APR 14 1976

The LAWYERS JOURNAL

MANILA, PHILIPPINES

VOLUME XXV NOVEMBER 30, 1960 NUMBER 11

In this issue

"DOES THE SUPREME COURT MAKE FREQUENT MISTAKES?" — *By Atty. Jose A. Perello* 321

PARITY AMENDMENT TO THE CONSTITUTION *By then Senator Carlos P. Garcia* 323

UNITED SUPREME COURT ADVANCE OPINION *Smith v. State of California* 326

ACCUSED MAY REMAIN AT LIBERTY UNDER ORIGINAL BOND AFTER CONVICTION AND DURING APPEAL 331

SUPREME COURT DECISIONS
- *Osmeña vs. Pendatun et al. — Justice Bengzon* 332
- *Gutierrez vs. Reyes — Justice Endencia* 338
- *Dangue vs. Frankin Baker Co. — Jcstice Barrera* 343
- *De los Reyes Vda. de Santiago et al vs. Reyes — Justice Labrador* 344
- *The Municipal Treasurer of Pili, Camarines Sur et al. vs. Hon. Palacio et al. — Justice Montemayor* 346
- *Gabriel et al. vs. Munsayac, et al. — Justice Bautista Angelo* 347

1960 BAR EXAMINATION QUESTIONS (Continuation)
- Political Law 349
- Criminal Law 349

THE ARAÑAS CASE (Unconstitutionality of Republic Act No. 1379) 350

VICENTE J. FRANCISCO
Editor and Publisher

RICARDO J. FRANCISCO
Assistant Editor

VICTOR O. FRANCISCO
Business Manager

THE LAWYERS JOURNAL is published monthly by Hon. Vicente J. Francsico, 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—₱20.00 for one year; ₱10.00 for 6 months; ₱2.00 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—₱105.00; Half page—₱65.00; One-fourth page—₱45.00; One-eight page—35.00; One-sixteenth page—₱25.00; Back Issues: In the Philippines—₱25.00 — twelve issues; ₱3.00—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.

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

734

SPECIAL CHRISTMAS OFFER

francisco's

RULES OF COURT IN THE PHILIPPINES
(Nine Volumes)
₱200.00 (Formerly ₱266.60)

TRIAL TECHNIQUE AND PRACTICE COURT
(Five Volumes)
₱150.00 (Formerly ₱179.00)

REVISED PENAL CODE
(Three Volumes)
₱60.00 (Formerly ₱75.00)

LABOR LAWS
(Two Volumes)
₱40.00 (Formerly ₱51.50)

Special price is only good for purchases made by the SET and DIRECTLY to the . . .

THE EAST PUBLISHING CO.
R-508 Samanillo Building
Escolta, Manila
Tel. No. 4-13-18

NOW AVAILABLE

francisco's

REVISED PENAL CODE

BOOK TWO
(Articles 114-245)
THIRD EDITION
1960

In this latest edition, the comprehensiveness and scholarly treatment of its past editions are carried over: explanation of each article is given, amplified by illustrative cases from the latest decisions of the Supreme Courts of the Philippines, of the United States and of Spain, with facts of each case digested for convenience while court rulings are quoted verbatim. Latest amendments of the laws are likewise included.

This new book offers to the members of the legal profession and law students as handy authoritative book on the subject.

₱25.00 per copy
Additional ₱1.20 per copy for mailing and handling expenses.

Place your orders to the

EAST PUBLISHING
508 Samanillo Bldg.,
Escolta, Manila
Tel. 4-13-18

Subscribe to

THE LAWYERS JOURNAL

A monthly magazine which keeps lawyers abreast with the development of law and jurisprudence through the publication of legal articles by Filipino and American lawyers, some of them appearing in leading American law reviews. The Journal helps lawyers in the practice of their profession by publishing Advance Opinions of the U.S. Supreme Court, Decisions of our Supreme Court, Court of Appeals, Court of Industrial Relations, and Court of Agrarian Relations. It publishes also Laws passed by the Congress of the Philippines and the Opinions of the Secretary of Justice.

The October Issue contains: (1) orations delivered by the Secretary of Foreign Affairs, Hon. Felixberto Serrano, Senator Lorenzo Tañada, Justice Alejo Labrador, and former Senator Vicente J. Francisco, the latter in behalf of the Delegates of the Constitutional Convention at the necrological services of the late Senator Claro M. Recto held at the Session Hall of the Philippine Senate on October 11, 1960; (2) advanced decisions of the U.S. Supreme Court; (3) selected decisions of the Philippine Supreme Court; (4) digest of the Court of Appeals decisions and of the Court of Agrarian Relations; and (5) a pleading in the Arañas case, impugning the constitutionality of the first Anti-Graft Law.

The Lawyers Journal
RM. 508 SAMANILLO BLDG.
ESCOLTA, MANILA
TEL. 4-13-18

"DOES THE SUPREME COURT MAKE FREQUENT MISTAKES?"

By JOSE A. PERELLO
Member, Philippine Bar

A law professor had just winded up a lengthy discourse on the doctrine of *stare decisis* before a freshman law class when one of the students asked him:

"Sir, does the Supreme Court make frequent mistakes?"

Having newly become familiar with the doctrine, the young man was frankly worried about the consequences should the highest tribunal of the land make erroneous but precedent-setting decisions.

After a pause, the professor replied in carefully measured words:

"Well, it does make mistakes — *errarum humanum est*. Of course, when the Supreme Court realizes its errors, it does rectify them, for, as Justice Malcolm said, "More important than anything else is that the court should be right."

One may imagine, though, how many judges and lawyers in subsequent similar cases would be misled while such errors last, how much rights would be prejudiced and how much time and money of the litigants, the government, and all other concerned would be wasted in following erroneous decisions.

This brings to our mind the promulgation in recent years of certain conflicting decisions that could hardly serve as guideposts in our forest of laws and jurisprudence.

On August 31, 1956, the Supreme Court held that the Court of Industrial Relations has jurisdiction over cases where the controversy refers to minimum wage under the Minimum Wage Law, or when it involves hours of employment under the Eight-Hour Labor Law. *Paflu vs. Tan, G.R. No. L*-9115, 52 *O.G.* 5836.

On May 31, 1957, the Supreme Court held that the Court of Industrial Relations has jurisdiction over claims for payment of additional compensation for work performed on Sundays and holidays, for night work, and for vacation and sick leave pay. *Detective and Protective Bureau, Inc. vs. Felipe Guevara, G. R. No. L*-8738.

On October 31, 1957, the Supreme Court held that the Court of Industrial Relations has jurisdiction over cases involving claims for conversion of wages from hourly to daily basis, overtime pay on Sundays and legal holidays, vacation and sick leave pay, payment of medical and hospitalization bills, and payment of their wages during a strike, if such strike had to be declared due to the refusal of the company to consider their demands. *Isaac Peral Bowling Alley vs. United Employees Association, G. R. No. L*-9831.

On December 28, 1957, the Supreme Court held that it is the Court of First Instance and not the Court of Industrial Relations which has jurisdiction over claims for payment of overtime wages, because such claims do not involve hours of employment under Commonwealth Act No. 444. *Mindanao Bus Employees Labor Union vs. Mindanao Company, et al., G. R. No. L*-9795.

On April 30, 1958, the Supreme Court held that where the action was simply for the collection of unpaid salaries and wages alleged to be due for services rendered and no labor dispute appears to be involved, and petitioners do not seek reinstatement, the Court of Industrial Relations does not have jurisdiction over the case but the Court of First Instance. *Roman Catholic Archbishop of Manila vs. Yanson, G. R. No. L*-12341.

On April 30, 1958, the Supreme Court, in Elizalde & Co., Inc. vs. Yanson, et al., G.R. No. L-12345, reiterated the above doctrine.

On August 18, 1958, the Supreme Court held that it was the Court of Industrial Relations, and not the Court of First Instance, which has jurisdiction to hear and decide claims for overtime compensation and for separation pay. Said the Supreme Court:

> "It is clear from the foregoing that the Court of First Instance has jurisdiction only over controversies involving violations of the Minimum Wage Law. The instant action, however, was for the collection of *overtime compensation* under the Eight-Hour Labor Law (Com. Act 444) and for *separation pay*, and that actions of this nature shall be brought before a court of competent jurisdiction. In this respect, it has been held by this Court that with the enactment of the Industrial Peace Act (Rep. Act 875), cases involving hours of *employment under the Eight-Hour Labor Law specifically fall within the jurisdiction of the Court of Industrial Relations* (Philippine Association of Free Labor Unions-PAFLU vs. Tan G.R. No. L-9115, promulgated August 31, 1956; Reyes vs. Tan, G.R. No. L-9137, promulgated August 31, 1956; Cebu Port Labor Unions vs. States Marine Corporation, G.R. No. L-9850, promulgated May 20, 1957)". *Gomez vs. North Camarines Lumber Co., G. R. No. L*-11945.

In this case, petitioner Raymundo Gomez was no longer employed by the respondent company and did not ask for reinstatement.

On November 28, 1958, the Supreme Court held that it is the Court of Industrial Relations and not the Court of First Instance, which has jurisdiction to hear and determine claims for overtime compensation and for work done on Sundays and holidays and at night. The petitioner in this case was actually in the employment of the respondent company. *NASSCO vs. ALMEN et al. G. R. No. L*-9055.

On April 29, 1959, the Supreme Court ruled that the Court of First Instance — and not the Court of Industrial Relations, — which has jurisdiction over claims for the differential and overtime pay of claimants who were former employees of respondent company. *CHUA WORKERS UNION vs CITY AUTOMOTIVE COMPANY, et al., G.R. No. L*-11655.

On May 29, 1959, the Supreme Court held that the Court of Industrial Relations and not the Court of First Instance, which has jurisdiction over a case where the claimant seeks payment of differential and overtime pay and reinstatement. *MONARES vs. CNS ENTERPRISES, et al., G.R. No. L*-11749.

On April 29, 1960, the Supreme Court held that the Court of Industrial Relations, and not the Court of First Instance, which has jurisdiction over the controversy of 39 employees of the respondent company for payment for work in excess of eight hours including Sundays and legal holidays and nighttime work, since it is practically a labor dispute that may lead to conflict between the employees and management. The Supreme Court fur-

ther stated that "if the claimants were not actual employees of the NASSCO, as for example, they have severed their connection with it or were dismissed but do not insist in reinstatement, the claim for overtime compensation would become simply a monetary demand properly cognizable by the regular courts and not by the Court of Industrial Relations." *Nassco vs. Court of Industrial Relations, G. R. No. L-*13888.

On May 23, 1960, the Supreme Court, after making an analysis of all the conflicting decisions on the question of jurisdiction over claims for overtime compensation, laid the following doctrine:

> "Where the employer-employee relationship is still existing or is sought to be established because of its wrongful severance (as where the employee seeks reinstatement), the Court of Industrial Relations has jurisdiction over all claims arising out of, or in connection with the employment, such as those related to the Minimum Wage Law and the Eight-Hour Labor Law. After the termination of the relationship and no reinstatement is sought such claims become mere money claims, and come within the jurisdiction of the regular courts." *Prisco v. C.I.R. et al., G.R No. L-*13806.

During the Commonwealth regime, there were conflicting doctrines of the Supreme Court, but this was due to the fact that the Supreme Court had been acting then *in division* and, quite inevitably, the ruling of one division conflicted with those of the other divisions on similar question. This was not frequent, however. It was precisely to remedy this situation that the delegates of the Constitutional Convention adopted the present provision in the Constitution enjoining the Supreme Court to always sit *en banc* when deciding cases. Similarly, it was the practice of the Supreme Court during the Commonwealth regime to distribute amongst its justices the cases for decision, with each justice thereafter making an individual study of the case assigned to him and submitting his findings and conclusions therein to the whole division or to the Court *en banc*. This practice provoked the criticism, founded or otherwise, that the resultant decision purportedly of the Supreme Court was in reality a one-justice decision. To remedy the situation, the Constitutional Convention provided in Sec. 11 Article VIII of the Constitution of the Philippines that —

> "The conclusion of the Supreme Court in any case submitted to it for decision shall be reached in consultation *before* the case is assigned to a justice for the writing of the opinion of the court."

If the Supreme Court had followed this constitutional mandate and the legal presumption is that it did, then perforced the aforecited doctrines were reached by its justices in consultation with each other.

As is obvious, the aforecited doctrines of the Supreme Court on the court which has jurisdiction over claims of separation pay, overtime pay, and allied subjects, hold diametrically opposing views, and it is not too difficult to see that they cannot all be correct. Hence, it is not surprising if our young law student's apprehension about the hosts of judges and lawyers of litigants who must have been confused and misled thereby, the precious time and money that must have been wasted in the process of searching just for the right court, should come to pass. Indeed, an illustrative actual case in point which demonstrates the adverse ill-effects of shifting doctrines on litigants haplessly caught in its wake is the case of "Stanley Winch, petitioner, versus P. J, Keiner Co., Ltd., respondent, G.R. No. L-17655."' This case involves a claim for overtime pay, vacation leave pay, and separation pay claimed by petitioner as a result of his illegal dismissal which took place on April 19, 1955. It was commenced on November 4, 1955, in the Department of Labor later substituted by the Wage Administration Service (WAS). As the proceeding in the WAS was very much delayed, petitioner decided to file the corresponding complaint in the Court of First Instance of Manila and notified the WAS of the withdrawal of his claim. However, the WAS dismissed the claim with prejudice.

On July 6, 1956, petitioner filed with the Court of First Instance of Manila the corresponding complaint based on the claim presented to WAS and docketed as Civil Case No. 30132. The complaint, however, upon motion of the respondent company that the same is barred by a prior judgment (referring to the order of dismissal of the WAS), was dismissed by the court. On appeal, however, the Supreme Court set aside the dismissal and remanded the case to the lower court for further proceedings. The case, however, was not heard on its merits because the respondent company again filed another motion to dismiss the complaint on the ground that the Court of First Instance of Manila has no jurisdiction over the subject matter and despite petitioner's opposition, the court issued its order dated March 5, 1959 dismissing the case, basing its resolution on the doctrine of the Supreme Court in the case of "Gomez v. North Camarines Lumber Co., Inc.," G.R. No. L-11945, promulgated on August 18, 1958, holding that claims for collection of overtime compensation and separation pay pertain to the jurisdiction of the Court of Industrial Relations. (supra)

In view of said dismissal and doctrine of the Supreme Court, petitioner had no alternative but to reproduce his complaint before the Court of Industrial Relations, which he did on April 13, 1959 and the same was docketed as C.I.R. Case No. 1937-V. But the respondent company again filed a motion to dismiss the complaint on the ground that the Court of Industrial Relations has no jurisdiction over the case invoking this time the case of "Chua Workers' Union (N.L.U.) vs. City Automotive Company, G.R. No. L-11655, promulgated on April 29, 1959, where the Supreme Court decreed that claims for collection of differential and overtime pay belong to the jurisdiction of the regular courts (*supra.*) Petitioner opposed this motion, invoking the doctrine of the Supreme Court in the case of Monares vs. CNS Enterprises," G. R. No. L-11749, promulgated on May 29, 1959, declaring that claims for recovery of differential and overtime pay, reinstatement and damages fall within the jurisdiction of the Court of Industrial Relations.

In its order dated June 25, 1960, three judges held that the CIR has no jurisdiction over the case citing the case of NASSCO vs. CIR, supra; another judge ruled that the CIR has no jurisdiction and cited the case of Price Stabilization Corp. vs. CIR supra; and another judge held that the CIR has jurisdiction citing the cases of Monares vs. CNS Enterprises, and Gomez v. North Camarines Lumber Co., supra. Curiously enough, however, after declaring itself without jurisdiction over the case, the Court of Industrial Relations also ruled that petitioner's action has already prescribed after the lapse of four years from the accrual of his cause of action.

Petitioner then brought the case to the Supreme Court on appeal by certiorari, but this Court dismissed the petition "for lack of merit".

To cap it all, when petitioner's lawyer tried again to renew petitioner's action before the CFI of Manila, it was found out that respondent (Kiener) had closed down business in the Philippines and returned to the United States.

Upon being informed of the result of the case by his lawyer, said petitioner sharply remarked, "After my case has been footballed from one court to another to the tune of changing rulings, now the court ruled that I have lost my right to bring action to recover overtime pay, vacation leave pay, sick leave pay, and separation pay because more than four years have elapsed. But all these four years were consumed in footballing my case from one court to another. Why should I be held responsible for it? What kind of justice is this?"

Truly, only when we cease to be human and have lost all sense of fairness can we fail to understand the bitterness of this poor litigant.

PARITY RIGHT AMENDMENT TO THE CONSTITUTION

*Speech delivered by Senator Carlos P. Garcia before the joint session of the Philippine Senate and the House of Representatives on September 18, 1946 opposing the approval of Congressional Resolution No. 5 amending Section 1, Article XIII and Section 8, Article XIV of the Constitution.**

THE ISSUE

GENTLEMEN OF THE CONGRESS:

There are moments in the life of a nation when its parliament is called upon to deliberate on questions involving the nation's very life and death. There are times when the parliament of the nation determines questions that affect the very depth of its being and the very essence of its fundamental national ideals and principles. Such a moment has come to this Congress. It will now decide and determine whether we will keep this land of ours and all our natural resources for the Filipino people and for our posterity, or whether we will open it to the acquisition and exploitation of Americans and other aliens hiding behind American fronts. We are called to determine whether this national patrimony, this sacred heritage for which millions of our race have fought, suffered and died, shall remain ours to keep and preserve, or whether alien hands will be allowed to appropriate its blessings. We are called upon to decide on this momentous debate whether or not this land of ours will remain the cradle and grave, the womb and tomb of our race — the only place where we build our homes, our temples and our altars and where we erect the castles of our racial hopes, dreams, and traditions, and where we establish the warehouse of our happiness and prosperity, of our joys and sorrows.

In short, we will answer the question — shall we pass this constitutional amendment, permitting the alienation of our land and resources to foreigners? In the magnitude of this transcendental question, parties and personalities are lost. Offices, ambitions, wealth and temporary power become molecular particles lost in the greatness of the issue. Hence, we have come here only as Filipinos to think with our hearts and to determine with our soul the momentous answer. On this sacred hour, as we chart the course of the State, after communion with the Spirit of the Nation, and consultation with our ancestors — our great dead whose deeds and thoughts and visions were beacon lights of our past that still illumine our path in the uncharted future, we come to the solemn conclusion that our answer must be No, No and No.

TEXT OF AMENDMENT

The concrete question presented to our consideration is whether or not we will amend the Constitution of the Philippines by appending thereto a new Ordinance to read as follows:

> "The disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, *be open to citizens of the United States and to all forms of business enterprise owned or controlled, directly or indirectly, by the United States citizens.*"

RESUME OF PRO ARGUMENTS

In popular parlance, this is known as the "equal rights" provision. The illustrious advocates for the acceptance of this amendment built a formidable battery of contentions and arguments upon the two fundamental emotions of the human heart — hope and fear. They ravish the hope of the Filipino people by painting an Utopia of economic renaissance magically arising out of the wreck and ruin of war. They assure us that the approval of this amendment gives our people "assurance of future work: that by this we draw now the pattern of a national reconstruction to permit the development of a broader, a richer, more productive economy than we ever had;" that the intent of this amendment was "simply to invite and encourage American capital to invest in the Philippines and aid in our rehabilitation." With mosaic certainty we are assured that the passing of this amendment to "implement the program that has been designed will be giving to the people of the Philippines and to our friends and well-wishers throughout the world the signal that we are on our way in a great crusade, eighteen million strong, to reach the haven of economic security which all the world is seeking today." (See Special Message of Roxas on the Subject).

F E A R S

On the other hand, these adroit proponents of this amendment, these matters of word-painting, these adepts in the psychology of the masses, excite their fear to terrify them into accepting this proposal to ravish our Constitution. They say that "without this assistance (what we are supposed to get if we approve the amendment), we are faced immediately by disaster." "Without the helping hand thus extended to us, we cannot survive." We have to accept the executive agreement which imposed the condition of amending our Constitution because "to do otherwise would be to invite economic and final political catastrophe." To throw more ghosts into the picture, they further say "that to seek the elimination of that provision at this time (referring to Section 341 of the Bell Act), would be to warn American investors and American enterprise not to come to the Philippines. That would be suicidal for us. Without that investment, we are lost. Our rehabilitation would be impossible without such assistance (meaning the assistance of American capital expected to flow into the Philippines if and when this amendment is approved). Not content in the raising of the hobgoblins of fear they evoke the spectre of death by contending that failure to pass this amendment will automatically terminate the trade relation between the Philippines and the United States and "we will be on a full foreign-duty basis, which means, that the sugar, tobacco and coconut oil industries will be dead; so, too, will be embroideries, pearl, buttons and, probably, cordage." (See special message of Roxas on the subject.)

S Y N T H E S I S

Boiling down these arguments to the lowest common denominator, they may be summarized as follows: We must pass this amendment signing away our national patrimony, for if we do, we hope to have money, trade and bread and plenty of them, and if we don't, we fear we will die of hunger in ruins and in po-

---

* We are publishing this speech of Senator Garcia in view of the numerous requests from our subscribers for a copy of the issue of the Lawyers Journal where this speech was published, and due to the lack of back issues of the same.

verty. Indeed, a masterly appeal to our sensual instinct of self-preservation — the strategy of modern economists! True to form, these savants of economics, the youngest generation of Sancho Panzas so engrossed in their pet adage that the shortest way to the heart is via the stomach, that they forgot that men and nations do not live by bread alone but by the spirit also. "Non in solo pane vivit homo sed in omni verbo Dei," was one of the sublimest truths enunciated by the great realist — Jesus. Yet how often in this complex materialistic age we take it with contempt!

NATIONALIST'S ANSWER

To this prosaic line of reasoning, we answer:

(1) That our land is a sacred part of the nation, the home of the Philippine race, whose value far transcends astronomical figures in dollars and pesos, and it must not be alienated and bartered for all the gold of a thousand Samarcand and Bocara. We are more willing and ready to forego rehabilitation, if need be, and to suffer poverty, hunger and privations rather than have the most complete rehabilitation at the price of our national heritage. On this rock of faith the true nationalists stand.

(2) That our freedom which we have won at the price of supreme sacrifices, is only true and real when its roots strike deep into our own free soil. There is no true freedom that thrives on alien-owned soil. So the alienation of our land to foreigners is the negation of our freedom. On this rock of conviction we stand.

(3) That the true nationalists of the Philippines have always stood, still stand and will forever stand on the imperishable principle of complete and absolute independence, and the nation shall never be satisfied until we have the reality and not the mimicry of independence. Freedom of the nation is something we can not evaluate in terms of human pounds and dollars. It is something of the spirit. It is something far above rehabilitation or reconstruction, dearer than trade, more valuable than industries. Indeed, we can never permit our freedom to be diminished or jeopardized by alienating to foreign hands the land on which the nation's home, shrines and altars are built, the only land God has given us. On the rock of this trinity of faith we stand.

NATIONAL LONGING

Gentlemen of the Congress, on the tablet of Eternity is written our deepest longing to be a free nation, living on our own free land, a free master of our destiny. This is the deathless dream of the Philippine race that remains unaltered throughout the surging centuries of events and changes. We must attain and realize it, cost what it may. If to attain it we have to renounce American aid in rehabilitation and construction, if to attain it we have to forfeit our trade relations with America, if to attain it we have to forego all loans and assistance we need so badly, if to attain it we will have to deny ourselves of the comforts of life, we will decidedly and freely choose to renounce all these rather than renounce our freedom and our land.

MAJORITY DEFEATISM

In one of the greatest lapses to defeatism ever recorded, the majority predicts "disaster," "economic and political catastrophe," "suicide and death," if we refuse to amend the constitution which is said to be the *sine qua non* for American aid. To me, this is a double-barreled slander leveled against both Filipinos and Americans. Because, how can we believe that the American people so well known for their sense of fairness and justice will ever deny us funds for rehabilitation and reconstruction of the very cities, towns and industries destroyed by their own bombs and guns, just because we refuse to do that which they themselves would never do? Who will ever doubt for a moment that the American sense of honor will ever take back her plighted word to reimburse our people of all expenses incurred to keep alive here the Resistance Movement against Japan just because we do not grant them that which they would never grant any nation? Is it conceivable that a good trader like Uncle Sam will ever close trade relation with the Filipinos who stood steadfastly and loyally by them in the direst and darkest hour of peril, just because we refuse to do that which they themselves would consider a ridiculous indignity? I do not know what others think, but as for me, no matter what we do with our constitution, we can depend upon American justice, upon American honor, and American gratitude, to do us and give us, what help we deserve, amendment or no amendment. To me it is absolutely unfair and unjust for the majority to represent that America will help us only when we give them our resources. Rather than let our cause depend on the shifting sand a common bargain, let us rest our case on the eternal principles of justice and the American people will give us both — justice and rehabilitation.

The insinuation is likewise a slander against the Filipino people, because nobody acquainted with the catastrophes and calamities and perils our nation single-handed and alone has gone through and survived through, can and will ever believe that without America's half a billion dollars we will go under. God knows how deep in the abyss of distress we had fallen during the three years of the most bloody and the most brutal enemy occupation. God knows the peril and hunger our people in the provinces survived through in that long night of our fall. We did survive through the devastating war against America and on its wreck and ruins we did build again our national renascence. We went through and survived through the hell of 300 revolutions against Spain and each time we fell, we rose from the ashes of defeat to renew the good fight. Yes, through these long years of untold sufferings, of tears and blood, of fire and flood, the Philippines still survives, and has gained in strength and stamina, in sturdiness and fearlessness, giving us the fullest confidence and assurance that without American aid, and loans and trades, and what not, we can and will survive, because God has given us a tryst with Destiny.

EXECUTIVE FAITHLESSNESS

"Without the helping hand thus extended to us, we cannot survive," so said the highest executive of the land. How little faith our President has in his people's capacity to survive! And yet no people on earth has passed through more bitter tests and trials and has shown more magnificent power of endurance and survival than the Filipinos. We have given the most abundant evidences of national survival, I am proud to say. So I am convinced from the innermost core of my heart, President Roxas notwithstanding, that there is absolutely no ground to doubt that with or without American aid, the Philippine nation shall live forever to fulfill its high mission assigned by Destiny.

Why then are we afraid to say NO to America in answer to a request which she herself would have answered NO with a mighty blow? Are you not ashamed to own independence and proclaim sovereignty and then admit our incapacity to survive through these moments of distress if half a billion dollars' aid is denied us? Since when have national honor and dignity fallen in value lower than trade and bread? How and why should the highest interest of freedom and patria be placed below the passing interest of economics? Answer these questions honestly, gentlemen of the majority, and your conscience and my conscience, and the conscience of our people will meet on the common ground that there shall be no *Defeatism*, no *Disasterism*, no economic *Catastrophism* in our national foreign policy. Our foreign policy must be founded on the cornerstone of Faith and Confidence in ourselves so we can command the confidence of the world. That policy must stand pat two-fisted on the principle that our independence is absolute and indivisible. The only foreign policy satisfactory to our people is that which rejects outright all deals and bargains that involve as consideration our land, or our honor, or our freedom. If we must have the love and confidence of the American people we will not get it by stooping to indignities; we will not get it by cowering servility or fear to face and fight the dangers in the adventurous path of true and free nationhood.

Let us, therefore, strike out a course in foreign relations characterized with manly independence and self-reliance. Let us give notice to the world that we are not afraid to suffer in a few fleeting moments of distress and hardships to gain an eternity of joy in freedom. Let it be known that our new republic is unafraid to be in the high seas taking her chances with wind and wave and star; and that it is the considered determination of this nation rather to go down in glory and grandeur of the the storm than to rot in a "haven of the economic security" out of foreign alms, foreign loans and foreign charity.

SPIRITUAL RESERVOIR

Gentlemen of the Congress, this is not an extemporaneous outburst of an enthusiast. It is no foamy chatter of irresponsibility. It is the considered opinion of thousands of Filipinos who know that deep in the soul of our nation there is enough endurance and resistance to conquer all sufferings and hardships, there is enough faith and power to succeed and triumph. There lies in the soul of our nation an infinite Spiritual Reservoir deep and fathomless, the sum total of all our dreams and deeds, our faith and achievements, our hopes and loves, and even our mistakes and misdeeds — all of these accumulated into a mighty force beyond human ken to measure.

LOVE OF NATIVE LAND

First and foremost is the Filipino's love of his native land. This goddess alone, if we stop to think about it, has wrought wonders recorded in the Old Testament of our past; and will yet work grander and greater miracles to be written in the New Testament of our independent nationhood. Take away the native land around which cluster the vines of love of a young ardent patriot, pass it to any alien hand, be it friendly, and there would be no more Lapulapu who stood like a rock in defense of Mactan, there would be no more Soliman whose heroic nationalism still lives in songs and romances and still inspires the Lunas and Amorsolos, there would be no more Dagohoy whose revolt for nearly a century writes in characters of gold the rugged patriotism of our race. Take away Calamba, Biñan, Dapitan and the emerald isles of the Visayas from the eternal loves of the hero-poet, and there would be no more Rizal who would stand on that peak of glory called Bagumbayan to proclaim unafraid before the guns and cannons of the mighty the aspiration of his race. Take away the smallest portion of this land that has been justly called the brightest gem in Orient Seas, and there woud be no more Bonifacios, del Pilars and Quezons who would be willing to give up all that they had and all that they were for their native land. Take away these Alpine heights of valor and heroism, called Corregidor and Bataan, and there would be no more of those thousands upon thousands of the Youth and flower of our nation who hurried to their post of duty, be it death, even as the stars hasten to the east to die in the glory of morning light.

It is this love of the native land that inspires the great songs of our poets and the immortal creation of our artists. It is that power which turns the wheels of industries to weave the fabric of our wealth, and makes our farms heave and swell with bounteous harvest. It is the same spirit that swells the sails of our ships which plow across the waves homeward bound laden with our wealth and our hopes. After all, banks, commercial houses, institutions and even churches find their true use and meaning and derive their existence from that exhaustless spirit we call love of our native land. Alienate the object of that love and there only remains darkness — death. What then, I ask, is the good of the rehabilitation and reconstruction of the Philippines when the price we have to pay for it is our whole national patrimony — our native land? What does it profit us to have trade, loans, reliefs, surplus goods, and all those things that give us the illusion of material ease and comfort, when the price we pay for them is nothing less than our national heritage? The question of the Master is now pertinently addressed to the Filipinos. Quid enim prodest homini si mundum universum lucretur; animae vere suae detrimentum patiatur? For what is a man profited, if he shall gain the whole world and lose his own soul?

LOVE OF FREEDOM

In the alchemy of that Spiritual Reservoir of the nation we also find love of freedom a potent generator of noble deeds. What almost incredible achievements we have attained with that magical might! With that spiritual power we scaled and conquered the Rocky Mountain ranges of untold hardships and sufferings. We went through the Valley of a thousand deaths to prove our worth and worthiness, untill the Sun of Freedom, after a long night that seemed eternity to us, finally rose gloriously in our eastern skies. At last our land is free. But, alas! if we aliente this land for alien use and exploitation, that freedom becomes a mocking illusion instead of a beautiful reality. He who controls our natural resources definitely controls our economy — even our government. A surrender of our land to alien capital is a surrender of our freedom.

Take away this dynamic and mystic element called the love of freedom by alienating our native land to foreigners, and you have deprived our people of the lever that lifted this nation and will yet lift her to the sun-kissed pinnacles of glory. Keep it by hugging to the land that gave its birth, and you can be sure that the problems of rehabilitation, trade, national recovery and others that ail our people and afear our defeatists are easily unravelled even as the sunbeams vanish the clouds. How truly has it been said, "that coming from the infinite sea of the future, there will never touch this 'bank and shoal of time' a richer gift, a rarer blessing than liberty for man, woman and for child."

FEARS NOT FACTS

Just one more argument and I am through. The eloquent defenders of the amendment in their frantic effort to blackout the lessons of history, invoke the self-denying record of America here and through their chief spokesman pontificate: "I wish to emphasize again and again that all the arguments that have been made against this provision have been based not on facts but on fears. I refused to be frightened by the ghost of imperialism." Brave man this. But, frankly, what impresses me more is not the Rooseveltian emphasis but the ability to shut his eyes ostrick-like to the stark lessons of history and then wheedle his people to bask in a fool's paradise. But we must insist that only fears we have are those based on facts — historical facts. Prospection is possible only by retrospection. We see forward by looking backward. Foresight looks through the glasses of hindsight.

LESSONS OF HISTORY

Let us be realistic — brutally realistic if you wish, and examine a few pages of recent history written in the blood and tears of the naive and the candid, just to prove our thesis by the empirical way that all big capitals whether English, American, or German are monopolistic and, therefore, imperialistic. Did not Mexico in 1823 rejoice under the protection of the Monroe Doctrine and in 1848 ceded an empire succumbing to the irresistible and imperialistic might of her protector? Does not the dollar imperialism of Wall Street now control the domestic economy of Cuba, and indirectly her politics also? The very country who helped her in the fight for liberation now places her under economic "protective custody." All the naive and trusting countries of the Carribean, which of them has escaped from the insatiable concupiscene of imperialistic capital? Let us not talk of Hawaii for that is a back number in modern geopolitics. Korea, was she not a protege of Japan in 1907 and a hostage in 1911? What of Persia and half a dozen principalities in Asia Minor, have they not first been cuddled in the protecting arms of seductive capitalism only to end finally as economic vassals?

Gentlemen, I have no desire to tax more your indulgence, by delving too long into the gloomy but instructive chambers of history. I only want to wind up by saying, let's stop kidding ourselves. Let's stop being funny by pretending that we have the

(Continued on page 352)

ELEAZAR SMITH, Appellant,
v
PEOPLE OF THE STATE OF CALIFORNIA
—US—,4 L ed 2d 205, 80 S Ct—
(No. 9)

Constitutional Law sec. 9255 — freedom of speech and press.

1. The liberty of the press and of speech is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action.

Constitutional Law sec. 925 — freedom of press — commercial works.

2. The free publication and dissemination of books and other forms of the printed word are protected by the constitutional guaranty of freedom of speech and press, irrespective of whether the dissemination takes place under commercial auspices.

Criminal Law sec. 6 — mens rea.

3. The existence of a men's rea is the rule of, rather than the exception to, the principles of Anglo-American criminal jurisprudence.

Criminal Law sec. 6 — power of the state — scienter.

4. It is competent for the states to create strict criminal liabilities by defining criminal offenses without any element of scienter, though even where no freedom-of-expression question is involved, this power is not without limitations.

Constitutional Law sec. 925; Evidence sec. 88; Taxes sec. 142 — freedom of speech — burden of proof — exemptions.

5. While the states generally may regulate the allocation of the burden of proof in their courts, and it is a common procedural device to impose on a taxpayer the burden of proving his entitlement to exemptions from taxation, nevertheless, the application of this device will be struck down by the United States Supreme Court where it is being applied in a manner tending to cause even a self-imposed restriction of free expression.

Statutes sec. 38 — seperability — freedom of speech.

6. The usual doctrines as to the separability of constitutional and unconstitutional applications of statutes do not apply where their effect is to leave standing a statute patently capable of many unconstitutional applications, threatening those who validly exercise their rights of free expression with the expense and inconvenience of criminal prosecution.

Constitutional Law sec. 925; Statutes sec. 17 — vagueness — freedom of speech.

7. Stricter standard of permissible statutory vagueness may be applied to a statute having a potentially inhibiting effect on speech; a man may the less be required to act at his peril in such a situation, because the free dissemination of ideas may be the loser.

Constitutional Law sec. 925; Food and Drugs sec. 1 — duty of care — freedom of speech.

8. While there is no specific constitutional inhibition against making the distributors of food the strictest censors of their merchandise by imposing upon them an absolute standard which will not hear a distributor's plea as to the amount of care he has used, the constitutional guaranties of the freedom of speech and of the press stand in the way of imposing a similar requirement on a bookseller.

Indecency, Lewdness, and Obscenity sec. 1 — scienter.

9. Common-law prosecutions for the dissemination of obscene matters adhere strictly to the requirement of scienter.

Evidence secs. 148, 914 — knowledge — obscenity.

10. Eyewitness testimony of a bookseller's perusal of a book hardly need be a necessary element in proving his awareness of its obscene contents; the circumstances may warrant the inference that he was aware of such contents despite his denial.

Constitutional Law sec. 925 — freedom of speech.

11. The fundamental freedom of speech and press have contributed greatly to the development and well being of our free society and are indispensable to its continued growth; ceaseless vigilance is the watchword to prevent their erosion by Congress or by the states.

Constitutional Law sec. 925 — freedom of speech and press.

12. The door barring federal and state intrusion into the area of freedom of speech and press cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interests.

Indecency, Lewdness, and Obscenity sec. 1 — power of state.

13. The existence of a state's power to prevent the distribution of obscene matter does not mean that there can be no constitutional barrier to any form of practical exercise of that power.

Constitutional Law sec. 930 — freedom of press — indecent books — scienter.

14. A municipal ordinance which, without requiring scienter, makes it a criminal offense for any person to have in his possession an obscene or indecent writing or book in a place of business where books are sold or kept for sale, has such a tendency to inhibit constitutionally protected expression that it cannot stand under the Federal Constitution.

Points from Separate Opinions

Criminal law sec. 6 — scienter.

15. The rule that scienter is not required in prosecutions for so-called public welfare offenses is a limitation on the general principle that awareness of what one is doing is a prerequisite for the infliction of punishment. (From separate opinion by Frankfurther, J.)

Indecency, Lewdness and Obscenity sec. 1 — community standards.

16. The determination of obscenity is for juror or judge, not on the basis of his personal unbringing or restricted reflection or particular experience of life, but on the basis of contemporary community standards. (From separate opinions by Frankfurther, J., and Harlan, JJ.)

Constitutional Law sec. 840 — due process — evidence — obscenity.

17. The due process clause of the Fourteenth Amendment is violated by exclusion, at the state trial of a bookseller for possession of obscene books in his shop, of exidence through duly qualified witnesses regarding the prevailing literary standards and the literary and moral criteria by which books relevantly comparable to the book in controversy are deemed not obscene. (From separate opinion by Frankfurther, J.)

Constitutional Law sec. 786 — due process — hearing.

18. Due process in its primary sense requires an opportunity to be heard and to defend a substantive right. (From separate opinion by Frankfurther, J.)

Constitutional Law sec. 840 — due process — evidence — obscenity.

19. The state conviction of a bookseller for having in his possession obscene books violates the process clause of the Fourteenth Amendment, where the trial judge turned aside every attempt by defendant to introduce evidence bearing on community standards. (From separate opinion by Harlan, J.)

APPEARANCES OF COUNSEL

Stanley Fleishman and *Sam Rosenwein* argued the cause for appellant.

Roger Arneberg argued the cause for appellee.

OPINION OF THE COURT

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

Appellant, the proprietor of a bookstore, was convicted in a California Municipal Court under a Los Angeles City ordinance which makes it unlawful "for any person to have in his possession any obscene or indecent writing, (or) book . . . in any place of business where . . . books . . . are sold or kept for sale." The offense was defined by the Municipal Court, and by the Appellate Department of the Superior Court, which affirmed the Municipal Court judgment imposing a jail sentence on appellant, as consisting solely of the possession, in the appellant's bookstore, of a certain book found upon judicial investigation to be obscene. The definition included no element of scienter — knowledge by appellant of the contents of the book — and thus the ordinance was construed as imposing a "strict" or "absolute" criminal liability. The appellant made timely objection below that if the ordinance were so construed it would be in conflict with the Constitution of the United States. This contention, together with other contentions based on the Constitution, was rejected, and the case comes here on appeal. 28 USC sec. 1257 (2); 358 US 926, 3 L ed 2d 299, 79 S Ct 317.

Almost 30 years ago, Chief Justice Hughes declared for this Court: "It is no longer open to doubt that the liberty of the press, and of speech, is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. It was found impossible to conclude that this essential personal liberty of the citizen was left unprotected by the general guaranty of fundamental rights of person and property. . . ." Near v Minnesota, 283 US 697, 707, 75 L ed 1357, 1363, 51 S Ct 625. It is too familiar for citation that such has been the doctrine of this Court, in respect of these freedoms, ever since. And it also requires no elaboration that the free publication and dissemination of books and other forms of the printed word furnish very familiar applications of these constitutionally protected freedoms. It is of course no matter that the dissemination takes place under commercial auspices. See Joseph Burstyn, Inc. v. Wilson, 343 US 495, 96 L ed 1098, 72 S Ct 777; Grosjean v American Press Co. 297 US 233, 80 L ed 660, 56 S Ct 444. Certainly a retail book seller plays a most significant role in the process of the distribution of books.

California here imposed a strict or absolute criminal responsibility on appellant not to have obscene books in his shop. "The existence of a mens rea is the rule of, rather than the exception to, the principles of Anglo-American jurisprudence." Dennis v United States, 341 US 494, 500, 95 L ed 1137, 1147, 71 S Ct 857. Still, it is doubtless competent for the States to create strict criminal liabilities by defining criminal offenses without any element of scienter-though even where no freedom-of-expression is involved, there is precedent in this Court that this power is not without limitations. See Lambert v. California, 355 US 225, 2 L ed 228, 78 S Ct 240. But the question here is as to the validity of this ordinance's elimination of the scienter requirement — an elimination which may tend to work as substantial restriction on freedom of speech. Our decision furnish examples of legal devices and doctrines, in most applications consistent with the Constitution, which cannot be applied in settings where they have the collateral effect of inhibiting the freedom of expression, by making the individual the more reluctant to exercise it. The States generally may regulate the allocation of the burden of proof in their courts, and it is a common procedural device to impose on a taxpayer the burden of proving his entitlement to exemptions from taxation, but where we conceived that this device was being applied in a manner tending to cause even a self-imposed restriction of free expression, we struck down its application. Speiser v Randall, 357 US 513, 2 L ed 1460, 78 S Ct 1332. See Near v Minnesota, supra (283 US at 712, 713). It has been stated here that the usual doctrines as to the separability of constitutional and unconstitutional applications of statutes may not apply where their effect is to leave standing a statute patently capable of many unconstitutional applications, threatening those who validly exercise their rights of free expression with the expense and inconvenience of criminal prosecution. Thornhill Alabama, 310 US 88, 97, 98, 84 L ed 1093, 1099, 1100, 60 S Ct 736. Cf. Staub v. Baxley, 355 US 313, 2 L ed 302 78 S Ct 277. And this Court has estimated that stricter standards of permissible statutory vagueness may be applied to a statute having potentially inhibiting effect on speech; a man may the less be required to act at his peril here, because the free dissemination of ideas may be the loser. Winters v New York, 333 US 507, 509, 510, 517, 518, 92 L ed 840, 846, 847, 850, 851, 68 S Ct 665. Very much to the point here, where the question is the elimination of the mental element in an offense, is this Court's holding in Wieman v Updegraff, 344 US 183, 97 L ed 216, 73 S Ct 215. There an oath as to past freedom from membership in subversive organizations, exacted by a State as a qualification for public employment, was held to violate the Constitution in that it made no distinction between members who had, and those who had not, known of the organization's character. The Court said of the elimination of scienter in this context: "To thus inhibit individual freedom of movement is to stifle the flow of democratic expression and controversy at one of its chief sources." Id. 344 US at 191.

Those principles guide us to our decision here. We have held that obscene speech and writings are not protected by the constitutional guarantees of freedom of speech and the press. Roth v United States, 354 US 476, 1 L ed 2d 1498, 77 S Ct 1304. The ordinance here in question, to be sure, only imposes criminal sanctions on a bookseller if there in fact is to be found in his shop an obscene book. But our holding in Roth does not recognize any state power to restrict the dissemination of books which are not obscene; and we think this ordinance's strict liability feature would tend seriously to have that effect, by penalizing booksellers, even though they had not the slightest notice of the character of the books they sold. Appellee and the court below analogize this strict-liability penal ordinance to familiar forms of penal statutes which dispense with any element of knowledge on the part of the person charged, food and drug legislation being a principal example. We find the analogy instructive in our examination of the question before us. The usual rationable for such statutes is that the public interest in the purity of its food is so great as to warrant the imposition of the higest standard of care on distributors-in fact an absolute standard which will not hear the distributor's plea as to the amount of care he has used Cf. United States v Balint, 258 US 250, 252-254, 66 L ed 604-607, 42 S Ct 301. His ignorance of the character of the food is irrelevant. There is no specific constitutional inhibition against making the distributors of food the strictest censors of their merchandise, but the constitutional guarantees of the freedom of speech and of the press stand in the way of imposing a similar requirement of the bookseller. By dispensing with any requirement of the contents of the book on the part of the seller, the ordinance tends to impose a severe limitation on the public's access to constitutionally-protected matter. For the bookseller is criminally liable without knowledge of the contents, and the ordinance fullfils its purpose, he will tend to restrict the books he sells to those he has inspected; and thus the State will have imposed a restriction upon the distribution of constitutionally protected as well as obscene literature. It has been observed of a statute construed as dispensing with any requirement of scienter that: "Every bookseller would be placed under an obligation to make himself aware of the contents of every book in his shop. It would be altogether unreasonable to demand so near an approach to omniscience." The King v Ewart, 25 NZLR 709, 729 (CA). And the bookseller's burden would become the public's burden, for by restricting him the public's access to reading matter would be restricted. If the contents of bookshops and periodical stands were restricted to material of which their proprietors had made an inspection, they might be depleted indeed. The bookseller's limitation in the

amount of reading material with which he could familiarize himself, and his timidity in the face of his absolute criminal liability, thus would tend to restrict the public's access to forms of the printed word which the State could not constitutionally suppress directly. The bookseller's self-censorship, compelled by the State, would be a censorship affecting the whole public, hardly less virulent for being privately administered. Through it, the distribution of all books, both obscene and not obscene, would be impeded.

It is argued that unless the scienter requirement is dispensed with, regulation of the distribution of obscene material will be ineffective, as booksellers will falsey discalim knowledge of their books' contents or falsely deny reason to suspect their obscenity. We might observe that it has been some time now since the law view itself as impotent to explore the actual state of a man's mind. See Pound, the Role of the Will in Law, 68 Harv L Rev 1. Cf. American Communications Asso. v. Douds 339 US 382, 411, 94 L ed 925, 950, 70 S Ct 674. Eyewitness testimony of a bookseller's perusal of a book hardly need be a necessary element in proving his awareness of its contents. The circumstances may warrant the inference that he was aware of what a book contained, despite his denial.

We need not and most definitely do not pass today on what sort of mental element is requisite to a constitutionally permissible prosecution of a bookseller for carrying an obscene book in stock; whether honest mistake as to wether its contents in fact constituted obscenity need be an excuse; whether there might be circumstances under which the State constitutionally might require that a bookseller investigate further, or might put on him the burden of explaining why he did not, and what such circumstances might be. Doubtless any form of criminal obscenity statute applicable to a bookseller will induce some tendency to self-censorship and have some inhibitory effect on the dissemination of material not obscene, but we consider today only one which goes to the extent of eliminating all mental elements from the crime.

We have said: "The fundamental freedoms of speech and press have contributed greatly to the development and well-being of our free society and are indispensable to its continued growth. Ceaseless vigilance is the watchdog to prevent their erosion by Congress or by the States. The door barring federal and state intrusion into this area cannot be left ajar; it must be kept tightly closed and opened only the slightest crack necessary to prevent encroachment upon more important interest." Roth v United States, supra (354 US at 488). This ordinance opens that door too far. The existence of the State's power to prevent the distribution of obscene matter does not mean that there can be no constitutional barrier to any form of practical exercise of that power. Cf. Dean Milk Co. v Madison, 340 US 349, 95 L ed 329, 71 S Ct 295. It is plain to us that the ordinance in question, though aimed at obscene matter, has such a tendency to inhibit constitutionally protected expression that it cannot stand under the Constitution.

Reversed.

SEPARATE OPINIONS

Mr. Justice *Black*, concurring.

The appellant was sentenced to prison for possessing in his bookstore an "obscene" book in violation of a Los Angeles city ordinance. I concur in the judgment holding that ordinance unconstitutional, but not for the reason given in the Court's opinion.

The Court invalidates the ordinance solely because it penalizes a bookseller for mere possession of an "obscene" book, even though he is unaware of its obscenity. The grounds on which the Court draws a constitutional distinction between a law that punishes possession of a book with knowledge of its "obscenity" and a law that punishes without such knowledge are not persuasive to me. Those grounds are that conviction of a bookseller for possession of an "obscene" book when he is unaware of its obscenity "will tend to restrict the books he sells to those he has inspected," and therefore "may tend to work a substantial restriction on freedom of speech." The fact is, of course, that prison sentences for possession of "obscene" books will seriously burden freedom of the press whether punishment is imposed with or without knowledge of the obscenity. The Court's opinion correctly points out how little extra burden will be imposed on prosecutors by requiring proof that a bookseller was aware of the book's contents when he possessed it. And if the Constitution's requirement of knowledge is so easily met, the result of this case is that one particular bookseller gains his freedom, but the way is left open for state censorship and punishment of all other booksellers by merely adding a few more words to old censorship laws. Our constitutional safeguards for speech and press therefore gain little. Their victory, if any, is a Pyrrhic one, Cf. Beauharnais v. Illinois, 343 US 250, 267, at 275, 96 L ed 919, 932, 936, 72 S Ct 725 (dissenting opinion).

That it is apparently intended to leave the way open for both federal and state governments to abridge speech and press (to the extent this court approves) is also indicated by the following statements in the Court's opinion: " 'The door barring federal and state intrusion into this area (freedom of speech and press) cannot be left ajar; it must be kept tightly closed and openeed only the slightest crack necessary to prevent encroachment upon more important interests.' . . . This ordinance opens that door too far."

This statement raises a number of questions for me. What are the "more important" interests for the protection of which constitutional freedom of speech and press must be given second place? What is the standard by which one can determine when abridgment of speech and press goes "too far" and when it is slight enough to be constitutionally allowable? Is this momentous decision to be left to a majority of this Court on a case-by-case basis? What express provision or provisions of the Constitution put freedom of speech and press in this precarious position of subordination and insecurity?

Certainly the First Amendment's language leaves no room for inference that abrigements of speech and press can be made just because they are slight. That Amendment provides, in simple words, that "Congess shall make no law . . .abridging the freedom of speech, or of the press." I read "no law abridging" to mean *no law abridging*. The First Amendment, which is the supreme law of the land, has thus fixed its own value on freedom of speech and press by putting these freedoms wholly "beyond the reach" of *federal* power to abridge. No other provision of the Constitution purports to dilute the scope of these unequivocal commands of the First Amendment. Consequently, I do not believe that any federal agencies, including Congress and this Court, have power or authority to subordinate speech and press to what they think are "more important interests." The contrary notion is, in my judgment, court-made not Constitution-made.

State intrusion or abridgment of freedom of speech and of press raises a different question, since the First Amendment by its terms refers only to law passed by Congress. But I adhere to our prior decisions holding that the Fourteenth Amendment made the first applicable to the States. See cases collected in the concurring opinion in Speiser v Randall 357 US 513, 530, 2 L ed 1460, 1475, 7 S Ct 1332. It follows that I am for reversing this case because I believe that the Los Angeles ordinance sets up a censorship in violation of the First and Fourteenth Amendments.

If, as it seems, we are on the way to national censorship, I think it timely to suggest again that there are grave doubts in my mind as to the desirability on constitutionnality of this Court's becoming a Supreme Board of Censors, — reading books and viewing television performances to determine whether, if permitted, they might adversely affect the moral of the people throughout the many divesified local communities in this vast country. It is true that the ordinance here is on its face only applicable to obscene or indecent writing." It is also true that this particular

kind of censorship is considered by many to be "the obnoxious thing in its mildest and least repulsive form. . . ." But "illegitimate and unconstitutional practices get their first footing in that way. . . . It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." Boyd v United States, 116 US 616, 635, 29 L ed 746, 752, 6 S Ct 524. While it is "obscenity and indecency" before us today, the experience of mankind — both ancient and modern — shows that this type of elastic phrase can, and most likely will, be synonymous with the political, and maybe with the religious unorthodoxy of tomorrow.

Censorship is the deadly enemy of freedom and progress. The plain language of the Constitution forbids it. I protest against the judiciary giving it a foothold here.

Mr. Justice *Frankfurther,* concurring.

The appellant was convicted for violating the city ordinance of Los Angeles prohibiting possession of obscene books in a bookshop. His conviction was affirmed by the highest court of California to which he could appeal and it is the judgment of that court that we are asked to reverse. Appellant claims three grounds of invalidity under the Due Process Clause of the Fourteenth Amendment, He urges the invalidity of the ordinance as an abridgment of the freedom of speech which the guarantee of "liberty" of the Fourteenth Amendment safeguards against state action, and this for the reason that California law holds a bookseller criminally liable for possessing an obscene book wholly apart from any scienter on his part regarding the book's obscenity. The second constitutional infirmity urged by appellant is the exclusion of appropriately offered testimony through duly qualified witnesses regarding the prevailing literary standards and the literary and moral criteria by which books relevantly comparable to the book in controversy are deemed not obscene. This exclusion deprived the appellant, such is the claim, of important relevant testimony bearing on the issue of obscenity and therefore restricted him in making his defense. The appellant's ultimate contention is that the questioned book is not obscene and that a bookseller's possession of it could not be forbidden.

The Court does not reach, and neither do I, the issue of obscenity. The Court disposes of the case exclusively by sustaining the appellan't claim that the "liberty" protected by the Due Process Clause of the Fourteenth Amendment precludes a State from making the dissemination of obscene books an offense merely because a book in a bookshop is found to be obscene without some proof of the bookseller's knowledge touching the obscenity of its contents.

The Court accepts the settled principle of constitutional law that traffic in obscene literature may be outlawed as a crime. But it holds that one cannot be made amenable to such criminal outlawry unless he is chargeable with knowledge of the obscenity. Obviously the Court is not holding that a bookseller must familiarize himself with the contents of every book in his shop. No less obviously, the Court does not hold that a bookseller who insulates himself against knowledge about an offending book is thereby free to maintain an emporium for smut. How much or how little awareness that a book may be found to be obscene suffices to establish scienter, or what kind of evidence may satisfy the how much or the how little, the Court leaves for another day.

I am no friend of deciding a case beyond what the immediate controversy requires, particularly when the limits of constitutional power are at stake. On the other hand, a case before this Court is not just a case. Inevitably its disposition carries implications and gives directions beyond its particular facts. Were the Court holding that this kind of prosecution for obscenity requires proof of the guilty mind associated with the concept of crimes deemed infamous, that would be that and no further elucidation would be needed. But if the requirement of scienter in obscenity cases plays a role different from the normal role of men's rea in the definition of crime, a different problem confronts the Court. If, as I assume, the requirement of scienter in an obscenity prosecution like the one before us does not mean that the bookseller must have read the book or substantially know its contents on the one hand, nor on the other that he can exculpate himself by studious avoidance of knowledge about its contents, then, I submit, invalidating an obscenity statute because a State dispenses altogether with the requirement of scienter does require some indication of the scope and quality of scienter that is required. It ought at least to be made clear, and not left for future litigation, that the Court's decision in its practical effect is not intended to nullify the conceded power of the State to prohibit booksellers from trafficking in obscene literature.

Of course there is an important difference in the scope of the power of a State to regulate what feeds the belly and what feeds the brain. The doctrine of the United States v Balint, 258 US 250, 65 L ed 604, 42 S Ct 301, has its appropriate limits. The rule that scienter is not required in prosecutions for so-called public welfare offenses is a limitation on the general principle that awareness of what one is doing is a prerequisite for the infliction of punishment. See Morissette v United States, 342 US 246, 96 L ed 288, 2S Ct 240. The balance that is struck between this vital principle and the overriding public menace inherent in the trafficking of noxious food and drugs cannot be carried over in balancing the vital role of free speech as against society's interest in dealing with pornography. On the other hand, the constitutional protection of non-obscene speech cannot absorb the constitutional power of the States to deal with obscenity. It would certainly wrong them to attribute to Jefferson or Madison a doctrine absolutism that would bar legal restriction against obscenity as a denial of free speech. We have not yet been told that all laws against defamation and against inciting crime by speech, see Fox v Washington, 236 US 273, 59 L ed 573, 35 S Ct 383 (1915), are unconstitutional as impermissible curbs upon unrestricable utterance. We know this was not Jefferson's view, any more than it was the view of Holmes and Brandeis, JJ., the originating architects of our prevailing constitutional law protective of freedom of speech.

Accordingly, the proof of scienter that is required to make prosecutions for obscenity constitutional cannot be of a nature to nullify for all practical purposes the power of the State to deal with obscenity. Out of regard for the State's interest, the Court suggests an unguiding, vague standard for establishing "awareness" by the bookseller of the contents of a challenged book in contradiction of disclaimer of knowledge of its contents. A bookseller may, of course, be well aware of the nature of a book and its appeal without having opened its cover, or, in any true sense, having knowledge of the book. As a practical matter therefore the exercise of the constitutional right of a State to regulate obscenity will carry with it some hazard to the dissemination by a bookseller of non-obscene literature. Such difficulties or hazards are inherent in many domains of the law for the simple reason that law cannot avail itself of factors ascertained quantitatively or even wholly impersonally.

The uncertainties pertaining to the scope of scienter requisite for an obscenity prosecution and the speculative proof that the issue is likely to entail, are considerations that reinforce the right of one charged with obscenity—a right implicit in the very nature of the legal concept of obscenity—to enlighten the judgment of the tribunal, be it the jury or as in this case the judge, regarding the prevailing literary and moral community standards and to do so through qualified experts. It is immaterial whether the basis of the exclusion of such testimony is irrelevance, or the incompetence of experts to testify to such matters. The two reasons coalsece, for community standards or the psychological or physiological consequences of questioned literature can as a matter of fact hardly be established except through experts. Therefore, to exclude such expert testimony is in effect to exclude as irrelevant evidence that goes to the constitutional safeguards of due

process. The determination of obscenity no doubt rests with judge or jury. Of course the testimony of experts would not displace judge or jury in determining the ultimate question whether the particular book is obscene, any more than experts testifying to the state of the art in patent suits determine the patentabiliy of a controverted device.

There is no external measuring rod of obscenity. Neither, on the other hand, is its ascertainment a merely subjective reflection of the taste or moral outlook of individual jurors or individual judges. Since the law through its functionaries is "applying contemporary community standards" in determining what constitutes obscenity, Roth v. United States, 354 US 476, 489, 1 L ed 2d 1498, 1909, 77 S Ct 1304, it surely must be deemed rational, and therefore relevant to the issue of obscenity, to allow light to be shed on what those "contemporary community standards" are. Their interpretation ought not to depend solely on the necessarily limited, hit-or-miss, subjective view of what they are believed to be by the individual juror or judge. It bears repetition that the determination of obscenity is for juror or judge not on the basis of his personal upbringing or restricted reflection or particular experience of life, but on the basis of "contemporarry community standards." Can it be doubted that there is a great difference in what is to be deemed obscene in 1959 compared with what was deemed obscene in 1859. The difference derives from a shift in community feeling regarding what is to be deemed prurient or not prurient by reason of the efffects attributable to this or that particular writing. Changes in the intellectual and moral climate of society, in part doubtless due to the views and fndings of specialists, afford shifting foundations for the attribution. What may well have been consonant "with mid-Victorian morals, does not seem to me to answer to the understanding and morality of the present time." United States v Kennerley (DC NY) 209 F 119, 120. This was the view of Judge Learned Hand decades ago reflecting an atmosphere of propriety much closer to mid-Victorian days than is ours. Unless we disbelieve that the literary psychological or moral standards of a community can be made fruitful and illuminating subjects of inquiry by those who give their life to such inquiries, it was violative of "due process", to exclude the constitutionally relevant evidence proffered in this case. The importance of this type of evidence in prosecutions for obscenity has been impressively attested by the recent debates in the House of Commons dealing with the insertion of such a provision in the enactment of the Obscene Publications Act, 1959, 7 & 8 Eliz 2, Ch 66 (see 597 Parliamentary Debates, H Comm, cols 1009, 1010, 1042, 1043; 604 Parliamentary Debates, H Comm, No. 100 (April 24, 1959), col 803), as well as by the most considered thinking on this subject in the proposed Model Penal Code of the American Law Institute. See ALI Model Penal Code, Tentative Draft No. 6 (1957), sec. 207.10. For the reasons I have indicated I would make the right to introduce such evidence a requirement of due process in obscenity prosecutions.

Mr. Justice *Douglas*, concurring.

I need not repeat here all I said in my dissent in Roth v. United States, 354 US 476, 508, 1 L ed 2nd 1498, 1520, 77 S Ct 1304, to underline my conviction that neither this book nor its author or distributor can be punished under our Bill of Rights for publishing or distributing it. The notion that obscene publications or utterances were not included in free speech developed in this country much later than the adoption of the First Amendment, as the judicial and legislative developments in this country show. Our leading authorities on the subject have summarized the matter as follows:

"In the United States before the Civil War there were few reported decisions involving obscene literature. This of course is no indication that such literature was not in circulation at that time; the persistence of pornography is entirely too strong to warrant such an inference. Nor is it an indication that the people of the time were totally indifferent to the proprieties of the literature they read. In 1851 Nathaniel Hawthorne's *The Scarlet Letter* was bitterly attacked as an immoral book that degraded literature and encouraged social licentiousness. The lack of cases merely means that the problem of obscene literature was not thought to be of sufficient importance to justify arousing the forces of the state to censorship." Lockhart and McClure, Literature, The Law of Obscenity, and the Constitution, 38 Minn L Rev 295, 324, 325.

Neither we nor legislatures have power, as I see it, to weigh the values of speech or utterance against silence. The only grounds for suppressing this book are very narrow. I have read it; and while it is repulsive to me, its publication or distribution can be constitutionally punished only on a showing not attempted here. My view was stated in the Roth Case, 354 US at 514:

"Freedom of expression can be suppressed if, and to the extent that, it is so closely brigaded with illegal action as to be an inseparable part of it. Giboney v Empire Storage Co., 336 US 490, 498; Labor Board v Virginia Power Co., 314 US 469, 477, 478. As a people, we cannot afford to relax that standard. For the test that suppresses a cheap tract today can suppress a literary gem tomorrow. All it need do is to incite a lasciviousness thought or arouse a lustful desire. The list of books that judges or juries can place in that category is endless."

Yet my view is in the minority; and rather fluid tests of obscenity prevail which require judges to read condemned literature and pass judgment on it. This role of censor in which we find ourselves is not an edifying one. But since by the prevailing school of thought we must perform it, I see no harm, and perhaps some good, in the rule fashioned by the Court which requires a showing of scienter. For it recognizes implicitly that these First Amendment rights, by reason of the strict command in that Amendment—a command that carries over to the States by reason of the Due Process Clause of the Fourteenth Amendment—are preferred rights. What the Court does today may possibly provide some small degree of safeguard to booksellers by making those who patrol bookstalls proceed less high-handedly than has been their custom.

Mr. Justice *Harlan*, concurring in part and dissenting in part.

The striking down of local legislation is always serious business for this Court. In my opinion in the Roth Case, 354 US at 503-508, I expressed the view that state power in the obscenity field has a wider scope than federal power. The question whether scienter is a constitutionally required element in a criminal obscenity statute is intimately related to the constitutional scope of the power to bar material as obscene, for the impact of such a requirement on effective prosecution may be one thing where the scope of the power to prescribe is broad and quite another where the scope is narrow. Proof of scienter may entail no great burden in the case of obviously obscene material; it may, however, become very difficult where the character of the material is more debatable. In my view then, the scienter question involves considerations of a different order depending on whether a state or a federal statute is involved. We have here a state ordinance, and on the meagre data before us I would not reach the question whether the absence of a scienter element renders the ordinance unconstitutional. I must say, however, that the generalities in the Court's opinion striking down the ordinance leave me unconvinced.

From the point of view of the free dissemination of constitutionally protected ideas, the Court invalidates the ordinance on the ground that its effect may be to induce booksellers to restrict their offerings of non-obscene literary merchandize though fear of prosecution for unwittingly having on their shelves an obscene publication. From the point of view of the State's interest in pro-

(*Continued next page*)

U. S. SUPREME COURT . . . (*Continued from page* 330)
tecting its citizens against the dissemination of obscene material, the Court in effect says that proving the state of a man's mind is little more difficult than proving the state of his digestion, but also intimates that a relaxed standard of mens rea would satisfy constitutional requirements. This is for me too rough a balancing of the competing interests at stake. Such a balancing is unavoidably required in this kind of constitutional adjudication, notwithstanding that it arises in the domain of liberty of speech and press. A more critical appraisal of both sides of the constitutional balance, not possible on the meager material before us, seems to me required before the ordinance can be struck down on this ground. For, as the concurring opinions of my Brothers Black and Frankfurter show, the conclusion that this ordinance but not one embodying some element of scienter, is likely to restrict the dissemination of legitimate literature seems more dialectical than real.

I am also not persuaded that the ordinance in question was unconstitutionally applied in this instance merely because of the state court's refusal to admit expert testimony. I agree with my Brother Frankfurter that the trier of an obscenity case must take into account "contemporary community standards," Roth v United States, 354 US 476, 489, I L ed 2d 1498, 1509, 77 S Ct 1304. This means that, regardless of the elements of the offense under state law, the Fourteenth Amendment does not permit a conviction such as was obtained here unless the work complained of is found substantially to exceed the limits of candor set by contemporary community standards. The community cannot, where liberty of speech and press are at issue, condemn that which it generally tolerates. This being so it follows that due process — "using that term in its primary sense of an opportunity to be heard and to depend (a) . . . substantive right," Brinkerhoff-Faris Trust & Sav. Co. v Hill, 281 US 673, 678, 74 L ed 1107, 1112 50 S Ct 451 — requires a State to allow a litigant in some manner to introduce proof on this score. While a State is not debarred from regarding the trier of fact as the embodiment of community standards, competent to judge a challenged work against those standards, it is not privileged to rebuff *all* efforts to enlighten or persuade the trier.

However, I would not hold that any particular kind of evidence must be admitted, specifically, that the Constitution requires that oral opinion testimony by experts be heard. There are other ways in which proof can be made, as this very case demonstrates. Appellant attempted to compare the contents of the work with that of other allegedly similar publications which were openly published, sold and purchased, and which received wide general acceptance. Where there is a variety of means, even though it may be considered that expert testimony is the most convenient and practicable method of proof, I think it is going to far to say that such a method is constitutionally compelled, and that a State may not conclude, for reasons responsive to its traditional doctrines of evidence law, that the issue of community standards may not be the subject of expert testimony. I know of no case where this Court, on constitutional grounds, has required a State to sanction a particular mode of proof.

In my opinion this conviction is fatally defective in that the trial judge, as I read the record, turned aside *every* attempt by appellant to introduce evidence bearing on community standards. The exclusionary rulings were not limited to offered expert testimony. This had the effect of depriving appellant of the opportunity to offer any proof on a constitutionally relevant issue. On this ground I would reverse the judgment below, and remand the case for a new trial.

ACCUSED MAY REMAIN AT LIBERTY UNDER ORIGINAL BOND AFTER CONVICTION AND DURING APPEAL

In a precedent-provoking decision, Judge Jesus P. Morfe of the Court of First Instance of Lingayen, Pangasinan recently ruled that an accused may continue to remain at liberty under his original bail bond after the rendition of judgment of conviction and during the period of appeal,

In its effect, Judge Morfe's ruling departs from the standard judicial practice of placing the accused into the custody of the law immediately after the reading of the judgment of conviction to him, unless then and there he appeals the decision and files a new bail bond for his provisional release during the pendency of the appeal.

Judge Morfe made the ruling in a criminal case for estafa (People of the Phil. vs. Floro C. Garcia and Alfredo R. Balagtas, Crim. Case No. No. 21257) following the oral manifestation of the counsel for the two accused therein of their intention to file a motion for reconsideration of the decision of conviction that was read in open court to the accused, accompanied with the verbal motion that in the meantime the accused be allowed to remain at liberty under their original bail bond.

In granting said verbal motion of the accused, Judge Morfe reasoned out that "to send an accused to jail for custody within the reglementary fifteen day period within which he can appeal the decision provided in Section 6 of Rule 118 will be tantamount to making him serve the sentence before it becomes executory". But an accused, Judge Morfe pointed out, cannot be so committed "unless he waives in writing his right to appeal and forthwith surrenders himself for the execution of the sentence imposed on him, or his bondsman surrenders him to the Court before the lapse of the period to appeal."

He also pointed out that as the bondsman of the accused did not appear at the reading of the judgment of conviction and did not surrender the accused to the court pursuant to sec. 16 (a) of Rule 110, "the bondsman will continue under the obligation of its bail to see to it that the accused appear before the court after the fifteen-day period mentioned in section 6, Rule 118 if the accused neither perfect his appeal during said period nor voluntarily surrender himself to the court for execution of its decision."

Judge Morfe also said that the term "conviction" contemplated in Sec 4, Rule 110 which gives rise to the ineffectivity of the original bail bond and the detention of the accused after the reading of the judgment of conviction, is a "conviction" that has become ripe for execution by virtue of the lapse of the fifteen-day period provided in sec. 6 of Rule 110. This conclusion finds support in Sec. 1 of Rule 118, which provides that 'from all *final judgments* of the Court of First Instance or courts of similar jurisdiction, and in all cases in which the law now provides for appeals from said courts, an appeal may be taken to the Court of Appeals or to the Supreme Court as hereinafter prescribed.' The use of the term 'final judgment' in sec. 1 of Rule 118 implies that the judgment therein contemplated is one that has become ripe for execution by reason of the lapse of the fifteen-day period provided in sec. 6 of the Rule 118. Consequently, a convicted accused must begin to serve his sentence on the 16th day following promulgation of judgment, unless he perfect his appeal before the close of office hours of the 15th day."

SUPREME COURT DECISIONS

I

Sergio Osmeña, Jr., Petitioner vs. Salipada K. Pendatun, et al., in their capacity as members of the Special Committee created by House Resolution No. 59, Respondents, G.R. No. L-17144, October 28, 1960, Bengzon, J.

1. CONSTITUTIONAL LAW; PARLIAMENTARY IMMUNITY; SECTION 15, ARTICLE VI OF CONSTITUTION CONSTRUED. — The provision of Section 15, Article VI of the Philippine Constitution which provides that "for any speech or debate" in Congress, the Senators or members of the House of Representatives "shall not be questioned in any other place" which provision is a copy of Sec. 6, Clause I of Art. 1 of the Constitution of the United States, has been understood in the United States to mean that although exempt from prosecution or civil actions for their words uttered in Congress, the Members of Congress may, nevertheless, be questioned in Congress itself.
2. ID.; ID. — Parliamentary immunity guarantees the legislator complete freedom of expression without fear of being made responsible in criminal or civil actions before the courts or any other forum outside the Congressional Hall but it does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming a member thereof.
3. ID.; ID. EXTENT OF PUNISHMENT OF MEMBERS OF CONGRESS FOR UNPARLIAMENTARY CONDUCT. — Members of Congress could be censured, committed to prison, suspended or even expelled by the votes of their colleagues for unparliamentary conduct.
4. ID.; PARLIAMENTARY RULES MAY BE DISREGARDED BY LEGISLATIVE BODY. — Parliamentary rules are merely procedural and may be disregarded by the legislative body and, therefore, failure to conform to said rules will not invalidate the action of a deliberative body when the requisite number of members have agreed to a particular measure.
5. ID.; DISORDERLY BEHAVIOR; CONGRESS THE BEST JUDGE OF WHAT CONSTITUTES DISORDERLY BEHAVIOR. — In the case at bar, the House of Representatives is the judge of what constitutes disorderly behavior, not only because the Constitution has conferred jurisdiction upon it, but also because the matter depends mainly on factual circumstances of which the House knows best but which cannot be depicted in black and white for presentation to and adjudication by the Courts.
6. ID.; POWER OF LEGISLATIVE BODY TO EXPEL A MEMBER. — Every legislative body in which is vested the general legislative power of the state has the implied power to expel a member for any cause it may deem sufficient, even in the absence of an express provision expressly conferring said power.
7. ID.; ID. — The power of the legislative body to expel a member thereof is inherent and courts are forbidden to direct or control said body in the exercise of said power.

REYES, J.B.L., *J., dissenting*:

8. ID.; EX POST FACTO LEGISLATION; VALIDITY OF RESOLUTIONS NOS. 59 and 175. — In the case at bar, petitioner had delivered his speech and before the House adopted, fifteen days later, Resolution No. 59, the House had acted on other matters and debated them and, therefore, petitioner had ceased to be answerable for the words uttered by him in his privilege speech. Resolution No. 59, insofar as it attempts to divest him of his immunity so acquired and subject him to discipline and punishment, when he was previously not so subject, violates the constitutional inhibition against *ex post facto* legislations and Resolutions Nos. 59 and 175 are legally obnoxious and invalid.
9. ID.; EX POST FACTO LAW. — The rule is well established that a law which deprives an accused person of any substantial right or immunity possessed by him before its passage is *ex post facto* as to prior offenses.
10. ID.; LIMITATION ON THE RIGHT OF THE HOUSE OF REPRESENTATIVES TO AMEND ITS RULES. — The rights of the House to amend its rules does not carry with it the right to retroactively divest its members thereof of an immunity he had already acquired. The Bill of Rights is against it.
11. ID.; SUSPENSION OF PRIVILEGES VIOLATIVE OF CONSTITUTIONAL PROVISION AGAINST EX POST FACTO LEGISLATION. — In the case at bar, while petitioner was only meted out a suspension of privileges, that suspension is as much a penalty as imprisonment or a fine, which punitive action is violative of the spirit if not of the letter, of the constitutional provision against *ex post facto* legislation.
12. ID.; PURPOSE OF IMMUNITY PROVIDED BY THE HOUSE RULES. — The plain purpose of the immunity provided by the House Rules is to protect the freedom of action of its members and to relieve them from the fear of disciplinary action taken upon second thought, as a result of political convenience, vindictiveness or pressures.
13. ID.; POWER OF SUPREME COURT TO DECLARE UNCONSTITUTIONAL THE QUESTIONED RESOLUTIONS. — In the case at bar, the fact that the Supreme Court possesses no power to direct or compel the Legislature to act in any special manner, should not deter it from recognizing and declaring the unconstitutionality and nullity of the questioned resolutions and all actions taken in pursuance thereof.

LABRADOR, A., J., *dissenting*:

14. ID.; RULE LIMITING PERIOD FOR IMPOSITION OF PENALTY FOR A SPEECH TO THE DAY IT WAS MADE NOT MERELY A RULE OF PROCEDURE. —The rule limiting the period for imposition of a penalty for a speech to the day it was made, is not merely a rule of procedure but a limitation of the time in which the House may take punitive action against an offending member. In reference to time, it is a limitation on the liability to punishment.
15. ID.; DUTY OF SUPREME COURT TO PRONOUNCE WHAT THE LAW IS. — The Supreme Court should not interfere with the legislature in the manner it performs its functions, but it can not abandon its duty to pronounce what the law is when it is invoked by the members of Congress or any humble citizen.

DECISION

On July 14, 1960, Congressman Sergio Osmeña, Jr., submitted to this Court a verified petition for "declaratory relief, certiorari and prohibition with preliminary injunction" against Congressman Salipada K. Pendatun and fourteen other congressmen in their capacity as members of the Special Committee created by House Resolution No. 59. He asked for annulment of such Resolution on the ground of infringement of his parliamentary immunity; he also asked, principally, that said members of the special committee be enjoined from proceeding in accordance

with it, particularly the portion authorizing them to require him to substantiate his charges agains the President, with the admonition that if he failed to do so, he must show cause why the House should not punish him.

The petition attached a copy of House Resolution No. 59, the pertinent portion of which read as follows:

"WHEREAS, on the 23rd day of June, 1960, the Honorable Sergio Osmeña, Jr., Member of the House of Representatives from the Second District of the province of Cebu, took the floor of this Chamber on the one hour privilege to deliver a speech, entitled "A Message to Garcia";

WHEREAS, in the course of said speech, the Congressman from the Second District of Cebu stated the following:

x x x x

"The people, Mr. President, have been hearing of ugly reports that under your unpopular administration the free things they used to get from the government are now for sale at premium prices. They say that even pardons are for sale, and that regardless of the gravity and seriousness of a criminal case, the culprit can always be bailed out forever from jail as long as he can come across with a handsome dole. I am afraid, such an anomalous situation would reflect badly on the kind of justice that your administration is dispensing. x x x x
District of Cebu, if made maliciously or recklessly and without basis in truth and in fact, would constitute a serious assault

WHEREAS, the charges of the gentleman from the Second upon the dignity and prestige of the Office of the President, which is the one visible symbol of the sovereignty of the Filipino people and would expose said office to contempt and disrepute: x x x x

Resolved by the House of Representatives, that a special committee of fifteen Members to be appointed by the Speaker be and the same hereby is, created to investigate the truth of the charges against the President of the Philippines made by Honorable Sergio Osmeña, Jr., in his privilege speech of June 23, 1960, and for such purpose it is authorized to summon Honorable Sergio Osmeña Jr., to appear before it to substantiate his charges as well as to issue *subpoena* and/or *subpoena duces tecum* to require the attendance of witnesses and/or the production of pertinent papers before it, and if Honorable Sergio Osmeña Jr.. fails to do so to require him to show cause why he should not be punished by the House. The special committee shall submit to the House a report of its findings and recommendations before the adjournment of the present special session of the Congress of the Philippines."

In support of his request, Congressman Osmeña alleged: first, the Resolution violated his constitutional absolute parliamentary immunity for speeches delivered in the House; second, his words constituted no actionable conduct; and third, after his allegedly objectionable speech and words, the House took up other business, and Rule XVII, sec. 7 of the Rules of the House provides that if other business had intervened after the Member had uttered obnoxious words in debate, *he shall not be held* to answer therefor nor be subject to censure by the House.

Although some members of the court expressed doubts of petitioner's cause of action and the Court's jurisdiction, the majority decided to hear the matter further, and required respondents to answer, without issuing any preliminary injunction. Evidently aware of such circumstance with its implications, and presed for time in view of the imminent adjournment of the legislative session, the special committee continued to perform its task and after giving Congressman Osmeña a chance to defend himself, submitted its report on *July* 18, 1960, finding said congressman guilty of serious disorderly behaviour; and acting on such report, the House approved on the same day—before closing its sessions—House Resolution No. 175, declaring him guilty as recommended and suspending him from office for fifteen months.

Thereafter on July 19, 1960, the respondents (with the exception of Congressman De Pio, Abeleda, San Andres Ziga, Fernandez and Baltao[1] filed their answers, challenged the jurisdiction of this Court to entertain the petition, defended the power of Congress to discipline its members with suspension, upheld House Resolution No. 175 and then invited attention to the fact that Congress having ended its session on July 18, 1960, the Committee — whose members are the sole respondents—had thereby ceased to exist.

There is no question that Congressman Osmeña, in a privilege speech delivered before the House, made the serious imputations of bribery against the President which are quoted in Resolution No. 59, and that he refused to produce before the House Committee created for the purpose, evidence to substantiate such imputations. There is also no question that for having made the imputations and for failing to produce evidence in support thereof, he was, by resolution of the House, suspended from office for a period of fifteen months, for serious disorderly behaviour.

Resolution No. 175 states in part:

"WHEREAS, the Special Committee created under and by virtue of Resolution No. 59, adopted on July 8, 1960, found Representative Sergio Osmeña, Jr., guilty of serious disorderly behaviour for making without basis in truth and in fact, scurrilous, malicious, reckless and irresponsible charges against the President of the Philippines in his privilege speech on June 23, 1960; and

WHEREAS, the said charges are so vile in character that they affronted and degraded the dignity of the House of Representatives: Now, Therefore, be it

RESOLVED by the House of Representatives, that Representative Sergio Osmeña Jr., be. as he hereby is, declared guilty of serious disorderly behaviour: and x x x x."

As previously stated Osmeña contended in his petition that: (1) the Constitution gave him complete parliamentary immunity, and so, for words spoken in the House, he ought not to be questioned: (2) that his speech constituted no disorderly behaviour for which he could be punished: and (3) supposing he could be questioned and disciplined therefore, the House had lost the power to do so because it had taken up other business before approving House Resolution No. 59. Now, he takes the additional position (4) that the House has no power, under the Constitution, to suspend one of its members.

Section 15 of Article VI of our Constitution provides that "for any speech or debate" in Congress, the Senators or Members of the House of Representatives "shall not be questioned in any other place." This section was taken or is a copy of sec. 6 clause 1 of Art. 1 of the Constitution of the United States. In that country, the provision has always been understood to mean that although exempt from prosecution or civil actions for their words uttered in Congress. the members of Congress may, nevertheless, be questioned *in Congress itself*. Observe that "they shall not be questioned in any *other* place" than Congress.

Furthermore, the Rules of the House which petitioner himself has invoked (Rule XVII, sec. 7), recognized the House's power to hold a member responsible "for words spoken in debate."

Our Constitution enshrines parliamentary immunity which is a fundamental privilege cherished in every legislative assembly of the democratic world. As old as the English Parliament, its purpose "is to enable and encourage a representative of the public to discharge his public trust with firmness and success" for it "is indispensably necessary that he should enjoy the fullest liberty of speech, and that he should be protected from the resentment of every one, however powerful, to whom the exercise of that liberty may occasion offense."[2] Such immunity has come to this country from the practices of Parliament as construed and applied by the Congress of the United States. Its extent and ap-

---

(1) These, except Congessman Abeleda, share the views of petitioner.

(2) Terry v. Brandhowe, 341 U.S. 367.

plication remain no longer in doubt in so far as related to the question before us. It guarantees the legislator complete freedom of expression without fear of being made responsible in criminal or civil actions before the courts or any other forum *outside* of the Congressional Hall. *But it does not protect him from responsibility before the legislative body itself whenever his words and conduct are considered by the latter disorderly or unbecoming a member thereof.* In the United States Congress Congressman Fernando Wood of New York was censured for using the following language on the floor of the House: "A monstrosity, a measure the most infamous of the many infamous acts of the infamous Congress." (Hinds' precedents, Vol. 2, pp. 789-799). Two other congressman were censured for employing insulting words during debate. (2 Hinds' precedent, 799-801). In one case, a member of Congress was summoned to testify on a statement made by him in debate but he invoked his parliamentary privilege. The Committee rejected his plea. (3 Hinds' Precedents 123-124).

For unparliamentary conduct, members of Parliament or Congress have been, or could be censured, committed to prison,[3] suspended, even expelled by the votes of their colleagues. The appendix to this decision amply attests to the consensus of informed opinion regarding the practice and the traditional power of legislative assemblies to take disciplinary action against its members, *including imprisonment, suspension or expulsion.* It mentions one instance of suspension of a legislator in a foreign country.

And to cite a local illustration, the Philippine Senate, in April 1949, suspended a senator for one year.

Needless to add, the Rules of Philippine House of Representatives provide that the parliamentary practices of the Congress of the United States shall apply in a supplementary manner to its proceedings.

This brings up the third point of the petitioner: the House may no longer take action against me, he argues, because after my speech, and before approving Resolution No. 59, it had taken up other business. Respondents answer that Resolution No. 59 was unanimously approved by the House, that such approval amounted to a suspension of the House Rules, which according to standard parliamentary practice may be done by unanimous consent.

Granted, counters the petitioner, that the House may suspend the operation of its Rules, it may not, however, affect past acts or renew its right to take action which had already lapsed.

The situation might thus be compared to laws[4] extending the period of limitation of actions that had lapsed. The Supreme Court of the United States has upheld such laws as against the contention that they impaired vested rights in violation of the Fourteenth Amendment (Campbel v. Holt, 115 U.S. 620). The states hold divergent views. At any rate, courts have declared that "the rules adopted by deliberative bodies are subject to revocation, modification or waiver at the pleasure of the body adopting them."[5] And it *has been said that "Parliamentary rules are merely procedural, and with their observance, the courts have no concern. They may be waived or disregarded by the legislative body."* Consequently, "mere failure to conform to parliamentary usage will not invalidate the action (taken by a deliberative body) when the requisite number of members have agreed to a particular measure."[6]

The following is quoted from a reported decision of the Supreme Court of Tennessee:

"The rule here invoked is one of parliamentary procedure, and it is uniformly held that it is within the power of all deliberative bodies to abolish, modify, or waive their own rules of procedure, adopted for the orderly conduct of business, and as security against hasty action." (Bennet v. New Bedford, 110 Mass. 433; Holt v. Somerville, 127 Mass. 408, 411; City of Sedalia v. Scott, 104 Mo. App. 595, 78 S. W. 276; Ex parte Mayor, etc., of Albany, 23 Wend. (N.Y.) 277, 280; Wheelock v. City of Lowell, 196 Mass. 220 230, 81 N. E. 977 124 Am. St. Rep. 543, 12 Ann. Cas. 1109; City of Cornith v. Sharp, 107 Miss. 696, 65 So. 868; McGraw v. Whetson, 69 Iowa 348, 28 N. W. 632; Tuell v. Meacham Contracting Co. 145 Ky. 181, 186, 140 S. W. 159, Ann. Cas. 1913B, 802) [Taken from the case of Rutherford v. City of Nashville, 79 South Western Reporter, p. 584.]

It may be noted in this connection, that in the case of Conggressman Stanbery of Ohio, who insulted the Speaker for which act a resolution of censure was presented, the House approved the resolution, despite the argument that other business had intervened after the objectionable remarks. (2 Hinds' Precedents pp. 799-800.)

On the question whether delivery of speeches attacking the Chief Executive constitutes disorderly conduct for which Osmeña may be disciplined, many arguments pro and con have been advanced. *We believe, however, that the House is the judge of what constitutes disorderly behaviour, not only because the Constitution has conferred jurisdiction upon it, but also because the matter depends mainly on factual circumstances of which the House knows best but which can not be depicted in black and white for presentation to, and adjudication by the Courts. For one thing, if this Court assume the power to determine whether Osmeña's conduct constituted disorderly behavior, it would thereby have assumed appellate jurisdiction, which the Constitution never intended to confer upon a coordinate branch of the Government. The theory of separation of powers fastidiously observed by this Court, demands in such situation a prudent refusal to interfere. Each department, it has been said, has exclusive cognizance of matters within its jurisdicition and is supreme within its own sphere. (Angara v. Electoral Commission,* 63 *Phil.* 139.)

"Sec. 200. *Judicial Interference with Legislature.* . . . The principle is well established that the courts will not assume a jurisdiction in any case which will amount to an interference by the judicial department with the legislature since each department is equally independent upon it by the Constitution.

"The general rule has been applied in other cases to cause the courts to refuse to intervene in what are exclusively legislative functions. Thus, where the state Senate is given the power to expel a member, the courts will not review its action or revise *even a most arbitrary or unfair decision.*" (11 Am. Jur., Const. Law, sec. 200, p. 902) Underscoring Ours).

The above statement of American law merely abridged the landmark case of Clifford v. French.[7] In 1905, several senators who had been expelled by the State Senate of California for having taken a bribe, filed mandamus proceedings to compel reinstatement, alleging the Senate had given them no hearing, nor a chance to make defense, besides falsity of the charges of bribery. The Supreme Court of California declined to interfere, explaining in orthodox juristic language:

"Under our form of government, the judicial department has no power to revise even the most arbitrary and unfair action of the legislative department or of either house thereof, taken in pursuance of the power committed exclusively to that department by the Constitution. It has been held by high authority that, even in the absence of an express provision conferring the power, every legislative body in which is vested the general legislative power of the state has the implied *power to expel a member for*

(3) Kilbourn v. Thompson, 103 U.S. 189; Hiss v. Bartlett & Gray, 468, 63 Am. Rec. 768, 770.

(4) Rules of the House have not the force of law, but they are merely in the nature of by-laws prescribed for the orderly and convenient conduct of their own proceedings. (67 Corpus Juris Secundum, p. 870).

(5) 67 Corpus Juris Secundum, p. 870.

(6) South Georgia Power v. Bauman, 169 Ga. 649; 151 S. W. 515.

(7) 140 Cal. 604; 609 L.R.A. 556.

any cause which it may deem sufficient. In Hiss v. Barlett, 3 Grey 473, 63 Am. Dec. 768, the supreme court of Mass. says, in substance, that this power *is inherent in every legislative body that it is necessary to enable the body 'to perform its high function,* and *is necessary to the safety of the state;' That it is a power of self-protection, and that the legislative body must necessarily be the sole judge of the exigency which may justify and require its exercise by either house of no provision authorizing courts to control, direct, supervise, or forbid the exercise by either house of the power to expel a member. 'These powers are functions of the legislative department and therefore, in the exercise of the power thus committed to it, the Senate is supreme.* An attempt by this court to direct or control the legislature, or either house thereof, in the exercise of the power, would be an *attempt to exercise legislative functions,* which it is expressly forbidden to do."

We have underscored in the above quotation those lines which in our opinion emphasize the principles controlling this litigation. Although referring to expulsion, they may as well be applied to other disciplinary action. Their gist are applied to the case at bar: *the House has exclusive power; the courts have no jurisdiction to interfere.*

Our refusal to intervene might impress some readers as subconscious hesitation due to discovery of impermissible course of action in the legislative chamber. Nothing of that sort; we merely refuse to disregard the allocation of constitutional functions which it is our special duty to maintain. Indeed, in the interest of comity, we feel bound to state that in a conscientious survey of governing principles and/or episodic illustrations, we found the House of Representatives of the United States taking the position on at least two occasions that *personal attacks upon the Chief Executive* constitute unparliamentary conduct or breach of order.[8] And in several instances, it took action against offenders, *even after other business* had been considered.[9]

Petitioner's principal argument against the House's power to suspend is the Alejandrino precedent. In 1924, Senator Alejandrino was, by resolution of the Senate, suspended from office for 12 months because he had assaulted another member of that body for certain phrases the latter uttered in the course of a debate. The senator applied to this court for reinstatement, challenging the validity of the resolution. Although this court held that in view of the separation of powers, it had no jurisdiction to compel the Senate to reinstate petitioner, is nevertheless went on to say the Senate had no power to adopt the resolution because suspension for 12 months amounted to removal, and the Jones Law (under which the Senate was then functioning) gave the Senate no power to remove an *appointive member,* like Senator Alejandrino. The Jones Law specifically provided that "each House may punish its members for disorderly behaviour, and, with the concurrence of two-thirds votes, expel an *elective* member (sec. 18). Note particularly the word "elective."

The Jones Law, it must be observed, empowered the Governor General to appoint "without consent of the Senate and without restriction as to residence senators x x x who will, in his opinion, best represent the Twelfth District." Alejandrino was one appointive senator.

It is true, the opinion in that case contained an *obiter dictum* that "suspension deprives the electoral district of representation without that district being afforded any means by which to fill that vacancy." But that remark should be understood to refer particularly to the *appointive senator* who was then the affected party and who was by the same Jones Law charged with the duty to represent the Twelfth District, and maybe the views of the Government of the United States or of the Governor-General, who had appointed him.

[8] Cannon's Precedents (1936) par. 2497 (William Willet, Jr. of New York), par. 2498 (Louis T. McFadden of Pennsylvania).

[9] Constitution, Jefferson's Manual and the House of Representatives by Louis Beachler (1955) p. 382.

It must be observed, however, that *at that time* the Legislative had only those powers which were granted to it by the Jones Law;[10] *whereas now the Congress has the full legislative powers and prerogatives of a sovereign* nation except as restricted by the Constitution. *In other words, in the Alejandrino case, the court reached the conclusion that the Jones Law did not give the Senate the power it then exercised — the power of suspension for one year.* Whereas now, as we find, the Congress *has the inherent legislative prerogative of suspension*[11] which the Constitution did not impair. In fact, as already pointed out, the Philippine Senate did suspend a senator for 12 months in 1949.

"The legislative power of the Philippine Congress is plenary, subject only to such limitations as are found in the Republic's Constitution. So that any power deemed to be legislative by usage or tradition, is necessarily possessed by the Philippine Congress, unless the Constitution provides otherwise." (Vera v. Avelino, 77 Phil. 192, 212.)

In any event, petitioner's argument as to deprivation of the district's representation can not be more weighty in the matter of suspension than in the case of imprisonment of a legislator, yet deliberative bodies have the power in proper cases, to commit one of their members to jail.[12]

Now come questions of procedure and jurisdiction. The petition intended to prevent the Special Committee from acting in pursuance of House Resolution No. 59. Because no preliminary injunction had been issued, the Committee performed its task, reported to the House, and the latter approved the suspension order. The House has closed its session, and the Committee has ceased to exist as such. It would seem, therefore, the case should be dismissed for having become moot or academic.[13] Of course, there is nothing to prevent petititioner from filing new pleading to include all members of the House as respondents, ask for reinstatement and thereby to present a justiciable cause. Most probable outcome of such reformed suit, however, will be a pronouncement of lack of jurisdiction as in Vera v. Avelino[14] and Alejandrino v. Quezon.[15]

At any rate, having perceived suitable solutions to the important questions of political law, the Court thought it proper to express at this time its conclusions on such issues as were deemed relevant and decisive.

Accordingly, the petition has to be, and is hereby dismissed. So ordered.

Paras, C. J., Bautista Angelo, Concepcion, Barrera, Gutierrez David, Paredes and Dizon, JJ., concurred.

Padilla, J. abstained.

Reyes, J. B. L., J., dissenting.

I concur with the majority that the petition filed by Conggressman Osmeña, Jr., does not make out a case either for declatory judgment or certiorari, since this Court has no original jurisdiction over declaratory judgment proceedings, and certiorari is available only against bodies exercising judicial or quasi-judicial powers. The respondent committee, being merely fact finding was not properly subject to certiorari.

[10] The Jones Law placed "In the hands of the people of the Philippines as large a control of their domestic affairs as can be given them, without in the meantime impairing the rights of sovereignty by the people of the United States." (Preamble)

[11] Apart from the view that power to remove includes the power to suspend as an incident. (Burnap v. U.S. 512, 64, L. Ed. 693, 695.) This view is distinguished from Hebron v. Reyes, G.R. No. L-9124, July 28, 1958. (See Gregory v. Mayor, 21 N.E. 120.) But we need not to explain this now. Enough to rely on the Congressional inherent power

[12] See Appendix par. VII, Cushing.

[13] This, apart from doubts on (a) our jurisdiction to entertain original petitions for declaratory judgments, and (b) availability of certiorari or prohibition against respondents who are not exercising judicial or ministerial functons (Rule 67, secs. 1 and 2).

[14] See supra.

[15] 46 Phil. 83.

I submit, however, that Congressman Osmeña was entitled to invoked the Court's jurisdiction on his petition for a writ of prohibition against the committee, in so far as House Resolution No. 59 (and its sequel, Resolution No. 175) constituted an unlawful attempt to divest him of an immunity from censure or punishment, an immunity vested under the very Rules of the House of Representatives.

House Rule XVII, on Decorum and Debates, in its section 77, provides as follows:

"If it is requested that a Member be called to order for words spoken in debate, the Member making such request shall indicate the words excepted, and they shall be taken down in writing by the Secretary and read aloud to the House; but the Member who uttered them shall not be held to answer, nor be subject to the censure of the House therefor, if further debate or other business has intervened."

Now, it is not disputed that after Congressman Osmeña had delivered his speech and before the House adopted, fifteen days later, the resolution (No. 59) creating the respondent Committee and empowering it to investigate and recommend proper action in the case, the House had acted on other matters and debated them. That being the case, the Congressman, even before the resolution was adopted, had ceased to be answerable for the words uttered by him in his privilege speech. By the express wording of the Rules, he was no longer subject to consure or disciplinary action by the House. Hence, the resolution, in so far as it attempts to divest him of the immunity so acquired and subject him to discipline and punishment, when he was previously not so subject, violates the constitutional inhibition against *ex post facto* legislations, and Resolutions Nos. 59 and 175 are legally obnoxious and invalid on that score. The rule is well established that a law which deprives an accused person of any substantial right or immunity possessed by him before its passage is *ex post facto* as to prior offenses (Cor. Jur. Fed. 16-A, section 144, p. 153; Peo. vs. Talkington, 47 Pac, 2d 368; U.S. vs. Carfinkel, 69 F. Supp. 849).

The foregoing also answer the contention that since the immunity was but an effect of section 7 of House Rule XVII, the House could, at any time, remove it by amending those Rules and Resolutions Nos. 59 and 175 effected such an amendment by implication. The right of the house to amend its Rules does not carry with it the right to retroactively divest the petitioner of an immunity he had already acquired. The Bill of Rights is against it.

It is contended that as the liability for his speech attached when the Congressman delivered it, the subsequent action of the House only affected the procedure for dealing with that liability. But whatever liability Congressman Sergio Osmeña, Jr. then incurred was extinguished when the House thereafter considered other business; and this extinction is a substantive right that can not be subsequently torn away to his disadvantage. On an analogous issue this Court, in People vs. Parel, 44 Phil. 437, has ruled:

"In regard to the point that the subject of prescription of penalties and of penal actions pertains to remedial and not substantive law, it is to be observed that in Spanish legal system, *provisions for limitation or prescription of actions are invariably classified as substantive and not as remedial law;* we thus find the provisions for the prescription of criminal actions in the Penal Code and not in the 'Ley de Enjuiciamiento Criminal.' This is in reality a more logical law. *In criminal cases prescription is not, strictly speaking, a matter of procedure; it bars or cuts off the right to punish the crime and, consequently, goes directly to the substance of the action. x x x"* (*Emphasis supplied*)

I see no substantial difference, from the standpoint of the the constitutional prohibition against *ex post facto* laws, that the objectionable measures happen to be House Resolutions and not statutes. In so far as the position of petitioner Osmeña is concernd, the essential point is that he is being subjected to a punishment to which he was formerly not amendable. And while he was only meted out a suspension of privileges, that suspension is as much a penalty as imprisonment or a fine which the house could have inflicted upon him had it been so minded. Such punitive action is violative of the spirit, if not of the letter, of the constitutional provision against *ex post facto* legislation. Nor it is material that the punishment was inflicted in the exercise of disciplinary power. "The *ex post facto* effect of a law," the Federal Supreme Court has ruled, "can not be evaded by giving civil form to that which is essntially criminal" (Burgess vs. Salmon, 97L. Ed. (U.S..) 1104, 1106; Cummings vs. Missouri, 18 L Ed. 276).

The plain purpose of the immunity provided by the House rules is to protect the freedom of action of its members and to relieve them from the fear of disciplinary action taken upon second thought, as a result of political convenience, vindictiveness, or pressures. It is unrealistic to overlook that without the immunity so provided, no member of Congress can remain free from the haunting fear that his most innocuous expressions may at any time afterward place him in jeopardy of punishment whenever a majority, however transient, should feel that the shifting sands of political expediency so demand. A rule designed to assure that members of the House may freely act as their conscience and sense of duty should dictate complements the parliamentary immunity from outside pressure enshrined in our Constitution, and is certainly deserving of liberal interpretation and application.

The various precedents, cited in the majority opinion, as instances of disciplinary action taken notwithstanding intervening business, are not truly applicable. Of the five instances cited by Deschler (in his edition of Jefferson's Manual), the case of Congressman Watson of Georgia involved also *printed* disparaging remarks by the respondent (III Hinds Precedents, sec. 2637), so that the debate immunity rule afforded no defense; that of Congressman Weaver and Sparks was one of censure for actual disorderly conduct (II Hinds, sec. 1657); while the cases of Congressmen Stanbery of Ohio, Alex Long of Ohio, and of Lovell Rousseau of Kentucky (II Hinds, secs. 1248, 1252 ant 1655) were decided under Rule 62 of the U.S. House of Reppresentatives as it stood before the 1880 amendments, and was differently worded. Thus, in the Rousseau case, the ruling of Speaker Colfax was to the following effect (II Hinds Precedents, page 1131):

"This sixty-second rule is divided in the middle by a semicolon and the Chair asks the attentions of the gentleman from Iowa (Mr. Wilson) to the language of that rule, as it settles the whole question:

"62. If a member be called to order for words spoken in debate, the person calling him to order shall repeat the words excepted to" —

That is, the "calling to order" is "excepting" to words spoken in debate—"and they shall be taken down in writing at the clerk's table; and no Member shall be held to answer, or be subject to the censure of the House, for words spoken in debate, if any other Member has spoken, or other business has intervened, after the words spoken, and before exception to them shall have been taken."

Th first part of this rule declares that "calling to order" is "excepting to words spoken in debate." The second part of the rule declares that a Member shall not be held subject to censure for words spoken in debate if other business has intervened after the words have been spoken and before "exception" to them has been taken. Exception to the words of the gentleman from Iowa (Mr. Grinnell) was taken by the gentleman from Kentucky (Mr. Harding), the gentleman from Massachusetts (Mr. Banks), the gentleman from Kentucky (Mr. Rousseau), and also by the Speaker of the House as the records of the Congressional Globe will show. The distinction is obvious between the two parts of

the rule. In the first part it speaks of a Member excepting to language of another and having the words taken down. In the last part of the rule it says he shall not be censured thereafter unless exception to his words were taken; but it omits to add as an essential condition that the words must also have been taken down. The substantial point, required in the latter part of the rule is, that exception to the objectionable words must have been taken."

The difference between the Rules as invoked in these cases and the Rules of our House of Representatives is easily apparent. As rule 62 of the United States House of Representatives stood before 1880, all that was required to preserve the disciplinary power of the House was that *exception should have been taken* to the remarks on the floor before further debate or other business intervened. Under the rules of the Philippine House of Representatives, however, the immunity becomes absolute if other debate or business has taken place before the motion for censure is made whether or not exceptions or point of order have been made to the remarks complained of at the time they were uttered.

While it is clear that the parliamentary immunity established in Article VI, section 15 of our Constitution does not bar the members being questioned and disciplined by Congress itself for remarks made on the floor, that disciplinary power does not, as I have noted, include the right to retroactively amend the rules so as to divest a member of an immunity already gained. And if Courts can shield an ordinary citizen from the effects of *ex post facto* legislation, I see no reason why a member of Congress should be deprived of the same protection. Surely membership in the legislature does not mean forfeiture of the liberties enjoyed by the individual citizen.

"The Constitution empowers each house to determine its rules of proceedings. *It may not by its rules ignore constitutional restraints or violate fundamental rights* and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the House, and it is no impeachment of the rule to say that some other way would be better, more accurate or even more accurate or even more just." (U.S. vs. Ballin,, Joseph & Co., 36 Law Ed., 324-325). "Courts will not interfere with the action of the state senate in reconsidering its vote on a resolution submitting an amendment to the Constitution, *where its action was in compliance with its own rules and there was no constitutional provision to the contrary.*" (Crawford vs. Gilchrist, 64 Fla. 41, 59 Sc. 963). (Emphasis Supplied)

Finally, that this Court possesses no power to direct or compel the Legislature to act in any specified manner, should not deter it from recognizing and declaring the unconstitutionality and nullity of the questioned resolutions and of all action that has been taken in pursuance thereof. Although the respondent committee has been disbanded after the case was filed, the basic issues remain so important as to require adjudication by this Court.

Labrador, J., dissenting:

I fully concur in the above dissent of Mr. Justice J. B. L. Reyes and I venture to add:

Within a constitutional government and in a regime which purports to be one of law, where law is supreme, even the Congress in the exercise of the power conferred upon it to discipline its members, must follow the rules and regulations that had itself promulgated for its guidance and for that of its members. The rule in force at the time Congressman Osmeña delivered the speech declared by the House to constitute a disorderly conduct provides:

> "x x x but the Member who uttered them shall not be held to answer, nor be subject to the censure of the House thereof, if further debate or other business has intervened, (Rules XVII Sec. 7, Rules, House of Representatives.)

Congressman Osmeña delivered the speech in question on June 23, 1960. It was only on July 8, or 15 days *after* June 23, 1960 when the House created the committee that would investigate him. For fully 15 days the House took up other matters. All that was done, while the speech was being delivered, was to have certain portions thereof deleted. I hold that pursuant to its own Rules the House may no longer punish Congressman Osmeña for the speech delivered fifteen days before.

The fact that no action was promptly taken to punish Congressman Osmeña immediately after its delivery, except to have some parts of the speech deleted, shows that the members of the House did not then consider Osmeña's speech a disorderly conduct. The idea to punish Congressman Osmeña, which came 15 days after, was, therefore, an afterthought. It is, therefore, clear that Congressman Osmeña is being made to answer for an act, after the time during which he could be punished therefor had lapsed.

The majority opinion holds that the House can amend its rules any time. We do not dispute this principle, but we held that the House may not do so in utter disregard of the fundamental principle of law that an amendment takes place only after its approval, or, as in this case, to the extent of punishing an offense after the time to punish had elapsed. Since the rule, that a member can be punished only before other proceedings have intervened, was in force at the time Congressman Osmeña delivered his speech, the House may not ignore said rule. It is said in the majority opinion that the rule limiting the period for imposition of a penalty for a speech to the day it was made, is merely one of procedure. With due respect to the opinion of the majority, we do not think that it is merely a rule of procedure; we believe it actually is a limitation of the time in which the House may take punitive action against an offending member; it is a limitation (in reference to time) on the liability to punishment. As Mr. Justice J. B. L. Reyes points out, the rule is substantive, not merely a procedural principle, and may not be ignored when invoked.

If, this Government is a Government of laws and not of men, then the House should observe its own rule and not violate it by punishing a member after the period for indictment and punishment had already passed. Not because the subject of the Philippic is no less than the Chief Magistrate of the nation should the rule of the House be ignored by itself. It is true that our Government is based on the principle of separation of powers between the three branches thereof. I also agree to the corollary proposition that this Court should not interfere with the legislature in the manner it performs its functions; but I also hold that the Court cannot abandon its duty to pronounce what the law is when any of its (the House) members, or any humble citizen, invokes the law.

Congressman Osmeña has invoked the protection of a rule of the House. I believe it is our bounden duty to state what the rule being invoked by him is, to point out the fact that the rule is being violated in meting out punishment for his speech; we should not shirk our responsibility to declare his rights under the rule simply on the broad excuse of separation of powers. Even the legislature may not ignore the rule it has promulgated for the government of the conduct of its members and the fact that a coordinate branch of the Government is involved, should not deter us from performing our duty. We may not possess the power to enforce our opinion if the House chooses to disregard the same. In such case the members thereof stand before the bar of public opinion to answer for their act in ignoring what they themselves have approved as their norm of conduct.

Let it be clearly understood that the writer of this dissent personally believes that vituperous attacks against the Chief Executive, or any official or citizen for that matter, should be condemned. But where the Rules, promulgated by the House itself, fix the period during which punishment may be meted out, said Rules should be enforced regardless of who may be prejudiced thereby. Only in that way may the supremacy of the law be maintained.

√ II

Luis Gutierrez, Petitioner, vs. Telesforo Reyes, Respondent, G. R. No. L-13137, February 28, 1959, Endencia, J.

1. ELECTION LAW; APPRECIATION OF BALLOTS; WRITING NAME OF CANDIDATE SEVERAL TIMES INVALIDATES BALLOT.—A ballot in which the name "Recto" is written eight times on the eight spaces for senators; the name "P. Catañag" written two times on the second and third spaces for councilors; and the name "F. Catapang" written three times on lines 4, 5 and 6 for councilors is a marked ballot.

2. ID.; ID.; WORD "ASION" HELD NOT IRRELEVANT.—The word "Asion" may refer to the nickname of a person whom the voter wanted to vote for and can not be considered an irrelevant expression which may mark the ballot.

3. ID.; ID.; CANDIDATE VOTED FOR SUFFICIENTLY IDENTIFIED.—Where the candidate is Telesforo Reyes and the names written are "Reiyes", "TiRes", "Keiris poro Reis", "Teryis", "T Reus", "T Rivies", "t. Riss", "T Reyes". "T. Reyesa", "te Reiz", "T rijies", "T. Ryss", "te Riz", "te Reyes" and "T Rez", the ballots are valid for said candidate.

4. ID.; ID.; SIGN TO INDICATE DESISTANCE FROM VOTING.—The appearance of "x" marks on the blank spaces of the ballot merely indicates the voter's desistance from voting for the positions covered by said mark.

5. ID.; ID.; WHEN INITIALS CANNOT BE CONSIDERED IDENTIFYING MARKS.—Where the initials appearing at the upper right hand corner of the ballot was placed by the Chairman of the Board of Election Inspectors to indicate that said ballot was accidentally torn when the same was detached from the stub, the initials cannot be considered identifying marks.

6. ID.; ID.; NICKNAME ALONE VALID.—Where the candidate for mayor is Telesforo Reyes and the word "Porong" which is his nickname is written without his surname, and there is no other candidate for the same office with such nickname, the ballot is valid for said candidate.

7. ID.; ID.; BALLOT IN WHICH CANDIDATES ARE VOTED BY INITIALS NOT MARKED.—A ballot wherein some candidates are voted by their initials is not marked.

8. ID.; ID.; WORD "LEMAS" HELD NOT IRRELEVANT.—The word "Lemas" written on the space for senator, special election, is not necessarily an irrelevant expression written for the purpose of identifying the ballot.

9. ID.; ID.; WORDS "TEBAN" AND "TIYAGO" HELD NOT IRRELEVANT EXPRESSIONS.—The words "Teban" and "Tiyago" written on the 5th and 6th spaces for senators are not irrelevant expressions for they may refer to candidates for senators Esteban Abada and Santiago Fonacier.

10. ID.; ID.; *IDEM SONANS*. — The names "L. Argueliz," "Gllo," "Lures"," "loas", "Lolio Gotiferes," "I. Cuincoes, and "Laulis Eriisrz", are not *idem sonans* with the name of candidate Luis Gutierrez. However, the names "L. Gofierez" "L. Got" "Lare", "L. Tutierres." "L Culurriz and "L Golukiris" are *idem sonans* with Luis Gutierrez.

11. ID.; ID.; STRAY VOTE.—Ballots wherein the name "Quizon" was voted for senator are not marked ballots, since the vote for "Quizon" should be considered stray vote.

12. ID.; ID.; ID.—A ballot with the name "Dador Pastor" written on the second space for senators is not marked, since the vote for Dador Pastor is a stray vote, there being no indication in the record that said name has been written to mark the ballot.

13. ID.; ID.; BALLOT WITH CAPITAL LETTERS "A B C D" HELD NOT MARKED.—A ballot with the capital letters "A B C D" is not marked, for said letters sounds like "Abcede", a candidate for senator, and the voter evidently wanted to vote for him.

14. ID.; ID.; NAME WRITTEN DOES NOT SUFFICIENTLY IDENTIFY CANDIDATES VOTED FOR.—The names "Luis Hernandez" and "Menaloz" do not sufficiently identify the candidate Luis Gutierrez. A ballot wherein the name "Teofilo Reyes" is written by a person who writes well is not valid for candidate Telesforo Reyes.

15. ID.; ID.; PARAGRAPH 23 OF SECTION 149 OF REVISED ELECTION CODE CONSTRUED.—Under paragraph 23, Section 149 of the Revised Election Code, a ballot appearing on its face to have been written by two distinct hands is null and void, thus creating a presumption that such ballot has been cast during the voting, and this presumption can only be overcome by the showing that the tampering with the ballot was made after it had been deposited in the ballot box. The common doctrine is that a ballot clearly appearing to be written by two distinct hands on its face is null and void. In the absence of proof that a ballot has been filled by two hands after it has been deposited in the ballot box, the validity of the ballot should be upheld.

16. ID.; ID.; STRAY VOTE; EVIDENCE ALIUNDE.—In the absence of proof *aliunde* that the names of persons who are not candidates written on the space for senators were used to identify the ballots, the ballots are valid since the votes for persons who are not candidates for the office should be considered stray votes.

17. ID.; ID.; WORDS "PANALO ITO" AND "PAHAM" HELD IRRELEVANT.—The Tagalog-expressions "panalo ito" which means "this wins", and "paham" which means "wise" are irrelevant expressions intended to identify the ballot and invalidates it as mark.

18. ID.; ID.; CANCELLATION OF NAME VOTED FOR. — Where there is no clear indication that the voter meant to cancel entirely the name of a candidate written on the proper space, the ballot should be considered valid in favor of said candidate.

19. ID.; ID.; EXCEPTION TO THE RULE THAT A NAME NOT WRITTEN ON PROPER SPACE CAN NOT BE COUNTED.—In a ballot the names written are "Recto" on the first line for senator; "T. Reyes" below the printed line for Mayor and "P. Castillo" below the printed line for Vice-Mayor. "T. Reyes" and "P. Castillo" appear written one immediately below the other. *Held*: Considering that Telesoforo Reyes and P. Castillo were the only candidates for Mayor and Vice-Mayor of their political group, and that "T. Reyes" is written just below the line for Mayor and "P. Castillo" is written below the name "T. Reyes" and that the ballot was left blank except for the said three names written, the voter intended to vote for Reyes and Castillo for municipal offics. Consequently, the ballot is valid for Telesforo Reyes, a candidate for Mayor.

20. ID.; ID.; EVIDENCE TO SHOW INTENT TO MARK BALLOT MUST BE SHOWN.—In the absence of evidence that the name "Dionisio Tapero" written on the space for senator, special election, was written to mark the ballot, the ballot is valid.

21. ID.; CONCLUSIVENESS OF LIST OF VOTERS AS TO PERSONS ENTITLED TO VOTE.—107 voters appear registered in the permanent list of voters for the year 1955; their names were not the subject of exclusion proceedings in the Court of First Instance; and their right to vote was not contested during the election .*Held*: In the absence of refutation of the fact that these voters appear in the permanent list of voters for 1955, the ballots cast by the 107 voters are valid.

DECISION

Petitioner Luis Gutierrez and respondent Telesforo Reyes were the only candidates to the office of municipal mayor of Alitagtag, province of Batangas, in the elections of 1955. After the election and pursuant to Sec. 168 of the Revised Election Code, the municipal board of canvassers proclaimed the petitioner elected to the office with a majority of 10 votes, it having found that the two candidates obtained the following number of votes:

Luis Gutierrez .... 1954 votes
Telesforo Reyes .... 1944 votes

Whereupon respondent filed with the Court of First Instance of Batangas a protest alleging therein fraud, anomalies and violations of the election law. After hearing, the case was decided in favor of petitioner who was declared to have received 1939 as against 1926 votes cast for the respondent, thus resulting a majority of 13 votes in his favor. Not satisfied with this decision, respondent appealed to the Court of Appeals where he was adjudged to have been elected with a majority of 17 votes, on the ground that he received 1933 votes while the petitioner received 1916 votes only. Thereupon petitioner brought this case to us on certiorari, alleging that the Court of Appeals committed the following errors:

I

"The Court of Appeals erred in not passing upon each and everyone of the 43 ballots involved in the first and second counter-assignments of errors of the herein petitioner, viz., Exhibits A-5, C-1, D-8, E-6, F-5, F-7, G-7, H-2, H-6, H-7, H-9, I-56, J-49, J-50, J-55, J-61, K-6, K-10, K-14, K-16, K-33, K-37, K-38, K-39, K-49, L-12, L-13, L-14, 1-Q, 3-Q, 3-UU, 3-HHH, 4-CCC, 5-E, 5-H, 6-T, 11-A, 12-E, 12-O, 12-Q, 12-R, 12-S and 12-V

II

"The Court of Appeals likewise erred in declaring the nullity of 18 ballots wherein the herein petitioner appears voted for as municipal mayor on the mere finding that each and everyone of them was filled up by two hands, viz., Exhibits 1-O, 1-EE, 3-L, 3-X, 3-QQ, 3-HHH, 3-OOO, 1-Y, 2-L, 6-EE, 10-M, 11-T, 1-S, 4-I, 4-NN, 5, 5-J and 8-A.

III

"The Court of Appeals again erred in failing to declare the nullity of the following 125 ballots: A-12, A-13, B-1, B-2, D-1, D-9, D-11, D-12, D-14, D-15, F-2, F-3, F-4, G, G-1, G-2, G-4, G-12, G-18, G-19, G-20, G-21, G-22, G-23, G-24, G-25, G-26, G-27, G-28, G-29, G-30, G-31, G-32, G-33, G-34, G-35, G-36, H-1, H-3, H-4, H-5, H-20, H-21, H-23, H-24, H-25, I-6, I-7, I-15, I-33, I-48, I-57, I-58, I-59, I-61, I-62, I-63, I-64, I-65, I-66, I-67, I-68, I-69, I-70, I-71, I-72, I-73, I-74, J-6, J-14, J-26, J-36, J-38, J-40, J-45, J-53, J-62, J-63, J-64, J-65, J-66, J-67, J-69, J-70, J-71, J-72, J-73, J-74, J-75, K-3, K-5, K-7, K-30, K-31, K-32, K-40, K-41, K-42, K-43, K-44, K-45, K-46, K-47, K-48, K-50, K-51, K-52, L-3, L-8, L-9, L-11, L-15, L-22, L-23, L-24, L-25, L-26, L-27, L-28, L-29, L-30, L-31, L-32, L-33, and L-34.

IV

"The Court of Appeals also erred in rejecting the votes for the herein petitioner in Exhibits I-BB, 2-A, 2-W, 4-LL, 5-C, 6-L, 6-PP and 10-T.

V

"Th Court of Appeals finally erred in not rejecting the votes for the herein respondent in Exhibits A-10, D-5, D-6, J-48, K-15 and K-28."

Respondent, in turn, after refuting the above-quoted assignment of errors, made the following counter-assignment of errors:

I

"The Honorable Court of Appeals erred in counting and recording exhibits 3-N and 6-I as good and valid votes for the petitioner.

II

"The Honorable Court of Appeals erred in not counting and recording Exhibits A-1, K-22, K-23 and I-19 as good and valid votes for the respondent.

III

"The Honorable Court of Appeals erred in ruling that Exhibit C-2 wherein the name "Teofilo Reyes" is written on the space for mayor as a stray vote for the respondent, and in not counting and recording the same as a valid vote for him.

IV

"The Court of Appeals erred in ruling that Exhibits K-29 and L-10 are marked ballots and in not counting and recording them as valid votes for the respondent.

V

"The Honorable Court of Appeals erred in ruling that Exhibits H-8 and J-44 are marked ballots, and in not counting and recording them as good and valid votes for the respondent.

VI

"The Honorable Court of Appeals erred in counting and and recording Exhibit K-35 for the respondent.

VII

"The Honorable Court of Appeals erred in not counting and recording Exhibit K-35 for the respondent.

VIII

"The Court of Appeals erred in not counting and recording Exhibit L-16 as a good and valid vote for the respondent.

IX

"The Court of Appeals erred in ruling that Exhibits 1-X, 6-A and 6-1 are good and valid votes for the petitioner.

X

"The Honorable Court of Appeals erred in counting and recording as a valid vote for the petitioner Exhibit 4-FF wherein the same 'Dionisio Tapero' was written on the space for senator, special elections.

XI

"The Honorable Court of Appeals erred in counting and recording as valid votes for the petitioner the following one hundred seven (107) ballots notwithstanding the fact that they were cast by persons who were never registered electors; 2-W, 2-Y, 2-Z, 2-AA, 2-BB, 2-CC, 2-DD, 2-EE, 2-FF, 2-GG, 2-HH, 2-II, 2-JJ, 2-KK, 2-LL, 2-MM, 2-NN, 2-OO, 2-PP, 2-QQ, 3-GG, 3-HH, 3-JJ, 3-KK, 3-LL, 3-MM, 3-NN, 3-OO, 3-PP, 3-QQ, 3-RR, 3-SS, 3-UU, 3-VV, 3-WW, 3-XX, 3-YY, 3-ZZ, 3-AAA, 3-BBB, 3-CCC, 3-DDD, 3-EEE, 3-FFF, 3-GGG, 3-HHH, 3-III, 3-JJJ, 3-KKK, 3-LLL, 3-MMM, 3-NNN, 3-OOO, 3-PPP, 3-QQQ, 3-RRR, 3-SSS, 3-TTT, 3-UUU, 3-VVV, 3-WW, 4-VV, 4-WW, 4-XX, 4-YY, 4-ZZ, 4-AAA, 4-BBB, 4-CCC, 4-DDD, 4-EEE, 4-FFF, 4-GGG, 4-HHH, 4-III, 4-JJJ, 4-KKK, 4-LLL, 4-MMM, 4-NNN, 4-OOO, 4-PPP, 4-XXX, 4-YYY, 4-ZZZ, 4-AAAA, 4-BBBB, 4-CCCC, 4-DDDD, 4-EEEE, 4-KKKK, 4-LLLL, 4-MMMM, 4-NNNN, 4-OOOO."

For the sake of clarity, we will discuss one by one all the errors asisgned by both parties.

Assignment of Error No. 1

Petitioner claims, under this error, that the Court of Appeals failed to pass upon each and everyone of the 43 ballots herein enumerated; as correctly pointed out by the respondent, said ballots were considered and passed upon by the Appellate Court, as could be seen in its decision attached to petitioner's brief. Petitioner submits however, that the Court of Appeals counted in favor of the respondent ballots which should have been rejected and rejected those that should have been counted in his (petitioner's) favor, and discussed them in his brief. We will decide these ballots individually.

Exhibit A-5. Counted in favor of respondent and assailed by petitioner as marked with Roman number III appearing in line 4 of the spaces for councilors. Respondents contends that the alleged mark is not really so but the initial "M" of the name of the candidate Marcelino Hernandez. We have carefully examined this ballot and we agree with respondent's theory; consequently, this ballot was rightly counted in favor of respondent.

Exhibit C-1. Counted in favor of respondent and assailed b petitioner as marked ballot, the mark being the word "Recto" written eight times on the eight spaces for senators; the name "P. Catañag" written two times on the second and third spaces for councilors; and the name "F. Catapang" written three times on the 4th, 5th and 6th spaces for councilors. At first impression, the repetition in the writing of the names of Recto, Catañag and Catapang in the ballot in question may constitute either a marking of the ballot or merely an enthusiasm of the voter for these three candidates. The majority opinion is that this ballot is marked and should not be counted in favor of petitioner. The writer of this opinion, however, believes that the repetitious writing of the names of Recto, Catañag and Catapang is nothing but an indication of the enthusiasm of the voter for them. The ballot is rejected.

Exhibit D-8, assailed as marked ballot in view of the word "Asion" written on the third line for councilors. Upon careful examination of this ballot, we find that the word "Asion" may respond, as contended by respondent, to the nickname of a person whom the voter wanted to vote for, as it is common knowledge that "Asion" may be a nickname or petname of Atanasio, Anastasio, Engracio, or Pancracio, and does not necessarily mean an irrelevant expression which may mark the ballot.

Exhibits E-6, *F*-5, *F*-7, *G*-7, *H*-7, *I*-56, *J*-49, *J*-55, *J*-61, *K*-6, *K*-33, *K*-37, *K*-49, *L*-12, *L*-13 and *L*-14. Petitioner contends that in each and everyone of these ballots respondent was not the candidate voted for, or at least the person voted for is not sufficiently identified. This contention is not well taken, for upon careful examination of these ballots, the names "Reyes", "Ti ris", "Keiris poro Ries", "Teryis", "T. Reues", "T. Rivies", "t. Riss", "T. Reyes", "T. Reus", "te Reiz", "T rejies", "T. Ryss", "T Reyesa," "te Riz" "te Rejes" and "T. Rez" appear to be voted for in the space for mayor. Undoubtedly these are good ballots for the respondent.

Exhibit H-2, claimed to be marked with the word "Magalang" written on the 8th line for senators. Respondent claims that such word is simply the mispelled surname of Enrique Magalona, candidate for senator. We agree with this theory, and therefore this ballot has been properly counted for respondent.

Exhibit H-6, assailed as marked because it was written in ink. Evidently this objection is not well taken, having in view paragraph 10 of Sec. 149 of the Revised Election Code which provides that "Any ballot written with crayola, lead pencil or with ink, wholly or in part, is valid."

Exhibit H-9, objected to as marked because of a big "x" placed and covering the blank spaces Nos. 3, 4, 5, 6, 7 and 8 for senators; another big "X" placed and covering the blank spaces Nos. 2, 3, 4, 5 and 6 for councilors; and a small "x" placed on the blank space for senator, special election, at the foot of the ballot. The objection is not well taken, for evidently, the said "X's" merely mean that the voter desisted from voting for the positions covered by those "X's" as so pointed out by respondent.

Exhibit J-50, claimed by the petitioner as marked because of the vote for Santiago Makabunot on the sixth line for councilors. It is contended that the name Santiago Makabunot is purely imaginary or indecent. We find no reason for this contention. This ballot is valid, for the vote for a person to the office to which he is not a candidate is considered a stray vote and does not invaliate the ballot.

Exhibit K-10, assailed as marked ballot because of the initials appearing at the upper right-hand corner of the ballot. The record shows, however, that said initials were identified by Hermogenes, Ilaagn, Chairman of the Board of Election Inspectors of Precinct 10 as his, who testified that he placed them to indicate that said ballot was accidenally torn when the same was detached from the stub. The alleged initials, therefore, cannot be considered as an identifying mark.

Exhibit K-14, claimed to be marked because of the word "Emong" written on the 6th line for councilors. It is claimed that there was no candidate for councilor with that nickname, and therefore, this word is an identifying mark. It is apparent that "Emong" may be a nickname of Guillermo or Geronimo; consequently the vote for "Emong" should be considered as stray vote and not a mark to identify the ballot.

Exhibit K-16, also contested as marked because of the words "Teninteng Anong" written on the sixth line for councilors. This ballot is in the same category as Exhibit K-14 and therefore should be counted for respondent.

Exhibits K-38 *and K*-39 are objected to on the ground that the word "Porong" in the space for mayor in Exhibit K-38 and the word "Purong" in the corresponding space in Exhibit K-39 are not accompanied by respondent's surname and therefore these ballots cannot counted for him. It is not disputed that "Porong" or "Purong" is the nickname of respondent Telesforo Reyes, and there being no other candidate for mayor with such a nickname we hold that the person voted in these two ballots is the respondent. Petitioner contends, however, that these ballots should be rejected in accordance with the ruling of the Electoral Tribunal of the House of Representatives in the case of Sosa vs. Lucero where two ballots bearing only the nickname "Maneng" were rejected on the ground that they do not sufficiently identify the candidate voted for. We are of the opinion that the Sosa case is not applicable to the present because it is not disputed here that "Porong" or "Purong" is the nickname of the respondent Telesforo Reyes, and no evidence was adduced to show that there is another candidate for mayor with that nickname.

Exhibits L-12, *L*-13 and *L*-14 are enumerated as among those not passed upon by the Court of Appeals, but petitioner failed to specify his objections thereto, and upon examination of these ballots we find that the respondent is the one voted for mayor.

Petitioner assails the rejection by the Court of Appeals of the following ballots, and claims that all of them should be counted in his favor:

Exhibit I-Q, rejected by the Court of Appeals as marked ballot for the reason that the voter only wrote the initials of the names of the candidates, with the exception of the complete names of "C Recto" for senator, and "Luis Gutierrez" and A. Cassalla" for mayor and vice-mayor, respectively. There is no evidence that said initials are not those of the names and surnames of candidates whom the elector intended to vote for. We have examined these initials, written in printed form and in capitals, and we find that they may refer to the initial letters of the names and surnames of the candidates for senator, such as "F.R." for Francisco Rodrigo, "Q.P." for Quintin Paredes, "P.R." or "D.R." for Decoroso Rosales, "P.S." for Pedro Sabido, "P.W." for Pacita Warns, and D.A. for Domocao Alonto. This ballot therefore, cannot be considered as marked and should be counted in favor of herein petitioner.

Exhibits 3-*QQ and* 3-*HHH*, rejected by the Court of Appeals on the ground that they were written by two hands, but claimed by petitioner as written by one hand. These two ballots were the subject matter of expert testimony who testified that they were written by two hands. No reason having been advanced for disregarding the expert testimony, we find no ground for dsturbing the opinion of the Court of Appeals.

Exhibit 3-UU, rejected as marked because of the word "Lemas" written on the space for senator, special election. This is in the same category as Exhibit D-8 which we declared valid in favor of respondent; consequently, this Exhibit 3-UUU should be counted in favor of petitioner, for the word "Lemas" is not ne-

cessarily an irrelevant expression written for the purpose of identifying the ballot and it may refer to the surname "Lim," candidate for senator Roseller Lim as claimed by petitioner.

Exhibit 4-CCC, rejected as marked because there were voted "Teban" and Tiyago" on the 5th and 6th spaces for senators, respectively. Petitioner contends that said names cannot be considered as distinguishing marks because they may be intended for Esteban Abada and Santiago Fonacier, respectively, who were candidates for senator. There is merit in this contention; hence, this ballot should be counted in favor of petitioner, having in view the constant doctrine of our courts of justice that no ballot should be declared null and void as marked unless there are clear and sufficient reasons to justify such conclusion. Besides the words "Teban" and "Tiyago' are not irrelevant expressions that may render the ballots invalid as marked.

Exhibits 5-*E* and 5-*H*, rejected as marked because in each of them the name "Quizon" was voted for senator. The rejection should be reconsidered, as the vote for Quizon should be considered as stray vote (paragraph 13, Sec. 149, Revised Election Code).

Exhibit 6-*T*, rejected by the Court of Appeals on the ground that the one voted therein for mayor is not the petitioner, but claimed by him maintaining that under the doctrine of *idem sonans*, this ballot should be counted in his favor. The name voted for in this ballot is "L. Argolliz" who is clearly not the petitioner; hence this was properly rejected.

Exhibit 11-A, rejected by the Court of Appeals and claimed by petitioner as valid vote for him. The person voted for mayor in this ballot is "Gllo" which has no semblance whatsoever with Luis Gutierrez; hence, the rejection of this ballot is correct.

Exhibit 12-*E*, rejected by the Court of Appeals for being marked with the name "Dador Pastor" written on the second space for senators. This ballot, like Exhibits 5-E and 5-H should be counted in favor of petitioner, for the vote for Dador Pastor is clearly a stray vote, there being no indication in the record that "Dador Pastor" has been written to mark the ballot.

Exhibit 12-*O*, rejected by the Court of Appeals as the one voted for mayor is "Lures" or "Lueres" and not the petitioner. Upon the face of the ballot, the rejection was justified.

Exhibit 12-*Q*, rejected by the Court of Appeals as marked with the capital letters "A B C D," claimed by petitioner as good ballot on the ground that the "A B C D" responds to the surname "Abcede" of the candidate for senator Alfredo Abcede. The contention is well taken, for "A B C D" sounds "Abcede". This ballot was prepared by a voter who is not well versed in handwriting and evidently he wanted to vote for the candidate Alfredo Abcede.

Exhibits 12-*R*, 12-*S and* 12-*V* are mentioned under this assignment of error, but not discussed in petitioner's brief. Upon examination of these ballots, we find that in Exhibit 12-R the person voted for mayor is Luis Hernandez, clearly written; in Exhibit 12-S the word written on the space for mayor is 'Menaloz;" and in Exhibit 12-V the space for mayor is left in blank. Evidently, these ballots cannot be validly claimed by the petitioner as the names "Luis Hernandez" and "Menaloz" cannot certainly refer to him.

ASSIGNMENT OF ERROR II

The 18 ballots enumerated under this second assignment of error quoted hereinbefore have been rejected by the Court of Appeals on the ground that they were written by two hands. They are now claimed by the petitioner as good ballots for him. We have examined carefully each and every one of these ballots and we find that, which the exception of Exhibits 3-L 11-T, 1-S and 8-A which in our opinion are written by one hand, all the rest were really prepared by two hands and therefore illegal and void. Petitioner, however, contends that there being no additional evidence to the effect that the filling up of these ballots *by two hands has been made during the voting and before they were deposited in the ballot boxes*, said ballots should not be declared null and void for the mere fact that they appear to have been prepared by two hands. Really paragraph 28 of Sec. 149 of the Revised Election Code provides as follows:

> "Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void."

It is clear under this provision that a ballot appearing on its face to have been written by two distinct hands is null and void, thus creating a presumption that such ballot has been cast, as is, during the voting, and this presumption can only be overcome by the showing that the tampering with the ballot was made after it had been deposited in the ballot box. Moreover, in this jurisdiction as well as in the Electoral Tribunals of the Senate and House of Representatives, the common doctrine is to the effect that ballots clearly appearing to be written by two distinct hands on its face are null and void. In this particular case, there is absolutely no proof that the ballots in question have been filled by two hands AFTER they had been deposited in the ballot box; hence, the ruling of the Court of Appeals declaring these ballots as null and void for having been prepared by two distinct hands should be maintained. As to ballots Exhibits 3-L, 11-T, 1-S; and 8-A which we find to have been written by only one person, they should be adjudicated to the petitioner.

ASSIGNMENT OF ERROR III

The 125 ballots disputed under this assignment of error have been already enumerated hereinabove. Petitioner claims that these ballots are null and void for having been filled by two different hands and should not have been counted in favor of the respondent. We have painstakingly scrutinized each and every one of them and find petitioner's contention to be not well taken. Although we observe that in some ballots the voter used printed capitals mixed with ordinary handwriting and in others the voter wrote in capitals only, said ballots do not appear to have been prepared by two distinct hands.

The respondent, in refuting this error, made mention of 121 ballots counted in favor of petitioner despite the fact that they were written by two different hands, and asked this Tribunal to reject said ballots should we find that the respondent's 125 ballots assailed under this assignment are invalid. In other words, respondent claims that we should apply the same yardstick in the appreciation of ballots under this category. We have also examined the 121 ballots assailed by respondent as written by two distinct hands but counted in favor of petitioner, and we are satisfied that they were written by only one hand. We therefore declare both sets of ballots as valid votes, and should be accordingly and respectively counted in favor of the claimant.

ASSIGNMENT OF ERROR IV

The eight ballots under this assignment of error were rejected by the Court of Appeals on the ground that the person voted therein for mayor is not the petitioner. It is claimed, however, that under the theory of *idem sonans* they should be counted in his favor. We have carefully examined these eight ballots and we find that, with the exception of Exhibit 6-PP, no reason exists for disturbing the finding of the Court of Appeals in rejecting them, for the name written on the space for mayor is either undecipherable or totally foreign to the sound in Luis Gutierrez, such as the "loas", in Exhibit 1-BB, "Lolio Gotiferes" in Exhibit 2-A, "L. Cuncoes" in Exhibit 2-W, "Laulis Eriisrz" in Exhibit 4-LL, "Zeus" in Exhibit 5-C, "Lors Coliers" in Exhibit 6-L and "L. (illegible)" in Exhibit 10-T. In Exhibit 6-PP, however, "L.Golierez" or "L. Gulierez" is written on the space for mayor, and this may be considered as vote for Luis Gutierrez, it appearing that this ballot was prepared by an untrained hand and the voter simply forgot to cross the "1" to make it "t" and to put a dot over the "i".

ASSIGNMENT OF ERROR V

The six ballots involved in this error were admitted by the Courts of Appeals and adjudicated in favor of the respondent. Petitioner assails them as marked ballots which should have been deducted from respondent's votes. It is claimed that Exhibit A-10 is marked by the figure "7" written on the fourth space for councilors, leaving spaces 5 and 6 in blank; that Exhibit D-5 is marked by the name "Oliva Bolar" written on the eight space for senators but leaving spaces 4, 5, 6 and 7 in blank although spaces 1, 2 and 3 have been filled; the same is true with Exhibit D-6, only that the "O Bunggo" is written on the eighth space for senators; that Exhibit J-48 is marked by the name "Santiago Macabonot" written on the eighth space for senators leaving 6 and 7 in blank; Exhibit K-15 is marked because "Pio Ilagan," was voted for senator who was not a candidate for that office; and that Exhibit K-28 is likewise marked because "Mausrisio Jasa" was voted for senator without being a candidate. On the face of the ballots, we find nothing to disturb the finding of the Court of Appeals, as these are not marked ballots as contemplated by law.

COUNTER-ASSIGNMENT OF ERROR I

Under this counter-assignment of error, respondent claims that Exhibits 3-N and 8-1 which were counted and recorded as good votes for petitioner, should have been rejected on the ground that "L. Gat" written on the space for mayor in Exhibit 3-N and the "L Gat" or "L Got" written in Exhibit 8-1 do not sufficiently identify the petitioner as the person voted for mayor. Under the well-respected doctrine of *idem sonans* we find no error committed by the Court of Appeals, for the "L" stands for Luis and "Got" or "Gat" represents the incomplete surname of Gutierrez. Besides, there was no other candidate for mayor whose initials are L. G. other than petitioner Luis Gutierrez.

COUNTER-ASSIGNMENT OF ERROR II

Under this counter-assignment, respondent claims that Exhibits A-1, K-22, K-23, I-19 L-19 should not have been rejected by the Court of Appeals on the ground that said respondent was the one voted for mayor therein, for although these ballots were filled in an inverted position, the respondent appears voted therein. We have examined these ballots and find no reason how the contention of respondent could be sustained. Not even under the adjustment theory could these ballots be declared for respondent. These ballots, therefore, were properly rejected.

COUNTER-ASSIGNMENT OF ERROR III

Exhibit C-2. This ballot was rejected on the ground that it is "Teofilo Reyes" and not Telesforo Reyes who appears voted therein for mayor. On its face, this ballot appears to have been prepared by one who writes well, and it is to be presumed that he could not have mistaken Teofilo Reyes for Telesforo Reyes; therefore, this ballot cannot be counted as good vote for respondent.

COUNTER-ASSIGNMENT OF ERROR IV

Exhibits K-29 and L-10. These were rejected by the Court of Appeals as marked ballots, it appearing that in Exhibit K-29 "Vidal Araño" and Nemecio Araño, Jr." appear voted for senators, and in Exhibit L-10 "Satur Abra", "Maurie Mac," "A. Calingasan," "A. Marasigan," and L. Macalinsag" appear voted for senators. Respondent claims them as valid votes in his favor on the ground that there is no proof aliunde that the aforementioned vote for senators was a means of identification of said ballots. This contention is well taken, since the votes for persons who are not candidates for the office should be considered as stray votes. These two ballots should be counted in favor of respondent.

COUNTER-ASSIGNMENT OF ERROR V

Exhibits H-8 and J-44, rejected by the Court of Appeals as marked ballots and now claimed by respondent as valid votes in his favor. In Exhibit H-8, the phrase "panalo ito" appears written immediately after "T. Reyes" and in Exhibit J-44 the word "paham" appears written on the space for senator, special election. We find that "panalo ito" and "paham" are irrelevant Tagalog expressions intended to identify the ballot. "Panalo ito" means "this wins" and "paham" means "wise", and both expressions do not respond to the name of any person. These two ballots have therefore been properly rejected.

COUNTER-ASSIGNMENT OF ERROR VI

Only one ballot, Exhibit 1-54, is involved in this counter-assignment of error, which was rejected by the Court of Appeals because the "Reyes" voted for mayor appears to have been cancelled or erased. We have examined this ballot carefully and we find that there is really a line crossing the upper part of "ey" but did not cross "R—es," and there is no clear indication that the voter meant to cancel entirely the vote for Reyes. Having in view our consistent ruling that the courts should be slow in annulling a ballot and that the same should be read liberally to give way to the will of the voter, it is our considered opinion that this ballot should be appreciated in favor of the respondent.

COUNTER-ASSIGNMENT OF ERROR VII

Exhibit K-35 is the only ballot involved in this counter-assignment wherein the word "T Beres" or "T Berer" appears written on the space for mayor, the rest being left in blank. Respondent claims this ballot as vote for him, but we find that this word written on the ballot appears meaningless and entirely foreign to the name Telesforo Reyes. We find no reason for disturbing the finding of the Court of Appeals.

COUNTER-ASSIGNMENT OF ERROR VIII

Exhibit L-16 is the only ballot involved in this counter-assignment, which the Court of Appeals rejected on the ground that the "T. Reyes" voted for is written on the space for vice-mayor. Respondent claims this ballot to be valid in his favor because, upon proper adjustment, the "T. Reyes" will fall on the space for mayor. Examining the ballot, we see that the only names written on it are "Recto" on the first line for senators, "T. Reyes" below the printed line for mayor and "P. Castillo" below the printed line for vice-mayor. "T. Reyes" and "P. Castillo" appear written one immediately below the other.

Pursuant to the provisions of Sec. 135 of the Revised Election Code, the name of a candidate should be written on the proper space. In this particular case, really, the names of "T. Reyes" and "P. Castillo" are not written on the proper spaces for mayor and vice-mayor; but, considering that Telesforo Reyes and P. Castillo were the only candidates for mayor and vice-mayor of their political group, and that "T. Reyes" is written just below the line for mayor and "P. Castillo" is written below the name "T. Reyes," and that the ballot was left in blank except for the three written names of Recto, Reyes and Castillo, it is our considered opinion that the voter intended to vote for Reyes and Castillo for municipal offices and in fact wrote their names one immediately below the other in such a way that, if these two names were to be slid an inch farther up, they will not only coincide with but will fit snugly in the spaces alloted for mayor and vice-mayor, respectively. This vote should therefore be counted in favor of respondent.

COUNTER-ASSIGNMENT OF ERROR IX

Exhibits 1-X, 6-A and 6-I were admitted by the Court of Appeals as valid votes for petitioner, but respondent assails them on the ground that the petitioner is not the one voted for therein. Upon examination of these ballots, we find that "L. Tutirres" appears written on the space for mayor in Exhibit 1-X; "L Culurres" appears written in Exhibit 6-A; and "L. Galukiris" appears written in Exhibit 6-I. These names really sound "Gutierrez" and the Court of Appeals correctly admitted them under the theory of idem sonans.

COUNTER-ASSIGNMENT OF ERROR X

Under this error, ballot *Exhibit 4-F* and not *4-FF* is disputed. It was counted as good ballot for petitioner by the Court of

Appeals but assailed as marked because of the name "Dionisio Tapero" written on the space for senator, special election. This ballot is valid for lack of showing that the name "Dionisio Tapero" was written to mark the ballot; evidently this is a stray vote.

COUNTER-ASSIGNMENT OF ERROR XI

Under this counter-assignment, respondent claims that the 107 ballots counted by the Court of Appeals as valid votes for petitioner should be disregarded as the same were cast by unregistered voters. This error was raised before the Court of Appeals and decided against respondent on the ground that said voters admittedly appear in the voters' list of the precincts concerned, and that as long as they are not stricken off, the list stands as conclusive proof that they were duly registered voters. In his brief, petitioner admits that the names of these voters are really registered in the permanent list of voters for the year 1955 in the municipality of Alitagtag; that their names were not the subject of exclusion proceedings in the Court of First Instance, and that their right to vote was not contested during the election. In the absence of refutation of the fact that these voters appear in the permanent list of voters for 1955, we find no reason for disturbing the finding of the Court of Appeals that these 107 votes were validly cast.

In conclusion, we hold that the 12 ballots Exhibits 1-Q, 3-UU, 4-CCC, 5-E, 5-H, 12-E, 12-Q, 3-L, 11-T, 1-S, 8-A and 6-PP individually discussed above should be added to the 1916 votes adjudicated by the Court of Appeals to the petitioner, thus increasing the number of votes cast in his favor to 1928. On the other hand, from the 1933 votes adjudicated to the respondent, one vote (Exhibit C-1) should be deducted therefrom, leaving a total of 1932 votes. To this, however, four votes (Exhibits K-29, L-10, I-54 and L-16) should be added, thus making a total of 1936 votes cast in his favor.

WHEREFORE, with the modification of the decision appealed from along the lines above indicated, the same is hereby affirmed, and respondent Telesforo Reyes declared elected to the office of municipal mayor of Alitagtag, province of Batangas, with a majority of eight votes. With costs against petitioner.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes A, Bautista Angelo, Labrador, and Concepcion, JJ., concurred.

III

Cayetano Dangue, Petitioner, vs. Franklin Baker Company of the Philippines and Workmen's Compensation Commission, Respondents, G.R. No. L-15838, April 9, 1960, Barrera, J.

1. WORKMEN'S COMPENSATION LAW; INJURY RECEIVED BY EMPLOYEE OUTSIDE OF HIS EMPLOYMENT BUT AGGRAVATED IN THE COURSE OF EMPLOYMENT IS COMPENSABLE. — In the case at bar, petitioner's right eye was injured while he was engaged in the performance of work outside of his employment, but said injury became worse or was aggravated by the accident which he met, while performing work in the course of his employment in respondent company and, therefore, he is entitled to compensation.
2. ID.; EFFECT OF FAILURE OF EMPLOYER TO CONTROVERT EMPLOYEE'S CLAIM FOR COMPENSATION. — The rule is that when the employer does not controvert the claim of the employee for compensation, he is also deemed to have waived his right to interpose any defense, and he could not prove anything in relation thereto.

DECISION

This is a petition for review on certiorari of the decision dated March 12, 1959 of respondent Workmen's Compensation Commission, and its resolution, *en banc*, of June 23, 1959.

In the morning of July 17, 1954, while petitioner Cayetano Dangue, an employee of respondent Franklin Baker Company of the Philippines, was cleaning his *kaingin*, his right eye was hit by the leaves of a shrub known as "payang-payang". Since his right eye was becoming reddish in color, he consulted respondent company's physician on July 19, 1954. Apparently finding nothing serious, he was allowed to work. On the following day, July 20, 1954, while petitioner was in the course of his work as sheller (shelling coconuts), his right eye was struck by flying speck of coconut shell. As a result, there developed an unbearable pain and blurring of vision. On July 21, 1954, upon the advice of respondent company's physician, petitioner was given leave of absence, which was extended from time to time, until November 10, 1954, when he resumed work. During this time, he was thrice operated on his injured eye and sustained a 16.4% loss of vision, thus causing his temporary total disability and permanent partial disability. For the entire period of his said leave of absence, from July 21, to November 10, 1954, petitioner was not paid any compensation by respondent company.

On September 6, 1954, petitioner filed with the Department of Labor a complaint against respondent company praying, *inter alia*, for payment of compensation in accordance with the Workmen's Compensation Act.[1]

On June 10, 1957, after due hearing, the Hearing Officer of respondent Commission at San Pablo City rendered a decision (Annex A) ordering respondent company to pay petitioner the amount of ₱460.77, as compensation pursuant to Sections 14 and 17 of the aforecited Act.

Onn June 21, 1957, respondent company filed with respondent commission a petition for review of said decision of the Hearing Officer. On March 12, 1959, respondent Commission rendered a decision dismissing petitioner's claim for compensation and absolving respondent company from liability. From this decision, petitioner filed a motion for reconsideration, which motion, was denied by respondent Commission in its resolution *en banc* of June 23, 1959 (Annex C).[2] Hence this petition for review.

Petitioner claims that respondent Commission erred in dismissing his claim for compensation.

We agree with petitioner. It is not disputed that petitioner, after consulting the company physician about his eye, was allowed to report for work. This fact indicates that the first injury, if at all, received on July 17, 1954 was not serious. If it were so, respondent company would have undoubtedly, and by all means, advised or even prevented him from reporting for work, and petitioner himself would not have been able to go about his tasks, considering the extreme sensitiveness of the human eye. It appears, however, that after he met the second accident while working for the company as a sheller, petitioner was, on the following day, or on July 21, 1954, advised to go on leave, which indicates that this second accident was serious, as in fact it was, as he had to be operated on thereafter and his leave continued until November 10, 1954. True it is, that petitioner's right eye was injured while engaged in the performance of work outside of his employment, but said injury become worse or was aggravated by the accident which he met, while performing work in the course of his employment in respondent company. Consequently, he is entitled to compensation.

> "Recovery will not be prevented because the consequences of the injury received in the accident were aggravated by the employee's physical condition at the time the injury was received." (71 C.J. 606.)

> "But even assuming that appellant's left eye was already defective when he entered appellee's employ, nevertheless it is clear that the defect was somehow aggravated or accelerated by his employment and ultimately necessitated an operation by reason of the accident in question. Appellee is not

[1] Act No. 3428, as amended.

[2] With Associate Commissioner Nieves Baens del Rosairo dissenting in a separate opinion.

therefore relieved of responsibility under the Workmen's Compensation Law, for acceleration of a previously existing disease in an injury under the Workmen's Compensation Laws (Brightman v. Aetna Life Insurance Company, 220 Miss. 17, 107 E.E. 527), and it is sufficient that the injury and a preexisting disease combined to produce disability in order to make the injury compensable." (71 C.J., 614; Isar v. Kellog and Sons, 40 O.G. 167).

"The fact that the employee suffered from impaired vision prior to the accident does not prevent the loss or further impairment of his vision from constituting an injury such as the statute authorizes compensation for." (Hicatur v. Hunter, 39 Pa. Super. 393.)

"Where a steel chip flew into an employee's eye, accelerating the development of a cataract and causing the loss of sight, he suffered an injury within the statute." (Kucinic v. United Engineering and Foundry Co., 160 A. 344; 110 Pa. Super. 261.)

"Where a miner while at work was struck so hard a blow on the left eye by a piece of coal that it accelerated the development of a cataract in that eye, and made necessary an operation which resulted in the loss of the vision of the eye, he suffered an injury with the statute." (Sakunas v. Philadelphia and Reading Coal and Iron Co., 78 Pa. Super. 261.)

"An employee was struck in the eyes by a stream of analyne. His eyes were injured and he was advised by the employer's physician to wear dark glasses. A month later while wearing these glasses, he fell downstairs and permanently injured one eye. The second injury was held the natural and proximate result of the first accident." (VI Schneider's Compensation Text, 30-40, and cases therein cited.)

"The Workmen's Compensation Act is a social legislation designed to give relief to the workman who has been the victim of an accident in the pursuit of his employment and must be liberally construed to attain the purpose for which it has been enacted." (71 C.J. 341-352; Ramos v. Poblete, 73 Phil. 241; Francisco v. Consing, 633 Phil. 354.)[3]

Petitioner also contends that respondent Commission erred in absolving respondent company from liability, in spite of its non-controversion of petitioner's claim and admission of his injury in the performance of his regular work.

There is also merit in the contention. Examination of the records of the case discloses that the Employer's Report of Accident or Sickness, signed by respondent company's personnel manager, Mr. Gregorio Imperial, contains the following: (1) as to controversion, said report stated "No", indicating that respondent company will not controvert petitioner's claim; (2) as to the question, "was he (petitioner) injured in regular occcupation?", the answer is "Yes"; and (3) as to the description of the accident, said report stated: "while taking off the shell from a coconut, a speck of coconut shell hit his (petitioner's eye." As a rule, when the employer does not controvert the claim of the employee for compensation, he is also deemed to have waived his right to interpose any defense, and he could not prove anything in relation thereto. (Victorias Milling Co., Inc. v. Compensation Commissioner, G. R. No. L-10533, prom. May 13, 1957.)

WHEREFORE, the appealed decision and resolution of respondent Commission are set aside. Respondent Franklin Baker Co. is hereby ordered to pay petitioner, the amount of ₱460.77, as compensation in accordance with Section 14 and 17 of the Workmen's Compensation Act, and to pay the amount of ₱5.00 to respondent Commission, pursuant to Section 55 of the same Act. With costs against respondent company.

SO ORDERED.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion and Endencia, JJ., concurred.

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

[3] See II Francisco, Labor Laws (3rd Ed.) 137-145.

IV

Trinidad de los Reyes Vda. de Santiago, for herself and in behalf of her minor children, Mamerto, Leonila, and Andrea, all surnamed Santiago, Petitioners, vs. Angela S. Reyes and Workmen's Compensation Commission, Respondents, G.R. No. L-13115, *February* 29, 1960, *Labrador*, J.

1. WORKMEN'S COMPENSATION LAW; PRESUMPTION OF PERFORMANCE OF DUTIES BY EMPLOYEE. — In the case at bar, it is a fact that before leaving Manila, the deceased was engaged in his employment, and the presumption is that he performed his duties legally and in accordance with the rules and regulations because that was his regular obligation and it is incumbent, therefore, upon the respondent to prove that the deceased voluntarily went out of his route and drove his jeepney towards the province of Quezon, not that the deceased voluntarily went to that province thereby going beyond the route provided for the vehicle that he was driving.

2. ID.; PRESUMPTION THAT EMPLOYEE DIED IN THE COURSE OF EMPLOYMENT. — In the case at bar, the death of the employee must be presumed to have arisen out of his employment because there is a presumption that the deceased died while in the course of his employment.

DECISION

This is a petition to review the decision of the majority of the members of the Workmen's Compensation Commission, denying a claim for compensation of petitioners for the death of Victoriano Santiago, driver of a jeepney operated by the respondent. The said deceased was the driver of an auto-calesa belonging to respondent and was last seen operating said auto-calesa at 9:00 in the evening of September 26, 1955. In the morning of September 27, 1955, his dead body was found in Tayabas, Quezon, obviously a victim of murder by persons who were at large and whose identities were not known. Apparently the driver must have been attacked with blunt instrument or instruments as an examination of his head disclosed that it was heavily fractured, fragmenting it into many pieces, crushing and lacerating the brains. (Stipulation of Facts). Other pertinent facts in the stipulation of facts submitted by the parties are as follows:

"That there is a specific instruction given by the respondent to the deceased to follow the route prescribed by the Public Service Commission. In the case of jeep driven by the deceased, its route is within Manila and suburbs;

That it has always been the practice of the respondent that, whenever the driver is accepted, specific instruction is given to him to follow faithfully the traffic rules and regulations, especially speeding and overloading, and he is requested also not to operate beyond the route given by the Public Service Commission. In case the driver goes beyond the route prescribed by the Public Service Commission, a fine of ₱50.00 is imposed which is paid by the respondent. However, in case of the traffic violations, especially speeding, it is the driver who pays. (p. 2, Annex "E").

Two of the members of the Commission made the following finding on the question as to whether or not the death of Victoriano Santiago arose of and was occasioned in the course of his employment.

"There is nothing in the record which justified the assumption that he was forcibly taken away, at the point of a gun or a knife from his regular orbit or employment. The most that may be conceded, however remote it seems, is the possibility that, to use the referee's own word, "he, the driver, might have been lured." by his assasins to get away from his regular route, only to be robbed of his earnings,

the jeep, and, which is the most important, his life. But this only demonstrates the voluntariness of his act of going out to the ordinary way of fulfilling his assigned job. It only adds to the inevitable conclusion that he went with his attackers in disregard not only of the instructions or orders of his employer but also of the rules and regulations of the Public Service Commission, which rules undeniably should be regarded as having the force of law, having been set by authorities for the observance of those to whom they are addressed, this deceased driver not excluded. If there is any material finding that is to be made out in this case, it is that the drivers act in deviating from the route prescribed for his observance constituted a positive factor in bringing about his own demise. His departure from the route where his employment only required him to be, in fact, brought him to an area fraught with extra risks or hazards not forceably and ordinarily attached to the employement for which he was hired.

This Commission finds that the deceased willfully violated public service rules and regulations and the instructions of his employer in undertaking a trip too far beyond the limits of the line which his jeepney was authorized to operate. And with this as the basis, the correct determination of the second issue can be reached upon consideration of the following precedents: x x x. (pp. 5-6, Annex "E").

Associate Commissioner Nieves Baens del Rosario dissented from the opinion of the majority. She says in part:

"In connection with the 'arising out of and in the course of employment' requirement in relation to the presumptions in favor of the employee, Larson makes this comment:

'The burden of proving his cases beyond speculation and conjecture is on the claimant. He is aided in some jurisdiction by presumptions that help to supply the minimum evidence necessary to support an award, and which shift the burden to the defendant when some connection of the injury with the work has been prove.' (p. 252, W/C.S. by Larson, Vol. 2)

And in this jurisdiction where such presumptions in favor of the employee are provided in our Workmen's Compensation Act, our Supreme Court in the aforecited Batangas Transportation case ruled:

'Our position is that once it is proved that the employee died *in the course* of the employment, the legal presumption in the contrary, is that the claim comes within the provisions of the compensation law (Sec. 44). In other words, that accident *arose out* of the workmen's employment (2-A).

Another presumption created in favor of the employee and which is more specific than the all embracing presumption 'that the claim comes within the provisions of the Act' is that one provided in sub-section 3 of Section 44. It reads: '3. That the injury was not occasioned by the willful intention of the injured employee to bring about the injury or death of himself or of another.' This presumption arises from the rule against suicides and once the presumption is established, the burden of proof shifts to the employer. He is, under the Workmen's Compensation Act, required to present 'substantial evidence' to overcome such presumption.

In the case of Travellers Insurance Company vs. Cardillo, 140 F-2d 10 (1943) the court stated:

'The evidence necessary to overcome the presumption then must do more than create doubt or set up non-compensable alternative explanations of the accident. It must be 'evidence such as a reasonable mind must accept as adequate to support a conclusion.'

No such evidence was presented by the herein respondent.

In explanation of this policy, the Court held in the Batangas Transportation case:

'It is not unfair; the employer has the means and the facilities to know the cause; and should not be allowed to profit by concealing it. May, he should take active steps to ascertain the cause of the murder; not just continue its operations unmolested.'

And in the case of Travellers Insurance Co. cited above the following reason was given:

'The death of the employee usually deprives the dependent of his best witness — the employee himself — and, especially where the accident is unwitnessed, some latitude should be given the claimant. Hence, presumptions or inference that an unwitnessed death arose out of the employment are allowed in some jurisdictions, *where the employer provides no contrary proof*, and when last seen deceased was working or had properly recessed.'

Here, the respondent employer has not provided any contrary proof, and Santiago when he was last seen was doing his regular work of driving x x x x. (pp. 14-16, Annex "G").

Section 43 of the Workmen's Compensation Act, as amended by Section 24 of Republic Act 772, establishes the following presumptions:

"In any proceeding for the enforcement of the claim for compensation under this Act, it shall be presumed in the absence of substantial evidence to the contrary —

1. That the claim comes within the provisions of this Act;

2. That sufficient notice thereof was given;

3. That the injury was not occasioned by the wilful intention of the injured employee to bring about the injury or death of himself or of another;

4. That the injury did not result solely from the intoxication of the injured employee while on duty; and

5. That the contents of verified medical and surgical reports introduced in evidence by claimants for compensation are correct.

The decision of the majority of the members of the Commission reasons out that the deceased had received specific instructions not to operate beyond the route given by the Public Service Commission (only within the City of Manila), and his act in getting outside of the city was his free and voluntary act, because he disregarded the orders of his employer as well as the rules and regulations of the Public Service Commission. The majority concludes that the deceased willfully violated Public Service Commission rules and regulations and, therefore, death did not arise out of or by reason of his employement.

The flaw in the above reasoning of the majority is that it violates the presumption expressly laid down by the following provision of Section 69, par. (q), Rule 123, Rules of Court:

"The following presumption are satisfactory if uncontradicted and overcome by other evidence:

x x x x x x

(q) That the ordinary course of business has been followed:

x x x x x x

There is no question that immediately before leaving Manila the deceased was engaged in his employmnt. The presumption is that he performed his duties legally and in accordance with the rules and regulations, because that was his regular obligation.

Inasmuch as the law establishes the presumption that the deceased followed the law and regulations, it was incumbent upon respondent to prove that he did otherwise, or that he failed to comply with the regulations. In other words it was incumbent upon the respondent herein to prove that the deceased *voluntarily* went out of his route and drove his jeepney towards the province of Quezon, not that the deceased voluntarily went to that province thereby going beyond the route provided for the vehicle that he was driving.

Petitioners claim that the deceased voluntarily went out of his ordinary route. Petitioners also have the obligation to prove this fact, this being as affirmative allegation. They failed to do so.

There being no such evidence submitted by the respondent, i. e., that the going of the deceased to Quezon province was made voluntarily by him, we must conclude, pursuant to the presumption that every person performs his duty or obligation, that he was forced by circumstances beyond his will to go outside his ordinary route; in other words that while driving in the city he must have been forced to go out and drive to the province of Quezon on the threats of the malefactors guilty of assaulting and killing him against his (deceased) will.

In the case of Batangas Transportation Co. vs. Josefina de Rivera, et al., G. R. No. L-7656, prom. May 8, 1956, decided by this Court, in which a driver of a bus, while so driving was suddenly attacked by his assailant who boarded the bus and thereafter stabbed him, the majority of this Court held that the driver died in the course of his employment even if there were indications (not sufficient to prove) that there was personal animosity between the assailant and the victim, which may have caused the assault. In said case the reason for the decision of this Court was that the circumstances or indications show that the deceased died while driving the bus, thus that his death must have been due to his employment.

The present case is stronger than the above-cited case of Batangas Transportation Co. vs. Rivera, for while in said previous case there were indications which showed personal animosities which may have been the root cause of the assault, in the case at bar, there are no such indications. On the other hand, there is a presumption that the deceased died while in the course of his employment, and therefore his death must be presumed to have arisen out of said employment.

We, therefore, find that the decision of the majority which has been appealed from is not in consonance with the law and the express provision of Section 43 of the Workmen's Compensation Law; and that by reason of such express provision of the law, we must hold that Victoriano Santiago died by reason of and in the course of his employment and consequently his heirs are entitled to receive the compensation provided for by law in such cases.

Decision rendered by the court below is hereby set aside, and respondent is hereby ordered to pay the compensation due the heirs under the law. Without costs.

SO ORDERED.

Paras, C. J., Bengzon, Bautista Angelo, J.B.L. Reyes, Endencia, Barrera and Gutierrez David, JJ., concurred.

Montemayor, J., reserved his vote.

V

The Municipal Treasurer of Pili, Camarines Sur, Balbino Onquit and Felix Onquit, Petitioners, vs. The Honorable Perfecto R. Palacio, Judge of the Court of First Instance of Camarines Sur and Honesto Paladin, Respondents, G.R. No. L-13653, April 27, 1960 Montemayor, J.

CIVIL PROCEDURE; SECTION 10 RULE 40 OF RULES OF COURT CONSTRUED. — Under Section 10, Rule 40 of the Rules of Court, where a Justice of the Peace Court disposes of a case not on its merits but on a question of law, as when it dismisses it, and it is appealed to the Court of First Instance, the latter may either affirm or reverse the ruling or order of dismissal.

D E C I S I O N

This is a petition for certiorari and mandamus to set aside the decision of respondent Judge Palacio in Civil Case No. 3909 of the Court of First Instance of Camarines Sur, and to order him to return the case to the Justice of the Peace Court of Pili, Camarines Sur.

The facts in this case are not in dispute. Balbino Onquit lost a carabao sometime in February, 1946. In December of that year, Honesto Paladin bought a carabao for ₱100.00 from one Jovito Milarpis, who in turn had bought the same animal from Vicente Baduya that same day. Almost ten years later, that is, on April 13, 1956, Balbino Onquit saw the carabao bought by Paladin in December 1946, and in the latter's possession and supposedly recognized it to be the animal he had lost about ten years before; so, he reported the matter to the Chief of Police of Pili, who immediately impounded the animal and gave its custody to the Municipal Treasurer of the said town.

On April 28, 1956, Paladin filed an action for replevin in the Justice of the Peace Court of Pili, Camarines Sur, (Civil Case No. 66), against Balbino Onquit, Felix Onquit, and the Chief of Police of Pili, to recover possession of the carabao. The Justice of the Peace Court decided the case in favor of the defendants. Paladin appealed the case to the Court of First Instance of Camarines Sur (Civil Case No. 3453), which in a decision dated January 14, 1957, reversed the appealed decision and ordered that the carabao involved be returned to plaintiff Paladin. After said decision had become final and executory, Paladin demanded the delivery of the carabao to him, but the Municipal Treasurer refused to deliver.

Instead of having the decision executed by the proper authorities, Paladin would appear to have done nothing, possibly waiting for the Municipal Treasurer to change his mind. But on April 13, 1957, instead of filing motion to enforce the judgment in his favor which had long become final and executory, he filed another Civil Case No. 87 in the same Justice of the Peace Court of Pili, against the Municipal Treasurer, Balbino Onquit and Felix Onquit, making reference to Civil Case No. 66 of the Justice of the Peace Court and the decision in Civil Case No. 3453, Court of First Instance, in his favor, and asking that the same carabao be returned to him and that defendants Onquit be made to pay him the sum of ₱1,500.00 as damages. Defendants filed a motion to dismiss on the ground of *res adjudicata* and estoppel. Acting upon said motion, the Justice of the Peace Court dismissed the case, stating that it was without prejudice on the part of Paladin to file a motion for execution, on the ground that the decision in the first case had already become final and executory, at the same time ruling that the Municipal Treasurer, one of the defendants, had no interest in the case.

Paladin appealed the order of dismissal to the Court of First Instance of Camarines Sur. Defendants-appellees failed to file their answer to the complaint and were declared in default. Paladin was allowed to present his evidence in their absence and respondent Judge Palacio, presiding the Court of First Instance of Camarines Sur, rendered the decision aforementioned, ordering the defendants Balbino Onquit and Felix Onquit to deliver the carabao and its offspring to the plaintiff and to pay the latter the sum of ₱1,500.00 as moral and consequential damages plus costs. Defendants filed two motions for reconsideration which were denied. Thereafter, they filed the present petition for certiorari and mandamus.

It is the contention of the petitioners that respondent Judge acted in excess of his jurisdiction or with grave abuse of discretion in trying the case appealed to him for the reason that under Section 10, Rule 40 of the Rules of Court, which read as follows:

> "Sec. 10. *Appellate powers of Courts of First Instance where action not tried on its merits by inferior courts.* — Where the action has been disposed of by an inferior court upon a question of law and not after a valid trial upon the merits, the Court of First Instance shall on appeal review the ruling of the inferior court and may affirm or reverse it, as the case may be. In case of reversal, the case shall be remanded for further proceedings.",

he should have remanded the case to the Justice of the Peace Court of Pili for further proceedings after he evidently had reversed the ruling of said Justice of the Peace Court, dismissing the case. We agree with petitioners. According to Section 10, Rule 40 of the Rules of Court, where a justice of the Peace Court disposes of a case not on its merits but on a question of law as when it dismisses it, and it is appealed to the Court of First Instance, the latter may either affirm or reverse the ruling or order of dismissal. In the present case, it presumably reverses said order; instead of trying the case on the merits, as it did, it should have returned the same to the Justice of the Peace Court for further proceedings.[1]

IN VIEW OF THE FOREGOING, the petition is granted. The decision of respondent Judge is hereby set aside and he is directed to remand the case to the Justice of the Peace Court for further proceedings. No costs.

Although we are ordering the remand of the case by respondent Judge to the Justice of the Peace Court, nevertheless, there is reason to believe that said case is already barred on the ground of *res adjudicata* and that the Justice of the Peace Court was correct in dismissing the same. If the plaintiff seeks damages due to the failure of the defendants in the first case to deliver the carabao to him within a reasonable time after said decision became final and executory, a separate action might be necessary not for the delivery of the carabao, but for damages suffered, if any, after the rendition of that decision.

As to the delivery of the carabao, the decision of the Court of First Instance in Civil Case No. 3453 in favor of plaintiff Paladin was rendered on January 14, 1957. Within five years thereafter, Paladin may yet file a motion for its execution. This is what he should have done, instead of filing the second case, Civil Case No. 87, in the Justice of the Peace Court.

Paras, C.J., Bengzon, Bautista Angelo, Labrador, Concepcion, and J.B.L. Reyes, JJ., concurred.
Barrera, J., concurred in the result.

VI

Nicanor E. Gabriel, et al., Plaintiffs-Appellants, vs. Carolino Munsayac, et al., Defendants-Appellees, G. R. No. L-12143, June 30, 1960, Bautista Angelo, J.

CIVIL PROCEDURE; PRO-FORMA MOTION FOR NEW TRIAL; MOTION FOR RECONSIDERATION.—Where the order of the trial court denying the motion for new trial on the ground that it is merely *pro-forma* has already become final for failure of appellant to ask for its reconsideration within the period of thirty days from the date it was received by counsel, but instead gave notice of his intention to appeal from the decision on the merits, appellant can not attack the validity of said order for the first time on appeal.

DECISION

Nicanor E. Gabriel brought this action before the Court of First Instance of Isabela to recover from Carolino Munsayac and Rafael de Leon certain sums of money allegedly advanced by the former to the latter in connection with the construction of a government project known as the "Pinakanawan Bridge Approach" along the Cagayan valley road which was the subject of a contract entered into between plaintiff and the government on June 5, 1950, plus damages and attorney's fees.

Defendants filed separately their respective answers setting up certain special defenses and a counterclaim. After trial, the court rendered judgment ordering defendant Munsayac to pay to plaintiff the sum of ₱674.35, but plaintiff in turn was ordered to pay defendant Rafael de Leon the sum of ₱4,351.92 as prayed for in the latter's counterclaim.

On September 28, 1955, plaintiff filed a motion for new trial, which was denied by the court in an order entered on October 15, 1955. And on October 19, 1955, plaintiff gave notice of his intention to appeal from the decision rendered by the court on August 24, 1955.

On November 11, 1955, defendant Munsayac filed a motion to dismiss the appeal on the ground that the notice of appeal was filed beyond the reglementary period considering that the motion for new trial filed by plaintiff was merely *pro-forma* as it does not conform with the rule relative to a motion for new trial. On December 10, 1955, plaintiff filed a petition for relief praying that the order of the court of October 15, 1955 denying plaintiff's motion for new trial on the ground that it was merely *pro-forma* be set aside, to which defendant Munsayac filed an opposition on January 23, 1956. On October 29, 1956, the court, considering the reasons alleged in the opposition founded, denied the motion for relief. Plaintiff interposed the present appeal seeking to set aside the order denying his petition for relief as well as the order denying his motion for reconsideration.

It should be noted that the decision of the trial court on the merits was rendered on August 24, 1955, copy of which was received by plaintiff's counsel on September 3, 1955. On September 28, 1955, plaintiff's counsel filed a motion for new trial with the request that it be included in the calendar for October 15, 1955 stating as reason the fact that counsel for plaintiff will be busy appearing before the House Electoral Tribunal in an election case then pending before it. The purpose of counsel was to appear before the court on said date and argue his motion orally and if necessary "supply" his oral argument with a written memorandum. However, he sent a telegram on October 14, 1955 praying that the hearing be postponed to October 18, 1955 alleging again as reason the fact that he was busy attending to the electoral protest. But when he went to Ilagan, Isabela on October 18, 1955 ready to argue on his motion for new trial he was surprised to find that his said motion was denied on October 15, 1955.

Plaintiff's counsel advanced as reasons for his petition for relief the following facts; that it was his intention to support his oral argument on the motion for new trial with a written memorandum so much so that he started its preparation in Ilagan, Isabela after filing the motion for new trial, but could not finish it on time as he had to leave for Manila in order to overtake the hearing of the electoral case between Albano and Reyes; that instead of finishing the memorandum, counsel prepared a supplementary petition for new trial wherein he pointed out in detail the errors which in his opinion were committed in the decision, putting the original and the copies in different envelopes ready to be sent to court and to the parties, but when he went to the post office to mail them he found the same already closed; that in the morning of September 13, 1955, being indisposed because he was then suffering from severe headache, plaintiff's counsel decided to see his doctor for treatment and entrusted the three envelopes to his housemaid, one Virginia de Vera, with the request to mail the same, but unfortunately Virginia lost the three envelopes and failed to inform counsel for her failure to mail them. Counsel now claims that the trial court committed a grave abuse of discretion in denying the petition for relief.

[1] Mirano vs. Diaz, 75 Phil. 274; Saavedra vs. Pecson, 76 Phil. 330.

There is no merit in the appeal. The record shows that appellant as well as his counsel received notice of the decision of the court on September 3, 1955. On September 23, 1955, appellant's counsel filed a motion for new trial which he asked that it be calendared for hearing on October 15, 1955. On October 15, 1955, the trial court issued an order denying the motion on the ground that it was merely *pro-forma*. On October 15, 1955, appellant's counsel received copy of the order denying the motion, and on October 19, 1955, he filed a notice of appeal from the decision on the merits. On November 11, 1955, appellee's counsel filed a motion to dismiss the appeal on the ground that it was filed beyond the reglementary period. On December 10, 1955, appellant's counsel filed a petition for relief, which the trial court denied on October 29, 1956.

It is apparent that the order of the trial court rendered on October 15, 1955 denying the motion for new trial on the ground that it is merely *pro-forma* has already become final for failure of appellant to ask for its reconsideration within the period of thirty days from the date it was received by counsel, inasmuch as instead of filing a motion for reconsideration he gave notice of his intention to appeal from the decision on the merits. It would appear, therefore, that appellant cannot now attack its validity for the first time in this instance.

But counsel may claim that the validity of said order has in fact been assailed in his petition for relief wherein he asked that it be set aside considering the explanation he has advanced justifying his failure to appear at the hearing of the motion for new trial, as well as his failure to send the supplementary petition wherein he set forth the reasons pinpointing the errors allegedly committed by the trial court. But the trial court acted correctly in not according merit to the alleged attempt to file a supplementary petition for new trial, considering that the petition for relief was filed on December 10, 1955, or almost a month after appellee's counsel had filed his motion to dismiss the appeal. This fact proves the groundlessness of counsel's claim that he prepared such supplementary petition and gave it to one Virginia de Vera for mailing, because if such claim were true counsel would have immediately filed a motion for reconsideration setting forth the reason for his failure to comply with the rule. But, as the record shows, instead of filing such motion, he gave notice of his intention to appeal, apparently in the belief that he could do away with such technicality thru an oversight on the part of appellee's counsel. Verily, the alleged preparation of a supplementary petition is but an afterthought or a last-minute effort to obviate the objection that the motion for new trial was merely *pro-forma* which scheme cannot justify a petition for relief.

> "The granting of a motion to set aside a judgment or order on the ground of mistake or excusable negligence is addressed to the sound discretion of the court (See Coombe vs. Santos, 24 Phil., 446; Daipan vs. Sigabu, 25 Phil., 184). And an order issued in the exercise of such discretion is ordinarily not to be disturbed unless it is shown that the court has gravely abused such discretion. (See Tell vs. Tell, 48 Phil., 70; Macke vs. Campo, 5 Phil., 185; Calvo vs. De Gutierrez, 4 Phil., 203; Manzanares vs. Moreta, 38 Phil., 821; Salva vs. Palacio & Leuterio, G. R. No. L-4247, January 30, 1952.) Where, as in the present case, counsel for defendant was given almost one month notice before the date set for trial, and upon counsel's failure to appear thereat, the trial court received the evidence of the plaintiff and granted the relief prayed for, the trial court did not abuse its discretion in refusing to reopen the case to give defendants an opportunity to present their evidence." (Palileo v. Cosio, 51 O.G., No. 12, 6181)

Wherefore, the order appealed from is affirmed, with costs against appellant.

Paras, C.J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, J.B.L. Reyes, Barrera and Gutierrez David, JJ., concurred.

WHAT THE WORD "SUCCESS" MEANS

by Joaquin R. Roces

Many young men and women define success in terms of a big house, two or three cars, and a large bank deposit.

I would measure a man's success by the extent he has helped his fellow men on this earth in a positive manner, and conversely, his success could be measured by the way mankind in general and his friends in particular have learned to love him. That is, as judged by his neighbors, his friends, his brothers, his in-laws, and not by those self-anointed and self-appointed judge of mankind who have set definite moral standards where God himself has not.

I would measure a man's success not by the work he has achieved but by the effort he put into it. I would measure a man's success not by the virtues he accumulated but by the manner of weaknesses he learned to overcome. And lastly, I would measure his success by the happiness and joy he got out of his youth, his life, the beauty that God laid around him.

As for the big house, two or three cars, and a large bank deposit, —they certainly are not the measure of success. But let me tell you. A small house, one car, and a small bank deposit would help.

Republic of the Philippines
Department of Public Works and Communications
BUREAU OF POSTS
Manila

SWORN STATEMENT

(Required by Act 2580)

The undersigned, Atty. Vicente J. Francisco, editor/publisher, of THE LAWYERS JOURNAL, published monthly, in English, at R-508 Samanillo Bldg., Escolta, Manila, after having been duly sworn in accordance with law, hereby submits the following statement of ownership, management, circulation, etc., which is required by Act 2580, as amended by Commonwealth Act No. 201:

	NAME:	ADDRESS:
Editor:	Vicente J. Francisco	Rm. 200-205 Samanillo Bldg., Escolta
Managing Editor:	V. J. Francisco	Rm. 200-205 Samanillo Bldg., Escolta
Bus. Mgr.:	Victor O. Francisco	Rm. 200-205 Samanillo Bldg., Escolta
Owner:	Vicente J. Francisco	Rm. 200-205 Samanillo Bldg., Escolta
Publisher:	Vicente J. Francisco	Rm. 200-205 Samanillo Bldg., Escolta
Printer:	MABUHAY PRESS	2832-42 Aurora Blvd., Sta. Cruz, Manila
Office of Publication:		R-508 Samanillo Bldg., Escolta

In case of publication other than daily, total number of copies printed and circulated of the last issue dated October, 1960:

1. Sent to paid subscribers 1,500
2. Sent to others than paid subscribers 25

TOTAL 1,525

(Sgd.) VICENTE J. FRANCISCO
Editor

SUBSCRIBED AND SWORN to before me this 29th day of November, 1960, at Manila, the affiant exhibiting his Residence Certificate No A-2257, issued at Manila, on January 4, 1960.

(Sgd.) RICARDO J. FRANCISCO
Notary Public
Until December 31, 1960

Doc. No. 457; Book No. III;
Page No. 93; Series of 1960

NOTE: This form is exempt from the payable of documentary stamp tax.

ACT 2580 REQUIRES THAT THIS SWORN STATEMENT BE FILLED WITH THE BUREAU OF POSTS ON APRIL 1 AND OCTOER 1 OF EACH YEAR.

1960 BAR EXAMINATION QUESTIONS

(Continuation)

POLITICAL LAW

I. (A) What is an unwritten constitution and what are its merits and demerits?

(B) (1) What are the requisites for a good written constitution? (2) What are its essential parts?

II. (A) Give the provisions of the Constitution designed to promote social justice.

(B) What is your concept of social justice?

III. (A) Explain briefly the doctrine of state immunity from suit.

(B) Is the immunity waivable? If so, how?

(C) Does the immunity apply to political subdivisions?

IV. (A) What is the provision of the Constitution on parliamentary immunity?

(B) What is its underlying purpose?

(C) What is the justification for the exercise of the right of eminent domain?

V. Some 20 tenants in a parcel of agricultural land with an area of 40 hectares have frequently been at odds with their landlord, the owner. Upon their petition and over the objection of the landowner, the President ordered the expropriation of said land and its subdivision, once acquired, into small farm lots for resale at cost to *bona fide* tenants, occupants or other qualified persons. The Land Tenure Administration (LTA) advised the owner of the presidential order and gave him three months to decide whether to agree or not to sell the land to the Government at a price to be determined by an evaluation committee. Instead of answering the LTA, what the owner did was to convey by absolute sale in small lots more than one-half of the land to his relatives none of whom was a tenant or occupant of any portion thereof. The Government instituted condemnation proceedings. The owner and those who had purchased portions of the land opposed the expropriation, contending —

1. That the property was not being expropriated for public use or purpose;

2. That the existence of tenancy conflicts between the landowner, on the one hand, and the actual tenants, on the other does not justify expropriation; and

3. That only big landed estates and not those containing only 40 hectares, are subject to expropriation for the purpose of selling them in small lots to tenants, etc.

Decide, giving reasons.

VI. (A) In the exercise of what powers may the state interfere with private property rights?

(B) Is it necessary that such powers be granted by any constitutional or statutory provisions? Explain.

VII. (A) What is the basis of police power of State and what are the requisites for a valid exercise thereof.

(B) May our municipalities exercise police power? If they may, what is the source of their authority?

VIII. (A) What persons are disqualified to vote?

(B) *A* was elected municipal mayor. *B* instituted *quo warranto* proceedings to have him declared ineligible on the ground of previous conviction of theft for which he was sentenced to ten months imprisonment. *A* contends that his disqualification as a voter had been removed and his elective franchise restored by the plenary pardon granted him. B argues that the pardon did not remove *A's* disqualification since his conviction was for an offense against property

Decide, giving reasons.

IX. (A) In 1950, *A's* petition for naturalization was granted. His son, *B*, born in the Philippines, was then 20 years old. In 1952, after the 2-year probationary period, *A* was finally allowed to take his oath of citizenship.

Did B automatically acquire Philippine citizenship? Reasons.

(B) An alien applied for naturalization alleging that he possessed all the qualifications and none of the disqualifications enumerated in the law. The court finding the petitioner to be a deaf-mute, denied the petition. Is the decision correct? Reasons.

X. A, incumbent mayor of a municipality, was charged administratively with:

1. having been convicted of malversation of public funds before his election; and

2. having committed the following acts during his incumbency: (a) organizing and participating in illegal cockfighting in a neighboring municipality, and (b) inflicting bodily harm upon the person of his wife inside the municipal building and during office hours for which he was convicted by the justice of the peace court of physical injuries.

Having been suspended by the provincial governor pending investigation of the case by the provincial board, *A* filed an action in court to annul the order of his suspension and to prohibit the provincial board frrom proceeding with the investigation of *any* of the charges above specified, claiming that the acts complained of do not fall within the purview of section 2188 of the Revised Administrative Code which empowers the provincial governor to suspend and the provincial board to investigate municipal officers "for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude." Decide, giving reasons.

CRIMINAL LAW

I. (A) Define frustrated felony, and give an example.

(B) Enumerate the circumstances for self-defense. Give an example.

II. (A) Define conspiracy.

(B) *A* and *B* conspire to rob a house. *A* remains below to act as guard while *B* goes up and proceeds to ransack it and takes away with him money and other valuables, which the two later divide between themselves. While ransacking the house, the owner thereof offered some resistance, and without the knowledge or consent of *A*, *B* shoots him dead. What is the crime committed, and the criminal responsibility of each?

III. A, a boy eight years old, living with his parents, after quarelling with another boy, *B*, a neighbor, sets fire to *B's* nipa house, razing it to the ground. *B's* father accuses *A* of arson and demands indemnity for the value of the house burned. Decide the case, giving reasons.

IV. State: two justifying circumstances
two exempting circumstances
two mitigating circumstances
two aggravating circumstances
one qualifying circumstance
and one alternative circumstance

V. (A) Mention two ways in which criminal liability is totally extinguished.

(B) Distinguish between prescription of a crime, and prescription of a penalty.

VI. Define (A) parricide, (B) murder.

(C) What is adultery? (D) Distinguish it from concubinage.

(Continued on page 352)

THE ARANAS CASE
(UNCONSTITUTIONALITY OF REPUBLIC ACT NO. 1379)

In the October issue, we published the complaint filed by former Commissioner of Internal Revenue Mr. Arañas against the Solicitor General for prohibition with preliminary injunction, contending that Republic Act No. 1379 is unconstitutional for being an *ex post facto* law.

Solicitor General Barot opposed the issuance of the preliminary injunction. A reply to the opposition was filed by Atty. Francisco who represents Arañas. Judge Alvendia denied the issuance of preliminary injunction. We publish hereunder the aforesaid opposition, reply and the pertinent portion of the order of Judge Alvendia.

OPPOSITION OF SOL. GEN. BAROT

"The term *ex-post facto law* is a technical term used only in connection with crimes and penalties. It is not applicable to civil laws but to penal and criminal laws (Concepcion vs. Garcia, 54 Phil. 81).

Although Republic Act No. 1379 provides for forfeiture to the State of property which petitioner has not shown to have been lawfully acquired (Sec. 6), said forfeiture is imposed not as a penalty but as a civil remedy to recover that which never lawfully belonged to petitioner. The proceeding is akin to escheat which is nothing more or less than the reversion of property to the State, which takes place when title fails (Delaney vs. State, 42 N.D. 630, 174 N.W. 290, quoted in footnote 6, 19 Am. Jur. 381, cited in Rellosa v. Gaw Chee Hun, L-1411, Sept. 29, 1953). As applied to the right of the State to lands purchased by an alien, it would more properly be termed a "forfeiture" at common law (19 Am. Jur. 381, cited in Rellosa v. Gaw Chee Hun, *supra*). Although escheat and forfeiture are not strictly synonymous terms, the distinction between them is not clearly drawn in modern usage (19 Am. Jur. 380). Thus, the use of the term "forfeiture" in Republic Act No. 1379 does not necessarily make the statute penal in nature.

On the theory that such property was obtained by a public officer either as a gift given to him in consideration of his office or as monies which should have accrued to the Government in the first place, and both on the principle that a public office is a public trust and that no one should be permitted to enrich himself at the expense of another, it follows that the recovery of such property may be viewed as one for recovery of property held under an implied trust (Arts. 1445, 1447, 1891, Civil Code).

Even assuming for the sake of argument that petitioner's objections as to the *ex-post facto* character of the statute are valid, it will be seen however that the complaint filed against him (Appendix B of the Petition) contains charges of unexplained acquisitions made after June 18, 1955, the effective date of Republic Act No. 1379. In so far therefore as they are concerned, they cannot be subject to attack of invalidity on ground of *ex-post facto*. Petitioner, therefore, is not entitled to a writ of prohibition enjoining respondent from taking cognizance of the complaint.

The act of suspending the operation of a law by the trial court especially one intended to combat graft and corruption in the government, is a matter of extreme delicacy, because that is an interference with the official acts not only of the duly elected representatives of the People in Congress but also of the highest magistrate of the land.

The courts should, therefore, refrain from enjoining the enforcement of laws, and should not interfere with the actions of public officers performed under statutory authorization. A mere allegation of the invalidity of a statute will not warrant the exercise by the courts of the extraordinary injunctive power and stop the enforcement of the law (Borden's Farm Products vs. Baldwin, 293 US 194, 55 S Ct 187; State vs. Adams Exp. Co., 85 NEB 25, 42 LRA (rs) 396). This is specially so where in this case, the petitioner is not placed under any restraint of his freedom of action in his daily life by any doubtful provision of the law.

Furthermore, the constitutionality of the law can always be interposed as a defense in case of the filing of a complaint against petitioner."

REPLY OF ATTY. FRANCISCO

"In the course of the oral argument yesterday, the Solicitor General manifested to the court that he does not dispute the existence and correctness of the authorities cited in the Petition for Prohibition, which hold that forfeiture is a punishment for transgressing the law; that the effect of the forfeiture is to transfer the title of a specific property from the owner to the sovereign power, imposed by way of punishment for the transgression of the law, or the commission of some wrong; that a law creating forfeiture as punishment is a penal statute and that a penal statute that makes an action, done before its passage and which was innocent when done, criminal, and punishes such action is an *ex-post facto law*. However, he contended that although the law provides that whenever any public officer has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary and to his other lawful income, and said public officer is unable to show to the satisfaction of the court that he has lawfully acquired that property, the same should be forfeited in favor of the State, said forfeiture is imposed not as a penalty but as a civil remedy to recover that property which never lawfully belong to him but to the State, and that he, therefore, only held it in trust. "The proceeding" — the Solicitor General maintained — "is akin to escheat which is the reversion of property to the State which takes place when title fails." (Page 5, Opposition.)

No proposition could be more obviously fallacious.

1. Although we have cited a long line of authorities holding that the law which creates forfeiture as a punishment for the transgression of its provisions is a penal law (Petition for Prohibition, pp. 11-12), the Solicitor General was not able to cite a single authority holding the contrary. Having failed to find any authority holding that forfeiture is not penalty, he stretched his imagination and foisted the novel theory of escheat. But this is the most unfortunate argument that the Solicitor had advanced. The properties subject of escheat are those left by a person who died intestate, leaving no heir or person by law entitled to them (Rule 92, Rules of Court; Arts. 1011-1014, Civil Code). And, according to Manresa, "the foundation of tho State's right over the properties of a person who died without a will and without leaving heirs, springs from the actual condition of abandonment of the properties so left upon the death of the owner and all persons having rights thereto." (7 Manresa 168.) In the case at bar, the properties that the Solicitor seeks to forfeit in favor of the State are properties that belong to the petitioner, not properties belonging to no one and, therefore, is not reversible to the State, as in the case of escheat.

Besides, in escheat there is no forfeiture but reversion of the property to the State. Reversion is defined as "the return of the property to the grantor after the grant is over." (Bouvier's Law Dictionary); the grantor in case of the escheat is the State. Forfeiture, on the other hand, is defined as "a punishment annexed by law to some illegal act in the owner of lands or hereditaments whereby he loses all his interests therein, and they become vested in the State." (Ibid).

Surely, the law in using the term "forfeiture" instead of "escheat," each of which terms has established meaning and connotation of its own and is distinct from the other, the law could not have contemplated "escheat." Otherwise, it would have employed the term "escheat" instead of "forfeiture." Why should the law use "forfeiture" if it meant "escheat"? The law must be taken to mean what it plainly and unequivocally says; it cannot be changed by the courts, much less by the Solicitor General.

> Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look or impose another meaning. In the case of such unambiguity, it is the established policy of the courts to regard the statute as meaning what it says, and to avoid giving it any other construction than that which its words demand. 50 *Am. Jur.* 205-207.

> A statute may not, under the guise of interpretation, be modified, revised, amended, distorted, remodeled, or rewritten, or given a construction of which its words are not susceptible, or which is repugnant to its terms. The terms of the statute may not be disregarded. To depart from the meaning expressed by the words of a statute, is to alter it, and is not construction, but legislation. 50 *Am. Jur.* 213-214.

2. Pursuing this fantastic escheat theory, the Solicitor General advances the argument, equally fantastic, that the philosophy of the law in providing that property acquired by a public officer out of proportion to his salary and to his other lawful income is unlawful and shall be forfeited in favor of the State unless he can show to the satisfaction of the court that he has lawfully acquired the same, is that it belongs to the State and petitioner only held it entrust for the State. In the light of our contention that Republic Act 1379 is an *ex-post facto* law, let us apply said theory to properties acquired by the petitioner in 1929, 1930, 1931, 1932, 1933, 1934, 1935, 1936, 1937, 1938, 1939, 1940, 1941, 1942, 1943, 1944, 1945, 1946, 1947, 1948, 1949, 1950, 1951, 1952, 1953, and 1954. The Solicitor admits—and he cannot deny—that those properties acquired by the petitioner in those years belong to him and that the presumption is that he acquired those properties lawfully. Even if there is no proof as to how a person has acquired a piece of property, his mere possession thereof under claim of ownership carries with it the legal presumption that he possesses it with just title, i.e., lawfully. Article 541 of the Civil Code provides that "a possessor in the concept of the owner has in his favor the legal presumption that he possesses a just title and he cannot be obliged to show or prove it." "Every person is taken to be honest and acting in good faith unless the contrary appears. The reason for this presumption is to protect owners from inconvenience. A contrary rule would oblige the owner to carry with him his titles in order to exhibit them to anyone who, with or without reason, may bring an action against him." (4 Manresa 248.) Since the complaint filed by the Anti-Graft Committee admits that the petitioner is the owner of those properties which he acquired in those years, the legal presumption is that he acquired the same lawfully. How then can the Solicitor General claim that since those properties are manifestly out of proportion to his income, the same were unlawfully acquired and held by him, only in trust for the State? Granting, for the sake of argument, that the amount of those properties were out of proportion to his income, was there any law at the time of their acquisition declaring that such acquisition is unlawful? Since it was only on June 18, 1955, that a law (Republic Act No. 1379) was passed declaring that properties acquired by a public officer out of proportion to his income is unlawful, we have to conclude that prior to this law the legal presumption is that the acquisition of such properties was lawful. And he being the lawful owner of those properties, it is absurd to maintain that he only held them in trust for the State.

3. In invoking the theory of trust, the Solicitor General does not of course have in mind an express trust but an implied trust, the concept of which is embodied in article 1456 of the Civil Code which provides:

> Art. 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes.

From the above-quoted provision, it is clear (1) that in order that property may be considered held in implied trust, the same must have been acquired through mistake or fraud and (2) that the property is held for the benefit of the person from whom the property comes.

Now, considering that properties acquired by a public officer prior to the enactment of Republic Act No. 1379, regardless of whether or not it is out of proportion to his salary or to his lawful income is presumed to be possessed by him under a just title; that is, legally, how can those properties be deemed to have been acquired through fraud and thus held in implied trust?

And even assuming that those properties were acquired under circumstances creating an implied trust in accordance with the afore-quoted provision of the Civil Code, how can it be contended that those properties held for the benefit of the State, since the same admittedly do not come from the State? If at all, such properties are held in trust for the benefit of anyone, it is certainly not for the benefit of the State, but of the person from whom the property came. Property unlawfully acquired within the meaning of Republic Act No. 1379 cannot be considered to be held in trust for the State any more than property acquired through robbery, theft, or estafa.

4. There can be no doubt that in trying to slip across the idea that the proceedings provided by Republic Act No. 1379 is akin to escheat, the purpose of the Solicitor General is to cloak the *ex post facto* nature of the said Act with a civil mantle. This, of course, is futile:

> The *ex-post facto* effect of a law cannot be evaded by giving a civil form to that which was essentially criminal. *Burgesse vs. Slamon*, 97 *U.S.* 381, 24 *L. Ed.*, 1104.

> A statute which deprives a man of his estate or any part of it for a crime which was not declared to be an offense by any previous law is void as an ex post facto law. *Fletcher vs. Peck*, 6 *Cranch* (*U.S.*) 87, *L. Ed.*, 162.

The Solicitor General further contended that even assuming for the sake of argument that Republic Act No. 1379 is an *ex post facto* law, the complaint filed against him contains charges of unexplained acquisition made before and after June 18, 1955, the effective date of the said Act, and that insofar as the properties acquired after the effectivity of said Act is concerned, the law cannot be attacked as an *ex post facto* law.

Citing the separability of provisions provided in Section 13 of the law, which reads: "If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby," the Solicitor General claims that although the complaint makes reference to properties acquired before passage of the law, it also makes reference to properties acquired after the passage of the law; therefore, as to the latter properties, the law cannot be attacked as *ex post facto*. Moreover, he argues, even if the law is *ex post facto*, the provision that makes the law ex post facto may be disregarded and separated from the rest of the law without affecting the remainder of the Act.

The entire argument of the Solicitor General rests on this false premise: that only part of the Act in question is *ex post facto* law and the remainder is not such. Nothing could be clearer than that it is the Act itself, not merely a part thereof, that is ex post facto; the Act itself penalizes acts performed prior to its enactment and innocent and not punishable at the time. The whole Act, therefore, is *ex post facto* and hence, unconstitutional and invalid in toto, pursuant to express provisional constitution which we again quote:

> "No ex post facto law or bill of attainder shall be enacted." Section 1. (1) Article III, *Phil. Constitution.*

Moreover, it is apparent from the foregoing provision of the Constitution that it prohibits an *ex post facto* law, such as the law under consideration, absolutely, without any qualification as to severability. When a law is of that character, it becomes unconstitutional *in toto*, the constitution allowing no part to remain.

True, the ex post facto character of the Act proceeds from Section 14 of the law. But the fact remains that it is not solely Section 14 that is *ex post facto*, but the entire Act by reason of the said section.

Nor could Section 14 be separated from the rest of the Act, since it provides for the effectivity and operation of the entire law.

Neither is it possible to weed out any part of Section 14 from the rest thereof in order to remove the *ex post facto* character from the Act without amending the law and thus in effect resorting to judicial legislation. Section 13 reads: "This Act shall take effect on its approval and shall apply *not only* to property thereafter unlawfully acquired *but also* to property unlawfully acquired before the effective date of this Act." It is patent that we cannot remove the clause "but also to property unlawfully acquired before the effective date of this Act," since what would remain would be an incomplete incoherent idea, to wit: "This Act shall take effect on its approval, and shall not only apply to property thereafter unlawfully acquired." It will be seen that every part of this provision of Section 14, is interdependent and not severable from one another.

> No matter how invoked, the rule must be employed with the qualification that if it is impossible to tell what part of a statute is intended to be operative when some of its provisions are unconstitutional, it is wholly invalid. Consequently, where the legislature intends to substitute a new system of taxation as a whole for the existing one, and all the provisions cannot be carried into effect because of constitutional infirmity, and it is impossible to tell what part the legislature would have adopted independently, the entire statute is void. 11 *Am. Jur.* 838-839.

Its unconstitutional character cannot be remedied except by amending the law thus: "This Act shall take effect on its approval and shall only apply to property thereafter unlawfully acquired," which would be the function of the legislature, and not of the Court.

> It is a general rule that the courts, in the interpretation of a statute, may not take, strike, or read anything out of a statute, or delete, subtract, or omit anything therefrom. 50 *Am. Jur.* 219.

It is well settled that injunction will lie to restrain the enforcement of a penal law that is unconstitutional or the constitutionality of which is doubtful and fairly debatable (Yu Cong Eng vs. Trinidad, 47 Phil. 385) as well as where it is necessary for an orderly administration of justice or to prevent the use of the strong arm of the law in an oppressive manner (Recto vs. Castelo, 13, L. J. (1953) 560, Dimayuga vs. Fernandez, 47 Phil. 385) — which circumstances obtain in this case.

JUDGE ALVENDIA'S ORDER

In resolving the question of the issuance of the writ of preliminary injunction, Judge Carmelino Alvendia issued an order dated November 5, 1960 denying the issuance of the same on the claim of petitioner (Arañas) that Republic Act No. 1379 is unconstitutional, and adduced as reason thereof: "To do so would be equivalent to judging the cause on its merits before the issues are actually joined and hearing is held."

(*To be continued*)

BAR EXAMS . . . (*Continued from page* 349)

VII. *A*, possessing only a student license to drive motor vehicles, finds a parked car with the key left in the switch. He proceeds to drive it away, intending to sell it. Just then, *B*, the owner of the car arrives. Failing to make A stop, B boards a taxi and pursues *A* who in his haste to escape, and because of his inexperience, violently collides with a jeepney full of passengers. The jeepney was overturned and wrecked; one passenger was killed; the leg of another passenger was crushed and had to be amputated. The car driven by A was also damaged. What offense or offenses may *A* be charged with?

VIII. State the rule for the application of penalties which contain three periods (maximum, medium and minimum) in view of the presence or absence of aggravating and/or mitigating circumstances.

IX. (A) State one difference between arbitrary detention and illegal detention.

(B) *A*, is accused of robbery and is arrested by *B*, a constabulary sergeant, by virtue of a warrant of arrest. *A* put up bail and was ordered released by the court. Three days later sergeant *B* sees *A* at the cockpit and immediately arrests him and takes him to the constabulary guardhouse and was kept there till the next morning when *B* took him to the court. All along *A* was telling *B* that he was out on bail, but *B* would not believe him; neither did he, *B*, make any effort to verify if *A* had really been released on bail. What offense if any has *B* committed, and why?

X. Define complex crime and give an example.

PARITY . . . (*Continued from page* 325)

"legal safeguards," the "legal authority," the "legal way" out of a hopeless predicament once we have fallen into the grip of the imperialistic cobra. If we must go to hell, let's not furnish the rope to lead us there. If we must hang, let us at least refuse to sign our death warrant. If we must be subdued, let us at least refuse to submit.

CONCLUSION

Adverting our attention to the heavy demands for naval, aerial and military bases already disturbing us, to the most recent violations of our sovereignty in Palawan yet unpunished, to the heavy investment in big estates already starting, to the growing control of our army by military assistants from abroad, etc., etc., let this my last warning, if not heard, at least, be recorded:

Pass this amendment and you have turned the clock of Philippine history 400 years back. Pass this resolution and you have led our unhappy nation through the fatal gates where passed the nations of vanished or vanishing identities — Hawaii, Cuba, Persia, the Carribean countries, Korea, and a dozen others in Europe and Central America that have the misfortune of falling within the orbit of mighty powers. Pass this amendment and you have consummated the greatest betrayal to the sublimest national cause, and the worst destruction to the memories of the heroes and leaders who fought and fell in 300 revolutions and three wars that constitute the sum total of our epic crusade for freedom. Pass this amendment and when the tragic consequences of this act will assume a reality showing our posterity orphaned of their birthright and their freedom — you will weep but too late with the anathema of history on your head told in the words of Ateiza, the mother of weeping Boadbil expelled king of Granada, when she said, "Weep like a woman for the loss of the kingdom which you did not defend like a man."

Lawyers *Directory*

In view of the present difficulty of locating the office of practicing attorneys, the Journal publishes this directory to acquaint not only their clients but also the public of their address. Lawyers may avail themselves of this service upon payment of Two Pesos for each issue of this publication or Six Pesos for one year—12 issues—payable in advance.

ANTONIO, ROMAN B.
R-420 Roman Santos Bldg.,
Plaza Goiti, Manila
Off. Tels. 3-91-80
3-64-40
Res. Tel. 2-46-36

ARANAS, JOSE
R-301 Bank of the Phil. Island Bldg.
Plaza Cervantes, Manila
Tel. 3-58-57

ARTIAGA, SANTIAGO JR.
Suite 309 Samanillo Bldg.
Escolta, Manila

ARTURO A. ALAFRIZ & ASSOCIATES
Attorneys & Counsellors at Law
Suite 406-408 Regina Bldg.
Escolta, Manila
Tels.: 3-33-38
3-48-57

ASA, LEON L.
Francisco Law Offices
R-201 Samanillo Bldg.
Escolta, Manila
Tel. 3-33-64

BERNALDO, RICARDO MAG.
Asst. Attorney: LEONARDO S. BALAN
Suite 303 Cu Unjieng Bldg.
208 Dasmariñas, Manila
Residence: 572-574 Herbosa cor. Franco
Tondo, Manila

BUENDIA, JIMENEZ B.
Office: Suite 303, Samanillo Bldg.
Escolta, Manila
Tel. 3-94-54
Residence: 2416 Radium St., Manila
Tel. 5-32-40

CHIPECO & ALETA LAW OFFICES
Suite 404 FCI Building
416 Dasmariñas, Manila
Tel. 3-44-46
Govt. 22-02-80

EMERENCIANA S. PACHECO-TIGLAO
2441-B San Anton, Manila
Tel. 3-86-29

FERNANDEZ, ESTANISLAO
R-420 Roman Santos Bldg.
Plaza Goiti, Manila
Tels. 3-91-80
3-64-40

FRANCISCO, ALBERTO J.
R-201 Samanillo Bldg., Manila
Tel. 3-33-64

FRANCISCO, RICARDO J.
R-201 Samanillo Bldg., Manila
Tel. 3-33-64

FRANCISCO, RODOLFO J.
R-201 Samanillo Bldg., Manila
Tel. 3-33-64

GARCIA, BIENVENIDO L.
210 Calvo Bldg.
Escolta, Manila
Tel. 3-68-33

GONZALES, RAFAEL CASTILLO
Suite 414, 4th Floor
Doña Mercedes Bldg.,
Plaza Miranda, Quiapo, Manila
Office: Tel. 3-31-28
Residence: Tel. 6-80-94

GUTIERREZ, VALENTIN C.
Rms. 409-411 Borja Bldg.
641 Rizal Ave., Manila
Tel. 3-71-97

GUZMAN, DOMINGO F. DE
Suite 312 FCI Bldg.
416 Dasmariñas St.
Manila
Tel. 3-45-51

GUZMAN, PRUDENCIO DE,
BENITO, JUSTINO Z.
GUZMAN, PRUDENCIO DE,
R-204 Leyba Bldg.
381 Dasmariñas, Manila
Tel. No. 3-21-79

JORDAN TECHICO LAW OFFICES
Associates: Casimiro S. Pe
Liceria J. Mancinedo
Ban Chuan Bldg.
Suite 201-202, 614 T. Pinpin
Corner Ongpin, Manila
Tel. 2-87-24; 6-52-35; 3-19-54

LEON O. TY, OLIVER BANAYO GESMUNDO & RICARDO Z. VELASCO — c/o Confederation of Citizens Labor Union (CCLU) Rm. 303 Free Press Bldg., 708 Rizal Ave., Manila, Tel. 3-88-74, 2-29-37. Branch Office: 5 Rizal Ave., San Pablo City (c/o Federation of Coconut Workers (San Pablo City Chapter) — CCLU).

LIWAG LAW OFFICES
Lorenzo J. Liwag
Rose F. Ramos
Teresito de la Paz
Suite 302 Free Press Bldg.
Rizal Avenue, Manila
Tel. 4-13-35

MENDIOLA, MARCIAL G.
S-203 Quiapo Bldg.
758 Hidalgo, Plaza Miranda
Manila
Tel. 3-73-88

MORALES, ERNESTO T.
717 Bank of the P. I. Bldg.
Plaza Cervantes, Manila
Tel. 3-52-86
Res. 1921 Dakota, Malate, Manila
Tel. 5-25-34

OLIVEROS LAW OFFICE
Teotimo T. Oliveros
845 Geronimo St.
Sampaloc, Manila
Tel. 6-81-04

REYES, MARIO RAMOS
716 Roman Santos Bldg.
Plaza Goiti, Manila
Tels.: 22-0196, 3-30-60 & 3-24-65

T. AYSON ROSARIO
Office: Rm. 217 Great Eastern Hotel Bldg.
Echague, Manila
Tel. 3-30-70
Residence: 243 Roosevelt Avenue
San Francisco del Monte
Quezon City
Tel. 7-85-32

ROXAS, RUBEN L.
202 Calvo Bldg.
Tel. 3-56-08

SAN JUAN, AFRICA, YÑIGUEZ & BENEDICTO
480 Padre Faura, Ermita, Manila
Tels.: 5-70-72 & 5-70-73

SANTOS, JOSE T. DE LOS
SANTOS, CIRIACO T. DE LOS
SANTOS, JORGE T. DE LOS
2nd Floor EMA Bldg. No. III
Quiapo, Manila
Tel. 3-34-49

SAYSON, CIRIACO C.
Office: R-306 Burke Bldg:
Escolta, Manila
Tel. 3-58-10
Residence: 58 San Antonio
San Francisco del Monte
Quezon City

SYCIP, SALAZAR & ASSOCIATES
5th Floor, Trade And Commerce Bldg
215 Juan Luna, Manila
Tels. 2-69-06, 2-69-07 & 2-69-08

SYQUIA LAW OFFICE
ENRIQUE P. SYQUIA
Andres L. Baltazar
Jose L. Javier
Jose J. Ferrer, Jr.
Felix Torralba
Arturo R. Viado
Rms. 320 & 326 Samanillo Bldg.
Escolta, Manila
Tels. 3-77-52 & 4-19-70

JUST A FEW MORE COPIES AVAILABLE!

francisco's

THE LAWYERS DIGEST

VOLUME I

A — E

What is the Lawyers Digest? It is a condensed compilation of Supreme Court doctrines alphabetically arranged by the topic. The facts of the decisions cited therein may be found in the corresponding pages of the Lawyers Journal.

The alphabetically arranged topics of doctrines cited in the Digest is designed to furnish the busy lawyer with authoritative and ready-to-use citations of court decisions.

Volume I covers decisions published in the Lawyers Journal from 1945 to 1950.

₱ 5.00 per copy for subscribers of the Lawyers Journal
₱10.00 per copy for non-subscribers
Additional ₱3.00 for bookbound copies and ₱1.20 for mailing charges.

Place your order direct to:

THE LAWYERS JOURNAL
R-508 Samanillo Building
Escolta, Manila
Tel. No. 4-13-18

Mabuhay
PRESS

- ***Printers***
- ***Publishers***
- ***Bookbinders***
- ***Typesetters***

Printer of the LAWYERS JOURNAL

2838-42 AURORA BLVD. CORNER
RIZAL AVE., STA. CRUZ, MANILA

Tel. 2-89-07

Compliments of

The refreshment of friendship