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JUSTICE RAMON DIOKNO

To die in harness is the dream of many a successful man, as he looks back on a life devoted to useful activity, checkered with fortunes and misfortunes, enriched by adversity as well as prosperity. The harder a man has worked, the more difficult it is for him to stop working, as long as his physical and mental faculties will permit him. To such men, life is synonymous with activity; to be alive is to struggle; to stop working, to rest or retire, is to die a slow death.

Such a man was Ramon Diokno, lawyer, jurist, legislator, political leader. Born in an age that produced Quezon, Osmeña and Palma, coming from the province that gave us Laurel and Recto, Justice Diokno was indeed a product of his times. He came upon a troubled world, for the Spanish regime had just ended and the American experiment was beginning. There were innumerable opportunities for bright young men who could quickly bridge the gap between the Spanish and English language, between colonialism and democracy, between old world courtliness and new world initiative and brashness. Ramon Diokno was such a young man.

It was the era of nationalism. The talk of independence for the nation just liberated from Spanish rule filled the air. The martyrdom of Rizal, the exile of Mabini, the sacrifice of Bonifacio and Luna were newspaper headlines rather than pages of history, and the immediacy of their impact on the national character was visible and audible. The smoke of battle was still in the horizon, and the sound of marching feet were often heard in the night.

Ramon Diokno was swept into this current. First he was the young lawyer, then the young politician, then the young leader. He became secretary of the Philippine Assembly, a strategic position from which to keep in touch with the leaders of the nation, as well as with the Americans who were still laying out the nation's course.

He saw Osmeña rise to power, then Quezon. He noted the defeat and oblivion of a group of Filipinos who wanted permanent political ties with the United States, and he saw the mounting crescendo of his countrymen's demand for complete, absolute and immediate independence. He observed how political patronage was dispensed, and how political dog fights were conducted. When he could no longer resist the call, he entered the fray and was elected member of the Lower House.

But his fame and prestige as a corporation lawyer overshadowed for a time his political activities and he was appointed government corporate counsel. Here he was in his element, the fringe areas where government and business met, the enterprises and projects where government became big business and big business often determined political doctrines. He amassed such a wealth of information and experience about the operation and inner machinery of government corporations that his advice was often sought by both administration and opposition alike.

The call of politics became irresistible again, and in 1946 he ran for, and was elected, Senator. But he felt that his health was waning, and after his term ended he did did not seek reelection. Nevertheless, his country called him again, to another field, the Supreme Court. At an age, therefore, when other men would think of a life of retirement, of writing memoirs or of supervising a farm, Ramon Diokno accepted an appointment to the Supreme Court. He lived out the long twilight of his life, as he had lived the dawn, fighting for his principles, stubborn as only one can be whose conscience has been his guide, unafraid of unpopularity or political pleasure. In a precedent-setting decision, he voted against a group of vocal, well-organized young men and women who saw in him the chief obstacle to their admission to the Philippine Bar. It was his valedictory, and it is fitting that the younger generation should now address Justice Diokno:

Soldier, rest! thy warfare o'er,
Dream of fighting fields no more;
Sleep the sleep that knows not breaking,
Morn of toil, nor night of waking.

THE PHILOSOPHY OF SOME REFORMS INTRODUCED BY THE NEW CIVIL CODE *

BY JORGE BOCOBO

I feel highly honored by this opportunity to speak on "The Philosophy of some Reforms introduced by the new Civil Code." I can discuss only a few of the innovations, for lack of time. Far be it from me to claim that the new Code is flawless. I wish merely to explain the reasons which moved the Code Commission in effecting the changes. Such reasons may or may not be cogent, in the opinion of some who study this new body of laws, but I am desirous that you should know what was in the mind of the Commission in proposing these reforms.

While it is true that every legislation should conform to the social conditions of the country and the character and culture of the people, it is no less true that new laws which may seem too advanced or may seem inadaptable to the present-day situations have an educational value. For example, when the Roman legions extended the sway of the Roman Empire all over Europe, and as the then unprogressive peoples of Europe accepted Roman culture, they at the same time received Roman law as part of that culture, and thereby after the lapse of centuries, enhanced and improved their way of life. It was in this way that Roman law influenced the civil law countries, such as France, Portugal, Spain, Italy, Belgium and Holland. Even the so-called common law of England is of Roman law origin, with the exception of the feudal tenure of land, according to Bryce in his "Lectures on Jurisprudence."

Therefore, some of the innovations in the Philippine Civil Code, if they seem strange to many members of the legal profession, should not be judged severely. Those adopted from abroad are a part of the legacy of civilization, and although they may be apparently too advanced, they are intended to influence the thinking of our people, with a view to social betterment and reform. Whether one follows the juristic school of natural law, led by Grotius, which has done so much for freedom, or is inclined toward the historic school which under Savigny and Puchta has strengthened the influence of the Roman law on modern legislation, it would be unwise to disregard the educational and regenerative function of law. As Prof. Ludwig Enneccerus of the University of Marburg has said: the supreme goal of law "is the unfolding of our entire culture, the perfection of the life of men in society and mankind. For such purpose, there is need of a fixed arrangement which would make it possible and would set in motion a useful, moral and economic development of all the people which would educate them to fulfill their duties." (Enneccerus, Civil Law, vol. I, p. 85)

Let me assure you that the Code Commission has intended to effect reforms moderately and gradually, avoiding as much as possible

Again: as to property relations during marriage, two opposite radical changes. For instance, on the subject of abatement of public or private nuisance: in the United States and England, extrajudicial abatement of nuisance can be carried out without intervention of the authorities, but in the Philippine Civil Code there must be previous approval by the district health officer and the abatement must be executed with the assistance of the local police. (Arts. 704 and 706)

radical changes offered themselves as standard systems: the absolute separation of property as in the United States, and the absolute community, as in Portugal and Holland. The first reform seemed to have been urged by the modern education of the Filipino woman and her ancient significant role in the family, while the second change appeared to have been called for by the established custom among most Filipino families that the properties brought into or acquired during marriage are in actual practice merged. But the Commission chose the middle ground by continuing the old conjugal partnership but so modified as to protect the rights of the wife. Thus: the husband can no longer alienate or encumber the real property of the conjugal partnership without the wife's

(Address before the Second National Convention of Lawyers, December 28, 1953)

THERE MUST BE REESTABLISHED THE GOLDEN BALANCE BETWEEN IDEALISM AND MATERIALISM*

BY VICE-PRESIDENT CARLOS P. GARCIA

It is with a feeling of pride and cheerfulness that upon invitation of my admired friend and comrade in the Senate, Sen. Vicente J. Francisco, I have come to join you in the rejoicing of your graduation

VICE PRESIDENT CARLOS P. GARCIA

and congratulate you for work well done and to wish you success in the practical life. These congratulations and best wishes, I want to extend to your beloved Alma Mater, the Francisco College, which in a brief span of a few years has risen to be one of the outstanding law colleges of the nation. No doubt, the quality of the instruction, the prestige of its founder as one of the legal luminaries of the Philippines, and the accomplishments of the products of this school in the field of practice, constitute the vital factors of the spectacular growth of your Alma Mater.

And now, my friends, as I see before me a handsome group of young men and young women trained and primed for the legal

This speech was delivered by Honorable Carlos P. Garcia, Vice President of the Philippines and Concurrently Secretary of Foreign Affairs on the occasion of The Commencement Exercises of The Francisco College on March 30, 1954.

consent (art. 166), and in case of abuse of powers of administration of the conjugal partnership by the husband, the courts, on petition of the wife, may provide for a receivership, or administration by the wife, or separation of property (art. 167). Moreover, the wife may, during the marriage, and within 10 years from the transaction, ask the courts for the annulment of any contract of the husband entered into without her consent, when such consent is necessary, or any act or contract of the husband which tends to defraud her or impair her interest in the conjugal partnership. (art. 173). With these safeguards, the Commission believed that the conjugal partnership system was the best, for the present at least. Of course, by agreement in the marriage settlements, the future spouses may adopt either the absolute separation or the absolute community of property.

A third example of the policy of moderate reforms refers to the sale with *pacto de retro*. In view of the grave abuse of this contract, which had become an instrument of greed, oppression and exploitation, our first impulse was to abolish *pacto de retro* entirely. However, we feared that the lender would demand an absolute conveyance of the land by the borrower, who would, out of compelling financial necessity, have to yield. Therefore, the Code Commission also adopted a middle ground, by the repeal of the automatic consolidation of ownership in the vendee and by giving the vendor ample opportunity to repurchase the property (arts. 1606 and 1607)

II

However, whenever the Commission saw the wisdom of introducing a radical change, this was done. In such cases, we felt no qualms because our nation, which is civilized and progressive, should share the precious heritage of culture of the world. Besides, even when there were no precedents elsewhere, but the Commission originally saw the rightfulness of a reform, that body did not hesitate to introduce the changes. As the Commission in its report said: "Law should not be static but vital and ever-growing. While there ought to be stability of the laws, they ought not to be so inflexible as to destroy their very essence, which is the supremacy of right. When there is delay of justice, it is truly said that justice is denied, a grave situation indeed, but graver still is the perpetuation of injustice by the law itself, for then the courts can do nothing but apply the law. How often the courts have deplored their melancholy task of applying a legal provision which they knew ran counter to reason and equity! The commission does not, of course, presume to claim that every reform suggested is unerringly the just rule or norm, but each proposed change is an expression of the Commission's best judgment as to what is right and fair."

III

Permit me now to set forth the reasons for some of the sweeping and radical changes. The provisions fall under five categories: (1) damages in case of intentional injury when the act, though not against positive law, is contrary to morals, good customs or public policy; (2) independent civil actions; (3) strengthening of democracy; (4) implementation of social justice; and (5) supremacy of equity and justice as against technicality and legalism.

On the first subject, art. 21 of the new Civil Code provides:

"Art. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

It will be noted that no positive law has been violated. But there are three requisites: (1) damage; (2) the act must have been wilfull; and (3) that it must be contrary to good morals, good customs or public policy."

This reform has been adopted, with certain modifications, from art. 826 of the German Civil Code. If no law of the State has been broken, why should the defendant be liable for damages? This innovation is justified by the Code Commission thus:

"In the last analysis, every good law draws its breath of life from morals, from those principles which are written with words of fire in the conscience of man. If this premise is admitted, then the proposed rule is a prudent earnest of justice in the face of the impossibility of enumerating, one by

and business professions, as I see so many pairs of bright eyes sparkling with hope, and burning with enthusiasm, and I see by the mental eye so many thousands of the youth and flower of the land graduated in hundreds of schools and colleges throughout the country, I cannot help but be uplifted by the feeling that with such a great army of intellectuals, trained and specialized in different activities of human life, the march of the Philippines to new heights of achievements, to vaster fields of development, and to new depths of strength and power must be irresistible and irrepressible.

That is why hope has again flowered in my heart and in the midst of youth, its strange and magical alchemy restored to me at least momentarily the dreams, the visions, the idyllic hours of my youth. Thru contact with you, I hear the returning vagrant faith in youth knock at my heart. With you I seem to imbibe a new Elixir of life abounding in faith and hope and vision of a greater Philippines. With so many college graduates, with so many educated hands and hearts, we should be able to make the Philippine Republic the most enlightened, the most prosperous, the most progressive and the happiest democracy in the Far East. Indeed, we have a right to claim the honor to be the cultural metropolis of Southeast Asia.

My young friends, before you start in the thrilling adventure of life, as you sail farther and farther from the shores of theory into the oceanic vastness of practical life, as you more and more have to depend upon yourselves and draw from your own mental and spiritual reservoir to wrestle with the problems and difficulties of life, a few words of reminder may not be amiss. While your hope for success may be rosy, while your determination is aflame with the will to succeed and your enthusiasm ebullient with vitality and you feel invincible, yet you cannot indulge in the illusion that your diplomas will open to you with the least effort all the gateways leading to success. I would rather advise you to look at life realistically without in any way betraying your ideals. While you should hitch your wagon to the stars, never forget that you are walking on solid earth. While you should polarize your thoughts, your dreams, your emotions and your efforts to your idealism, you should never forget that you are dealing with hard earth-bound realities. You should be realistic enough to recognize that in the sea of life, there are currents and cross-currents. You should philosophically accept the fact that in this grand adventure of life you sometimes have to pass through the Sargasso Sea of doubt and hesitation. You have to navigate over malestroms of adversity. You have to face storms and tempests, and now and then you will sojourn on Calipso island where life is easy and soft to make you forget and to lull you into vicious inactivity or inertia.

But these warnings are not intended to paint a somber picture of the life ahead to discourage the young travelers of life. Rather, they are intended to spur you to action because these things, these hazards and these problems, are simply the tests and trials designed by Divine Providence to be overcome and to be surmounted before the reward of success is attained. It is one way of telling you that nobody can win success as a gift handed to him on a silver platter. You have to work for real success; you have to sow in energy and effort in thought and vision if you want to reap success in life. You should by now realize that you shall not win where you did not sow. Those of you who indulge in the illusion that you can win your battle in life by relying on your wealth, inherited or acquired, those of you who indulge in the illusion that such qualities as honor, integrity, courage, honesty, intellectual brilliance or moral strength can be purchased with money should start reexamining such ideas in the light of the rediscovery by science of the eternal, inalterable, inescapable and exact cosmic law of Cause and Effect.

This law, if I may superficially state it, commands that nothing exists in life, nothing happens in life without a cause. Nothing can intervene to prevent cause to produce its effect. There is nothing that man can make to avoid the consequences of his act. That is what Jesus Christ meant when he said in the parable of the Sower: "Thou shalt reap that which thou soweth." Thus, under this infallible and inexorable law of Cause and Ef-

one, all wrongs which cause damage. When it is reflected that while codes of law and statutes have changed from age to age, the conscience of man has remained fixed to its ancient moorings, one can not but feel that it is safe and salutary to transmute, as far as may be, moral norms into legal rules, thus imparting to every legal system that enduring quality which ought to be one of its superlative attributes."

The origin of this principle is the doctrine advocated by some German jurists, such as Adickes, Bullow, Menger, Erlich, Wurzel, and Kantsrowicz. These legal philosophers give the judge the widest freedom to follow his reason and conscience, so long as he does not act contrary to positive law. According to Adickes, the value of positive law is only as a limit beyond which the judge can not go in arriving at his decision, which is the fruit of his own reason applied to the relations of life, provided it is not opposed to positive law.

The reform effected in said art. 21 of the new Civil Code is not at all strange if we bear in mind these words of Prof. Clemente De Diego: "La idea de la justicia es el brote de todas las manifestaciones del Derecho, como la belleza lo es de todas las artisticas, la verdad de todas las cientificas y el bien de todas las eticas." (Fuentes del Derecho Civil Español, p. 155)

Art. 21 may also be justified by these words of Eugen Huber, author of the Swiss Civil Code of 1907: "Moral law has in law such a penetrating and valuable significance that we can not speak of positive law without referring to moral law. The moral law and the law of the State have the same object and purpose, and together they govern human aims and conduct, which constitute human society itself. x x x Human community is the field in which morality and law act as imminent ideas in our rational conscience x x x. It is equally possible to consider morality as included in law and to consider law as included in morality." (Law and Its Realization, Vol. I, pp. 41-42). Later on he says that the essence of modern culture "is the coincidence of the law with the moral law." (p. 79).

The effect of the innovation in art. 21 is to give relief for every intentional wrong which causes damage, even if no statute has been violated. The Code Commission in its Report gives this example to illustrate art. 21: "A" seduces a 19-year old daughter of "X". A promise of marriage either has not been made or can not be proved. The girl becomes pregnant. But there is no crime, as the girl is above 18 years of age. Neither can any civil action for breach of promise of marriage be filed. However, under the new Civil Code, she and her parents may bring a civil action for damages.

As for public policy, this is not found in the source, art. 826 of the German Civil Code. But public policy was added in Art. 21 of the Philippine Civil Code because it is of supreme concern in any country. If a man in defiance of a declared policy of the State causes loss or damage to another, he (the former) should pay indemnity, though his act is not contrary to a statute. Let us take the public policy of social justice, which is consecrated in the Constitution. If a rich man, by means of a legal technicality discovered by his lawyer, exploits a poor man without violating the law, the victim, according to art. 21, may demand damages.

IV.

The second reform, which creates independent civil actions, departs from well-established ideas in the Philippines. Some of these civil actions are similar to the Anglo-American institution called "tort." Others are of a different character, which will be explained later. This civil action is separate and independent from any criminal action. Here are some cases similar to "tort."

(1) Art. 33, authorizing an independent civil action for defamation, fraud or physical injuries. These actions correspond, respectively, to the Anglo-American torts called libel or slander, deceit and assault and battery.

(2) Art. 32, which creates a civil action, separate and distinct from the criminal action, in case of violation of individual liberties, guaranteed by the Constitution, such as freedom of religion, speech, and of the press, freedom from illegal detention, freedom from unreasonable searches, freedom of suffrage, etc.

(3) Art. 26, which establishes a separate civil action to protect one's privacy and private life, etc.

(4) Art. 27, which gives a right of independent civil action

fect, nobody can do wrong without getting ultimately the retribution for his wrong act. Nobody who does what is right, what is just and what is kind will ever fail to receive the reward for such good acts. In the light of this law, he who in his laziness, weakness, frivolity, or thoughtlessness does nothing will receive nothing. Each will harvest the kind, the quality and the quantity of that which he sows. Seen with the eye of the spirit, you will find that this law is a complete manifestation of the Infinite Justice and love and wisdom of Divine Providence. Obedience to this law is the secret of all successful and truly great men in all times and climes, and disobedience thereto is the explanation of all failures.

So, the key to your success lies in yourself because deep in every man's conscience, whether he is educated or not, God placed the knowledge and the conscienciousness of that which is good and that which is bad, of that which is right and that which is wrong. He placed in every man's conscience; in other words the consciousness of the law of Cause and Effect. Divine Providence has also endowed every man with freedom of will. This freedom man can exercise to do either that which his conscience tells him is good or to do that which his conscience tells him is bad. Man being a free agent in the exercise of his freedom of will must therefore, be held responsible for his choice. So, man is the master of his own destiny under this Divine Law of Cause and Effect, and this is the wonderful thing that you have. You are masters of your own destiny.

Some people try to blame others for any misfortune, bad luck or failure that befall upon them. Some men who lack faith in the infinite justice of God come to the hasty decision that if he can make a million by committing one or two acts of dishonesty or injustice, it is worth it. Some men become cynical and say "what is the use of honor and integrity and honesty and for that matter all the virtues exalted by the moral code if after all you starve and languish in misery and penury. Make me a millionaire and I do not care what the world thinks of me."

This is an evidence of man's blindness and ignorance of the law. This kind of thinking has made the world grossly materialistic. This kind of thinking made the world forget the idealism in whose infinite womb were created the wondrous things of beauty, the worthy dwelling of truth. This materialistic philosophy of life of putting money above everything perhaps has multiplied the material riches of the world. It may have built great and massive buildings and palaces, great industrial plants, irrigation systems, gigantic transportation companies, etc., but it has not, in my humble view, increased the happiness of humanity. This sordid materialism has produced more greed and concupiscence. It has corrupted governments and administrations, prostituted the administration of justice, and swelled criminality. It has caused moral disintegration in almost all countries. It resulted in devastating wars among rich and powerful nations; it has destroyed great and magnificent monuments of art and culture for the mad desire for wealth and power. It has thrown the world into chaos, conflicts, and turmoils for the mad desire of the rich and powerful men and nations to monopolize the trade, the natural resources and the markets and the power potentials of the earth. In short, this materialistic philosophy in its mad desire to amass the happiness of the world has only succeeded to create and multiply the unhappiness of humanity.

My message to the graduates of the Francisco College, therefore, is that the time has come for a change. The time has come to restore idealism to its proper place in the scheme of life. I call upon all graduates, nay, upon all institutions of learning to spearhead our fight back to idealism. There must be reestablished the golden balance between idealism and materialism. The happiness of humanity lies in the golden mean between materialism and idealism. You cannot overemphasize the one at the expense of the other without upsetting the natural order of things. The reality of life, in my humble opinion, is an algebraic equation, in which consist the materialistic and the idealistic sides must be balanced.

Yes, money can buy you bread and meat for the body, but it cannot buy the spiritual stream of thoughts and emotions that flow in the human soul. Money may build great and proud buildings and

against a public servant or employee who refuses or neglects, without just cause, to perform his official duty.

(5) Lastly, art. 34 which creates a civil suit against a policeman who refuses or fails to render aid to any person in case of danger to life or property.

In all the five foregoing cases, the act is intentional and therefore a criminal prosecution might be instituted under certain circumstances. But a civil action may be brought independently, even after the accused has in the criminal case been acquitted. The new Civil Code thus upsets the doctrine of our Supreme Court in the leading case of Almeida v. Abarao, 8 Phil. 178 decided in 1907, which held that acquittal in a criminal case bars every civil action for damages.

There are powerful reasons why an independent civil action should be allowed in the five instances mentioned. Here are some:

First, conviction in a criminal case requires proof beyond reasonable doubt, while in a civil case, preponderance of evidence is enough on which to base judgment for the plaintiff. There have been countless cases where the accused in a criminal case has been acquitted, because of reasonable doubt, although a preponderance of evidence showed that the act had been committed by the accused In such cases, there has been a gross miscarriage of justice, because under the old law the aggrieved party was precluded from subsequently suing for damages in a civil case.

Secondly, not infrequently, the Fiscal under political pressure or other undue influence, would not start criminal proceedings. Or he might have been too busy with other cases. So the new Code assures the injured person an opportunity to prove his case by a preponderance of evidence in a civil case, and thus obtain relief.

Thirdly, our people have been habituated to rely on the public prosecutor to obtain justice. This has smothered civic spirit, self-reliance and individual initiative. One of the sources of strength of democracy in England and America is that the citizens have been accustomed to resort to civil actions for tort, such as assault and battery, false imprisonment, slander, deceit, and other intentional wrongs. Similarly we should educate our people to vindicate their rights in a civil rather than in a criminal action, and thus assert their individual rights, so they do not have to depend on the Fiscal.

Thus far we have discussed civil actions where the defendant acted intentionally. But there is another independent civil action, called quasi-delict in the new Civil Code, based on defendant's negligence. It is the Anglo-American tort for negligence. It is also the old civil action for fault or negligence under arts. 1902 and 1903 of the former Civil Code. The new Code in art. 2177 incorporates the doctrine laid down by the Philippine Supreme Court in Barredo v. Garcia and Almario, 73 Phil. 607, decided in 1942. Said art. 2177 provides:

> "Art. 2177. Responsibility for fault or negligence under the preceding article is entirely separate and distinct from the civil liability arising from negligence under the Penal Code. But the plaintiff cannot recover damages twice for the same act or omission of the defendant."

This Philippine decision cited Maura and other jurists, as well as the Sentence of the Supreme Tribunal of Spain of October 21, 1910, where the court held the defendant liable for damages under arts. 1902 and 1903 of the Spanish Civil Code, for the death of Izquierdo, due to defendant's negligence, although there had been a previous acquittal in a criminal prosecution. It will be seen that on this question the Spanish Supreme Tribunal was ahead of our highest court by at least 32 years. Other Spanish decisions that might be added are the Sentences of Nov. 13, 1934, and Feb. 4 1943.

The Code Commission, in embodying in the new Civil Code the principle enunciated in Barredo v. Garcia and Almario, was moved by the same reasons already set forth concerning intentional wrongs.

Next, I wish to discuss two civil actions created by the new Civil Code. They are found in arts. 29 and 35.

Art. 29 provides:

> "Art. 29. When the accused in a criminal prosecution is

magnificent palaces, but it cannot furnish the genius of the architects nor supply the rhythm and the symmetry of beauty. These are things of the soul. Money can build the Vatican, the White House or the palace of Versailles, but it cannot furnish the brains, the talent and the vision of the great popes and presidents that guided the destiny of nations. These again are things of the spirit. Money can buy the machinery, the equipments and the gadgets for gigantic industrial or commercial organizations but it cannot give the executive ability, the leadership and the dynamism of the men that run them. These are things of the soul. Money, considered by the materialists as omnipotent, has not the power to produce a single petal of the lily that blooms in your garden; it cannot create a single streak of the symphony of colors of a magnificent sunset or a gorgeous sunrise. It cannot create the inspiration of a Shakespeare, the supreme sacrifices of a Rizal or the great thoughts of a Mabini. Money can build magnificent galleries and great museums but it is impotent to produce the "touch of Eternity" of DaVinci, Michael Angelo, Luna or Amorsolo. Money is impotent to produce the genius of Einsteine, Eddison and Marconni. These are things of the spirit, consigned by the all-wise Creator to the sacred vaults of the ideal realm.

Thus, such ideal things as honor, truths, justice, honesty, integrity, love, faith and hope are the stuff of which idealism is made. Their dynamism is infinite, their vitality is eternal. They are the qualities of character which should be our constant endeavor to acquire as part of ourselves. These are the things that really contribute to man's happiness even greatness. These are the enduring things that no thief or robber can steal or rob from you. These are the things that will last long after millionaires shall have been forgotten, long after industrial and commercial empires shall have crumbled into "the tongueless silence of the dreamless dust," long after mighty men shall have returned to common clay.

As a parting thought, young friends of the graduating classes, let me return to our country. I have expressed a fervent hope in the beginning of my remarks that by the power of your education, you can make the Philippines the most enlightened, the most prosperous and the happiest democracy in the Far East. Your success is the success of our nation; your happiness is the happiness of our native land. You have, therefore, a stake in our Republic in the same way that our country has a stake in you. The prestige of your Alma Mater, the pride of your school, is involved in every act of yours as professionals. You would want, therefore, to build a character where idealism and materialism are established in a golden balance upon which you will build your mansion of success. You will not forget that talent without character is like the beauty of a woman without virtue, one element more for prostitution. You will not forget that the most precious gift that you can give to your country and the best legacy that you can leave to the generations and generations of Filipinos yet sleeping in the womb of Time is a good character. The strongest rampart of freedom, the impregnable bulwark of justice and the fountainhead of invincible nationalism is the strong noble character of the people. I thank you.

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acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious.

"If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground."

This article does not refer to cases of independent civil actions already considered, such as arts. 33, 27, etc. This provision (art. 29) covers most crimes, such as roberry, theft, arson, murder, rape, seduction, etc. There have been innumerable trials for these crimes, wherein the government failed to prove the crime beyond reasonable doubt, so the accused was acquitted. Before the new Civil Code, this acquittal closed the case definitely, but since the new Code went into effect, the aggrieved party may bring a civil action for damages, in which he may prove the act by a preponderance of evidence. This art. 29 prevents injustice brought about by the rule that a crime must be proved beyond reasonable doubt. The new provision is fair, because proof beyond reasonable doubt should be only for the purpose of sending the accused to prison, but why should the plaintiff be deprived of indemnity when he can show the act by a preponderance of evidence? But I am afraid the legal profession has not yet learned to make use of this article.

Another innovation that should be resorted to by the legal profession is found in art. 35, which provides:

"Art. 35. When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but the justice of the peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting attorney refuses or fails to institute criminal proceedings, the complainant may bring a civil action for damages against the alleged offender. Such civil action may be supported by a preponderance of evidence. Upon the defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complaint should be found to be malicious."

Very often the justice of the peace finds no reasonable grounds to believe that a crime has been committed, or the Fiscal refuses or fails to institute criminal proceedings. But the justice of the peace or Fiscal may be mistaken in weighing the evidence, or he may be under political pressure, or he may be acting under improper motives. Why should the aggrieved party be denied justice through the fault of the justice of the peace or the prosecuting attorney? All that the injured party wants is indemnity, so he should be allowed to bring a civil action and prove his case by a preponderance of evidence. Art. 35 authorizes him to bring such civil action. The bond referred to forestalls groundless civil suits.

V

I come now to two of the new provisions designed to strengthen democracy.

First, there is art. 358 which provides:

"Art. 358. Every parent and every person holding substitute parental authority shall see to it that the rights of the child are respected and his duties complied with, and shall particularly, by precept and example, imbue the child with high mindedness, *love of country, veneration for the national heroes, fidelity to democracy as a way of life*, and attachment to the ideal of permanent world peace."

All parents, teachers and professors of minors in public and private schools, colleges and universities are thus obliged to teach their pupils and students "love of country, veneration for the national heroes, *fidelity to democracy as a way of life*, and attachment to the ideal of permanent world peace."

I am afraid this legislative mandate is not being adequately implemented. There should be in all public and private schools, colleges and universities a special and separate course on democracy that must be taken by every student under 21 years. In such a course, great stress should be laid on the advantages of democracy as against Communism, Fascism, and every form of totalitarian regime. In the fight against Communism, our complacency is fatal, because we have to face the impassioned and vehement zeal of Communist adherents. There is need of kindling in the hearts of our people, especially of the youth, the fire of devotion to democracy. This can not be done by generalities. We must thoroughly teach the virtues of freedom and democracy.

In the same course on democracy, our struggles for freedom specially since the time of Padre Burgos, should also be presented, together with the lives and teachings of our national heroes. It is shocking that only very few university graduates are thoroughly acquainted with the writings of Rizal, though they constitute an essential part of our patriotic gospel. Neither are the writings of Burgos, Marcelo H. del Pilar, Lopez Jaena, Antonio Luna, Mabini, and other patriots known to many. It was realization of these sad facts that art. 358 of the new Civil Code has been drawn up. It is intended thereby that parents, teachers and professors should feel the solemn responsibility of transmitting to the youth our sacred heritage of freedom and love of country. It is alarming to contemplate the sad and tragic spectacle of indifference toward the history of our people's fight for freedom. This apathy threatens to extinguish the torch of liberty, instead of our handing it with greater glow and radiance, to the new generation.

Another provision intended to fortify democracy is art. 32 which ordains:

"Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

(1) Freedom of religion;

(2) Freedom of speech;

(3) Freedom to write for the press or to maintain a periodical publication;

(4) Freedom from arbitrary or illegal detention;

(5) Freedom of suffrage;

(6) The right against deprivation of property without due process of law;

(7) The right to a just compensation when private property is taken for public use;

(8) The right to the equal protection of the laws;

(9) The right to be secure in one's person, house, papers, and effects against unreasonable searches and seizures;

(10) The liberty of abode and of changing the same;

(11) The privacy of communication and correspondence;

(12) The right to become a member of associations or societies for purposes not contrary to law;

(13) The right to take part in a peaceable assembly to petition the Government for redress of grievances;

(14) The right to be free from involuntary servitude in any form;

(15) The right of the accused against excessive bail;

(16) The right of the accused to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witness in his behalf;

(17) Freedom from being compelled to be a witness against one's self, or from being induced by a promise of immunity or reward to make such confession, except when the person confessing becomes a State witness;

(18) Freedom from excessive fines, or cruel and unusual punishment, unless the same is imposed or inflicted in accordance with a statute which has not been judicially declared unconstitutional; and

(19) Freedom of access to the courts.

"In any of the cases referred to in this article, whether

or not the defendant's act or omission constitutes a criminal offense, the aggrieved party has a right to commence an entirely separate and distinct civil action for damages, and for other relief. Such civil action shall proceed independently of any criminal prosecution (if the latter be instituted), and may be proved by a preponderance of evidence.

"The indemnity shall include moral damages. Exemplary damages may also be adjudicated.

"The responsibility herein set forth is not demandable from a judge unless his act or omission constitutes a violation of the Penal Code or other penal statute."

The purpose of this article is to cultivate in our citizens an undaunted determination to guard their liberties guaranteed by the Constitution, without depending on the Fiscal. I have already said something on this point. But allow me to elaborate. In the heat of an election campaign, there are illegal detentions, unreasonable searches, prohibitions of political rallies, terroristic acts to prevent voting, and other abuses by order of public officials. Too often the Fiscal is under pressure, so he cannot file the complaint. It is thus necessary to give the aggrieved party the right to bring a civil action for damages. Our citizens should learn to make use of this right of action, not only to obtain indemnity, but also to help build up general respect for individual liberties.

VI

I come now to the provisions implementing social justice, which is a fundamental policy under the Constitution. One of the pillars of our Republic is equality before the law. Accordingly, the new Civil Code tries to lessen the danger of a situation in which, according to Lord Bacon, laws are like cobwebs," where the small flies are caught, and the great break through.

Art. 24 provides:

"Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection."

Examples where this article should be applied are: questions arising from contracts of rice tenancy, where many landlords try to exploit the tenant, and cases of usury.

Then we have arts. 1700 to 1703 which are self-explanatory.

"Art. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed shop, wages working conditions, hours of labor and similar subjects."

"Art. 1701. Neither capital nor labor shall act oppressively against the other, or impair the interest or convenience of the public.

"Art. 1702. In case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.

"Art. 1703. No contract which pratically amount to involuntary servitude, under any guise whatsoever, shall be valid."

Then, let me refer to arts. 1689-1699, intended to protect houselhelpers. The new Code requires the family head to furnish the houselhelper, free of charge, "suitable and sanitary quarters as well as adequate food and medical attendance" (art. 1690); if the houselhelper is under 18, he must be given an opportunity for at least elementary education (art. 1691); he shall not be required to work more than 10 hours a day, and he must be allowed 4 days' vacation a month with pay (art. 1695); there are other provisions in favor of houselhelpers. But this entire set of rules have not been enforced by the government. I respectfully invite the attention of the new administration to this grave situation. I say it is grave because every country is judged by the way it treats the poorest class. The legal profession, which stands for the supremacy and enforcement of the law, should also earnestly attend to this matter.

The main spring of the principle of social justice is to remove man's inhumanity to man. All sound and just legislation must be based on love of mankind. Often we lament with the poet Thernbury, "In a thousand pounds of law I find not a single ounce of love."

VII

Finally, permit me to discuss one of the most far-reaching reforms introduced by the new Civil Code. It is the adoption of provisions tending to uphold the supremacy of equity and justice against technicality and legalism. The new Code does its utmost to solve the age-old problem of justice and right as against injustice and wrong shielded by technicality and the letter of the law. The legal profession has been largely to blame for the perpetuation of technicality. It is strange and lamentable fact that equity as a system, as a separate body of rules, has not developed in Spain, as it has grown in England and the United States. This is indeed strange because Spanish law is a direct descendant of Roman law, where equity originated, while English law, which, though essentially based upon the Roman system — is further removed from it than Spanish law. The pronouncements by the *praetor*, who drew principles from the *jus gentium* and other sources, took away the injustices and softened the rigors of the Roman civil law. It was thus that the pretorian edicts became a body of equitable rules. A similar history took place later in England. Whenever the English common law resulted in an injustice, the English subjects complained to the King, who entrusted his Chancellor with the task of finding a rightful and just solution, disregarding the old English common law. This was why the Chancellor became known as the "keeper of the king's conscience." English equity jurisprudence was then transplanted to the United States.

But unfortunately, no such course of events took place in Spain. Hence, technicality and legalism have been more frequent in Spanish law than in Anglo-American law. This is manifest in the Spanish Civil Code. Spanish courts and writers have been helpless before the hard-and-fast and inflexible rules of the Spanish laws. So the Code Commission introduced many principles of equity jurisprudence found in the English and American system. Let me name some of them:

1. Reformation of instruments. Arts. 1359-1369.
2. Quieting of title. Arts. 476-481.
3. Implied trust. Arts. 1447-1457.
4. Recovery upon substantial performance of a contract. Art. 1234.
5. Recovery in case of unjust enrichment. Art. 22.
6. Reduction of contractual penalty if it is iniquitious or unconscionable. Art. 1229.

By the elimination of technicality, the new Code intends to avoid injustice which is brought about by what Shakespeare called "the nice sharp quillets of the law."

In conclusion, the Civil Code is the first endeavor, under the Philippine Republic, to codify private substantive law. With all its defects, as every human effort, it may in all modesty be claimed to be an improvement on the Spanish Civil Code. Perhaps it could have been prepared much better, but this has been said of the French, Italian, Argentinian and other civil codes; the same can be said even of the comparatively recent German and Swiss Civil Codes, though these two are thought by many to be among the very best in the world. I hope that in the course of the years, through the noble open-mindedness of the legal profession, the philosophy of the reforms introduced by the new Civil Code will be better understood. Then, I make bold to say perhaps its role as a transmitter and transmuter of the heritage of Roman civil law and English common law, and as an interpreter of our nation's aspirations for freedom and justice, will be more clearly discerned. Thank you.

The objective of a legal education is primarily to train the student to meet and solve the problems which constantly confront the lawyer and the judge. This requires of him a capacity to think hard and straight, a settled determination to accept the ipso dixit of no man or group of men, the ability to make a searching analysis of a complicated state of facts which will disclose the legal problem involved therein, a resourceful imagination to discover possible solutions, the patience to investigate their validity and practicability, and the courage to form and act upon his own considered judgment.

THE PRESENT LABOR UNREST

BY ATTY. GEMINIANO F. YAPUT

There are two conflicts raging over the nation today.

The first of these conflicts is a political struggle between the two major political parties in the Philippines for control over our reins of government. Altho politics is a very interesting topic and has the nation wholly engrossed in its many intricacies at the present moment, I have chosen not to comment on it today. In the first place, I confess to my non-partisan status in this quarrel. As you can readily see our buses carry passengers impartially. regardless of party affiliation.

In the second place, it will answer no valuable purpose for me to comment one way or the other. The entire nation will speak on this subject at the polls twelve days from now and resolve this issue more decisively than I can ever attempt to do so.

Suffice it for me to say here that I am confident that the final outcome of this struggle will be the ultimate triumph of the Filipino nation. I have great faith in the wisdom of our people.

The second conflict which rages today and about which I wish to speak a little more at length, is an economic struggle. Pitted against each other are labor and capital — the two strongest mainstays of any progressive economic structure. It is a struggle which has of late successfully vied for prominence with politics in our national news.

I am confident too, about the final outcome of this conflict and that it will be resolved with as much satisfaction as the political struggle I have just mentioned. The danger, however, lies in the fact that too much damage may be inflicted upon our economic and industrial growth, which are the only bright hopes of our future survival as a nation, before we realize the folly of this senseless conflict.

I consider it indeed the greatest folly we can indulge in for labor and capital to be bickering at this stage of our independent national life. It may stunt our economic and industrial growth which we all so urgently need to accelerate.

Frankly, I do not see what there is to bicker about. Two dogs will quarrel over a bone. In this industrial dispute which we are slowly precipitating into a full scale industrial war, what is the bone of contention? Is it wealth? We do not have that in the Philippines today. We have not produced enough wealth over which we should fight! Is it a case of justice where the oppressed and exploited rise up to vindicate their wrongs? I do not believe so. At least, not in industry or business. The Filipino workingman, compared to the rest of his Oriental brothers, receive higher wages and are much better protected in their rights by legislation even before the passage of our more recent labor laws.

Is it perhaps a striving for the ideal — the ideal in working conditions, in wages, in standards of living? If it is, then it is foolish to fight each other. Not only labor but capital, too, have still a long way to go to attain the ideal. Capital in the Philippines still has to find solid footing, to grow and become strong. Capital in our country is weak and timid and is still in its first stages of growth. That is why we have tax exemptions for new industries. That is why we have governmental agencies to help what little capital venture we have circulating around. That is why we are sending out frantic invitations to foreign capital to please come in and start the ball rolling.

Then, too, this economic struggle may be just an experiment in democracy. If it is, I will agree that is worth while going through. My only admonition is that we go slow about it so as not to cause an explosion in the laboratory. I am certain we do not wish that to happen.

There is danger for me to be misunderstood as I am too well identified with one of the contending parties in this conflict. Permit me to make clear my stand.

I am for unionism. I wish to see free unionism grow and attain full stature in the Philippines so it can contribute its indispensable share in the work of building a free society where economic democracy prevails. I pledge to do my utmost to help any true exponent of free

* This speech was delivered at Vigan, Ilocos Sur, before the Rotarians of the province on October 29th, 1953.

BACK TO LAW SCHOOL

BY ATTY. FRANK W. BRADY

There comes a time in the life of every lawyer when he should return to law school to refresh his mind, to catch up with new legislation and to familiarize himself with the new decisions of our appellate courts. In my case, I returned to law school twenty years after graduation. No lawyer, no reputable lawyer who is conscious of his oath of office has the right to hold himself out to the general public with a decadent knowledge of the law. And lawyers, like all aging mortals, *forget*.

Last November, I enrolled in the Francisco Law School as a "regular" student in the second semester of the senior class. Dean Vicente J. Francisco, bewildered and nonpulsed, accepted my application with hesitation, wondering why a practising attorney in good and regular standing with twenty years' active practice, should ever wish to go back to law school. "Wouldn't you prefer to teach law, Mr. Brady?", he eagerly inquired, as he still hesitated to approve my application. "No!", was my answer, "I want to review — I have a great urge to go back to formal classes and *review*. It *cannot* do me any harm."

So the next day I was back in school attending regular classes as a senior in a class of about thirty students. It was to be one of the greatest experiences of my life as a lawyer. My gray hair attracting the attention of one of my "classmates" caused him to ask another, "Hoy, sino ba yong matandang americano?" Hushing him, the second answered, "Sh-h-h, si Atornee Braadee yan, at pilipino citizen." "Ano ang ginagawa niya dito?", the first student continued the inquiry. "Hoy, huag kang maingay, nagrerebieu siya dito." And the inquirer gasped, "Siya nga ba?"

I found the classes most interesting. My classmates though youngish were solemnly steeped in their studies and their future, a congenial relationship existing between professors and students that was lacking in the classroom of twenty years ago. The anticipated, nerve-racking system of teaching law by class recitation has given way almost entirely to a frank discussion of the law and the leading cases in a paternalistic way. All students rise when the professor enters and leaves the classroom, the same respect accorded to a judge in a court of justice.

Though it is true that the type of English spoken in class today has retrogressed somewhat, this circumstance, in my opinion, is more than offset by the self-assertiveness of the modern student. He takes no nonsense from anybody. For instance, upon being asked for his authority on a point of law, one of my classmates shot right back to the professor, "Common sense!"

What prompted me to return to law school? What made me go back to daily classes for an entire semester from 5:30 to 8:30 every evening? The answer, the truth is: an unquenchable thirst to return to the source, the fountainhead, of the little law that I know. While self-study is most commendable, it is as rare as hen's teeth. There are not too many Lincolns.

Review, and by this I mean *formal* review, keeps a lawyer young in the profession. For one thing, it enables him to view the whole field of the law in retrospect, to concentrate and specialize in his own chosen branch of the law; and, above all, it teaches him the most important thing a lawyer can ever learn — *humility!* For regardless of any measure of success that he may have attained in his professional career, a return to school is an expression of humbleness — that he does not know all the law and, what is equally important, that he wants to know more than what he presently knows.

Review brings us in contact again with the fundamentals of the law and, as Judge Harold R. Medina has aptly stated, "Fundamentals are truly wonderful things, for they always turn the scales."

A refresher student also learns another lesson of far-reaching effect, i.e., that the law is a living institution with *growth*. By returning to classes, he can actually measure such growth in his own case with fair accuracy. He learns, too, that he who does not grow with the law will soon be outgrown by the law and left helplessly behind in the relentless growth of the law.

How many lawyers can truthfully say that they have *studied* the new Civil Code? How many have actually read that codification once

(*Continued on page* 211)

labor unionism who possesses demonstrated qualities of selflessness, dependability and honesty of purpose. But it must be unionism that sees and recognizes more than just its own needs. It must be leadership that is responsible and willing to work for the interests of more than just its own people.

The late President Manuel Quezon who saw far ahead of his time had occasion to warn against the brand of leadership which we have prevalent in labor unionism today. He said, "Let us beware of men who deliberately, for political or selfish aims, stir up discontent among the masses. They preach subversive doctrines, speak of evils and abuses that do not exist, or magnify those which are often inevitable in democracies. These men are the worst enemies of society, more dangerous to the community than ordinary criminals. They have no sympathy for the people but are mere self-seekers, intent only in securing either pecuniary or political advantages for themselves. If as a result of their preachings disorders occur, they cowardly disclaim all responsibility for that which none other than themselves had brought about. He who tries to curry favor with the masses by appealing to the passions of the people, stirring up their prejudices, or capitalizing discontent or human suffering is unworthy of public trust." The words of President Quezon never rang truer than they do now.

Men who would exploit the opportunities for self aggrandizement which this present conflict has provided will advance as argument to the principle also laid down by President Quezon in the same speech I have just quoted. It is couched in the following words: "I am a firm believer in the institution of private property. I contend, however, that whenever property rights come in conflict with human rights, the former should yield to the latter. It is thus that we may draw the line between labor and capital and erect an economic structure based on the principle that human life is the measure of all other values, that considerations of possession and profit must give way to the supremacy of human existence."

The question now is this: In this present economic conflict which we are witnessing, have we run counter to this principle that "considerations of possession and profit must give way to the supremacy of human existence" thus bringing down upon our heads the present trouble we are in? I can say in all earnestness that we have not. We have not at any time, in our industries and business enterprises, sacrificed the supremacy of human existence to considerations of possession and profit. I believe that with the present plight our economy in it is quite difficult to find instances where profit was served at the expense of human dignity. On the contrary, we have many instances where considerations of profit and possession were sacrificed in the interest of the preservation of the human personality. Many of our new industries and business had to fold up because the supremacy of human existence had to be upheld. What capital has been doing is to stretch its capacity to sustain as much as it can the burden of human existence. Witness to this is the overstaffing prevalent in many of our industrial firms and commercial establishments. Industries are overmanned to absorb a little the burden of unemployment. Our greatest problem is still unemployment and not anything else.

But this does not go to the core of the present conflict. How serious is it really? According to press reports there have been to date six major strikes called. From official records no less than one hundred eleven (111) unions have filed strike notices against their firms with the Department of Labor. All of these within the short space of three months since the advent of Act 875, the Industrial Peace Act. What is back of all this apparent labor unrest?

I have followed closely the unfolding drama of labor-management relations in our country and have tried to study its various aspects. There is nothing basically wrong in our economic structure, nothing sorely amiss anywhere in the entire framework of labor-capital relations that I have found which should serve as a fuse to start off a really serious industrial war. I have found nothing basically wrong which would require extreme economic measures to correct. On the premise that labor is responsible and cognizant of its duties, I say that our fears of a disruptive general unrest are groundless.

The labor trouble which seems to have gripped the country today is nothing, more nor less, than what I would call an experiment in economic democracy. Labor wanted to try its new found wings.

The experiment, I will admit, poses a danger to our economic stability and may hamper our industrial growth. But that is a necessary risk that all experiments entail. I have, however, an abiding faith in the innate goodness and justness of our people and I am not alarmed by the danger that this particular economic experiment poses. My view of the situation is one of great optimism.

If the present labor unrest we see fermenting looks ominous it is only because of the following circumstances: First, the experiment was launched at a wrong time, and second, the experiment was badly conducted. Let us examine them for a while.

There exists between labor and capital an attitude of mutual suspicion and antagonism which will do us more harm not to recognize. Management has always been paternalistic in mentality. This is not through any fault of any particular individual but is a deeply rooted characteristic in our past and our culture. Because of this paternalism management cannot help but view with suspicion and hostility any one who would break away from the paternal fold and assert aggressive independence. Labor on the other hand, has fanned the flames of suspicion already engendered with its impatience, lack of sober judgment and over-aggressiveness. Coupled with unscrupulous leadership which we have seen manifested often enough, suspicion has grown into fear, and fear into hate. And it was under this unhealthy atmosphere that the experiment was launched.

Confounding this already taut situation the experiment was most badly conducted. There was a sad lack of maturity in the decisions, a need for sobriety in the thinking. This served to further frighten already apprehensive capital and to build a wall between them.

Mr. Spencer Miller, Jr., United States Assistant Secretary of Labor had occasion to comment on the actuations of some sections of the Philippine labor movement. In a statement before Philippine labor officials and representatives of labor he counselled against unreasonable demands. Refrain from making demands that would look like a "laundry list," he declared.

And so it is these circumstances, ladies and gentlemen, that brought about the second conflict raging over our nation today. I will reiterate here my belief that this conflict at the present stage is not of so serious proportions as to cause grave, apprehension among our people. It should be arrested in time, however. And labor has the responsibility to take the initiative in this direction.

The job of labor at present, as I see it, is to strengthen trade unionism in the Philippines by gaining the confidence of the public and of management. It would be to the best interest of trade unionism if labor concentrated all its efforts for the present in breaking down the existing atmosphere of suspicion and hostility against it. This, labor can do, very easily and simply. Prove that labor is responsible. Demonstrate its capacity for mature judgment. Manifest a little willingness to make sacrifices and not be too impatient.

Most important of all, labor has to forget for a short while, at least, the long list of demands — the laundry list, according to Mr. Miller. Time enough for that when through labor's own efforts a healthy attitude of trust and confidence not of suspicion and antagonism prevails.

Collective bargaining recently introduced in the Philippines by the Industrial Peace Act is our hope of building a secure and prosperous free society under both political and economic democracy. Collective bargaining, however, is unworkable without a sound labor leadership and enlightened management. These are the two indispensable factors that will insure success in collective bargaining. One without the other and collective bargaining fails. It will become a farce where the stronger imposes upon the weaker.

The way seems clear before us. Build up a sound labor leadership that management can trust, and I am certain everything else will fall into line. I am firm in my belief that this is all that we need to accomplish, to assure for us and the nation, the industrial peace we wish, that will serve as the cornerstone of the great industrial economy we will build. Then perhaps prosperity will not be just a hope but a living reality for all our people.

RAMON DIOKNO Y EL EJEMPLO DE SU VIDA

(Discurso pronunciado por el Senador Claro M. Recto en la sesión necrológica celebrada en la sala de sesiones del Tribunal Supremo en la mañana del 25 de abril de 1954.)

En ocasión dolorosa como la que ahora nos congrega el panegírico de las virtudes del ser que ha dejado esta vida, por otra, que es mejor, según el poeta, no se hace para inclinar a su favor la balanza de la justicia divina que rechaza en su pronunciamiento sin apelación la calidad tan deleznable de estos testimonios humanos, ni para halagar la vanidad de los allegados que le sobreviven pues no hay halago que sirva de bálsamo a las heridas que abre en el alma la orfandad, sino para que el ejemplo de su vida, en lo que fué realización del bien, suministre, a quienes los han menester, principios que profesar y practicar, para la ordenación de la conducta y la conquista de anhelados horizontes.

Decir de Ramón Diokno que fué gran abogado y notable jurisconsulto es decir lo que ya saben de sobra dos generaciones de filipinos. Las tempranas luces de su talento alumbraron las incipientes aulas para la enseñanza del Derecho en nuestro país, apenas entrado el presente siglo. Su mentor, Don Felipe Buencamino, padre, gran figura de los días revolucionarios, que había conocido a Rizal, creyó hallar en Ramón Diokno una capacidad intelectual que podía parangonarse con la del gran héroe de nuestra raza. Y ciertamente, a poco de recibirse de abogado, Ramón Diokno ya se puso a librar denodadas batallas en el foro, y en ellas fué como lumbrera, que, avivada por una laboriosidad pocas veces igualada, fué esparciendo, en el espacio de casi media centuria, claridades de mediodía sobre los vastos dominios del pensamiento jurídico, sin sufrir mengua alguna hasta el trágico instante en que se apagó de súbito, porque Dios lo quiso, en un esfuerzo último de compartir los afanes de este Tribunal de dar término a las dilaciones en la dispensación de la justicia.

Lo que llevo dicho se ha dicho de paso, porque lo que en verdad me cumple destacar en este momento son las cualidades que a mi juicio perfilaron firmemente la personalidad del esclarecido compatriota a quien consagramos estas honras póstumas.

Ramón Diokno hizo elección de una norma de vida, de una profesión y de una fe política, y las abrazó todas con entera e inquebrantable lealtad. Se encerró en la vida de familia como en un monasterio y tan que no buscó fuera de ella aun los más inocentes esparcimientos que se podía calificarle de antisocial y culparle, como rémora en la vida de relación, de no conocer más mundo que el íntimo en que vivía. Sin ser político, en efecto, pues no podía serlo y prometerse éxito con aquel modo de vivir que practicaba, se aventuró, sin embargo, en el campo de la política, y si llegó más de una vez al parlamento lo debió al prestigio nacional de que gozaba y no al conocimiento del trato de las gentes ni a la posesión y ejercicio de ese arte peculiar del proselitismo electorero.

Fué tal su fidelidad a la vocación de toda su vida que desde que ingresó en su gremio profesional no dejó que su curiosidad intelectual le llevara a otras aventuras que no fuesen las que directamente darían por resultado acrecentar su conocimiento del derecho y de los procedimientos judiciales. Era empírico y metódico y así fué que en los numerosos y variados litigios en que intervino, desde la protesta electoral y los casos de reivindicación de propiedad hasta los más intrincados de derecho constitucional y los muy enojosos de materia administrativa, el minucioso examen de los hechos, la acertada formulación de la teoría, la cuidadosa preparación de las pruebas, y la incansable búsqueda de los aplicables principios jurídicos y doctrinas de jurisprudencia, absorbían de tal modo su atención personal que bien se comprendía cómo aquel hombre no hallase tiempo y vagar para otro empleo que no fuese el que demandaba su profesión. Y cuando, en reconocimiento de sus méritos, el gobierno de la República le elevó a la magistratura para que participara en la tarea de hacer justicia e interpretar el derecho, llevó a su alto ministerio tal caudal de conocimientos y experiencia y de tal forma se consagró a él con la misma devoción de los agitados días de su práctica forense, que de no haber sido porque le plugo al Creador llamarle a descansar en su seno, se hubieran realizado plenamente las justas y legítimas esperanzas que la magistratura y el foro habían cifrado en su acertada selección como miembro de este Supremo Tribunal para los grandes fines de la administración de justicia.

Desde que hizo incursiones por el campo de la política, que señalo como una mera digresión adventicia de su vida de ciudadano, y de profesional, militó en el partido nacionalista, y otra vez vimos destacarse en él esa virtud de lealtad a los principios en que se acrisoló su carácter, y, a pesar de los tumbos que dió su partido con sus alternativas de triunfo y derrota, permaneció inconmovible sin hacer cambios de frente, sin mudarse de camisa y sin dar golpes de oportunismo, esas posturas y lances de volatinero que son entre nosotros de incidencia tan frecuente que ya han parecido síntomas alarmantes de anestesia moral en nuestro cuerpo político, poniéndose en riesgo de muerte la vida de nuestras instituciones.

La pasión del trabajo y la capacidad para el trabajo no han sido de las cualidades menos pronunciadas del Magistrado Diokno en el predio deslindado de su actividad. Faenas intelectuales que otros tomarían semanas en acabar, Ramón Diokno las despachaba en veinticuatro horas. La calidad del trabajo a veces se resentía, pero este dificultad quedaba allanada facilmente en el proceso de revisión. Para él lo importante era comenzar con presteza y terminar pronto lo que se había comenzado. Y en el caso particular de la administración de justicia le parecía que los primores del lenguaje y exquisiteces del estilo, las honduras del pensamiento y novedades de doctrina, bien podían inmolarse en la mayoría de los casos en aras de la prontitud y diligencia en dar a cada uno lo suyo.

Había, pues, en Ramón Diokno ese espejo de virtudes morales: lealtad — quizás la palabra inglesa "loyalties" sea mas exacta y comprensiva — firmeza en las convicciones, laboriosidad y disciplina, en que deben mirarse aquellos de nuestros compatriotas que están aun en su proceso formativo, si han de ser en lo futuro útiles a sí mismos y a la comunidad. Sea el mayor tributo a la memoria de Ramón Diokno, Magistrado y Senador, el que muchos filipinos, sobre todo los que como él nacieron en humilde cuna, lleguen a la altura a que él llegó por la noble virtud de su ejemplo y el noble ejemplo de sus virtudes.

In the Matter of the Petitions for Admission to the Bar of Unsuccessful Candidates of 1946 *to* 1950, *promulgated, March* 18*th,* 1954, *Diokno, J.*

1. BAR FLUNKERS' ACT; — REPUBLIC ACT NO. 972; ILLEGALITY OF ITS OBJECTIVE. — By its declared objective, the law is contrary to public interest because it qualifies 1,094 law graduates who confessedly had inadequate preparation for the practice of the law profession, as was exactly found by this Tribunal in the aforesaid examinations. The public interest demands of the legal profession adequate preparation and efficiency, precisely more so as legal problems evolved by the times become more difficult.

   An adequate legal profession is one of the vital requisites for the practice of law that should be developed constantly and maintained firmly. To the legal profession is entrusted the protection of property, life, honor and civil liberties. To approve officially of these inadequately prepared individuals, to dedicate themselves to such a delicate mission is to create a serious social danger.
2. IBID; IBID. — There is no identical case of similar background as the Bar Flunkers' Act in the Anglo Saxon legal history that can be invoked to support the validity of said act. We cannot find a case in which the validity of a similar law has been sustained, while there are cases which support its invalidity. The law has no precedent in its favor. The case of Cooper (22 N.Y. 81) cited by the petitioners is of complete inapplicability with the case at bar.
3. ATTORNEYS-AT-LAW; THEIR ADMISSION, SUSPENSION AND DISBARMENT. — In the judicial legal system from which ours has been evolved, the admission, suspension, disbarment and reinstatement of attorneys at law in the practice of the profession and their supervision have been indisputably a judicial function and responsibility.
4. IBID; IBID. — This function requires (1) previous established rules and principles, (2) concrete facts, whether past or present, affecting determinate individuals, and (3) decision as to whether these facts are governed by the rules and principles; in effect, a judicial function of the highest degree. And it becomes more indisputably judicial, and not legislative, if previous judicial resolutions on the petitions of these same individuals are attempted to be revoked or modified.
5. CONSTITUTIONAL LAW; DISTINCTION BETWEEN THE FUNCTIONS OF THE JUDICIAL AND LEGISLATIVE DEPARTMENTS OF THE GOVERNMENT. — The distinction between the functions of the legislative and the judicial departments is that it is the province of the legislature to establish rules that shall regulate and govern in matters of transactions occurring subsequent to the legislative action, while the judiciary determines rights and obligations with reference to transactions that are past or conditions that exist at the time of the exercise of judicial power, and the distinction is a vital one and not subject to alteration or change either by legislative action or by judicial decrees.
6. IBID; SECTION 13, ART. VIII OF THE CONSTITUTION CONSTRUED. — Section 13, Article VIII of the Constitution has not conferred in Congress and the Supreme Court equal responsibilities concerning the admission to the practice of law. The primary power and responsibility which the Constitution recognizes, continue to reside in this Court. Had congress found that this Court has not promulgated any rule on the matter, it would have nothing over which to exercise the power granted to it. Congress may repeal, alter and supplement the rules promulgated by this Court, but the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys at law and their supervision remain vested in the Supreme Court. The power to repeal, alter and supplement the rules does not signify nor permit that Congress substitute or take the place of this Tribunal in the exercise of its primary power on the matter. The Constitution does not say nor mean that Congress may admit, suspend, disbar or reinstate directly attorneys at law, or a determinate group of individuals to the practice of law. Its power is limited to repeal, modify or supplement the existing rules on the matter, if according to its judgment the need for a better service of the legal profession requires it. But this power does not relieve this Court of its responsibility to admit, suspend, disbar and reinstate attorneys at law and supervise the practice of the legal profession.
7. IBID; IBID. — Being coordinate and independent branches, the power to promulgate and enforce rules for the admission to the practice of law and the concurrent power to repeal, alter and supplement them may and should be exercised with the respect that each owes to the other, giving careful consideration to the responsibility which the nature of each department requires. These powers have existed together for centuries without diminution on each part; the harmonious delimitation being found in that the legislature may and should examine if the existing rules on the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training and responsibility.
8. IBID; IBID. — The legislature may, by means of repeal, amendment or supplemental rules, fill up any deficiency that it may find, and the judicial power, which has the inherent responsibility for a good and efficient administration of justice and the supervision of the practice of the legal profession, should consider these reforms as the minimum standards for the elevation of the profession, and see to it that with these reforms the lofty objective that is desired in the exercise of its traditional duty of admitting, suspending, disbarring and reinstating attorneys at law is realized.
9. BAR FLUNKERS' BILL ACT; ITS UNCONSTITUTIONALITY ON ACCOUNT OF ITS RETROACTIVITY. — To defend the disputed law from being unconstitutional on account of its retroactivity, it is argued that it is curative, and that in such form it is constitutional. What Congress lamented is that the Court did not consider 69.5% obtained by those candidates who failed in 1946 to 1952 as sufficient to qualify them to practice of law. Hence, it is the lack of will or defect of judgment of the Court that is being cured, and to complete the cure of this infirmity, the effectivity of the disputed law is being extended up to the years 1953, 1954 and 1955, increasing each year the general average by one per cent, with the order that said candidates be admitted to the Bar. This purpose, manifest in the said law, is the best proof that what the law attempts to amend and correct are not the rules promulgated, but the will or judgment of the Court, by means of simply taking its place. This is doing directly what the Tribunal should have done during those years according to the judgment of Congress. In other words, the power exercised was not to repeal, alter or supplement the rules, which continue in force. What was done was to stop or suspend them. And this power is not included in what the Constitution has granted to Congress, because it falls within the power to apply the rules. This power corresponds to the judiciary, to which such duty has been confided.
10. IBID; ARTICLE 2 OF THE LAW IS UNCONSTITUTIONAL —In this case, however, the fatal defect is that the article is not expressed in the title of the Act. While this law according to its title will have temporary effect only from 1946 to 1955, the text of article 2 establishes a permanent system for an indefinite time. This is contrary to Sec. 21(1), Art. VI of the Constitution, which vitiates and annuls article 2 completely; and because it is inseparable from article 1, it is obvious that its nullity affects the entire law.
11. CONSTITUTIONAL LAW; WHEN LAWS ARE UNCONSTITUTIONAL. — Laws are unconstitutional on the following grounds: first, because they are not within the legislative powers of Congress to enact, or Congress has exceeded its powers; second, because they create or establish arbitrary methods or forms that infringe constitutional principles; and third, because their purpose or effects violate the constitution or its basic principles. As has already been seen, the con-

tested law suffers from these fatal defects.

LABRADOR, J., concurring and dissenting.

1. ATTORNEYS AT LAW; THE RIGHT TO ADMIT MEMBERS TO THE BAR IS THE EXCLUSIVE PRIVLEGE OF THE SUPREME COURT. — The right to admit members to the Bar is, and has always been, the exclusive privilege of this Court, because lawyers are members of the Court and only this Court should be allowed to determine admission thereto in the interest of the principle of the separation of powers. The power to admit is judicial in the sense that discretion is used in its exercise.

2. IBID; THE POWER TO ADMIT MEMBERS TO THE BAR DISTINGUISHED FROM THE POWER TO PROMULGATE RULES WHICH REGULATE ADMISSION. — This power should be distinguished from the power to promulgate rules which regulate admission. It is only this power (to promulgate amendments to the rules) that is given in the Constitution to the Congress, not the exercise of the discretion to admit or not to admit. Thus, the rules on the holding of examination, the qualifications of applicants, the passing grades, etc. are within the scope of the legislative power.

3. IBID; POWER TO DETERMINE WHEN A CANDIDATE HAS MADE OR NOT THE PASSING GRADE. — The power to determine when a candidate has made or has not made the required grade is judicial, and lies completely with this Court.

4. BAR FLUNKERS' ACT; ITS UNCONSTITUTIONALITY. — The Act under consideration is an exercise of the judicial function, and lies beyond the scope of congressional prerogative of amending the rules. To say that candidates who obtain a general average of 72% in 1953, 73% in 1954, and 74% in 1955 should be considered as having passed the examination, is to mean exercise of the privilege and discretion lodged in this Court. It is a mandate to the tribunal to pass candidates for different years with grades lower than the passing mark. No reason is necessary to show that it is an arrogation of the Court's judicial authority and discretion.

5. IBID; THE ACT IS DISCRIMINATORY. — It is furthermore objectionable as discriminatory. Why should those taking the examinations in 1953, 1954 and 1955 be allowed to have the privilege of a lower passing grade, while those taking earlier or later are not?

PARAS, C.J., dissenting.

1. ATTORNEYS AT LAW; POWER TO REGULATE THE ADMISSION TO THE PRACTICE OF LAW. — All discussions in support of the proposition that the power to regulate the admission to the practice of law is inherently judicial, are immaterial, because the subject is now governed by Article VIII, Section 13 of the Constitution. Under this Constitutional provision, while the Supreme Court has the power to promulgate rules concerning the admission to the practice of law, the Congress has the power to repeal, alter or supplement said rules. Little intelligence is necessary to see that the power of the Supreme Court and the Congress to regulate the admission to the practice of law is concurrent.

2. BAR FLUNKERS' ACT; ITS CONSTITUTIONALITY. — The opponents of Republic Act No. 972 argue that this Act, in so far as it covers bar examinations held prior to its approval, is unconstitutional, because it sets aside the final resolutions of the Supreme Court refusing to admit to the practice of law the various petitioners, thereby resulting in a legislative encroachment upon the judicial power. In my opinion this view is erroneous. In the first place, resolutions on the rejection of bar candidates do not have the finality of decisions in justiciable cases where the Rules of Court expressly fix certain periods after which they become executory and unalterable. Resolutions on bar matters, specially on motions for reconsiderations filed by flunkers in any given year, are subject to revision by this Court at any time, regardless of the period within which the motions were filed, and this has been the practice heretofore. The obvious reason is that bar examinations and admission to the practice of law may be deemed as a judicial function only because said matters happen to be entrusted, under the Constitution and our Rules of Court, to the Supreme Court. There is no judicial function involved, in the strict and constitutional sense of the word, because bar examinations and the admission to the practice of law, unlike justiciable cases, do not affect opposing litigants. It is no more than the function of other examining boards.

3. IBID; THE RETROACTIVITY OF THIS ACT DOES NOT MAKE IT UNCONSTITUTIONAL. — Retroactive laws are not prohibited by the Constitution, except only when they would be *ex post facto*, would impair obligations and contracts or vested rights, or would deny due process and equal protection of the law. Republic Act No. 972 certainly is not an *ex post facto* enactment, does not impair any obligation and contract or vested right, and denies to no one the right to due process and equal protection of the law.

4. IBID; THE ACT IS A MERE CURATIVE STATUTE. — It is a mere curative statute intended to correct certain obvious inequalities arising from the adoption by this Court of different passing general averages in certain years.

5. IBID; THE ACT IS NOT DISCRIMINATORY. — Neither can it be said that bar candidates prior to July 4, 1946, are being discriminated against, because we no longer have any record of those who might have failed before the war, apart from the circumstance that 75 per cent had always been the passing mark during said period. It may also be that there are no pre-war bar candidates similarly situated as those benefited by Republic Act No. 972. At any rate, in the matter of classification the reasonableness must be determined by the legislative body. It is proper to recall that the Congress held public hearings, and we can fairly suppose that the classification adopted in the Act reflects good legislative judgment derived from the facts and circumstances then brought out.

6. IBID; THE ACT DOES NOT CONSTITUTE AN ENCROACHMENT UPON THE JUDGMENT OF THE SUPREME COURT. — As regards the alleged interference in or encroachment upon the judgment of this Court by the Legislative Department, it is sufficient to state that, if there is any interference at all, it is one expressly sanctioned by the Constitution. Besides, interference in judicial adjudication prohibited by the Constitution is essentially aimed at protecting rights of litigants that have already been vested or acquired in virtue of decisions of courts, not merely for the empty purpose of creating appearances of separation and equality among the three branches of the Government. Republic Act No. 972 has not produced a case involving two parties and decided by the Court in favor of one and against the other. Needless to say, the statute will not affect the previous resolutions passing bar candidates who had obtained the general average prescribed by section 14 of Rule 127.

7. CONSTITUTIONAL LAW; WHEN A LAW MAY BE HELD OBJECTIONABLE AS UNCONSTITUTIONAL. — A law would be objectionable and unconstitutional if, for instance it would provide that those who have been admitted to the bar after July 4, 1946, whose general average is below 80 per cent, will not be allowed to practice law, because said statute would then destroy a right already acquired under previous resolutions of this Court, namely, the bar admission of those whose general averages were from 75 to 79 per cent.

8. SUPREME COURT; ITS RULE-MAKING POWER. — Under its rule making power it may pass a resolution amending Section 14 of Rule 127 by reducing the passing average to 70% effective several years before the date of the resolution. Indeed, when this Court on July 15, 1948 allowed to pass all candidates who obtained a general average of 69 per cent or more and on April 28, 1949 those who obtained a general average of 70 per cent or more, irrespective of whether they filed petitions for reconsideration, it in effect amended section 14 of Rule 127 retroactively, because during the examinations held in August 1947 and August 1948, said section (fixing the general

average at 75 per cent) was supposed to be in force.

9. SUPREME COURT AND CONGRESS; THEIR CONCURRENT POWER TO REGULATE THE ADMISSION TO THE PRACTICE OF LAW. — It stands to reason, if we are to admit that the Supreme Court and the Congress have concurrent power to regulate the admission to the practice of law, that the latter may validly pass a retroactive rule fixing the passing general average.

I would, however, not go to the extent of admitting that the Congress, in the exercise of its concurrent power to repeal, alter or supplement the Rules of Court regarding the admission to the practice of law, may act in an arbitrary or capricious manner, in the same way that this Court may not do so. We are thus left in the situation, incidental to a democracy, where we can and should only hope that the right men are put in the right places in our Government.

10. BAR FLUNKERS' ACT; NOT ARBITRARY OR CAPRICIOUS. — Republic Act. No. 972 cannot be assailed on the ground that it is unreasonable, arbitrary or capricious, since this Court had already adopted as passing averages 69 per cent for the 1947 bar examinations and 70 per cent for the 1948 examinations.

11. IBID; ITS WISDOM CANNOT BE INQUIRED INTO BY THE COURTS. — We should not inquire into the wisdom of the law, since this is a matter that is addressed to the judgment of the legislators. This Court in many instances had doubted the propriety of legislative enactments, and yet it has consistently refrained from nullifying them solely on that ground.

12. IBID; ACT NOT AGAINST PUBLIC INTEREST. — To say that the admission of the bar candidates benefited under Republic Act No. 972 is against public interest, is to assume that the matter of whether said Act is beneficial or harmful to the general public was not considered by the Congress. As already stated, the Congress held public hearings, and we are bound to assume that the legislators, loyal, as do the members of this Court, to their oath of office, had taken all the circumstances into account before passing the Act. On the question of public interest I may observe that the Congress, representing the people who elected them, should be more qualified to make an appraisal. I am inclined to accept Republic Act No. 972 as an expression of the will of the people through their duly elected representatives.

Miguel R. Cornejo, Jose M. Arruego, Irineo M. Cabrera, Tomas S. Macasaet, Mariano H. de Joya, Buenaventura Evangelista, Vicente Pelaez, Socorro Tirona Liwag and *Antonio Enrile Inton* for petitioners.

Solicitor General Juan R. Liwag and *Solicitor Felix V. Makasiar* for the Government.

Vicente J. Francisco, Arturo A. Alafriz, Enrique M. Fernando, Vicente Abad Santos, Carlos A. Barrios and *Roman Ozaeta* as *amici curiae.*

RESOLUTION

DIOKNO, *J.*:

In recent years few controversial issues have aroused so much public interest and concern as Republic Act No. 972, popularly known as the "Bar Flunkers' Act" of 1953. Under the Rules of Court governing admission to the bar, "in order that a candidate [for admission to the Bar] may be deemed to have passed his examinations successfully, he must have obtained a general average of 75% in all subjects, without falling below 50% in any subject." (Rule 127, Sec. 14, Rules of Court). Nevertheless, considering the varying difficulties of the different bar examinations held since 1946 and the varying degree of strictness with which the examination papers were graded, this Court passed and admitted to the bar those candidates who had obtained an average of only 72% in 1946, 69% in 1947, 70% in 1948, and 74% in 1949. In 1950 to 1953, the 74% was raised to 75%.

Believing themselves as fully qualified to practice law as those reconsidered and passed by this Court, and feeling conscious of having been discriminated against (See Explanatory Note to R. A. No. 972), unsuccessful candidates who obtained averages of a few percentage lower than those admitted to the Bar agitated in Congress for, and secured in 1951 the passage of Senate Bill No. 12 which, among others, reduced the passing general average in bar examinations to 70% effective since 1946. The President requested the views of this Court on the bill. Complying with that request, seven members of the Court subscribed to and submitted written comments adverse thereto, and shortly thereafter the President vetoed it. Congress did not override the vote. Instead, it approved Senate Bill No. 371, embodying substantially the provisions of the vetoed bill. Although the members of this Court reiterated their unfavorable views on the matter, the President allowed the bill to become a law on June 21, 1953 without his signature. The law, which incidentally was enacted in an election year, reads in full as follows:

REPUBLIC ACT No. 972

AN ACT TO FIX THE PASSING MARKS FOR BAR EXAMINATIONS FROM NINETEEN HUNDRED AND FORTY-SIX UP TO AND INCLUDING NINETEEN HUNDRED AND FIFTY-FIVE.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Notwithstanding the provisions of section fourteen, Rule Numbered One hundred and twenty-seven of the Rules of Court, any bar candidate who obtained a general average of seventy per cent in any bar examinations after July fourth, nineteen hundred and forty-six up to the August nineteen hundred and fifty-one bar examinations; seventy-one per cent in the nineteen hundred and fifty-two bar examinations; seventy-two per cent in the nineteen hundred and fifty-three bar examinations; seventy-three per cent in the nineteen hundred and fifty-four bar examinations; seventy-four per cent in the nineteen hundred and fifty-five bar examinations without a candidate obtaining a grade below fifty per cent in any subject, shall be allowed to take and subscribe the corresponding oath of office as member of the Philippine Bar: *Provided, however,* That for the purpose of this Act, any exact one-half or more of a fraction, shall be considered as one and included as part of the next whole number.

SEC. 2. Any bar candidate who obtained a grade of seventy-five per cent in any subject in any bar examination after July fourth, ninteen hundred and forty-six shall be deemed to have passed in such subject or subjects and such grade or grades shall be included in computing the passing general averages that said candidate may obtain in any subsequent examinations that he may take.

SEC. 3. This Act shall take effect upon its approval.

Enacted on June 21, 1953, without the Executive approval.

After its approval, many of the unsuccessful postwar candidates filed petitions for admission to the bar invoking its provisions, while others whose motions for the revision of their examination papers were still pending also invoked the aforesaid law as an additional ground for admission. There are also others who have sought simply the reconsideration of their grades without, however, invoking the law in question. To avoid injustice to individual petitioners, the Court first reviewed the motions for reconsideration, irrespective of whether or not they had invoked Republic Act No. 792. Unfortunately, the Court has found no reason to revise their grades. If they are to be admitted to the bar, it must be pursuant to Republic Act No. 972 which, if declared valid, should be applied equally to all concerned whether they have filed petitions or not. A complete list of the petitioners, properly classified, affected by this decision, as well as a more detailed account of the history of Republic Act No. 972, are appended to this decision as Annexes I and II. And to realize more readily the effects of the law, the following statistical data are set forth:

(1) The unsuccessful bar candidates who are to be benefited by section 1 of Republic Act No. 972 total 1,168, classified as follows:

Year of Examinations	Total of candiates who took the examination	Total of those who failed	Candidates benefited by Republic Act No. 972
1946 (August)	206	121	18
1946 (November)	477	228	43
1947	749	340	0
1948	899	409	11
1949	1.218	632	164
1950	1.316	893	26
1951	2.068	879	196
1952	2 738	1.033	426
1953	2.555	986	284
Totals	12,230	5,421	1,168

Of the aforesaid 1,168 candidates, 92 have passed in subsequent examinations, and only 586 have filed either motions for admission to the bar pursuant to said Republic Act, or mere motions for reconsideration.

(2) In addition, some other 18 successful candidates are to be benefited by Section 2 of said Republic Act. These candidates had each taken from two to five different examinations, but failed to obtain a passing average in any of them. Consolidating, however, their highest grades in different subjects in previous examinations, with their latest marks, they would be sufficient to reach the passing average as provided for by Republic Act 972.

(3) The total number of candidates to be benefited by this Republic Act is therefore 1,094, of which only 604 have filed petitions. Of these 604 petitioners, 33 who failed in 1946 to 1951 had individually presented motions for reconsideration which were denied, while 125 unsuccessful candidates of 1952, and 56 of 1953, had presented similar motions, which are still pending because they could be favorably affected by Republic Act No. 972, — although, as has been already stated, this Tribunal finds no sufficient reasons to reconsider their grades.

UNCONSTITUTIONALITY OF REPUBLIC ACT NO. 972

Having been called upon to enforce a law of farreaching effects on the practice of the legal profession and the administration of justice, and because some doubts have been expressed as to its validity, the Court set the hearing of the aforementioned petitions for admission on the sole question of whether or not Republic Act No. 972 is constitutional.

We have been enlightened in the study of this question by the brilliant assistance of the members of the bar who have amply argued, orally and in writing, on the various aspects in which the question may be gleaned. The valuable studies of Messrs. E. Voltaire Garcia, Vicente J. Francisco, Vicente Pelaez and Buenaventura Evangelista, in favor of the validity of the law, and of the U. P. Women Lawyers' Circle, the Solicitor General, Messrs. Arturo A. Alafriz, Enrique M. Fernando, Vicente Abad Santos, Carlos A. Barrios, Vicente del Rosario, Juan de Blancaflor, Mamerto V. Gonzales and Roman Ozaeta, against it, aside from the memoranda of counsel for petitioners, Messrs. Jose M. Aruego, M. H. de Joya, Miguel R. Cornejo and Antonio Enrile Inton, and of petitioners Cabrera, Macasaet and Galema, themselves, has greatly helped us in this task. The legal researchers of the Court have exhausted almost all Philippine and American jurisprudence on the matter. The question has been the object of intense deliberation for a long time by the Tribunal, and finally, after the voting, the preparation of the majority opinion was assigned to a new member in order to place it as humanly as possible above all suspicion of prejudice or partiality.

Republic Act No. 972 has for its object, according to its author, to admit to the Bar, those candidates who suffered from insufficiency of reading materials and inadequate preparation. Quoting a portion of the Explanatory Note of the proposed bill, its author Honorable Senator Pablo Angeles David stated:

> "The reason for relaxing the standard 75% passing grade is the tremendous handicap which students during the years immediately after the Japanese occupation has to overcome such as the insufficiency of reading materials and the inadequacy of the preparation of students who took up law soon after the liberation."

Of the 9,675 candidates who took the examinations from 1946 to 1952, 5,236 passed. And now it is claimed that in addition 604 candidates be admitted (which in reality total 1,094), because they suffered from "insufficiency of reading materials" and of "inadequacy of preparation".

By its declared objective, the law is contrary to public interest because it qualifies 1,094 law graduates who confessedly had inadequate preparation for the practice of the profession, as was exactly found by this Tribunal in the aforesaid examinations. The public interest demands of the legal profession adequate preparation and efficiency, precisely more so as legal problems evolved by the times become more difficult. An adequate legal preparation is one of the vital requisites for the practice of law that should be developed constantly and maintained firmly. To the legal profession is entrusted the protection of property, life, honor and civil liberties. To approve officially of these inadequately prepared individuals to dedicate themselves to such a delicate mission is to create a serious social danger.

Moreover, the statement that there was an insufficiency of legal reading materials is grossly exaggerated. There were abundant materials. Decisions of this Court alone in mimeographed copies were made available to the public during these years and private enterprises had also published them in monthly magazines and annual digests. The Official Gazette had been published continuously. Books and magazines published abroad have entered without restriction since 1945. Many law books, some with even revised and enlarged editions have been printed locally during these periods. A new set of Philippine Reports began to be published since 1946, which continued to be supplemented by the addition of new volumes. These are facts of public knowledge.

Notwithstanding all these, if the law in question is valid, it has to be enforced.

The question is not new in its fundamental aspect or from the point of view of applicable principles, but the resolution of the question would have been easier had an identical case of similar background been picked out from the jurisdiction we daily consult. Is there any precedent in the long Anglo-Saxon legal history, from which has been directly derived the judicial system established here with its lofty ideals by the Congress of the United States, and which we have preserved and attempted to improve, or in our contemporaneous juridical history of more than half a century? From the citations of those defending the law, we can not find a case in which the validity of a similar law had been sustained, while those against its validity cite, among others, the cases of Day (In re Day, 54 NE 646), of Cannon (State v. Cannon, 240 NW 441), the opinion of the Supreme Court of Massachusetts in 1932 (81 ALR 1061), of Guariña (24 Phil. 37), aside from the opinion of the President which is expressed in his veto of the original bill and which the proponent of the contested law respects.

This law has no precedent in its favor. When similar laws in other countries had been promulgated, the judiciary immediately declared them without force or effect. It is not within our power to offer a precedent to uphold the disputed law.

To be exact, we ought to state here that we have examined carefully the case that has been cited to us as a favorable precedent of the law — that of Cooper (22 NY 81), where the Court of Appeals of New York revoked the decision of the Supreme Court of that State, denying the petition of Cooper to be admitted to the practice of law under the provisions of a statute concerning the school of law of Columbia College promulgated on April 7, 1860, which was declared by the Court of Appeals to be consistent with the Constitution of the state of New York.

It appears that the Constitution of New York at that time provided:

> "They (*i.e.*, the judges) shall not hold any other office of public trust. All votes for either of them for any elective office except that of the Court of Appeals, given by the Legislature or the people, shall be void. They shall not exercise any power of appointment to public office. Any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of this State." (p. 93).

According to the Court of Appeals, the object of the constitutional precept is as follows:

> "Attorneys, solicitors, etc., were public officers; the power of appointing them had previously rested with the judges, and this was the principal appointing power which they possessed. The convention was evidently dissatisfied with the manner in which this power had been exercised, and with the restrictions which the judges had imposed upon admission to practice before them. The prohibitory clause in the section quoted was aimed directly at this power and the insertions of the provision respecting the admission of attor-

neys; in this particular section of the Constitution, evidently arose from its connection with the object of this prohibitory clause. There is nothing indicative of confidence in the courts or of a disposition to preserve any portion of their power over this subject, unless the Supreme Court is right in the inference it draws from the use of the word 'admission' in the action referred to. It is urged that the admission spoken of must be by the court; that to admit means to grant leave, and that the power of granting necessarily implies the power of refusing, and of course the right of determining whether the applicant possesses the requisite qualifications to entitle him to admission.

"These positions may all be conceded, without affecting the validity of the act." (p. 93).

Now, with respect to the law of April 7, 1860, the decision seems to indicate that it provided that the possession of a diploma of the school of law of Columbia College conferring the degree of Bachelor of Laws was evidence of the legal qualifications that the constitution required of applicants for admission to the Bar. The decision does not however quote the text of the law, which we cannot find in any public or accessible private library in the country.

In the case of Cooper, *supra*, to make the law consistent with the Constitution of New York, the Court of Appeals said of the object of the law:

"The motive for passing the act in question is apparent. Columbia College being an institution of established reputation, and having a law department under the charge of able professors, the students in which department were not only subjected to a formal examination by the law committee of the institution, but to a certain definite period of study before being entitled to a diploma as graduates, the Legislature evidently, and no doubt justly, considered this examination, together with the preliminary study required by the act, as fully equivalent as a test of legal acquirements, to the ordinary examination by the court; and as rendering the latter examination, to which no definite period of preliminary study was essential, unnecessary and burdensome.

"The act was obviously passed with reference to the learning and ability of the applicant, and for the mere purpose of substituting the examination by the law committee of the college for that of the court. It could have had no other object, and hence no greater scope should be given to its provisions. We cannot suppose that the Legislature designed entirely to dispense with the plain and explicit requirements of the Constitution; and the act contains nothing whatever to indicate an intention that the authorities of the college should inquire as to the age, citizenship, etc., of the students before granting a diploma. The only rational interpretation of which the act admits is, that it was intended to make the college diploma competent evidence as to the legal attainments of the applicant, and nothing else. To this extent alone it operates as a modification of pre-existing statutes, and it is to be read in connection with those statutes and with the Constitution itself in order to determine the present condition of the law on the subject." (p. 39).

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"The Legislature has not taken from the court its jurisdiction over the question of admission, that has simply prescribed what shall be competent evidence in certain cases upon that question." (p. 93)

From the foregoing, the complete inapplicability of the case of Cooper with that at bar may be clearly seen. Please note only the following distinctions:

(1) The law of New York does not require that any candidate of Columbia College who failed in the bar examinations be admitted to the practice of law.

(2) The law of New York, according to the very decision of Cooper, has not taken from the court its jurisdiction over the question of admission of attorneys-at-law; in effect, it does not decree the admission of any lawyer.

(3) The Constitution of New York at that time and that of the Philippines are entirely different on the matter of admission to the practice of law.

In the judicial system from which ours has been evolved, the admission, suspension, disbarment and reinstatement of attorneys at law in the practice of the profession and their supervision have been indisputably a judicial function and responsibility. Because of this attribute, its continuous and zealous possession and exercise by the judicial power have been demonstrated during more than six centuries, which certainly "constitutes the most solid of titles." Even considering the power granted to Congress by our Constitution to repeal, alter and supplement the rules promulgated by this Court regarding the admission to the practice of law, to our judgment the proposition that the admission, suspension, disbarment and reinstatement of attorneys at law is unacceptable. This function requires (1) previously established rules and principles, (2) concrete facts, whether past or present, affecting determinate individuals, and (3) decision as to whether these facts are governed by the rules and principles; in effect, a judicial function of the highest degree. And it becomes more undisputably judicial, and not legislative, if previous judicial resolutions on the petitions of these same individuals are attempted to be revoked or modified.

We have said that in the judicial system from which ours has been derived, the act of admitting, suspending, disbarring and reinstating attorneys at law in the practice of the profession is concededly judicial. A comprehensive and conscientious study of this matter had been undertaken in the case of State v. Cannon (1932) 240 NW 441, in which the validity of a legislative enactment providing that Cannon be permitted to practice before the courts was discussed. From the text of this decision we quote the following paragraphs:

"This statute presents an assertion of legislative power without parallel in the history of the English speaking people so far as we have been able to ascertain. There has been much uncertainty as to the extent of the power of the Legislature to prescribe the ultimate qualifications of attorneys at law, but in England and in every state of the Union the act of admitting an attorney at law has been expressly committed to the courts, and the act of admission has always been regarded as a judicial function. This act purports to constitute Mr. Cannon an attorney at law, and in this respect it stands alone as an assertion of legislative power. (p. 444).

"No greater responsibility rests upon this court than that of preserving in form and substance the exact form of government set up by the people. (p, 444).

"Under the Constitution all legislative power is vested in a Senate and Assembly. Section 1, art. 4. In so far as the prescribing of qualifications for admission to the bar are legislative in character, the legislature is acting within its constitutional authority when it acts up and prescribes such qualifications. (p. 444)

"But when the Legislature has prescribed those qualifications which in its judgment will serve the purpose of legitimate legislative solicitude, is the power of the court to impose other and further exactions and qualifications foreclosed or exhausted? (p. 444)

"Under our Constitution the judicial and legislative departments are distinct, independent, and coordinate branches of the government. Neither branch enjoys all the powers of sovereignty, but each is supreme in that branch of sovereignty which properly belongs to its department. Neither department should so act as to embarrass the other in the discharge of its respective functions. That was the scheme and thought of the people in setting upon the form of government under which we exist. State v. Hastings. 10 Wis. 525; Attorney General ex rel. Bashford v. Barstow, 4 Wis. 567. (p. 445)

"The judicial department of government is responsible

for the plans upon which the administration of justice is maintained. Its responsibility in this respect is exclusive. By committing a portion of the powers of sovereignty to the judicial department of our state government, under a scheme which it was supposed rendered it immune from embarrassment or interference by any other department of government, the courts cannot escape responsibility for the manner in which the powers of sovereignty thus committed to the judicial department are exercised. (p. 445)

"The relation of the bar to the courts is a peculiar and intimate relationship. The bar is an attache of the courts. The quality of justice dispensed by the courts depends in no small degree upon the integrity of its bar. An unfaithful bar may easily bring scandal and reproach to the administration of justice and bring the courts themselves into disrepute. (p. 445)

"Through all time courts have exercised a direct and severe supervision over their bars, at least in the English speaking countries." (p. 445)

After explaining the history of the case, the Court ends thus:

"Our conclusion may be epitomized as follows: For more than six centuries prior to the adoption of our Constitution, the courts of England, concedely subordinate to Parliament since the Revolution of 1688, had exercised the right of determining who should be admitted to the practice of law, which, as was said in Matter of the Sergeants at Law, 6 Bingham's New Cases 235, 'constitutes the most solid of all titles.' If the courts and the judicial power be regarded as an entity, the power to determine who should be admitted to practice law is a constituent element of that entity. It may be difficult to isolate that element and say with assurance that it is either a part of the inherent power of the court, or an essential element of the judicial power exercised by the court, but that it is a power belonging to the judicial entity cannot be denied. Our people borrowed from England this judicial entity and made of it a separate, independent, and coordinate branch of the government. They took this institution along with the power traditionally exercised to determine who should constitute its attorneys at law. There is no express provision in the Constitution which indicates an intent that this traditional power of the judicial department should in any manner be subject to legislative control. Perhaps the dominant thought of the framers of our constitution was to make the three great departments of government separate and independent of one another. The idea that the Legislature might embarrass the judicial department by prescribing inadequate qualifications for attorneys at law is inconsistent with the dominant purpose of making the judicial independent of the legislative department, and such a purpose should not be inferred in the absence of express constitutional provision. While the Legislature may legislate with respect to the qualifications of attorneys, its power in that respect does not rest upon any power possessed by it to deal exclusively with the subject of the qualifications of attorneys, but is incidental merely to its general and unquestioned power to protect the public interest. When it does legislate fixing a standard of qualifications required of attorneys at law in order that public interests may be protected, such qualifications constitute only a minimum standard and limit the class from which the court must make its selection. Such legislative qualifications do not constitute the ultimate qualifications beyond which the court cannot go in fixing additional qualifications deemed necessary by the course for the proper administration of judicial functions. There is no legislative power to compel courts to admit to their bars persons deemed by them unfit to exercise the prerogatives of an attorney at law." (p450)

"Furthermore, it is an unlawful attempt to exercise the power of appointment. It is quite likely true that the Legislature may exercise the power of appointment when it is in pursuance of a legislative function. However, the authorities are well-nigh unanimous that the power to admit attorneys to the practice of law is a judicial function. In all of the states, except New Jersey (In re Raisch, 83 N.J. Eq. 82, 90 A. 12), so far as our investigation reveals, attorneys receive their formal license to practice law by their admission as members of the bar of the court so admitting. Cor. Jur. 572; Ex parte Secombe, 19 How. 9, 15 L. Ed. 565; Ex parte Garland, 4 Wall 333, 18 L. Ed. 366; Randall v. Brigham, 7 Wall. 52, 19 L. Ed. 285; Hanson v. Grattan, 84 Kan. 843, 115 P. 646, 34 L.R.A. 519; Danforth v. Egan, 23 S. D. 43, 119 N.W. 1021, 139 Am. St. Rep. 1030, 20 Ann. Cas. 418.

"The power of admitting an attorney to practice having been perpetually exercised by the courts, it having been so generally held that the act of a court in admitting an attorney to practice is the judgment of the court, and an attempt as this on the part of the Legislature to confer such right upon any one being most exceedingly uncommon, it seems clear that the licensing of an attorney is and always has been a purely judicial function, no matter where the power to determine the qualifications may reside." (p. 451)

In that same year of 1932, the Supreme Court of Massachusetts, in answering a consultation of the Senate of that State, 180 NE 725, said:

"It is indispensable to the administration of justice and to interpretation of the laws that there be members of the bar of sufficient ability, adequate learning and sound moral character. This arises from the need of enlightened assistance to the honest, and restraining authority over the knavish, litigant. It is highly important, also, that the public be protected from incompetent and vicious practitioners, whose opportunity for doing mischief is wide. It was said by Cardozo, C. J., in People ex rel. Karlin v. Culkin, 242 N. Y. 465, 470, 471, 162 N. E. 487, 489, 60 A. L. R. 851: 'Membership in the bar is a privilege burdened with conditions.' One is admitted to the bar 'for something more than private gain.' He becomes 'an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice. His co-operation with the court is due 'whenever justice would be imperiled if co-operation was withheld.' Without such attorneys at law the judicial department of government would be hampered in the performance of its duties. That has been the history of attorneys under the common law, both in this country and in England. Admission to practice as an attorney at law is almost without exception conceded to be a judicial function. Petition to that end is filed in courts, as are other proceedings invoking judicial action. Admission to the bar is accomplished and made open and notorious by a decision of the court entered upon its records. The establishment by the Constitution of the judicial department conferred authority necessary to the exercise of its powers as a co-ordinate department of government. It is an inherent power of such a department of government ultimately to determine the qualifications of those to be admitted to practice in its courts, for assisting in its work, and to protect itself in this respect from the unfit, those lacking in sufficient learning, and those not possessing good moral character. Chief Justice Taney stated succinctly and with finality in Ex parte Secombe, 19 How. 9, 13, 15 L. Ed. 565, 'It has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counselor, and for what cause he ought to be removed.' " (p. 727)

In the case of Day and others who collectively filed a petition to secure license to practice the legal profession by virtue of a law of the state (In re Day, 54 NE 646), the court said in part:

"In the case of Ex parte Garland, 4 Wall, 333, 18 L. Ed. 366, the court, holding the test oath for attorneys to be unconstitutional, explained the nature of the attorney's office as follows: 'They are officers of the court, admitted as such by its order, upon evidence of their possessing sufficient legal

learning and fair private character. It has always been the general practice in this country to obtain this evidence by an examination of the parties. In this court the fact of the admission of such officers in the highest court of the states to which they, respectively, belong, for three years preceding their application, is regarded as sufficient evidence of the possession of the requisite legal learning, and the statement of counsel moving their admission sufficient evidence that their private and professional character is fair. The order of admission is the judgment of the court that the parties possess the requisite qualifications as attorneys and counselors, and are entitled to appear as such and conduct causes therein From its entry the parties become officers of the court, and are responsible to it for professional misconduct They hold their office during good behavior, and can only be deprived of it for misconduct ascertained and declared by the judgment of the court after opportunity to be heard has been afforded. Ex parte Hoyfron, 7 How. (Miss. 127; Fletcher v. Daingerfield, 20 Cal. 430. Their admission or their exclusion is not the exercise of a mere ministerial power. It is the exercise of judicial power, and has been so held in numerous cases. It was so held by the court of appeals of New York in the matter of the application of Cooper for admission. Re Cooper 22 N. Y. 81. 'Attorneys and Counselors,' said that court, 'are not only officers of the court, but officers whose duties relate almost exclusively to proceedings of a judicial nature; and hence their appointment may, with propriety, be intrusted to the court, and the latter, in performing his duty. may very justly considered as engaged in the exercise of their appropriate judicial functions.' " (pp. 650-651).

We quote from other cases, the following pertinent portions:

"Admission to practice of law is almost without exception conceded everywhere to be the exercise of a judicial function, and this opinion need not be burdened with citations on this point. Admission to practice have also been held to be the exercise of one of the inherent powers of the court." —Re Bruen, 102 Wash. 472, 172 Pac. 906.

"Admission to the practice of law is the exercise of a judicial function, and is an inherent power of the court." — A. C. Brydonjack v. State Bar of California, 281 Pac. 1018; See Annotation on Power of Legislature respecting admission to bar, 66 A. L. R. 1512.

On this matter there is certainly a clear distinction between the functions of the judicial and legislative departments of the government.

"The distinction between the functions of the legislative and the judicial departments is that it is the province of the legislature to establish rules that shall regulate and govern in matters of transactions occuring subsequent to the legislative action, while the judiciary determines rights and obligations with reference to transactions that are past or conditions that exist at the time of the exercise of judicial power, and the distinction is a vital one and not subject to alteration or change either by legislative action or by judicial decrees.

"The judiciary cannot consent that its province shall be invaded by either of the other departments of the government." — 16 C.J.S. Constitutional Law, p. 299.

"If the legislature cannot thus indirectly control the action of the courts, by requiring of them a construction of the law according to its own views, it is very plain it cannot do so directly, by settling aside their judgments, compelling them to grant new trials, ordering the discharge of offenders, or directing what particular steps shall be taken in the progress of a judicial inquiry." — Cooley's Constitutional Limitations, 192.

In decreeing that bar candidates who obtained in the bar examinations of 1946 to 1952, a general average of 70% without falling below 50% in any subject, be admitted in mass to the practice of law, the disputed law is not a legislation; it is a judgment — a judgment revoking those promulgated by this Court during the aforecited years affecting the bar candidates concerned; and although this Court certainly can revoke these judgments even now, for justiciable reasons, it is no less certain that only this Court, and not the legislative nor executive department, that may do so. Any attempt on the part of any of these departments would be a clear usurpation of its functions, as is the case with the law in question.

That the Constitution has conferred on Congress the power to repeal, alter or supplement the rules promulgated by this Tribunal, concerning the admission to the practice of law, is no valid argument. Section 13 Article VIII of the Constitution provides:

> "Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines." —Constitution of the Philippines, Art. VIII, Sec. 13.

It will be noted that the Constitution has not conferred on Congress and this Tribunal equal responsibilities concerning the admission to the practice of law. The primary power and responsibility which the Constitution recognizes, continue to reside in this Court. Had Congress found that this Court has not promulgated any rule on the matter, it would have nothing over which to exercise the power granted to it. Congress may repeal, alter and supplement the rules promulgated by this Court, but the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys at law and their supervision remain vested in the Supreme Court.. The power to repeal, alter and supplement the rules does not signify nor permit that Congress substitute or take the place of this Tribunal in the exercise of its primary power on the matter. The Constitution does not say nor mean that Congress may admit, suspend, disbar or reinstate directly attorneys at law, or a determinate group of individuals to the practice of law. Its power is limited to repeal, modify or supplement the existing rules on the matter, if according to its judgment the need for a better service of the legal profession requires it. But this power does not relieve this Court of its responsibility to admit, suspend, disbar and reinstate attorneys at law and supervise the practice of the legal profession.

Being coordinate and independent branches, the power to promulgate and enforce rules for the admission to the practice of law and the concurrent power to repeal, alter and supplement them may and should be exercised with the respect that each owes to the other, giving careful consideration to the responsibility which the nature of each department requires. These power have existed together for centuries without diminution on each part, the harmonious delimitation being found in that the legislature may and should examine if the existing rules on the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training and responsibility. The legislature may, by means of repeal, amendment or supplemental rules, fill up any deficiency that it may find, and the judicial power, which has the inherent responsibility for a good and efficient administration of justice and the supervision of the practice of the legal profession, should consider these reforms as the minimum standards for the elevation of the profession, and see to it that with these reforms the lofty objective that is desired in the exercise of its traditional duty of admitting, suspending disbarring and reinstateing attorneys at law is realized. They are powers which, exercised within their proper constitutional limits, are not repugnant, but rather complementary to each other in attaining the establishment of a Bar that would respond to the increasing and

exacting necessities of the administration of justice.

The case of Guariña (1913) 24 Phil. 37, illustrates our criterion. Guariña took the examinations and failed by a few points to obtain the general average. A recently enacted law provided that one who had been appointed to the position of Fiscal may be admitted to the practice of law without a previous examination. The Government appointed Guariña and he discharged the duties of Fiscal in a remote province. This Tribunal refused to give his license without previous examination. The Court said:

"Relying upon the provisions of section 2 of Act No. 1597, the applicant in this case seeks admission to the bar, without taking the prescribed examination, on the ground that he holds the office of provincial fiscal for the Province of Batanes.

"Section 2 of Act No. 1597, enacted February 28, 1907, is as follows:

"Sec. 2 Paragraph one of section thirteen of Act Numbered One Hundred and ninety, entitled 'An Act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands,' is hereby amended to read as follows:

"'1. Those who have been duly licensed under the laws and orders of the Islands under the sovereignty of Spain or of the United States and are in good and regular standing as members of the bar of the Philippine Islands at the time of the adoption of this code: *Provided*, That any person who, prior to the passage of this Act, or at any time thereafter, shall have held, under the authority of the United States, the position of justice of the Supreme Court, judge of the Court of First Instance, or judge or associate judge of the Court of Land Registration, of the Philippine Islands, or the position of Attorney-General, Solicitor-General, Assistant Attorney-General, assistant attorney in the office of the Attorney-General, prosecuting attorney for the city of Manila, assistant prosecuting attorney for the City of Manila, city attorney of Manila, assistant city attorney of Manila, provincial fiscal, attorney for the Moro Province, or assistant attorney for the Moro Province, may be licensed to practice law in the courts of the Philippine Islands without an examination, upon motion before the Supreme Court and establishing such fact to the satisfaction of said court.'"

"The records of this court disclose that on a former occasion this applicant took, and failed to pass the prescribed examination. The report of the examining board, dated March 23, 1907, shows that he received an average of only 71 per cent in the various branches of legal learning upon which he was examined, thus falling four points short of the required percentage of 75. We would be delinquent in the performance of our duty to the public and to the bar, if, in the face of this affirmative indication of the deficiency of the applicant in the required qualifications of learning in the law at the time when he presented his former application for admission to the bar, we should grant him a license to practice law in the courts of these Islands, without first satisfying ourselves that despite his failure to pass the examination on that occasion, he now 'possesses the necessary qualifications of learning and ability.'

"But it is contended that under the provisions of the above-cited statute the applicant is entitled as of right to be admitted to the bar without taking the prescribed examination 'upon motion before the Supreme Court' accompanied by satisfactory proof that he has held and now holds the office of provincial fiscal of the Province of Batanes. It is urged that having in mind the object which the legislator apparently sought to attain in enacting the above-cited amendment to the earlier statute, and in view of the context generally and especially of the fact that the amendment was inserted as a proviso in that section of the original Act which specifically provides for the admission of certain candidates without examination, the clause 'may be licensed to practice law in the courts of the Philippine Islands without any examination.' It is contended that this mandatory construction is imperatively required in order to give effect to the apparent intention of the legislator, and to the candidate's claim *de jure* to have the power exercised."

And after copying article 9 of Act of July 1, 1902 of the Congress of the United States, articles 2, 16 and 17 of Act No. 136, and articles 13 to 16 of Act 190, the Court continued:

"Manifestly, the jurisdiction thus conferred upon this court by the Commission and confirmed to it by the Act of Congress would be limited and restricted, and in a case such as that under consideration wholly destroyed, by giving the word 'may,' as used in the above citation from Act No. 1597, as mandatory rather than a permissive effect. But any Act of the Commission which has the effect of setting at naught in whole or in part the Act of Congress of July 1, 1902, or of any Act of Congress prescribing, defining or limiting the power conferred upon the Commission is to that extent invalid and void, as transcending its rightful limits and authority.

Speaking on the application of the law to those who were appointed to the positions enumerated, and with particular emphasis in the case of Guariña, the Court held:

"In the various cases wherein applications for admission to the bar under the provisions of this statute have been considered heretofore, we have accepted the fact that such appointments had been made as satisfactory evidence of the qualifications of the applicant. But in all of those cases we had reason to believe that the applicants had been practicing attorneys prior to the date of their appointment.

"In the case under consideration, however, it affirmatively appears that the applicant was not and never had been practicing attorney in this or any other jurisdiction prior to the date of his appointment as provincial fiscal, and it further affirmatively appears that he was deficient in the required qualifications at the time when he last applied for admission to the bar.

"In the light of this affirmatively proof of his deficiency on that occasion, we do not think that his appointment to the office of provincial fiscal is in itself satisfactory proof of his possession of the necessary qualifications of learning and ability. We conclude therefore that this application for license to practice in the courts of the Philippines should be denied.

"In view, however, of the fact that when he took the examination he fell only four points short of the necessary grade to entitle him to a license to practice; and in view also of the fact that since that time he had held the responsible office of governor of the Province of Sorsogon and presumably gave evidence of such marked ability in the performance of the duties of that office that the Chief Executive, with the consent and approval of the Philippine Commission, sought, to retain him in the Government service by appointing him to the office of provincial fiscal, we think we would be justified under the above-cited provision of Act No. 1597 in waiving in his case the ordinary examination prescribed by general rule, provided he offers satisfactory evidence of his proficiency in a special examination which will be given him by a committee of the court upon his application therefor, without prejudice to his right, if he desires so to do, to present himself at any of the ordinary examinations prescribed by general rule." — (In re Guariña, pp. 48-49.)

It is obvious, therefore, that the ultimate power to grant license for the practice of law belongs exclusively to this Court, and the law passed by Congress on the matter is of permissive character, or as other authorities say, merely to fix the minimum conditions for the license.

The law in question, like those in the case of Day and Cannon, has been found also to suffer from the fatal defect of being a class legislation, and that if it has intended to make a classification, it is arbitrary and unreasonable.

In the case of Day, a law enacted on February 21, 1899 re-

quired of the Supreme Court, until December 31 of that year, to grant license for the practice of law to those students who began studying before November 4, 1897, and had studied for two years and presented a diploma issued by a school of law, or to those who had studied in a law office and would pass an examination, or to those who had studied for three years if they commenced their studies after the aforementioned date. The Supreme Court declared that this law was unconstitutional being, among others, a class legislation. The court said:

"This is an application to this court for admision to the bar of this state by virtue of diplomas from law schools issued to the applicants. The act of the general assembly passed in 1899, under which the application is made, is entitled 'An act to amend section 1 of an act entitled "An act to revise the law in relation to attorneys and counselors," approved March 28, 1874, in force July 1, 1874.' The amendment, so far as it appears in the enacting clause, consists in the addition to the section of the following: "And every applicant for a license who shall comply with the rules of the supreme court in regard to admission to the bar in force at the time such applicant commenced the study of law, either in a law office or a law school or college, shall be granted a license under this act notwithstanding any subsequent changes in said rules.' " — In re Day et al., 54 N.E. p. 646.

x x x. "After said provision there is a double proviso, one branch of which is that up to December 31, 1899, this court shall grant a license of admittance to the bar to the holder of every diploma regularly issued by any law school regularly organized under the laws of this state, whose regular course of law studies is two years, and requiring an attendance by the student of at least 36 weeks in each of such years, and showing that the student began the study of law prior to November 4, 1897, and accompanied with the usual proofs of good moral character. The other branch of the proviso is that any student who has studied law for two years in a law office, or part of such time in a law office, 'and part in the aforesaid law school,' and whose course of study began prior to November 4, 1897, shall be admitted upon a satisfactory examination by the examining board in the branches now required by the rules of this court. If the right to admission exists at all, it is by virtue of the proviso, which, it is claimed, confers substantial rights and privileges upon the persons named therein, and establishes rules of legislative creation for their admission to the bar." (p. 647.)

"Considering the proviso, however, as an enactment, it is clearly special legislation, prohibited by the constitution, and invalid as such. If the legislature had any right to admit attorneys to practice in the courts and take part in the administration of justice, and could prescribe the character of evidence which should be received by the court as conclusive of the requisite learning and ability of persons to practice law, it could only be done by a general law, and not by granting special and exclusive privileges to certain persons or classes of persons. Const. art. 4, section 2. The right to practice law is a privilege, and a license for that purpose makes the holder an officer of the court, and confers upon him the right to appear for litigants, to argue causes, and to collect fees therefor, and creates certain exemptions, such as from jury service and arrest on civil process while attending court. The law conferring such privilege must be general in its operation. No doubt the legislature, in framing an enactment for that purpose, may classify persons so long as the law establishing classes in general, and has some reasonable relation to the end sought. There must be some difference which furnished a reasonable basis for different legislation as to the different classes, and not a purely arbitrary one, having no just relation to the subject of the legislation. Braceville Coal Co. v. People, 147 Ill. 66, 35 N.E. 62; Ritchie v. People, 155 Ill. 98, 40 N.E. 454; Railroad Co. v. Ellis, 165 U. S. 150, 17 Sup. 255.

"The length of time a physician has practiced, and the skill acquired by experience, may furnish a basis for classification (Williams v. People, 121 Ill. 84, 11 N.E. 881); but the place where such physician has resided and practiced his profession cannot furnish such basis, and is an arbitrary discrimination, making an enactment based upon it void (State v. Pennoyer, 65 N.E. 113, 13 Atl. 878). Here the legislature undertakes to say what shall serve as a test of fitness for the profession of the law, and, plainly, any classification must have some reference to learning, character, or ability to engage in such practice. The proviso is limited, first, to a class of persons who began the study of law prior to November 4, 1897. This class is subdivided into two classes — First, those presenting diplomas issued by any law school of this state before December 31, 1899; and, second, those who studied law for the period of two years in a law office, or part of the time in a law school and part in a law office, who are to be admitted upon examination in the subjects specified in the present rules of this court, and as to this latter subdivision there seems to be no limit of time for making application for admission. As to both classes, the conditions of the rules are dispensed with, and as between the two different conditions and limits of time are fixed. No course of study is prescribed for the law school, but a diploma granted upon the completion of any sort of course its managers may prescribe is made all-sufficient. Can there be anything with relation to the qualifications or fitness of persons to practice law resting upon the mere date of November 4, 1897, which will furnish a basis of classification? Plainly not. Those who began the study of law November 4th could qualify themselves to practice in two years as well as those who began on the 3rd. The classes named in the proviso need spend only two years in study, while those who commenced the next day must spend three years, although they would complete two years before the time limit. The one who commenced on the 3rd. if possessed of a diploma, is to be admitted without examination before December 31, 1899, and without any prescribed course of study, while as to the other the prescribed course must be pursued, and the diploma is utterly useless. Such classification cannot rest upon any natural reason, or bear any just relation to the subject sought, and none is suggested. The proviso is for the sole purpose of bestowing privileges upon certain defined persons. (pp. 647-648.)

In the case of Cannon above cited, State v. Cannon, 240 N. W. 441, where the legislature attempted by law to reinstate Cannon to the practice of law, the court also held with regards to its aspect of being a class legislation:

"But the statute is invalid for another reason. If it be granted that the legislature has power to prescribe ultimately and definitely the qualifications upon which courts must admit and license those applying as attorneys at law, that power can not be exercised in the manner here attempted. That power must be exercised through general laws which will apply to all alike and accord equal opportunity to all. Speaking of the right of the Legislature to exact qualifications of those desiring to pursue chosen callings, Mr. Justice Field in the case of Dent v. West Virginia, 129 U. S. 114, 121, 9 S. Ct. 232, 233 32 L. Ed. 626, said: 'It is undoubtedly the right of every citizen of the United States to follow any lawful calling, business or profession he may choose, subject only to such restrictions as are imposed upon all persons of like age, sex, and condition. This right may in many respects be considered as a distinguishing feature of our republican institutions. Here all vocations are all open to every one on like conditions. All may be pursued as sources of livelihood, some requiring years of study and great learning for their successful prosecution. The interest, or, as it is sometimes termed, the 'estate' acquired in them—that is, the right to continue their prosecution —is often of great value to the possessors, and cannot be arbitrarily taken from them, any more than their real or personal property can be thus taken. It is fundamental under our sys-

tem of government that all similarly situated and possessing equal qualifications shall enjoy equal opportunities. Even statutes regulating the practice of medicine, requiring examinations to establish the possession on the part of the application of his proper qualifications before he may be licensed to practice, have been challenged, and courts have seriously considered whether the exemption from such examinations of those practicing in the state at the time of the enactment of the law rendered such law unconstitutional because of infringement upon this general principle. State v. Thomas Call, 121 N.C. 643, 28 S.E. 517; see. also, The State ex rel. Winkler v. Rosenberg, 101 Wis. 172, 76 N.W. 345; State v. Whitcom, 122 Wis. 118, 99 N.W. 468.

"This law singles out Mr. Cannon and assumes to confer upon him the right to practice law and to constitute him an officer of this Court as a mere matter of legislative grace or favor. It is not material that he had once established his right to practice law and that one time he possessed the requisite learning and other qualifications to entitle him to that right. That fact in no manner affect the power of the Legislature to select from the great body of the public an individual upon whom it would confer its favors.

"A statute of the state of Minnesota (Laws 1929, c. 424) commanded the Supreme Court to admit to the practice of law, without examination, all who had 'serve in the military or naval forces of the United States during the World War and received an honorable discharge therefrom and who (were disabled therein or thereby within the purview of the Act of Congress approved June 7th, 1924, known as 'World War Veteran's Act, 1924 and whose disability is rated at least ten per cent thereunder at the time of the passage of this Act." This Act was held unconstitutional on the ground that it clearly violated the quality clauses of the constitution of that state. In re Application of George W. Humphrey, 178 Minn. 331, 227 N.W. 179

A good summary of a classification constitutionally acceptable is explained in 12 Am. Jur. 151-153 as follows:

"The general rule is well settled by unanimity of the authorities that a classification to be valid must rest upon material differences between the persons included in it and those excluded and, furthermore, must be based upon substantial distinctions. As the rule has sometimes avoid the constitutional prohibition, must be founded upon pertinent and real difference, as distinguished from irrelevant and artificial once. Therefore, any law that is made applicable to one class of citizens only must be based on some substantial difference between the situation of that class and other individuals to which it does not apply and must rest on some reason on which it can be defended. In other words, there must be such a difference between the situation and circumstances of all the members of the class and the situation and circumstances of all other members of the state in relation to the subjects of the discriminatory legislation as presents a just and natural reason for the difference made in their liabilities and burdens and in their rights and privileges. A law is not general because it operates on all within a class unless there is a substantial reason why it is made to operate on that class only, and not generally on all." (12 Am. Jur. pp. 151-153.)

Pursuant to the law in question, those who, without a grade below 50% in any subject, have obtained a general average of 69.5% in the bar examinations in 1946 to 1951, 70.5% in 1952, 71.5% in 1953, and those who will obtain 72.5% in 1954, and 73.5% in 1955, will be permitted to take and subscribe the corresponding oath of office as members of the Bar, notwithstanding that the Rules require a minimum general average of 75%, which has been invariably followed since 1950. Is there any motive of the nature indicated by the above-mentioned authorities, for this classification? If there is none, and none has been given, then the classification is fatally defective.

It was indicated that those who failed in 1944, 1941 or the years before, with the general average indicated, were not included because the Tribunal has no record of the unsuccessful candidates of those years. This fact does not justify the unexplained classification of unsuccessful candidates by years, from 1946-1951, 1952, 1953, 1954, 1955. Neither is the exclusion of those who failed before said years under the same conditions justified. The fact that this Court has no record of examinations prior to 1946 does not signify that none concerned may prove by some other means his right to an equal consideration.

To defend the disputed law from being declared unconstitutional on account of its retroactivity, it is argued that it is curative, and that in such form it is constitutional. What does Rep. Act 972 intend to cure? Only from 1946 to 1949 were there cases in which the Tribunal permitted admission to the bar of candidates who did not obtain the general average of 75%; in 1946 those who obtained only 72%; in 1947 all those who had 69% or more; in 1948, 70% and in 1949, 74%; and in 1950 to 1953, those who obtained 74%, which was considered by the Rules, by reason of circumstances deemed to be sufficiently justifiable. These changes in the passing averages during those years were all that could be objected to or criticized. Now, is it desired to undo what had been done—cancel the license that was issued to those who did not obtain the prescribed 75%? Certainly not. The disputed law clearly does not propose to do so. Concededly, it approves what has been done by his Tribunal. What Congress lamented is that the Court did not consider 69.5% obtained by those candidates who failed in 1946 to 1952 as sufficient to qualify them to practice law. Hence, it is the lack of will or defect of judgment of the Court that is being cured, and to complete the cure of this infirmity, the effectivity of the disputed law is being extended up to the years 1953, 1954 and 1955, increasing each year the general average by one per cent, with the order that said candidates be admitted to the Bar. This purpose, manifest in the said law, is the best proof that what the law attempts to amend and correct are not the rules promulgated, but the will or judgment of the Court, by means of simply taking its place. This is doing directly what the Tribunal should have done during those years according to the judgment of Congress. In other words, the power exercised was not to repeal, alter or supplement the rules, which continue in force. What was done was to stop or suspend them. And this power is not included in what the Constitution has granted to Congress, because it falls within the power to apply the rules. This power corresponds to the judiciary, to which such duty has been confided.

Article 2 of the law in question permits partial passing of examinations, at indefinite intervals. The grave defect of this system is that it does not take into account that the laws and jurisprudence are not stationary, and when a candidate finally receives his certificate, it may happen that the existing laws and jurisprudence are already different, seriously affecting in this manner his usefulness. The system that the said law prescribes was used in the first bar examinations of this country, but was abandoned for this and other disadvantages. In this case, however, the fatal defect is that the article is not expressed in the title of the Act. While this law according to its title will have temporary effect only from 1946 to 1955, the text article 2 establishes a permanent system for an indefinite time. This is contrary to Sec. 21(1), Art. VI of the Constitution, which vitiates and annuls article 2 completely; and because it is inseparable from article 1, it is obvious that its nullity affects the entire law.

Laws are unconstitutional on the following grounds: first, because they are not within the legislative powers of Congress to enact, or Congress has exceeded its powers; second, because they create or establish arbitrary methods or forms that infringe constitutional principles; and third, because their purposes or effects violate the Constitution or its basic principles. As has already been seen, the contested law suffers from there fatal defects.

Summarizing, we are of the opinion and hereby declare that Republic Act No. 972 is unconstitutional and, therefore, void, and

without any force nor effect for the following reasons, to wit:

1. Because its declared purpose is to admit 810 candidates who failed in the bar examinations of 1946-1952, and who, it admits, are certainly inadequately prepared to practice law, as was exactly found by this Court in the aforesaid years. It decrees the admission to the Bar of these candidates, depriving this Tribunal of the opportunity to determine if they are at present already prepared to become members of the Bar. It obliges the Tribunal to perform something contrary to reason and in an arbitrary manner. This is a manifest encroachment on the constitutional responsibility of the Supreme Court.

2. Because it is, in effect, a judgment revoking the resolution of this Court on the petitions of these 810 candidates, without having examined their respective examination papers, and although it is admitted that this Tribunal may reconsider said resolution at any time for justifiable reasons, only this Court and no other may revise and alter them. In attempting to do it directly, Republic Act No. 972 violated the Constitution.

3. By the disputed law, Congress has exceeded its legislative power to repeal, alter and supplement the rules on admission to the Bar. Such additional or amendatory rules are, as they ought to be, intended to regulate acts subsequent to its promulgation and should tend to improve and elevate the practice of law, and this Tribunal shall consider these rules as minimum norms towards that end in the admission, suspension, disbarment and reinstatement of lawyers to the Bar, inasmuch as a good bar assists immensely in the daily performance of judicial functions and is essential to a worthy administration of justice. It is therefore the primary and inherent prerogative of the Supreme Court to render the ultimate decision on who may be admitted and may continue in the practice of law according to existing rules.

4. The reason advanced for the pretended classification of candidates, which the law makes, is contrary to facts which are of general knowledge and does not justify the admission to the Bar of law students inadequately prepared. The pretended classification is arbitrary. It is undoubtedly a class legislation.

5. Article 2 of Republic Act No. 972 is not embraced in the title of the law, contrary to what the Constitution enjoins, and being inseparable from the provisions of Article 1, the entire law is void.

6. Lacking in eight votes to declare the nullity of that part of article 1 referring to the examinations of 1953 to 1955, said part of article 1, insofar as it concerns the examinations in those years, shall continue in force.

RESOLUTION

Upon the mature deliberation by this Court, after hearing and availing of the magnificent and impassioned discussion of the contested law by our Chief Justice at the opening and close of the debate among the members of the Court, and after hearing the judicious observations of two of our beloved colleagues who since the beginning have announced their decision not to take part in the voting, we, the eight members of the Court who subscribe to this decision have voted and resolved, and have decided for the Court, and under the authority of the same:

1. That (a) the portion of article 1 of Republic Act No. 972 referring to the examinations of 1946 to 1952, and (b) all of article 2 of said law are unconstitutional and, therefore, void and without force and effect.

2. That, for lack of unanimity in the eight Justices, that part of article 1 which refers to the examinations subsequent to the approval of the law, that is from 1953 to 1955 inclusive, is valid and shall continue to be in force, in conformity with section 10 Art. VII of the Constitution.

Consequently, (1) all the above-mentioned petitions of the candidates who failed in the examinations of 1946 to 1952 inclusive are denied, and (2) all candidates who in the examinations of 1953 obtained a general average of 71.5% or more, without having a grade below 50% in any subject, are considered as having passed, whether they have filed petitions for admission or not. After this decision has become final, they shall be permitted to take and subscribe the corresponding oath of office as members of the Bar on the date or dates that the Chief Justice may set.

So ordered.

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

Chief Justice Paras dissents in a separate opinion.

Messrs. Justices Bautista Angelo and *Concepcion* did not take part in the voting in this case.

LABRADOR, J., concurring and dissenting:

The right to admit members to the Bar is, and has always been, the exclusive privilege of this Court, because lawyers are members of the Court and only this Court should be allowed to determine admission thereto in the interest of the principle of the separation of powers. The power to admit is judicial in the sense that discretion is used in its exercise. This power should be distinguished from the power to promulgate rules which regulate admission. It is only this power (to promulgate amendments to the rules) that is given in the Constitution to the Congress, not the exercise of the discretion to admit or not to admit. Thus the rules on the holding of examination, the qualifications of applicants, the passing grades, etc. are within the scope of the legislative power. But the power to determine when a candidate has made or has not made the required grade is judicial, and lies completely with this Court.

I hold that the act under consideration is an exercise of the judicial function, and lies beyond the scope of the congressional prerogative of amending the rules. To say that candidates who obtaind a general average of 72% in 1953, 73% in 1954, and 74% in 1955 should be considered as having passed the examination, is to mean exercise of the privilege and discretion lodged in this Court. It is a mandate to the tribunal to pass candidates for different years with grades lower than the passing mark. No reasoning is necessary to show that it is an arrogation of the Court's judicial authority and discretion. It is furthermore objectionable as discriminatory. Why should those taking the examinations in 1953, 1954, and 1955 be allowed to have the privilege of a lower passing grade, while those taking earlier or later are not?

I vote that the act *in toto* be declared unconstitutional, because it is not embraced within the rule-making power of Congress, because it is an undue interference with the power of this Court to admit members thereof, and because it is discriminatory.

PARAS, *C.J., dissenting:*

Under section 14 of Rule 127, in order that a bar candidate "may be deemed to have passed his examinations successfully, he must have obtained a general average of 75 per cent in all subjects, without falling below 50 per cent in any subject." This passing mark has always been adhered to, with certain exception presently to be specified.

With reference to the bar examinations given in August, 1946, the original list of successful candidates included only those who obtained a general average of 75 per cent or more. Upon motion for reconsideration, however, 12 candidates with general averages ranging from 72 to 73 per cent were raised to 75 per cent by resolution of December 18, 1946. In the examinations of November, 1946, the list first released containing the names of successful candidates covered only those who obtained a general average of 75 per cent or more; but, upon motion for reconsideration, 19 candidates with a general average of 72 per cent were raised to 75 per cent by resolution of March 31, 1947. This would indicate that in the original list of successful candidates those having a general average of 73 per cent or more but below 75 per cent were included. After the original list of 1947 successful bar candidates had been released, and on motion for reconsideration, all candidates with a general average of 69 per cent were allowed to pass by resolution of July 15, 1948. With respect to the bar examinations held in August, 1948, in addition to the original list of successful bar candidates, all those who obtained a general average of 70 per cent or more, irrespective of the grades in any one subject and irrespective of whether they filed petitions for reconsideration, were allowed to pass by resolution of April 28, 1949. Thus, for the year 1947 the Court in effect made 69 per cent

as the passing average, and for the year 1948 70 per cent; and this amounted, without being noticed perhaps, to an amendment of section 14 of Rule 127.

Numerous flunkers in the bar examinations held subsequent to 1948, whose general averages mostly ranged from 69 to 73 per cent, filed motions for reconsideration, invoking the precedents set by this Court in 1947 and 1948, but said motions were uniformly denied.

In the year 1951, the Congress, after public hearings where law deans and professors, practising attorneys, presidents of bar associations, and law graduates appeared and argued lengthily *pro* or *con*, approved a bill providing, among others, for the reduction of the passing general average from 75 per cent to 70 per cent, retroactive to any bar examination held after July 4, 1946. This bill was vetoed by the President mainly in view of an unfavorable comment of Justices Padilla, Tuason, Montemayor, Reyes, Bautista and Jugo. In 1953, the Congress passed another bill similar to the previous bill vetoed by the President, with the important difference that in the later bill the provisions in the first bill regarding (1) the supervision and regulation by the Supreme Court of the study of law, (2) the inclusion of Social Legislation and Taxation as new bar subjects, (3) the publication of names of the bar examiners before the holding of the examinations, and (4) the equal division among the examiners of all admission fees paid by bar applicants, were eliminated. This second bill was allowed to become a law, Republic Act No. 972, by the President by merely not signing it within the required period; and in doing so the President gave due respect to the will of the Congress which, speaking for the people, chose to repass the bill first vetoed by him.

Under Republic Act No. 972, any bar candidate who obtained a general average of 70 per cent in any examinations after July 4, 1946 up to August 1951; 71 per cent in the 1952 bar examinations; 72 per cent in 1953 bar examinations; 73 per cent in the 1954 bar examinations; and 74 per cent in the 1955 bar examinations, without obtaining a grade below 50 per cent in any subject, shall be allowed to pass. Said Act also provides that any bar candidate who obtained a grade of 75 per cent in any subject in any examination after July 4, 1946, shall be deemed to have passed in such subject or subjects and such grade or grades shall be included in computing the passing general average that said candidate may obtain in any subsequent examinations.

Numerous candidates who had taken the bar examinations previous to the approval of Republic Act No. 972 and failed to obtain the necessary passing average, filed with this Court mass or separate petitions, praying that they be admitted to the practice of law under and by virtue of said Act, upon the allegation that they have obtained the general averages prescribed therein. In virtue of the resolution of July 6, 1953, this Court held on July 11, 1953 a hearing on said petitions, and members of the bar, especially authorized representatives of bar associations, were invited to argue or submit memoranda as *amici curiae*, the reason alleged for said hearing being that some doubt had "been expressed on the constitutionality of Republic Act No. 972 in so far as it affects past bar examinations and the matter" involved "a new question of public interest."

All discussions in support of the proposition that the power to regulate the admission to the practice of law is inherently judicial, are immaterial, because the subject is now governed by the Constitution which in Article VIII, section 13, provides as follows:

> "The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes and are declared Rules of Court, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines."

Under this constitutional provision, while the Supreme Court has the power to promulgate rules concerning the admission to the practice of law, the Congress has the power to repeal, alter or supplement said rules. Little intelligence is necessary to see that the power of the Supreme Court and the Congress to regulate the admission to the practice of law is concurrent.

The opponents of Republic Act No. 972 argue that this Act, in so far as it covers bar examinations held prior to its approval, is unconstitutional, because it sets aside the final resolutions of the Supreme Court refusing to admit to the practice of law the various petitioners, thereby resulting in a legislative encroachment upon the judicial power. In my opinion this view is erroneous. In the first place, resolutions on the rejection of bar candidates do not have the finality of decisions in justiciable cases where the Rules of Court expressly fix certain periods after which they become executory and unalterable. Resolutions on bar matters, specially on motions for reconsiderations filed by flunkers in any given year, are subject to revision by this Court at any time, regardless of the period within which the motions were filed, and this has been the practice heretofore. The obvious reason is that bar examinations and admission to the practice of law may be deemed as a judicial function only because said matters happen to be entrusted, under the Constitution and our Rules of Court, to the Supreme Court. There is no judicial function involved, in the strict and constitutional sense of the word, because bar examinations and the admission to the practice of law, unlike justiciable cases, do not affect opposing litigants. It is no more than the function of other examining boards. In the second place, retroactive laws are not prohibited by the Constitution, except only when they would be *ex post facto*, would impair obligations and contracts or vested rights, or would deny due process and equal protection of the law. Republic Act No. 972 certainly is not an *ex post facto* enactment, does not impair any obligation and contract or vested right, and denies to no one the right to due process and equal protection of the law. On the other hand, it is a mere curative statute intended to correct certain obvious inequalities arising from the adoption by this Court of different passing general averages in certain years.

Neither can it be said that bar candidates prior to July 4, 1946, are being discriminated against, because we no longer have any record of those who might have failed before the war, apart from the circumstance that 75 per cent had always been the passing mark during said period. It may also be that there are no pre-war bar candidates similarly situated as those benefited by Republic Act No. 972. At any rate, in the matter of classification, the reasonableness must be determined by the legislative body. It is proper to recall that the Congress held public hearings, and we can fairly suppose that the classification adopted in the Act reflects good legislative judgment derived from the facts and circumstances then brought out.

As regards the alleged interference in or encroachment upon the judgment of this Court by the Legislative Department, it is sufficient to state that, if there is any interference at all, it is one expressly sanctioned by the Constitution. Besides, interference in judicial adjudication prohibited by the Constitution is essentially aimed at protecting rights of litigants that have already been vested or acquired in virtue of decisions of courts, not merely for the empty purpose of creating appearances of separation and quality among the three branches of the Government. Republic Act No. 972 has not produced a case involving two parties and decided by the Court in favor of one and against the other. Needless to say, the statute will not affect the previous resolutions passing bar candidates who had obtained the general average prescribed by section 14 of Rule 127. A law would be objectionable and unconstitutional if, for instance, it would provide that those who have been admitted to the bar after July 4, 1946, whose general average is below 80 per cent, will not be allowed to practice law, because said statute would then destroy a right already acquired under previous resolutions of this Court, namely, the bar admission of those whose general averages were from 75 to 79 per cent.

Without fear of contradiction, I think the Supreme Court, in the exercise of its rule-making power conferred by the Constitution, may pass a resolution amending section 14 of Rule 127 by reducing

the passing average to 70 per cent, effective several years before the date of the resolution. Indeed, when this Court on July 15, 1948 allowed to pass all candidates who obtained a general average of 69 per cent or more and on April 28, 1949 those who obtained a general average of 70 per cent or more, irrespective of whether they filed petitions for reconsideration, it in effect amended section 14 of Rule 127 retroactively, because during the examinations held in August 1947 and August 1948, said section (fixing the general average at 75 per cent) was supposed to be in force. It stands to reason, if we are to admit that the Supreme Court and the Congress have concurrent power to regulate the admission to the practice of law, that the latter may validly pass a retroactive rule fixing the passing general average.

Republic Act No. 972 cannot be assailed on the ground that it is unreasonable, arbitrary or capricious, since this Court had already adopted as passing averages 69 per cent for the 1947 bar examinations and 70 per cent for the 1948 examinations. Any way, we should not inquire into the wisdom of the law, since this is a matter that is addressed to the judgment of the legislators. This Court in many instances had doubted the propriety of legislative enactments, and yet it has consistently refrained from nullifying them solely on that ground.

To say that the admission of the bar candidates benefited under Republic Act No. 972 is against public interest, is to assume that the matter of whether said Act is beneficial or harmful to the general public was not considered by the Congress. As already stated, the Congress held public hearings, and we are bound to assume that the legislators, loyal, as do the members of this Court, to their oath of office, had taken all the circumstances into account before passing the Act. On the question of public interest I may observe that the Congress, representing the people who elected them, should be more qualified to make an appraisal. I am inclined to accept Republic Act No. 972 as an expression of the will of the people through their duly elected representatives.

I would, however, not go to the extent of admitting that the Congress, in the exercise of its concurrent power to repeal, alter or supplement the Rules of Court regarding the admission to the practice of law, may act in an arbitrary or capricious manner, in the same way that this Court may not do so. We are thus left in the situation, incidental to a democracy, where we can and should only hope that the right men are put in the right places in our Government.

Wherefore, I hold that Republic Act No. 972 is constitutional and should therefore be given effect in its entirety.

II

The People of the Philippines, Plaintiff-Appellee, vs. Juanito Donig, et al., Defendants-Appellants, G. R. No. L-5275, August 25, 1953.

1. EVIDENCE; "FALSUS IN UNO, FALSUS IN OMNIBUS"; RULE EXPLAINED.—The rule is not a mandatory rule of evidence, but rather a permissible one which allows the jury or court to draw the inference or not to draw it as circumstances may best warrant.
2. ID; ID.—Professor Wigmore criticizes the broad rule as unsound, because not true to human nature; that because a person tells a single lie, he is lying throughout his whole testimony, or that there is strong possibility that he is so lying. The reason for it is that once a person knowingly and deliberately states a falsehood in one material aspect, he must have done so as to the rest. But it is also clear that the rule has its limitations, for when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted. Because though a person may err in memory or in observation in one or more respects, he may have told the truth as to others. (III Wigmore, Secs. 1009-1015, pp. 674- 83.)
3. ID; LIMITATIONS OF THE "FALSUS IN UNO, FALSUS IN OMNIBUS" RULE.—The maxim should not apply in the case at bar for three reasons. First, there is sufficient corroboration on many grounds of the testimony. Second, the mistakes are not on the very material points. Third, the errors do not arise from an apparent desire to pervert the truth, but from innocent mistakes and the desire of the witness to exculpate himself though not completely.

Domingo L. Vergara and *Perfecta de Vera* for appellants.

Assistant Solicitor General Guillermo E. Torres and *Solicitor Ramon L. Avanceña* for appellee.

DECISION

LABRADOR, *J.*:

Defendants in the above-entitled case appeal from a judgment of the Court of First Instance of Isabela, finding them guilty of the crime of robbery with homicide, and sentencing them to *reclusion perpetua*, to indemnify jointly and severally the heirs of Norberto Ramil, in the sum of ₱4,000.00, and the complainant, Jacinta Galasinao, in the sum of ₱190.00, and to pay the costs of the prosecution.

The record discloses that in the evening of December 23, 1949, at about midnight, while Norberto Ramil and his wife, Jacinta Galasinao, and their daughter and son, Segunda and Domingo, respectively, were sleeping in their house situated not far away from the municipal building of Antatet (now Luna), Province of Isabela, the said spouses were suddenly awakened by the barking of dogs and the grunting of pigs. Ramil got up and walked quietly towards a window, to find out what the dogs were barking at, but just then two persons who had entered the house faced him. The wife heard these persons talking in whispers and saw them in front. She lighted a lamp, and as she did so the two intruders levelled their guns at her husband and demanded from him to produce his pistol. As the husband could not produce any pistol and said he had none at all, they fired at him. He used his two hands to protect himself but to no avail. As he received the shots, he fell down in a stooping position and then slumped on the floor, face downwards. The wife and her two children, who had already been awakened, cried for help, but the intruders levelled their guns at them, commanding them to keep quiet and threatening to kill if they did not do so. For fear, they had to stop. The intruders then went inside the bedroom and ransacked the contents of the trunk which contained their valuables. ₱10.00 in cash and jewels worth ₱180.00 were taken away.

The Chief of Police of Atatet, who lived around twenty meters away from the house of Ramil, heard three pistol shots, so he repaired to the municipal building to fetch one of his policemen, then they passed by the house of the Mayor, and together with him they proceeded to the house of Ramil. When they reached it the robbers were already gone. They found Ramil already dead with gunshot wounds on the left eye, in the right breast, at the back, and at the left index finger. They questioned the wife, who recounted to them what had happened. The Chief of Police found a fired bullet, caliber 32, inside the trunk, four empty 22-caliber cartridges near the dead body, three empty 32-caliber shells, one near the broken box inside the bedroom and the other two five meters away from the house of the deceased, and three 45-caliber empty shells under the house just below the dead body. The following day, a physician of Antatet performed an autopsy on the dead body of Ramil and he found four gunshot wounds in the places already indicated above. When he opened the chest cavity, he discovered a 22-caliber slug right at the heart.

The above facts are not contradicted. The evidence, upon which the judgment of conviction is based, consists of the testimony of one, Jose Mallillin, that of Andres Bumanglag, which in part corroborates Mallillin's testimony, and the findings of a ballistic expert of the Philippine Constabulary to the effect that the empty 32-caliber cartridges found under the house of Ramil had been fired from the Llama auto-pistol possessed by, and licensed in the name of Mallillin, and that the 32-caliber slug, Exhibit "C", which was found inside the trunk, had also been fired therefrom. These findings were based on the fact that the striations found in the said bullet are identical with and congruent to those which he fired from the same Llama auto-pistol, and the pin marks at the empty 32-caliber cartridges are identical with and congruent to that found at an empty cartridges fired from the same pistol.

Mallillin was formerly a school teacher of Antatet and had resided there, but on the date of the robbery he was living in a contiguous town, Cauayan. He testified as follows: On the evening in question, while he was on his way home, he saw four persons near a check point, and as he passed by, two of them got

hold of him and a third snatched his pistol away and compelled him to follow them. The four were later recognized by him to be the defendants Balbino Gabuni, Juanito Dasig and Marcelino Dayao, and Sergio Eduardo. They boarded a jeep, which was parked near the road and in which there were two others whom Mallillin did not recognize, and then they drove to the junction of the Cabatuan-Antatet roads. Here they all went down and walked towards Antatet.

When the party was around 100 meters from the municipal building, he saw his companions talking to Andres Bumanglag. Taking Bumanglag aside, he informed the latter that he had been held up. Upon Mallillin's suggestion, his companions asked Bumanglag how the house of Ramil could be entered, and the latter answered that it could be done through a window near the wall. They also asked further information from him, and thereafter he was allowed to go away, but with the warning that if he would squeal, he would be put to death.

After Bumanglag had left, they went to a place around fifty meters from the house of Ramil, the intended victim. Here they waited till about midnight when they approached the house. Gabuni then ordered Mallillin to stay in a place beside the road. Dasig and Eduardo then gave him their shoes for him to keep, while the five, including the two unknown persons, approached the house. Dasig and Eduardo entered the house through the window, while Gabuni stayed at the door in front. Gabuni gave his carbine to Dayao and Mallillin's Llama pistol to Dasig, while Eduardo held a .22 caliber pistol.

Five minutes after the three had gone up the house, Mallillin heard three shots. Then he heard a voice calling for help. He got frightened, so he hurriedly went away bound for Cauayan. While still in Antatet, he heard the policeman of Antatet exchange shots with his companions. He arrived at Cauayan at about one o'clock. At around 4:30 that morning, Sergio Eduardo called at his house and asked for their shoes, and as he went away, he warned Mallillin not to squeal, otherwise he would be killed. Mallillin asked for his pistol and was informed that it was with Marcelino Dayao. That same morning he went to Dayao and got it from the latter. Juanito Dasig also called at his house that same morning, warning him that if he would squeal, he would be in a bad fix, informing him further that their two companions whom Mallillin had not recognized, had gone to Manila to fetch some more of their companions until they reach as many as twenty.

The above is Mallillin's version. He was apprehended by the authorities on December 31, 1949. Four days before his arrest, he further said, he had decided after consultation with his wife, to go to the chief of police of Cauayan to ask him to accompany him to Cabatuan, where he was going to relate all that had happened, but that it so happened that when he saw the chief of police, the latter had no time to hear him as he was going away and was then ready with his baggage to go to Manila.

When Mallillin was taken to the Constabulary barracks on December 31, 1949, he had a talk with Lieutenant Panis of the Constabulary. Panis promised him that he would be used as a state witness if he would disclose all that he knew about the robbery. With this promise Mallillin made a complete disclosure of the above facts to Lieutenant Panis. His statement was put in writing, although it was not sworn to before the justice of the peace until January 3, 1950. His affidavit was introduced at the trial as Exhibit 4-Gabuni, Exhibit 3-Dasig-Dayao, and contains substantially the same facts testified to by him during the trial.

The testimony of Andres Bumanglag is to the effect that that same evening, he had been playing guitar with two companions at the house of one Labog, and that when they went home and as they were approaching his house, he was suddenly held up by two persons. When brought to a group to which the two belonged, he recognized Mallillin, Gabuni, chief of police of Cauayan, and Dasig. He was asked about the number of policemen of Antatet, the arms that they had, the caliber of the arms, and persons who had firearms. Finally, they asked him to draw a sketch of the house of Norberto Ramil and its position in relation to the house of the mayor, as well as the position of the window through which entrance could be gained into the house. Bumanglag was very much frightened because, at the beginning when he refused to answer the questions that they asked him, he was kicked and threatened by the group. Besides, Mallillin had informed him that he himself had been held up, and that he should tell what they asked him, otherwise both of them would be killed. After getting all the information that they desired, Bumanglag was allowed to go home. A few minutes after he went to bed he heard some shots, and stray bullets hit his house and a kapok tree nearby, so he and his family had to go down the house to seek shelter from stray bullets.

On January 3, 1950, Andres Bumanglag also made an affidavit before Lieutenant Panis, which was sworn to by him before the justice of the peace of Antatet. In this affidavit, Exhibit 5-Gabuni, he mentions the fact that before the robbery a group of persons, four of whom were armed, came and asked information from him about the house of Norberto Ramil, and that on that occasion he also saw Mallillin with them, who told him that he was also held up by the group.

The trial court gave credit to the testimonies of Mallillin and Bumanglag as above outlined, and together with the identification made by the wife of Ramil of one of the appellants by the latter's stature, and on the further ground that the cartridges and some of the bullets found in the premises had been fired from the Llama pistol of Mallillin, held that the crime of robbery with homicide had been committed by the accused-appellants herein, and sentenced them as above indicated.

In this court the attorneys for the appellants contend that inasmuch as Mallillin's confession was obtained by a promise made by Constabulary Lieutenant Panis that Mallillin would be excluded from the information and made a State witness, Mallillin's confession is not admissible against him and neither should it be admissible against the appellants herein. It is evident that counsel misunderstands the application of the principle in evidence that a confession secured through promise of immunity is not admissible. The evidence submitted against the appellants is not the confession made by Mallillin; it is his testimony given in open court. There is, therefore, no occasion to invoke the principle of evidence in question.

The most important claim of the defendants-appellants is that inasmuch as Mallillin was an accomplice in the crime and his testimony contains flaws in many particulars, the maxim *falsus in uno falsus in omnibus* should be applied to the whole of his testimony, and the judgment of conviction would then have no leg to stand on. There are certainly many points or particulars in Mallillin's testimony which can not stand careful scrutiny. First of all, we have the supposed compulsion or hold-up which he claims he was subjected to. Mallillin admits that the defendants-appellants had been his companions in various games, like poker, "pekyo", etc. Then there is the circumstance that the supposed hold-up took place in the center of the town. According to some defense witnesses, Mallillin had also been telling of robberies that might take place in town. It is not unreasonable, therefore, to conclude that Mallillin was not an unwilling companion in the commission of the crime.

But, on the other hand, we find that his testimony is corroborated by evidence worthy of credit. That he was present on the occasion of the robbery can not be denied, because his Llama pistol was proven to have been fired at the scene of the robbery, as cartridges and bullets proved to have been fired from the said pistol had been found in the house where the robbery was committed. And the fact that appellants had been companions of Mallillin in many gambling games points to the close acquaintance between them and their unity of purpose as well. While his story that it was not he who furnished the data about the climbing of the house can not be believed, as he must have known the house and its surroundings, his statement that Juanito Dasig and Sergio Eduardo were the ones who went inside the house is corroborated by the inmates of the house to the effect that only two of the robbers entered the house.

Again, the testimony about the different arms used, a carbine in the possession of Dayao, a pistol given Eduardo by Gabuni — these facts are corroborated by the finding of .22 caliber slugs and empty shells in the heart of the victim and in the house and

in the premises. The testimony of Mallillin that Gabuni carried a .45 caliber pistol, which was his service pistol as chief of police, is also untrue because the examination of the .45 caliber bullet found in the premises shows that it was not fired from the service pistol of Gabuni. But Mallillin's assertion may be due to an innocent error on his part. He perhaps thought that the pistol that Gabuni carried was his service pistol. But Gabuni may have planned to avoid identification by using a firearm different from that which he used as member of the police force.

Then there is the corroboration of the testimony of Mallillin given by Andres Bumanglag, whom the trial court considered as a trustworthy witness. We find nothing from the record which would justify us in reversing the appraisal of the above testimony and the credit given this corroborating witness by the trial court.

It has been stated that the rule (*falsus in uno, falsus in omnibus*) invoked is not a mandatory rule of evidence, but rather a permissible one, which allows the jury or the court to draw the inference or not to draw it as circumstances may best warrant. (70 C.J. 783.) The unbelievable allegation of Mallillin, that he was forced into joining the band against his will, arises from the natural desire of an accomplice to shift the blame to his co-conspirators and exculpate himself; while his assertion that the gun Gabuni carried was his service pistol may be an innocent mistake on Mallillin's part. His claim that it was Bumanglag who indicated where access to the victim's house may be had may also be untrue, because Mallillin had been said to have been in the house. Do these flaws and defects render his testimony wholly inadmissible under the rule invoked?

We take advantage of this opportunity to explain the true scope of of this much invoked and abuse rule (of *falsus in uno, falsus in omnibus.*) Professor Wigmore states that this rule ceased to be the rule in England as early as the beginning of the eighteenth century. He criticizes the broad rule as unsound, because not true to human nature; that because a person tells a single lie, he is lying throughout his whole testimony, or that there is strong possibility that he is so lying. The reason for it is that once a person knowingly and deliberately states a falsehood in one material aspect, he must have done so as to the rest. But it is also clear that the rule has its limitations, for when the mistaken statement is consistent with good faith and is not conclusively indicative of a deliberate perversion, the believable portion of the testimony should be admitted. Because though a person may err in memory or in observation in one or more respects, he may have told the truth as to others. (III Wigmore, Secs. 1009-1015, pp. 647-683.) There, are, therefore, these requirments for the application of the rule, i.e., that the false testimony is as to a material point, and that there should be a conscious and deliberate intention to falsify. (Lyric Film Exchange Inc. vs. Cowper, 1937, 36 O. G. 1642.)

The rule is also carefully considered in the case of The Santisima Trinidad, 7 Wheat. 283, 5 L. Ld. 454, thus:

> "Where a party speaks to a fact in respect to which he cannot be presumed liable to mistake, as in relation to the country of his birth, or his being in a vessel on a particular place, if the fact turn out otherwise, it is extremely difficult to exempt him from the charge of deliberate falsehood; and courts of justice under such circumstances, are bound upon principles of law and morality and justice to apply the mixim falsus in uno, falsus in omnibus. What ground of judicial belief can there be left when the party has shown such gross insensibility to the difference between right and wrong, between truth and falsehood?"

In the case of Godair v. Ham National Bank, 80 N.E., 407, the Supreme Court of Illinois made the following very illuminating expression of the scope of the rule:

> "As to the second criticism, it has uniformly been held by this Court that the maxim, 'Falsus in uno falsus in omnibus,' should only be applied in cases where a witness has knowingly and willfully given false testimony. Chittenden v. Evans, 41 Ill. 251; City of Chicago v. Smith, 48 Ill. 107; United States Express Co. v. Hutchins, 58 Ill. 44; Pope v. Dodson, Id. 360 Guliher v. People, 82 Ill. 145; Swan v. People, 98 Ill. 610: Hoge v. People, 117 Ill. 35, 6 N.E. 796; Freeman v. Easly 117 Ill. 317, 7 N. E. 856; Overtoom v. Chicago & Eastern Illinois Railroad Co., 81 Ill. 323, 54 N. E. 898; Matthews v. Granger, 196 Ill. 164, 63 N. E. 658."

> "In City of Chicago v. Smith, *supra*, on page 108 of 48 Ill., it was said: 'As to the eight instructions asked by the defendant and refused, we are of opinion, under the authority of the case of Brennan v. People, 15 Ill. 511, it should not have been given. There the court say it does not follow, merely because a witness makes an untrue statement, that his entire testimony is to be disregarded. This must depend on the motive of the witness. If he intentionally swears falsely as to one matter, the jury may properly reject his whole testimony as unworthy of credit. But, if he makes a false statement through mistake or misapprehension, they ought not to disregard his testimony altogether. The maxim, 'Falsus in uno falsus in omnibus,' should only be applied in cases where a witness willfully and knowingly gives false testimony.'"

> "And in Pope v. Dodson, *supra*, on page 365 of 58 Ill.: 'The tenth instruction in the series given for appellee is palpably erroneous. It told the jury that ,if the witness Lovely, 'has sworn falsely in any material statement,' the jury might disregard her entire statement except so far as it was corroborated. A witness cannot be discredited simply on the ground of an erroneous statement. It is only where the statements of a witness are willfully and corruptly false in regard to material facts that the jury are authorized to discredit the entire testimony. The most candid witness may innocently make an incorrect statement, and it would be monstrous to hold that his entire testimony, for that reason, should be disregarded.' This statement was quoted with approval in Matthews v Granger, *supra*, on page 72 of 196 Ill., on page 661 of 63 N.E."

> "In Guliher v. People, supra, the court instructed the jury that, if they believed the defendant had 'been contradicted on a material point,' then the jury had the right to disregard his whole testimony unless corroborated by other testimony. The court said (page 146 of 82 Ill.): 'The instruction was clearly erroneous. When analyzed, it plainly tells the jury that 'if they believe, from the evidence, that Alfred F. Foote has been contradicted on a material point, then the jury have a right to disregard his whole testimony unless corroborated by other testimony.' This is not the law . . . . If the witness, whether defendant or otherwise, is shown, by proof, to have sworn willfully and knowingly false on any material matter, his evidence may be rejected so far as it is not corroborated . . . . The mere fact, however, that he is contradicted as to some material matter is not enough to warrant the rejection of his evidence altogether.'"

> "In Overtoom v. Chicago & Eastern Illinois Railroad Co., *supra*, the court instructed the jury that 'if they believe any witness has testified falsely, then the jury may disregard such witness' testimony except in so far as it may have been corroborated.' In disposing of this instruction the court said (page 330 of 181 Ill., page 901 of 54 N.E.): 'A witness may have testified falsely upon some matter inquired about from forgetfulness or honest mistake, and in such case the jury would not be authorized to disregard his entire testimony, whether corroborated or not. It is the corrupt motive, or the giving of false testimony knowing it to be false, that authorizes a jury to disregard the testimony of a witness and the court to so instruct them.'"

With the above limitations of the rule in mind, it is clear that the maxim should not apply in the case at bar, for three reasons. First, there is sufficient corroboration on many grounds of the testimony. Second, the mistakes are not on the very material points. Third, the errors do not arise from an apparent desire to pervert the truth, but from innocent mistakes and the desire of the witness to exculpate himself though not completely.

The next legal question to decide is whether the credible evidence submitted, together with that adduced on behalf of the defendants, proves beyond reasonable doubt that it was the three appellants who participated in the commission of the crime. The evidence submitted by the appellants of their defenses of alibi are not satisfactory to use. That presented by appellant Juanito Dasig, which consists of the testimony of a nurse, that on the night

in question Dasig was in his house because his wife was suffering from stomach ache, is not satisfactory for the reason that the nurses did not positively state that the date when she went to attend Dasig's wife was December 23, 1949. This date was included in the leading questions propounded by counsel for appellants, where the date is insidiously joined with another fact and witness' affirmative answer may refer to the more important fact contained in the answer, not to the date. Thus, the first question asked was as follows:

> Q Do you remember having attended to the wife of Juanito Dasig sometime or around December 23, 1949?
>
> A Yes, sir.
>
> (t.s.n., p. 174)

The affirmative answer may well mean that she did actually attend, and may not imply that she did so on December 23, 1949. Another question asked was:

> Q How many days previous to that trip of yours on December 24, 1949? Was it the day previous?
>
> A Previous.
>
> (t.s.n., p. 176)

This question is a leading question. The witness also connects the night of the robbery with a trip supposedly made by her with one Dr. Modales. But as to this occasion of the trip, her answer as to the date is also ambiguous, thus:

> Q Do you remember the date of that trip of yours with Dr. Modales when you left him in Antatet?
>
> A *It seems to me* it was on December 24, 1949.
>
> (t.s.n., p. 175; underscoring ours)

On cross-examination, however, this witness testified that she never keeps a record of the cases that she attends to every day, and on being asked what cases she attended in December, 1949, she answered that she can not tell unless she saw her record. Its date, therefore, December 23, 1949, was not remembered by her but put into her mind by the leading question of counsel. To convince the court that the attendance took place on December 23rd, it was necessary for her to have shown that that date appeared in the record that she kept.

The alibi presented by Gabuni is to the effect that on December 23, he and Sergeant Tamani were together the whole day and evening, and during the evening Gabuni stayed at home. That Gabuni and Sergeant Tamani should stay in a barrio two kilometers away, on patrol, from nine in the morning to six in the evening, or fully nine hours, is hard to understand. For them to spend four more hours drinking and eating together in a restaurant, evidently without their returning to their offices to report the results of their supposed mission, is still harder to believe. But for them to eat again at the home of Gabuni, after they had already eaten in a restaurant, is the height of improbability. Gabuni must have been on vacation that day, not on duty. If Gabuni was really and actually on patrol on that day, why was not the police blotter submitted? But even if the above story, improbable as it is, were assumed to be true, and his claim that he was at his house at ten in the evening and woke up at six in the morning, also true, it is still not impossible for him to have gone down the house after ten o'clock in the evening to join in the commission of the robbery, and come back at home in time to be there and wake up at six o'clock in the following morning.

Neither can the defense of alibi presented by appellant Marcelino Dayao stand the test of careful scrutiny. That Dayao was with his witnesses on certain days and on the occasions mentioned, in the case of witness Silverio Anies and Juana Molina on the occasion of the presentation of the latter's claim, and in the case of witness Daniel Yuson on the occasion of a night of gambling, may be assumed to be true. But their assertion that it was on the precise date, December 23, 1949, that they saw or were with Dayao is difficult to believe. Human memory on dates or days is frail, and unless the day is an extraordinary or unusual one for the witness, there is no reasonable assurance of its correctness. Dayao's witness did not prove that some extraordinary or unusual thing had happened on that day, that would have made them remember it. As to Anies, the presentation of claims is admitted by him to be a common occurrence, such that he had to admit he can not remember the dates when other similar applicants saw him. As to witness Yuson, the playing of mahjong was also a common pastime. Neither Anies nor Yuson presented any writing or book entry where the event or occasion they mentioned took place. The trial court did not believe their testimony, and we are unable to find that its conclusion is not borne out by human experience.

Having found that sufficient admissible evidence, worthy of credit, has been adduced to prove beyond reasonable doubt that the defendants-appellants were the ones who perpetrated the robbery in question, and the evidence with which they sought to prove their defenses of alibi having been found to be unsatisfactory, we must affirm, as we hereby affirm, the judgment appealed from, with costs against the appellants.

So ordered.

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

III

Leopoldo Gonzales, Petitioner, vs. Hon. Secretary of Labor, et al., Respondents, G. R. No. L-6409, February 5, 1954.

EVIDENCE; WHEN THE PRIVILEGE AGAINST SELF-INCRIMINATION CAN BE INVOKED; CASE AT BAR. — G filed with the Wage Administration Service a claim for overtime pay in the total sum of ₱13,212.59 against his employer S. To establish his claim, G had S summoned to the witness stand and put under oath. But before any question could be propounded to him, S invoked his constitutional right not to be compelled to be a witness against himself, calling attention to the fact that the law on overtime pay provides a penalty for its violation. HELD: As stated in Jones on Evidence (Vol. 6, pp. 4926-4927), a person who has been summoned to testify "cannot decline to appear, nor can he decline to be sworn as a witness" and "no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and, generally speaking, at that time only, the claim of privilege may properly be interposed."

Petitioner in his own behalf.

Anastacio R. Teodoro, Solicitor General Juan R. Liwag and *Assistant Solicitor General Francisco Carreon* for respondents.

DECISION

REYES, *J.*:

On June 23, 1952, the petitioner Leopoldo Gonzales filed with the Wage Administration Service a claim for overtime pay in the total sum of ₱13,212.59 against his employer, the respondent Sy Kot. Upon the case being submitted to the WAS (Wage Administration Service) for investigation and arbitration, the claimant, to establish his claim, had Sy Kot summoned to the witness stand and put under oath. But before any question could be propounded to him, Sy Kot invoked his constitutional right not to be compelled to be a witness against himself, calling attention to the fact that the law on overtime pay provides a penalty for its violation. Considering the point well taken, the investigator ordered Sy Kot's withdrawal from the witness stand. The ruling was, upon appeal, sustained by the Secretary of Labor in his decision of November 17, 1952.

Suing for a writ of certiorari, petitioner asks that the ruling be annulled, contending that the same is illegal and arbitrary and made with grave abuse of discretion.

Except in criminal cases, there is no rule prohibiting a party litigant from utilizing his adversary as a witness. As a matter of fact, section 83 of Rule 123, Rules of Court, expressly authorizes a party to call an adverse party to the witness stand and interrogate him. This rule is, of course, subject to the constitutional injunction not to compel any person to testify against himself. But it is established that the privilege against self-incrimination must be invoked at the proper time, and the proper time to invoke it is when a question calling for a criminating answer is propounded. This has to be so, because before a question is asked there would be no way of telling whether the information to be elicited from the witness is self-incriminating or not. As stated in Jones on Evidence (Vol. 6, pp. 9426-4927), a person who has been summoned to testify "cannot decline to appear, nor can he decline to be sworn as a witness" and "no claim of privilege can be made until a question calling for a criminating answer is asked; at that time, and, generally speaking, at that time only, the claim of privilege may properly be interposed."

The point raised by the Solicitor General on behalf of the

respondent Secretary of Labor that petitioner's remedy is to appeal to the President of the Philippines is not well taken. Section 7 of the law creating the WAS (Rep. Act No. 602) expressly authorizes any person aggrieved by an order of the Secretary of Labor to obtain a review of such order in the Supreme Court.

Wherefore, the petition is granted and the ruling or order complained of annulled and set aside. Without costs.

Paras, Pablo, Bengzon, Padilla, Montemayor, Jugo; Bautista Angelo and *Labrador. — J.J., concur.*

IV

Nieves Duran Embate, Plaintiff-Appellee, versus Rafael F. Peralta Defendant-Appellant, G. R. No. L-4942, promulgated on September 23, 1953, per Labrador, J.

1. CONTEMPT FOR FAILURE TO COMPLY WITH AN ORDER OF THE COURT GRANTING ALIMONY; CASE AT BAR. — A motion for contempt was filed because of the defendant's failure to pay the alimony for his child as ordered by the court. The defendant filed his answer to the motion alleging that he was out of work for sometime and that he was earning only ₱150.00 a month and that plaintiff had received some war damage compensation. The court did not hear the motion upon request of the parties who alleged that there was a possible amicable settlement of their differences. Thereafter plaintiff's attorney set the motion for contempt for hearing, giving notice thereof by registered mail to the defendant's counsel. The defendant did not appear at the hearing. The court issued an order giving him 48 hours to comply with the order directing him to support his child or be placed under arrest. A motion for reconsideration of the order was filed by the defendant alleging that he was not able to attend the hearing for the motion for contempt because he was informed by the clerk of court that the judge thereof was on vacation and therefore he did not have an opportunity to be heard before entering the order of contempt. A hearing for this motion for reconsideration was held. Thereafter the court denied the same. *Held:* The appellant was given an opportunity to answer and he did file one. Then the motion to declare him for contempt was set for hearing by the appellee in accordance with the rules of court. It is not necessary that the court itself order the motion to be set for hearing, as the pre-requisite therefor, because the notice given by the parties was sufficient. As the motion was heard after this notice, it cannot be said that the hearing was held without due process of law. What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard.
2. JUDGMENT AWARDING SUPPORT; AMICABLE SETTLEMENT. — A judgment awarding support may be modified. But any attempt at amicable settlement thereon after the final judgment of support, cannot *per se* suspend said final judgment.
3. JUDGMENT; ITS ENFORCEABILITY. — Judgments are final and solemn pronouncements made after trial and deliberation, and the rights and obligations fixed therein may not be modified except in the same form and manner in which they are arrived at; and while they stand unmodified they must be enforced and respected by the parties.

Felixberto M. Serrano for appellant.
Paz V. Inocencio for appellee.

DECISION

LABRADOR, *J.*: ,

This is an appeal against an order of the Court of First Instance of Rizal, ordering defendant-appellant to pay plaintiff-appellee or deposit with its clerk of court of ₱712.62 within the period of forty eight hours, otherwise he will be placed under arrest until he complies with the order.

Plaintiff brought this suit to secure support for a minor six years of age, a natural child of plaintiff and defendant, who had lived together as common-law husband and wife from January, 1943 to January, 1949. In 1949 defendant abandoned plaintiff and the child, married another woman, and since then failed to give support to the child. The record discloses that defendant had to be summoned by publication, as his whereabouts could not be located. It does not appear from the record of the case that the summons was published, or that the defendant ever filed any answer, but on September 28, 1949 judgment was rendered by the court *a quo* ordering the defendant to give the child a monthly support of ₱75 beginning January 10, 1949. The defendant received copy of this decision on January 23, 1950, and appears to have given to plaintiff for the maintenance of the child the sum of ₱290 up to January 16, 1951. On this date, plaintiff presented a "motion for contempt" to require defendant to pay her ₱560, which she had contracted as an indebtedness to support the child. The motion was called for hearing on January 27, 1951, but its consideration was postponed in the court's order "until further assignment or petition of either of the parties," "who are on the way to a possible amicable settlement of their differences."

On February 6, 1951, plaintiff's attorney petitioned the court that the "motion for contempt" be set for hearing on February 24, 1951, and pursuant thereto the court, on February 22, 1951, set the case for hearing on February 24, 1951 and ordered the defendant to answer the motion on the same date. The defendant filed his answer on the day fixed, alleging that he was in no position to give support to the child because he was out of work for some time, that he was earning only ₱150 a month, and that plaintiff had received some war damage compensation. The court did not then resolve the motion, but granted a postponement "until further petition of either of the parties or until further assignment", upon agreement of the parties, "who need more time within which to consider a possible amicable settlement of their differences."

On April 20, 1951 plaintiff's attorney petitioned the clerk of court to set the motion for contempt for hearing on April 25, 1951, giving notice thereof by registered mail to defendant's counsel At the same time, she caused the Manager of the San Miguel Brewery, under whom defendant was working, to be summoned as a witness. On April 25, 1951, the court entered the order now appealed from, requiring the defendant to pay ₱712.62 within 48 hours, or be placed under arrest. Motion to set aside this order was filed by defendant's counsel on April 26, 1951. It is stated in this motion that counsel did not believe that the motion was going to be heard as the clerk of court had informed him that, in all probability, the motion was not to be called for hearing because of the absence of the presiding judge, who was on vacation. The motion also claims that the judgment granting support had been suspended temporarily by the court pending the amicable settlement, and that the defendant should have been afforded opportunity to be present, the notice to set the motion for hearing not being sufficient to give this opportunity, but that a court order setting the case for hearing should previously have been issued. This motion was heard, and on April 28, 1951 the court denied it. The defendant has appealed against the order of April 25, 1951 to raise only questions of law.

One contention of the appellant is that the order of the trial court of April 25, 1951 was issued without due process of law, for the reason that the respondent was not given an opportunity to be heard, and the order was issued without any lawful hearing. It is argued that the request of counsel for plaintiff that his motion be heard did not *per se* authorize the court to hear the case as prayed for. We find no merit in this argument. First, the appellant was given an opportunity to answer, and he did file one. Then the motion to declare him in contempt was set for hearing by the appellee, notice of the same being made in accordance with Section 4, 5 and 6 of Rule 26 of the Rules of Court. It is not necessary that the court itself order the motion to be set for hearing, as a pre-requisite therefor, because the notice given by the party was sufficient. As the motion was heard after this notice, and strictly in compliance with the above provisions of the Rules of Court, it can not be said that the hearing was held without due process of law. What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard. Besides, the adverse party was heard on his motion for reconsideration; this constitutes sufficient opportunity to be heard (Borja, et al. vs. Tan, etc. et al., G. R. No. L-6108, promulgated on May 25, 1953.)

It is also contended that, inasmuch as there were attempts to effect an amicable settlement, the judgment of the court awarding ₱712.62 to the plaintiff should be considered suspended until the court declares that such settlement can not be arrived at. In support of this contention, it is argued that a judgment for sup-

port may be modified any time and, therefore, may be reduced or increased, and that it becomes necessary for the court, before enforcing any judgment for support, to give the respondent full opportunity to be heard. It is true that a judgment awarding support may be modified. But any attempt at amicable settlement thereon, after a final judgment of support, can not *per se* suspend said final judgment. It is superfluous for us to consider the objection as to lack of opportunity, because, as above shown, such opportunity was given in accordance with the rules.

As far as respondent is concerned, the purpose that he sought by the amicable settlement seems to be a reduction of the amount fixed as support for the minor, on the ground that his salary was insufficient. But the trial judge heard the respondent's employer and was not impressed by respondent's excuse, and found that the amicable settlement was part of delaying tactics employed by respondent. But whatever purpose any of the parties may have had, the judgment, which had already become final and executory and was actually sought to be enforced, even if it was a support judgment, could not be considered suspended by the attempt at amicable settlement. The fact that it was suggested by the judge did not mean that the judgment should be modified. His evident intention in making the suggestion was to prevent friction between the parties and delay, and encourage expeditious payment of the support. Judgments are formal and solemn pronouncements made after trial and deliberation, and the rights and obligations fixed therein may not be modified except in the same form and manner in which they are arrived at; and while they stand unmodified they must be enforced and respected by the parties

It should be noted that by the proceedings in this appeal, the respondent has secured what he had wanted, a delay in the enforcement of the order to grant immediate support. More than two years have now elapsed, since he was ordered to pay the support within forty eight hours. Further delay would cause an injustice.

The appeal is hereby dismissed and the order affirmed, with costs against respondent.

So ordered.

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

V

Valentin Aligarbes, Plaintiff-Appellant, vs. Juan Aguilar, et al., Defendants-Appellees, G. R. No. L-5736, January 30, 1954.

1. APPEAL; MOTION TO APPEAL IN FORMA PAUPERIS; CASE AT BAR. — The justice of the peace court of Gandara, Samar, allowed A to sue as pauper in a forcible entry case. After due hearing, the complaint was dismissed. Within the reglementary period he filed a motion to appeal in *forma pauperis*, together with a notice of appeal to the Court of First Instance. The justice of the peace by written order of July 25, 1950, declared he had no authority to permit the plaintiff to litigate as pauper on appeal and that such permission may only be granted by the Court of First Instance. However, the same judge "transmitted" the records to the superior court "for its proper determination in the premises." The Court of First Instance held that because neither the required fee for docketing the case was paid nor an order from it to docket the same without fee obtained, the docketing was illegal, it being in contravention of the provisions of law. HELD: The justice of the peace had the authority to permit A to appeal as pauper. Wherefore, his mistake as to the extent of his powers should not prejudice herein plaintiff. Where failure of appellants to file an appeal bond on time is due to an error of the justice of the peace, they will not be deprived of their right to be heard in the Court of First Instance.

2 RULES OF PROCEDURE; WHEN LITERAL OBSERVANCE THEREOF CAN BE OVERLOOKED. — The lapse in the literal observance of a rule of procedure can be overlooked when it does not involve public policy and arises from an honest mistake.

Fernando de los Santos for appelant.

Alfredo M. Sabater for appellee.

DECISION

BENGZON, J.

The justice of the peace court of Gandara, Samar, allowed the plaintiff Valentin Aligarbes to sue as pauper in a forcible entry case. After due hearing, the complaint was dismissed. Within the reglementary period he filed a motion to appeal in *forma pauperis*, together with a notice of appeal to the court of first instance. The justice of the peace by written order of July 25, 1950, declared he had no authority to permit the plaintiff to litigate as pauper on appeal and that such permission may only be granted by the court of first instance. However the same judge "transmitted" the records to the superior court "for its proper determination in the premises".

On August 3, 1950 the clerk of the Samar court of first instance addressed to the defendants a letter of the following tenor:

> "In accordance with the provisions of Act 3171 in relation with Section 7, Rule 40, of the Rules of Court, you are hereby notified that the above-entitled civil case has been entered on this date in the docket of this court in view of the appeal taken by the plaintiff from the decision of the Justice of the Peace of Gandara, Samar.
>
> "In view hereof, you are required to file before this court your answer to the complaint or any other pleadings therein within fifteen (15) days from receipt of this notice. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.
>
> "Witness the Honorable Fidel Fernandez, Judge of said court, this 3rd day of August, 1950."

The defendants duly answered. During the hearing and while the plaintiff was testifying, the trial judge issued this order:

> "This case was appealed from the Justice of the peace Court of Gandara. No docket fees were paid by the appelant on the ground that he presented a motion before the Justice of the Peace Court that he be allowed to appeal this case as pauper. The Justice of the Peace Court, in its order remanded this case to this court but with injunction that such petition to appeal as pauper be presented before this Court of First Instance who has the authority to consider it. Such was not done. The required fee for docketing this case was not paid. Neither was an order from this court to docket the same without fee obtained.
>
> "But in spite of the failure to pay the fee and to obtain the order of this court, the case was docketed.
>
> "This court is of the opinion and so holds that the docketing was illegal, it being in contravention of the provisions of law.
>
> "Inasmuch as the period for appeal has already expired, to return this case to the Justice of the Peace Court of origin, or to allow the plaintiff to pay the docketing fee or secure the order from this Court to allow it a pauper's appeal would be void as this Court has not acquired jurisdiction over this case. The judgment of the Justice of the Peace Court has already become final.
>
> "Therefore, the court orders that this case be returned to the Justice of the Peace Court of Gandara for the execution of the judgment."

His motion for reconsideration having been denied, the plaintiff interposed this petition for review, which the court *a quo* subsequently certified as a pauper's appeal.

The expediente clearly shows the appellant's lack of means. And, in view of the constitutional mandate that poverty shall not deny any person free access to the courts, we are impelled to hold that under the circumstances it was a mistaken exercise of discretion to dismiss the case for non-payment of fees.

The justice of the peace granted permission to litigate as pauper by virtue of sec. 22 Rule 3 of the Rules of Court under which said officer could have subsequently excused the poor litigant from compliance with the requisites involving payment of money to perfect his appeal (Lacson v. Tabarres 68 Phil. 317). In other words the justice of the peace had the authority to permit Alegarbes to appeal as pauper. Wherefore, his mistake as to the extent of his powers should not prejudice herein plaintiff.[1] True, the Lacson decision says the appellant should also ask permission from the court of first instance to continue or substantiate his appeal in *forma pauperis;* but Alegarbes probably thought it unnecessary to take further steps, the clerk having already docketed the cause without payments of fees as shown by the letter requiring de-

fendants to answer.

Supposing then that, strictly speaking, the controversy was not before the court due to non-payment of fees, "the lapse in the literal observance of a rule of procedure could be overlooked as it did not involve public policy, and arose from an honest mistake"(2).

It would now be unfair to hold that the decision of the justice of the peace has become final. The plaintiff took all the steps necessary to perfect his appeal; and it was only thru the error of said officer, and of the clerk of court that the matter of court fees has not been attended to. There being no question as to appellant's inability to pay, he should be afforded opportunity to comply with procedural requirements to enable him to prosecute his suit.

In view of the foregoing, the record will be returned so that the justice of the peace may pass on the petition to appeal as pauper, and the court of first instance may also act thereafter upon request by the litigant for exemption from payment of fees. So ordered, without costs.

Paras, Pablo, Padilla, Montemayor, Reyes, Jugo and Bautista Angelo. JJ. concur

Mr. Justice Labrador took no part.

(1) Where failure of appellants to file an appeal bond on time is due to an error of the justice of the peace they will not be deprived of their right to be heard in the court of first instance. (Alandy v. San Jose 45 O.G. No. 7 p. 2829)

(2) (Ethel case and Minna Hartz v. Jugo 43 O.G. No. 11, 4629)

VI

Marvel Building Corporation et als., Plaintiffs-Appellees, vs. Saturnino David, in his capacity as Collector, Bureau of Internal Revenue, Defendant-Appellant, G. R. No. L-5081, Feb. 24, 1954.

1. EVIDENCE; TESTIMONY OF HANDWRITING EXPERT MUST BE RECEIVED WITH CAUTION.—Attempt was also made by the plaintiffs to show by expert evidence that the endorsement could have been superimposed, i.e., that the signatures made on other papers and these were pasted and thereafter the documents photographed. Judicial experience is to the effect that expert witnesses can always be obtained for both sides of an issue, most likely because expert witnesses are no longer impermeable to the influence of fees (II Wigmore, Sec. 563 (2), p. 646). And if parties are capable of paying fees, expert opinion should be received with caution.
2. ID; WHERE THE OPINION OF THE EXPERTS SHOWS MERE POSSIBILITY THAT THE DISPUTED SIGNATURE IS NOT GENUINE AND IS CONTRADICTED BY VARIOUS CIRCUMSTANCES.—In the case at bar, the opinion on the supposed superimposition was merely a *possibility*, and we note various circumstances which prove that the signatures were not superimposed and corroborate defendant's claim that they were genuine. In the first place, the printed endorsement contains a very heavy line at the bottom for the signature of the endorsee. This line in almost all of the endorsements is as clear as the printed letters above it, and at the points where the letters of the signature extend down and traverse it (the line), there is no indication that the line is covered by a superimposed paper. Again in these places both the signatures and the lines are clear and distinct where they cross one another. Had there been superimpositions the above features could not have been possible.

Solicitor General for appellant.

Rosenijo J. Tansinsin for appellees.

DECISION

LABRADOR, *J.*:

This action was brought by plaintiffs as stockholders of the Marvel Building Corporation to enjoin the defendant Collector of Internal Revenue from selling at public auction various properties described in the complaint, including three parcels of land, with the buildings situated thereon, known as the Aguinaldo Building, the Wise Building, and the Dewey Boulevard-Padre Faura Mansion, all registered in the name of said corporation. Said properties were seized and distrained by defendant to collect war profits taxes assessed against plaintiff Maria B. Castro (Exh. B). Plaintiffs allege that the said three properties (lands and buildings) belong to the Marvel Building Corporation and not to Maria B. Castro, while the defendant claims that Maria B. Castro is the true and sole owner of all the subscribed stock of the Marvel Building Corporation, including those appearing to have been subscribed and paid for by the other members, and consequently said Maria B. Castro is also the true and exclusive owner of the properties seized. The trial court held that the evidence, which is mostly circumstantial, fails to show to its satisfaction that Maria B. Castro is the true owner of all the stock certificates of the corporation, because the evidence is susceptible of two interpretations and an interpretation may not be made which would deprive one of property without due process of law.

It appears that on September 15, 1950, the Secretary of Finance, upon consideration of the report of a special committee assigned to study the war profits tax case of Mrs. Maria B. Castro, recommended the collection of ₱3,593,950.78 as war profits taxes for the latter, and on September 22, 1953 the President instructed the Collector that steps be taken to collect the same (Exhs. 114, 114-A to 114-D). Pursuant thereto various properties, including the three above mentioned, were seized by the Collector of Internal Revenue on October 31, 1950. On November 13, 1950, the original complaint in this case was filed. After trial, the Court of First Instance of Manila rendered judgment ordering the release of the properties mentioned, and enjoined the Collector of Internal Revenue from selling the same. The Collector of Internal Revenue has appealed to this Court against the judgment.

The following facts are not disputed, or are satisfactorily proved by the evidence:

The Articles of Incorporation of the Marvel Building Corporation is dated February 12, 1947 and according to it the capital tock is ₱2,000 000, of which ₱1,025,000 was (at the time of incorporation) subscribed and paid for by the following incorporators:

Maria B. Castro	250	shares	— ₱250,000.00
Amado A. Yatco	100	"	— 100,000.00
Santiago Tan	100	"	— 100,000.00
Jose T. Lopez	90	"	— 90,000.00
Benita Lamagna	90	"	— 90,000.00
C. S. Gonzales	80	"	— 80,000.00
Maria Cristobal	70	"	— 70,000.00
Segundo Esguerra, Sr.	75	"	— 75,000.00
Ramon Sangalang	70	"	— 70,000.00
Maximo Cristobal	55	"	— 55,000.00
Antonio Cristobal	45	"	— 45,000.00
			₱1,025,000.00

Maria B. Castro was elected President and Maximo Cristobal, Secretary-Treasurer (Exh. A).

The Wise Building was purchased on September 4, 1946, the purchase being made in the name of Dolores Trinidad, wife of Amado A. Yatco (Exh. V), and the Aguinaldo Building, on January 17, 1947, in the name of Segundo Esguerra, Sr. (Exh. M). Both buildings were purchased for ₱1,800,000, but as the corporation had only ₱1,025,000, the balance of the purchase price was obtained as loans from the Insular Life Assurance Co., Ltd., and the Philippine Guaranty Co., Inc. (Exh. C).

Of the incorporators of the Marvel Building Corporation, Maximo Cristobal and Antonio Cristobal are half-brothers of Maria B. Castro, Maria Cristobal is a half-sister, and Segundo Esguerra, Sr. a brother-in-law, husband of Maria Cristobal, Maria B. Castro's half-sister. Maximo B. Cristobal did not file any income tax returns before the year 1946, except for the years 1939 and 1940, but in these years he was exempt from the tax. He has not filed any war profits tax return (Exh. 54). Antonio Cristobal, Segundo Esguerra, Sr. and Jose T. Lopez did not file any income tax returns for the years prior to 1946, and neither did they file any war profits tax returns (Exh. 52). Maria Cristobal filed income tax returns for the years 1929 to 1942, but they were exempt from the tax (Exh. 53). Benita A. Lamagna did not file any income tax returns prior to 1945, except for 1942 which was exempt. She did not file any war profits tax (Exh. 55). Ramon M. Sangalang did not file income tax returns up to 1945, except for the years 1936, 1937, 1938, 1939 and 1940. He has not filed any war profits tax return (Exh. 56). Santiago Tan did not file any income tax returns prior to 1945, except for the years 1938, 1939, 1940 and 1942, but all of these were exempt. He did not file any war profits tax return (Exh. 57). Amado A. Yatco did not file income tax returns prior to 1945, except for the years 1937, 1938, 1939, 1941 and 1942, but these were exempt. He did not file any war profits tax

return (Exh. 58).

Antonio Cristobal's income in 1946 was ₱15,630, and in 1947, ₱4,550 (Exhs. 59-60); Maximo B. Cristobal's income in 1946 is ₱19,759.10, in 1947, ₱9,773.47 (Exhs. 61-62); Segundo Esguerra's income in 1946 is ₱5,550, in 1947, ₱7,754.32 (Exhs. 63-64); Jose T. Lopez's income in 1946 is ₱20,785, in 1947, ₱14,302.77 (Exhs. 69-70); Benita A. Lamagna's income in 1945 is ₱1,559, in 1946, ₱6,463.36, in 1947, ₱6,189 79 and her husband's income in 1947 is ₱10 825.53 (Exhs. 65-68); Ramon M. Sangalang's income in 1945 is ₱5,500, in 1946, ₱18,300.00 (Exhs. 71-72); Santiago Tan's income in 1945 is ₱456, in 1946, ₱9,167.95, and in 1947, ₱7,620.11 (Exhs. 73-75); and Amado Yatco's income in 945 is ₱12,600, in 1946, ₱23,960, and in 1947, ₱11,160 (Exhs. 76-78).

In October, 1945 Maria B. Castro, Nicasio Yatco, Maxima Cristobal de Esguerra, Maria Cristobal Lopez and Maximo Cristobal organized the Maria B. Castro, Inc. with a capital stock of ₱100,000, of which Maria B. Castro subscribed for ₱99,600 and all the others for ₱100 each. This was increased in 1950 to ₱500,000 and Maria B. Castro subscribed ₱76,000 and the others ₱1,000 each (Exh. 126).

It does not appear that the stockholders or the board of directors of the Marvel Building Corporation have ever held a business meeting, for no books thereof or minutes of meeting were ever mentioned by the officers thereof or presented by them at the trial. The by-laws of the corporation, if any had ever been approved, has not been presented. Neither does it appear that any report of the affairs of the corporation has been made, either of its transactions or accounts.

From the book of accounts of the corporation, advances to the Marvel Building Corporation of ₱125,000 were made by Maria B. Castro in 1947, ₱102,916.05 in 1948, and ₱160,910.96 in 1949 (Exh 118).

The main issue involved in these proceedings is: Is Maria B. Castro the owner of all the shares of stock of the Marvel Building Corporation and the other stockholders mere dummies of hers?

The most important evidence presented by the Collector of Internal Revenue to prove his claim that Maria B. Castro is the sole and exclusive owner of the shares of stock of the Marvel Building Corporation is the supposed endorsement in blank of the shares of stock issued in the name of the other incorporators, and the possession thereof by Maria B. Castro. The existence of said endorsed certificates was testified to by witnesses Felipe Aquino, internal revenue examiner, Antonio Mariano, examiner, and Crispin Llamado, Under-Secretary of Finance, who declared as follows: Towards the end of the year 1948 and about the beginning of the year 1949, while Aquino and Mariano were examining the books and papers of the Marvel Building Corporation at its place of business, which books and papers were furnished by its Secretary, Maximo Cristobal, they came across an envelope containing eleven stock certificates, bound together by an Acco fastener, which (certificates) corresponded in number and in amount on their face to the subscriptions of the stockholders; that all the certificates, except that in the name of Maria B. Castro, were endorsed in blank by the subscribers; that as the two revenue agents could not agree what to do with the certificates, Aquino brought them to Undersecretary of Finance Llamado, who thereupon suggested that photostatic copies thereof be taken; that this was done, and the photostatic copies placed by him in his office safe; that Aquino returned the certificates that same day after the photostatic copies had been taken; that the photostatic copies taken are exhibits 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13; and that in July, 1950, copy-cat copies of the above photostats were taken, and said copy-cats are Exhibits 40-49.

Julio Llamado, bookkeeper of the Marvel Building Corporation from 1947 to May, 1948, also testified that he is the one who had prepared the original certificates, putting therein the number of shares in words in handprint; that the originals were given to him by Maria B. Castro for comparison with the articles of incorporation; that they were not yet signed by the President and by the Secretary-Treasurer when he had the certificates; and that after the checking he returned all of them to Mrs. Castro. He recognized the photostats, Exhibits 4 to 13 as photostats of the said originals. He also declared that he also prepared a set of stock certificates, similar to the certificates which were copied in the photostats, filling the blanks for the name of the stockholder, the number of shares, and the date of issue, and that the certificates he had prepared are Exhibits H, H-1 to H-7 and J (Exhs. 30-38). This set of certificates was made by him first and the set of which photostats were taken, a few days later.

The plaintiffs offered a half-hearted denial of the existence of the endorsed blank certificates, Maximo Cristobal, secretary of the corporation, saying that no investigation was ever made by Aquino and Mariano in which said certificates were discovered by the latter. They, however, vigorously attack the credibility of the witnesses for the defendant, imputing to the Llamados, enmity against Maria B. Castro, and to Aquino and Mariano, a very doubtful conduct in not divulging the existence of the certificates either to Lobrin, Chief Income Tax Examiner, or to the Collector of Internal Revenue, both their immediate chiefs. Reliance is also placed on a certificate, Exh. ", wherein Aquino and others declare that the certificates (Exhs. 30 to 38, or H. H-1 to H-7 and J) were regular and were not endorsed when the same were examined. In connection with this certificates examined were Exhs. 30 to 38, the existence or character of which are not disputed. But the statement contains nothing to the effect that the above certificates were the only ones in existence, according to their knowledge. Again the certificate was issued for an examination in September 1949, not by Aquino and Mariano at the end of 1948 or the beginning of 1948. It can not, therefore, discredit the testimonies of the defendant's witnesses.

As to the supposed enmity of the Llamados towards the plaintiff Maria B. Castro, we note that, supposing that there really was such enmity, it does not appear that it was of such magnitude or force as could have induced the Llamados to lie or fabricate evidence against her. It seems that the Llamados and Maria B. Castro were close friends way back in 1947 and up to 1949; but that at the time of the trial the friendship had been marred by misunderstandings. We believe that in 1948 and 1949 the Llamados were trusted friends of Maria B. Castro, and this explains why they had knowledge of her secret transactions. The younger Llamado even made advances for the hand of Maria B. Castro's daughter, and this at the time when as a bookkeeper he was entrusted with checking up the certificates of stock. When the older Llamado kept secret the existence of the endorsed certificates, the friendship between the two families was yet intact, hence, the existence of the endorsed certificates must have been kept to himself by the older Llamado. All the above circumstances reinforce our belief that the Llamados had personal knowledge of the facts they testified to, and the existence of this knowledge in turn renders improbable plaintiffs' claim that their testimonies were biased.

Attempt was also made by the plaintiffs to show by expert evidence that the endorsement could have been superimposed, i. e., that the signatures made on other papers and these were pasted and thereafter the documents photographed. Judicial experience is to the effect that expert witnesses can always be obtained for both sides of an issue, most likely because expert witnesses are no longer impermeable to the influence of fees (II Wigmore, Sec. 563 (2), p. 646). And if parties are capable of paying fees, expert opinion should be received with caution. In the case at bar, the opinion on the supposed superimposition was merely a *possibility*, and we note various circumstances which prove that the signatures were not superimposed and corroborate defendant's claim that they were genuine. In the first place, the printed endorsement contains a very heavy line at the bottom for the signature of the endorsee. This line in almost all of the endorsements is as clear as the printed letters above it, and at the points where the letters of the signature extend down and traverse it (the line), there is no indication that the line is covered by a superimposed paper. Again in these places both the signatures and the lines are clear and distinct where they cross one another. Had there been superimpositions the above features could not have been possible. In the second place, Maria B. Castro admitted having signed 25 stock certificates, but only eleven were issued (t.s.n., p. 662). No explanation is given by her why she had to sign as many as 25 forms when there were only eleven subscribers and eleven forms to be filed. This circumstance corroborate the young Llamado's declaration that two sets of certificates had been prepared. The nineteen issued must be Exhs. H, H-1 to H-7 and J., or Nos. 30 to 38.

and the stock certificates endorsed whose photostatic copies are Exhs. 4 to 13. It is to be remembered also, that it is a common practice among unscrupulous merchants to carry two sets of books, one set for themselves and another to be shown to tax collectors. This practice could not have been unknown to Maria B. Castro, who apparently had been able to evade the payment of her war profits taxes. These circumstances, coupled with the testimony of Julio Llamado that two sets of certificates were given to him for checking, show to an impartial mind the existence of the set of certificates endorsed in blank, thus confirming the testimonies of the defendant's witnesses, Aquino, Mariano and Crispin Llamado, and thus discrediting the obviously partial testimony of the expert presented by plaintiffs. The genuineness of the signatures on the endorsements is not disputed. How could the defendant have secured these genuine signatures? Plaintiffs offer no explanation for this, although they do not question them. It follows that the genuine signatures must have been made on the stock certificates themselves.

Next in importance among the evidence submitted by the defendant collector to prove his contention that Maria B. Castro is the sole owner of the shares of stock of the Marvel Building Corporation, is the fact that the other stockholders did not have incomes in such amounts, during the time of the organization of the corporation in 1947, or immediately thereto, as to enable them to pay in full for their supposed subscriptions. This fact is proved by their income tax returns, or the absence thereof. Let us take Amado A. Yatco as an example. Before 1945 his return were exempt from the tax, in 1945 he had ₱12,600 and in 1946, ₱23,000. He has four children. How could he have paid ₱100,000 in 1945 and 1946? Santiago Tan who also contributed ₱100,000 had no appreciable income before 1946, and in this year an income of only ₱9,167.95. Jose T. Lopez also did not file any income tax returns before 1940 and in 1946 he had an income of only ₱20,784, whereas he is supposed to have subscribed ₱90,000 worth of stock early in 1947. Benita Lamagna had no returns either up to 1945, except in 1942, which was exempt, and in 1945 she had an income of ₱1,550 and in 1946, ₱6,463.36. In the same situation are all the others, and besides, brothers and sisters and brother-in-law of Maria B. Castro. On the other hand, Maria B. Castro had been found to have made enormous gains or profits in her business such that the taxes thereon were assessed at around ₱3,000,000. There was, therefore, a *prime facie* case made out by the defendant collector that Maria B. Castro had furnished all the money that the Marvel Building Corporation had.

In order to meet the above evidence only three of the plaintiffs testified, namely, Maximo Cristobal, the corporation's secretary, who made the general assertion on the witness stand that the other stockholders paid for their shares in full, Maria B. Castro, who stated that payments of the subscriptions were made to her, and C. S. Gonzales, who admitted that Maria B. Castro paid for his subscription. After a careful study of the above testimonies, however, we find them subject to various objections. Maximo Cristobal declared that he issued provisional receipts for the subscriptions supposedly paid to him in 1946; but none of the supposed receipts was presented. If the subscriptions were really received by him, big as the amounts were, he would have been able to tell specifically, by dates and in fixed amounts, when and how the payments were made. The general assertion of alleged payments, without the concrete days and amounts of payment, are, according to our experience, positive indications of untruthfulness, for when a witness testifies to a fact that actually occurs, the act is concretely stated and no generalization is made.

With respect to Maria B. Castro's testimony, we find it to be as untruthful as that of Cristobal. She declared that the payments of the subscriptions took place between July and December, 1946, and that said payments were first deposited by her in the National City Bank of New York. A study of her account in said bank (Exh. 82), however, fails to show the alleged deposit of the subscriptions during the year 1946 (See Exhs. 83-112). This fact completely belies her assertion. As to the testimony of C. S. Gonzales that Maria B. Castro advanced his subscription, there is nothing in the evidence to corroborate it, and the circumstances show otherwise. If he had really been a stockholder and Maria B. Castro advanced his subscription, the agreement between him and Castro should have been put in writing, the amount advanced being quite considerable (₱80,000), and it appearing further that Gonzales is no close relative or confidant of Castro.

Lastly, it is significant that the plaintiffs, the supposed subscribers, who should have come to court to assert that they actually paid for their subscriptions, and are not mere dummies, did not do so. They could not have afforded such a costly indifference, valued at from ₱70,000 to ₱100,000 each, if they were not actual dummies. This failure on their part to take the witness stand to deny or refute the charge that they were mere dummies is to us of utmost significance. What could have been easier to disprove the charge that they were dummies, than for them to come to court and show their receipts and testify on the payments they have made on their subscriptions? This they, however, refused to do. They had it in their power to rebut the charges, but they chose to keep silent. The non-production of evidence that would naturally have been produced by an honest and therefore fearless claimant permits the inference that its tenor is unfavorable to the party's cause (II Wigmore, Sec. 285, p. 162). A party's silence to adverse testimony is equivalent to an admission of its truth (Ibid, Sec. 289, p. 175).

Our consideration of the evidence submitted on both sides leads us to a conclusion exactly opposite that arrived at by the trial court. In general the evidence offered by the plaintiffs is testimonial and direct evidence, easy of fabrication; that offered by defendant, documentary and circumstantial, not only difficult of fabrication but in most cases found in the possession of plaintiffs. There is very little room for choice as between the two. The circumstantial evidence is not only convincing; it is conclusive. The existence of endorsed certificates, discovered by the internal revenue agents between 1948 and 1949 in the possession of the Secretary-Treasurer, the fact that twenty five certificates were signed by the president of the corporation, for no justifiable reason, the fact that two sets of certificates were issued, the undisputed fact that Maria B. Castro had made enormous profits and, therefore, had a motive to hide them to evade the payment of taxes, the fact that the other subscribers had no incomes of sufficient magnitude to justify their big subscriptions, the fact that the subscriptions were not receipted for and deposited but were kept by Maria B. Castro herself, the fact that the stockholders or the directors never appeared to have ever met to discuss the business of the corporation, the fact that Maria B. Castro advanced big sums of money to the corporation without any previous arrangement or accounting, and the fact that the books of accounts were kept as if they belonged to Maria B. Castro alone — these facts are of patent and potent significance. What are their necessary implications? Maria B. Castro would not have asked to endorse their stock certificates, or be keeping these in her possession, if they were really the owners. They never would have consented that Maria B. Castro keep the funds without receipts or accounting, nor that she manages the business without their knowledge or concurrence, were they owners of the stocks in their own rights. Each and every one of the facts all set forth above, in the same manner, is inconsistent with the claim that the stockholders, other than Maria B. Castro, owned their shares in their own right. On the other hand, each and every one of them, and all of them, can point to no other conclusion than that Maria B. Castro was the sole and exclusive owner of the shares and that they were only her dummies.

In our opinion, the facts and circumstances duly set forth above, all of which have been proved to our satisfaction prove, conclusively and beyond reasonable doubt (Sec. 98, Rule 123 of the Rules of Court and Sec. 42 of the Provisional Law for the application of the Penal Code) that Maria B. Castro is the sole and exclusive owner of all the shares of stock of the Marvel Building Corporation and that the other partners are her dummies.

Wherefore, the judgment appealed from should be, as it hereby is, reversed and the action filed by plaintiffs-appellees, dismissed, with costs against plaintiffs-appellees.

So ordered.

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

Justice Reyes took no part.

Eugenio Aquino, Petitioner, vs. Eulogio F. de Guzman, Judge of the Court of First Instance, Dagupan City, and Emiliana Mendoza, Respondents, G. R. No. L-5763, Sept. 28, 1953

PLEADING AND PRACTICE; APPEAL; CASE AT BAR. — This registration case has been tried by the judge jointly with a civil case, because the parties in the latter are the same as those of the registration case, and both parties in both cases were represented by the same attorneys. One single decision was entered in both cases. Judgment having been rendered against the petitioner in both cases, the attorney presented on June 19, 1951 a notice of appeal for both cases and a joint record on appeal for both cases also, and deposited an appeal bond. The appeal bond was receipted for in the civil case on June 30, 1951. No bond was deposited for the appeal in the land registration case until August 1, 1951. The record on appeal was approved but the court gave course only to the appeal in the civil case. Objection to the appeal in the registration case was presented and this was sustained by the court. *Held*: The contention that since the notice on appeal and the record on appeal were embodied together in a single document in both cases, the certification of the record on appeal in the civil case necessarily included that of the registration case, because the record on appeal in one case is inseparable from that of the other, is entirely without merit. The physical embodiment of both records on appeal into one single document does not make the two cases one, or relieve the petitioner of the obligation to file a bond in the other. The identities of both cases are preserved; the oneness of the record on appeal does not modify the nature of one or the other, or merge the registration case into the civil case.

Severino Dagdag for petitioner.

Primicias, Abad, Mencias & Castillo for respondents.

DECISION

LABRADOR, *J.*:

This is an original petition instituted in this court to compel the Court of First Instance of Pangasinan, Judge F. de Guzman, presiding, to allow the petitioner's appeal against its judgment in Land Registration Case No. 302, G.L.R.O. Record No. 1173 to the Court of Appeals. The record discloses that this case was tried by said judge jointly with Civil Case No. 10965, because the parties in the latter are the same as those of the registration case, and both parties in both cases were represented by the same attorneys. One single decision was entered in both cases. Judgment having been rendered against the petitioner in both cases, his attorney presented on June 19, 1951, a notice of appeal for both and a joint record on appeal for both cases also (bearing titles of both cases) and deposited an appeal bond of P60. This appeal bond was receipted for in the Civil Case No. 10965 on June 30, 1951 (Annex 4 of answer.) No bond was deposited for the appeal in the Land registration case until August 1, 1951 (Annex 5 of answer.) The record on appeal was approved, but the court gave course only to the appeal in the civil case. Objection to the appeal in the registration case was presented and this was sustained by the court, whereupon the present action was filed in this court.

The petitioner contends that since the notice of appeal and the record on appeal were embodied together in single documents in both cases, the certification of the record on appeal in the civil case necessarily included that of the registration case, because the record on appeal in one case is inseparable from that in the other. The contention is entirely without merit. The physical embodiment of both records on appeal into one single document does not make the two cases one, or relieve the petitioner of the obligation to file a bond in the other. The identities of both cases are preserved; the oneness of the record on appeal does not modify the nature of one or the other, or merge the registration case into the civil case.

But while we hold that there is no error of law committed by the court *a quo* in dismissing the appeal in the registration case, there are potent reasons why, in the exercise of its discretion, it should have decreed otherwise. One is the fact that the civil case is entirely dependent upon the registration case; no recovery of possession can be decreed in favor of, and no damages can accrue to, the plaintiff unless he is declared the owner of the property subject of both cases. When defendant, therefore, questioned plaintiff's right to the possession and to damages, he must have meant to question plaintiff's title to the property. The other reason is the fact that as the two cases were so inextricably related to each other, and they were tried jointly, and only one joint record on appeal presented, appellant's attorney or his client or both may have overlooked the need of filing two bonds, or thought that one was sufficient without the other. This constitutes an excusable oversight. Under these circumstances, the filing of the bond in 60 days should have been excused and the appeal in the civil case given due course and relief granted as authorized under the provisions of Rule 38. The petition is hereby granted, but petitioner should pay the costs.

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

VIII

Ty Kong Tin, Petitioner-Appellee, vs. Republic of the Philippines, Oppositor-Appellant, G. R. No. L-5609, February 5, 1954.

CIVIL CODE; CHANGE OR CORRECTION OF ENTRY IN THE CIVIL REGISTER; CASE AT BAR. -- T filed a petition in the court of first instance alleging that all his children were born in Manila whose births were duly reported to the Civil Register by the midwife or doctor who had attended their births. By submitting the report it was made to appear therein that the citizenship of T was "Chinese" instead of "Filipino"; that the mistake were committed by the midwife or doctor without the knowledge or consent of T; therefore he prays that an order be issued directing the Civil Register to correct the pertinent portion of the civil register by making it appear therein that the petitioner as well as his children are Filipino citizens and not Chinese citizens as authorized by Article 412 of the new Civil Code. *HELD*: It is our opinion that the petition under consideration does not merely call for a correction of a clerical error. It involves a matter which concerns the citizenship not only of petitioner but of his children. It is therefore an important controversial matter which can and should only be threshed out in an appropriate action. The philosophy behind this requirement lies in the fact that "the books making up the civil register and all documents relating thereto shall be considered public documents and shall be prima facie evidence of the facts therein contained" (Article 410, new Civil Code, and if the entries in the civil register could be corrected or changed through a mere summary proceeding and not through an appropriate action wherein all parties who may be affected by the entries are notified or represented, we would set wide open the door to fraud or other mischief the consequence of which might be detrimental and far reaching.

DECISION

BAUTISTA ANGELO, *J.*:

This is a petition filed by Ty Kong Tin to correct certain mistakes which had allegedly been committed in the civil register of the Civil Registrar of the City of Manila concerning his citizenship.

On May 9, 1951, petitioner filed in the Court of First Instance of Manila a petition alleging that he is a Filipino citizen duly licensed to practice law in the Philippines; that all his children were born in the City of Manila whose births were duly reported to the civil registrar by the midwife or doctor who had attended their births but in submitting the report it was made to appear therein that the citizenship of petitioner was "Chinese" instead of "Filipino"; that the aforesaid mistakes were committed by the midwife or doctor without the knowledge or consent of petitioner who became aware thereof only when he asked for a certified copy of the birth certificates of his children; and, therefore, he prays that an order be issued directing the civil registrar to correct the pertinent portion of the civil register by making it appear therein that petitioner as well as his children are Filipino citizens and not Chinese citizens, as authorized by article 412 of the new Civil Code.

The Civil Registrar of Manila in his answer, states that he has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the petition but he has no ob-

jection to making the required correction provided he is so ordered by the court.

The court set the petition for hearing not after ordering petitioner to serve a copy thereof on the Solicitor General for whatever action he may deem proper to take in the premises. After the hearing was held, the Solicitor General submitted a written opposition wherein he asks that the petition be denied on the ground that petitioner has failed to present satisfactory and convincing evidence in support of his claim that he is a Filipino citizen.

Issues having been joined, the court rendered decision overruling the opposition of the Solicitor General and holding that the evidence presented by petitioner sufficiently establishes the claim that he and his children are Filipino citizens, and, consequently, it ordered the Civil Registrar of Manila to make the necessary correction in his register as prayed for in the petition. From this decision the Solicitor General has appealed.

When the case came up for discussion before the members of this Court, the issue that became the center of controversy revolved around the interpretation of the provisions of article 412 of the new Civil Code under which the petition under consideration was filed. This article provides that "No entry in a civil register shall be changed or corrected, without judicial order." The bone of contention was the extent or scope of the matters that may be changed or corrected as contemplated in said legal provision. After a mature deliberation, the opinion was reached that what was contemplated therein are mere corrections of mistakes that are clerical in nature and not those which may affect the civil status or the nationality or citizenship of the persons involved. If the purpose of the petition is merely to correct a clerical error then the court may issue an order in order that the error or mistake may be corrected. If it refers to a substantial change, which affects the status or citizenship of a party, the matter should be threshed out in a proper action depending upon the nature of the issue involved. Such action can be found at random in our suubstantive and remedial laws the implementation of which will naturally depend upon the factors and circumstances that might arise affecting the interested parties. This opinion is predicated upon the theory that the procedure contemplated in article 412 is summary in nature which cannot cover cases involving controversial issues.

It is our opinion that the petition under consideration does not merely call for a correction of a clerical error. It involves a matter which concerns the citizenship not only of petitioner but of his children. It is therefore an important controversial matter which can and should only be threshed out in an appropriate action. The philosophy behind this requirement lies in the fact that "the books making up the civil register and all documents and shall be prima facie evidence of the facts therein contained." (Article 410, new Civil Code), and if the entries in the civil register could be corrected or changed through a mere summary proceeding and not through an appropriate action wherein all parties who may be affected by the entries are notified or represented, we would set wide open the door to fraud or other mischief the consequence of which might be detrimental and far reaching. It is for these reasons that the law has placed the necessary safeguards to forestall such eventuality that even on matters which call for a correction of clerical mistakes the intervention of the courts was found necessary. This is an innovation not originally found in the law which placed this matter exclusively upon the sound judgment and discretion of the civil registrars. This was found by Congress unwise and risky in view of the far reaching importance of the subjects covered by the civil register. And under the present innovation the law even exacts civil liability from the civil registrar for any unauthorized alteration, which shows the concern of Congress in maintaining the integrity and genuineness of the entries contained in our civil registers (Article 411, new Civil Code).

The foregoing make it unnecessary for us to consider the issues raised by the Solicitor General in the present appeal.

Wherefore, the decision appealed from is reversed. The petition is dismissed without pronouncement as to costs.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Labrador. concur

IX

Secretary of Public Works and Communications, Secretary of Finance and Executive Secretary, petitioners, versus Hon. Bienvenido Tan, Judge of the Court of First Instance of Rizal, The Provincial Board of Rizal, Narciso G. Isidro, Respondents, G.R. No. L-5987, promulgated, Nov. 25, 1953, Jugo, J.

RULES OF COURT; INJUNCTION TO RESTRAIN THE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS FROM CONTINUING THE COLLECTION OF TOLLS ON A BRIDGE.—Where the Court of First Instance issued the writ of preliminary injunction prayed for in the complaint, restraining the Secretary of Public Works and Communications, Secretary of Finance and Executive Secretary from continuing the collection of tolls on a bridge because the cost of the same plus 4% interest per annum had been fully recovered from the tolls collected up to the filing of the complaint, a fact which is asserted by the Provincial Board of Rizal and not denied by any interested party, the court did not exceed its jurisdiction or abuse its discretion in issuing the writ of injunction.

DECISION

JUGO, *J.*:

The Marikina Toll Bridge was constructed under the provisions of Act No. 3500. The pertinent provisions of said Act are as follows:

> "SECTION 1. The sum of five million pesos is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated, to constitute a revolving fund for the construction of permanent bridges on interprovincial or intercoastal roads in the Philippines, which shall be expended under the supervision of the Secretary of Commerce and Communications. Said bridges shall be declared toll bridges for a period not exceeding fifteen years and tolls shall be collected from all traffic using such bridges in accordance with rates to be fixed by a board composed of the Secretary of Commerce and Communications as chairman, the Secretary of Finance, and the Insular Auditor, as members: *Provided, however,* That no toll charges shall be collected from pedestrians.
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> SEC. 4. When the total cost of a bridge, plus interest of four per centum per annum, is fully recovered, the board created in section one of this Act shall so certify to the Governor-General who, by means of an Executive Order, shall turn over the bridge to the provincial board concerned and order the collection of tolls to be discontinued. The cost of maintaining bridges financed under the provisions hereof shall be charged to the road and bridge fund of the province in which said bridges are situated."

On March 4, 1952, Narciso G. Isidro filed a complaint in the Court of First Instance of Rizal against the petitioners herein, the Secretary of Public Works and Communications, the Secretary of Finance and the Executive Secretary, and the Provincial Treasurer and the District Engineer of Rizal, alleging, among other things, that he is an operator of several buses with proper certificates of public convenience which pass over said bridge in their trips from Manila to Marikina and *vice versa*, and that the defendants (petitioners herein), have been collecting tolls for the use of said bridge; that the period of fifteen years had passed since the construction of said bridge and that the cost of the same plus 4% interest per annum had been fully recovered from the tolls collected up to the filing of the complaint, and praying that a writ of preliminary injunction be issued restraining the defendants from continuing the collection of tolls, and that an order be issued requiring the defendants to certify to the President of the Philippines that the cost of the construction of said bridge had been fully recovered from the tolls collected. The Provincial Board of Rizal as an interested party filed a complaint in intervention, making substantially the same allegations and the same prayer as Narciso G. Isidro.

The Secretary of Public Works and Communications, the Secretary of Finance and the Executive Secretary filed an answer in the Court of First Instance alleging in substance that the money borrowed from the Agricultural and Industrial Bank for the con-

struction of said bridge had not yet been fully paid.

The respondent Court of First Instance issued the writ of preliminary injunction prayed for in the complaint of Isidro, restraining the defendants, their representatives etc., from continuing the collection of tolls on said bridge, upon the filing by the plaintiff of a bond in the sum of P2,000.00. The defendants (petitioners herein), have filed a petition in this Court for a writ of certiorari, praying that a preliminary injunction be issued prohibiting the enforcement of the preliminary injunction issued by the Court of First Instance and that after hearing said injunction be declared null and void.

It should be borne in mind that the lower court has not yet tried the case on the merits and has not yet rendered a final judgment, the only question before us being whether the court acted in excess of its jurisdiction or with abuse of its discretion in issuing said writ of preliminary injunction. In this connection, it should be considered that the Provincial Board of Rizal alleges that the total cost of bridge plus 4% interest per annum had been recovered with excess from the tolls already collected and that the period of fifteen years from the opening of the bridge had elapsed since the year 1945. However, the petitioners raise the technical point that it is not within the authority of the defendant officers to order the discontinuance of the collection of tolls but only to certify to the (Governor-General) President of the Philippines that the cost of the bridge plus 4% interest had already been recovered.

In the first place, more than fifteen years had elapsed since the opening of the bridge and this fact does not require any certification In the second place, the above-mentioned board has failed to comply with its ministerial duty to certify to the President the fact that the cost of the bridge plus 4% interest per annum has been recovered with excess, a fact which is asserted by the Provincial Board of Rizal and not seriously denied by any party. The allegation of the defendants (petitioners herein), in their answer that the money borrowed from the Agricultural and Industrial Bank to construct the bridge, has not been fully paid, if true, is immaterial, for it would not be the fault of the plaintiff Isidro that the toll collections had not been turned over to the said bank or its successor, in payment of the alleged debt. It would appear, therefore, from the allegations in the pleadings that the respondent Judge did not exceed his jurisdiction or abuse his discretion in issuing the writ of injunction above-mentioned.

Without prejudice to the holding of the trial on the merits in the court below and the rendition of final judgment by it, the petition for the writ of certiorari is hereby denied without costs.

It is so ordered.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor; Reyes; Bautista Angelo and *Labrado, JJ.*, concur.

X

Catalina de los Santos, Plaintiff-Appellee, vs. Roman Catholic Church of Midsayap et als., Defendants-Appellants, G. R. No. L-6058, *February* 25, 1954.

1. PUBLIC LAND; SALE OF LAND COVERED BY A HOMESTEAD PATENT BEFORE THE EXPIRATION OF FIVE YEARS FROM THE DATE OF ISSUANCE OF PATENT; ITS NULLITY. — Where a land covered by a homestead patent is sold before the expiration of five years from the date of the issuance of the patent such sale is null and void.
2. IBID; IBID; APPROVAL OF THE SALE BY THE SECRETARY OF AGRICULTURE AND NATURAL RESOURCES; REGISTRATION OF THE DEED OF SALE. — The approval of such sale by the Secretary of Agriculture and Natural Resources does not validate it although the approval was obtained more than ten years from the date of the issuance of the patent, nor the fact that the deed of sale was registered in the office of the Register of Deeds also more than ten years after the issuance of the patent. The approval of the Secretary of Agriculture and Natural Resources regarding the sale of land covered by a homestead patent is merely a formality which the law requires if the sale is effected after the term of five years but before the expiration of a period of 25 years for the purpose of testing the validity of the sale on constitutional grounds. But, as ruled by the Supreme Court, the absence of such formality will not render the transaction null and void.
3. IBID; MANDATORY CHARACTER OF THE LAW. — The provision of the law which prohibits the sale or incumbrance of the homestead within five years after the grant of the patent is mandatory and cannot be obviated even if official approval is granted beyond the expiration of that period, because the purpose of the law is to promote a definite public policy, which is "to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him." (Pascua v. Talens, 45 O. G., No. 9. (Supplement) 413.)
4. IBID; PURPOSE OF THE SALE IS IMMATERIAL. — The claim that the sale of land covered by a homestead patent which was sold before the expiration of five years after the issuance of the patent can be validated because it was made for the purpose of being dedicated solely to educational and charitable purposes is unmeritorious.
5. IBID; SECTION 121 OF COMMONWEALTH ACT NO. 141 CONSTRUED. — It is true that under section 121, Commonwealth Act No. 141, a corporation, association, or partnership may acquire any land granted as homestead if the sale is done with the consent of the grantee and the approval of the Secretary of Agriculture and Natural Resources and is solely for commercial, industrial, educational, religious, or charitable purposes, or for a right of way, and apparently there is no limitation therein as to the time within which such acquisition may be made. But this provision should be interpreted as a mere authority granted to a corporation, association or partnership to acquire a portion of public land and not as an unbridled license to acquire without restriction for such would be giving an advantage to an entity over an individual which finds no legal justification. It is our opinion that the authority granted by section 121 should be interpreted as subject to the condition prescribed in section 118, namely, that the acquisition should be after the period of five years from the date of the issuance of the patent.
6. IBID; PRINCIPLE OF PARI DELICTO NOT ABSOLUTE. — Where the principle of *pari delicto* is invoked by the defendants because the homesteaders sold the land before the expiration of five years after the issuance of the patent the said principle may not be invoked in this case considering the philosophy and the policy behind the approval of the Public Land Act. The principle underlying *pari delicto* as known here and in the United States is not absolute in its application. It recognizes certain exceptions one of them being when its enforcement or application runs counter to an avowed fundamental policy or to public interest. As stated by us in the Rellosa case, "This doctrine is subject to one important limitation, namely, 'whenever public policy is considered advanced by allowing either party to sue for relief against the transaction.'" (Rellosa v. Gaw Chee Han. R. R. No. L-1411.)
7. IBID; PRINCIPLE OF PARI DELICTO NOT APPLICABLE TO THE CASE AT BAR. — Ordinarily the principle of *pari delicto* would apply to the appellee who desires to nullify a transaction which was done in violation of the law because the predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality (8 Manresa 4th ed., pp. 717-718), but because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated (Pascual v. Talens, *supra*). This right cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve" (Gonzalo Puyat and Sons, Inc. v. Pantalcon de las Ama, et al., 74 Phil.,3).

D E C I S I O N

BAUTISTA ANGELO, *J.*:

On December 9, 1938, a homestead patent covering a tract of land situated in the municipality of Midsayap, province of Cotabato, was granted to Julio Sarabillo and on March 17, 1939, Original Certificate of Title No. RP-269 (1674) was issued in his favor.

On December 31, 1940, Julio Sarabillo sold two hectares of said land to the Roman Catholic Church of Midsayap for the sum of P800 to be dedicated to educational and charitable purposes. It was expressly agreed upon that the sale was subject to the

approval of the Secretary of Agriculture and Natural Resources.

In December, 1947, a request for said approval was submitted in behalf of the Roman Catholic Church by Rev. Fr. Gerard Mongeau stating therein that the land would be used solely for educational and charitable purposes. The sale was approved on March 26, 1949, and on March 29, 1950, the deed of sale was registered in the Office of the Register of Deeds for the province of Cotabato. No new title was issued in favor of the Roman Catholic Church although the deed was annotated on the back of the title issued to the homesteader.

In the meantime, Julio Sarabillo died and intestate proceedings were instituted for the settlement of his estate and Catalina de los Santos was appointed administratrix of the estate. And having found in the course of her administration that the sale of the land to the Roman Catholic Church was made in violation of section 118 of Commonwealth Act No. 141, the administratrix instituted the present action in the Court of First Instance of Cotabato praying that the sale be declared null and void and of no legal effect.

In their answer defendants claim that the sale is legal and valid it having been executed for educational and charitable purposes and approved by the Secretary of Agriculture and Natural Resources. They further claim that, even if it be declared null and void, its immediate effect would be not the return of the land to appellee but the reversion of the property to the State as ordained by law. Defendants also set up as a defense the doctrine of *pari delicto*.

As a preliminary step, the court, upon petition of counsel for defendants, directed the clerk of court, assisted by a representative of both parties, to appraise the value of the improvements existing on the controverted land and to submit to the court a report of his findings. This was done, the clerk of court reporting that the value of the improvements was P601.

After the parties had submitted the case on the pleadings, in addition to the report of the clerk of court as to the value of the improvements existing on the land, the court rendered decision declaring the sale null and void and ordering the plaintiff to reimburse to the defendants the sum of P800 which was paid as purchase price, plus the additional sum of P601 as value of the improvements, both sums to bear interest at 6 per cent per annum from the date of the complaint, and ordering defendants to vacate the land in question. Dissatisfied with this decision, the case was taken to the Court of Appeals but it was later certified to this Court on the ground that the appeal merely involves questions of law.

It appears that the patent covering the tract of land which includes the portion now disputed in this appeal was issued to the late Julio Sarabillo on December 9, 1938, and the sale of the portion of two hectares to the Roman Catholic Church took place on December 31, 1940. This shows that the sale was made before the expiration of the period of five years from the date of the issuance of the patent and as such is null and void it being in contravention of section 118 of Commonwealth Act No. 141. The fact that it was expressly stipulated in the deed of sale that it was subject to the approval of the Secretary of Agriculture and Natural Resources and the approval was sought and obtained on March 26, 1949, or more than ten years after the date of the issuance of the patent, or the fact that the deed of sale was registered in the office of the Register of Deeds only on March 29, 1930 and was annotated on the back of the title on that date, cannot have the effect of validating the sale for the reason that the approval of the Secretary of Agriculture and Natural Resources does not have any valid curative effect. That approval is merely a formality which the law requires if the sale is effected after the term of five years but before the expiration of a period of 25 years for the purpose of testing the validity of the sale on constitutional grounds. But, as was ruled by this Court, the absence of such formality will not render the transaction null and void (Evangelista v. Montano, G. R. No. L-5567). What is important is the period within which the sale is executed. The provision of the law which prohibits the sale or encumbrance of the homestead within five years after the grant of the patent is mandatory. This cannot be obviated even if official approval is granted beyond the expiration of that period, because the purpose of the law is to promote a definite public policy, which is "to preserve and keep in the family of the homesteader that portion of public land which the State has gratuitously given to him." (Pascua v. Talens, 45 O. G., No. 9, (Supplement) 413.)

The claim that the sale can be validated because it was made with the avowed aim that the property would be dedicated solely to educational and charitable purposes is likewise unmeritorious even considering the law invoked by counsel for appellants in favor of its validity. It is true that under section 121, Commonwealth Act No. 141, a corporation, association, or partnership may acquire any land granted as homestead if the sale is done with the consent of the grantee and the approval of the Secretary of Agriculture and Natural Resources and is solely for commercial, industrial, educational, religious, or charitable purposes, or for a right of way, and apparently there is no limitation therein as to the time within which such acquisition may be made. But this provision should be interpreted as a mere authority granted to a corporation, association or partnership to acquire a portion of the public land and not as an unbridled license to acquire without restriction for such would be giving an advantage to an entity over an individual which finds no legal justification. It is our opinion that the authority granted by section 121 should be interpreted as subject to the condition prescribed in section 118, namely, that the acquisition should be after the period of five years from the date of the issuance of the patent.

But appellants now contend that even if it be declared that the sale made to them by the homesteader is null and void yet its immediate effect would be not the return of the land to appellee but rather its reversion to the State wherein the Government is the interested party. (Sction 124 of the Public Land Act). Appellants further claim that the present action cannot be maintained by the appellee under the principle of *pari delicto*.

The principles thus invoked by appellants are correct and cannot be disputed. They are recognized not only by our law but by our jurisprudence. Section 124 of the Public Land Act indeed provides that any acquisition, conveyance or transfer executed in violation of any of its provisions shall be null and void and shall produce the effect of annulling and cancelling the grant or patent and cause the reversion of the property to the State, and the principle of *pari delicto* has been applied by this Court in a number of cases wherein the parties to a transaction have proven to be guilty of having effected the transaction with knowledge of the cause of its invalidity. (Bough and Bough v. Cantiveros and Hanopol, 40 Phil., 210, 216; Rellosa v. Gaw Chee Hun, G. R. No. L-1411; Trinidad Gonzaga de Cabauatan v. Uy Hoo, et al., G. R. No. —-2207; Caoile v. Yu Chiao Peng, G. R. No. L-4068; Talento, et al. v. Makiki, et al., G. R. No. L-3529.) But we doubt if these principles can now be invoked considering the philosophy and the policy behind the approval of the Public Land Act. The principle underlying *pari delicto* as known here and in the United States is not absolute in its application. It recognizes certain exceptions one of them being when its enforcement or application runs counter to an avowed fundamental policy or to public interest. As stated by us in the Rellosa case, "This doctrine is subject to one important limitation, namely, 'whenever public policy is considered advanced by allowing either party to sue for relief against the transaction.'" (Rellosa v. Gaw Chee Hun, G. R. No. L-1411.)

The case under consideration comes within the exception above adverted to. Here appellee desires to nullify a transaction which was done in violation of the law. Ordinarily the principle of *pari delicto* would apply to her because her predecessor-in-interest has carried out the sale with the presumed knowledge of its illegality (8 Manresa 4th ed., pp. 717-718), but because the subject of the transaction is a piece of public land, public policy requires that she, as heir, be not prevented from re-acquiring it because it was given by law to her family for her home and cultivation. This is the policy on which our homestead law is predicated (Pascua v. Talens, *supra*). This right cannot be waived. "It is not within the competence of any citizen to barter away what public policy by law seeks to preserve" (Gonzalo Puyat and Sons, Inc. v. Pantaleon de las Ama, et al., 74 Phil., 3). We are, therefore, constrained to hold that appellee can maintain the present action it being in furtherance of this fundamental aim of our homestead law.

As regards the contention that because the immediate effect of

(*Continued on page* 202)

OPINIONS OF THE SECRETARY OF JUSTICE

I

(On the question as to whether or not the Director of Public Schools may authorize public normal schools to grant the Degree of Bachelor of Science in Education, and issue the corresponding diplomas).

A degree is any academic rank recognized by colleges and universities having a reputable character as institutions of learning, or any form of expression indicative of academic rank so as to convey to the ordinary mind the idea of some collegiate, university or scholastic distinction, while a diploma is the written or printed evidence indorsed by the proper authorities that the person named thereon has completed a prescribed course of study in the school or institution named therein.

The power to confer degrees and issue diplomas may exist either by express provision of statute or by necessary implication.

OPINION NO. 11, 1954
3rd Indorsement
Jan. 21, 1954

Respectfully returned to the Director of Public Schools, Manila

Opinion is requested as to whether or not the Director of Public Schools may authorize public normal schools to grant the Degree of Bachelor of Science in Education, major in Elementary Education, and issue the corresponding diplomas.

It appears that the Director of Public Schools, with the approval of the Secretary of Education, issued Circular No. 10, s. 1952, authorizing certain normal schools to offer an elementary teacher curriculum on the four-year collegiate level beginning July 1, 1952. This curriculum allegedly fulfills all the academic requirements necessary for the degree of Bachelor of Science in Education with Elementary Education Major and is similar to the curriculum in duly recognized colleges and universities here and abroad.

A degree is any academic rank recognized by colleges and universities having a reputable character as institutions of learning, or any form of expression indicative of academic rank so as to convey to the ordinary mind the idea of some collegiate, university or scholastic distinction (14 C.J.S. 1337), while a diploma is the written or printed evidence indorsed by the proper authorities that the person named thereon has completed a prescribed course of study in the school or institution named therein (Valentine v. Independent School District of Casey et al., 183 N.S. 434). The power to confer degrees and issue diplomas may exist either by express provision of statute or by necessary implication (14 C.J.S. 1337, citing State ex. inf. Otto v. St. Louis College of Physicians & Surgeons, 295 S.W. 537, 317 No. 49; Collins v. Farary, 126 A. 538, 100 N.J.L. 170). In Valentin v. Independent School Dist. of Casey, et al., *supra*, it was held that a school board which prescribed a course of study approved by the department of public instruction, so the high school became an approved or accredited one, is, although not so required, by implication bound to issue diplomas to those pupils satisfactorily completing the prescribed course who were otherwise qualified.

Assuming, therefore, that Circular No. 10, s. 1952, of the Director of Public Schools is valid, the foregoing principle would sustain the conclusion that public normal schools offering elementary-teacher curriculum on the four-year collegiate level pursuant to the said circular are by implication authorized to grant the Degree of Bachelor of Science in Education, Major in Elementary Education and issue the corresponding diploma to students satisfactorily completing the academic requirements necessary for that particular course. The question thus hinges on whether the above-mentioned circular of the Director of Public Schools is valid and authorized.

From the tenor of the preceding indorsement, the said circular appears to have been issued pursuant to Section 910 (i and d) of the Revised Administrative Code, which authorizes the Director of Public Schools to maintain classes for superior instruction to teachers and to fix the curriculuum of all public schools under his jurisdiction. However, in a previous opinion rendered for the Secretary of Education, Mr. Justice Ozaeta, then Secretary of Justice, ruled that Section 910 of the Revised Administrative Code which enumerates the powers and duties of the Director of Public Schools, does not include that of establishing collegiate and professional courses, and that a special law is necessary before such courses may be established in any of the school divisions under the Bureau of Public Schools. (See Op., Sec. of Justice, No. 175, s. 1947.)

The four-year course leading to the degree of Bachelor of Science in Education with Elementary Education Major is no doubt a collegiate or professional course which, as above held, the Director of Public Schools cannot establish in any of the school divisions falling under his bureau unless authorized by specific provision of law. This rule was impliedly recognized and given legislative sanction when the former Philippine Normal School, originally established under Act No. 74 and thereunder authorized to offer only the two-year general and three-year combined curricula, was, by special congressional act, converted into the present Philippine Normal College with specific authority to offer a four-year and a five-year courses leading to the degrees of Bachelor of Science in Elementary Education and Master of Arts in Education, respectively, and to confer the corresponding degrees to successful candidates for graduation. (Rep. Act No. 416, as amended by Rep. Act No. 921.) In the instant case, however, no legal provision other than Section 910 of the Revised Administrative Code has been cited, and neither is the undersigned aware of any, upon which the authority of the Director of Public Schools in issuing the circular in question could be based.

In view of the foregoing, this Office is led to conclude that Circular No. 10, s. 1952, of the Director of Public Schools is null and void as having been issued without legal authority. Accordingly, the query is answered in the negative.

Sgd PEDRO TUASON
Secretary of Justice

II

(On the question as to whether or not the National Planning Commission can prescribe penalties for the violation of its planning regulations).

Once the National Planning Commission has promulgated the plans, zoning ordinances, and subdivision regulations it is authorized to adopt by the law of its creation, its authority under its charter is exhausted, and any attempt by the Commission to impose penalties for violations of the said regulations would be a clear case of unwarranted exercise of an undelegated and non-delegable power.

OPINION NO. 13, 1954

January 23, 1954

The Chairman
National Planning Commission
P. O. Box 117
Manila
Sir:

This is in reply to your letter of the 6th instant requesting for an opinion as to whether the National Planning Commission could prescribe penalties for violations of its planning regulations adopted and promulgated in accordance with Executive Order No. 98, series of 1946.

The National Planning Commission (NPC) was created by Executive Order No. 367 dated November 11, 1950, and assumed all the powers, duties and functions theretofore exercised by the defunct National Urban Planning Commission (NUPC), the Capital City Planning Commission (CCPC), and the Real Property Board (RPB). The functions of the NUPC, as defined in Executive Order No. 98, series of 1946, and now exercised by the NPC by virtue of Executive Order No. 367, series of 1950, are the preparation and promulgation of general plans, zoning ordinances and subdivision regulations for the physical development of urban areas. The penal sanction for violations of regulations issued by the NUPC is prescribed in Section 13 of Executive Order No. 98, series of 1946, which reads as follows:

"Any willful violation of any resolution, regulation or

General Plan which is in effect in accordance with this Order shall be punished by imprisonment not exceeding six months or a fine of not exceeding ₱500, or both such imprisonment and fine in the discretion of the court."

The above provision is neither modified nor abrogated by Executive Order No. 367, series of 1950, since the latter expressly repeals only such provisions of Executive Order No. 98, series of 1946, Republic Act No. 333, and of all other acts, executive orders and administrative orders as are inconsistent therewith. (Sec. 10 Ex. Order No. 367, series of 1950).

The validity of the above-quoted provision is not in issue; hence, no inquiry will be made into its legality. Besides, this Office is not competent to declare invalid any law or presidential executive order. The undersigned, however, notes in passing that in its decision in the case of University of the East vs. The City of Manila, Civil Case No. 20850, the Court of First Instance of Manila made some remarks expressing doubts that Executive Order No. 98, series of 1946, is still in force. It would seem that the present request for legal opinion has been prompted by the aforesaid decision and the National Planning Commission proposes to provide a penalty for violations of its regulations independently of the penal provision contained in Section 13 of Executive Order No. 98, series of 1946.

It is a settled rule of law that administrative authorities may be empowered to enact rules and regulations having the force and effect of law, but any criminal or penal sanction for the violation of such rules and regulations must come from the legislature itself (42 Am. Jur. Sec. 50, p. 355). Prescribing of penalties is a legislative function (State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 S. 969, 32 LRA (NS) 639), and a commission may not be empowered to impose penalties for violations of duties which it creates under a statute permitting it to make rules (Harber Commrs. v. Excelsior Redwood Co., 88 Cal. 491, 26 p. 375; Ex parte Leslie, 87 Tex. Crim. Rep. 476, 223 SW 227). Accordingly, it has been held that the legislature cannot delegate to an administrative board the authority to fix the penalty for a violation of orders or regulations which the legislature authorized the board to make. The penalty must be fixed by the legislature itself. (Howard v. State, 154 Ark. 430, 242 SW 818; State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 S. 969; Zuber v. Southern R. Co., 9 Ga. App. 539, 71 SE 937). If the power to provide penalties for violations of rules and regulations may not be validly delegated to an administrative body, much less can such an administrative body by itself initiate penal sanctions. (U.S. v. Brimaud, 220 US 506, 55 L ed 563, 31 S. Ct. 480; Re Kollock, 165 US 526, 41 L ed 813, 17 S. Ct. 444; U.S. v. Eaton, 144 US 677, 36 L ed 591; Standard Oil Co. v. Limestone County, 220 Ala. 231, 124 S. 523).

It follows that once the National Planning Commission has promulgated the plans, zoning ordinances, and subdivision regulations it is authorized to adopt by the law of its creation, its authority under its charter is exhausted, and any attempt by the Commission to impose penalties for violations of the said regulations would be a clear case of unwarranted exercise of an undelegated and non-delegable power.

The query is therefore answered in the negative.

Respectfully,

(Sgd.) PEDRO TUASON
Secretary of Justice

III

(On the question as to whether or not the University of the Philippines may be considered a part of the government of the Philippines as that term is used in Section 624 of the Revised Administrative Code).

For the purpose of Section 624 of the Revised Administrative Code the University of the Philippines may be regarded as a part of the government so that debts due it may be collected in the manner provided in said section.

OPINION NO. 14, 1954
5th Indorsement
Jan. 22, 1954

Respectfully returned to the Honorable, the Auditor General, Manila.

Opinion is requested on whether or not the salary of Mrs. Bonita B. Sotto, an employee of the Bureau of Public Works may be withheld and applied to the outstanding loan account with the Student Loan Board, University of the Philippines, of Miss Beatriz Garcia, for whom said Mrs. Sotto bound herself as co-debtor, pursuant to Section 624 of the Revised Administrative Code which reads:

"SEC. 624. Retention of salary for satisfaction of indebtedness to Government. — When any person is indebted to the Government of the Philippines, the Auditor General may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness."

The question boils down to the nature of the University of the Philippines, i.e., whether it may be considered a part of the Government of the Philippines as that term is used in the above-quoted section.

No established ruling has so far been laid down as to whether or not the University of the Philippines may be considered a part of the Government for all purposes. In an opinion rendered by this Office, it was held that the University of the Philippines did not come under the term "Philippine Government" as defined in Section 2 of the Revised Administrative Code and is therefore not embraced within the scope of that term as used in Section 8 of the Copyright Law. It was stated that altho said University was created by an act of the Philippine Legislature as a public corporation maintained at public expense, it was not created for political purposes and is not invested with political powers. (Op., Sec. of Jus., No. 11, S. 1940.) However, in another opinion, this Department held that employment in the same university may be considered employment in the government within the meaning of Section 16, Article VI, of the Constitution of the Philippines, because it is a government institution existing for the purpose of effectuating a function imposed upon the government by Section 5, Article XIV, of the Constitution of the Philippines, that of providing advanced education in the arts and sciences. (Op., Sec. of Jus. dated November 26, 1946.) This seeming inconsistency is, nevertheless, explained by the ruling of this Office: that government-owned corporations may properly be treated as part of the government for one purpose and as independent entity for another, depending upon the object of the provision of law being applied. (Ops., Sec. of Jus., No. 349, S. 1940; No. 159, S. 1952; No. 28, S. 1953; and No. 208, S. 1953).

Section 624 of the Revised Administrative Code, above-quoted, was evidently aimed at safeguarding the interest of the government by ensuring the collection of debts due it. The University of the Philippines was created by Act No. 1870 and all moneys appropriated or donated for its operation and maintenance are public funds. Like any government office, its accounts and expenses are required to be audited by the Auditor-General, and the Treasurer of the Philippines is its ex-officio Treasurer.

My opinion is that for purpose of Section 624 of the Revised Administrative Code the University of the Philippines may be regarded as a part of the Government so that debts due it may be collected in the manner provided in said section.

Sgd. PEDRO TUASON
Secretary of Justice

IV

(On the retirement gratuity of provincial, municipal and city officers and employees).

The retirement gratuity provided for in the law may be demanded only if the claimant is retired or separated from the service as a result of the reorganization of the office to which he belongs.

OPINION NO. 16, 1954
2nd Indorsement
Jan. 27, 1954

Respectfully returned to the Honorable, the Executive Secretary, Manila.

Opinion is requested as to whether or not Mr. Pascual Ag-

cacili, road maintenance capataz in the Office of the Engineer of Ilocos Norte, may be retired with gratuity under Act No. 4183.

The following facts appear incontrovertible:— That Mr. Pascual Agcaoili was the Justice of the Peace of Piddig, Ilocos Norte, from 1900 to 1902; Clerk, Office of the Governor from 1903 to 1905; Municipal Treasurer of various municipalities from 1905 to 1919; Capatas in various capacities from 1934 to 1941; and Road Maintenance Capataz from 1946 to the present. It also appears that in 1941 he applied for retirement under Act No. 4183 but no action was taken thereon by reason of the war. In 1946 he renewed his application which was favorably recomended by the District Engineer who also certified that the position of Mr. Agcaili will be abolished as soon as he is retired and its functions absorbed by another Maintenance Capataz. The Provincial Board of Ilocos Norte approved the said retirement and granted him a gratuity equivalent to 24 months salary. Act No. 4183 is still enforce insofar as Mr. Agcaoili is concerned because he has not become a member of the Government Service Insurance System. (See Sec. 28, Rep. Act No. 660).

Section 1 of Act No. 4133, as amended, expressly provides as follows:

> "In order to grant a gratuity to provincial, municipal and city officers and employees who resign or are separated from the service by reason of a reorganization thereof, the provincial boards, municipal and city boards or councils may, with the approval of the Secretary of the Interior, retire their officers and employees, granting them, in consideration of satisfactory service rendered, a gratuity of one month's salary for each year or fraction of a year of service but not to exceed twenty-four months in any case on the basis of the salary they receive at the time of leaving the service, to be paid monthly at the rate of thirty-three percentum of the monthly salary."

Construing the above-quoted provision, this Department has consistently ruled that the retirement gratuity provided for there in may be demanded only if the claimant is retired or separated from the service as a result of the reorganization of the Office to which he belongs. Thus, commenting on the application of Act No. 4183 as amended by Commonwealth Act No. 623, in connection with the proposed retirement of Mr. Sisenando Ferriols, Administrative Deputy in the Office of the Provincial Treasurer of Batangas, this Department recommended that no provincial, municipal, or city officer or employee could be retired with gratuity under said Act unless his retirement or separation from the service arose from or became necessary by reason of a reorganization of the service. (Op. Sec. of Justice dated October 16, 1946).

Again, in the case of Mr. Cornelio Revilla, a former laborer in the Department of Engineering and Public Works, City of Manila, this Office has held that having been separated from the service by reason of his death and not by reason of the reorganization of the City of Manila, he was not entitled to the retirement gratuity provided for under Act No. 4183. (Opinion Sec. of Justice No. 105, s. 1946).

Upon the other hand, the case of Mr. Petronilo Repia, a laborer in the Engineering Department of the City of Manila who was arrested and confined in the San Lazaro Hospital as leper suspect and given an indefinite leave of absence from his work but whose item was later on abolished in the Appropriation Ordinance of the City of Manila, was held to be fully within the purview with gratuity under said Act. (Opinion Sec. of Justice No. 46, s. 1939). It may be stated, in this connection, that Act No. 4270 is identical with Act No. 4183 in that both Acts authorize the grant of retirement gratuity to officials and employees who have resigned or been separated from the service by reason of the reorganization of the Office to which they belong.

Lately, the Supreme Court, in the case of Cornelio Antiquera vs. Hon. Sotero Baluyot, Secretary of the Interior, G. R. L-3318, promulgated on May 5, 1952, ruled that "the simple retirement provided by Act No. 4183, in order that a municipal officer or employee may be retired thereunder, is that he be separated from the service by reason of a reorganization," and that "the important and decisive fact, in order that a municipal officer or employee may come under Act No. 4183, is that his position or item be abolished."

Thus, it can be gathered from all the foregoing cases that, the right to retirement gratuity provided for in Act No. 4183 as well as in Act No. 4270 (for the City of Manila), can be availed of only when the position of the officer or employee concerned has been abolished, either by virtue of a reorganization of the Office, or merely eliminated in the appropriation law for the sake of economy. Neither death of the employee, his long service, nor old age would satisfy the requirement of Act No. 4183 so as to entitle him to the benefits thereof.

True indeed that Mr. Agcaoili's position has not been abolished but, upon his retirement, the authorities concerned are committed to its abolition and the transfer of its functions to other maintenance capataces whose sections are adjacent to that of Mr. Agcaoili's. This is a substantial compliance with the requirement of section 1 of Act No. 4183, as amended. It is believed that, for purposes of the retirement gratuity provided in Act No. 4183, there is no substantial difference between abolishing an employee's position first and retiring him thereafter, and retiring him first and thereafter abolishing his position. The requirements of the law are complied with and its purpose equally attained in both instances. Besides, Act No. 4183 is a gratuity law and should be liberally construed in favor of the employee to better accomplish its purpose.

In view of the foregoing, the undersigned is of the opinion that Mr. Pascual Agcaoili may be retired with gratuity under the provisions of Act No. 4183, as amended, provided that his position is abolished immediately after his retirement.

Sgd. PEDRO TUASON
Secretary of Justice

V

(On the question as to whether or not the money value of the leaves earned by a justice of the Court of Appeals may be paid out of savings on the appropriations for the inferior courts, pursuant to Section 6(8) of Republic Act No. 906).

OPINION NO. 37, 1954
6th Indorsement
Mar. 1, 1954

Respectfully returned to the Honorable, the Acting Commissioner of the Budget, Manila.

It appears that Justice Mariano de la Rosa was, upon reaching the age of 70 years on September 23, 1953, retired as Associate Justice of the Court of Appeals under Republic Act No. 910. At the time of his retirement, he had to his credit leave amounting to 7 months and 26 days. Because of lack of funds in the Court of Appeals for the payment of the money value of said leave, the Presiding Justice of the Court of Appeals requested that the President authorize the use of salary savings in the executive departments for the purpose. The General Auditing Office disallowed said request, on the ground that Section 6(8) of Republic Act No. 906 allows the use of savings in the executive departments for the payment of commuted leaves only when the employee retires under Republic Act No. 660, but allowed the payment of said leave out of Justice de la Rosa's salary item. Meanwhile, the President had appointed Judge Potenciano Pecson as Associate Justice, vice Justice de la Rosa, and the former assumed office on November 5, 1953. Because of the use of the salary item, as above-stated, and because said Court does not have any savings in its appropriations for salaries and wages, Justice Pecson has not been paid his salary from the time he assumed office. For his salary up to June 30, 1954 the Court of Appeals needs about ₱8,000.00. It has therefore been proposed that the salary savings of ₱8,000.00 in the inferior courts be transferred to the Court of Appeals to offset the payment made to Justice de la Rosa for his terminal leave, thus making available the appropriation for the item occupied by Justice Pecson

(*Continued on page 211*)

REPUBLIC ACT NO. 928

AN ACT TO AMEND SUBSECTION "C" OF SECTION ONE HUNDRED AND FOURTEEN OF ACT NUBERED FOUR HUNDRED AND NINETY-SIX, ENTITLED "THE LAND REGISTRATION ACT" AS AMENDED BY REPUBLIC ACT NUMBERED ONE HUNDRED AND SEVENTEEN.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Subsection "C" of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, entitled "The Land Registration Act", as amended by Republic Act Numbered One hundred and seventeen, is hereby further amended to read as follows:

"C. *Fees payable to the Register of Deeds.*—The register of deeds shall collect fees for all services rendered by him under this Act in accordance with the following schedule:

"1. For the entry of one original certificate of title, and issuing one owner's duplicate certificate, eight pesos for the first parcel of land described thereon, and one peso for each additional parcel: *Provided, however,* That in case of certificates of title under the Cadastral Act, the fees for entering one original certificate of title and issuing the owner's duplicate thereof, when the total current assessed value of the lots included therein does not exceed seven hundred pesos, and irrespective of the number of such lots, shall be one peso for every one hundred pesos or fractional part thereof.

"2. For each entry in the primary entry book, one peso.

"3. For the annotation of an attachment levy, writ of execution, or adverse claim, three pesos for the first parcel of land affected thereby, and two pesos for each additional parcel. If the total assessed value of the land and improvements exceeds six thousand pesos, there shall be collected an additional fee equivalent to ten *per centum* of the fees under paragraph sixteen of this subsection computed on the basis of said assessed value.

"4. For the annotation of a notice of *lis pendens*, or of any document or order in connection therewith, for each parcel of land affected thereby, two pesos.

"5. For the annotation of a release of any encumbrance, except mortgage, lease, or other lien for the cancellation of which a specific fee is prescribed herein, for each parcel of land so released, two pesos; but the total amount of fees to be collected shall not exceed the amount of fees paid for the registration of such encumbrance.

"6. For the annotation of an order of the court for the amendment of, or the making of a memorandum on, a certificate of title, except inclusion of buildings or improvements, or any order directing the registration of a document, or of any right or interest referred to in said order, or the cancellation of a certificate of title and/or the issuance of a new one, two pesos for each certificate of title on which annotation is made, in addition to the fees prescribed under paragraph sixteen or seventeen, as the case may be, of this subsection , if the same are also due for the registration of such document, right or interest.

7. For the annotation of an order of the court for the inclusion of buildings and/or improvements in a certificate of title, five pesos for each certificate of title if the buildings or improvements belong to a person other than the registered owner of the land. If they belong to the same registered owner, the fees to be collected shall be based on the value of such buildings and improvements in accordance with the schedule prescribed under paragraph sixteen or seventeen, as the case may be, of this subsection.

"8. For registering and filing a power of attorney, letters of administration or letters testamentary whether or not accompanied by a copy of the testament, certificate of allowance of a will with attested copy of the will annexed, appointment of guardian for a minor or incompetent person, appointment of receiver, trustee, or administrator, articles of incorporation of any corporation, association or partnership, or resolution of its board of directors empowering an officer or member thereof to act in behalf of the same, seven pesos; and for the annotation of such papers on certificates of title when required by existing laws or regulations, one peso and fifty centavos for each certificate of title so annotated: *Provided, however,* That when the certificate of allowance of a will and the letters testamentary or letters of administration are filed together, only one fee shall be collected. For registering and filing an instrument of revocation of any of the papers mentioned above, two pesos; and if annotated on the corresponding certificate of title, one peso and fifty centavos for each certificate of title.

"9. For the annotation of a notice of tax lien of any description, notice of lost duplicate or copy of a certificate of title, order of the court declaring such duplicate or copy null and void, notice of change of address, or the cancellation of any such annotation, for each certificate of title, one peso.

"10. For transferring the memorandum of an encumbrance of any kind from one certificate of title which is cancelled to a new one in lieu thereof in the name of a new owner, for each memorandum thus transferred, one peso.

"11. For any memorandum made in a standing co-owner's, mortgagee's, or lessee's copy of a certificate of title after a similar memorandum has been made in the original thereof, for each such certificate of title, one peso.

"12. For any memorandum made in a certificate of title for which no specific fee is prescribed above, for each certificate of title, two pesos.

"13. For the issuance of a transfer certificate of title, including its duplicate, to a trustee, executor, administrator, or receiver, for the cancellation of such certificate of title and issuance of new one, including its duplicate, to the *cestui que trust*, in case of or for the cancellation of such certificate of title and issuance of a trusteeship, eight pesos. If the certificate covers more than one parcel or lot, an additional fee of one peso and fifty centavos shall be collected for each additional parcel or lot.

"14. For the issuance of a transfer certificate of title including its duplicate, to a person other than those named in the next preceding paragraph, three pesos, in addition to the fees hereinafter prescribed in paragraph sixteen or seventeen, as the case may be, of this subsection, if the same are also due. If the certificate covers more than one parcel or lot, an additional fee of one peso and fifty centavos shall be collected for each additional parcel or lot.

"15. For the issuance of a new owner's duplicate or a co-owner's, mortgagee's or lessee's copy of a certificate of title, or any additional duplicate or copy thereof, three pesos for the first page and one peso for each subsequent page, or fraction thereof.

"16. For the registration of a deed of sale, conveyance, transfer, exchange, partition, or donation; a deed of sale with *pacto de retro*, conditional sale, sheriff's sale at public auction, sale for nonpayment of taxes, or any sale subject to redemption, or the repurchase or redemption of the property so sold; any instrument, order, judgment or decree divesting the title of the registered owner, except in favor of a trustee, executor, administrator or receiver; option to purchase or promise to sell; any mortgage, surety, bond, lease, easement, right-of-way, or other real right or lien created or constituted by virtue of a distinct contract or agreement, and not as an incidental condition of sale, transfer or conveyance; the assignment, enlargement, extension or novation of a mortgage or of any other real right, or a release of mortgage, termination of lease, or consolidation of ownership over a property sold with *pacto de retro;* where no specific fee is prescribed therefor in the preceding paragraphs, the fees shall be based on the value of the consideration in accordance with the following schedule:

"(a) When the value of the consideration does not exceed six thousand pesos, three pesos and fifty centavos for the first five hundred pesos, or fractional part thereof, and one peso and fifty centavos for each additional five hundred pesos, or fractional part thereof.

"(b) When the value of the consideration is more than six thousand pesos but does not exceed thirty thousand pesos, twenty-four pesos for the first eight thousand pesos, or fractional part thereof, and four pesos for each additional two thousand pesos, or fractional part thereof.

"(c) When the value of the consideration is more than thirty thousand pesos but doe snot exceed one hundred thousand pesos, seventy-five pesos for the first thirty-five thousand pesos, or fractional part thereof, and seven pesos for each additional five thou-

sand pesos, or fractional part thereof.

"(d) When the value of the consideration is more than one hundred thousand pesos but does not exceed five hundred thousand pesos, one hundred seventy-six pesos for the first one hundred ten thousand pesos, or fractional part thereof, and ten pesos for each additional ten thousand pesos, or fractional part thereof.

"(e) When the value of the consideration is more than five hundred thousand pesos, five hundred eighty-one pesos for the first five hundred twenty thousand pesos, or fractional part thereof, and fifteen pesos for each additional twenty thousand pesos, or fractional part thereof.

"17. In the following transactions, however, the basis of the fees collectible under paragraph sixteen of this subsection, whether or not the value of the consideration is stated in the instrument, shall be as hereunder set forth:

"(a) In the exchange of real property the basis of the fees to be paid by each party shall be the current assessed value of the properties acquired by one party from the other, in addition to the value of any other consideration, if any, stated in the contract.

"(b) In the transmission of an hereditary estate without partition or subdivision of the property among the heirs, devisees, or legatees, although with specification of the share of each in the value of the estate, the basis shall be the total current assessed value of the property thus transmitted.

"(c) In the partition of an hereditary estate which is still in the name of the deceased, in which determinate properties are adjudicated to each heir, devisee or legatee, or to each group of heirs, devisees or legatees, the basis of the fees to be paid by ach person or group, as the case may be, shall be the total current assessed value of the properties thus adjudicated to each person or group. In the case, however, of conjugal property, the basis of the fees for the registration of one-half thereof in the name of the surviving spouse shall be an amount equal to ten *per centum* of the total cuurrent assessed value of the properties adjudicated to said spouse.

"(d) In the partition of real property held in common by several registered co-owners, the basis of the fees to be paid by each co-owner or group of co-owners shall be the total assessed value of the property taken by each co-owner or group.

"(e) In the sale, conveyance or transfer of two or more parcels of land in favor of two or more separate parties but executed in one single instrument, the basis shall be the total selling price paid by each party-buyer, or, in the case of lump sum consideration, such portion thereof as apportioned in accordance with the assessed value of the respective land acquired by each party-buyer.

"(f) In the sale, conveyance, or transfer of properties situated in different cities or provinces, the basis of the fees in each registry of deeds where the instrument is to be registered shall be the total selling price of the properties situated in the respective city or province, or, in case of a lump sum consideration, such portion thereof as obtained for those properties lying within the jurisdiction of the respective registry after apportioning the total consideration of the sale, conveyance or transfer in accordance with the current assessed values of such properties.

"(g) In the sale, conveyance, or transfer of a mortgaged property, the basis shall be the selling price of the property proper plus the full amount of the mortgage, or the unpaid balance thereof if the latter is stated in the instrument. If the properties are situated in different cities or provinces, the basis of the fees in each registry of deeds where the instrument is to be registered shall be such sum as obtained for the properties situated in the respective city or province after apportioning in accordance with the current assessed values of said properties the total amount of consideration as above computed, unless the selling price of the properties in each city or province and the proportionate share thereof in the amount or unpaid balance of the mortgage are stated in the instrument, in which case the aggregate of such selling price and share shall be the basis. In any case, however, where the aggregate value of the consideration as above computed shall be less than the current assessed value of the properties in the city or province concerned, such assessed value shall be the basis of the fees in the respective registry.

"(h) In a mortgage affecting properties situated in different cities or provinces, the basis of the fees in each registry of deeds where the document is to be registered shall be such amount as obtained for the properties lying within the jurisdiction of said registry after apportioning the total amount of the mortgage in accordance with the current assessed value of such properties.

"(i) In the release of a mortgage the basis of the fees shall be an amount equal to ten *per centum* of the total amount of obligation secured by the mortgage. If the properties are situated in different cities or provinces, the basis of the fees in each registry shall be ten *per centum* of such sum as obtained for the properties in the respective city or province after apportioning the amount of the mortgage in accordance with the current assessed values of such properties In the case of a partial release, the fees shall be based on ten *per centum* of the current assessed value of the property so released in the respective city or province: *Provided, however*, That where several partial releases had been registered, the fees corresponding to the final release shall be computed on the basis of ten *per centum* of the difference between the amount of the mortgage and the aggregate of the considerations used as basis for the collection of the fees paid for the registration of all previous partial releases.

"(j) In a certificate of sale at public auction by virtue of an order of execution, or sale for delinquency in the payment of taxes, or repurchase of the property so sold, the basis of the fees in each registry shall be ten *per centum* of the selling or repurchase price of the property lying within the jurisdiction of the registry.

"(k) In an affidavit for the consolidation of ownership over a property sold with *pacto de retro* or pursuant to an extrajudicial foreclosure under the provisions of Act Numbered Thirty-one hundred and thirty-five as amended, the basis of the fees in each registry shall be an amount equivalent to ten *per centum* of the consideration of the sale in the respective city or province.

"(l) In contracts of lease, the basis of the fees in each registry shall be the sum total to be paid by the lessee for the properties situated in the respective city or province during the entire period specified in the contract, including the extension contemplated by the parties which may be given effect without the necessity of further registration. If the period is from year to year, or otherwise not fixed, the basis shall be the total amount of rentals due for thirty months. If the rentals are not distributed, the total amount thereof as above computed shall be apportioned to said properties in accordance with their assessed values, and the proportionate sum thus obtained for each city or province shall be the basis of the fees to be collected in the registry concerned.

"(m) In the termination of a lease, the basis of the fees in each registry shall be ten *per centum* of the amount used as basis for the collection of the fees paid for the registration of said lease.

"(n) In contracts of option to purchase or promise to sell, the basis of the fees in each registry shall be five *per centum* of the current assessed value of the property subject of such contract in the respective city or province.

"(o) In other transactions where the actual value of the consideration is not fixed in the contract or can not be determined from the terms thereof, or, in case of a sale, conveyance, or transfer, the consideration stated is less than the current assessed value of the property, the basis of the fees shall be the current assessed value of the property involved in the transaction. If the properties are situated in different cities or provinces, the basis of the fees in each registry shall be the assessed value of the properties lying within the jurisdiction of the registry concerned.

"18. For furnishing copies of any entry, decree, document, or other papers on file, twenty centavos for each hundred words or fraction thereof contained in the copies thus furnished.

"19. For certifying a copy furnished under the next preceding paragraph, for each certification, one peso.

"20. For issuing a certificate relative to, or showing the existence or non-existence of, an entry in the registration books or a document on file, for each such certificate containing not more than two hundred words, three pesos; if it exceeds that number an additional fee of fifty centavos shall be collected for every one hun-

dred words, or fraction thereof, in excess of the first two hundred words."

SEC. 2. This Act shall take effect upon its approval.

Approved, June 20, 1953.

REPUBLIC ACT NO. 815

AN ACT TO AMEND REPUBLIC ACT NUMBERED FIVE HUNDRED AND SEVENTY-THREE, OTHERWISE KNOWN AS THE "PHILIPPINE MILITARY AID TO THE UNITED NATIONS ACT", AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Republic Act Numbered Five hundred and seventy-three is amended by inserting between section five and Title III thereof the following new section:

"SEC. 5-A. *Family subsistence allowance.*—The spouse, or in default of the spouse, the children, or in default of such spouse and children, the parents, or in default of such spouse, children, and parents, the dependents for support of an officer or enlisted man shall receive a family subsistence allowance equivalent to three months' base pay in the case of an officer and four months' base pay in the case of an enlisted man. Said family subsistence allowance shall be paid only once upon departure of the officer or enlisted man from the Philippines for service overseas. The family subsistence allowance advanced or to be paid to the officers and enlisted men of the Tenth and Twentieth Battalion Combat Teams shall be computed on the basis of their respective ranks at the time of their departure from the Philippines: *Provided*, That if the cash advance already made to any officer or enlisted man of the Tenth or Twentieth Battalion Combat Team shall exceed his family subsistence allowance as computed above, such officer or enlisted man shall not be required to reimburse the difference."

SEC. 2. The same Act is amended by inserting between section seven and Title IV thereof the following new provision:

TITLE III-A.—*Exemption from the Income Tax*

"SEC. 7-A. *Exemption from the Income Tax.*—The overseas pay, overseas duty bonus, death gratuity, disability pension, and family subsistence allowance provided for herein shall be exempt from the income tax, and no portion thereof shall be withheld as withholding tax; and any income tax collected thereon or withholding tax withheld therefrom shall be refunded."

SEC. 3. To carry out the purposes of this Act, such sum as may be necessary is authorized to be appropriated out of any funds in the National Treasury not otherwise appropriated.

SEC. 4. This Act shall take effect as of September 7, 1950.

Approved, July 14, 1952.

REPUBLIC ACT NO. 892

AN ACT TO AMEND SECTIONS ONE, TWO, THREE, AND SIX OF REPUBLIC ACT NUMBERED SIX HUNDRED AND TWENTY-ONE BY TRANSFERRING THE UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION NATIONAL COMMISSION OF THE PHILIPPINES FROM THE SUPERVISION OF THE DEPARTMENT OF FOREIGN AFFAIRS TO THE PRESIDENT OF THE PHILIPPINES, AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section one of Republic Act Numbered Six hundred and twenty-one is hereby ameded to read as follows:

"SECTION 1. The United Nations Educational, Scientific and Cultural Organization National Commission of the Philippines, herein after referred to as the Commission, is hereby created under the President of the Philippines to serve as a liaison agency between the Government of the Philippines and the United Nations Educational, Scientific and Cultural Organization (UNESCO) and to associate principal bodies in the Philippines interested in educational, scientific and cultural matters with the work of the UNESCO, in accordance with Article VII of the Constitution of the aforesaid Organization accepted by Joint Resolution Numbered Three of the Congress of the Philippines adopted on October seventeen, nineteen hundred and forty-six."

SEC. 2. Subsection (a) of section two of the same Act is hereby amended to read as follows:

"(a) Twenty shall be designated by the President of the Philippines upon recommendation of organizations interested in educational, scientific and cultural matters affiliated with and duly registered in the Commission; *Provided*, That no person shall be appointed to the commission who is not morally and academically qualified for membership therein."

SEC. 3. The second paragraph of section two of the same Act is further amended to read as follows:

"A Chairman and Vice-Chairman shall be elected by the Commission to serve for a term of two years or until their respective successors shall have been elected or qualified. The Chairman shall be the presiding officer of the Commission and shall *ex officio* be the Head of the Executive Committee herein provided."

SEC. 4. The first paragraph of section three of the same Act is amended to read as follows:

"The Commission shall create an Executive Committee and such other committees or sub-committees as may be necessary for the effective and efficient performance of its powers and duties."

SEC. 5. Sub-section (b) of section six of the same Act is hereby amended to read as follows:

"(b) To promulgate rules and regulations for the conduct of its own affairs;"

SEC. 6. The transfer of the United Nations Educational, Scientific and Cultural Organization (UNESCO) National Commission of the Philippines from the supervision of the Department of Foreign Affairs to that of the President of the Philippines shall include the transfer of all its records, property, equipment, appropriations and personnel.

SEC. 7. This Act shall take effect upon its approval.

Approved, June 20, 1953.

REPUBLIC ACT NO. 899

AN ACT CREATING A REVOLVING FUND FOR THE CONSTRUCTION, RECONSTRUCTION OR IMPROVEMENT OF IRRIGATION SYSTEMS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Revolving fund.*—The sum of twenty million pesos is hereby authorized to be appropriated, out of any funds in the National Treasury not otherwise appropriated, and placed to the credit of a Special Fund, hereby created, in the National Treasury, to be known as "Irrigation Revolving Fund."

SEC. 2. *Administration of fund.*—The "Irrigation Revolving Fund" shall be administered by the Secretary of Public Works and Communications and shall be used exclusively for the construction of new irrigation systems and for the reconstruction or improvement of existing private or communal irrigation systems.

SEC. 3. *Application of interested parties.* — Any land owner or planter interested in, or any group of such persons constituted to carry out, the construction, reconstruction or improvement of an irrigation system shall apply to the Secretary of Public Works and Communications for the financing of such project to the extent of ninety *per centum* of the cost thereof, payable by the applicant in ten equal annual installments beginning with the first crop year after the completion of the project plus interest at four per centum per annum. The applicant shall, in his application submit his plans, specifications and itemized estimates of the work involved as well as such other pertinent information as the Secretary may require in connection therewith.

SEC. 4. *Processing of applications.*—The Secretary of Public Works and Communications will process such applications, may require such changes in the plans, specifications and estimates as he shall deem due and proper and, if the proposal merits his approval pursuant to the provisions of this Act, shall forthwith accomplish and submit to the Secretary, on forms duly prescribed for the pur-

pose, the application for the loan, supporting such application with the required evidence of the availability of the applicants funds for such project equivalent to at least ten *per centum* of the approved estimated cost of the project.

SEC. 5. *Construction work.*—The approved work on any project shall be undertaken by the applicant under the technical supervision of the Director of Public Works, who shall certify periodically to the quality of the work and the percentage of completion of the project: *Provided*, That no certification for less than ten *per centum* of the total cost of the work shall be released by the Director for the purpose of releasing sums from the Revolving Fund, pursuant to section six hereof.

SEC. 6. *Release of funds.*—Upon the approval by the Secretary of Public Works and Communications of the application for loan executed pursuant to sections three and four hereof, he shall forthwith authorize the construction of the project, transfer the approved sum to the credit of the Director of Public Works, and advise the Director to supervise the work therein, charging the expenses of such supervision against the funds of the project: *Provided*, That in no case shall such cost of supervision exceed two per centum of the actual cost of the project.

Upon completion of at least fifteen *per centum* of the work and at every ten per cent progress thereafter, the Director of Public Works shall certify such accomplishments to the Secretary of Public Works and Communications and shall release to the credit of the applicant the amount corresponding and equal to the certified amount of work accomplished.

SEC. 7. *Amortization of loan.*—Loans shall be garanteed by a first lien on a sufficient amount of the crop of the applicant and shall be redeemed in ten equal annual installments with interest at four *per centum per annum*. The amortization payments shall be due and payable on or before thirty days after the crop has been harvested.

SEC. 8. *Accruals.*—All moneys collected pursuant to the provisions of this Act, less such amount as may have been spent by the Director of Public Works to defray the expenses of supervising the work on authorized projects, shall accrue to the "Irrigation Revolving Fund."

Approved, June 20, 1953.

REPUBLIC ACT NO. 833

AN ACT AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO LEASE FOR A PERIOD NOT EXCEEDING NINETY-NINE YEARS TO THE UNITED STATES OF AMERICA THE TRACT OF LAND KNOWN AS THE "PLAZA MILITAR" LOCATED IN THE CITY OF MANILA, PHILIPPINES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The President of the Philippines, subject to such terms and conditions as he may deem just and advisable in the national interest, is hereby authorized to lease for a period not exceeding ninety-nine years to the United States of America, for diplomatic or consular purposes, the following portions of the tract of land located in the District of Malate, City of Manila, Philippines, known as the "Plaza Militar" described as follows:

1. Parcel 1, which consists of portions of lots Nos. 3 and 16 Block No. 501, of Manila Cadastre, bounded on the northwest by the proposed extension of Herran Street; on the northwest by M. H. del Pilar Street as proposed to be widened; on the southeast by the extension of Militar Street; and on the southwest by the Dewey Boulevard as proposed to be widened, containing an area of 12,000 square meters, more or less; and

2. Parcel 2, which consists of Block No. 502, Manila Cadastre, bounded on the northwest by Herran Street as proposed to be widened; on the northeast by Mabini Street as proposed to be widened; on the southeast by Calle Militar as proposed to be widened; and on the southwest by M. H. del Pilar Street, as proposed to be widened, containing an area of 12,407.8 square meters, more or less.

SEC. 2. The Director of Lands shall make the survey as soon as possible of the parcels of land which are authorized to be transferred by this Act.

SEC. 3. It shall be a condition of the lease agreement that in the event the United States of America find no more need for the land, for diplomatic or consular purposes, the lease shall be terminated and the land shall revert to the possession of the Republic of the Philippines, together with the improvements therein.

SEC. 4. The registration of such instruments as may be necessary to carry out the provisions of this Act shall be exempt from registration or other fees.

SEC. 5. This Act shall take effect upon its approval.

Approved, August 14, 1952.

REPUBLIC ACT NO. 783

AN ACT TO AMEND PARAGRAPH ONE HUNDRED FORTY-SEVEN, CLASS IX, OF SECTION EIGHT OF THE PHILIPPINE TARIFF ACT OF 1909, BY PROVIDING EXEMPTION OF NEWSPRINT FROM CUSTOMS DUTY IN CERTAIN CASES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Paragraph numbered one hundred and forty-seven, Class IX of section eight of the Philippine Tariff Act of nineteen hundred and nine as continued in force and effect by Republic Act Numbered Three, is amended to read as follows:

"147. Printing paper, white or colored, suitable for books not printed or otherwise elaborated, and sand, glass, emery, carborundum, and similar papers, and sheathing and roofing paper, ten per centum ad valorem: *Provided*, That printing paper, white or colored, suitable for newspapers, not printed otherwise elaborated, whenever imported by or for publishers for exclusive use in the publication of newspapers, shall be exempt from payment of duty.

SEC. 2. This Act shall take effect upon its approval.

Approved, June 21, 1952.

SUPREME COURT . . . (*Continued from page* 195)

the nullification of the sale is the reversion of the property to the State appellee is not the proper party to institute it but the State itself,— that is a point which we do not have, and do not propose, to decide. That is a matter between the State and the Grantee of the homestead, or his heirs. What is important to consider now is who of the parties is the better entitled to the possession of the land while the government does not take steps to assert its title to the homestead. Upon annulment of the sale, the purchaser's claim is reduced to the purchase price and its interest. As against the vendor or his heirs, the purchaser is no more entitled to keep the land than any intruder. Such is the situation of the appellants. Their right to remain in possession of the land is no better than that of appellee and, therefore, they should not be allowed to remain in it to the prejudice of appellee during and until the government takes steps toward its reversion to the State. (See Castro v. Orpiano, G. O. No. L-4094, November 29, 1951.)

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

Paras, Pablo, Bengzon, Montemayor, Jugo and *Labrador, JJ.*; concur.

MEMORANDUM OF THE CODE COMMISSON

(Continued from the March Issue)

MEMORANDUM ON THE PROPOSED AMENDMENTS SUBMITTED BY THE MEMBERS OF THE BAR TO THE PROVISIONS ON SUCCESSION (BOOK III)

ARTICLES 779 *and* 780

Prof. R. C. Aquino of the College of Law, University of the Philippines, suggests the inclusion of a definition of legal or intestate succession. We have accented this suggestion in our Memorandum on the Proposed Amendments Embodied in House Bill No. 1019.

ARTICLE 782

Prof. R. C. Aquino also asks for the definitions of "voluntary and legal heirs" The Code Commission deems this unnecessary, because the distinction is too elementary.

ARTICLE 789

Attorney R. M. Jalandoni suggests that "the oral declarations of the testator should not be excluded from the extrinsic evidence which may prove his intention." How can the testator clarify his intention when he may be ten feet below the ground? The rule is that the probate court should confine itself to the context of the will, and should consider the circumstances surrounding the execution of the same, in order to ascertain the intention of the the testator. The admission of oral declarations of the testator before his death would create confusion and foster false claims.

ARTICLES 805 *and* 806

Prof. R. C. Aquino proposes the elimination of the attestation clause in case of ordinary wills and that the matters to be stated in the said attestation clause be embodied in the notarial acknowledgment. We maintain that the liberalization of the execution of ordinary wills as embodied in Article 809 of the new Civil Code if coupled with the proposed elimination of the attestation clause may open the door to fraud. It is a better safeguard to have both an attestation clause and a notarial acknowledgment, the former to be executed by the attesting witnesses and the latter by the notary public.

ARTICLES 823 *and* 1027 (4)

Attorney R. M. Jalandoni contends that Article 823 and Article 1027(4) are in conflict.

As an answer to this contention, we refer to our Memorandum on the Proposed Amendments of Mr. Justice Jose B. L. Reyes on articles 823 and 1027(4).

Prof. R. C. Aquino suggests that "to obviate any doubt, the Code should expressly disqualify an heir, including a compulsory heir, from becoming a witness to a will."

The suggestion may prevent a person from making a valid will because there may not be other persons around at the time when a testator makes his last wishes. The article refers only to devises and legacies that should be taken from the disposable portion of the estate of the decedent, and does not include the legitime of a compulsory heir. The purpose of the law is to forestall undue pressure and influence that may be exerted upon the testator in the disposition of the free portion.

ARTICLE 824

Attorney R. M. Jalandoni suggests that there should be no qualification as to the nature of the debts, and that creditors may be witnesses to the will in all cases. What article wants to avoid is the disqualification of a creditor who may have a real right in the thing devised or bequeathed, and that real right may be claimed to be such an interest as may disqualify a person from being a witness to the will. In other words, the provisions of this article make it clear that a mere charge on the real or personal estate of the testator, for the payment of debts, say either in the form of a mortgage or a pledge, shall not prevent his creditors from being competent witnesses to his will.

ARTICLES 878, 880 *and* 885

Prof. R. C. Aquino claims that these three articles are inconsistent with one another, and suggests that they be eliminated. By studying these articles a little more deeply, it will appear that they provide for different situations. Article 878 deals with a disposition subject to a suspensive term; Article 880 provides for *what shall be done with the estate* of a deceased pending the arrival of the suspensive term or condition; and finally Article 885 speaks of a *resolutory condition or term.* In other words, how can these articles be incompatible with one another, when they provide for different things?

We beg to oppose the proposed suggestion.

ARTICLE 882

Attorney R. M. Jalandoni proposes that the phrase "in this manner" in the first line of paragraph 2 of this article be replaced by "in this latter manner". It is a question of interpretation, whether the phrase "in this manner" refers to the "institucion modal" alluded to in the first part of the first paragraph of this article, or the said phrase refers to "unless it appears that such was his intention" (meaning condition). We maintain that a careful reading of the whole first paragraph of this article will show that [The phrase "in this manner" refers to the "institucion modal" because the heir or heirs so instituted are also obliged to give security for the compliance with the wishes of the testator in the same manner as the heirs subject to the fulfillment of a suspensive condition or term.] (See Manresa, Vol. 6, pp. 190-193).

ARTICLE 891

Attorney T. M. Santiago wants that the provisions of the Civil Code on the rights and obligations of the "reservista" and the "reservatario" be restored to supplement the provisions of the article on "reserva troncal". We deem it unnecessary to have any comment on this subject inasmuch as the Code Commission does not believe in the "reserva troncal" and we have eliminated the same from our original draft of the new Civil Code.

ARTICLE 895

Prof. R. C. Aquino suggests that this article should expressly state that the legitime of an illegitimate child, other than a natural child, should be two-fifths (2/5) of the legitime of each legitimate child.

This express statement is unnecessary. Any person who has a little knowledge of arithmetic will not make a mistake. Article 895, paragraph 1, provides that the legitime of each of the acknowledged natural children and each of the natural children by legal fiction shall consist of one-half (1/2) of the legitime of each of the legitimate children or descendants. Paragraph 2 of the same article provides that the legitime of an illegitimate child who is neither an acknowledged natural, nor a natural child by legal fiction (spurious child) shall be equal in every case to four-fifths (4/5) of the legitime of an acknowledged natural child.

To compute: If the share of an acknowledged natural child is 1/2 of that of a legitimate child, and the share of an illegitimate child other than the natural is 4/5 of that of the acknowledged, the share of that illegitimate child other than the natural is 4/5 of 1/2, or 4/10 or 2/5 of that of the legitimate child.

ARTICLE 891

Prof. R. C. Aquino recommends that Article 891 (reserva troncal) be repealed, to which the Code Commission concurs.

Attorney R. M. Jalandoni suggests that the provisions of the old law on "reserva viudal" be restored because of the revival of the "reserva troncal".

The Code Commission has never been in favor of these "reservas", and inasmuch as we have recommended the abolition of the "reserva troncal", we cannot very well accept the revival of the "reserva viudal".

LEGITIMES AND INTESTACY

Attorney R. M. Jalandoni gives an example of the application of Articles 895, 983 and 999 and concludes from his own example

that legitimate children may get only 4/9 of the estate of the decedent and therefore less than one-half (1/2) which should be their legitime. The conclusion arrived at by Attorney Jalandoni will necessarily be wrong because he mixed up the provisions of the law on testamentary succession with those on intestacy, citing Articles 895, 983, and 999. It should be borne in mind that in intestacy, *there is no legitime* inasmuch as the whole estate of the decedent shall be subject to distribution.

Article 886 of the new Civil Code provides:

"Art. 886. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs."

In other words, if a person dies, intestate, there is no legitime at all, and the whole estate left by the deceased shall be subject to distribution in favor of persons entitled to the same under the law. If Attorney Jalandoni properly gives an example, confining himself to either testate or intestate succession, we may be able to solve the example.

However, in case of mixed succession or partial intestacy, we accept the proposed amendment submitted by Congressman Tolentino as shown by our memorandum commenting on his proposed amendments.

ARTICLES 904, 872 *and* 864

Prof. R. C. Aquino has the same suggestion as that of Mr. Justice Reyes with respect to these three articles which we have commented upon in our Memorandum on the Proposed Amendments submitted by Justice Reyes.

ARTICLE 892

Attorney A. S. Atienza proposes that this article be amended so as to give the surviving spouse only one sixth (1/6) of the hereditary estate in case she or he should survive with one legitimate child or descendant and an acknowledged natural child or children or a natural child or children by legal fiction, and that these illegitimate children should also be entitled to one-sixth (1/6) of the hereditary estate. In both cases, their shares (spouse and illegitimate children) shall be taken from the free portion.

He further suggests that if the testator leaves only one legitimate child or descendant and an illegitimate child or children, the surviving spouse shall be entitled to one-sixth (1/6) of the estate; and the illegitimate child or children to one-eighth (1/8) of the estate.

We beg to oppose the proposed amendment, not only because we do not see any reason for the change, but also because the division of the inheritance as suggested will destroy the mathematical symmetry of the division of the estate as provided in other articles of the Civil Code, aside from the fact that the surviving spouse under the proposed reform will get very little, which would be unfair and unjust.

LEGITIMES OF ILLEGITIMATE CHILDREN

Attorney L. G. Formentera claims that illegitimate children other than natural should not be given any legitime because it is not in accord with the tradition of the Filipino people. We beg reference to our arguments on the Successional Rights of Illegitimate Children embodied in a Memorandum submitted to the Joint Committee of Congress on Codes, dated July 20, 1950, and published in the Lawyers' Journal in its issue of December, 1951.

ARTICLES 983 *and* 990

Prof. R. C. Aquino asks for clarification of these two articles. These two articles of the Civil Code should be read in connection with Articles 995, 998 and 999 which all refer to the rights of the surviving spouse concurring with illegitimate children.

ARTICLE 994

In answer to the question of Prof. R. C. Aquino on this article we beg reference to our Memorandum on the Additional Amendments Proposed by Congressman Tolentino.

ARTICLES 986 *and* 993

Prof. R. C. Aquino suggests that in connection with Article 986, a provision similar to that of Article 887, be formulated to the effect that the parents may concur with illegitimate children and surviving spouse of the deceased. These suggestions are already embodied in Articles 991, 993, 994 and 1000.

With regard to his suggestion on Article 993, we would like to invite attention to our comments on the same in our Memorandum on the Proposed Amendments of Justice Reyes.

Respectfully submitted,
PEDRO Y. YLAGAN
Member, Code Commission

Manila, February 21, 1951.

MEMORANDUM
ON THE
ADDITIONAL AMENDMENTS PROPOSED BY CONGRESSMAN TOLENTINO TO THE PROVISIONS ON SUCCESSION
(BOOK III)

ARTICLE 959

The Code Commission has no objection to have this article 959 transferred to the Section on Institution of Heirs ,and it should be placed between articles 847 and 848.

ARTICLE 880

It is suggested that this article 880 be replaced by the provisions of article 801 of the old Civil Code.

The Code Commission regrets to disagree with the suggestion, because the old law speaks of "suspensive condition" in article 799 upon which article 801 is based, and the new Civil Code changed the term "suspensive condition" mentioned in article 799 to "suspensive term" in article 880. Hence, the change in article 799 of the old law (now 878) should also change article 801 (now 880).

If article 801 of the Civil Code should be restored as suggested it would throw article 878 of the new Civil Code out of gear.

NEW ARTICLE

Congressman Tolentino proposes that a new article be inserted between articels 961 and 962 which should read as follows:

"In mixed succession, the devises, legacies, bequests and other testamentary dispositions shall be taken from the shares of the intestate heirs to whom the rules hereinafter set forth give more than their respective legitimes, but without impairing the latter, or who are not compulsory heirs."

The Code Commission accepts this proposed amendment inasmuch as it clarifies the provisions of the law on mixed succession.

ARTICLE 983

It is proposed that this article be amended to read as follows:

"If illegitimate children survive with legitimate children, they shall, in addition to their legitimes, share in the free portion in the same proportions prescribed in article 895."

We believe that the proposed amendment is not necessary because in intestate succession, the whole estate of the deceased is subject to distribution, and it follows that the illegitimate children shall always share in the free portion by operation of law in the same proportions prescribed in article 895. In intestate succession, there is no legitime nor free portion to speak of, because legitime exists only in testamentary succession.

ARTICLE 894

The Code Commission does not see any substantial difference between the provisions of this article of the new Civil Code and the proposed amendment. Hence, we beg to disagree with the proposed amendment.

ARTICLE 988

Article 988 is proposed to be amended by adding the following:

"in the proportion established in the second paragraph of article 895."

We believe that this proposed amendment is not necessary because the term "illegitimate children" used in paragraph 2 of this

article 988 includes acknowledged natural children proper, natural children by legal fiction, and other illegitimate children not having the status of natural children (spurious children) whose filiation is duly proven. If they concur in the succession, they shall share in the proportions prescribed in article 895.

ARTICLE 993, *Par.* 2

We have accepted this amendment in our Memorandum to the Proposed Amendments of Mr. Justice Reyes under the same article.

ARTICLE 994

The Code Commission believes that the proposed amendment to article 994 which reads as follows:

> "but if the latter alone survive, they shall be entitled to the entire estate,"

is not necessary because of the provisions of articles 1004 and 1005 giving brothers and sisters, nephews and nieces who alone survive, the right to succeed to the entire estate.

Respectfully submitted,
PEDRO Y. YLAGAN
Member, Code Commission

Manila, February 20, 1951.

MEMORANDUM ON THE AMENDMENTS TO SUCCESSION PROPOSED BY MR. JUSTICE JOSE B. L. REYES

ARTICLE 782

Mr. Justice Reyes contends that Article 782 does not give a clear distinction between heir and legatee. The word "heir" as used in this article includes testamentary legatees or devisees to whom gifts of personal and real property are respectively given by virtue of a will.

The distinction between "heredero" and "legatario" under the old Civil Code is unimportant now because of the new system of payment of debts under the Rules of Court.

ARTICLE 794

The Code Commission has no objection to the proposed amendment by substituting the word "different" in the place of the word "less" in the last line of the said article.

ARTICLES 802-803

These articles speak only of married women in order to clarify and supplement the provisions of Article 1414 of the old Civil Code (Art. 170, new Civil Code) which expressly gives the husband the power to make a will without mentioning that of the wife. These Articles 802 and 803 are inserted in the new Civil Code to make the law on the subject more comprehensive, and to correct the impression on the part of many people that a married woman cannot make a will without the consent of the husband.

ARTICLE 805, *par.* 2

It is proposed that the last page of the will shall also be signed by the testator and by the instrumental witnesses on the left margin. This article of the new Civil Code provides that the last page need not be signed on the left margin by the testator and the instrumental witnesses because they are already required to sign the end of the will by virtue of the provisions of the first paragraph of the same article. Inasmuch as their signatures already appear on the same page (at the end of the will), there is no necessity that they should further sign the left margin. With the other safeguards mentioned in the same article, insertions and substitutions of new pages can hardly take place.

ARTICLE 808

The Code Commission has no objection to the proposed amendment to the second sentence. So that as amended, that sentence shall read, thus:

> "once by a subscribing witness *before the will is executed*, and again by the notary public *before the will is acknowledged.*"

ARTICLE 809

The proposed amendment reads as follows:

> "If such defects and imperfections can be supplied by *an examination of the will itself and* it is proved that the will was in fact executed and attested."

There is no necessity for this proposed amendment because the court in determining whether or not the will was executed in substantial compliance with the law will necessarily *examine the will itself* and shall also consider the circumstances surrounding its execution. The rules of interpretation embodied in Articles 788 to 792 are deemed sufficient.

ARTICLE 810

Mr. Justice Reyes doubts the revival of the holographic will because "its simplicity is an invitation to forgery". That contention may be true because even the most complicated handwriting may be forged. But the law should favor testacy, and should give a person greater freedom to dispose of his property subject to the limitations imposed by law. Hence a person should be allowed to make his will in his own handwriting without the necessity of complying with the complicated requirements of an ordinary will. Without the holographic will, even a person of college or university education may not make an ordinary will without resorting to the aid of another who may not know the formalities himself. Many wills are thus disallowed. Besides, the testator should be given a choice to make a holographic will if he wants to keep his dispositions a secret. Such secrecy is often essential to conserve family harmony and to guaranty freedom to the testator.

ARTICLE 811, *par.* 1

This article requires that if a holographic will is contested, the testimony of at least three witnesses who know the handwriting and signature of the testator is required. The purpose of the article is to counteract the simplicity required in the execution of holographic wills, and is complained of by Justice Reyes, and to prevent the allowance of a will based on the testimony of only one witness which may be perjured at that. True, a witness can be very convincing, but suppose he is a consummate liar?

ARTICLE 815

Mr. Justice Reyes asks whether a Filipino who is abroad can make a will in the form prescribed by our Civil Code. Article 815 provides:

> "Art. 815. When a Filipino is in a foreign country, *he is authorized to make a will in any of the forms* established by the law of the country in which he may be. Such will may be probated in the Philippines."

From the reading of the provisions of the above article, *it does not appear that he is obliged or compelled* to follow the forms of the foreign law. He is merely *authorized*, and that does not preclude his right to make a will according to the law of his own country if he happens to know the same.

ARTICLE 816

The Code devotes an article to a will executed by an alien abroad to make the law on the subject more complete. It can readily be seen that *Article* 815 provides for wills executed by *Filipinos who may be in a foreign country;* Article 816 speaks of *wills executed by an alien abroad;* and Article 817 deals of will *made in the Philippines by a citizen or subject of another country.*

ARTICLE 823

This article speaks of a witness to the will and other persons who may claim interest under him, and who are disqualified from succeeding. Whereas Article 1027 mentions the persons who are disqualified from succeeding not only because of their participation in

the execution of the will, but also because of the undue pressure and influence that they may exert on the testator. In other words, Article 1027 provides for the general rule, and Article 823 deals only with specific persons.

Moreover, Article 1027 (pars. 1 and 2) refer to priests and ministers, whose moral influence on the testator is greater than other persons, so the prohibition should extend as far as the 4th degree. Pars. 3 and 5 do not refer to relatives of the disqualified person because their moral influence is not as great as the priest or minister.

ARTICLE 827

The Code Commission has no objection to the proposed amendment suggested by Mr. Justice Reyes in line 2, first paragraph of the article, and in No. 4, of the same article.

With respect, however, to the elimination of the provision on incorporation by reference, we believe that the same is necessary for the convenience of the testator so that instead of embodying in the will itself the contents of a document he may incorporate the same by reference, provided that the safeguards required by law are present.

ARTICLE 829

This article provides for the law under which the revocation should be made in order that said revocation be valid. Mr. Justice Reyes claims that in revoking a will, the Code applies the law of the place where the will was executed or the law of the testator's domicile, while in the execution of testaments, it applies the law of the place of its execution, or the law of the testator's country, and thereby creates a double standard. The Civil Code in allowing a testator to revoke his will according to the law of his domicile has in mind a situation where a testator may not be residing in his own country or nation when he revokes his will. Therefore, to give that freedom to revoke his will any time during life, he may do so either according to the law of the place where the will was made, or according to the law of his domicile at the time of revocation, or according to the provisions of the new Civil Code. In all these cases, the revocation shall be valid in the Philippines.

ARTICLE 836

The proposed amendment is unnecessary because it is clearly stated in the preceding article (835) that "the testator can not republish *without reproducing in a subsequent* will," etc. Therefore, under Article 836 the previous will must necessarily be a valid one in form.

ARTICLE 851

This article deals with mixed succession. Mr. Justice Reyes says:

> "There seems to be no reason why intestate succession should be limited only to the remainder of an estate of which an *aliquot portion* is disposed of by the testator. Whether the will covers an *aliquot portion or not*, the property not disposed of should pass by intestate succession. How else could it be inherited?"

If a testator has disposed of only a portion of his estate, necessarily the rest shall be disposed of according to the provisions of the law on intestacy. The provisions of the article explain what shall be done with the rest of the estate. If these provisions are not found in this article, it would not be surprising if critics would ask this question: "What shall be done with the rest of the estate of the decedent?" Now that the provisions make the matter clear, it is alleged that the same is not necessary.

ARTICLE 856

The Code Commission maintains that the provisions of Article 856 are proper, as they should be read together with those of Article 977. The first paragraph of this article speaks only of *voluntary heir* who dies before the testator. The second paragraph deals with the following: (a) *A compulsory heir* who dies before the testator; (b) A person incapacitated to succeed; and (c) *one* who renounces the inheritance. The word "person" used in the second case includes both compulsory and voluntary heirs, and so is the word "one" used in the third case. If these words are properly understood, they amount to the same thing as the proposed amendment of Mr. Justice Reyes.

However, we agree to the addition of a disinherited compulsory heir. Therefore the first line of the second paragraph should read: "A compulsory heir who dies before the testator *or is disinherited*."

Express reference to the legatees is not necessary. See our comment under Art. 782.

ARTICLE 858

This article of the new Civil Code provides that substitution of heirs may be: (1) Simple or common; (2) Brief or compendious; (3) Reciprocal, or (4) Fideicommisary.

Mr. Justice Reyes contends that the compendious and reciprocal are merely varieties of the simple or vulgar substitution. We agree with him specially when he says that "there is no incompatibility between a brief or a reciprocal substitution and a simple one". That is the reason why the three ways of substitution can stand together and are embodied in Article 858 of the new Civil Code. The four-fold enumeration clarifies the subject.

ARTICLE 863

Mr. Justice Reyes claims that the commentators of Article 781 of the Spanish Civil Code differ as to the meaning of "degree" in connection with fideicommissary substitution. May we add that they also differ as to the person from whom the degree shall be computed. But in connection with the "degree" mentioned in Article 863 of the new Civil Code, there is no doubt that the law means "degree of relationship" and this is made clearer by the phrase following the same which says "from the heir originally instituted."

ARTICLE 864

The Code Commission accepts the elimination of Article 864 whose provisions are covered by Article 872 and 904, par. 2.

ARTICLE 867 (2)

The limitations mentioned by this article that the fideicommissary substitution shall not go beyond one degree from the heir originally instituted, and that the fiduciary or first heir and the second heir should be living at the time of the death of the testator are imposed to prevent the property from being locked up in the family, with the end in view of complying with the philosophy of socialization of ownership of property.

In other words, aside from the limitation imposed by Article 870, the limitations mentioned in Article 863 must also be observed in fideicommissary substitutions.

ARTICLE 878

It is suggested that the provisions of Article 759 of the Spanish Civil Code be revived. Said Article provides:

> "Art. 759. An heir or legatee who dies before the condition is fulfilled, even though he survives the testator, transmits no right whatsoever to his heirs."

This article of the old Civil Code was eliminated because of the provisions of Article 884 of the new Civil Code which ordain:

> "Art. 884. Conditions imposed by the testator upon the heirs shall be governed by the rules established for conditional obligations in all matters not provided for by this Section."

According to the above mentioned article, if an obligation is subject to the fulfillment of a condition, and the condition is not fulfilled, no right arises. The same rule may be applied in case of an heir or legatee who dies before the condition is fulfilled. He acquires no right and hence transmits nothing to his own heirs.

ARTICLE 880

It is proposed that this article be amended by eliminating the words "or term" in line 2, and "or until the arrival of the term" in lines 4 and 5 (end of the first paragraph).

We beg to disagree with the proposed amendment because this article provides for what shall be done with the estate of the deceased pending the fulfillment of a suspensive condition or the arrival of a suspensive term.

By eliminating the words mentioned in the proposed amendment, the article would cover only one case, when it should cover both the testamentary dispositions subject to the fulfillment of a suspensive *condition* and dispositions with *term*.

ARTICLE 883

The Code Commission accepts the suggested amendment to paragraph 2, of Article 883, so that it will read, thus:

"If a person interested should prevent its compliance, without fault of the heir, the requirements of the testator shall be deemed complied with. This rule shall likewise apply to suspensive conditions."

GENERAL OBSERVATIONS

The increase of legitime to one-half enlarges the free portion to one-half, thus giving more freedom of disposal. The *mejora* is suppressed because the testator may, if he desires, express his preference to any of his children by giving him a part of all of the free half.

ARTICLE 886

This article uses the words "compulsory heirs" instead of "forced heirs". The Code Commission believes that the former is more appropriate and better, because the word "forced" may imply the use of violence or intimidation. Moreover, these two terms have been and are still used interchangeably by the bench and bar. The German Civil Code in its translation uses the terms "compulsory beneficiary" and "compulsory portion".

It is not a question of "amending itch", but a question of choice of terms. With the proposed amendment, may we return the "amending itch" with our compliments? (See also our comment under Art. 887, No. 3).

ARTICLE 887 (3)

The proposed addition of the phrase "who has not given cause for legal separation" to No. 3 of this article is superfluous, not only because of Article 892, par. 1, but also of Article 176. By adding the proposed amendment, criticism may be made on the ground of repetition.

ARTICLE 888

Mr. Justice Reyes suggests that a third paragraph be inserted in Article 888 which should provide, thus:

"The legitime of an adopted child shall be the same as that of a legitimate, except as provided in Articles 342 and 343."

Again, the insertion proposed is not necessary because of the effects of adoption which are specifically stated in Article 341, paragraphs (1) and (3), which ordain:

"(1) Give to the adopted person the same rights and duties as if *he were a legitimate child* of the adopter;

"(3) Make the adopted person a *legal heir* of the adopter."

ARTICLE 891

It seems that Mr. Justice Reyes agrees in the abolition of the "reserva troncal" provided that the right of representation be extended to the direct ascending line. The original draft of the Code Commission eliminates the "reserva troncal" and all other "reservas" provided for in the old Civil Code, such are the "reversion legal" (Art. 812) and the "reserva viudal" (Arts. 968, et. seq.) The main purpose of eliminating all these "reservas" is to let the property go out of the family, to prevent the occurrence of suspended ownership, and to carry out the fundamental principle embodied in the law of succession leading to the socialization of ownership, not in the sense of "socialism", but in the sense of effectively adapting the property to the needs of society.

By abolishing the "reserva troncal" and establishing a right of representation in both the paternal and maternal ascending lines, it will necessarily produce the same result which the new Code attempts to avoid. It is the same thing but done under a different cover.

Non-representation in the ascending line is based on the deep-rooted sentiment of parents that they do not expect any material reward from their children and grandchildren.

ARTICLE 892

Mr. Justice Reyes suggests that the following shall be added to the first paragraph of Article 892:

"The result of the suit shall be awaited."

The insertion of the sentence is not necessary for the proper understanding of the provisions of paragraph 1 of this article. The last sentence of the said article reads:

"In case of a legal separation, the surviving spouse may inherit if it was the *deceased who had given cause for the same.*"

A careful reading of the above provisions shows that the right of the surviving spouse to inherit from the decedent shall depend upon the result of the action for legal separation, and a person would be too presumptuous to claim a right when the same has not yet accrued.

ARTICLE 899

If the surviving spouse concurs with legitimate parents or ascendants, the former shall be entitled to one fourth (1/4) of the estate, and the other fourth is at the free disposal of the testator (Art. 893). Article 899 provides for the share of the surviving spouse who may concur with legitimate parents or ascendants and illegitimate children (natural and spurious). In the latter case, the share of the surviving spouse together with that of the illegitimate children shall be taken from the free portion. It necessarily follows that the legitime of the spouse should be smaller because he or she succeeds with another class of heirs. Whereas ,in Article 893, there are no illegitimate children with whom he or she may concur. The free portion consisting of one-eighth (1/8) may be given by the deceased to his or her surviving spouse, and thus his or her share shall be the same as the global share of all illegitimate children.

ARTICLE 900

The purpose of Article 900, par. 2 which provides for the legitime of the surviving spouse in case of marriage in "articulo mortis" where the testator died within three months after the marriage is to forestall the possibility of a marriage with some ulterior motive. In other words, a person may marry another who is on the verge of death and the former may take advantage of that condition. In intestate succession, however, the law makes no distinction with respect to the circumstances surrounding the celebration of the marriage, because the possibility of undue pressure and influence in the making of a will is eliminated, and the surviving spouse inherits by operation of law.

ARTICLE 902

Mr. Justice Reyes contends that the provisions of Articles 902, 989 and 998 confer the right of representation upon *the illegitimate issue of an illegitimate child;* while the *illegitimate issue of a legitimate child* is denied the right of representation by Article 992, and therefore unfair and unjustified.

In answer to this claim of unfairness and injustice, we would like to cite the provisions of Articles 982:

"Art. 982. The grandchildren and other descendants shall inherit by right of representation, and if any one of them should have died, leaving several heirs, the portion pertaining to him shall be divided among the latter in equal portions."

If the provisions of the above article are correctly interpreted and understood, do they exclude the illegitimate issue of a legitimate child? The terms "grandchildren and other descendants" are not confined to legitimate offspring.

We submit that not only legitimate but also illegitimate descendants should be included in the interpretation of Articles 902, 989 and 998. In cases of this kind, where the Code does not expressly provide for specific rights, and for that matter, all codes have gaps, equity and justice should prevail ,taking into consideration the fundamental purpose of the whole law on succession which, among other things, gives more rights to illegitimate children, thereby relaxing the rigidity of the old law, and liberating these unfortunate persons from the humiliating status and condition to which they have been dumped.

(To be continued)

[§ 280] U. *Personal conduct and habits; disorderly houses.*— 1. *In general.* — a. *Generally.* "Within well-defined limits of their granted powers, either charter or statutory, and with careful observance of constitutional guaranties of personal liberty, municipal corporations may enact ordinances designed to prevent breaches of the peace, disorderly conduct, vagrancy, and similar offenses. Ordinances designed for such purposes, however, are frequently found to be much too broad in scope, hence unconstitutional or unreasonable. For instance, ordinances have been held invalid which make it a crime for anyone knowingly to associate with persons having the reputation of being thieves or gamblers, with intent to agree to commit any offense; which declare it unlawful for any minor to be upon the streets more than fifteen minutes after the ringing of a curfew at an early hour of the evening; and which make a private trespass a penal offense. An ordinance that no person shall 'permit drunkards, intoxicated persons, tipplers, gamblers, persons having the reputation or name of being prostitutes, or other disorderly persons to congregate, assemble, visit, or remain' in "his or her house, tavern, inn, saloon, cellar, shop, office, or other residence or place of business,' has likewise been declared to be unreasonable and beyond the power of a municipal council to enact, because it is not limited in its application to places of business which require police regulation, or to assemblages of immoral persons, and does not make knowledge of the reputation of the person visiting a house or place of business, or an unlawful purpose on the part of the visitor, an ingredient of the offense."[153]

Disorderly houses. "Disorderly houses may become the proper subjects of regulation by municipal corporatoin; sometimes under their general powers as to public safety, welfare, health, etc., and sometimes under an express or implied grant of power for the purpose. The regulation of such houses may involve the power to prohibit or suppress."[154]

[§ 281] b. *Statutory provisions as to Philippine municipal corporations.* — (1) *Municipalities in regular provinces.* "It shall be the duty of the municipal council, conformably with law:

"* * * *"

"(i) To restrain riots, disturbances, and disorderly assemblages.

"(j) To prohibit and penalize intoxication, fighting, gambling, mendicancy, prostitution, the keeping of disorderly houses, and other species of disorderly conduct or disturbance of the peace.

"(k) To provide for the punishment and suppression of vagrancy and the punishment of any person found within the town without legitimate business or visible means of support."

"* * * *"[155]

The section in which these provisions are to be found is entitled *"Certain legislative powers of mandatory character."*

[§282] (2) *Municipalities in specially organized provinces.* "The municipal council shall have power by ordinance or resolution:

"* * * *"

"(gg) *Disorderly houses, and so forth.* — To suppress or regulate houses of ill fame and other disorderly houses . . .

"(hh) *Gambling, riots, and breaches of the peace.* — To prevent and suppress riots, gambling, affrays, disturbances, and disorderly assemblies; to punish and prevent intoxication, fighting, quarreling, and all disordely conduct; to make and enforce all necessary police ordinances, with the view to the confinement and reformation of vagrants, gamblers, disorderly persons, mendicants, and prostitutes, and persons convicted of violating any municipal ordinance.

"* * * *"[156]

[§ 283] (3) *City of Manila.* "The Municipal board shall have the following legislative powers:

"* * * *"

"(f) To . . . make all necessary police ordinances with a view to the confinement and reformation of vagrants, disorderly persons, mendicants, and prostitutes, and persons convicted of violating any of the ordinances of the city.

"* * * *"

"(r) To provide for the prohibition and suppression of riots, affrays, disturbances, and disorderly assemblies; houses of ill fame and other disorderly houses; gaming houses, gambling and all fraudulent devices for the purposes of obtaining money or property; prostitution, vagrancy, intoxication, fighting, quarreling, and all disorderly conduct . . .

"* * * *"[157]

[§ 284] 2. *Use of tobacco.* "A municipal corporation has no power to prohibit the smoking of tobacco upon the streets or other public places within its limits. Even when such a broad, attempted restriction is confined to the smoking of cigarettes, it is nonetheless invalid. Smoking in itself is not to be condemned for any reason of public policy. It is agreeable and pleasant, almost indispensable to those who have acquired the habit, although it is distasteful, and sometimes hurtful, to those who are compelled to breathe the air impregnated with tobacco in close and confined places, such as street cars, may be prohibited by ordinance; likewise, regulations may be adopted to prevent smoking in the neighborhood of large quantities of combustible materials, in order to limit the danger of fire."[158]

[§ 285] V. *Private property; keeping and use.*[159] — 1. *In general.*—"No definite rule can, with accuracy, be set forth, as to the extent to which municipal corporations may regulate the use of private property. While there is little difference in the enunciation of the applicable principles, the difficulty and the differences grow out of the application of these principles to the facts of particular cases. The police power of municipal corporations must be responsive, in the interest of common welfare, to the changing conditions and developing needs of growing communities. Such power authorizes various restrictions upon the use of private property as social and economic changes come. The validity of the exrcise of the power may depend upon the circumstances of the particular case. A restriction which may have been considered unreasonable and invalid in prior years may subsequently be considered otherwise. Also a restriction while reasonable and valid in regard to a particular district of the corporation may be unreasonable and invalid toward a different district of the municipality. And again a restriction while reasonable within a particular municipal corporation may be unreasonable in another. The tendency is in the direction of sustaining the power. While it is fundamental that the owner of private property, located within the municipal boundaries, may use it for any lawful purpose or in any lawful manner that he may see fit, and a municipal corporation cannot interfere with such right, such property may be subject to such restrictions and regulations as the corporation may, in the exercise of the police power, by proper enactment, reasonably impose. So long as municipal bodies confine their enactments, providing for the regulation and control of property privately owned, within the proper limits of their police powers, they do not violate the property rights of the individual.[160] The limit imposed is that the regulations or requirements, whatever they may be, must be reasonable, and not arbitrary, and have for their object the preservation of the public health, safety, morals, or general welfare. A limitation upon an owner's use of his property cannot be imposed for the benefit of other property owners. It is held that an authority materially to curtail the uses of property under the general police power, when health, safety, morals, peace, and comfort are not involved, will not ordinarily be inferred from the general welfare powers conferred upon municipal corporations, particularly when kindred or similar powers are not expressly conferred, and have not been customarily exercised pursuant to the general powers relating to the public welfare."[161]

Illustration. On September 7, 1935, the municipal council of Iriga, Camarines Sur, approved Ordinance No. 5, series of 1925, article 1 of which provides as follows:

153 37 Am. Jur 972.
154 43 C. J. 364.
155 Sec. 2242, Rev. Adm. Code.
156 Sec. 2625, Rev. Adm. Code.
157 Sec. 18, Rep. Act No. 409.
158 37 Am. Jur. 973.
159 Building regulation, see supra, §
Fire regulations, see supra, §
Zoning regulations, see infra, § S
160 Case v. Board of Health; 24 Phil. 250; Fabie v. Manila, 21 Phil. 486.
161 43 C. J. 413-416.

"ARTICULO 1. Se prohibe terminantemente a cualquiera persona, associacion o corporacion, dueño del terreno que colinda con las orillas fe cualquier camino, vereda, rio y riachuelo dentro de la jurisdiccion del municipio de Iriga, Camarines Sur, acorralar dicho parte del terreno sin pedir permiso en forma al Presidente Municipal, especificado en ella el sitio y el nombre donde radica."

The herein appellant, Pedro Malazarte, was fined P10, with subsidiary imprisonment in case of insolvency and to pay the costs, for violation of the aforesaid ordinance. On appeal to the Court of First Instance of the province, defendant presented no evidence and moved for the dismissal of the case on the ground that the ordinance unduly interferred with individual liberty and property and therefore unconstitutional.

The Supreme Court held that this contention of the appellant is without merit. The permit is required where the private property to be fenced borders on public properties or properties affected with public interest, and the requirement is a legitimate exercise of the police power of the municipality. Chief Justice Shaw, one hundred years ago, observed that every holder of title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the rights of the community. (*Commonwealth v. Alger*, 7 *Cush.* 53.) The permit in the present case is required by the ordinance to safeguard these rights. *People v. Malazarte*, 70 *Phil.* 236-237.

[§ 286] 2. *Aesthetic considerations.* "Since the police power of a municipal corporation cannot properly be exercised for merely an aesthetic purpose, it is generally held that building regulations or regulations in regard to the use of private property, which are in use solely induced by aesthetic considerations and have no relation to the proper objects of police powers, cannot be sustained."[162]

"Of recent years, in response to a growing demand for the preservation of natural beauty and the conservation of the amenities of the neighborhood resulting from the manner in which it has been laid out and built upon, legislatures and municipalities have sought, by statute and by ordinance, to prevent the encroaching of undesirable features, unsightly erections, and obnoxious trades. This legislation, induced mainly by aesthetic considerations, has given rise to a series of novel questions affecting the legislative power of both the State and its governmental agent, the city. It has been held that, for aesthetic considerations and to promote the popular enjoyment and advantages derived from the maintenance of a public park, the legislature may, by virtue of the power of eminent domain and upon making just compensation, impose restrictions upon the manner in which property abutting on the park may be improved and used. But it is apparent that restrictions founded, not upon the power of eminent domain, but upon the exercise of the police power, stand upon another basis, and several cases have laid down the rule that by virtue of the police power merely, neither the legislature, nor the city council exercising delegated power to legislate by ordinance, can impose restrictions upon the use of private property which are induced solely by aesthetic considerations, and have no other relation to the health, safety, convenience, comfort, or welfare of the city and its inhabitants. The law on this point is undergoing development, and perhaps cannot be said to be conclusively settled as to the extent of the police power."[163]

This rule has been applied to regulations establishing building lines and inhibiting abutting owners from encroaching thereon, and regulations in regard to the height of buildings. But when it is determined that the regulation has a reasonable reference to the safety, health, morals, or general welfare of the municipality, considerations of an aesthetic nature may enter in as an auxiliary; and such fact will not invalidate the regulation. And from the language used by some decisions it may be inferred that such regulations may rest upon aesthetic considerations."[164]

"If by the term 'aesthetic considerations' is meant a regard merely for outward appearances, for good taste in the matter of the beauty of the neighborhood itself, we do not observe any substantial reason for saying that such a consideration is not a matter of general welfare. The beauty of a fashionable residence neighborhood in a city is for the comfort and happiness of the residents, and it sustains in a general way the value of property in the neighborhood. It is therefore as much a matter of general welfare as is any either condition that fosters comfort or happiness, and consequent values generally of the property in the neighborhood. Why should not the police power avail, as well to suppress or prevent a nuisance committed by offending the sense of hearing, or the olfactory nerves? An eyesore in a neighborhood of residences might be as much a public nuisance, and as ruinous to property values in the neighborhood generally, as a disagreeable noise, or odor, or a menace to safety or health. The difference is not in principle, but only in degree. In fact, we believe that the billboard case . . . might have rested as logically upon the so-called aesthetic considerations as upon the supposed other considerations of general welfare."[165]

[§ 287] W. *Public calamities; statutory provisions as to Philippine municipal corporations.* — 1. *Municipalities in regular provinces.* "[The mayor] shall have the following duties:

"* * * *"

"(c) He shall issue orders relating to the police or to public safety and orders for the purpose of avoiding conflagrations, floods and the effects of storms or other public calamities.

"* * * *"[166]

[§ 288] 2. *Municipalities in specially organized provinces.* "The

"* * * *"

municipal council shall have power by ordinance or resolution:

"(1) *Storms and calamities.* — To make suitable provisions to insure the public safety from conflagrations, the effects of storms, and other public calamities, and to provide relief for persons suffering from the same.

"* * * *"[167]

[§ 289] 3. *City of Manila.* "The general duties and powers of the mayor shall be:

"* * * *"

"(o) To take such emergency measures as may be necessary to avoid fires, floods, and the effects of storms and other public calamities.

"* * * *"[168]

The Municipal Board shall have the following legislative powers:

"* * * *"

"(k) To make regulations to protect the public from conflagrations and to prevent and mitigate the effects of famine, flood, storms, and other public calamities, and to provide relief for persons suffering from the same.

"* * * *"[169]

[§ 290] X. *Public meetings.* "Public meetings or assemblies in public places may be subject to reasonable regulations by municipal corporations. Such regulations are a valid exercise of the police power; and they have been upheld as against constitutional objections, as for instance, that they curtailed or restricted the liberty of speech and that they made arbitrary discrimination in favor of some persons against others. But the regulations must be reasonable, and not arbitrary. It is only when public meetings create public disturbances, become nuisances, or create or threaten some tangible public or private mischief that the power to regulate such meeting should be exercised. Under express or implied powers municipal corporations may prohibit public meetings in public places on the Sabbath day. Municipal corporations may prohibit the display of banners, placards, etc., on the streets or sidewalks except in public processions."[170]

"*Permits.* In the exercise of the power municipal corporations may require permits to be obtained, for the holding of public meetings, from designated public officials or boards. Such requirement is a valid exercise of the police powers. The grant or refusal of such permit cannot be left to arbitrary discretion. Where applicant for a permit for a public meeting complies with all the requirements, and the permit is refused, he may invoke the aid of the court to prevent the unreasonable refusal and to compel the granting of the necessary permit."[171]

162 43 C. J. 416.
163 2 Dillon Municipal Corporations § 695 (quot Fruth v. Charleston Bd. of Affairs, 75 W. Va. 456, 464, LRA1915C 981.
164 43 C. J. 416-417.

165 State v. New Orleans, 164 La 271, 33 ALR 260.
166 Sec. 2194, Rev. Adm. Code.
167 Sec. 2625, Rev. Adm. Code.
168 Sec. 11, Rep. Act No. 409.
169 Sec. 18, Rep. Act No. 409.
170-171 43 C. J. 419; Primicias v. Fugoso, 45 Off. Gaz. 3284, for facts and ruling see § 151, supra

[§ 291] Y. *Public utilities of private ownership.* — 1. *In general.* — a. *Generally.* "The term 'public utility' implies a public use, carrying with it the duty to serve the public and treat all persons alike, and it precludes the idea of service which is private in its nature and is not to be obtained by the public."[172]

"As a general rule municipal corporations have power to regulate reasonably the conduct of public utilities conducted under private ownership. And the state may delegate to such corporation its right to do so. Such power may be derived from express, constitutional, or statutory grant, or it may be implied when, and only when, necessary to provide for the health, safety, or welfare of the corporation, unless such power has been exclusively conferred upon some other public body. Such regulations are incidents of police power, and must be so restricted. This power is a continuing one and cannot be bargained away or otherwise parted with. The regulations imposed must be reasonable, and certain, and such as not to violate any charter rights of the public utility company, or infringe on constitutional rights. The power to regulate does not include the power to prohibit. A municipal corporation cannot impose upon a public utility essential to the welfare of the people conditions of operation or maintenance which will confiscate its property or destroy its power to serve the public; this the corporation cannot do either by ordinance or by contract. The language of a statute granting such power is strictly construed. Where the means by which the power granted shall be exercised are specified, no other or different means for the exercise of such power can be implied. The exercise of the power of regulation is subject to judicial review, but the court will not interfere in the absence of evidence establishing abuse of discretion or a violation of constitutional rights."[173]

[§ 292] b. *Statutory provisions as to Philippine municipal corporation.* — (1) *Municipalities in specially organized provinces.* "The municipal council shall have power by ordinance or resolution:

"* * * *"

"(p) *Gas, electricity, telephones, and so forth.* — To provide for the inspection of all gas, electric and telephone wires, conduits, meters, and other apparatus and the condemnation and correction or removal of the same when dangerous or defective.

"* * *"[174]

[§ 293] (2) *City of Manila.* "The Municipal Board shall have the following legislative powers:

"* * * *"

"(dd) . . . to regulate and provide for the inspection of all gas, electric, telephone, and street-railway conduits, mains, meters, and other apparatus, and provide for the condemnation, substitution or removal of the same when defective or dangerous.

"* * * *"[175]

[§ 294] 2. *Where state has acted.* "The power to regulate public utilities may be, and often times is, delegated by the state to boards or commissions. Then the question arises whether the power of such body is exclusive or concurrent with that of the municipal corporations. If the power conferred on the board or commission may be exercised without being interfered with by the regulation of the municipal corporation, the power may be exercised concurrently to the extent that the municipal regulation does not conflict with the exercise of the power conferred upon the state board or commission. Following the general rule municipal regulations dealing with public utilities cannot conflict with statutory enactments on the subject. Ordinarily power conferred on public service boards or commissions over public utilities excludes the corporation from acting in the premises. The power of the municipal corporation ceases when the authority is exclusively vested by the state in a public service commission or board. And it ceases immediately when the law conferring the power on the commission becomes effective."[176]

Application of rules. The above rules have been applied, among other public utilities, to gas companies, electric companies, railroads, street railroads, telegraphs and telephones, and water companies."[177]

[§ 295] Z. *Race segregation.* — 1. *In general.* "The earliest decisions of the highest courts of appeal of several of the states upheld the validity of regulations segregating races, whereby separate residential sections were provided for particular races. They held that the power arose by implication under the incidental powers of municipal corporations; also under a general grant of power; and they regarded such ordinances as a proper exercise of the police power of the corporation. The validity of such ordinances was upheld that the power arose by implication under the incidental powers due process of law, that they were discriminatory, and that they denied the equal protection of the law."[178]

"No intelligent observer in communities where there are many colored people can fail to notice that there are sometimes exhibitions of feelings between members of the two races which are likely to, and occasionally do, result in outbreaks of violence and disorder. It is not for us to say what this is attributable to, but the fact remains — however much it is to be regretted — and if a segregation of the races to such extent as may be permissible under the Constitution and laws of the land will have a tendency not only to avoid disorder and violence, but to make a better feeling between the races, every one having the interests of the colored people as well as of the white people at heart ought to encourage rather than oppose it."[179]

"The avowed object of the ordinance is to preserve peace, prevent conflict and ill feeling between the two races and thereby promote the welfare of Baltimore. The means employed are that blocks which were occupied by colored people exclusively should continue to be occupied by them exclusively, and that blocks occupied exclusively by white people should so continue to be occupied by them. The ordinance does not legislate on what were 'mixed blocks' — those occupied by members of the two races — at the time it was passed, and whatever other objections may be urged against it, it cannot be truly said that there is any discrimination in the ordinance against the colored race. Indeed in its practical operation it would be more burdensome on white people than on colored people, for it is well known that white people own the great bulk of property in Baltimore City, and hence where the property of one colored person would be affected by such an ordinance those of many more white people would be. What is denied one class is denied the other, what is allowed one class is allowed the other. There is therefore no such discrimination as is prohibited by the Constitution or statutes securing civil rights, and it is not necessary to discuss that question further."[180]

"But even some of the early decisions held that the power conferred upon a municipal corporation to enact ordinances for the general welfare of the community did not authorize such segregating regulations."[181]

"We do not think that the authority conferred . . . to enact ordinances for the 'general welfare of the city' can justly be construed as intended by the Legislature to authorize an ordinance of this kind which establishes a public policy which has hitherto been unknown in the legislation of our State. To do so would give to the words 'general welfare' an extended and wholly unrestricted scope, which we do not think the Legislature could have contemplated in using those words. If the board of aldermen is thereby authorized to make this restriction, a bare majority of the board could, if they may 'deem it wise and proper,' require Republicans to live on certain streets and Democrats on others; or that Protestants shall reside only in certain parts of the town and Catholics in another; or that Germans or people of German descent should reside only where they are in majority, and that Irish and those of Irish descent should dwell only in certain localities, designated for them by the arbitrary judgment and permission of a majority of the aldermen. They could apply the restriction as well to business occupations as to residences, and could also prescribe the localities allotted to each class of people without reference to whether the majority already therein is of the prescribed race, nationality, or political or religious faith . . . . In Ireland there were years ago limits prescribed beyond which the native Irish or Celtic population could not reside. This was called the 'Irish Pale,' and one of the results was continued disorder and unrest in that unhappy island, which had as one of its consequences that more

172 Vehicles and other means of Transportation, see infra.
173 43 C. J. 421-422.
174 Sec. 2625, Rev. Adm. Code.
175 Sec. 18, Rep. Act No. 409.
176 43 C. J. 422-423.
177 Id. 423.
178 43 C. J. 429.
179 State v. Gurray, 121 Md. 534, 546, 47 LRANS 1087.
180 State v. Gurray, supra.
181 43 C. J. 429.

OPINIONS OF . . . (*Continued from page 198*)

for the payment of his salary.

Hence, opinion is requested on whether or not the money value of the leaves earned by Justice de la Rosa may be paid out of savings in the appropriations for the inferior courts, pursuant to Section 6(8) of Republic Act No. 906 which reads:

"Sec. 6. Authority to use savings for other purposes -- The President of the Philippines is authorized to use any savings in the appropriations authorized in this Act for the Executive Departments x x x; (8) for the payment of commuted sick and vacation leaves of employees who may be retired under the provisions of Republic Act Numbered Six hundred sixty; x x x."

The Auditor General interposes no objection to the transfer of the savings in question to the Court of Appeals and justifies his stand in the following manner:

"If the provisions of section 6(8) above-quoted were to be strictly adhered to, the savings of ₱8,000.00 mentioned above could not be transferred to the Court of Appeals under this section. Considering, however, the circumstances of the case as stated above and the fact that Republic Acts Nos. 906 and 910 were approved simultaneously so that Congress could not include the payment of terminal leave of Justices of the Court of Appeals and the Supreme Court who may be retired under Republic Act No. 910 out of the savings that may be realized, and considering further that Justices of the Court of Appeals are entitled to retire under Republic Act No. 660 (Justice de la Rosa could have availed of the benefits of Republic Act No. 660, instead of Republic Act No. 910 had he chosen to do so in which case his terminal leave could be paid out of salary savings pursuant to section 6(8) supra), this Office, in line with section 6(8) of Republic Act No. 906, will interpose no objection to the transfer to the Court of Appeals of the savings of ₱8,000.00 realized for the Inferior Courts for the purpose of covering a portion of the accumulated leave of former Justice de la Rosa, if approved by the President of the Philippines."

The undersigned concurs in the above-stated view of the the Auditor General and agrees with the reasons advanced in support thereof. The query should therefore be answered in the affirmative.

Sgd. PEDRO TUASON
Secretary of Justice

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than half its population came to this country. That policy has since been reversed. But in Russia, to this day, there are certain districts to which the Jews are restricted, with the result that vast numbers of them are emigrating to this country. We can hardly believe that the Legislature by the ordinary words in a charter authorizing the aldermen to 'provide for the public welfare' intended to initiate so revolutionary a public policy."[182]

And they also held that such regulations could not interfere unreasonably with vested rights. When the question first arose in the supreme court of the United States, several municipal corporations, from the states wherein the ordinances under consideration were upheld, were permitted through amici curiae to file briefs in the case. That court settled the question and held that segregation ordinances or regulations whereby separate residential sections are provided for particular races are not within the police power of municipal corporations, and that such ordinances or regulations were unconstitutional in violation of the Fourteenth Amendment of the federal constitution."[183]

[§ 296] 2. *Statutory provision as to City of Manila.* "The Municipal Board shall have the following legislative powers:

"* * * * *"

"(dd) To regulate, inspect and provide measures preventing any discrimination or the exclusion of any race or races in or from any institution, establishments, or service open to the public within the city limits, or in the sale and supply of gas or electricity, or in the telephone and street-railway service; to fix and regulate charges therefor where the same have not been fixed by national law . . .

"* * * * *"[184]

182 State v. Darnell, 166 N. C. 300, 302, 303, 51 LRANS 332.
183 Buchanan v. Warley, 245 U. S. 60, 38 Sup. Ct. 12, 62 L. ed. 149.
184 Sec. 18, Rep. Act No. 409.

BACK TO LAW . . . (*Continued from page 168*)

in its entirety? How many are familiar with Article 191 of that code? Of the legal requirement of executing a testament before a notary public? How many have a copy of the new code? And how many of my colleagues know that about sixty per cent of this code is *new*; and when I say new I mean brand new?

There is therefore need, great need in our country, for regular refresher courses for practising attorneys and for *other* members of the bar. The medics have it. The question, then, is, Which of our law schools will initiate the movement for refresher classes for Ll. B.'s? It's a fertile field!

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Notary Public
My Commission Expires on December 31, 1954

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"LAUGHTER IS LEGAL"

TOO TRUE!

Statistics show it requires about 19 hours of congressional talk to produce one law. And one law probably results in 19 years of talk in the courts after it's passed.

NOTHING BUT THE LIE

The judge wished to make sure that the witness understood the solemnity of the occasion.

"Do you know what that oath means?" the judge asked.

"Sure, I do," the witness answered. "That oath means if I swear to a lie, I gotta stick to it."

JUST ON DAYTIME

Client (just aquitted on bulgary charge) — "Well, good bye. I'll drop in your home some time."

Counsel — "All right, but make it in the daytime, please."

THE CHOICE

"I shall have to give you ten days or $20", said the judge."

"I'll take the $20, judge," said the prisoner.

PROFIT AND LOST

My uncle, helping a farmer prepare his tax return, examined his ledger. There were no debit or credit columns, but instead the entries read: "Sold eggs $2.68" or Bought $16.92." Most of the items were easy to interpret, but one reading simply "Horse $10.00" stumped my uncle.

"Did you buy the horse for ten dollars or sell him", he asked.

"Well," said the farmer," it's like this: I bought that ornery animal for ten dollars. He right away kicked down two stalls, and that cost ten dollars. Then I used him to pull a car of a mud rut, and got paid ten dollars. Once I sold him for ten dollars, but he cause such a peck of trouble that I bought him back for ten dollars. I used him to take some kids for a ride, and they gave me ten dollars. Finally the fool horse wandered into the roads, and a guy hit him and killed him. He paid me ten dollars, but I had to turn around and pay ten dollars to have the carcass hauled away. And you know," said the farmer. I must have lost track somewhere, 'cause I can't figure out whether that durn horse ended up in owing me or me owing him."

COURT CASES

A man appeared in court seeking a separation from his wife.

"On what grounds?" asked the judge.

"On the grounds guaranteed in the constitution. You know, Judge — freedom of speech."

EAVESDROPPED

"Repeat the words the defendant used", said the lawyer.

"I did rather not. They were not fit words to tell a gentleman"

"Th en," said the attorney, "whisper them to the judge."

TAKE ALL

An undertaker wired a man; "your mother in law just died." Shall I bury, enbalm, or cremate her"?

The guy wired; All three — take no chances!

ASYLUM GRADUATES

The story is told of Oliver Wendell Holmes that he once mistook an insane asylum for a college. Realizing his mistake, he explained to the gatekeeper and commented humorously.

"I suppose after all, there is not a great deal of difference."

"Oh yes, sir, there is," replied the guard. "In this place you must show some improvement before you can get out."

WELL, WELL, WELL .....

Two men bearing identical names, one a lawyer and the other a businessman, lived in Manila.

The lawyer died at about the same time that the businessman left for the South. Upon reaching his destination the latter sent his wife a telegram informing her of his safe journey. Unfortunately the message was delivered to the wife of the lawyer. Imagine the surprise of the good woman when she read; "Arrived safely-heat terrific."

HE IS THAT

Hadley Myers, an Oklahoma friend of mine, was mighty mad when I saw him on the street a while back. What's your wife done now? I asked.

"Oh, Hadley exploded," she got smart-alecky the other day and hired me as secretary. Blonde or brunette?"

Hadley grimaced; "He's bald."

STOP ME

A man was about to go on trial for murder and he didn't feel that his chances for acquittal were very good, so he decided to get to one of the jurors. After sizing them up, he decided to bribe one little guy who didn't look any too bright. And he was successful. This little dope would take a bribe. The dope said to the man, "What do you want me to do?"

The man said, "I want you to oppose the death penalty." The dope said, "How do I do that?"

"You just hold out for a verdict of manslaughter"

"Okay."

After the trial, the jury was charged and they retired. They were out deliberating for about four days. Meanwhile the man was ontenterhooks. Finally they returned with a verdict. And the verdict was manslaughter.

The man was delighted with the verdict and as soon as he could he met the dope to pay him off. He said, "I'm tremendously obliged to you. Did you have a hard time holding out for a verdict of manslaughter?"

"Yeah. The other eleven guys wanted to acquit you!"

Stop Me if You've Heard This One.

LEGAL STRATEGY

If you are strong on the facts but weak on the law, discuss the facts. If you are strong on the law but weak on the facts discuss the law. If you are weak both on the law and the facts, bang the table.

SELECTION

The period of romance also brings some bitter laughs. For example, during the last war, this guy was in the Army and was crazy about this girl, and when he left for overseas, she cried and cried. He was crazy about her and he carried her picture next to his heart for two years—with the knowledge that she had told him she would always be true to him, that she was waiting for him to come home.

Then one day he got a letter from her. He was so happy to receive it that he tore the envelope open and the letter read:

"Dear Mr. Jones:

I have decided I cannot wait for you. The banker's son wants to marry me right away and has already given me a beautiful 5-karat ring and a beautiful mink coat. So would you be good enough to return my picture.

Very truly yours,
Maude"

Well, this just left Private Jones heartbroken. Then he started to burn. The more he thought about it the madder he got. So he went through the camp collecting every picture he could get, including pin-up girls, grandmothers, mothers... until he had about 200 of them. Then he sent the collection of pictures to the girl with the following note.

"Dear Miss Milliken:

Received your request for your picture. I don't remember exactly who you are, so if your picture is among these, would you be good enough to take it out and send back the rest.

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