present charge. In the light of these facts, illusions, associations, suggestions, judgment, trick of the memory could not have penetrated into and influenced the witnesses' observations and caused them to mistake another woman for the defendant.

The record will have to be searched in vain for any ill will that could have induced the three women witnesses to trump up a charge for a capital offense against the defendant. At the most, they were moved by a righteous indignation aroused by the treachery of a Filipino who shamelessly aided and comforted with the enemy both in flesh and the wanton butchery of her people during that reign of terror and tribulations that tried men's souls. Asuncion Dueñas' statement that if the accused had not been arrested she herself might have killed her because of so many people she had betrayed, was a genuine and natural reaction of an aggrieved widow against one who had brought her desolation, misery and suffering. Relating as it does to the very atrocities under investigation, her wrath gives vivid substance and reality to her testimony rather than weighs on her veracity.

The decision cites Exhibit 3—Lourdes Son's statement prepared by one of the defendant's attorneys and signed by Lourdes at the Correctional Institution for Women —to impeach Lourdes' testimony. I may mention that from a leading question asked Modesta Son by defense counsel it also seems that the defendant's attorneys were able to exact from her, in their office, a promise that she would stand by them. Needless to say, this procedure was highly reprehensible and unethical. In one aspect Exhibit 3 and Modesta's promise positively favor the prosecution. The defense's effort to win Modesta and Lourdes Son to its side after they had given evidence against the defendant is indication of its realization that there was truth and gravity in what they knew. And the ease with which the effort succeeded is evidence that the witnesses were not unfriendly, and gives the lie to the contention that they were bent on having the accused punished to the point of being capable of committing intentional injury against her.

Referring, on cross-examination, to Exhibit 3, Lourdes declared that she did not know what it said and insinuated that she was intimidated. While we may discount her testimony that she was threatened by Corporal Vera, we should not overlook the great probability that undue influence was brought to bear upon her and her mother to retract their statements made to the CIC and the prosecutors. They said that when they were summoned by De Vera and defendant's two sisters from their temporary quarters at the Gregorio del Pilar Elementary School to come to the lawyer's office, they thought the government lawyer's office was meant. De Vera's intervention could conceivably have disarmed them of any suspicion of anomaly. De Vera was one of the two non-commission officers who had questioned them at the Manila Jockey Club in March and who, it would seem, arrested the accused. They might not have known that this corporal had married the defendant's elder sister in June and had become defendant's protector. Modesta San and Lourdes San are unlettered.

On its intrinsic merit, Exhibit 3 is of little or no value. I have to admit that Modesta's and Lourdes's testimony is unsatisfactory on what the defendant's attorneys and De Vera told them and on other things that transpired between them. For reasons that can only be left to conjectures counsel did not press the point, which under normal circumstances would be an important bit of proof for the defense. But whatever the case may be, Exhibit 3 and Modesta's promise not to forsake the accused disproves the insinuation of unreasoned hostility. In the face of the proven facts, they do not impair the witnesses' credibility on the main issue. Their statements to the military authorities in March were made spontaneously and, as has been heretofore said, the witnesses had received no inducement and had no reason to prevaricate. If they agreed with the defendant's lawyers to testify according to the tenor of Exhibit 3, their commitment could not be the truth, nor put in doubt the truth of their previous statements to the representatives of the prosecution.

The very character of the supposed mistake supposedly committed by the witness is, I think, its best refutation. As I trust I have shown, mistaken identity was highly remote. The implication of the accused by Modesta, Lourdes and Asuncion to the authorities was either an outright, deliberate falsehood or an absolute truth. There is no room for a middle ground. That it is the truth is inescapable. If Cabutin, Mejia and Alejandro were pointed out to the Japs by a woman, as the defense at least impliedly admits, and if, as the witnesses said the accused was that woman and so declared to the CIC, no amount of subsequent contrary statements can create any doubt as to the accuracy of their first information, unless it could be shown that they had any base motive to wish the defendant harm and to shield the real culprit. There is not the least indication or insinuation of either. To think that the witnesses left unmolested the real informer who was instrumental in the killing of members of their families and friends and trained their bitterness and resentment against a guiltless woman for no reason whatever is highly irrational.

Stripped of all cluttering details, the issue is reduced to the credibility of the opposing witnesses. There are no sufficient grounds for this Court to set aside the unanimous findings of fact of the three experienced judges who saw and heard the witnesses testify.

*Montemayor* and *Pablo, JJ.*, concur in the foregoing dissenting opinion.

VI

*Joaquin Zamora, petitioner, vs. Rafael Dinglasan, Judge, Court of First Instance of Manila, and Isabelo Hilario, respondents, G. R. No. L-750, August 16, 1946,* PABLO, *J.*

1. DESAHUCIO; EJECUCION; MORA EN EL PAGO O DEPOSITO DE LOS ALQUILERES; CASO DE AUTOS.—El demandado deje de depositar los alquileres correspondientes a los meses de abril y mayo. El demandante tenia derecho a pedir la ejecución de la sentencia, y era deber del Juzgado ordenar la ejecución de la sentencia apelada.

2. ID.; ID.; ID.; SUSPENSION DE EJECUCION BAJO LA LEY No. 689, CON SUJECION AL PAGO O DEPOSITO DE LOS ALQUILERES VENCIDOS.—No contiene la Ley No. 689 disposición alguna que justificase la falta de pago o deposito de los alquileres vencidos. Dicha ley cuando existe ya "orden o sentencia ya firme y ejecutoria," autoriza al Juzgado a "suspender la ejecución de semejante orden o sentencia, por el periodo que estime conveniente, que no será mayor de tres meses" (articulo 4) con sujeción a las condiciones prescritas en los articulos 5 y 6. Una de las condiciones de la suspención es "que la persona contra la cual se dicto la sentencia deposite todo el importe de los alquileres por todo el tiempo que dura la suspension o las porciones de dicho importe que el Juzgado ordene de tiempo en tiempo a razon del cual se dictó la sentencia deposite todo alquiler que pago por el mes inmediatamente anterior a la terminación del arrendamiento." Esta ley no protege al que incurre en mora en el pago o deposito de los alquileres.

JUICIO ORIGINAL en el Tribunal Supremo. Mandamus.

Los hechos aparecen relacionados en la decisión del tribunal.

*Sres. Padilla, Carlos* & *Fernando* en representación del recurrente.

*Sr. D. Eusebio Morales* en representación del recurrido Hilario.

Nadie compareció en representación del Juez recurrido.

PABLO, *M.:*

En la causa civil No. 1307, titulada "Joaquin Zamora, como administrador, etc. contra Isabelo Hilario, demandado," el Juzgado Municipal de Manila dicto en Enero 14,

1946, sentencia condennando al demandado a desalojar las fincas Nos. 2032, 2032-A y 2034, de la Calle Azcarraga, Manila, ya pagar la renta de ₱170 al mes. El demandado apeló, y el expediente ha sido registrado en el Juzgado de Primera Instancia de Manila como causa civil No. 72180.

En Mayo 29, 1946, el recurrente (demandante en la causa de desahucio) presentó una moción en dicho Juzgado de Primera Instancia pidiendo la ejecución de la sentencia dictada por el Juzgado Municipal de Manila, alegando como razon la falta de pago o depósito por el demandado de los alquileres correspondientes a los meses de Abril y Mayo de 1946. El demandado ha sido notificado de esta moción, y en Mayo 31, esto es, al segundo dia despues de presentada la moción, depositó los citados alquileres en la Escribania del Juzgado.

En Junio 11, despues de considerar los escritos presentados por ambas partes, el Honorable Juez recurrido dicto una orden denegando la moción de ejecución.

En Junio 24 recurrente presentó moción de reconsideración razonada, y al siguiente dia el demandado presentó su escrito oponiendose a la moción de reconsideración, que fue denegada por el Juzgado de Judio 12.

El recurrente, por medio de una solicitud original de mandamus, y alegando que las ordenes del Juzgado de Junio 11 y Julio 12 de esta año han sido dictadas en contravención de la ley que no tiene otro remedio facil y expedito para obtener la ejecución a que tiene derecho, pide que este Tribunal ordene al recurrido, el Honorable Rafael Dinglasan, como Juez del Juzgado de Primera Instancia de Manila, que expida una orden de ejecución en la causa civil No. 72180.

El articulo de la regla 72 dispone: "si se dictare sentencia contra el demandado, se expedirá inmediatamente la ejecución, a menos que se perfeccionare una apelación y el demandado prestare fianza bastante para suspender la ejecución de dicha sentencia, aprobada por el juez de paz o municipal y otorgada en favor del demandante para el registro de la causa en el Juzgado de Primera Instancia y para el pago de los alquileres, daños y costas hasta que se dicte sentencia definitiva, y a menos que, durante la pendencia de la apelación, el demandado pague periodicamente al demandante o al Juzgado de Primera Instancia la cantidad de los alquileres vencidos, segun el contrato, si lo hubiere, tal y como hubiere estimado en su sentencia el juzgado de paz o municipal, * * *. Si el demandado no hiciere periodicamente los pagos antes mencionados durante la pendencia de la apelación, el Juzgado de Primera Instancia, previa moción del demandante, que se notificara al demandado y previa prueba de falta de pago, ordenará la ejecución de la sentencia apelada;" * * *.

El demandado dejo de depositar los alquileres correspondientes a los meses de Abril y Mayo. El demandante tenia derecho a pedir la ejecución de la sentencia, y era deber del Juzgado ordenar la ejecución de la sentencia apelada. El Reglamento en ingles dice: "shall order the execution of the judgment appealed from."

No contiene la Ley No. 689, disposición alguna que justificase la falta de pago o deposito de los alquileres vencidos. Dicha ley, cuando existe ya "orden o sentencia ya firme y ejecutoria," autoriza al Juzgado a "suspender la ejecución de semejante orden o sentencia, por el periodo que estime conveniente, que no será mayor de tres meses," (articulo 4) con sujeción a las condiciones prescritas en las articulos 5 y 6. Una de las condiciones de la suspensión es "que la persona contra la cual se dictó la sentencia deposite todo el importe de los alquileres por todo el tiempo que dure la suspensión o las porciones de dicho importe que el Juzgado ordene de tiempo en tiempo a razon del alquiler que pagó por el mes inmediatamente anterior a la terminación del arrendamiento." Esta ley no protege al que incurre en mora en el pago o deposito de los alquileres.

Se dicta sentencia ordenando al Honorable Juez recurrido que expida la orden de ejecucion pedida. Sin pronunciamiento sobre costas.

*Moran, Pres., Paras, Feria, Perfecto, Hilado, Bengzon, Briones,* y *Tuason, MM.,* estan conformes.

Se concede la solicitud.

## VII

*Patricio H. Gubagaras, plaintiff-appellee, vs. West Coast Life Insurance Company, defendant-appellant, CA-G.R. No. 1628, January, 6, 1949,* DE LA ROSA, *J.*

1. INSURANCE; WAR; EFFECT OF NON-PAYMENT OF INSURANCE PREMIUM BY REASON OF WAR. —On August 1, 1940, plaintiff-appellee and his wife were insured by defendant-appellant under a joint endowment policy for twenty years, under which the surviving spouse became the beneficiary. The last premium paid by the insured covered the semester period of August 1, 1941 to February 1, 1942. The Pacific War which started on December 8, 1941, and the occupation of the City of Manila on January 2, 1942, caused the disruption of all means of communication between the capital and other points outside the City of Manila. As a result of this, appellee could not remit to the appellant the premiums due. The wife died on May 30, 1945, in the municipality of Dueñas, province of Iloilo, before the armistice but after the liberation of Iloilo. On June 18 of the same year appellee notified the appellant of her demise and requested for necessary forms to support a claim for the amount of the insurance. Appellant refused to entertain the claim on the ground that appellee having failed to pay the premium due after February 1, 1942, payment of the amount of the insurance was forfeited. *Held*: The defendant-appellant was ordered to pay the amount of the insurance, less the value of the premiums due and unpaid until the death of the wife, with legal interest from the filing of the complaint and costs.

2. ID.; ID.; IMPOSSIBILITY TO PAY PREMIUMS IN THE HOME OFFICE OF INSURER.—Where the policy provides "all premiums are due and payable in advance to the home office of the company in the City of San Francisco, California, U.S.A. . . .," but by reason of the war the insured could not pay the premium in the home office, the insured was excused for nonpayment thereof.

3. ID.; FAILURE OF INSURER TO ASSIGN AGENT AT THE RESIDENCE OF THE INSURED.—Where the policy provides that the premiums "may be paid to an authorized agent of the company producing the company's official premium receipt signed by the President, a Vice President or Secretary of the Company, and countersigned by the person receiving the premium," the company is obliged to assign an agent to present receipts of premiums due or to be due, signed by its president, vice president or secretary, and countersigned by the agent, to the insured, in their residents, to collect them.

4. ID.; WAR; JAPANESE MILITARY NOTES; CONSIGNATION; DEPOSIT OF JAPANESE MILITARY NOTES TO PAY PREMIUMS DUE. —If the insured deposited with the Clerk of Court the premiums due, in the Japanese Military Notes, the insurer will not accept the money because it has no value.

5. ID.; CONSTRUCTION AND INTERPRETATION; FAILURE TO DEMAND PAYMENT OR TO PAY PREMIUMS DUE; INSURANCE CONTRACT INTERPRETED IN FAVOR OF INSURED. — Where there are no justifiable reasons to lay the blame on either of the contracting parties for failure either to demand payment or to pay premium due on the policy in question, Article 1105 of the Civil Code should be applied, as it tends to supply the deficiencies in the contract, especially when it is al-