

attorney consulted with Leon but as they did not have any money to make the journey to Tokyo, they did not go there besides the fact which they noted that the taking of the deposition was not at all authorized by the trial Court in Manila for Juan's attorney also forgot to secure that authority thru a motion; therefore, after the deposition had been taken in Tokyo and trial came to be held in Manila, Leon's attorney objected to its admission for said lack of previous authorization from the trial court. How do you decide the question?

- V. (a) What difference is there between manner of service of summons and that of *subpoena* and what is the reason for the difference?
(b) What do you mean by an order *nunc pro tunc*? What rule, if any, authorizes its issuance?
(c) Distinguish, if there is any distinction, between a restraint order and a preliminary injunction.

VI. An American sailor having arrived at the port of Manila, goes on shore leave; he is seen by a taxi dancer at a night club and she entices him to go with her to a pleasure house and while there, the taxi dancer robs him of his money; the sailor complains to the police who arrest the dancer and Fiscal charges her in the Municipal Court and she is there convicted but she appeals to the Court of First Instance but pending appeal, the American sailor leaves for America so that when trial was called in the Court of First Instance, he was no longer available; therefore, the Fiscal sought the presentation of the notes taken by the Municipal Judge during the trial of the case as secondary proof of the testimony of the sailor; these notes were attached to the record and the Municipal Judge could be called to identify them; the Fiscal contended that they could be admitted because there were no stenographic notes since the Municipal Court is not a Court of record. Defense however contends that the procedure was wrong and the evidence incompetent. How would you decide the question of the admissibility of said notes of the Municipal Judge?

VII. Conrado loaned money to Dionisio who executed a deed of real estate mortgage unto Conrado and the mortgage was duly registered, but when the loan fell due, and notwithstanding the demands of Conrado, the loan was not paid; therefore, Conrado sent a final letter of demand unto Dionisio informing him that should he not still pay, Conrado would file action to collect; upon receipt of that letter, Dionisio in turn filed an action to annul the mortgage on the ground of lack of consideration.

(a) If, in such a situation, Conrado filed an answer to the complaint for annulment, setting forth his defenses and then pending the case, he instituted an independent action for foreclosure of the mortgage, but Dionisio moved to dismiss it on the ground of pending action, how would you rule in the motion to dismiss?

(b) If Conrado did not file the independent action for foreclosure but just presented his answer with defenses in the complaint for annulment and the case was decided in his favor, declaring the mortgage valid, and after the judgment had become final, it was then when Conrado filed his complaint for foreclosure but Dionisio met it with a motion to dismiss on the ground of bar by former judgment contending that Conrado had in his favor an alternative cause and failed to avail of the right to foreclose by filing it as a counterclaim in the action to annul, how would you decide Dionisio's motion to dismiss?

VIII. Nestor brought an action to foreclose a mortgage on a parcel of land against Olimpio; the latter upon receipt of the summons realized that the document was a forgery; therefore, he went to the Fiscal and complained to him, and the Fiscal instituted after investigation, a criminal charge for

falsification against Nestor but the contention of Nestor was that the civil case was a prejudicial question and should first be tried and the Court sustained him; and the final judgment in the foreclosure suit was that the document was forged as contended by Olimpio; whereupon, the Fiscal moved to hear the criminal case, but unfortunately, Olimpio died in the meantime, and so the Fiscal sought to present his testimony in the civil case in which he testified that the signature in the deed was a forgery, and also the decision in the civil case upholding the contention of Olimpio that it was indeed a forgery, but the defense of Nestor objects to the competency of both proofs contending that they were incompetent, besides being irrelevant in the criminal case. How do you decide?

IX. In a criminal action for serious physical injuries thru recklessness imprudence, the defendant chauffeur was convicted and sentenced to pay damages to the injured party; the latter secured execution against the chauffeur but he turned out to be insolvent according to the sheriff's return; whereupon, the offended party filed a civil action for subsidiary civil liability against the employer of the chauffeur which was a public service transportation company and in the trial of the civil case, attorney of plaintiff presented the same sheriff's return to prove the insolvency of the chauffeur without calling the sheriff himself to testify on how he came to find out that the chauffeur was insolvent; therefore, attorney for defendant transportation company objected to the admission of the return calling the attention of the Court that the sheriff was present and could be called and cross-examined and the return was therefore clearly hearsay and deprived him of the chance to cross examine. How do you decide on the admissibility of the return?

- X. (a) Is there any difference or there is none between "public document" and "official entry"? Explain your answer.
(b) When do the Rules permit and when do they not permit, proof of bad character by particular wrongful acts? Give the reason for the Rules.

LEGAL ETHICS AND PRACTICAL EXERCISES

- I. (a) What are the duties of an attorney?
(b) According to the Supreme Court, what are the circumstances to be considered in determining the compensation of an attorney?
- II. According to the Canons of Legal Ethics:
(a) How far may a lawyer go in supporting a client's cause?
(b) What is the lawyer's duty in its last analysis?
- III. Acting upon a complaint filed by three leading bar associations to the effect that evil practices, more specifically, "ambulance chasing" or personal injuries or damage suits, seemed to be spreading to demoralizing extent, with the consequence that the poor were oppressed and the ignorant taken advantage of, retainers often on extravagant terms solicited and paid for, a practice not limited to lawyers for claimants but likewise availed of by lawyers for defendants and with the added result that the calendars became congested and clogged, the Supreme Court designated the Solicitor General to conduct an investigation of such practices described in the petition and any other practice obstructive or harmful to the administration of justice, with instruction to make a report and recommendation within ninety days. One of the witnesses cited was a lawyer, X, a member of the Bar for more than twenty years, who was asked among others, who were his law office associates and employees, whether he had been paying police officials and hospital personnel for referring cases to him. He was also asked to produce all his records of litigations for damage suits and to explain if some of those records were missing. Law-

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- yer X objected, first, to the validity of the inquiry as a whole, there being no specific complaint against him and, second, to the above questions on the ground of his right not to incriminate himself. Rule on his objections with reasons.
- IV. (a) According to Rule 127, what conduct on the part of an attorney may be punished as contempt?
 (b) In the long, protracted hearing of the major Communist leaders before Judge Medina, counsel for the accused persisted in making long, repetitious, and unsubstantial arguments, objections, and protests; repeatedly make charges of bias and prejudice; and persisted in asking questions on matters already ruled as excluded. Would such conduct constitute contempt? Reason out your answer.
- V. (a) What is the extent of an attorney's authority to bind his clients according to the Rules of Court?
 (b) It appears that having been adjudicated a 1/2 undivided share in a farm land, plaintiffs were able to obtain a writ of execution on a specific portion of the lot which they themselves had selected. The execution admittedly departed materially and radically from the tenor of the judgment, but the plaintiffs asserted that the counsel for defendants gave his assent. Was such an assent binding on his clients? Reason out your answer.
- VI. (a) On what grounds may a member of the Bar be removed or suspended by the Supreme Court?
 (b) It was shown that Attorney X was prosecuted and convicted in three criminal cases for having solicited, charged and received as fees, amounts in excess of the limit fixed by Republic Act No. 145 for the preparation, presentation and prosecution of benefit claims by three war veterans. Thereafter, disbarment proceedings were

instituted against him. Should he be disbarred? Why?

- VII. (a) In a disbarment proceeding, it was shown that respondent, a member of the Bar, was previously convicted of murder and with his co-defendants was sentenced to life imprisonment, which decision was thereafter affirmed on review by the Supreme Court. After serving part of the sentence, respondent was granted a conditional pardon, the unexecuted portion thereof being remitted. At about the same time, the widow of the deceased filed a verified complaint before the Supreme Court praying that he be disbarred. Respondent pleaded the conditional pardon and sought the dismissal of the disbarment proceeding. How would you rule? Explain.
 (b) Prepare a chattel mortgage.
- VIII. In outline form, prepare a complaint or petition:
 (a) Contesting the validity of a legislative Act.
 (b) Contesting the validity of an executive order.
 (c) Contesting the validity of a municipal ordinance.
- IX. Prepare *habeas corpus* petitions:
 (a) Seeking the custody of a minor.
 (b) Seeking the release of a person detained without formal charges having been filed against him.
 (c) Seeking relief from a judgment or order of a court of record.
- X. (a) Prepare a petition for certiorari as a special civil action.
 (b) In outline form, prepare a petition for certiorari to the Supreme Court appealing from a judgment of the Court of Appeals.
 (c) You represent a Filipino industrialist desirous of establishing a factory near Manila. He was able to locate such a site with the owner willing to part with such property at practically give away prices as long as he is paid in cash. Draw up a contract or deed, as the case may be, to enable your client to obtain the site.

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by the Court of Appeals, except insofar as the maximum of said indeterminate penalty which was increased to 10 years, 8 months and 1 day of *prision mayor*. The case is before us on appeal by certiorari taken by Sergio del Rosario.

It appears that, after showing to complainant Apolinario del Rosario the Philippine one-peso bills Exhibits C, E and G and the Philippine two-peso bill Exhibit H, and inducing him to believe that the same were counterfeit paper money manufactured by them, although in fact they were genuine treasury notes of the Philippine Government one of the digits of each of which had been altered and changed, the aforementioned defendants had succeeded in obtaining P1,700.00 from said complainant, in the City of Davao, on June 23, 1955 for the avowed purpose of financing the manufacture of more counterfeit treasury notes of the Philippines. The only question raised in this appeal is whether the possession of said Exhibits C, E, and H constitutes a violation of Article 168 of the Revised Penal Code. Appellant maintains that, being genuine treasury notes of our government, the possession thereof cannot be illegal. We find no merit in this pretense.

It is not disputed that a portion of the last digit 9 of Serial No. F-79692619 of Exhibit C, had been erased and changed so as to read 0 and that similar erasures and changes had been made in the penultimate digit 9 in Serial No. F-79692691 of Exhibit G, and in the last digit 9 of Serial No. D-716329 of Exhibit H.

Articles 168 and 169 of the Revised Penal Code read:

ART. 168. *Illegal possession and use of false treasury bank notes and other instruments of credit.* — Unless the act is one of those coming under the provisions of any of the preceding articles, any person who shall knowingly use or have in possession, with intent to use any of the false or falsified instruments referred to in this section, shall suffer the penalty next lower in degree than that prescribed in said articles.

"ART. 169. *How forgery is committed.*—The forgery referred to in this section may be committed by any of the following means:

1. By giving to a treasury or bank note or any instrument payable to bearer or to order mentioned therein, the appearance of a true and genuine document.

2. By erasing, substituting, counterfeiting or altering by any means the figures, letters, words or signs contained therein."

It is clear from this provision that the possession of genuine treasury notes of the Philippines wherein any of "the figures, letters, words or signs contained" in which had been erased and/or altered, with knowledge of such erasure and alteration, and with the intent to use such notes, as they were used by petitioner herein and his codefendants in the manner adverted to above, is punishable under said Article 168, in relation to Article 169, subdivision (1), of the Revised Penal Code (U.S. vs. Gardner, 3 Phil., 398; U.S. vs. Solito, 36 Phil., 785).

Being in accordance with the facts and the law, the decision appealed from is, accordingly, affirmed, with costs against petitioner Sergio del Rosario.

IT IS SO ORDERED.

Benzon, C.J., Padilla, Bautista Angelo, Labrador, J.B.L. Reyes, Barrera and De Leon, JJ., concurred.

Paredes, J. took no part.

O M I S S I O N

In the case of Caraballo vs. Republic, G. R. No. L-15080, April 25, 1962 published on page 213 of the July 31, 1962 issue of the Lawyers Journal, on line 28 between the words "and" and "his" the following words were inadvertently omitted: "his wife Graciela G. Caraballo live, alleges that he and".