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

allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgement on those allegations taken together with such of his own as are admitted in the pleadings. (Bauermann v. Casas, 10 Phil. 386; Evangelista v. De la Rosa, 76 Phil., 115; Tanchico v. Ramos, 48 O. G. [1] 654,)

4. IBID; WHEN JUDGMENT ON THE PLEADINGS MAY BE RENDERED. — Judgment on the pleadings can only be rendered when the pleading of the party against whom the motion is directed, be he plaintiff or defendant, does not tender any issue or admits all the material allegations of the pleading of the movant. Otherwise, judgment on the pleadings cannot be rendered.

I. C. Monsod for appellant Vicente D. Alobog.
Pedro C. Gloria for appellees.

DECISION

BAUTISTA ANGELO, *J.*:

This is an action for damages instituted in the Court of First Instance of Rizal arising from the attachment of a movie house together with all equipments, machineries, and furniture found therein, the ownership of which is disputed.

Defendant Vicente Alobog filed a motion to dismiss and when the same was denied for lack of merit, he filed an answer wherein he denied specifically all the material allegations of the complaint and set up some affirmative and special defenses and a counterclaim.

Plaintiffs answered the counterclaim stating merely that they deny "generally and specifically each and every allegation contained in each and every paragraph" of said counterclaim. Thereafter, defendant Vicente Alobog, considering that plaintiff's answer to his counterclaim failed to tender an issue, filed a motion praying that judgment be rendered in his favor and against plaintiffs, asking at the same time that he be allowed to present evidence as to the amount of damages he is claiming in his answer.

This motion was set for hearing, but as defendant or his counsel failed to appear, counsel for plaintiffs informed the court that he was agreeable that a judgment on the pleadings be rendered as prayed for in the motion of defendant. Accordingly, the court rendered judgment granting practically the relief prayed for in the complaint. From this decision defendant has appealed.

The case was originally taken to the Court of Appeals, but when the case was called for hearing appellant's counsel admitted that he was merely raising questions of law, to which appellees' counsel agreed, as in fact the latter alleged in his brief that said court has no jurisdiction over the case and that it should be forwarded to the Supreme Court. Thereupon, the case was certified to this Court.

The motion which the lower court considered as one for judgment on the pleadings and which served as basis of its decision reads as follows:

"Comes now defendant Vicente Alobog, by and through his undersigned counsel and to this Honorable Court most respectfully shows:

1. That the defendant Vicente D. Alobog in answer to the plaintiffs' complaint on file denying the allegations contained therein, except paragraph 1 and in a way paragraphs 3, 5, 6, and 13, for the truth of the matter are as stated in the Affirmative and Special defenses, and by way of Counterclaim reproduces all the allegations of his 'Answer', 'Affirmative Defense' and 'Special Defense' and incorporated therein as part of said Counterclaim in the amount of Twelve Thousand (P12,000.00) Pesos for damages suffered by said defendant.

said counterclaim of said defendant Vicente D. Alobog, said answer dated September 6, 1950, failed to tender an issue, and instead in law admit the material allegations of the said 'Answer', 'Affirmative Defense', 'Special Defense', and 'Counterclaim' of defendant Vicente D. Alobog, for the said answer of plaintiffs state: 'THAT PLAINTIFFS DENY GENERALLY AND SPECIFICALLY EACH AND EVERY ALLEGATION CONTAINED IN EACH AND EVERY PARAGRAPH OF THE DEFENDANTS' COUNTERCLAIM.'

That the herein moving party is thus entitled to a judgment as a matter of law.

That the defendant Vicente D. Alobog is ready to present evidence as to the amount of Damage suffered by him therein alleged.

WHEREFORE, premises considered, the undersigned pray for an order giving judgment in favor of the defendant Vicente D. Alobog and against the plaintiffs based on the pleadings on file; that the defendant Vicente D. Alobog be allowed to present evidence as to the amount of damage suffered by him as therein alleged; and further pray for such other and further relief as the court may deem just with costs, against the plaintiffs."

What is the nature of a judgment on the pleadings? This point is well defined in our Rules of Court. Thus, in Section 10, Rule 35, it is provided that "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 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. 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 rudle applies to either party. (Roxoline Petroleum Co. v. Craig, et al., 300 P. 620; 71 C. J. S. p. 863.)

Quite apart from the rule we have quoted above, and regardless of whoever may invoke the benefit of its provisions, 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 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 allegations 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 (Ongsin 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 allegations, and without giving the opposing party an opportunity to introduce evidence, must be understood to admit the truth of all the material and relevant allegations of the opposing party, and to rest his motion for judgment on those allegations taken together with such of his own as are admitted in the pleadings. (Bauermann v. Casas, 10 Phil., 386; Evangelista v. De la Rosa, 76 Phil., 115; Tanchico v. Ramos, 48 O. G. [1] 654.) It is apparent from these rulings that judgment on the pleadings can only be rendered when the pleading of the party against whom the motion is directed, be he plaintiff or defendant, does not tender any issue, or admits all the material allegations of the pleading of the movant. Otherwise, judgment on the pleadings cannot be rendered.

If we consider the motion filed by the defendant wherein he prayed that judgment be rendered on the pleading in the light of the foregoing rules, one cannot but reach the conclusion that what was intended was merely to ask for judgment in so far as the counterclaim contained in his answer is concerned in view of the failure of the plaintiffs to traverse it as required by the rules. This is reflected in the second paragraph of the motion wherein defendant makes patent the fact that plaintiffs' answer to his counterclaim failed to tender an issue because it merely pleaded a general denial. This is also reflected in the prayer wherein he asked that judgment be rendered in his favor and against the plaintiffs and that he be allowed to present evidence as to the amount of damages claimed by him in his counterclaim. The motion could

not have referred to the material allegations of the complaint for the simple reason that they were specifically denied in the answer and therefore the latter has tendered an issue which could not be the subject of a judgment on the pleadings. This is the only conclusion that can be drawn from a careful analysis of the contents of the motion of defendant. A contrary interpretation would be incongruous and contrary to its very purpose. It is for these reasons that we believe that the lower court committed an error in considering the aforesaid motion as an implied admission of all the material allegations of the complaint and in rendering judgment accordingly.

Wherefore, the decision appealed from is hereby revoked, without pronouncements as to costs. The case is remanded to the lower court for further proceedings.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo and *Labrador, J. J.*, concur.

XV

Mamerto Mission, et al., Petitioners, vs. Vicente S. del Rosario, as Acting Mayor of Cebu City, et al., Respondents, G. R. No. L-6754, February 26, 1954.

1. PUBLIC OFFICERS; "DETECTIVE" DEFINED.—"The word 'detective', as commonly understood in the United States, is defined as one of a body of police officers, usually dressed in plain clothes, to whom is intrusted the detection of crimes and the apprehension of the offenders, or a policeman whose business is to detect wrongs by adroitly investigating their haunts and habits." [Grand Rapids & I. Ry. Co. v. King, 83 N.E. 778, 780, 41 Ind. App. 707, citing Am. Dict, and Webst. Dict. (Vol. 12, Words and Phrases, p. 312.)]

2. IBID; "POLICEMAN" DEFINED. — The term "policemen" may include detectives (62 C.J.S. p. 1091).

3. IBID; "POLICE" DEFINED.—"The term 'police' has been defined as an organized civil force for maintaining order, preventing and detecting crimes, and enforcing the laws, the body of men by which the municipal law, and regulations of a city, town, or district are enforced."

4. IBID; COMMON FUNCTION OF POLICEMEN AND DETECTIVES.—With few exceptions, both policemen and detectives perform common functions and duties and both belong to the police department. In contemplation of law therefore both shall be considered as members of the police force.

5. IBID; REMOVAL OF CITY POLICE UNDER REPUBLIC ACT NO. 557.—Section 1 of Republic Act No. 557 provides, in so far as may be pertinent to their case, that the members of the *city police* shall not be removed "except for misconduct or incompetency, dishonesty, disloyalty to the Philippine government, serious irregularities in the performance of their duties, and violation of law or duty," and in such cases, charges shall be preferred by the city mayor and investigated by the city council in a public hearing, and the accused shall be given opportunity to make their defense. A copy of the charges shall be furnished the accused and the investigating body shall try the case within ten days from notice. The trial shall be finished within a reasonable time, and the investigating body shall decide the case within fifteen days from the time the case is submitted for decision. The decision of the city council shall be appealable to the Commission of Civil Service.

6. REMOVAL OF CITY POLICE UNDER EXECUTIVE ORDER NO. 264.—Executive Order No. 264, on the other hand, prescribes a more summary procedure. It applies to secret service agents or detectives and provides in a general way that the appointing officer may terminate the services of the persons appointed if he deems it necessary because of lack of trust or confidence and if the person to be separated is a civil service eligible, the advice of his separation shall state the reasons therefor. Under this procedure no investigation is necessary, it being sufficient that the appointee be notified of his separation based on lack of confidence on the part of the appointing officer.

7. IBID; ILLEGAL REMOVAL OF DETECTIVES; CASE AT BAR.—Some detectives in the Police Department of Cebu City were removed by the Mayor because he had lost his confidence in them. The detectives maintain that their removal is illegal because it was made in violation of the law and the Constitution which protect those who are in the civil service. On the other hand, the mayor contends that their positions being primarily confidential, their removal can be effected under Executive Order No. 264 of the President, on the ground of lack of trust or confidence. HELD: (1) Sec. 1 of Republic Act No. 557 provides, in so far as may be pertinent to their case, that the members of the *city police* shall not be removed "except for misconduct or incompetency, dishonesty, disloyalty to the Philippine government, serious irregularities in the performance of their duties, and violation of law or duty," and in such cases, charges shall be preferred by the city mayor and investigated by the city council in a public hearing, and the accused shall be given opportunity to make their defense, etc. Executive Order No. 264, on the other hand, prescribes a more summary procedure. It applies to secret service agents or detectives and provides in a general way that the appointing officer may terminate the services of the persons appointed if he deems it necessary because of lack of trust or confidence and if the persons to be separated is a civil service eligible, the advice of his separation shall state the reasons therefor. Under this procedure no investigation is necessary, it being sufficient that the appointee be notified of his separation based on lack of confidence on the part of the appointing officer. An analysis of the pertinent provisions of the Charter of the City of Cebu (Com. Act No. 58) will reveal that the position of a detective comes under the police department of the city. This is clearly deducible from the provisions of sections 32, 34, and 35. Therefore, the detectives were illgeally removed from their positions.

Fernando S. Ruiz for petitioners.
Jose L. Abad for respondents.

DECISION

BAUTISTA ANGELO, *J.*:

Petitioners were detectives in the Police Department of the City of Cebu duly appointed by the Mayor of the city. Some of the appointees were civil service eligibles. Their rank, length of service, and efficiency rating appear in the certification attached to the petition.

On May 11, 12, and 19, 1953, petitioners were notified by the Mayor that they had been removed because he has lost his confidence in them. Following their removal, the City Treasurer and City Auditor stopped the payment of their salaries, and after their positions had been declared vacant because of their removal, the City Mayor immediately filled them with new appointees who are presently discharging the functions and duties appertaining thereto.

Considering that their removal was made in violation of the law and of the Constitution which protect those who are in the civil service, petitioners filed the present petition for mandamus in this Court praying that their removal be declared illegal and without effect and that their reinstatement be ordered and their salaries paid from the date of their removal up to the time of their reinstatement.

Respondents in their answer tried to justify the removal of petitioners contending that, their positions being primarily confidential, their removal can be effected under Executive Order No. 264 of the President of the Philippines, on the ground of lack of trust or confidence. They claim that the Mayor of Cebu City has lost confidence in them, and so he separated them from the service upon due notice.

The only issue involved in this petition hinges on the determina-