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Pacito Abrea, petitioner-appellant, vs. Isabelo A. Lloren, respondent-appellee, G. R. No. L-2078, October 26, 1948, OZAETA, *J.*

1. ELECTIONS; STATUTES; CONSTRUCTION AND INTERPRETATION; EFFECT OF NONINCORPORATION OF A PROVISION OF PREVIOUS ELECTION LAW IN THE REVISED ELECTION CODE. —The nonincorporation in the Revised Election Code of the provision of a previous election law (Act No. 4203, section 16), which said: "* * * Nor shall any vote be counted on which the candidate is designated by his nickname or alias, although mention thereof is made on his certificate of candidacy," is indicative of the intention of the Congress to abandon it.

2. ID.; BALLOTS; NICKNAMES; CANDIDATE SUFFICIENTLY IDENTIFIED BY NICKNAMES.— Appellee was sufficiently identified by his nickname Beloy or Biloy, first, because such nickname is a derivative, or a contraction of his Christian name Isabelo; second, because he was popularly and commonly known in the entire municipality of Inopacan by that nickname; and, third, because there was no other candidate for mayor with same nickname.

3. ID.; ID.; CANDIDATE SUFFICIENTLY IDENTIFIED BY HIS CHRISTIAN NAME OR SURNAME ONLY; RULES LAID DOWN IN CAILIES VS. GOMES AND BARBAJA, 42 PHIL. 496 AND CECILIO VS. TOMACRUZ, 62 PHIL. 689, CHANGED OR ABANDONED.— Rule No. 1 contained in section 149 of Republic Act No. 180 reverses the doctrine or rule laid down by the Supreme Court regarding the use of the Christian name alone of a candidate by providing that—contrary to said doctrine—any ballot where only the Christian name of a candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office. The purpose of this new rule is to validate the vote provided the name written on the ballot identifies the candidate voted for beyond any question or possible confusion with any other candidate for the same office.

4. ID.; ID.; NICKNAMES; BALLOT BEARING NICKNAME OF CANDIDATE ONLY, VALID. — When the nickname of a candidate is a derivative or contraction of his Christian name or of his surname, and if he is popularly and commonly known by that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office.

5. ID.; ID.; APPRECIATION OF BALLOTS.—A ballot is indicative of the will of the voter. It does not require that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective. At the same time, it is not admissible to say that something was intended which is contrary to what was done; and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded. (Mandac vs. Samonte, 49 Phil. 284)

6. ID.; ID.; NICKNAMES; EVIDENCE; PROOF OF CANDIDATE'S IDENTITY BY NICKNAME. — The protestee had the right to prove that he was popularly and commonly known by his nickname to overcome the contention of the protestant that the use of such nickname on the ballots in question did not sufficiently identify the protestee as the candidate voted for.

7. ID.; ID.; ID.; INQUIRY TO VOTES CAST LIMITED.—The trial court acted properly in limiting the inquiry to the number of votes cast for the protestee with only his nickname written on the ballots, because the basis of the protest was not that the election inspectors had erred in counting all the votes cast for each of the two candidates but that they erred in counting in favor of the protestee 417 votes in which only his nickname was used. No fraud, mistake, or misreading of the ballots was alleged in the protest. The issue presented to the court was confined to whether there were really 417 votes for the protestee in which the nickname Beloy alone was written and whether those votes were valid or not.

PERFECTO, *J.*, concurring:

8. NICKNAMES.—As a general rule, votes cast in nicknames written in isolated ballots, should not be given effect in accordance with paragraph 9, Sec. 149, in connection with Sec. 34 of the Election Code.

9. CLEAR INTENTION OF THE ELECTORATE.—When the evidence on record shows that the nickname written in the ballots express the intention of the electorate to vote for a candidate, that intention must be given effect.

10. CONCLUSIVE EVIDENCE.—The fact that 602 ballots were cast with the names of Beloy, Biloy and Belog, nicknames of the Christian name Isabelo of a candidate, is conclusive evidence that the electorate voted in fact for said candidate.

11. LEGAL TECHNICALITIES.—Legal technicalities should be brushed aside for the sake of the fundamental purpose of popular suffrage: that of giving effect to the will of the people as freely and clearly expressed in the ballots.

12. BASIC PRINCIPLE OF POPULAR SOVEREIGNTY. — Statutory provisions and judicial doctrines on elections are enacted and laid down to insure the determination of the true will of the people in consonance with the basic principle of the Constitution that "sovereignty resides in the people and all government authority emanates from them."

13. THE SUPREME LAW.—All provisions of law and legal doctrines should be interpreted, applied and enforced not to defeat but to give effect to the basic principles of the Constitution. The Constitution is the supreme law and all legal provisions are and should give way to its paramount authority.

Attys. Dominador M. Tan, Braulio G. Alfaro & Conrado G. Abiera and *Dominador M. H. de Joya* for the petitioner-appellant.

Attys. Domingo Veloso and *Castrence Veloso* for the respondent-appellee.

DECISION

OZAETA, *J.*:

In the general elections of November 11, 1947, appellant Pacito Abrea and appellee Isabelo A. Lloren were the candidates for the office of municipal mayor of Inopacan, Leyte. In his certificate of candidacy appellee Isabelo Lloren stated that he was also known by the following names: Isabelo A. Lloren, Isabelo Lloren Abrea, Beloy Lloren, I. Lloren Abrea, Loy Lloren, and Loy Abrea.

The municipal board of canvassers proclaimed Isabelo Lloren municipal-mayor-elect with 1,010 votes, which gave him a majority of 198 votes over Pacito Abrea, who obtained only 812 votes.

Pacito Abrea protested the election of his opponent on four grounds, only the first of which is relied upon by him in this appeal, to wit: "(a) That a total of 417 votes cast in all the precints in said municipality in favor of one Beloy as clearly written in the ballots were credited and read in favor of the above respondent."

In the course of the trial the ballot boxes were opened, and it resulted that 517 votes were cast for the office of municipal mayor in the name of Beloy, 77 votes in the name of Biloy, and 8 votes in the name of Belog.

The trial court found—and its finding is not questioned in this appeal—that it had been clearly proved that the protestee Isabelo A. Lloren was popularly and commonly known in the whole municipality of Inopacan by his nickname Beloy or Biloy; and that the protestant himself proved that before and on the day of the election the protestee distributed sample ballots on which was written the name Beloy on the line corresponding to the office of municipal mayor. The trial court also found that in the said elections in Inopacan there was no other candidate for mayor or any other office who was known by the name Beloy.

Declaring that the votes for municipal mayor in the names of Beloy, Biloy, and Belog had been correctly counted in favor of the protestee, the trial court confirmed the proclamation made by the municipal board of canvassers and declared the protestee municipal-mayor-elect of Inopacan, ordering the protestant to pay the costs. From that judgment the protestant has appealed to this court upon the questions of law which we shall now discuss.

1. Appellant's main contention is that the 602 ballots in which only the nickname Beloy, Biloy, or Belog was voted for municipal mayor should have been rejected, thereby adjudicating only 408 votes to the appellee against the appellant's 812 votes. In other words he contends that all ballots in which only the nickname of the appellee was written were invalid for said candidate. In support of his contention he cites paragraph 9 of section 149 of the Revised Election Code (Republic Act No. 180), approved June 21, 1947, which reads as follows:

"9. The use of the nicknames and appellations of affection and friendship, if accompanied by the name or surname of the candidate, does not annul such vote, except when they were used as a means to identify their respective voters."

The foregoing is one of twenty-three rules for the appreciation of ballots contained in section 149 of the Revised Election Code, the first two rules being the following:

"1. Any ballot where only the Christian name of candidate or only his surname appears is valid for such candidate, if there is no other candidate with the same name or surname for the same office; but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter.

"2. A name or surname incorrectly written which, when read, has a sound equal or similar to the real name or surname of the candidate shall be counted in his favor."

Rule No. 9, which is relied upon by appellant, provides only for the determination of whether a ballot or vote shall or shall not be annulled on the ground that it is marked by means of a nickname. It says that it shall not be annulled on that ground unless the nickname, accompanied by the name or surname of the candidate, was used as a means to identify the voter. It does not say that when a nickname alone is written to identify the candidate voted for the vote is invalid. If it had been the intention of the Congress to annul such vote it would have preserved in the Revised Election Code the provision of a previous election law (Act No. 4203, section 16), which said:

"* * * Nor shall any vote be counted on which the candidate is designated by his nickname or alias, although mention thereof is made on his certificate of candidacy."

The nonincorporation of that provision or rule in the Revised Election Code is indicative of the intention of the Congress to abandon it.

It is not contended by the appellant that the 602 votes in question should be annulled as marked ballots. His contention is that they should not be counted in favor of the appellee because the latter was not sufficiently identified by his nickname Beloy, Biloy or Belog.

We agree, however, with the trial court that the appellee was sufficiently identified by his nickname Beloy or Biloy, first, because such nickname is a derivative, or a contraction, of his Christian name Isabelo; second, because he was popularly and commonly known in the entire municipality of Inopacan by that nickname; and, third, because there was no other candidate for mayor with the same nickname. We do not deem it necessary to decide whether the eight votes for "Belog" are valid or not, because they are immaterial to the result.

Previous to the enactment in 1938 of the Election Code (Commonwealth Act No. 357) the rules were: (1) that ballots bearing the Christian name only or the Christian name and the initial of the surname of one candidate should be rejected as insufficient to identify the person voted for (Cailles vs. Gomez and Barbaza [1921], 42 Phil. 496, 533); and (2) that, for the same reason, votes cast with only the nickname or the familiar name should not be counted in favor of any candidate (Cecilio vs. Tomacruz [1935], 62 Phil. 689). But such rules were changed or abandoned by the legislature when it enacted section 144 of Commonwealth Act No. 357 and, subsequently, section 149 of Republic Act No. 180, which provided rules for the appreciation of ballots. Said section is a compilation in statutory form of most of the doctrines theretofore laid down by the Supreme Court regarding the appreciation of ballots. Rule No. 1 contained in section 149 reverses the doctrine or rule laid down by the Supreme Court regarding the use of the Christian name alone of a candidate by providing that—contrary to said doctrine—any ballot where only the Christian name of a candidate or only his surname appears is valid for such candidate if there is no other candidate with the same name or surname for the same office. The purpose of this new rule is to validate the vote provided the name written on the ballot identifies the candidate voted for beyond any question or possible confusion with any other candidate for the same office. Hence, conformably to such purpose we hold that when the nickname of a candidate is a derivative or contraction of his Christian name or of his surname, and if he is popularly and commonly known by

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ated from office where he apparently is acting in good faith, under a misconception of the law. *In re Impeachment of Flordeliza*, 44 Phil. 608.

12. SUSPENSION.

Statutes sometimes authorize the temporary suspension of a judge during the pendency of proceedings for his removal. Such a statute is not in conflict with a constitutional provision fixing the terms of office of judges and providing for their removal for specified causes after a hearing. Notice and a hearing are not essential to due process of law, and are not required where the statute does not provide for them. 30 *Am. Jur. 737.*

(TO BE CONTINUED)

that nickname, a ballot where only such nickname appears is valid for such candidate if there is no other candidate with the same nickname for the same office. This ruling is in consonance with the wellknown principle of election law which this court reiterated in Mandac vs. Samonte, 49 Phil. 284, 301-302, as follows:

"A ballot is indicative of the will of the voter. It does not require that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter, and the object should be to ascertain and carry into effect the intention of the voter, if it can be determined with reasonable certainty. The ballot should be liberally construed, and the intendments should be in favor of a reading and construction which will render the ballot effective, rather than in favor of a conclusion which will, on some technical grounds, render it ineffective. At the same time, it is not admissible to say that something was intended which is contrary to what was done; and if the ballot is so defective as to fail to show any intention whatever, it must be disregarded."

2. Appellant further contends that "the lower court erred in admitting evidence aliunde to determine the intention of the voter." Counsel in his brief does not specify what evidence he is referring to, nor does he show that it was admitted over his objection and exception. He merely says: "The fact that in its decision the lower court makes a conclusion that the protestee is popularly known in his place by the nicknames already mentioned, presupposes consideration of testimonial evidence to influence its mind in making said conclusion." He evidently refers to the proof upon which the trial court based its finding that the protestee was popularly and commonly known in the whole municipality of Inopacan by the nickname Beloy or Biloy. We do not feel bound to consider the admissibility or inadmissibility of such proof in the absence of any showing that the adverse party duly interposed an objection to its admission. But we think the protestee had the right to prove that he was popularly and commonly known by his nickname to overcome the contention of the protestant that the use of such nickname on the ballots in question did not sufficiently identify the protestee as the candidate voted for.

3. Lastly, appellant contends that the lower court erred in not ordering the recounting of all the votes of the contending candidates.

We think the trial court acted properly in limiting the inquiry to the number of votes cast for the protestee with only his nickname written on the ballots, because the basis of the protest was not that the election inspectors had erred in counting all the votes cast for each of the two candidates but that they erred in counting in favor of the protestee 417 votes in which only his nickname was used. No fraud, mistake, or misreading of the ballots was alleged in the protest. The issue presented to the court was confined to whether there were really 417 votes for the protestee in which the nickname Beloy alone was written and whether those votes were valid or not. If there were at least 417 of such votes and they were not valid, the protestant should win because the protestee's majority was only 198 votes. The inquiry brought out the fact that there were more than 417 of such votes; but as a matter of law the court found that they were valid. We confirm that finding.

The judgment appealed from is affirmed, with costs.

SO ORDERED.

Moran, C. J., Paras, Pablo, Bengzon, Briones, and *Tuason, JJ.*, concur.

Feria, Montemayor and *Reyes, JJ.*, did not take part.

PERFECTO, *J.*, concurring:

Two candidates ran for mayor of Inopacan, Leyte, in the elections of November 11, 1947: Isabelo A. Lloren, Liberal, and Pacita Abrea, Nacionalista. The Liberal candidate was proclaimed elected with 1,010 votes, with majority of 198 against the Nationalista who was credited with 812 votes.

The Nacionalista protested, seeking the annulment of 417 ballots in which Beloy was voted for mayor and were credited as votes for the Liberal candidate.

When the ballot boxes were opened, it was found that the names of Beloy, Biloy and Belog appeared written in the following numbers of ballots: Beloy 517, Biloy 77 and Beloy 8. All these 602 ballots were counted among the 1,010 votes credited to the Liberal candidate.

The Nacionalista candidate contended in the lower court and in this appeal that the 602 ballots with the three nicknames should not be counted as votes for the Liberal candidate, invoking the numerous decisions of the Supreme Court holding that nicknames alone are not sufficient identification of a candidate. "(Molina v. Nuesa, G. R. No. 30548, June 5, 1929, not reported; Alegre v. Perey, G. R. No. 3107, March 26, 1929, not reported; Valenzuela v. Carlos, etc., 42 Phil., 428; Bayona v. Siatong, 56 Phil., 831; Marquez v. Santiago, 57 Phil., 969; Fausto v. Ramos, 61 Phil., 1035; Sarenas v. Generoso, 61 Phil., 459; Cecilio v. Tomacruz, 62 Phil., 693; Coscolluela v. Gaston, 63 Phil., 41; etc.)."

Paragraph 9, Sec. 149, of the Election Code, taken jointly with the provision of Sec. 34 thereof, that provides that "certificates of candidacy shall not contain nicknames of the candidates" and the fact that the nicknames alone in question are not mentioned by the Liberal candidate among the many names he has mentioned in his certificate of candidacy with which he alleged he is known, aside from the long line of decisions of the Supreme Court, appear to support the contention of the Nacionalista candidate. We are of opinion, however, that all these legal reasons must give way to the unmistakable expression of the popular will.

The record of the case offers conclusive evidence that those voters who cast their ballots for the three nicknames in question intended in fact to vote for the Liberal candidate who is known by the electorate, friends and opponents, by the nicknames in question, derivatives of his Christian name and are among the nicknames with which the people call for short those who carry the same Christian name.

It is inconceivable to nullify the votes of so many voters, more than one-half of those who voted for the Liberal candidate, when there is no possible mistake that they have voted for said candidate. While we would not give effect to isolated ballots simply in nicknames, that may refer to persons other than a candidate, in abidance with the legal authorities above mentioned, in this specific case we feel no hesitancy in brushing them aside as ineffective legal technicalities for the sake of the fundamental purpose of popular suffrage: that of giving effect to the will of the people as freely and clearly expressed in the ballots.

Election statutory provisions and judicial doctrines are enacted and laid down to insure the determination of the true will of the people and to give it full effect, in consonance with the basic principle of the Constitution that "sovereignty resides in the people and all government authority emanates from them." (Sec. 1, Art. II.) All provisions of law and legal doctrines should be interpreted, applied and enforced not to defeat that basic principle but to give it full effect. The Constitution is the supreme law and all legal provisions are and should give way to its paramount authority.

We concur in the affirmance of the appealed decision.

II

Froilan Lopez, plaintiff-appellee, vs. Silvestre de Jesus, defendant-appellant, G. R. No. L-334, September 30, 1946, PARAS, *J.*

LEASE; DURATION WHEN NOT STIPULATED; TERMINATION; COMMONWEALTH ACT NO. 689, APPLICABILITY OF; CASE AT BAR. — As the lease did not have a fixed term, it should be considered

as one from month to month (the rental being payable monthly) and to have ceased, without the necessity of special notice, upon the expiration of every month. (Article 1581, Civil Code.) Even if, as contended by the appellant, a novation took place when the appellee increased the rent in June, 1945, the lease was still monthly and terminated after said month. Appellee's election to end the lease was unmistakably made known to the appellant when, on July 2, 1945, the latter was asked to vacate. Consequently, after June, 1945, there was no longer any lease that could be affected by section 1 of Commonwealth Act No. 689, which was enacted only on October 15, 1945.

APPEAL from a judgment of the Court of First Instance of Manila. De la Rosa, J.

The facts are stated in the opinion of the court.

Atty. Arturo Zialcita for defendant-appellant.

Attys. Gamboa & Enverga for plaintiff-appellee.

PARAS, *J.*:

The plaintiff is the owner of an apartment known and identified as No. 2227 Rizal Avenue, Manila. This apartment has been occupied by the defendant since September, 1940, under a verbal contract of lease calling for a monthly rental of ₱35 payable in advance, which was raised by the plaintiff to ₱44 in June, 1945. On April 2, 1945, and again on July 2, 1945, the plaintiff gave notice to the defendant for him to vacate the premises. Defendant's failure to do so led to the filing, on July 1945, by the plaintiff of an action for ejectment in the municipal court of Manila which, after trial, handed down a decision in favor of the plaintiff. The defendant appealed, but the Court of First Instance of Manila, in which the parties submitted a stipulation of facts, rendered a judgment for restitution and the payment of the monthly rental of ₱44 beginning June 1, 1945.

Appealing again, the defendant—through his counsel—argues that the action for ejectment was prematurely instituted and that, at least on equitable considerations, he should be allowed to stay.

Section 1 of Commonwealth Act No. 689 provides that "A lease for the occupation as dwelling of a building or part thereof which is not a room or rooms of an hotel, which does not specify any term, shall be considered of six months' duration counted from the date of occupation by virtue of said lease at the option of the lease." It is now the theory of the appellant that since the period of his lease was not specified, he has the right to remain as lessee for at least six months from June 1, 1945, when the rental was increased to ₱44—an act which resulted in a novation of the original lease.

Counsel for the appellant is mistaken. As the lease did not have a fixed term, it should be considered as one from month to month (the rental being payable monthly) and have ceased, without the necessity of special notice, upon the expiration of every month. (Article 1581, Civil Code.) Even if, as contended by the appellant, a novation took place when the appellee increased the rent in June, 1945, the lease was still monthly and terminated after said month. Appellee's election to end the lease was unmistakenly made known to the appellant when, on July 2, 1945, the latter was asked to vacate. Consequently, after June, 1945, there was no longer any lease that could be affected by section 1 of Commonwealth Act No. 689, which was enacted only on October 15, 1945, even assuming that said law is applicable to a legal relation that came into being prior to its enactment.

From the equitable viewpoint, appellant's case cannot also prosper. He might have been an old tenant now facing the difficulty of finding another house, but this circumstance cannot nullify the legal rights of the appellee and his family who have been admittedly "compelled to live upon the charity of some friend who generously offered them temporary shelter in his house which is overcrowded, to say the least."

The appealed judgment is affirmed, with costs against the appellant. So ordered.

Pablo, Perfecto, Hilado, and *Padilla, JJ.*, concur.

Judgment affirmed.

III

Bienvenido Yap, petitioner-appellee, vs. The Solicitor General, oppositor-appellant, G. R. No. L-1602, September 9, 1948, PERFECTO, *J.*

1. POLITICAL LAW; CITIZENSHIP; NATURALIZATION; DECLARATION OF INTENTION TO BECOME FILIPINO; ORAL EVIDENCE, SUFFICIENCY OF.—Where the records have been lost, oral testimony of the applicant that he had filed his declaration of intention to become a Filipino citizen, is sufficient.
2. ID.; ID.; ID.; CHINESE LAW, NATURALIZATION OF FILIPINOS UNDER.—Under the Chinese Law of citizenship, a copy of which was attached to the record, a Filipino can acquire Chinese citizenship by naturalization.

Atty. R. D. Salcedo for the petitioner-appellee.

The Solicitor General for the oppositor-appellant.

DECISION

PERFECTO, *J.*:

Bienvenido Yap was born of Chinese parentage on May 27, 1918, in Capiz, where he has been continuously residing ever since. He speaks and writes English and Hiligaynon, the Visayan language in the locality. He started his studies in the Capiz Chinese Elementary School and continued in the Capiz High School where he was in the fourth year at the outbreak of the last war. He is married to Gloria Lim, a native, born of a Chinese father and by this union he has two children born in Capiz, Wilfred Yap on May 26, 1944 and Roubin Yap on April 12, 1946. He is engaged in business with an invested capital of ₱10,000.00. During the occupation he rendered services to the guerrillas.

The lower court granted his application for Philippine citizenship.

The Solicitor General raises two questions in this appeal.

He contends, in the first place, that the lower court erred in not finding that the applicant has failed to establish satisfactorily that he had previously filed his declaration of intention to become a citizen of the Philippines and that he is not exempted from the prerequisite of filing said declaration.

Applicant alleged under oath in his petition that he had filed his declaration of intention to become a Filipino citizen with the office of the Solicitor General in 1941, although all the records have been lost by reason of the war. This allegation is not disputed in any answer or objection and is supported by the unrebutted testimony of applicant, who was duly cross-examined in the trial court. This is enough evidence. Appellant's contention that applicant's testimony should be supported by documentary proof is not well taken. There is nothing in the law in support of such requirement.

The second and last question raised by the Solicitor General is that the lower court erred in not finding that applicant has failed to establish that the laws of China grant Filipinos the right to become naturalized citizens thereof.

We find on record Exhibit E, a document supposed to be a copy of the Chinese law of citizenship, where it appears that a Filipino can acquire Chinese citizenship by naturalization. Although we do not see any certification attached to the exhibit, the lower court's decision states that applicant's pronouncement is in a way supported by the fact that Exhibit E carries the dry seal of the Court of First Instance of Cebu. The pronouncement of the lower court has not been disputed, and it can be assumed that when the copy was submitted to the lower court, the latter must have seen a certification attached to

it which might have been misplaced. At any rate, the controversy appears to be academic, considering the fact that at the hearing of this case, counsel for appellant stated that in another case there is such certified copy of the Chinese law where it appears that Filipinos are given the right to acquire Chinese citizenship.

There being no error in the appealed decision, the same is affirmed.

Paras, Pablo, Briones, Feria, Bengzon, Padilla and *Tuason, JJ.*, concur.

IV

Consuelo S. de Garcia, Anastacio U. Garcia, Virginia S. de Meneses and Alfredo Meneses, petitioners, vs. Ambrosio Santos, Judge, Court of First Instance of Rizal, Natividad Reyes and Adriana Reyes, respondents, G. R. No. L-1422, October 17, 1947, PARAS, *J.*

1. INJUNCTION; PRELIMINARY INJUNCTION TO PRESERVE "STATUS QUO."—The respondents had been in material and physical possession of certain lots until January 7, 1947. In December, 1946, they commenced to build four houses of strong materials on said lots and the construction work was suspended only on January 7, 1947, due to the forcible entry of petitioners who thereafter built around the lots a wire fence and placed armed men on the premises to make the ouster of respondents and their laborers effective. *Held*: That petitioners' act may at most be considered as a mere interference with or disturbance of respondents' possession and that the issuance of a preliminary injunction to restore respondents in their *status quo* was proper.

2. ID.; POSSESSION AND CONTROL OF PROPERTY.—Injunction generally will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established by law (Rodulfa vs. Alfonso, G. R. No. L-144, promulgated February 25, 1946, 42 Of. Gaz. 2439).

3. ID.; PRELIMINARY INJUNCTION TO PRESERVE "STATUS QUO."—The sole object of a preliminary injunction is to preserve the *status quo* until the merits can be heard. The *status quo* is the last actual peaceable uncontested *status* which preceded the pending controversy.

4. ID.; COURT; HEARING; JUDGE ACTED AFTER DUE HEARING.—Where injunction was granted by the respondent Judge almost two months after the filing of the complaint, and only after the parties had argued the point in open court and after considering the verified pleadings with their supporting papers, and the petitioners were able to file a motion for reconsideration, which was also denied by the respondent Judge after taking into account all the considerations invoked by the petitioners, the respondent Judge did not act hastily in the matter and without hearing.

Attys. Q. Paredes & Reyes & Castañeda for the petitioners.

Atty. Mariano Albert for the respondents.

DECISION

PARAS, *J.*:

Under date of January 22, 1947, the herein respondents, Natividad Reyes and Adriana Reyes, filed a verified complaint (Civil Case No. 129) in the Court of First Instance of Rizal against the herein petitioners, praying that a writ of preliminary mandatory injunction be issued ordering the petitioners to restore to the respondents the possession of two contiguous lots located in the municipality of Pasay, province of Rizal, and to take away the wire fence built around said lots by the petitioners; that after trial said injunction be made permanent; that the petitioners be sentenced to pay ₱20,000 by way of damages, and that the respondents be granted such other remedy as may be proper under the law. The complaint alleges in substance that the respondents acquired the two lots on June 6, 1945, from their former owner, Realty Investments, Inc.; that from such date the respondents have been in possession of the lots; that in December, 1946, the latter began constructing on the lots four houses of strong materials valued at about ₱14.400; that on January 7, 1947, when the houses were about to be finished, the petitioners forcibly entered the lots and ousted therefrom the respondents and the persons constructing the houses; that said petitioners thereafter built around the lots a wire fence and posted armed men on the lots with a view to preventing the respondents and their laborers from entering therein and proceeding with the construction of the houses above mentioned.

Under date of February 1, 1947, the petitioners filed a verified answer in said Civil Case No. 129, alleging in the main that the contract of June 6, 1945, between the Realty Investments, Inc. and the respondents, upon which the latter base their claim of ownership over the lots in question, was a mere contract to sell, which was converted on April 26, 1946, into a conditional contract to buy, which was in turn rescinded on December 19, 1946, by the Realty Investments, Inc.; that the petitioners are the registered owners of the lots, having bought the same from the Realty Investments, Inc. on December 28, 1946; that the petitioners have been in peaceful possession thereof, by themselves and through their predecessor in interest, Pararam Aildos (who transferred to the petitioners his right to buy the lots from the Realty Investments, Inc.), since November, 1941; that the respondents, on or about December 28, 1946, over the opposition of the petitioners and their predecessor in interest, entered the lots and began the construction of the four houses mentioned in the complaint; that it was the mayor of Pasay who ordered the suspension of said construction, and that the persons guarding the premises are members of the Detective and Protective Bureau, Inc., who are merely enforcing the order of said mayor.

Under date of February 1, 1947, the petitioners filed a verified written opposition to the issuance of the writ of preliminary mandatory injunction, based on practically the same allegations contained in their answer.

After a hearing in which the matter was argued at length, the herein respondent Judge of the Court of First Instance of Rizal, Honorable Ambrosio Santos, issued an order dated March 14, 1947, directing the issuance of the writ of preliminary mandatory injunction prayed for by the respondents, upon their filing of a bond in the sum of ₱5,000. Petitioners' motion for reconsideration dated March 28, 1946, was denied by the respondent Judge in his order of April 15, 1947. On this latter date, the respondent Judge issued an order approving the bond of ₱5,000 filed by the respondents and directing the issuance of the corresponding writ of preliminary mandatory injunction.

Whereupon, on April 19, 1947, the petitioners instituted the present petition for certiorari with preliminary injunction, praying that the orders of the respondent Judge of March 14 and April 15, 1947, and that the respondent Judge be ordered to set Civil case No. 129 for trial on the merits with a view to determining the question of title and possession over the two lots in question.

The respondent Judge, without attempting to settle the issue relating to the ownership of the lots, found, in his order of March 14, 1947, that the respondent have been in material and physical possession of the lots until January 7, 1947, and that in December, 1946, said respondents commenced to build four houses of strong materials on said lots and the construction work was suspended only on January 7, 1947, due to the forcible entry of the petitioners who thereafter built around the

lots a wire fence and placed armed men on the premises to make the ouster of the respondents and their laborers effective. After a careful examination of the record before us, we find said conclusions to be correct. It is significant that the petitioners admit the existence of a contract in favor of the respondents for the purchase of the lots in question, and that said contract preceded the alleged deeds of sale executed by the Realty Investments, Inc. on December 28, 1946, in favor of the petitioners. More significant still is the stubborn fact that there are actually on the lots four houses of strong materials about to be finished, the construction of which by the respondents in December, 1946, is not denied by the petitioners. These circumstances strongly militate against petitioners' pretense that they had ever been in peaceful possession of the lots prior to that of the herein respondents.

The legal question that arises is whether the issuance of a writ of preliminary mandatory injunction, such as that ordered by the respondent Judge, is proper, in view of the established rule that injunction generally will not be granted to take property out of the possession or control of one party and place it into that of another whose title has not clearly been established by law. (Rodulfa v. Alfonso, G. R. No. L-144, promulgated February 28, 1946, 42 O. G. 2439, citing earlier cases.)

We are of the opinion that the respondent Judge did not gravely abuse his discretion in granting the injunction. We hereby reiterate the general rule pointed out in Rodulfa v. Alfonso, *supra*, but we consider the case at bar as not falling thereunder. Rather, it is a situation contemplated in the following passages of said decision:

"But the fact that the petitioner might have been in sporadic possession of all or some of the lands in question, in the last months of 1945, having entered the same, by means of threats and intimidation, will not prevent the issuance of a writ of preliminary injunction in favor of herein respondent, as defendant in said civil case No. 8939, in whose name said lands had been registered under the Torrens System, and who has been in possession thereof, during the last 20 years, as said possession of the petitioner is completely and absolutely illegal.

* * * *

"The sole object of a preliminary injunction is to preserve the *status quo* until the merits can be heard. The *status quo* is the last actual peaceable uncontested *status* which preceded the pending controversy. (Frederick *vs.* Huber, 180 Pa., 572; 37 Atl., 90.)

* * * *

"In cases involving the issuance of a writ of preliminary injunction, the exercise of sound judicial discretion by the lower court will not generally be interfered with; and the refusal of the trial court to permit the plaintiff in this case to file a counterbond cannot be considered as an abuse of sound judicial consideration, *bearing in mind particularly the admission made by the plaintiff himself that sometime in 1945, or thereabouts, he occupied and took possession of all or some of the lands in question, without waiting for the final decision of the competent courts in said civil case No. 8930. It is a general principle in equity jurisprudence that 'he who comes to equity must come with clean hands.'* (North Negros Sugar Co. *vs.* Hidalgo, 63 Phil., 664.)" Rodulfa v. Alfonso, *supra.*

The action of the petitioners in encircling the lots in question with a wire fence and in guarding the place, may at most be considerd as a mere interference with or disturbance of respondents' possession and, as such, is even of less extent than the possession admittedly held by the petitioners in the case of Rodulfa v. Alfonso, *supra.* We have therefore, a much better instance in which a preliminary injunction may be availed of "to preserve the *status quo* until the merits can be heard." Said *status quo* is the "last actual peaceable and uncontested" possession of the herein respondents which preceded Civil Case No. 129, and certainly not the guarded possession of the petitioners. The necessity of restoring the parties in this case to their former situation is called for by the fact that the suspension of the construction of respondents' houses may result in a much greater damage than the granting of the injunction upon the filing of a bond which can amply indemnify the herein petitioners.

The injunction was granted by the respondent Judge almost two months after the filing of the complaint, and only after the parties had argued the point in open court and after considering the verified pleadings with their supporting papers. Again, the petitioners were able to file a motion for reconsideration, which was also denied by the respondent Judge after taking into account all the considerations invoked by the petitioners. We are thus unable to hold that the respondent Judge acted hastily in the matter and without a hearing. Of course, it was not yet necessary for the respondent Judge to require and receive such evidence as may be sufficient to settle the question of title, which should be decided after the trial on the merits. It is needless to state in this connection that the complaint in Civil Case No. 129 clearly makes out an action to quiet title.

Wherefore, the petition is hereby dismissed with costs against the petitioners. So ordered.

Feria, Pablo, Perfecto, Hilado Bengzon, Briones, Padilla and *Tuason, JJ.*, concur.

Moran, C.J., concurs in the result.

V

People of the Philippines, plaintiff-appellee, vs. Pilar Barrera de Reyes, defendant-appellant, G.R. No. L-397, November 23, 1948, PERFECTO, *J.*

CRIMINAL LAW; TREASON; EVIDENCE; WITNESSES; INHERENTLY IMPROBABLE OR CONTRADICTORY TESTIMONY OF WITNESSES.—Although there were two or more witnesses who testified to an overt act of treason, if their testimonies are contradictory in themselves or inherently improbable, the Court cannot hold that the guilt of the accused has been established beyond reasonable doubt.

Atty. Enrique Ramirez for the defendant-appellant.

The Solicitor General for the plaintiff-appellee.

DECISION

PERFECTO, *J.*:

Pilar Barrera de Reyes appealed against the lower court's judgment finding her guilty of treason and sentencing her, in accordance with the provisions of Article 114 of the Revised Penal Code, *to reclusion perpetua*, with the accessories of the law and to pay a fine in the amount of ₱10,000.00 and the costs.

The prosecution accuses her of having caused, by pointing them to Japanese officers and soldiers, the arrest of three Filipino guerrilla suspects, Pelagio Cabutin, Ignacio Mejia and Alejandro Tan, who, after having been apprehended inside the air raid shelter where they were hiding inside the ruins of the Santa Rosa College, Intramuros, Manila, were tortured and then brought to Fort Santiago where they were killed, the treasonous denunciation having been committed on February 15, 1945.

Two witnesses, Modesta B. Son and her daughter Lourdes B. Son, testified for the prosecution to show appellant's responsibility for the arrest, torture and killing of the three victims of Japanese brutality. According to the two witnesses, on February 5, 1945, all the male residents in Intramuros, about 400 of them, were taken by the Japanese and herded in Fort Santiago, while all the females, about 300, and the children, were herded inside the ruins of Santa Rosa College. The three victims, members of a guerrilla outfit in Laguna, who went to Intramuros to visit their relatives and observe the activities of the Japanese, were among the males who were rounded up, tied, tortured and brought to Fort Santiago on February 5, 1945. On February 9, 1945, they were able to secure permission from a Japanese lieutenant to go out for the purpose of visiting two girls, Rosing and Magdalena, Cabutin's nieces, who were among the women herded in the Santa Rosa College compound. (The statement in the government's brief that the three victims managed to escape is not based on any testimony on record.) Once inside the ruins, Cabutin and companions hid from the Japanese, dug an air raid shelter, covered it with wood and earth, and on top built a shack for Rosing and Magdalena to stay in. The accused, who was living in another shack with

her child and a maid and wherein her husband, a Japanese officer, passed all night from 6 p.m. to 6 a.m., used to make rounds to spy on males hiding in the compound, pretending to barter foodstuffs. On the morning of February 15, 1945, she discovered the presence of the three victims and reported the fact to her husband who, in turn, called three Japanese soldiers and all of them, including the accused, went to the hiding place and the three Japanese soldiers apprehended the three victims and tortured them. The accused told the Japanese officer to take the three guerrillas and bring them to Fort Santiago. The arrest of the three guerrillas took place in the morning, and in the afternoon of the same day the accused told the witness that the three had already been killed. On the following day, February 16, at 11 o'clock, Arcadio Son, Modesta's husband, who was hiding in their shack since February 5, was also taken by the Japanese soldiers, tortured and brought to Fort Santiago, because the accused happened to hear of his presence in the place on February 15, and denounced him then to her husband, the Japanese officer. Arcadio Son never returned since he was brought to Fort Santiago. From February 5 to 20, there were in Santa Rosa College compound many women married to Japanese, all of them spies who used to go around the shacks to look for men in hiding. Those other women peeped into the shack of Arcadio Son three times looking for men.

There is no way of determining with absolute certainty whether Modesta and Lourdes B. Son testified to the truth or not. While the record offers no clue that mother and daughter's testimonies should be imputed to bastard motives, there are flaws in their declarations that preclude us from accepting them at their face value. We notice several contradictions that have not been explained. But even if they can be explained, there are improbabilities in the testimonies, from accepting which conscience recoils. That Cabutin, Mejia and Tan, after having been confined in Fort Santiago since February 5, were on February 9 given permission by a Japanese lieutenant to go out for the exclusive purpose of visiting Cabutin's nieces, Rosing and Magdalena, appears to be fantastic. That the three guerrillas were allowed to go out, that they went out without any Japanese guard or escort, and that, upon their failure to return, the Japanese did not right away comb all places including the Santa Rosa College for their arrest, are things incompatible with the ways of the Japanese. If the Japanese lieutenant could have believed that to visit his nieces was enough reason to allow Cabutin to go out from Fort Santiago, such reason could not be applied in favor of his two companions who had nothing to do with the girls. If the three guerrillas wanted to hide, they could not have been so dumb to go to and stay at the very spot where Rosing and Magdalena were staying, as it would be the logical spot, to anyone's mind, that the Japanese would have search first, because the Japanese lieutenant must have known that to visit the two girls, they must have had to go to their place.

If it is true that the accused had been making daily rounds in order to detect males hiding in the Santa Rosa College compound, it is incomprehensible how it took her six days, from February 9 to February 15, to discover the presence of the guerrilla trio and to denounce them to the Japanese officer. According to Modesta and Lourdes, the air raid shelter dug by the trio was situated at a few meters distance from the shack of the accused. Before the three guerrillas had been able to dig the hole, all of them must have been exposed to the full view of the accused and they remained so while they were working in the excavation, to perform which it would have taken days or many hours. The earth and stones taken from the hole must have been piled on the surface. When the three guerrillas undertook the work of placing wooden planks and earth on top of the shelter and then they built the shack for Rosing and Magdalena, they could have also been seen by the accused. There is no pretence that the accused suffered blindness during the hours and days needed the three guerrillas to complete the whole job.

Modesta's story of the Japanese officer who every night slept with the accused, is surprising. The conduct of the Japanese appears to be that of a civilian employee rather than that of a military officer or, at any rate, of a man enjoying the blessings of undisturbed peace. It is unbelievable that a Japanese officer should leave his garrison for whole nights, and much more at the time when the American Army was already in Manila and was showering bombs and cannon shells in Intramuros.

Modesta would make us believe that the accused made denunciations to the Japanese officer in a way that she could hear them, that the accused was almost ordering the Japanese officer to bring the victims to Fort Santiago, and even bragged that they were already killed. A Filipina in her mind could not have done such things, considering the well-known fact of the overwhelming feeling in our population against the Japanese, and much more on February 15, 1945, when the victorious Americans had already surrounded Intramuros. It would have been suicidal for the accused to have done what Modesta attributes to her because it would have exposed her to reprisal or revenge.

Modesta would make us believe also that the presence of her husband, Arcadio Son, in the compound was discovered by the accused since February 15 and denounced on the same day to the Japanese officer, but the arrest took place only at 11 o'clock the next morning. No Japanese officer could have been so slow as that.

On the other hand, Modesta's assertion that she was outside of her shack when she witnessed the arrest of the guerrilla trio on February 15, is belied by Asuncion Dueñas, a witness for the prosecution, who said that when the three victims were caught by the Japanese, Modesta was during the whole time inside her shelter.

When after liberation, Modesta and her daughter denounced to the authorities the Japanese arrests in the Santa Rosa College ruins, but mentioned the apprehension of the guerrilla trio, but not the arrest of Arcadio Son. They failed to do so twice, first when they made the denunciation to Froilan Bungue, United States Army soldier, and the second time when they were investigated on March 15, at about 10 a.m., by the American CIC at General Solano Street. Modesta's explanation was that at that time her mind was perturbed, and that of Lourdes was that she simply forgot about it. That a husband, a father, had in that way been forgotten by his wife and daughter who, nevertheless, were prompt in remembering the names of three acquaintances or friends, is a thing that cannot fail to cast doubt on the mother and daughter's credibility.

As regards Lourdes, there is her positive testimony that on November 16, 1945, she was beaten by her husband because she said on one occasion that the accused was not the same woman who pointed the three men caught by the Japanese at the Santa Rosa College and killed in Fort Santiago, that her husband told her to point the accused as the one, and that if she should tell again that it was not the accused, he would beat her again. This revelation cannot fail to affect her testimony against the accused.

The defense has shown that since February 11, 1945, the child of the accused had been ill and that she remained all the time attending to said child until it was killed by a shrapnel on February 18, and that it is not true that the accused had any Japanese sleeping with her or committed the acts attributed to her by the witness for the prosecution. A witness for the defense had shown that the witnesses for the prosecution could have confused the accused with other women, with similar features. When Modesta approached Froilan Bungue to denounce the arrests, the accused was not present, and among those arrested by Bungue as a result of the denunciation was one Asuncion Mendoza, while other witnesses testified that among the women spies were two, called by the name of Fely and Perla.

The prosecution has the *onus probandi* in showing the guilt of an accused. "In all criminal prosecutions, the accused shall be presumed to be innocent until the contrary

is proved." (Sec. 1 [17], Art. III of the Constitution.) The evidence of the prosecution in this case does not show beyond all reasonable doubt that the accused has committed the overt act imputed to her. The presumption of innocence in favor of appellant has not be overthrown.

With the reversal of the appealed judgment, appellant Pilar Barrera de Reyes is acquitted and, upon promulgation of this decision, she will be immediately released.

Moran, C.J., Paras, Feria, Bengzon and *Briones, JJ.,* concur.

Reyes, J., takes no part.

TUASON, *J.,* dissenting:

Three-eye-witnesses, not two, testified for the prosecution in this case.

Modesta B. Son testified that on February 5, 1945, the Japanese gathered all the menfolk in Intramuros, bound their hands, and took them to Fort Santiago. She saw about 200 men thus arrested. Pelagio Cabutin, Ignacio Mejia and one Alejandro, whose surname she did not know, were among them. On February 9, they appeared at Sta. Rosa College; they said that they were able to get out because they talked to a Japanese lieutenant. From that time the three men stayed at Sta. Rosa College. They made a hole "deep enough," put planks of wood and galvanized iron sheets on top, and covered these with earth. On top of the covering they built a small shack for Rosing and Magdalena who were Pelagio Cabutin's nieces. The witness does not know whether Magdalena and Rosing were still alive because she had never seen them after liberation. On February 15, Cabutin, Mejia and Alejandro, by the indication of Pilar Barrera Reyes, were found and told to come out of the hole, and after they did, a Japanese officer and three Japanese soldiers slapped, kicked and bayonetted them, after which they were taken to Fort Santiago.

Before that date, the witnesses had known Pilar Barrera Reyes, when she was living at No. 73 Beaterio street. Pilar used to call on witness, landlord. That began as early as February 15, 1944. Pilar Barrera Reyes was then living at No. 50 Legaspi street. She lived with a Japanese officer who used to come to her house day and night. Witness supposed he was an officer because he carried a sword and a pistol.

At Sta. Rosa College, Pilar Barrera Reyes frequently went from shack to shack to barter food. But this was a mere pretext, her purpose being to find out if there were males in the shacks. When she pointed to the Japanese the hideout of Cabutin, Mejia and Alejandro she, the accused, was standing at the door of her shack. Then the Japanese officer fetched three Japanese soldiers. That was the time when the four Japanese arrested Cabutin, Mejia and Alejandro.

Modesta B. Son also testified that Pilar Barrera Reyes had witness' husband, Arcadio San, arrested by the Japanese. That was on the 16th. Pilar informed the Japanese that Arcadio Son was inside the shack. Three Japanese soldiers came, pulled him out, tied and slapped him, and carried him away. This time Pilar Barrera Reyes was in front of the witness' shack when the arrest was made. Arcadio Son, when he was spied by the accused, was inside an air-raid shelter covered with pillows and mats and wearing a woman's dress. The accused happened to see Arcadio Son on February 16 when she was bartering foodstuffs and peeped into the shack.

Lourdes B. Son, Modesta's daughter, 17 years old, testified substantially as follows: On February 5, 1945, the Japanese seized and arrested about 400 men in Intramuros, maltreated them and took them to Fort Santiago. All the women were sent to Sta. Rosa College which had already been destroyed by fire. Among the males taken to Fort Santiago were Pelagio Cabutin, Ignacio Mejia and one Alejandro. About February 9, 1945, these three men appeared at Sta. Rosa. She asked them how they were able to get out and they answered they begged a Japanese officer to let them see and talk to their nieces Rosing and Magdalena. Then they hid themselves in an air-raid shelter. They dug a hole, put wood shafts inside and covered the top with galvanized iron sheets and earth. On top of these, they built a shack for Rosing and Magdalena. On February 15, Pilar Barrera Reyes was bartering rice at every shack. She heard voices in Rosing's shack and appeared surprised. She peeped in through a hole and saw the three men inside. After that she returned to her shack and one-half hour afterward her Japanese husband showed up. To the Japanese Pilar Barrera Reyes pointed the shack where she had heard men's voices. Thereupon the Japanese officer went out and brought back three soldiers. The Japanese removed the iron sheets from the shack and told Magdalena and Rosing to step out. Then they told the three men to come out. Once outside the hole, the three men were tied, slapped, beaten with the butts of guns and fists, stabbed with bayonets and, when they fell, were put back on their feet. While this punishment was being inflicted, Pilar Barrera Reyes was near the Japanese officer. The three men were taken to Fort Santiago and never heard from again.

On February 16, at 9 o'clock, the witness left her family's shack and when she returned she saw her father being tortured by three Japanese soldiers and the Japanese husband of Pilar Barrera Reyes. Her father was bleeding; at that time Pilar Barrera Reyes was beside the Japanese officer. Pilar Barrera Reyes was laughing and saying, "You are hiding yet, probably you are also a guerrilla." (Nagtatago ka pa, marahil ay guerrilla ka rin".)

Asuncion Dueñas testified that on Febbruary 5, 1945, she was at the Cathedral with her husband, a cousin, and her three children. From the Cathedral, the women were sent to Sta. Rosa College while the males were taken to Fort Santiago by the Japanese. Among the women at Sta. Rosa College was Pilar Barrera Reyes whose shelter was about three brazas away from hers. In moving to Sta. Rosa College witness first took her three children and told her husband to wait at the Cathedral. Later she came back, put on him her own clothes, covered his head with a kerchief, and accompanied him to Sta. Rosa. On February 15, she saw Pilar Barrera Reyes talking with two Japanese officers who came to her shack. Pilar pointed her shelter to the Japanese and said that a man was hiding there. Then the Japanese officer led her husband out, stripped him of his woman's apparel and the towel with which his head was wrapped, after which they struck him with fists and bayoneted him on the left shoulder. Witness heard Pilar say that it would be better to take him to Fort Santiago because he was hard-headed; he did not want to join the males. This happened about 3 o'clock in the afternoon.

At 11 o'clock a.m. of that day, she also saw Cabutin, Mejia and Alejandro being maltreated by three Japanese. They were tied, slapped, boxed and bayoneted. She heard Pilar tell the Japanese that they had better take the men to Fort Santiago.

Asuncion Dueñas also testified that once, on the 15th, Pilar Barrera Reyes saw her (witness') child crying; that when, in answer to the defendant's question why the baby was crying she said it was its habit to cry most of the time, Pilar remarked that witness should throw the child away. She also testified that on the 25th when they were liberated she and Pilar saw each other again at the San Lazaro Race Track. She said that she knew Modesta for the first time when they met at Sta. Rosa College.

The defense is a complete denial of any complicity, on the part of the accused, in the atrocities stated by government witnesses. Other women cohabiting with Japanese, it was alleged or insinuated, were the spies responsible for those atrocities.

The decision would tear down the testimony of the witnesses for the prosecution on assumed, not established or alleged, facts. On some points it theorizes from premises that are contrary to actual facts; on still others, the conjectures are not, in my judgment, sound even in the realms of speculation and psychology; for the rest, the discussion in the decision is immaterial in the light of defendant's defense or admission.

The Court disbelieves the evidence that Pelagio Cabutin, Ignacio Mejia and Alejandro came out of Fort Santiago with the permission of a Japanese officer. Truly, there is room for doubt as to the permission. We can not say for certain how these three men succeeded in getting out of that camp of

horrors. If we indulge in speculation, the best guess is that they escaped. It is a matter of general knowledge that scores of prisoners were able to do that in those hectic days of Japanese sadism and brutality, perhaps due to the fact that there were too many prisoners there to attend to closely. There was more than a probability that when the men said they had obtained permission of a Japanese officer, they lied. Two of them were mere friends of the Sons, and one was the son of a distant cousin of Modesta. They were in an extremely perilous situation at the time when the carnage was at its worst. Lying men even to immediate members of one's family was demanded by ordinary prudence. Their security from rearrest and almost certain death was undoubtedly enhanced by concealment of the truth that they had fled from Fort Santiago.

There is nothing queer in the testimony that the three men came to Sta. Rosa after escaping from Fort Santiago. That, on the contrary, seemed to be the natural thing for them to do. Where else could they go? When they were marched off to Fort Santiago from the Cathedral, the women including Rosing and Magdalena, their relatives and apparently housemates, were told to go to Sta. Rosa. They did not know, when they decided to come to the latter place, that Pilar Barrera de Reyes, the spy, was there nor that she and her Japanese paramour still sustained sexual relation in those critical days. Pilar Barrera Reyes, according to her testimony, moved to Sta. Rosa after February 5.

We do not share the doubt that Cabutin, Mejia and Alejandro made the hideout when they were caught. The way, as related by the witnesses, the three men dug a hole and concealed themselves in that hole sounds plausible. The whole affair, with materials at hand, could have been finished in a matter of hours; and if the men worked at night, as probably they did, that explains why they were not seen while working by Pilar Barrera Reyes or her Japanese friend. The decision assumed or presumed that Pilar and the Japanese officer were at Sta. Rosa all the time. The evidence shows that the Japanese officer was posted with his company or men at the Sto. Domingo church ruins where he stayed and had to stay most of the time, while it appears that the defendant at times went out of the Sta. Rosa premises. Moreover, the place was crowded with women and children.

From the tone and tenor of the Court's findings and of its ratiocination, it would appear that it brands the accusation as a fabrication out of whole cloth: that the alleged presence and arrest of Cabutin, Mejia and Alejandro at Sta. Rosa were a pure concoction. This supposition is more than the defense dared suggest, and I believe that it is far-fetched. The time when the three witnesses implicated the defendant was early March, 1945. Still stunned by a holocaust; just widowed or orphaned under tragic circumstances; homeless and living on charity, their primary concern was where and how to find food and shelter. They were not in a mood and did not have the motive and the incentive to place upon themselves a new burden and worry by inventing a fantastic story against a woman who, according to that woman, had not done them any wrong. She even denied she knew the witnesses.

These witnesses did not have to use imaginary victims if they merely wanted to send the defendant to prison or to the gallows. It has been seen that Modesta B. Son and Asuncion Dueñas lost their own husbands under circumstances, they said, identical with the arrest, torture and liquidation of Cabutin, Mejia and Alejandro. The torture and arrest of those two men certainly furnished their folk the wherewithal to prosecute the defendant if the witnesses were just after defendant's scalp regardless of defendant's innocence of any connection with the discovery of their husbands' hiding. Yet Arcadio Son's arrest and torture were not made the subject of this information. This, we think, goes to refute the theory that the three women's statements to the authorities concerning the arrests of Cabutin, Mejia and Alejandro were a deliberate falsehood conceived in their imagination for no other reason than to send an innocent woman to her doom.

The truth of the matter is, as has been said, the accused herself has not advanced—at least not openly—the suggestion that the arrest of Cabutin, Mejia and Alejandro at Sta. Rosa College, was a fantasy. On the contrary, her evidence admits that these men were arrested in that college through the betrayal of a woman. Her line of defense is, not that the arrests and tortures were a fake, but that she was not the woman who revealed the three unfortunate men's hideout. It ought to be recorded that Lourdes Son was deceived into signing, or persuaded to sign, a statement prepared and put in evidence by defendant's counsel, in which she was made to say, or made her appear as saying, that she had been taken to the Correctional Institution for Women in Mandaluyong on the 16th of November, 1945, together with a sister of the accused, for the purpose of identifying the latter; that having seen the accused, she (Lourdes) realized that Pilar Barrera Reyes "was not the same woman whom she had seen in Intramuros *pointing out to Japanese soldiers, Pelagio Cabutin, Ignacio Mejia and Alejandro, who were taken by the Japanese officers to some place*"; that she (Lourdes) actually *saw the woman who pointed the above-named Filipinos and heard her say that those three Filipinos are inside a certain air-raid shelter in Intramuros.*" To make that statement Lourdes was taken to Welfareville by one of the defendant's lawyers, her two sisters and a Corporal De Vera, husband of the defendant's elder sister Rosa.

And the accused and her witnesses, at the trial, amplified this thesis. The gist of their testimony is that at Sta. Rosa, two women (neither of them the accused) who cohabited with Japanese officers, disclosed the presence of the three men to the Japanese; that those two women accompanied Japanese officers in their search for men in the Sta. Rosa compound; that the said women resembled the accused, their names sounded like that of the accused, and they could easily be mistaken for the accused; that the accused bore the pet-name of Pil while one of the two women above mentioned was known by the name of Fely and the other's pet-name was Perla. That is the simple issue. This is a simple case of mistaken identity! The government witnesses, according to the accused and her witnesses, got mixed up; Fely and/or Perla, not Pilar, were the traitors.

The question thus boils down to who cohabited with a Japanese officer, accompanied him in his rounds looking for males, and, discovering the hideout of Cabutin, Mejia and Alejandro, led her Japanese paramour to it.

Now, can we believe the yarn that the defendant was a mere victim of an unfortunate confusion?

The evidence that there were three women at Sta. Rosa College who resembled one another in names, in physiognomy and in general appearance, except the hair, which the defense stressed, has all the traces of a fiction. And granting the truth of such a rare coincidence, there was little or no possibility of the three witnesses for the prosecution committing the same mistake under conditions far from being conducive to errors of identity.

The incident occurred in broad daylight in the immediate presence of the witnesses. The arrest of the helpless men and the stabbing and other forms of torture perpetrated on them must have consumed no little time; and such atrocities were committed not once but three times. Only one woman spy was an active participant in the atrocious acts. The witnesses had known the defendant by sight and by name for a long time before they took refuge at Sta. Rosa, and they were with her in that compound for two weeks after the arrest. Being the concubine of a Japanese officer and not by any means shy or of retiring disposition, as can be gathered from the record, she must have been conspicuous and the object of suspicion if not fear. At the Manila Jockey Club the three witnesses and the defendant were together again after liberation until the accused was arrested in connection with the

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

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

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

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

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

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

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

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

VI

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

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

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

JUICIO ORIGINAL en el Tribunal Supremo. Mandamus.

Los hechos aparecen relacionados en la decisión del tribunal.

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

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

Nadie compareció en representación del Juez recurrido.

PABLO, *M.:*

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

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

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

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

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

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

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

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

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

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

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

Se concede la solicitud.

VII

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

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

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

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

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

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

ready the admitted rule that confiscations should be avoided through an interpretation favorable to the insured.

6. ID.; ID.; RIGHTS OF PARTIES IN CASE OF WAR NOT STIPULATED IN INSURANCE CONTRACT.—In life insurance contracts the silence with respect to the rights of the parties thereof in case of war is an omission which should not benefit insurance companies which are the ones who drafted the contract, and they should not be permitted to invoke in their favor their own omissions.

TORRES, *J.*, concurring:

7. ID.; WAR; IMPOSSIBILITY TO PAY PREMIUMS DUE IS AN EXCUSE.—The failure of insured to make payment of premiums due on policy was caused by the stoppage of all means of communication between his place of residence in the province of Iloilo and the City of Manila, where the Philippine offices or agency of the defendant company were established before the war, and it being a matter of common knowledge that the offices of all firms and companies of American nationality have been closed and liquidated by the Japanese Military Administration soon after the beginning of the occupation of these Islands, it would be utterly unreasonable to contend that because of the failure of the insured to pay the premiums due from February 1, 1942, "the policy lapsed without value." *Impossibilium nulla obligatio est* (there is no obligation to do impossible things). (Impossibility is an excuse in the law). These are maxims which are in all fours with the case at bar.

8. ID.; STATUTES; LAW GOVERNING INSURANCE SUPERIOR TO TERMS OF POLICY.—An insurance company organized outside the territory of the Philippines and permitted to transact business in this territory must abide by the provisions of the laws in force in his jurisdiction governing life insurance business. The court, therefore, cannot adhere to the contention of defendant who, in his first assignment of error, contends that "the policy is the law between the parties." The law governing the subject matter of insurance is superior to the terms of the policy.

9. ID.; OBLIGATIONS AND CONTRACTS; VALIDITY AND FULFILLMENT OF CONTRACT OF INSURANCE CANNOT BE LEFT TO THE WILL OF ONE OF THE CONTRACTING PARTIES.—In the absence of specific provisions in the Insurance Law, No. 2427 as amended, a contract of life insurance is governed by the rules of civil law regarding contracts. Thus, if according to Article 1256 of our Civil Code, "the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties," the attitude of defendant in declaring that the policy had lapsed and become worthless on the ground of alleged non-payment of premiums, is utterly unjustified, in that it is contrary to the provisions just quoted which is based on principles of justice, because it not only proclaims the binding nature of the contract as stated in Article 1258 of said Code, but it likewise establishes the principle of equality which is so essential for the contracting parties; it forbids that one of the parties be bound by the terms of the agreement while the other is not.

10. ID.; WAR; LIFE INSURANCE POLICY NOT LAPSE FOR NON-PAYMENT OF PREMIUMS DUE TO WAR.—The life insurance policy did not lapse for non-payment of premiums due to impossibility of payment as a result of war.

11. ID.; PROMPT PAYMENT OF PREMIUM ESSENCE OF CONTRACT OF INSURANCE, EXCEPTION.—Prompt payment of premiums is material and of the essence of the contract of insurance. This must, however, be qualified by taking into consideration the time and circumstances surrounding the act of payment. Not in vain the maxim says: *distingue tempore et concordabis jura* (Distinguish times, and you will make laws agree).

12. ID.; JUDGMENT; DOCTRINE LAID DOWN IN NEW YORK LIFE INSURANCE COMPANY v. STATHAM, 93 U.S. 24, 23 L. ED. 789 NOT CONTROLLING.—Considering that the ruling laid down in the Statham case (New York Life Insurance Company v. Statham, 93 U.S. 24, 23 L. Ed. 789) has been made by the United States Supreme Court about 75 years ago, during the horse and buggy period of the life of the American nation, it cannot be regarded as an overall principle that shall govern the relations between the insurer and the insured in the present age. Granting that, at the time of the promulgation of said decision on October 23, 1876, such ruling was good law, it cannot be accepted as such in the present circumstances of human advancement and progress. Law and jurisprudence, its companies and exponent, are not static like the still waters of a pond; they go hand in hand with the progress and advancement of time; they look after and provide for the needs and welfare of the community.

Attys. Padilla, Carlos & Fernando, for defendant-appellant.

Atty. R. A. Espino, for plaintiff-appellee.

DECISION

DE LA ROSA, *M.*:

Patricio H. Gubagaras reclama el pago de la suma de ₱2,000.00, importe de una póliza expedida por la West Coast Life Insurance Company, de la que él es asegurado y beneficiario, mas la cantidad adicional de ₱600.00, en concepto de daños.

Con efectividad el 1.o de agosto de 1940, Patricio H. Gubagaras y su esposa Maria Labaco, hoy finada, obtuvieron de la West Coast Life Insurance Company la póliza dotal conjunta Exh. A, de veinte años o hasta la muerte de cualquiera de ellos dos, que eran mutuos beneficiarios, por la cantidad de ₱2,000.00, con participación en las ganancias. La última prima pagada por los asegurados comprendía el periodo semestral del 1.o de agosto de 1941 al 1.o de febrero de 1942. La guerra del Pacífico estalló el 8 de diciembre de 1941, y Manila, en donde la compañia tenía su agencia, fué ocupada por las fuerzas invasoras japonesas el 2 de enero de 1942. Con motivo de la paralización de todas las comunicaciones, terrestres, marítimas y aéreas, la prima que vencía el 1.o de febrero de 1942 y las siguientes, durante la guerra, no se pagaron. Labaco falleció el 30 de mayo de 1945, en el municipio de Dueñas, de la provincia de Iloilo, antes del armisticio, pero despues de la liberación de Iloilo por las fuerzas americanas, oficialmente declarada en 22 de marzo de 1945. El 18 de junio de 1945, Gubagaras dirigió a la compañia la carta, copia fotostática de la cual es el Exh. 1, avisándola de la muerte de su esposa y pidiendo al mismo tiempo formularios para probar su muerte y presentar la reclamación correspondiente. La compañia le contestó que, por no haberse pagado la prima debida el 1.o de febrero de 1942, la póliza Exh. A caducó, sin ningun valor (Exh. 2). Despues que se cruzaran otras correspondencias entre las partes, Gubagaras presentó su demanda de autos el 24 de junio de 1946.

La compañia admite sustancialmente los hechos que se acaban de relatar, y contestando a la demanda, alega que la póliza en cuestión provee que

"All premiums are due and payable in advance at the Home Office of the Company in the City of San Francisco, California, U. S. A., but may be paid to an authorized agent of the Company producing the Company's Official premium receipt signed by the President, a Vice President or Secretary of the Company and countersigned by the person receiving the premium. No person has any authority to collect a premium unless he then holds said official receipt. * * * *"

Y entre otras defensas especiales, interpone:

"1. States that the policy in question provides that:

"PAYMENT OF PREMIUM'

* * * * * This policy shall lapse if any premium is not paid as herein provided and no right here-

under shall exist except as herein expressly provided.

2. States that by reason of the non-payment of the premium due on 1 February 1942, and/or thereafter, the policy in question has lapsed, and that accordingly plaintiff's complaint states no cause of action.

By way of

SECOND SPECIAL DEFENSE

1. States that insured are guilty of laches in that they failed to apply for reinstatement of the policy under the clause thereof which reads:—

REINSTATEMENT'

'At any time within five years after default, upon written application by the insured and upon presentation of evidence of insurability satisfactory to the Company, this policy, if not surrendered to the Company, may be reinstated together with any indebtedness in accordance with the loan provisions of the policy, upon payment of the loan interest, and of arrears of premium with interest at the rate of six per cent per annum thereon from their due dates. * * * *" (Expediente de Apelación, pp. 10 y 11)

Aportadas por ambas partes sus pruebas, el Juzgado *a quo*, aplicando al caso el Art. 1106 del Código Civil, que reza:

"Fuera de los casos expresamente mencionados en la ley, y de los en que así lo declare la obligación, nadie responderá de aquellos sucesos que no hubieran podido preverse, o que, previstos, fueran inevitables."

dictó esta sentencia:

"POR TANTO, el Juzgado dicta decisión en este asunto, condenando a la demandada a pagar al demandante la cantidad de DOS MIL PESOS (₱2,000.00), menos el valor de las primas, no pagadas, devengadas hasta la muerte de la esposa del demandante, que ocurrió el 30 de mayo de 1945, con intereses legales desde la presentación de la demanda, y al pago, ademas, de las costas del juicio."

Atribuyendole cuatro errores a este fallo, la Compañia recurre en alzada a este Tribunal de Apelaciones.

PRIMER ERROR

"THE LOWER COURT ERRED IN NOT HOLDING THAT THE POLICY HAD LAPSED FOR NON-PAYMENT OF PREMIUMS DUE."

Como precedente, se aduce en apoyo de este primer señalamiento de error la decisión dictada el 23 de octubre de 1876 por el Tribunal Supremo de los Estados Unidos en New York Life Insurance Company vs. William C. Statham et al (23 Law Ed. 798), en la que se enunció esta doctrina:

"We are of opinion therefore, first, that as the company elected to insist upon the condition in these cases, the policies in question must be regarded as extinguished by non-payment of the premium, though caused by the existence of the war, and that an action will not lie for the amount insured thereon.

Secondly, that such failure being caused by a public war without default of the assured, they are entitled *ex aequo et bono* to recover the equitable value of the policies with interest from the close of the war."

El Tribunal Supremo, en su primer pronunciamiento, se atuvo a la letra del contrato de seguro, siguiendo esta proposición:

"(1) The right of the parties depend upon the contract, which they themselves made. The court will not interpolate new conditions but will hold the parties to their own agreement."

Basandose en las condiciones del contrato, literalmente interpretadas, el Tribunal lo declaró extinguido, por falta de pago de las primas convenidas, sosteniendo, no obstante, que el asegurado tenía derecho a recobrar el valor equitativo de su póliza, con intereses desde la terminación de la guerra. Si la póliza caducó, por no haberse pagado sus primas, el derecho equitativo reconocido en el asegurado se derivó de un contrato extinguido.

Esta doctrina, que interpreta a la letra las clausulas del contrato y de algun modo la informa el aforismo *dura lex sed lex*, es una barrera que dificulta e impide una clara y explicita redacción de los contratos de seguro de vida.

Guerra ha habido siempre desde los albores de la humanidad, y ha ido desenvolviendose de la lucha entre tribus a la guerra mundial. Su frecuencia es una realidad, y las perturbaciones que produce se dejan sentir profundamente. A raiz de la guerra civil americana, en los Tribunales de los Estados Unidos se ha debatido un número considerable de asuntos de pólizas de seguro de vida, cuyas primas no pudieron pagarse con motivo de la guerra. Con todo, ninguna modificación, que difina los derechos y obligaciones de las partes interesadas, en casos de guerra, se ha conseguido incorporar en los contratos de seguro de vida, porque la decisión en el asunto de Statham, al interpretar literalmente sus clausulas, ha hecho de la guerra un suceso confiscatorio de las primas pagadas por los asegurados, con la anulación de sus derechos, a favor de las compañias aseguradoras.

La póliza de seguro Exh. A, origen de este asunto, contiene esta clausula:

". . . . . This policy shall lapse if any premium is not paid as herein provided, and no right hereunder shall exist except as herein expressly provided."

Esta clausula es tan lata y vaga que por ella la compañia trata de acaparar para si todos los derechos, y no conceder nada a sus asegurados. Fundandose en ella, se sostiene en el alegato de la apelante:

"THE STATHEM RULE

The leading and controlling case on the legal point under consideration is New York Life Insurance Co. vs. Statham (93 U. S., 24; 23 L. ed. 789). The question involved in the Statham case is identical with the question involved in the present case. In both cases the policy contained the following stipulations: (a) that the premiums must be paid in advance; and (b) that non-payment of any of such premiums will cause the policy to lapse. In both cases the insured did not pay the stipulated premiums and claimed as excuse for such non-payment the impossibility of payment as a result of the war." (pp. 14 y 15)

Segun esto, la póliza expedida en 1851, que motivó la causa de Statham, contenía exactamente las mismas clausulas de la póliza Exh. A de autos, librada 89 años mas tarde, o el 1.o de agosto de 1940. Este estancamiento, de casi un siglo ahora, en un ambiente de contratación que día a día tiende a la mayor mutualidad de los beneficios, es el resultado de la doctrina en el asunto de Statham, que prueba la sabiduria y precisión que extraña la maxima legal de interpretación: la letra mata, el espiritu vivifica.

SEGUNDO ERROR

"THE LOWER COURT ERRED IN HOLDING THAT THE BENEFICIARY CAN RECOVER ON A VALUELESS AND LAPSED POLICY."

En el parrafo 13 de la contestación se acota la clausula de pago de las primas convenida en la póliza Exh. A, que establece dos maneras:

"(a) All premiums are due and payable in advance to the home office of the company in the City of San Francisco, California, U.S.A. . . . . "

Como en el caso presente es absurdo suponer que los asegurados, Gubagaras y Labaco, se comprometieran a pagar las primas en la oficina de la compañia en San Francisco, California, aparte de que no era posible cruzar el Pacifico durante la guerra por la paralización completa de las comunicaciones, había que descartar esta primera manera por imposible. Y,

"(b) but may be paid to an authorized agent of the company producing the company's official premium receipt signed by the President, a Vice President or Secretary of the Company, and countersigned by the person receiving the premium."

Por esta segunda manera, la compañia se obligó a nombrar un agente que presente los recibos de las primas vencidas o por vencer, firmados por su presidente, vice presidente o secretario, y contraseñado por el agente, a los asegurados, en la residencia de estos, para su cobro.

Que pasos se han dado por las partes, de acuerdo con esta segunda manera, para efectuar el cobro y pago de la prima que vencia en 1.o de febrero de 1942?

Patricio H. Gubagaras declaró:

Q. Before February 1, 1942, did you make any effort to make payment to the defendant Company?
R. Si, señor.
Q. What did you do?
R. Me vine al post office con el proposito de pagar, pero la oficina de correo ya estaba cerrada.
Q. Where was the post office here in the City of Iloilo then situated at the time?
R. En el edificio de la Aduana.
Q. When did you go to the Custom House Building?
R. Alla a mediados del mes de enero.
Q. In what year?
R. 1942.

* * * * *

Q. Where did you go when you had to return?
R. Volvi a Dueñas.
Q. Did you make any further effort after returning to your house?

R. Si, señor.
Q. What did you do?
R. Me fuí a la oficina de correos del municipio de Dueñas para cerciorar si podia remitir correspondencias para Manila.
Q. Were you able to send any correspondence to Manila?
R. No, Señor, porque según el tesorero no se podia ya recibir, porque la ciudad de Manila estaba ocupada por los japoneses.
(t.n.t. pp. 8-10)

Federico A. Pigason, estafetero de la oficina de correos de la ciudad de Iloilo, antes y despues de la guerra, aseveró:

"Q. When was the Post Office in the Province of Iloilo began to open to the public?
R. On July 4, 1945.
Q. Will you please tell us when were the mail facilities for the Municipalities opened after the liberation of the province of Iloilo?
R. After the liberation in the province of Iloilo, the PCAU or the Philippine Civil Affairs Unit tried to facilitate mails in the provinces by means of mail carrier; then when the office was officially opened by the post office on July 4, 1945, we hired the Philippine Railroad and all the buses to bring mails to the Municipalities; and now we have also steamers and airplanes.

Q. What happened to the post office after the bombing of Iloilo on December 18, 1941?
A. You mean this post office of Iloilo in the City of Iloilo? After that, we transferred in La Paz.

* * * * *

"Q. Don't you know if by request through the Army post office mail could be sent from Iloilo to the United States?
A. To the United States we did not have any arrangement, but all mail in Iloilo were delivered to APO 715.
(t.n.t. pp. 2 y 3)

Leonardo Cocjin, Tesorero Municipal y Postmaster del municipio de Dueñas, testificó:

"Q. In the year 1942 or to be exact before the Japanese invasion of the Island of Panay, were you holding the same office in the government?
A. Yes, sir.
Q. And the same place?
A. The same place.
Q. Do you know a person by the name of Maria Labaco in her lifetime?
A. Yes, sir.
Q. Do you know also the plaintiff in this case Patricio H. Gubagaras?
A. Yes, he is the husband of the late Maria Labaco.
Q. Will you please tell the Court if you have seen this person sometime in the month of January, 1942 in Dueñas?
A. So far as I can remember, this couple Patricio Gubagaras and the late Maria Labaco had come to me in my office in Dueñas on or about the last days of January, 1942 with the purpose of inquiring as to whether it was possible during that time to send money by mail.
Q. Do you know to whom did they intend to send money by mail at that time?
A. They tried to send money to the West Coast Life Insurance Company.

* * * * *

Q. Upon inquiring of the couple Patricio Gubagaras, the herein plaintiff and his late wife whether it was possible to send money by mail to West Coast Life Insurance Co., what was your answer?
A. I told them that during that time there was no more facility of transportation between Manila and Iloilo, and besides, the Japanese Forces were occupying the City of Manila; I told them. "It seems to me, to send money to Manila is futile."
(t.n.t. pp. 18-20)

El interes de Gubagaras de hallar un medio de enviar a la agencia de la compañia, en Manila, el importe de la prima que vencia el 1.o de Febrero de 1942, revela su deseo de cumplir con las condiciones de la póliza Exh. A.

De su parte, que medidas ha tomado la compañia para presentar a Gubagaras el recibo, debidamente expedido y contraseñado, hacia esa fecha, 1.o de febrero de 1942?

Gregorio San Jose, superintendente del departamento de reclamaciones de la Compañia, declaró:

"Q. Your Honor please. Will you please tell us what happened to your company on 2 June 1942 (should be January) when Manila was officially occupied by the Japanese Imperial Forces?
A. We were forced upon order of the enemy force to close our business, being an American Company.
Q. Can you tell us if there is any insured from the province of Iloilo who was able to continue paying the premium due from 2 June (should be January) 1942 up to the time of liberation in 1945?
A. There was not a single policy holder who was able to send their premium.
Q. Will you please tell us when was your Manila branch office opened to the public?
A. December 1, 1945.
(t.n.t. pp. 29-30)

En contraste con las gestiones que, hacia fines de enero de 1942, Gubagaras hiciera para encontrar un medio de enviar el importe de la prima que vencia el 1.o del mes siguiente, la compañia nada hizo para cumplir con la obligación que tenía de presentar a los asegurados el recibo de dicha prima, debidamente firmado por su presidente, vice presidente, o secretario, y contraseñado por la persona autorizada para recibir su importe.

Se dirá que, estando la compañia en San Francisco California, allende el Pacifico, a miles de millas de distancia de las costas de Filipinas, con la agencia en Manila cerrada por orden del enemigo, nada humanamente podia hacer. Esta sería, indudablemente una explicación plausible. Mas, si la paralización de las comunicaciones, la orden de cierre de su agencia en Filipinas, dada por el enemigo, la guerra, en una palabra, constituye para la compañia una excusa buena y valida, porque no ha de ser legal y eficaz para el asegurado? Porque las consecuencias de la guerra, que impidieron a ambos contratantes cumplir sus respectivas obligaciones, ha de favorecer a la compañia, que se limitó a cruzarse de brazos, amparandose en la doctrina de la causa de Statham, y ha de imponer el asegurado, sin culpa de su parte, el castigo de la pérdida de todos sus derechos despues de la diligencia que empleara para hallar un medio de cumplir con su obligación de pagar la prima que estaba por vencer?

Despues de la guerra civil americana, con menos motivos, porque los Estados Americanos foreman un territorio compacto y unido, sin mares que los aparten como el gran oceano que separa California y Filipinas, en Hamilton vs. Mutual Life Insurance Co. (11 Federal cases, 351, 358, 359, 360), decidiendo la contención en favor del beneficiario, el Tribunal sostuvo:

"* * * * *

"The defense is also set up, that the policy, by its terms, ceased to exist by reason of the nonpayment of the annual premium that was due and payable on the 2nd of March, 1862, and that thereby, also, all previous payments made by Goodman became forfeited to the defendants. It is replied, on the part of the plaintiff, to this defense, that the agencies from the state of Alabama in March, 1861, prevented the payment of Goodman of his annual premiums, and thereby waived such payments, all of which became due after the 16th of August, 1861, the act of the defendants having prevented the payments in Alabama, and the effect of the war being to make such payments at New York, by Goodman, unlawful.

"If it was a part of the contract entered into by the defendants, or of their obligations to Goodman under it, that Goodman should have the right to pay his annual premiums to an agent of the defendants in Alabama, and if the defendants were bound to provide in Alabama, during the continuance of the risk on the policy, an agent to receive such premiums then Goodman was not bound to seek any other recipient of such payments than such agent, and was not bound, for want of any such agent, to pay the premiums, directly to the defendants at New York. In the application made in February, 1849, for the policy issued to Mrs. Goodman in March, 1849 Goodman is described as residing in Mobile, Alabama, and as being a wharfinger there. In his application of March, 1858, for the policy of 1858, and in that policy, he is described as of Mobile, in the state of Alabama. All the premiums that he paid, were with the knowledge of the defendants, paid at Mobile, to McCoy, their agent there, and were received by the defendants through and from McCoy. Goodman resided in Mobile from 1835 up to his death, and died at Mobile. In the absence of any notice to the contrary, the defendants must be held to have continued to understand that he continued to reside in Mobile. His application for the policy of 1858 was made through McCoy, at Mobile, the policy was delivered to him through the hands of McCoy, at Mobile, and bears McCoy's signature, as agent at Mobile, the three payments of premiums in 1859,1860 and 1861, were made thru McCoy, at Mobile, and the receipts therefor bear the signature of McCoy as the defendants' agent. The policy contains on its face the words: 'Agents of the company are authorized to receive premiums when due, but not to make, alter, or discharge contracts, or waive forfeitures.' It is contended by the defendants that there was no obligation on them to keep an agent at Mobile or in Alabama. Considering the character of the contract, the circumstances under which it was entered into, the fact that Goodman was, with the knowledge of the defendants, a resident citizen of Alabama at all times, the fact that the contract must be regarded as having been entered into, and continued in operation by the defendants, at least as long as they themselves recognized its continuance, that is, until March 2nd, 1862, with reference to, and in subordination, on their part, to such statute law of the state of Alabama as should be enacted on the subject of their keeping agents in that state,

and the fact that the agency of McCoy, having been continued during the life of the policy up to March, 1861, was then withdrawn, *it must I think, be held, that the defendants were bound to keep in Alabama an agent to whom Goodman could pay his annual premiums, or could, at least, offer or tender payment, such agent to be appointed in conformity with such statute law, and that, if the absence of such agent was all that prevented the payment of such premiums by Goodman, the defendants are estopped from setting up the non-payment of such premiums at the times stipulated therefor as a defense to this suit.*

* * * * *

The evidence shows pecuniary ability and willingness on the part of Goodman to pay the premiums at Mobile, and that the reason why he did not pay them there was the absence of any agent thereof the defendants. I see no legal objection to the evidence on this subject, either as competent, or as sufficient to prove the facts. If the defendants were entitled to the punctual payment of the premiums, as a condition precedent to their continuing liability from year to year, *their prevention of such payment, by the withdrawal of McCoy's agency, and of all other agencies in Alabama, excused Goodman from making the payments punctually, and debars the defendants from setting UP SUCH WANT OF PUNCTUALITY as a defense in this suit.* Williams v. Bank of U. S. 2 Pet. (27 U. S.) 94, 102; Van Buren v. Digges, 11 How. (52 U. S.) 461, 479.

There is no force in the objection, that the defendants could not, during the war, have received from their agent in Alabama any moneys paid to him there as premiums, or that such moneys would have been confiscated in the hands of such agent, if paid to him. If the agent had been provided, Goodman could have tendered the premium, and the agent could have refused to receive it, because he could not remit it, and because it would be confiscated. The rights of Goodman would thus have been preserved, according to the tenor of the contract. The less, if any, which would have ensured to the defendants, was a loss incident to the war, and with which Goodman had no concern, and the apprehension or certainty of which could affect his rights. The unlawfulness of any receipt by the defendants at New York, from Goodman, or any other person in Alabama, during the war, of any money's paid as premiums, cannot affect any rights of Goodman in respect of having the opportunity of paying such premiums in Alabama, or be set up by the defendants as a ground of forfeiture of the policy in respect of such rights.

* * * * *

Under these views, the contract was only suspended during the war. After the end of the war, the right of Goodman to pay the premiums which he had been prevented from paying by the action of the defendants, continued in all respects."

* * * * *

The withdrawal of the agency of McCoy, and of the other agencies in Alabama, made it unnecessary for Goodman to seek out McCoy or some other person who had been an agent of the defendants in Alabama, and tender the premiums, as due, to him, even though, as would appear from the evidence, McCoy reamined in Alabama, accessible, during a part, at least, of the war. Especially is this so, in view of the fact that Goodman had notice of the revocation of McCoy's agency.

Or. all these considerations, I am of opinion that *the defendants must be regarded as having prevented Goodman from paying his premiums, as due, in Alabama, where he had a right by the contract to pay them, and, therefore, as having waived such punctual payment; that the policy was not and is not forfeited by reason of the non-payment of premiums; that it is a valid and subsisting policy against the defendants*: and that the plaintiff was, when he brought this suit, in a position to ask the relief prayed for by the bill.

These views recognize fully all the terms of the policy, and do not interpolate in the contract of the parties any provision, by way of excuse for the non-payment, on the stipulated day, of any premium, which is not within the terms of the contract. It is of the essence of every contract, that, if one party to it prevents its performance by the other party, the former cannot be allowed to reap any benefit from the fact of such non-performance. In this case, the prevention by the defendants of performance by Goodman was equivalent to actual performance by Goodman, or to a waiver by the defendants of such performance." (Italics supplied).

Hay, ademas, estos otros precedentes:

"And, although the case cannot be so strongly put, I think it is equally clear that, when the assured was involved in no default, but was at the place when and where payment was to be made, ready and willing to pay, but was prevented by the disability of the company to receive payment, from whatever cause, he having had no agency in producing it, the company is not entitled to claim the forfeiture, or to be relieved from its obligation to pay the sum assured." (The Manhattan Life Insurance Co. v. Warwick, 20 Gratt (Vs.) 614, 3 Am. Rep. 218, 22 O, the Supreme Court of Appeals of Virginia).

"It is urged that the last premium was not paid, and hence the policy became void. If it were not paid, I do not think the consequences claimed would follow. The war suspended this contract, and no forfeiture for non-payment would arise while the war lasted, provided the premiums, with proper interest, were promptly paid on the return of peace." (Sands v. The New York Life Insurance Co. 50 N. Y. 626, 10 Am. Rep. 535, 543) (Italics supplied)

"Then, as according to principle and consistent authority, the contract was not dissolved by the war, how can this court, consistently with the spirit of the literal condition and the facts of the case, adjudge the policy avoided by the inevitable non-payment of premium? Such a decision would seem to be as unreasonble as unjust." (New York Life Insurance Co. v. Clipton, Etc., 7 Bush (Ky.) 179; 3 Am. Rep. 290, 295)

"* * * * And, according to a Canadian decision, if a foreign company ceases to do business at the place where the premium is stipulated to be paid, and maintains no known agency there, non-payment is excused. * * * * 3 Couch, Cyclopedia of Insurance Law 2229.

TERCER ERROR

THE LOWER COURT ERRED IN NOT HOLDING THAT THE PLAINTIFF WAS GUILTY OF LACHES DESPITE PLAINTIFF'S DEFAULT IN THE PAYMENT OF PREMIUMS AND FAILURE TO APPLY FOR REINSTATEMENT UNDER THE 'REINSTATEMENT' CLAUSE OF THE POLICY.

Contiendese que durante la guerra Gubagaras y Labaco no han ofrecido ni consignado ante los Tribunales el importe de las primas de su póliza. De haber la compañia operado en Filipinas durante la guerra, hubiera expedido pólizas, completamente saldadas, porque la abundancia de dinero militar japones buscaba inversión. Teniendo esto en cuenta, lo mas probable es que Gubagaras no hubiera dejado de pagar una prima semestral exigua de ₱68.96.

Pero, suponiendo que Gubagaras hubiera consignado, oportunamente, en dinero japones, el importe de las primas que hubieran vencido de la póliza Exh. A, lo aceptaría la Compañia? Ciertamente que no, porque no le daria ningun valor, y aunque valiese algo, sería inaceptable segun la doctrina en el caso de Statham.

Sostienese que, despues de la liberación de la provincia de Iloilo por las fuerzas americanas y antes de la muerte de Labaco, los asegurados no han solicitado la rehabilitación de su póliza Exh. A, ni han hecho nada para pagar a la compañia las primas vencidas de tres años. La provincia de Iloilo fué liberada en 22 de marzo de 1945. Labaco fallecié el 30 de mayo del mismo año. En ese tiempo, la compañia no habia habierto aun su agencia en Filipinas. Las oficinas de correos, de la provincia de Iloilo, se reabrieron el 4 de julio de 1945. Todo esto significa que antes de la muerte de Labaco no habia facilidades de remitir dinero, porque su envio por giro postal no se habia aun restablecido.

Por otra parte, como dice en su alegato la represntación del apelado, solicitar la rehabilitación de la póliza Exh. A, valdría tanto como admitir que la misma había caducado.

CUARTO ERROR

THE LOWER COURT ERRED IN APPLYING THE PROVISIONS OF ARTICLE 1105 OF THE CIVIL CODE TO THE PRESENT CASE AND CONSTRUING IT TO THE SOLE BENEFIT OF PLAINTIFF.

La representación de la apelante sostiene que, en cuanto a los contratos de seguro, las disposiciones generales del Código Civil carecen de aplicación.

En Musgñi vs. West Coast Life Insurance Co. (61 Phil. 864), el Tribunal Supremo sostuvo lo contrario:

"2. Id.; NULLITY; APPLICABILITY OF CIVIL LAW.—When not otherwise specially provided for by the Insurance Law, the contract of life insurance is governed by the general rules of the civil law regarding contracts. . . ." (Syllabus)

En este asunto, en que no hay motivos justificados para culpar a ninguno de los contratantes por la falta de cobro o pago de las primas de la póliza en cuestión, viene al caso el precepto del Art. 1105 del Código Civil, tendente a suplir deficiencias del contrato, tanto mas cuanto que es ya regla admitida la de evitar confiscaciones, mediante una interpretación favorable a los asegurados.

"The rule applicable to contracts generally, that a written agreement should in case of doubt as to the meaning thereof, be interpreted against the party who has drawn it, is very frequently applied to policies of insurance and constitutes an important rule of construction in such respect, in view of the fact that ordinarily, and in practically all cases, it is the insurer who furnished or prepares the policies used to embody the insurance contracts. The general rule is that terms in an insurance policy, which *are ambiguous, equivocal, or uncertain to the extent that the intention of the parties is not clear* and cannot be ascertained clearly by the application of the ordinary rules of construction *are to be construed strictly in and most strongly against the insurer, and liberally in favor of*

the insured, so as to effect the dominant purpose of indeminity or payment to the insured, *especially where a forfeiture is involved since the forfeiture of insurance policies is not* favored by the courts." [29 Am. Jur. 180, 181] (*Underscoring* supplied)

"The severe hardships to which the insured was formerly subjected under the older concepts of contract law and because of the advantageous economic position of the insurers to impose unfair stipulations and conditions is well known. Comprehensive legislation regulating the activities of insurers, having as its objective the protection of the public and those insured, has become very common in the United States. In keeping with the judicial policy of construing insurance policies in favor of the insured, legislation enacted for the purpose of his protection have usually been liberally construed in favor of the public and the insured. *The law looks with disfavor upon the forfeiture of the rights of the insured, and so statutes protecting and extending those rights are treated with liberality.*" 3 Sutherland Statutory Construction, 3rd ed. sec. 7105, p. 393, 394. See also 45 C. J. S. 387. (Italics supplied.)

"It is a matter of common knowledge that large amounts of money are collected from ignorant persons by companies and associations which adopt high sounding titles and print the amount of benefits they agree to pay in large blackfaced type, following such undertakings by fine print which destroy the substance of the promise. *All provisions, conditions or exceptions which in any way tend to work a forfeiture of the policy would be construed most strongly against those for whose benefit they are inserted, and most favorably toward those against whom they are meant to operate.*" (Standard L. and A. Ins. Co. v. Martin, 132 Ind. 376, 33 N. E. 105; McElfresh v. Odd Fellows Acc. Co., 21 Ind. App 557, 52 N. E. 819; 1 Cyc. 243, and cases therein cited.) (United States Benev. Society v. Watson, 1908, 84 N. E. 29, 31)" (Trinidad vs. Orient Protective Assurance Association, 37 Off. Gaz. 2674) (Italics supplied.)

Se puede añadir, que la aplicación del Art. 1105 del Código Civil al caso presente es de estricta justicia, porque en los contratos de seguro sobre la vida el silencio con respecto a los derechos de las partes, en casos de guerra, es una omision—que no debe beneficiar a las compañias aseguradoras, que son las que redactan dichos contratos, y no pueden invocar a su favor sus propias faltas.

La doctrina en el asunto de Statham, que en su segunda parte adjudica al beneficiario el valor equitativo de la póliza, fundandose en el principio *ex aequo et bono*, es en esencia una modalidad del alcance del Art. 1105 del Código Civil, cuyas disposiciones supletorias tienen su aplicación cuando el incumplimiento de los terminos del contrato no pueda en equidad y conciencia atribuirse a culpa o negligencia de cualquiera de los contratantes.

En sus comentarios al Art. 1105 del Codigo Civil, el Sr. Manresa, dice:

"En concreto, se ha declarado por el Tribunal Supremo que constituyen casos de fuerza mayor: . . . . . ; el hecho de la conflagración europea y de la guerra, que trastornó las economias mundiales y privó a las compañias ferroviarias de los medios necesarios (como locomotoras, vagones y carbon ingles), para cumplir exactamente los contratos de trasporte estipulados con los particulares (Sentencia de 2 de febrero de 1926; . . . .") (8 Manresa 90)

Se confirma en todas sus partes la sentencia de que se apela, con las costas a la apelante.

Asi se ordena.

Torres, J., concurs in a separate opinion. *Labrador* and *David, JJ.*, concur.

Jugo, *J.*, dissenting:

Believing that the doctrine laid down by the decision of the Supreme Court of the United States in the case of New York Life Ins. Co. vs. Statham (93 U.S. 24, 23 L. ed. 789) is based on strong and sound reasons and on high authority, I dissent. (On Oct. 4, 1946 Justice Jugo, then Judge of the Court of First Instance decided the case of Paz Lopez de Constantino vs. Asia Life Ins. Co. (No. 71875) in favor of the Insurance Co. The case is now pending decision by our Supreme Court.)

Torres, *Pres. J.* concurring:

The essential facts in this controversy, as clearly related in the decision penned by Mr. Justice De la Rosa, are as follows: On August 1, 1940, Patricio H. Gubagaras and his wife, Maria Labaco, were insured by the West Coast Life Insurance Company for the sum of ₱2,000.00. The joint twenty-year endowment policy is sued by the company being a mutual benefit made the surviving spouse the beneficiary of the other and both of them participates in its profits. The premium was payable every six months and the last premium paid covered the semester period ending February 1, 1942. In the meantime, on December 8, 1941, war was declared in the Pacific, and on January 2, 1942, the Japanese invading forces occupied the City of Manila. This caused the disruption and paralyzation of all means of communication between the capital of the Philippines and other points outside of the City of Manila.

Maria Labaco, one of the insured, died in the municipality of Dueñas, province of Iloilo, on May 30, 1945, and on June 18 of the same year, Patricio H. Gubagaras, the surviving spouse and co-insured, notified the company of the death of his wife (Exhibit "1"), and requested that he be furnished with the necessary forms to support a claim for the payment of ₱2,000.-00, the amount of the insurance. The company replied that in view of the failure of the insured to pay the premiums due after February 1, 1942, the policy, Exhibit "A," had lapsed and, therefore, payment was forfeited. After an exchange of correspondence, on June 24, 1946, Gubagaras finally brought in the Court of First Instance of Iloilo the corresponding motion against the West Coast Life Insurance Company.

After proper proceedings, the lower court, in a judgment rendered on January 30, 1947, found for the plaintiff and against the defendant and ordered the latter to pay the former the sum of ₱2,000.-00, from which shall be deducted the total amount of premiums due and remaining unpaid until May 30, 1945, the date of the death of Maria Labaco, with legal interest from the date of the filing of the complaint, and the costs of these proceedings.

In this appeal, the defendant-appellant West Coast Life Insurance Company, assigned several errors allegedly committed by the trial Judge.

The main point raised by counsel is based on the proposition that, contrary to the holding of the lower court, the policy issued by the company to the plaintiff and his deceased wife "had lapsed for non-payment of premiums due."

As previously stated, all means of communication between Manila and the province had been interrupted by the war and the occupation of the City of Manila and other places in the Archipelago by the Japanese forces. The policy, Exhibit "A", was issued by the home office of the West Coast Life Insurance Company located in San Francisco, State of California, U. S. A., through its agency located in the City of Manila. Following the practice of companies authorized to do business in this country, the defendant "sold" the insurance policy, Exhibit "A", to the plaintiff and his deceased wife through its agency established in the City of Manila prior to the advent of the last global war. We may thus take judicial notice of the fact that a foreign insurance company, which has been authorized under the Philippine laws to do business in these Islands, establishes its local office or agency through which it reaches the public in the Philippine Islands to "sell" its policies. It can not be conceived that these persons who, like the plaintiff and his deceased wife, have been locally insured by the defendant, an American company with home office in the City of San Francisco, State of California, U. S. A., would have contacted directly the main office of said company in order to be insured by the latter. In the ordinary course of business in the field of insurance, the applicant is investigated by a local representative of the company and, what is most important, is examined by the company medical officer before his application is submitted to the main or home office for its approval.

In view of what is stated in the preceding paragraph, it is quite safe for me to conclude that the payment of the premiums on the policy in question was not made directly "at the home office of the company in the City of San Francisco, State of California, U. S. A.," as is printed in the policy, but "to an authorized agent of the company," as is likewise stated therein. And I do not say this in vain, because the record supports my point of view in this respect. When the communications between the province of Iloilo and the City of Manila were disrupted and

stopped by the war, the evidence shows that the plaintiff—who jointly with his wife had been paying the premiums up to the 1st of February, 1942 when the Japanese Imperial Forces were already occupying the City of Manila and other parts of the Archipelago—made every possible effort to contact the local agency of the defendant company because he wanted to remit to the Manila office of the defendant the semester premiums due from February 1, 1942. The post-office in the municipality of Dueñas was closed, and he was informed by the municipal treasurer that there was no business transaction with Manila which was then already occupied by the Japanese forces. He went to the City of Iloilo and his inquiries brought the same result; in fact, the postal service in the province of Iloilo was re-established only in July, 1945, after the death of the wife of plaintiff.

In view of all those facts and circumstances, it having been clearly proven that the failure of this plaintiff to make further payment of premiums due on policy Exhibit "A" was caused by the stoppage of all the means of communication between his place of residence in the province of Iloilo and the City of Manila, where the Philippine offices or agency of the defendant company were established before the war, and it being a matter of common knowledge that the offices of all firms and companies of American nationality have been closed and liquidated by the Japanese Military Administration soon after the beginning of the occupation of these Islands, it would be utterly unreasonable to contend that because of the plaintiff's failure to pay the premiums due from February 1, 1942, "the policy lapsed without value" (Exhibit "C" of plaintiff). *Impossibilium nulla obligatio est* (there is no obligation to do impossible things—Wharton L. Lex). *Impotentia excusat lagem* (impossibility is an excuse in the law—Bouvier's Law Dictionary). These are maxims which are in all fours with the case at bar.

It cannot be successfully alleged, and much less proven, that the plaintiff did not do his best to contact the Manila office of the defendant company for the payment of the premiums due beginning from February 1, 1942. The efforts made by him are the best evidence of his earnest and honest intention to comply with his part of the obligation contracted and commitments made by him when he accepted the policy Exhibit "A" issued by the company upon acceptance of his application by the home office. It is not my purpose to state here that the defendant company was at fault when its local office was closed by the Japanese Military Administration. Even if the Japanese Military Administration had permitted the local agency of defendant to transact business during the period of military occupaion, the lack of communication between Manila and the provinces particularly the province of Iloilo, would have just the same resulted in the failure on the part of the plaintiff to remit and the agency of the Company to receive the premium due from February 1, 1942.

In this connection, the evidence of the defendant has strongly endorsed our view in the premises, when by its Exhibit "G", a circular letter dated June 15, 1945, addressed to its "policyholders in the Philippine Islands," the President of the company, among other things, says:

* * * * *

You will appreciate how impossible it has been for us to communicate with or serve in any way either policyholders or representatives in the Islands. Our Resident Manager and Resident Secretary have but recently arrived in the United States following their liberation from Los Baños and Santo Tomas, and given us a report regarding our former Branch Office in Manila.

We desire to re-open a service office there just as soon as this is permitted and becomes possible. Now and up-to-date policy records are being prepared for this purpose from the original records here in the Home Office, under the supervision of our Resident Manager and Resident Secretary for the Philippines.

Meanwhile, may we have your correct present mailing address, in order that we may furnish you with information as to the present standing of your policy. Please complete the enclosed forms giving such additional information as you desire and return to us in the self-addressed envelope enclosed for this purpose.

This letter is being mailed to all policyholders in the Philippine Islands to their last known mailing address according to our records. No doubt many of our policyholders have been compelled to move during this past three years and there may have been many changes of address. Consequently, some may not receive their copy of this letter and we would appreciate your help by passing its contents on to any such policyholders with whom you may be acquainted."

But, notwithstanding the cordial terms of the above-quoted letter, clearly intended for the resumption of business relations between the company and its prewar patrons, the attitude of the defendant in this controversy is such that it clearly denies the insured all the rights and benefits to which they are entitled under the policy. An insurance company organized outside the territory of the Philippines and permitted to transact business in this territory must abide by the provisions of the laws in force in this jurisdiction governing life insurance business. We, therefore, cannot adhere to the contention of defendant who, in his first assignment of error, contends that "the policy is the law between the parties." The law governing the subject matter of insurance is superior to the terms of the policy.

In Musngi v. West Coast (61 Phil. 864), the Supreme Court held that in the absence of specific provisions in the Insurance Law, No. 2427 as amended, a contract of life insurance is governed by the rules of civil law regarding contracts. Thus, if according to Article 1256 of our Civil Code, "the validity and fulfillment of contracts cannot be left to the will of one of the contracting parties," the attitude of defendant in declaring that the policy Exhibit "A" had lapsed and become worthless on the ground of alleged non-payment of premiums, is utterly unjustified, in that it is contrary to the provisions just quoted which is based on principles of justice, because it not only proclaims the binding nature of the contract as stated in Article 1258 of said Code, but it likewise established the principle of equality which is so essential for the contracting parties; it forbids that one of the parties be bound by the terms of the agreement while the other is not (Manresa, Commentaries on the Spanish Civil Code, 4th ed., Vol. 8, page 556)

Greatly relied by the defendant to support its contention in this case in the so-called Statham doctrine. In the Statham case (New York Life Insurance Company vs. Statham, 93 U.S. 24 23 L. Ed. 789), the Supreme Court of the United States held that "an action cannot be maintained for the amount assured on a policy of life insurance forfeited by nonpayment of the premium, even though the payment was prevented by the existence of the war." The defendant also cites other decisions rendered in New York Life Insurance Company v. Davies (95 U.S. 425, 24 L. Ed. 493; Worthington v. The Charter Oak Life Insurance Company, 41 Conn. 372, 19 Am. Rep. 495; and Dillard v. The Manhattan Life Insurance Company, 44 Ga. 119, 9 Am. Rep. 167); which cases also followed the doctrine in the Statham case. Defendant-appellant contends that since the promulgation of the decision of the United States Supreme Court in the Statham case, there has been no departure from the rule laid down therein, because it has been followed in other cases. However, in the broad field of American Jurisprudence, contrary authority is found which shows that not all the courts of the United States agree with such ruling. In Manhattan Life Insurance Company vs. Warwick (3 Am. Rep., 218, 220), the Supreme Court of Appeals of Virginia, in holding that the life insurance policy did not lapse for non-payment of premiums due to impossibility of payment as a result of war, said the following:

" * * * If the assured was at the place on the day, where and when payment was to be made, and where he had a right to make payment, ready and prepared to make payment, but was prevented by either of the causes mentioned, it would be unreasonable to say that he had incurred for-feiture. And I think it is equally clear, upon reason and authority, that the company was not thereby released from its obligation to pay the sum assured. It would be a monstrous perversion of law, and repugnant to our very sense of justice, to say that this company, after having received more than half the sum assured, could by this act determine the policy, hold on to the money they had received, and to say to their confiding victim, 'you may whistle to the winds for your merited reward, notwithstanding you relied upon our covenant and good faith to pay it.'

"And, although the case cannot be so strongly put, I think it is equally clear that, when the assured was involved in no default, but was at the place when and where payment was to be made, ready and willing to pay, but was prevented by the disability of the company to receive payment, from whatever cause, he having had no agency in producing it, the company is not entitled to claim the forfeiture, or to be relieved from its obligation to pay the sum assured."

In this case, the premiums covering the period from the date of the policy up to January 31, 1942, have been paid, and according to the law and the terms of the policy, when the first premium was paid, a full contract of insurance was completed, so that had Maria Labaco died soon after the payment of that first premium and before the next premium became due, the rights of the plaintiff to the sum insured would have become vested, and a full contract of insurance completed. But the events were shaped in a different way. Maria Labaco died after the liberation and during the intervening period, the premiums from February 1, 1942 until her death, were not paid, due, because they could not be paid by reason of the extraordinary circumstances obtaining at that time. But the defendant, clinging stubbornly to the situation thus created thereby, refuses payment of the value of the policy. The Supreme Court of Appeals of Virginia thus said:

" * * * The payment of the first premium covers the whole life-time, and makes a complete vested right to the sum insured, if death takes place before another premium is payable, but if not, it is subject to the payment of further premiums * * * ".

* * *

" * * * When the first premium is paid a full contract of insurance is completed, subject to conditions peculiar to that class of contracts. The use of the words condition precedent, Baron Martin, in a certain case (Bradford v. Williams, L.R. 7 Exh. 261), said he thought unfortunate; that 'the real question, apart from all technical expression, is, what in each case in the substance of the contract.' So far as the precedent payment of the premium in arrear is concerned it would, of course, have to be made before recovery. Time, also, is of the essence of the contract, and no fault or neglect of the party could excuse a non-payment; but why should not this, like any other contract, be subject to such qualifications and conditions as the law may impose?" (The Mutual Benefit Life Insurance Co. v. Willyard, 18 A. R. 741, 749-750).

It cannot be denied that, as contended by appellant, prompt payment of premiums is material and of the essence of the contract of insurance. This must, however, be qualified by taking into consideration the time and circumstances surrounding the act of payment. Not in vain the maxim says: *distingue tempore et concordabis jura* (Distinguish times, and you will make laws agree, Wharton L. Lex.)

In the light of what has been said in the preceding paragraphs and considering that the ruling laid down in the Statham case has been made by the United States Supreme Court about 75 years ago, during the *horse and buggy* period of the life of the American nation, it cannot be regarded as an over-all principle that shall govern the relations between the insurer and the insured in the present age. Granting that, at the time of the promulgation of said decision on October 23, 1876, such ruling was good law, it cannot be accepted as such in the present circumstances of human advancement and progress. Law and jurisprudence, its companion and exponent, are not static like the still waters of a pond; they go hand in hand with the progress and advancement of time; look after and provide for the needs and welfare of the community.

"Since law is defined as the rule of reason applied to existing conditions, as stated supra note 10, and can remain static only as long as the conditions to which it applies remain static, it is a proper province of the law to interpret human relationship, and to modify, enlarge, and develop with changing conditions of human affairs." (52 C.J.S. 1024)

In the present case, the Statham doctrine, while it gives full protection to the rights of the insurer, it disregards and repudiates the rights of the insured. Such law, and the jurisprudence which interprets and applies it to a given case, cannot be good law, because it does not give the interested party, the plaintiff in his case, the equal protection guaranteed him by the Constitution.

Summing up, therefore, all that has just been said, we do not hesitate to hold that after a thorough consideration of all the angles of this controversy, the events that took place in these Islands as a result of the last war, undeniably constitute *force majeure*, which resulted in mutual disability on the part of the insured to pay the premiums due after February 1, 1942, and on the part of the insurance company to receive such premiums. In defining fortuitous event, Article 1105 of the Civil Code says—"Outside of the cases mentioned in the law and of those in which obligation so declares, no one shall be responsible for events which could not be foreseen, or which having been foreseen were unavoidable."

This situation has brought forth the theory of suspension of the contract of insurance as against that of cancellation of the policy, advocated by the insurance company on the strength of the rules laid down in the Statham case. The theory of suspension was for the first time discussed when the peace terms were being debated in Versailles, to end the First World War. The idea has since gained many supporters; even some life insurance companies adhered to the idea and showed their readiness to abandon the theory of cancellation of the policy. In this connection, Mr. Sidney A. Diamond, special assistant to the Attorney-General of the United States, in an article entitled "The Effect of war on pre-existing contracts involving enemy nationals," published in 53 Yale Law Journal 700, made this significant comment:

"*Contracts suspended.* Contracts held suspended, rather than terminated, by the outbreak of war also fall into groups. The most familiar type is the contract of life insurance. Although there are indications to the contrary, *the overwhelming weight* of authority refuses to treat a life insurance contract as dissolved by war. The rationale is that the contracts are not commercial in nature and require communication between the parties only for payment of premiums, an obligation which can be suspended *until after the war* without serious consequences to either side." (Rejoinder to Appellee's Reply Memorandum, by Ramires & Ortigas, Amici Curiae, p. 59)

Premised on the foregoing, which renders it unnecessary to discuss herein the other points of secondary importance raised by appellant, I hereby fully concur in the main decision rendered in this case.

"It is not he who never fails in his life that is a success; but it is he who rises every time he fails."