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BUSINESS MANAGER

February 29, 1960

Editorial:

CONSTITUTION DAY

Constitution Day was fittingly observed in Manila last February 8, the date the text of the Constitution was submitted to the Constitutional Convention for its final approval twenty-five years ago. The surviving delegates, happily still more than one-half of the entire constituent body, were properly regaled, in an effort, no doubt, to make them feel that despite the flight of time and the inexorable fact that sooner or later they, too, will join the caravan to that "undiscover'd country from whose bourn no traveller returns," the public still remembers them with pride and gratitude and appreciates their enduring work, the monument they reared for the good of the people and the glory of their native land.

But Constitution Day does not and cannot mean much if in reality it merely serves as an occasion to honor and extol the living delegates and to remind the present generation that it has a constitution of its own "sacredly obligatory upon all," in the graphic words of Washington, and that on the eighth day of the second month of every year, the people must observe it and what it stands for. Its real meaning lies far deeper than the mere outward observance of the day. It is a constant and solemn reminder to all the Filipino people that on that particular day they ought and must renew their pledge of dedication to the defense and preservation of so noble a charter so that its spirit shall always prevail and the principles it enunciates and embodies shall remain forever triumphant and inviolate.

In his impressive valedictory address in Spanish in 1935 as well as in his recent silver anniversary speech in English before the delegates and their guests and friends at the Manila Hotel, Senator Claro M. Recto, President of the Constituent Assembly, expressed the hope that future generations of Filipinos will "recognize the loftiness of our motives and the magnitude of our task" and will realize that the ultimate goal as well as the aspiration of the delegates was that God make the Philippines "a happy country." At the same time he voiced his confidence that "the Constitution shall . . . live through the ages as long as the Filipino nation shall live."

His prediction is surely a consummation devoutly to be wished by every true Filipino. Unfortunately, at the rate the Constitution has been flouted and violated for sheer political expediency, one may well wonder how long it will really last. In the past few years, two important cases have been elevated to the Supreme Court to test once again its validity and sacredness as well as the sincerity of some of its leading framers and avowed admirers. On both occasions, it is sad to say, only one of the delegates dared come to its rescue, only one dared raise his voice in protest against the attempt to convert the Constitution into an instrument, a weapon in the struggle for political power.

The first fragrant and in a way most scandalous case was the deliberate "weeding out" by mere legislation — Republic Act No. 1186 passed by the Congress and became a law in mid-night of June 19, 1954 — of Judges-at-large and Cadastral Judges. The only reason for the move was that, as the majority floor leader of the House of Representatives put it, speaking evidently for the rest, the party in power considered them "undesirable" presumably because they did not toe the line.

Former Senator Francisco[1] filed a prohibition case with the Supreme Court to declare said law unconstitutional and argued that "the constitution has guaranteed the tenure of office of the members of the judiciary by providing that 'the members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office'. Implementing this constitutional provision, the Judiciary Act of 1948 provided that 'No District Judge, Judge-at-Large, or Cadastral Judge shall be separated or removed from office by the President of the Philippines unless sufficient cause shall exist, in the judgment of the Supreme Court, involving serious misconduct or inefficiency, for the removal of said judge from office after the proper proceedings,' and the Rules of Court prescribe the procedure for the removal of judges of the Court of First Instance, which is characterized by due process, for the judge should be informed of the charges against him, and he should be heard in his own defense before he is removed.

But for the Congress to charge judges as incompetent or dishonest, and to legislate them out, the Congress thus playing the role of accuser and judge at the same time, without giving the judges concerned the opportunity to be heard in their own defense, is a procedure not sanctioned by our Constitution and unknown in a government of laws. The constitutional provision securing the tenure of office and salaries of members of the Judiciary were expressly intended as limitations upon the power of the executive and legislative departments to disturb these safeguards of an independent department. They were intended to be fixed and unalterable, subject alone to one limitation which is, the removal of a judge from office for causes of his own creation [serious misconduct] or arising from his personal condition [incapacity to discharge the duties of his office or for having reached the age of 70 years] to be determined by the Supreme Court, not by the Legislation. In other words, the removal of judges on any of these grounds must be made by means of the proceeding prescribed, which is judicial in nature. The Constitution does not vest in the Congress the power to terminate the tenure of office of judges of the Court of First Instance or any other judge by removing them from office. It is high time that the Supreme Court should stop once and for all this injudicious encroachment of the Congress upon the judiciary, and to make the Congress realize that although the judiciay does not possess the force nor the will but merely judgment, and although it cannot dispense honors and hold the sword like the executive, nor command the purse like the legislative, yet it is not a subordinate of the executive or of the legislature, and that under the Philippine constitutional system, the legislative, the executive and judicial departments are all coordinate, co-equal and potentially coextensive."

Article VIII, Section 10 of the Constitution of the Philippines provides that: "No law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Supreme Court." Unfortunately, the ousted judges were not able to secure the concurrence of two-thirds of all the members of the Supreme Court in declaring the law unconstitutional. Seven Justices voted for holding the law unconstitutional and four in favor

[1] Chairman of the Committee on Judiciary of the Constitutional Convention.

of its constitutionality. One of the Justices[2] considered such law as an attempt against the independence of the Judiciary, and made the following remark:

> *"Admittedly, section 7 Article VIII aims to preserve the independence of the judiciary. It assures that so long as they behave, they cannot be removed from office — no matter what party controls the Government — until they reach the age of seventy years or become incapacitated. To complete their independence from political control or pressure, it further assures them that their salaries cannot be diminished during their incumbency. [Sec. 9]. Hence it may be asked, of what consequence is the assurance of tenure of office and of salary non-diminution, if anyway judges could be legislated out through a court reorganization? . . . The Constitutional Convention wanted judges unafraid to lose their jobs or their salaries, unmoved and unswayed by any considerations, except the trepidations of the judicial balance."*

Another Justice[3], asserting that such kind of law tends to make the Judiciary subservient to the Legislature, said:

> *"We can have no independent Judiciary if judicial tenure may be shortened or destroyed, by legislative reorganization, however well intentioned and well meant. There is real and grave danger of the Judiciary eventually being subservient to a Legislature that thru abolition of judicial posts by means of a judicial reorganization can unmake judges. And how could a Judiciary, which under a constitutional form of government, is supposed to act as a check against the Legislature for any violation of the Constitution, do so when such Judiciary is subservient to the Legislature it is supposed to check?"*

The second case is not less scandalous as the first one. It involved an executive violation of the same doctrine of separation of powers. A judge of the Court of First Instance of Iloilo was directed by the President, thru the Secretary of Justice, to serve in the Office of the President in Malacañang as adviser on legal matters, said judge having manifested that "he would serve in that capacity because the President wanted him to." Ex-Senator Francisco, asserting that such act of the President was unconstitutional, instituted a mandamus proceeding in the Supreme Court to compel said judge to discharge his functions as such, and that his assignment to serve as legal adviser in Malacañang, — a non-judicial function — be declared as violative of the Constitution. Contending that the act of the President was unconstitutional Atty. Francisco advanced the following argument before the Supreme Court: "The order of the President to the Secretary of Justice to relieve the respondent judge from his duties of performing the judicial act of administering justice in the court of which he was appointed and to detail him in Malacañang to perform non-judicial functions — to assist him on legal matters — is doubly unconstitutional, firstly, because the Constitution has not given him any power to give such order, and secondly, because such order violates the principle of separation of powers. The Constitution has invested the power of government in three distinct departments: the Legislative, Executive and the Judiciary, all of which are possessed of powers emanating alike from the people and limited and defined alike by the people; thus, all three departments are co-ordinate, coequal and co-important and of equal dignity. The detailing of a member of the Judiciary to a position under the executive department and in which he is responsible to the President for his official acts, would have the effect of reducing the Judiciary to a position subordinate to that of the executive in violation of the principle of coequality and equal dignity of the two departments. The truth of this proposition is too plain to require elucidation. To say that such a practice is lawful and permissible would be to say that the executive may detail not only one but two, five, ten or any number of judges of first instance to his office. It is immaterial whether the President will do it. What is important is whether he can do it. If judges were to drop their duties at the bidding of the President or the Secretary of Justice in order to work in the executive department, the Courts of First Instance would be a mere appendage of the executive, to be used as the President pleases. Thereby, the Executive would have it in his power to destroy the integrity and effectiveness of the Judiciary, cripple it and render it useless whenever he pleases.

In a democracy such as ours, no trust more sacred and vital could be reposed by the sovereign in any one than that of exercising judicial powers. In the carrying out of that trust, the judge, as a minister of justice, passes upon questions affecting the life, liberty and property of the citizens. In him is confided the solemn task, not only of enforcing and protecting personal and proprietary rights, but of safeguarding the people from tyranny and oppression and preserving their freedom and inalienable constitutional rights. He is part and parcel of the judiciary, which is venerated as the bulwark of justice and freedom. Upon accepting that trust and taking the oath that with the help of God he will well and faithfully discharge the same to the best of his ability, respondent should have felt himself consecrated thereto and proceeded to perform the same with utmost devotion and dedication. He should not have subserviently obeyed the order of the President to serve in Malacañang as it is offensive to the Constitution which he as judge and the President as such have solemnly sworn to support and defend."

Unfortunately, the decision of the Supreme Court was not made known to the people because before its promulgation, of the decision which would reportedly have adversely affected him the said judge concerned manifested to the Court that he was appointed technical adviser on legal matters to the President, that he accepted such office of legal adviser and abandoned and renounced his office as judge of the Court of First Instance, and, therefore, the case for mandamus against him had become a moot question and must be dismissed. And the Supreme Court resolved to dismiss the case, as it became a moot one with the resignation of the judge.

Paradoxical as it may sound, in the case of judges, the bill which was converted into law ousting them from the Judiciary, was filed by a former delegate to the constitutional convention, one of the justices who voted in favor of the constitutionality of the law was also a former delegate and three of the victims of such law were likewise former delegates to the convention.

Timely, therefore, is the following warning of Senator Recto:

> *"Neither in the toils of the day nor in the vigils of the night can the sentinels of the Constitution relax their vigilance. Let us all be wary and stand by our arms, lest, by culpable tolerance or by criminal negligence, our country should in some forbidding future become a desolate Carthage wherein only the naked ruins of our republic shall remain, fallen monuments of the past in whose debris our descendants, by then the forlorn bondsmen of some corrupt despot, shall in vain endeavor to decipher the language of the Constitution, inscribed, as in forgotten hieroglyphs on the sarcophagus of our dead freedoms."*

[2]Mr. Justice Cesar Bengzon.
[3]Mr. Justice Marcelino R. Montemayor.

OUR FUTURE UNDER THE CONSTITUTION*

By SENATOR CLARO M. RECTO

This is the eve of not only Constitution Day but of the Silver Jubilee of its adoption. It was on February 8, 1935 at 5:45 in the afternoon, as recorded by one of its most distinguished chroniclers, Dr. José M. Aruego, that the text of the Constitution was put to a final vote for its approval by the delegates to the Convention. The vote was, to all intents and purposes, unanimous, despite the negative vote cast by Delegate Cabili which was not really a vote against the Constitution but a manifestation of his objection to the method of enfranchisement of the province of Lanao for the election of its representatives to the National Assembly. Delegate Cabili wanted an express provision in the Constitution itself for that purpose and not mere constitutional authority for a future ordinary enactment.

After voting on the Constitution, but before parting from one another, I gave a valedictory ending in a paragraph which I am going to repeat, with your gracious leave, in its original Spanish:

"Pasarán rodando al olvido y a la nada, los años y los lustros; nuevas generaciones sucederán a las presentes, cada cual con un ideario nuevo y su caudal de progreso aumentado o disminuido a través de siglos de ascensión o decadencia; el tiempo, en incesante devenir, hará en los mundos existentes su obra lenta, pero inexorable, de renovación y exterminio; y la humanidad, hastiada de si misma y presa de nuevas locuras, arrojará una vez y otra al incendio de las espantables guerras del porvenir los tesoros de la civilización; pero cuando nuestros descendientes vuelvan la mirada al pasado en procura de inspiración y doctrina, y fijen su atención en esta ley fundamental que ahora sale de nuestras manos, confío en que la juzgarán reconociendo la alteza de nuestros propositos y la magnitud de nuestro esfuerzo, y verán que los cuidados y afanes que orientaron el curso de nuestra labor no fueron para recoger aplausos del presente y legar nuestros nombres al futuro en el bronce y marmol de una gloria perdurable. sino realizar para nuestro pueblo, por medio de esta Constitución, aquel santo anhelo que palpita en estas palabras llenas de sabiduria humana y de uncion divina con que un ilustre prelado, gloria del sacerdocio indigena, invocó al Supremo Hasedor en aquel dia memosable en que iniciamos nuestras tareas: 'Señor, Tú, que eres fuente de todo poder y origen de toda bienandanza, haz de Filipinas un pueblo feliz en el que reinas.'"

It contained melancholy premonitions about the future, and what seemed to be a phophecy of the total war that three years later was to bring misery and desolation to mankind was nothing more than the knowledge acquired from history of a phenomenon that recurs in cycles. But because I spoke in your name and expressed your feelings my parting words were, nevertheless, pregnant with hope for a great destiny for our people and with faith in the merciful Lord Who at that very hour was bringing them out of secular bondage.

That memorable day marked the birth of the Constitution of the Philippines. Almost one half of those of us who participated in its writing have crossed the Great Divide. The youngest among us today, like delegates Abella, Aldeguer, Canonoy, Cloribel, Crespillo, Conejero, Dungiang, Galang, Gumangan, José de Guzman, Joven, Meléndez, Jesús Pérez, Toribio Pérez, and Velasco, may still hope to be among the celebrants of the Golden Jubilee of the Constitution. Beyond that all of us, its framers, shall be no more, but the Constitution shall, from one centennial to another, live through the ages, as long as the Filipino nation shall live. In this quarter of a century of the life of the Constitution we went through a world war, the cruelest that has ever scourged mankind since Cain dipped his hands in Abel's blood, and three years of a most vicious enemy occupation, but the nation and its Constitution have survived, and they shall survive, because Divine Pr.vidence, whose aid and guidance we invoked in framing this historical instrument, will not deny our people His sustaining care.

Our hope not only for national survival but for the realization of a great destiny for our people is rooted in the firm conviction that the free and ordered life of our nation depends upon the preservation of those ideals and injunctions proclaimed in the preamble and the declaration of principles of the Constitution: conserve and develop the national patrimony, promote the general welfare and insure the well-being and economic security of all the people, renounce war as an instrument of national policy, but making the defense of the state against aggression the prime duty of all citizens, and secure to this generation and the succeeding ones the blessings of independence under a regime of justice, liberty and democracy, forever united in a common destiny, under one flag and one God.

And yet our Constitution, or any constitution for that matter. does not and cannot work miracles. Its lofty declaration of aims and principles, its wise commands and injunctions, are not the "open sesame" to all the promised treasures of a republican regime nor a magic formula which can by itself restore youth and vigor to a decrepit polity. It is an instrument, noble, it is true, in its origin and purpose, but a very human thing too, and it can only attain dyanamic validity by popular consciousness faith and militancy.

In an American magazine(1) I read many years ago that the orignal documents containing the Declaration of Independence and the Constitution of the United States were transferred from the Library of the United States Congress to the National Archives Building. The editor of the magazine, after reporting that a military escort and military band had attended them, observed: "How uncomplicated it looked, this physical act of guarding our greatest treasures! And how serene" — he continued — "life would be if the essence of the documents could be guarded so easily, so precisely, and with such gay props as bagpipes and such exact ones as machine guns? Ah, liberty" — the magazine editor concluded — "you look so simple crossing town!"

We are perhaps in a clearer position. The war destroyed the original of the Constitution, and we are free from any confusion between the historic document itself as a treasured possession and the infinitely more precious spirit which it once embodied. It is only the spirit of the great charter over which we must stand guard to preserve its purity and integrity.

Yet we may regard that spirit to be too simple a thing, just a matter of bureaucratic routine, adorned with good intentions and vehement protestations of loyalty to the ideals of freedom. We may grow to believe that the Constitutiin will work on us like grace from heaven, or like a guardian angel, benevolent and detached, leading us away from temptations of personal vainglory and unbridled love of power and riches, and delivering us from all the evils of misgovernment.

And yet such is not the case, for, when the people no longer agree on the necessity of living under the Constitution both in good and in bad times, when they are ready to discard it for immediate material rewards or to close their eyes to its violation for temporary advantages, the Constitution cannot work.

These are not idle speculations. Our faith in the Constitu-

* Speech delivered at the annual Constitution Day dinner held at the Manila Hotel on the night of February 7, 1960 to celebrate the Silver Jubilee of the Constitution.

(1) *The New Yorker*, Dec. 27, 1952.

tion has been repeatedly tested by numerous events during the twenty-five years of its life and often found wanting.

Let us ask ourselves certain questions and answer them honestly in the sanctuary of our conscience.

Are we ready to defend the freedom of speech of those with whom we disagree, of those whose concepts of society and political authority we violently detest? Are we ready and willing to test the validity of our beliefs in the open market of ideas? Are we disposed and willing to maintain the purity of suffrage even at the price of an adverse popular verdict? Shall we keep faith with the Constitution even though it may mean the sacrifice of our political fortunes or economic security?

Throughout the history of democracy men have faced these questions and have seldom given clear and definite answers. In the late 1930's the German people, in their millions, haunted by fear of Communism, groaning under the weight of the Treaty of Versailles, desperately eager for security, infinitely weary of destitution and unemployment, cast aside the Weimar Constitution and gave absolute power to a mad dictator, only to suffer the calamitous consequences of such an injudicious choice. Can we, who believe in democracy and in the advantages of our Constitution over any other form of government, take for granted that our people, if put to the same test, shall always believe what we ourselves now believe, or that we ourselves shall always be true to our present convictions?

In our country, democracy is still an educational process. We must train ourselves in its principles and practices; we must help train all the people by precept and example; we must risk unpopularity and misunderstanding to show the people the distant goals, the hidden dangers, the necessity of temporary sacrifices if our democratic system is to survive. And this obligation rests more particularly on those of us who had a hand in the framing of the Constitution or who are vested with the powers of government it has defined and provided.

I see around me tonight old and beloved colleagues of the Constitutional Convention of 1934. I take it that not only they but all the Filipinos in this distinguished audience are committed, by their very presence here, to the defense of the Constitution. I should like to see all of us unite in the common effort of making our people deeply conscious that the Constitution must be obeyed by and enforced upon both rulers and governed, and that its ultimate and permanent advantages will far outweigh any temporary discomforts and privations we may suffer in obeying and enforcing it. Only thus can we make certain that the Constitution shall long endure, and with it the system of government and way of life which it was its purpose to establish, guarantee and preserve.

The plebiscite of 1935 that stamped its approval on the great instrument which the Constitutional Convention adopted as the supreme law of the land, did not adjudicate the question for all time. It was not a final judgment. In a democracy such as ours there is a permanent plebiscite in which we cast our votes for or against the Constitution according as we act or fail to act.

For, let us not forget, the ideals of democracy, the spirit of the Constitution, not only may be uprooted or felled by direct assault, but they can also wither through disuse or abandonment. Inasmuch as in the course of our national existence we are bound to face, oftener than not, the temptations of expediency and suffer frustration and the fears that ripen into despair, the faith of our people in the Constitution must be constantly kept militant, vigorous and steadfast.

I do not mean to underestimate the wisdom and maturity of our people when I say that the gospel of democracy must be constantly preached to them. When even lawyers cannot agree on what the Constitution says, it is folly to expect the lay mind to perceive fully the implications and effects of any encroachment upon its dominions. When ancient and cultured peoples have despaired of the efficacy of democratic processes in times of upheaval, we can hardly expect our people to maintain an unwavering faith in the Constitution under adverse circumstances, unless, in this formative period of our Republic, they are thoroughly acquainted with its principles and constantly disciplined in habitual loyalty to them.

Their doubts and difficulties must, therefore, be squarely met and resolved as soon and as often as they arise, and the dangers of hasty and opportunistic decisions fearlessly and promptly exposed. Those who can now look beyond present fears and desires must share their forebodings with the people, not in a spirit of vainglory, or presumptuousness, or of defeatism, but simply in the consciousness of a common fate.

For all of us, regardless of party, regardless of ideology or condition, must suffer equally from the debasement of the Constitution and the resulting impairment of democracy. Isolated infractions, if left uncorrected, may in time become a chronic condition. If the Constitution is allowed to be violated in one provision, it will be easily violated in another provision. If the Constitution is suspended as to one group of citizens, it can be suspended as to another group of citizens. If one department of the government can invade and usurp the powers of another, so can it invade and usurp the totality of power.

And if, as a result, the Constitution falls, all of us shall fall with it, the learned and the untutored, the foresighted and the improvident, the courageous and the hesitant, the wealthy and the poor, the lovers of liberty and its enemies and detractors.

None of us can be sure that he will have no need of the Constitution; it behooves us all, therefore, to protect and preserve it for an evil day. The very persons who now defy the Constitution or allow it to be subverted or undermined without protest, may themselves cry out for its protection tomorrow, and bewail the loss of the guarantees that they themselves destroyed or denied to their enemies. Then indeed may they weep like Boabdil, the last Moorish king of Granada, who, pausing in his flight at a bridge for one last look at his beloved city, wept for his lost dominions, only to be bitterly reproached by his mother in these unforgettable words: "Weep like a woman over the kingdom you could not defend like a man."

It is true that upon our judges rests the responsibility of interpreting and applying the Constitution, finding its true spirit in and between the faltering language of its human authors.

But the Constitution is, after all, a political law and democracy a political system, and it is inevitable that both the Constitution and democracy should be the special concern of the two political departments of the government. They it is that are called upon to lead in the preservation of the system of government we have rightly chosen, by showing in words and deeds that it can succeed, and succeed more fully than any other system, in any conceivable situation for any legitimate objective.

The Congress has convened in regular session a few days ago in the usual atmosphere of political intrigues, selfishness, and lust for power. Before the 100-day period ends we shall, I am sure, witness bitter and protracted political battles between Congress and the President, between the two houses of Congress and between the members of each House not only among those professing diverse party loyalties but even among those under the same political banner.

I am not one to decry such conflicts when they arise from honest differences of opinion and for altruistic motives. It is good within limits, that we should disagree. There are less chances that the people will be robbed and swindled of their rights when their agents and trustees are mutually jealous and vigilant. Such conflicts and differences are part of a democratic system; only tyranny can impose an artificial unanimity of thought and action, the unanimity in a graveyard. Politics, by its very nature, is conflict, and conflict for power is the most unrelenting of all conflicts.

When the balance of power, which is the soul of democracy, is destroyed, the outward forms of democracy become meaningless. When President and Congress, joining the power of appointment with the power of confirmation, the power of legislation with the power of enforcement, the power to declare a policy with the power to carry it out, the power to raise money with the power to disburse it, conspire in the interest of total power by one man or

DISCREPANCY BETWEEN FIGURES AND WORDS IN ELECTION RETURNS

By LEON L. ASA
Member, Philippine Bar

An interesting question of first impression was recently raised before the Supreme Court in the election case "Manuel Abad Santos, petitioner, vs. Judge Arsenio Santos, of the Court of First Instance of Pampanga, and Rafael S. del Rosario, respondents". G.R. No. L-16375. The question was: when the number of votes received by a candidate written in figures is different from that written in words, may the interested party ask for judicial recounting of votes under Section 163 in relation with Section 168 of the Revised Election Code?

The facts of the case are briefly summarized as follows: In the election held last November 10, 1959, for the office of Municipal Mayor of Angeles, Pampanga, upon completion of the canvass made by the Municipal Board of Canvassers of said municipality, Manuel Abad Santos obtained 6,518 votes while his rival candidate Rafael S. del Rosario obtained 6,517 votes or a plurality of only vote in favor of Abad Santos. Immediately, del Rosario filed with the Court of First Instance of Pampanga a petition for a judicial recounting of the votes cast in Precinct Nos. 4 and 4-A for the office of Municipal Mayor of Angeles, Pampanga, alleging that there was a conflict in the election returns between the number of votes written in letters and the number of votes written in figures received by him. In Precinct No. 4, it appears in the four copies of the election returns that del Rosario received "one hundred five" votes written in words and "145" written in figures, while in Precinct No. 4-A, it appears that he received "one hundred and nine" votes written in words and "169" written in figures. The lower court granted the petition of del Rosario for a judicial recounting of the votes cast in said two precincts. Abad Santos then filed with the Supreme Court a petition for Prohibition with Preliminary Injunction.

The main argument of his lawyer is the following: "The mere discrepancy between the words and the figures in the election return as to the number of votes that a candidate has received is not the discrepancy contemplated in Section 163 in relation to Section 168 of the Revised Election Code. It is the discrepancy in the statements — which gives to a candidate a different number of votes and the difference affects the result of the election. The legislature could not have intended that mere discrepancy between the words and the figures should cause the recounting of the votes to determine the true result of the election, because it could not have ignored the rule of universal application that where the conflict is between words and figures, the words will be given effect (82 C.J.S. 720).

> The general rule of construction is conceded that, where there is a conflict between words and figures, the former prevails; and this concession is in accord with the text-books and decision. *Warder v. Millard*, 8 *Lea.* 581-583; *Payne v. Clark*, 19 *Mo.* 152.
>
> Where a difference appears between the words and figures, evidence cannot be received to explain it; but the words in the body of the paper must control; and if there is

(*Continued on next page*)

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one group, then democracy is in peril of its life.

No matter what the Constitution may say, such a concentration of power can exert well-nigh irresistible pressure on the courts, undermine the rights of the people through repeated encroachments, or wipe them out in one bold sweep against which effective redress shall no longer be found within the framework of the Constitution.

And who shall rise to defend and protect the individual's bill of rights, who shall rise to fight for the supremacy of the Constitution, and how can those who would do so expect the support of the majority of the people when the people, by then, shall have become impassive to the repeated violations and desecrations of the Constitution?

Let us then congratulate ourselves that we still have the inclination and the ability to disagree to expose errors and misdeeds wherever they are found, and to detect and resist any conspiracy to unite and seize political power, and in the end, to call upon the people to restore the balance.

I am reminded of a character in Bernard Shaw's play, *The Devil's Disciple*. A woman reputed to be religious finds her faith shaken when she sees her enemies, whom she considers sinful, succeeding and prospering while she fails, and she upbraids the minister of the gospel with a heart full of regrets for her virture. "Why should we do our duty and keep God's law" she remonstrates, "if there is to be no difference made between us and those who follow their own likings and dislikings and make a jest of us and of their Maker's word?"

I wonder if there are some of us who, like that embittered old woman, believe that we should keep the Constitution and love democracy only in the expectation of material rewards. Can our faith surmount the trial of suffering and resist the temptations of prompt relief in times of distress or ignore the lure of expediency for the attainment of political ends?

What if we were facing a real national emergency? Could we be sure that the majority of our people would not follow the sad examples of desperate and angry nations in the annals of the democratic experiment, and that they will not discard the Constitution to gain a delusive salvation?

Perhaps we believe in the Constitution only because it is the thing to do, because we have learned its provisions by rote in school like arithmetic and spelling and the Lord's Prayer, and not because we sincerely and consciously believe it to be the best and surest guaranty of our chosen way of life.

The Constitution, through which all good things in our democracy have come into being, and without which they could not have come to be, is the light of our nation, but this light cannot illumine those who neither understand it nor love it, because men of little faith, Pharisees and money-changers, generations of vipers, in the angry words of the Lord, have hidden it under the bushel of their hypocrisy and greed.

Let us then bear witness to the Constitution, so that, in the language of the gospels, all the people may learn to believe. If our nation is to survive and attain greatness in freedom the Constitution must live in our actions, both as individuals and as a people, in the enlightened conviction and steadfast belief that only in the spirit of the Constitution, infused in us, shall democracy abide with us and our nation forever enjoy the blessings of independence under a regime of justice and liberty, and fulfill its destiny within the Lord's Kingdom.

Neither in the toils of the day nor in the vigils of the night can the sentinels of the Constitution relax their vigilance. Let us all be wary and stand by our arms, lest, by culpable tolerance or by criminal negligence, our country should in some forbidding future become a desolate Carthage wherein only the naked ruins of our republic shall remain, fallen monuments of the past in whose debris our descendants, by then the forlorn bondsmen of some corrupt despot, shall in vain endeavor to decipher the language of the Constitution, inscribed, as in forgotten hieroglyphs, on the sarcophagus of our dead freedoms.

I

Bienvenido Nera, Petitioner-Appellee, vs. Paulino Garcia, Secretary of Health, and Tranquilino Elicano, Director of Hospitals, Respondents-Appellants, G.R. No. L-18169, Jan. 30, 1960, Montemayor, J.

1. PUBLIC OFFICERS; SUSPENSION OF OFFICER PENDING INVESTIGATION. — Suspension is a preliminary step in an administrative investigation and if after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, he is removed or dismissed. This is the penalty. There is nothing improper in suspending an officer pending his investigation and before the charges against him are heard and he is given an opportunity to prove his innocence. In the case at bar, the suspension of petitioner before he could file his answer to the administrative complaint was not a punishment or penalty for the acts of dishonesty and misconduct in office, but only as a preventive measure.

2. ADMINISTRATIVE LAW; PREVENTIVE SUSPENSION; SECTION 694 OF REVISED ADMINISTRATIVE CODE CONSTRUED. — Under the provision of Section 694 of the Revised Administrative Code, the comma after the words dishonesty and oppression warrants the conclusion that only the phrase "grave misconduct or neglect" is qualified by the words "in the performance of duty" and, therefore, dishonesty and oppression to warrant punishment or dismissal, need not be committed in the course of the performance of duty by the person charged.

3. ID.; ID.; SECTION 34 OF REPUBLIC ACT NO, 2260 CONSTRUED. — Section 34 of Republic Act No. 2260, known as the Civil Service Act of 1959 introduces a change into Section 694 of the Revised Administrative Code by placing a comma after the words "grave misconduct", so that the phrase "in the performance of duty" instead of qualifying "grave misconduct or neglect" as it did in Section 694 of the Revised Administrative Code, now qualifies only the last word "neglect", making clear the legislative intent that to justify suspension, when the person charged is guilty merely of neglect, the same must be in the performance of his duty; but when he is charged with dishonesty, oppression or grave misconduct, these need not have a relation to the performance of duty.

4. ID.; SUSPENSION OF ELECTIVE OFFICERS AND APPOINTIVE OFFICERS OR EMPLOYEE. — An elective officer, elected by popular vote, is directly responsible only to the community that elected him and, ordinarily, is not amenable to rules of official conduct governing appointive officials and may not be forthwith and summarily suspended, unless his conduct and acts of irregularity have some connection with his office. An elective official has a definite term of office, relatively of short duration and since suspension from his office affects and shortens the term of office, said suspension should not be ordered and done unless necessary to prevent further damage or injury to the office and to the people dealing with said officer.

Jose Tomaneng Guerrero, for petitioner-appellee.

Acting Solicitor General Guillermo E. Torres & Solicitor Camilo D. Quiason, for respondents-appellants.

DECISION

Respondents are appealing the decision of the Court of First Instance of Manila, dated October 30, 1957, ordering them to reinstate petitioner Bienvenido Nera to his former position as clerk in the Maternity and Children's Hospital, and to pay him his back salary from the date of his suspension until reinstatement.

The facts in this case are not in dispute. Petitioner Nera, a civil service eligible, was at the time of his suspension, serving as clerk in the Maternity and Childern's Hospital, a government institution under the supervision of the Bureau of Health. In the course of his employment, he served as manager and cashier of the Maternity Employee's Cooperative Association, Inc. As such manager and cahier, he was supposed to have under his control funds of the association. On May 11, 1956, he was charged before the Court of First Instance of Manila with malversation, Criminal Case No. 35447, for allegedly misappropriating the sum of ₱12,636.21 belonging to the association.

Some months after the filing of the criminal case, one Simplicio Balcos, husband of the suspended administrative officer and cashier of the Maternity and Children's Hospital, named Gregoria Balcos, filed an administrative complaint against petitioner Nera, on the basis of the criminal case then pending against him. Acting upon this administrative complaint and on the basis of the information filed in the criminal case, as well as the report of the General Auditing Office to the effect that as a result of its examination of the accounts of Nera as manager and cashier of the association, he was liable in the amount of ₱12,,636.21, the executive officer, Antonio Rodriguez, acting for and in the absence of the Director of Hospitals, required petitioner to explain within seventy-two hours from receipt of the communication, Exhibit D, why he should not be summarily dismissed from the service for acts in-

DISCREPANCY . . . (*Continued from page 37*)

difference between printed and written words, the written must control. *Kimball v. Costa*, 104 *Am. St. Rep.* 937, 939.

Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount. *Section* 17 (a), *Negotiable Instruments Law.*

When an instrument consists partly of written words and partly of a printed form and the two are inconsistent, the former controls the latter. *Rule* 123, *Section* 63, *Rules of Court.*

Prudence demands that the recounting of votes be limited to instances where the discrepancies refer to the number of votes appearing in the different copies of the election returns. It should not be applied to a mere discrepancy between the figures and the words in the return; for it is a matter of common knowledge how easy it is to commit mistakes in writing figures. That is why the law requires that the total number of votes polled by each candidate should be written out in the statements in words and in figures (Section 150, Revised Election Code)."

The Supreme Court dismissed the petition "for lack of merits". However, in the case of Parlade et al. vs. Judge Quicho et al., G.R. No. L-16259, December 29, 1959, the Supreme Court in a divided decision (six against five) declared that where there is conflict "in the statement itself, words contradicting figures, there arises *ex necessitate rei* the need of finding, which statement of number should be followed by the Board," and "the law gives the court of first instance power to recount the votes cast in the precinct."

It may be said, therefore, although it is not a settled doctrine, because the Court was almost equally divided — that in case of discrepancy between the figures and the words in the election returns as to the number of votes received by a particular candidate, such discrepancy constitutes a legal ground for the recounting of votes under Section 163 in relation with Section 168 of the Revised Election Code.

volving dishonesty. This period of seventy-two hours was extended to December 20, 1956. Before the expiration of the period as extended, that is, on December 19, 1956, Nera received a communication from respondent Director of Hospitals suspending him from office as clerk of the Maternity and Children's Hospital, effective upon receipt thereof. This suspension carried the approval of respondent Garcia, Secretary of Health.

The petitioner asked the PCAC to intervene on his behalf, which office recommended to respondents the lifting of the suspension of petitioner. Upon failure of respondents to follow said recomendation, petitioner asked respondents for a reconsideration of his suspension, which request was denied. Petitioner then filed the present special civil action of prohibition, certiorari and mandamus to restrain respondents from proceeding with the administrative case against him until after the termination of the criminal case; to annul the order of suspension dated December 19, 1956, and to compel respondents to lift the suspension. After hearing this special civil action, the appealed decision was rendered. The trial court held that petitioner was illegaly suspended, first because the suspension came before he was able to file his answer to the administrative complaint, thereby depriving him "of his right to a fair hearing and an opportunity to present his defense, thus violating the due process clause"; also, that assuming for a moment that petitioner were guilty of malversation or misappropriation of the funds of the association, nevertheless, said irregularity had no connection with his duty as clerk of the Maternity and Children's Hospital.

In connection with the suspension of petitioner before he could file his answer to the administrative complaint, suffice it to say that the suspension was not a punishment or penalty for the act of dishonesty and misconduct in office, but only as a preventive measure. Suspension is a preliminary step in administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and he is given opportunity to prove his innocence.

As to the holding of the trial court about dishonesty or misconduct in office having connection with one's duties and functions in order to warrant punishment, this involves an interpretation of Section 694 of the Revised Administrative Code, which for purposes of reference we reproduce below:

> "SEC. 694. *Removal or suspension.* — No officer or employee in the civil service shall be removed or suspended except for cause as provided by law.
>
> "The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation to the charges against such officer or pending an investigation of his bureau or office. With the approval of the proper head of department, the chief of a bureau or office may likewise suspend any subordinate or employee in his bureau or under his authority pending an investigation, *if the charge against such subordinate or employee involves dishonesty, oppression, or grave misconduct or neglect in the performance of duty.*"

It will be observed from the last four lines of the second paragraph that there is a comma after the words dishonesty and oppression, thereby warranting the conclusion that only the phrase "grave misconduct or neglect" is qualified by the words "In the performance of duty". In other words, dishonesty and oppression to warrant punishment or dismissal, need not be committed in the course of the performance of duty by the person charged.

Section 34 of Republic Act No. 2260, known as the Civil Service Act of 1959, which refers to the same subject matter of preventive suspension, throw some light on this seeming ambiguity. We produce said section 34:

> "SEC. 34. *Preventive Suspension.* — The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation of the charges against such officer or pending an investigation of his bureau or office. With the approval of the proper Head of Department, the chief of a bureau or office may likewise preventively suspend any subordinate officer or employee in his bureau or under his authority pending an investigation, if the charge against such officer or employee involves *dishonesty, oppression or grave misconduct, or neglect in the performance of duty,* or if there are strong reasons to believe that the respondent is guilty of charges which would warrant his removal from the service."

It will be noticed that it introduces a small change into Section 694 of the Revised Administrative Code by placing a comma after the words "grave misconduct", so that the phrase "in the performance of duty" instead of qualifying "grave misconduct or neglect", as it did under Section 694 of the Revised Administrative Code, now qualifies only the last word "neglect", thereby making clear the legislative intent that to justify suspension, when the person charged is guilty merely of neglect, the same must be in the performance of his duty; but that when he is charged with dishonesty, oppression or grave misconduct, these have no relation to the performance of duty. This is readily understandable. If a Government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot well tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the Government other than the office where he is employed; and by reason of his office, he enjoys and possess a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations. As the Solicitor General well pointed out in his brief, "the private life of an employee cannot be segregated from his public life. Dishonesty inevitably reflects on the fitness of the officer or employee to continue in office and the discipline and morale of the service."

It may not be amiss to state here that the alleged misappropriation involved in the criminal case is not entirely disconnected with the office of the petitioner. True, the Maternity Employee's Cooperative Association that owns the funds said to have been misappropriated is a private entity. However, as its name implies, it is an association composed of the employees of the Maternity and Children's Hospital where petitioner was serving as an employee. Moreover, if petitioner was designated to and occupied the position of manager and cashier of said association, it was because he was an employee of the Maternity and Children's Hospital. The connection though indirect, and, in the opinion of some, rather remote, exists and is there.

The trial court cites the cases of Mondano vs. Silvosa (G. R. No. L-7708, May 30, 1955), Lacson vs. Roque (G. R. No. L-3081, October 14, 1953), and others to support its holding that an official may not be suspended for irregularities not committed in connection with his office. These cases, however, involve elective officials who stand on ground different from that of an appointive officer or employee, and whose suspension pending an investigation is governed by other laws. Furthermore, an elective officer, elected by popular vote, is directly responsible only to the community that elected him. Ordinarily, he is not amenable to rules of official conduct governing appointive officials, and so, may not be forthwith and summarily suspended, unless his conduct and acts of irregularity have some connection with his office. Furthermore, an elective official has a definite term of office, relatively of short duration; naturally, since suspension from his office definitely affects and shortens this term of office, said suspension

should not be ordered and done unless necessary to prevent further damage or injury to the office and to the people dealing with said officer.

In view of the conclusion that we have arrived at, we deem it unnecessary to discuss and determine the other questions raised in the appeal.

IN VIEW OF THE FOREGOING, the appealed decision is hereby reversed, with costs.

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

II

Dr. Cesar Samson, Petitioner, vs. Hon. Numeriano G. Estenzo, Judge of the Court of First Instance of Leyte, 13th Judicial District, 5th Branch at Ormoc City, and Mrs. Asuncion Conui Omega, Respondents, G. R. No. L-16286, *January* 30, 1960, *Concepcion*, J.

1. ELECTION LAW; DISCREPANCY BETWEEN ELECTION RESULT NOT GROUND FOR RECOUNTING OF VOTES; CASE AT BAR. — Petitioner and respondent were, among others, candidates for councilor of the City of Ormoc in the elections of November 10, 1959. After the canvass, petitioner garnered enough votes to be proclaimed as the eight councilor, with plurality of three votes over his nearest opponent, Mrs. Omega. Respondent then filed with the Court of First Instance a petition to recount the votes in Precinct Nos. 17 and 18 on the ground that the election returns which gave her 68 votes in each precincts were contradicted by the certification of the result of the election incorporated in Form No. 8 of the Commission on Elections, which gave her only 67 and 59 votes respectively. On November 24, 1959, said respondent amended her petition by including Precinct No. 8 on the ground that in the election result certified by the Board of Election Inspectors in the Transcript of Election Returns, only 41 votes were tallied in favor of petitioner but in the election returns, petitioner got 71 votes. The lower court enjoined the Municipal Board of Canvassers from proceeding with the canvass. On November 25, 1959, the lower court issued another order directing the Board of Canvassers to open the ballots boxes for Precincts Nos. 8, 17 and 28 to determine who is the elected candidate for city councilor. The motion for reconsideration having been denied, petitioner brought the present petition. *Held*: Insofar as they direct the Board of Canvassers to open the ballot boxes of Precincts Nos. 8, 17 and 28, the orders are contrary to law. This case does not fall under section 163 of Republic Act No. 180, authorizing the recount of the votes cast in a given precinct when another copy or other authentic copies of the statement from an election precinct submitted to the board gives a candidate a different number of votes and the difference affects the result of the election. The recount so authorized, must be made by the Court of First Instance itself, not by the Board of Canvassers, as ordered by respondent judge and for the sole purpose of determining which is the true statement or the true result of the count of the votes cast in a given precinct and not to determine who is the elected candidate.
2. ID.; DISCREPANCY BETWEEN ELECTION RETURN AND CERTIFICATE OF VOTE NOT GROUND FOR RECOUNTING OF VOTES. — Where the conflict is between the election returns or statements of the count alluded to in section 150 of the Revised Election Code and the certificate mentioned in section 153 thereof, sections 163 and 168 of the Revised Election Code are not applicable (Parlarde et al., vs. Quicho, et al., G. R. No. L116259, Dec. 29, 1959).

DECISION

This is a petition for certiorari and prohibition to enjoin the Judge, Hon. Mariano C. Estenzo, from enforcing its order of December 1, 1959, to open the ballot boxes of Precincts Nos. 8, 17 and 28, of Ormoc City and make a recount of the votes therein cast. The petition, likewise, contained a prayer for a writ of preliminary injunction, which we issued upon the filing of the requisite bond.

Petitioner Dr. Cesar Samson and respondent herein, Mrs. Asuncion Conui Omega, were, among other, candidates for councilor of the City of Ormoc in the general elections held on November 10, 1959. After a canvass by the City Board of Canvassers of the votes then cast, it appeared, on November 23, 1959, that Samson had garnered enough votes to be proclaimed as the last of the eight (8) conucilors elected to the city council, with a plurality of three (3) votes over his nearest opponent, said Mrs. Conui Omega. However, on the same date the latter filed with the aforementioned Court of First Instance a petition for the recounting of the votes cast in Precincts Nos. 17 and 28 of said city, upon the ground that the election returns therefor, which gave her 68 votes in each precinct, were contradicted by the certification of the result of the election therein, incorporated in Form No. 8 of the Commission on Elections, according to which she got only 67 and 59 votes, respectively. On November 24 Mrs. Omega amended her petition by including in her request for recount the ballot box of Precinct No. 8 of Ormoc City, upon the ground that, in said precinct, "the x x x election result certified by the Board of Election Inspectors in the Transcript of Election Returns (Elec-see form) submitted to and as gathered by the 39th PC Company, Ormoc City, which is duly deputized agency of the Commission on Elections, only 41 votes were tallied in favor of Dr. Cesar Samson", whereas "the same Board of Election Inspectors x x x in another statement (referring to the election returns), "certified that the same candidate Dr. Cesar Samson got 71 votes". Upon the filing of said amended petition, the Court of First Instance issued an order enjoining the Municipal Board of Canvassers "from further proceeding with the canvass" until further orders, and, relying upon sections 163 and 168 of the Revised Election Code, the court issued on November 25, 1959, another order the depositive part of which reads:

> "The Board of Canvassers is hereby directed to open the ballot boxes for precinct Nos. 8, 17 and 28 so that they may proceed to recount the votes of Dr. Samson and Mrs. Omega for the sole purpose of determining who is the elected candidate for city councilor.
>
> "Taking into account the fact that there are ten members of the Board of Canvassers, the members of the Board of Canvassers are hereby directed to divide themselves into three divisions so that each division of three may take care in the counting of votes in every precinct and the Chairman will act as the supervisor. Dr. Samson and Mrs. Asuncion C. Omega may appoint watchers with one watcher for each said party for every division. The counting shall take place immediately before this Court."

A reconsideration of this order was denied by another order bearing the same date, which, likewise, stated that:

> "Taking into account that tommorrow is a special public holiday and there is no probability that the said keys will arrive Ormoc City on that day, the said members of the Board of Canvassers are hereby notified that the ballot for precincts Nos. 8, 17 and 28 will be opened before this Court on *November 27, 1959*, at 7:30 A.M., with notice to all the members of the Board of Canvassers, as well as to Attorneys Benjamin Tugonon, Mendola, Teleron and Brocoy, in open court."

A motion for reconsideration of the latter order having had the sense fate, Dr. Samson instituted the present case, for the purpose adverted to above.

At the outset, it is clear that, insofar as they direct the Board of Canvassers to open the ballot boxes of Precincts Nos. 8, 17 and 28, the orders complained of are contrary to law. Respondents herein seem to have acted under the impression that this case falls under section 168, in relation to section 163, of Republic Act No. 180, authorizing the recount of the vote cast in a given precinct when "another copy of other authentic copies of the statement from an election precinct submitted to the board gives a candidate a different number of votes and the difference affects

the result of the election x x x". However, the recount so authorized, must be made by "the Court of First Instance" itself, not by the *Board of Canvassers*, as ordered by the respondent Judge. Moreover, said recount is authorized "for the sole purpose of determining", not "who is the elected candidate" as stated in the first order of respondent Judge, dated November 25, 1959, but *"which is the true statement* or which is the true result of the count of the votes cast" in the precincts in question.

Again the alleged conflicts in the case at bar exist between the election returns, or statements of the count alluded to in section 150 of said Act, on the one hand, and the certificate mentioned in section 153 thereof, on the other, and we have already held in Jose Parlade, et al. vs. Perfecto Quicho, et al., G.R. No. L-16259 (December 29, 1959) that the aforementioned sections 163 and 168 are inapplicable to such situation.

WHEREFORE, the orders complained of are set aside and the writ of preliminary injunction issued herein is hereby made permanent, with cost against respondent Mrs. Asuncion Conui Omega.

IT IS SO ORDERED.

Bengzon, Padilla, Labrador, J.B.L. Reyes and Barrera, JJ., concurred.

Paras, C.J., Bautista Angelo Endencia and Gutierrez David, JJ., reserved their votes.

III

Ildefonso D. Yap and Philippine Harvardian College, Petitioners-appellant, vs. Daniel M. Salcedo, in his private capacity and as Director of the Bureau of Private Schools, Respondent-appellee, G. R. No. L-13920, *December* 24, 1959, *Labrador, J.*

1. ADMINISTRATIVE LAW; PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; CASE AT BAR.—Petitioner-appellant acquired the Mindanao Academy on May 10, 1954. On December 19, 1959, petitioner sent a letter to the respondent-appellee requesting that he be furnished true copies of the records of each of four students. In answer, respondent suggested that said records be secured from the former owners of the academy. Petitioner insisted upon his request, threatening to file charges against respondent if he fails to furnish the records within 96 hours. This second letter was coursed through the Secretary of Public Education. Respondent did not heed the demand. Petitioner brought an action in the Court of First Instance of Manila to compel respondent to furnish him with true copies of the transcript of records of four students. Said court denied the petition on the grounds among others, that no appeal has been made by petitioner to the Secretary of Education which is a more speedy and adequate remedy. Petitioner appealed. *Held*: The court below correctly denied the petition for failure of petitioner-appellant to exhaust the administrative remedy, most speedy and adequate, of appealing the refusal of the respondent appellee to his immediate superior, the Secretary of Education, in accordance with the principle of exhaustion of administrative remedies. The remedy most appropriate and speedy available to petitioner was an appeal to the Secretary of Education in whose discretion the enforcement or non-enforcement of the instructions being carried out by respondent-appellee lies.

Saviniano Balagtas, for petitioner-appellant.

Acting Solicitor General Guillermo E. Torres & Sol Jorge R. Coquia, for respondent-appellee.

DECISION

Appeal from the judgment of the Court of First Instance of Manila, denying a petition of petitioner-appellant for the issuance of a writ of mandamus against respondent-appellee, in his capacity as Director of the Bureau of Public Schools, to compel him to furnish petitioner-appellant with true copies of the transcript of records of four students of the defunct Mindanao Academy, Oroquieta, Misamis Occidental.

Petitioner-appellant acquired the Mindanao Academy on May 10, 1954. On December 19, 1956, he sent a letter to the respondent-appellee requesting that he be furnished true copies of the records of each of four students. In answer respondent suggested that said records be secured from the former owners of the academy. Upon receipt of this denial petitioner insisted upon his request, explaining that the records of the former school were in a disorder topsy-turvey condition, threatening to file charges against respondent if he fails to furnish the records requested within 96 hours, etc. This second letter was coursed through the Secretary of Public Education. The respondent did not heed the demand and threat, explaining that it is not the policy of his Bureau to issue copies of its records to schools, unless the latter have suffered a calamity that has caused loss of its records; that his office, upon orders of the Secretary, is checking records of public school teachers who are claiming adjustment of their salaries, and the issuance of copies might nullify the work of investigation; and that until his office has completed the investigation of the records in question and is convinced that they are authentic, no true copies could be used.

Thereupon, petitioner brought the action in the Court of First Instance of Manila. This court denied the petition on three grounds: (1) that no appeal has been made by petitioner-appellant to the Secretary of Education, which is a more speedy and adequate remedy; (2) that there is no specific legal duty on the part of respondent to issue the copies demanded; and (3) no evidence was submitted that the records in question can not be obtained.

We hold that the court below correctly denied the petition for failure of petitioner-appellant to exhaust the administrative remedy, most speedy and adequate, of appealing the refusal of the respondent-appellant to his immediate superior, the Secretary of Education, in accordance with the principle of exhaustion of administrative remedies enunciated by this Court in a great number of cases. (Lamb vs. Phipps, 22 Phil. 456; Miguel vs. Vda. de Reyes, G. R. No. L-4851, July 31, 1953; Wee Poco vs. Posadas, 64 Phil. 640; Lucas vs. Burian, G. R. No. L-7886, September 23, 1957; Harry Lyons, Inc., vs. U. S. A., G. R. No. L-11786, Sept. 26, 1958)

The applicability of the principle above mentioned becomes imperative if we take into account that the petitioner-appellant had been expressly advised by letter of respondent-appellee that the Secretary of Education had given instructions for the checking of the records of public school teachers who are claiming adjustment of their salaries in accordance with the provisions of Republic Act No. 842, which instructions might fail on enforcement if records of teachers in respondent's office are divulged. (Petitioner-appellant's brief, pp. 7-8). Under these circumstances, it is evident that the remedy most appropriate and speedy available to petitioner was an appeal to the Secretary of Education in whose discretion the enforcement of the instructions being carried out by respondent-appellee clearly lies. In passing, it may be illuminating to recall the fact, of which we may take judicial notice, that upon enactment of Republic Act No. 842, which standardized the salaries of public school teachers according to their degrees, a mad scramble for degrees ensued among teachers, giving rise to the indiscriminate issuance of diplomas by private schools, which in turn resulted in the "diploma mill" scandals then subject of investigation.

Without considering the other grounds given by the court *a quo* for denying the petition, we hold that under the particular circumstances of the present case said denial is fully justified. Coursing of the communication or request through the Secretary of Education can not be considered as an appeal to this official.

The decision subject of appeal is hereby affirmed, with costs against petitioner-appellant.

SO ORDERED.

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

IV

Gabina Perez, et al., Plaintiffs-Appellees, vs. Jose C. Zulueta, Defendant-Appellant, G. R. No. L-10374, *September* 30, 1959, *Bengzon, J.*

CIVIL LAW; ARTICLE 1606 NEW CIVIL CODE CONSTRUED. — Article 1606 of the New Civil Code which gives the vendor *a retro* "the right to repurchase within thirty days from the time final judgment was rendered in a civil action, on the basis that the contract was a true sale with the right to repurchase" means that after the courts have decided by a final or executory judgment that the contract was *a pacto de retro* and not a mortgage, the vendor may still have the privilege of repurchasing within 30 days.

DECISION

Appeal from an order requiring defendant to permit plaintiffs to repurchase their land.

Omitting reference to procedural details, the facts material to the principal issue may be briefly stated as follows:

On December 27, 1950 Magtangol P. Pedro and others (hereafter named plaintiffs) executed a deed whereby for the sum of ₱10,000.00 they sold a parcel of land in Quezon City. (Transfer Certificate of Title 8762) to Jose C. Zulueta (hereafter named defendant), subject to their right to repurchase within one year. As the vendors failed to repurchase, defendant took steps to consolidate his title to the land in January 1952. This gave rise to a suit (Q-344) in the Quezon City court of first instance wherein the vendors (plaintiffs) alleging the contract to be a mortgage disguised as *pacto de retro*, asked for a declaration to that effect plus other appropriate remedies. Defendant asserted the contract was a true *pacto de retro* sale. Such court, after hearing, gave judgment for plaintiffs, holding the contract to be a mortgage. But on appeal, the Court of Appeals in its decision of May 13, 1955, reversed and held the contract to be a true *pacto de retro* sale; however, it added "without prejudice to plaintiffs' (vendors) right to make the repurchase in accordance with x x x paragraph 3 of Art. 1606 of the New Civivl Code". The plaintiffs applied to this Court for review on certiorari, but their petition was denied by our resolution of June 29, 1955. At no time did they move to reconsider.

On August 2, 1955, defendant renewed his efforts to consolidate his title by filing a petition in the Quezon Court alleging that the plaintiffs had failed to exercise their reserved right to repurchase within thirty days. But on August 9, 1955, the plaintiffs opposed the claims, maintaining that the 30-day period had not yet elapsed. Thereafter by letter of August 10, 1955, they demanded from defendant the reconveyance of the property, offering to repay the price; and upon his refusal, they filed in court (in Q-344) Aug. 13, 1955, a petition that he be required to reconvey. (Thereafter, they judicially deposited the money.) This petition was, after hearing, granted by Hon. Hermogenes Caluag, Judge, by order, the dispositive part of which reads as follows:

> "x x x Mr. Jose Zulueta is hereby ordered to execute a deed of reconveyance over the parcel of land covered by Transfer Certificate of of Title No. 8762 in favor of the petitioners Gavina Perez, et al., within five days from receipt of a copy of this order and upon compliance therewith he may withdraw the amount of ₱10,000.00 deposited with the court. In the event that Mr. Zulueta fails or refuses to execute the said deed of reconveyance within the period above stated, the Clerk of Court is ordered to hold the amount ₱10,000.00 subject to the disposition of the said Mr. Zulueta, and the Register of Deeds of Quezon City is hereby ordered to cancel the annotation of encumbrances made and appearing on Transfer Certificate of Title No. 8762."
>
> Hence this appeal by defendant Zulueta.

The New Civil Code, Art. 1606, gives the vendor a retro "the right to repurchase within thirty days from the time final judgment was rendered in a civil action, on basis that the contract was a true sale with the right to repurchase." This is admittedly the right reserved to the plaintiffs (Pedro and others) in the decision of the Court of Appeals.

The main issue concerns the counting of such 30-day period. Defendant says it should start from June 24, 1955, when this Supreme Court upheld by resolution, the appellate court's decision whereas plaintiffs contend, "the period commenced to run only on July 15, 1955, after the day the resolution of June 24 became final.

Defendant counters that the resolution of the Supreme Court was a "final judgment", rendered on June 24, 1953. And he quotes several provisions of the Rules of Court about "final judgment" being one that disposes of the issues completely was distinguished from interlocutory judgment. We also quotes decisions saying that a judgment is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the trial court.(1) On the contrary, the plaintiffs maintain, final judgment means a judgment which has become final or executory, one which is conclusive and binding, and in that light, the judgment (Supreme Court) became final only on July 14, because up to that time a motion to reconsider could be entertained.

The authorities say that in determining whether a judgment is "final", no hard and fast definition or test can be given since finality depends somewhat on the purpose for which the judgment is being considered (Corpus Juris Secundum, Vol. 49, p. 35). "Final" may mean one thing on an issue of conclusiveness or binding effect. For the purpose of appeal, final judgment is what herein defendants understands and maintains. On the other hand, a judgment will be deemed final or executory "only after expiration of the time allowed by law for appeal therefrom, or, when appeal is perfected, after the judgment is upheld in the appellate court." (Corpus Juris Secundum, Vol. 49, p. 39.)

In the latter sense, we declared in De los Reyes v. de Villa, 48 Phil. 227, that final decision means a decision which has become final and non-appealable.

Now then, in what sense did the New Civil Code use "final judgment" in Art. 1606? Articles 1548 and 1557 of the same Code provide that eviction takes place whenever by, 'a final judgment" x x x the vendee is deprived of the whole or of a part of the thing purchased; and the warranty of eviction can not be enforced until "a final judgment" has been rendered whereby the vendee loses the thing acquired or a part thereof.

Manresa believes and holds that final judgment in those articles imply a judgment that has become final and executory.(2) And "sentencia firme" in Spanish (that is the word in Arts. 1475 and 1480 of the Civil Code(3)) refer to binding, conclusive judgment.(4) Needless to add, if in previous articles "final judgment" signify a *judgment that has become final*, it should have the same meaning in subsequent articles in the same Code.

But let us test defendant's theory a little further. From his standpoint, if the Quezon court of first instance had declared the contract to be a *pacto de retro*, the 30-day period would begin from the promulgation of the judgment there, because such judgment was "final" (appealable) not interlocutory. If such were the correct view, Art. 1660 would place the vendors in the difficult position of having to decide either to appeal within 30 days or to repurchase. The framers of the Code could not have had such intention. They could not have meant to give the vendor the privilege to repurchase *in exchange for his right to* bring the mat-

(1) See Insular Gov't v. Roman Catholic Bishop, 17 Phil. 487 Mejia v. Alimorong, 4 Phil. 372; Monteverde v. Jaranilla, 60 Phil. 297, etc.

(2) Cuando la sentencia quede firme, esto es, cuando x x x no quepa contra ella recurse alguno ordinario el extraordinario (Manresa, Comments on Art. 1475, Civil Code, Vol. 10, p. 166-4th Ed.)

(3) The sources of Arts. 1548 and 1557, New Civil Code.

(4) *Sentencia Firme.* — La sentencia que adquiere la fuerza de las definitivas por no haberse utilizado por las partes litigantes recurso alguno contra ella dentro de los terminos y plazos legales concedidos el efecto. (Enciclopedia Juridica Española)

ter before a higher court. The litigant who alleged he was a mere mortgagor might not agree to the court's finding that he was a vendor, and might insist that he was a mere mortgagor before a higher court. Until that tribunal decides against him, he is not duty bound to consider himself a vendor.(5)

Again, in consonance with his position on the meaning of final judgment, herein defendant could as well claim that the Court of Appeals' decision was a final judgment (a determination of all the issues in the action — not interlocutory) and that the 30-day period began on May 14, 1955. He does not now advance such claim. Why? Because he knows such decision of the Court of Appeals was not final, definitive, and obligatory. And he could not very well argue that the vendors were "obliged" to repurchase in accordance with such decision, when precisely they were mortgagors — not vendors.

Presuming then that the lawmaking body intended right and justice to prevail(6) we hold that Art. 1606 means; after the courts have decided by a final or executory judgment that the contract was a *pacto de retro* and not a mortgage, the vendor (whose claim as mortgagor had definitely been rejected) may still have the privilege of repurchasing within 30-days.(7)

As a matter of fact, American courts hvae held that although "final" is often used with "judgment" to distinguish it from interlocutory judgment, "final judgment" is also used to describe a determination effective to exclude further proceedings in the same cause by appeal or otherwise, particularly where time within which to act is limited to run "from final judgment."(8)

It is, therefore, our opinion on this phase of the litigation, that the 30-day period within which the vendors (plaintiffs) could exercise their right to repurchase started to run on July 15, 1955, when the resolution of this Court upholding the decision of the Court of Appeals became final.

A secondary issue is raised as to the vendor's efforts to repurchase. Defendant says the letter of August 10, 1955, offering the money was not sufficient since it was not sincere, inasmuch as the money was only deposited in court in November 11, 1955, a long time after the 30-day period. Little need be said on this point except to declare that in the circumstances, the right was exercised in due time, deposit of money being unnecessary, according to Rosales v .Reyes, 25 Phil. 495, and Cruz v. Resurreccion, 53 Of. Gaz. 5198, particularly because defendant had declared the time to repurchase had passed, thereby impliedly declining to accept any redemption money.(9)

Wherefore, the appealed order is affirmed *in toto* with costs against appellant. This is subject, however, to our resolution of April 7, 1958, ordering the substitution of plaintiffs-appellees by Corazon L. Villanueva.

Padilla Montemayor, Labrador, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concurred.

V

Florentino Joya, Juan Tahimic, and Domingo Joya, Petitioners, vs. Pedro Pareja, Respondent, G. R. No. L-13258, November 28, 1959, Barrera, J.

1. AGRICULTURAL TENANCY ACT; SECTION 9 OF REPUBLIC ACT NO. 1199, AS AMENDED BY SECTION 3 OF REPUBLIC ACT NO. 2263 CONSTRUED. — Under Section 9 of Republic Act No. 1199, as amended by Section 3 of Republic Act No. 2263, a tenant of a lessee retains the right to work on the land despite the termination of the lease, or said in other words, whether his being a tenant of the lessee, makes him a tenant of the lessor upon the expiration of the contract.
2. ID.; ID. — It is clear from Section 9 of Republic Act No. 1199, as amended by Section 3 of Republic Act No. 2263 that tenancy relationship is not extinguished by (1) the expiration of the contract of tenancy; (2) sale; (3) alienation; or (4) transfer of legal possession of the land.
3. CIVIL LAW; LEASE. — In a contract of lease, the lessee, for the duration of the contract, acquires legal possession and control of the property subject of the agreement.
4. AGRICULTURAL TENANCY ACT; EFFECT OF ENACTMENT OF REPUBLIC ACT NO. 2263 ON TENURE OF TENANT. — Prior to the enactment of Republic Act No. 2263, amending Republic Act No. 1199, our tenancy legislations, while providing for the tenant's right in cases of sale or alienation of the property, is silent where there is only a transfer of legal possession of the land. With the amendment of the Agricultural Tenancy Act (Rep. Act No. 1199) on June 19, 1959, the tenure of the tenant in the land he is cultivating was secured even in cases of transfers of legal possession.

Placido C. Ramos, for petitioners.
Jesus M. Dator, for respondent.

DECISION

Florentino Joya is the owner of a parcel of land with an area of 11 hectares (lot No. 1171), situated in Sanja Mayor, Tanza, Cavite, which had been under lease to one Maximina Bondad for 16 years. For the duration of said period, the land was tenanted and worked on for the lessee by Pedro Pareja.

In April, 1954, upon termination of the lease agreement, the property was returned to the landowner, with the lessee recommending that the same be leased to Pareja. The said tenant and the landowner, however, failed to agree on the terms under which the former could work on the land, specifically on the matter of rental, as Joya demanded 120 cavanes as annual rental therefor. Notwithstanding such lack of understanding between them, Pareja continued on his cultivation of the property.

On May 24, 1954, the tenant filed with the Court of Industrial Relations (before the creation of the Court of Agrarian Relations) Tenancy Case No. 528I-R against Florentino Joya for the purpose of securing a reduction of the rental allegedly being imposed upon him by the respondent. The landowner resisted the complaint disclaiming that Pareja had ever been his tenant.

Two days thereafter or on May 26, Florentino Joya leased the land to Domingo Joya at an annual rent of 120 cavanes. As the aforesaid lessee found Pareja already working on the land, the former agreed to allow him (Pareja) to continue with his cultivation on condition that they would equally share its produce after deducting the rental for the land. In view of this development, Pareja moved for the dismissal of his complaint against the landowner, then pending in the Court of Industrial Relations, on the ground that the parties therein had already reached an agreement on the matter in controversy.

One year later, or on April 10, 1955, Florentino Joya renewed the lease in favor of Domingo Joya but included as co-lessee one Juan Tahimic. The rent was reduced to 105 cavanes a year. Pareja, with whom Domingo had worked during the previous year, refused to surrender the land to Tahimic. Thereupon, Florentino filed with the Justice of the Peace Court of Tanza, Cavite, a complaint for usurpation against Pareja who, consequently, was arrested and stayed in jail for a week. When finally released on bail, Pareja filed a counter-charge with the Office of the Provincial Fiscal, against Florentino Joya, Juan Tahimic, and Domingo Joya, for alleged violation of Republic Act 1199. However, threatened to be imprisoned again or fined in the usurp-

(5) Cf. Fernandez v. Suplido, G.R. L-5977, Feb. 17, 1955.
(6) Art. 10, New Civil Code.
(7) Cf. Ayson v. Court of Appeals, G.R. L-6501, May 31, 1955.
(8) Northwestern Wisconsin Electric Co. v. Public Service Commission, 2488 Wis. 479; 2 N.W. 2nd. 472; Dignowity v. Court of Civil Appeals, 110 Tex. 613; 210 S.W. 505; 223 S.W. 165; Wolfer v. Hurst, 47 Or. 156; 80 Pac. 419; 82 Pac. 20, and cases cited therein.
(9) Gonzaga v. Go, 69 Phil. 678.

ation case if he did not desist and surrender the land, he withdrew his complaint manifesting that he was surrendering the property to its owner but "leaving to the Court of Industrial Relations or Agrarian Court the determination of whatever right he may have in the said land." Thereafter, at the instance of Florentino Joya, the criminal case for usurpation was also dismissed.

On January 31, 1956, Pareja filed in the Court of Agrarian Relations a complaint against Florentino Joya and Juan Tahimic for alleged violation of Republic Act 1199 (Tenancy Case No. CAR-6, Cavite), consisting of his allegedly unlawful ejectment from the land he was working on for 16 years and the appointment by Florentino Joya of his co-defendant Juan Tahimic as tenant in his (Pareja's) stead; of the landowner's filing a criminal action when he refused to vacate the property and making it a contention for its dismissal his (Pareja's) surrender of the same. And contending that he unwillingly vacated the land for fear of being again indicted in court, Pareja prayed for his reinstatement to the landholding; payment to him of his share of the crops for the agricultural year 1955-56 which he failed to receive; for damages and attorney's fees.

In their answer with counterclaim, defendants Florentino and Juan denied the existence of tenancy relationship betwee plaintiff and defendant Florentino; and claimed that the complaint stated no cause of action and that the case had already been passed upon by competent authorities (apparently referring to the dismissal by the Court of Industrial Relations and the Provincial Fiscal's Office of the previous complaints of Pareja against the same defendants) Domingo Joya also filed an answer in intervention praying for the recognition of his and Tahimic's superior right to work on and cultivate the land.

After the hearing, the Court rendered judgment holding that upon termination of the civil lease in favor of Maximina Bondad, Pedro Pareja, the lessee's tenant, automatically became the tenant of the landowner, pursuant to Section 26-4 of Act 4054; that said tenant, on the other hand, in agreeing to share equally with Domingo Joya the produce of the land for the agricultural year 1954-55 in effect waived his right over an undetermined 1/2 of the landholding; that the subsequent contract of lease entered into between the landowner and Domingo Joya and Juan Tahimic as lessee should not prejudice the right of Pareja to work on the same land and, accordingly, was declared valid only insofar as that portion given up by the latter in favor of Domingo Joya was concerned. Consequently, Pedro Pareja was ordered reinstated to 1/2 of the 11-hectare landholding, while Domingo Joya and Juan Tahimic were recognized as joint tenants over the other half. As the rental for the lease of the land was fixed at 53.75 cavanes per agricultural year after taking into consideration its nature and productivity, the court also directed Florentino Joya to return to plaintiff Pareja and intervenor Domingo Joya 21.25 cavanes of palay or their value, which were overpaid to him (the landowner) for the agricultural year 1954-55; and to Domingo Joya and Juan Tahimic 55 cavanes or their corresponding value which were overpaid to him for the years 1955-56 and 1956-57. The court, however, finding that plaintiff's failure to continue on the cultivation of the land and its return to the owner could not be imputed to the latter, exonerated Florentino Joya from the charge of violation of Republic Act 1199. Not satisfied with this decision, therein defendants and intervenor filed this petition for review.

Admittedly, the respondent-tenant cultivated the land for the lessee for 16 years or for the entire duration of the lease agreement. There is no controversy either that tenancy relationship existed between Maximina Bondad, the lessee, and Pareja, the tenant. The question now interposed in this petition is whether the tenant of a lessee retains the right to work on the land despite the termination of the lease, or said in other words, whether his being a tenant of the lessee makes him, upon the expiration of the contract, a tenant of the lessor.

The question thus presented must be answered in the affirmative not so much because of Act 4054 relied upon by the Agrarian Court, but pursuant to Section 9 of Republic Act 1199, as amended by Section 3 of Republic Act 2263, which reads in part:

"SEC. 9. *Severance of Relations.*—The tenancy relationship is extinguished by the voluntary surrender or abandonment of the land by, or the death or incapacity of, the tenant:

x x x.

The expiration of the period of the contract as fixed by the parties, or the sale, alienation or transfer of *legal possession of the land does not of itself extinguish the relationship. In the latter case,* the purchaser *or transferee shall assume the rights and obligations of the former landholder in relation to the tenant.* In case of death of the landholder, his heir or heirs shall likewise assume his rights and obligations." (Emphasis supplied.)

It is clear from the foregoing that tenancy relationship is not extinguished by (1) the expiration of the contract (of tenancy); (2) sale; (3) alienation; or (4) transfer of legal possession of the land.

In a contract of lease, the lessee, for the duration of the contract, acquires legal possession and control of the property subject of the agreement.[1] The return by the lessee of the property to the lessor, upon expiration of the lease contract, naturally involves again a transfer of possession from one lawful holder to another. But it may be asked, is this transfer of possession included in or comprehended by the aforequoted Section 9 of Republic Act 1199, as amended?

Prior to the enactment of Republic Act 2263, amending Republic Act 1199, our tenancy legislations, while providing for the tenant's right in cases of sale of alienation of the property, is silent where there is only a transfer of legal possession of the land. With the amendment of the Agricultural Tenancy Act (Rep. Act 1199) on June 19, 1959, the tenure of the tenant in the land he is cultivating was secured even in cases of transfers of legal possession. Petitioner-landowner, however, claims that to hold that the lessee's tenant, with whom he had no dealing whatsoever, automatically becomes his tenant upon the return of the property to him would constitute a restraint on his right to enter into contract and deprive him of his liberty (to contract) and property without due process of law.

The same contention was raised during the deliberations of the then Senate Bill No. 119, but Congress, decided to implement its policy and objective in adopting the Agricultural Tenancy Law and passed the bill in its present form. The following is quoted from the Congressional Record:

"SENATOR PRIMICIAS. On the severance of relationships of tenant and landowner, it seems that there is an intention on the part of Your Honor to amend Section 9 of the Act so as to include the transfer of legal possession of land in one or two cases which do not extinguish the relationship. x x x.

"SENATOR PELAEZ. I would say that this afternoon, in the Committee on Revision of Laws, we were considering amendments to the effect that the present tenants must have the priority right, and I think we should give priority to those tenants who are there and that *any transfer* of lands should not affect them the least.

x x x

"SENATOR PRIMICIAS. x x x. Does Your Honor think that the landowner is not entitled to transfer the lease to another person even if the price is better?

"SENATOR PELAEZ. Under the present law, he cannot do it.

"SENATOR PRIMICIAS. Would that not constitute a deprivation of property without due process of law?

[1] Tolentino v. Gonzales Sy Chiam, 50 Phil. 558.

"SENATOR PELAEZ. It is deprivation of property without due process of law. It is in the present law. But we have to remember here social values and human values against material values. Precisely, the agricultural tenancy act remedied an existing evil because before the agricultural tenancy act provided for security of these poor tenants, they were pushed out of the land by the landlords. x x x." (Senate Congressional Record, Vol. I, No. 54, April 21, 1958, p. 905-906.)

It is our considered judgment, since the return by the lessee of the leased property to the lessor upon the expiration of the contract involves also a transfer of legal possession, and taking into account the manifest intent of the lawmaking body in amending the law, i.e., to provide the tenant with security of tenure in all cases of transfer of legal possession, that the instant case falls within and is governed by the provisions of Section 9 of Republic Act 1199, as amended by Republic Act No. 2263.[2] The termination of the lease, therefore, did not divest the tenant of the right to remain and continue on his cultivation of the land. Furthermore, should any doubt exist as to the applicability of the aforementioned provision of law to the case at bar, such doubt must be resolved in favor of the tenant.[3]

Petitioner landowner likewise assails the legality of the judgment of the court a quo prescribing the rental that must be paid by the tenants, it being claimed that such question was never raised in the pleadings filed in said court. This is not exactly the case, because it must be remembered that the main reason for the refusal of the landowner to let petitioner continue in the cultivation of the landholding in 1954 was precisely the question of the rental to be paid, the tenant claiming that the 120 cavanes being asked by the landowner was excessive. This, therefore, is a matter of dispute between the parties and the action taken by the Agrarian Court is sanctioned by Section 11 of Republic Act No. 1267 which provides:

> SEC. 11. *Character of Order or Decision.* — In issuing an order or decision, the Court shall not be restricted to the specific relief claimed or demands made by the parties to the dispute, but may include in the order or decision any matter or determination which may be deemed necessary and expedient for the purpose of settling the dispute or of *preventing further disputes*, provided that said matter for determination has been established by competent evidence during the hearing.

Contrary to petitioners' contention that no proof was adduced during the trial to support the lower court's finding that the landholding has an average annual yield of 215 cavanes, we have the testimony of Florentino Joya himself that "the land normally produces more than 300 cavanes per year" (pp. 207 and 225, Records). There is also the statement of Pareja that in 1954-55, he harvested 133 cavanes, in spite of poor crop. (p. 45, Record.) Hence, we find no reason to disturb the finding of fact of the lower court.

Petitioners also allege that the tenant voluntarily surrendered the property to the landowner, as evidenced by an affidavit executed by Pareja on July 16, 1955 and subscribed before the Justice of the Peace of Tanza, Cavite, the translation of which reads:

> "I, PEDRO PAREJA, of legal age, and residing in the municipality of Tanza, Cavite, under oath, state the following:
>
> "That in accordance with what I have declared before the Provincial Fiscal of Cavite during the investigation (July 6, 1955), I will not interfere with or continue the cultivation in the land of Mr. Florentino Joya in Balite, Tanza, Cavite, Lot No. 1171, and which I am voluntarily returning to him, nevertheless I am leaving to the C.I.R. or Agrarian petitioner's fear — after his incarceration was ordered by the Court the determination of whatever right I may have in said land.
>
> "IN WITNESS WHEREOF, I hereby sign this document, in the Municipal building of Tanza, Cavite, this 16th day of July, 1955.
>
> (Sgd.) PEDRO PAREJA"

This statement notwithstanding, the lower court found that Justice of the Peace — was such that his freedom of choice was impaired, or at least restricted. Under such circumstances, he was not acting voluntarily."

This conclusion is fully supported by the record of the case. The explanation of the tenant is sufficiently borne out by the circumstances attending the execution of the document. At the time he made the statement both in the office of the Provincial Fiscal and the Justice of the Peace of Tanza (who ordered his previous arrest), petitioner Florentina Joya was in attendance. The criminal acion filed by Florentino against him was then pending in the justice of the peace court. The fact that immediately after the execution of the affidavit the landowner moved for the dismissal of the aforementioned criminal case corroborates Pareja's testimony that he had to do as he did out of fear of further harrassment.

Significantly too, it may be observed from a reading of the document that the affiant did not turn over the property to the owner unconditionally. On the contrary, he made a reservation of his right to secure from the proper court a judicial declaration of whatever interest he may have in the land. This indeed contradicts the supposed "voluntariness" of the tenant's act in giving up the land.

With respect to the charge that a portion of the land was utilized by the tenant as a "tilapia" fish pond, we agree with the lower court that there is no evidence that it resulted in material injury to the land (Sec. 51, Rep. Act 1199). The uncontradicted testimony is that the fishpond was made on requirement of the Bureau of Agricultural Extension that every farmer in that vicinity should have a small fishpond, and that this particular fishpond was on the portion ("balot") not used for planting rice (pp. 81-82, Record.)

WHEREFORE, finding no reason to review the decision appealed from, the same is hereby affirmed, with costs against petitioner Florentino Joya.

SO ORDERED.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Endencia, Barrera and Gutierrez David JJ., concurred.

Concepcion, J., on leave, took no part.

VI

Juan Palacios, Petitioner-Appellant, vs. Maria Catimbang Palacios, Oppositor-Appellee, G. R. No. L-12207, December 24, 1959, Bautista Angelo J.

1. CIVIL LAW; WILLS; PROBATE OF WILL DURING LIFETIME OF TESTATOR;- CASE AT BAR. — Petitioner-appellant executed his last will and testament on June 25, 1946, and on May 23, 1956 filed a petition for its approval before the Court of First Instance. In said will, he instituted as his sole heirs his natural children Antonio C. Palacios and Andrea C. Palacios. On June 21, 1956, oppositor-appellee filed an opposition to the probate of the will, claiming that she is the acknowledged natural daughter of petitioner but that she was ignored in said will, thus impairing her legitime. On July 6, 1956, the Court issued an order admitting the will to probate. However, the Court set a date for the hearing of the opposition relative to the intrinsic validity of the will. After hearing, the Court issued another order declaring oppositor to be the natural child of petitioner and annulled the will insofar as it impairs her legitime. Hence this appeal of

[2] See Section 22, Republic Act 2263, which provides:
> "SEC. 22. The provisions of this Act shall be applicable to all cases pending in any Court at the time of the approval of this Act."

[3] Section 56, Republic Act 1199, as amended.

petitioner. Held: The trial court erred in entertaining the opposition and in annulling the portion of the will which allegedly impairs the legitime of the oppositor on the ground that she is an acknowledged natural daughter of the testator. This is an extraneous matter which should be threshed out in a separate action.

2. ID; ID; ID; ID. — In the case at bar, such opposition cannot be entertained in this proceeding because its only purpose is to determine if the will has been executed in accordance with law, much less if the purpose of the opposition is to show that the oppositor is an acknowledged natural child who allegedly has been ignored in the will for such issue cannot be raised here but in a separate action. This is so when the testator, as in the case at bar, is still alive and has merely filed a petition for the allowance of his will leaving the effects thereof after his death.

3. ID; ID; WILL PROBATE DURING LIFETIME OF TESTATOR REVOCABLE. — After a will has been probated during the lifetime of a testator, it does not necessarily mean that he cannot alter or revoke the same before his death. Should he make a new will, it would also be allowable on his petition, and if he should die before he has had chance to present such petition, the ordinary probate proceedings after the testator's death would be in order (Report of the Code Commission, pp. 53-54). The reason is that the rights to the succession are transmitted from the moment of the death of the decedent.

Augusto Francisco & Vicente Reyes Villavicencio, for petitioner-appellant.

Enrique A. Amador & Laureano C. Alano, for oppositor-appellee.

DECISION

Juan Palacios executed his last will and testament on June 25, 1946 and availing himself of the provisions of the new Civil Code, he filed on May 23, 1956 before the Court of First Instance of Batangas a petition for its approval. In said will, he instituted as his sole heirs his natural children Antonio C. Palacios and Andrea C. Palacios.

On June 21, 1955, Maria Catimbang filed an opposition to the probate of the will alleging that she is the acknowledged natural daughter of petitioner but that she was completely ignored in said will thus impairing her legitime.

After the presentation of petitioner's evidence relative to the essential requisites and formalities provided by law for the validity of a will, the court on July 6, 1956 issued an order admitting the will to probate. The court, however, set a date for the hearing of the opposition relative to the intrinsic validity of the will and, after proper hearing concerning this incident, the court issued another order declaring oppositor to be the natural child of petitioner and annulling the will insofar as it impairs her legitime, with costs against petitioner.

From this last order, petitioner gave notice of his intention to appeal directly to the Supreme Court, and accordingly, the record was elevated to this Court.

It should be noted that petitioner instituted the present proceeding in order to secure the probate of his will availing himself of the provisions of Article 838, paragraph 2, of the new Civil Code, which permit a testator to petition the proper court during his lifetime for the allowance of his will, but to such petition one Maria Catimbang filed an opposition alleging that she is the acknowledged natural daughter of petitioner but that she was completely ignored in the will thus impairing her legitime. In other words, Maria Catimbang does not object to the probate of the will insofar as its due execution is concerned or on the ground that it has not complied with the formalities prescribed by law; rather she objects to its intrinsic validity or to the legality of the provisions of the will.

We hold that such opposition cannot be entertained in this proceeding because its only purpose is merely to determine if the will has been executed in accordance with the requirements of the law, much less if the purpose of the opposition is to show that the oppositor is an acknowledged natural child who allegedly has been ignored in the will for such issue cannot be raised here but in a separate action. This is especially so when the testator, as in the present case, is still alive and has merely filed a petition for the allowance of his will leaving the effects thereof after his death.

This is in line with our ruling in Montañano v. Suesa, 14 Phil., 676, wherein we said: "The authentication of the will decides no other question than such as touch upon the capacity of the testator and the compliance with those requisites or solemnities which the law prescribes for the validity of a will. It does not determine nor even by implication prejudge the validity or efficiency of the provisions; that may be impugned as being vicious or null, notwithstanding its authentication. The question relating to these points remain entirely unaffected, and may be raised even after the will has been authenticated."

On the other hand, "after a will has been probated during the lifetime of a testator it does not necessarily mean that he cannot alter or revoke the same before his death. Should he make a new will, it would also be allowable on his petition, and if he should die before he had a chance to present such petition, the ordinary probate proceedings after the testator's death would be in order" (Report of the Code Commission, pp. 53-54). The reason for this comment is that the rights to the succession are transmitted from the moment of the death of the decedent (Article 777, new Civil Code).

It is clear that the trial court erred in entertaining the opposition and in annulling the portion of the will which allegedly impairs the legitime of the oppositor on the ground that, as it has found, she is an acknowledged natural daughter of the testator. This is an extraneous matter which should be threshed out in a separate action.

Wherefore, the order appealed from is set aside, without pronouncement as to cost.

Paras, C.J., Bengzon, Padilla, Labrador, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concurred.

VII

People of the Philippines, Plaintiff-Appellant, vs. Bernardo Borja, et al., Defendants-Appellees, G.R. No. L-14327, *January* 30, 1960, *Barrera*, J.

1. CRIMINAL PROCEDURE; STATE WITNESS; SECTION 9 RULE 115 OF RULES OF COURT CONSTRUED. — Under Section 9, Rule 115 of the Rules of Court, it is well settled that the discharge or exclusion of a co-accused from the information, in order that he may be utilized as a prosecution witness, is a matter of sound discretion with the trial court, to be exercised by it upon the conditions therein set forth. It should be availed of only when there is absolute necessity for the testimony of the accused whose discharge is requested, as when his testimony would simply corroborate or otherwise strengthen the evidence of the prosecution.

2. CRIMINAL LAW; MOTIVE. — Proof of a motive is not absolutely indispensable or necessary to establish the commission of a crime.

Acting Solicitor General Guillermo E. Torres and Solicitor Pacifico P. de Castro, for the plaintiff-appellant.

Alaba Custodio, Jamero and Navarro & Navarro, for the defendants-appellees.

DECISION

Bernardo Borja, Floro Tandang, Joaquin Odog, Pedro Bagso, Pedring Tagunon, alias Emper, and Teofilo Bag-ao, were charged in the Court of First Instance of Surigao (in Crim. Case No. 2226), with the crime of murder, for having allegedly killed

Manuel Ibanez on January 13, 1943, in the municipality of Mainit, province of Surigao, with evident premeditation and treachery, and with abuse of superior strength and weapons.

On April 8, 1957, the accused, claiming that the execution of the deceased for which they are charged, was done in furtherance of the guerilla movement, filed a petition for guerilla amnesty, pursuant to Guerrilla Amnesty Proclamation No. 8 of the President.

On May 2, 1957, while petition was pending, the Provincial Fiscal moved to exclude from the information the accused Floro Tandang and Joaquin Odog to be utilized as state witnesses.

The other accused opposed the motion of the Provincial Fiscal, and on June 29, 1957, the court issued an order of the following tenor:

"ORDER

"The Fiscal in his motion dated May 3, 1957 (should be May 2, 1957), which was considered submitted that in view of the fact that there was no date set for the same, asked for the discharge of the two accused, namely Floro Tandang and Joaquin Odog, alleging the fact that there is absolute necessity for the testimony of the defendants whose discharge is requested; that there is no other direct evidence available for the proper prosecution of the offense committed except the testimony of said defendants; that the testimony of said defendants can be substantially corroborated in its material points; that said accused do not appear to be the most guilty; and that said accused have not at any time been convicted of any offense involving moral turpitude. The rest of the accused opposed this motion alleging that there is no absolute necessity for the release of the said defendants and that it is not true that there is no other direct evidence of the prosecution except the testimonies of the said defendants because in the written statements of two prosecution witnesses in the record, namely: Leonardo Ybañez and Eduardo Baloran, show that they were eyewitnesses to the killing and that said witnesses stated that they heard one of the accused, Bernardo Borja, order his co-accused to kill the deceased, and conspiracy can be inferred from the acts of the accused prior, during and after the offense was committed and that fact can be substantially corroborated by the fact that could be inferred from the testimonies of the other witnesses. The Fiscal and Private Prosecutor insisted that they have no direct proof to establish the motive of the commission of the act and such proof is essential in the consideration of this case before the Amnesty Commission.

"The Court after consideration of the matter believes and concludes that the two essential elements for the discharge of these accused, namely: that there is absolute necessity and that there are no other direct evidence available to prove the offense, do not exist and, besides, in this Court proofs to established motive is not necessary if the act committed is clear. Under these circumstances, there exists no justification to grant the motion to exclude the two accused and that point concerning the proof of motive which is claimed is essentially in favor of the accused can be brought again when this case shall be submitted to said Amnesty Commission for consideration.

"WHEREFORE, the motion to exclude the accused Floro Tandang and Joaquin Odog, is hereby denied. Having now resolved this point which the Amnesty Commission believed should be disposed of by this Court before said Commission could take jurisdiction over the case, the record of the case may now be transmitted and forwarded to the Commission for its hearing on the merits and final determination of the case.

"SO ORDERED."

The Provincial Fiscal filed a motion for reconsideration, which was denied by the court as follows:

"ORDER

"The motion for reconsideration is hereby denied, it appearing that the Rules of Court does not state as one of the grounds for excluding one accused to prove personal motive. that matter which is claimed to be necessary when the case comes before the Amensty Commission for decision, and before that time comes, this Court cannot take into account the exclusion of a co-accused to establish motive, because this Court believes that said Amnesty Commission is clothed with all the powers to dispose (of) the principal question, as well as the question of motive involved in the case.

"WHEREFORE, the said motion is hereby denied."

"SO ORDERED."

From the foregoing orders, the prosecution appealed to the Courts of Appeals, but said court, in its resolution of July 14, 1958, certified the case to us, as it involving only questions of law.

The prosecution in this instance, claims that the lower court erred in denying its motion to exclude from the information the accused Floro Andang and Joaquin Odog, to be utilized as witnesses for the Government.

We do not agree with the prosecution. Section 9, Rule 115 of the Rules of Court provides:

"SEC. 9. *Discharge of one of several defendants to be witness for the prosecution.* — When two or more person are charged with the commission of a certain offense, *the competent court*, at any time before they have entered upon their defense, may *direct any of them to be discharged* with the latter's consent that he may be a witness for the government *when in the judgment of the court*:

"(a) There is absolute necessity for the testimony of the defendant whose discharge is requested;

"(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said defendant;

"(c) The testimony of said defendant can be substantially corroborated in its material points;

"(d) Said defendant does not appear to be the most guilty;

"(e) Said defendant has not at any time been convicted of any offense involving moral turpitude." (Emphasis supplied.)

Under the above-quoted provision of the Rules of Court, it is well-settled that the discharge or exclusion of a co-accused from the information, in order that he may be utilized as a prosecution witness, is a matter of sound discretion with the trial court (U.S. v. Abanzado, 37 Phil. 658; People v. Ibañez, G. R. No. L-5242, prom. April 20, 1953,) (1) to be exercised by it upon the conditions therein set forth. The expedient should be availed of, only when there is *absolute necessity* for the testimony of the accused whose discharge is requested, as when he alone has knowledge of the crime, and not when his testimony would simply corroborate or otherwise strengthen the evidence in the hands of the prosecution. (2 Moran, Comments on the Rules of Court [1957 Ed.] 827.)

In the case of People v. Ibañez, supra, it was held that —

"The court's is the exclusive responsibility to see that the conditions prescribed by the rule exist. The rule is completely silent as to any authority of the prosecution in the premises, although authority may be inherent in the office of the prosecuting attorney to propose. Section 2 of Act No. 2709 from which the preceding rule was taken, was enacted avowedly to curtail miscarriage of justice, before too common, through the abuse of the power to ask for the discharge of one or more defendants. 'Absolute necessity of the testimony of the defendant whose discharge is requested,' among other things, must now be shown if the discharge is to be allowed, and, as above stated, it is the court upon which the power to determine the necessity is lodged."

The trial court, in the instant case, properly denied the pro-

(1) See also U.S. v. De Guzman, 30 Phil. 416; U.S. v. Bonate, 40 Phil. 958; People v. Bautista, 49 Phil. 389; and People v. Palcoto, et al; G.R. No. L-8458, January 30, 1956.

secution's motion to exclude from the information the accused Tandang and Odog, after being convinced that there was no absolute necessity for their testimony, it appearing that the killing of the deceased Manuel Ibañez could be established by other available direct evidence, namely, the testimony of prosecution witnesses Leonardo Ybañez and Eduardo Baloran, who were eyewitnesses to the said killing, as shown by their written statements on record.

As to the prosecution's claim that the exclusion of the accused Tandang and Odog from the imformation is necessary to prove the personal motive or reason of their co-accused in the killing of said deceased, it may be stated that proof of motive is not absolutely indispensable or necessary to establish the commission of a crime. (3 Moran, Comments on the Rules of Court [1952 Ed.] 630-631; U.S. v. Ricafort, 1 173; U.S. v. Balmori, et al., 18 Phil 578; U S. v. Valdez, et al., 30 Phil. 293.) It is true that motive is essential in cases falling under the Amnesty Proclamation, but as stated by the trial court, the exclusion of said accused for the purpose of establishing personal motive of their co-accused is a matter which may be properly taken up when the case is submitted to the Amnesty Commission for reconsideration, pursuant to the provisions of Proclamation No. 8,(1) dated September 7, 1946 (Guerilla Amnesty Proclamation) and Administrative Order No. 11(2) of October 2, 1946 which authorizes the Guerilla Amnesty Commission to "examine the facts and circumstances surrounding each case and if necessary or requested by either or both of the interested parties, conduct summary hearings of witnesses both for the complainants and the accused."

WHEREFORE, finding no reversible error in the order appealed from, the same is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

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

VIII

Adriano Valdez, Plaintiff-Appellee vs. Rodrigo Ocumen, Ignacio Mendoza, Procopio Santiago, et al., Defendants-Appellants, G. R. No. L-13536, *January* 29, 1960, *Barrera, J.*

1. APPEAL; PERFECTION OF APPEAL FROM INFERIOR COURTS; SECTION 2 RULE 40 RULES OF COURT CONSTRUED. — Under the provision of Section 2 Rule 40 of the Rules of Court, in order to perfect an appeal from the judgment of the Justice of the Peace or Municipal Court, an appellant must within 15 days from notice of the judgment, (1) file with the justice of the peace or municipal judge a notice of appeal, (2) deliver a certificate of the municipal treasurer or of the Clerk of Court of First Instance in chartered cities, showing that he has deposited the appellate court docket fee, and (3) give a bond.

2. ID.; ID.; EFFECT OF FAILURE TO PERFECT APPEAL WITHIN PRESCRIBED PERIOD. — The rule is well settled that the failure to perfect an appeal from a judgment of a justice of the peace court within the period allowed by law bars the appeal and that if a party does not perfect his appeal within the time prescribed by law, the appellate court cannot acquire jurisdiction and, therefore, compliance with said requirement is jurisdictional.

3. ID.; PROVISIONS OF RULES OF COURT WHICH CANNOT BE THE SUBJECT OF AGREEMENTS BETWEEN COURT AND COUNSEL. — The provisions of the Rules of Court, especially those prescribing the period within which certain acts must be done, or certain proceedings taken, which are intended to prevent needless delays and promote the speedy discharge of judicial business, can hardly be the subject of agreements or stipulations between a court and counsel. Strict, not substantial, compliance therewith is required.

Antonio Rodriguez & Celso Zoleta, Jr. for plaintiff-appellee.
Teofilo A. Leonin, for defendants-appellants.

DECISION

This is an appeal taken by defendants from the order of the Court of First Instance of Isabela, dismissing the appeal they brought to said court from the judgment of the Justice of the Peace Court of Roxas, Isabela, in Civil Case No. 224 (Forcible Entry), on the ground that they failed to perfect the same within the reglementary period provided in Section 2, Rule 40 of the Rules of Court.

It appears that on March 9, 1957, the justice of the peace court, after hearing, rendered a decision in said case No. 224 ordering the defendants to restore to the plaintiff the possession of the questioned Lot No. 3005, to vacate its premises, and to pay the costs. Notice of said decision was sent to the counsel of the parties on April 30, 1957, defendants receiving their copy on May 24, 1957. On May 29, 1957, defendants filed with said court a notice of appeal bond of ₱25.00 without, however, paying the appellate court docket fee of ₱16.00, as required under Section 2, Rule 40, of the Rules of Court. Acting upon said notice of appeal, the court, on the same date, issued an order forwarding the records of the case to the Court of First Instance of Isabela but stating therein "without however the docket fee for appeal". The Clerk of Court of First Instance received the records on July 25, 1957, at 3:40 P.M. Defendants paid the appellate court docket fee of ₱16.00 only on the following day, July 26, 1957.

Receiving plaintiff's motion filed on July 29, 1957, to dismiss the appeal on the ground that it was not perfected within the reglementary period (15 days from notice of the judgment) provided in the Rules of Court, the defendants' opposition thereto, the Court of First Instance on August 28, 1957, issued an order dismissing the appeal, stating in part, as follows:

x x x

"The appellate court docket fee may be deposited either with the municipal treasurer or with the Clerk of Court of First Instance and a certificate of such deposit shall be attached to the record by the justice of the peace. It should be deposited in full within the period of 15 days and this provision of the Rules of Court is mandatory and not directory. Therefore, if only ½ of the amount of the appellate court docket fee is deposited and the other half is rendered after the expiration of such period, no appeal is being perfected. (sic) (Lazaro v. Endencia, 57 Phil. 552).

"In the case at bar, the defendants-appellants did not deposit the appellate court docket fee of ₱16.00 with the Justice of the Peace Court of Roxas. And as the official receipt No. C-7155000, will show, the appellate court docket fee of ₱16.00 was only paid by Atty. Dominador P. Nuesa on July 26, 1957 or 61 days after the notice of appeal was filed. It is thus clear that the appeal has not been perfected in accordance with the provision of Section 2, Rule 40, of the Rules of Court.

"The contention of appellants' counsel to the effect that that there was a substantial compliances with the law is that the docket fee was paid in the Office of the Clerk of Court on July 26, 1957 is without merit because the Rules of Court provides in no uncertain terms that a certificate of payment of the appellate court docket fee must be filed with the justice of the peace court of origin in order that the appeal is deemed perfected as to warrant the justice of the peace court to remand the case to the Court of First Instance.

(1) 42 O.G. 2072
(2) 42 O.G. 2360; see also Adm. Order No. 17 dated Nov. 15, 1946 (42 O.G. 2725), and Adm. Order No. 41, dated July 6, 1954 (50 O.G. 2928).

"For all the forgoing considerations, the Court believes and so holds that the appeal has not been perfected in accordance with law and, therefore, this court has not acquired jurisdiction to try the case on the merits.

"WHEREFORE, the appeal should be, as it is hereby dismissed."

Defendants' motion for reconsideration of said order on the ground of its illegality having been denied, defendants instituted this present appeal.

Section 2, Rule 40, of the Rules of Court, provides:

"SEC. 2. *Appeal,* how *perfected* — An appeal shall be perfected within fifteen days after notification to the party of the judgment complained of, (a) by filing with the justice of the peace or municipal judge a notice of appeal; (b) by delivering a certificate of the municipal treasurer showing that the appellant has deposited the appellate court docket fee, or in chartered cities, a certificate of the clerk of such court showing a receipt of said fee; and (c) by giving a bond."

Under this provision of Rules of Court, in order to perfect an appeal from the judgment of the justice of the Peace or Municipal Court, an appellant must, within 15 days from notice of the judgment, (1) file with the justice of the peace or municipal judge a notice of appeal, (2) deliver a certificate of the municipal treasurer or of the clerk of the Court of First Instance in chartered cities, showing that he has deposited the appellate court docket fee, and (3) give a bond.

In the case under consideration, while defendants did file with the Justice of the Peace of Roxas, Isabela, their notice of appeal and gave an appeal bond of P25.00 on May 29, 1957, they failed to pay the appellate court docket fee of P16.00. It was only on July 26, 1957, that is 61 days after filing their notice of appeal, evidently, beyond the reglementary period of 15 days from notice of judgment as provided under the aforequoted section of the Rules of Court, that they effected the payment of the same. Their appeal, therefore, was never perfected in the Court of First Instance of Isabela, and the trial judge correctly and properly dismissed said appeal, as it acquired no jurisdiction thereon.

Well-settled is the rule that the failure to perfect an appeal from a judgment of a justice of the peace court within the period allowed by law, bars the appeal (Gajiton v. Maria, 54 Phil. 488; Policarpio v. Borja, 16 Phil. 31; Lazaro v. Endencia, *supra;* Bermudez v. Baltazar, G. R. No. L-10268, prom. April 30, 1957), and that if a party does not perfect his appeal within the time prescribed by law, the appellate court cannot acquire jurisdiction, and for that reason, the compliance with said requirement is jurisdictional (Lelda v. Legaspi, 39 Phil. 83; Lim v. Singian, 37 Phil. 817.) (1)

Defendant claim that plaintiff waived his right to question the timeliness of their appeal, inasmuch as he filed his motion to dismiss when the case has already been remanded to the Court of First Instance, citing in support of his submission the cases among others, of Slade-Perkins v. Perkins (57 Phil. 223) and Luengo v. Herrero (17 Phil. 29) In answer, it may be stated that said cases are not applicable to the cases at bar, for the reason that the objections which were deemed waived therein, refer to questions which do not affect the jurisdiction of the court. They can not, therefore, be invoked as precedents in the determination of this case. (Miranda v. Guanzon, *supra.*)

Defendants, furthermore, argue that there was substantial compliance with the aforequoted provision of Section 2, Rule 40, of the Rules of Court, inasmuch as their failure to pay the appellate court docket fee within the period therein provided, was the result of their agreement with the Justice of the Peace that it shall be paid to the Clerk of the Court of First Instance, who will determine the proper amount to be paid.

The contention is untenable. The provisions of the Rules of Court, especially those prescribing the period within which certain acts must be done, or certain proceedings taken, which are intended to prevent needless delays and promote the speedy discharge of judicial business. (2) can hardly be the subject of agreements or stipulations between a court and counsel. (3) In fine, strict, not substantial, compliance therewith is required. (4)

WHEREFFORE, finding no error in the order appealed from, the same is hereby affirmed, with cost against the defendants-appellants.

SO ORDERED.

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

SUPREME COURT RESOLUTION

Quoted hereunder, for your information, is a resolution of this Court dated February 10, 1960:

"The petition of Antonio Ma. Cui for reinstatement as member of the Bar shows that he resignedly acquiesced in the decree of disbarment, voluntarily withdraw from litigations in which he had engaged as counsel, and up to this time has refrained form engaging in his legal profession. His petition is supported by a favorable certification from judges of the Cebu Court of First Instance and testimonials of honesty and right conduct from religious dignitaries and civic associations of Cebu.

Considering that in view of circumstances attending his disbarment, this period of enforced retirement from active practice probably constitutes enough punishment for his professional misconduct;

The Court awared of the high regard in which he was held by the Bar of Cebu when he was practicing law in that City, as disclosed by the resolution attached to the record, and relying upon his solemn promise to behave properly in the future.

GRANTED THE PETITION and ordered the Clerk of Court to list his name anew in the roll of attorneys."

———oOo———

TUT-TUT, YOUR HONOR!

A sultry blnode was seated in the witness chair. Her dress showed more of her than otherwise. As she crossed one leg and then the other, the dress crept up. The judge was just about to tell her to step down when her lawyer spoke. "Your honor, I've just thought of something."

The judge gave him a look, then glanced at the girl, and retorted, "I don't believe there's one man in his courtroom who hasn't." — *R. E. Martin, Future*

(1) See also Roman Catholic Bishop of Tuguegarao v. Director of Lands, 34 Phil. 623; Cordoba et al. v. Alabado, 34 Phil. 920; Bermudez v. Director of Lands, 36 Phil. 774. Miranda v. Guanzon et al, GR. No. L-4992, prom. Oct. 27, 1952; Rodrigo et al., G.R. No. L-4992, prom. Oct. 27. 1952; Rodrigo v. Seridon, et al., G.R. No.L-7896, Res. of July 29, 1954.

(2) Shioji v. Harvey, 43 Phil. 333.

(3) In Policarpio v. Borja, et al., *supra,* the fact that the plaintiff was told by the Justice of the Peace to return another day, did not justify his failure to perfect his appeal within the reglementary period.

(4) Alvero v. De la Rosa, 76 Phil. 428.

COURT OF APPEALS DECISION

Bagumbayan Productions, Inc., Petitioner, vs. Balatbat Productions, Inc. and Hon. Gregorio S. Narvasa, Judge, Manila Court of First Instance, Respondents, CA-G. R. No. 25435-R, *February* 2, 1960, *Cabahug*, J.

CIVIL PROCEDURE; TRIAL BY COMMISSIONER; SECTION 1 RULE 34 OF RULES OF COURT CONSTRUED. — Under the provision of Section 1, Rule 34 of the Rules of Court "By written consent of both parties, filed with the clerk, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court." In the case at bar, although there was no written consent signed by the parties filed with the clerk of court in Civil Case No. 35113 but the parties therein having manifested to respondent judge in open court their agreement to the continuation of the proceedings before the clerk of court and the same agreement having been incorporated in the order of August 10, 1959, the provision of Section 1, Rule 34 of the Rules of Court has been substantially complied with.

Vicente J. Francisco, for respondents.
Luis Manalang, for petitioner.

DECISION

In an original petition filed with this court petitioner prays that a) the order of the court referring cross-examination of petioner's witnesses and the introduction of evidence by respondent before the commissioner and all other proceedings by nature included therein as well as the few cross-question already propounded by the respondent's counsel before the commissioner, clerk Macario M. Ofilada, be declared null and void; b) ordering the respondent honorable judge to set the hearing before the court and prohibiting him to refer to a commissioner the cross-examination and introduction of evidence of respondent; c) that the respondent, except the respondent honorable judge, be ordered to pay actual damage in the amount of ₱2,000 for attorney's fees and other incidental expenses of the litigation and moral damages in the amount of ₱10,000, plus costs."

The record discloses that herein petitioner was the plaintiff in Civil Case No. 35113 of the Court of First Instance of Manila, while herein respondent Balatbat Productions, Inc. was the defendant therein. When the trial of that case was called on June 29, 1959, neither the defendant nor its counsel appeared; whereupon Judge Gregorio S. Narvasa, presiding over branch V of the same court issued an order allowing the plaintiff to present its evidence before Clerk of Court Macario M. Ofilada. Upon the defendant's motion and despite the plaintiff strong opposition, the court, on July 6, 1959, gave the "defendant's counsel an opportunity to crooss-examine the witnesses presented by the plaintiff during the ex-parte reception of the latter's evidence, and adduce evidence for said defendant." For this purpose the hearing of the case was set for July 27, 1959. A petition for the reconsideration of this order was denied on the 16th of the same month.

Alleging that he would be in Iloilo City to attend to some pending cases before the Iloilo branch of the Court of Industrial Relations, on July 14, 1959 counsel for plaintiff moved for the cancellation of the hearing set for July 22, 1959 and that it be reset for the following month, which motion was opposed by the defendant. Neither the herein petitioner nor the respondents attached to their petition and answer the order resolving this motion for postponement of plaintiff, but it is presumed that the same was granted and the hearing was postponed on August 10, 1959; for on this date, herein respondent judge issued the following order:

> "By agreement of the parties, the continuation of the proceedings in this case may be had before the Clerk of Court who is hereby authorized to receive the evidence the parties may present."

It appears that immediately after the issuance of this order, the parties in the above numbered civil case appeared before Clerk of Court Macario M. Ofilada who, at 9:05 a.m. of the same day, opened the hearing with plaintiff's witness Jose Maria Hernandez testifying on cross-examination. However, this cross-examination had to be suspended because according to the plaintiff's counsel, he "would like to avail myself of the proviso of the order of the Honorable Court that in case we did not get along all right, because of so many legal questions that are being raised, we can have the case returned to the Honorable Judge." And in a motion bearing the same date of August 10, 1959 but filed on the 13th, the plaintiff asked that the hearing of the case be conducted on September 2, 1959 before the respondent judge and not before the commissioner. Upon the denial of this last motion on August 18, 1959, the plaintiff filed an urgent motion for reconsideration praying that this last order of denial be reconsidered and another be entered ordering the continuance of the hearing before the court and not before the commissioner. Acting on this motion for reconsideration and the opposition thereto, respondent judge issued on September 18, 1959 the order hereinbelow quoted:

> "After careful consideration of plaintiff's urgent motion for reconsideration of Order of August 13, 1958, denying said plaintiff's motion to continue hearing of this case before the Judge himself instead of this case before the Clerk of Court, as per Order of August 10, 1959, and of defendant's opposition thereto, the court hereby denies the said motion for reconsideration, and maintains its Order of August 10, 1959." (an nex B)

Hence the filing of the instant petition. The petitioner contends that there being no written consent of both parties as required by section 1, rule 34 of the Rules of Court, the respondent judge committed a grave abuse of discretion in ordering that the cross examination of its witnesses and the reception of the respondent corporation's evidence in Civil Case No. 35113 be made before a commissioner, and in neglecting or refusing to do his duty as enjoined by law. On the other hand, respondents maintain that the agreement entered into by and between the parties in open court, which agreement was incorporated in the controverted order of August 10, 1959, is a substantial compliance with the provision of the section aforecited, which provides:

> "By written consent of both parties, filed with the clerk, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court."

Indeed, there was no written consent signed by the parties filed with the clerk of court in Civil Case No. 35113; but the parties therein having manifested to respondent judge in open court their agreement to the continuation of the proceedings before the clerk of court, and the same agreement having been incorporated in the order of August 10, 1959, we are of the opinion and so held that the provision of section 1, rule 34, Rules of Court, cited by the petitioner, has been substantially complied with. Consequently, in issuing the order complained of the respondent judge acted perfectly in accordance with the mandates of the law and he did not commit any semblance of an abuse, much less grave abuse, of discretion; nor did he refuse or neg-

(*Continued on page* 63)

RECONSTITUTION OF COURT AND OFFICIAL RECORDS GENERALLY*

PUBLIC ACT NO. 3110
(Effective March 19, 1923)

Section 1. *Records of Court of First Instance destroyed; duty of clerk.*

As soon as practicable after the occurrence of any fire or other public calamity resulting in the loss of all or part of the records of judicial proceedings on file in the office of the clerk of a Court of First Instance, said officer shall send a notice by registered mail to the Secretary of Justice, the Attorney-General, the Director of Lands, the Chief of the General Land Registration Office, the clerk of the Supreme Court, the judge of the province, the register of deeds of the province, the provincial fiscal, and all lawyers who may be interested. stating the date on which such fire or public calamity occurred and whether the loss or destruction was total or partial, and giving a brief list of the proceedings not affected in case the loss or destruction was partial.

REFERENCES: In general, see 34 Am Jur, Lost Papers and Records.

ANNOTATIONS

1. This Act inapplicable to Public Service Commission records.

Reconstitution of records of proceedings before the Public Service Commission is governed by the provisions of Commonwealth Act No. 146, not by this Act. Re Gregorio, 77 Phil. 906.

2. Failure to give required notices.

Where it does not appear that any of the notices required by Section 1, 2, and 3 of this Act were given in connection with reconstitution of the records of a case, the lack of notice to the adverse party and non-compliance with the statutory requirements vitiate the reconstitution proceedings and render an order declaring the record reconstitution ineffective. *Reyes v. Pecson, Phil.*, 47 *Off. Gaz.* 6133 (#L-2879, 1950).

Section 2. — *Notice to persons interested.....*

Upon receipt of the notice mentioned in the preceding section, the court shall issue or cause to be issued a general notice which shall be addressed and sent by registered mail to the lawyers and officers mentioned in the preceding section and to such other persons as might be interested, advising them of the destruction of the records, with a brief list of the proceedings not affected in case the destruction was partial, and of the time fixed by this Act for the reconstitution of the destroyed records.

This notice shall also be published in the Official Gazette and in one of the newspapers most widely read in the province, once a week, for four consecutive weeks.

ANNOTATIONS

1. Effect of failure to give required notices.

Where it does not appear that any of the notices required by Sections 1, 2, and 3 of this Act were given in connection with reconstitution of the records of a case, the lack of notice to the adverse party and non-compliance with the statutory requirements vitiate the reconstitution proceedings and render an order declaring the record reconstituted ineffective. *Reyes v. Pecson, Phil.* 47 *Off. Gaz.* 6133 (#L-2879, 1950)

Section 3. — *Application to reconstitute record in civil case; notice to others interested.*

The parties to civil cases, or their counsels, shall appear and file, within thirty days after having been notified in accordance with the next preceding section, an application for the reconstitution of the records in which they are interested, and the clerk of court, upon receiving such application, shall send notice to all parties interested, or their counsels, of the day, hour, and place when the Court will proceed to the reconstitution, requesting them to present, on said day and hour, and at said place, all copies of motions, decrees, orders, and other documents in their possession, having reference to the record or records to be reconstituted.

ANNOTATIONS

1. Nature and purpose of reconstitution proceedings.

Proceedings for the reconstitution of judicial records are not, strictly speaking, judicial, but rather administrative in character, the main purpose being to see that a judicial record is restored to status quo and no issue affecting the merits being involved. *Rodrigo v. Cantor, Phil.* (#L-4398, 1952).

2. Remedy made available to any interested party.

Where the records of an action or proceeding have been destroyed, the remedy of any interested party is to file a proper petition for reconstitution. *Jamora v. Blanco*. 68 *Phil.* 497, 44 *Off.* Gaz. 3832 (#L-1131, 1947).

3. Inability to produce any part of the record; sufficiency of mere statement concerning it.

Where the party seeking reconstitution of the record in a case wherein the records have been destroyed is unable to locate or produce the pleadings, orders, and other documents, or authentic copies thereof, or to obtain an agreement on the facts from the other party as contemplated by # 4 of this Act, his mere "statement" as to what the pleadings were, and the like, cannot be accepted, and the only course open is a new trial on new pleadings and proceedings as contemplated by #30, *de Carungcong* v. Cojuangco, Phil. (#L-3761, 1951).

4. Reconstitution ineffective unless required notice given.

Where it does not appear that any of the notices required by Sections 1, 2, and 3 of this Act were given in connection with reconstitution of the records of a case, the lack of notice to the adverse party and non-compliance with the statutory requirements vitiate the reconstitution proceedings and render an order declaring the record reconstituted ineffective. Reyes v. Pecson, Phil. 47 Off. Gaz. 6133 (#L-2879, 1950).

Section 4. — *Method of re-establishing record in civil case.*

Civil cases pending trial shall be reconstituted by means of copies presented and certified under oath as correct by the counsels or the parties interested. In case it is impossible to find a copy of a motion, decree, order, document, or other proceeding of vital importance for the reconstitution of the record, the same may be replaced by an agreement on the facts entered into between the counsels or the parties interested, which shall be reduced to writing and attached to the proper record.

ANNOTATIONS

1. Limited objective of reconstitution proceedings.
2. Sufficient basis for reconstitution.
3. Proceeding on recollection alone, without reconstituting the record.
4. Admission of additional documents and papers.
5. Proceedings subsequent to judgment as subject to reconstitution.

1. Limited objective of reconstitution proceedings.

In a proceedings for reconstitution of the record of a case, the

* In view of the numerous requests from our subscribers, particularly those from the provinces of Cavite and Abra whose court records were destroyed by fire, we are publishing herein the Law on Reconstitution of Court and Official Records.

concern of the court and of the parties is that the documents presented as a basis for reconstitution are authentic and really part of the record, not question of law as to their effect, which still remain open. *Gonzales v. Ysip, 77 Phil.* 661.

2. Sufficient basis for reconstitution.

Reconstitution does not necessarily require verbatim copies of all parts of the record in question, and parts of it may be supplied by stipulation of the parties, if they can agree, or by findings of the court clearly showing that some required step, such as the service of notice of judgment on the attorney for the defeated party, was duly had. *Deliva v. Surtiva, Phil.* 48 *Off. Gaz.* 4389 (#L-4614, 1952).

3. Proceeding on recollection alone, without reconstituting of records.

Where the records in pending intestate proceedings were destroyed when the court house burned, and the parties to the proceedings, though given ample opportunity both by the court of first instance and the Supreme Court to reconstitute the records, made no attempt to do so and instead instituted and diligently went ahead with entirely new proceedings, it was beyond the power of the court of first instance to reinstate the old proceedings and insist upon going ahead therewith on the basis of the clerk's recollection of the records. *Valenzuela v. de Aguilar, Phil.* 47 *Off. Gaz.* 730, 747 (# L-L-2262 and L-2480, 1949).

4. Admission of additional documents and papers.

In connection with reconstitution of the destroyed records in a case, it is within the discretion of the judge to allow readmission of documents and papers not originally produced by the interested parties because of circumstances beyond their control, in order that the record may be completed and real justice done. Rodrigo v. Cantor, Phil. (#L-4398, 1952).

5. Proceedings subsequent to judgment as subject to reconstitution.

It is inferable from # # 4 and 7 of this Act that judicial records may be reconstituted without exception, and there is accordingly no merit in a contention that proceedings subsequent to judgment may not be reconstituted. *Erlanger & Galinger, Inc. v. Exconde, Phil.* (#L-4792, 1953).

Section 5. — *Procedure if parties unable to agree.*

In case the counsels or parties are unable to come to an argument, the Court shall determine what may be proper in the interest of equity and justice, and may also consider the proceeding in question as non-existent and reconstitute only that part of the record which can stand without such proceeding, and continue proceeding upon the record so reconstituted.

ANNOTATIONS

1. Admission as amounting to agreement.

In a reconstitution proceeding, an admission made by one of the parties to the effect that there had been judgment and execution of judgment is not nullified by the circumstance that it is made without prejudice to challenging the validity of the proceeding. Azotes v. Planco, 78 Phil. 739, 44 Off. Gaz. 488 (#L-962, 1947).

Section 6 — *Testimony already taken.*

Testimony of witnesses taken in civil cases shall be reconstituted by means of an authentic copy thereof or a new transcript of the stenographic notes. If no authentic copy can be obtained and the stenographic notes have also been destroyed, the cases shall be tried de novo as if called for trial for the first time.

ANNOTATIONS

1. Additional testimony.

In view of # # 6 and 7 of this Act it was held that where the record of a case was destroyed by fire but an authentic copy of the orginal decision was in existence, the evidence was to be reconstructed by retaking only testimony of those who testified at the original hearing, and it was no abuse of discretion to deny an application for introduction of the testimony of additional witnesses. *Madalang v. Court of First Instance of Romblon an dMalbas* (1926) 49 *Phil.* 487.

Sec. 7. — *Decision.*

If a civil case has already been decided, the decision shall be reconstituted by means of an authentic copy. In case an authentic copy cannot be found, the Court shall make a new decision, as if the case had never been decided.

ANNOTATIONS

1. Unauthenticated copy of decision as basis for execution.

It was error for a judge of First Instance to order execution of a judgment merely on the basis of an unauthenticated copy of what purported to be the judgment, the original records in the case having been destroyed, but authenticated copies being in existence of notice of appeal and bond on appeal to the Court of Appeals, without satisfactory proof of the final and executory nature of the judgment. *Ibañez v. Barrios, 77 Phil.* 186 (1946).

2. Discretion to deny taking of additional testimony where authentic copy of decision produced.

An authentic copy of a decision, the original of which was destroyed by fire, being available, it was no abuse of discretion for the court, after reconstructing the decision from such copy, to deny an application for the introduction of testimony of additional witnesses. *Madalang v. Court of First Instance of Romblon and Malbas* (1926) 49 *Phil.* 487.

3. Reconstitution of proceedings subsequent to judgment.

It is inferable from # 4 and 7 of this Act that judicial records may be reconstituted without exception, and there is accordingly no merit in a contention that proceedings subsequent to judgment may not be reconstituted. *Erlanger & Galinger, Inc. v. Exconde, Phil.,* (#L-4792. 1953).

Section 8. — *Records in special proceedings.*

Special proceedings shall be reconstituted in the same manner as ordinary civil cases, with the sole addition that a copy of the statement to be made by the parties or their counsel, setting forth the status of the proceedings at the time when the fire or other public calamity occurred, shall be attached to the reconstituted record.

Section 9. — *Records in land registration proceedings.....*

Registration proceedings pending the issuance of a decree shall be reconstituted by means of copies furnished by the Chief of the General Land Registration Office. It shall be the duty of this officer, immediately upon receipt of the notice provided for in section one of this Act, to direct duly certified true copies of all destroyed registration proceedings pending at the time of the destruction, and of all decrees destroyed, to be sent to the clerk of the Court of First Instance concerned.

CROSS-REFERENCE: Later legislation as to reconstitution of land title certificates. see # 94 et seq., infra.

ANNOTATIONS

1. No reconstitution of owner's certificate unless shown to be lost or destroyed.

Where it was not contended that the owner's duplicate certificate of title to the property in question was lost or destroyed, no useful purpose would be served by instituting proceedings under Act No. 3110, as amended by Republic Act No. 26, for the reconstitution of documents which were lost or destroyed after submission to the Register of Deeds of Manila for registration, as they could not be registered, under # 57 of Act No. 496, without production of the owner's duplicate title certificate for cancellation, as sought by independent suit. *Henson v. J. K. Pickering & Co., Phil.,* (#L-3440, 1951).

Section 10. — *Records in cadastral proceedings.*

Pending cadastral cases shalll be reconstituted as follows:

The Court shall issue an order directing the persons interested to file anew their replies, for which purpose reasonable time may be allowed. The order shall be published in the Official Gazette and by local notices during a period fixed in said order.

Immediately upon receipt of the notice provided for in section one of this Act, the chief of the General Land Registration Office

shall cause duly certified true copies of all destroyed cadastral proceedings to be sent to the clerk of the Court concerned.

The new replies filed by the parties interested and the copies furnished by the General Land Registration Office shall form the reconstituted record.

Section 11. — *Official cooperation in re-establishing records in land cases.*

The Director of Lands shall cooperate with the Chief of the General Land Registration Office in furnishing copies of the plans, certificates, reports, and other documents necessary for the reconstitution of destroyed registration or cadastral proceedings. The expense of the reconstitution of such records shall be reimbursable to said Bureau and office out of the public calamity or emergency funds.

Section 12. — *Inability to reconstitute record in land cases; procedure.*

In case there is anything in the registration or cadastral proceedings which cannot be reconstituted by means of the procedure provided for in sections nine and ten hereof and which is of vital importance to the interested parties, the reconstitution procedure established for ordinary civil cases shall be used.

Section 13. — *Criminal case records.*

Pending criminal actions shall be reconstituted by means of copies filed by the fiscal and the counsel for the defendant or the defendant himself, or certified by them under oath as being correct, and whatever cannot be reconstituted in this manner shall be reconstructed by means of the supplementary procedure provided for the reconstitution of ordinary civil cases.

ANNOTATIONS

1. Right of counsel for offended party to seek reconstitution.

With respect to a charge of adultery instituted during the Japanese occupation, the record having been destroyed, the attorney for the offended party was entitled to apply for reconstitution of the record so that the proceedings could go forward. *Herrero v. Diaz*, 75 *Phil.* 489.

Section 14. — *Testimony or documentary evidence in criminal case destroyed.*

The testimony of witnesses, if any has already been taken, shall be reconstituted by means of an authentic copy thereof or by a new transcript of the stenographic notes; but if it is impossible to obtain an authentic copy of the evidence and if the stenographic notes have been destroyed, the case shall be heard anew as if it had never been tried.

Documentary evidence shall be replaced by secondary evidence.

Section 15. — *Decision in criminal case.*

If the case has already been decided, the decision shall be reconstituted by means of authentic copy. If an authentic copy is not obtainable, the case shall be decided anew, as if it had never been decided.

Section 16 — *Evidence of preliminary investigation.*

A duly certified copy of the proper entries of the docket of the justice of the peace court concerned shall be attached to the reconstituted record and shall be sufficient evidence that a preliminary investigation was held.

Section 17. — *Fiscal's records destroyed; duties; recourse to other records.*

In case the records of the office of the provincial fiscal have also been destroyed, said provincial fiscal shall ascertain the criminal actions pending in the Court of First Instance and may for this purpose make use of the data obtainable from the dockets of the justice of the peace courts of the province, the reports of the provincial commander of the Constabulary, the records of the warden of the provincial jail and of the municipal police, and from any other sources that might be of assistance to him in the investigation.

Section 18. — *Investigation of facts; making up reconstituted record.*

The provincial fiscal shall investigate the facts in each pending criminal action, and if he should find sufficient merits to sustain the action, he shall without loss of time file the proper information which, after being registered, shal, together with a certified copy of the proper entries in the docket of the justice of the peace court concerned, if any, form the reconstituted record. which shall be used as point of departure in the continuation of the proceedings.

Section 19 — *Motion to dismiss, when authorized; procedure.*

If the provincial fiscal does not find sufficient merits to sustain the accusation, he shall present to the court a motion for dismissal, specifying all the facts of the case and all steps taken by him in the investigation required in section seventeen hereof. This motion for dismissal, after being registered, shall, together with a certified copy of the proper entries in the docket of the justice of the peace court concerned, if any, form the reconstituted record, which shall be used as point of departure in the continuation of the proceedings.

Sec. 20. — *Evidence already taken; reproduction of information.*

If the provincial fiscal finds that evidence has already been taken in the case, which has not been destroyed or which can be reproduced by a new transcription of the proper stenographic notes, he may, in view of such evidence, enter into an agreement with the defendants or their counsel, the Court, in view of the evidence, shall determine in what terms the information shall be reproduced and shall give the defendants an opportunity to file a demurrer against the information so reproduced or introduce additional evidence.

If the defendants have no counsel and state to the Court that they desire one, the court shall assign to them a counsel who shall represent them in the proceedings for the reproduction of the information.

Section 21. — *Procedure on reproduced information.*

Upon the reproduction of the information in the manner set forth in the next preceding section, the defendant shall be informed thereof, and if he enters a plea of not guilty, the proper hearing shall be held, in which shall be admitted all evidence previously introduced and such additional evidence, if any, as may be lawfully offered by the parties.

Section 22. — *Decision of case.*

If the case has already been decided, the decision shall be reconstituted by means of an authentic copy, and in case it is impossible to obtain an authentic copy, the case shall be decided anew, as if had never been decided anew, as if it had never been decided.

Section 23. *Preferred cases.*

The provincial fiscal shall give absolute preference to the reconstitution of criminal actions in which the defendants are confined awaiting decision, and shall act with all possible dispatch.

Section 24. — *Formal requirements for reproduced informations.*

All informations reproduced by the provincial fiscal shall be entitled 'Reproduced Information," and at the end thereof shall appear the date on which they were actually reproduced and a statement to the effect that they were reproduced in accordance with the provisions of this Act.

Section 25. — *Records on appeal or for review; use of copies if available.*

The records of civil actions, special proceedings, and registration and cadastral proceedings which at the time of their destruction were ready to be sent to the Supreme Court of the Philippine Islands on appeal, shall be reconstituted by means of an authentic copy of the bill of exceptions or appeal record, which, together with the reconstituted evidence, shall form the reconstituted record for the purposes of the appeal.

Section 26. — *Procedure in other cases.*

If it is not possible to obtain an authentic copy of the bill of exceptions or appeal record, or if the evidence cannot be reconstituted, the records referred to in the next preceding section shall be reconstituted by means of the other procedure established in the

preceding sections.

Section 27. — *Criminal appeals.*

The records of criminal actions which at the time of their destruction were ready to be sent to the Supreme Court of these Islands on appeal, shall be reconstituted in the manner established in sections thirteen to twenty-four. At any event, if there shall be any question as to the appeal record or the time within which the same was filed, the court may authorize the defendant to reproduce it within a reasonable time.

Section 28. *Original docket entries, controlling effect.*

In case it has been possible to save or preserve the dockets of the clerk's office relative to the civil actions, registration and cadastral proceedings, criminal actions, and special proceedings, destroyed, which were pending at the time of their destruction, the entries in said dockets shall be proof of the judicial proceedings therein made of record and shall prevail over any agreement entered into between the parties or their counsels.

Section 29. — *Failure to seek reconstitution of record; right to file new actions.*

In case the parties interested in a destroyed record fail to petition for the reconstitution thereof within the six months next following the date on which they were given notice in accordance with section two hereof, they shall be understood to have waived the reconstitution and may file their respective actions anew without being entitled to claim the benefits of section thirty-one hereof.

ANNOTATIONS

1. Duty to seek reconstitution rests on both parties.

Once the record of a case is destroyed or lost, the duty of having the same reconstituted devolves upon both parties, so that the omission of one party alone to ask for reconstitution should not be construed as an abandonment of the case. *Lichaw-o v. Lucero, Phil.*, 47 *Off Gaz* 3544 (#L-2944, 1950).

The duty to ask for reconstitution of destroyed records in a case rests upon both parties, and although, during the time when the record could have been reconstituted, no adequate steps were taken by either party to that end, defendant was not entitled to invoke the rule of estoppel by judgment against plaintiff by reason of his failure to have the record on appeal from such judgment reconstituted. In such a situation, this section applies. *Clarillad v. Novella, Phil.* (#L-4207, 1912).

2. Cases pending on appeal.

This Act is divided into parts dealing with reconstitution of records at various stages of the proceedings. Where the records in a court of first instance remain intact, but the records on an attempted appeal were destroyed, the parties are not remitted, under this section, to a new trial, but only to a new appeal, and it is error to dismiss the appeal on the score that the record was not reconstituted in time. *Nacua v. Intestate Estate of Alo, — Phil., —* (#L-4933, 1953), modifying prior decisions.

Where a case was pending on appeal to the Court of Appeals at the time of destruction of the records, and only those in the Court of Appeals were destroyed, not the records of the court of first instance, which remain intact and available, the parties are not remitted to a new action, but only to reconstitution of the appeal or a new appeal. *Nacua v. Alo, Phil.*, 49 *Off Gaz* 3353 (#L-49933, 1953).

Where a pre-war case was pending on appeal from one judgment therein to the Court of Appeals at the time the record was destroyed, either party could seek reconstitution of the record and it was not incumbent on one of them to make such an application any more than it was on another. If no one made application within the allotted time, the judgment failed to become final because of pendency of the appeal, the right to reconstitution must be considered waived, and the parties were remitted to new litigation. *Ambat v. Director of Lands, Phil.*, 49 *Off Gaz* 129 (#L-5042, 1953).

3. Criminal cases.

Where the records are destroyed in a criminal case, it is as much the duty of the accused as it is of the prosecution to see that they are reconstituted and that the case is disposed of; and if the accused takes no steps to this end, he is not in a position to complain of want of a speedy trial, nor, the case never having been decided or disposed of, that he is placed in double jeopardy by reconstitution of the records and going ahead with the prosecution on the part of the fiscal. *People v. Dagatan, Phil.* (#L-4396, 1951).

4. Motion to dismiss reconstitution proceedings as abandonment.

A motion to dismiss proceedings for the reconstitution of the record in a case does not necessarily amount to abandonment of an appeal from the judgment in such case. Section 29 of this Act does not remit the parties to a new action if reconstitution proceedings are started in due time and the pleadings and decision are produced, merely because oral and documentary evidence is missing; the proper procedure in such case is to move the appellate court to remand the case for new trial under, #64. *Medina v. Bernabe*, Phil. (#L-03036, 1949).

Section 30. — *New action if record cannot be reconstituted.*

When it shall not be possible to reconstitute a destroyed judicial record by means of the procedure established in this Act or for any reason not herein provided for, the interested parties may file their actions anew, upon payment of the proper fees, and such actions shall be registered as new actions and shall be treated as such.

ANNOTATIONS

1. When new action sanctioned or required by this section.

The commencement of a new proceeding should not be countenanced unless it is definitely demonstrated that the lost judicial records cannot be sufficiently reconstituted. *Abellera v. Garcia, Phil.*, 47 *Off Gaz* 2908 (#L-2404, 1949).

When the record in a pending case has been destroyed and cannot be reconstituted, the only practical solution is to permit the filing of a new action, as provided in this section. *Macapinlac v. Court of Appeals. Phil.*, (#L-02400, 1950).

2. Insufficiency of attempt to reconstitute record.

Where the court finds an attempt to reconstitute the record in a pending action insufficient for failure to produce the pleadings or other pertinent documents, or authentic copies hereof, or obtain an agreement on the facts, the plaintiff's mere statement, in a so-called "complaint" in new proceedings under # 30 of this Act. as to what the former pleadings contained and what transpired up to the time of destruction of the records, will not suffice as a basis for further action, *de Carungcong v. Cojuangco Phil.*, (#L-3761, 1951).

Section 31. — *Limitations and prescription period if records destroyed.*

For all legal effects, the time that has elapsed from the initiation of the destroyed record until the date when its reconstitution was declared impossible, shall not be counted against the interested party or his heirs and other successors in interest.

ANNOTATIONS

1. Prior action as tolling limitations where record destroyed.

The effect of a prior action commenced on the same cause of action as tolling the statute of limitations is lost where the record in such case is destroyed prior to final termination and not reconstituted or reinstated, as the prior action must, for that reason, be considered as abandoned and as though it had never existed. *Jarder v. Jarder, Phil.*, (#L-4626, 1952).

Section 32. — *Registration and docketing of reconstituted cases.*

All reconstituted civil and criminal actions and special proceedings and those initiated anew after the calamity, shall be registered and entered in the respective docket and shall be numbered consecutively in the chronological order of their reconstitution and filing. Reconstituted cases shall be numbered with figures preceded by a dash and capital letter R.

ANNOTATIONS

1. Appealability of order reconstituting record

An order for reconstitution of the record in a case is interlocutory and not appealable. *Fuentebella v. Ocampo*, 80 *Phil.*, 552; 45 *Off Gaz Supp.* 9 p. 178 (#L-1762, 1948).

Section 33. — *Restoration to original status where possible.*

In case it has been possible to save or preserve the dockets of the civil and criminal actions and special proceedings, the reconstituted records shall be numbered as they were in said dockets, with the sole addition of a dash and a capital letter R preceding their respective numbers, and without prejudice to their being registered and entered in the "Docket of Reconstituted Cases" prescribed in section thirty-five hereof.

ANNOTATIONS

1. Reconstitution of record as precluding relief from judgment.

Reconstitution of the record in a case does not preclude a party from seeking relief from the judgment therein in the manner provided by the Rules of Court. *Gonzales v. Ysip*, 77 *Phil.*, 661.

Section 34. — *Land registration and cadastral proceedings.*

Reconstituted registration and cadastral proceedings shall be registered and entered in their respective docket under the same numbers they had before the calamity occurred with the sole addition of a dash and a capital letter R, preceding their respective numbers.

Records of a like nature presented after the calamity shall take the numbers of the destroyed and reconstituted records.

Section 35. — *Special docket.*

Independently from the ordinary dockets for all criminal and civil actions and special proceedings reconstituted or newly filed, the clerk of the court shall open a special docket for all reconstituted cases which shall be denominated "Docket of Reconstituted Cases."

Section 36. — *Certification of special docket.*

On the first pages of the "Docket of Reconsstituted Cases," the clerk of the court shall spread a certificate setting forth that notice was duly given as required in sections one and two of this Act, transcribing the same in full, and shall paste thereon a copy of the publication in a newspaper of the notice prescribed in section two, with the statement that such publication was also made in the Official Gazette, and specifying the volume and page number.

Section 37. — *Notations to appear in special docket.*

All civil and criminal actions and special proceedings reconstituted in accordance with this Act shall be registered and entered in the "Docket of Reconstituted Cases" and shall be given the same numbers under which they appear in their respective ordinary dockets, and in the entry of each case mention shall be made of the agreements and all other proceedings had for the reconstitution of the record, and, if possible, the register number which it bore before the fire or public calamity shall be stated.

Section 38. — *Docketing of registration and cadastral proceedings.*

Reconstituted registration and cadastral proceedings shall not be registered or entered, but briefly noted in the "Docket of Reconstituted Cases."

Section 39. — *Notations in special docket if record not reconstituted.*

In case of the failure of the reconstitution of a record, the clerk of the court shall make a statement of this effect in the "Docket of Reconstituted Cases," setting forth all the proceedings had and the order of the court declaring such reconstitution to have failed.

Section 40. — *Where reconstitution proceedings to be docketed.*

The proceedings for the continuation of the reconstituted record shall not be spread upon the "Docket of Reconstituted Cases," but upon the respective ordinary dockets.

Section 41 — *Suspension of terms on destruction of records.*

All terms fixed by law or regulation shall cease to run from the date of the destruction of the records and shall only begin to run again on the date when the parties or their counsels shall have received from the clerk of the court notice to the effect that the records have been reconstituted.

ANNOTATIONS

1. "Terms" referred to.

The provision of this section that all terms shall begin to run on the date the parties have notice that the record has been reconstituted refers to the terms fixed by law which were already running when destruction of the record occurred. *Velasquez v. Ysip* 79 *Phil* 645, 45 *Off Gaz* 2079 (#L-1469, 1947)

Section 42. — *Renewal of bonds.*

All bonds executed in civil and criminal cases and special proceedings shall be renewed as soon as the respective cases have been duly reconstituted.

Section 43. — *Partial destruction of judicial records, application of Act.*

In case of the partial loss or destruction of a judicial record, the destroyed portion may be reconstituted in accordance with the provisions of this Act.

ANNOTATIONS

1. Reconstitution of entire record not necessary.

It is not necessary, for reconstitution of a destroyed record, that all the papers be reconstituted, and it was accordingly not error for a court of first instance, to which an ejectment case had been appealed, to hold that the record was sufficiently reconstituted on the basis of a copy of the decision, without reference to the pleading and other papers. *San Jose v de Venecia*, 79 *Phil* 646, 45 *Off Gaz* 2073 (#I-1154, 1947).

Although 888 out of 906 exhibits used in connection with trial of a case were destroyed by fire and could not be reconstituted, where such destruction took place after decision in the lower court and while the case was pending on appeal, and the findings of fact of the lower court were undisputed, it was unnecessary to resort to a new action and the appeal could be proceeded with. *Grey v. Insular Lumber Co., Phil.*, 49 *Off. Gaz* 4357 (#535, 1953)

Section 44. — *Records destroyed or lost other than by fire or public calamity, application of Act.*

Judicial records destroyed or lost from causes other than fire or public calamity may also be reconstituted in accordance with the provisions of this Act.

Section 45. — *Other provisions not repealed.*

Nothing contained in this Act shall be construed to repeal or modify the provisions of section three hundred and twenty-one of Act Numbered One hundred and ninety.

Section 46. — *Clerk of court's duty to note names of stenographers and send copies of criminal decisions to provincial fiscal.*

It shall be the duty of the clerk of the court to state in the proper dockets and in the minutes of the sessions of the court the names of the stenographers who have taken note of the evidence introduced in the cases tried, and to send to the provincial fiscal full copies of the decesions rendered by the court in criminal actions.

Section 47. — *Provincial fiscal to keep copies of informations and decisions.*

It shall be the duty of the provincial fiscal to keep authentic copies of all informations filed by him and of all decisions sent to him by the clerk of the court.

Section 48. — *Justice of the peace court records destroyed; procedure generally.*

Justice of the peace courts, in reconstituting the records of cases pending in said courts and destroyed by fire or any other public calamity, shall follow substantially and wherever possible, the procedure established for the reconstitution of records in the Courts of First Instance.

Section 49. — *Notice to be given.*

Justice of the peace courts shall not be required to issue the notice provided for in section one hereof, but that provided for in section two, which shall be addressed and sent by registered mail to the provincial board, the provincial fiscal, the provincial com-

mander of the Constabulary, the municipal president and councilors, the local health officer, the municipal treasurer, the chief of police, and the barrio lieutenants.

Provisions referred to: See Secs. 1, 2, this Title.

Section 50. — *Posting and publication of notice.*

Copies of this notice shall be posted for ten consecutive days in three public places of the *poblacion* of the municipality, and in three public places in each and all of the barrios of the municipality.

Such notice shall, moreover, be published by *bandillo* during the ten days mentioned in the next preceding section in the *poblacion* of the municipality and in each and all of the barrios thereof.

Section 51. — *Time to apply for reconstitution of records.*

The parties to civil actions or their counsels shall be given ten days' time for applying for the reconstitution of the records of the cases in which they may be interested.

Section 52. — *Duties of prosecuting officer.*

The duties imposed upon the provincial fiscal shall, with regard to the reconstitution of criminal actions pending in the justice of the peace courts, be imposed upon the proper prosecuting officer.

Section 53. — *Special docket for reconstituted cases not required.*

It shall not be necessary for justice of the peace courts to open a special docket for reconstituted cases.

Section 54. — *Supreme Court records destroyed; general notice to be given.*

As soon as practicable after the occurrence of any fire or other public calamity resulting in the loss of all or part of the records of judicial proceedings on file in the Supreme Court, the clerk of said Court shall send a notice by registered mail to the Governor-General, the Justices of the Supreme Court, the Secretary of Justice, the Attorney-General, all Courts of First Instance, the Director of Lands, the Chief of the General Land Registration Office, the Fiscal of the City of Manila, the provincial fiscals, and all lawyers who may be interested, stating the date on which such fire or public calamity occurred and whether the loss or destruction was total or partial, and giving a brief list of the proceedings not affected in case the loss or destruction was partial.

Section 55. — *Notice to persons interested.*

Upon receipt of the notice mentioned in the preceding section, the Chief Justice of the Supreme Court shall issue or cause to be issued a general notice which shall be addressed and sent by registered mail to the lawyers and officers mentioned in the preceding section, advising them of the destruction of the records of the Supreme Court, with a brief list of the proceedings not affected in case the destruction was partial, and of the time fixed by this Act for the reconstitution of the destroyed records.

This notice shall also be published in the Official Gazette and in one of the newspapers most widely read in these Islands, once a week during eight consecutive weeks.

Section 56. — *Original cases pending before court.*

Application for the reconstitution of the records of cases of the original jurisdiction of the Supreme Court shall be made within six months from the month in which the interested parties were notified in accordance with the next preceding section, and such reconstitution shall be accomplished by the same procedure as established for the reconstitution of cases pending in the Courts of First Instance.

Section 57. — *Various civil proceedings.*

Parties interested in any civil action, registration or cadastral proceeding, or special proceeding appealed to the Supreme Court may apply for the reconstitution thereof by filing, within six months' time, a petition accompanied by a printed copy of the bill of exceptions or appeal record.

Section 58. — *Notice on receipt of petition to reconstitute record.*

Upon receipt of the petition mentioned in the next preceding section, the clerk of the Supreme Court shall notify all interested parties and their respective counsels of the day, hour, and place at which the Supreme Court or its commissioner will proceed to the reconstitution, and on said day and hour and at said place, the parties or their counsels shall present to the Supreme Court or its commissioner all papers they may have in their possession relative to the cases to be reconstituted.

Section 59. — *Bases for making up the record.*

The case may be reconstituted by means of an authentic printed copy of the bill of exceptions or appeal record, a copy of the briefs if any have already been presented, an authentic copy of the transcript of the stenographic notes of the testimony taken, an authentic copy of the judgment if any has already been rendered by the Supreme Court, and copies of the resolution, writs, and other documents of vital importance.

Destroyed documentary evidence shall be reconstituted by means of secondary evidence which may be presented to any judge of the Supreme Court or any other officer commissioned by said Court, who may be the judge of the Court of First Instance from which the case came.

ANNOTATIONS

1. Prescribed bases for record as exclusive.

By providing, in # 59, for reconstitution of the judgment and resolution of the Supreme Court by means of an authentic copy, and in # 60 that if no copy can be found the parties shall substitute an agreement in lieu thereof, all other means of reconstituting such a record are excluded. *Francisco v. de Borja, Phil.*, (#L-1854, 1951).

Section 60. — *Agreements of parties and procedure in absence thereof.*

If no copy of any resolution, writs or other document of vital importance can be filed or found, the parties shall substitute an agreement in lieu thereof, and in default of such agreement, the Supreme Court shall determine what may be proper in the interest of equity and justice and may even consider the proceeding or document in question as non-existent and reconstitute only that part of the case which can stand without such proceeding or document and continue the proceeding on the basis of the record so reconstituted.

ANNOTATIONS

1. This, and the preceding, section as prescribing exclusive methods.

By providing, in #59, for reconstitution of the judgment and resolution of the Supreme Court by means of an authentic copy, and in #60 that if no copy can be found the parties shall substitute an agreement in lieu thereof, all other means of reconstituting such a record are excluded. *Francisco v. Borja, Phil.*, (#L-1854, 1951).

2. Insufficient basis for reconstitution.

The record of a case which was pending on appeal to the Court of Appeals at the time the records were destroyed could not be declared reconstituted generally, or even for the special purpose of showing the judgment which defendants alleged to have satisfied by making a consignment of Japanese war notes, where all that could be resurrected was certain papers relating to the attempted consignment and some miscellaneous documents, without any of the pleadings, evidence, decision, or briefs. *China Insurance & Surety Co. v. Berkenkotter, Phil.*, 46 *Off Gaz* 5466 (#CA-332; 1949).

Section 61. — *New decision, when required.*

If an authentic copy of the decision rendered by the Supreme Court is not obtainable, the case shall be decided anew.

Section 62. — *New briefs, when required.*

If it is not possible to obtain authentic copies of the briefs already filed and the case was pending decision at the time of the calamity, or if it is necessary to decide it anew, the Supreme Court shall order new briefs to be submitted and may grant reasonable time therefor.

Section 63. — *New bill of exceptions or record.*

If an authentic printed copy of the bill of exceptions or ap-

peal record is not obtainable or if the bill of exceptions or appeal record presented were about to be printed at the time of the destruction, the Supreme Court shall direct the Court of First Instance concerned to order the preparation of a new bill of exceptions or appeal record and may grant reasonable time therefor.

Section 64. — *New transcript or retaking of testimony.*

If an authentic copy of the transcript of the stenographic notes of the testimony taken cannot be filed, the Supreme Court shall direct the proper stenographer to make another transcription. And if the stenographic notes taken by the stenographer have also been destroyed, the Supreme Court shall direct the proper Court of First Instance to proceed to hear the case anew, which shall then be considered as ready for a hearing in said Court of First Instance.

ANNOTATIONS

1. Demand for new trial.

Where the record, including the transcript of testimony, is destroyed pending appeal from an order overruling a motion for new trial in a civil case, and the case will be heard before a different judge if a new trial is granted and some of the original witnesses will not be available, the Supreme Court could properly limit the scope of a new trial, if it grants one, but need not restrict the issues and may, if it sees fit, remand the cause for new trial generally. *De Almario v. Ibañez, Phil.,* 46 *Off Gaz Supp* 1, *p* 390. (#L-2547; 1948).

2. Demand for evidence does not sanction new proceeding.

Where the trancript of evidence had been lost or destroyed and the Court of Appeals returned the case under this section to permit the plaintiff to reconstitute the evidence, the plaintiff had no authority to start a new proceeding without attempting to reconstitute the evidence. *Abellera v. Garcia, Phil.,* 47 *Off Gaz* 2908 (#L-2404; 1949).

3. New decision on remand.

This section governs reconstitution of the record and further proceedings where the record in a civil is lost or destroyed while the case is pending on appeal. If a new trial is being sought, the transcript of testimony has been destroyed, and a different judge, without any recollection of the testimony, will preside at the new trial, and some of the original witnesses are no longer available, new and additional witnesses may be allowed and the court must render a new decision. *de Almario v Ibañez, Phil.,* 46 46 *Off Gaz Supp* 1, *p.* 390 (#L-2547; 1948).

4. Motion to dismiss reconstitution proceedings as abandonment of appeal.

A motion to dismiss proceedings for the reconstitution of the record in a case does not necessarily amount to abandonment of an appeal from the judgment in such case. Section 29 of this Act does not remit the parties to a new action if reconstitution proceedings are stated in due time and the pleadings and decision are produced, merely because oral and documentary evidence is missing; the proper procedure in such case is to move the appellate court to remand the case for new trial under #64. *Medina v. Benabe, Phil.,* (#L-3036, 1949).

Section 65. — *Decision not appealable or already final.*

If the decision rendered by the Supreme Court is not appealable or has already become final, an authentic copy of such decision shall be proof of its contents and shall form the reconstituted record, without prejudice to attaching thereto such copies as may be obtainable of the bill of exceptions or appeal record and the briefs filed..

Section 66. — *Criminal cases.*

Upon receipt of the notice provided for in sections fifty-four and fifty-five hereof, the Courts of First Instance shall cause a complete list to be made of all criminal actions appealed to the Supreme Court, which list shall contain the names of the stenographers who have reported each case. Copies of this list shall be sent to the provincial fiscal, the Attorney-General, and the clerk of the Supreme Court.

Section 67. — *Reconstitution by Court of First Instance.*

Upon the preparation of the list provided for in the next preceding section, the Courts of First Instance shall proceed to reconstitute all criminal actions included in said list, in accordance with the rule and procedure established in sections thirteen to forty-five hereof, and every time they declare any record reconstituted or its reconstitution a failure, they shall report the same to the Supreme Court.

Section 68. — *Sending up of reconstituted record.*

As soon as the reconstituted record is ready to be submitted to the Supreme Court on appeal, the proper clerk of court shall send it, in accordance with the exixsting legal procedure, to the clerk of the Supreme Court, for further appeal proceedings.

Section 69. — *What to constitute record in case of reconstitution.*

In case the Court of First Instance is successful in restoring the record to the condition in which it was when forwarded under appeal, such record, together with an authentic copy of the briefs, if any have been filed, and with an authentic copy of the decision, if any has been rendered by the Supreme Court, shall form the reconstituted record in the Supreme Court.

Section 70. — *New decision, when required.*

If an authentic copy of the decision rendered by the Supreme Court is not obtainable, the case shall be decided anew.

Section 71. — *New Briefs in certain instances.*

If authentic copies of the briefs filed are not obtainable and the case was pending decision at the time of the calamity, or if it is necessary to decide it anew, the Supreme Court shall direct new briefs to be filed and may allow a reasonable time for this purpose.

Section 72. — *Cases already decided.*

If a criminal action has already been decided by the Supreme Court and the decision has become final or is not appealable, an authentic copy thereof shall be proof of its contents and shall form the reconstituted record, without prejudice to copies of the information, the decision of the court below, and the briefs filed being attached to it.

Section 73. — *Procedure after record reconstituted.*

Civil and criminal actions, registration and cadastral proceedings, and special proceedings pending appeal to the Supreme Court of the United States shall be reconstituted in accordance with the rules and procedure provided for in the preceding sections, and the appeal shall take its course as soon as the reconstituted record is ready for it.

Section 74. — *Time extensions.*

In case there is any question as to the appeal record or the time within which the same was filed, the Supreme Court may authorize its reproduction within such time as it may deem reasonable.

Section 75. — *Register of deeds' records destroyed; reporting.*

When, as result of a fire or other public calamity, the documents, books, and files of the office of the register of deeds are destroyed, the register of deeds shall report such fact immediately to the Chief of the General Land Registration Office and shall, if possible, forward to the same a list of the register books, decrees, and certificates of title destroyed.

Section 76. — *Chief of Land Registration Office to provide copies.*

The chief of the General Land Registration Office shall send or cause to be sent to the register of deeds copies of the destroyed registration decrees and certificates of title.

HISTORY: Sections 76, 77, and 89 of this Act have been declared "inoperative insofar as they provide for the reconstitution of certificates of title" by RA 26 #25, eff Sept. 25, 1946.

Section 77. — *Notice to owners of registered property.*

Upon receipt of the copies mentioned in the next preceding section, the register of deeds shall cause to be published in the Official Gazette and in one of the papers most widely read in the Philippine Islands, and in the Province, if any, for a period

of six months, a notice to all owners of property registered under the Torrens system, requiring them to present in the office of the register of deeds copies of the original certificates of title or certificates of transfer in their possession, in order that the annotation made upon the same may be spread upon the copies received from the General Land Registration Office, and upon such new certificates of transfer as may be issued.

HISTORY: This section and the preceding one were declared "inoperative insofar as they provide for the reconstitution of certificates of title" by RA 26 #25, eff Sept. 25, 1946.

Section 78. — *New notations on back of reconstituted documents.*

The register of deeds shall not make any new annotation upon the back of any reconstituted certificate of title or certificate of transfer, until the previous annotations have been transcribed thereon.

Section 79. — *Notice to chattel mortgage holders.*

The register of deeds shall cause to be published, in the manner mentioned in section seventy-seven, a notice to holders of chatter mortgages to present such copies of documents relative to the same as they may have, in the office of the register of deeds.

Section 80. — *Re-entry of such mortgages.*

Upon the presentation of the copies mentioned in the next preceding section, the register of deeds shall enter them anew in the book of records of chattel mortgages, under Act Numbered Fifteen hundred and eight, under the date appearing on said copies.

Section 81. — *Numbering of subsequent mortgage entries.*

The register of deeds shall use a book of records of chattel mortgages separate from the one he shall open for the registration of new mortgages, filed after the fire or public calamity, and shall register the new mortgages in chronological order, beginning with number one, unless it has been possible to save the book of records of chattel mortgages, in which case the existing enumeration shall be followed in future entries.

Section 82. — *Same procedure for certain other entries.*

The register of deeds shall adopt the same rules and procedure for the reconstitution of entries made under Act Numbered Twenty-eight hundred and thirty-seven and Act Numbered Twelve hundred and twenty-eight, and amendments thereof.

Acts referred to: PA 2837 is an Act amending a prior Act with respect to lands not registered under the Land Registration Act. The reference to PA 1228 is apparently an error, as that is a special Act revaluing the property of one individual only.

Section 83. — *Entries under Spanish Mortgage Law*

With regard to entries made under the Spanish Mortgage Law, the register of deeds shall cause to be published, in the manner mentioned in section seventy-seven hereof, a notice to all persons having in their possession any instrument registered under said law, requiring them to present the same at the office of the register of deeds, for re-registration.

Section 84. — *Numbering.*

Entries made in accordance with the Spanish Mortgage Law shall be given the same numbers as appear at the foot of the instrument.

Section 85. — *New book for reconstituted registrations*

The register of deeds shall open a record book for reconstituted registrations.

Section 86. — *Notations concerning reconstituted entries.*

It shall not be necessary for the register of deeds, upon extending the reconstituted entries to make any entry in the entry book; but in the column for remarks or at the foot of each reconstituted entry he shall put a note setting forth that such entry has been reconstituted in accordance with this Act.

Section 87. — *No fees.*

The register of deeds shall not charge any fees whatsoever for the reconstitution of entries.

Section 88. — *Force and effect on reconstituted entries.*

Reconstituted entries shall have the same validity and legal effects as the original entries.

Section 89. — *Original documents to be produced if possible.*

For the purposes of the reconstitution of the documents of the office of the register of deeds, the latter shall, whenever possible, require the interested parties to present the original documents, and shall make a copy thereof, which shall be certified correct and authentic and made in accordance with this Act.

HISTORY: This section and Section 76 and 77 of PA 3110 were declared "Inoperative insofar as they provide for the reconstitution of certificates of title" by RA 26 #25, eff Sept. 25, 1946.

Section 90. — *Filing of certified copies of originals and force as evidence.*

Copies so made and certified shall be filed in the proper envelopes or bundles and shall have the same validity and legal effects as their originals.

Section 91. — *Regulations, instructions and records to be issued.*

The Supreme Court, the Secretary of Justice, the Attorney General, and the Chief of the General Land Registration Office shall issue regulations, circulars, and instructions, and prescribe the books and banks necessary to carry into effect the provisions of this Act, and shall promulgate the rules and take the measures necessary to avoid future destruction of the judicial records and the books or documents of the office of the register of deeds.

REPUBLIC ACT NO. 441
(Effective June 7, 1950)

Section 1. — *Extension of time to reconstitute court records destroyed by war.*

Notwithstanding the provisions of Act Numbered Three Thousand one hundred and ten, the party or parties interested in any case pending in the courts the records of which have been destroyed by reason of the last Pacific war may file a petition for the reconstitution of such records within one year from the date of the approval of this Act.

ANNOTATIONS

1. Liberal construction; application to partially completed reconstitution proceedings.

The fact that a motion for reopening a reconstitution of the records in a case was not made within the time originally prescribed by law was immaterial in view of Reublic Act No. 441, extending for one year the period to take steps for reconstitution of records destroyed by the war, as that Act, being remedial, is to be liberally construed as extending not merely the time to start original reconstitution proceedings, but also applications for completion of partly reconstituted records. *Rodrigo v. Cantor, Phil.*, (#L-4398, 1952)

Section 2. — *Procedure.*

The procedure, requirements and all other incidents of such reconstitution shall be governed by the provisions of Act Numbered Three thousand one hundred and ten.

1959 BAR EXAMINATION QUESTIONS

(Conclusion)

CRIMINAL LAW

I. (a) Except as provided in treaties and laws of preferential application, enumerate five cases wherein the Revised Penal Code is applicable outside the territorial jurisdiction of the Philippines.

(b) One night, two American soldiers of the U. S. Army forcibly take two Filipino hostesses from Angeles, Pampanga, and bring them inside Clark Air Base. Once inside the base they are taken to a dance, but finding the hall too crowded they immediately proceed to the soldiers' quarters where the girls are raped.

(1) May the two soldiers be prosecuted before a Philippine Court? Reasons.

(2) For what offense or offenses are they criminally liable? Reasons.

II. (a) Is mere membership in the Communist Party of the Philippines punishable? Cite authoritative provisions.

(b) A was taken to a farm by outlaw members B and C. B gave A a bolo and told the latter that the chief outlaw wanted A to kill the farmer who was sleeping inside the hut. A refused, but after B told A "you have to comply with that order of the chief outlaw, otherwise you will have to come along with us," A killed the farmer.

Is A criminally liable? Reason out your answer.

III. (a) What penalties are to be imposed for complex crimes?; for crimes committed which are different from those intended?

(b) A was seated at the rear side of the orchestra in a theater. He left his seat with his revolver in hand to look for another seat behind. On his way, his revolver suddenly was discharged and the bullet hit B, causing his death, and C, causing injuries that required more than 30 days to heal.

If you were the prosecutor, for what offenses or offenses would you charge A, Reasons.

If convicted, what would be the proper penalty?

IV. (a) Distinguish both by their nature and their effects between justifying and exempting circumstances.

(b) M, a public school teacher, scolded R, one of her pupils. The next day, while M was conducting her class, R's father boxed M on different parts of her body. The injuries of M healed more than ten (10) days but less than thirty days.

For what offense or offenses may R's father be charged? Give reasons for your answer.

V. (a) Generally the Revised Penal Code imposes a lower penalty for crimes committed through criminal negligence. Cite one specific offense where the penalty is the same regardless of whether the offense is committed with criminal intent or through criminal negligence.

(b) X, a patrolman, was accused of grave threats before the JP court. He was arrested and detained in the municipal jail. Based on the certification of the Chief of Police that X performed continued service without absence, X was able to draw his salary during the period of his confinement. The mayor approved the payroll and the treasurer paid the salary.

What offense or offenses have been committed? Reasons.

Who are the parties liable therefore? Reasons.

VI. (a) What are included in the civil liability incurred by a person committing an offense, and how are they made or satisfied?

(b) Give the two exceptions to the rule that penal laws shall have a retroactive effect in so far as they favor the persons guilty of a felony.

(c) For what offenses may a member of Congress be arrested during the regular or special session of Congress?

VII. (a) A and B, armed with carbines, decided to rob the house of X. While attempting to gain entrance thereto, X shouted for help which caused A and B to fire at X, who died. There is no evidence to show who among A and B fired the fatal shot.

May A and B be prosecuted? Reason out your answer.

(b) A police raiding team apprehended a bachelor and a woman in the act of cohabitation at a motel room. It was admitted by the couple that the woman received five bottles of perfumes in consideration of the intercourse.

What was the offense committed, if there was any? Give reasons for your answer.

VIII. (a) In a poker game A, employing fraud, won ₱500.00 from B. When the criminal complaint for estafa was pending preliminary investigation before the provincial fiscal, A returned the ₱500.00 to B's wife, with knowledge of B. After receipt of the ₱500, B insisted in the prosecution of A.

If you were the prosecutor, what will you do? Give your reasons.

(b) P knocked at the door of the room of his wife, M. When there was no response P opened the door. P saw his illegitimate grandfather, G, jumped out of the window. P asked M why X was inside her room, but M refused to answer. P pursued X and killed him.

What was the offense committed, if there was any? Reason out your answer.

IX. (a) Give the cases where the Indeterminate Sentence Law does not apply.

(b) D brought his maid E to his room. After raising his cane D compelled E to take off her clothes and dance before him.

What offense has been committed? Give your reasons.

(c) F, cashier of the Manila Railroad Company, misappropriated ₱50,000.00 in conspiracy with L, a businessman.

For what offense or offenses are F and L liable? Reason out your answer.

X. (a) State the provision in the Revised Penal Code which succeeded the former offense of false prosecution.

(b) In consideration of ₱15,000 which R gave to S, the latter agreed to execute the next day a deed of conveyance over 1,000 sq. m. lot in favor of R. On the following day, S did not comply with the agreement; instead he evaded R. When pressed by R for compliance, S refused. Later on, S sold the same lot to another buyer.

What was the offense committed, if there was any? Reason out your answer.

POLITICAL LAW

I. (a) State the purpose and scope of the due process of the Constitution.

(b) M is accused of theft, and after trial the court sentenced him to the proper penalty for said crime. Having been previously convicted twice by final judgment of the crime of theft, a fact sufficiently alleged in the information, he is also sentenced to an additional penalty of three years of prison correccional pursuant to habitual delinquency law. On appeal M contends that the habitual delinquency law is unconstitutional, first, because it inflicts cruel and unusual punishment, and second, because it punishes an accused a second time for an earlier crime of which he had been previously convicted and punished.

How should the appellate court resolve the questions raised by M? Explain your answer.

II. (a) Give two powers of Congress which although not expressly granted are implied from the express grants

of power, and three non-legislative powers expressly granted Congress by the constitution.

(b) P, a member of the House of Representatives and of the Commissions of Appointments, as complainant filed formal administrative charges against the justice of the peace of a muunicipality in his district. At the investigation of the charges before the Judge of the Court of First Instance of the province, may P, over the objection of the respondent who invokes Section 17 of Article VI of the Constitution which provides: "No member of the Commission on Appointments shall appear as counsel before any court inferior to a collegiate court of appellate jurisdiction", be permitted to substantiate his charges?

Reason out your answer.

III. (a) Distinguish eminent domain from police power.

(b) B is the owner of a big lot in the City of Manila. With her permission, a private alley was constructed from the public street bordering her lot into the interior of her property and the adjoining lot. This alley serves as the only means of exit to said public street for the interior residents. B subsequently applied for a permit to build a house of strong materials on the portion of her lot occupied by the private alley. The City Engineer denied her application because the proposed building would close the alley, in violation of a city ordinance which provides that before a building can be constructed in the interior of a city lot a private alley must first be provided and that such alley can not be closed as long as there are interior residents using the alley as a means of entrance and egress to and from a public street.

B filed a petition for mandamus in the Court of First Instance of Manila to compel the City Engineer to issue a building permit, contending that the denial of her application is tantamount to taking her property without compensation and that if the City of Manila needed her property for a street, it must first expropriate it.

How should the court decide the case? Explain your answer.

IV. (a) Discuss briefly the doctrine of immunity of Government from suit.

(b) Commonwealth Act No. 303 penalizes an employer who being able to make payment, refuses to pay the salary of his employee. Prosecuted for a violation of said Act, R, as the owner of a business establishment, admits that he has not paid his employees. He contends, however, that Commonwealth Act No. 303 is violative of the provision of the Constitution that "No person shall be imprisoned for debt".

Decide the case, giving reasons.

V. (a) State one recognized exception to the rule which prohibits the passage of irrepealable laws, and the reason or reasons for the exception.

(b) F, a young, ignorant orphan girl residing in one of the municipalities of distant province, came to Manila and started working as a domestic servant in the house of J who advanced the amount for fare. F wants to leave J's employ, but J, without employing physical force, would not allow her to leave until the amount advanced to her is paid in full. May a petition for a writ of habeas corpus on her behalf be granted in this case.

Reason out your answer.

VI. (a) On what ground or grounds may a provincial board disapprove an ordinance or resolution passed by a municipal council?

(b) Under a power expressly granted by law to municipal councils, the municipal council of A passed an ordinance prohibiting the installation of machineries of more than 20 horse power within certain thickly populated sections of the town. A copy of the ordinance was immediately furnished the provincial board of the province but that body never approved or disapproved the ordinance.

S applied for a permit to install an engine of more than 20 horse power in a section of the town where installation of such engine is prohibited by the ordinance. The municipal mayor disapproved the application and S filed a petition for mandamus in the Court of First Instance of the province to compel the mayor to issue the permit, contending that the ordinance is inoperative because it was never approved by the provincial board of the province.

How should the court decide the case? Reason out your answer.

VII. (a) When does a tax ordinance passed by a city, municipal or municipal district council take effect? Who may suspend it and of what ground or grounds?

(b) Under the power granted it by the city charter "to tax, fix the license fees and regulate the business of theaters, cinematographs," the Municipal Board of Manila passed an ordinance imposing a graduated license tax on theatres and cinematographs in the City of Manila. On the other hand, Section 260 of the National Internal Revenue Code fixes a graduated amusement tax on theaters and cinematographs and other places of amusement. T operates several theaters and cinematographs in Manila, and after paying the amusement tax under the National Internal Revenue Code, he also paid, but under protest, the license tax required in the aforesaid city ordinance. In the suit which T filed to recover the license tax from the City of Manila, he contends that the ordinance is void because payment of the license tax therein imposed constitute double taxation.

Is T's contention tenable? Reason out your answer.

VIII. (a) Discuss briefly the doctrines of exhaustion of administrative remedies and conclusive finality of administrative decisions.

(b) M and R filed with the Director of Lands separate lease application under the Public Land Act covering the same portion of the public domain. After an investigation, with notice to the conflicting applicants, the Director of Lands rejected M's application and approved that of R. M immediately filed a petition in the proper court alleging total lack of evidence to support the decision and grave abuse of authority and discretion on the part of the Director of Lands, and praying for judgment voiding said decisions and ordering the Director of Lands to approve his "M" application.

Has M a cause of action against the Director of Lands, give reason for your answer.

IX. (a) May the President of the Philippines by virtue of his control of the executive department of the government and his general supervisory authority over local governments, himself or through an official of the National Government designated by him, investigate charges against a municipal mayor, a municipal vice-mayor, or a member of the municipal council? Reason out your answer.

(b) C, an alien, adopts the minor S, an alien born in the Philippines. After the adoption C becomes a Filipino citizen by naturalization.

Has S, who is still a minor, also become a Filipino citizen in view of Section 15 of the Revised Na-

turalization Law which provides that "minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof", and Article 341 of the New Civil Code which states "that the adoption shall give to the adopted person the same rights and duties as if he were a legitimate child of the adopter"?

Reason out your answer.

X. (a) In the general elections of 1955, A and B were rival candidates for mayor of the same municipality. Fifty-six (56) ballots contained the name of B but written on spaces for offices other than the office of the mayor. In the election contest between the two candidates which involved the 56 ballots, should these be counted in favor of B? Explain your answer.

(b) R and G were candidates for the office of Provincial Governor of a certain province in 1955. G was proclaimed elected on December 8, 1955. Within the period fixed by Section 174 of the Revised Election Code (within two weeks after proclamation), R filed his petition contesting G's election. Within the time fixed by Section 16 of the same Code which provides:

"Sec. 176. Procedure x x x

(b) The protestee shall answer the protest within five days after being summoned. x x x

(c) Should the protestee desire to impugn the votes received by the protestant in other precincts, he shall file a counter-protest within the same period fixed for the answer. x x x

G filed his asnwer and counter-protest on December 16, 1955. On June 1, 1956, G petitioned the trial court for permission to amend his counter-protest by including therein a new precinct. R objected to the petition to amend.

Should the court grant G's petition to amend his answer and counter-protest.

Reason out your answer.

REMEDIAL LAW

I. (a) Distinguish cause of action from right of action. What law governs each,

(b) What determines the singleness of a cause of action and what is the effect of splitting same?

Supposing an indebtedness of ₱30,000.00 is payable in five yearly amortizations of ₱6,000.00 each starting on January 1, 1959, and one every January 1st of each year hereafter, there been no acceleration clause. The first installment not having been paid, a demand was made for the sum of ₱6,000.00, but debtor refused to pay, alleging that the obligation was without consideration.

If you are to file a complaint for the creditor, upon what cause of action would you base it, Give your reasons.

II. (a) Differentiate: (1) permissive joinder of parties; (2) class suit; (3) Derivative suit.

(b) A owns a residential lot with a garage thereon in Baguio City. He agreed to lease the garage to B for 2 months under a written contract to be later executed. B, who had taken possession of the garage, required A to sign the formal contract, but A refused, adding that there was no need for it.

If B filed an action to compel A to execute the agreed contract, is the action "in rem" or "in personam"?

III. (a) In what action or actions is a judgment on the pleadings, or a judgment based on stipulation of facts or confession of judgment not applicable or obtainable?

(b) A sued B in the Court of First Instance to recover ₱10,000.00. B, the defendant, answered the complaint within the period provided for by law. Later A, the plaintiff, filed a notice to dismiss the action. The case was nevertheless set for trial with notice to the parties. On the day of the trial plaintiff was absent and the defendant moved for the dismissal of the case, and the court dismissed the case. One year later, A filed the same action against B. The defendant B filed a motion to dismiss, on the ground that the dismissal of the first action was bar. Decide the case, giving your reasons.

IV. (a) May a court of first instance issue an injunction in connection with a picket established by a striking union of laborers by reason of a pending case of unfair labor practices in the Court of Industrial Relations? Reason out your answer.

(b) A filed a complaint in the Court of First Instance against M & Co., an insurance company, to collect the value of a fire insurance policy covering A's property which was burnt. A obtained judgment in his favor and notice thereof was served on the insurance company on December 20, 1958. The decision became final on January 19, 1958. Four months and fifteen days after the decision has became final, M & Co. learned that the fire was intentional and succeeded in gathering evidence to this effect.

Is there any remedy for M & Co. by which it may relieve itself from compliance with the judgment?

If in the affirmative, upon what grounds and in what manner may the relief be obtained? If in the negative, state your reasons.

V. (a) In what respect has the new Civli Code affected the provisions of the Rules of Court in the matter of: (1) Guardianship; (2) Adoption; (3) Presumption of death for purposes of succession?

(b) X obtained a judgment for money against Y in the Municipal Court. Pending trial of Y's appeal in the Court of First Instance, Y dies.

(1) Can X file his judgment in the administration of Y's estate? (2) Supposing Y died after judgment against him by the Court of First Instance, what would X's remedy be? (3) Supposing further that execution of the judgment of the CFI has been levied on Y's property at the time of his death, what remedy does X have? Reason out your answers.

VI. (a) Distinguish from each other: suspension of payment; voluntary insolvency; involuntary insolvency.

(b) R, administrator of the estate of the deceased S, after submitting his inventory, files a motion in the administration proceedings praying for an order directing X to deliver to R the house and lot included in R's inventory. The Court, without hearing, grants the motion and issues the corresponding order. X, nothwithstanding the order, refuses to deliver the property claiming that it was donated to him inter vivos by the deceased S. R contends that the donation was null and void. R asks the Court to declare the donation invalid, to declare X in contempt of Court, and to compel X to deliver the property.

If you were counsel for X, on what ground would you oppose the second motion and assail the first order? Reasons.

VII. (a) Name three grounds for a motion to quash that are not apparent upon the face of a complaint or information.

(b) A was prosecuted for alleged attempted homicide in

that he willfully, unlawfully, feloniously, with intent to kill, hurled from a house-window, a big stone at B while the latter was passing along A's house, without hitting her. At trial the prosecution established that B was injured probably by a splinter when the stone hit the pavement which physical injury required eleven days to heal with medical attendance, and the Court admitted the evidence over the vigorous objection of the defense on the ground that there was no allegation of physical injury in the information.

Ruling that the intent to kill had not been proven, the Court, however, convicted the defendant of less serious physical injuries. Was the judgment of conviction well taken? Reasons.

VIII. (a) When may an information be amended without leave of court?

(b) A, defendant in a criminal case took the witness stand on his own behalf. In his cross-examination, can he be compelled to:

(1) Write or give specimens of his handwriting on a piece of paper so as to determine whether he had written another allegedly falsified document?

(2) Place his foot upon a footprint on the ground, to see if said footprint tallied with his own?

(3) Produce certain documents proven to be in his possession? Give reason for your answer.

IX. (a) State the Hearsay Evidence Rule and discuss the difference in its effects when offered testimonially and when tendered circumstancially. Illustrate by examples.

(b) Y had purchased a parcel of land from X and paid ₱1,000.00 therefor, leaving a balance of ₱200.00. Z did not personally intervene in his transaction, but subsequently meeting X, had verbally guaranteed payment of of said balance. In an action for the recovery of the balance foled by X against Y and Z, the evidence had disclosed that Y had just been acting as an agent or representative of Z in said purchase. As a matter of fact Z was the real purchaser of the land. Will Z's defense, under the Statue of Frauds, that his "promise to answer for that debt of another" not being in writing and consequently invalid, proper? Reasons.

X. (a) State the rule or principle of evidence called "Res inter alios Acta" both in criminal as well as in civil cases. Reasons for the rule.

(b) In an extra-judicial confession had before the Constabulary and NBI officers, A, charged with murder, voluntarily admitted the charge, but incriminated B and C as his co-conspriators. Apprehended, B and C vehemently denied the charge or any participation therein. Disregarding however, B & C's counsel's objection to the admissibility of A's confession as against B & C, the prosecution filed the corresponding information against the trio.

At the trial before the Court of First Istance, counsel for B & C again vigorously objected to A's testimony.

Is A's testimony on te witness stand incriminating B & C admissible against them? Reasons.

Manila August 30, 1959

LEGAL ETHICS AND PRACTICAL EXERCISES

I. (a) You may answer the following two questions separately or together.

(1) Is the "ethics" of the legal profession in this jurisdiction provided for in a specific statute or rule of court? If so, indicate generally the corresponding statute or rule.

(2) If legal ethics in this jurisdiction is not covered by positive statute or rule of court, indicate generally the source or sources of authority for finding that a lawyer has acted unethically.

(b) Senator X is engaged in the practice of law. One day, three prospective clients, A, B, and C, asked him to represent them in three separate cases, as follows: A is a municipal mayor accused of murder; B is the owner of a piece of land and is defendant in expropriation proceedings filed by the City of Manila; and C is an infantry officer who is accused in courtmartials proceedings.

Can Senator X properly accept all the cases? Briefly explain your answer.

II. (a) Can an attorney of record, with a written contract of partnership, withdraw from a case against the wishes of his client? Explain your answer briefly.

(b) X has been convicted of murder by a Court of First Instance and he has appealed to the Supreme Court. Atty. R was appointed counsel de officio. After studying the records, Atty. R came to the conclusion that X is really guilty. Which of the following alternative actions may be properly take?

(1) File a brief and contend nevertheless that X is not guilty.

(2) File a brief, or motion, asking that the decision be affirmed

(3) File a motion praying that the Court relieve him as counsel de officio on the ground that he can not adequately represent X because he believes him guilty.

III. (a) Rep. Act No. 145 penalizes the receipt of fees by a lawyer in excess of ₱20.00 in relation to claims for benefits under statutes of the United States being administered by the U.S. Veterans Administration. Atty. M was found guilty and convicted in a criminal case for violation of said Rep. Act No. 145 for having solicited, charged, and received, as fees, amounts in excess of ₱20.00.

May Atty. M be disbarred because of his conviction? Give your reasons.

(b) As lawyer for client X, Atty. A secured a money judgment against Y before a court of first instance. On appeal by Y, X hired another lawyer to represent him in the appeal and judgment was affirmed. Two years after the decision had become final, X tried to execute his judgment against property which he thought belonged to Y but which a third party, Z, claimed to be his. As a matter of fact, Z filed a complaint against X and the Sheriff to vindicate his title to the property. Z was represented by Atty. A.

Did Atty. A commit any breach of legal ethics? Reason out your answer.

IV. (a) Atty. A consented to the publication, but for only one time, of the following advertisement in a local newspaper as a gift from a client:

"Free legal consultation for the poor.
Marriage license promptly secured and arranged according to wishes of parties.
"Atty. A — Tel. 392; 41 Escolta".

(1) Did Atty. A violate any statute or rule of court?

(2) State whether the Supreme Court has decided any case with similar facts; and if so, give the ruling enunciated by the Court.

(b) B took an affidavit to his lawyer, A, who was also a notary public for ratification. B swore to the affidavit and sign it before A, who ratified the same and made the corresponding entry in his notarial register without reading it. B took all the copies of the affidavit

with him. It turned out later that the affidavit contained allegations that B, a married man, had agreed to live separately from his wife, confirming that each of them could choose another lifetime partner without interference from the other.

Can the act of Atty. A, in ratifying the affidavit subject him to disbarment, ? Briefly reason out your answer.

V. (a) F is the leading lawyer in his province. C, a resident of the same province, having a doubtful claim against P, another resident, consult with F, showing him papers and giving him facts relative to the claim. F thereafter tells C he believes that C does not have a case against P and politely refuses to handle the case Subsequently, C hires the services of another lawyer and files suit against P. P now approaches and ask F to represent him.

(1) What consideration may be invoked in support of F's acceptance of the request that he represent P in the case?

(2) What consideration in contra may be invoked?

(3) State whether the Supreme Court has decided any case with similar facts; and if so, give the ruling enunciated by the Court.

(b) Suppose that next month after the bar examinations are over but before the results are published, you are engaged to represent the accused in a criminal case of damage to property through reckless imprudence pending before the Municipal Court of Manila. Can you legally represent the accused? Briefly explain your answer.

VI. (a) After a pre-trial was had in a civil case, Judge B casually states the following to the attorney for the plaintiff: "Atty. X, I do not believe in the veracity of or relevancy of your evidence. I advise you to compromise your case."

(1) Has the judge committed any breach of judicial ethics? Explain you answer.

(2) What remedy, if any does the plaintiff have? Explain.

(a) A bus, driven by X collided with and damaged the car of Y. In the criminal case filed for physical injuries and damage to the property through reckless imprudence, Judge G acquitted the accused X. Subsequently, Y filed a civil action for damages against X. The civil case was assigned to the sala of Judge G.

(1) Can Judge G be disqualified from hearing the civil case? Briefly give your reasons.

(2) If X should seek to disqualify Judge G, how should he go about it?

VII. (a) SW, a woman married to FH, sold two parcels of land located in Quezon City for ₱20,000.00 to Mr. & Mrs. AB. Prepare the notarial acknowledgment for a simple unilateral deed of absolute sale to cover the transaction, supplying all necessary data.

(b) Prepare a simple negotiable promissory note with an acceleration clause.

VIII. (a) Using your own facts, prepare a paragraph for inclusion in the articles of incorporation of a company providing for its authorized capitalization.

(b) Supplying your own facts, prepare a simple bill of exchange.

IX. (a) T is the owner of an apartment house. He leased apartment No. 2 to H for a year, terminating on July 31, 1959. Although no extension to the lease was granted, H refused to vacate. On August 16th, as Attorney for T, you filed a complaint for ejectment against H. Reproduce your entire complaint.

X. (a) Omitting caption and title, and supplying all necessary facts, prepare the body of an information charging the accused with bigamy.
Manila. Aukust 30, 1959

COURT OF APPEALS . . . (*Continued from page* 50)

lect to perform any duty specifically enjoined by law.

The petitioner alleges that it orally acquiesced to the cross examination of its witness before a commissioner subject "to the proviso that in the event many legal questions or issues arise during the cross-examination before the commissioner, the same shall be retunred to the court as the commissioner is powerless to rule on them." However, the order of August 10, 1959 completely belies this allegation — which is probably the reason why it is not among the annexes submitted with the petition, despite the fact that it is precisely the same order being questioned.

Upon the other hand, it cannot be successfully denied that the principal issue of Civil Case No. 35113 requires a tedious examination of a lengthy and complicated account. Aside from the ₱160,000.00 for moral and exemplary damages and attorney's fees, the plaintiff therein, herein petitioner, asked for the payment of ₱35,000.00 representing its capital contribution to the filming of "Buhay at Pag-ibig ni Dr. Jose Rizal"; ₱31,000.00 representing damages due to padded production costs; ₱10,000.00 representing earned and concealed profits; and ₱50,000.00 for unrealized but expected profits. While the defendant therein, herein respondent corporation, alleged that the total cost of the production of the film was not only ₱70,000.00 as previously estimated, but ₱101,424.86; that every item of expense is supported by invoices and vouchers; that the more than six months' showing of the film in different theaters would require the report of the ticket sellers; and that the statement of account covering all income and expenses would demand the intervention and testimony of public accountants. It is therefore indisputable that the respondent judge on his own motion and even without the consent of the parties, could have legally referred the aforementioned civil case to the commissioner directing the latter to hear and report upon the entire issue, pursuant to section 2 of the rule aforecited.

WHEREFORE, the instant petition is denied and dismissed, with costs against the petitioner.

IT IS SO ORDERED.

Dizon and Peña, JJ., concurred.

———oOo———

NO MONEY?

A famous lawyer was called in to see a man in the county jail accused of murder.

When he returned to his office, his secretary said, "Well, did you take the case, Mr. Blank?"

"No, I didn't take it."

"Why, didn't you think the man was justified in his acts?"

"My dear young lady,' said the lawyer, "he certainly was not financially justified in committing murder." — *Naples (N.Y.) Record.*

NONE WHATSOEVER

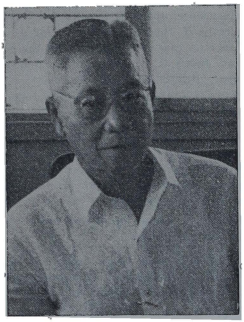
Judge: This is a malpractice case, and the defendant is a doctor. Does that create any bias or prejudice in you in any respect because the defendant is of that profession?

Juror: No, Your Honor.

Judge: What is your occupation?

Juror: Undertaker. — *Minnesota Bulletin.*

PROFILES: MEMBERS OF THE BENCH AND BAR



ARSENIO SANTOS
Judge, Court of First Instance of Pampanga

To temper justice with mercy is an act of humanity. It is no less an act of nobility. Mercy is rightly described as the crown of justice. There is always the recurring possibility that what Justinian or an assistant of his defined as "the earnest and constant will to render to every man his due" may have erred, that the proverbial scale or balance may have been tipped in favor of severity or injustice.

It is altogether unfortunate that in the administration of justice in the Philippines, many a judge often forgets to temper justice or what he thinks is just. The reason is that in construing or interpreting the law, he adheres more to the letter than to the spirit that prompted the enactment of such law.

Years ago, an American World War veteran, wishing to allay the pangs of hunger, yielded to the temptation of helping himself to a few apples and a pound of grapes. Later he told the fruit vendor that he had no money and consequently could not pay for the damage. He was placed under arrest. Brought to court, he confessed to the judge that since he left the army he had been out of job, that he had tried his best to look for one but without success, that he had a wife and son to share his lot.

Satisfied that the accused had told nothing but the truth, the judge set him free. He went further: he asked the people in court to chip in whatever they could for the old veteran. The audience contributed twenty-five dollars with which the accused returned home plus a job. Possibly, what the good judge had done was not strictly in accordance with the law, but he earned high commendations both from the press and the public.

Feeling hungry after going his daily rounds in the old Walled City for possible customers, a young bootblack seated himself in a Chinese restaurant and ordered some food. After finishing his meal, he went to the manager and told him that he had no money with which to pay. He was arrested, charged with *estafa*, and was sentenced by the municipal judge to more than one month's imprisonment. The judge excused himself by saying, possibly to salve his conscience, that the law gave him no discretion.

Finding himself similarly situated as his American counterpart, a judge of the Court of First Instance of Pampanga, with out having heard about the American veteran's case, recently acquitted an old man, an ex-guerrilla, charged with having helped himself also to some food for himself and his wife and children. He pleaded guilty, but begged that he be given another chance as he had failed in his effort to look for a job. A number of witnesses testified to the truth of the guerrilla's statement. The judge generously responded to the plea for mercy, had the hat passed around in court for those who were willing to help. Not only did the prisoner return home with money, but what was better, he was assured of a job in the community.

The judge who did honor to his position and still does is a son of Bulacan, but a district judge of Pampanga. Judge Arsenio Santos, a native of Malabon, is not only a man of understanding, but a man of broad sympathies, who, despite his inherited wealth, has not lost the common touch. He has had a varied career that gave him perspective and experience. He finished his collegiate course at the Ateneo de Manila, majoring in philosophy. Enjoying a tremendous popularity in his home town largely due to his kindness to the people and his willingness and disposition to help wherever he can, he was elected mayor of Malabon in 1916 when he was barely 19 years of age.

Knowing that he was a minor, his opponent filed *quo warranto* proceedings. Unseated by order of the court, Santos was named acting mayor or rather municipal president by the Governor-General. With reluctance he accepted the appointment. His position did not prevent him from taking up law, the intricacies and complexities of which fascinated him after he lost in court. In 1921 he completed his law course at the famed Escuela de Derecho, now defunct, and passed the bar in the same year.

Promptly, he was designated secretary of Bulacan's provincial board. The late Governor-General Wood took notice of him and appointed him acting provincial governor; but determined not to be in politics, he resigned in two days. Efforts were exerted by General Wood to keep him in office, but he firmly declined the offer. He wanted to remain just a plain citizen, a lawyer, not a politician, by profession. He had enough law practice and that apparently satisfied him. His books and his studies had more attraction for him than positions in the government.,

The late President Quezon, who knew how to select his men, offered to appoint him provincial fiscal, then judge; but gratefully he declined both offers. In 1946 or after liberation, President Osmeña prevailed upon him to accept a position in the judiciary. Circumstances, however, did not permit him to remain long. It was only in 1954 that he finally consented to give up his law practice and accepted his appointment by the late President Magsaysay as judge of the Court of First Instance.

One of the important cases recently decided by him is that of the incumbent mayor of Angeles, Pampanga, in which the mayor, who appeared in the certificate of canvass as having lost by one vote, asked for the recounting of the votes in a certain precinct in Angeles, basing his petition on the discrepancy between the number of votes written in words and the number of votes written in figures. The opposing candidate contended that such discrepancy was not a ground for the recounting of votes because in case of conflict between the figures and the words, the latter must prevail. Judge Santos decided the case in the sense that there was discrepancy among the election returns themselves in so far as the figures and words of the number of votes was concerned, and ordered the recounting of the votes. In the *certiorari* filed by the opposing candidate, the Supreme Court sustained the opinion of Judge Santos.

Lawyers appearing before Judge Santos are unanimous in their opinion that because of his splendid record, his background and experience, he should be elevated to the Court of Appeals.

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