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

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

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

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

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

The judgment appealed from is affirmed, with costs.

SO ORDERED.

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

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

PERFECTO, *J.*, concurring:

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

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

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

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

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

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

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

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

We concur in the affirmance of the appealed decision.

II

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

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

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

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

The facts are stated in the opinion of the court.

Atty. Arturo Zialcita for defendant-appellant.

Attys. Gamboa & Enverga for plaintiff-appellee.

PARAS, *J.*:

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

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

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

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

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

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

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

Judgment affirmed.

III

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

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

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

The Solicitor General for the oppositor-appellant.

DECISION

PERFECTO, *J.*:

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

The lower court granted his application for Philippine citizenship.

The Solicitor General raises two questions in this appeal.

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

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

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

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