Valencia was retired, even as his position was retained, and Ocampo promoted to take his (Valencia's) position. As Valencia's position was not abolished or suppressed, Valencia should not have been separated by retirement; it should have been Ocampo who should have been retired because of the abolition of his own position. Petitioner's argument in effect is as follows: that there is economy if Valencia is separated and Ocampo retained, but none if Ocampo, whose position is abolished, is retained and Valencia dismissed. The absurdity of the contention is evident; it is its own refutation. Reasons of economy may have justified the reduction of Valencia's salary, but certainly not his separation. Evidently, the reduction was merely the opportune occasion for a dismissal without cause.

Was the dismissal in the interest of efficiency? The CIR found that Valencia's efficiency is shown by the greater amount of production obtained during his incumbency. Even the petitioner admits that there is no charge of inefficiency. (See Brief for the Petitioner, p. 89.) But the separation was recommended "for the good of the service," implying that there were valid reasons therefor. None appear in the record. On the other hand, the evidence submitted prove Valencia's efficiency. Even if there were reasons therefor, which were not disclosed, the separation would still be illegal because no charges of any kind whatsoever appear to have been filed against him and neither does any opportunity appear to have been given him to answer them or to defend himself against them.

The above considerations cover the most important points raised in this appeal; it would be unprofitable to answer all the other arguments, most of which are high-sounding claims without foundation in fact and in law. Suffice it for us to state that we have carefully examined the record and we find no reason or ground to disturb the findings of fact and conclusions of law contained in the judgment. The findings of fact are based on the testimonial and documentary evidence submitted. The claim that the facts appearing in the record are not stated, or that the requirements of due process of law have been ignored, find no support in the record, it appearing that every opportunity was afforded petitioner to present its side.

The judgment is, therefore, hereby affirmed, with costs.
So ordered.

Paras, Pablo, Bengzon, Padilla, Montemayor; Reyes; Jugo and *Bautista Angelo, J. J.*, concur.
Mr. Justice Concepcion and *Mr. Justice Diokno* did not take part.

XIX

The People of the Philippines, Plaintiff, Antonio Espada, Offended-Party-Appellee, vs Pelagio Montasesa et al., Accussed-Appellants, G. R. No. L-5684, January 22, 1954.

1. CRIMINAL LAW; CIVIL LIABILITY OF THE ACCUSED; CASE AT BAR. — The defendants were found guilty of the crime of coercion and were sentenced either to return the articles in question (two bales of tobacco) to the complainant or to indemnify him of the same of P632.00 with subsidiary imprisonment in case of insolvency. In compliance therewith, the accused delivered to the provincial sheriff two bales of tobacco but in spite of this the provincial sheriff levied upon certain real properties of the accused. The accused claimed that tobacco is a fungible thing and that in accordance with article 1593 of the Civil Code, the obligation of one who receives money or fungible things is to return to the creditor the same amount or thing owned of the same kind or specie and quality. *Held*: The civil liability of the accused-appellants, in the case at bar, is not governed by the Civil Code, as contended, but by Articles 100-111 of the Revised Penal Code. In accordance therewith, the sentence is for the return of the very thing taken, *restitution*, and if this can not be done, for the payment of P600 in lieu thereof, *reparation*. This amount represents the value of the two bales of tobacco taken, at the time of the taking, and this value was fixed by the court presumably in accordance with the evidence adduced during the trial.

2. IBID; IBID; RESTITUTION OR REPARATION AS THE CIVIL LIABILITY OF THE ACCUSED IN CRIMES AGAINST PROPERTY. — The purpose of the law is to place the offended party as much as possible in the same condition as he was before the offense was committed against him. So if the crime consists in the taking away of his property, the first remedy granted is that of restitution of the thing taken away. If restitution can not be made, the law allows the offended party the next best thing, reparation .

3. IBID; IBID; REPARATION MAY NOT BE MADE BY THE DELIVERY OF A SIMILAR THING. — Reparation may not be made by the delivery of a similar thing (same amount, kind or species and quality), because the value of the thing taken may have decreased since the offended party was deprived thereof. Reparation, therefore, should consist of the price of the thing taken, as fixed by the court (Art. 106, Revised Penal Code).

4. IBID; IBID; AMOUNT TO BE PAID TO THE OFFENDED PARTY AS REPARATION; MONEY AS STANDARD OF VALUE. — In the case at bar, the court considered the payment of P600 as the next best thing, if the property taken could not be returned. No valid objection can be raised against this decision; money is the standard of value, and, except in financial crises, it does not fluctuate in value as much as merchandise or things, especially those bought and sold in the ordinary course of commerce.

Julio Siayoco for appellants.
No appearance for appellees in the Supreme Court.

DECISION

LABRADOR, *J.*:

In the above entitled criminal case, the accused-appellants were found guilty of the crime of coercion and were sentenced by the Court of Appeals, as follows:

> "x x x the penalty is increased to four (4) months and one (1) day of arresto mayor, and that appellant should also be sentenced either to return the articles in question to the complainant or to indemify him in the sum of P632.00, with subsidiary imprisonment in case of insolvency, x x x."

When the case was returned to the Court of First Instance for the execution of the above sentence, said court issued an order of execution for P600, the value of two bales of tobacco obtained by the accused from the offended party. The provincial sheriff levied upon certain real properties of the accused Paulino Dumagat to secure the payment thereof, notwithstanding the fact in compliance with the judgment, the accused had delivered to him (the sheriff) two bales of tobacco. So the accused presented a motion in court praying that the order of execution be set aside. The offended party opposed the petition, and the court sustained this opposition, denying the petition to set aside the order. Against this order of denial, the accused have prosecuted this appeal.

In their brief, the accused claim that tobacco is a fungible thing and that, in accordance with Article 1593 of the Civil Code, the obligation of one who receives money or fungible things is to return to the creditor the same amount of the thing owed of the same kind or species and quality.

The civil liability of the accused-appellants, in the case at bar, is not governed by the Civil Code, as contended, but by Articles 100-111 of the Revised Penal Code. In accordance therewith, the sentence is for the return of the very thing taken, *restitution*, and if this can not be done, for the payment of P600 in lieu thereof, *reparation*. This amount represents the value of the two bales of tobacco taken, at the time of the taking, and this value was fixed by the court presumably in accordance with the evidence adduced during the trial.

The purpose of the law is to place the offended party as much as possible in the same condition as he was before the offense was committed against him. So if the crime consists in the taking away

of his property, the first remedy granted is that of restitution of the thing taken away. If restitution can not be made, the law allows the offended party the next best thing, reparation. The Spanish jurist Viada, commenting on this provision of the law says:

> "En las causas por robo, jurto, etc., en que no hayan sido recuperados durante el proceso los objetos de dichos delitos, be condenarse a los reos a su restitucion, o, en su defecto, a la indemnizacion correspondiente en la cantidad en que hayan sido valorados o tasados por los peritos; x x." (3 Viada 6).

Reparation may not be made by the delivery of a similar thing (same amount, kind or species and quality), because the value of the thing taken may have decreased since the offended party was deprived thereof. Reparation, therefore, should consist of the price of the thing taken, as fixed by the court (Art. 106, Revised Penal Code).

In the case at bar, the court considered the payment of ₱600 as the next best thing, if the property taken could not be returned. No valid objection can be raised against this decision; money is the standard of value, and, except in financial crises, it does not fluctuate in value as much as merchandise or things, especially those bought and sold in the ordinary course of commerce. In any case, the judgment of the Court of Appeals ordering restitution, or the payment of the value of the property taken, is now final and executory and can no longer be subject to modification.

The appeal is hereby dismissed, with costs against accused-appellants.

So ordered.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo and *Bautista Angelo, J. J.*, concur.

XX

Re: Transfer Certificate of Title No. 14123, *Tirso T. Reyes, as guardian of the minors, Azucena, Flor-De-Lis and Tirso, Jr., all surnamed Reyes y Barretto, Petitioners-Appellees versus Milagros Barretto-Datu, Oppositor-Appellant, G. R. No. L-5549, February* 26, 1954.

1. FINAL JUDGMENTS; DIFFERENT WAYS OF ATTACKING THEIR VALIDITY. — Under our rules of procedure, the validity of a judgment or order of the court, which has become final and executory, may be attacked only by a direct action or proceeding to annul the same, or by motion in another case if, in the latter case, the court had no jurisdiction to enter the order or pronounce the judgment (Sec. 44, Rule 39 of the Rules of Court). The first proceeding is a direct attack against the order or judgment, because it is not incidental to, but is the main object of, the proceeding. The other one is the collateral attack, in which the purpose of the proceedings is to obtain some relief, other than the vacation or setting aside of the judgment, and the attack is only an incident. (I Freeman on Judgments, Sec. 306, pp. 607-608.) A third manner is by a petition for relief from the judgment or order as authorized by the statutes or by the rules, such as those expressly provided in Rule 38 of the Rules of Court, but in this case it is to be noted that the relief is granted by express statutory authority in the same action or proceeding in which the judgment or order was entered. In the case at bar, we are not concerned with a relief falling under this third class, because the project of partition was approved in the testate proceedings in the year 1949, whereas the petition in this case is in a registration proceeding and was filed in the year 1951.

2. ID.; ID.; CASE AT BAR. — In the case at bar, the respondent Lucia Milagros Barretto is objecting to the petition by the second method, the collateral attack. When a judgment is sought to be assailed in this manner, the rule is that the attack must be based not on mere errors or defects in the order or judgments. There and there alone can it meet with any meaand void, because the court had no power or authority to grant the relief, or no jurisdiction over the subject matter or over the parties or both. (Ibid. Sec. 326, p. 650).

3. ID.; ID.; PRINCIPLES GOVERNING COLLATERAL ATTACK. — In cases of collateral attack, the principles that apply have been stated as follows:

> "The legitimate province of collateral impeachment is void judgments. There and there alone can it meet with any measure of success. Decision after decision bears this import: In every case the field of collateral inquiry is narrowed down to the single issue concerning the void character of the judgment and the assailant is called upon to satisfy the court that such is the fact. To compass his purpose of overthrowing the judgment, it is not enough that he show a mistaken or erroneous decision or a record disclosing non-jurisdictional irregularities in the proceedings leading up to the judgment. He must go beyond this and show to the court, generally from the fact of the record itself, that the judgment complained of is utterly void. If he can do that his attack will succeed for the cases leave no doubt respecting the right of a litigant to collaterally impeach a judgment that he can prove to be void." (I Freeman on Judgments, Sec. 322, p. 642.)

4. ID.; ID.; WHEN LACK OF JURISDICTION OF THE COURT MAY BE A GROUND FOR COLLATERAL ATTACK. — The doctrine that the question of jurisdiction is to be determined by the record alone, thereby excluding extraneous proof seems to be the natural unavoidable result of that stamp of authenticity which, from the earliest times, was placed upon the record, and which gave it such uncontrollable credit and verity that no plea, proof, or averment could be heard to the contrary. x x x. Any other rule, x x x, would be disastrous in its results, since to permit the court's records to be contradicted or varied by evidence dehors would render such records of no avail and definite sentence would afford but slight protection to the rights of parties once solemnly adjudicated. x x x. (I Freeman on Judgments, Sec. 376, p. 789.)

Deogracias T. Reyes and *Virgilio Anz. Cruz* for appellant.
Calanog and *Alafriz* for appellee.

DECISION

LABRADOR, *J.*:

This is an appeal prosecuted in this Court against two orders of the Court of First Instance of Bulacan, issued in Case No. 116, G. L. R. O. Rec. No. 12908, requiring the oppositor-appellant Lucia Milagros Barretto to surrender Transfer Certificate of Title No. 14123, issued in the name of Bibiano Barretto, so that the same may be cancelled and a new one issued in lieu thereof in the name of Azucena, Flor-de-lis and Tirso, Jr., all surnamed Reyes, co-owners of an undivided one-half share, and Lucia Milagros Barretto as the owner of the other half. The circumstances leading to the issuance of the said orders may be briefly stated as follows:

Bibiano Barretto died on February 18, 1936, and in the testate proceedings for the settlement of his estate, Salud Barretto and Lucia Milagros Barretto were declared as his children and heirs. Lucia Milagros Barretto was at that time a minor, 15 years of age, and proceedings were instituted in the same court (Case No. 49881) for the appointment of her guardian. In the testate proceedings a project of partition was submitted, which was signed by Salud Barretto, Lucia Milagros Barretto (minor) and Maria Gerardo (surviving spouse), the latter signing "on her behalf and as guardian for the Minor, Milagros Barretto." This project of partition was approved by the court. It was filed in the Office of the Register of Deeds of Bulacan on May 22, 1940 but the transfer certificate of title over the property in question was never cancelled. His widow, Maria Gerardo, died on March 5, 1948, and in the testate proceedings for the settlement of her estate, Lucia Milagros Barretto submitted a will purporting to be of said deceased for probate, in accordance with which Maria Gerardo had only one child with the deceased Bibiano Barretto, namely. Lucia Milagros Barretto. This will submitted by Lucia Milagros Barretto was declared to be the last will and testament of the deceased Maria Gerardo.

(*Continued on page* 253)