DISCREPANCY BETWEEN FIGURES AND WORDS IN ELECTION RETURNS

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An interesting question of first impression was recently raised before the Supreme Court in the election case "Manuel Abad Santos, petitioner, vs. Judge Arsenio Santos, of the Court of First Instance of Pampanga, and Rafael S. del Rosario, respondents". G.R. No. L-16375. The question was: when the number of votes received by a candidate written in figures is different from that written in words, may the interested party ask for judicial recounting of votes under Section 163 in relation with Section 168 of the Revised Election Code?

The facts of the case are briefly summarized as follows: In the election held last November 10, 1959, for the office of Municipal Mayor of Angeles, Pampanga, upon completion of the canvass made by the Municipal Board of Canvassers of said municipality, Manuel Abad Santos obtained 6,518 votes while his rival candidate Rafael S. del Rosario obtained 6,517 votes or a plurality of only vote in favor of Abad Santos. Immediately, del Rosario filed with the Court of First Instance of Pampanga a petition for a judicial recounting of the votes cast in Precinct Nos. 4 and 4-A for the office of Municipal Mayor of Angeles, Pampanga, alleging that there was a conflict in the election returns between the number of votes written in letters and the number of votes written in figures received by him. In Precinct No. 4, it appears in the four copies of the election returns that del Rosario received "one hundred five" votes written in words and "145" written in figures, while in Precinct No. 4-A, it appears that he received "one hundred and nine" votes written in words and "169" written in figures. The lower court granted the petition of del Rosario for a judicial recounting of the votes cast in said two precincts. Abad Santos then filed with the Supreme Court a petition for Prohibition with Preliminary Injunction.

The main argument of his lawyer is the following: "The mere discrepancy between the words and the figures in the election return as to the number of votes that a candidate has received is not the discrepancy contemplated in Section 163 in relation to Section 168 of the Revised Election Code. It is the discrepancy in the statements — which gives to a candidate a different number of votes and the difference affects the result of the election. The legislature could not have intended that mere discrepancy between the words and the figures should cause the recounting of the votes to determine the true result of the election, because it could not have ignored the rule of universal application that where the conflict is between words and figures, the words will be given effect (82 C.J.S. 720).

> The general rule of construction is conceded that, where there is a conflict between words and figures, the former prevails; and this concession is in accord with the text-books and decision. *Warder v. Millard*, 8 *Lea.* 581-583; *Payne v. Clark*, 19 *Mo.* 152.
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> Where a difference appears between the words and figures, evidence cannot be received to explain it; but the words in the body of the paper must control; and if there is

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one group, then democracy is in peril of its life.

No matter what the Constitution may say, such a concentration of power can exert well-nigh irresistible pressure on the courts, undermine the rights of the people through repeated encroachments, or wipe them out in one bold sweep against which effective redress shall no longer be found within the framework of the Constitution.

And who shall rise to defend and protect the individual's bill of rights, who shall rise to fight for the supremacy of the Constitution, and how can those who would do so expect the support of the majority of the people when the people, by then, shall have become impassive to the repeated violations and desecrations of the Constitution?

Let us then congratulate ourselves that we still have the inclination and the ability to disagree to expose errors and misdeeds wherever they are found, and to detect and resist any conspiracy to unite and seize political power, and in the end, to call upon the people to restore the balance.

I am reminded of a character in Bernard Shaw's play, *The Devil's Disciple*. A woman reputed to be religious finds her faith shaken when she sees her enemies, whom she considers sinful, succeeding and prospering while she fails, and she upbraids the minister of the gospel with a heart full of regrets for her virture. "Why should we do our duty and keep God's law" she remonstrates, "if there is to be no difference made between us and those who follow their own likings and dislikings and make a jest of us and of their Maker's word?"

I wonder if there are some of us who, like that embittered old woman, believe that we should keep the Constitution and love democracy only in the expectation of material rewards. Can our faith surmount the trial of suffering and resist the temptations of prompt relief in times of distress or ignore the lure of expediency for the attainment of political ends?

What if we were facing a real national emergency? Could we be sure that the majority of our people would not follow the sad examples of desperate and angry nations in the annals of the democratic experiment, and that they will not discard the Constitution to gain a delusive salvation?

Perhaps we believe in the Constitution only because it is the thing to do, because we have learned its provisions by rote in school like arithmetic and spelling and the Lord's Prayer, and not because we sincerely and consciously believe it to be the best and surest guaranty of our chosen way of life.

The Constitution, through which all good things in our democracy have come into being, and without which they could not have come to be, is the light of our nation, but this light cannot illumine those who neither understand it nor love it, because men of little faith, Pharisees and money-changers, generations of vipers, in the angry words of the Lord, have hidden it under the bushel of their hypocrisy and greed.

Let us then bear witness to the Constitution, so that, in the language of the gospels, all the people may learn to believe. If our nation is to survive and attain greatness in freedom the Constitution must live in our actions, both as individuals and as a people, in the enlightened conviction and steadfast belief that only in the spirit of the Constitution, infused in us, shall democracy abide with us and our nation forever enjoy the blessings of independence under a regime of justice and liberty, and fulfill its destiny within the Lord's Kingdom.

Neither in the toils of the day nor in the vigils of the night can the sentinels of the Constitution relax their vigilance. Let us all be wary and stand by our arms, lest, by culpable tolerance or by criminal negligence, our country should in some forbidding future become a desolate Carthage wherein only the naked ruins of our republic shall remain, fallen monuments of the past in whose debris our descendants, by then the forlorn bondsmen of some corrupt despot, shall in vain endeavor to decipher the language of the Constitution, inscribed, as in forgotten hieroglyphs, on the sarcophagus of our dead freedoms.

I

Bienvenido Nera, Petitioner-Appellee, vs. Paulino Garcia, Secretary of Health, and Tranquilino Elicano, Director of Hospitals, Respondents-Appellants, G.R. No. L-18169, Jan. 30, 1960, Montemayor, J.

1. PUBLIC OFFICERS; SUSPENSION OF OFFICER PENDING INVESTIGATION. — Suspension is a preliminary step in an administrative investigation and if after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, he is removed or dismissed. This is the penalty. There is nothing improper in suspending an officer pending his investigation and before the charges against him are heard and he is given an opportunity to prove his innocence. In the case at bar, the suspension of petitioner before he could file his answer to the administrative complaint was not a punishment or penalty for the acts of dishonesty and misconduct in office, but only as a preventive measure.

2. ADMINISTRATIVE LAW; PREVENTIVE SUSPENSION; SECTION 694 OF REVISED ADMINISTRATIVE CODE CONSTRUED. — Under the provision of Section 694 of the Revised Administrative Code, the comma after the words dishonesty and oppression warrants the conclusion that only the phrase "grave misconduct or neglect" is qualified by the words "in the performance of duty" and, therefore, dishonesty and oppression to warrant punishment or dismissal, need not be committed in the course of the performance of duty by the person charged.

3. ID.; ID.; SECTION 34 OF REPUBLIC ACT NO, 2260 CONSTRUED. — Section 34 of Republic Act No. 2260, known as the Civil Service Act of 1959 introduces a change into Section 694 of the Revised Administrative Code by placing a comma after the words "grave misconduct", so that the phrase "in the performance of duty" instead of qualifying "grave misconduct or neglect" as it did in Section 694 of the Revised Administrative Code, now qualifies only the last word "neglect", making clear the legislative intent that to justify suspension, when the person charged is guilty merely of neglect, the same must be in the performance of his duty; but when he is charged with dishonesty, oppression or grave misconduct, these need not have a relation to the performance of duty.

4. ID.; SUSPENSION OF ELECTIVE OFFICERS AND APPOINTIVE OFFICERS OR EMPLOYEE. — An elective officer, elected by popular vote, is directly responsible only to the community that elected him and, ordinarily, is not amenable to rules of official conduct governing appointive officials and may not be forthwith and summarily suspended, unless his conduct and acts of irregularity have some connection with his office. An elective official has a definite term of office, relatively of short duration and since suspension from his office affects and shortens the term of office, said suspension should not be ordered and done unless necessary to prevent further damage or injury to the office and to the people dealing with said officer.

Jose Tomaneng Guerrero, for petitioner-appellee.

Acting Solicitor General Guillermo E. Torres & Solicitor Camilo D. Quiason, for respondents-appellants.

DECISION

Respondents are appealing the decision of the Court of First Instance of Manila, dated October 30, 1957, ordering them to reinstate petitioner Bienvenido Nera to his former position as clerk in the Maternity and Children's Hospital, and to pay him his back salary from the date of his suspension until reinstatement.

The facts in this case are not in dispute. Petitioner Nera, a civil service eligible, was at the time of his suspension, serving as clerk in the Maternity and Childern's Hospital, a government institution under the supervision of the Bureau of Health. In the course of his employment, he served as manager and cashier of the Maternity Employee's Cooperative Association, Inc. As such manager and cahier, he was supposed to have under his control funds of the association. On May 11, 1956, he was charged before the Court of First Instance of Manila with malversation, Criminal Case No. 35447, for allegedly misappropriating the sum of ₱12,636.21 belonging to the association.

Some months after the filing of the criminal case, one Simplicio Balcos, husband of the suspended administrative officer and cashier of the Maternity and Children's Hospital, named Gregoria Balcos, filed an administrative complaint against petitioner Nera, on the basis of the criminal case then pending against him. Acting upon this administrative complaint and on the basis of the information filed in the criminal case, as well as the report of the General Auditing Office to the effect that as a result of its examination of the accounts of Nera as manager and cashier of the association, he was liable in the amount of ₱12,,636.21, the executive officer, Antonio Rodriguez, acting for and in the absence of the Director of Hospitals, required petitioner to explain within seventy-two hours from receipt of the communication, Exhibit D, why he should not be summarily dismissed from the service for acts in-

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difference between printed and written words, the written must control. *Kimball v. Costa*, 104 *Am. St. Rep.* 937, 939.

Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount. *Section* 17 (a), *Negotiable Instruments Law.*

When an instrument consists partly of written words and partly of a printed form and the two are inconsistent, the former controls the latter. *Rule* 123, *Section* 63, *Rules of Court.*

Prudence demands that the recounting of votes be limited to instances where the discrepancies refer to the number of votes appearing in the different copies of the election returns. It should not be applied to a mere discrepancy between the figures and the words in the return; for it is a matter of common knowledge how easy it is to commit mistakes in writing figures. That is why the law requires that the total number of votes polled by each candidate should be written out in the statements in words and in figures (Section 150, Revised Election Code)."

The Supreme Court dismissed the petition "for lack of merits". However, in the case of Parlade et al. vs. Judge Quicho et al., G.R. No. L-16259, December 29, 1959, the Supreme Court in a divided decision (six against five) declared that where there is conflict "in the statement itself, words contradicting figures, there arises *ex necessitate rei* the need of finding, which statement of number should be followed by the Board," and "the law gives the court of first instance power to recount the votes cast in the precinct."

It may be said, therefore, although it is not a settled doctrine, because the Court was almost equally divided — that in case of discrepancy between the figures and the words in the election returns as to the number of votes received by a particular candidate, such discrepancy constitutes a legal ground for the recounting of votes under Section 163 in relation with Section 168 of the Revised Election Code.

volving dishonesty. This period of seventy-two hours was extended to December 20, 1956. Before the expiration of the period as extended, that is, on December 19, 1956, Nera received a communication from respondent Director of Hospitals suspending him from office as clerk of the Maternity and Children's Hospital, effective upon receipt thereof. This suspension carried the approval of respondent Garcia, Secretary of Health.

The petitioner asked the PCAC to intervene on his behalf, which office recommended to respondents the lifting of the suspension of petitioner. Upon failure of respondents to follow said recomendation, petitioner asked respondents for a reconsideration of his suspension, which request was denied. Petitioner then filed the present special civil action of prohibition, certiorari and mandamus to restrain respondents from proceeding with the administrative case against him until after the termination of the criminal case; to annul the order of suspension dated December 19, 1956, and to compel respondents to lift the suspension. After hearing this special civil action, the appealed decision was rendered. The trial court held that petitioner was illegaly suspended, first because the suspension came before he was able to file his answer to the administrative complaint, thereby depriving him "of his right to a fair hearing and an opportunity to present his defense, thus violating the due process clause"; also, that assuming for a moment that petitioner were guilty of malversation or misappropriation of the funds of the association, nevertheless, said irregularity had no connection with his duty as clerk of the Maternity and Children's Hospital.

In connection with the suspension of petitioner before he could file his answer to the administrative complaint, suffice it to say that the suspension was not a punishment or penalty for the act of dishonesty and misconduct in office, but only as a preventive measure. Suspension is a preliminary step in administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and he is given opportunity to prove his innocence.

As to the holding of the trial court about dishonesty or misconduct in office having connection with one's duties and functions in order to warrant punishment, this involves an interpretation of Section 694 of the Revised Administrative Code, which for purposes of reference we reproduce below:

> "SEC. 694. *Removal or suspension.* — No officer or employee in the civil service shall be removed or suspended except for cause as provided by law.
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> "The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation to the charges against such officer or pending an investigation of his bureau or office. With the approval of the proper head of department, the chief of a bureau or office may likewise suspend any subordinate or employee in his bureau or under his authority pending an investigation, *if the charge against such subordinate or employee involves dishonesty, oppression, or grave misconduct or neglect in the performance of duty.*"

It will be observed from the last four lines of the second paragraph that there is a comma after the words dishonesty and oppression, thereby warranting the conclusion that only the phrase "grave misconduct or neglect" is qualified by the words "In the performance of duty". In other words, dishonesty and oppression to warrant punishment or dismissal, need not be committed in the course of the performance of duty by the person charged.

Section 34 of Republic Act No. 2260, known as the Civil Service Act of 1959, which refers to the same subject matter of preventive suspension, throw some light on this seeming ambiguity. We produce said section 34:

> "SEC. 34. *Preventive Suspension.* — The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation of the charges against such officer or pending an investigation of his bureau or office. With the approval of the proper Head of Department, the chief of a bureau or office may likewise preventively suspend any subordinate officer or employee in his bureau or under his authority pending an investigation, if the charge against such officer or employee involves *dishonesty, oppression or grave misconduct, or neglect in the performance of duty,* or if there are strong reasons to believe that the respondent is guilty of charges which would warrant his removal from the service."

It will be noticed that it introduces a small change into Section 694 of the Revised Administrative Code by placing a comma after the words "grave misconduct", so that the phrase "in the performance of duty" instead of qualifying "grave misconduct or neglect", as it did under Section 694 of the Revised Administrative Code, now qualifies only the last word "neglect", thereby making clear the legislative intent that to justify suspension, when the person charged is guilty merely of neglect, the same must be in the performance of his duty; but that when he is charged with dishonesty, oppression or grave misconduct, these have no relation to the performance of duty. This is readily understandable. If a Government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot well tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the Government other than the office where he is employed; and by reason of his office, he enjoys and possess a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. As the Solicitor General well pointed out in his brief, "the private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service."

It may not be amiss to state here that the alleged misappropriation involved in the criminal case is not entirely disconnected with the office of the petitioner. True, the Maternity Employee's Cooperative Association that owns the funds said to have been misappropriated is a private entity. However, as its name implies, it is an association composed of the employees of the Maternity and Children's Hospital where petitioner was serving as an employee. Moreover, if petitioner was designated to and occupied the position of manager and cashier of said association, it was because he was an employee of the Maternity and Children's Hospital. The connection though indirect, and, in the opinion of some, rather remote, exists and is there.

The trial court cites the cases of Mondano vs. Silvosa (G. R. No. L-7708, May 30, 1955), Lacson vs. Roque (G. R. No. L-3081, October 14, 1953), and others to support its holding that an official may not be suspended for irregularities not committed in connection with his office. These cases, however, involve elective officials who stand on ground different from that of an appointive officer or employee, and whose suspension pending an investigation is governed by other laws. Furthermore, an elective officer, elected by popular vote, is directly responsible only to the community that elected him. Ordinarily, he is not amenable to rules of official conduct governing appointive officials, and so, may not be forthwith and summarily suspended, unless his conduct and acts of irregularity have some connection with his office. Furthermore, an elective official has a definite term of office, relatively of short duration; naturally, since suspension from his office definitely affects and shortens this term of office, said suspension

should not be ordered and done unless necessary to prevent further damage or injury to the office and to the people dealing with said officer.

In view of the conclusion that we have arrived at, we deem it unnecessary to discuss and determine the other questions raised in the appeal.

IN VIEW OF THE FOREGOING, the appealed decision is hereby reversed, with costs.

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

II

Dr. Cesar Samson, Petitioner, vs. Hon. Numeriano G. Estenzo, Judge of the Court of First Instance of Leyte, 13th Judicial District, 5th Branch at Ormoc City, and Mrs. Asuncion Conui Omega, Respondents, G. R. No. L-16286, *January* 30, 1960, *Concepcion*, J.

1. ELECTION LAW; DISCREPANCY BETWEEN ELECTION RESULT NOT GROUND FOR RECOUNTING OF VOTES; CASE AT BAR. — Petitioner and respondent were, among others, candidates for councilor of the City of Ormoc in the elections of November 10, 1959. After the canvass, petitioner garnered enough votes to be proclaimed as the eight councilor, with plurality of three votes over his nearest opponent, Mrs. Omega. Respondent then filed with the Court of First Instance a petition to recount the votes in Precinct Nos. 17 and 18 on the ground that the election returns which gave her 68 votes in each precincts were contradicted by the certification of the result of the election incorporated in Form No. 8 of the Commission on Elections, which gave her only 67 and 59 votes respectively. On November 24, 1959, said respondent amended her petition by including Precinct No. 8 on the ground that in the election result certified by the Board of Election Inspectors in the Transcript of Election Returns, only 41 votes were tallied in favor of petitioner but in the election returns, petitioner got 71 votes. The lower court enjoined the Municipal Board of Canvassers from proceeding with the canvass. On November 25, 1959, the lower court issued another order directing the Board of Canvassers to open the ballots boxes for Precincts Nos. 8, 17 and 28 to determine who is the elected candidate for city councilor. The motion for reconsideration having been denied, petitioner brought the present petition. *Held*: Insofar as they direct the Board of Canvassers to open the ballot boxes of Precincts Nos. 8, 17 and 28, the orders are contrary to law. This case does not fall under section 163 of Republic Act No. 180, authorizing the recount of the votes cast in a given precinct when another copy or other authentic copies of the statement from an election precinct submitted to the board gives a candidate a different number of votes and the difference affects the result of the election. The recount so authorized, must be made by the Court of First Instance itself, not by the Board of Canvassers, as ordered by respondent judge and for the sole purpose of determining which is the true statement or the true result of the count of the votes cast in a given precinct and not to determine who is the elected candidate.
2. ID.; DISCREPANCY BETWEEN ELECTION RETURN AND CERTIFICATE OF VOTE NOT GROUND FOR RECOUNTING OF VOTES. — Where the conflict is between the election returns or statements of the count alluded to in section 150 of the Revised Election Code and the certificate mentioned in section 153 thereof, sections 163 and 168 of the Revised Election Code are not applicable (Parlarde et al., vs. Quicho, et al., G. R. No. L116259, Dec. 29, 1959).

DECISION

This is a petition for certiorari and prohibition to enjoin the Judge, Hon. Mariano C. Estenzo, from enforcing its order of December 1, 1959, to open the ballot boxes of Precincts Nos. 8, 17 and 28, of Ormoc City and make a recount of the votes therein cast. The petition, likewise, contained a prayer for a writ of preliminary injunction, which we issued upon the filing of the requisite bond.

Petitioner Dr. Cesar Samson and respondent herein, Mrs. Asuncion Conui Omega, were, among other, candidates for councilor of the City of Ormoc in the general elections held on November 10, 1959. After a canvass by the City Board of Canvassers of the votes then cast, it appeared, on November 23, 1959, that Samson had garnered enough votes to be proclaimed as the last of the eight (8) conucilors elected to the city council, with a plurality of three (3) votes over his nearest opponent, said Mrs. Conui Omega. However, on the same date the latter filed with the aforementioned Court of First Instance a petition for the recounting of the votes cast in Precincts Nos. 17 and 28 of said city, upon the ground that the election returns therefor, which gave her 68 votes in each precinct, were contradicted by the certification of the result of the election therein, incorporated in Form No. 8 of the Commission on Elections, according to which she got only 67 and 59 votes, respectively. On November 24 Mrs. Omega amended her petition by including in her request for recount the ballot box of Precinct No. 8 of Ormoc City, upon the ground that, in said precinct, "the x x x election result certified by the Board of Election Inspectors in the Transcript of Election Returns (Elec-see form) submitted to and as gathered by the 39th PC Company, Ormoc City, which is duly deputized agency of the Commission on Elections, only 41 votes were tallied in favor of Dr. Cesar Samson", whereas "the same Board of Election Inspectors x x x in another statement (referring to the election returns), "certified that the same candidate Dr. Cesar Samson got 71 votes". Upon the filing of said amended petition, the Court of First Instance issued an order enjoining the Municipal Board of Canvassers "from further proceeding with the canvass" until further orders, and, relying upon sections 163 and 168 of the Revised Election Code, the court issued on November 25, 1959, another order the depositive part of which reads:

> "The Board of Canvassers is hereby directed to open the ballot boxes for precinct Nos. 8, 17 and 28 so that they may proceed to recount the votes of Dr. Samson and Mrs. Omega for the sole purpose of determining who is the elected candidate for city councilor.
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> "Taking into account the fact that there are ten members of the Board of Canvassers, the members of the Board of Canvassers are hereby directed to divide themselves into three divisions so that each division of three may take care in the counting of votes in every precinct and the Chairman will act as the supervisor. Dr. Samson and Mrs. Asuncion C. Omega may appoint watchers with one watcher for each said party for every division. The counting shall take place immediately before this Court."

A reconsideration of this order was denied by another order bearing the same date, which, likewise, stated that:

> "Taking into account that tommorrow is a special public holiday and there is no probability that the said keys will arrive Ormoc City on that day, the said members of the Board of Canvassers are hereby notified that the ballot for precincts Nos. 8, 17 and 28 will be opened before this Court on *November 27, 1959*, at 7:30 A.M., with notice to all the members of the Board of Canvassers, as well as to Attorneys Benjamin Tugonon, Mendola, Teleron and Brocoy, in open court."

A motion for reconsideration of the latter order having had the sense fate, Dr. Samson instituted the present case, for the purpose adverted to above.

At the outset, it is clear that, insofar as they direct the Board of Canvassers to open the ballot boxes of Precincts Nos. 8, 17 and 28, the orders complained of are contrary to law. Respondents herein seem to have acted under the impression that this case falls under section 168, in relation to section 163, of Republic Act No. 180, authorizing the recount of the vote cast in a given precinct when "another copy of other authentic copies of the statement from an election precinct submitted to the board gives a candidate a different number of votes and the difference affects

the result of the election x x x". However, the recount so authorized, must be made by "the Court of First Instance" itself, not by the *Board of Canvassers*, as ordered by the respondent Judge. Moreover, said recount is authorized "for the sole purpose of determining", not "who is the elected candidate" as stated in the first order of respondent Judge, dated November 25, 1959, but *"which is the true statement* or which is the true result of the count of the votes cast" in the precincts in question.

Again the alleged conflicts in the case at bar exist between the election returns, or statements of the count alluded to in section 150 of said Act, on the one hand, and the certificate mentioned in section 153 thereof, on the other, and we have already held in Jose Parlade, et al. vs. Perfecto Quicho, et al., G.R. No. L-16259 (December 29, 1959) that the aforementioned sections 163 and 168 are inapplicable to such situation.

WHEREFORE, the orders complained of are set aside and the writ of preliminary injunction issued herein is hereby made permanent, with cost against respondent Mrs. Asuncion Conui Omega.

IT IS SO ORDERED.

Bengzon, Padilla, Labrador, J.B.L. Reyes and Barrera, JJ., concurred.

Paras, C.J., Bautista Angelo Endencia and Gutierrez David, JJ., reserved their votes.

III

Ildefonso D. Yap and Philippine Harvardian College, Petitioners-appellant, vs. Daniel M. Salcedo, in his private capacity and as Director of the Bureau of Private Schools, Respondent-appellee, G. R. No. L-13920, *December* 24, 1959, *Labrador, J.*

1. ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; CASE AT BAR.—Petitioner-appellant acquired the Mindanao Academy on May 10, 1954. On December 19, 1959, petitioner sent a letter to the respondent-appellee requesting that he be furnished true copies of the records of each of four students. In answer, respondent suggested that said records be secured from the former owners of the academy. Petitioner insisted upon his request, threatening to file charges against respondent if he fails to furnish the records within 96 hours. This second letter was coursed through the Secretary of Public Education. Respondent did not heed the demand. Petitioner brought an action in the Court of First Instance of Manila to compel respondent to furnish him with true copies of the transcript of records of four students. Said court denied the petition on the grounds among others, that no appeal has been made by petitioner to the Secretary of Education which is a more speedy and adequate remedy. Petitioner appealed. *Held*: The court below correctly denied the petition for failure of petitioner-appellant to exhaust the administrative remedy, most speedy and adequate, of appealing the refusal of the respondent appellee to his immediate superior, the Secretary of Education, in accordance with the principle of exhaustion of administrative remedies. The remedy most appropriate and speedy available to petitioner was an appeal to the Secretary of Education in whose discretion the enforcement or non-enforcement of the instructions being carried out by respondent-appellee lies.

Saviniano Balagtas, for petitioner-appellant.

Acting Solicitor General Guillermo E. Torres & Sol Jorge R. Coquia, for respondent-appellee.

DECISION

Appeal from the judgment of the Court of First Instance of Manila, denying a petition of petitioner-appellant for the issuance of a writ of mandamus against respondent-appellee, in his capacity as Director of the Bureau of Public Schools, to compel him to furnish petitioner-appellant with true copies of the transcript of records of four students of the defunct Mindanao Academy, Oroquieta, Misamis Occidental.

Petitioner-appellant acquired the Mindanao Academy on May 10, 1954. On December 19, 1956, he sent a letter to the respondent-appellee requesting that he be furnished true copies of the records of each of four students. In answer respondent suggested that said records be secured from the former owners of the academy. Upon receipt of this denial petitioner insisted upon his request, explaining that the records of the former school were in a disorder topsy-turvey condition, threatening to file charges against respondent if he fails to furnish the records requested within 96 hours, etc. This second letter was coursed through the Secretary of Public Education. The respondent did not heed the demand and threat, explaining that it is not the policy of his Bureau to issue copies of its records to schools, unless the latter have suffered a calamity that has caused loss of its records; that his office, upon orders of the Secretary, is checking records of public school teachers who are claiming adjustment of their salaries, and the issuance of copies might nullify the work of investigation; and that until his office has completed the investigation of the records in question and is convinced that they are authentic, no true copies could be used.

Thereupon, petitioner brought the action in the Court of First Instance of Manila. This court denied the petition on three grounds: (1) that no appeal has been made by petitioner-appellant to the Secretary of Education, which is a more speedy and adequate remedy; (2) that there is no specific legal duty on the part of respondent to issue the copies demanded; and (3) no evidence was submitted that the records in question can not be obtained.

We hold that the court below correctly denied the petition for failure of petitioner-appellant to exhaust the administrative remedy, most speedy and adequate, of appealing the refusal of the respondent-appellant to his immediate superior, the Secretary of Education, in accordance with the principle of exhaustion of administrative remedies enunciated by this Court in a great number of cases. (Lamb vs. Phipps, 22 Phil. 456; Miguel vs. Vda. de Reyes, G. R. No. L-4851, July 31, 1953; Wee Poco vs. Posadas, 64 Phil. 640; Lucas vs. Burian, G. R. No. L-7886, September 23, 1957; Harry Lyons, Inc., vs. U. S. A., G. R. No. L-11786, Sept. 26, 1958)

The applicability of the principle above mentioned becomes imperative if we take into account that the petitioner-appellant had been expressly advised by letter of respondent-appellee that the Secretary of Education had given instructions for the checking of the records of public school teachers who are claiming adjustment of their salaries in accordance with the provisions of Republic Act No. 842, which instructions might fail on enforcement if records of teachers in respondent's office are divulged. (Petitioner-appellant's brief, pp. 7-8). Under these circumstances, it is evident that the remedy most appropriate and speedy available to petitioner was an appeal to the Secretary of Education in whose discretion the enforcement of the instructions being carried out by respondent-appellee clearly lies. In passing, it may be illuminating to recall the fact, of which we may take judicial notice, that upon enactment of Republic Act No. 842, which standardized the salaries of public school teachers according to their degrees, a mad scramble for degrees ensued among teachers, giving rise to the indiscriminate issuance of diplomas by private schools, which in turn resulted in the "diploma mill" scandals then subject of investigation.

Without considering the other grounds given by the court *a quo* for denying the petition, we hold that under the particular circumstances of the present case said denial is fully justified. Coursing of the communication or request through the Secretary of Education can not be considered as an appeal to this official.

The decision subject of appeal is hereby affirmed, with costs against petitioner-appellant.

SO ORDERED.

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

IV

Gabina Perez, et al., Plaintiffs-Appellees, vs. Jose C. Zulueta, Defendant-Appellant, G. R. No. L-10374, *September* 30, 1959, *Bengzon, J.*

CIVIL LAW; ARTICLE 1606 NEW CIVIL CODE CONSTRUED. — Article 1606 of the New Civil Code which gives the vendor *a retro* "the right to repurchase within thirty days from the time final judgment was rendered in a civil action, on the basis that the contract was a true sale with the right to repurchase" means that after the courts have decided by a final or executory judgment that the contract was *a pacto de retro* and not a mortgage, the vendor may still have the privilege of repurchasing within 30 days.

DECISION

Appeal from an order requiring defendant to permit plaintiffs to repurchase their land.

Omitting reference to procedural details, the facts material to the principal issue may be briefly stated as follows:

On December 27, 1950 Magtangol P. Pedro and others (hereafter named plaintiffs) executed a deed whereby for the sum of ₱10,000.00 they sold a parcel of land in Quezon City. (Transfer Certificate of Title 8762) to Jose C. Zulueta (hereafter named defendant), subject to their right to repurchase within one year. As the vendors failed to repurchase, defendant took steps to consolidate his title to the land in January 1952. This gave rise to a suit (Q-344) in the Quezon City court of first instance wherein the vendors (plaintiffs) alleging the contract to be a mortgage disguised as *pacto de retro*, asked for a declaration to that effect plus other appropriate remedies. Defendant asserted the contract was a true *pacto de retro* sale. Such court, after hearing, gave judgment for plaintiffs, holding the contract to be a mortgage. But on appeal, the Court of Appeals in its decision of May 13, 1955, reversed and held the contract to be a true *pacto de retro* sale; however, it added "without prejudice to plaintiffs' (vendors) right to make the repurchase in accordance with x x x paragraph 3 of Art. 1606 of the New Civivl Code". The plaintiffs applied to this Court for review on certiorari, but their petition was denied by our resolution of June 29, 1955. At no time did they move to reconsider.

On August 2, 1955, defendant renewed his efforts to consolidate his title by filing a petition in the Quezon Court alleging that the plaintiffs had failed to exercise their reserved right to repurchase within thirty days. But on August 9, 1955, the plaintiffs opposed the claims, maintaining that the 30-day period had not yet elapsed. Thereafter by letter of August 10, 1955, they demanded from defendant the reconveyance of the property, offering to repay the price; and upon his refusal, they filed in court (in Q-344) Aug. 13, 1955, a petition that he be required to reconvey. (Thereafter, they judicially deposited the money.) This petition was, after hearing, granted by Hon. Hermogenes Caluag, Judge, by order, the dispositive part of which reads as follows:

> "x x x Mr. Jose Zulueta is hereby ordered to execute a deed of reconveyance over the parcel of land covered by Transfer Certificate of of Title No. 8762 in favor of the petitioners Gavina Perez, et al., within five days from receipt of a copy of this order and upon compliance therewith he may withdraw the amount of ₱10,000.00 deposited with the court. In the event that Mr. Zulueta fails or refuses to execute the said deed of reconveyance within the period above stated, the Clerk of Court is ordered to hold the amount ₱10,000.00 subject to the disposition of the said Mr. Zulueta, and the Register of Deeds of Quezon City is hereby ordered to cancel the annotation of encumbrances made and appearing on Transfer Certificate of Title No. 8762."
>
> Hence this appeal by defendant Zulueta.

The New Civil Code, Art. 1606, gives the vendor a retro "the right to repurchase within thirty days from the time final judgment was rendered in a civil action, on basis that the contract was a true sale with the right to repurchase." This is admittedly the right reserved to the plaintiffs (Pedro and others) in the decision of the Court of Appeals.

The main issue concerns the counting of such 30-day period. Defendant says it should start from June 24, 1955, when this Supreme Court upheld by resolution, the appellate court's decision whereas plaintiffs contend, "the period commenced to run only on July 15, 1955, after the day the resolution of June 24 became final.

Defendant counters that the resolution of the Supreme Court was a "final judgment", rendered on June 24, 1953. And he quotes several provisions of the Rules of Court about "final judgment" being one that disposes of the issues completely was distinguished from interlocutory judgment. We also quotes decisions saying that a judgment is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the trial court.(1) On the contrary, the plaintiffs maintain, final judgment means a judgment which has become final or executory, one which is conclusive and binding, and in that light, the judgment (Supreme Court) became final only on July 14, because up to that time a motion to reconsider could be entertained.

The authorities say that in determining whether a judgment is "final", no hard and fast definition or test can be given since finality depends somewhat on the purpose for which the judgment is being considered (Corpus Juris Secundum, Vol. 49, p. 35). "Final" may mean one thing on an issue of conclusiveness or binding effect. For the purpose of appeal, final judgment is what herein defendants understands and maintains. On the other hand, a judgment will be deemed final or executory "only after expiration of the time allowed by law for appeal therefrom, or, when appeal is perfected, after the judgment is upheld in the appellate court." (Corpus Juris Secundum, Vol. 49, p. 39.)

In the latter sense, we declared in De los Reyes v. de Villa, 48 Phil. 227, that final decision means a decision which has become final and non-appealable.

Now then, in what sense did the New Civil Code use "final judgment" in Art. 1606? Articles 1548 and 1557 of the same Code provide that eviction takes place whenever by, 'a final judgment" x x x the vendee is deprived of the whole or of a part of the thing purchased; and the warranty of eviction can not be enforced until "a final judgment" has been rendered whereby the vendee loses the thing acquired or a part thereof.

Manresa believes and holds that final judgment in those articles imply a judgment that has become final and executory.(2) And "sentencia firme" in Spanish (that is the word in Arts. 1475 and 1480 of the Civil Code(3)) refer to binding, conclusive judgment.(4) Needless to add, if in previous articles "final judgment" signify a *judgment that has become final*, it should have the same meaning in subsequent articles in the same Code.

But let us test defendant's theory a little further. From his standpoint, if the Quezon court of first instance had declared the contract to be a *pacto de retro*, the 30-day period would begin from the promulgation of the judgment there, because such judgment was "final" (appealable) not interlocutory. If such were the correct view, Art. 1660 would place the vendors in the difficult position of having to decide either to appeal within 30 days or to repurchase. The framers of the Code could not have had such intention. They could not have meant to give the vendor the privilege to repurchase *in exchange for his right to* bring the mat-

(1) See Insular Gov't v. Roman Catholic Bishop, 17 Phil. 487 Mejia v. Alimorong, 4 Phil. 372; Monteverde v. Jaranilla, 60 Phil. 297, etc.

(2) Cuando la sentencia quede firme, esto es, cuando x x x no quepa contra ella recurse alguno ordinario el extraordinario (Manresa, Comments on Art. 1475, Civil Code, Vol. 10, p. 166-4th Ed.)

(3) The sources of Arts. 1548 and 1557, New Civil Code.

(4) *Sentencia Firme.* — La sentencia que adquiere la fuerza de las definitivas por no haberse utilizado por las partes litigantes recurso alguno contra ella dentro de los terminos y plazos legales concedidos el efecto. (Enciclopedia Juridica Española)

ter before a higher court. The litigant who alleged he was a mere mortgagor might not agree to the court's finding that he was a vendor, and might insist that he was a mere mortgagor before a higher court. Until that tribunal decides against him, he is not duty bound to consider himself a vendor.(5)

Again, in consonance with his position on the meaning of final judgment, herein defendant could as well claim that the Court of Appeals' decision was a final judgment (a determination of all the issues in the action — not interlocutory) and that the 30-day period began on May 14, 1955. He does not now advance such claim. Why? Because he knows such decision of the Court of Appeals was not final, definitive, and obligatory. And he could not very well argue that the vendors were "obliged" to repurchase in accordance with such decision, when precisely they were mortgagors — not vendors.

Presuming then that the lawmaking body intended right and justice to prevail(6) we hold that Art. 1606 means; after the courts have decided by a final or executory judgment that the contract was a *pacto de retro* and not a mortgage, the vendor (whose claim as mortgagor had definitely been rejected) may still have the privilege of repurchasing within 30-days.(7)

As a matter of fact, American courts hvae held that although "final" is often used with "judgment" to distinguish it from interlocutory judgment, "final judgment" is also used to describe a determination effective to exclude further proceedings in the same cause by appeal or otherwise, particularly where time within which to act is limited to run "from final judgment."(8)

It is, therefore, our opinion on this phase of the litigation, that the 30-day period within which the vendors (plaintiffs) could exercise their right to repurchase started to run on July 15, 1955, when the resolution of this Court upholding the decision of the Court of Appeals became final.

A secondary issue is raised as to the vendor's efforts to repurchase. Defendant says the letter of August 10, 1955, offering the money was not sufficient since it was not sincere, inasmuch as the money was only deposited in court in November 11, 1955, a long time after the 30-day period. Little need be said on this point except to declare that in the circumstances, the right was exercised in due time, deposit of money being unnecessary, according to Rosales v .Reyes, 25 Phil. 495, and Cruz v. Resurreccion, 53 Of. Gaz. 5198, particularly because defendant had declared the time to repurchase had passed, thereby impliedly declining to accept any redemption money.(9)

Wherefore, the appealed order is affirmed *in toto* with costs against appellant. This is subject, however, to our resolution of April 7, 1958, ordering the substitution of plaintiffs-appellees by Corazon L. Villanueva.

Padilla Montemayor, Labrador, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concurred.

V

Florentino Joya, Juan Tahimic, and Domingo Joya, Petitioners, vs. Pedro Pareja, Respondent, G. R. No. L-13258, November 28, 1959, Barrera, J.

1. AGRICULTURAL TENANCY ACT; SECTION 9 OF REPUBLIC ACT NO. 1199, AS AMENDED BY SECTION 3 OF REPUBLIC ACT NO. 2263 CONSTRUED. — Under Section 9 of Republic Act No. 1199, as amended by Section 3 of Republic Act No. 2263, a tenant of a lessee retains the right to work on the land despite the termination of the lease, or said in other words, whether his being a tenant of the lessee, makes him a tenant of the lessor upon the expiration of the contract.
2. ID.; ID. — It is clear from Section 9 of Republic Act No. 1199, as amended by Section 3 of Republic Act No. 2263 that tenancy relationship is not extinguished by (1) the expiration of the contract of tenancy; (2) sale; (3) alienation; or (4) transfer of legal possession of the land.
3. CIVIL LAW; LEASE. — In a contract of lease, the lessee, for the duration of the contract, acquires legal possession and control of the property subject of the agreement.
4. AGRICULTURAL TENANCY ACT; EFFECT OF ENACTMENT OF REPUBLIC ACT NO. 2263 ON TENURE OF TENANT. — Prior to the enactment of Republic Act No. 2263, amending Republic Act No. 1199, our tenancy legislations, while providing for the tenant's right in cases of sale or alienation of the property, is silent where there is only a transfer of legal possession of the land. With the amendment of the Agricultural Tenancy Act (Rep. Act No. 1199) on June 19, 1959, the tenure of the tenant in the land he is cultivating was secured even in cases of transfers of legal possession.

Placido C. Ramos, for petitioners.
Jesus M. Dator, for respondent.

DECISION

Florentino Joya is the owner of a parcel of land with an area of 11 hectares (lot No. 1171), situated in Sanja Mayor, Tanza, Cavite, which had been under lease to one Maximina Bondad for 16 years. For the duration of said period, the land was tenanted and worked on for the lessee by Pedro Pareja.

In April, 1954, upon termination of the lease agreement, the property was returned to the landowner, with the lessee recommending that the same be leased to Pareja. The said tenant and the landowner, however, failed to agree on the terms under which the former could work on the land, specifically on the matter of rental, as Joya demanded 120 cavanes as annual rental therefor. Notwithstanding such lack of understanding between them, Pareja continued on his cultivation of the property.

On May 24, 1954, the tenant filed with the Court of Industrial Relations (before the creation of the Court of Agrarian Relations) Tenancy Case No. 528I-R against Florentino Joya for the purpose of securing a reduction of the rental allegedly being imposed upon him by the respondent. The landowner resisted the complaint disclaiming that Pareja had ever been his tenant.

Two days thereafter or on May 26, Florentino Joya leased the land to Domingo Joya at an annual rent of 120 cavanes. As the aforesaid lessee found Pareja already working on the land, the former agreed to allow him (Pareja) to continue with his cultivation on condition that they would equally share its produce after deducting the rental for the land. In view of this development, Pareja moved for the dismissal of his complaint against the landowner, then pending in the Court of Industrial Relations, on the ground that the parties therein had already reached an agreement on the matter in controversy.

One year later, or on April 10, 1955, Florentino Joya renewed the lease in favor of Domingo Joya but included as co-lessee one Juan Tahimic. The rent was reduced to 105 cavanes a year. Pareja, with whom Domingo had worked during the previous year, refused to surrender the land to Tahimic. Thereupon, Florentino filed with the Justice of the Peace Court of Tanza, Cavite, a complaint for usurpation against Pareja who, consequently, was arrested and stayed in jail for a week. When finally released on bail, Pareja filed a counter-charge with the Office of the Provincial Fiscal, against Florentino Joya, Juan Tahimic, and Domingo Joya, for alleged violation of Republic Act 1199. However, threatened to be imprisoned again or fined in the usurp-

(5) Cf. Fernandez v. Suplido, G.R. L-5977, Feb. 17, 1955.
(6) Art. 10, New Civil Code.
(7) Cf. Ayson v. Court of Appeals, G.R. L-6501, May 31, 1955.
(8) Northwestern Wisconsin Electric Co. v. Public Service Commission, 2488 Wis. 479; 2 N.W. 2nd. 472; Dignowity v. Court of Civil Appeals, 110 Tex. 613; 210 S.W. 505; 223 S.W. 165; Wolfer v. Hurst, 47 Or. 156; 80 Pac. 419; 82 Pac. 20, and cases cited therein.
(9) Gonzaga v. Go, 69 Phil. 678.

ation case if he did not desist and surrender the land, he withdrew his complaint manifesting that he was surrendering the property to its owner but "leaving to the Court of Industrial Relations or Agrarian Court the determination of whatever right he may have in the said land." Thereafter, at the instance of Florentino Joya, the criminal case for usurpation was also dismissed.

On January 31, 1956, Pareja filed in the Court of Agrarian Relations a complaint against Florentino Joya and Juan Tahimic for alleged violation of Republic Act 1199 (Tenancy Case No. CAR-6, Cavite), consisting of his allegedly unlawful ejectment from the land he was working on for 16 years and the appointment by Florentino Joya of his co-defendant Juan Tahimic as tenant in his (Pareja's) stead; of the landowner's filing a criminal action when he refused to vacate the property and making it a contention for its dismissal his (Pareja's) surrender of the same. And contending that he unwillingly vacated the land for fear of being again indicted in court, Pareja prayed for his reinstatement to the landholding; payment to him of his share of the crops for the agricultural year 1955-56 which he failed to receive; for damages and attorney's fees.

In their answer with counterclaim, defendants Florentino and Juan denied the existence of tenancy relationship betwee plaintiff and defendant Florentino; and claimed that the complaint stated no cause of action and that the case had already been passed upon by competent authorities (apparently referring to the dismissal by the Court of Industrial Relations and the Provincial Fiscal's Office of the previous complaints of Pareja against the same defendants) Domingo Joya also filed an answer in intervention praying for the recognition of his and Tahimic's superior right to work on and cultivate the land.

After the hearing, the Court rendered judgment holding that upon termination of the civil lease in favor of Maximina Bondad, Pedro Pareja, the lessee's tenant, automatically became the tenant of the landowner, pursuant to Section 26-4 of Act 4054; that said tenant, on the other hand, in agreeing to share equally with Domingo Joya the produce of the land for the agricultural year 1954-55 in effect waived his right over an undetermined 1/2 of the landholding; that the subsequent contract of lease entered into between the landowner and Domingo Joya and Juan Tahimic as lessee should not prejudice the right of Pareja to work on the same land and, accordingly, was declared valid only insofar as that portion given up by the latter in favor of Domingo Joya was concerned. Consequently, Pedro Pareja was ordered reinstated to 1/2 of the 11-hectare landholding, while Domingo Joya and Juan Tahimic were recognized as joint tenants over the other half. As the rental for the lease of the land was fixed at 53.75 cavanes per agricultural year after taking into consideration its nature and productivity, the court also directed Florentino Joya to return to plaintiff Pareja and intervenor Domingo Joya 21.25 cavanes of palay or their value, which were overpaid to him (the landowner) for the agricultural year 1954-55; and to Domingo Joya and Juan Tahimic 55 cavanes or their corresponding value which were overpaid to him for the years 1955-56 and 1956-57. The court, however, finding that plaintiff's failure to continue on the cultivation of the land and its return to the owner could not be imputed to the latter, exonerated Florentino Joya from the charge of violation of Republic Act 1199. Not satisfied with this decision, therein defendants and intervenor filed this petition for review.

Admittedly, the respondent-tenant cultivated the land for the lessee for 16 years or for the entire duration of the lease agreement. There is no controversy either that tenancy relationship existed between Maximina Bondad, the lessee, and Pareja, the tenant. The question now interposed in this petition is whether the tenant of a lessee retains the right to work on the land despite the termination of the lease, or said in other words, whether his being a tenant of the lessee makes him, upon the expiration of the contract, a tenant of the lessor.

The question thus presented must be answered in the affirmative not so much because of Act 4054 relied upon by the Agrarian Court, but pursuant to Section 9 of Republic Act 1199, as amended by Section 3 of Republic Act 2263, which reads in part:

"SEC. 9. *Severance of Relations.*—The tenancy relationship is extinguished by the voluntary surrender or abandonment of the land by, or the death or incapacity of, the tenant:

x x x.

The expiration of the period of the contract as fixed by the parties, or the sale, alienation or transfer of *legal possession of the land does not of itself extinguish the relationship. In the latter case,* the purchaser *or transferee shall assume the rights and obligations of the former landholder in relation to the tenant.* In case of death of the landholder, his heir or heirs shall likewise assume his rights and obligations." (Emphasis supplied.)

It is clear from the foregoing that tenancy relationship is not extinguished by (1) the expiration of the contract (of tenancy); (2) sale; (3) alienation; or (4) transfer of legal possession of the land.

In a contract of lease, the lessee, for the duration of the contract, acquires legal possession and control of the property subject of the agreement.[1] The return by the lessee of the property to the lessor, upon expiration of the lease contract, naturally involves again a transfer of possession from one lawful holder to another. But it may be asked, is this transfer of possession included in or comprehended by the aforequoted Section 9 of Republic Act 1199, as amended?

Prior to the enactment of Republic Act 2263, amending Republic Act 1199, our tenancy legislations, while providing for the tenant's right in cases of sale of alienation of the property, is silent where there is only a transfer of legal possession of the land. With the amendment of the Agricultural Tenancy Act (Rep. Act 1199) on June 19, 1959, the tenure of the tenant in the land he is cultivating was secured even in cases of transfers of legal possession. Petitioner-landowner, however, claims that to hold that the lessee's tenant, with whom he had no dealing whatsoever, automatically becomes his tenant upon the return of the property to him would constitute a restraint on his right to enter into contract and deprive him of his liberty (to contract) and property without due process of law.

The same contention was raised during the deliberations of the then Senate Bill No. 119, but Congress, decided to implement its policy and objective in adopting the Agricultural Tenancy Law and passed the bill in its present form. The following is quoted from the Congressional Record:

"SENATOR PRIMICIAS. On the severance of relationships of tenant and landowner, it seems that there is an intention on the part of Your Honor to amend Section 9 of the Act so as to include the transfer of legal possession of land in one or two cases which do not extinguish the relationship. x x x.

"SENATOR PELAEZ. I would say that this afternoon, in the Committee on Revision of Laws, we were considering amendments to the effect that the present tenants must have the priority right, and I think we should give priority to those tenants who are there and that *any transfer* of lands should not affect them the least.

x x x

"SENATOR PRIMICIAS. x x x. Does Your Honor think that the landowner is not entitled to transfer the lease to another person even if the price is better?

"SENATOR PELAEZ. Under the present law, he cannot do it.

"SENATOR PRIMICIAS. Would that not constitute a deprivation of property without due process of law?

[1] Tolentino v. Gonzales Sy Chiam, 50 Phil. 558.

"SENATOR PELAEZ. It is deprivation of property without due process of law. It is in the present law. But we have to remember here social values and human values against material values. Precisely, the agricultural tenancy act remedied an existing evil because before the agricultural tenancy act provided for security of these poor tenants, they were pushed out of the land by the landlords. x x x." (Senate Congressional Record, Vol. I, No. 54, April 21, 1958, p. 905-906.)

It is our considered judgment, since the return by the lessee of the leased property to the lessor upon the expiration of the contract involves also a transfer of legal possession, and taking into account the manifest intent of the lawmaking body in amending the law, i.e., to provide the tenant with security of tenure in all cases of transfer of legal possession, that the instant case falls within and is governed by the provisions of Section 9 of Republic Act 1199, as amended by Republic Act No. 2263.[2] The termination of the lease, therefore, did not divest the tenant of the right to remain and continue on his cultivation of the land. Furthermore, should any doubt exist as to the applicability of the aforementioned provision of law to the case at bar, such doubt must be resolved in favor of the tenant.[3]

Petitioner landowner likewise assails the legality of the judgment of the court a quo prescribing the rental that must be paid by the tenants, it being claimed that such question was never raised in the pleadings filed in said court. This is not exactly the case, because it must be remembered that the main reason for the refusal of the landowner to let petitioner continue in the cultivation of the landholding in 1954 was precisely the question of the rental to be paid, the tenant claiming that the 120 cavanes being asked by the landowner was excessive. This, therefore, is a matter of dispute between the parties and the action taken by the Agrarian Court is sanctioned by Section 11 of Republic Act No. 1267 which provides:

> SEC. 11. *Character of Order or Decision.* — In issuing an order or decision, the Court shall not be restricted to the specific relief claimed or demands made by the parties to the dispute, but may include in the order or decision any matter or determination which may be deemed necessary and expedient for the purpose of settling the dispute or of *preventing further disputes*, provided that said matter for determination has been established by competent evidence during the hearing.

Contrary to petitioners' contention that no proof was adduced during the trial to support the lower court's finding that the landholding has an average annual yield of 215 cavanes, we have the testimony of Florentino Joya himself that "the land normally produces more than 300 cavanes per year" (pp. 207 and 225, Records). There is also the statement of Pareja that in 1954-55, he harvested 133 cavanes, in spite of poor crop. (p. 45, Record.) Hence, we find no reason to disturb the finding of fact of the lower court.

Petitioners also allege that the tenant voluntarily surrendered the property to the landowner, as evidenced by an affidavit executed by Pareja on July 16, 1955 and subscribed before the Justice of the Peace of Tanza, Cavite, the translation of which reads:

> "I, PEDRO PAREJA, of legal age, and residing in the municipality of Tanza, Cavite, under oath, state the following:
>
> "That in accordance with what I have declared before the Provincial Fiscal of Cavite during the investigation (July 6, 1955), I will not interfere with or continue the cultivation in the land of Mr. Florentino Joya in Balite, Tanza, Cavite, Lot No. 1171, and which I am voluntarily returning to him, nevertheless I am leaving to the C.I.R. or Agrarian petitioner's fear — after his incarceration was ordered by the Court the determination of whatever right I may have in said land.
>
> "IN WITNESS WHEREOF, I hereby sign this document, in the Municipal building of Tanza, Cavite, this 16th day of July, 1955.
>
> (Sgd.) PEDRO PAREJA"

This statement notwithstanding, the lower court found that Justice of the Peace — was such that his freedom of choice was impaired, or at least restricted. Under such circumstances, he was not acting voluntarily."

This conclusion is fully supported by the record of the case. The explanation of the tenant is sufficiently borne out by the circumstances attending the execution of the document. At the time he made the statement both in the office of the Provincial Fiscal and the Justice of the Peace of Tanza (who ordered his previous arrest), petitioner Florentina Joya was in attendance. The criminal acion filed by Florentino against him was then pending in the justice of the peace court. The fact that immediately after the execution of the affidavit the landowner moved for the dismissal of the aforementioned criminal case corroborates Pareja's testimony that he had to do as he did out of fear of further harrassment.

Significantly too, it may be observed from a reading of the document that the affiant did not turn over the property to the owner unconditionally. On the contrary, he made a reservation of his right to secure from the proper court a judicial declaration of whatever interest he may have in the land. This indeed contradicts the supposed "voluntariness" of the tenant's act in giving up the land.

With respect to the charge that a portion of the land was utilized by the tenant as a "tilapia" fish pond, we agree with the lower court that there is no evidence that it resulted in material injury to the land (Sec. 51, Rep. Act 1199). The uncontradicted testimony is that the fishpond was made on requirement of the Bureau of Agricultural Extension that every farmer in that vicinity should have a small fishpond, and that this particular fishpond was on the portion ("balot") not used for planting rice (pp. 81-82, Record.)

WHEREFORE, finding no reason to review the decision appealed from, the same is hereby affirmed, with costs against petitioner Florentino Joya.

SO ORDERED.

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

Concepcion, J., on leave, took no part.

VI

Juan Palacios, Petitioner-Appellant, vs. Maria Catimbang Palacios, Oppositor-Appellee, G. R. No. L-12207, December 24, 1959, Bautista Angelo J.

1. CIVIL LAW; WILLS; PROBATE OF WILL DURING LIFETIME OF TESTATOR;- CASE AT BAR. — Petitioner-appellant executed his last will and testament on June 25, 1946, and on May 23, 1956 filed a petition for its approval before the Court of First Instance. In said will, he instituted as his sole heirs his natural children Antonio C. Palacios and Andrea C. Palacios. On June 21, 1956, oppositor-appellee filed an opposition to the probate of the will, claiming that she is the acknowledged natural daughter of petitioner but that she was ignored in said will, thus impairing her legitime. On July 6, 1956, the Court issued an order admitting the will to probate. However, the Court set a date for the hearing of the opposition relative to the intrinsic validity of the will. After hearing, the Court issued another order declaring oppositor to be the natural child of petitioner and annulled the will insofar as it impairs her legitime. Hence this appeal of

[2] See Section 22, Republic Act 2263, which provides:
> "SEC. 22. The provisions of this Act shall be applicable to all cases pending in any Court at the time of the approval of this Act."

[3] Section 56, Republic Act 1199, as amended.

petitioner. Held: The trial court erred in entertaining the opposition and in annulling the portion of the will which allegedly impairs the legitime of the oppositor on the ground that she is an acknowledged natural daughter of the testator. This is an extraneous matter which should be threshed out in a separate action.

2. ID; ID; ID; ID. — In the case at bar, such opposition cannot be entertained in this proceeding because its only purpose is to determine if the will has been executed in accordance with law, much less if the purpose of the opposition is to show that the oppositor is an acknowledged natural child who allegedly has been ignored in the will for such issue cannot be raised here but in a separate action. This is so when the testator, as in the case at bar, is still alive and has merely filed a petition for the allowance of his will leaving the effects thereof after his death.

3. ID; ID; WILL PROBATE DURING LIFETIME OF TESTATOR REVOCABLE. — After a will has been probated during the lifetime of a testator, it does not necessarily mean that he cannot alter or revoke the same before his death. Should he make a new will, it would also be allowable on his petition, and if he should die before he has had chance to present such petition, the ordinary probate proceedings after the testator's death would be in order (Report of the Code Commission, pp. 53-54). The reason is that the rights to the succession are transmitted from the moment of the death of the decedent.

Augusto Francisco & Vicente Reyes Villavicencio, for petitioner-appellant.

Enrique A. Amador & Laureano C. Alano, for oppositor-appellee.

DECISION

Juan Palacios executed his last will and testament on June 25, 1946 and availing himself of the provisions of the new Civil Code, he filed on May 23, 1956 before the Court of First Instance of Batangas a petition for its approval. In said will, he instituted as his sole heirs his natural children Antonio C. Palacios and Andrea C. Palacios.

On June 21, 1955, Maria Catimbang filed an opposition to the probate of the will alleging that she is the acknowledged natural daughter of petitioner but that she was completely ignored in said will thus impairing her legitime.

After the presentation of petitioner's evidence relative to the essential requisites and formalities provided by law for the validity of a will, the court on July 6, 1956 issued an order admitting the will to probate. The court, however, set a date for the hearing of the opposition relative to the intrinsic validity of the will and, after proper hearing concerning this incident, the court issued another order declaring oppositor to be the natural child of petitioner and annulling the will insofar as it impairs her legitime, with costs against petitioner.

From this last order, petitioner gave notice of his intention to appeal directly to the Supreme Court, and accordingly, the record was elevated to this Court.

It should be noted that petitioner instituted the present proceeding in order to secure the probate of his will availing himself of the provisions of Article 838, paragraph 2, of the new Civil Code, which permit a testator to petition the proper court during his lifetime for the allowance of his will, but to such petition one Maria Catimbang filed an opposition alleging that she is the acknowledged natural daughter of petitioner but that she was completely ignored in the will thus impairing her legitime. In other words, Maria Catimbang does not object to the probate of the will insofar as its due execution is concerned or on the ground that it has not complied with the formalities prescribed by law; rather she objects to its intrinsic validity or to the legality of the provisions of the will.

We hold that such opposition cannot be entertained in this proceeding because its only purpose is merely to determine if the will has been executed in accordance with the requirements of the law, much less if the purpose of the opposition is to show that the oppositor is an acknowledged natural child who allegedly has been ignored in the will for such issue cannot be raised here but in a separate action. This is especially so when the testator, as in the present case, is still alive and has merely filed a petition for the allowance of his will leaving the effects thereof after his death.

This is in line with our ruling in Montañano v. Suesa, 14 Phil., 676, wherein we said: "The authentication of the will decides no other question than such as touch upon the capacity of the testator and the compliance with those requisites or solemnities which the law prescribes for the validity of a will. It does not determine nor even by implication prejudge the validity or efficiency of the provisions; that may be impugned as being vicious or null, notwithstanding its authentication. The question relating to these points remain entirely unaffected, and may be raised even after the will has been authenticated."

On the other hand, "after a will has been probated during the lifetime of a testator it does not necessarily mean that he cannot alter or revoke the same before his death. Should he make a new will, it would also be allowable on his petition, and if he should die before he had a chance to present such petition, the ordinary probate proceedings after the testator's death would be in order" (Report of the Code Commission, pp. 53-54). The reason for this comment is that the rights to the succession are transmitted from the moment of the death of the decedent (Article 777, new Civil Code).

It is clear that the trial court erred in entertaining the opposition and in annulling the portion of the will which allegedly impairs the legitime of the oppositor on the ground that, as it has found, she is an acknowledged natural daughter of the testator. This is an extraneous matter which should be threshed out in a separate action.

Wherefore, the order appealed from is set aside, without pronouncement as to cost.

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

VII

People of the Philippines, Plaintiff-Appellant, vs. Bernardo Borja, et al., Defendants-Appellees, G.R. No. L-14327, *January* 30, 1960, *Barrera*, J.

1. CRIMINAL PROCEDURE; STATE WITNESS; SECTION 9 RULE 115 OF RULES OF COURT CONSTRUED. — Under Section 9, Rule 115 of the Rules of Court, it is well settled that the discharge or exclusion of a co-accused from the information, in order that he may be utilized as a prosecution witness, is a matter of sound discretion with the trial court, to be exercised by it upon the conditions therein set forth. It should be availed of only when there is absolute necessity for the testimony of the accused whose discharge is requested, as when his testimony would simply corroborate or otherwise strengthen the evidence of the prosecution.

2. CRIMINAL LAW; MOTIVE. — Proof of a motive is not absolutely indispensable or necessary to establish the commission of a crime.

Acting Solicitor General Guillermo E. Torres and Solicitor Pacifico P. de Castro, for the plaintiff-appellant.

Alaba Custodio, Jamero and Navarro & Navarro, for the defendants-appellees.

DECISION

Bernardo Borja, Floro Tandang, Joaquin Odog, Pedro Bagso, Pedring Tagunon, alias Emper, and Teofilo Bag-ao, were charged in the Court of First Instance of Surigao (in Crim. Case No. 2226), with the crime of murder, for having allegedly killed

Manuel Ibanez on January 13, 1943, in the municipality of Mainit, province of Surigao, with evident premeditation and treachery, and with abuse of superior strength and weapons.

On April 8, 1957, the accused, claiming that the execution of the deceased for which they are charged, was done in furtherance of the guerilla movement, filed a petition for guerilla amnesty, pursuant to Guerrilla Amnesty Proclamation No. 8 of the President.

On May 2, 1957, while petition was pending, the Provincial Fiscal moved to exclude from the information the accused Floro Tandang and Joaquin Odog to be utilized as state witnesses.

The other accused opposed the motion of the Provincial Fiscal, and on June 29, 1957, the court issued an order of the following tenor:

"ORDER

"The Fiscal in his motion dated May 3, 1957 (should be May 2, 1957), which was considered submitted that in view of the fact that there was no date set for the same, asked for the discharge of the two accused, namely Floro Tandang and Joaquin Odog, alleging the fact that there is absolute necessity for the testimony of the defendants whose discharge is requested; that there is no other direct evidence available for the proper prosecution of the offense committed except the testimony of said defendants; that the testimony of said defendants can be substantially corroborated in its material points; that said accused do not appear to be the most guilty; and that said accused have not at any time been convicted of any offense involving moral turpitude. The rest of the accused opposed this motion alleging that there is no absolute necessity for the release of the said defendants and that it is not true that there is no other direct evidence of the prosecution except the testimonies of the said defendants because in the written statements of two prosecution witnesses in the record, namely: Leonardo Ybañez and Eduardo Baloran, show that they were eyewitnesses to the killing and that said witnesses stated that they heard one of the accused, Bernardo Borja, order his co-accused to kill the deceased, and conspiracy can be inferred from the acts of the accused prior, during and after the offense was committed and that fact can be substantially corroborated by the fact that could be inferred from the testimonies of the other witnesses. The Fiscal and Private Prosecutor insisted that they have no direct proof to establish the motive of the commission of the act and such proof is essential in the consideration of this case before the Amnesty Commission.

"The Court after consideration of the matter believes and concludes that the two essential elements for the discharge of these accused, namely: that there is absolute necessity and that there are no other direct evidence available to prove the offense, do not exist and, besides, in this Court proofs to established motive is not necessary if the act committed is clear. Under these circumstances, there exists no justification to grant the motion to exclude the two accused and that point concerning the proof of motive which is claimed is essentially in favor of the accused can be brought again when this case shall be submitted to said Amnesty Commission for consideration.

"WHEREFORE, the motion to exclude the accused Floro Tandang and Joaquin Odog, is hereby denied. Having now resolved this point which the Amnesty Commission believed should be disposed of by this Court before said Commission could take jurisdiction over the case, the record of the case may now be transmitted and forwarded to the Commission for its hearing on the merits and final determination of the case.

"SO ORDERED."

The Provincial Fiscal filed a motion for reconsideration, which was denied by the court as follows:

"ORDER

"The motion for reconsideration is hereby denied, it appearing that the Rules of Court does not state as one of the grounds for excluding one accused to prove personal motive. that matter which is claimed to be necessary when the case comes before the Amensty Commission for decision, and before that time comes, this Court cannot take into account the exclusion of a co-accused to establish motive, because this Court believes that said Amnesty Commission is clothed with all the powers to dispose (of) the principal question, as well as the question of motive involved in the case.

"WHEREFORE, the said motion is hereby denied."

"SO ORDERED."

From the foregoing orders, the prosecution appealed to the Courts of Appeals, but said court, in its resolution of July 14, 1958, certified the case to us, as it involving only questions of law.

The prosecution in this instance, claims that the lower court erred in denying its motion to exclude from the information the accused Floro Andang and Joaquin Odog, to be utilized as witnesses for the Government.

We do not agree with the prosecution. Section 9, Rule 115 of the Rules of Court provides:

"SEC. 9. *Discharge of one of several defendants to be witness for the prosecution.* — When two or more person are charged with the commission of a certain offense, *the competent court*, at any time before they have entered upon their defense, may *direct any of them to be discharged* with the latter's consent that he may be a witness for the government *when in the judgment of the court*:

"(a) There is absolute necessity for the testimony of the defendant whose discharge is requested;

"(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;

"(c) The testimony of said defendant can be substantially corroborated in its material points;

"(d) Said defendant does not appear to be the most guilty;

"(e) Said defendant has not at any time been convicted of any offense involving moral turpitude." (Emphasis supplied.)

Under the above-quoted provision of the Rules of Court, it is well-settled that the discharge or exclusion of a co-accused from the information, in order that he may be utilized as a prosecution witness, is a matter of sound discretion with the trial court (U.S. v. Abanzado, 37 Phil. 658; People v. Ibañez, G. R. No. L-5242, prom. April 20, 1953,) (1) to be exercised by it upon the conditions therein set forth. The expedient should be availed of, only when there is *absolute necessity* for the testimony of the accused whose discharge is requested, as when he alone has knowledge of the crime, and not when his testimony would simply corroborate or otherwise strengthen the evidence in the hands of the prosecution. (2 Moran, Comments on the Rules of Court [1957 Ed.] 827.)

In the case of People v. Ibañez, supra, it was held that —

"The court's is the exclusive responsibility to see that the conditions prescribed by the rule exist. The rule is completely silent as to any authority of the prosecution in the premises, although authority may be inherent in the office of the prosecuting attorney to propose. Section 2 of Act No. 2709 from which the preceding rule was taken, was enacted avowedly to curtail miscarriage of justice, before too common, through the abuse of the power to ask for the discharge of one or more defendants. 'Absolute necessity of the testimony of the defendant whose discharge is requested,' among other things, must now be shown if the discharge is to be allowed, and, as above stated, it is the court upon which the power to determine the necessity is lodged."

The trial court, in the instant case, properly denied the pro-

(1) See also U.S. v. De Guzman, 30 Phil. 416; U.S. v. Bonate, 40 Phil. 958; People v. Bautista, 49 Phil. 389; and People v. Palcoto, et al; G.R. No. L-8458, January 30, 1956.

secution's motion to exclude from the information the accused Tandang and Odog, after being convinced that there was no absolute necessity for their testimony, it appearing that the killing of the deceased Manuel Ibañez could be established by other available direct evidence, namely, the testimony of prosecution witnesses Leonardo Ybañez and Eduardo Baloran, who were eyewitnesses to the said killing, as shown by their written statements on record.

As to the prosecution's claim that the exclusion of the accused Tandang and Odog from the imformation is necessary to prove the personal motive or reason of their co-accused in the killing of said deceased, it may be stated that proof of motive is not absolutely indispensable or necessary to establish the commission of a crime. (3 Moran, Comments on the Rules of Court [1952 Ed.] 630-631; U.S. v. Ricafort, 1 173; U.S. v. Balmori, et al., 18 Phil 578; U S. v. Valdez, et al., 30 Phil. 293.) It is true that motive is essential in cases falling under the Amnesty Proclamation, but as stated by the trial court, the exclusion of said accused for the purpose of establishing personal motive of their co-accused is a matter which may be properly taken up when the case is submitted to the Amnesty Commission for reconsideration, pursuant to the provisions of Proclamation No. 8,(1) dated September 7, 1946 (Guerilla Amnesty Proclamation) and Administrative Order No. 11(2) of October 2, 1946 which authorizes the Guerilla Amnesty Commission to "examine the facts and circumstances surrounding each case and if necessary or requested by either or both of the interested parties, conduct summary hearings of witnesses both for the complainants and the accused."

WHEREFORE, finding no reversible error in the order appealed from, the same is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

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

VIII

Adriano Valdez, Plaintiff-Appellee vs. Rodrigo Ocumen, Ignacio Mendoza, Procopio Santiago, et al., Defendants-Appellants, G. R. No. L-13536, *January* 29, 1960, *Barrera, J.*

1. APPEAL; PERFECTION OF APPEAL FROM INFERIOR COURTS; SECTION 2 RULE 40 RULES OF COURT CONSTRUED. — Under the provision of Section 2 Rule 40 of the Rules of Court, in order to perfect an appeal from the judgment of the Justice of the Peace or Municipal Court, an appellant must within 15 days from notice of the judgment, (1) file with the justice of the peace or municipal judge a notice of appeal, (2) deliver a certificate of the municipal treasurer or of the Clerk of Court of First Instance in chartered cities, showing that he has deposited the appellate court docket fee, and (3) give a bond.

2. ID.; ID.; EFFECT OF FAILURE TO PERFECT APPEAL WITHIN PRESCRIBED PERIOD. — The rule is well settled that the failure to perfect an appeal from a judgment of a justice of the peace court within the period allowed by law bars the appeal and that if a party does not perfect his appeal within the time prescribed by law, the appellate court cannot acquire jurisdiction and, therefore, compliance with said requirement is jurisdictional.

3. ID.; PROVISIONS OF RULES OF COURT WHICH CANNOT BE THE SUBJECT OF AGREEMENTS BETWEEN COURT AND COUNSEL. — The provisions of the Rules of Court, especially those prescribing the period within which certain acts must be done, or certain proceedings taken, which are intended to prevent needless delays and promote the speedy discharge of judicial business, can hardly be the subject of agreements or stipulations between a court and counsel. Strict, not substantial, compliance therewith is required.

Antonio Rodriguez & Celso Zoleta, Jr. for plaintiff-appellee.
Teofilo A. Leonin, for defendants-appellants.

DECISION

This is an appeal taken by defendants from the order of the Court of First Instance of Isabela, dismissing the appeal they brought to said court from the judgment of the Justice of the Peace Court of Roxas, Isabela, in Civil Case No. 224 (Forcible Entry), on the ground that they failed to perfect the same within the reglementary period provided in Section 2, Rule 40 of the Rules of Court.

It appears that on March 9, 1957, the justice of the peace court, after hearing, rendered a decision in said case No. 224 ordering the defendants to restore to the plaintiff the possession of the questioned Lot No. 3005, to vacate its premises, and to pay the costs. Notice of said decision was sent to the counsel of the parties on April 30, 1957, defendants receiving their copy on May 24, 1957. On May 29, 1957, defendants filed with said court a notice of appeal bond of ₱25.00 without, however, paying the appellate court docket fee of ₱16.00, as required under Section 2, Rule 40, of the Rules of Court. Acting upon said notice of appeal, the court, on the same date, issued an order forwarding the records of the case to the Court of First Instance of Isabela but stating therein "without however the docket fee for appeal". The Clerk of Court of First Instance received the records on July 25, 1957, at 3:40 P.M. Defendants paid the appellate court docket fee of ₱16.00 only on the following day, July 26, 1957.

Receiving plaintiff's motion filed on July 29, 1957, to dismiss the appeal on the ground that it was not perfected within the reglementary period (15 days from notice of the judgment) provided in the Rules of Court, the defendants' opposition thereto, the Court of First Instance on August 28, 1957, issued an order dismissing the appeal, stating in part, as follows:

x x x

"The appellate court docket fee may be deposited either with the municipal treasurer or with the Clerk of Court of First Instance and a certificate of such deposit shall be attached to the record by the justice of the peace. It should be deposited in full within the period of 15 days and this provision of the Rules of Court is mandatory and not directory. Therefore, if only ½ of the amount of the appellate court docket fee is deposited and the other half is rendered after the expiration of such period, no appeal is being perfected. (sic) (Lazaro v. Endencia, 57 Phil. 552).

"In the case at bar, the defendants-appellants did not deposit the appellate court docket fee of ₱16.00 with the Justice of the Peace Court of Roxas. And as the official receipt No. C-7155000, will show, the appellate court docket fee of ₱16.00 was only paid by Atty. Dominador P. Nuesa on July 26, 1957 or 61 days after the notice of appeal was filed. It is thus clear that the appeal has not been perfected in accordance with the provision of Section 2, Rule 40, of the Rules of Court.

"The contention of appellants' counsel to the effect that that there was a substantial compliances with the law is that the docket fee was paid in the Office of the Clerk of Court on July 26, 1957 is without merit because the Rules of Court provides in no uncertain terms that a certificate of payment of the appellate court docket fee must be filed with the justice of the peace court of origin in order that the appeal is deemed perfected as to warrant the justice of the peace court to remand the case to the Court of First Instance.

(1) 42 O.G. 2072
(2) 42 O.G. 2360; see also Adm. Order No. 17 dated Nov. 15, 1946 (42 O.G. 2725), and Adm. Order No. 41, dated July 6, 1954 (50 O.G. 2928).

"For all the forgoing considerations, the Court believes and so holds that the appeal has not been perfected in accordance with law and, therefore, this court has not acquired jurisdiction to try the case on the merits.

"WHEREFORE, the appeal should be, as it is hereby dismissed."

Defendants' motion for reconsideration of said order on the ground of its illegality having been denied, defendants instituted this present appeal.

Section 2, Rule 40, of the Rules of Court, provides:

"SEC. 2. *Appeal,* how *perfected* — An appeal shall be perfected within fifteen days after notification to the party of the judgment complained of, (a) by filing with the justice of the peace or municipal judge a notice of appeal; (b) by delivering a certificate of the municipal treasurer showing that the appellant has deposited the appellate court docket fee, or in chartered cities, a certificate of the clerk of such court showing a receipt of said fee; and (c) by giving a bond."

Under this provision of Rules of Court, in order to perfect an appeal from the judgment of the justice of the Peace or Municipal Court, an appellant must, within 15 days from notice of the judgment, (1) file with the justice of the peace or municipal judge a notice of appeal, (2) deliver a certificate of the municipal treasurer or of the clerk of the Court of First Instance in chartered cities, showing that he has deposited the appellate court docket fee, and (3) give a bond.

In the case under consideration, while defendants did file with the Justice of the Peace of Roxas, Isabela, their notice of appeal and gave an appeal bond of P25.00 on May 29, 1957, they failed to pay the appellate court docket fee of P16.00. It was only on July 26, 1957, that is 61 days after filing their notice of appeal, evidently, beyond the reglementary period of 15 days from notice of judgment as provided under the aforequoted section of the Rules of Court, that they effected the payment of the same. Their appeal, therefore, was never perfected in the Court of First Instance of Isabela, and the trial judge correctly and properly dismissed said appeal, as it acquired no jurisdiction thereon.

Well-settled is the rule that the failure to perfect an appeal from a judgment of a justice of the peace court within the period allowed by law, bars the appeal (Gajiton v. Maria, 54 Phil. 488; Policarpio v. Borja, 16 Phil. 31; Lazaro v. Endencia, *supra;* Bermudez v. Baltazar, G. R. No. L-10268, prom. April 30, 1957), and that if a party does not perfect his appeal within the time prescribed by law, the appellate court cannot acquire jurisdiction, and for that reason, the compliance with said requirement is jurisdictional (Lelda v. Legaspi, 39 Phil. 83; Lim v. Singian, 37 Phil. 817.) (1)

Defendant claim that plaintiff waived his right to question the timeliness of their appeal, inasmuch as he filed his motion to dismiss when the case has already been remanded to the Court of First Instance, citing in support of his submission the cases among others, of Slade-Perkins v. Perkins (57 Phil. 223) and Luengo v. Herrero (17 Phil. 29) In answer, it may be stated that said cases are not applicable to the cases at bar, for the reason that the objections which were deemed waived therein, refer to questions which do not affect the jurisdiction of the court. They can not, therefore, be invoked as precedents in the determination of this case. (Miranda v. Guanzon, *supra.*)

Defendants, furthermore, argue that there was substantial compliance with the aforequoted provision of Section 2, Rule 40, of the Rules of Court, inasmuch as their failure to pay the appellate court docket fee within the period therein provided, was the result of their agreement with the Justice of the Peace that it shall be paid to the Clerk of the Court of First Instance, who will determine the proper amount to be paid.

The contention is untenable. The provisions of the Rules of Court, especially those prescribing the period within which certain acts must be done, or certain proceedings taken, which are intended to prevent needless delays and promote the speedy discharge of judicial business. (2) can hardly be the subject of agreements or stipulations between a court and counsel. (3) In fine, strict, not substantial, compliance therewith is required. (4)

WHEREFFORE, finding no error in the order appealed from, the same is hereby affirmed, with cost against the defendants-appellants.

SO ORDERED.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, J.B.L. Reyes, Endencia and Gutierrez David, JJ., concurred.

SUPREME COURT RESOLUTION

Quoted hereunder, for your information, is a resolution of this Court dated February 10, 1960:

"The petition of Antonio Ma. Cui for reinstatement as member of the Bar shows that he resignedly acquiesced in the decree of disbarment, voluntarily withdraw from litigations in which he had engaged as counsel, and up to this time has refrained form engaging in his legal profession. His petition is supported by a favorable certification from judges of the Cebu Court of First Instance and testimonials of honesty and right conduct from religious dignitaries and civic associations of Cebu.

Considering that in view of circumstances attending his disbarment, this period of enforced retirement from active practice probably constitutes enough punishment for his professional misconduct;

The Court awared of the high regard in which he was held by the Bar of Cebu when he was practicing law in that City, as disclosed by the resolution attached to the record, and relying upon his solemn promise to behave properly in the future.

GRANTED THE PETITION and ordered the Clerk of Court to list his name anew in the roll of attorneys."

———oOo———

TUT-TUT, YOUR HONOR!

A sultry blnode was seated in the witness chair. Her dress showed more of her than otherwise. As she crossed one leg and then the other, the dress crept up. The judge was just about to tell her to step down when her lawyer spoke. "Your honor, I've just thought of something."

The judge gave him a look, then glanced at the girl, and retorted, "I don't believe there's one man in his courtroom who hasn't." — *R. E. Martin, Future*

(1) See also Roman Catholic Bishop of Tuguegarao v. Director of Lands, 34 Phil. 623; Cordoba et al. v. Alabado, 34 Phil. 920; Bermudez v. Director of Lands, 36 Phil. 774. Miranda v. Guanzon et al, GR. No. L-4992, prom. Oct. 27, 1952; Rodrigo et al., G.R. No. L-4992, prom. Oct. 27. 1952; Rodrigo v. Seridon, et al., G.R. No.L-7896, Res. of July 29, 1954.

(2) Shioji v. Harvey, 43 Phil. 333.

(3) In Policarpio v. Borja, et al., *supra,* the fact that the plaintiff was told by the Justice of the Peace to return another day, did not justify his failure to perfect his appeal within the reglementary period.

(4) Alvero v. De la Rosa, 76 Phil. 428.