President, in promoting Garcia, thought in this wise: that his appointment being null and void anyway, he neither filled the vacancy left by ex-chairman Carag nor assumed the term thereof — from 1959 to 1968 — for which reason, therefore, they were given to Visarra instead albeit only as Commissioner.

The separate dissenting opinions of Justice Concepcion, J.B.L. Reyes, Barrera, Paredes and Dizon will be published in the forthcoming July issue of this Journal.

II

Eloy Prospero, plaintiff-appellee vs. Alfredo Robles, et al, defendants-appellants, G.R. No. L-16870, May 31, 1963. Dizon, J.

1. RELIEF FROM JUDGMENT; LACK OF ALLEGATIONS IN PETITION OF FACTS CONSTITUTING NEGLIGENCE, MISTAKE OR ABANDONMENT.—The mere allegation made by appellants in the petition for relief from judgment that the default was due to the gross negligence or mistake and/or abandonment of their attorney, without stating the facts that constitute such negligence, mistake, or abandonment, is not legally sufficient to justify the granting of the relief provided for in Rule 38.
2. ID.; AFFIDAVIT OF MERIT; IT MUST CONTAIN FACTS, WHICH WOULD CONVINCE THE COURT THAT AGGRIEVED PARTY HAS MERITORIOUS CASE.—It has been repeatedly held that, to merit petition for relief from judgment, it is not sufficient to allege that the aggreived party has good and strong evidence to support his case, this being clearly a mere conclusion. The affidavit of merit required by the rules must contain and submit to the court such facts as would probably convince the latter that the aggrieved party has a meritorious case.
3. JURISDICTION; INJUNCTION; ISSUANCE OF WRIT PROPER TO ENJOIN PICKETING WHERE EMPLOYER-EMPLOYEE RELATIONSHIP NO LONGER EXIST.—Appellants claim that the lower court erred in assuming jurisdiction over the case and issuing a writ of injunction against them, claiming that picketing is a legitimate exercise of freedom of speech and can not be enjoined in labor disputes. HELD: The only trouble with this contention is that the lower court made an express finding — which can not now be reviewed — that, at the time of the picketing, there was totally no employer-employee relations between plaintiff and appellants and the action was merely an ordinary one for damages and and a restraining order.

D E C I S I O N

Eloy Prospero filed the present action on January 30, 1959, to recover damages and obtain a writ of injunction against appellants. The preliminary writ was issued upon his filing a bond in the sum of ₱1,000..

On February 18, 1959, appellants, represented by Attys. Beltran and Lacson, filed a motion to dismiss the complaint, but the same was denied for lack of merit. The order of denial required them to file their answer — presumably within the usual reglementary period after service of summons — "the period to be computed from the notification of this court."

On May 16, 1959, appellee filed a motion for default, but the same was denied on the ground that, according to the record, appellants' period for the filing of their answer had not yet expired.

On May 20, 1959, appellants filed a motion for the reconsideration of the order denying their motion to dismiss, but the same was denied on May 23 of the same year. Notice of this order was received by appellants on the 29th of the same month.

On July 8, 1959, appellee filed a second motion for default alleging, among other things, that, up to that time, appellants had not filed their answer. As this allegation was found substantiated by the record, the court entered the corresponding order of default, proceeded to receive the evidence of appellee and subsequently rendered decision as follows:

"WHEREFORE, this Court hereby renders judgment ordering the defendants to pay jointly and severally to the plaintiff the sum of:

'(1) ₱1,000.00 for his pecuniary loss due to the injury to his good will and patronage;

'(2) ₱1,000.00 as moral damages;

'(3) ₱1,000.00 as attorney's fees; and

'(4) Costs.

"Finally, the Court hereby orders the defendants, Alfredo Robles, Ignacio Loyola, Emilio Magcalos, Lucio Bersamin and Andoy "Doe," singly and en masse, including their attorneys, representatives, agents and any other person or persons assisting them, to refrain permanently from establishing picket lines in and around the premises and/or places where the plaintiff may perform professional musical services."

On October 26, 1959, appellants, this time through Atty. Edgardo Diaz de Rivera, filed a verified motion for new trial, alleging that their failure to answer the complaint was due to accident, mistake or the excusable negligence of their former counsel, Atty. Aurelio S. Arguelles, Jr., and alleging further that the decision and the writ of injunction were against the law. The court denied this motion on December 2, 1959 on the ground that it was not supported by any affidavit of merit nor did it allege facts sufficient to constitute a ground for relief from a final judgment. The order of denial further stated that appellants had no standing in court because the order of default entered against them had not been set aside.

On January 8, 1960, appellants filed a petition for relief from judgment, verified by appellant Robles who, in a separate affidavit, alleged that he was the president of the Philippine Musicians Guild, a registered labor union; that he was one of the defendants in the case; that they were declared default because their former lawyer, Atty. Aurelio S. Arguelles, Jr., failed to file their answer to the complaint and that because of his "mistake or excusable negligence", the substantial rights of his clients had been prejudiced; that had they been able to present evidence, the decision rendered against appellants would have been different.

Appellee naturally opposed the petition, and on February 8, 1960, the court denied the same firstly, because it was filed out of time, and secondly, because it did not rely on any ground sufficient to meet any of the reglamentary requirements.

The present appeal from the order last mentioned is without merit.

As the lower court held, the petition for relief was filed out of time. Appellants admit that they had knowledge of the order and decision by default rendered against them since October 21, 1959. It is clear, therefore, that the petition for relief filed on January 8, 1960, or seventy-nine (79) days after appellants knew of the order and decision by default, came too late — beyond the period of sixty (60) days provided for in Rule 38, Rules of Court.

Moreover, neither their motion for new trial nor the petition for relief was supported with any affidavit sufficient in form and substance to prove even one of the grounds provided for in Rule 38 of the Rules of Court, nor to show that appellants have a good and meritorious defense.

The mere allegation made by appellants in the petition for relief that the default was due to the gross negligence or mistake and/or abandonment of their attorney, without stating the facts that constitute such negligence, mistake, or abandonment, is not legally sufficient to justify the granting of the relief provided for in Rule 38. Likewise, it has been repeatedly held that, to merit the relief, it is not sufficient to allege that the aggrieved party has good and strong evidence to support his case, this being clearly a mere conclusion. The affidavit of merit required by the rules must contain and submit to the

court such facts as would probably convince the latter that the aggrieved party has a meritorious case.

Lastly, appellants also claim that the lower court erred in assuming jurisdiction over the case and issuing a writ of injunction against them, claiming that picketing is a legitimate exercise of freedom of speech and can not be enjoined in labor disputes. The only trouble with this contention is that the lower court made an express finding — which can not now be reviewed — that, at the time of the picketing, there was totally no employer-employee relations between plaintiff and appellants and the action was merely an ordinary one for damages and a restraining order.

WHEREFORE, the order appealed from is affirmed, with costs.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, J.B.L. Reyes, Regala, and Makalintal, JJ., concurred.

Labrador and Barrera, JJ., took no part.

III

Vicente Martelino, petitioner-appellant, vs. Maximo Estrella, et al, respondents, G.R. No. L-15927, April 29. Regala, J.

1. CABARET; LIMITATION OF ITS ESTABLISHMENT. — A cabaret cannot be established, maintained and operated at a distance of less than 200 meters from public schools. (Sec. 1, Rep. Act 938 as amended by Rep. Acts 979 and 1224).
2. "CHAPEL"; DEFINED. — A "chapel" is a small house or subordinate place of worship; A christian sanctuary other than a parish or cathedral church.
3. "CHURCHES"; WHAT DO THEY INCLUDE. — When the law speaks of "churches" it includes all places suited to regular religious worship. In 7 words and Phrases 199, it is described as a "place where persons regularly assemble for worship." (citing Stubbs v. Texas Liquor Control Board, Tex. Cir. Appl. 166 S.W. 2d. 178, 180.)
4. CHAPEL; WHEN IT WOULD NOT FALL UNDER CATEGORY OF A CHURCH. — In a chapel where there is no regularity in the holding of religious services, would not fall under the category of "churches" as contemplated in the law.
5. ID.; CHURCHES; ESSENTIAL CHARACTERISTIC OF A CHURCH.—In fact, chapels are churches; only that they may be smaller than, or subordinate to, a principal church. The essential characteristic of a church, is the devotion of the place of religious services held with regularity, and not the size of the building or of the congregation that assembles therein. The fact that these two buildings in question are called "chapel" in no way alters the case (See Delgado, et al. v. Roque, et al., G.R. No. L-8260, May 27, 1955,)
6. ID.; ID.; A CHAPEL IS CONSIDERED A CHURCH.—In the Delgado, et al., v. Roque. et al., G.R. No. L-8260, May 27, 1955, it was held that the so-called chapel of the Seventh Day Adventist in Sta. Cruz, Laguna, which is located near a proposed cockpit, is considered a "church" within the meaning of the law involved in this case.

D E C I S I O N

This is an appeal from a decision of the Court of First Instance of Rizal dismissing the petition of Vicente Martelino for prohibition with preliminary injunction in Civil Case No. 4502.

The facts are undisputed. On April 1, 1956, the Municipal Council of Makati, Rizal, by Resolution No. 94, approved the application of Vicente Martelino to reopen the Tropical Night Spot cabaret located in Constancia street of said municipality.[1] Pursuant thereto, the Mayor of Makati issued the corresponding permit to said applicant.

Under date of January 22, 1957, the Executive Secretary, through the Provincial Governor of Rizal, sent a communication to the mayor, informing him that according to the records in his (Secretary's) office, there were two buildings within 200 meters from the cabaret, which were being rented for school purposes, and which made the operation of said amusement place violative of Republic Act No. 1224. The mayor was thus enjoined to revoke the permit he had issued.

Replying to the communication of the Executive Secretary, the mayor asked for reconsideration of the order, alleging that according to an investigation conducted by a committee created by the municipal council of Makati, the classroom annex which used to be near the site of the cabaret had already been transferred to a far away barrio.

Subsequently, however, the governor of Rizal again addressed a letter to the mayor stating that according to a survey conducted by his office, the cabaret in question is located 191.50 meters from the F. Benitez Elementary School Annex, 37.30 from a Catholic chapel and 178 meters from a chapel of the Iglesia ni Kristo. Likewise, the mayor was enjoined to comply with the directive of the Executive Secretary.

Accordingly, the mayor sent a letter to Martelino, ordering him to close the cabaret in question. But instead of complying, Martelino, on April 2, 1957 filed with the Court of First Instance of Rizal a petition for prohibition with preliminary injunction praying that the mayor's order of closure be declared null and void for having been issued without or in excess of authority or with grave abuse of discretion, and that the mayor be ordered to refrain from enforcing said order. As prayed for, a preliminary writ was issued before trial.

The Court of First Instance found that, although there was no school within 200 meters from the questioned cabaret, there were two chapels therein. Said court, therefore, dismissed the petition and dissolved the preliminary injunction, holding that the establishment of petitioner's cabaret is in violation of Republic Act No. 1224.

The petitioner appealed to the Court of Appeals, but that court certified the case to us, finding no factual question involved. The certification, however, contains a very clear recital of the facts.

The provision of law that meets interpretation is Section 1 of Republic Act 938, as amended by Republic Acts 979 and 1224, which reads:

> "Section 1. The Municipal or City board or council of each chartered city and the municipal council of each municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of nightclubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billard pools, and other similar places of amusement within its territorial jurisdiction: Provided, **however, That no such places of amusement mentioned therein shall be established, maintained and/or operated within a radius of two hundred lineal meters** in the case of night clubs, **cabarets**, pavilions, or other similar places, and fifty lineal meters in case of dancing schools, bars, saloons, billiard pools, except cockpit the distance of which shall be left to the discretion of the municipal or city board or council from any public building, schools, hospitals and churches. x x x." (underscoring supplied.)

The only issue in this appeal is whether or not the two chapels, which are located within a radius of 200 meters to the cabaret in question may be considered churches within the meaning of the above quoted section of the law.

Petitioner argues that Republic Act 1224 speaks of "churches" and not "chapels," and following the principle of statutory construction **expressio unius est exclusio alterius**, the word "churches" should not be taken to include chapels. Petitioner further states that there is a sharp difference between church and chapel.

[1] Reopening of the same Tropical Night Spot was also denied by the decision of this Court in Provincial Governor of Rizal, et al. v. Hon. Demetrio Encarnacion, et al., G.R. No. L-7282, Nov. 29, 1954. for the reason that it stands less than 500 meters from public schools. (The distance, as now provided in the law, amended, is 200 meters.)