez Roman says that the natural child should also get his share one-half of which is in naked ownership and the other half in full ownership; the usufruct of that which he receives in naked ownership constitutes a free portion, but upon the death of the widow, shall be consolidated to the natural child.

Again, on this particular point, our Supreme Court has the same opinion as that of Sanchez Roman as expressed in the Tad-Y case, *supra*. In that case, the following facts were proven:

On December 26, 1922, Vicente Tad-Y died in the Municipality of Iloilo, Province of Iloilo, leaving his widow Rosario Elser, a legitimate son Jose Tad-Y, and an acknowledged natural daughter Maria Tad-Y, who are declared in the judgment appealed from as his only legal heirs. In said judgment there was adjudicated to Rosario Elser the usufruct of the third

of the estate of the deceased available for betterment, to Jose Tad-Y the third constituting the short legitime in full ownership, and the naked ownership of the third available for betterment, and to Maria Tad-Y the free third in full ownership. This allotment made by the trial court was held by the Supreme Court as against the law. In reversing the decision appealed from, the Supreme Court laid down the following rule:

"To determine the share that pertains to the natural child which is but one-half of the portion that in quality and quantity belongs to the legitimate child not bettered, the latter's portion must first be ascertained. If a widow share in the inheritance, together with only one legitimate child, as in the instant case, the child gets, according to the law, the third constituting the legitime in full ownership, and the third available for betterment in naked ownership, the usufruct of which goes to the widow. The natural child must get one-half of the free third in full ownership and the other half of this third in naked ownership, from which third his portion must be taken, so far as possible, after deducting the funeral and burial expenses. And excess would result consisting in the usufruct of the surplus remaining of the other half of this third, which for lack of testamentary provision must go to the legitimate child. As upon the death of the widow, the usufruct of the third available for betterment will pass to the legitimate child, in order to maintain this proportion established by the law, the natural child must in turn get the usufruct of the surplus of this half of the free third."

Accordingly, the Supreme Court made the following allotment: The portion allotted to Jose Tad-Y was the third constituting the short legitime in full ownership, and the third available for betterment in naked ownership; to Maria Tad-Y, one-half of the free third in full ownership and the other half of this third in naked ownership, after deducting the burial and funeral expenses; to Rosario Elser, the usufruct of the third available for betterment; and to Jose Tad-Y, the usufruct of the remaining half of the free third, which upon the death of Rosario Elser shall pass to Maria Tad-Y.

It should, however, be noted that from the language of Section 735 of the Code of Civil Procedure, repeated in Section 7, Rule 87 of the New Rules of Court, which will take effect on July 1, 1940, it is evident that in all cases the funeral and burial expenses are to be paid from the mass of the estate of the deceased. Therefore, so much of the rule which refer to funeral and burial expenses should now be eliminated. So that the rule is settled that the share of each of the acknowledged natural children, concurring with the legitimate children and descendants of the deceased parent, is equal to one-half in quantity and in quality to that which pertains to each of the legitimate children not bettered. But is the rule applicable in all cases where natural children concur with legitimate children and descendants of the deceased? In other words, does not the rule admit of any exception? This brings us to the provision of Article 839 of the Civil Code in relation to Articles 834 and 840 of the same Code already cited and discussed.

Article 839 of the Civil Code provides that in case there survive children of two or more marriages, the usufruct pertaining to the widowed spouse of the second marriage (which means the last marriage of the deceased) shall be taken from the third available for the free disposal of the parents.

Let us now suppose that the deceased is survived by his widow and four children; two of whom are legitimate belonging to two different marriages, and the other two are acknowledged natural children of the deceased. Acording to Article 834, the widow is entitled in usufruct to a portion of the inheritance equal to that which pertains as legitime to each of the legitimate children or decendants not bettered. Therefore, in the example given, she is entitled in usufruct to one-third of the entire estate which usufruct according to Article 839, is to be taken from the third available for free disposal, because the legitimate children belong to two different marriages. Her usufruct, therefore, burdens the entire free third.

But according to the rule, each of the acknowledged natural children is entitled to a share in the inheritance equal to one-half in quantity and in quality to that which pertains to each of the legitimate children not bettered, which share is also to be taken from the free third. Inasmuch as the share of both of the natural children herein is equal to one-third of the entire inheritance, it therefore consumes also the entire free portion. But because that entire portion is totally burdened by the usufruct of the widow, therefore, the share of the natural children is reduced to a mere naked ownership, while the share of the legitimate children is in full ownership. Therefore, the share of each of the natural children in this case is not anymore equal to one-half in quantity and in quality to that which pertains as legitime to each of the legitimate children or descendants not bettered. Is not then the rule applicable in this instance?

We can only apply the rule by doing either of two ways: (1) by applying Article 834 instead of Article 839 with regard to the portion from which the usufruct of the widow is to be taken, or (2) by reducing proportionately the share of the legitimate children.

If we apply Article 834 instead of Article 839 in this case, in the sense that the usufruct of the widow is to be taken from the betterment instead of the free portion, then the rule can be applied by merely following the allotment made in the Tad-Y case, *supra*. But it seems that this course is not warranted by the law. It is because Article 839 or any other article of the Civil Code does not provide for any such exception. And if there be none, the court cannot, by interpretation provide for one. The application of Article 839 in this case might work an injustice to the natural children. But the court cannot do otherwise but to apply it. It is only for the Legislature to alter the law so as to make it conformable to justice.

We can also apply the rule by reducing proportionately the share of the legitimate children. This is done by reducing it into a mere naked ownership like that of the natural children, so that the usufruct therefore becomes a free portion which the deceased could have freely disposed of by will. But again this course does not seem to find any justification in the law. It is because it is not legally possible to create a free portion from the legitime of the legitimate children.

It seems clear, therefore, that when the acknowledged natural children concur with that of the widow and the legitimate children of the deceased, the rule that each of the natural children receives as his share a portion of the inheritance equal in quantity and in quality to one-half of that which as legitime pertains to each of the legitimate children not bettered, suffers an exception where the legitimate children belong to different marriages. In which case, the natural children may suffer a reduction to their inheritance caused by the usufruct of the widow, without any corresponding reduction to the legitime of the legitimate children.

STATUTE NOT TO BE CONSTRUED ISOLATEDLY

"A STATUTE is not to be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws. It is not to be expected that a statute which takes its place in a general system of jurisprudence shall be so perfect as to require no support from the rules and statutes of the system of which it becomes a part, or so clear in all its terms as to furnish in itself all the light needed for its construction. It is proper to look to other statutes, to the rules of the common law, to the sources from which the statute was derived, to the general principles of equity, to the object of the statute, and to the condition of affairs existing when the statute was adopted . . . . 'Construction has ever been a potent agency in harmonizing the operation of statutes, with equity and justice.' Statutes are to be construed as to make the law one uniform system, not a collection of diverse and disjointed fragments."—Elliott, J. in Humphries v. Davis (1884), 100 Ind. 274, 284. (From the United States Law Review, Vol. LXXI, No. 12 p. 701).

THE PHILIPPINE LAW ON ORGANIZED LABOR—COM. ACT NO. 213

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[CONCLUDED]

CHAPTER V

THE PENAL PROVISION OF THE LAW

Section 5 of Commonwealth Act No. 213 provides as follows:

Any person or persons, landlord or landlords, corporation or corporations or their agents, partnership or partnerships or their agents, who intimidate or coerce any employee or laborer or tenant under his or their employ, with the intent of preventing such employee or laborer or tenant from joining any registered legitimate labor organization of his own choosing, or who dismiss or threaten to dismiss such employee or laborer or tenant from his employment for having joined, or for being a member of, any registered legitimate labor organization, shall be guilty of a felony and shall be punished by imprisonment of not exceeding one year or a fine not exceeding one thousand pesos, or both, at the discretion of the court.

There are two classes of acts punishable under this article:

1st. The act of intimidating or coercing any employee or laborer or tenant with the intention of preventing such employee or laborer or tenant from joining any registered legitimate labor organization, of his own choosing.

2nd. The act of dismissing or threatening to dismiss such employee or laborer or tenant from his employment for having joined, or for being a member of, any registered legitimate labor organization.

The first class of acts are concededly within the power of the National Assembly to punish. The use of force or intimidation disturbs the public peace and interferes with the personal liberty and security of the laborers, and as such, it is not only the right but also the duty of the National Assembly to suppress.

As to the power of the legislature to punish the second class of acts, however, this had been for so many years the subject of controversy among leading American jurists and legal talents. Some of them believed that the legislature is without power to punish such act for to do so would deprive the employers of their constitutional rights,[103] while others believed the contrary.[104] To be able to appreciate the merits of the two conflicting views I shall frame a hypothetical case which involves this controversial part of the law.

Let us assume that an information was filed by the City Fiscal of the following tenor:

"The undersigned accuses Mr. Reyes for violating Section 5 of Commonwealth Act No. 213 committed as follows:

"That on or about October 5, 1938 in the City of Manila, and within the jurisdiction of this court, the accused, being the managing partner of Reyes & Co., maliciously and feloniously dismissed from his employ A, B, C, D and E without just cause. That said dismissal was due to the defendant's having discovered the fact that said employees are members of Labor Union 'X, Y, Z.' All contrary to law."

The defendant after having been duly summoned and arraigned pleaded not guilty. He admits all the allegations in the complaint, but sets the defense that the section of the law under which he is prosecuted is unconstitutional.

The Arguments for the Defense

1. It Deprives Employer of Liberty and Property Without Due Process of Law:

"The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of a purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell. In all such particulars the employer and the employee have equality of rights, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract, which no government can legally justify in a free land, under a constitution which provides that no person shall be deprived of his liberty without due process of law." (Adair v. United States, 208 U. S. 161; to the same effect in Lochner v. New York, 198 U. S. 45.)

"Included in the right of personal liberty and the right of private property—partaking the nature of each—is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are exchanged for money or other forms of property. If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established sense . . ." (Coppage v. Kansas, 236 U. S. 1)

"Liberty includes not only the right to labor, but to refuse to labor, or for labor and to terminate such contracts and to refuse to make such contracts. * * * Hence, we are of the opinion that this Act contravenes those provision of the Federal Constitution, which guarantees that no person shall be deprived of life, liberty, or property without due process of law." (Gillespie v. People, 188 Ill. 176).

2. It Deprives Employer of the Equal Protection of the Law.

The Act is unilateral in its application. It takes into account the interest of the laborers at the expense of the employers. And "the right (to enter into contract of employment) is essential to the laborer as to the capitalists, to the poor as to the sick." (Coppage v. Kansas, *supra*) and "in the making of such contract—the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining." (Adair v. United States, *supra*).

3. The Law Cannot be Sustained as a Proper Exercise of the Police Power of the State.

Such a statute makes the leveling of inequalities of fortune "an end in itself, and not an incident to the promotion of the general welfare. Indeed, to punish an employer for simply proposing terms of employment under circumstances devoid of coercion, duress, or undue influence, has no reasonable relation with public health, safety, morals and general welfare," (Coppage v. Kansas, *supra*) and as such, "the legislature has no authority to pronounce an innocent act criminal."

Argument for the Prosecution

1. The Employer is not Deprived of Liberty and Property Without Due Process of Law.

"The section is in substance, a very limited interference with freedom of contract, no more. It does not require the carriers (employers) to employ anyone. It does not forbid them to refuse to employ anyone, for any reason they may deem good . . . The section simply prohibits the more powerful party to exact certain undertakings, or to threaten to dismissal or unjustly discriminate on certain grounds against those already employed." (Adair v. United States, dissenting opinion of Justice Holmes).

"That the right to contract is a part of the individual freedom within the protection of this Amendment, and may not be arbitrarily interfered with is conceded. While this is true, nothing is better settled by the repeated decisions of this court than that the right of contract is not absolute and unyielding, but is subject to limitation and restraint in the interest of the public health, safety, and welfare, and such limitations may be declared in legislation of the state." (Coppage v. Kansas, dissenting opinion of Justice Day).

"Due process of law is not denied by the provision" of this section. "It does not interfere with the normal exercise of the right of an employer to select his employees

[103] Among the jurists may be mentioned Justice Harlan and Justice Pitney.
[104] Among them may be mentioned, Justice Holmes, Chief Justice Hughes and Justice Day.

or discharge them so long as he does not under cover of such right intimidate or coerce his employees with respect to their self-organization and representation.

"Employers have their correlative right to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work.—Restraints for the purpose of preventing an unjust interference with that right cannot be considered arbitrary or capricious." (National Labor Relations Bd. v. Laughlin S. Corp., 301 U. S. 1).

2. It Does Not Deprive the Employer of the Equal Protection of the Law.

"The Act has been criticised as one-sided in its application; that it subjects the employer to supervision and restraint and leaves untouched the abuses for which employees may be responsible. That it fails to provide a more comprehensive plan,—with better assurance of fairness to both sides and with increased chances of success in bringing about, if not compelling, is declared to be beyond the legislative authority of the State.

"But we are dealing with the power of Congress, not with a particular policy, or with the extent to which policy should go. We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with evils within the range of legislative power." (Jones Laughlin S. Corp., etc., *supra*).

"In present conditions a workingman not unnaturally may believe that only by belonging to a labor union can he secure a contract that shall be fair to him. If that belief, whether right or wrong, may be held by a reasonable man, it seems to me that it may be enforced by law in order to establish the equality of position between the parties in which liberty of contract begins. Whether in the long run it is wise for the legislature to enact legislation of this sort is not my concern, but I am strongly of the opinion that there is nothing in the constitution of the United States to prevent it and that Adair v. United States should be overruled." (Coppage v. Kansas, dissenting opinion of Justice Holmes).

3. The law is a Valid Exercise of the Police Power of the State.

"Discrimination and coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority;" for "experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace." But "such collective action would be a mockery if representation were made futile by interference with freedom of choice." And hence, the prohibition, "instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both." (National Labor Rel. Bd. v. Jones & Laughlin S. Corp. 301 U. S. 1).

"The right to join labor unions is undisputed, and has been the subject of frequent affirmation in judicial opinion. Acting within their legitimate rights such associations are as legitimate as any organization of citizens formed to promote their common interest. They are organized under the law of many states, by virtue of express statutes passed for that purpose, and, being legal, and acting within their constitutional rights, the right to join them, as against coercive action to the contrary may be the legitimate subject of protection in the exercise of police authority of the state.

"It is urged that the statute has no object or purpose, express or implied, that has reference to health, safety, morals, or public welfare, beyond the supposed desirability of leveling inequalities of fortune by depriving him of his property or some part of his financial independence.

"But this argument admits that financial independence is not independence of law or of the authority of the legislature to declare the policy of the state as to matters which have a reasonable relation of the welfare, peace, and security of the community.

"Opinions may differ as to the remedy, but we cannot understand upon what ground it can be said that a subject so intimately related to the welfare of society is removed from the legislative power... It would be difficult to select any subject more intimately related to good order and security of the community than that under consideration." (Coppage v. Kansas, dissenting opinion of Justice Day).

Possible Decision of the Court

The Court is of the opinion that the authorities cited by the prosecution represent the law. The arguments presented by the defense, whatever be their merits, cannot be maintained under the strain of recent decisions of the Federal Court of the United States.

Wherefore, the court finds that defendant is guilty of the crime charged and gives judgment convicting the defendant to six months imprisonment. So ordered.

CHAPTER VI

ACTIONS AND REMEDIES

11. Labor Unions As Parties to an Action
12. Remedies Against Labor Unions
    —Actions for Damages
    —Enforcement of Contractual Obligations
    —Injunction in Labor Disputes
    —Violation of Injunction
13. Remedies Available to Labor Unions
    —Actions for Damages
    —Actions for the Enforcement of Contractual Obligations
    —Injunction
14. Courts Having Jurisdiction in Industrial Disputes

11. *Labor Unions As Parties to an Action.*

(a) *Registered Labor Unions.* As we have seen labor unions that are registered are considered juridical persons distinct and separate from the laborers composing it. Having such category, registered labor unions may sue and be sued in their corporate name without including their officers and members. This should not be taken, however, as to imply that officers and members of the same are immune from legal processes.

The officers and members are still amenable to the provisions of our penal laws for crimes committed by them, whether or not the crime arose from acts which received the official sanction of the organization.[103] Likewise, torts committed by officers or members which did not receive the sanction of the union will hold such members solely responsible for damages.[106]

(b) *Unregistered Labor Unions.* Previous to the year 1925 it was the established law in American jurisprudence that a labor union not incorporated can not sue[107] or be sued[108] in its common name, for it is not a legal entity distinct from its members; but that actions in which such association is involved must be brought by[109] or against[110] all of its members. In 1925, however, the United States Supreme Court held in the case of United States Mine Workers v. Coronado Coal Co. (259 U. S. 344) that in view of the affirmative legal recognition of their existence and usefulness and provisions for their protection, and of the fact that they act as entities distinct from their members, unregistered labor unions become in effect, quasi-corporations against which action may be brought in the association name.

An action may also be brought for or against a particular officer or member as a representative of a labor union under the authority of our local statute which provides as follows:

"Sec. 118 (C.C.P.) Numerous Parties—When the subject matter of the controversy is one of common or general interest to many persons, and the parties are so numerous that it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. . . ."

It has been held that under a like provision one or more members of a labor union may sue on behalf of themselves and the

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[103] Moeller v. People, 70 Colo., 223, 199 Pac. 414; Com. v. Hart, 4 Wheat, Ill.

[106] Hill v. Eagle Glass & Mfg. Co. 219 Fed. 719.

[107] Guilfoil v. Arthur, 158 Ill. 600, 41 N. E. 1009; Donovan v. Danielson, 244 Mass. 482, 134 N. E. 811.

[108] American Steel, etc. v. Wire Drawers & Die Makers Union 90 Fed. 598; Allis-Chalmers Co. v. Iron Molders Union, 150 Fed. 155.

[109] St. Paul Typothetae v. St. Paul Bookbinders' Union, 94 Minn. 351, 102 N. W. 725.

[110] Cahill v. Plumbers', Gas & Steamfitters' & Helpers' Local 238 Ill. 125.

others[111] and that an action may be brought against the members of a union by suing some of them as representatives of the class.[112]

12. *Remedies Against Labor Unions.*

(a) *Actions for Damages.* Art. 1902 of the Civil Code provides:

"Any person who by an act or omission causes damage to another by his fault or negligence shall be answerable for the damage caused."

This provision of the law applies with as much force to labor unions as to natural persons. Thus, it has been held that a person against whom an unlawful boycott, strike, or picketing has been instituted may have his action for the damages thereby occasioned against the labor union which caused the injury[113] provided there is a causal connection between the acts complained of and the damage suffered.[114]

Aside from liabilities for damages arising from torts, labor unions are also liable for damages due to breach of contract between employer and union;[115] so also will labor unions be held liable for damages in case of injury resulting from criminal conspiracy.[116]

A labor union may likewise be sued for damages for unlawfully suspending or expelling a member from the organization[117] or for any other breach of contract with its members.

Another interesting phase of this topic is the extent of liability of unregistered labor unions. Since the case of United States Mine Workers v. Coronado Coal Co. (supra) was decided unregistered labor unions seem to be burdened with double form of liability. The labor unions are liable to the extent of its funds for damages done by individual members, in case the union sanctioned the act causing the damage, while at the same time the individual members are unlimitedly liable for the acts of their elected officials. For unregistered labor unions, this result is not merely exasperating but positively threatening. At any moment, their funds may be wiped out by the acts of uncontrolled individuals. And members themselves may have enormous damages assessed upon them by the action of remote officials.

This double liability above-mentioned can, of course, be avoided by registering labor unions in the Department of Labor. Under the favorite legal fiction of artificial personality, acts of laborers which had the sanction of the union will only hold the union for damages, and vice-versa, acts of laborers not having the sanction of the union will only subject the individual members to damages.

(b) *Enforcement of Contract Obligations.* Employers who entered into a contract with a labor union may enjoin the officers and agents of such union from violating said contract and a suit to enforce a contract between employers and labor unions is maintainable[118] unless it is for the specific performance of contract for personal services.[119]

(c) *Injunctions in Labor Disputes.* An injunction is a court order issued to prevent injury to property or property rights for which there is no adequate remedy at law.[120] In industrial conflicts, this remedy was originally intended to protect property from irreparable injury during a strike or boycott. But at present the injuction has been called upon to perform a much wider service. Union workers and officials have at times been enjoined by court orders to urge non-unionmen to join a union;[121] to picket;[122] to issue slanderous statement against the employer which will likely damage the complainant's business[123] to induce a third person to break the latter's contract with the employer;[124] or to the putting of employers in the unfair list, in furtherance of a strike for an illegal purpose.[125] It was also held that injunction has been properly issued restraining the sending by the national organization in the locality of funds to aid or promote acts of unlawful interference with complainant's business;[126] against the display of banners, in proper cases;[127] against applying vile names or words of ridicule or contempt to complainant's employers or partners, or persons intending to become such;[128] against lawful acts interwoven with unlawful ones;[129] against secondary boycotts;[130] against the payment of strike benefits where the strike is for unlawful purpose;[131] against the making of false or misleading statements, to the injury of the complainant's business, [132] against the destruction of property;[133] etc.

It is thus seen, that with the wide variety of the use of injunction the labor unions are at times weakened to such a degree as to render strikes, boycotts and other labor's weapons of little use. The writer believes that any abuse of judicial discretion in the issuance of injunction would mean a widespread loss of confidence in the integrity of the courts.

(d) *Violation of Injunction.* Officers and members of labor organization violating an order of injunction issued by the court will be punished as for contempt;[134] and an injunction against members of a union as individuals may be violated by illegal action by them in associated capacity.[135]

13. *Remedies Available to Labor Unions*

1. *Actions for Damages.* On the side of labor, the law grants the same protection as it gives to employers by giving to labor unions the same right to bring an action for damages in case an actionable wrong is inflicted upon them. Thus, a labor union may bring action for damages arising from torts[136] or breach of contractual obligations,[137] which may be brought against employers, other persons, or even against their own members; so also may a labor union bring an action for damages arising from crimes committed against them, under the rule that every person criminally liable for a felony is likewise civilly liable.[138]

2. *Civil Actions to Enforce a Contract.* A labor union may bring an action for the enforcement of its contractual rights as long as the contract is lawful.[139] Thus, an action may be brought by a labor union to enforce an agreement with an employer to give all his work to members of the union[140] or to employ union laborers exclusively;[141] or to enforce previous stipulations regarding wages and other terms and conditions of work.[142]

There is also a case which held that the articles of agreement of a labor union, whether called a constitution, charter, by-law or any other name, constitute a contract between the members which the courts will enforce, if not immoral or contrary to public policy or the law of the land.[143]

3. *Injunction.* Injuction may issue as well in behalf of labor unions where adequate remedy in law is not available. The remedy had been granted in cases where the rights of labor unions would be infringed by blacklisting;[144] or in case their picketing members are molested or coerced, and such acts of interference or violence will result in the infliction of substantial money damages;[145] or in case of an alleged conspiracy to cripple and destroy a labor union by preventing persons from joining it and by forcing its members to leave it by unlawfully procuring their discharge from employment because they are members of such union.[146]

(*Continued on page 105*)

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[111] Strasser v. Moonelis, etc, 11 N. Y. S.R. 270.
[112] Bassett v. Ohany, 251 N. Y. Supp. 877.
[113] Purington v. Kinchliff, 219 Ill. 159; Burnham v. David, 217 Mass. 351; Auburn Draying Co. v. Wardell, 227 N. Y. 1, 124 N. E. 97.
[114] Boats v. Grundy, 32 L. Y. N. E. 769, 48 Week. Rep. 653.
[115] Nederlandsch etc. v. Stevedores' & L. Benev. Soc., 265 Fed. 397.
[116] Sorrell v. Smith A. C. 709, 13 B. R. C. 1.
[117] Campbell v. Johnson, 167 Fed. 162.
[118] Barnes v. Berry, 156 Fed. 72, 157 Fed. 883.
[119] Chambers v. Davis, 128 Mn. 613.
[120] Look up Secs. 164-172, Act 190.
[121] Flocens v. Smith, 199 Pa. St. 128, 48 Atl. 894.
[122] Vegelahn v. Gunter, 167 Mass. 92, 44 N. E. 1077.
[123] Springhead Spinning Co. v. Lilley, 16 Week. Rep. 1138.
[124] Jitchman Coal & Coke Co. v. Mitchell, 245 U. S. 229; Montgomery v. Pacific Elec. R. Co. 293 Fed. 680.
[125] Reynolds v. Davis.
[126] Casaway v. Borderland Coal Corp. 278 Fed. 56.
[127] Sherry v. Perkins, 147 Mass. 212.
[128] Casaway v. Borderland Coal Corp. 278 Fed. 56.
[129] United States v. Railway Employers' Dept. 283 Fed. 479.
[130] Thomsom Mach. Co. v. Brown, 59 N. J. Eq. 229.
[131] Barnes v. Berry, 156 Fed. 72.
[132] Inter. Organization v. Lewal Coal Co., 285 Fed. 32.
[133] Arthur v. Oakes, 63 Fed. 320.
[134] United States v. Colo. 216 Fed. 654.
[135] American Steel & Wire Co. v. Wire Drawers' etc. 90 Fed. 598.
[136] Art. 1902 Civil Code.
[137] Art. 1101, Civil Code.
[138] Art. 100 Revised Penal Code; Stone & Textile Examiners & Shrinkers Employers' Asso. 122 N. Y. Supp. 460.
[139] Post v. Black's Stone, etc. Co. 200 Fed. 918; Art. 1255 Civil Code.
[140] Smith v. Bowen, 232 Mass. 106.
[141] Local Branch v. Sold, 8 Ohio App. 437.
[142] Greenfield v. Central Labor Council, 104 Or. 236, 192 Pac. 783.
[143] Brown v. Storekel. 74 Mich. 269, 41 N. W. 921, 3 L. R. A. 430.
[144] Bayer v. Western v. Teleg. Co. 124 Fed. 246.
[145] Atkins v. W. A. Fletcher Co. 65 N. J. Eq. 858, 55 Atl. 1074.
[146] United States v. Moore, 129 Fed. 630.

THE NEW RULES OF COURT

[CONTINUED]

RULE 26
MOTIONS

SECTION 1. *Motion defined.*—Every application for an order not included in a judgment, may be called a motion.

SEC. 2. *Motion must be in writing.*—All motions shall be made in writing except motions for continuance made in the presence of the adverse party, or those made in the course of a hearing or trial.

SEC. 3. *Contents.*—A motion shall state the order sought to be obtained and the grounds upon which it is based, and shall be accompanied by supporting affidavits and other papers.

SEC. 4. *Notice.*—Notice of a motion shall be served by the applicant to all parties concerned, at least three days before the hearing thereof, together with a copy of the motion, and of any affidavits and other papers accompanying it. The court, however, for good cause may hear a motion on shorter notice, specially on matters which the court may dispose of on its own motion.

SEC. 5. *Contents of notice.*—The notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion.

SEC. 6. *Proof of service, to be filed with motion.*—No motion shall be acted upon by the court, without proof of service of the notice thereof.

SEC. 7. *Motion day.*—The first hours of the morning session of the court every Saturday of each week shall be devoted to hearing motions, unless, for special reasons, the court shall fix another day for the hearing of any particular motion.

SEC. 8. *Omnibus motion.*—A motion attacking a pleading or a proceeding shall include all objections then available, and all objections not so included shall be deemed waived.

SEC. 9. *Form.*—The rules applicable to pleadings shall also apply to all motions so far as concerns caption, signing and other matters of form.

RULE 27
SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS

SECTION 1. *Filing with the court, defined.*—The filing of pleadings, appearances, motions, notices, orders and other papers with the court as required by these rules shall be made by filing them with the clerk of the court. The date of the mailing of motions, pleadings, or any other papers or payments or deposits, as shown by the post-office registry receipt, shall be considered as the date of their filing, payment, or deposit in this court.

SEC. 2. *Papers to be filed and served.*—Every order required by its terms to be served, every pleading subsequent to the complaint, every written motion other than one which may be heard *ex-parte*, and every written notice, appearance, demand, offer of judgment or similar papers shall be filed with the court, and served upon the parties affected thereby. If any of such parties has appeared by an attorney or attorneys, service upon him shall be made upon his attorneys or one of them, unless service upon the party himself is ordered by the court. Where one attorney appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side.

SEC. 3. *Modes of service.*—Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail.

SEC. 4. *Personal service.*—Service of the papers may be made by delivering personally a copy to the party or his attorney, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or attorney's residence, if known, with a person of sufficient discretion to receive the same.

SEC. 5. *Service by mail.*—Service may also be made by depositing the copy in the post office, in a sealed envelope, plainly addressed to the party or his attorney at his office, if known, otherwise at his residence, if known, with postage fully prepaid, and with instructions to the postmaster to return the mail to the sender after ten days if unclaimed.

SEC. 6. *Substituted service.*—If personal service or service by mail cannot be made under the two preceding sections, the office and place of residence of the party or his attorney being unknown, service may be made by delivering the copy to the clerk of court, with a proof of failure of personal service and service by mail. The service is complete at the time of such delivery.

SEC. 7. *Service of final orders or judgments.*—Final orders or judgments shall be served either personally or by registered mail.

SEC. 8. *Completeness of service.*—Personal service is complete upon actual delivery. Service by mail is complete upon the expiration of five (5) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee; but if he fails to claim his mail from the post office within five days from the date of first notice of the postmaster, the service shall take effect at the expiration of such time.

SEC. 9. *When service not necessary.*—No service of papers shall be necessary on a party in default except when he files a motion to set aside the order of default, in which event he is entitled to notice of all further proceedings.

SEC. 10. *Proof of service.*—Proof of personal service shall consist of a written admission of the party served, or the affidavit of the party serving, containing a full statement of the date, place and manner of the service. If the service is by mail, proof thereof shall consist of an affidavit of the person mailing, together with the registry receipt issued by the mailing office if the letter has been registered. The registry return card shall be filed immediately upon receipt thereof by the sender, or in lieu thereof the letter unclaimed together with the certified or sworn copy of the notice given by the postmaster to addressee.

RULE 28
COMPUTATION OF TIME

SECTION 1. *How to compute time.*—In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the time shall run until the end of the next day which is neither a Sunday nor a holiday.

RULE 29
SUBPOENA

SECTION 1. *Subpoena and subpoena duces tecum.*—Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or the trial of an action or at any investigation conducted under the laws of the Philippines, or for the taking of his deposition. It may also require him to bring with him any books, documents, or other things under his control, in which case it is called a subpœna *duces tecum*.

SEC. 2. *By whom shall be issued.*—The subpœna shall be issued by the court or judge before whom the witness is required to attend, or by the judge of the Court of First Instance of the province or any judge of the municipality or city where the deposition is to be taken or the investigation is to be conducted, or by any Justice of the Supreme Court or Court of Appeals in any case pending within the Philippines. If a prisoner, not confined in a municipal jail, is required to attend before an inferior

court, the Judge of the Court of First Instance of the province where the inferior court is sitting, or any Justice of the Court of Appeals or of the Supreme Court may issue the subpœna.

SEC. 3. *Form and contents.*—A subpœna shall be signed by the clerk under the seal of the court, or by the judge if his court has no clerk. It shall state the name of the court and the title of the action or investigation, shall be directed to the person whose attendance is required, and shall contain a reasonable description of the books, documents or things therein demanded, which must appear *prima facie* sufficiently relevant.

SEC. 4. *Quashing a subpœna duces tecum.*—The court upon motion made promptly and in any event at or before the time specified in the subpœna *duces tecum* for compliance therewith, may (*a*) quash the subpœna if it is unreasonable and oppressive or (*b*) condition denial of the motion upon the advancement by the person in whose behalf the subpœna is issued of the reasonable cost of producing the books, papers or things.

SEC. 5. *Sufficient authority.*—Proof of service of a notice to take a deposition, as provided in sections 15 and 25 of Rule 18, constitutes a sufficient authorization for the issuance of subpœnas for the persons named therein by the clerk of the Court of First Instance for the province, or by the judge of the municipality or city, in which the deposition is to be taken. The clerk shall not, however, issue a subpœna *duces tecum* to any such person without an order of the court.

SEC. 6. *Service.*—Service of a subpœna shall be made by the sheriff, by his deputy, or by any other person specially authorized who is not a party and is not less than 18 years of age. The original shall be exhibited and a copy thereof delivered to the person named therein, tendering to him the fees for one day's attendance and the mileage allowed by these rules, except that, when a subpœna is issued by or on behalf of the Commonwealth of the Philippines or an officer or agency thereof the tender need not be made. The service must be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance.

SEC. 7. *Service when witness is concealed.*—If it is shown by affidavit that a witness is concealed in a building or vessel so as to prevent the service upon him of a subpœna and that his testimony or the things demanded from him are material, the court or judge issuing the subpœna may issue an order authorizing the sheriff or his deputy or the person specially authorized to serve, to break into the building or vessel where the witness is concealed for the purpose of carrying the service into effect.

SEC. 8. *Service of subpœna upon a prisoner.*—If the witness required to attend is a prisoner, the subpœna shall be served upon the officer having the management of the jail, who in turn shall serve it upon the prisoner.

SEC. 9. *Witness not bound by subpœna.*—A witness is not bound to attend as such before any court, judge, or other officer out of the province in which he resides, unless the distance be less than 50 kilometers from his place of residence to the place of trial by the usual course of travel. A prisoner cannot be removed from the province where he is serving sentence.

SEC. 10. *Personal presence in court.*—A person present in court before a judicial officer may be required to testify in the same manner as if he were in attendance upon a subpœna issued by such court or officer.

SEC. 11. *Compelling attendance.*—In case of failure of a witness to attend, the court or judge issuing the subpœna, upon proof of the service thereof, and of the failure of the witness, may issue a warrant to the sheriff of the province, or his deputy, to arrest the witness and bring him before the court or officer where his attendance is required, and the costs of such warrant and seizure of such witness shall be paid by the witness if the authority issuing it shall determine that his failure to answer the subpœna was willful and without just excuse.

SEC. 12. *Contempt.*—Failure by any person without adequate excuse to obey a subpœna served upon him shall be deemed a contempt of the court from which the subpœna is issued.

RULE 30
DISMISSAL OF ACTIONS

SECTION 1. *Dismissal by the plaintiff.*—An action may be dismissed by the plaintiff without order of court by filing a notice of dismissal at any time before service of the answer. Unless otherwise stated in the notice, the dismissal is without prejudice, except that a notice operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in a competent court an action based on or including the same claim.

SEC. 2. *By order of the court.*—Except as provided in the preceding section, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph shall be without prejudice. A class action shall not be dismissed or compromised without the approval of the court.

SEC. 3. *Failure to prosecute.*—When plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time, or to comply with these rules or any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court.

SEC. 4. *Effect of dismissal on other grounds.*—Unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits.

SEC. 5. *Dismissal of counterclaim, cross-claim, or third-party claim.*—The provisions of this rule apply to the dismissal of any counterclaim, cross-claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to section 1 of this rule shall be made before a responsive pleading is served or, if there is none, before the introduction of evidence at the trial or hearing.

RULE 31
CALENDAR AND ADJOURNMENTS

SECTION 1. *When issue joined.*—Upon the filing of the last pleading, the case shall be included in the trial calendar of the court.

SEC. 2. *Trial calendar.*—The clerk of court shall have a calendar of the cases ready for trial; but he must prepare a special calendar for preferential cases including *habeas corpus* and election cases, those arising from the Employers' Liability Act and Workmen's Compensation Act, and actions of special nature.

SEC. 3. *Notice of trial.*—Upon entry of a case in the corresponding trial calendar the clerk shall fix a date for trial and shall cause a notice thereof to be served upon the parties.

SEC. 4. *Adjournments and postponements.*—A court may adjourn a trial from day to day, and to any stated time, as the expeditious and convenient transaction of business may require, but shall have no power to adjourn a trial for a longer period than one month for each adjournment, nor more than three months in all, except when authorized in writing by the Chief Justice.

SEC. 5. *Requisites of motion to postpone trial for absence of evidence.*—A motion to postpone a trial on the ground of absence of evidence can be granted only upon affidavit showing the materiality of evidence expected to be obtained, and that due diligence has been used to procure it. But if the adverse party admits that such evidence would be given, and that it be considered as actually given on the trial, or offered and overruled as improper, the trial must not be postponed.

SEC. 6. *Requisites of motion to postpone trial for illness of party.*—A motion to postpone a trial on the ground of illness of a party may be granted if it appears upon affidavit that the

presence of such party at the trial is indispensable and that the character of his illness is such as to render his nonattendance excusable.

RULE 32
CONSOLIDATION OR SEVERANCE

SECTION 1. *Consolidation.*—When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

SEC. 2. *Separate trials.*—The court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

RULE 33
TRIAL

SECTION 1. *Order of trial.*—Subject to the provisions of section 2 of Rule 32, and unless the judge, for special reasons, otherwise directs, the order of trial shall be as follows:

(*a*) The plaintiff must produce the evidence on his part;

(*b*) The defendant shall then offer evidence in support of his defense, counterclaim, cross-claim and third-party claim;

(*c*) The third-party defendant, if any, shall introduce evidence of his defense, counterclaim, cross-claim and third-party claim;

(*d*) The fourth, etc., party, if any, shall introduce evidence of the material facts by him pleaded;

(*e*) The parties against whom any counter-claim or cross-claim has been pleaded, shall introduce evidence in support of their defense, in the order to be prescribed by the court;

(*f*) The parties may then respectively offer rebutting evidence only, unless the court, for good reasons, in the furtherance of justice, permits them to offer evidence upon their original case;

(*g*) When the evidence is concluded, unless the parties agree to submit the cause without argument, the plaintiff or his counsel may make the opening argument, the defendant, third-party defendant, and fourth, etc., party, ortheir respective counsel, may follow successively, and the plaintiff or his counsel may conclude the argument. Two counsel may, if desired, be heard upon each side, but in the order herein prescribed;

(*h*) If several defendants or third-party defendants, having separate defenses, appear by different counsel, the court must determine their relative order in the evidence and argument, but in any event the plaintiff is entitled to the opening and closing argument.

SEC. 2. *Agreed statement of facts.*—The parties to any action may agree, in writing, upon the facts involved in the litigation, and require the judgment of the court upon the questions of law arising from the facts agreed upon, without the introduction of evidence.

SEC. 3. *Statements of judge.*—During the hearing or trial of a case any statement made by the judge with reference to the case, or to any of the parties thereto, witnesses or attorneys, shall be made of record in the stenographic notes if requested by either of the parties.

RULE 34
TRIAL BY COMMISSIONER

SECTION 1. *Reference by consent.*—By written consent of both parties, filed with the clerk, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court. As used in these rules the word "commissioner" includes a referee, an auditor, and an examiner.

SEC. 2. *Reference ordered on motion.*—When the parties do not consent, the court may, upon the application of either, or of its own motion, direct a reference to a commissioner in the following cases:

(*a*) When the trial of an issue of fact requires the examination of a long account on either side, in which case the commissioner may be directed to hear and report upon the whole issue, or any specific question involved therein;

(*b*) When the taking of an account is necessary for the information of the court before judgment, or for carrying a judgment or order into effect;

(*c*) When a question of fact, other than upon the pleadings, arises upon motion or otherwise, in any stage of a case, or of carrying a judgment or order into effect.

SEC. 3. *Order of reference, powers of the commissioner.*—When a reference is made, the clerk shall forthwith furnish the commissioner with a copy of the order of reference. The order may specify or limit the powers of the commissioner, and may direct him to report only upon particular issues, or to do or perform particular acts, or to receive and report evidence only, and may fix the date for beginning and closing the hearings and for the filing of his report. Subject to the specifications and limitations stated in the order, the commissioner has and shall exercise the power to regulate the proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may issue subpoenas and subpoenas *duces tecum*, swear witnesses, and unless otherwise provided in the order of reference he may rule upon the admissibility of evidence. The trial or hearing before him shall proceed in all respects as though the same had been before the court.

SEC. 4. *Oath of commissioner.*—Before entering upon his duties the commissioner shall be sworn to a faithful and honest performance thereof.

SEC. 5. *Proceedings before commissioner.*—Upon receipt of the order of reference unless otherwise provided therein, the commissioner shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 10 days after the date of the order of reference and shall notify the parties or their attorneys.

SEC. 6. *Failure of parties to appear before commissioner.*—If a party fails to appear at the time and place appointed, the commissioner may proceed *ex-parte* or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party or his attorney of the adjournment.

SEC. 7. *Refusal of witness.*—The refusal of a witness to obey a subpœna issued by the commissionr or to give evidence before him, shall be deemed a contempt of the court who appointed the commissioner,

SEC. 8. *Commissioner shall avoid delays.*—It is the duty of the commissioner to proceed with all reasonable diligence. Either party, on notice to the parties and commissioner, may apply to the court for an order requiring the commissioner to speed up the proceedings and to make his report.

SEC. 9. *Report of commissioner.*—Upon the completion of the trial or hearing or proceeding before the commissioner, he shall file with the court his report in writing upon the matters submitted to him by the order of reference. When his powers are not specified or limited, he shall set forth his findings of fact and conclusions of law in his report. He shall attach thereto in all cases, all exhibits, affidavits, depositions, papers and the transcript, if any, of the evidence presented before him.

SEC. 10. *Notice to parties of the filing of report.*—Upon the filing of the report, the parties shall be notified by the clerk, and they shall be allowed ten days within which to signify grounds of objections to the findings of the report, if they so desire. Objections to the report based upon grounds which were available to the parties during the proceedings before the commissioner, other than objections to the findings and conclusions therein set forth, shall not be considered by the court unless they were made before the commissioner.

SEC. 11. *Hearing upon report.*—Upon the expiration of the period of ten days referred to in the preceding section, the report

shall be set for hearing, after which the court shall render judgment by adopting, modifying, or rejecting the report in whole or in part or it may receive further evidence or may recommit it with instructions.

SEC. 12. *Stipulation as to findings.*—When the parties stipulate that a commissioner's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

SEC. 13. *Compensation of commissioner.*—The court shall allow the commissioner such reasonable compensation as the circumstances of the case warrant, to be taxed as costs against the defeated party, or apportioned, as justice requires.

RULE 35
JUDGMENTS, ORDERS AND ENTRY THEREOF

SECTION 1. *How judgment rendered.*—Except those of inferior courts, all judgments determining the merits of cases shall be in writing personally and directly prepared by the judge, and signed by him, stating clearly and distinctly the facts and the law on which it is based, and filed with the clerk of the court.

SEC. 2. *When and how judgments and orders entered.*—If no appeal or motion to set aside is filed within the time provided in these rules, the judgment or order shall be entered by the clerk. The notation of the judgment or order in the book of entries of judgments shall constitute its entry. The notation shall contain the dispositive part of the judgment or order and shall be signed by the clerk, with a certificate that such judgment or order has become final and executory.

SEC. 3. *Judgment for or against one of several parties.*—Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants, and the court may, when justice requires it, conclusively determine the ultimate rights of the parties on each side, as between themselves, and may require such parties to file adversary pleadings as between themselves.

SEC. 4. *Several judgments.*—In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment is proper.

SEC. 5. *Judgment at various stages.*—When more than one claim for relief is presented in an action, the court at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may enter a judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is so entered, the court by order may stay its enforcement until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

SEC. 6. *Judgment by default.*—If the defendant fails to answer within the time specified in these rules, the court shall, upon motion of the plaintiff, order judgment against the defendant by default, and thereupon the court shall proceed to receive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant. This provision applies where no answer is made, within the period provided in these rules, to a counterclaim, cross-claim, or third-party complaint.

SEC. 7. *Judgment when some defendants answer, and others make default.*—When a complaint states a common cause of action against several defendants, some of whom answer, and the others make default, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented by the parties in court. The same procedure applies when a common cause of action is pleaded in a counterclaim, cross-claim and third-party claim.

SEC. 8. *Judgment against association or person under a name or style.*—When judgment is entered against two or more persons sued as an association, the judgment shall set out the individual or proper name or names, if known.

SEC. 9. *Extent of relief to be awarded.*—A judgment entered by default shall not exceed the amount or be different in kind from that prayed for in the demand for judgment. In other cases the judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

SEC. 10. *Judgment on the pleadings.*—Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading, except in actions for annulment of marriage or divorce wherein the material facts alleged in the complaint shall always be proved.

RULE 36
SUMMARY JUDGMENTS

SECTION 1. *Summary judgment for claimant.*—A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the pleading in answer thereto has been served, move with affidavits for a summary judgment in his favor upon all or any part thereof.

SEC. 2. *Summary judgment for defending party.*—A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with supporting affidavits for a summary judgment in his favor as to all or any part thereof.

SEC. 3. *Motion and proceedings thereon.*—The motion shall be served at least ten days before the time specified for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

SEC. 4. *Case not fully adjudicated on motion.*—If on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

SEC. 5. *Form of affidavits; further testimony.*—Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

SEC. 6. *Affidavits in bad faith.*—Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith, or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees and any offending party or attorney may be adjudged guilty of contempt.

RULE 37
NEW TRIAL

SECTION 1. *When and for what causes new trial may be*

sought.—Within thirty days after notice of the judgment in an action, the aggrieved party may move the trial court to set aside the judgment and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(*a*) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights;

(*b*) Newly discovered evidence, which he could not, with reasonable diligence, have discovered, and produced at the trial, and which if presented would probably alter the result;

(*c*) Because excessive damages have been awarded, or the evidence was insufficient to justify the decision, or it is against the law.

SEC. 2. *Method of procedure in motions for new trial.*—The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant of the adverse party.

When the motion is made for the causes mentioned in subdivisions (*a*) and (*b*) of the preceding section, it shall be proved in the manner provided for proof of motions. Affidavit or affidavits of merits shall also be attached to a motion for the cause mentioned in subdivision (*a*) which may be rebutted by counter-affidavits.

When the motion is made upon the cause mentioned in subdivision (*c*) of the preceding section, it shall point out specifically the findings or conclusions of the judgment which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

SEC. 3. *When motion for new trial may be granted or denied.*—The trial court may set aside the judgment and grant a new trial, upon such terms as may be just, or may deny the motion. If the motion is made upon the cause mentioned in subsection (*c*), section 1 of this rule, and the court finds its judgment to be contrary to evidence or law, it may amend such judgment accordingly without granting a new trial, unless the court deems the introduction of additional evidence advisable.

SEC. 4. *Second motion for new trial.*—Grounds for new trial which can properly be alleged in a motion, are deemed waived if not alleged therein. A second motion for new trial may be allowed if based on a ground not existing when the first motion was made and may be filed within the time herein provided excluding the time during which the first motion has been pending.

SEC. 5. *Effect of granting of motion for new trial.*—If a new trial be granted in accordance with the provisions of this rule, the original judgment shall be vacated, and the action shall stand for trial *de novo;* but the recorded evidence taken upon the former trial so far as the same is material and competent to establish the issues, shall be used upon the new trial without retaking the same.

SEC. 6. *Partial new trials.*—If the grounds for a motion under this rule appear to the court to affect the issues as to only a part, or less than all of the matter controversy or only one, or less than all, of the parties to it, the court may, if such issues are severable from the rest, order a new trial as to such issues without interfering with the judgment upon the rest.

SEC. 7. *Effect of order for partial new trial.*—When less than all of the issues are ordered retried, the court may either enter final judgment as to the rest, or stay the entry of final judgment until after the new trial.

RULE 38

RELIEF FROM JUDGMENTS, ORDERS, OR OTHER PROCEEDINGS

SECTION 1. *Petition to Court of First Instance for relief from judgment of inferior court.*—When a judgment is rendered by an inferior court, and a party to the case, by fraud, accident, mistake, or excusable negligence, has been unjustly deprived of a hearing therein, or has been prevented from taking an appeal, he may file a petition in the Court of First Instance of the province in which the original judgment was rendered, praying that such judgment be set aside and the case tried upon its merits.

SEC. 2. *Petition to Court of First Instance for relief from judgment or other proceeding thereof.*—When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court praying that the judgment, order, or proceeding be set aside.

SEC. 3. *When petition filed; contents and verification.*—A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six months after such judgment or order was entered, or such proceeding was taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be, which he may prove if his petition be granted.

SEC. 4. *Order to file an answer.*—If the petition is sufficient in form and substance to justify such process, the court in which it is filed, or a judge thereof, shall issue an order requiring those against whom the petition is filed to answer the same within fifteen days from the receipt thereof, which order shall be served in such manner as the court may direct, together with copies of the petition.

SEC. 5. *Preliminary injunction pending proceedings.*—The court in which the petition is filed, or a judge thereof, may grant such preliminary injunction as may be necessary for the preservation of the rights of the parties pending the proceeding, upon the filing by the petitioner of a bond to the adverse party conditioned that if the petition is dismissed, or the petitioner fails on the trial of the case upon its merits, he will pay the adverse party all damages and costs that may be awarded to him by reason of the issuance of such injunction or the other proceedings following the petition; but such injunction shall not operate to discharge or release bail, or to extinguish any lien which the adverse party may have acquired upon the property of the petitioner.

SEC. 6. *Proceedings after answer is filed.*—Once the answer is filed, or the time for its filing has expired, the court shall hear the case, and if after such hearing, the court finds that the allegations of the petition are not true, the petition shall be dismissed; but if it finds said allegations to be true, it shall order the judgment, order, or other proceeding complained of to be set aside, upon such terms as may be just, and shall try the principal case upon its merits.

SEC. 7. *How trial upon the merits had.*—Where the judgment set aside is that of a Court of First Instance, such court shall proceed to hear and determine the case as if a timely motion for a new trial had been granted therein. Where the judgment set aside is that of an inferior court, the trial in the Court of First instance shall be as if the case had been regularly brought up by appeal, and the judge of the inferior court may be required by the Court of First Instance to attend and produce at the trial all the papers in the original case.

SEC. 8. *Appeal.*—The order of the court setting aside the judgment, order or proceeding is not appealable until a final judgment is rendered upon the merits in the principal case.

RULE 39

EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS

SECTION 1. *Execution as of right.*—Execution shall issue upon a final judgment or order upon the expiration of the time to appeal when no appeal has been perfected.

SEC. 2. *Execution discretionary.*—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special

order. If a record on appeal is filed thereafter, the special order shall be included therein. Excution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellee, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part.

SEC. 3. *Execution of supersedeas bond.*—The bond given under the preceding section may be executed on motion before the trial court after the case is remanded to it by the appellate court.

SEC. 4. *Injunction, receivership and patent accounting, not stayed.*—Unless otherwise ordered by the court, an interlocutory or final judgement in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters patent, shall not be stayed after an appeal is perfected or during the pendency of an appeal. The trial court, however, in its discretion, when an appeal is taken from an interlocutory or final judgment granting, dissolving or denying an injunction, may make an order suspending, modifying, restoring, or granting such injunction during the pendency of the appeal, upon such terms as to bond or otherwise as it may consider proper for the security of the rights of the adverse party, subject to the power of the appellate court or of a justice thereof to the same effect.

SEC. 5. *Effect of reversal of judgment executed.*—Where the judgment executed is reversed totally or partially on appeal, the trial court, on motion, after the case is remanded to it, may issue such orders of restitution as equity and justice may warrant under the circumstances.

SEC. 6. *Execution by motion or by independent action.*—A judgment may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action.

SEC. 7. *Execution in case of death of party.*—Where a party dies after the entry of the judgment or order, execution thereon may issue, or one already issued may be enforced in the following cases:

(*a*) In case of the death of the judgment creditor, upon the application of his executor or administrator, or successor in interest;

(*b*) In case of the death of the judgment debtor, against his executor or administrator or successor in interest, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon;

(*c*) In case of the death of the judgment debtor after execution is actually levied upon any of his property, the same may be sold for the satisfaction thereof, and the officer making the sale shall account to the corresponding executor or administrator for any surplus in his hands.

SEC. 8. *Issuance, form and requisites of execution.*—The execution must issue in the name of the Commonwealth of the Philippines from the court in which the judgment or order is entered; must intelligibly refer to such judgment or order, stating the court, province, and municipality where it is of record, and the amount actually due thereon if it be for money; and must require the sheriff or other proper officer to whom it is directed substantially as follows:

(*a*) If the execution be against the property of the judgment debtor, to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property;

(*b*) If it be against real or personal property in the hands of personal representatives, heirs, devisees, legatees, tenants, or trustees, to satisfy the judgment with interest, out of such property;

(*c*) If it be for the sale of real or personal property, to sell such property, describing it, and apply the proceeds in conformity with the judgment, the material parts of which shall be recited in the execution;

(*d*) If it be for the delivery of the possession of real or personal property, to deliver the possession of the same, describing it, to the party entitled thereto, and to satisfy any costs, damages, rents, or profits covered by the judgment out of the personal property of the person against whom it was rendered, and if sufficient personal property cannot be found, then out of the real property.

SEC. 9. *Writ of execution of special judgment.*—When a judgment requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property, a certified copy of the judgment shall be attached to the writ of execution and may be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeyed such judgment.

SEC. 10. *Judgment for specific acts; vesting title.*—If a judgment directs a party to execute a conveyance of land, or to deliver deeds or other documents, or to perform any other specific act, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effect as if done by the party. If real or personal property is within the Philippines, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment shall have the force and effect of a conveyance executed in due form of law.

SEC. 11. *Return of execution.*—The execution may be made returnable, to the clerk or judge of the court issuing it, at any time not less than ten nor more than sixty days after its receipt by the officer, who must set forth in writing on its back the whole of his proceedings by virtue thereof, and file it with the clerk or judge to be preserved with the other papers in the case. A certified copy of the record, in the execution book kept by the clerk, of an execution by virtue of which real property has been sold, or of the officer's return thereon, shall be evidence of the contents of the originals whenever they, or any part thereof, have been lost or destroyed.

SEC. 12. *Property exempt from execution.*—Except as otherwise expressly provided by these rules, the following property, and no other, shall be exempt from execution:

(*a*) The debtor's homestead, in which he resides, and land necessarily used in connection therewith, both not exceeding in value three hundred pesos;

(*b*) Tools and implements necessarily used by him in his trade or employment;

(*c*) Two horses, or two cows, or two carabaos, or other beasts of burden, such as the debtor may select, not exceeding three hundred pesos in value, and necessarily used by him in his ordinary occupation;

(*d*) His necessary clothing, and that of all his family;

(*e*) Household furniture and utensils necessary for housekeeping, and used for that purpose by the debtor, such as the debtor may select, of a value not exceeding two hundred pesos;

(*f*) Provisions for individual or family use sufficient for three months;

(*g*) Professional libraries of attorneys, judges, physicians, pharmacists, dentists, engineers, surveyors, clergymen, school teachers, and music teachers not exceeding five hundred pesos in value.

(*h*) One fishing boat and net, not exceeding the total value of one hundred pesos, the property of any fisherman, by the lawful use of which he earns a livelihood;

(*i*) So much of the earnings of the debtor for his personal services within the month preceding the levy as are necessary for the support of his family;

(*j*) Lettered gravestones;

(*k*) All moneys, benefits, privileges, or annuities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred pesos, and if they exceed that sum a like exemption shall exist which shall

bear the same proportion to the moneys, benefits, privileges, and annuities so accruing or growing out of such insurance that said five hundred pesos bears to the whole annual premiums paid.

But no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage thereon.

SEC. 13. *How execution for the delivery or restitution of property enforced.*—The officer must enforce an execution for the delivery or restitution of property by placing the plaintiff in possession of such property, and by levying as hereinafter provided upon so much of the property of the judgment debtor as will satisfy the amount of the costs, damages, rents, and profits included in the execution. However, the officer shall not destroy, demolish or remove the improvements made by the defendant or his agent on the property, except by especial order of the court, which order may only issue upon petition of the plaintiff after due hearing and upon the defendant's failure to remove the improvements within a reasonable time to be fixed by the court.

SEC. 14. *How execution against the property enforced.*—The officer must enforce an execution against the property by levying on all the property, real and personal of every name and nature whatsoever, and which may be disposed of for value, of the judgment debtor not exempt from execution, or on a sufficient amount of such property, if there be sufficient, and selling the same, and paying to the plaintiff, or his attorney, so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be delivered to the judgment debtor, unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, within the view of the officer, he must levy only on such part of the property as a amply sufficient to satisfy the judgment and costs. Real property, stocks, shares, debts, credits, and other personal property, or any interest in either real or personal property, may be levied on in like manner and with like effect as under an order of attachment.

SEC. 15. *Proceedings where property claimed by third person.* If property levied on be claimed by any other person than the defendant or his agent, and such person make an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serve the same upon the officer making the levy, and a copy thereof upon the judgment creditor, the officer shall not be bound to keep the property, unless such judgment creditor or his agent, on demand, indemnify the officer against such claim by a bond in a sum not greater than the value of the property levied on, and, in case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. The officer is not liable for damages, for the taking or keeping of such property, to any such third person unless such claim is made and unless the action for damages be brought within one hundred twenty days from the date of the filing of the bond. But nothing herein contained shall prevent such third person from vindicating his claim to the property by any proper action. When, however, the plaintiff, or the person in whose favor the writ of execution runs, is the Commonwealth of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or attaching officer is sued for damages as a result of the attachment, he shall be represented by the Solicitor-General and if held liable therefor, the actual damages adjudged by the court shall be paid by the Insular Treasurer out of such funds as may be appropriated for the purpose.

SEC. 16. *Notice of sale of property on execution.*—Before the sale of property on execution, notice thereof must be given as follows:

(*a*) In case of perishable property, by posting written notice of the time and place of the sale in three public places in the municipality or city where the sale is to take place, for such time as may be reasonable, considering the character and condition of the property;

(*b*) In case of other personal property, by posting a similar notice in three public places in the municipality or city where the sale is to take place, for not less than five nor more than ten days;

(*c*) In case of real property, by posting a similar notice particularly describing the property for twenty days in three public places in the municipality or city where the property is situated, and also where the property is to be sold, and, if the assessed value of the property exceeds four hundred pesos, by publishing a copy of the notice once a week, for the same period, in some newspaper published or having general circulation in the province, if there be one. If there are newspapers published in the province in both the English and Spanish languages, then a like publication for a like period shall be made in one newspaper published in the English language, and in one published in the Spanish language.

SEC. 17. *Penalty for selling without notice, or removing or defacing notice.*—An officer selling without the notice prescribed by the last preceding section shall forfeit five hundred pesos to any party injured thereby, in addition to his actual damages, both to be recovered in a single proper action; and a person willfully removing or defacing the notice posted, if done before the sale, or before the satisfaction of the judgment if it be satisfied before the sale, shall forfeit five hundred pesos to any person injured by reason thereof, to be recovered in any proper action.

SEC. 18. *No sale if judgment and costs paid.*—At any time before the sale of property on execution the judgment debtor may prevent the sale by paying the amount required by the execution and the costs that have been incurred therein.

SEC. 19. *How property sold on execution. Who may direct manner and order of sale.*—All sales of property under execution must be made at public auction, to the highest bidder, between the hours of nine in the morning and five in the afternoon. After sufficient property has been sold to satisfy the execution, no more shall be sold. When the sale is of real property, consisting of several known lots, they must be sold separately; or, when a portion of such real property is claimed by a third person, he may require it to be sold separately. When the sale is of personal property capable of manual delivery, it must be sold within view of those attending the sale and in such parcels as are likely to bring the highest price. The judgment debtor, if present at the sale, may direct the order in which property, real or personal, shall be sold, when such property consists of several known lots or parcels which can be sold to advantage separately. Neither the officer holding the execution, nor his deputy, can become a purchaser, nor be interested directly or indirectly in any purchase at such sale.

SEC. 20. *Refusal of purchaser to pay.*—If a purchaser refuses to pay the amount bid by him for property struck off to him at a sale under execution, the officer may again sell the property to the highest bidder and shall not be responsible for any loss occasioned thereby; but the court may order the refusing purchaser to pay into court the amount of such loss, with costs, and may punish him for contempt if he disobeys the order. The amount of such payment shall be for the benefit of the person entitled to the proceeds of the execution, unless the execution has been fully satisfied, in which even such proceeds shall be for the benefit of the judgment debtor. When a purchaser refuses to pay, the officer may thereafter reject any subsequent bid of such person.

SEC. 21. *Adjournment of sale.*—By written consent of debtor and creditor, the officer may adjourn any sale upon execution to any date agreed upon in writing by the parties. Without such agreement he may adjourn the sale from day to day, if it becomes necessary to do so for lack of time to complete the sale on the day fixed in the notice.

SEC. 22. *Conveyance to purchaser of personal property capable of manual delivery.*—When the purchaser of any personal property, capable of manual delivery, pays the purchase money, the officer making the sale must deliver to the purchaser the property, and, if desired, execute and deliver to him a certificate of sale. Such conveys to the purchaser all the right which the debtor had in such property on the day the execution or attachment was levied.

SEC. 23. *Conveyance to purchaser of personal property not capable of manual delivery.*—When the purchaser of any personal property, not capable of manual delivery, pays the purchase money, the officer making the sale must execute and deliver to the purchaser a certificate of sale. Such certificate conveys to the purchaser all the right which the debtor had in such property on the day that the execution or attachment was levied.

SEC. 24. *Effect of sale of real property. Certificate thereof given to purchaser and filed with registrar.*—Upon a sale of real property, the purchaser shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided. The officer must give to the purchaser a certificate of sale containing:

(*a*) A particular description of the real property sold;

(*b*) The price paid for each distinct lot or parcel;

(*c*) The whole price by him paid;

(*d*) The date when the right of redemption expires.

A duplicate of such certificate must be filed by the officer in the office of the registrar of deeds of the province.

SEC. 25. *Who may redeem real property so sold.*—Property sold subject to redemption, as provided in the last preceding section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons:

(*a*) The judgment debtor, or his successor in interest in the whole or any part of the property;

(*b*) A creditor having a lien by attachment, judgment, or mortgage on the property sold, or on some part thereof, subsequent to that under which the property was sold. Such redeeming creditor is termed a redemptioner.

SEC. 26. *Time and manner of, and amounts payable on, successive redemptions. Notice to be given and filed.*—The judgment debtor, or redemptioner, may redeem the property from the purchaser, at any time within twelve months after the sale, on paying the purchaser the amount of his purchase, with one per centum per month interest thereon in addition, up to the time of redemption, together with the amount of any assessments or taxes which the purchaser may have paid thereon after purchase, and interest on such last-named amount at the same rate; and if the purchaser be also a creditor having a prior lien to that of the redemptioner, other than the judgment under which such purchase was made, the amount of such other lien, with interest. If the property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with two per centum thereon in addition, and the amount of any assessments or taxes which the last redemptioner may have paid thereon after redemption by him, with interest on such last-named amount, and in addition, the amount of any liens held by said last redemptioner prior to his own, with interest. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with two per centum thereon in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption thereon, with interest thereon, and the amount of any liens held by the last redemptioner prior to his own, with interest. Written notice of any redemption must be given to the officer who made the sale and a duplicate filed with the registrar of deeds of the province, and if any assessments or taxes are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the officer and filed with the registrar of deeds; if such notice be not filed, the property may be redeemed without paying such assessments, taxes, or liens.

SEC. 27. *Effect of redemption by judgment debtor, and a certificate to be delivered and recorded thereupon. To whom payments on redemption made.*—If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner, whereupon the effect of the sale is terminated and he is restored to his estate, and the person to whom the payment is made must execute and deliver to him a certificate of redemption acknowledged or approved before a notary public or other officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the register of deeds of the province in which the property is situated, and the register of deeds must note the record thereof on the margin of the record of the certificate of sale. The payments mentioned in this and the last preceding sections may be made to the purchaser or redemptioner, or for him to the officer who made the sale.

SEC. 28. *Proof required of redemptioner.*—A redemptioner must produce to the officer, or person from whom he seeks to redeem, and serve with his notice to the officer:

(*a*) A copy of the judgment or order under which he claims the right to redeem, certified by the clerk or judge of the court wherein the judgment is docketed; or, if he redeem upon a mortgage or other lien, a memorandum of the record thereof, certified by the registrar of deeds;

(*b*) A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;

(*c*) An affidavit by himself or his agent, showing the amount then actually due on the lien.

SEC. 29. *Manner of using premises pending redemption. Waste restrained.*—Until the expiration of the time allowed for redemption, the court may, as in other proper cases, restrain the commission of waste on the property by injunction, on the application of the purchaser or the judgment creditor, with or without notice; but it is not waste for the person in possession of the property at the time of the sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use it in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or reasonably to use wood or timber on the property therefor, or for fuel for his family, while he occupies the property.

SEC. 30. *Rents and profits pending redemption. Statement thereof and credit therefor on redemption.*—The purchaser, from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption, is entitled to receive the rents of the property sold or the value of the use and occupation thereof when such property is in the possession of a tenant. But when any such rents and profits have been received by the judgment creditor or purchaser, or by a redemptioner, or by the assignee of either of them, from property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and, if a later redemptioner or the judgment debtor, before the expiration of the time allowed for such redemption demands in writing of such creditor, purchaser, or prior redemptioner, or his assigns, a written and verified statement of the amounts of the rents and profits thus received, the period of redemption is extended five days after such demand is complied with and such sworn statement given to such later redemptioner or debtor. If such statement is not so given within one month from and after such demand, such redemptioner or debtor may bring an action to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

SEC. 31. *Deed and possession to be given at expiration of redemption period. By whom executed or given.*—If no redemption be made within twelve months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of the property; or, if so redeemed, whenever sixty days have elapsed and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to the conveyance and possession; but in all cases the judgment debtor shall have the entire period of twelve months from the date of the sale to redeem the property. The deed shall be executed by the officer making the sale or by his successor in office, and in the later case shall have the same validity as though the officer making the sale had continued in office and executed it. The possession shall be given by the same officer if no third parties are actually holding the property adversely to the judgment debtor.

SEC. 32. *When purchaser of property may recover price from judgment creditor. When he may have judgment revived.*—If the purchaser of real property sold on execution, or his successor in interest, be evicted therefrom in consequence of irregularities in the proceedings concerning the sale, or because the judgment has been reversed or set aside, or because a third person has vindicated his claim to the property, he may in a proper action recover the price paid, with interest, from the judgment creditor. If the purchaser of property at such official sale, or his successor in interest, fail to recover possession in consequence of irregularities in the proceedings concerning the sale, or because the property sold was not subject to execution and sale, the court having jurisdiction thereof shall, after notice and on motion of such party in interest, or his attorney, revive the original judgment in the name of the petitioner, for the amount paid by such purchaser at the sale, with interest thereon from the time of payment at the same rate that the original judgment bore; and the judgment so revived shall have the same force and effect as would an original judgment of the date of the revival and no more.

SEC. 33. *Right to contribution or reimbursement.*—When property liable to an execution against several persons is sold thereon, and more than a due proportion of the judgment is satisfied out of the proceeds of the sale of the property of one of them, or one of them pays, without a sale, more than his proportion, he may compel a contribution from the others; and when a judgment is against several, and is upon an obligation of one of them, as security for another, and the surety pays the amount, or any part thereof, either by sale of his property or before sale, he may compel repayment from the principal.

SEC. 34. *Examination of judgment debtor when execution returned unsatisfied.*—When an execution issued in accordance with law against property of a judgment debtor, or any one of several debtors in the same judgment, is returned unsatisfied, in whole or in part, the judgment creditor, at any time after such return is made, shall be entitled to an order from a judge of the Court of First Instance of the province in which the judgment was rendered or from which the execution was returned, requiring such judgment debtor to appear and answer concerning his property and income before such judge of the Court of First Instance, or before a commissioner appointed by him, at a specified time and place; and such proceedings may thereupon be had for the application of the property and income of the judgment debtor toward the satisfaction of the judgment. But no judgment debtor shall be so required to appear before a judge of first instance or commissioner out of the province in which such debtor resides or is found.

SEC. 35. *Examination of debtor of judgment debtor.*—After the return of an execution against the property of a judgment debtor, or of one of the several debtors in the same judgment, unsatisfied in whole or in part, and upon proof, by affidavit of a party or otherwise, to the satisfaction of the judge, that a person, corporation, or other legal entity has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person, corporation, or other legal entity, or any officer or member thereof, to appear before the judge, or a commissioner appointed by him, at a time and place within the province in which the order is served, to answer concerning the same. The service of the order shall bind all credits due the judgment debtor and all money and property of the judgment debtor in the possession or in the control of such person, corporation, or legal entity from the time of service; and the judge may also require notice of such proceedings to be given to any party to the action in such manner as he may deem proper.

SEC. 36. *Conduct of examination and enforcing attendance.*—Examinations had in accordance with the two preceding sections shall not be unduly prolonged, but the proceedings may be adjourned from time to time, until they are completed. If the examination is before a commissioner, he must take it in writing and certify it to the judge. All examinations and answers before a judge or commissioner must be on oath, and when a corporation or other legal entity answers it must be on the oath of an officer or agent thereof. A party or other person may be compelled, by an order or subpœna, to attend before the judge or commissioner to testify, and upon failure to obey such order or subpœna, or to be sworn, or to answer as a witness, or to subscribe his deposition, may be punished for contempt as in other cases.

SEC. 37. *Debtor may pay execution against creditor.*—After an execution against property has issued, a person indebted to the judgment debtor may pay to the officer holding the execution the amount of his debt or so much thereof as may be necessary to satisfy the execution, and the officer's receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment creditor on the execution.

SEC. 38. *Order for application of property and income to satisfaction of judgment.*—The judge may order any property of the judgment debtor, or money due him, not exempt from execution, in the hands of either himself or other person, or of a corporation or other legal entity, to be applied to the satisfaction of the judgment, subject to any prior rights of the holders of such property; and if, upon an investigation of his current income and expense, it appears that the earnings of the judgment debtor for his personal services are more than is necessary for the support of his family, the judge may order that he pay the judgment in fixed monthly installments, and upon his failure to pay any such installment when due without good excuse may punish him for contempt.

SEC. 39. *Appointment and bond of receiver.*—The judge may, by order, appoint the sheriff, or other proper officer or person, receiver of the property of the judgment debtor; and he may also, by order, forbid a transfer or other disposition of, or any interference with, the property of the judgment debtor not exempt from execution. If a bonded officer be appointed receiver, he and his sureties shall be liable on his official bond as such receiver, but if another person be appointed he shall give a bond as receiver as in other cases.

SEC. 40. *When and how ascertainable interest of judgment debtor in real estate sold.*—If it appears that the judgment debtor has an interest in real estate, in the province in which proceedings are had, as mortgagor or mortgagee, or otherwise, and his interest can be ascertained as between himself and the person holding the legal estate, or the person having a lien on or interest in the same without controversy as to the interest of such person holding such legal estate or interest therein, or lien on the same, the receiver may be ordered to sell and convey such real estate or the interest of the debtor therein; and such sale shall be conducted in all respects in the same manner as is provided for the sale of real estate upon execution, and the proceedings thereon shall be approved by the court before the execution of the deed.

SEC. 41. *Proceedings when indebtedness denied or another person claims the property.*—If it appears that a person or corporation, alleged to have property of the judgment debtor or to be indebted to him claims an interest in the property adverse

to him or denies the debt, the court or judge may authorize, by an order made to that effect, the judgment creditor to institute an action against such person or corporation for the recovery of such interest or debt, forbid a transfer or other disposition of such interest or debt until an action can be commenced and prosecuted to judgment, and may punish disobedience of such order as for contempt. Such order may be modified or vacated by the judge granting the same, or by the court in which the action is brought, at any time, upon such terms as may be just.

SEC. 42. *When satisfaction of judgment entered by clerk or judge.*—Satisfaction of a judgment shall be entered by the clerk or judge in his docket, and in his judgment book if it be the judgment of a superior court, upon the return of an execution satisfied, or upon the filing of an admission of the satisfaction of the judgment executed and acknowledged in the same manner as a conveyance of real property by the judgment creditor, or by the attorney of the judgment creditor unless a revocation of his authority is filed, or upon the indorsement of such admission by the judgment creditor or his attorney on the face of the record of the judgment.

SEC. 43. *When admission of satisfaction, or entry of satisfaction without admission, ordered.*—Whenever a judgment is satisfied in fact, otherwise than upon an execution, the judgment creditor or his attorney must execute and acknowledge, or indorse, an admission of the satisfaction as provided in the last preceding section, and after notice and upon motion the court may order either the judgment creditor or attorney so to do, or may order the entry of satisfaction to be made without it.

SEC. 44. *Effect of judgment.*—The effect of a judgment or final order rendered by a court or judge of the Philippines or of the United States, or of any State or Territory of the United States, having jurisdiction to pronounce the judgment or order, may be as follows:

(*a*) In case of a judgment or order against a specific thing, or in respect to the probate of a will, or the administration of the estate of a deceased person, or in respect to the personal, political, or legal condition or relation of a particular person, the judgment or order is conclusive upon the title of the thing, the will or administration, or the condition or relation of the person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate;

(*b*) In other cases the judgment so ordered is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity.

SEC. 45. *What is deemed to have been adjudged.*—That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

SEC. 46. *When principal bound by judgment against surety.*—When the party is bound by a record, and such party stands in the relation of surety for another, the latter is also bound from the time that he has notice of the action or proceeding, and an opportunity at the surety's request to join in the defense.

SEC. 47. *Effect of record of a court of the United States.*—The effect of a judicial record of a court of the United States or of a court of one of the States or territories of the United States, is the same in the Philippines as in the United States, or in the State or territory where it was made, except that it can only be enforced here by an action or special proceeding, and except, also, that the authority of a guardian, or executor, or administrator does not extend beyond the jurisdiction of the Government under which he was invested with his authority.

SEC. 48. *Effect of foreign judgments.*—The effect of a judgment of any other tribunal of a foreign country, having jurisdiction to pronounce the judgment, is as follows:

(*a*) In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing;

(*b*) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

[TO BE CONTINUED]

(*Continued from page* 95)

14. *Courts Having Jurisdiction in Industrial Disputes.*

1. *The Court of Industrial Relations.*[147] The Court of Industrial Relations shall have power to decide and settle disputes between laborers and employers if these requisites exist:

a. The dispute must be one causing or likely to cause a strike or lockout;

b. The dispute must be due to differences as regards wages, shares or compensation, hours of work or conditions of employment;

c. The number of employees or laborers involved in the dispute must exceed thirty;

d. The industrial dispute is submitted to the Court by the Secretary of Labor, or by any or both of the parties to the controversy certified by the Secretary of Labor as existing and proper to be dealt with by the court for the sake of public interest.

These requisites may be gathered from the words of Section 4, Commonwealth Act No. 213. One should note that there seems to be a conflict between this Section and Section 1 of the same Act. The latter seems to bestow jurisdiction on the Court of Industrial Relations "to decide and settle *any question, matter or dispute*" between employees and employer, which is not the case under Section 4. This contradiction is to be settled by regarding Section 1 as a general provision and Section 4 as particular provision, and then, apply the rule of statutory construction that when a general provision conflicts with a particular provision the latter shall prevail.

2. *Other Courts.* The organization of the Court of Industrial Relations did not have the effect of depriving ordinary Courts of Justice the jurisdiction of deciding industrial conflicts. This fact is very evident upon reading Commonwealth Act No. 103. In the first place, the act never uses the work "exclusive" or its equivalent when it designated the powers and duties of the Court of Industrial Relations; furthermore, only cases which received the certification of the Secretary of Labor may be heard by the court; as such, the act admits the conclusion that cases without such certification are still within the jurisdiction of the ordinary courts of the Philippines.

[147] Organized under Commonwealth Act. No. 103.

CONCEPT OF LIBERTY

Liberty does not import "an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis, organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others. * * * There is, of course, a sphere within which the individual may assert the supremacy of his own will, and rightfully dispute the authority of any human government—especially of any free government existing under a written Constitution—to interfere with the exercise of that will. But it is equally true that in every well-ordered society charged with the duty of conserving the safety of its members, the rights of the individual in respect of his liberty may at times, under the pressure of great dangers, be subjected to such restraint to be enforced by reasonable regulations, as the safety of the general public may demand." (Harlan, J., in Jacobson vs. Massachusetts (1905) 197 U. S., 11.) (Cited by Justice Malcolm in Rubi v. Provincial Board of Mindoro, 39 Phil., 660, 704-705.)

Decisions

SUPREME COURT

I

Feliciano Sanchez, petitioner-appellant, vs. Hon. Francisco Zulueta, Judge of the Court of First Instance of Cavite, et al., respondents-appellees, G. R. No. 45616, May 16, 1939, **Avanceña, C. J.**

PRACTICE AND PROCEDURE; PARENT AND CHILD; ADULTERY AS DEFENSE TO CLAIM FOR SUPPORT *PENDENTE LITE;* RIGHT OF DEFENDANT TO PRESENT EVIDENCE.—*Facts:* In an action for support, plaintiffs, claiming to be wife and son, respectively, of defendant, asked support *pendente lite.* Defendant opposed, alleging that plaintiff's child was not his son but of another man with whom plaintiff wife had committed adultery, and asked to be permitted to adduce evidence of adultery. The trial court, refusing to hear the evidence, granted the prayer and ordered defendant to pay pension *pendente lite. HELD:* The action of the court in refusing to hear the evidence of adultery was error. The adultery of the wife is a valid defense against an action for support. Consequently, in respect to the child the fact that he is the fruit of such adulterous relations is also a defense, since in that case he would not be the child of the defendant and he would not have right to support as a child. But, as it is not sufficient merely to allege this defense but it is necessary to prove it, it would be useless if it would not be allowed to be proved. It is not of course necessary to enter fully into the merits of the case but the Court may determine the kind and extent of evidence which he believes sufficient for him to justly resolve the petition in one way or another, taking into account only the provisional character of the resolution he is going to render.

DECISIÓN

En la causa civil 3199 del Juzgado de Primera Instancia de Cavite, en que Josefa Diego y Mario Sanchez son demandantes y Feliciano Sanchez demandado, los demandantes piden que se condene al demandado a pagarles una pensión mensual.

Se alega en la demanda que los demandantes son, respectivamente, esposa e hijo del demandado; que éste, desde el año 1932, rehusó y rehusa hasta ahora mantener a los demandantes; que éstos no tienen medios propios de subsistencia, mientras el demandado recibe de la Armada de los Estados Unidos una pensión mensual de P174.20; que el demandado abandonó a los demandantes sin ninguna razón valida y rehusa permitirles vivir con él.

El demandado alega, como defensa especial, que la demandante Josefa Diego abandonó la casa conyugal el 27 de Octubre de 1930, sin su conocimiento ni consentimiento, por haber cometido adulterio con Macario Sanchez, con quien tuvo, como consecuencia de estas ilicitas relaciones, un hijo que es el otro demandante Mario Sanchez.

En el mes siguiente a la presentación de la demanda, los demandantes solicitaron del Juzgado que el demandado fuera obligado a darles *pendente lite*, en concepto de alimentos, la cantidad de P50.00 cada mes. En oposición a esta petición el demandado alegó que Mario Sanchez no es su hijo legítimo sino que es hijo adulterino de la demandante con Macario Sanchez y pidió oportunidad para presentar pruebas en apoyo de esta defensa. El Juzgado, sin acceder a esta petición del demandado para presentar pruebas, proveyó favorablemente a la solicitud de los demandantes y le ordenó que pague una pensión mensual de P50.00, *pendente lite*, a los demandantes, a partir del 1.o de Julio de 1936. En virtud de estos hechos el demandado presentó una solicitud de prohibición ante el Tribunal de Apelación contra el Juez del Juzgado de Primera Instancia de Cavite y los demandantes. El Tribunal de Apelación denegó el recurso y contra esta resolución el demandado recurre en certiorari ante este Tribunal.

Somos de opinión que el Tribunal de Apelación erró al no permitir al demandado presentar sus pruebas con el objeto de determinar si existen, o no, suficientes para enervar *prima facie* la solicitud. El adulterio de la mujer es una defensa válida contra la acción por alimentos (Maria Quinta contra Gelación Lerma, 24 Jur. Fil., 296). Consiguientemente, en cuanto al hijo, es también defensa el hecho de que él es el fruto de tales relaciones adulterinas, toda vez que, en tal caso, no sería hijo del demandado y no tiene derecho a los alimentos como hijo, no siéndolo. Pero, como no basta alegar esta defensa, sino que es necesaria probarla, nada valdría si, por otra parte, no se permite la prueba de ella. No es desde luego necesario entrar de lleno en los méritos de la causa sino que el Juzgado puede determinar la clase y la extensión de la prueba que crea suficiente a permitirle resolver justamente la solicitud, en uno o en otro sentido, teniendo en cuenta el carácter solamente provisional de la resolución que ha de dictar.

Aunque meras declaraciones juradas podrian satisfacer el criterio del Juzgado para resolver la solicitud, sin embargo, la omisión de acompañarlas a la oposición no justificaba que esta fuera desatendida, solamente por esta omisión, habiéndose pedido, por otra parte, oportunidad para presentar pruebas. Es posible que el demandado no pueda disponer de declaraciones juradas para apoyar su oposición, pero, puede poseer otras pruebas, acaso de mayor valor.

Si el demandado alega una defensa válida, que debe probarse, y pide oportunidad para presentar la prueba, es un error negarle esta oportunidad.

Con revocación de la decisión dictada por el Tribunal de Apelación, se declara que procede dar al recurrente oportunidad de presentar pruebas en apoyo de su defensa contra la petición de alimentos *pendente lite*, en la extensión que el Juzgado determine, sin especial pronunciamiento en cuanto a las costas.

Así se ordena.

RAMON AVANCEÑA.

CONFORMES: *Antonio Villa-Real, Carlos A. Imperial, Anacleto Diaz, Jose P. Laurel, Pedro Concepcion.*

El Magistrado Sr. *Morán* no tomó parte.

II

Patrocinio Lumbreras, plaintiff-appellant, vs. Salvador Sison, defendant-appellee, G. R. No. 45583, April 14, 1939, **Villa-Real, J.**

PLEADING AND PRACTICE; SERVICE BY PUBLICATION APPLICABLE ONLY TO REAL ACTIONS.—The Supreme Court has already declared in various decisions that in personal actions the defendant should be personally served with summons; that service by publication provided for in section 398 of the Code of Civil Procedure is not sufficient; and if it is done, the court will not acquire jurisdiction over the person of the defendant; and that his special appearance for the sole purpose of asking that the judgment rendered and the writ of execution issued against him be annulled and declared to be without effect, does not confer upon the court jurisdiction over his person.

DECISION

En 19 de agosto de 1936, Patrocinio Lumbreras de Sison presentó en el Juzgado de Primera Instancia de Cavite una demanda contra su esposo Salvador Sison, residente entonces en San Francisco, California, Estados Unidos de America, en la que, por los

hechos alegados en ella, pedia que se dictase sentencia condenando a dicho demandado a que enviase a la demandante la cantidad de ₱100.00 en concepto de manutención *pendente lite*, que se le pagase despues la misma cantidad de ₱100.00 en concepto de alimentos, más la suma de ₱1,000.00 para pagar una deuda contraida por ella por gastos de médico y subsistencia, y a su abogado la suma de ₱500.00 como honorarios profesionales.

En vista de que el demandado residía fuera de las Islas Filipinas, a petición de la demandante se dictó en 2 de septiembre de 1936 un auto en el que se ordenaba que el emplazamiento de la demanda al demandado se hiciera mediante publicación en el periodico La Opinión, como así se hizo por tres semanas consecutivas una vez la semana.

Con fecha 8 de diciembre de 1936, el demandado hizo una comparecencia especial con el único objecto de impugnar la jurisdicción del Juzgado sobre su persona, alegando que estando ausente en los Estados Unidos él puede ser emplazado solamente mediante publicación cuando el litigio tiene por objeto bienes muebles o inmuebles, situados en las Islas Filipinas, sobre los cuales dicho demandado tuviese o reclamase una hipoteca legal preferente, o interés, real o eventual, o que el remedio pedido consistiera en excluir total o parcialmente al mencionado demandado de cualquier interés en los citados bienes, de acuerdo con el artículo 398 del Código de Procedimiento Civil. Es así que el presente litigio tiene por objeto obligarle a pagar cierta cantidad de dinero, luego, según dicho demandado, el Juzgado que ordenó la publicación del emplazamiento contra él no podía adquirir jurisdicción sobre su persona por tal medio solamente, y pidió que la citada orden de 2 septiembre de 1936, por la que se ordenaba su emplazamiento mediante publicación, se dejase sin efecto.

Encontrando atendibles las razones expuestas por el demandado en su comparecencia especial, el Juzgado se declaró sin jurisdicción sobre la persona de dicho demandado y declaró nula y de ningún efecto la orden de publicación del emplazamiento de fecha 2 de septiembre de 1936.

Contra este auto la apelante interpuso la presente apelación, señalando como supuesto error cometido por el Juzgado a quo el haberse declarado sin jurisdicción sobre la persona del demandado.

Esta Corte ya tiene declarado en varias decisiones, siendo una de ellas la dictada en el asunto de Nelson *contra* Platón, R. G. No. 38987, que en acciones personales el demandado debe ser emplazado personalmente; que el emplazamiento mediante publicación previsto por el artículo 398 del Código de Procedimiento Civil no es suficiente, y si se hace, el Tribunal no adquirirá jurisdicción sobre la persona de dicho demandado; y que la comparecencia especial de un demandado para el único objeto de pedir que la sentencia dictada y el mandamiento de ejecución expedido contra él se dejara sin efecto y se declarase nulo y de ningún valor, no confiere al Juzgado jurisdicción sobre su persona (4 Corpus Juris, 1341-1343, Montevercle *contra* Jaranilla, 60 Jur. Fil., 297; Vergel de Dios *contra* Abucay Plantation Co., 59 Jur. Fil., 924; Central Azucarera de Tarlac *contra* De León, 56 Jur. Fil., 185; Marquez Lim Cay *contra* Del Rosario, 55 Jur. Fil., 1030; Banco de las Islas Filipinas contra De Coster, 47 Jur. Fil., 626; Ocampo *contra* Zurbito, 57 Jur. Fil., 781.)

En su virtud, y de acuerdo con la citada doctrina, confirmamos el auto apelado, sin especial pronunciamiento en cuanto a las costas.

Así se ordena.

ANTONIO VILLA-REAL.

CONFORMES: *Ramon Avanceña, Carlos A. Imperial, Anacleto Diaz, Jose P. Laurel, Pedro Concepcion, Manuel V. Moran.*

III

Manila Electric Company, plaintiff-appellee, vs. Ramon Roces, defendant-appellant, G. R. No. 46273, Oct. 28, 1939, **Imperial, J.**

CIVIL PROCEDURE; AMENDMENT OF PLEADINGS; CHANGE OF NAME OF PARTY DEFENDANT.—*Facts:* Plaintiff corporation brought action against Ramon Roces. In answer, defendant disclaimed interest in the litigation, claiming that the real party defendant was the corporation, Ramon Roces Publications, Inc., of which he was only the president. Plaintiff presented an amended complaint, changing the party defendant to Ramon Roces Publications, Inc. Defendant opposed amendment on the ground that it would illegally permit the change of the party defendant and of the cause of action. *Held:* The amendment should be allowed. The change of the name should be permitted because if the original complaint should be retained, the result would be that the action would have been instituted against a wrong party. It may not also be sustained that the amendment would permit a change in the cause of action because the allegations of the two complaints are the same.

DECISIÓN

La demandante inició en el Juzgado de Primera Instancia de Manila la Causa Civil No. 51804, intitulada "Manila Electric Company, demandante, contra Ramón Roces, demandado. En la demanda la demandante alegó: que por virtud de la Resolución No. 1 de la Junta Municipal de la ciudad de Manila, acordada el 29 de Diciembre de 1936 y aprobada el 4 de Enero de 1937, el demandado fué autorizado para instalar un cable eléctrico subterráneo a través de la calle Calero, para suministrar fluido eléctrico por conducto de dicho cable a *Liwayway Building* de la propiedad de Ramón Roces Publications, Inc., situado al Oeste de la referida calle; que el 17 de Junio de 1937 el demandado instaló ilegalmente el mencionado cable eléctrico subterráneo y está tratando de transmitir fluido eléctrico por conducto de él a *Liwayway Building;* y que la Junta Municipal de la Ciudad de Manila no tenía facultad para aprobar la referida Resolución No. 1 ni para autorizar al demandado la instalación del cable eléctrico subterráneo por la razón de que ella, la demandante, es la corporación que posee franquicia para vender en la Ciudad de Manila fluido eléctrico y para suministrarlo para el alumbrado público y otros fines. Como remedio solicitó que el Juzgado expida interdicto prohibitorio contra el demandado para que se abstenga de hacer uso del mencionado cable eléctrico subterráneo y de ultilizar fluido eléctrico procedente de la planta de la demandante. En su contestación el demandado negó las alegaciones materiales de la demanda y como defensa alegó: que la Resolución No. 1 era errónea puesto que la licencia debía haberse expedido a favor de Ramón Roces Publications, Inc.; que la Junta Municipal de la Ciudad de Manila, para corregir el error en que incurrió, aprobó la Resolución No. 270, adoptada el 22 de Septiembre de 1937 y aprobada el 2 de Octubre del mismo año, por la cual fué autorizada Ramón Roces Publications, Inc., para instalar el cable eléctrico subterráneo y para suministrar por conducto de él fluido eléctrico a su propiedad conocida por Liwayway Building; y que él, Ramón Roces, no tiene interés directo ni personal en el asunto. En vista de esta contestación, el 8 de Octubre de 1937 la demandante presentó una moción pidiendo que la demanda enmendada que adjuntaba fuese admitida por el Juzgado. En la demanda enmendada se hacían prácticamente las mismas alegaciones, excepto que el nombre del demandado fué sustituido por el de la Ramón Roces Publications, Inc. A la demanda enmendada se acompañó una copia de la Resolución No. 270 de la Junta Municipal de la Ciudad de Manila por la cual se enmendó la Resolución No. 1 en el sentido de que el permiso se concedía a Ramón Roces Publications, Inc., en vez de Ramón Roces. El demandado se opuso a la admisión de la demanda enmendada, fundándose en que no era permisible el cambio de nombres que se pedía en la moción porque ello equivalía a cambiar enteramente la parte demandada y a alterar substancialmente el motivo de acción. En orden del 16 de Octubre de 1937 el Juzgado accedió a la moción y admitió la demanda enmendada. De esta orden se excepcionó el demandado e interpuso la presente apelación.

El demandado sostiene que el Juzgado erró al admitir la demanda enmendada de la demandante y al no sobreseer el asunto, con las costas a la demandante.

Sostiene el demandado que bajo el artículo 110 del Código de Procedimiento Civil la demanda enmendada no debía haber sido admitida porque con ello se ha permitido ilegalmente el cambio de la parte demandada y el del motivo de acción de la demanda original. El artículo 110 del Código de Procedimiento Civil se lee como sigue:

"SEC. 110. *Amendments in General.*—The court shall, in furtherance of justice, and on such terms, if any, as may be proper, allow a party to amend any pleading or proceeding and at any stage of the action, in either the Court of First Instance or the Supreme Court, by adding or striking out the name of any party, either plaintiff or defendant, or by correcting a mistake in the name of a party, or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner. The court may also, upon like terms, allow an answer or other pleading to be made after the time limited by the rules of the court for filing the same. Orders of the court upon the matters provided in this section shall be made upon motion filed in court, and after notice to the adverse party, and an opportunity to be heard."

Como se verá, el artículo permite, a discreción del Juzgado, la enmienda de cualquier escrito de alegaciones para corregir cualquier error en el nombre de alguna de las partes o en el de cualquiera alegación o descripción, con el fin de que los méritos de la controversia puedan resolverse prontamente, sin tener en cuenta tecnicismos, y para que el asunto pueda tramitarse de la manera más expedita y menos costosa. Es cosa resuelta en esta jurisdicción que el cambio en el nombre de las partes puede hacerse en una demanda siempre que los motivos de acción sean los mismos y no se traiga al asunto una nueva parte completamente extraña (Alonso contra Villamor, 16 Jur. Fil., 318; Chua Kiong contra Whitaker, 46 Jur. Fil., 605). En el primero de dichos asuntos este Tribunal dijo:

"Hemos examinado detenidamente los motivos de recurso invocados por el abogado de los demandados en esta apelación. No encontramos ninguno de ellos bien fundado. El único que merece especial atención por nuestra parte es aquel en que los demandados afirman que el Juez de Primera Instancia erró al permitir que la acción se entablara y siguiera en nombre del demandante en vez del obispo de la diócesis en que estaba situada la iglesia o a nombre de la Iglesia Católica Apostólica Romana, como verdadera parte interesada a la cual competía ejercitar la acción."

"Es indiscutible que el obispo de la diócesis o la Iglesia Católica Apostólica Romana era la verdadera parte interesada. El demandante personalmente no tiene interés alguno en la causa de acción. El artículo 114 del Código de Procedimiento Civil requiere que toda acción se interponga a nombre de la verdadera parte interesada. El aquí demandante no es tal parte interesada."

"El artículo 110 del Código de Procedimiento Civil, sin embargo, dice:

"ART. 110. *De las enmiendas en general.*—En interés de la justicia, y bajo las condiciones que sean procedentes, el tribunal permitirá a las partes enmiendas de cualquier escrito o actuación, en cualquier tiempo durante la tramitación del juicio, ya sea en el Juzgado de Primera Instancia o en la Corte Suprema, mediante la adición o supresión del nombre de cualquiera de las partes, ya del demandante o demandado o la corrección de un error en el nombre de una de ellas o la de una alegación errónea o una descripción inadecuada en cualquier otro respecto, para que se puedan determinar prontamente, sin ocuparse en tecnicismos y de la manera más expedita y menos costosa, los méritos verdaderos del litigio. En idénticas condiciones también puede permitir el tribunal que se presente una contestación, u otros escritos después del tiempo señalado para su presentación por los reglamentos generales. Las providencias de los tribunales sobre las materias a que se refiere este artículo, se dictarán a petición de la parte correspondiente y previa notificación a la parte contraria, a quién se concederá la oportunidad de ser oída."

"El artículo 503 del mismo Código, dice:

"ART. 503. *De la revocación de la sentencia, que no debe fundarse en formalidades técnicas.*—Ninguna sentencia será revocada por vicio de forma o por falta de tecnicismo o por un error, que no perjudique los derechos esenciales de la parte excepcionante."

"Estamos convencidos de que, bajo estas disposiciones del Código, esta Corte tiene plenos poderes, aparte del poder y facultades inherentes a la misma, para enmendar los escritos de alegaciones, actuaciones y decisión en los presentes autos sustituyendo como demandante a la verdadera parte interesada. No solo estamos seguros de que *podemos* hacerlo, sino que estamos convencidos de que *debemos* hacerlo. Tal enmienda no constituye realmente un cambio en la identidad de las partes. El demandante alega en su demanda y ha sostenido siempre en estos autos, que él ha entablado y matiene esta acción no por sí sino a nombre del obispo de la diócesis, no por derecho propio sino en representación de otro. Simplemente trata de hacer por el obispo lo que éste podría hacer por sí mismo. No se trata de su propia personalidad. No invoca derechos propios. No pretende tener interés alguno en el litigio. No busca más que la felicidad de la gran Iglesia a la cual sirve. Consiente de buen grado en que su identidad sea completamente absorbida por la de su superior. La sustitución, pues, del nombre (del) Obispo de la Diócesis o de la Iglesia (Católica) Apostólica Romana en lugar del nombre del Padre Alonso, como demandante, no es realidad la sustitución de una entidad por otra, de una parte por otra, sino simplemente el hacer que la forma dé expresión a la sustancia. La sustancia está ahí. Resalta en todo lo actuado. Nadie puede dudar ni por un momento quién es el verdaderamente interesado en este litigio. La forma de su expresión es lo único defectuoso que hay. La sustitución no es, pues, sustancial sino meramente formal. El mero defecto de forma no puede en modo alguno perjudicar a nadie con tal de que lo sustancial aparezca de una manera clara. La forma no es más que un medio de expresar el fondo y hacerlo aparecer de una manera clara. Es el medio por el cual la sustancia se revela a sí misma. Si la forma fuere defectuosa pero con todo la sustancia se mostrare de una manera clara, ningún perjuicio podría resultar de que se haga que la forma exprese exactamente el fondo."

"A nadie se ha inducido a error con la equivocación en el nombre del demandante. Si por razón de este error devolviéramos este asunto a primera instancia para nuevo juicio, tendríamos la misma demanda, la misma contestación, la misma defensa, los mismos intereses, los mismos testigos y las mismas pruebas. El nombre del demandante constituiría la única diferencia entre el primer juicio y el segundo. A nuestro juicio, esto del nombre no es motivo suficiente para justificar tal resolución."

"No hay nada sacramental en los trámites y escrito de alegaciones en su forma o en su contenido. Su único objeto es facilitar la aplicación de la justicia a las contiendas que surjan entre particulares. Se han creado, no para obstaculizar y dilatar, sino para facilitar la administración de justicia. No constituyen lo que los Tribunales han tratado siempre de asegurar a los litigantes. Se han establecido como los medios más adaptados para obtener ese fin. En otras palabras son el medio para llegar al fin. Cuando pierden el carácter de medio y se convierten en fin, la administración de justicia es defectuosa y los Tribunales no cumplen por consiguiente con su deber."

"El error en el presente caso es puramente técnico. Aprovecharse de él como no sea para corregirlo, sería contrario a todo espíritu imparcial de justicia. Invocarlo como un error fatal a la acción del demandante parece más bién un alarde de habilidad que la defensa de un derecho. Los pleitos no son juegos de tecnicismos en los que el más diestro e instruido en el arte de movimientos y posiciones, atrapa y destruye al otro. Es más bién una contienda en la que cada parte contendiente debe exponer ante el Tribunal de manera imparcial los hechos del caso, y después, echando a un lado como triviales y de ninguna importancia todas las imperfecciones de forma y tecnicismos de procedimiento, pedir que se haga justicia en el fondo. Los pleitos, a diferencia de los duelos, no han de ganarse de una estocada. El tecnicismo, cuando deja de ser, como es, un auxiliar de la justicia para convertirse en su mayor obstáculo y principal enemigo, merece escasa consideración a los Tribunales. No puede haber ningún derecho adquirido en cuestión de tecnicismos. No se permitirá a ningún litigante que impugne los autos de cualquier Tribunal de estas Islas por defectos de forma, a menos que se haya perjudicado los derechos esenciales de alguna de las partes."

"Al autorizar esta sustitución, obramos de conformidad con el mejor criterio judicial. (McKeighan vs. Hopkins, 19 Neb., 33; Dixon vs. Dixon, 19 Ia., 522; Hodges vs. Kimball, 49 Ia., 577; Sanger vs. Newton, 134 Mass., 308; George vs. Reed, 101 Mass., 378; Bowden vs. Burnham, 59 Fed. Rep., 752; Phipps & Co. vs. Hurlburt, 70 Fed. Rep., 202; McDonald vs. State, 101 Fed. Rep., 171; Morford vs. Diffenbocker, 20 N. W. 600; Costelo vs. Crowell, 134 Mass., 280; Whitaker vs. Pope, 2 Woods, 463; Fed. Cas., No. 17528; Miller vs. Pollock, 99 Pa. St., 202; Wilson vs. Presbyterian Church, 56 Ga., 554; Wood vs. Circuit Judge, 84 Mich., 521; Insurance Co. vs. Mueller, 77 Ill., 22; Farman vs. Doy'e, 128 Mich., 696; Union Bank vs. Mott, 19 How. Pr., 114; R. R. Co. vs. Gibson,

4 Ohio St., 145; Hume vs. Kelly, 82 Oreg., 398."

El error que se trató de corregir con la presentación de la demanda enmendada consistió en la inclusión de Ramón Roces como demanda en la demanda original, error que obedeció a su vez al hecho de que la Resolución No. 1 concedió el permiso a dicho demandado, en lugar de haberlo concedido a Ramón Roces Publications, Inc., que era la dueña del *Liwayway Building* al cual se trataba de proveer de fluido eléctrico. Según las alegaciones de la demanda y de la demanda enmendada Ramón Roces no era en realidad parte demandada necesaria porque el *Liwayway Building*, al cual se suministraría el fluido eléctrico, era de Ramón Roces Publications, Inc.; pero si Ramón Roces fué designado como el único demandado ha sido indudablemente porque la licencia o permiso se expidió a su nombre. Como quiera que la Resolución No. 1 se enmendó por la Resolución No. 270 haciendo aparecer a Ramón Roces Publications, Inc., como la autorizada para instalar el cable eléctrico subterráneo, si no se permite la enmienda de la demanda el resultado sería que la acción no se habría instituido contra la verdadera parte demandada. No puede sostenerse que ha habido cambio de motivo de acción en la demanda enmendada porque comparando sus alegaciones con las de la demanda original se verá que la demandante se ha fundado siempre en su pretensión de que ni Ramón Roces ni Ramón Roces Publications, Inc., tenían derecho a servirse del cable eléctrico subterráneo para suministrar fluido eléctrico a *Liwayway Building*. Y tampoco puede sostenerse que ha habido cambio substancial en las alegaciones de ambos escritos porque aparece que Ramón Roces no es ajeno a Ramón Roces Publications, Inc., porque es el Presidente de esta corporación. Dados los hechos y circunstancias expuestos, la objeción a la admisión de la demanda enmendada está fundada en mero tecnicismo del que debe prescindirse, de conformidad con el artículo 110, para que el asunto pueda decidirse prontamente en sus méritos, evitando molestias innecesarias a las partes, y de la manera menos costosa posible.

Se confirma la orden apelada, con las costas de esta instancia al apelante.

Así se ordena.

CARLOS A. IMPERIAL.

CONFORMES: *Ramón Avanceña, Antonio Villa-Real, Anacleto Díaz, José P. Laurel, Manuel V. Morán.*

Concepción, M., no tomó parte.

IV

Jose Martinez, etc., petitioners-appellants, vs. Santos B. Pampolina, Justice of the Peace of Biñan, Laguna, et al., respondents-appellees, G. R. No. 45177, April 5, 1939, **Diaz, J.**

1. PLEADINGS AND PRACTICE; MOTION TO REQUIRE FILING OF SEPARATE ACTIONS HELD IN THE NATURE OF MOTION FOR SPECIFICATION OR DEMURRER.—A motion filed for the purpose of requiring several persons who have joined in the filing of a single suit to institute separate and independent actions on the ground that their interests were not identical, is equivalent to a motion for specification based under Section 108 of Act No. 190, or, at least, to a demurrer based on misjoinder of parties plaintiff.

2. ID.; DEMURRER; EFFECT OF FAILURE TO AMEND COMPLAINT. —When a demurrer to a complaint is sustained and the court orders that the allegations be made more specific, and the plaintiffs fail to cure the defects or make the specifications required, the only remaining step for the court is to dismiss the case.

DECISIÓN

Los recurrentes fueron demandados por desahucio y cobro de alquileres, en el Juzgado de Paz de San Pedro, Laguna, por los recurridos Carlos Young, Newland Baldwin y Adele C. Baldwin. Lo fueron en once causas separadas, (causas civiles Nos. 811, 812, 813, 815, 816, 817, 818, 819, 820, 823 y 824), una para cada uno de ellos, excepto las que estaban casadas que lo fueron juntamente con sus respectivos consortes. Pidieron en casi todas ellas que se les proveyese de asesores. El Juez del mencionado Juzgado, sin embargo, hizo caso omiso de su petición y procedió, por el contrario, a oir y decidir cada una de dichas causas hasta el fin. Creyendo que no fueron debidamente tratados, promovieron esta causa de *mandamus* en el Juzgado de Primera Instancia de Laguna, para pedir en primer lugar, que se dejase sin efecto todo lo actuado en las referidas once causas; y en segundo lugar, para que se les proveyese de asesores como lo habían solicitado. Contra su demanda, los recurridos Young y Baldwin interpusieron un demurrer fundándose en que había unión indebida de recurrentes o demandantes y acciones, y que los hechos alegados en dicha demanda no eran constitutivos de derecho de acción. Visto el demurrer por el Juzgado inferior, lo estimó bien fundado, y permitió a los recurrentes enmendar su demanda para corregir los defectos de que la misma adolecía.

Los recurrentes enmendaron su demanda, pero como quiera que no corrigieran el defecto de que adolecía en su forma original, se volvió a interponer otro demurrer contra la misma, por los recurridos Baldwin y Young. El Juzgado inferior volvió a sostener el segundo demurrer, y concedió a los recurrentes otra oportunidad para enmendar su escrito. En la segunda demanda enmendada que presentaron, dejaron de alegar el hecho de que habían sido demandados separadamente en once causas distintas como lo habían alegado en cada una de sus anteriores demandas, habiéndose limitado entonces a decir que habían sido demandados por desahucio y cobro de alquileres por los mencionados recurridos, en el Juzgado de Paz. En vista de este nuevo giro que dieron a su último escrito de demanda, el demurrer de los recurridos, fundado en los mismos motivos que habían expuesto en las dos ocasiones anteriores, no prosperó.

Pero, antes de que se viese la causa, los recurridos pidieron que se ordenase a los recurrentes a dividir su acción, ejercitando cada uno de ellos la que de derecho le competía, por no tener todos ellos juntos, unos mismos derechos o unos mismos motivos de acción. Sostuvieron su petición, presentando los Exhibits A al A-11 que son copias de las decisiones del Juzgado de Paz de San Pedro, Laguna, dictadas en las once causas de que antes se ha hecho mención, de las cuales resulta claro y evidente que los intereses y obligaciones de cada uno de ellos no eran los mismos, sino enteramente distintos. El Juzgado inferior, dándose cuenta de los verdaderos hechos, ordenó que ejercitasen su acción respectiva, contra los recurridos, independientemente los unos de los otros, fundándose indudablemente en el artículo 108 de la Ley No. 190 que dispone cuándo y cómo debe requerirse a una parte a especificar claramente sus alegaciones. Los recurrentes, en vez de obrar de conformidad con lo así ordenado, expresaron su decisión de no querer enmendar su última demanda enmendada; y por dicha razón, los recurridos presentaron una moción de sobreseimiento que les fué concedida por el Juzgado, mediante su auto de 28 de Febrero de 1936.

No vemos ningún error en lo actuado por el Juzgado inferior; pues, en puridad, la moción de los recurridos Young y Baldwin pidiendo que se requiriese a los recurrentes a ejercitar sus respectivas acciones independientemente los unos de los otros, por no tener unos mismos intereses y un mismo derecho de acción, equivale a una petición para mayor especificación, fundada en el mencionado artículo 108 de la Ley No. 190, o cuando menos, a un demurrer fundado a su vez en la indebida unión de partes demandantes. Así lo estimó el Juzgado inferior reconsiderando de ese modo prácticamente, su auto por el que había desestimado el demurrer de los recurridos, cosa perfectamente posible y legal, porque le era inherente como a todo Tribunal, la facultad incidental de reformar o alterar sus órdenes, en interés de la justicia. (Art. 11 de la Ley No. 190). Por otra parte, es de ley que cuando un demurrer contra un escrito de demanda es estimado por el Juzgado, o

Headnote 1

Headnote 2

éste ordena que se hagan mas especificas las alegaciones que en dicho escrito se hacen y el demandante ni lo enmienda para corregir los defectos de que adolece, ni hace las especificaciones requeridas, el único paso que queda y procede darse es sobreseer la causa, como así lo ha hecho con mucho acierto el Juzgado inferior. (Arts. 101 y 127 de la Ley No. 190; Marcelo contra Bermudez y otros, R. G. No. 43547, Septiembre 13, 1938).

Por tanto, confirmamos el auto apelado, o sea el de 28 de Febrero de 1936, con las costas a los apelantes.

Así se ordena.

ANACLETO DIAZ.

CONFORMES: *Ramon Avanceña, Antonio Villa-Real, Carlos A. Imperial, Jose P. Laurel, Pedro Concepción.*

MORAN, M., concurrente:

Estoy conforme con la parte dispositiva. Aunque la moción de sobreseimiento no equivale, en mi sentir, a una moción de especificación ni a un *demurrer*, creo, sin embargo, que la misma es permisible bajo las circunstancias especiales del caso, en que el demandante quiere ocultar en su última demanda enmendada un hecho indiscutible alegado en sus anteriores demandas, con el deliberado propósito de ocultar un error de procedimiento que, tarde o temprano, se ha de descubrir, y que debe corregirse lo antes posible para evitar dilaciones innecesarias. Los tribunales de Justicia deben estar investidos de poderes amplios para enderezar los procedimientos y encaminarlos a una pronta y eficiente disposición de los asuntos.

MANUEL V. MORAN.

V

Tavera-Luna, Inc., petitioner-appellant, vs. Judge Mariano Nable, respondent-appellee, G. R. No. 45601, April 14, 1939, **Laurel, J.**

1. CIVIL PROCEDURE; COURTS OF JUSTICE OF THE PEACE; FORCIBLE ENTRY AND UNLAWFUL DETAINER ACTIONS; JURISDICTION NOT LOST BY MERE ALLEGATION OF OWNERSHIP.—In an action of forcible entry and detainer instituted to recover possession, the defendant cannot defeat that action merely by asserting in his answer a claim of ownership in himself. The only exception to this rule is when the question of ownership is so necessarily involved that it would be impossible to decide the question of mere possession without first settling that of ownership.

2. ID.; INTERVENTION; DISCRETION OF TRIAL COURTS.—Under section 121 of the Code of Civil Procedure, before a party may be allowed to intervene in an action or proceeding, he must show legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. And the granting or refusal of a motion to intervene is a matter of judicial discretion, and once exercised, the decision of the court cannot be reviewed or controlled by mandamus, however erroneous it may be.

3. ID.; ID.; ID.; EXCEPTION; REASON.—The only exception to this rule is when there is an arbitrary abuse of that discretion, in which case mandamus may issue if there is no other adequate remedy, though the result is that the court will be called upon to review the exercise of a discretionary power. Such review is allowed because the power of discretion is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility. But it has also been held that this abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all, in contemplation of law.

DECISION

This is an appeal by the petitioner Tavera-Luna, Inc. from an order of the Court of First Instance of Manila sustaining the demurrer interposed by the respondent to the petitioner's petition for mandamus.

On December 21, 1936, El Hogar Filipino, as administrator of the Crystal Arcade Building, filed Civil Case No. 111246 in the Municipal Court of the City of Manila to recover the possession of the portion known as the Torre of the "Crystal Arcade" from the defendant therein, Andres Luna, by reason of the latter's failure to pay the corresponding rentals thereof. In answer to the complaint, Andres Luna alleged, among other things, that Tavera-Luna, Inc., the petitioner herein, was the owner of the Crystal Arcade Building, and that El Hogar Filipino, as mere administrator thereof, had no right to increase the rental of the portion occupied by him, and that there was pending in the Court of First Instance of Manila Civil Case No. 47097, entiled "Tavera vs. Hogar Filipino and Tavera-Luna, Inc.", in which the issue involved was the title and ownership over the Crystal Arcade Building. On January 7, 1937, the petitioner filed a motion for intervention, which motion was denied by the respondent Judge of the Municipal Court of Manila. To compel the respondent municipal judge to admit the intervention, Tavera-Luna, Inc., instituted mandamus proceedings in the Court of First Instance of Manila. In its petition for mandamus Tavera-Luna, Inc., the petitioner and herein appellant, alleges that as the registered owner of the Crystal Arcade Building, any judgment which might be rendered against the defendant Andres Luna in Civil Case No. 111246 would necessarily affect the occupancy and possession of the tower of that building by Tavera-Luna, Inc. of which Andres Luna was the President, and that the respondent judge, in refusing to admit its motion for intervention in Civil Case No. 111246, had committed an abuse of discretion. Respondent demurred to the petition on the grounds (1) that the petition did not state facts sufficient to constitute a cause of action, and (2) that the petitioner had other plain, adequate and speedy remedy at law. The Court of First Instance of Manila sustained the demurrer of the respondent. The petitioner having elected to stand on its complaint, the lower court dismissed the same. Hence, the appeal to this Court adverted to in the beginning of this opinion.

Petitioner claims that in illegal detainer proceedings, the defendant or any intervenor therein may, subject to certain qualifications, raise the question of ownership of the property in litigation. The rule is that in an action of forcible entry and detainer, instituted to recover possession, the defendant cannot defeat that action merely by asserting in his answer a claim of ownership in himself. The only exception to this rule is when the question of ownership is so necessarily involved that it would be impossible to decide the question of mere possession without first settling that of ownership. (Mediran vs. Villarueva, 37 Phil. 752; Medel vs. Militante, 41 Phil. 526; See Kiong Pha vs. Ti Bun Lay, 45 Phil 670; Sevilla vs. Tolentino, 51 Phil. 333; Supia vs. Quintero, 59 Phil. 312). In Civil Case No. 111246 of the Municipal Court of the City of Manila, El Hogar Filipino alleged mere possession of the Crystal Arcade Building of which the tower occupied by Andres Luna is part, and that Luna failed to pay the rents from November 1, 1936. Both plaintiff and defendant there did not claim any right of ownership for themselves of the Crystal Arcade Building or of its tower. The sole question presented was one of possession. The question of ownership of the building was a matter foreign. This being the case, it is not seen how the petitioner's claim of ownership of the Crystal Arcade Building could be affected by any decision rendered in the detainer proceedings. It is elementary law that the right of a party cannot be affected by any judgment or order in a case in which he is not a party. Upon the other hand, it appears that there is actually a suit pending in the Court of First Instance of Manila entitled "Tavera vs. El Hogar Filipino and Tavera-Luna, Inc." (Civil Case No. 47097), in which the issue is the title over the Crystal Arcade Building and in which two writs of preliminary injunctions had been

Headnote 1

(*Continued on page* 112)

COURT OF APPEALS

The Government of the Philippine Islands, plaintiff-appellee, vs. Mariano Conde, defendant-appellant G. R. Nos. 3031 and 3249, October 26, 1939, **Padilla, J.**

1. JUDICIAL SALE; CONFIRMATION; INADEQUACY OF PRICE.—"We have it as an established doctrine that inadequacy of the price alone, unless shocking to the conscience of the court, will not be sufficient to set aside the sale, if there is no showing, * * *, that in the event of resale a better price can be obtained, or that there was fraud, collusion, mistake, surprise, unfairness or irregularity in the conduct of said sale" (The Government of the Philippine Islands *vs.* Zapanta, et al., 37 Off. Gaz., 1729-1730).

2. APPEAL; EXECUTION PENDING APPEAL; STAY OF EXECUTION; SUPERSEDEAS BOND.—A party against whom execution is issued for special reasons, cannot appeal by bill of exceptions from the order of execution. The only way of staying such execution is by filing a supersedeas bond, or by extraordinary legal remedy.

DECISION

Pursuant to a judgment affirmed by the Supreme Court in a foreclosure suit, the mortgaged property was sold at public auction for ₱8,000 to the plaintiff. Afterwards, confirmation of the sale and deficiency judgment for ₱6,195.53 and 8% interest thereon, were prayed for by the plaintiff. The defendant objected on the ground of inadequacy of price as compared to its assessed and actual market values. The Court confirmed the sale and issued an *alias* writ of execution for the deficiency. Exception to the order of confirmation and execution and motion for new trial were filed. Denial of motion and announcement of intent to appeal followed one another. Pending allowance of the bill of exceptions, the plaintiff prayed that, notwithstanding the filing of the bill of exceptions, an order of execution be issued for the satisfaction of the deficiency judgment, on the ground that the appeal was frivolous and intended to delay the satisfaction thereof, unless a supersedeas bond for the amount of the deficiency judgment were given. This prayer was granted. The defendant excepted and moved for reconsideration. The last motion having been denied, another bill of exceptions was filed to appeal from the order of execution. There are, therefore, two appeals, one from the order of confirmation and other from the order of execution of the deficiency judgment pursuant to the provisions of section 144 of the Code of Civil Procedure. The first appeal bears G. R. No. 3031 and the second G. R. No. 3249 of this Court.

As the second appeal is an offshoot of the first, we see no usefulness in writing two opinions. Appellant has filed one brief in support of the two appeals.

The ground for the objection to the confirmation of sale of the mortgage property for ₱8,000 is inadequacy of price, as compared to its assessed or actual market value. It is alleged that the assessed value was ₱13,950, and the market value on December 9, 1937, the date when the objection to the confirmation of sale was filed, was estimated at ₱16,000. This estimated value is not supported by any evidence. In declining to set aside an order of confirmation on the ground of inadequacy of price, the Supreme Court said:

"Assuming that the reasonable value of the properties is ₱66,000, as the affidavits of the real estate brokers purport to show, we do not think that the price of ₱43,000 at which they were sold is so grossly inadequate as to shock the conscience of the court. In Bank of the Philippine Islands vs. Green (52 Phil., 491), the property worth ₱60,000 was sold for ₱25,000; in National Bank vs. Gonzales (45 Phil., 693), the property worth ₱45,950 was sold for ₱15,000; and in the Government of the Philippine Islands vs. Serna (G. R. No. 32196, March 8, 1930, not reported), the property worth ₱120,000 was sold for ₱15,000. In none of these cases did this court set aside the sale for inadequacy of price.

"We have it as an established doctrine that inadequacy of the price alone, unless shocking to the conscience of the court, will not be sufficient to set aside the sale, if there is no showing, as in the instant case, that in the event of a resale a better price can be obtained, or that there was fraud, collusion, mistake, surprise, unfairness or irregularity in the conduct of said sale. (Government of the Philippine Islands vs. Green, *supra;* Warner, Barnes & Co. vs. Santos, 14 Phil., 446; La Urbana vs. Belando, 54 Phil., 930; National Bank vs. Gonzales, *supra;* Guerrero vs. Guerrero, 57 Phil., 442; Cu Unjieng & Sons vs. Mabalacat Sugar Co., 58 Phil., 439; and Government of the Philippine Islands vs. Serna, *supra.*)" (The Government of the Philippine Islands vs. Zapanta, et al., 37 Off. Gaz., 1729-1730.)

Headnote 1

The question involved in the second appeal (G. R. No. 3249) is whether the party, against whom execution is issued for special reasons, may appeal by bill of exceptions from the order of execution. A stay of execution by an appeal from an order directing it would render the execution of judgments for special reasons nugatory, ineffective, and valueless, as the party against whom execution is issued may always stay it by taking an appeal therefrom by bill of exceptions. If by filing a bill of exceptions such party may stay execution, there would be added to section 144 of the Code of Civil Proceedure provisions that the legislative department had not intended to enact. The only way of staying such execution is by filing a supersedeas bond. This was required in the order of execution appealed from, but, instead of filing it, the appellant announced his intention to appeal by bill of exceptions which he subsequently filed. It is a clever circumvention of the law and of the order of execution which we cannot countenance, much less sanction. Relief against abuse of discretion by the Court in ordering execution of judgment for special reasons or fixing excessive amount of supersedeas bonds should not be by appeal but by extraordinary legal remedy.

Headnote 2

There being no ground for disturbing the order of the Court of December 15, 1937, confirming the sale of the mortgaged property and requiring payment of the balance of deficiency, the same is affirmed, with costs against the appellant.

As no appeal can be taken from the order of February 12, 1938, directing execution of the deficiency judgment for special reasons, the appeal taken from said order is dismissed, with costs against the appellant.

So ordered.

SABINO PADILLA.

We CONCUR: *Cesar Benzon, Pedro Tuason, Jose Lopez Vito, Alex. Reyes.*

TECHNICALITIES TANGLE JUSTICE IN NAME OF FORM

"Every lawyer knows that the continued reversal of judgments, the sending of parties to a litigation to and from between the trial and appellate courts, has become a disgrace to the administration of justice. Everybody knows that the vast network of highly technical rules of evidence and procedure serves to tangle justice in the name of form. It is a disgrace to our law, and a discredit to our institutions."—Elihu Root in Washington University Law Quarterly, Vol. 23, April, 1938, No. 3.

THE LAWYER'S BOOKSHELF

THE INCOME TAX LAW ANNOTATED

BY FRANCISCO DALUPAN, L.L. M., C.P.A.

Ilaya Press, 705 Ilaya, Manila.

Price—₱15.00.

Filling a void in the local field of taxation literature, this book comes out as a pioneer work on income taxation in the Philippines, and is a great boon to the members of legal profession who hitherto have had to depend upon authorities of American or foreign origin in the solution of their tax problems. The annotations to the income tax law, as contained in Title II of Commonwealth Act No. 466, otherwise known as the National Internal Revenue Code, have been done with an eye single to their easy comprehension and in the light of the accounting principles involved. Income taxation being mainly based upon net income, a practical understanding of the income tax law necessarily involves practical insight into accounting principles and practice. A lawyer who wants to have the income tax law in his finger tips must be thoroughly familiar with the accounting principles involved in their operation, just as an accountant dealing with income tax must thoroughly master the law. Both are similarly situated if they do not combine such knowledge of law and accounting; they will always stand up against a big wall when confronted with income tax cases. The businessman or taxpayer fares no worse, for however earnest may be his desire to comply with the provisions of the law, not having the requisite knowledge of law and accounting to place him in a position of advantage in its interpretation and application, he invariably commits unintentional violations which result ultimately in penalties and overpayments. It is here, therefore, that this book enters to solve the difficulties of the lawyer, the accountant, the businessman, the taxpayer or anyone dealing with or affected by the income tax.

The annotations are done in the orthodox manner, but they are made as exhaustive and all-embracing as they could possibly be. Our income tax being taken mostly from American legislation and administrative regulations, much is drawn from American sources. Decisions promulgated by the Philippine Supreme Court under the former law, Act No. 2833, which, in the opinion of the author, are still applicable to the provisions of the new law; regulations promulgated by the Department of Finance, general circulars and rulings of the Collector of Internal Revenue; regulations of the U. S. Treasury Department under the U. S. Revenue Act of 1938 applicable to the present law, are cited. For a knowledge of its background and intent, which are of particular interest to lawyers, excerpts from the Reports of the Tax Commission in recommending that part of the Code referring to income tax have been quoted following the corresponding provisions.

One great merit of the book which makes it of great practical value to the practitioner and accountant is the practical illustrations made to explain the difficult provisions of the law. These illustrations give the practitioner or accountant a dip into the practical operations of the law and of the accounting principles involved; they serve to crystallize understanding after the provisions are explained and interpreted by judicial decisions and administrative rulings.

A member of the bar and a certified public accountant, besides being professor on auditing, commercial law and income taxation in a local university, the author draws upon his experience as a law practitioner, accountant and teacher on income taxation, to produce this handbook which is of immense practical value to practicing lawyers and accountants. The more objective and analytical aspects of the law, which may confuse rather than clarify, are advisedly not touched upon. That the author has accomplished his purpose "to give the lawyers, accountants, businessmen and the general paying public a brief, clear and comprehensive guide in the understanding and application of its (income tax) provisions" is easily borne out even by a superficial perusal; but those who want to gather from it something of value should have it within easy reach.

We do not hesitate to recommend this book to all lawyers, accountants, businessmen and the taxpaying public in general. —S. V.

(*Continued from page* 110)

issued, one restraining the register of deeds of Manila from transferring the Torrens title to the said building from the petitioner herein to El Hogar Filipino, and the other restraining El Hogar Filipino from selling and transferring its rights to that building.

While the petitioner concedes that the respondent is given discretionary power to admit or not its motion for intervention, it nevertheless contends that the respondent Judge of the Municipal Court of Manila abused his discretion in denying the intervention. It is claimed that once the party intervenor has established the necessary requisites for intervention, that is, after he has shown the required legal interest in the matter in litigation and in the success of either party or both, it becomes mandatory on the part of the court to admit the motion to intervene, and that its refusal to admit that motion, after the party intervenor has complied with those requisites, can be the subject of mandamus proceedings. Under section 121 of the Code of Civil Procedure, before a party may be allowed to intervene in an action or proceeding, he must show legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both. And the granting or refusal of a motion to intervene is a matter of judicial discretion, and once exercised, the decision of the court cannot be reviewed or controlled by mandamus, however erroneous it may be (Otto Gmur Inc. y Revilla, 55 Phil. 627.) The only exception to this rule is when there is an arbitrary abuse of that discretion, in which case mandamus may issue if there is no other adequate remedy, though the result is that the court will be called upon to review the exercise of a discretionary power (18 R. C. L., p. 126.) Such review is allowed because the power of discretion is not an arbitrary and despotic one, to be exercised at the pleasure of the court, or from passion, prejudice, or personal hostility. (Ex parte Secombe, 19 How. 13; Ex parte Bradley, 19 U. S. (Law ed.), 214, 219.) But it has also been held that this abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all, in contemplation of law (18 R. C. L., p. 126.)

Headnote 2

Headnote 3

The order appealed from is hereby affirmed, with costs against the petitioner-appellant.

SO ORDERED.

JOSE P. LAUREL.

WE CONCUR: *Ramon Avanceña, Antonio Villa-Real, Carlos A. Imperial, Anacleto Diaz, Pedro Concepcion, Manuel V. Moran.*

THE CADASTRAL ACT ANNOTATED

[ACT NO. 2259]

By VICENTE J. FRANCISCO
Member, Philippine Bar

[CONTINUED]

Section Five

SEC. 5. When the lands have been surveyed and platted, the Director of Lands, represented by the Attorney-General (now Solicitor-General), shall institute registration proceedings by petition against the holders, claimants, possessors, or occupants of such lands or any part thereof, stating in substance that the public interests require that the titles to such lands be settled and adjudicated, and praying that such titles be so settled and adjudicated. The petition shall contain a description of the lands and shall be accompanied by a plan thereof, and may contain such other data as may serve to furnish full notice to the occupants of the lands and to all persons who may claim any right or interest therein. (*As amended by Sec. 1855, Ad. Code.*)

If the lands contain two or more parcels held or occupied by different persons the plan shall indicate the boundaries or limits of the various parcels as correctly as may be. The parcels shall be known as "lots" and shall on the plans filed in the case be given separate numbers by the Director of Lands, which numbers shall be known as "cadastral numbers." The lots situated within each municipality, township or settlement, shall, as far as practicable be numbered consecutively, beginning with the number "one" and only one series of numbers shall be used for that purpose in each municipality, township or settlement. In cities or townsites a designation of the land holdings by block and lot numbers may be employed instead of the designation by cadastral numbers and shall have the same effect for all purposes as the latter. (*As amended by Sec. 1856, Ad. Code.*)

ART. 5. *Cuando los terrenos hayan sido medidos y sus planos levantados, el Director de Terrenos, representado por el Fiscal General (hoy Procurador-General), instituirá procedimientos de registro, mediante solicitud, contra los tenedores, reclamantes, poseedores u ocupantes de los terrenos de que se trate o de cualquier parte de los mismos, expresando en substancia que el interés público exige que se fije y declare el dominio de dichos terrenos, y pidiendo que el dominio sea fijado y declarado. La solicitud contendrá una descripción de los terrenos, irá acompañado de un plano de los mismos, y podrá contener los demás datos conducentes a dar pleno conocimiento a los ocupantes de los terrenos y a todas las personas que aleguen cualquier derecho a ellos o interés sobre los mismos.* (Tal como quedó enmendado por el Art. 1855 del Código Administrativo.)

Si los terrenos contienen dos o más parcelas poseídas u ocupadas por diferentes personas, el plano indicará los límites de las diversas parcelas con la posible exactitud. Las parcelas se designarán como "lotes" y en los planos que se presenten en el caso se señalaran con números distintos por el Director de Terrenos, números que se denominarán "números catastrales." Los lotes situados dentro de cada municipio, TOWNSHIP *o ranchería, se numerarán correlativamente en cuanto sea posible, empezando con el número "uno" y sólo se usará una serie de números para dicho efecto en cada municipio,* TOWNSHIP *o ranchería. En las ciudades, o reservas para pueblos, podrá hacerse la designación de los solares por los números de las manzanas y lotes en lugar de la designación por números catastrales, y tendrán el mismo efecto que la última para todos los fines.* (Tal como quedó enmendado por el Art. 1856 del Código Administrativo.)

1. Duty of applicant or claimant to prove title.
2. Registration of possessory information.
3. Difference in area; boundaries.
4. Evidence of possession.
5. Lands of the State.
6. Land granted to a homesteader not subject to cadastral proceeding.
7. Amendment of plan; new publication necessary.

1. Duty of applicant or claimant to prove title. That no person is entitled to have land registered under the Cadastral or Torrens system unless he is the owner in fee simple of the same, even though there is no opposition presented against such registration by third persons, has been decided by the courts many times. One of the primary and fundamental purposes of the registration of land under the Torrens system is to secure to the owner an absolute indefeasible title, free from all encumbrances and claims whatever, except those mentioned in the certificate of title issued to the owner by the court, absolute proof of such title. In order that the petitioner for the registration of his land shall be permitted to have the same registered, and to have the benefit resulting from the certificate of title finally issued, the burden is upon him to show that he is the real and absolute owner, in fee simple, of the land which he is attempting to have registered. The petitioner is not necessarily entitled to have the land registered under the Torrens system simply because no one appears to oppose his title and to oppose the registration of his land. He must show, even though there is no opposition, to the satisfaction of the court, that he is the absolute owner, in fee simple. Courts are not justified in registering property under the Torrens system, simply because there is no opposition offered. Courts may, even in the absence of any opposition, deny the registration of the land under the Torrens system, upon the ground that the facts presented did not show that the petitioner is the owner, in fee simple, of the land which he is attempting to have registered. (Maloles and Malvar *vs.* Director of Lands, 25 Phil. 548; De los Reyes *vs.* Paterno, 34 Phil. 420, 424; Roman Catholic Bishop of Lipa *vs.* Municipality of Taal, 38 Phil., 367, 376).—*Director of Lands vs. Agustin,* 42 Phil., 227, 228-229, 42 J. F. 240.

2. Registration of possessory information. The appellee contends that the registration of the possessory information amounted to a registration of ownership under the provisions of section 397 of the Spanish Mortgage Law of February 8, 1861. To begin with, we may state that the Spanish Mortgage Law of February 8, 1861, was never in force in the Philippines, and, consequently, section 397 thereof relied upon was likewise never in force. The mortgage law in force in this country on December 12, 1892, when the possessory information of E. F. was registered,

was the Mortgage Law for the Philippine Islands, which took effect on October 1, 1889 (Berriz, Diccionario de la Administración de Filipinas, Anuario de 1889, 295, 396 *et seq.)—Sales vs. Director of Lands,* 35 Off. Gaz., 186.

3. **Difference in area; boundaries.** We have seen that if this land were a portion of that which formerly belonged to E. F., the result would be that the area of the entire land would reach 445 hectares, instead of 50 hectares, as clearly stated in the possessory information. The appellee insists that this discrepancy in the area is not important because in the identification of lands, their boundaries are controlling. The principle would be applicable if natural boundaries were involved; but in the instant case it will be seen that, except the north and south sides of the land, bounded by the San Miguel Bay and the Talacop River, respectively, the other sides were bounded by private and public lands. *Held:* That the great excess in area which has been explained, that the land formerly belonging to E. F. would have, if appellee's contention were to be accepted, is another factor which induces us to hold that the land did not form a part of that described in the possessory information; and, naturally, the same could not be transmitted either to E or to the appellant.—*Ibid.*

4. **Evidence of possession.** E. F., when he still owned and possessed all the land, testified under oath that all that he had was 50 hectares, so much that he appealed to the municipal council of Calabanga, when some officials assigned to the property a greater area, insisting and obtaining at the time that his property should not be given an area of more than 50 hectares and that he should not be required to pay a land tax for more than the said area. That testimony and admission militates against the applicant under section 278 of the Code of Civil Procedure.—*Ibid.*

5. **Lands of the State.** The applicant alleges that he and his predecessors in interest have been in the continuous, open, public and peaceful possession of the land for more than forty years, and on this alleged possession he bases his right to register the same. The evidence of possession is fatal both to the applicant and to his predecessors, in interest. There is overwhelming evidence indicative that the entire land formerly belonging to *F* was grass land dvoted to pasture, with the exception of certain portions now planted to coconuts. In the sworn tax declarations which *E. F.* and the applicant presented, neither of them showed that there was any improvement or planting of any kind. On the pasture land grazed animals belonging to *F* and to other neighbors and owners. Whatever planting of value there is on the land was done by the homesteaders-oppositors, and the houses built by the applicant are, as has been said, of recent construction. We conclude that neither the applicant nor his predecessors in interest has been in real possession of the land and that said occupation cannot be invoked as a title to register the land. In the supposition that this land was included in the possessory information, the latter cannot likewise be invoked as a sufficient means or title to register the ownership, because neither the applicant nor his predecessors in interest has been in the continuous and open possession of the property.—*Ibid.*

6. **Land granted to a homesteader not subject to cadastral proceeding.** The title to the land thus granted and registered may no longer be the subject of any inquiry, decision, or judgment in a cadastral proceeding. But a partition may be made in said proceeding, in accordance with the provisions of Act No. 2259.—*Manalo vs. Lukban and Liwanag,* 48 Phil. 973, 974, 48 J. F. 1029.

7. **Amendment of plan; new publication necessary.** An order of court in a cadastral case amending the official plan so as to make it include land not previously included therein is a nullity unless new publication is made as a preliminary to such step. Publication is one of the essential bases of the jurisdiction of the court in land registration and cadastral cases, and additional territory cannot be included by amendment of the plan without new publication.—*Philippine Manufacturing Co. vs. Imperial,* 49 Phil. 122, 49 J. F. 128.

Section Six

SEC. 6. After final decree has been entered for the registration of a lot its cadastral number shall not be changed except by order of the Court of First Instance. Future subdivisions of any lot shall, with the approval of said Court, be designated by a letter or letters of the alphabet added to the cadastral number of the lot to which the respective subdivisions pertain. The letter with which a subdivision is designated shall be known as its "cadastral letter." *Provided, however,* That subdivisions of additions to cities or townsites may, with the approval of the court, be designated by block and lot numbers instead of cadastral numbers and letters.

All subdivisions under this section shall be made in accordance with the provisions of section forty-four of Act Numbered Four hundred and ninety-six, and the provisions of section fifty-eight of the said Act shall be applicable to conveyances of lands so subdivided.

ART. 6. *Después de dictado el decreto final de registro de un lote, no se cambiará su número castastral a no ser por orden del Tribunal del Registro de la Propiedad. Las sucesivas subdivisiones de un lote cualquiera se designarán, con la aprobación de dicho tribunal, por medio de una o de varias letras del alfabeto añadidas al número catastral del lote a que correspondan las respectivas subdivisiones. La letra con que se designe una subdivisión se conocerá como su "letra catastral";* ENTENDIENDOSE, SIN EMBARGO, *Que las subdivisiones de las adiciones a las ciudades o reservas para pueblo pueden designarse, con la aprobación del tribunal, por los números de manzana y del lote en lugar de los números y las letras catastrales.*

Todas las subdivisiones hechas en armonía con este artículo, se harán de acuerdo con lo que dispone el artículo cuarenta y cuatro de la Ley Número Cuatrocientos Noventa y Seis, y el artículo cincuenta y ocho de dicha Ley será aplicable a las transferencias de terrenos subdivididos de este modo.

Section Seven

SEC. 7. Upon the receipt of the petition and the accompanying plan the clerk of the Court of First Instance shall cause notice of the filing of said petition to be published twice in successive issues of the Official Gazette, in both the English and the Spanish languages. The notice shall be issued by order of the court, attested by the clerk and shall be in form substantially as follows:

"REGISTRATION OF TITLES,
"..... Province,
COURT OF FIRST INSTANCE

"To (here insert the name of all persons appearing to have an interest and the adjoining owners so far as known),

and to all whom it may concern:

"Whereas a petition has been presented to said court by the Director of Lands, praying that the titles to the following described lands or the various parcels thereof be settled and adjudicated (insert description) you are hereby cited to appear at the Court of First Instance to be held at ....., in the Province of ..... on the ....., day of ....., Anno Domini 19.... at ..... o'clock, to present such claims as you may have to said lands or any portion thereof, and to present evidence, if any you have, in support of such claims.

"And unless you appear at said court at the time and place aforesaid your default will be recorded and the titles to the lands will be adjudicated and determined in accordance with the prayer of the petition and upon the evidence before the court, and you will be forever barred from contesting such petition or any decree entered thereon.

"Witness: ....., Judge of said court, this ..... day of ....., A. D. 19....

"Attest:

"....
Chief of the General
Land Registration Office."

ART. 7. *Al recibir la solicitud y el plano que la acompañe el escribano del Tribunal del Registro de la Propiedad hará que se publique un edicto de la presentación de la misma en dos números consecutivos de la Gaceta Official, en inglés y español. El edicto irá expedido por orden del tribunal, testimoniado por el escribano, y tendrá en substancia la siguiente forma:*

REGISTRO DE TÍTULOS
Provincia .....
JUZGADO DE PRIMERA INSTANCIA

A (aquí se insertarán los nombres de todas las personas que aparezcan con algún derecho y los de los propietarios colindantes en cuanto sean conocidos) y a todos los interesados.

Por cuanto el Director de Terrenos ha presentado a este Tribunal una solicitud pidiendo que se fije y declare el dominio de los terrenos descritos a continuación o de varias parcelas de los mismos (insértese la descripción) se cita a los arriba nombrados para que comparezcan ante el Juzgado de Primera Instancia en la sesión que ha de celebrarse en ..... en la provincia de ..... el día ..... de ..... del año del Señor de 19...., a las ....., para que aleguen los derechos que tengan acerca de dichos terrenos o de cualquier parte de los mismos y las pruebas, si tienen alguna en que los apoyen.

Y si no comparecen ante dicho tribunal en la fecha y lugar antedichos, serán declarados en rebeldía y se fijará y declarará el dominio de los terrenos de acuerdo con lo pedido en la solicitud y en vista de la prueba presentada al tribunal, y quedarán para siempre incapacitados para impugnar dicha solicitud ni ningún dictado según ella.

....., juez de dicho tribunal, a ..... de ..... de 19....
Doy fe:

.....
Escribano del Tribunal

Section Eight

SEC. 8. The return of said notice shall not be less than thirty days nor more than one year from the date of issue. The court shall also, within seven days after the publication of said notice in the Official Gazette as hereinbefore provided, cause notice to be mailed by the clerk to every person named therein whose address is known. The court shall also cause a duly attested copy of the notice to be posted, in the English and the Spanish languages, in a conspicuous place on the lands included in the application, and also in a conspicuous place upon the chief municipal building of the municipality, township or settlement in which the lands or a portion thereof are situated, by the sheriff of the province, or by his deputy, or by such other person as may be designated by the court, fourteen days at least before the return day thereof. A copy of the notice shall also be sent by registered mail to the president of the municipal council of the municipality, township or settlement in which the lands are situated, and to the provincial board. The court may also cause other or further notice of the petition to be given in such manner and to such persons as it may deem proper.

ART. 8. *El plazo para el cumplimiento de este edicto no podrá ser menor de treinta días ni mayor de un año, a contar desde la fecha de su expedición. El tribunal, dentro de los siete días siguientes a la publicación de dicho edicto en la Gaceta Oficial, como queda dicho, hará también que se envíe el mismo por correo por el escribano a todas las personas nombradas en él cuya dirección sea conocida. El tribunal hará también que se fije una copia debidamente testimoniada del mismo, en inglés y en español, en un lugar visible de los terrenos comprendidos en la solicitud, y también en un lugar visible del principal edificio municipal del pueblo,* TOWNSHIP *o ranchería en que radiquen los terrenos o alguna parte de los mismos, por el sheriff de la provincia o su delegado, o por la persona que el tribunal designe, catorce días por lo menos antes de la fecha en que venza el plazo para la comparecencia mencionada. También se enviará copia del mismo certificado por correo al presidente del consejo del municipio,* TOWNSHIP *o ranchería en que radiquen los terrenos y a la junta provincial. El tribunal puede disponer también otro o nuevo edicto de la solicitud de la manera y a las personas que considere convenientes.*

Section Nine

SEC. 9. Any person claiming any interest in any part of the lands, whether named in the notice or not, shall appear before the Court by himself, or by some person in his behalf and shall file an answer on or before the return day or within such further time as may be allowed by the court. The answer shall be signed and sworn to by the claimant or by some person in his behalf, and shall state whether the claimant is married or unmarried and, if married, the name of the husband or wife and date of the marriage, and shall also contain:

(*a*) The age of the claimant.

(*b*) The cadastral number of the lot or lots claimed, as appearing on the plan filed in the case by the Director of Lands, or the block and lot numbers, as the case may be.

(*c*) The name of the barrio and municipality, township or settlement in which the lots are situated.

(*d*) The names of the owners of the adjoining lots as far as known to the claimant.

(*e*) If the claimant is in possession of the lots claimed and can show no express grant of the land by the Government to him or to his predecessors in interest the answer shall state the length of time he has held such possession and the manner in which it has been acquired, and shall also state the length of time, as far as known during which his predecessors, if any, held possession.

(*f*) If the claimant is not in possession or occupation of the land the answer shall fully set forth the interest claimed by him and the time and manner of its acquisition.

(*g*) If the lots have been assessed for taxation, their last assessed value.

(*h*) The incumbrances, if any, affecting the lots and the names of adverse claimants as far as known.

ART. 9. *Todo el que alegue algún interés en cualquier parte de los terrenos, haya sido o no nombrado en el edicto, comparecerá ante el tribunal por sí mismo o representado por alguna otra persona, y presentará una contestación antes del día en que haya de darse por cumplimentado el edicto, o en dicho día, o dentro del plazo ulterior que el tribunal haya podido conceder. La contestación irá firmada y jurada por el alegante o por alguna otra persona en su nombre y expresará si el reclamante es o no casado, y si lo es, el nombre de su conyuge y la fecha del matrimonio, y expresará también:*

(a) La edad del reclamante.

(b) El número catastral del lote o de los lotes reclamados como aparezca en el plano presentado en el expediente por el Director de Terrenos, o los de la manzana y del lote, según el caso.

(c) El nombre del barrio y del municipio, TOWNSHIP *o ranchería, en que radiquen los lotes.*

(d) Los nombres de los propietarios de los lotes colindantes, en cuanto el reclamante los conozca.

(e) Si el reclamante está en posesión de los lotes que reclama y no puede probar una concesión expresa del terreno por el Gobierno a él o a sus causantes, la contestación ha de expresar el lapso de tiempo por el cual ha tenido la posesión y la manera como la adquirió, y expresará también el lapso de tiempo, en cuanto le sea conocido, durante el cual tuvieron la posesión sus causantes, si los hay.

(f) Si el reclamante no está en posesión del terreno o no lo ocupa, la contestación expresará plenamente el derecho que alegue y la fecha y la manera de su adquisición.

(g) Si los lotes han sido amillarados para la contribución, el último valor de amillaramiento.

(h) Los gravámenes si los hay, que afecten a los lotes y los nombres de los reclamantes adversos hasta donde sean conocidos.

1. When verification of protest is not necessary.
2. Provisions of Code of Civil Procedure, when applicable.
3, 4. Jurisdiction to dismiss answer.

1. When verification of protest is not necessary. Whatever may be the rule as to the necessity of verifying a protest filed by a private person in a cadastral proceeding, it does not apply to the Government in a case where the proceedings were initiated by one branch of the Government in which an opposition was filed against private persons by another branch, who appeared and asserted their respective rights against the Government itself.—*Government of the Philippine Islands vs. Hormillosa,* 49 Phil. 362, 49 J. F. 377.

2. Provisions of Code of Civil Procedure, when applicable. Act No. 496, known as the Land Registration Act, contains no special rule as to the procedure to be followed in contesting the sufficiency of answers in cadastral registration proceedings, or in determining whether their dismissal will lie, therefore the provisions of the Code of Civil Procedure are applicable.—*Dais vs. Court of First Instance of Capiz,* 51 Phil. 396, 51 J. F. 417.

3. Jurisdiction to dismiss answer. In ordering that the answer presented by the judicial administrator of an intestate estate in the name of the heirs be stricken out, notwithstanding the latter's objection and for a cause not provided by law as a ground for dismissal, the respondent court exceeded its jurisdiction, for it is necessary not only that it have jurisdiction over the subject matter in litigation and the parties but that it have authority over each and every one of the essential particulars of the action.—*Ibid.*

4. When two persons claim the ownership of one and the same cadastral lot, both of them are claimants and opponents at the same time, and their respective answers cannot be dismissed by the court except upon the grounds mentioned in sections 101 and 127 of Act No. 190, to wit, default at the trial, failure to prosecute, or defects provided by the law as grounds for demurrer.—*Ibid.*

Section Ten

SEC. 10. The governor of the province shall, upon the request of the Court, detail an officer or employee of the province to assist the defendants in any action brought under this Act in the preparation of their pleadings and evidence, without cost to them: *Provided, however,* That the Court may, in its discretion, detail any of its employees to perform such service, and in case of the failure of the provincial governor to make suitable provision of the assistance of the defendants as above set forth, the court may, with the approval of the Secretary of Justice, employ for such purpose the necessary personnel, to paid out of provincial funds. The officer or employee detailed, or the person employed to assist the defendants, shall prepare their answer, which shall be sworn to before such officer, employee or person. No fees shall be charged for the preparation, acknowledgment and filing of the answer, nor shall a documentary stamp be required. The court shall, at some convenient date prior to the expiration of the time for filing the answer, cause such general notice to be issued to all persons interested as may be necessary fully to inform them of the purposes of this section and their rights with respect thereto.

ART. 10. *El gobernador de la provincia, a petición del tribunal, designará a un funcionario o empleado de la misma para que ayude a los demandados en cualquier juicio que se incoe con sujeción a esta Ley, a preparar sus alegaciones y pruebas, sin que les cueste nada:* ENTENDIÉNDOSE, SIN EMBARGO, *Que el tribunal puede a su discreción destinar a*

SECCIÓN CASTELLANA

EL PROCESO DE LOS MARCOS

[CONTINUACIÓN]

MEMORANDUM DE LA ACUSACIÓN

CREDIBILIDAD DE LOS TESTIGOS DE UNA Y OTRA PARTE

La presente causa se reduce sencillamente a la credibilidad de los testigos de una y otra parte. Ya hemos aducido nuestro argumento para demostrar al Hon. Juzgado que los testigos de la acusación merecen más crédito que los de la defensa. La defensa en su afán de desacreditar a nuestros testigos estaría hasta en estos momentos con la lámpara de Diógenes buscando en las declaraciones de ellos, hasta la más insignificante contradicción, para después gritar por los cuatro vientos que nuestros testigos eran falsos, perjuros y comprados. Tal vez, con los ojos de lince que tiene la defensa, encontrará algunas contradicciones en que incurrieron nuestros testigos, pero estamos segurísimos que si tales contradicciones existen, no serán lo suficientes para afectar el fondo de la cuestión. La Corte Suprema en varias decisiones dijo que meras contradicciones no afectan la veracidad de los testigos. Sometemos las siguientes doctrinas:

"Para determinar, en una causa criminal, hacia donde se inclina la preponderancia de las pruebas sobre las cuestiones planteadas, el Tribunal podrá estimar todos los hechos y circunstancias del caso, la manera de declarar los testigos, su inteligencia, sus medios y ocasión para estar enterados de los hechos sobre que declaran, la índole de los mismos hechos, la verosimilitud o inverosimilitud de sus declaraciones, el interés o falta de interés que tengan en el asunto y asimismo su veracidad, tal como todo eso resulto verdaderamente del juicio. El Juez podrá también tener en cuenta el número de los testigos, aún cuando la preponderancia de las pruebas no se determina necesariamente por el mayor número de ellos." (E. U. contra Claro, 32 Jur. Fil., 434).

"In determining the preponderance weight of evidence on the issues involved lies, the Court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial." (U. S. vs. Cabe, et al., 1 P. R. 266; U. S. vs. Modejar, 19 P. R., 158).

MEMORANDUM DE LA DEFENSA

Indignación fingida del Fiscal

Anticipándose a toda afirmación de soborno y de malas prácticas, el Fiscal, curándose en salud, exclama en estos o parecidos términos: Cómo creer en el Gobierno o en sus funcionarios, en los miembros de la Constabularia, la posibilidad de esas insinuaciones ridículas, que llegasen a pagar testigos contra cualquiera persona?

La verdad es que la indignación del Fiscal resulta fingida, y su asombro, infantil. Ahí están en los autos las pruebas sobre soborno que si no son concluyentes, pero dejan en el ánimo de cualquiera la impresión de que el Gobierno, por medio de sus irresponsables D-I men, no ha jugado limpio en este asunto. Es un jugador tramposo. Por otro lado, el Fiscal, que es de suponer tiene una extraordinaria cultura jurídica, sabe, seguramente de sobra, que, en su mayoría, los innumerables errores judiciales son debidos precisamente a ese afán de poner a todo trance en claro los crímenes y de descubrir el secreto de sus autores, cuando los delitos han tenido repercusión en el público y en la prensa, afán que es humanamente explicable. Él sabe que la policía en todas las naciones ha creído que la importancia de su misión justificaba el empleo de todos los medios; que lo honorable del fin convertía en lícitos todos los procedimientos, y que no se ha parado en barras ante el soborno, ante la violencia, ni aun ante la aplicación de torturas y tormentos, por mas condenados y prohibidos que estén éstos métodos en todas las legislaciones. Este es un vicio tan extendido y tan grave que, a consecuencia de las quejas recibidas por la Sociedad de las Naciones—transmitidas éstas por los más grandes penalistas de la tierra—el año 1937, el Secretario General de la Liga, a instancia de la misma Asamblea; tuvo que recurrir a las siete asociaciones de derecho penal más calificadas mundialmente, por su prestigio en el aspecto técnico, para que dieran su opinión sobre los medios para atajar un mal tan notorio y condenable, " en vía de prevenir las violencias, coacciones morales y otros medios coactivos empleados hoy con lamentable frecuencia por la policía cerca de los acusados y testigos". (Véase "Rogles en vie de prevenir les violences ou autres contraintes exercies contre la personne destemoins por M.F.A. Roux (Octubre, 1938); y "Dio Yrtumer des Straifjustir sobre 'errores judiciales' " por Erich Sello (Berlin Deker Verloy, 1911).

En relación con el asesinato de Nalundasan, el Fiscal no puede olvidarse que públicamente en la prensa se ha ofrecido por las autoridades de la Constabularia un premio en metálico al que facilitara testimonios acusatorios contra los "desconocidos" autores del asesinato de dicho ex-Representante. Y qué otra cosa es eso sino la promesa anticipada de pagar a los testigos de cargo? El Juzgado de Primera Instancia de Ilocos Norte no pudo menos de declarar en su sentencia que el testigo Gaspar Silvestre, que declaró en el asunto de Layaoen a favor del Gobierno, era un testigo sospechoso, que se movía a impulsos de un bajo interés.

"But that in all probability what induced him to make the statement which brought about the prosecution of the accused was the allurement of the ₱500 prize offered to whomsoever might furnish that kind of evidence, which offer he admitted having learned before making said statement" (Decisión, Exh. 5).

En la misma declaración de Gaspar Silvestre se reconocen y confiesan estos ofrecimientos en estos términos:

P. Cuando usted estuvo en Manila y antes de revelar la historia que usted relató ante este Juzgado sobre Nicasio Layaoen, se enteró usted de la oferta pública en los periódicos y puesto en los pasquines de la suma de ₱4,000 que se entregaría a la

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cualquiera de sus empleados a prestar dichos servicios: y en caso de que el gobernador provincial deje de proveer lo necesario para la ayuda de los demandados como arriba se expresa, el tribunal puede, con la aprobación del Secretario de Justicia, emplear para dicho fin el personal necesario con cargo a los fondos provinciales. El funcionario o empleado designado, o la persona empleada para ayudar a los demandados, preparará su contestación, que estará jurada ante dicho funcionario, empleado, o persona. No se cobrará ningún derecho por la preparación, reconocimiento y prestación de la contestación, ni se exigirá ningún sello documental. El tribunal hará, en una fecha conviniente antes de la terminación del plazo para presentar la contestación, que se envíe un aviso general a todas las personas interesadas, según sea necesario para informarlas ampliamente de los fines de este artículo y de sus derechos con respecto al mismo.

Right of heirs to intervene in cadastral proceedings. The heirs have the right to intervene in an action involving some of the property of the *haereditas jacens* of a decedent when they believe that the acts of the judicial administrator are prejudicial to their interests.—*Dais vs. Court of First Instance of Capiz*, 51 Phil. 396, 51 J. F. 417.

[TO BE CONTINUED]

ACUSACIÓN:

"Immaterial discrepancies or differences in the statements of witnesses do not affect their credibility, unless there is something to show that they originate in willful falsehood. If there are conflicts in the statements of witnesses, it is the duty of this court to reconcile them if it can be done, for the law presumes that every witness has sworn the truth. But if the conflicts can not be reconciled, the Court must adopt the testimony which it believes to be true. In reaching this conclusion it can take into consideration the character of the witness, his manner and demeanor on the stand, the consistency or inconsistency of his statements, their probability or improbability, his ability and willingness to speak the truth, his intelligence and means of knowledge, and his motives to speak the truth or swear to a falsehood." (U. S. vs. Lasada, 18 P. R., 90).

"The Supreme Court, as a matter of rule, does not and will not interfere with the judgment of the trial court in passing upon the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence, which has been overlooked or the significance of which has been misinterpreted. The trial court which saw the witness in the act of testifying and observed their manner in the witness-stand is in a better position than anyone to pass upon their credibility." (U. S. vs. Bernales, 18 P. R. 525; U. S. vs. Soriano, 25 P. R. 624).

"Esta Corte no revocará las apreciaciones de hecho formuladas por un Juez sentenciador con vista de las declaraciones contradictorias y que dependen en su mayoría de la credibilidad de los testigos que declararon ante dicho Juez, a menos que éste no haya tenido en cuenta algún hecho o circunstancia esencial o no haya dado el justo valor a todos los hechos y circunstancias esenciales que se han sometido para su consideración. (Baltazar contra Alberto, 35 Jur. Fil., 338).

"El Juzgado sentenciador, que tiene delante a los testigos y los oye declarar, se halla en posición mejor, en varios sentidos, para juzgar sobre la importancia que deberá darse a las declaraciones opuestas que lo estamos nosotros, quienes solo vemos las preguntas y respuestas escritas en maquinilla; y cuando nada hay en autos que demuestre que el Juzgado dejó de tener en cuenta algún hecho o circunstancia esencial, o no apreció debidamente todos los hechos y circunstancias esenciales, o dejó de desempeñar algún deber para con el acusado, que la ley le impone, esta Corte no se entremeterá con la sentencia del Tribunal sentenciador en lo relativo a la importancia que debió de darse a las declaraciones de testigos opuestos." (E. U. contra Pico, 15 Jur. Fil., 565; E. U. contra Benitez, 18 Jur. Fil., 523).

"No siempre basta para desacreditar la declaración de un testigo el que se encuentren en ella algunas discrepancias." (E. U. contra Briones, 26 Jur. Fil., 383).

CARACTER PERNICIOSO, IMPULSIVO Y AGRESIVO DE QUIRINO LIZARDO

Bastante cuidadoso fué la defensa no presentar pruebas sobre lo bueno, lo santo y lo inmaculado que es Quirino Lizardo. Este acusado, sin embargo, no pudiendo controlar la influencia de su caracter agresivo, impulsivo y pernicioso, hizo alarde, mientras declaraba, de su fuerza bruta. Dijo, en contestación a una pregunta de la acusación, que en cierta ocasión pegó de puñetazos a un tal Arturo Versoza de Batac rompiéndole los dientes. Hizo alarde también, no solamente de su fuerza, sino de su conocimiento del boxeo, del florete, de la esgrima y del "jiu-jitsu."

El Honorable Juez habrá observado durante la vista de esta causa que en todas las veces cuando el Distinguido Abogado Defensor y el Fiscal se enzarzaban en discusiones acaloradas, Quirino Lizardo, con una actitud amenazadora, siempre se colocaba al lado del Fiscal como queriendo decir: "No te muevas porque te voy a matar." No hemos querido llamar la atención del Hon. Juzgado sobre la actitud amenazadora del acusado porque nosotros observabamos que el Honorable Juez siempre se fijaba en él. La única vez cuando nos vimos obligados a llamar la atención del Hon. Juzgado fué cuando Quirino Lizardo, a oidos del Juzgado, llamó dos ó tres veces, mentiroso al testigo Yumol mientras éste declaraba en contrapruebas. Respetuosamente sometemos que esta conducta de Quirino Lizardo durante la vista de esta causa es más elocuente que cualquiera otra prueba para demostrar su caracter agresivo y pernicioso. La defensa diría que no debemos hablar de ningún hecho que no ha sido objeto de pruebas por parte de una y otra parte. Sometemos, sin embargo, que todo

DEFENSA:

persona que revelare o que diera por resultado el arresto y la condena de la persona del autor o autores del asesinato del Representante Nalundasan?

R. No, señor, sino leí solamente aquel pasquín de oferta de ₱500 en Batac.

P. Antes de revelar usted estos hechos en Manila?

R. Sí, señor."

(Declaración de Gaspar Silvestre, 5 n.t. Exh. 9-B).

A la afirmación del Fiscal de que "no es posible que en este gobierno nuestro, que es un gobierno de leyes y no de hombres, llegase hasta el extremo de pagar testigos contra cualquiera persona", respondemos, no debe confundirse al gobierno de leyes con sus funcionarios corruptos y desalmados.

El ofrecer en premio unos cientos o miles de pesos para aquellos que facilitaran a las autoridades pruebas que condujeran al descubrimiento y castigo del autor o autores de un asesinato, es un hecho extraño y condenable moralmente y desde el punto de vista juridico. El procedimiento es abiertamente ilicito. El poner precio a la delación repugna siempre a toda conciencia honrada. Podrá alguna vez tener justificación practica, para obtener exito en la búsqueda de un criminal convicto, peligroso y recalcitrante, a fin de prevenir daños futuros y conseguir la publica tranquilidad, pero no el premiar la delación de los autores de un crimen, porque con este procedimiento se incitan las bajas pasiones y el mezquino interes de los hombres depravados; y cualquier fabulador, cínico y desaprensivo, es capáz, sin reparar en la iniquidad ni en la vileza de su acción, de forjar una delación falsa para llegar a obtener un lucro cierto. En cambio, ninguna persona honrada, digna de credito, que sepa algo sobre el asunto y que espontaneamente no lo haya expuesto a las autoridades, se sentirá arrastrada a hablar por temor de que se crea que su testimonio no es espontaneo si no a cambio de un plato de lentejas. Ese pregon a voces de un galardon al delator solo consigue remover el cieno que existe en los bajos fondos sociales, donde bullen los reptiles infrahumanos, carentes de dignidad y de conciencia.

Y este mismo Gaspar Silvestre, sin otra razón ocasional que la de haber testimoniado contra Layaoen, se encuentra ahora y a raiz de su declaración, convertido en agente de la Constabularia, con ₱50 de sueldo gozando de una vida mucho mejor de la que llevaba cuando era simple policía Municipal que solo ganaba ₱20. El Comandante Guido, jefe interino de los DI, no pudo menos de admitir este hecho en su siguiente declaración, prestada en la sesión del 27 de Mayo de 1939:

P Conoce usted a aquel policía Gaspar Silvestre, que declaró en el asunto de Pueblo contra Layaoen?

R. Sí, señor.

R. Aquel era policía raso del municipio de Batac?

R. Sí, señor.

P. Ha sido aquel premiado por la Constabularia con algún puesto en Manila, después de haber prestado declaración en favor del Gobierno?

R. Eso de premiar, yo no puedo declarar sobre eso, porque lo que pasó fué esto.

P. Voy a ser más claro: ha sido aquel empleado en la Constabularia, después de haber declarado en el asunto contra Layaoen, tal como quería el Gobierno?

R. Eso de tal como quería el Gobierno yo no puedo decir eso: pero lo cierto es que, después de aquel asunto contra Layaoen, él se vió con el Coronel Ramos, que era entonces mi jefe en la Division de Información, y pidió su misericordia, su compasión, para quedarse en Manila, porque no podía volver más a Batac, porque él decía que "si pudieron asesinar a un representante electo, cual sería yo, un humilde policía?" Así es que el Coronel Ramos le empleó como agente, y hasta ahora sigue siendo agente de información.

P. Eso fué inmediatamente después de haber declarado?

R. Después de haber vuelto a Manila.

P. Cuánto tiempo después de haber declarado aquí, tuvo un puesto en Manila, en la Oficina de la Constabularia?

R. Tiempo exacto no puedo recordar.

P. Más o menos.

R. Unos cuantos días después.

P. Es verdad de que la práctica honorable de la Constabularia la de conseguir testigos en los asuntos criminales, ofreciéndo-

ACUSACIÓN:

lo que el Juzgado vió y oyó durante la vista puede ahora ser motivo de consideración por parte de dicho Juzgado, ya a favor o ya en contra de cualquiera de las partes.

Aunque es indocumentado Quirino Lizardo a diferencia de su coacusado Mariano Marcos que presentó la mar de exhibitos para acreditar su valentía y coraje como hombre, aceptamos por vía de argumentación que dicho Quirino Lizardo, no solamente tiene bulto y grasa, sino que también es fuerte, boxeador y aficionado en la esgrima, florete y en el "Jiu-jitsu." Estas cualificaciones de que mucho alarde hizo Quirino Lizardo ante el Juzgado, ¿excluyen acaso la necesidad de tener a su lado a un hombre de su confianza? Hombres como Lizardo consideran como lujo el tener a uno como "body-guard."

La opinión que hemos formado de Quirino Lizardo no es más que nuestra fiel adhesión a lo que dijo su suegra. Doña Cresencia Rubio, en su affidavit que suscribió y juró ante el Juez de Paz Verzosa con motivo de su denuncia por tentativo de homicidio, causa criminal No. 1765 del Juzgado de Paz de Batac, titulado, "Pueblo contra Quirino Lizardo." El referido affidavit en parte dice lo siguiente:

"3. That in the morning of January 3, 1928, between 9:00 and 10:00 o'clock, while my daughter Maria Marcos, now known as Mrs. Maria M. Lizardo, was at home located in Barrio Binagan, within the jurisdiction of Batac, Ilocos Norte, Philippine Islands, her husband came to look for her and then wanted to assault her with an open knife but he failed to inflict wounds upon her because my said daughter ran to my back for safety; that when he (Quirino S. Lizardo) saw that I tried to protect her (said wife) and when he heard that I cried for help, he angrily stated in Ilocano: "Sica nga consentidora, dayta a panangisakitmo ita anakmo pakiramramanka a papatayen," which when translated means that, "Inasmuch as you protect your daughter I am going to kill you also"; that after uttering the herein quoted expression, he raised his arm with the open knife in this hand and aimed at me but he (Quirino S. Lizardo) failed to inflict fatal wounds upon me due to the timely intervention of one Mr. Santos Mangapit who could wrest the said open knife from him, the said accused."

Sometemos ahora al Hon. Juzgado que un hombre capaz de atentar contra la vida de su pobre é indefensa esposa, también es capaz de matar a otro, solo por satisfacer sus deseos de venganza.

Diría la defensa que no debemos hablar del affidavit que acabamos de acotar porque no forma parte de las pruebas en autos. Contendemos que tenemos derecho de hablar de este affidavit porque éste ha sido objeto de nuestra oferta de prueba. Contendíamos que nuestro intención era probar la susceptibilidad del aquí acusado de cometer el delito de autos, y hasta ahora contendemos que teníamos razón porque semejante prueba es admisible.

[SE CONTINUARÁ]

DEFENSA:

les cargo o empleo para después de haber declarado, como por ejemplo, en el caso de Layaoen?

R. Eso de práctica honorable, yo no sé a que va usted; pero en el caso particular de Gaspar Silvestre, no había prácticas deshonorables, creo yo.

P. El sueldo de él al gozar de un puesto en la Constabularia, fué mucho mayor que lo que él ganaba como policía de Batac?

R. No sé cuanto ganaba en Batac; ahora gana P50."

El mismo Gaspar Silvestre en su declaración ante el Juzgado en la misma sesión de 27 de Mayo de este año, dice así:

"P. Usted declaró el Diciembre de 1935 en el Juzgado en el asunto de Pueblo contra Layaoen?

R. Sí, señor.

P. Y entonces usted era policía raso de Batac, con un sueldo de P21.50?

R. Sí, señor."

* * * *

"P. Después de ser policía de Batac, qué cargo tuvo usted?

R. He sido agente de la Constabularia."

* * * *

"P. El Comandante Guido ha dicho que el sueldo de usted en la Constabularia según él cree, son P50 al mes, es eso cierto?

R. Sí, señor."

DEFENSA:

Gaspar Silvestre fué destituído del cargo de policía municipal y sometido a un expediente administrativo por su negligencia en el cumplimiento de sus deberes, en el caso de Nalundasan. Verdadera o falsa su declaración en la causa contra Layaoen, lo cierto es que él probó allí, ser incapaz como policía. Y no obstante, ahora aparece nombrado agente de la Constabularia, con un sueldo dos veces y medio mayor del que tenía. Es indudable que el único motivo de su nombramiento fué el de sus servicios como testigo en aquella causa.

Gaspar Silvestre era el "star witness" del Gobierno en el asunto contra Layaoen, como lo es Calixto Aguinaldo en el presente asunto contra los Marcos y Lizardo. Y así como Silvestre recibió como premio, después de prestar su declaración, el nombramiento de agente de la Constabularia, Aguinaldo recibió también su nombramiento como agente de la Constabularia *después* de haber prestado declaración contra los Marcos y Lizardo, ante el Subsecretario de Justicia Melencio, el Comandante Guido y el Fiscal Macadaeg. He aquí la declaración del Comandante Guido:

SR. FRANCISCO:

"P. Ese Calixto Aguinaldo no es verdad de que es agente de la Constabularia?

R. Es agente especial de la Constabularia, sin sueldo.

P. Desde cuándo le hizo usted a Calixto Aguinaldo agente de la Constabularia—si es que fué usted quien le hizo agente?

R. No le he nombrado agente especial de la Constabularia. Despues que él haya declarado por primera vez ante el Secretario Melencio, ante mí y ante el Fiscal Macadaeg sobre los hechos relacionados con el asunto Nalundasan, él *pidió que sea nombrado agente especial*, para fines de protección suya . . . Así es que, teniendo esas consideraciones, no he titubeado en recomendarle al General Francisco, para que sea nombrado agente especial sin sueldo * * *.

P. Antes de nombrarle a Calixto Aguinaldo agente de la Constabularia, usted investigó qué reputación tenía él en Tárlac?

R. No, señor.

P. Qué privilegios tiene un agente especial de la Constabularia?

R. Nada.

P. Qué beneficios le reporta a uno el ser agente especial—nada también?

R. Nada.

P. Sin embargo, usted ha nombrado agente especial a ese hombre, a pesar de que le consta a usted de que ningún beneficio le puede reportar a él, ni puede reportar al Gobierno.—Es así como le entiendo?

P. Eso es verdad. (Ses. de 27 de Mayo, 1939).

No nos sorprende el que el Comandante Guido dijera que Calixto Aguinaldo no recibe sueldo o algún emolumento de la Constabularia como tal agente y por declarar cómo testigo en esta causa. Sólo un testigo veraz a toda prueba, y al mismo tiempo, desinteresado, puede llegar al extremo de declarar lo contrario. A pesar de nuestras consideraciones personales al Comandante Guido, decimos con pesar, que él no es de esta clase de testigos, al menos en este asunto. Una prueba es la siguiente: él afirmó que Calixto Aguinaldo fué nombrado agente especial de la Constabularia, a *solicitud* del mismo. El testigo Guieb, clerk de la Constabularia, le desmiente, sin embargo. Este testigo fué citado para exhibir el record personal de Calixto Aguinaldo, como agente de la Constabularia, y en dicho record no se encontró ninguna solicitud para ser tal agente; en cambio, en el record de los otros agentes especiales de la Constabularia, que fueron nombrados a petición de parte, la solicitud aparecía unida al record. He aquí la declaración de Guieb:

MR. FERNANDEZ:

P. Please show to the Court, if you have them, the appointments of Gaspar Silvestre and Calixto Aguinaldo as agents of the Constabulary and which was the object of the subpoena duces tecum.

R. I have them (El testigo los exhibe).

P. Can you tell the Court if these appointments as special agents are issued upon application of the one appointed?

R. The records will show.

P. Please look at the two records which you exhibited to the Court and state whether there appear any application of Gaspar Silvestre or Calixto Aguinaldo—either of them.

DEFENSA:

R. In both cases I don't see any application.

JUZGADO:

P. So, they have not filed any application?

R. No; according to the records.*
(Sesión de 27 de Mayo de 1939).

Que el Comandante Guido no es un testigo desinteresado en esta causa, lo prueba su propia declaración del siguiente tenor:

SR. FRANCISCO:

"P. El Septiembre de 1935, qué cargo ocupaba usted?

R. Yo era el Jefe auxiliar de la División de Información de la Constabularia.

P. Hasta ahora desempeña usted ese cargo, con rango de Comandante?

R. Yo soy Jefe de la División de Información, y también Jefe interino de la Division de Investigación del Departamento de Justicia.

P. Examinando los records del asunto de Pueblo contra Layaoen, aparece que usted actuó de testigo de la acusación en aquella causa.

R. Sí, señor.

P. Fué usted el mismo quien cooperó con el Fiscal en aquel asunto, en la búsqueda de pruebas y en la substanciación de la querella contra Nicasio Layaoen?

R. He sido instruído por mis jefes a cooperar con los Fiscales Carlos, hoy Juez, y Arellano.

P. En este asunto contra los Marcos y Lizardo, usted estaba en la lista de testigos de la acusación?—Recuerda usted eso?

R. Sí, señor; parece que mi nombre aparece en la lista.

P. Como cuestión de hecho, usted también ha cooperado con el Fiscal en la búsqueda y preparación de las pruebas contra los aquí acusados, y en la substanciación de la querella contra los mismos?

R. Yo era el que ha comenzado la investigación de esta presente causa, y cuando pudimos ya encontrar algo, el Departamento mandó llamar al Fiscal Macadaeg para examinar las pruebas que tenia.

P. De modo que usted era el asignado tambien para cooperar con el Fiscal Macadaeg en este asunto?

R. Sí, señor.

P. Quién fué el superior de usted que le designó a usted para este trabajo?

R. Después del sobreseimiento de la causa contra Layaoen, el General Reyes, me dió instrucciones para que siguiera la investigación de esta causa, *porque era una vergüenza para el país dejar impune un crimen tan horrendo como el crimen de autos.*
(Ses. de 27 de Mayo de 1939.)

Ahora, expondremos un hecho más, recientemente ocurrido, que demuestra lo apasionado que es el Comandante Guido, en relación con este asunto. El Juzgado recordará que uno de los testigos de la defensa, que declaró mediante citación sub-poena, fué Jose D. Mendoza, que había actuado de inspector de elección en el Precinto No. 3 de Tárlac en 1935, y su declaración consistió en autenticar el censo electoral Exh. 84, y en identificar a Calixto Aguinaldo como el que, bajo este nombre, estaba registrado en dicho censo y había votado en dichas elecciones de 17 de Septiembre de 1935. Durante las repreguntas del Fiscal Macadaeg, le fué sugerido por el Comandante Guido que hiciera la siguiente pregunta: "No es verdad de que es usted agente especial de la Constabularia"? A lo que el testigo contestó en sentido afirmativo. Pero, a pesar de la advertencia e insinuación que esta pregunta encerraba, para el testigo, éste insistió en afirmar que Calixto Aguinaldo había votado, dando, además, el siguiente detalle: que cuando Calixto Aguinaldo entró en el colegio electoral y el chairman anunció en voz alta el nombre de éste, él (Mendoza), que era inspector del General Aguinaldo, se dijo a sí mismo: "El General Aguinaldo tiene ahora otro voto seguro". Esto se le ocurrió, según Mendoza, porque Calixto llevaba el apellido "Aguinaldo".

Esta declaración de Mendoza se prestó el Junio 13, 1939. Ocho días después, Mendoza recibía la siguiente comunicación del Comandante Guido, por conducto del Inspector Provincial de Tárlac (Exh. 98):

"COMMONWEALTH OF THE PHILIPPINES
CONSTABULARY HEADQUARTERS
MANILA

June 21, 1939.

Mr. Jose D. Mendoza
Tarlac, Tarlac
Through Provincial Inspector, P. C.

Sir:

Please be informed that your appointment as Special Agent of the Constabulary has this date been revoked. Kindly turn over your original appointment and Special Agent badge No. 1709 to the Provincial Inspector for transmittal to this office.

Respectfully,
(Sgd.) JOSE P. GUIDO
Captain, P. C.
Chief, Information Division."

"1st Indorsement
OFFICE OF THE PROVINCIAL INSPECTOR, TARLAC, TARLAC
June 24, 1939

Respectfully forwarded to Mr. Jose D. Mendoza, Tarlac, Tarlac, inviting attention to the basic communication for compliance.

(Sgd.) J. G. POLOTAN,
Captain, P. C.
Provincial Inspector."

Si se tiene en cuenta que la vista contra Lizardo terminó el 19 de Junio de 1939, por la noche, y que el Comandante Guido volvió a Manila al día siguiente (20 de Junio de 1939), tenemos que el primer acto del Comandante Guido al hacer oficina fué el de vengarse o tomar represalia contra su subordinado Mendoza, despojándole del nombramiento de agente especial de la Constabularia. El Comandante Guido habrá creído que su prestigio estaba envuelto en este asunto, y, en su apasionamiento, se olvidó de apreciar el deber de un ciudadano, sea agente de la Constabularia o no, de decir la verdad ante un tribunal de justicia y en un asunto en que se juega la vida de cuatro hombres.

Alejandro Yumul, el segundo "star witness" del Gobierno, (que fué presentado para tergiversar las fechas y otros datos de las pruebas documentales de la defensa, que demuestran que Calixto Aguinaldo estaba en Tárlac en las fechas en que él (Calixto) declaró en este asunto haber estado en Batac con Lizardo), fué también nombrado agente especial de la Constabularia *antes* de *prestar* testimonio en este asunto, pero *después* de prestarlo ante el Fiscal Macadaeg. De modo que tanto Calixto Aguinaldo como Alejandro Yumul eran, en su capacidad de agentes especiales de la Constabularia, subordinados del Comandante Guido, y, como es natural, éste ejercía influencia moral sobre aquellos, mientras declaraban como testigos en esta causa. He aquí la declaración de Yumul sobre el particular:

SR. FRANCISCO:

"P. Y cuando se enteró usted de que iba a ser testigo de la acusación en este asunto?

R. Una semana después del día 4 de Marzo.

P. Pero usted dice que el Marzo de 1939 se enteró de que sería testigo en este asunto, y que usted supo el 20 de Mayo de 1939 que era agente especial de la Constabularia—Es eso correcto?

R. Sí, señor.

P. Y usted quiere dar a entender al Juzgado que no sabe usted hasta estos momentos por qué le nombraron a usted agente especial de la Constabularia?

R. Lo sé, porque el Representante Urquico me avisó de que soy agente especial.

P. Pero, preguntó usted o no al Representante Urquico por qué le habían hecho agente especial, cuando que usted no había pedido que lo fuera?

R. Ya no hemos hablado de eso.

P. Y cuándo tuvo usted conferencia con el Fiscal Macadaeg, en relación con este asunto—antes o después de haber sido usted nombrado agente especial de la Constabularia?

R. Antes.

* * * * *

P. Cuánto recibía usted de sueldo cuando era escribiente temporero del public defender el año 1935?

R. Recibía el sueldo de ₱30 mensuales con allowance.

*Aparecen en dicho record los siguientes datos; que el nombramiento de Calixto Aguinaldo cómo agente especial de la Constabularia fué expedido el 2 de Diciembre de 1938, y que Gaspar Silvestre, desde Manila, presentó su dimisión como policía municipal de Batac, el Diciembre 31, 1935, obrando copia de dicha carta-dimisión en el record personal de dicho testigo, que forma parte del archivo de la Constabularia. Este último hecho sugiere la idea de que la carta-dimisión se escribió en la oficina de la Constabularia, y que Gaspar Silvestre obraba bajo instrucciones de ésta.

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P. Y a cuanto ascendía el per diem (o allowance) que usted podía ganar en un mes como escribiente temporero?
R. Estaba limitado a ₱30 y nada mas.
P. Despu s de Diciembre de 1935, hasta ahora, se ha empleado usted en alguna oficina del Gobierno o en alguna casa o alguna oficina particular, ya como clerk o cualquier cosa?
R. Espere usted; estoy pensando porque usted se refiere a tantos años.
P. Cuánto tiempo necesitaría usted para contestar a esa pregunta?
R. No recuerdo cuantas veces.
P. Quiere usted dar a entender al Juzgado que después de trabajar en la oficina del public defender (el Diciembre de 1935) usted ha trabajado u ocupado algún empleo en el Gobierno?
R. Sí, señor; pero deme usted tiempo.
P. Qué quiere usted decir?
R. Me ha preguntado usted si puedo indicar (los empleos que he tenido) y yo le digo que puedo indicar.
P. Donde va usted a buscarlo?
R. Yo, podré decir si me da tiempo sobre dónde y qué puestos he ocupado desde entonces.
P. Y cuánto tiempo necesita usted para acordar si usted ha tenido algún empleo en el gobierno en cualquier oficina particular, después de Diciembre de 1935, hasta ahora?
R. Necesito tres o cuatro días.
P. Y cómo lo averiguaría usted?
R. Entre mis papeles.

* * * *

P. Usted tampoco está actualmente empleado en alguna casa comercial o en alguna oficina particular o en el Gobierno, con sueldo?
R. No lo estoy.
P. No recibe usted entonces sueldo de nadie?
R. No recibo.
P. Cuántos hijos tiene usted?
R. Cinco los que viven.
P. Y vive la esposa de usted hasta ahora?
R. Sí, señor; mi tercera esposa.
P. Y usted es el que mantiene a su esposa y a sus hijos?
R. Sí, señor."

(Sesión de 19 de Junio de 1939).

Vida de grandes burgueses

Otro dato que causará asombro a todo hombre de limpida conciencia es el hecho de que todos los testigos de la acusación, que fueron traídos a Laoag, para declarar contra los Marcos y Lizardo, fueron alojados por la Constabularia, como grandes señores, en el mejor hotel de Laoag, en el Bueno's Hotel, en el mismo hotel en que se hospedaban el Fiscal Macadaeg y el Comandante Guido, costeados por el Gobierno, atendidos, mimados y vigilados directamente por aquellos funcionarios. No citaremos lo que cada uno de estos testigos declararon sobre su estancia en el Bueno's Hotel. Nos bastará mencionar, cómo botón de muestra, lo que dijeron tres de ellos.

Emiliano Santos declaró así: "A qué gastos podría incurrir aquí, si tengo libre comida, y parece que el Gobierno es el que gasta—libre jabón, libre toalla, libre cigarrillo, *libre todo*, en el Hotel Bueno?"

(Sesión de Junio 8, 1939.)

Severino Dayrit, un *capataz* de obras públicas, declaró que fué conducido de Tárlac al Hotel Bueno en un *automovil* del Gobierno, y que allí en el hotel tenía alojamiento y comida gratis. (Sesión de Junio 17, 1939).

María Juatco, concubina de Calixto Aguinaldo, prestó la siguiente declaración:

SR. FRANCISCO:
"P. Hace cuánto tiempo que está usted en Laoag?
R. Tal vez, hasta ahora, más o menos de 10 días.
P. En que casa vive usted aquí?
R. Estamos en el Bueno's Hotel.
P. Calixto Aguinaldo y usted han estado hospedándose, desde que llegaron hasta ahora, en el Bueno's Hotel?
R. Sí, señor.
P. Qué oficio tiene ahora Calixto Aguinaldo?
R. Para qué quiere usted saber?
P. Muy clara es mi pregunta, qué oficio tiene Calixto Aguinaldo ahora?
R. *No tiene ahora busca-vida, porque el Gobierno le ha sacado como testigo para estas vistas.*
P. Quién paga la estancia y comida de ustedes en el Bueno's Hotel?
R. Desde que hemos llegado, el Gobierno.
P. A quién llama usted "Gobierno"?
R. Pues, el Gobierno.
P. Vea usted aquí, si usted se refiere al Major Guido o al Fiscal Macadaeg.
R. Con nosotros están el Fiscal y el Major Guido.
P. Y quién de ellos paga?
R. No sé quien de entre los dos paga nuestro alojamiento y comida en el Hotel Bueno.
(Sesión de Febrero 16, 1939.)

Esta declaración de María Juatco de que Calixto Aguinaldo no tiene ahora busca-vida, porque es testigo del Gobierno, no tiene desperdicios, porque ella implica racionalmente que éste no perdería gratuitamente meses enteros al servicio del Gobierno, si no se le pagase.

Ese derroche de los fondos públicos no tiene explicación, no puede tenerlo sino el intento de halagar voluntades. Y nada de ello sería necesario si esos fueran testigos veraces, a quienes no mueve más que el cumplimiento de un deber cívico y el amor a la verdad. Esa práctica es francamente condenable. No puede admitirse como una práctica digna. Para el propio prestigio del Ministerio Fiscal, debió haber evitado esa convivencia con sus testigos bajo un mismo techo y costeada por el Gobierno. De ese hecho nace una tacha de sospecha total, sobre toda la prueba de una acusación, que tan mal mide las distancias que deben mediar entre ella y sus testigos.

Consideraciones finales
de este capitulo

Los procedimientos de mala ley puestos en juego en este asunto por los D-I, con la aquiescencia si no a iniciativa del Ministerio Fiscal, es una reflexion contra el buen nombre de nuestro Gobierno. No deben ser tolerados. Justo y legitimo es que el gobierno persiga, hasta el límite de la ley, a todos cuantos crea que han cometido algun delito; pero no está justificado el que los funcionarios encargados de la prosecución y sus auxiliares, como los D-I, se valgan de medios ilegitimos para conseguir la condena de aquéllos, haciendo ilusorio el derecho que todo acusado tiene a ser juzgado con debido proceso de ley. En su misión de perseguir a los individuos que se suponen responsables de algún crimen, el gobierno tiene el deber correlativo de protegerles en su prosecución, de tal suerte que sean juzgados libres de todo prejuicio, sin valerse contra ellos de pruebas obtenidas mediante soborno, coacción y otros medios ilicitos o repugnantes a la conciencia, pues, de otro modo, el gobierno sería tan criminal como a quien acusa y condena. La protección que otorga nuestra Carta Magna a la vida y libertad de los individuos, no puede quedarse menoscabada por el simple hecho de que sean aquéllos procesados ante los Tribunales. Es, precisamente, cuando más se necesita protegerles, a fin de que el gobierno no abuse de su superioridad contra el individuo. Y esta es la razón por que creemos que las prácticas condenables de los D-I en este asunto justifican la supresión de dicha agencia del gobierno, que por su mala reputación ha alcanzado el remoquete de "Division de Injusticia del Departamento de Justicia". Si se quiere que se continue, debe hacerse un expurgo de sus miembros, eliminando a todos cuantos hayan demostrado, por su conducta, ser indignos del cargo, y manteniendo solo en ella a aquéllos que gozan de honradez a toda prueba. No debe olvidarse que los D-I son todos abogados, y, si son honrados y con suficiente preparación tecnica para trabajos detectivescos, seria un instrumento útil para el gobierno y el país; pero si son depravados, serian el mayor peligro para la paz, y el orden de la comunidad.

Si se reflexiona la declaración del Comandante Guido sobre la instrucción que dice haber recibido del General Reyes, de que se hiciera cargo de la investigación del asesinato de Nalundasan, porque "es una vergüenza para el país dejar impune un crimen tan horrendo", y se estudia luego el conjunto de las pruebas del gobierno en este asunto, se comprenderá fácilmente cómo se fraguó la acusación contra los Marcos y Lizardo. Era imperativo el que alguién sea procesado y convicto por el asesinato de Nalundasan, porque, de otro modo, "sería una vergüenza para el país." Para esta empresa el Comandante Guido necesitaba de la

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ayuda de un consejero legal, para fijar las pruebas incriminatorias para la persona o personas que habian de ser procesadas. Y el Sub-secretario de Justicia Hon. José P. Melencio nombró al Fiscal Macadaeg para ello. Primeramente se estudió la teoria sobre el móvil que debía atribuir al supuesto autor del crimen. No se ha realizado investigaciones sobre la vida de relación de Julio Nalundasan en los demas aspectos que ella tiene, excepto en lo que se refiere a la faceta política. Y aun dentro de esta misma no se han seguido otras pistas que no sea la de los Marcos y sus partidarios, por ser estos adversarios políticos—pero no los unicos, por cierto—de Nalundasan, en las elecciones para Diputado del segundo distrito de Ilocos Norte en 1935. Tomando la derrota de Mariano Marcos como el móvil del crimen, el investigador Comandante Guido y el Fiscal Macadaeg creyeron haber hallado la mejor teoria para la acusación contra Mariano Marcos. Esta es la primera parte de la empresa. La segunda parte consiste en estudiar las pruebas necesarias para el proceso de Marcos, tomando por base la teoria sobre el móvil. Despues viene la búsqueda de personas que por ciertas consideraciones, ya politica o de dinero, estuvieran dispuestas a prestar declaraciones, tales como fueron concebidas y preparadas.* Y, ultimamente, viene el adiestramiento de los testigos y pulimento de sus declaraciones, para dar a éstas visos de verdad. En ultimo término se creó una teoria y luego se prepararon pruebas para apuntarla. De ahí que sostenemos—y los autos nos apoyan—que el proceso de los aquí acusados está fundado en pruebas fabricadas y que de la naturaleza de dichas pruebas tienen perfecto conocimiento los autores de esta persecusión. Un dato más hemos de aducir para demostrar que no andamos errados en nuestra aserción, aunque lo que dejamos puntualizados más arriba son suficientes. El dato a que nos referimos se encuentra en la declaración fabricada de Calixto Aguinaldo, que dice asi:

FISCAL MACADAEG:

P. Después de que hayan subido ya Ferdinand Marcos y Quirino Lizardo, no bajaron más ellos aquella noche?
R. Bajaron todavia.
P. Juntos los dos?
R. Sí, señor.
P. Donde fuéron?
R. Vinieron a los bajos de la casa.
P. Que hicieron en los bajos de la casa?
R. Habia un tubo de hierro recogido por el señor Lizardo y en él pusieron el arma de fuego de Ferdinand.
P. Y que hicieron de aquel tubo, una vez metido el arma de fuego de Ferdinand?
R. Lo enterraron en un sitio que distaba solamente un metro de los harigues de la cocina de la casa, al lado de un arbol pequeño de coco.
(Ses. de 13 de febrero de 1939.)

Este testimonio de Calixto Aguinaldo habla de un indicio *físico* que puede tener una influencia tal vez decisiva para fortalecer la declaración de él. ¿Qué ha hecho el Comandante Guido, y que iniciativa ha tomado el Fiscal Macadaeg para buscar esta formidable prueba real de fuerte valor inculpativo? Nada. El record no dice que hayan hecho algo. Y nosotros preguntamos: ¿que demuestra esta actitud de los autores de este proceso, Comandante Guido y Fiscal Macadaeg? Nuestra lógica nos dice que estos funcionarios no trataron de buscar o de comprobar la existencia de esta prueba real, incriminativa contra los acusados Ferdinand Marcos y Quirino Lizardo, porque les constaba positivamente que la declaración de Aguinaldo era pura invención.

V

DEFENSA DE LOS ACUSADOS

Estuvimos tentados de pedir el sobreseimiento de esta causa, después de cerrar la acusación sus pruebas, porque estábamos convencidos—y lo estamos hasta ahora—que con ellas el Fiscal no ha conseguido probar, siquiera "prima facie", la culpabilidad de los acusados, no sólo por las contradicciones en que han incurrido sus testigos sino especialmente por la inverosimilitud inherente de sus declaraciones. En último análisis, la única prueba incriminativa contra los acusados, la aporta Calixto Aguinaldo con su declaración, que está diciendo a voces que es una fábula, la fábula más ridicula que la imaginación humana pudo producir. No hemos pedido, sin embargo, el sobreseimiento de la causa y hemos entrado de lleno en la práctica de las pruebas, porque no queremos ocultar nada. Desde el comienzo, nos hemos propuesto hacer que la verdad resplandezca en toda su desnudéz y la Justicia abra su paso en este asunto, sin los obstáculos de los tecnicismos, y proclame hoy y para siempre la inocencia de los acusados de un delito horrendo, que los enemigos políticos de los Marcos y Lizardo,—sin piedad y sin escrúpulos de conciencia, trataron de hacerles responsables, para humillarles, arruinarles y destruirles, de una vez.

Nos bastará recordar que, por propia declaración del Comandante Guido y del D-I Valle, ha quedado establecido que, cuando éstos se embarcaron en la empresa de buscar pruebas sobre el asesinato de Nalundasan, que culminó con la presentación de la querella contra los aquí acusados, no se situaron en una zona neutral, sino qué se instalaron en la casa de Arturo Verzosa quien, por repreguntas del mismo Fiscal a Lizardo, se supo que tuvo un encuentro personal grave con éste, por cuestiones de política, y es el mismo que, segun otro testigo de la acusación, (Lara) guiaba el tetrico "coupe" durante la manifestación pública celebrada el 19 de septiembre, 1935, por el triunfo de Nalundasan, y que el hermano del mismo, el actual Juez de Paz de Batac, era uno de los que estaban en el truck que formaba parte de la misma manifestación, y gritaba "Viva Nalundasan y muera Mariano Marcos." No puede negarse también que Mariano Marcos es una potencia política en Ilocos Norte y que en las elecciones de 1935 sostuvo publicamente la candidatura de Monseñor Aglipay. En las elecciones sucesivas tuvo su propio candidato contra los de la administración, y que la presente querella se promovió después de las elecciones que tuvieron lugar en 1938 y poco después de que el candidato de Mariano Marcos, que solo perdió por unos cien de votos, haya presentado, a instancias de Mariano Marcos, una protesta contra el candidato electo de la administración. Está probado que uno de los testigos de la acusación, Valentin Rubio, trató de disuadirle a Mariano Marcos que buscara datos y pruebas para dicha protesta, y que cuando éste se negó, fué advertido a raja tabla que algo grave le iba a suceder. Y, efectivamente, vino la presente acusación por asesinato, no solo contra Mariano Marcos sino contra su hijo, Ferdinand Marcos, su hermano Pio Marcos y su cuñado Quirino S. Lizardo. Con esto no acusamos al gobierno, pero sí queremos decir francamente que él fué sorprendido en su buena fe por los enemigos políticos de Mariano Marcos.

La acusación contra los Marcos y Lizardo estaba asentada sobre pruebas falsas, y la Justicia no la podía acoger en su templo. Cuando los acusados consiguieron su libertad provisional, Lizardo consiguió hallar en los mismos archivos del Departamento del Trabajo pruebas contundentes y concluyentes que apoyarían su declaración, de que Calixto Aguinaldo no estaba en Batac el mes de septiembre, sino en Tarlac; y gracias al censo electoral del precinto número 3 de Tarlac, correspondiente a las elecciones de 1935, se pudo también demostrar concluyentemente que el día 17 de septiembre, Calixto Aguinaldo había votado en Tarlac. Fué así como el castillo de la acusación, construido paciente e ingeniosamente, durante varios años, por los D-I, encabezados por el Comandante Guido, se derrumbó estrepitósamente.

No nos extenderemos demasiado en exponer y discutir las pruebas de la defensa, porque son claras y contundentes. Para su debido estudio las hemos de considerar bajo las siguientes proposiciones:

1. Calixto Aguinaldo no estaba en Batac, y es fabricado su testimonio, sobre la supuesta conspiración de los acusados para matar a Nalundasan.

*Como fabulador, Calixto Aguinaldo no tiene par, pues tiene sobrada experiencia en testimonios y pruebas, adquirida en oficinas de abogados. Según él, ha estado trabajando durante muchos años en varios bufetes de Tarlac, entre ellos, en el bufete de los abogados Bañaga y Villarta, en el bufete del abogado Porfirio Espinosa, en el del abogado Amado Vicente y ultimamente en el de los abogados Valle.

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2. Que los acusados no son responsables del asesinato de Nalundasan, ni han tenido nada que ver con el mismo.

En cuanto a la primera proposición

La no presencia de Calixto Aguinaldo en Batac, la establece testimonio de testigos, algunos de los cuales no tienen relación alguna ni con los acusados ni con Julio Nalundasan; a diferencia de los testigos de la acusación que, si no son agentes de la constabularia, son parientes o líders o amigos del malogrado Nalundasan. Entre los testigos de la defensa descuella Antonio Logarta, que es abogado y funcionario del gobierno, que ha demostrado ser un hombre imparcial, aún en los momentos en que la acusación le hostilizaba. La establecen también pruebas documentales de valor concluyente—documentos públicos fehacientes—el censo electoral del precinto número 3 de Tarlac, Tarlac, correspondiente a las elecciones presidenciales y de diputados de 1935 (exhibit 84); y los documentos exhibits 23, 24, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 y 37, que forman parte de los archivos del Departamento del Trabajo.

Los acusados han negado rotundamente que Calixto Aguinaldo haya estado en Batac el septiembre de 1935.

Quirino Lizardo declaró que cuando él partió de Manila para Ilocos Norte, de conformidad con las instrucciones que recibiera del Subsecretario del Trabajo, venían con él su esposa, una hija de tres años de edad y un primo hermano suyo, Geronimo Lizardo, quien se apeó en la intersección de Narvacan-Abra, porque tenía que ir a Abra, para votar en aquellas elecciones y actuar de interventor del Presidente Quezon.

Gerónimo Lizardo corroboró esta declaración de Quirino Lizardo. Él aseguró enfáticamente que la primera vez que vió a Calixto Aguinaldo fué en el Juzgado, en la vista de este asunto. Contó, además, el siguiente incidente; que en el primer día que él llegó al Juzgado, por esta causa, él se encontró con los hermanos Valle y se hablaron, porque fueron condiscípulos suyos en la Escuela de Derecho; que uno de éstos se acercó a un hombre de gruesa condición, física y moreno, que resultó ser Calixto Aguinaldo, y a quien él (Gerónimo) daba la espalda; que el otro Valle puso su brazo alrededor de su cintura (de Gerónimo) y trató de hacer que él se pusiera de frente a dicho individuo, mientras que el otro Valle decía a Aguinaldo "Ese es el Gerónimo Lizardo".

Esta declaración de Gerónimo Lizardo no ha sido contraprobada por la acusación ni fué contradicha siquiera por Crisostomo Valle, cuando declaró como testigo del gobierno, sobre sus conferencias con Celedonio Ledesma.

María Marcos de Lizardo, esposa de Quirino Lizardo, declaró también que Calixto Aguinaldo no vino con ella y su marido a Batac el 14 de Septiembre de 1935.

Antonia Marcos-Rubio, hermana mayor de los Marcos, que habita la casa de éstos en Batac desde que la misma se construyó en 1910 y se reconstruyó en 1934, declaró que Calixto Aguinaldo jamás estuvo en aquella casa de los Marcos, en Batac, y que la primera vez que élla le vió fué el febrero de 1939, en el Juzgado, mientras testificaba.

Eugenia Rubio, que era la que atendía a los líders y visitas de Mariano Marcos en la casa de éste en aquellos días, aseguró positivamente que Calixto Aguinaldo no ha vivido en aquella casa, ni estuvo ni un minuto en ella.

Y hubieramos presentado una infinidad de testigos, si no fuera porque el Juzgado nos dió a entender que no eran necesarias más pruebas acumulativas.

Los siguientes testigos declararon también que en el día de las elecciones, así como en los días que precedieron y subsiguieron a aquél, Calixto Aguinaldo estaba en Tarlac.

Amado Príncipe, tiene 50 años de edad, es escribiente y reside en Tarlac, Tarlac. Declaró que reside en el pueblo de Tarlac hace cuarenta años; qué fué constabulario; que hace tiempo que conoce a Calixto Aguinaldo; que la casa de éste está frente de la suya en la calle P. Hilario; que Calixto no vive con su esposa sino con María Juatco; con quien tiene varios hijos; que la casa de Aguinaldo es de materiales mixtos; que cuando él le conoció por primera vez, Calixto era escribiente del presidente municipal Espinosa, de Tarlac, luego él pasó a ser escribiente del abogado Porfirio Espinosa y después trabajó en la oficina del Public Defender; que en el día de las elecciones de 1935—17 de septiembre—, a eso de las ocho de la mañana, él estaba de pie, frente al precinto No. 3, en espera del truck que iba a conducirle al precinto número 11, para votar, y allí vió a Calixto Aguinaldo hablando con algunas personas, porque iba también a votar en dicho precinto número 3; que éllos hablaron y cuando él preguntó a Aguinaldo "Oye, Ictong, has votado ya?" contestó que no había votado aún; y que en la tarde del mismo día él también encontró a Calixto Aguinaldo en Tárlac.

En repreguntas el Fiscal declaró que entre las personas con quién Calixto Aguinaldo estuvo hablando en la mañana del día de las elecciones estaban Glicerio Tejeiro y Arsenio Magat. En repreguntas declaró que el precinto número 3, donde fué Calixto Aguinaldo a votar, estaba en el barrio de San Roque, al lado de la carretera provincial, y que el precinto número 11 donde él (Principe) fué a votar, estaba en el barrio de Maliwalu. La declaración de este testigo no ha sido desmentida por Calixto.

Glicerio Tejeiro.—Éste es comerciante de 39 años de edad y residente en Tárlac, Tárlac. Declaró que es uno de los electores en el precinto No. 3 de Tárlac, Tárlac, el año 1935; que el elector con el nombre de "Glicerio Tejeiro" que aparece en los censos electorales de dicho precinto (exhibitos 41, 41-A, 41-B y 84) es él; que él votó en las elecciones de 17 de septiembre de 1935 a eso de las 8:00 de la mañana; que conoce a Calixto Aguinaldo y es su amigo hace ocho años; que en la mañana del 17 de septiembre de 1935 él se encontró con Calixto Aguinaldo antes de entrar al precinto No. 3 y luego entraron juntos para votar; que ambos recibieron sus respectivas balotas del Chairman de la junta de inspectores, Celedonio Ledesma.

En repreguntas este testigo declaró, entre otras cosas, que, después de votar, él volvió a ver a Calixto Aguinaldo dos veces: la una, a eso de las 12:00 del día, y la otra, por la noche, del día 17 de septiembre de 1935, frente al edificio "Tri-Mag", donde se anunciaba el resultado de las elecciones; que él vió también en Tárlac a Calixto Aguinaldo días antes de las elecciones; que en las dos veces que él se encontró con Calixto Aguinaldo, después de haber emitido su voto, estuvieron los dos oyendo el resultado de las elecciones en el "Tri-Mag" building, en el cuál había una pizarra grande en donde se escribían los votos que obtenía cada candidato. La declaración de este testigo tampoco fué desmentida por Calixto Aguinaldo.

Según el censo electoral, exhibit "84", el elector Glicerio Tejeiro lleva el orden de inscripción número 469 y recibió la balota número 1102, y Calixto Aguinaldo lleva el orden de incripción número 27 y recibió la balota número 1106. Debieron, pués, haber votado en la misma ocasión, a juzgar por la proximidad de los números de sus respectivas balotas, y este dato corrobora fuertemente la declaración de Tejeiro, de que cuando él recibió la balota de manos del "Chairman" de la Junta de Inspectores, estaba con él Calixto Aguinaldo que recibió también la suya.

Arsenio Magat.—Éste tiene 56 años de edad, escribiente y residente en Tárlac, Tárlac. Declaró que conoce a Calixto Aguinaldo hace 15 años y es amigo suyo, que en la noche del día de elecciones, 17 de septiembre de 1935, después de las votaciones y de haber él tomado la cena, bajó de casa con el propósito de ir al Trimag Building, donde se hallaba alojado el cuartel general del Partido Nacionalista; que en el frente de dicho edificio estaba entonces colocada una pizarra larga y grande en donde aparecían escritos los nombres de los candidatos a Presidente y Vice-Presidente de la Mancomunidad y a diputado; que en dicha pizarra se escribía el resultado de las elecciones, para conocimiento del público; que cuando él llegó al Trimag Building, encontróse con Calixto Aguinaldo, a eso de las ocho de la noche, y estuvieron los dos hablando de política; que Aguinaldo contó sus trabajos en

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favor de la candidatura de Monseñor Aglipay; que allí estuvieron los dos por más de media hora, y cuando él bajó para ir a otros precintos en busca de noticias sobre las elecciones, Calixto Aguinaldo se quedó en el Trimag Building; que unas dos horas después él se encontró otra vez con Calixto en el precinto número 11, oyendo el resultado de las elecciones; que cuando él preguntó por el resultado de la votación en aquél precinto, Calixto contestó: "estamos perdiendo; los de aquí son Quezonistas"; que, después de un rato, los dos de Aguinaldo se marcharon, cogieron una carromata, y se dirigieron al Trimag Building; que, más tarde, él se marchó para el precinto del barrio de Santo Cristo, pero Calixto Aguinaldo se quedó en el Trimag Building; que al día siguiente de las elecciones, se encontró otra vez con Aguinaldo frente al Hotel Tárlac, tomando nota de los votos que obtuvo el Senador Aquino, porque el candidato Januario Fidel le ganó en unos trescientos votos, en Victoria. En repreguntas, este testigo declaró, entre otras cosas, que cuando él se encontró con Calixto Aguinaldo en Trimag Building había allá unas treinta personas y que Aguinaldo estaba de pie, tomando nota de los votos recibidos por los candidatos; que recuerda que en aquella ocasión los dos de Aguinaldo estuvieron bromeandose y que él le dijo: "por que no votaste por Aguinaldo, cuando que llevas su mismo apellido," y que éste replico—"No, es mejor Aglipay, que es tan ilocano como yo." (Ses. Junio 5, 1939.)

José D. Mendoza.—Es comerciante, de 32 años de edad, residente en Tárlac y *agente especial de la Constabularia.* Es uno de los inspectores del precinto No. 3 de Tárlac, nombrado para representar al candidato a Presidente del Commonwealth, General Aguinaldo. La declaración de este testigo tiene dos partes: la una, se refiere a la autenticidad del censo electoral, exhibit 84, y la otra, se refiere al hecho de haber él visto a Calixto Aguinaldo votar en Tárlac, Tárlac, el 17 de septiembre de 1935.

En cuánto a la identificación del censo, este Mendoza declaró que Celedonio Ledesma era el chairman de la Junta de Inspectores del precinto No. 3 y que los demás inspectores eran él (Mendoza), Alfonso Espinosa y Apolinario Espinosa; que las firmas en el censo exhibit 84, que llevan dichos nombres, fueron estampados por éllos mismos, respectivamente; que éllos (los inspectores de elección) estamparon sus respectivas firmas en el exhibit 84 en la última sesión de la Junta de Inspectores que tuvo lugar el 17 de septiembre de 1935; que la columna designada con las palabras "ballot number" en dicho exhibit contiene el número de las balotas que cada elector ha recibido para votar; que el procedimiento seguido en aquéllas elecciones—que era la única en que actuó de inspector—fué el siguiente: al entrar un elector, el chairman pregunta por su nombre y luego lo anuncia en voz alta. Comprueban los inspectores en el censo si allí aparece el nombre anunciado. En caso afirmativo, así advierten al chairman, quién entrega al elector la balota, anunciando el número de la misma; del número de la balota toman nota en el censo los inspectores; el elector que ha recibido la balota se dirige al compartimiento y allí la llena, luego se la entrega de vuelta al chairman y éste lee el número de la balota y los inspectores lo chequean con el número que apuntaron en el censo y ponen el signo de "check".

En la segunda parte de su declaración, el testigo dice que conoce a Calixto Aguinaldo desde hace quince años; que Calixto es elector inscrito en el precinto No. 3 en las elecciones de 17 de septiembre de 1935, y es él mismo que aparece en el censo bajo la inscripción No. 27, San Roque; que Calixto Aguinaldo votó en dichas elecciones y recibió la balota No. 1106; que él recuerda, que cuando el nombre de Calixto Aguinaldo se anunció por el chairman, antes de entregarle la balota correspondiente, él pensó que el General Aguinaldo iba a recibir un voto seguro, en vista de que Calixto llevaba el apellido Aguinaldo; que después de las elecciones, todos los censos usados, entre ellos el exhibit 84, fueron devueltos por los inspectores al tesorero municipal.

En repreguntas, Mendoza declaró lo siguiente entre otras cosas: que cuando entró Calixto Aguinaldo en el precinto electoral, él no se dió cuenta porque estaba ocupado, pero al oir el apellido Aguinaldo, de Calixto, él le miró y es cuando dijo para sí que el General Aguinaldo tenía un voto segunro; que él vió cuando Calixto recibió la balota de Celedonio Ledesma y él vió también cuando Aguinaldo devolvió la balota al mismo Ledesma, después de llenada, y cuando Aguinaldo salió del Colegio Electoral; que días antes de declarar él en este asunto, no recordaba bien el hecho de si Calixto Aguinaldo había votado o no, debido al tiempo transcurrido, pero cuando él vió el censo electoral exhibit 84, que Celedonio Ledesma trajo a Laoag para exhibirlo al Juzgado, él comenzó a recapacitar y entonces se acordó de que realmente Calixto Aguinaldo había votado, porque inclusive se acordó él de que al anunciarse el apellido de "Aguinaldo", de Calixto, él se dijo para sí que el Gral. Aguinaldo tenía un voto seguro.

Repreguntado si un tal Alejandro Yumol había votado en aquellas elecciones, en el precinto No. 3 de Tárlac, Tárlac, el testigo contestó, sin ver el censo, que parecía haber votado, y cuando el Fiscal le presentó al testigo a Alejandro Yumol el testigo dijo "ese es Alejandro Yumol,—ha votado". Dijo, además, que Yumol era un lider conocido en la provincia de Tárlac del Gobernador Urquico. (Sesión de Junio 13, 1939.)

La única tacha que pone el Fiscal a este testigo es que en su affidavit, exhibit 56, suscrito a instancias del D-I Valle, él dice que, debido al tiempo transcurrido y al número de electores que votaron el 17 de septiembre de 1935, no puede recordar si Calixto Aguinaldo ha votado o no, a menos que vea el censo que él y sus demás compañeros inspectores prepararon; mientras que, en el día de la vista aseguró que Calixto Aguinaldo había votado.

Creemos que esta tacha no tiene razón de ser. Mendoza declaró que días antes de testificar, él vió el censo en poder de Ledesma y allí vió también el orden de inscripción de Aguinaldo y el número de la balota que había recibido; y que todos estos datos llevaron a su memoria otras circunstancias que le hicieron recordar que Calixto Aguinaldo realmente había votado. Francamente no vemos ninguna contradicción entre esa declaración y su affidavit. ¿No es acaso un fenómeno psicológico que la memoria se aviva con ciertos datos que se le suministran? ¿No es acaso cierto que un recuerdo dormido se despierta cuando ante nuestra vista se presentan objetos, documentos, hechos que lo reviven y esclarecen?

Celedonio Ledesma, tiene 50 años de edad, "chairman" de la junta electoral del precinto número 3 de Tárlac, Tárlac, y *sigue diciendo hasta ahora.* Testificó sobre la autenticidad del censo electoral, exhibit 84, y sobre el hecho de que Calixto Aguinaldo votó en las elecciones que se celebraron el 17 de Septiembre de 1935.

En cuánto al primer punto, este testigo dijo lo siguiente: que él conoce el censo electoral exhibit 84, porque es el censo que él usó en las elecciones del día 17 de septiembre de 1935, como "chairman" de la junta electoral del precinto número 3 de Tárlac, Tárlac; que son suyas las firmas que con el nombre de Celedonio Ledesma aparecen en dicho censo, y que las firmas de los demás inspectores que aparecen en el mismo, fueron estampadas por éstos en presencia de él.

En cuánto al segundo punto, testificó que él conoce a Calixto Aguinaldo hace ya tiempo; que es elector en el precinto número 3 de Tárlac, Tárlac, con número 27 de inscripción en el censo electoral exhibit 84; que él también conoce a Francisco Aguinaldo y es el que aparece inscrito en el precinto número 3 de Tárlac, Tárlac, bajo el número de inscripción 28; que conoce también a Glicerio Tejeiro, y es el elector del mismo precinto registrado bajo el número de inscripción 469 en el censo electoral; que Glicerio Tejeiro ha votado y recibió la balota número 1102; que Calixto Aguinaldo también ha votado entre 7 y 8 de la mañana y recibió la balota número 1106; que *Francisco Aguinaldo no ha votado,* como puede verse en el censo electoral exhibit 84 (que no ha recibido ninguna balota); y que él conoce a Calixto Aguinaldo hace 20 años. El testigo explicó el procedimiento que se ha seguido en dichas elecciones en el precinto 3; él que es el mismo descrito por el inspector Mendoza.

[SE CONTINUARÁ]

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