supervened that would change the nature of the offense for which petitioner was tried in the military court, the alleged additional overt acts specified in the amended information in the civil court having already taken place when petitioner was indicted in the former court. Of more pertinent application is the following from 15 American Jurisprudence, 56-57:

> "Subject to statutory provisions and the interpretation thereof for the purpose of arriving at the intent of the legislature in enacting them, it may be said that as a rule only one prosecution may be had for a continuing crime, and that where an offense charged consists of a series of acts extending over a period of time, a conviction or acquittal for a crime based on a portion of that period will bar a prosecution covering the whole period. In such case the offense is single and indivisible; and whether the time alleged is longer or shorter, the commission of the acts which constitute it, within any portion of the time alleged, is a bar to the conviction for other acts committed within the same time. x x x."

As to the claim that the military court had no jurisdiction over the case, well known is the rule that when several courts have concurrent jurisdiction of the same offense, the court first acquiring jurisdiction of the prosecution retains it to the exclusion of the others. This rule, however, requires that jurisdiction over the person of the defendant shall have first been obtained by the court in which the first charge was filed. (22 C. J. S. pp. 186-187.) The record in the present case shows that the information for treason in the People's Court was filed on March 12, 1946, but petitioner had not yet been arrested or brought into the custody of the court — the warrant of arrest had not even been issued — when the indictment for the same offense was filed in the military court on January 13, 1947. Under the rule cited, mere priority in the filing of the complaint in one court does not give that court priority to take cognizance of the offense, it being necessary in addition that the court where the information is filed has custody or jurisdiction of the person of defendant.

It appearing that the offense charged in the military court and in the civil court is the same, that the military court had jurisdiction to try the case and that both courts derive their powers from one sovereignty, the sentence meted out by the military court to the petitioner should, in accordance with the precedents above-cited, be a bar to petitioner's further prosecution for the same offense in the Court of First Instance of Zamboanga.

Wherefore, the petition for certiorari and prohibition is granted and the criminal case for treason against the petitioner pending in that court ordered dismissed. Without costs.

Paras, Pablo, Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Labrador, Concepcion and *Diokno, J. J.*, concur.

XIII

Vicente J. Francisco and Francisco Marasigan, Petitioners, vs. Eduardo Enriquez, Judge of the Court of First Instance of Negros Occidental, Respondent, G. R. No. L-7058, *March* 20, 1954.

1. CONTEMPT OF COURT; FAILURE OF AN ATTORNEY TO APPEAR AT THE TRIAL OF THE CASE; EXPLANATION FOR SUCH FAILURE; CASE AT BAR. — Attorney F and his assistant M with law office in Manila were the lawyers of L in a criminal case instituted in Negros Occidental. On the day when the trial of the case was to be resumed in Bacolod both lawyers did not appear. Judge Eduardo Enriquez ordered their arrest. Attorney F requested that the order be suspended and sent Attorney M to Negros to explain that their failure to attend at the trial was fully justified. Judge Enriquez refused to listen to Attorney M's explanation because he wanted Attorney F to appear personally and to be the one to explain why he did not appear on the said date. *Held:* The order is without reason and the judge acted in excess of jurisdiction.

2. IBID; IBID; IBID. — After the required explanation had been presented under oath, and after Atty. M had appeared in person to give the explanation and had submitted the required evidence, for him and in behalf of Atty. F, there was no reason to require the further personal appearance of the petitioner for the same purpose in Bacolod on some other date. The sworn explanation is according to our rules, prima facie evidence (Sec. 100, Rule 123).

3. IBID; IBID; IBID. — Atty. M who had sworn that the facts stated in the explanation are of his personal knowledge, and who was the one called upon to attend the Criminal Case of the 15th day of Sept., 1953, was a competent person to give a pertinent explanation of the absence of the petitioner on the date of trial on Sept. 15, and he actually offered to give such explanation. It does not appear that there was any question asked of him about the non-appearance of the petitioner which he could not answer by his own knowledge and about which only Atty. F could give legally admissable answer.

4. IBID; IBID; IBID. — The denial to hear Atty. M's explanation only because it includes Atty. F's explanation, is against the law. It is indisputable that he has the right to be heard in its own representations, then and there. There was no reason to compel him to come back. It was also indisputable that Atty. F had also the right to be heard "by himself or counsel" (Rule 64, Sec. 3). There was at the moment no reason at all to require his personal appearance, even laying aside his delicate state of health at the time which was an impediment for him to travel.

JUSTICE ANGELO BAUTISTA, concurring.

1. CONTEMPT OF COURT; POWER TO PUNISH FOR CONTEMPT. — The power to punish for contempt is inherent in all courts and is essential to their right of self-preservation. "The reason for this is that respect for the courts guarantees the stability of their institution. Without such guaranty said institution would be resting on a very shaky foundation." This power is recognized by our Rules of Court (Rule 64.).

2. IBID; KINDS OF CONTEMPT. — Under this rule, contempt is divided into two kinds: (1) direct contempt, that is, one committed in the presence of, or so near, the Judge as to obstruct him in the administration of justice; and (2) constructive contempt, or that which is committed out of the presence of the court, as in refusing to obey its order or lawful process.

3. IBID; HOW IT SHOULD BE INITIATED. — As a rule, contempt proceeding is initiated by filing a charge in writing with the court. (Section 3, Rule 64.) It has been held however that the court may *motu propio* require a person to answer why he should not be punished for contemptuous behaviour. Such power is necessary for its own protection against an improper interference with the due administration of justice.

4. IBID; CASE AT BAR. — The contempt under consideration is a constructive one it having arisen in view of the failure of Attys. F and M to obey an order of the court, and for such failure respondent Judge ordered them to appear and show cause why they should not be punished for contempt. There was therefore no formal charge filed against them but the action was taken directly by the court upon its own initiative.

5. IBID; WAIVER OF APPEARANCE. — The rule on the matter is not clear (Section 3, Rule 64). While on one hand it allows a person charged with contempt to appear by *himself* or by *counsel*, on the other, the rule contains the following provision: "But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court or from holding him in custody pending such proceedings." Apparently, this is the provision on which respondent Judge is now relying in insisting on the personal appearance of Atty. F.

6. IBID; POWER OF THE COURT TO ORDER ARREST OF THE ACCUSED PARTY. — This power (to order the arrest of the accused party) can only be exercised when there are good reasons justifying its exercise. The record discloses none. The

reason for the appearance is already well known. The contemptuous charge was clear. The only thing required was for Atty. F to explain his conduct. This he did in his telegram to the court intimating that his failure to appear was due to failing health and doctor's advice, while, on the other hand, he caused Atty. M to appear for him and elaborate on his explanation. This attitude, in my opinion, is a substantial compliance with the rule and justifies the action taken by Atty. F.

Vicente J. Francisco and *F. V. Marasigan* for petitioners.
Eduardo P. Arboleda for respondent.

DECISION

DIOKNO, *M.*:

La cuestion en este recurso ha quedado reducida a la de si el Honorable Juez recurrido incurrió en exceso de jurisdiccion al insistir en su orden de que los recurrentes comparezcan personalmente ante él, en la ciudad de Bacolod para que expongan las razones por qué no se les debe imponer accion disciplinaria por no haber comparecido el dia 15 de septiembre de 1953 para la continuacion de la vista de la causa criminal No. 3220 del Juzgado de Primera Instancia de Negros Occidental, intitulado Pueblo *contra* Lacson y otros, por asesinato.

Los hechos pertinentes, brevemente expuestos, son los siguientes:

1.o Los recurrentes, Francisco y Marasigan, eran los abogados del acusado Rafael Lacson. El primero era el abogado principal y el segundo el auxiliar, que en ausencia del primero actuaría y actuó, en efecto, en su lugar. Marasigan era, ademas, abogado de otro acusado en la causa. El 15 de septiembre de 1953 estaba señalada la continuacion de la vista de la causa criminal, y ninguno de los recurrentes comparecieron, ni enviaron oportuna explicación de su ausencia. El acusado Lacson estaba presente, pero se limito á informar que el recurrente Francisco le habia dicho que él personalmente no asistiría en la vista sino el recurrente Marasigan. Con motivo de la ausencia de ambos abogados, la vista hubo de transferirse para otro dia.

2.o Con vista de esta ausencia inexplicada, el Hon. Juez recurrido ordenó el arresto de los recurrentes. En el mismo dia, el recurrente Francisco dirigio al Juez recurrido el siguiente telegrama, desde Manila:

"Septiembre 15, 1953
Honorable Eduardo Enriquez
Bacolod City
Please suspend order until we have opportunity to explain stop Attorney Marasigan flying to Negros tomorrow
Vicente Francisco"

A lo que el Hon. Juez recurrido contestó como sigue:

"Bacolod Sep 16-53
Atty. Vicente Francisco
Manila
Re tel order suspended as requested but you are required personally to appear twenty fourth instant to explain why you should not be held in contempt.
Judge Enriquez"

El anterior telegrama fue recibido por el recurrente Francisco cuando el recurrente Marasigan ya habia salido por avión para Bacolod, por lo que aquél envió el mismo dia el siguiente telegrama al Hon. Juez recurrido:

"Judge Enriquez
Bacolod City
Received your telegram when Atty. Marasigan had gone already to Negros by plane to submit explanation why he and myself did not attend last hearing Lacson case stop I submit said explanation and motion of withdrawal for your action without hearing stop Request my presence be dispensed with on the 24th cannot make trip to Negros during this stormy season due to failing health and doctors advice
Vicente Francisco"

3.o El recurrente Marasigan llegó a Bacolod el mismo dia 16 de septiembre de 1953, llevando consigo la explicación de la ausencia de ambos recurrentes en la vista del 15, en forma de un escrito intitulado "Ex-parte Urgent Motion for Reconsideration of Order of Arrest," fechado 15 de septiembre, 1953, firmado por ambos recurrentes, y jurado por Marasigan (Exh. D).

El 17 de septiembre de 1953, el recurrente Marasigan presentó el escrito y compareció ante el Hon. Juez recurrido. Lo que sigue es parte de la transcripción de las notas taquigraficas de lo que ocurrió en esa ocasión:

"Marasigan: I would like to state that I am here to explain for Atty. Francisco and for myself.

—— x —— —— x —— —— x ——

"Court: Practically that order has been suspended or practically set aside because of the telegram of Mr. Francisco sent on the fifteenth. There is a telegram sent by Atty. Francisco asking that the order be suspended because you are coming here by plane, but in my reply-telegram I advised him that the order was suspended but he must appear here on the twenty fourth to explain and to show cause why no disciplinary actions should be taken against him. Besides that telegram, I dictated an order requiring Mr. Francisco and you — Mr. Marasigan — to appear on the twenty fourth. Inasmuch as you are here the court is ready to listen to your explanation but that is insofar as you are concerned only. The court still requires Mr. Francisco to appear before this court, before or on September 24th because I will not accept your explanation for Mr. Francisco. So you choose, do you want to have your explanation on the twenty fourth with Mr. Francisco or do you want to advance your explanation by disregarding your explanation for Mr. Francisco? Because the court wants Mr. Francisco to be present here to explain for himself and no explanation from somebody else will be accepted by this court because I would like to propound some questions to Atty. Francisco.

—— x —— —— x —— —— x ——

"Court: I have told you already that I will not accept any explanation from somebody else but from Mr. Francisco himself. He must appear here personally.

—— x —— —— x —— —— x ——

'Court: Let us cut short this discussion. I made it clear to you that the court will not accept any explanation for Mr. Francisco by somebody except by Mr. Francisco only, and there is a standing order requiring him to be here and not thru somebody else.

"Atty. Marasigan: That is it. The court admits that the only purpose in requiring him to come here is to give him an opportunity to explain. Now I am here to explain for him in the meantime.

—— x —— —— x —— —— x ——

"Court: I will let it appear on the record that the court is not ready to receive any explanation for Mr. Francisco by somebody else.

"Atty. Marasigan: Not even if it will be an explanation that would justify the failure of Atty. Francisco to appear here?

"Court: I am not concerned with the explanation for Mr. Francisco by somebody else.

—— x —— —— x —— —— x ——

"Court: Well, if you believe that it is his right let us wait for Atty. Francisco. If he wants to be here it is okay and if he does not want to come here it is also okay but I know what steps I will take.

"Court: The telegram of Mr. Francisco is as follows:

"Please suspend order until we have opportunity to explain stop Atty. Marasigan flying to Negros tomorrow." This was received at 5:45 p.m., September 15, Tuesday. On the following day, yesterday, I answered that telegram. "Re tel order suspended as requested but you are required personally to appear twenty fourth instant to explain why you should not be held in contempt." This is very clear. "Personally." The court wants him to appear personally and not thru another person. Besides that telegram, here is the order of the court signed by me yesterday, which I am quoting: "A peticion del abogado Sr. Vicente J. Francisco

contenida en su telegrama de ayer, por el presente se suspendo aquella parte de la orden de 15 de Septiembre de 1953 en cuanto se ordena el arresto de los abogados Sres. Vicente J. Francisco y Francisco Marasigan, y en su lugar se ordena a ambos abogados para que personalmente comparezcan ante esta Sala el 24 de Septiembre de 1953, a las 9:00 de la mañana y expongan las razones por qué no se les debe imponer acción disciplinaria por no haber comparcido el dia 15 de Septiembre de 1953 para la continuación de la vista de esta causa. Envíense por correo aereo y por certificado copias de esta orden a los referidos abogados. Asi se ordena." The court in open court will offer you a copy of this order and please sign on the original of this order. (To a court personnel who was present there.) Where is a copy of that. You furnish Mr. Marasigan. (To Atty. Marasigan.) Now, if you want to advance your appearance here by virtue of that order you can do so but I will repeat: I won't hear any explanation to be made by you in behalf of Mr. Francisco because the court will stick to its order and will require Mr. Francisco to be here on the 24th." (pp. 3756, 3557, 3758 and 3759, t.s.n.)

"Atty. Marasigan: At any rate I will explain and I ask the court to consider that whatever I explain; I explain it not only in connection with my case but in connection with the case of Atty. Francisco, I explain in the meantime.

"Court: If that is the condition, I will not listen to you — if you will abide by that condition.

—— x —— —— x —— —— x ——

"Atty. Marasigan: But I insist . . .

"Court (Interruption) I don't want to hear, if you insist that you will be heard in behalf of Mr. Francisco. If you want to explain for yourself, all right, but if you want to explain for Mr. Francisco, nothing doing." (pp. 3767-3768, t.s.n.)

"Atty. Marasigan: I have nothing more to say but I will make of record that I am presenting my evidence. This is a question of law." (p. 3768, t.s.n.)

"Court: All right, this is the order of the court. Let the motion for reconsideration filed by Messrs. Francisco and Marasigan be heard on the 24th of this month September 1953, at 9:00 A.M." (pp. 3768-3769, t.s.n.)

"Court: That is the order of the court. All right hearing closed.

"Atty. Marasigan: All right, Your Honor, I will present evidence in support of the ex-parte urgent motion for reconsideration.

"Court: The order is already issued. (To Court Interpreter) Next case, that election case." (pp. 3768-3769, t.s.n.)

4.o En cuanto a la condicion física por entonces del recurrente Francisco, consta que el 1.o de septiembre de 1953, o quince dias antes. el Juzgado estaba enterado que aquel "temia" viajar en avion.

"Court: There are people who are afraid to take the plane as a means of transportation and I am one of them. Mr. Francisco is as old as I am and I want to live longer.

—— x —— —— x —— —— x ——

"Court: This is one instance where the non-appearance of Atty. Francisco is justified. Nobody can go against the will of God. This typhoon is the act of God. If anybody says: If he did not take the boat, why did he not take the plane? But I would have done the same like him." (p. 3716,t.n.t.)

Tambien consta el hecho de que el abogado no podía hacer viaje alguno debido a su mala salud en el telegrama arriba transcrito de fecha 16 de septiembre de 1953. Y ello no parece ficticio, porque el Dr. Agorico B. M. Sison, Director del Philippine General Hospital, certificó bajo juramento —

"x x x that Atty. Vicente J. Francisco is under the medical care of the undersigned and has been advised to avoid sea and air travel because he is extremely susceptible to 'Motion Sickness' which lowers his vitality to such an extent that it provokes Neurocirculatory Asthenia, and may seriously endanger his health."

5.o Habiendo el Hon. Juez recurrido insistido en la comparecencia personal de los recurrentes para el 24 de septiembre, el recurrente Francisco, dirigió el siguiente telegrama al Hon. Juez recurrido:

"Raised question to Supreme Court whether Atty. Marasigan and myself may be compelled to appear personally in hearing September twenty four stop Requesting incident be held in abeyance until after Supreme Court resolves certiorari. Vicente Francisco."

y dicho Juez, el 24 del citado mes, sin haber sido aun notificado del recurso aqui presentado dictó una orden (anexo F) que dice en parte:

"El Juzgado cree que, a menos que haya una orden de la Corte Suprema ordenando a este tribunal para que se abstenga de seguir ejerciendo sus facultades en este incidente, podria hacer caso omiso o ignorar el contenido de este telegrama; sin embargo, para dar todas las oportunidades al Sr. Francisco para poner a prueba la legalidad de la orden de fecha 16 de Septiembre de 1953, el Juzgado resuelve conceder la peticion del Sr. Francisco y dispone transferir la comparencia de los Sres. Francisco y Marasigan ante este Juzgado a fin de exponer las razones que tuvieren por que no deben ser declarados incursos en desacato, hasta que la Corte Suprema resuelva el remedio de cortiorari que segun el Sr. Francisco ha presentado ante dicha Superioridad."

En la misma orden el Hon. Juez recurrido dijo que se abstenía de tomar acción alguna en cuanto a la moción de reconsideración de la orden de arresto de los recurrentes "toda vez que dicha orden ya ha sido suspendida"; y en cuanto a la separacion de los recurrentes como abogados en la causa criminal conforme a sus mociones de fecha 7 y 18 de septiembre de 1953, autorizó la retirada de los mismos como abogados del acusado Rafael Lacson, y el ultimo además como abogado del acusado Jose Valencia. Tambien por dicha orden pospuso la comparecencia personal de los recurrentes hasta que fuese resuelta por esta Corte el presente recurso.

El art. 3 de la regla 64 de los Reglamentos dice que "after charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty x x x may be punished by contempt." Dice tambien que "nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings."

Estando ya presentada la explicación requerida, y bajo juramento, y habiendo ya el recurrente Marasigan comparecido en persona para dar las aclaraciones y presentar las pruebas que se necesiten, para sí y para el recurrente Francisco, no habia razón alguna para requerir todavia la comparecencia personal de los recurrentes para el mismo tramite en Bacolod en otra fecha. La explicación jurada es, con arreglo a nuestros reglamentos, prueba prima facie. (Art. 100, Regla 123.) Caso de falsedad de dicha explicación escrita en algun detalle material, cabe la acusacion de perjurio. Ademas, ambos son miembros del foro y son responsables de toda conducta anti-profesional. El recurrente Marasigan, que lo juró de propio conocimiento, y que era el llamado a asistir en la vista del dia 15 de septiembre de 1953 de la causa criminal, era competente para dar personalmente cualquiera explicacion pertinente de la *ausencia* de los recurrentes en la vista del dia 15 de septiembre, y se había ofracido a darla. No consta que se le haya dirigido pregunta alguna sobre la incomparecencia de los recurrentes que él no podia contestar de su propio conocimiento, o que solo el recurrente Francisco podia dar contestación legalmente admisible. La negativa de oir la explicacion de Marasigan solo porque incluia la de Francisco va contra los preceptos de la ley. Es indisputable que él tenia derecho a ser sido en su propia representacion, entonces y allí mismo. No habia razon alguna para hacerle volver. Es tambien indisputable que el recurrente Francisco tenia derecho a ser oido "by himself or counsel." (Regla 64, art. 3) No habia por el momento razón para requerir su presencia personal, dejando a un lado su por entonces delicada salud para hacer viajes. Y está repetidamente declarado que se obra con exceso de jurisdiccion cuando se dicta orden sin razón.

Se arguye que al exigir la comparecencia personal de los re-

currentes el Hon. Juez recurrido estaba autorizado por el ultimo parrafo del art. 3 de la Regla 64 que provée que el mismo no se interpretará de modo que impida al Juzgado ordenar que el acusado sea traido al Juzgado o de tenerle detenido durante la pendencia del incidente. Se pueden tambien invocar al mismo efecto los arts. 5 y 6 de la misma regla. Sin embargo, el arresto de los recurrentes está abandonado y el argumento es por tanto inmaterial. Entonces todo lo que quedaba del incidente era resolverlo.

EN VIRTUD DE LO EXPUESTO, se concede el recurso. La orden del 24 de septiembre de 1953, en cuanto requiere a los recurrentes que comparezcan ante el Hon. Juez recurrido para un tramite ya hecho, cual es, el de explicar la incomparecencia de los mismos en la vista del día 15 de septiembre de 1953 de la causa criminal No. 3220 del Juzgado de Primero Instancia de Negros Occidental queda anulada. Sin costas.

Asi se ordena.

Paras, Bengzon, Montemayor, Jugo, Labrador, Pablo, Padilla; Reyes and *Bautista Angelo, J. J.*, concur.

BAUTISTA ANGELO, *J., concurring*:

On September 15, 1953, date set for the continuation of the hearing of the case, Attys. Francisco and Marasigan, who were appearing for the accused, failed to show up, whereupon respondent Judge issued an order for their arrest. Informed of this order, Atty. Francisco sent a wire asking for an opportunity to explain. The order was suspended but Attys. Francisco and Marasigan were required to appear *personally* on September 24. Atty. Francisco replied by telegram informing the court that he could not appear on the date set due to failing health and doctor's advice, but was submitting his explanation through Atty. Marasigan. Atty. Marasigan in effect appeared on the date set but respondent Judge refused to hear his explanation if it would include that of Atty. Francisco. A portion of the transcript showing what has taken place during the hearing is as follows:

"Court: I have told you already that I will not accept any explanation from somebody else but from Mr. Francisco himself. *He must appear here personally.*

—— x —— —— x —— —— x ——

"Atty. Marasigan: x x x If in a criminal action the accused can waive his presence, why cannot Atty. Francisco waive his presence and allow me, instead in the meantime to explain for him, Your Honor?

"Court: I can tell you that a defendant in a criminal case can waive his presence in certain stage in the proceedings but he cannot waive his presence to be arraigned of this information or charge. *He must be present here.* He cannot be represented by somebody else.

"Atty. Marasigan: But in this case there is no arraignment, Your Honor.

"Court: Precisely he is required to be here, to be appraised of the charge.

"Atty. Marasigan: In a criminal charge there is an arraignment but in a contempt proceedings, there is none.

"Court: Why not? That is the reason why the court wants him to be present here to be apprised of the charges.

"Atty. Marasigan: *But he is apprised already.* As a matter of fact there is no arraignment."

The power to punish for contempt is inherent in all courts and is essential to their right of self-preservation. "The reason for this is that respect for the courts guarantees, the stability of their institution. Without such guaranty said institution would be resting on a very shaky foundation." (Salcedo v. Hernandez, 61 Phil. 724.) This power is recognized by our Rules of Court (Rule 64). Under this rule, contempt is divided into two kinds: (1) direct contempt, that is, one committed in the presence of, or so near, the Judge as to obstruct him in the administration of justice; and (2) constructive contempt, or that which is committed out of the presence of the court, as in refusing to obey its order or lawful process. (Narcida v. Bowen, 22 Phil. 365, 371; Iso Yick Mon v. Collector of Customs, 41 Phil. 548; Caluag v. Pecson, 46 O. C. (a), 514.)

As a rule, contempt proceeding is initiated by filing a charge in writing with the court. (Section 3, Rule 64.) It has been held however that the court may *motu proprio* require a person to answer why he should not be punished for contemptuous behavior. Such power is necessary for its own protection against an improper interference with the due administration of justice (In re Quirino, 76 Phil. 630).

The contempt under consideration is a constructive one it having arisen in view of the failure of Attys. Francisco and Marasigan to obey an order of the court, and for such failure respondent Judge ordered them to appear and show cause why they should not be punished for contempt. There was therefore no formal charge filed against them but the action was taken directly by the court upon its own initiative. The question that now arsies is: Can the attorneys waive their *personal appearance* as ordered by the court?

The rule on the matter is not clear (Section 3, Rule 64). While on one hand it allows a person charged with contempt to appear by *himself* or by *counsel*, on the other, the rule contains the following proviso: "But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings." Apparently, this is the provision on which respondent Judge is now relying in insisting on the personal appearance of Atty. Francisco.

I believe, however, that this power can only be exercised when there are good reasons justifying its exercise. The record discloses none. The reason for the appearance is already well known. The contemptuous charge was clear. The only thing required was for Atty. Francisco to explain his conduct. This he did in his telegram to the court intimating that his failure to appear was due to failing health and doctor's advice, while, on the other hand, he caused Atty. Marasigan to appear for him and elaborate on his explanation. This attitude, in my opinion, is a substantial compliance with the rule and justifies the action taken by Atty. Francisco.

XIV

Felix Fabella and Ernesto Figueroa, Plaintiffs-Appellees, vs. The Provincial Sheriff of Rizal, Vicente D. Alobog, and Alto Surety and Insurance Co. Inc., Defendants-Appellants, G. R. No L-6090, November 27, 1953.

1. PLEADING AND PRACTICE; JUDGMENT ON THE PLEADINGS; ITS NATURE. — The nature of a judgment on the pleadings maybe found in Section 10, Rule 35 of the Rules of Court, which provides "where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading, except in actions for annulment of marriage or divorce wherein the material facts alleged in the complaint shall always be proved." The rules contain no other provision on the matter.

2 IBID; WHO MAY ASK JUDGMENT ON THE PLEADINGS.— Apparently, in this jurisdiction the rule regarding judgment on the pleadings only applies where an answer fails to tender an issue and plaintiff invokes the rule. The rule is silent as to whether a similar relief may be asked by the defendant, although under American jurisprudence, the rule applies to either party.

3. IBID; CASE ILLUSTRATING THE NATURE AND APPLICATION OF THE RULE. — We have in this jurisdiction quite a good number of cases illustrating the nature and application of the rule. As an illustration and guidance, we may cite the following restatement of the rulings found in different cases decided by this Court: When the defendant neither denies nor admits the material allegation of the complaint, judgment on the pleadings is proper (Alemany, et al. v. Sweeney, 3 Phil. 114). But where the defendant's answer tenders an issue, judgment on the pleadings should not be rendered (Ongain v. Riarte, 46 O. G. No. 1, p. 67). And when the defendant admits all allegations of the complaint, the admission is a sufficient ground for judgment. One who prays for judgment on the pleadings without offering proof as to the truth of his own