The LAWYERS JOURNAL

MANILA, PHILIPPINES

VOLUME XXVII SEPTEMBER 30, 1962 NUMBER 9

In this issue

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THE LAWYERS JOURNAL is published monthly by Hon. Vicente J. Francisco, former senator and delegate to the Constitutional Convention, practising attorney and president of the Francisco College (formerly Francisco Law School.)

SUBSCRIPTION AND ADVERTISING RATES: Subscription. In the Philippines—P20.00 for one year; P10.00 for 6 months; P2.00 per copy. In the United States and foreign countries—$20.00 for one year; $10.00 for 6 months; $2.00 per copy. Advertising: Full page—P105.00; Half page—P65.00; One-fourth page—P45.00; One-eighth page—35.00; One-sixteenth page—P25.00; Back Issues: In the Philippines—P25.00 — twelve issues; P3.00—per issue. In the United States and foreign countries—$25.00—twelve issues; $3.00—per issue. Entered as second class mail matter at the Post Office.

Escolta, Manila — Tel. No. 4-13-18
BUSINESS OFFICE: R-508 Samanillo Bldg.

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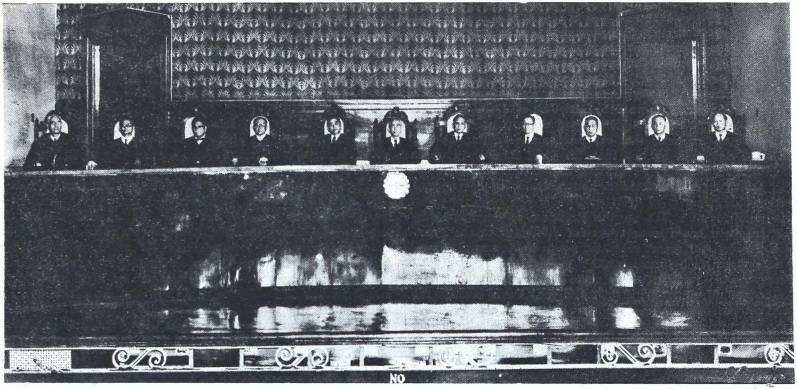
Editorial:



JUSTICE WITHOUT FEAR OR FAVOR

The Supreme Court decision on the suspension case of Dr. Paulino J. Garcia should be a sobering reminder to the country of the indispensable role played by an independent Judiciary in our system of representative democracy, and breathes meaning to the principle of separation of powers. Indeed the case of Dr. Garcia has focused and dramatized the continuing and imperative necessity for the country to maintain a judiciary that is free and independent. Nothing less can insure protection of the citizenry against the excesses which may be committed, deliberately or not, by the most powerful branch of the government.

The unpleasant aftermath between the President and one of the concurring justices should not deflect our appreciation away from the fact that, following promulgation of the decision, which must have been unpleasant to the President, the President nonetheless openly pledged fealty to the decision of the Supreme Court.

The decision in the case of Dr. Paulino Garcia came opportunely. Before that decision was handed, responsible quarters were already expressing apprehension over the way investigations were being conducted by the zealous prosecutors of the administration. Trial by publicity, fueled by the frothing accusations sensationally aired by supposedly responsible officials, was frightfully becoming the order of the day and the promise of the new era. These officials consequently gave the impression that theirs — and the administration's — was a righteous zeal which would tolerate no sobering caution, not even the caution dictated by the supreme law of the land. In their drive to ferret out graft, administration officials apparently became oblivious of the fact that there is such a thing as procedural due process and the constitutional mandate to hear before one condemns.

Righteousness is not valid excuse to trample upon rights guaranteed by the Constitution. It precisely becomes the duty of those who would proclaim a "new era" of morality to scrupulously observe and enforce the Constitution and our laws. Public officials who cannot observe the law can never really be expected to be genuine servants of the moral order, new and otherwise. Theirs become a self-righteousness which conceals an evil motive.

It is unfortunate that for every case filed, for every investigation instituted, for every accusation made, the reputation and honor of persons are involved, and this stigma of notoriety brought about by undue publicity cannot be completely eradicated even if their innocence is eventually vindicated.

But turning back to the Supreme Court, it is heartening and refreshing to realize that it dispensed justice as it deemed fit, without fear or favor, and without regard to the known desires of the most powerful elective official of the land. This indeed is the true function of those who sit in the Judiciary. This is the spirit that should permeate the actuations of even the most obscure justice of the peace, not to mention the entire gamut of membership in this most venerable of our government institutions — the Bench.

There is no question but that the Supreme Court will continue to resolve cases in the spirit of courage and independence. It did not hesitate to uphold the President in the Aytona-Castillo Central Bank controversy. Now it has not hesitated to uphold the cause of suspended Dr. Paulino Garcia. No one can accuse the Supreme Court of either bias or fear. It continues to proclaim the glory of courageous thought and independent action. One prays that this glory remains a permanent heritage. It is a heritage which officials of the other branches of the government would do well to respect. It is the last bulwark of the rights enshrined in the Constitution and so long as we pay homage to the Constitution so long must we pay homage to the independence that has made our Judiciary what it is.

Justice, dispensed without fear or favor, is the only justice to which a people, living under a regime of law and not of men, is entitled. And nothing should be tolerated by the public conscience which would in any way weaken or tend to weaken a system which dispenses that kind of justice.

PRES. MACAPAGAL REBUKES JUSTICE REYES ON ATTACK IN GARCIA DECISION

"The Supreme Court decision has not resolved the charges against Dr. Paulino Garcia but the period of his suspension. In accordance with my general attitude of giving faith, credit, and respect to the Supreme Court, I shall comply with its decision.

"I am constrained, however, to except to statements made in the concurring opinion, penned by Mr. Justice J. B. L. Reyes, that the President of the Philippines 'had already prejudged the case and made up his mind that the petitioner (Dr. Garcia) had been guilty of electioneering' and that 'the Chief Executive's words and conduct have evidenced an attitude that is difficult to reconcile with the open mind, soberness and restraint to be expected of an impartial judge.'

This uncalled-for attack on the President is aggravated by the fact that it is based on a statement attributed to the President from a newspaper report submitted not in the course of the reception of evidence in a formal trial.

"There was no justification to make the gratuitous and irrelevant allusions attacking the President's good faith because the case was not yet being decided on its merits. As the President was not a party to the case, it was inexcusable to make a finding of fact about his conduct, at least without giving him a chance to have his say. By prejudging the presidential mind even before the President has decided the case, the justice is the one who appears to have prejudged the Garcia case.

"The justice has ignored that being a lawyer ourselves whose sense of responsibility has been recognized by no less than our people, we know the difference between personal knowledge and judicially established evidence in rendering judgment on a case.

"Not only that—the justice has apparently forgotten that the right of free speech is one of the most cherished of freedoms; that the President should be entitled to that; that the statement alluded to was made on Jan. 29, 1962, when there was as yet no case pepding before a tribunal of justice, here the investigating committee; and there was, therefore, as yet no case to prejudge. Who can deny therefore the right of the citizen, here the President? And when, with such an erroneous basis and logic that he had to support his stand, he went to the extent of censuring my own conduct, I must submit to the judgment of the people that he has gone too far.

"I have consistently shown respect for the Supreme Court and its members, and have always heeded its decisions. But to be entitled to respect, one must accord respect in return.

"Any justice who unduly attacks the President of the Republic detracts from the prestige of the Supreme Court which should be held high at all times. A becoming sense of merit and humility should make one consider that he is not infallible; that it is not only he who knows the law; and that while the President of the country receives his position from the sovereign people, an appointive official receives his appointment from one man.

"If a justice gratuitously prejudges the mind and good faith of others, he is opening the door to a suspicion of his own impartiality and good faith. In this case, for instance, it is plausible that there is less reason to prejudge the mind and good faith of the President than the mind and partiality of the justice who is a long-standing and ideological colleague of the respondent, Dr. Garcia, in the Civil Liberties Union and who, despite such extraordinary association, has not seen fit to inhibit himself from a case affecting the juridical, as distinguished from the ideological and emotional standards, of civil liberties.

"Pursuant to the people's mandate, this country is now going through a period of reform. It is desirable that the Supreme Court be kept above the resultant political and emotional stresses, for which purpose, the virtue of the court and its members should be assumed. It would be unfortunate if through an inordinate sense of superior righteousness that is made to replace judicial sobriety, a justice would open that assumption to dispute."

CIVIL LIBERTIES UNION ANSWERS PRES. MACAPAGAL

The President has seen fit to draw the Civil Liberties Union of the Philippines into the case of Dr. Paulino J. Garcia. The Civil Liberties Union believes that he has no valid reason to complain against Justice J. B. L. Reyes' concurring opinion in the Dr. Garcia case.

Justice Reyes voted with a unanimous Supreme Court in ordering the immediate reinstatement of Dr. Garcia to the NSDB and clearly expressed his opinion that there had been a denial of procedural due process, because the President had from the beginning prejudged the case and condemned Dr. Garcia of electioneering, even before any charges were filed and heard.

The President has in effect admitted that he made the condemnatory statements, claiming "that the statement alluded to was made on 29 January 1962 when there was as yet no case before a tribunal of justice or the investigating committee; and there was therefore as yet no case to prejudge."

If even before there was a case, the President had already openly and publicly condemned Dr. Garcia and adjudged him guilty, what chance would Dr. Garcia have when his case came up before the President for ultimate judgment? The President who condemned Dr. Garcia is still the same President who will decide his case."

Dr. Garcia's case was the first case of the President's "resign or face charges and be found guilty" technique. But Dr. Garcia refused to be intimidated and was immediately suspended by the President since last Feb. 18.

The indefinite suspension has now been declared by the Supreme Court to be in violation of the Constitution. Justice Reyes further opined that the suspension was void at the outset for denial of due process. In either case, the Supreme Court was unanimous that there has been denial of due process.

No one takes away from the President his right as a citizen to free speech, but he should realize all his public statements are always of an official character by virtue of his position.

In an obvious attempt to becloud the issues, the President charged Justice Reyes with partiality, claiming "the justice is a long-standing and ideological colleague" of Dr. Garcia in the CLU. The decision of the Supreme Court was unanimous. The President has not challenged or denied the facts and the law of the case, as stated both in the Court's opinion and in the concurring opinion of Justice Reyes. Common membership with a party in a case in a civic, professional or social association has never been considered a ground for a judge to inhibit himself. As to the CLU, its objectives since its founding in 1937 have always remained the same: militant Filipinism, devotion to democracy and opposition to dictatorship in whatever guise or form, social justice and respect for all constitutional rights.

It would do the President well to ponder whether his casting such an unjustified aspersion on a member of the Supreme Court—which has been the bulwark of the people's rights—cannot but lead to undermining the people's confidence in our Courts.

The CLU stands behind the import of Justice Reyes' opinion; No one, be he President, can condemn without a hearing. No one is above the Constitution and the law, nor immune to criticism. *The President is NOT the State.*

WHEN AN ALIEN MAY BE DEPORTED

Since the deportation of Harry Stonehill and Robert Brooks and the recent filing of deportation proceedings against Bob Stewart, owner of the Republic Broadcasting Station, public curiosity has been aroused regarding the meaning, nature and implications of deportation.

The popular concept is that deportation merely involves the sending back of an undesirable alien to the country of his origin or to the country where he was born or of which he is a citizen or subject. This is not necessarily so for there are other alternatives. A deportee may also be sent to the foreign port at which he resided prior to his residence in the Philippines.

Another popular concept is that all deportation proceedings partake of the same nature. Deportation proceedings, however, are of two types. The first type of deportation proceeding is governed by the Philippine Immigration Act of 1940 as amended, the second type, by the Revised Administrative Code. Authority to deport under the first type is vested in the Bureau of Immigration and the proceedings are undertaken by the Bureau's Board of Special Inquiry. On the other hand, authority to deport under the second type lies in the President, the proceedings being undertaken by the Deportation Board of the Department of Justice. (The deportation of Stonehill and Brooks and the deportation proceedings against Stewart fall under the second type.)

The grounds for deportation under the first type of which there are thirteen, are found in Section 37 of the Immigration Act. On the other hand, there are "no hard and fast rules in determining who are undesirable aliens" under the second type of deportation.

The following are the grounds for deportation under the first type:

1. Entry to the country "by means of false and misleading statements or without inspection and admission by the immigration authorities."
2. Entry although not lawfully admissible.
3. Conviction for a violation of the law governing prohibited drugs.
4. Conviction for a crime involving moral turpitude.
5. Practice of prostitution, connection with the management of a house of prostitution, or being a procurer.
6. Becoming a public charge.
7. Violation of any condition of admission as a non-immigrant.
8. Belief in or advocacy of the overthrow of the government by force; disbelief in or opposition to organized government; advocacy of assault or assassination of public officials; unlawful destruction of property; affiliation with any organization teaching such doctrines.
9. (a) Personation of another individual while applying for an immgration document or assuming a fictitious name to evade the immigration laws.
   (b) Issuing or disposing of an immigration document to an unauthorized person.
   (c) Knowingly obtaining, accepting or using a false immigration document.
   (d) Entry to the country without inspection and admission by immigration officials, or by fraudulent representation or wilful concealment of a material fact.
   (e) Posing as a Philippine citizen in order to evade immigration laws and requirements.
   (f) Making false statements under oath.
   (g) Departure from the country without an immigration clearance certificate.
   (h) Attempt or conspiracy with another to commit any of the foregoing acts.
   (i) Bringing in, concealing, or harboring ineligible aliens.
10. Conviction of having violated the Philippine Registration Act of 1941.
11. Engaging in profiteering, hoarding or blackmarketing.
12. Conviction of any offense penalized under the Revised Naturalization Laws or any law relating to the acquisition of Philippine citizenship.
13. Defrauding his creditor by absconding or alienation of properties to prevent them from being attached or executed.

What are the grounds for deportation under the second type? As we have already mentioned, there are "no hard and fast rules in determining who are undesirable aliens" under the second type of deportation. However, the case of a German parish priest by the name of George Koschinski who is facing deportation after having allegedly torn the Filipino flag may be cited.

A Swiss was charged with deportation for uttering words against an Indian minister to the Philippines. This Swiss uttered something which is likely to disturb the good relations between Indian and Philippine governments.

Other grounds for deportation are the following:

1. Tax evasion under the special law called Republic Act 1093.
2. Violation of the gambling law.
3. Violation of the opium law.
4. Violation of the usury law.
5. Smuggling.
6. Prostitution.
7. Conviction of crimes involving moral turpitude.

It will be noted that the last two mentioned grounds for deportation are the same as those found in Section 37 of the Immigration Act. Although a deportation case has already been filed in the Bureau of Immigration, the same may be filed with the Deportation Board.

How does the Board conduct deportation proceedings? An alien may be charged before the Deportation Board on complaint of anybody or by the board itself, *motu proprio*. Upon receipt of the complaint, the Office of the Special Prosecutor of the board conducts an investigation of the case. If satisfied that there is a *prima facie* case against the respondent, the Special Prosecutor files charges which corresponds to the information filed by the fiscal in criminal cases. A warrant of arrest signed by the Chairman of the board is then issued for the arrest of respondent. As soon as the respondent is arrested, he may file a petition for bail. Thereafter the case may be set for trial, on its merits, before the board. Trial proceeds as in the ordinary court of justice where the prosecuting officer of the government first introduces his evidence to be followed by the respondent. As soon as the hearing of the case is terminated, the case is considered submitted to the board, which will then prepare its report and recommendations to the President of the Philippines.

The Deportation Board is the authorized agent of the President to conduct investigations and make recommendations for deportation to the President. The board was created by Executive Order No. 33 of May 29, 1936. This has been amended by various Executive Orders, the latest amendment being Executive Order No. 455, which determines the present composition of the board. Three members compose the present board, namely, Undersecretary of Justice Magno S. Gatmaitan, Solicitor General Arturo Alafriz, and Col. Manuel Reyes, the authorized representative of the Secretary of National Defense.

Aside from its primary function of hearing deportation cases, the Deportation Board can also inquire into and decide questions of citizenship. In such cases, if the respondent does not agree with the findings of the board, he can always bring the matter to the court in order that the question of his citizenship may be determined. Whenever doubt exists, the doubt is always resolved in favor of the government and against the alien.

When can an undesirable alien not be deported?

Although a deportation order has been issued against an un-

(*Continued next page*)

UNITED STATES SUPREME COURT

Advance Opinion

EMIL RECK, Petitioner,
v
FRANK J. PATE, Warden
— US —, 6 L ed 2d 948, 81 S Ct —
[No. 181]
Argued April 19, 1961. Decided May 12, 1961.

SUMMARY

Under circumstances detailed in headnote 4, infra, an accused confessed to and was convicted of murder in a state court, and was sentenced to a 199-year prison term. Several years later, the accused filed a petition for habeas corpus in the United States District Court for the Northern District of Illinois, asserting that he was denied due process of law under the Fourteenth Amendment by the admission into evidence at the trial of his allegedly coerced confession. The writ issued, but after reviewing the circumstances surrounding the confession, the District Court ordered the writ quashed. (172 F Supp 734.) The Court of Appeals for the Seventh Circuit affirmed. (274 F2nd 250.)

On certiorari, the Supreme Court vacated the judgments of the District Court and the Court of Appeals and remanded the case to the District Court. In an opinion by STEWART, J., expressing the view of six members of the Court, it was held that under the circumstances the confession was coerced and that its admission into evidence at the state trial violated the due process clause of the Fourteenth Amendment.

DOUGLAS, J., joined by WHITTAKER, J., dissented on the ground that the confession was not coerced.

Constitutional Law Sec. 840.5 — due process — involuntary confession.

1. The question whether there has been a violation of the due process clause of the Fourteenth Amendment by the introduction of an involuntary confession into evidence is one which it is the ultimate responsibility of the United States Supreme Court to determine.

Evidence Sec. 682 — confession — coercion.

2. The question whether a confession was coerced depends upon whether the defendant's will was overborne at the time he confessed, for if such was the case, his confession cannot be deemed the product of a rational intellect and a free will.

Evidence Sec. 682 — confession — coercion.

3. In resolving the question whether a confession was coerced, physical mistreatment is but one circumstance, albeit a circumstance which by itself weighs heavily; other circumstances may combine to produce an effect just as impellingly coercive as the deliberate use of the third degree.

Evidence Sec. 685 — confession — coercion — interrogation.

4. The due process clause of the Fourteenth Amendment is violated by the admission into evidence in a state murder prosecution of confessions obtained from the accused, a 19-year-old youth of subnormal intelligence and without previous experience with the police, who was, for all practical purposes, held incommunicado for the four days preceding his first confession, during which time he was subjected daily to 6- or 7-hour stretches of relentless and incessant interrogation, and was intermittently placed on public exhibition in police "show-ups," where during the entire period he was physically weakened and in intense pain, and without adequate food, without counsel, and without the assistance of family or friends.

Constitutional Law Sec. 840.5; Courts Sec. 766 — due process — confession — precedents.

5. The determination of whether the confession of an accused was coerced, so as to render its admission into evidence in a state criminal trial a violation of the due process clause of the Fourteenth Amendment, requires more than a mere color-matching of cases.

Appeal and Error Sec. 1689 — remand — for re-trial — habeas corpus — coerced confession.

6. When vacating judgments of a Court of Appeals and a District Court denying a state prisoner's application for habeas corpus in a coerced confession case, the United States Supreme Court will remand the case to the District Court with directions to the District Court to enter such orders as are appropriate and consistent with the Supreme Court's opinion, allowing the state a reasonable time in which to re-try the prisoner.

APPEARANCES OF COUNSEL

Donald Page Moore argued the cause for petitioner.
William C. Wines argued the cause for respondent.

(*Continued next page*)

WHEN AN ALIEN . . . (*Continued from page 259*)

desirable alien, it may be difficult or impossible to execute the order. For instance, if the said alien is "stateless," meaning he is "a man without a country," he cannot be deported. In such a case, he should be released from imprisonment, provided, however, that he posts the necessary bond and submits himself to reasonable surveillance of the immigration authorities. Such a person is entitled to release from imprisonment because of the theory that "after a reasonable length of time and in default of specific charges placed against him other than that he is undesirable alien, a vagrant, or the like, the deportation order becomes *functus officio* (cannot be executed or made effective) for lack of ability to execute it and there is no authority for further incarceration."

In almost all cases, the cost of deportation is shouldered by the government. However, when deportation proceedings are instituted within five years after the alien's entry, except when the reason for deportation arises subsequent to his entry, Section 39 of the Philippine Immgration Act of 1940 as amended provides that the cost of deportation from the port of deportation shall be at the expense of the owner or owners of the vessel by which the alien came. In case that is not practicable, the government foots the bill.

A procedure similar to deportation is exclusion. Should an alien brought to the Philippines be excluded, he would be sent back immediately to the country from where he came, on the same vessel that has brought him, and in accommodations of the same class by which he arrived. The owner or owners of such vessel is required to shoulder the expense of his return. In the event that the said vessel has left and if it should not be possible to return the alien within a reasonable time by means of another vessel owned by the same interests, the government may pay the cost of return and later charge it against the owner, agent, or consignee of the vessel.

Contrary to popular belief, deportation proceedings are not criminal in nature and therefore deportation is not a punishment.

OPINION OF THE COURT

Mr. Justice *Stewart* delivered the opinion of the Court.

On the night of January 2, 1936, Dr. Silber C. Peacock, a Chicago physician, left his Edgewater Beach apartment in response to an emergency telephone call to attend a sick child. He never returned. The next day his lifeless body was found in his automobile on a Chicago street. It was apparent that he had been brutally murdered. On Wednesday, March 25, 1936, the petitioner, Emil Reck, and three others were arrested by the Chicago police on suspicion of stealing bicycles. Late the following Saturday afternoon Reck confessed to participation in the murder of Dr. Peacock. The next day he signed another written confession. At Reck's subsequent trial in the Criminal Court of Cook County, Illinois, the two confessions were, over timely objection, received in evidence against him. The jury found Reck guilty of murder, and he was sentenced to prison for a term of 199 years.

The conviction was affirmed by the Illinois Supreme Court, People v. Rock, 392 Ill. 311, 64 NE2d 526. Several years later Reck filed a petition under the Illinois Post-Conviction Hearing Act, alleging that his confessions had been procured by coercion and that their use as evidence at his trial had, therefore, violated the Due Process Clause of the Fourteenth Amendment. After a hearing, the Criminal Court of Cook County denied relief. The Supreme Court of Illinois affirmed the Criminal Court's finding that due process had not been violated at Reck's trial. Reck v. People, 7 Ill 2d 261, 130, NE2d 200. This Court denied certiorari "without prejudice to an application for a writ of habeas corpus in an appropriate United States District Court." Reck v. Illinois, 351 US 942, 100 L ed 1469, 76 S Ct 838.

Reck then filed a petition for habeas corpus in the United States District for the Northern District of Illinois. The writ issued, and at the hearing the District Court received in evidence the transcript of all relevant proceedings in the Illinois courts. In an opinion reviewing in detail the circumstances surrounding Reck's confession, the District Court held "the Due Process Clause not violated in the instant case." 172 F Supp 734. The Court of Appeals for the Seventh Circuit affirmed, one judge dissenting, 274 F2d 250, and we granted certiorari, 363, US 838, 4 L ed 2d 1725, 80 S Ct 1629. The only question presented is whether the State of Illinois violated the Due Process Clause of the Fourteenth Amendment by using an evidence at Reck's trial confessions which he had been coerced into making.

The question whether there has been a violation of the Due Process Clause of the Fourteenth Amendment by the introduction of an involuntary confession is one which it is the ultimate responsibility of this Court to determine. See Malinski v. New York, 324 US 401, 404, 89 L ed 1029, 1032, 65 S Ct 781; Thomas v. Arizona, 356 US 390, 393, 2 L ed 2d 863, 866, 78 S Ct 885; Watts v. Indiana, 338 US 49, 51 52, 93 L ed 1801, 1804, 1805, 69 S Ct 1347, 1357. After thoroughly reviewing the record in this case, we are satisfied that the district judge's summary of the undisputed facts is accurate and complete. Neither in brief nor oral argument did the respondent take issue with these findings. No useful purpose would be served by attempting to paraphrase the district judge's words:

". . . Emil Reck was at the time of this horrible crime but nineteen years old. Throughout his life he had been repeatedly classified as mentally retarded and deficient by psychologists and psychiatrists of the Institute for Juvenile Research in Chicago. At one time he had been committed to an institution for the feebleminded, where he had spent a year. He dropped out of school at the age of 16, never having completed the 7th grade, and was found to have the intelligence of a child between 10 and 11 years of age at the time of his trial. Aside from his retardation, he was never a behavior problem and bore no criminal record.

"Reck was arrested in Chicago without a warrant at 11:00 a.m. Wednesday, March 25, 1936, on suspicion of stealing bicycles. He was then shuttled between the North Avenue Police Station and the Shakespeare Avenue Police Station until 1:15 p.m., at which time he was returned to the North Avenue Police Station and there interrogated mainly about bicycle thefts until 6:30 or 7:00 p.m. He was then taken to the Warren Avenue Police Station where the night. The records shows that Reck was fed an egg sandwich and coffee at the North Avenue Station and a bologna sausage sandwich at the Warren Avenue Station.

"On Thursday, at 10:00 a.m., Reck was brought back to the North Avenue Station where he was interrogated some six or seven hours about various crimes in the District. Afterwards, he was sent to the Shakespeare Station and later that evening he was taken downtown to the Detective Bureau where he was exhibited at a so-called 'show-up'. The record does not indicate where Reck spent the night. The records shows that Reck was fed an egg sandwich and a glass of milk on Thursday but apparently nothing else.

"The record is silent as to where Reck spent Friday morning but it is clear that interrogation was resumed sometime in the early afternoon. Friday evening over one hundred people congregated in the North Avenue Police Station where Reck was exhibited on the second floor. Shortly after 7:00 p.m. Reck fainted and was brought to the Cook County Hospital where he was examined by an intern who found no marks or bruises upon his body and rejected him for treatment. Reck was then taken directly back to the North Avenue Station where he was immediately again placed on exhibition. He again became sick and was taken to an unfurnished handball room, where a Sergent Aitken, assigned to the Peacock murder investigation, questioned him about the Peacock murder for a short period of time. Reck again became sick and a Dr. Abraham was called who later testified that Reck was extremely nervous, that he was exposed and that his shirt was unbuttoned and hanging outside of his pants. He was rubbing his abdomen and complaining of pain in that region. After an examination of 60 to 90 seconds, Dr. Abraham left and Reck was questioned intermittently and exhibited to civilians until approximately 9:30 p.m. when he became ill and vomited a considerable amount of blood on the floor.

"Reck was again brought to the Cook County Hospital at 10:15 p.m. on Friday where he was placed in a ward and given injections of morphine, atropine, and ipecac twice during the evening. At about 2:00 a.m. two physicians, Doctor Scatliff which has been assisting the police in the Peacock murder came at the request of Prosecutor Kearney to see if there were any marks of brutality on Reck. They found the door of Reck's room barred by a police officer. After securing permission from one, Police Captain O'Connell, they went in and found Reck asleep and therefore made only a cursory examination in the dark which revealed nothing conclusive. At 9:00 a.m. on Saturday, Reck told Dr. Zachary Felsher of the Cook County Hospital that the police had been beating him in the stomach. He also told Dr. Weissman of the same hospital that he had been beaten in the abdomen and chest over a three-day period. This was the first time since his arrest some 70 hours before that Reck had conversed with any civilian outside the presence of police officers. His father had attempted to see Reck on Thursday and Friday at the North Avenue Police Station and on Saturday at the Cook County Hospital. Each time he was refused.

"At 9:30 a.m. on Saturday, Reck was removed from the hospital in a wheelchair and was questioned about the Peacock murder as soon as he was transferred into Captain O'Connell's car to be transported to the North Avenue Police Station, where the questioning continued until the afternoon, when he was taken to the State's Attorney's office at approximately 2:00 p.m.

"Previously to this, on Friday evening, two of the boys, Nash and Goeth, who had been arrested with Reck, had confessed to the murder of Dr. Peacock, implicating Reck and one other boy, Livingston. At about 3:00 a.m. on Saturday, Livingston also agreed to sign a confession. (Upon arraignment, Livingston pleaded not guilty and alleged that he was subjected to physical abuse by the police.)

"On Saturday afternoon, Reck was questioned about the whereabouts of the gun which Goeth had told police that Reck possess-

ed. After intensive interrogation, Reck admitted that Goeth had told him of the Peacock murder. About 4:30 p.m. in front of a group of officers and prosecutors, Reck was confronted with Nash and Goeth. Nash told the story which became his signed confession. Reck denied participation in the crime. Goeth then made the statement that Nash was telling the truth and implicated Reck. At this point Reck stated that he was present at the crime but that Livingston and not he struck Dr. Peacock.

"At 5:55 p.m. of the same Saturday, March 28, 1936, a joint confession was taken, at which time Reck was very weak and sick looking. At this point, Reck had been in custody almost 80 hours without counsel, without contact with his family, without a court appearance and without charge or bail. The text of this joint confession reveals mostly yes and no answers in the case of Reck. The interrogation did not deal with the gun or the automobile used in the crime and was signed by all that Saturday night.

"On Sunday, Reck was again interrogated in the State's Attorney's office and at 4:30 p.m. his individual statement was taken which was more or less a reiteration of the joint confession. The boys then washed up and were given clean clothes. Thereafter, in a formal ceremony in front of numerous officers and prosecutors as well twelve invited civilians, the statements were read to the boys, they were duly cautioned and the confessions were then signed. The boys did not know there were civilians present and were not permitted counsel. At this time Reck had been without solid food since Friday when he had an egg sandwich. He was placed on a milk diet by the doctor Friday night at the hospital.

"Reck was held in custody Monday, Tuesday and Wednesday, March 30 through April 1. Why, is not revealed in the record. On Thursday, April 2, 1936, Reck was rearraigned in open court and pleaded *not guilty*. He had not seen his father or other relatives or any lawyer during this entire period."

As the district judge further noted, the record "carries an unexpressed import of police brutality, . . ." Reck testified at length to beatings inflicted upon him on each of the four days he was in police custody before he confessed. His testimony was corroborated. The police, however, denied beating Reck, and, in view of this conflict in the evidence, we proceed upon the premise, as did the District Court, that the officers did not inflict deliberate physical abuse or injury upon Reck during the period they held him in their custody. See Thomas v. Arizona, 356 US 390, 402, 403, 2 L ed 2d 863, 871, 872, 78 S Ct 885; Stein v New York, 346 US 156, 183, 184, 97 L ed 1522, 1541, 1542, 73 S Ct 1077; Ashcraft v Tennessee, 322 US 143, 152, 88 L ed 1192, 1198, 1199, 64 S Ct 921; Ward v Texas, 316 US 547, 552, 86 L ed 1663, 1665, 1666, 62 S Ct 1139.

But it is hardly necessary to state that the question whether a confession was extracted by coercion does not depend simply upon whether the police resorted to the crude tactic of deliberate physical abuse. "The blood of the accused is not the only hallmark of an unconstitutional inquisition" Blackburn v Alabama, 361 US 199, 206, 4 L ed 2d 242, 247, 80 S Ct 274. The question in each case is whether a defendant's will was overborne at the time he confessed. Chambers v Florida, 309 US 227, 84 L ed 716, 60 S Ct 472; Watts v Indiana, 338 US 49, 52, 53, 93 L ed 1801, 1805, 1809, 69 S Ct 1347, 1357; Leyra v Denno, 347 US 556, 558, 98 L ed 948, 950, 74 S Ct 716. If so, the confession cannot be deemed "the product of a rational intellect and a free will," Blackburn, supra (361 US at 208). In resolving the issue all the circumstances attendant upon the confession must be taken into account. See Fikes v. Alabama, 352 US 191, 198, 1 L ed 2d 246, 251, 77 S Ct 281; Payne v Arkansad, 356 US 560, 567, 2 L ed 2d 975, 980, 78 S Ct 844. Physical maltreatment is but one such circumstance, albeit a circumstance which by itself weighs heavily. But other circumstances may combine to produce an effect just as impellingly coercive as the deliberate use of the third degree. Such, we think, were the undisputed circumstances of this case, as set out in detail by the District Court.

At the time of his arrest Reck was a nineteen-year old youth of subnormal intelligence. He had no prior criminal record or experience with the police. He was held nearly eight days without a judicial hearing. Four of those days preceded his first confession. During that period Reck was subjected each day to six or seven hour stretches of relentless and incessant interrogation. The questioning was conducted by groups of officers. For the first three days the interrogation ranged over a wide variety of crimes. On the night of third day of his detention the interrogation turned to the crime for which petitioner stands convicted. During this same four-day period he was shuttled back and forth between police stations and interrogation rooms. In addition, Reck was inmittently placed on public exhibition in "show-ups." On the night before his confession, petitioner became ill while on display in such a "show-up." He was taken to the hospital, returned to the police station and put back on public display. When he again became ill he was removed from the "show-up," but interrogation in the windowless "handball court" continued relentlessly until he grew faint and vomited blood on the floor. Once more he was taken to the hospital, where he spent the night under the influence of drugs. The next morning he was removed from the hospital in a wheel chair, and intensive interrogation was immediately resumed. Some eight hours later Reck signed his first confession. The next afternoon he signed a second.

During the entire period preceding his confessions Reck was without adequate food, without counsel, and without the assistance of family or friends. He was, for all practical purposes, held incommunicado. He was physically weakened and in intense pain. We conclude that this total combination of circumstances " is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear." Ashcraft v Tennessee, 322 US 143. 154, 88 L ed 1192, 1199, 64 S Ct 921.

It is true that this case lacks the physical brutality present in Brown v Mississippi, 297 US 278, 80 L ed 682, 56 S Ct 461, the threat of mob violence apparent in Payne v Arkansas, 356 US 560, 2 L ed 2d 975, 98 S Ct 844, the thirty-six hours of consecutive questioning found in Ashcraft v Tennessee, 322 US 143, 88 L ed 1192, 64 S Ct 921, the threats against defendant's family used in Harris v South Carolina, 338 US 68, 93 L ed 1815, 69 S Ct 1354, 1357, or the deception employed in Spano v New York, 360 US 315, 3 L ed 2d 1265, 79 S Ct 1202, and Leyra v Denno, 347 US 556, 98 L ed 948, 74 S Ct 716. Nor was Reck's mentality apparently so irrational as that of the petitioner in Blackburn v Alabama, 361 US 199, 4 L ed 2d 242, 80 S Ct 274. However, it is equally true that Reck's youth, his subnormal intelligence, and his lack of previous experience with the police make it impossible to equate his powers of resistance of overbearing police tactics with those of the defendants in Stein v New York, 346 US 156, 97 ed 1522, 73 S Ct 1077, or Lisenba v California, 314 US 219, 86 L ed 166, 62 S Ct 280.

Although the process of decision in this area, as in most, requires more than a mere color-matching of cases, it is not inappropriate to compare this case with Turner v Pennsylvania, 338 US 62, 93 L ed 1810, 69 S Ct 1352, 1357, where we held a confession inadmissible on a record disclosing circumstances less compelling. Decision in Turner rested basically on three factors: the length of detention, the amount and manner of interrogation, and the fact that Turner had been held incommunicado by the police. Turned had been in custody for four nights and five days before he confessed. He had been questioned intermittently, as much as six hours in a day, sometimes by one, sometimes by several officers. He had been interrogated a total of some twenty-three hours. Reck was held the same length of time, under basically the same circumstances, before his second confession. He was held some twenty-four hour less than Turner before his first con-

fession, but during that period he was subjected to more concentratedly intensive interrogation, in longer stretches. He also spent considerable periods of time on public display in "show-ups," a factor not present in Turner. In addition, Reck was weakened by illness, pain, and lack of food. Finally, unlike Turner, Reck must be regarded as a case of a least borderline mental retardation. The record here thus presents a totality of coercive circumstances far more aggravated than those which dictated our decision in Turner. See also Johnson v Pennsylvania, 340 US 881, 95 L ed 640, 71 S Ct 191; Fikes v Alabama, 352 US 191, 1 L ed 2d 246, 77 S Ct 281.

It cannot fairly be said on this record that "the inward consciousness of having committed a murder and a robbery and of being confronted with evidence of guilt which petitioner could neither deny nor explain seems enough to account for the confessions here." Stein v New York, 346 US 156, 185, 97 L ed 1522, 1542, 73 S Ct 1077. It is true that, as in Stein, Reck did not confess until confronted with the incriminating statements of his companions. But beyond this the circumstances in Stein bear little resemblance to those involved in this case. The defendants in Stein were questioned a total of twelve hours during a thirty-two hour detention. Part of that time was spent working out a "bargain" with police officers. Neither defendant was "young, soft, ignorant or timid." Stein, supra (346 US at 185). Nor were they "inexperienced in the ways of crime or its detection" or "dumb as to their rights." Id. 346 US at 186. By contrast, Reck was in fact young and ignorant. He was in fact inexperienced in the ways of crime and its detection. Moreover, he was subjected to pressures much greater than were the defendants in Stein. He was held incommunicado and questioned over a much longer period. He was physically ill during much of that time, in pain, and weakened by lack of food. Confrontation with the confessions of his companions in these circumstances could well have been the event which made further resistance seem useless to Reck, whether he was guilty or not. On this record, therefore, the fact that his confession came hard upon the confessions of others who implicated him has little independent significance.

The State has made no effort to distinguish between the Saturday and Sunday confessions. Nor could it properly do so. The coercive circumstances preceding the first confession existed through Sunday. Reck remained in police custody, without a judicial hearing. He was subjected to further interrogation. He did not see counsel, family or friends between Saturday afternoon and Sunday afternoon. There are no other facts in the record suggesting that the Sunday confession was an act independent of the confession extracted on Saturday. Both confessions are subject to the same infirmities. Under the Due Process Clause of the Fourteenth Amendment neither was admissible at Reck's trial.

The petitioner's detention is in violation of the Constitution of the United States, and he is therefore entitled to be freed therefrom. The judgments of the Court of Appeals and the District Court are vacated and the case remanded to the latter. On remand, the District Court should enter such orders as are appropriate and consistent with the opinion allowing the State a reasonable time in which to retry the petitioner. Cf Rogers v Richmond, 365 US 534, 549, 5 L ed 2d 760, 771, 81 S Ct 735; Irvin v Dowd, — US —, 6 L ed 2d 751, 759, 81 S Ct —.

Vacated and remanded.

SEPARATE OPINIONS

Mr. Justice *Douglas*, concurring.

Emil Reck at the age of twelve was classified as a "high grade mental defective" and placed in an institution for mental defectives. He dropped out of school when he was sixteen. Though he was retarded he had no criminal record, no record of delinquency. At the time of his arrest, confession, and conviction he was nineteen years old.

He was arrested Wednesday morning, March 25, 1936. The next day, March 26, his father went to the police asking where his son was and asking to see him. The police would give him no information. On March 27 his father came to the police station again but was not allowed to see his son. Later the father went to see his son at the hospital but was denied admission.

The father was denied the right to see his son over and again. The son was held for at least eight full days incommunicado. He was arraigned before a magistrate on April 12, 1936, only after he had confessed.

The late professor Alexander Kennedy of the University of Edinburgh has put into illuminating words the manner in which long continued interrogation under conditions of stress can give the interrogator effective command over the prisoner. The techniques — now explained in a vast literature — include (1) disorientation and dissolution; (2) synthetic conflict and tension; (3) crisis and conversion; (4) rationalization and indoctrination; (5) apologetics and exploitation.

"Production by conditioning methods of a state of psychological tension with its concomitant physical changes in heart, respiration, skin and other organs, the feeling being unattached to any particular set of ideas. This is later caused to transfer itself to synthetic mental conflicts created out of circumstances chosen from the subject's life-history, but entirely irrelevant to the reasons for his detention. The object is to build up anxiety to the limits of tolerance so as to invoke pathological mental mechanisms of escape comparable to those of Conversion Hysteria."

Whether the police used this technique on Emil Reck no one knows. We do know from this record that Emil Reck was quite ill during his detention. He was so ill that he was taken to a hospital incommunicado. He was so ill he passed blood. What actually transpired no one will know. The records coming before us that involve the relations between the police and a prisoner during periods of confinement are extremely unreliable. The word of the police is on the side of orderly procedure, non-oppressive conduct, meticulous regard for the sensibilities of the prisoner. There is the word of the accused against the police. But his voice has little persuasion.

We do know that long detention, while the prisoner is shut off from the outside world, is a recurring practice in this country — for those of lowly birth, for those without friends or status. We also know that detention incommunicado was the secret of the inquisition and is the secret of successful interrogation in Communist countries. Professor Kennedy summarized the matter:

"From the history of the Inquisition we learn that certain empirical discoveries were made and recognized as important by a thoughtful and objective minority of those concerned. The first was that if a prisoner were once induced to give a detailed history of his past and to discuss it with his interrogators in the absence of threat or persuasion or even of evidence of interest, he might after an emotional crisis recant and confess his heresies. The second discovery was that true and lasting conversion could never be produced by the threat of physical torture. Torture not infrequently had the opposite effect and induced a negative mental state in which the prisoner could no longer feel pain but could achieve an attitude of mental detachment from his circumstances and with it an immunity to inquisition. The most surprising feature was the genuine enthusiasm of those who did recant. While these results were necessarily ascribed at the time to the powers of persuasion of the Inquistadores, it is evident in retrospect that something was happening which was often beyond their control. The same facts come to light in the long history of Russian political interrogation. In the Leninist period, the success of the immensely tedious method of didactic interrogation then in use was similarly ascribed to the appeal of Marxist doctrine to reason. The fact is that in conditions of confinement, detailed

history-taking without reference to incriminating topics and the forming of a personal relationship with an interrogator who subscribes to a system of political or religious explanation, there may occur an endogenous and not always predictable process of conversion to the ideas and beliefs of the interrogator."

Television teaches that confessions are the touchstone of law enforcement. Experience however teaches that confessions born of long detention under conditions of stress, confusion, and anxiety are extremely unreliable.

People arrested by the police may produce confessions that come rushing forth and carry all the earmarks of reliability. But detention incommunicado for days on end is so fraught with evil that we should hold it to be inconsistent with the requirements of that free society which is reflected in the Bill of Rights. It is the means whereby the commands of the Fifth Amendment (which I deem to be applicable to the States) are circumvented. It is true that the police have to interrogate to arrest; it is true that they may arrest to interrogate. I would hold that any confession obtained by the police while the defendant is under detention is inadmissible, unless there is prompt arraignment and unless the accused is informed of his right to silence and accorded an opportunity to consult counsel. This judgment of conviction should therefore be reversed.

Mr. Justice *Clark*, whom Mr. Justice *Whittaker* joins, dissenting.

Twenty-five years ago a jury found Reck guilty of the savage murder of Dr. Silber C. Peacock. His first attempt to upset that conviction came nine years later when he sought a writ of error to the Supreme Court of Illinois. It was denied by opinion, People v. Reck, 392 Ill 311, 64 NE 2d 526 (1945). This Court denied certiorari. Reck v Illinois, 331 US 855, 91 L ed 1862, 67 S Ct 1742 (1947). In the same year the Illinois Supreme Court again denied Reck's application for discharge. The next year the United States District Court for the Northern District of Illinois did likewise. Then, in 1952, an application under the Illinois Post Conviction Hearing Act was filed to test the validity of Rock's 199-year sentence imposed by a jury 16 years previously. His application was denied after a full hearing by the trial court, and the Illinois Supreme Court affirmed by a unanimous opinion. Reck v People, 7 Ill 2d 261, 130 NE 2d 200 (1955). Petition for certiorari was again denied, without prejudice to the filing of appropriate proceedings in Federal District Court. 351 US 942, 100 L ed 1469, 76 S Ct 838 (1956). This case was then filed in the United States District Court where no witnesses were heard, the court being satisfied with reviewing the record. Once again relief was denied, 172 F Supp 734, and the Court of Appeals affirmed. 274 F2d 250.

Today — 25 years after his conviction — this Court overturns the decision of the original trial judge, the judgment and findings of a state trial judge on post-conviction hearing, the unanimous opinion of the Supreme Court of Illinois on that appeal, decisions of both the Supreme Court of Illinois and a federal district judge on separate applications for habeas corpus and, finally, those of a federal district judge and Court of Appeals in this case. All of these courts are overruled on the ground that "a totality of coercive circumstances" surrounded Reck's confession. The Court second-guesses the findings of the trial judge and those of the only other trial court that heard and saw any of the witnesses, both of which courts impartially declared the confession to be entirely voluntary.

The Court has quoted at length and with approval the summary of the evidence by the United States district judge. I quote in the margin the findings of the two state judges who saw the witnesses and heard the evidence, one a few weeks after the events, and the other sixteen years thereafter. A casual comparison of the three findings shows that the federal judge — to say the least — has imported conclusions and added embellishments not present in the cold record of the trial. I need only cite one example, where he finds that his "cold summary . . . carries an unexpressed import of police brutality . . ." While the Court of Appeals at least sub silentio, overturned some of these findings, the State does not take issue with the basic facts in the summary but does strenuously object to its conclusory findings. Perhaps the explanation for these differences is best explained by the federal judge himself, when he finds that he has read "[t]he record . . . in the light most favorable" to Reck; and further that "Reck's confession was tested before a judge and jury who had the opportunity to observe witnesses and weigh other fresh evidence at first hand while I must make my decision on the basis of a cold and ancient record, *which can appear misleading*." (Emphasis added.)

Although the Court says that it proceeds "upon the premise, as did the District Court, that the officers did not inflict deliberate physical abuse or injury upon Reck," it nonetheless finds the confession to have been coerced. I assume, therefore, that the Court bases its reversal on psychological or mental coercion. In so doing it goes far beyond the holding of any of the prior cases of this Court.

I shall not repeat the facts except to note that Reck was arrested on Wednesday; he was not interrogated concerning Dr. Peacock's murder until Friday, when he immediately became ill, and was hospitalized; later that night all three of his confederates confessed; confronted with them on Saturday — each accusing him of participation in the murder — he confessed. There was no evidence of physical brutality, no request for counsel, nor, unlike Turner v Pennsylvania, 338 US 62, 93 L ed 1810, S Ct 1352, 1357 (1949), for relatives and friends. Nor did he ask for food or make any indication of any desire or need therefor, showing, in the light of the record, nothing more than the lack of interest in food of one who had suffered from stomach ulcers for years. How the Court can now — 25 years later — find on this "cold" record that these circumstances amounted to mental or psychological coercion is beyond my comprehension. I agree with the score of judges who have decided to the contrary.

Since mental coercion is the keystone of its rationale, the Court properly sets to one side the cases involving physical brutality, e. g., Brown v Mississippi, 297 US 278, 80 L ed 682, 56 S Ct 461 (1936). While they dealt with factors bearing upon the mental state of the defendants, the Court properly distinguishes cases involving threats of mob violence, the wearing down of the accused by protracted questioning, threats against members of the defendant's family, and those in which deception was practiced. Nor can Reck be classified as mental defective, as was the case in Blackburn v Alabama, 361 US 199, 4 L ed 2d 242, 80 S Ct 274 (1960).

The Court relies heavily on Turner v Pennsylvania (US) supra. I do not agree that it presented this Court with "a totality of coercive circumstances" significantly less "aggravated" than the situation presented here. In Turner the Court reviewed the Pennsylvania Supreme Court's affirmance of petitioner's conviction by a jury. In the present case no claim is made that the codefendants' confessions, with which Reck was confronted, were in fact not made and did not in fact implicate Reck in the murder of which he was convicted. In Turner, however, the petitioner" was falsely told that other suspects had 'opened up' on him." 338 US, at 64. Such a falsification, in my judgment, presents a much stronger case for relief because at the outset Pennsylvania's officers resorted to trickery. Moreover, such a psychological artifice tends to prey upon the mind, leading its victim to either resort to counter charges or make "further resistance useless," and abandonment of claimed innocence the only course to follow.

I

Paulino Garcia, petitioner vs. the Honorable Executive Secretary, and Juan Salcedo, Jr., in his capacity as Acting Chairman of the National Science Development Board, respondents, G. R. No. L-19748, September 13, 1962, Barrera, J.

1. CIVIL SERVICE; ADMINISTRATIVE INVESTIGATION; PREVENTIVE SUSPENSION; AS PROVIDED IN THE NEW CIVIL SERVICE LAW AND REVISED ADMINISTRATIVE CODE; LIFTING OF PREVENTIVE SUSPENSION PENDING ADMINISTRATIVE INVESTIGATION NOT FOUND IN ADMINISTRATIVE CODE. — Section 35, Republic Act 2260 (Civil Act of 1959) is a new provision in our Civil Service law. In the Revised Administrative Code, in its Article VI on "Discipline of Persons in Civil Service", is found the same power of preventive suspension exercisable by the President and the chief of a bureau or office with the approval of the proper head of department, as is now provided in Section 34 of Republic Act 2260, but there is no counterpart in the Administrative Code, of Section 35 pending administrative investigation.

2. ID.; ID.; EVILS OF INDEFINITE SUSPENSION DURING ADMINISTRATIVE INVESTIGATION. — The insertion for the first time in our Civil Service law of an express provision limiting the duration of preventive suspension is significant and timely. It indicates realization by Congress of the evils of indefinite suspension during investigation, where the respondent employee is deprived in the meantime of his means of livelihood, without an opportunity to find work elsewhere, lest he be considered to have abandoned his office. It is for this reason that it has been truly said that prolonged suspension is worse than removal. And this is equally true whether the suspended officer or employee is in the classified or unclassified service, or whether he is a presidential appointee or not.

3. ID.; ID.; NO DISTINCTION BETWEEN PREVENTIVE SUSPENSION OF OFFICER APPOINTED BY THE PRESIDENT AND SUSPENSION OF SUBORDINATE OFFICERS OR EMPLOYEES.—There is nothing in Section 35, Civil Service Act, which distinguishes between the preventive suspension of an officer appointed by the President and the suspension of subordinate officers or employee undergoing administrative investigation.

4. ID.; ID.; LIFTING OF PREVENTIVE SUSPENSION PENDING ADMINISTRATIVE INVESTIGATION APPLICABLE TO OFFICERS AND EMPLOYEES SUSPENDED BY THE PRESIDENT.—The phrase "officer or employee" used in Section 35, Civil Service Act, is not modified by the word "subordinate" as employed in Section 34 when speaking of the preventive suspension ordered by the chief of a bureau or office. In fact, the last sentence of Section 35 which provides that, "if the respondent officer or employee is exonerated, he shall be restored to his position with full pay from the period of suspension", is undeniably applicable to all officers and employees whether suspended by the President or by the Chief of office or bureau, or investigated by the Commissioner of Civil Service, or by a presidential investigating committee.

5. ID.; ID.; DISCIPLINARY ADMINISTRATIVE CASES SHOULD PASS THROUGH SCRUTINY OF COMMISSIONER OF CIVIL SERVICE; APPEAL OF DECISION TO CIVIL SERVICE BOARD OF APPEALS.—The first sentence of Section 35, Civil Service Act, stating that "when the administrative case against the officer or employee under preventive

(*Continued next page*)

UNITED STATES . . . (*Continued from page 264*)

Further, the issue of voluntariness of the confession in Turner was submitted to the jury, but the trial judge refused to charge "that in considering the voluntariness of the confession the prolonged interrogation should be considered." At p. 65. And the appellate court considered it an indifferent circumstance that "convicted murderer" was held five days in jail. 358 Pa 350, 357, 58 A2d 61. Finally, in Turner the Supreme Court of Pennsylvania affirmed the conviction in an opinion stressing the probable guilt of the petitioner and assuming that the alternatives before it were either to approve the conduct of the police or to turn the petitioner " 'loose upon [society] after he has confessed his guilt.' " 338 US, at 65. This Court might well have disagreed in that case with findings so made, and, with less hesitation than is appropriate here, where the determinations of voluntariness have been so constant and so numerous, have reached an opposite conclusion. In this case we are not considering the validity of a conviction by certiorari to the court affirming that judgment. Voluntariness has not been here inadequately tested by a standard which refuses to take account of relevant factors. Cf. Rogers v Richmond, 365 US 634, 5 L ed 2d 760, 81 S Ct 735 (1961). To the contrary, a proper standard has been successively applied by at least two trial courts and several appellate courts, no one of which felt itself forced to choose between what it considered equally undesirable results, and with whose conclusions this Court may not so lightly disagree.

Similarly, in Fikes v Alabama, 352 US 191, 196, 197, 1 L ed 2d 246, 250, 251, 77 S Ct 281 (1957), also relied on by the Court, the confession was wrung from an "uneducated Negro, certainly of low mentality, if not mentally ill." Fikes "was a weaker and more susceptible subject than the record in that case reveals Turner to have been." Unlike Reck, Fikes was removed from the local jail to a state prison far from his home and the Court recognized that petitioner's location was a fact "to be weighed." So, too, in Fikes the petitioner's lawyer was barred from seeing him, unlike the situation here, where no request for counsel was made.

Of course, I agree with the Court that confession cases are not to be resolved by color-matching. Comparisons are perhaps upon occasion unavoidable, and, may even be proper, as in a case "on all fours" whose facts approach identity with those of one claimed opposite. I do not find that to be the situation here, however. In my view, the Court today moves onto new ground, and does not merely retread the steps it took in Turner. In my judgment, neither the elusive, measureless standard of psychological coercion heretofore developed in this Court by accretion on almost an ad hoc, case-by-case basis, nor the disposition made in Turner requires us to disagree with more than a score of impartial judges who have previously considered these same facts. Perhaps, as these cases indicate, reasonable minds may differ in the gauging of the cumulative psychological factors upon which the Court bases its reversal, but in what case, I ask, has a court dealing with the same extrinsic facts, a quarter of a century after conviction, overturned so many decisions by so many judges, both state and federal, entirely upon psychological grounds? When have the conclusions of so many legal minds been found to be so unreasonable by so few?

Certainly, I walk across this shadowy field no more surefootedly than do my brothers, but after reading the whole record and the opinions of all of the courts that have heard the case I am unpersuaded that the combined psychological effect of the circumstances somehow, in some way made Reck speak. The fact is, as the Court of Appeals said, when confronted with and accused by all three of his confederates, Reck knew the "dance was over and the time had come to pay the fiddler," quoting from Mr. Justice Jackson's opinion for the Court in Stein v New York, 346 US 156, 186, 97 L ed 1522, 1543, 73 S Ct 1077 (1953).

suspension is not finally decided by the Commissioner of Civil Service within the period of 60 days after the date of suspension of the respondent, the respondent shall be reinstated in the service", merely demonstrates the feeling of Congress that, in line with its policy of strengthening the Civil Service of the nation and protecting it from the inroads of partisan political considerations, pursuant to the spirit of the Constitution, all disciplinary administrative cases pass through the impartial scrutiny of the Commissioner of Civil Service, even though the final decision on the matter may not be his, as an appeal from such decision of the Commissioner to the Civil Service Board of Appeal is expressly authorized by Section 36 of the same law.

6. ID.; ID.; SPONSOR OF REP. ACT NO. 2260 STATED THAT PREVENTIVE SUSPENSION CANNOT BE MORE THAN 60 DAYS.—As explained by Senator Francisco A. Rodrigo, sponsor of the bill which later became the Civil Service Act of 1959 (Rep. Act 2260), "suspension cannot be more than 60 days — preventive suspension. Even if the case drags on for six months or a year, after 60 days of preventive suspension, the suspended employee is reinstated." (Senate Congressional Record, Vol. II, 69, p. 2001).

7. ID.; ID.; NO DISTINCTION BETWEEN PREVENTIVE SUSPENSION OF OFFICERS BY THE PRESIDENT AND THAT BY CHIEF OF OFFICE OR BUREAU.—It may be noted that Senator Rodrigo did not make any distinction between the preventive suspension of officers by the President and that by the chief of office or bureau, and Section 35, Republic Act 2260 as passed did not contain any such distinction. Neither is such distinction justifiable, for there is no cogent reason — and none has been suggested — why the protection granted to subordinate employees is not to be applied to more important public officers.

8. ID.; ID.; PERSONS IN THE UNCLASSIFIED SERVICE NOT EXCLUDED FROM BENEFITS EXTENDED TO THOSE IN THE CLASSIFIED SERVICE.—There is no reason for excluding persons in the unclassified service from the benefits extended to those belonging to the classified service. Both are expressly declared to belong to the Civil Service, hence, the same rights and privileges should be accorded to both. Persons in the unclassified service are so designated because the nature of their work and classification, which is not true of those appointed to the classified service. This can not be a valid reason for denying privileges to the former that are granted to the latter. (Unabia vs. Hon. City Mayor, 53 O.G. No. 1, p. 133-134)

9. CONSTITUTIONAL LAW; CIVIL SERVICE LAW; INDEFINITE PREVENTIVE SUSPENSION NOT ALLOWED; CONTRARY TO ROBUST, EFFECTIVE, AND EFFICIENT CIVIL SERVICE.—To adopt the theory of respondents that an officer appointed by the President, facing administrative charges, can be preventively suspended indefinitely, would be to countenance a situation where the preventive suspension can, in effect, be the penalty itself without a finding of guilt after due hearing, contrary to the express mandate of the Constitution and the Civil Service Law. This, it is believed, is not conducive to the maintenance of a robust, effective and efficient civil service, the integrity of which has, in this jurisdiction, received constitutional guarantee, as it places in the hands of the Chief Executive a weapon that could be wielded to undermine the security of tenure of public officers. Of course, this is not so in the case of those officers holding office at the pleasure of the President.

10. CIVIL SERVICE; ADMINISTRATIVE INVESTIGATION; PREVENTIVE SUSPENSION; PUBLIC OFFICERS WITH FIXED TERM CANNOT BE PREVENTIVELY SUSPENDED INDEFINITELY.—But where the tenure of office is fixed, as in the case of herein petitioner, which according to the law he could hold "for 6 years and shall not be removed therefrom except for cause", to sanction the stand of respondents that an officer appointed by the President, facing administrative charges, can be preventively suspended indefinitely, would be to nullify and render useless such specific condition imposed by the law itself.

11. ID.; ID.; ID.: INDEFINITE PREVENTIVE SUSPENSION WOULD RENDER MEANINGLESS FIXED TENURE OF OFFICE AND REMOVAL FOR CAUSE.—If petitioner could be preventively suspended indefinitely, until the final determination of the administrative charges against him (and under the circumstances, it would be the President himself who would decide the same at a time only he can determine) then the provisions of the law both as to the fixity of his tenure and the limitation of his removal to only for cause would be meaningless. In the guise of a preventive suspension, his term of office could be shortened and he could, in effect, be removed without a finding of a cause duly established after due hearing, in violation of the Constitution. This would set at naught the laudible purpose of Congress to surround the tenure of office of the Chairman of the National Science Development Board, which is longer than that of the President himself, with all the safeguards compatible with the purpose of maintaining the office of such officer, considering its highly scientific and technological nature, beyond extraneous influences, and of insuring continuity of research and development activities in an atmosphere of stability and detachment so necessary for the fulfillment of its mission, uninterrupted by factors other than removal for cause.

12. ID.; ID.: ID.; PREVENTIVE SUSPENSION OF OFFICERS APPOINTED BY THE PRESIDENT WITH A FIXED TERM AND REMOVABLE ONLY FOR CAUSE CANNOT BE INDEFINITE; REASONS OF THE RULE. — There is unanimity of opinion among the members of the Supreme Court that the preventive suspension in the case of officers, although appointed by the President but with a fixed term and removable only for cause, cannot be indefinite. To some of the members, the provisions of Section 35 of Republic Act 2260 limiting the duration to 60 days is applicable to herein petitioner, as, in their view, it evinces a legislative policy that preventive suspension of a public officer is not lightly to be resorted to, but only after a previous serious and thorough scrutiny of the charges and that the prompt and continued hearing thereof should not be hampered, both in justice to the suspended officer who is without salary during suspension, and in the interest of public service to avoid as much as possible the interruption of the efficient functioning of the office that the suspended official holds. Other justices, however, are of the opinion that while said period may not apply strictly to cases of presidential appointees facing administrative charges to be decided by the President, the preventive suspension shall nevertheless be limited to a responsible period, and in the circumstances of the present case, they too believe that the further suspension of herein petitioner, who has been under preventive suspension since February 18, 1962. would no longer be reasonable.

CONCURRING OPINION OF JUSTICE J.B.L. REYES:

1. CONSTITUTIONAL LAW; DUE PROCESS; REQUISITES.— One of the elementary requisites of due process is that a case should be decided by an impartial tribunal or authority. The requisites of due process are: (1) that he shall have due notice, which may be actual or constructive, of the institution of the proceedings by which his legal rights may be affected; (2) that he shall be given a reasonable opportunity to appear and defend his rights, including the right himself to testify, to produce witnesses, and to introduce relevant documents and other evidence; (3) *that the tribunal in or before which his rights are adjudicated is so constituted as to give reasonable assurance* of his honesty and impartiality; and (4) that it is a court of competent jurisdiction. (3 Willoughby — Constitution of the United States, 1709)

2. ID.; ID.; LAW OF THE LAND; REQUISITES.—The law of the land is one that "hears before it condemns; which proceeds upon inquiry and renders judgment only after trial". (Dartmouth College vs. Woodward, 4 Wheaton, 518).

D E C I S I O N

This is a petition filed by petitioner, Dr. Paulino J. Garcia, Chairman of the National Science Development Board created by Republic Act 2067 otherwise known as the "Science Act of 1958" against the respondents Executive Secretary and Juan Salcedo, Jr., the latter in his capacity as Acting Chairman of the same National Science Development Board, in the form of quo warranto and prohibition with preliminary injunction, with prayer that the further preventive suspension of petitioner beyond the maximum period of 60 days, provided in Section 35 of the Civil Service Act of 1959 (Rep. Act 2260), be declared illegal and void, and that respondent Juan Salcedo, Jr., be likewise declared guilty of unlawfully holding and exercising the functions of the office of Chairman of the National Science Development Board since April 10, 1962, date of the expiration of the said 60-day period.

Succinctly stated, the pertinent facts of this case are as follows:

Upon the enactment on June 13, 1958 of Republic Act 2067, creating the National Science Development Board for the avowed purpose of implementing the declared policy of the State to integrate, coordinate, promote and intensify scientific and technological research and development and to foster invention and utilize scientific knowledge as an effective instrument for the promotion of national progress, petitioner herein, Dr. Paulino J. Garcia, was appointed by the President of the Philippines, which appointment was duly confirmed by the Commission on Appointments, as the first Chairman of the National Science Development Board for a fixed term of six years, pursuant to Section 6 of the Science Act. Accepting such appointment, petitioner duly qualified, assumed the performance of the functions of the office on July 15, 1958, and organized and since then built up the Board into a real effective instrument for scientific advancement that it is today.

As a result of the last national elections held in November, 1961, a change of administration took place. Shortly thereafter, or on February 9, 1962, after petitioner declined to heed what respondents admit as the new Assistant Executive Secretary Rodrigo Perez's "friendly gesture of advising petitioner to resign from his position in order to avoid the unpleasant consequences of having to face an administrative action for violation of the Revised Administrative Code on the basis of evidence then on hand", respondent Executive Secretary required petitioner in writing to explain charges for alleged electioneering based on the affidavits of four individuals. On February 15, petitioner submitted his written explanation denying under oath the said charges claiming them to be false, malicious and unsubstantial. On the following day, February 16, respondent Executive Secretary advised petitioner, by authority of the President, that his explanation was found unsatisfactory, and immediately ordered his preventive suspension from office effective upon receipt of the communication. Thus, the preventive suspension took effect on Monday, February 18, 1962. On the day previous, or on Sunday, February 17, 1962, the respondent Juan Salcedo, Jr. was designated by the President as Acting Chairman of the National Science Development Board.

By Administrative Order No. 5 dated February 17, 1962, an investigating committee was created. On February 23, another charge of dishonesty in office was filed with the investigating committee against petitioner. On February 27, the investigating committee commenced the investigation of the administrative charges and, after some delays caused by the unpreparedness of the prosecution, the hearing was indefinitely postponed because of the departure for abroad, on March 19, 1962, on an extended vacation, of one of the members of the committee (former Justice Ramon San Jose) who, before his appointment, apprised the President thereof but was advised he could go as the investigation could be postponed during his absence.

In view of his indefinite suspension, petitioner, on May 5, 1962, filed the present petition praying in effect that the 60-day period prescribed in the Civil Service law for preventive suspension having already expired on April 19, 1962, he be reinstated in the service pursuant to Section 35 of the said Act.

The clear-cut issue, therefore, before us is the effect and scope of the aforementioned Section 35 of the Civil Service Act, which reads:

> SEC. 35. *Lifting of Preventive Suspension Pending Administrative Investigation.* When the administrative case against the officer or empolyee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. If the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension."

Contrary to the contention of petitioner that the provisions of the above-quoted section are mandatory and applicable to him, respondents sustain that the compulsory lifting of the preventive suspension pending administrative investigation provided in this action, applies only to officers or employees whose administrative cases are to be decided by the Commissioner of Civil Service, and that with respect to any officer appointed by the President, there is no provision of law regulating the duration of the preventive suspension pending investigation of charges against such officer, as is the case of petitioner. In other words, it is respondents' contention that Section 35 of the Civil Service Act does not *apply* to officers appointed by the President answering administrative charges against them.

At the outset, let it be said that Section 35 is a new provision in our Civil Service law. In the Revised Administrative Code, in its Article VI on "Discipline of Person in Civil Service", we find the same power of preventive suspension exercisable by the President and the chief of a bureau or office with the approval of the proper head of department, as is now provided in Section 34 of Republic Act 2260, but there is no counterpart in the Administrative Code, of Section 35 of Act 2260 regarding the lifting of preventive suspension pending administrative investigation. This insertion for the first time in our Civil Service law of an express provision limiting the duration of preventive suspension is significant and timely. It indicates realization by Congress of the evils of indefinite suspension during investigation, where the respondent employee is deprived in the meantime of his means of livelihood, without an opportunity to find work elsewhere, lest he be considered to have abandoned his office. It is for this reason that it has been truly said that prolonged suspension is worse than removal. And this is equally true whether the suspended officer or employee is in the classified or unclassified service, or whether he is a presidential appointeee or not. Having in mind the remedial purpose of the law, is respondents' contention justifiable that Section 35 of the Civil Service Act is applicable only to employees whose administrative cases are submitted to the Commissioner of Civil Service? Except for the insertion of the clause "is not finally decided by the Commissioner of Civil Service" (which would presently be discussed), there is nothing in Section 35 which distinguishes between the preventive suspension of an officer appointed by the President and the suspension of subordinate officers or employee undergoing administrative investigation. Note that the phrase "officer or employee" used in Section 35, is not modified by the word "subordinate" as employed in Section 34 when speaking of the preventive suspension ordered by the chief of a bureau or office. In fact, the last sentence of Section 35 which provides that, "if the respondent officer or employee is exonerated, he shall be restored to his position with full pay from the period of suspension", is undeniably applicable to all officers and employees whether suspended by the President or by the chief of office or bureau, or investigated by the Commissioner of Civil Service, or by a presidential investigating committee.

The first sentence of Section 35 stating that "when the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of 60 days after the date of suspension of the respondent, the respondent shall be reinstated in the service," merely demonstrates, we believe, the feeling of Congress that, in line with its policy of strengthening the Civil Service of the nation and protecting it from the inroads of partisan political considerations, pursuant to the spirit of the Constitution, all disciplinary administrative cases should pass through the impartial scrutiny of the Commissioner of Civil Service, even though the final decision on the matter may not be his, as an appeal from such decision of the Commissioner to the Civil Service Board of Appeals is expressly authorized by Section 36 of the same law. So also, it may be conceded without deciding, may the President, in the exercise of his power of control and supervision over all offices and departments of the executive branch of the government, revise, review, or revoke the decisions of the Commissioner of Civil Service and of the Civil Service Board of Appeals. But this power has nothing to do with the preventive suspension, because this is not intended to be a penalty. As explained by Senator Francisco A. Rodrigo, sponsor of the bill which later became the Civil Service Act of 1959 (Rep. Act 2260), "suspension cannot be more than 60 days — preventive suspension. Even if the case drags on for six months or a year, after 60 days of preventive suspension, the suspended employee is reinstated." (Senate Congressional Record, Vol. II, No. 69, p. 2001). It may be noted that Senator Rodrigo did not make any distinction between the preventive suspension of officers by the President and that by the chief of office or bureau, and Section 35 as passed did not contain any such distinction. Neither is such distinction justifiable, for there is no cogent reason — and none has been suggested — why the protecton granted to subordinate employee is not to be applied to more important public officers. As this Court has ruled in the case of Severino Unabia v. The Hon. City Mayor, et al. (53 O.G., No. 1, pp. 133-134) —

> "x x x There is no reason for excluding persons in the unclassified service from the benefits extended to those belonging to the classified service. Both are expressly declared to belong the Civil Service; hence, the same rights and privileges should be accorded to both. Persons in the unclassified service are so designated because the nature of their work and qualifications are not subject to classification, which is not true of those appointed to the classified service. This can not be a valid reason for denying privileges to the former that are granted to the latter."

To adopt the theory of respondents that an officer appointed by the President, facing administrative charges, can be preventively suspended indefinitely, would be to countenance a situation where the preventive suspension can, in effect, be the penalty itself without a finding of guilt after due hearing, contrary to the express mandate of the Constitution[1] and the Civil Service law.[2] This, it is believed, is not conducive to the maintenance of a robust, effective and efficient civil service, the integrity of which has, in this jursdiction, received constitutional guarantee, as it places in the hands of the Chief Executive a weapon that could be wielded to undermine the security of tenure of public officers. Of course, this is not so in the case of these officers holding office at the pleasure of the President. But where the tenure of office is fixed, as in the case of herein petitioner, which according to the law he could hold "for 6 years and shall not be removed therefrom except for cause," to sanction the stand of respondents would be to nullify and render useless such specific condition imposed by the law itself. If he could be preventively suspended indefinitely, until the final determination of the administrative charges against him (and under the circumstances, it would be the President himself who would decide the same at a time only he can determine) then the provisions of the law both as to the fixity of his tenure and the limitation of his removal to only for cause would be meaningless. In the guise of a preventive suspension, his term of office could be shortened and he could, in effect, be removed without a finding of a cause duly established after due hearing, in violation of the Constitution. This would set at naught the laudible purpose of Congress to surround the tenure of office of the Chairman of the National Science Development Board, which is longer than that of the President himself, with all the safeguards compatible with the purpose of maintaining the office of such officer, considering its highly scientific and technological nature, beyond extraneous influences, and of insuring continuity of research and development activities in an atmosphere of stability and detachment so necessary for the fulfillment of its mission, uninterrupted by factors other than removal for cause.

Upon these considerations, there is unanimity of opinion among the members of this Court that the preventive suspension in the case of officers, although appointed by the President but with a fixed term and removable only for cause, cannot be indefinite. To some of the members, the provisions of Section 35 limiting the duration to 60 days is applicable to herein petitioner, as, in their view, it evinces a legislative policy that preventive suspension of a public officer is not lightly to be resorted to, but only after a previous serious and thorough scrutiny of the charges and that the prompt and continued hearing thereof should not be hampered, both in justice to the suspended officer who is without salary during suspension, and in the interest of public service to avoid as much as possible the interruption of the efficient functioning of the office that the suspended official holds. Other justices, however, are of the opinion that while said period may not apply strictly to cases of presidential appointee facing administrative charges to be decided by the President, the preventive suspension shall nevertheless be limited to a reasonable period, and in the circumstances of the present case, they too believe that the further suspension of herein petitioner, who has been under preventive suspension since February 18, 1962, would no longer be reasonable.

WHEREFORE, decision is hereby rendered holding petitioner Dr. Paulino J. Garcia entitled to immediate reinstatement to his position as Chairman of the National Science Development Board, without prejudice to the final outcome of the investigation of the charges against him on which no opinion is here expressed. Respondent Juan Salcedo, Jr. is hereby oredered to immediately vacate and cease to exercise the functions of the said office and to deliver the same to herein petitioner Paulino J. Garcia, No costs.

SO ORDERED.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Dizon and Macalintal, JJ., concurred.

Paredes and Regala, JJ., took no part.

REYES, J.B.L., J., *concurring.*

I concur in the opinion penned by Mr. Justice Barrera, but for the main reason that in this case there has been a denial of procedural due process in so far as petitioner Garcia is concerned.

One of the elementary requisites of due process is that a case should be decided by an impartial tribunal or authority. Willoughby, in his classic on the Constitution of the United States, Vol. 3, p. 1709, enumerates the requisites of due process to be —

> "(1) that he shall have had due notice, which may be actual or constructive, of the institution of the proceedings by which his legal rights may be affected;
>
> (2) that he shall be given a reasonable opportunity to appear and defend his rights, including the right himself to testify, to produce witnesses, and to introduce relevant documents and other evidence;

1. No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law. (Art. XII, Sec. 4, Constitution of the Philippines).
2. No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law and *after due process.* (Sec. 32, Rep. Act 2260).

(3) *that the tribunal in or before which his rights are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality;* and

(4) that it is a court of competent jurisdiction."

Indeed, all the other requisites of notice and hearing would be meaningless if the ultimate decision is to come from a partial and biased judge. Now, the evidence submitted to this Court, particularly the photostatic copies of press reports, marked as Annexes G to K, to the reply, and which have been neither denied or contradicted, show that from the very beginning the President has insisted in Dr. Garcia's vacating his office as Chairman of the National Science Development Board, alleging at first that the position was a confidential nature, and later, when confronted with the fact that the tenure of the office was fixed by statute, by charging openly and publicly that —

"The trouble with this official is that he is an active politician who openly campaigned in his province for the NP candidates." (Annex J. Reply to Answer, Philippines Herald January 29, 1962; quotes in the original)

These statements, which were made without qualification, so far as the record goes, reveal that *even before* the *formal charges* were made in the letter of Executive Secretary Amelito R. Mutuc to herein petitioner under date of February 17, 1962, the President, who is to be the ultimate arbiter to decide the administrative case against the petitioner, had already prejudged the case and made up his mind that the petitioner had been guilty of electioneering, which is the principal charge against Garcia. While the evidence was heard and the charges tried by a committee of former magistrates whose impartiality and sense of justice are beyond challenge, the fact is that the committee's powers are purely recommendatory. The last and final word, under the law, pertains to the President, who may set aside the recommendations of the investigating committee, and unfortunately, the Chief Executive's words and conduct have evidenced an attitude that is difficult to reconcile with the open mind, soberness, and restraint to be expected of an impartial judge.

The law of the land, as observed by Webster in Dartmouth College vs. Woodward (4 Wheaton 518), is one that "hears before it condemns; which proceeds upon inquiry and renders judgment only after trial."

II

Leonardo Diaz, et al., Petitioners-appellants vs. Felix Amante, respondent-appellee, G. R. No. L-9228, December 20, 1958, Bautista Angelo, J.

1. PUBLIC OFFICERS; POLICEMEN; DISMISSAL CONTRARY TO REPUBLIC NO. 557 IS ILLEGAL. — The dismissal of a civil service eligible policeman who was extended a permanent appointment as member of the police force was illegal when it had been made in a manner contrary to the procedure prescribed in Republic Act No. 557. (Mission vs. Del Rosario, 50, O.G., No. 4, p. 1571).
2. ID.; ID.; EXECUTIVE ORDER NO. 264 IMPLIEDLY REPEALED BY REP. ACT 557. — Executive Order No. 264 is no longer in force for the same had been impliedly repealed by Republic Act No. 557.
3. ID.; ID.; TEMPORARY APPOINTMENT; DURATION. — The appointment of a person who is not a civil service eligible at the time of his appointment, and it does not appear that he have since then qualified for the position he is holding, his appointment was only for a period of three months and not more." (Pana, et al v. City Mayor, et al., G.R. No. L-2700, December 18, 1953). Under the new Civil Service Act (Rep. Act 2260), temporary appointment is limited to six months.[1]
4. ID.; ID.; DAMAGES; BACOLOD CITY; CITY NOT LIABLE FOR DAMAGES DUE TO FAILURE OF MAYOR TO ENFORCE PROVISIONS OF LAW. — The respondent city mayor should be made to pay the back salaries of petitioners for the reason that under the Charter of the City of Bacolod (Section 5, Commonwealth Act No. 326), the city cannot be made liable for damages arising from the failure of the mayor to enforce any provisions of the law or from his negligence in the enforcement of any of its provisions.
5. ID.; ID.; MORAL DAMAGES ABSORBED BY BACK SALARIES. — The respondent City Mayor in separating the petitioners from the service acted with gross negligence, if not in bad faith, considering the events of contemporary history that had happened in his province and his official acts amounting to abuse of authority of which the trial court took judicial notice in its decision. The sum of ₱5,000.00 it slapped upon respondent as moral damages is not justified, for the same is already included in, if not absorbed by, the back salaries the City Mayor was ordered to pay to petitioners.
6. ID.; ID.; EXEMPLARY DAMAGES; IT IS IMPOSED TO CURTAIL ABUSES OF SOME PUBLIC OFFICIALS. — With regard to the sum of ₱2,000.00 which respondent City Mayor was ordered to pay as exemplary damages, the same is somewhat excessive, considering that respondent acted in the belief that he had the requisite authority under Executive Order No. 264 of the President which at that time as not yet been declared repealed by the Supreme Court, but these damages should be imposed if only to curtail the abuses that some public officials are prone to commit upon coming to power in utter disregard of the civil service rules which constitute the only safeguard of the tenure of office guaranteed by our Constitution. These damages should therefore be reduced to ₱1,000.00.

D E C I S I O N

Leonardo Diaz and Alberto Aguilar filed a petition for mandamus in the Court of First Instance of Negros Occidental against Felix P. Amante in his capacity as Mayor of Bacolod City to compel the latter to reinstate them to their positions as members of the police force of said city.

The trial court, after hearing, rendered judgment ordering the respondent to reinstate petitioners as prayed for and to pay them (a) their unpaid salaries from August 16, 1951 up to the date of their reinstatement; (b) the sum of ₱5,000.00 as moral damages; (c) the sum of ₱2,000.00 as exemplary damages; and (d) to pay the costs of the preceedings. Respondent took the case on appeal to this Court on the ground that the only issue involved is one of law.

Leonardo Diaz was given a temporary appointment as third class patrolman on July 23, 1946 with an annual salary of ₱480.00. On October 1, 1946, he was given a promotion in salary in the amount of ₱600.00 per annum. On November 18, 1946, he was appointed also in a temporary capacity as second class officer with a salary of ₱660.00 per annum. On January 16, 1947, he was promoted to first class traffic officer with a salary of ₱690.00 per annum. On April 1, 1947, he was promoted in salary to ₱720.-00 per annum. On July 1, 1947 he was given for the first time a permanent appointment as second class detective with a salary of ₱900.00 per annum. On July 1, 1948 and July 1, 1949, he was given a salary increase as permanent second class detective with a salary of ₱960.00 and ₱1,020.00 per annum respectively. On June 1, 1950, he was again promoted to first class detective with a salary of ₱1,080.00 per annum. And on July 1, 1951, his salary as permanent first class detective was increased to ₱1,320.00 ing examination for patrolman with a rating of 83%.

Alberto Aguilar is not a civil service eligible but on September 8, 1949 he was appointed as patrolman effective July 1, 1949. On February 8, 1950, he was promoted to second class detective, and when he was dismissed on August 15, 1951, he was a first class detective. He is an old veteran, having been a guerrilla under Lt. Col. Salvador Abcede.

On August 15, 1951, both Diaz and Aguilar were notified by respondent of their separation from the service effective at the

[1]. A person may receive a temporary appointment in a position needed only for a limited period not exceeding six months, provided that preference in filling such position be given to persons on appropriate eligible lists. *Sec.* 24 (*d*) *Rep. Act* 2260 (*Civil Service Act of* 1959).

close of business hours of said day for lack of trust and confidence upon the recommendation of the chief of police. With regard to Aguilar, he was separated on the additional ground of immorality and of maintaining a house of prostitution. His position was filled by a civil service eligible on August 16, 1951. As a justification for the action he has taken against petitioners, respondent invoked the provisions of Executive Order No. 264 promulgated by President Quezon on April 1, 1940 believing that petitioners as detectives who occupy confidential positions could be separated upon a moment's notice for lack of trust and confidence, and his authority to dismiss them was sustained by the Executive Secretary who in an indorsement intimated that the removal of a detective from the service for lack of confidence was lawful. His action was also sustained by a provincial circular issued on April 3, 1954 by the Executive Secretary confirming the propriety of his action.

With regard to petitioner Diaz, who admittedly was a civil service eligible and was extended on more than one occasion a permanent appointment as member of the police force of Bacolod City, there is no question that his dismissal was illegal for having been made in a manner contrary to the procedure prescribed in Republic Act No. 557.[1] Executive Order No. 264 is no longer in force, the same having been impliedly repealed by said Act. Thus, in Mission v. Del Rosario, 50 O. G., No. 4, 1571, this Court said: "It appearing that petitioners, as detectives, or members of the police force of Cebu City, were separated from the service not for any of the grounds enumerated in Republic Act No. 557 and without the benefit of investigation or trial therein prescribed, the conclusion is inescapable that their removal is illegal and of no valid effect. In this sense, the provisions of Executive Order No. 264 of the President of the Philippines should be deemed as having been impliedly repealed in so far as they may be inconsistent with the provisions of said Act."

A different consideration should be made with regard to petitioner Aguilar for it appears that he was not a civil service eligible even if he was extended several appointments as detective or patrolman by the City Mayor of Bacolod, for not being a civil service eligible, he is not qualified for a permanent appointment. Thus, in one case, this Court said: "In accordance with Section 682 of the Rev. Adm. Code, when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a long period than three months. As petitioners herein were not civil service eligibles at the time of their appointment, and it does not appear that they have since then qualified for the positions they are holding, their respective appointments were only for a period of three months and not more." (Pana, et al. v. City Mayor, et al., G. R. No. L-2700, December 18, 1953).[2] The case of Aguilar comes squarely within the purview of this ruling.

The lower court ordered respondent not only to reinstate petitioners but also to pay them their back salaries and moral and exemplary damages in the aggregate amount of ₱7,000.00. We agree with the trial court that respondent should be made to pay the back salaries of petitioners for the reason that under the Charter of the City of Bacolod (Section 5, Commonwealth Act No. 326), the city cannot be made liable for damages arising from the failure of the mayor to enforce any provisions of the law or from his negligence in the enforcement of any of its provisions. We may also agree with the trial court in holding that respondent in separating the petitioners from the service acted with gross negligence, if not in bad faith, considering the events of contemporary history that had happened in his province and his official acts amounting to abuse of authority of which the trial court took judicial notice in its decision, but we believe that the sum of ₱5,000.00 it slapped upon respondent as moral damages is not justified, for the same is already included in, if not absorbed by, the back salaries he was ordered to pay to petitioners. And with regard to the sum of ₱2,000.00 which respondent was ordered to pay as exemplary damages, the same is somewhat excessive, considering that respondent acted in the belief that he had the requisite authority under Executive Order No. 264 of the President which at that time has not yet been declared repealed by the Supreme Court. But these damages should be imposed if only to curtail the abuses that some public officials are prone to commit upon coming to power in utter disregard of the civil service rules which constitute the only safeguard of the tenure of office guaranteed by our Constitution. These damages should therefore be reduced to ₱1,000.00.

Wherefore, the decision appealed from is hereby modified as follows: respondent, or the incumbent Mayor of Bacolod City, is ordered to reinstate petitioner Leonardo Diaz as prayed for; respondent Amante is ordered to pay petitioner Diaz his unpaid salaries from August 16, 1951 up to the date of his reinstatement and the sum of ₱1,000.00 as exemplary damages. In all other respects, the decision appealed from is hereby reversed. With costs against respondent.

Paras, C.J., Padilla, Labrador, Concepcion, J.B.L. Reyes and Endencia, JJ., concurred.

Bengzon, J., took no part.

[1] Uy v. Rodriguez, July 30, 1954, 50 O.G., No. 8, pp. 3574-76; Abella v. Rodriguez, June 29, 1954, 50 O.G., No. 7, pp. 3039-41; Mission v. Del Rosario, Feb. 26, 1954, 50 O.G., No. 4, pp. 1571, 1573-74; Palamine v. Zagado, March 5, 1954, 50 O.G., No. 4, pp. 1566-67.

[2] See also Reyes, et al. v. Dones, et al., G.R. No. L-11427, May 28, 1958.

III

In re: Disbarment Proceedings Against Atty. Diosdado Q. Gutierrez, Respondent, Adm. Case No. 363, July 31, 1962, Makalintal, J.

1. ATTORNEYS-AT-LAW; REMOVAL AND SUSPENSION BY REASON OF CONVICTION OF CRIME INVOLVING MORAL TURPITUDE SUCH AS MURDER.— Under Section 5 of Rule 127 a member of the bar may be removed or suspended from his office as attorney by the Supreme Court by reason of his conviction of a crime involving moral turpitude. Murder is, without doubt, such a crime.

2. ID.; MORAL TURPITUDE; WHAT MAY IT INCLUDES.— The term "moral turpitude" includes everything which is done contrary to justice, honest, modesty or good morals. (In re Carlos S. Basa, 41 Phil. 275.)

3. ID.; ID.; IN DISBARMENT STATUTES; MEANING OF.— As used in disbarment statutes it means an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted rule of right and duty between man and man. (State ex rel. Conklin v. Buckingham, 84 P. 2nd 49; 5 Am. Jur. Sec. 279, pp. 428-429.)

4. ID.; ID.; PARDON; WHEN IT MAY BE A BAR TO DISBARMENT PROCEEDING.—When proceedings to strike on attorney"s name from the rolls are founded on, and depend alone, on a statute making the fact of a conviction for a felony ground for disbarment, it has been held that a pardon operates to wipe out the conviction and is a bar to any proceeding for the disbarment of the attorney after the pardon has been granted.

5. ID.; ID.; EFFECTS OF ABSOLUTE PARDON.—A person reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.

6. ID.; ID.; ID.; PARDON GRANTED TO RESPONDENT IS NOT ABSOLUTE BUT CONDITIONAL.—The pardon granted to respondent here is not absolute but conditional, and merely remitted the unexecuted portion of his term. It does not reach the offense itself, unlike that in Ex parte Garland, which was "a full pardon and amnesty for all offenses by him committed in connection with the rebellion (civil war) against the government of the United States."

7. ID.; ID.; ID.; IN RE LONTOK CASE INAPPLICABLE TO TO THE CASE AT BAR.—Respondent Gutierrez must be judged upon the fact of his conviction for murder without regard to the pardon he invokes in defense. The crime was qualified by treachery and aggravated by its having been committed in band, by taking advantage of his official position (espondent being municipal mayor at the time) and with the use of a motor vehicle. The degree of moral turpitude involved is such as to justify his being purged from the profession.

8. ID.; PRACTICE OF LAW; RIGID STANDARD REQUIREMENTS.—The practice of law is privilege accorded only to those who measure up to certain rigid standards of mental and moral fitness. For the admission of a candidate to the bar the Rules of Court not only prescribe a test of academic preparation but require satisfactory testimonials of good moral character. These standards are neither dispensed with nor lowered after admission; the lawyer must continue to adhere to them or else incur the risk of suspension or removal.

9. ID.; DUTIES TO UPHOLD THE LAWS.—"Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot and to ignore the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic. (Ex parte Wall, 107 U.S. 263, 37 Law ed., 552, 556.)

D E C I S I O N

Respondent Diosdado Q. Gutierrez is a member of the Philippine Bar, admitted to it on October 5, 1945. In criminal case No. R-793 of the Court of First Instance of Oriental Mindoro he was convicted of the murder of Filemon Samaco, former municipal mayor of Calapan, and together with his co-conspirators was sentenced to the penalty of death. Upon review by this Court the judgment of conviction was affirmed on June 30, 1956 (G.R. No. L-7107), but the penalty was changed to *reclusion perpetua*. After serving a portion of the sentence respondent was granted a conditional pardon by the President on August 19, 1958. The unexecuted portion of the prison term was remitted "on condition that he shall not again violate any of the penal laws of the Philippines."

On October 9, 1958 the widow of the deceased Filemon Samaco, victim in the murder case, filed a verified complaint before this Court praying that respondent be removed from the roll of lawyers pursuant to Rule 127, section 5. Respondent presented his answer in due time, admitting the facts alleged by complainant regarding his previous conviction but pleading the conditional pardon in defense, on the authority of the decision of this Court in the case of In re Lontok, 43 Phil. 293.

Under section 5 of Rule 127 a member of the bar may be removed or suspended from his office as attorney by the Supreme Court by reason of his conviction of a crime involving moral turpitude. Murder is, without doubt, such a crime. The term "moral turpitude" includes everything which is done contrary to justice, honesty, modesty or good morals. In re Carlos S. Basa, 41 Phil. 275. As used in disbarment statutes, it means an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted rule of right and duty between man and man. State ex rel. Conklin v. Buckingham, 84 P. 2nd 49; 5 Am. Jur. Sec. 279, pp. 428-429.

The only question to be resolved is whether or not the conditional pardon extended to respondent places him beyond the scope of the rule on disbarment aforecited. Reliance is placed by him squarely on the Lontok case. The respondent therein was convicted of bigamy and thereafter pardoned by the Governor-General. In a subsequent proceeding for his disbarment on the ground of such conviction, this Court decided in his favor and held: "When proceedings to strike on attorney's name from the rolls are founded on, and depend alone, on a statute makng the fact of a conviction for a felony ground for disbarment, it has been held that a pardon operates to wipe out the conviction and is a bar to any proceeding for the disbarment of the attorney after the pardon has been granted."

It is our view that the ruling does not govern the question now before us. In making it the Court proceeded on the assumption that the pardon granted to respondent Lontok was absolute. This is implicit in the *ratio decidendi* of the case, particularly in the citations to support it, namely, In re Emmons, 29 Cal. App. 121; Scott vs. State 6 Tex. Civ. App. 343; and Ex parte Garland, 4 Wall. 380. Thus in Scott vs. State the court said:

> "We are of opinion that after he received an unconditional pardon the record of the felony conviction could no longer be used as a basis for the proceeding provided for in article 226. This record, when offered in evidence, was met with an unconditional pardon, and could not, therefore, properly be said to afford "proof of a conviction of any felony." Having been thus cancelled, all its force as a felony conviction was taken away. A pardon falling short of this would not be a pardon, according to the judicial construction which that act of executive grace was received. Ex parte Garland, 4 Wall, 344; Knote v. U.S., 95 U.S. 149, and cases there cited; Young v. Young, 61 Tex. 191."

And the portion of the decision in Ex parte Garland quoted with approval in the Lontok case is as follows:

> "'A pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity.'"

The pardon granted to respondent here is not absolute but conditional, and merely remitted the unexecuted portion of his term. It does not reach the offense itself, unlike that in Ex parte Garland, which was "a full pardon and amnesty for all offenses by him committed in connection with the rebellion (civil war) against the government of the United States."

The foregoing considerations render In re Lontok inapplicable here. Respondent Gutierrez must be judged upon the fact of his conviction for murder without regard to the pardon he invokes in defense. The crime was qualified by treachery and aggravated by its having been committed in band, by taking advantage of his official position (respondent being municipal mayor at the time) and with the use of a motor vehicle. People vs. Diosdado Gutierrez, supra. The degree of moral turpitude involved is such as to justify his being purged from the profession.

The practice of law is a privilege accorded only to those who measure up to certain rigid standards of mental and moral fitness. For the admission of a candidate to the bar the Rules of Court not only prescribe a test of academic preparation but require satisfactory testimonials of good moral character. These standards are neither dispensed with nor lowered after admission; the lawyer must continue to adhere to them or else incur the risk of suspension or removal. As stated in Ex parte Wall, 107 U.S. 263, 27 Law ed., 552, 556: "Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them under foot and to ignore

the very bands of society, argues recreancy to his position and office and sets a pernicious example to the insubordinate and dangerous elements of the body politic."

Wherefore, pursuant to Rule 127, Section 5, and considering the nature of the crime for which respondent Diosdado Q. Gutierrez has been convicted, he is ordered disbarred and his name stricken from the roll of lawyers.

Bengzon, C.J., Labrador, Concepcion, Barrera, Paredes, Dizon and Regala, JJ., concurred.

Padilla, J., took no part.

IV

Mateo Canite, et al., plaintiffs-appellants vs. Madrigal & Co., Inc., et al, defendants-appellees, G. R. No. L-17836, August 30, 1962, Bautista Angelo, J.

1. PLEADING AND PRACTICE; MOTION TO DISMISS COMPLAINT; GROUNDS MAY BE BASED ON FACTS NOT ALLEGED IN THE COMPLAINT.—Under Rule 8 of our Rules of Court, a motion to dismiss is not like a demurrer provided for in the old Code of Civil Procedure that must be based *only* on facts alleged in the complaint. Except where the ground is that the complaint does state no cause of action which must be based only on the allegations of the complaint, a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint (Ruperto vs. Fernando, 83 Phil., 943).
2. ID.; ID.; DISMISSAL OF COMPLAINT WITHOUT RESERVATION IS AN ADJUDICATION UPON THE MERITS.—Section 4, Rule 30, of the Rules of Court provides that "Unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits". Where a complaint had been dismissed without reservation, the dismissal operated as an adjudication upon the merits.
3. RES JUDICATA; AS GROUND TO DISMISS A COMPLAINT.—Where all the essential requisites for the existence of *res judicata* are present, namely, final judgment, jurisdiction of the court, judgment on the merits, and identity of parties, cause of action and subject matter, the motion to dismiss the complaint on the ground of *res judicata* must be granted.
4. STATUTE OF LIMITATIONS; WHEN ACTION IS BARRED BY STATUTE OF LIMITATIONS.—Where the facts disclose that more than ten years had already elapsed since the cause of action accrued on September 30, 1948, the action of plaintiffs is barred by the statute of limitations.

D E C I S I O N

Plaintiffs impleaded defendants before the Court of First Instance of Manila to recover certain sums of money representing the salaries and allowances due them from March 17, 1948 to September 30, 1948 as members of the crew employed by defendants to fetch the ship S.S. BRIDGE from Sasebu, Japan to Manila by virtue of a certain shipping contract entered into between them.

Within the reglementary period, defendants filed a motion to dismiss on the grounds (a) that plaintiffs' cause of action is already barred by a prior judgment rendered by the Court of First Instance of Manila in Civil Case No. 29663 and (b) that plaintiffs' cause of action is also barred by prescription.

Counsel for plaintiffs filed his opposition to this motion, and after both the motion and the opposition were set for hearing, the court issued an order dismissing the complaint on the grounds set forth in the motion to dismiss.

Plaintiffs interposed the present appeal before this Court on purely questions of law.

It appears that prior to the filing of the instant case, a complaint was filed before the Court of First Instance of Manila by the same plaintiffs herein and other co-members of the same crew to which they belonged seeking to recover from the same defendants the total amount of ₱14,254.12 representing their unpaid salaries as crew members of the vessel S.S. BRIDGE corresponding to the period from March 17, 1948 to September 30, 1948, which amount includes the same sums now sought to be recovered in the instant case. Plaintiffs' cause of action is predicated upon alleged violation of the same shipping contract entered into between herein plaintiffs and defendants. After trial on the merits, the court rendered decision ordering defendants to pay to one Miguel Olimpo the amounts of ₱1,016.13 as wages and ₱300.00 as attorney's fees and costs, but dismissing the complaint with regard to the other plaintiffs among them the claims of Mateo Canite, Abdon Jamaquin and Filomeno Sampinit, who are the plaintiffs in the instant case. The dispositive part of the decision states that "the case of the other plaintiffs is dismissed as well as defendant's counterclaim for *insufficiency of evidence*." (Underlining supplied) The plaintiffs, whose complaint was dismissed, gave notice of their intention to appeal, but the same was denied because it was filed out of time. They filed a petition for mandamus with the Court of Appeals in an attempt to have the lower court approve and give course to their appeal, but their petition was dismissed, and so the decision became final and executory. It is because of these facts which appear to be undisputed that the court a quo found no other alternative than to dismiss the present action on the ground of *res judicata*. In this we find no error for evidently all the essential requisites for the existence of the principle of *res judicata* are here present. These requisites are:

> "In order that a judgment rendered in a case may be conclusive and bar a subsequent action, the following requisites must be present: (a) it must be a final judgment; (b) the court rendering it must have jurisdiction of the subject matter and of the parties; (c) it must be a judgment on the merits; and (d) there must be between the two cases identity of parties, identity of subject matter, and identity of cause of action." (Lapid v. Lawan, et al., G.R. No. L-10686, May 31, 1957)

It is, however, contended that the court *a quo* erred in dismissing the complaint on the ground of *res judicata* there being no allegation in the complaint that the present action has been the subject of a decision in a previous case. This contention is clearly unmeritorious, for under Rule 8 of our Rules of Court, a motion to dismiss is not like a demurrer provided for in the Old Code of Civil Procedure that must be based *only* on facts alleged in the complaint. "Except where the ground is that the complaint does state no cause of action which must be based only on the allegations of the complaint, a motion to dismiss may be based on facts not alleged and may even deny those alleged in the complaint x x x."[1] The court *a quo*, therefore, acted properly in sustaining the motion to dismiss.

The contention that only the claim of Miguel Olimpo was adjudicated on the merits while the claims of the other plaintiffs, including the plaintiffs in the instant case, were dismissed *merely* for failure of the parties to testify in the hearing of the case and so not on the merits, cannot also be sustained in view of what is provided for in Section 4, Rule 30, of our Rules of Court. Thus, under said Section 4, "Unless otherwise ordered by the court, any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits", and in the aforesaid case there is nothing in the decision that would take the case out of the operation of the general rule. The complaint having been dismissed without reservation, the dismissal operated as an adjudication upon the merits.

It appearing that all the essential requisites for the existence of *res judicata* are here present, namely, final judgment, jurisdiction of the court, judgment on the merits, and identity of parties, cause of action and subject matter, as laid down in the case above-mentioned, the court *a quo* had no other alternative than to dismiss the present action on the ground of *res judicata*.

Aside from the foregoing, the facts also discloses that more than ten years had already elapsed since the cause of action herein accrued on September 30, 1948, which justifies the contention that the action of plaintiffs is also barred by the statute of limitations.

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[1] Ruperto v. Fernando, 83 Phil., 943.

Wherefore, the order appealed from is affirmed, without pronouncement as to costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, J.B.L. Reyes, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

V

Luneta Motor Company, Petitioner, vs. A.D. Santos, Inc. et al., Respondents, G.R. No. L-17716, July 31, 1962, Dizon, J.

1. CORPORATION; AUTHORITY TO PURCHASE, HOLD OR DEAL IN REAL AND PERSONAL PROPERTY.—Under Section 13 (5) of the Corporation Law, a corporation created thereunder may purchase, hold, etc., and otherwise deal in such real and personal property as the purpose for which the corporation was formed may permit, and the transaction of its lawful business may reasonably and necessarily require.
2. CERTIFICATE OF PUBLIC CONVENIENCE; IT IS LIABLE TO EXECUTION.—A certificate of public convenience granted to a public operator is liable to execution (Raymundo vs. Luneta Motor Co., 58 Phil. 889) and may be acquired by purchase.
3. CORPORATION; CORPORATE PURPOSES; CERTIFICATE OF PUBLIC CONVENIENCE TO OPERATE WATER TRANSPORTATION IS NOT AN AUTHORITY TO ENGAGE IN LAND TRANSPORTATION BUSINESS.—Petitioner claimed that its corporate purposes are to carry on a general mercantile and commercial business, etc., and that it is authorized in its articles of incorporation to operate and otherwise deal in and concerning automobiles and automobile accessories' business in all its multifarious ramification and to operate, etc. and otherwise dispose of vessels and boats, etc., and to own and operate steamship and mailing ships and other floating craft and deal in the same and engage in the Philippine Islands and elsewhere in the transportation of persons, merchandize and chattels by water; all this incidental to the transportation of automobiles. *Held*: There is nothing in the legal provision and the provisions of petitioner's articles of incorporation relied upon that could justify petitioner's contention to engage in land transportation business and operate a taxicab service. To the contrary, they are precisely the best evidence that it has no authority at all to engage in such transportation business. That it may operate and otherwise deal in automobiles and automobile accessories; that it may engage in the transportation of persons by water does not mean that it may engage in the business of land transportation — an entirely different line of business. If it could not thus engage in this line of business, it follows that it may not acquire any certificate of public convenience to operate a taxicab service, such acquisition would be without purpose and would have no necessary connection with petitioner's legitimate business.

D E C I S I O N

Appeal from the decision of the Public Service Commission in case No. 123401 dismissing petitioner's application for the approval of the sale in its favor, made by the Sheriff of the City of Manila, of the certificate of public convenience granted before the war to Nicolas Concepcion (Commission Cases Nos. 60604 and 60605, reconstituted after the war in Commission Case No. 1470) to operate a taxicab service of 27 units in the City of Manila and therefrom to any point in Luzon.

It appears that on December 31, 1941, to secure payment of loan evidenced by a promissory note executed by Nicolas Concepcion and guaranteed by one Placido Esteban in favor of petitioner, Concepcion executed a chattel mortgage covering the above mentioned certificate in favor of petitioner.

To secure payment of a subsequent loan obtained by Concepcion from the Rehabilitation Finance Corporation (now Development Bank of the Philippines) he constituted a second mortgage on the same certificate. This second mortgage was approved by the respondent Commission, subject to the mortgage lien in favor of petitioner.

The certificate was later sold to Francisco Benitez, Jr., who resold it to Redi Taxicab Company. Both sales were made with assumption of the mortgage in favor of the RFC, and were also approved provisionally by the Commission, subject to petitioner's lien.

On October 10, 1953 petitioner filed an action to foreclose the chattel mortgage executed in its favor by Concepcion (Civil Case No. 20853 of the Court of First Instance of Manila) in view of the failure of the latter and his guarantor, Placido Esteban, to pay their overdue account.

While the above case was pending, the RFC also instituted foreclosure proceedings on its second chattel mortgage and, as a result of the decision in its favor therein rendered, the certificate of public convenience was sold at public auction in favor of Amador D. Santos for ₱24,010.00 on August 31, 1956. Santos immediately applied with the Commission for the approval of the sale, and the same was approved on January 26, 1957, subject to the mortgage lien in favor of petitioner.

On June 9, 1958 the Court of First Instance of Manila rendered judgment in Civil Case No. 20853, amended on August 1, 1958, adjudging Concepcion indebted to petitioner in the sum of ₱15,197.84, with 12% interest thereon from December 2, 1941 until full payment, plus other assessments, and ordered that the certificate of public convenience subject matter of the chattel mortgage be sold at public auction in accordance with law. Accordingly, on March 3, 1959 said certificate was sold at public auction to petitioner, and six days thereafter the Sheriff of the City of Manila issued in its favor the correspondng certificate of sale. Thereupon petitioner filed the application mentioned heretofore for the approval of the sale. In the meantime and before his death, Amador D. Santos sold and transferred (Commission Case No. 1272231) all his rights and interests in the certificate of public convenience in question in favor of the now respondent A. D. Santos, Inc. who opposed petitioner's application.

The record discloses that in the course of the hearing on said application and after petitioner had rested its case, the respondent A.D. Santos, Inc., with leave of Court, filed a motion to dismiss based on the following grounds:

"a) under the petitioner's Articles of Incorporation, it was not authorized to engage in the taxicab business or operate as a common carrier;

"b) the decision in Civil Case No. 20853 of the Court of First Instance of Manila did not affect the oppositor nor its predecessor Amador D. Santos inasmuch as neither of them had been impleaded into the case;

"c) that what was sold to the petitioner were only the 'rights, interests and participation' of Nicolas Concepcion in the certificate that had been granted to him which were no longer existing at the time of the sale."

On October 18, 1960 the respondent Commission, after considering the memoranda submitted by the parties, rendered the appealed decision sustaining the first ground relied upon in support thereof, namely, that under petitioner's articles of incorporation it had no authority to engage in the taxicab business or operate as a common carrier, and that, as a result, it could not acquire by purchase the certificate of public convenience referred to above. Hence the present appeal interposed by petitioner who claims that, in accordance with the Corporation Law and its articles of incorporation, it can acquire by purchase the certificate of public convenience in question, maintaining inferentially that, after acquring said certificate, it could make use of it by operating a taxicab business or operate as a common carrier by land.

There is no question that a certificate of public convenience granted to a public operator is liable to execution (Raymundo vs. Luneta Motor Co., 58 Phil. 889) and may be acquired by purchase. The question involved in the present appeal, however, is not only whether, under the Corporation Law and petitioner's articles of incorporation, it may acquire by purchase a certificate of public convenience, such as the one in question, but also whether, after its acquisition, petitioner may hold the certificate and thereunder

operate as a common carrier by land.

It is not denied that under Section 13 (5) of the Corporation Law, a corporation created thereunder may purchase, hold, etc., and otherwise deal in such real and personal property as the purpose for which the corporation was formed may permit, and the transaction of its lawful business may reasonably and necessarily require. The issue here is precisely whether the purpose for which petitioner was organized and the transaction of its lawful business reasonably and necessarily require the purchase and holding by it of a certificate of public convenience like the one in question and thus give it additional authority to operate thereunder as a common carrier by land.

Petitioner claims in this regard that its corporate purposes are to carry on a general mercantile and commercial business, etc., and that it is authorized in its articles of incorporation to operate and otherwise deal in and concerning automobiles and automobile accessories' business in all its multifarious ramification (petitioner's brief, p. 7) and to operate, etc. and otherwise dispose of vessels and boats, etc., and to own and operate steamship and mailing ships and other floating craft and deal in the same and engage in the Philippine Islands and elsewhere in the transportation of persons, merchandise and chattels by water; all this incidental to the transportation of automobiles (id. pp. 7-8 and Exhibit B).

We find nothing in the legal provision and the provisions of petitioner's articles of incorporation relied upon that could justify petitioner's contention in this case. To the contrary, they are precisely the best evidence that it has no authority at all to engage in the business of land transportation and operate a taxicab service. That it may operate and otherwise deal in automobiles and automobile accessories; that it may engage in the transportation of persons *by water* does not mean that it may engage in the in the business of land transportation — an entirely different line of business. If it could not thus engage in this line of business, it follows that it may not acquire any certificate of public convenience to operate a taxicab service, such as the one in question, because such acquisition would be without purpose and would have no necessary connection with petitioner's legitimate business.

In view of the conclusion we have arrived at on the decisive issue involved in this appeal, we deem it unnecessary to resolve the other incidental questions raised by petitioner.

WHEREFORE, the appealed decision in affirmed, with costs.

Bengzon, C.J., Padilla, Concepcion, Barrera, Paredes, and Makalintal, JJ., concurred.

Regala, J., did not take part.

VI

Ricardo M. Gutierrez, Plaintiff-Appellant, vs. Lucia Milagros Barretto-Datu, Executrix of the Testate Estate of the deceased Maria Gerardo Vda. de Barretto, Defendant-Appellee, G.R. No. L-17175, July 31, 1962, Makalintal, J.

1. ESTATE OF A DECEASED PERSON; CLAIMS; AS USED IN STATUTE REQUIRING PRESENTATION OF CLAIMS AGAINST A DECEDENT'S ESTATE: CONSTRUED.—The word "claims" as used in statutes requiring the presentation of claims against a decedent's estate is generally construed to mean debts or demands of a pecuniary nature which have been enforced against the deceased in his lifetime and could have been reduced to simple money judgments; and among these are those founded upon contract. 21 Am. Jur. 579.
2. ID.; CLAIM BASED ON BREACH OF CONTRACT.— The claim in the case at bar is based on contract — specifically, on a breach thereof. It falls squarely under Section 5 of Rule 87, Rules of Court.
3. ID.; ID.; CONTRACTS BY DECEDENT BROKEN DURING HIS LIFETIME; PERSONAL REPRESENTATIVE LIABILITY FOR BREACH OUT OF THE ASSETS.— Upon all contracts by the decedent broken during his lifetime, even though they were personal to the decedent in liability, the representative is answerable for the breach out of the assets. 3 Schouler on Wills, Executors and Administrators, 6th Ed., 2395.
4. ID.; ID.; PRESENTATION OF CLAIM FOR BREACH OF A COVENANT IN A DEED OF DECEDENT.— A claim for breach of a covenant in a deed of the decedent must be presented under a statute requiring such presentment of all claims grounded on contract.
5. EXECUTOR OR ADMINISTRATOR; ACTIONS THAT MAY BE INSTITUTED AGAINST EITHER.— The only actions that may be instituted against the executor or administrator are those to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal. Rule 88, section 1. The instant suit is not one of them.

DECISION

Ricardo M. Gutierrez appeals from the orders of the Court of First Instance of Rizal (1) dismissing his complaint against Lucia Milagros Barretto-Datu, as executrix of the estate of the deceased Maria Gerardo Vda. de Barretto, and (2) denying his motion for reconsideration of the dismissal.

The relevant facts alleged by appellant are as follows: In 1940 Maria Gerardo vda. de Barretto, owner of 371 hectares of fishpond lands in Pampanga, leased the same to appellant Gutierrez for a term to expire on May 1, 1947. On November 1, 1941, pursuant to a decision of the Department of Public Works rendered after investigation, the dikes of the fishfonds were opened at several points, resulting in their destruction and in the loss of great quantities of fish inside, to the damage and prejudice of the lessee.

In 1956, the lessor having died in 1948 and the corresponding testate proceeding to settle her estate having been opened (Sp. Proc. No. 5002, C.F. I., Manila), Gutierrez filed a claim for two items: first, for the sum of ₱32,000.00 representing advance rentals he had paid to the decedent (the possession of the leased property, it is alleged, having been returned to her after the opening of the dikes ordered by the government); and second, for the sum of ₱60,000.00 as damages in the concept of unearned profits, that is, profits which the claimant failed to realize because of the breach of the lease contract allegedly committed by the lessor.

On June 7, 1957 appellant commenced the instant ordinary civil action in the Court of First Instance Rizal (Quezon City branch) against the executrix of the testate estate for the recovery of the same amount of ₱60,000.00 referred to as the second item claimed in the administration proceeding. The complaint specifically charges the decedent Maria Gerardo Vda. de Barretto, as lessor, with having violated a warranty in the lease contract against any damages the lessee might suffer by reason of the government that several rivers and creeks of the public domain were included in the fishponds.

In July 1957 appellant amended his claim in the testate proceeding by withdrawing therefrom the item of ₱60,000.00, leaving only the one for refund of advance rentals in the sum of ₱32,000.00.

After the issues were joined in the present case with the filing of the defendant's answer, together with a counterclaim, and after two postponements of the trial were granted, the second of which was in January 1958, the court dismissed the action for abandonment by both parties in an order dated July 31, 1959. Appellant moved to reconsider; appellee opposed the motion; and after considerable written argument the court, on March 7, 1960, denied the motion for reconsideration on the ground that the claim should have been prosecuted in the testate proceeding and not by ordinary civil action.

Appellant submits his case on this lone legal question: whether or not his claim for damages based on unrealized profits is a money claim against the estate of the deceased Maria Gerardo vda. de Barretto within the purview of Rule 87, Section 5. This section states:

> "SEC. 5. Claims which must be filed under the notice. If not filed, barred; exception.—All claims for money against

the decedent, arising from contract, express or implied, whether the same be due, not due, or contingent, all claims for funeral expenses and expenses of the last sickness of the decedent, and judgment for money against the decedent, must be filed within the time limited in the notice; otherwise they are barred forever, except that they may be set forth as counterclaims in any action that the executor or administrator may bring against the claimants. Where an executor or administrator commences an action, or prosecutes an action already commenced by the deceased in his lifetime, the debtor may set forth by answer the claims he has against the decedent, instead of presenting them independently to the court as herein provided, and mutual claims may be set off against each other in such action; and if final judgment is rendered in favor of the defendant, the amount so determined shall be considered the true balance against the estate, as though the claim had been presented directly before the court in the administration proceedings. Claims not yet due, or contingent, may be approved at their present value."

The word "claims" as used in statutes requiring the presentation of claims against a decedent's estate is generally construed to mean debts or demands of a pecuniary nature which could have been enforced against the deceased in his lifetime and could have been reduced to simple money judgments; and among these are those founded upon contract. 21 Am. Jur. 579. The claim in this case is based on contract — specifically, on a breach thereof. It falls squarely under section 5 of Rule 87. "Upon all contracts by the decedent broken during his lifetime, even though they were personal to the decedent in liability, the personal representative is answerable for the breach out of the assets." 3 Schouler on Wills, Executors and Administrators, 6th Ed., 2395. A claim for breach of a covenant in a deed of the decedent must be presented under a statute requiring such presentment of all claims grounded on contract. Id. 2461; Clayton v. Dinwoody, 93 P. 723; James v. Corvin, 51 P. 2nd 689.(1)

The only actions that may be instituted against the executor or administrator are those to recover real or personal property from the estate, or to enforce a lien thereon, and actions to recover damages for an injury to person or property, real or personal. Rule 88, section 1. The instant suit is not one of them.

Appellant invokes Gavin v. Melliza, 84 Phil. 794, in support of his contention that this action is proper against the executrix. The citation is not in point. The claim therein, which was filed in the testate proceeding, was based upon a breach of contract committed by the executrix herself, in dismissing the claimant as administrator of the *hacienda* of the deceased. While the contract was with the decedent, its violation was by the executrix and hence personal to her. Besides, the claim was for indemnity in the form of a certain quantity of *palay* every year for the unexpired portion of the term of the contract. The denial of the claim was affirmed by this Court on the grounds that it was not a money claim and that it arose after the decedent's demise, placing it outside the scope of Rule 87, Section 5.

The orders appealed from are affirmed, with costs against appellant.

Bengzon, C.J., Labrador, Concepcion, Barrera, Paredes, Dizon and Regala, JJ., concurred.

Padilla, J., took no part.

(1) Plaintiff's claim arose from a breach of a covenant in the deed. It is very clearly expressed by the statute that all claims arising on contracts whether due, not due, or contingent, must be presented. The only exception made by the statute is that a mortgage or lien "against the property of the estate subject thereto" may be enforced without first presenting a claim to the executor or administrator "where all recourse against any other property of the estate is expressly waived in the complaint." But this was not an action to enforce a lien. It was not one seeking to have the claim satisfied out of specific property of the estate, or to subject any particular property of the estate to the satisfaction thereof. Clayton v. Dinwoody, 93 p. 723.

The claim for damages for the unexpired portion of the lease is not an obligation incurred by the administratrix in the course of her admnistration of the estate. It arises out of a contractual obligation incurred by Louis Johnson and is governed by the statute of nonclaim. By the terms of the lease, he obligated himself, his heirs, executors, administrators and assigns to pay $4,860 for the premises for a term of five years, covering the time involved in this action. A claim for damages for a breach of contract arises out of that obligation requiring as prerequisite to a suit thereon, that the claim be served on the administratrix and filed with the clerk of court. James v. Corvin, 51 P (2d) 689.

VII

Teresa Realty, Inc., Plaintiffs-Appellee vs. Carmen Preysler Vda. de Garriz, Defendant-Appellant, G.R. No. L-14717, July 31, 1962, Padilla, J.

LANDED ESTATES; CITY OF MANILA; SUSPENSION OF DETAINER PROCEEDINGS UNDER REPUBLIC ACT 1162 AS AMENDED BY REPUBLIC ACT NO. 1599; REQUISITE.— The authority granted by section 1 of Republic Act No. 1599, approved on 17 June 1956, amending Republic Act No. 1162, which took effect on 18 June 1954, to expropriate "landed estates or haciendas, or lands which formerly formed part thereof, in the City of Manila, which are and have been leased to tenants for at least ten years," "Provided, That such lands shall have at least fifty houses of tenants erected thereon," does not mean that once these conditions or requisites are present, Republic Act No. 1599 or Republic Act No. 1162 would readily be applied. Before either Act together with the remedies therein provided, such as suspension of detainer proceedings, installment payment of rentals, or maximization of rentals, could be availed of, it is necessary that proceedings for the expropriation of the parcel of land must have been instituted. Otherwise, the law could not be availed of. In the case at bar, the parcel of land subject of the litigation is not being expropriated.

D E C I S I O N

On 19 May 1948 Carmen Preysler vda. Garriz acquired by purchase from the successors-in-interest of D. M. Fleming a residential house and a leasehold right on a parcel of land (Lot 11-K) where the house stands (Exhibit A-2). Situated on 23 Manga Avenue, Santa Mesa, Manila, the parcel of land contains an area of 1,492.59 square meters described in transfer certificate of title No. 30061 issued in the name of Teresa Realty, Inc. by the Register of Deeds in and for the City of Manila, and assessed at ₱22,540. On 21 March 1918 D. M. Fleming acquired by purchase the leasehold right from John W. Haussermann (Exhibit A-1) who on 3 June 1910 had entered into a contract of lease with Demetrio Tuason y de la Paz, the manager (administrador) of the Estate of Santa Mesa y Diliman (Exhibit A). Under the original lease agreement (Exhibit A), the term thereof was to expire on 31, December 1953.

Effective 1954 the parcel of land above referred to was assessed at ₱22,540 by the City Assessor of Manila in the name of Teresa Realty, Inc. (Exhibit B).

On 22 December 1953, or before the expiration of the lease on 31 December 1959, the Teresa Realty, Inc. notified in writing Carmen Presyler vda. de Carriz that it would agree to a new lease for five years at an increased rental from ₱135 a year plus tax on the land to ₱225.40 a month, which is 12% of the assessed value of the parcel of land. Despite such offer to enter into a new lease contract the lessee refused to have it renewed for five years at an increased rental as offered by the lessor. For that reason, the Teresa Realty, Inc. brought a detainer action against Carmen Preysler vda. de Garriz in the Municipal Court of Manila. After trial, the court rendered judgment ordering Carmen Preysler vda. de Garriz or any person claiming under her to vacate the parcel of land subject of the lease and to pay ₱225.40 as reasonable monthly rental for the use of the parcel of land from 1 January 1954 until possession of the same shall have been restored to the plaintiff, and costs. She appealed to the Court of First Instance of Manila. Whereupon, the complaint filed in the Municipal Court was reproduced. On 17 January 1955 the defendant lessee answered anew the reproduced complaint and alleged further by way of special defenses that she was holding possession of the parcel of land waiting for the Court to decide the action

she had brought for the purpose of asking the Court to fix the reasonable rental and the period of extension of the lease contract, the rental demanded by the plaintiff being speculative and excessive (civil case No. 21897); that the parcel of land the possession of which the plaintiff seeks to recover is part of the Hacienda of Santa Mesa and Diliman; and that pursuant to Republic Act No. 1162 all detainer cases had to be suspended until expropriation proceedings are terminated, provided the current rentals are paid by the tenant. Upon these premises she prayed for the dismissal of the complaint or suspension of the proceedings in the detainer case and for any other just and equitable relief. After trial, on 1 October 1955 the Court of First Instance of Manila rendered judgment which, aside from reiterating what the Municipal Court had adjudged, ordered the defendant Carmen Preysler vda. de Garriz to remove from the parcel of land her improvement or construction thereon. Her motion for reconsideration and/or new trial having been denied on 27 October 1955, she appealed to the Court of Appeals. The appeal was certified to this Court, because the appellee Teresa Realty, Inc., in objecting to the appellant's motion to suspend the detainer proceedings under the provisions of Republic Act No. 1599, had raised the question of constitutionality and applicability of the statute. On 7 November 1956 this Court returned the case to the Court of Appeals for the latter to ascertain the number of houses built on the leased parcel of land which was necessary for the determination as to whether the case would come under Republic Act No. 1599. Pursuant to this directive, the Court of Appeals designated its Deputy Clerk Esperidion M. Ventura as commissioner to receive evidence on such number of houses built thereon. On 5 August 1958 the commissioner rendered a report that more than 50 houses were on the tract of land belonging to the plaintiff, or, as admitted by the assistant manager of the Teresa Realty, Inc., there were about 460 tenants, and that 53 tenants, he had interviewed, had, in their own right or together with their predecessors-in-interest, occupied their respective parts of the tract of land for more than ten years before Republic Act No. 1599 was approved. On November 1958 the Court of Appeals again certified the case to this Court.

The appellant contends that the trial court erred in not suspending the detainer proceedings against her and in ordering her to vacate the lot leased by her and predecessors-in-interest since 3 June 1910 and to pay a monthly rental equivalent to 12% of assessed value of the parcel of land. According to her, the requisites of section 1 of Republic At No. 1599, namely, that the parcel of land in litigation (1) be part of a landed estate or hacienda—the former Hacienda de Santa Mesa y Diliman in Manila; (2) had been leased for at least ten years; and (3) that the landed estate had more than fifty houses of tenants, are present; hence the law invoked by her applies and the detainer proceedings against her should have been suspended as provided for in section 5 of Republic Act No. 1599. Said section partly provides:

> From the approval of this Act, and even before the commencement of the expropriation herein provided, ejectment proceedings against any tenant or occupant of any landed estates or haciendas or lands herein authorized to be expropriated, shall be suspended for a period of two years, upon motion of the defendant, if he pays his current rentals, x x x.

The appellant"s contention cannot be sustained. The authority granted by section 1 of Republic Act No. 1599, approved on 17 June 1956, amending Republic Act No. 1162, which took effect on 18 June 1954, to expropriate "landed estates or haciendas, or lands which formerly formed part thereof, in the City of Manila, which are and have been leased to tenants for at least ten years," "Provided, That such lands shall have at least fifty houses of tenants erected thereon," does not mean that once these conditions or requisites are present, Republic Act No. 1599 or Republic Act No. 1162 would readily be applied. Before either Act together with the remedies therein provided, such as suspension of detainer proceedings, installment payment of rentals, or maximization of rentals, could be availed of, it is necessary that proceedings for the expropriation of the parcel of land must have been instituted.(1) Otherwise, the law could not be availed of. In the case at bar, the parcel of land subject of the litigation is not being expropriated.

The rental of ₱225.40 a month, which is 12% per annum of the assessed value of the parcel of land involved herein, is reasonable.(2)

The judgment appealed from is affirmed, with costs against th appellant.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

J.B.L. Reyes, J., took no part.

VIII

Godofredo Navera, petitioner vs. Hon. Perfecto Quicho, etc., et al., respondents G. R. No. L-18339, June 29, 1962, Bautista Angelo, J.

1. REGISTRATION OF LANDS; PUBLIC HIGHWAY IS EXCLUDED FROM THE TITLE.— Under Section 39, Act No. 496, Land Registration Law, any public highway, even if not noted on a title, is deemed excluded as a legal lien or encumbrance in the registered land.

2. ID.; INCLUSION BY MISTAKE OF A LAND WHICH CANNOT LEGALLY BE REGISTERED DOES NOT MAKE APPLICANT OWNER THEREOF.— A person who obtains a title which includes by mistake a land which cannot legally be registered does not by virtue of such inclusion become the owner of the land erroneously included therein. But this theory only holds true if there is no dispute that the portion to be excluded is really part of a public highway. This principle only applies if there is unanimity as to the issue of fact involved.

3. ID.; CORRECTION OF CERTIFICATE OF TITLE UNDER SECTION 112 OF ACT 496 (Land Registration Act); WHEN PETITION CANNOT BE GRANTED.— The claim of the municipality that an error has been committed in the survey of the lot recorded in respondent's name by including a portion of the Natera Street is not agreed to by petitioner. In fact, he claims that that is a question of fact that needs to be proven because it is controversial. There being dissension as to an important question of fact, the petition cannot be granted under Section 112 of Act No. 496.

4' ID.; ID.; JURISDICTION OF LAND REGISTRATION COURT TO MAKE CORRECTION IN CERTIFICATE OF TITLE; ORDINARY COURT.—While Section 112 of Act No. 496, among other things, authorizes a person in interest to ask for any erasure, alteration, or amendment of a certificate of title "upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased', and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs.

DECISION

On January 24, 1961, the municipality of Ligao filed with the Court of First Instance of Albay a petition under Section 112 of Act No. 496, as amended, for the correction of Transfer Certificate of Title No. T-9304 issued in the name of Godofredo Navera, covering Lot No. 2793-A, on the ground that a portion of 123 sq. m. was erroneously included in said title during the cadastral survey of Ligao.

Navera filed a motion to dismiss based on the ground that the relief which petitioner seeks to obtain cannot be granted under Section 112 of Act 496 because the same would involve the opening of the original decree of registration. He contends that, under

(1) Teresa Realty, Inc. vs. Maxima Blouse de Potenciano, G.R. No. L-17588, 30 May 1962.
(2) Id.

said section, the court can only authorize an alteration which may not impair the rights recorded in the decree, or one which will not prejudice such rights, or one which is consented to by all parties concerned, or can authorize the correction of any error or mistakes which would not involve the reopening of the original decree of registration. Here the petition will have such effect, for it will involve the correction of the technical description of the land covered by the certificate of title in question, segregating therefrom the portion alleged to have been erroneously included, which eventually will cause the amendment of the original decree of registration. This cannot be done at this stage after the lapse of 23 years from the issuance of the certificate of title.

After hearing both parties, the court a quo issued an order denying the motion to dismiss and requiring Navera to answer the petition within the reglementary period. After this motion for reconsideration was denied, Navera filed the present petition for certiorari disputing the jurisdiction of the court *a quo*.

It is alleged by the municipality of Ligao that in the course of the construction or repair of Natera street of said municipality it was ascertained by a duly licensed surveyor that Lot No. 2793-A of the cadastral survey of Ligao has encroached upon said street by depriving the street of an area amounting to 123 sq. m. which was erroneously included in Lot No. 2793-A now covered by Transfer Certificate of Title No. T-9304 issued in the name of Godofredo Navera. Hence, the municipality prays for the correction of such error in the technical description of the lot, as well as in the certificate of title, with a view to excluding therefrom the portion of 123 sq. m. erroneously included therein.

The court *a quo*, over the objection of Navera, granted the petition even if the same was filed under Section 112 of Act No. 496. The court predicates its ruling upon the following *rationale*;

> "It is a rule of law that lands brought under the operation of the Torrens System are deemed relieved from all claims and encumbrances not appearing on the title. However, the law excepts certain rights and liabilities from the rule, and there are certain burdens on the lands registered which continue to exist and remain in force, although not noted on the title, by express provisions of Section 39 of Act No. 496, as amended. Among the burdens on the land registered which continue to exist, pursuant to said Section 39, is 'any public highway, way, private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.' The principle involved here is that, if a person obtains a title under the Torrens System which includes by mistake or oversight a land which cannot be registered, he does not by virtue of such certificate alone become the owner of the land illegally included therein. In the case of Ledesma vs. Municipality of Iloilo, 49 Phil., 679, the Supreme Court laid down the doctrine that the inclusion of public highways in the certificate of title under the Torrens System does not thereby give to the holder of such certificate said public highways.' "

Petitioner Navera does not agree with this ruling, invoking in his favor what we stated in a recent case to the effect that, "the law authorizes only alterations which do not impair rights recorded in the decree, or alterations which, if they do not prejudice such rights, are consented to by all parties concerned, or alterations to correct obvious mistakes, without opening the original decree of registration" (Director of Lands v. Register of Deeds, G. R. No. L-4463, promulgated March 31, 1953). Navera contends that the purpose of the instant petition is not merely to correct a clerical error but to reopen the original decree of registration which was issued in 1937, and this is so because the petition seeks to direct the register of deeds to make the necessary correction in the technical description in order that the portion erroneously included may be returned to the municipality of Ligao. In effect, therefore, the petition does not seek merely the correction of a mistake but the return or reconveyance of a portion of a registered property to respondent. This cannot be done without opening the original decree of registration.

The theory entertained by the court *a quo* that if the portion to be segregated was *really* erroneously included in the title issued to petitioner because it is part of the Nadera street which belongs to the municipality of Ligao that portion may be excluded under Section 112 of Act 496 because under the law[1] any public highway, even if not noted on a title, is deemed excluded therefrom as a legal lien or encumbrance, is in our opinion correct. This is upon the principle that a person who obtains a title which includes by mistake a land which cannot legally be registered does not by virtue of such inclusion become the owner of the land erroneously included therein.[2] But this theory *only* holds true if there is no dispute that the portion to be excluded is really part of a public highway. This principle *only* applies if there is unanimity as to the issue of fact involved.

Here said unanimity is lacking. The claim of the municipality that an error has been committed in the survey of the lot recorded in respondent's name by including a portion of the Natera street is not agreed to by petitioner. In fact, he claims that that is a question of fact that needs to be proven because it is controversial. There being dissension as to an important question of fact, the petition cannot be granted under Section 112 of Act No. 496.

> "We are of the opinion that the lower court did not err in finding that it lacks jurisdiction to entertain the present petition for the simple reason that it involves a controversial issue which takes this case out of the scope of Section 112 of Act No. 496. While this section, among other things, authorizes a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title 'upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have terminated and ceased, and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs. x x x" (Tangunan, et al. v. Republic of the Philippines, G. R. No. L-5545, December 29, 1953; *See also* Jimenez v. De Castro, 40 O.G. No. 3, 1st Supp. p. 80; Government of the Philippines v. Jalandoni, 44 O. G., 1837)

Wherefore, petition is granted. The order of respondent court dated March 8, 1961, as well as its order dated March 25, 1961, are hereby set aside. No costs.

Bengzon, C.J., Padilla, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

IX

People of the Philippines, Plaintiff-appellee vs. Emiterio Villanueva, Pedro Percal and Felix Jasmilona, Defendants-appellants, G.R. No. L-12687, July 31, 1962, Bengzon, C.J.

1. CRIMINAL LAW; CONSPIRACY; WHEN MAY EXTRA-JUDICIAL CONFESSION OF ONE CONSPIRATOR BE CONSIDERED AS PART OF THE EVIDENCE AGAINST PARTIES CONCERNED.—The rule is that where the recitals in the extra-judicial confession of one of the conspirators are corroborated in its important details by other proofs in the record, it may considered as part of the evidence against the parties concerned.

2. ID.; CONFESSION; AS EVIDENCE AGAINST THE ACCUSED MAKING THE CONFESSION; HEARSAY EVIDENCE AGAINST HIS CO-DEFENDANTS; EXCEPTIONS.—While a confession is against him but not against his co-defend-

[1] Section 39, Act 496.
[2] Ledesma v. Municipality of Iloilo, 49 Phil. 709.

ants to whom said confession is hearsay evidence, the rule, however, admits of certain exceptions. One of them is when a defendant, who made the confession, is called to testify as a witness for his co-defendants, his confession then becomes competent evidence for the purpose of contradicting his testimony in behalf of his co-defendants (People vs. Manalo, 46 Phil. 573). This was what happened in this case because Emiterio Villanueva and Pedro Percal adopted as part of their defense not only the testimony of Felix Jasmilona but also the statement given by him before the Justice of the Peace of Calamba on March 10, 1956.

D E C I S I O N

This case began with the filing of an information charging the above defendants with the murder of Loreto Estacio, committed in the municipality of Calamba, province of Laguna.

After trial, the court of first instance held that their guilt had been proven beyond reasonable doubt; and there being no circumstances modifying the commission of the crime, each of the said accused was sentenced to "cadena perpetua", to indemnify jointly and severally the heirs of the victim in the sum of ₱6,000 without subsidiary imprisonment in case of insolvency, and to pay a proportionate part of the costs.

From such convictions the three defendants appealed to this Supreme Court, raising the usually basic question whether or not the evidence for the prosecution shows beyond reasonable doubt that all of them are guilty as charged.

Appellants were convicted partly on the strength of the extra-judicial confession of the accused Felix Jasmilona which appears to be corroborated by circumstantial evidence.

Such extra-judicial confession written down by Corporal Villegas on February 6, 1956 in the presence of Lt. Carungcong, was signed and sworn to the next day before Justice of the Peace Felix Angeles, and contains statements to the effect that Loreto Estacio was killed in the "taklab" (camarin) of Emiterio Villanueva, who had resented the filing of a criminal charge against him by Loreto Estacio; that Loreto was mauled and badly beaten on different parts of the body and when he was already unconscious, he was stabbed in the abdomen; that the body of Loreto was then carried and later thrown into a marshy place in barrio Linga commonly called "tikiwan"; that the persons who took part in the killing were Emiterio Villanueva, one of his sons, Pedro Fercal, Elpidio Habacon and Felix Jasmilona; that it was the son of Emiterio who beat and mauled Loreto while Pedro Percal was the one who stabbed him; that Elpidio Habacon and Pedro Percal were paid by Emiterio Villanueva the sum of ₱400 for their cooperation. x x x According to the lower court, the chain of circumstances which in connection with Jasmilona's confession, tended to establish the guilt of the prisoners were the following:

"1. In the afternoon of December 21, 1955, Emiterio Villanueva asasulted Loreto Estacio with fist blows on the face;

"2. Loreto Estacio immediately filed a criminal complaint for slight physical injuries against Emiterio Villanueva;

"3. On December 22, 1955, Emiterio Villanueva asked Benito Mendoza to persuade Loreto Estacio to drop his complaint. Benito Mendoza, who was married to a niece of Loreto Estacio, declined to intervene in the case, and so Emiterio Villanueva left disgusted and stated that he would not stop until something untoward would happen to Loreto Estacio;

"4. On December 23, 1955, the Justice of the Peace Court set the preliminary investigation of the Criminal Case against Emiterio Villanueva for January 3, 1956;

"5. Patrolman Balderrama notified the accused the next day;

"6. Late in the evening of December 26, 1955, Pedro Percal asked Loreto to withdraw his complaint against Emiterio Villanueva. When Loreto refused, Pedro Percal threatened him, saying 'something bad would happen';

"7. At about 5 a.m. on December 27, 1955, Loreto Estacio left his house to check the water irrigating his rice field. About this time, Benito Mendoza saw him between Emiterio Villanueva and Pedro Percal, the three walking single-file, passing in front of his store, coming from the direction of Loreto Estacio's house.

"8. Between 5:30 and 6 p.m., Enrique Fatiga saw Pedro Percal and Felix Jasmilona passing his rice field, the two proceeding in the direction of the 'taklab' of Emiterio Villanueva about 200 meters away;

"9. At about half past 7 in the evening of the same day, while Enrique Fatiga was proceeding home he heard sounds coming from inside which seemed to be the groans of a person. He slowed down to find out what it was, but then he heard the voice of a person inside the 'taklab' prodding another and saying — 'sulong Felix', 'sulong Pedro', followed by laughter. Enrique Fatiga then thought that those persons inside the 'taklab' were having some fun and so he did not give much thought to what he heard and hurried on his way home;

"10. Loreto Estacio did not return home on December 27, 1956 and so on the following morning, his wife, Cresencia Pacana, began to look for him. Four days later on December 31, 1955 his cadaver was found floating on a marshy place called 'tikiwan' in barrio Linga, Calamba, Laguna;

"11. The dark stains on different parts of the 'taklab' of Emiterio Villanueva proved to be of human blood;

"12. When Dr. Sunico and his party left the 'taklab' of Emiterio Villanueva to board the vehicle wherein they had traveled from Manila, the wife of Emiterio Villanueva, who was with the group, suddenly grabbed a wooden pestle from her son, then threw it into an irrigation canal and thereafter she tried to wash off the dark stain (blood) at one end thereof with the use of her hands. Upon being asked by Sergeant Velosano for her suspicious behaviour, Villanueva's wife refused to answer and merely kept silent;

"13. Eight hematoma wounds (contusions) were found on the corpse, in addition to the stab wound on the abdomen." (See pp. 16-19 of the decision of the lower court)

Appellant Jasmilona assails the admissibility and credibility of his extra-judicial confession on the ground that it was not made voluntarily. He claims that he was punched in the belly, and on the neck by one Sgt. Velosano; that he was taken to a swimming pool in Los Baños, Laguna where he was given the "water treatment"; that he was again struck on the stomach by his investigators and then when he still refused to sign the extra-judicial confession, he was threatened with bodily harm.

Amado Camillas, a witness for the defense, stated in court that when he saw Jasmilona alight from the jeep that carried him to the municipal jail, the latter was limping a little; that upon inquiry he was told by Jasmilona that he was maltreated by his investigators. Dr. Florentino Elasique, also a witness for the defense, issued a medical certificate (Exh. "3") showing that there were contusions on both shoulders just below the neck of said accused.

However, a prosecution witness, Dr. Juan M. Cardenas, who conducted an examination on the body of appellant Jasmilona on February 6, 1956 (i.e. one day after the defense doctor performed his examination) said that he did not see any sign of external injuries or contusions *on any part of Jasmilona's body;* that he could not determine the cause of pain complained of by said accused in the lower auxillary region, right side of the body. (t.s.n. pp. 4-5, Mar. 12, 1957.)

A significant fact pointed out by the Government is that if appellant Jasmilona had really been maltreated by the said investigators, he would have complained to Judge Angeles before whom

the extra-judicial confession was signed and sworn to. But he did not.

Judge Angeles stated in court that he himself read to Jasmilona the contents of the affidavit (extra-judicial confession) and has asked the latter whether or not, he was willing to sign the same and to swear to the truth of its contents. Jasmilona said yes, and willingly. Moreover, he also stated that when such extra-judicial confession was about to be read to the accused, for signature and oath, he (Judge Angeles) ordered the soldiers accompanying the prisoner to leave the room.

Considering therefore the circumstances under which this extra-judicial confession was executed, we are not inclined to disagree with the lower court on its finding that it was voluntarily made.

The next question is whether or not said extra-judicial confession may serve as the basis for the conviction of appellants Jasmilona, Villanueva and Percal.

It is urged that granting the confession was admissible, appellant Jasmilona must be absolved because said affidavit contains exculpatory statements exonerating him from guilt. On this point, we say that courts need not believe the confession in its entirety.

As to the other accused, it was allegedly error for the lower court to use the extra-judicial confession of Jasmilona against them.

On this issue, the rule is that where the recitals in the extra-judicial confession of one of the conspirators are corroborated in its important details by other proofs in the record, it may be considered as part of the evidence against the parties concerned.

In the case of U. S. vs. Reyes, et al.(1) we opined:

"The truth of the incriminating statements of Miguela Sibug, Damaso Valencia's widow, in connection with each of the said three defendant, is proved by those made by the other witnesses for the prosecution, Lorenzo Reyes, and by the confession, *although extra-judicial*, made by Faustino Mañago himself in the municipality of Hagonoy to the lieutenant of the Constabulary, Cristobal Cerquella, and to the municipal president and a policeman of the said pueblo; and this confession is worthy of credence and is admissible against him, as it is likewise credible and admissible against his co-defendants, Abdon de Leon and Severino Perez, his accusation of their participation in the crime, inasmuch as the confession is corroborated both by the testimony of Miguela Sibug herself and by that of Lorenzo Reyes and confirmed by other evidence related thereto and found in the record."

This brings us to the query: Are the recitals in the extra-judicial confession and the other proofs sufficient to support conviction?

We are satisfied that the trial judge made painstaking efforts to evaluate the evidence of record. The circumstances it found to have indicated the guilt of the accused, are indeed substantiated. We do not need to recount them now.

At this juncture, it may be added that we think the trial judge exercised sound judgment when it considered Jasmilona's confession against the other two defendants as *an exception* to the general rul against its admission, for the following reasons:

"While a confession is against him but not against his co-defendants to whom said confession is hearsay evidence, the rule, however, admits of certain exceptions. One of them is when a defendant, who made the confession, is called to testify as a witness for his co-defendants, his confession then becomes competent evidence for the purpose of contradicting his testimony in behalf of his co-defendants (People vs. Manalo, 46 Phil. 573). This was what happened in this case because Emiterio Villanueva and Pedro Percal adopted as part of their defense not only the testimony of Felix Jasmilona but also the statement given by him before the Justice of the Peace of Calamba on March 10, 1956."

It is urged that some of the prosecution witnesses were biased, because Enrique Fatiga was a dismissed tenant of Emiterio Villanueva, and Benito Mendoza was related by marriage to the deceased, (Mendoza's wife being his niece). However, upon examining the testimony of such witnesses, this Court finds no compelling reason for disbelief. There is no tinge at all of exaggeration or improbability in their testimonies. Besides, the defense itself has shown that the differences between Fatiga and Villanueva had been settled amicably sometime in October, 1950, many years before this fatal incident.

On the other hand, the defendants' *alibi* carries no weight. Aside from the fact that it is not corroborated by others, it is definitely without sufficient strength in the fact of the assertion of witnesses who saw them at or near the scene of the crime on Dec. 27, 1955.

Appellants ascribe error to the lower court in concluding that there was conspiracy among them. In support of their assertion, they claim that accused Percal and Jasmilona had no motive in killing the deceased, Loreto Estacio; that it was only Emiterio Villanueva, who had been charged by the deceased in the Justice of the Peace Court of Calamba in the criminal complaint, who could have reason to kill.

Although it is true that there is no direct proof of conspiracy among the accused, their acts, in the light of the recitals in the extra-judicial confession show that the killing of Loreto was planned among them and carried out accordingly. This confession, as stated, is supported and corroborated by competent evidence. The chain of circumstances, fitting well into the statements in the extra-judicial confession, is more than sufficient to establish conspiracy, as found by the trial court.

Wherefore, the judgment of conviction must be upheld, and the sentence affirmed. The imprisonment however should be *reclusion perpetua*, instead of *cadena perpetua*. Costs against appellants, who shall be credited with one-half of the period of their preventive imprisonment, in accordance with Art. 29 of the Revised Penal Code.

So ordered.

Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concurred.

X

Sergio del Rosario, Petitioner, vs. People of the Phil., Respondent, G.R. No. L-16806, December 22, 1961, Concepcion, J.

CRIMINAL LAW; USING FORGED PHILIPPINE TREASURY NOTES.—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 the accused and his codefendants, is punishable under Article 168, in relation to Article 169, subdivision (1), of the Revised Penal Code (U.S. vs Gardner, 3 Phil., 398; U.S. Solito, 36 Phil., 785).

P. M. Stuart del Rosario, for petitioner.
The Solicitor General, for respondent.

D E C I S I O N

Accused of counterfeiting Philippine treasury notes, Sergio del Rosario, Alfonso Araneta and Benedicto del Pilar were convicted by the Court of First Instance of Davao of illegal possession of said forged treasury notes and sentenced to an indeterminate penalty ranging from 8 years and 1 day to 10 years and 1 day of *prision mayor*, and to pay a fine of ₱5,000, without subsidiary imprisonment in case of insolvency, as well as a proportionate part of the costs. On appeal, the judgment was affirmed

(*Continued on page 287*)

(1) 32 Phil. 163, 173.

COURT OF FIRST INSTANCE DECISION

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF PANGASINAN
Third Judicial District

JESUS P. MORFE
Plaintiff
— *versus* — CIVIL CASE NO. 14166

AMELITO R. MUTUC, as Executive Secretary
and JOSE W. DIOKNO, as Secretary of Justice,
Defendants,
x — x — — — — — — x

DECISION

Plaintiff, attacking the constitutionality of Sec. 7 of Republic Act No. 3019, filed a complant for declaratory relief where the defendants are the Executive Secretary and the Secretary of Justice, Honorable Amelitu R. Mutuc and Honorable Jose W. Diokno, respectively. In support of his contention that said section of said Act is unconstitutional, plaintiff enumerates the following as basis for its unconstitutionality:

"(a) Said provision of law is an insult to the personal integrity and official dignity of the plaintiff in particular, and of officers of this Republic similarly situated, for it is premised on the unwarranted and derogatory assumption that officers and employees of this Republic are corrupt at heart and, unless restrained by the necessity of periodically baring their financial condition, incomes, expenses, etc., they cannot be trusted to desist from committing the corrupt practices defined and punished in Rep. Act No. 3019 and in other laws of this Republic.

"(b) It requires sworn information on the purely personal and/or private interests or concerns of the plaintiff, such as the amount of his personal and family expenses, cash on hand, and bank balances, and thereby impairs plaintiff's normal and legitimate enjoyment of life and liberty without due process of law.

"(c) It amounts to a fishing expedition for non-existing incriminating evidence; serves no useful purpose; and wittingly or unwittingly attempts to violate the constitutional prohibition against making the citizens of this Republic testify against themselves.

"(d) It is an indirect way of making an unreasonable search of the money, properties, effects, books, and records of the plaintiff before the latter forfeits his right to complete privacy by actual commission of a public offense or the means used in its commission, thereby infringing the existing constitutional guaranty against unreasonable searches and seizures.

"(e) It offends the aforementioned constitutional guarantees which have been held to serve a dual purpose: (1) Protection of the privacy of the individual, i.e., his right to be let alone; and (2) Protection of the individual against compulsory production of evidence to be used against himself (Davis v. United States, 238 U.S. 582, 90 L. ed. 1453, 68 S. Ct. 1256).

"(f) In relation to the last paragraph of Sec. 9 of Rep. Act No. 3019, it impairs the security of tenure of office of members of our judiciary by adding as a ground for dismissal from office the failure to file said oppressive and unnecessary statement of financial condition, assets, income and liabilities.

"(g) There is no need for the said required sworn statement as the income tax law and the tax census law also require statements which can serve to determine whether an officer or employee in this Republic has enriched himself out of proportion to his reported incomes."

The defendants, answering thru the Solicitor General, assistant Solicitor General and Solicitor, sustain the constitutionality of said Sec. 7 of Republic Act No. 3019 by setting up special and affirmative defenses as follows:

"1. That when a government official, like plaintiff, accepts a public position, he is deemed to have voluntarily assumed the obligation to give information about his personal affairs, not only at the time of his assumption of office but during the time he continues to discharge public trust. The private life of an employee cannot be segregated from his public life (Nera vs. Garcia, G.R. No. L-13169, Jan. 30, 1960).

"A government official undertakes obligations of frankness, candor and cooperation in answering inquiries made of him regarding his fitness to remain in the public service. He cannot, for example, hide behind the "no self-incrimination" clause in refusing to answer the question whether he had been a communist party member (Bailan vs. Board of Education of Philadelphia, 357 US 1414).

"The State can inquire of its employees matters that may prove relevant to their fitness and suitability for the public service (Gardner vs. Board of Public Works, 341 US 716, 95 L. ed. 1317; 71 Sct. 909).

"The matters sought to be elicited in the sworn statements in question are relevant to one's integrity and, hence, to his continued fitness to remain in office.

"2. That the constitutionality of a law cannot be attacked on the bare claim that it is an insult to the personal integrity and official dignity of plaintiff and other public officers and that it casts a doubt on their integrity. An Act, lawful in all other respects, cannot be nullified just because it touches the tender feelings or sensibilities of the citizens.

"Courts cannot invalidate statutes just because they are harsh (State vs. Swagerty, 203 M. 517, 102 S. W. 483, 10 L.R.A. (N.S.) 601; Shevlin-Carpenter Co. US Minnesota 218 U.S. 57, 54 L. ed. 930; 305 Sct. 663; Hunter v. Pittsburgh, 207 US 161, 52 L.ed. 151, 28 Sct. 40), or may be mischievous in their effects and burdensome on the people (U.S. *ex rel.* Atty. Gen. vs. Delaware & H. Co., 213 US 366, 53 L.ed. 836, 27 Sct 527) as with respect to such defects the remedy of petitioner is an appeal to Congress, not to the courts.

"3. That the law is not based on nor does it create the presumption that public servants are lacking in integrity but but assuming *arguendo* that there is in reality such presumption, the same can be upheld. Presumptions shifting to a party the burden of persuasion or the burden of going forward are valid (Hawes vs. Georgia, 258 US 1 (1922); Casey vs. United States, 276 US 413 (1928). Thus in *Shore vs. United States* (56 F (2d) 490; App. D. C. 1932) the Court of Appeals of the District of Columbia upheld a section of the Tariff Act which made the possession of foreign whiskey presumptive of unlawful importation (See also People vs. Bullock, 123 Cal. pp. 299, 11 Pac (2d) 441 (1932).

"4. That the privilege against self-incrimination covers only statements made in courts under process as a witness (3 Wigmore, Evidence, ser. 2266; Ex Parte Kneedler, 147 S. W. 983). Assuming that the privilege can be extended to

proceedings out of court, still it cannot cover the performance of acts which, by mere possibility, no matter how remote, may incriminate him. Otherwise, the law requiring display of license plates in plain sight and under illumination at night, would be invalid because the license plate would be a means in the identification of the owner in case of accident. But this law has been upheld in the case of People vs. Schneider, 139 Mich. 673. Statutes requiring druggists to make weekly sworn statements of their sales of liquor has been upheld even if these records can be used in their prosecutions for illegal sales (State vs. Henwood, 123 Mich. 317; State vs. Davis, 69 S. E. 639 (W. Va.); State *ex rel.* McClovey vs. Donovan, 10 N. D. 203; State vs. Davies, 108 No. 666).

"5. That questions whether the law will serve any "useful purpose" or not (par. 5(c) complaint); whether there is no necessity of periodically baring financial condition, incomes and expenses of public officials to eradicate corruption in the government (par. 5(a) complaint); and whether there is no need for the sworn statement in question because the income tax law and tax census law require the same information (par. 5(g) complaint) — are matters within the exclusive prerogative of the legislature. The courts cannot inquire into the wisdom, or lack of it, of a piece of legislation. Legislative acts may be judicially assailed only from the standpoint of power granted by the Constitution.

"6. That the law does not violate the constitutional right against unreasonable searches and seizure (par. 5(d), (e) complaint).

"The constitutional guarantees against unreasonable searches and seizures do not interfere with investigation into matters of a public or quasi-public nature or which the public has an interest (See discussion in 29 LRA 819). It has also been held that orders requiring common carriers to furnish information as to their operations do not amount to unreasonable search and seizure (Isbrandtsen-Miller Co. vs. U.S., 300 US 139, 81 L ed. 562, 57 Sct 40).

"7. That petitioner is estopped from questioning the validity of section 7 of Rep. Act No. 3019 after his admission that he believes the same to be a "reasonable requirement for employment in a public office" upon assumption of office and after he had filed the sworn statement required by said section in compliance with the law (par. 3, "Cause of Action", p. 3, complaint).

"8. That the sworn statement required under Sec. 7, Rep. Act 3019 is also required under the Income Tax Law and Tax Census Law and yet plaintiff, instead of questioning the validity of the aforementioned laws, apparently accepts their validity (par. 5(g) complaint).

"9. That the provision of law in question cannot be attacked on the ground that it impairs plaintiff's normal and legitimate enjoyment of his life and liberty because said provision merely seeks to adopt a reasonable measure of insuring the interest of general welfare in honest and clean public service and is therefore a legitimate exercise of police power."

After the defendants have filed their answer during the reglementary period, plaintiff filed a motion for judgment on the pleadings on February 27, 1962, and to said motion for judgment on the pleadings, the defendants did not file any opposition. For which reason, this Court, upon motion of the plaintiff, gave to each of the parties in this case a period of thirty (30) days from March 10, 1962, within which to file their respective memorandum. Plaintiff, in compliance with the aforementioned order of the Court, filed his memorandum, but the defendants' counsel submitted the case without memorandum as, according to them, their answer already contains a full discussion of the authority in support of their side.

It must be stated at the beginning that the plaintiff does not seek to declare the nullity of the whole of Sec. 7 of Republic Act No. 3019, but only that portion thereof which requires periodical submittal of sworn statements of financial conditions, assets and liabilities of an official or employee of this Republic after such official or employee had once submitted such a sworn statement upon assuming the duties of his office. For clarity's sake, Sec. 7 of Republic Act No. 3019 provides as follows:

> "*Statement of assets and liabilities.* Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amount of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statements in the following months of January."

As already mentioned above, plaintiff questions the constitutionality of said Sec. 7 of Republic Act No. 3019 on several grounds. The defendants sustain the constitutionality of said portion of the above-mentioned section on the principal ground of general welfare. In other words, the said section was enacted under the police power of the State.

Verily, police power is one of the three fundamental prerogatives of the State and any private right must be sacrificed in the exercise of the same. But, it must also be admitted that the exercise of said power must be reasonable and, if possible, should not infringe upon the constitutional and inalienable rights of a citizen of a free and democratic country.

This Court considers the filing of a sworn statement of assets and liabilities after an official or employee had already filed statement of assets and liabilities after assumption of office to be a violation of the constitutional rights of a citizen not to testify against himself. While the defendants maintain that the immunity from self-incrimination only extends to a citizen testifying in an investigation or trial, yet, this Court believes that the purpose of securing the sworn statement of assets and liabilities is to prove later on in a judicial proceeding that the official or employee has been guilty of graft and corruption, or has amassed a fortune very much in excess of his assets or of his salary during the time he had been in office. The required statement of assets and liabilities constitutes advanced testimony extracted from the accused to be used against him later on. For, it cannot be denied that the only purpose in requiring a sworn statement of assets and liabilities after one has already been filed after assumption in office by an official or employee is to determine whether he can be prosecuted under the graft and corruption act. The section in question renders an official or employee defenseless when confronted with such sworn statement of assets and liabilities; it facilitates the conviction of an accused, and is just a sword of Damocles hanging over his head. The officials and employees of our government suffer by said section a continuous nightmare, for although they have been honest in their statement of assets and liabilities, yet, they might have committed an error of computation, or might have failed to unintentionally mention an asset.

That freedom from self-incrimination does not only extend to oral testimony in Court or in an investigation has been sustained in various cases. Thus, in State of Michigan ex rel. S. Moll v. Jacob C. Densign, et al., 238 Mich. 39; 213 NW 448; 152 A.L.R. 136, 141.

"The authorities are quite uniform in holding that where a bill is filed solely for a discovery, and the facts upon which the discovery is sought are such as would tend to incriminate the defendant, the bill cannot be maintained at all, and should be dismissed on demurrer. As equity follows the common law in respect to the privilege of a witness to refuse to testify (see 28 R.C.L. 426), it would certainly seem that considering that the nature of a pure bill of discovery is to obtain evidence to be used in some other suit, the defendant should, at least, be permitted to assert a privilege against being required to answer.

"This privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent to either a confession of guilt or a conclusive presumption fo perjury. The privilege serves to protect the *innocent* who otherwise would be ensnared by ambiguous circumstances."

(Slochower v. Board of Higher Education, 350 U. S. 551, 557, 558, 100 L. ed. 700, 76 S. Ct. 637, emphasis supplied).

That the police power of the State cannot be invoked to violate a fundamental, constitutional and personal right of a citizen, more especially so when there is no purpose in the enactment of a law by virtue of said police power has also been sustained in this jurisdiction as well as in the States.

"In accord with the rule laid down in the case of Lawton v. Steele (152 U. S. 132-134), quoted at some length in the in the opinion in the case of U. S. v. Toribio, to justify the State in the exercise of the police powers on behalf of the public, it must appear:

"First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislators may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is *subject to the supervision of the courts*."

(Fabie v. City of Manila, 21 Phil. 486, 490).

"The Legislature's determination that its acts are a proper exercise of its police power is always *subject to the scrutiny of the courts* and legislation will not be sustained if its sole excuse is the exercise of the police power when such power is abused or where there is no relation between the purported basis for the legislation and the enactment. Stated differently, the Legislature cannot use the police power as a subterfuge to do something that it otherwise could not do in the infringement of private interests or the restraint of private rights."

(Midwest Beverage Co. v. Gates, 61 Fed. Suppl. 688, page 691).

"The exercise of the police power is under the control of the principles of constitutional law, and the police power must at all times be exercised with scrupulous regard for constitutional guaranteed rights. It has been stated that constitutional guarantees stand in equal strength and force with the police power, and are not subordinate to it."

(State v. Gleason, 227 P.2nd 530; Hertz Drivurself Stations v. Siggins, 58 A.2d 464, 359 Pa. 25, 7 A.L.R. 2d 438; State v. Paille, 9 A.2d 663, 90 N. H. 347).

"Notwithstanding personal rights are subject to the police power, . . . these rights are not to be totally annihilated by the police power, or interfered with to a greater extent than reasonably necessary, taking into account the real object to be accomplished. The police power must at all times be exercised with scrupulous regard for private rights guaranteed by the constitution, and even then only in the public interest, and not for the benefit of a private company of individual. Thus, the police power may not be resorted to as a cloak for the invasion of personal rights guaranteed by the various constitutions, and may not be exercised capriciously or unreasonably; and a statute or ordinance which deprives one of his individual rights cannot be sustained under the police power when the regulation does not reasonably come within the scope of the police power.

"It is apparent from the above that each case must be determined on its individual facts, and that precautionary measures must be used to guard against two dangers, first, lest the civil liberties guaranteed under our Bill of Rights be unnecessarily invaded, and second, lest, using the Bill of Rights as a cloak, an individual is allowed to commit a nuisance or worse against the public."

(16 C.J.S., pp. 983-984).

Apparently, there is a conflict between the purported exercise of the police power of the State and the constitutional right to privacy, the right to be let alone (Davis v. United States, 328 U. S. 582), the "clear and present danger rule" should be applied. In other words, the test should be whether or not the provision of our Anti-Graft and Corrupt Practices Act, requiring periodical baring of assets and liabilities of government officials and employees, is so necessary to the general welfare that to do away with said requirement would "likely produce a clear and present danger" to the peace and liberties of the people composing the community. To the mind of the Court, it is obvious that the answer must be in the negative.

With the above discussion of the issues involved in this case, the Court finds it unnecessary to go to the other reasons and legal points advanced by the contending parties in support of their stand.

IN VIEW OF THE FOREGOING, decision is hereby rendered, declaring unconstitutional, null and void Section 7, Republic Act No. 3019, in so far as it requires periodical submittal of sworn statements of financial conditions, assets and liabilities of an official or employee of the government after he had once submitted such a sworn statement upon assuming office; without costs.

SO ORDERED.

Done at Lingayen, Pangasinan, this 19th day of July, 1962.

ELOY B. BELLO
Judge

1962 BAR EXAMINATION QUESTIONS

(Continuation)

POLITICAL LAW

I. (a) What are the salient features and characteristics of our Constitution that give us a government republican in form?

(b) What do you understand by the principle of "limited government" as one of the basic principles of constitutional law in the Philippines?

(c) Describe briefly the procedure of amending the Philippine Constitution.

II. (a) Discuss briefly the limitations on the powers of Congress.

(b) Under the Constitution as amended, what are the bills which must originate exclusively in the House of Representatives?

(c) In the Appropriation Act, Congress provides that no government official or employee shall be permitted to teach more than six hours a week. Is this constitutional? Reasons.

(d) Name the instances when a bill or measure duly passed by Congress and submitted to the President for his approval may become a law without his signature (the President's).

III. (a) Pedro Santos who had previously served twelve years in Muntinglupa Prison for swindling is elected unopposed in a congressional district. Under the Constitution, not being a qualified elector, he cannot be a legislator. When informed of this fact, may the House to which he is chosen *motu propio* postpone his induction? May it suspend, investigate and thereafter exclude him? Reasons.

(b) In case the proper Electoral Tribunal decides that a protested legislator has the necessary qualifications altho in fact he does not have them, may the courts review the said finding on appeal thereto? Reason.

(c) On the basis of the report of the Commission on Elections that by reason of certain specified acts of terrorism and violence in certain provinces the voting therein did not reflect the true and free expression of the popular will, the Senate, in the course of its session, approved a resolution ordering that pending the termination of the protest lodged against their election with the Electoral Tribunal of the Senate based on said terrorism, the administration of oaths seating three senators be deferred. The senators concerned filed in the Supreme Court a petition for a writ of preliminary injunction against their colleagues, praying for an order annulling the resolution and compelling them to permit them to occupy their seats, and to exercise ther senatorial prerogatives. In their pleadings, the respondents alleged that the Court had no jurisdiction over the case and asserted the validity of the resolution. Decide giving reasons.

IV. (a) The Government grants to a company an exclusive franchise to operate a toll bridge across a river. Subsequently, it institutes condemnation proceedings for the acquisition of the toll bridge in question for the purpose of converting it into a free bridge. The company claims that the obligation of its franchise contract would be impaired in violation of the Constitution. Decide giving reasons.

(b) State the meaning of the constitutional provision "No person shall be denied the equal protection of the laws."

(c) Pursuant to Republic Act No. 37, which grants preference to Filipino citizens in the lease of public market stalls, the Secretary of Finance issued an order declaring all stalls or booths in all public markets as vacated by their occupants and their leases terminated on January 1, 1947, and that thenceforth all leases of market stalls shall be awarded to Filipino citizens. The constitutionality of the Act in question is attacked as a denial of equal protection to the Chinese. Decide giving your reasons.

V. (a) In what cases, if any, may the courts review or control the exercise of authority of making appointments vested in the executive department?

(b) What are the limitations on the power of the President to remove public officers?

(c) X was the City Engineer of Baguio in 1951. On June 20, 1951, the President appointed Y *ad interim* City Engineer of Baguio to take the place of X. X refused to vacate his post claiming that he was being removed without cause, and filed a petition for a writ of *quo warranto* against Y. Decide the case giving your reasons.

VI. (a) You are the representative from the lone Congressional district of Bataan and you are interested in the conversion of a barrio of the town of Salanga into an independent municipality. Under existing laws, what are the courses of action open to you to accomplish your desire?

(b) Explain briefly the meaning of: "municipal corporations present a dual aspect and perform powers and functions in a dual capacity."

(c) Before the cession of the Philippine Islands to the United States, Juan Santos was a creditor of the City of Manila. After said City was incorporated under a new charter, Santos brought an action against the City of Manila to recover the sum due him. As a matter of defense it was claimed that the old City of Manila, which incurred the debt, had been dissolved by the change of sovereignty and that by the new incorporation of the City of Manila the liability of the old city had already been extinguished. Decide giving your reasons.

VII. (a) Under what condjtions may the President of the Philippines deport aliens and what is the basis of his authority to do so?

(b) What is the composition of the Deportation Board as at present organized and what are its functions?

(c) An alien has been ordered deported by the President, having found, after due investigation by the Deportation Board, an undesirable alien. Not being satisfied with the decision of the President, he institutes an action petitioning the Supreme Court to review his case, alleging that the evidence adduced at the investigation and upon which the President based his decision was insufficient to warrant his deportation. Decide giving reasons.

VIII. (a) Under the Constitution, who is authorized to judge all contests relating to the election, returns and qualifica-

tions of members of Congress? What is its composition?

(b) What is the limitation, if any, on the power of Congress to punish private individuals for contempt? Explain briefly your answer.

(c) One A assaulted Representative B on January 30, 1960. The House of Representatives of which Representative B was a member adopted a resolution on February 10, 1960, requiring the Speaker to order the arrest of A to be confined in Muntinglupa Prison for twenty-four hours. The House adjourned that session on the 19th of May, 1960, without the order of arrest having been served on A. A confirmatory resolution was approved by the House on January 31, 1961, during the regular session of the Legislature. Shortly thereafter, a new warrant of arrest was issued by the Speaker of the House of Representatives, and A was taken into custody by a Constabulary officer. A petitioned for a writ of *Habeas Corpus*. Decide giving reasons.

IX. (a) The Constitution provides that the Congress may authorize upon payment of just compensation, the "expropriation of lands to be sub-divided into small lots and conveyed at cost to individuals". Is this not a violation of one of the constitutional limitations on the exercise of the power of eminent domain, namely, that private property taken shall be for public use? Reasons.

(b) In the exercise of the power of *eminent domain*, may the state appropriate contracts in spite of the provison of the Constitution that "no law impairing the obligation of contracts shall be enacted"? Reasons.

(c) For the extension of the Dewey Boulevard it was necessary to take over 1/5 of the land belonging to B. Before the extension thereof, the market value of the entire land was ₱1000.00. As a result of the improvement, the remaining 4/5 has now a market value of ₱10,000.00. In view hereof the government contends that there is no more obligation to pay for the land appropriated. Decide giving reasons.

X. (a) Differentiate between the power exercised by the President over the executive departments and the bureaus or offices of the National Government from that exercised by him over the local governments. In your opinion, which is more effective — that exercised by him over the departments and bureaus or offices of the National Government or that over the local governments? Why?

(b) The Municipal Council of Villasis enters into a contract with Juan Sison whereby the latter is granted the lease of a fishpond for a period of two years in consideration of the sum of five thousand pesos. After one year, the Municipal Council rescinds the contract without any sufficient justification and awards the fishpond to Pedro Santos for a similar period and for the same amount. Sison now hires you to handle the case for him. As counsel, do you think he has a cause of action for damages? If so, against whom and why? Reasons.

CRIMINAL LAW

I. (a) What are the PENAL CODES enacted for operation in the Philippines? Give the respective YEARS in which they were made effective.

(b) Before or after the promulgation of Act 3815 (Revised Penal Code), were any project or projects ever prepared and submitted to Congress or governmental authorities amending the SYSTEM of penology of the Philippines? If so, enumerate them chronologically, giving the names of their respective authors.

II. "A", a Consul of the Philippines stationed in X-place, in the exercise of his official functions as such, while in his place of assignment and for the consideration of ₱10,000 prepared various documents in favor of "B" wherein he knowingly made untruthful statements in the narration of facts and in connection therewith he issued "B" the corresponding VISA authorizing "B" to enter Philippine soil to which "B" was not entitled:

(a) Has "A" committed any crime defined and punished in the Revised Penal Code? If so, name it; If not, explain your answer.

(b) Can "A" be prosecuted in the Philippines for said crime? Why?

III. (a) Explain the aggravating circumstance that the crime was committed by a band.

(b) What shall be the nature or extent of the disguise necessary to consider its attendance as an aggravating circumstance?

(c) Article 14, paragraph 6, of the Revised Penal Code mentions 3 aggravating circumstances, i.e., night time, uninhabited place and that the crime be committed by a band. Are ALL these 3 circumstances when attending the commission of a crime to be considered as only one or as 3 different and separate from one another? Why?

IV. (a) Can the crime of rebellion be complexed with other common crimes? Why?

(b) In 1960, Juliet committed 6 crimes of estafa to the damage of the respective offended parties in the sum of ₱1,000 in each case. She was in the same year prosecuted for all the 6 cases: 2 in the Court of First Instance of Manila, 2 in Quezon City, 1 in Pasay City and the last one in Caloocan City. She was convicted after hearing in all the 6 cases. In the imposition of the corresponding penalties: (a) would she be entitled to the benefits of the threefold-length-of-time rule provided in Rule 70, last paragraph, of the Revised Penal Code as amended by Commonwealth Act No. 217, Section 2? In the affirmative case, how could that rule be applied to her?

V. One morning, Hilarion went to the house of Dionisio, and and there had an altercation with him over certain deliveries of tobacco leaves which the latter did not want to yield. Enraged, Hilarion left saying that he was to come back at noon, which he did, armed with a paltik and a bolo, and at a distance of 30 feet from the house, called Dionisio to 'come down'. As the latter refused, Hilarion to compel Dionisio to come down, set fire to Dionisio's house. Naturally, Dionisio fled before the house was destroyed. Is Hilarion liable for the crime of arson provided in Art. 321, No. 1, of the Revised Penal Code for having set fire to a dwelling house knowing it to be occupied by one or more persons at the time of the fire? Explain your answer.

VI. A, B, C, D, E and F conspired to commit the crime of robbery with homicide in the house of the spouses Y and Z, residing in San Juan, Rizal. F, a servant of said spouses became afraid upon learning that the conspirators intended also to kill his master and informed them of the proposed crime. Said spouses sought then the protection of the NBI and the Constabulary, so that when on August 1, 1962, the malefactors went to the house of said spouses to consummate their intended felony and were in the act of carrying the spouses' automobile away from the garage, they were halted by the government forces whereupon a gun battle ensued with the result that F, the spouses' servant, and C, one of the malefactors, were killed. Did the surviving malefactors commit the composite or special crime of robbery with homicide notwithstanding the fact that one of the persons killed had participated in the conspiracy and the other was one of the malefactors killed by the government forces? Explain your answer.

VII. (a) What do you know about the so-called impossible crimes? Do the perpetrators thereof incur any criminal liability under the provisions of the Revised Penal Code? Why?

(b) In the affirmative case, give an example of a felonious act punished by the Penal Code that turns out to be an impossible crime. In the negative case, explain briefly why the perpetrator of a so-called impossible crime does not incur any criminal liability.

VIII. In January, 1959, Romeo was prosecuted and convicted in the Court of First Instance of Manila of 3 crimes of theft for which he was sentenced by reason of the value of the properties stolen to the following penalties of *prision correccional*: ₱6,200 fine to 3 years, 6 months and 20 days; ₱1,000 and ₱500 fine to 1 year, 8 months and 21 days in each case. Romeo immediately commenced to serve these penalties in Muntinglupa. In 1960, while serving sentence, he escaped therefrom and went to Lingayen, Pangasinan, where he also committed 10 crimes of estafa, each in the sum of ₱1,000, for all which crimes, he again was prosecuted and convicted after hearing in May, 1961. Under these circumstances, can the penalties imposed to Romeo, for the crimes committed before his escape from Muntinglupa, affect the imposition and service of the penalties for which he was sentenced for the second group of crimes under the threefold-length-of-time rule prescribed in Article 70, last paragraph, of the Revised Penal Code, as amended by Commonwealth Act 217, section 2?

IX. X-newspaper of general circulation in the Philippines, published in its issue of August 1, 1962, a libelous article accusing A, B and C of having acted in confederation to smuggle as they did smuggle into the Philippines, several items of merchandise worth ₱1,000,000. A resides in Manila; B in Quezon City; and C in Polo, Bulacan. Under these facts, may the criminal liability of the author of that libel be divided into 3 distinct and separate offenses so that said author might be prosecuted and convicted of 3 crimes of libel? Explain your answer.

X. (a) A, B, C and D, without any right whatsoever squatted on a piece of land in the City of Manila, the property of Z. Inasmuch as ejectment proceedings would take quite a very long time to produce results, if ever successful, can the Fiscal of Manila, upon complaint of Z, charge A, B, C and D with the crime of coercion or unjust vexation which, though light felonies, covered by Article 287, last paragraph, of the Revised Penal Code, would, upon conviction of the culprits, bring about their immediate ejection from the premises? Express your opinion giving your reasons therefor.

(b) Rogelio was prosecuted for murder. After hearing, he was found guilty of the crime charged attended by the mitigating circumstance of the offender having voluntarily surrendered himself to a person in authority or his agents. He was, therefore, sentenced, among others, to the principal penalty provided for murder in its minimum degree, that is, to 17 years, 4 months and 1 day of *reclusion temporal*. May the provisions of Acts 4103 and 4225, known as the indeterminate sentence law be applied in this case? Explain your answer.

REMEDIAL LAW

TO THE EXAMINEE: Where you are given a problem, first give your answer and then your reasoning.

I. *Antonio* was run over by a jeepney driven by Cirilo but owned by *Baldomero* and he suffered serious physical injuries as a result; in due time, *Antonio* filed a civil action for damages against *Baldomero* in the Justice of the Peace Court and immediately secured a writ of attachment upon *Baldomero's* properties which was levied upon a parcel of unregistered land owned by *Baldomero;* trial was held and Antonio won in the Justice of the Peace but *Baldomero* appealed.

(a) If pending trial in the Court of First Instance, *Antonio* died whereupon, Baldomero moved to dismiss but *Antonio's heirs* oppose the motion, how would you rule on the motion?

(b) If pending trial in the Court of First Instance, it was *Baldomero* who died and his heirs therefore move to dismiss but *Antonio* opposes the motion, how would you rule on said motion?

II. *Dionisio* filed an action against Eriberto but when the Sheriff came to Eriberto's house, to serve summons, it happened that Eriberto was away having gone to Mindanao on business and the Sheriff only reached Eriberto's wife who received the summons for him; now Eriberto did not return any more because he died in Mindanao, 1 day before service of summons upon his wife here in Luzon but news of his death came to his wife much later and Dionisio was able to secure a default judgment in the action and after that a writ of execution, but when this was about to be levied upon Eriberto's properties, his wife having already learned of Eriberto's death, consulted an attorney who filed a motion to annul the execution and the default judgment, but because one year had already passed since the entry of the judgment when the wife came to know of Eriberto's death so that the motion was filed more than one year after the entry of said judgment, therefore, Dionisio opposed the motion alleging it was too late, because according to him, lack of jurisdiction over the person of Eriberto should have been availed of under Rule 8 and the period for this had already passed; in any case, the period prescribed in Rule 38 on relief from judgment had also already passed. How do you decide?

III. Felix leased his house to Gregorio; Gregorio failed to pay the rentals due; Felix sent him a letter of demand and a threat to sue him on unlawful detainer should he not make payment within 10 days from notice; Gregorio received the letter but did not pay nor vacate; instead, Gregorio filed an action against Felix in the Court of First Instance for specific performance, alleging that the rental agreed upon was much lower than that demanded and that he, Gregorio, was willing to pay the correct amount and therefore, he deposited the amount in the Court of First Instance and asked that Felix be ordered to receive them and to permit him, Gregorio, to continue in possession as lessee. Felix having received summons, he filed an answer alleging that the rental he had demanded was the correct one. The case was tried in the Court of First Instance and decision was rendered for Felix, dismissing the case. After judgment had become final, Felix presented his own action, for unlawful detainer, against Gregorio, but Gregorio, upon receipt of the summons in this case, now filed a motion to dismiss on the ground that this was a suit on exactly the same cause of action between them and that since Felix forgot to secure the correct remedy in the first case by filing his necessary counterclaim for unlawful detainer, the judgment in the first case already barred him from instituting the second action. Decide the motion.

IV. Juan sues Leon on a sum of money for breach of contract; but before trial, Juan goes to Tokyo on business; he is there when his attorney receives notice of trial; therefore the attorney at once serves notice upon Leon's attorney in Manila for the taking of Juan's deposition before the Philippine consul in Tokyo upon oral examination, on a definite time and place, before the scheduled trial in Manila; Leon's

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 Muncipal 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 dsmiss 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 reckless 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 and to explain if some of those records were missing. Law-

(*Continued next page*)

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.

SUPREME COURT . . . (*Continued from page* 279)

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 ₱1,700.00 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 be 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.

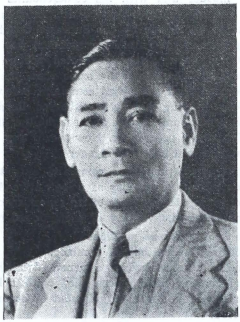
IT IS SO ORDERED.

Bengzon, 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".



JOSE P. BENGZON
Presiding Justice, Court of Appeals

On June 18, 1962, the Hon. Jose P. Bengzon took his oath of office as Presiding Justice of the Court of Appeals. At the base of the appointment is a solid foundation of distinguished public service and a brilliant record in the private practice of law. Both records compass a long period of rapidly changing governments, changes in constitutional and statutory laws, new and expanded theories and practice in economics and business, new concepts of education, and developing awareness of human values and the economic and social relations of man with man. In the era of rapid change, only men of fresh outlook, inquiring intelligence, and sensitive understanding of human values can remain in leadership. Such a man and leader is Presiding Justice Jose P. Bengzon of the Court of Appeals.

The record of public and private service of Justice Bengzon is impressive by any standard of measurement, namely; practising attorney in Lingayen, Pangasinan; Municipal Councilor of Lingayen; Corporate Lawyer, Pangasinan Transportation Co.; Assistant Fiscal of Pangasinan; Corporate legal counsel of several corporations in Manila; Elected Congressman, First District of Pangasinan; City Fiscal of Manila; Undersecretary of Justice and concurrently Chief of the Immigration Bureau, Chairman of the Board of Pardons and Parole, Member of the Integrity Board, Chairman of the Deportation Board, President and Chairman of the Board of the Manila Gas Corporation; Secretary of Justice; resumed practice of law in Manila; professor of law in the Francisco College, becoming Dean of the College of Law and acting vice-president of the Francisco College; and Chief of Mission with rank of Minister, Philippine Reparations Mission, Tokyo, Japan, from which last position he was appointed Presiding Justice of the Court of Appeals by President Diosdado Macapagal.

Part of his carreer is in the past, but Justice Bengzon does not belong to nor is he tied to the past; he does not even remember nor care for the inclusive dates of his career. The country gains to have leaders like him who look forward. Like the champion athlete that he was in college days, Justice Bengzon bubbles with energy, his inquiring mind dissatisfied and always looking for ways of improving the administration of justice, — by increased efficiency of the staff, punctuality, devotion to duty, faster movement of judicial records, and adoption of proven business methods.

"Our people," Justice Bengzon said, "have always been demanding fast administration of justice. I have devoted time studying the causes of such delays. One of the causes is the seeming lack of earnestness on the part of court stenographers to transcribe as soon as possible the notes taken by them during the trial below. We have cases in the Court of Appeals now which have been pending for about five years due to the tardiness of trial court stenographers in transcribing their stenographic notes. As of late, Justices of this Court have ordered the imposition of severe remedial measures other than fine, in order to oblige the stenographers to transcribe their notes, and a great deal of action on the part of stenographers has been whipped up by reason thereof. Some of the stenographers are transcribing their notes right in the Court of Appeals, others right in the Department of Justice. The number of decisions promulgated by the Court has increased appreciably."

The Presiding Justice has brought in business methods into the Court of Appeals. He requests but expects compliance by the staff to observe efficiency, punctuality, devotion to duty and above all honesty and integrity. Quietly, a circular has been passed around that the Presiding Justice will consider punctuality and devotion to duty in the assessment of merits of all employees for promotion in rank or salary in next year's budget. The tardiness report given by the Clerk of Court upon his assumption of office showed an average of 2.2 hours a month for each employee. Succeeding reports showed the record to have been considerably lowered to 1.6 hours average, or an improvement on the matter of punctuality by about 28%. The circular is sure to be copied by other offices.

The Presiding Justice has also brought in another innovation, which he began in the Reparations Mission in Tokyo, that at the beginning of the week on Monday and at the end of the week on Saturday, the staff of the Court of Appeals are requested to attend Philippine Flag ceremonies and the singing of the National Anthem.

A jurist is called upon to explain and interpret the law, and to maintain the majesty of the law and the dignity of the court. The Presiding Justice has delved deep into the Judiciary Act, which gave the Court of Appeals a seemingly less jurisdiction in capital crimes than the courts of first instance.

"In the course of the performance of my office," Justice Bengzon said, "I have been impressed more vividly of the fact that, whereas the Court of First Instance can impose death penalty and *reclusion perpetua* in appropriate cases, the Court of Appeals, according to the law creating the same can merely sort of recommend to the Supreme Court the imposition of such penalty, and certify the case to the Supreme Court for final determination, as if the case had been brought before it on appeal. So that, although a Court of First Instance judgment imposing death penalty is automatically elevated to the Supreme Court, its judgment imposing *reclusion perpetua* can become final and executory; whereas, this Court has no power to impose even the penalty of *reclusion perpetua*. To some this would appear incongruous considering that the Court of Appeals is of higher category than Courts of First Instance. However, one has to consider that the latter takes cognizance of the case in the exercise of its original jurisdiction while the latter, in the performance of its appellate jurisdiction; and by Constitutional mandate, the Supreme Court cannot be deprived of its jurisdiction to review all criminal cases in which the penalty imposed is death or life imprisonment. Anyway, this could be a good food for thought for students of law, specially for the authorities concerned, as to whether there is wisdom in making any change."

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