RECENT CASES

CRIMINAL LAW — VIOLATION OF CONDITIONAL PARDON NOT PUNISHABLE WHEN SENTENCE IMPOSING PENALTY REMITTED BY PARDON IS OR BECOMES VOID.

Prior to April 19, 1944, Benedicto Jose y Santos was convicted by the Court of Special and Exclusive Criminal Jurisdiction of the City of Manila for a violation of Sec. 3(b) and 2(b) of Act No. 65 of the National Assembly of the Republic of the Philippines, in connection with Sec. 11 of Ordinance No. 1 which reads as follows:

"No one except the control organization or the persons designated by said organization shall engage in the purchase, importation, sale or transfer of rice and corn, or act as agent, broker, or intermediary in the purchase, sale or transfer of such commodities for the purpose of their sale or transfer unless authorized by the Minister of Agriculture and Commerce."

On October 15, 1944, he was granted a conditional pardon and sometime prior to April 5, 1945, he violated the same. Thereupon, he was accused of a violation of Art. 159 of the Revised Penal Code punishing the violation of a conditional pardon. The Supreme Court held that the defendant can not now be prosecuted criminally for the violation of the pardon. (People of the Philippines v. Benedicto Jose y Santos, G. R. No. L-22, Dec. 20, 1945)

The decision of the Supreme Court is predicated on the following propositions: first, that the sentence of imprisonment imposed by the Court of Special and Exclusive Criminal Jurisdiction, being political in complexion, should be denied validity after the restoration of the Commonwealth Government; second, that the effectivity of a conditional pardon depends on that of the sentence which inflicts upon a defendant the punishment from which he is exempted by the pardon.

The so-called Republic of the Philippines was a de facto government of paramount force and its judicial acts, except those which are of a political complexion, remained good and valid upon the restoration of the Commonwealth Government. (Co Kim Cham v. Valdez Tan Keh, 41 O. G. 799) Political acts fall through as of course, whether they introduce any positive change into the organization of the country, or they only suspend the working of that already in existence. (Peralta v. Director of Prisons, 42 O. G. 198) A punitive or penal sentence is said to be of a political complexion when it penalizes either a new act not defined in the municipal laws, or acts already penalized by the latter as crimes against

the legitimate government, but taken out of the territorial law and penalized as new offenses committed against the belligerent occupant, incident to a state of war and necessary for the control of the occupied territory and the protection of the army of the occupant. (Alcantara v. Director of Prisons, 42 O. G. 480) In accordance with the foregoing rulings, the sentence which convicted Benedicto Jose was of a political complexion because it penalized an act not criminal by the municipal laws. Consequently, it ceased to have effect upon the reoccupation of the Philippines.

Pardon is prospective, that is, remits only the penalty not yet suffered, and not retrospective or does not affect that which has already been served and much less the sentence. (Robert v. State, 51 N. Y. Supp. 691, 692; 30 App. On. 106; In re Spenser [U.S.] 22 Fed. Cas. 921, 923) Upon the revocation of a pardon for breach of one of its conditions the legal status of the person pardoned must be regarded the same as it had been before it was granted. (State v. Horne, 52 Fla. 125; U. S. v. Ignacio, 33 Phil. 202) Hence, the original sentence may be enforced against him. (Ex parte Wells, 18 Howard [U.S.] 307; Ex parte Hawkins, 61 Ark. 321, 30 L. R. A. 736, 54 Am. St. Rep. 209; Kennedy's Case, 135 Mass. 48; *Ex parte* Marks, 64 Cal. 29) When a pardon is invalid, the original sentence upon the condemned may be carried out. (Cabantug v. Wolfe, 6 Phil. 273) It is clear, therefore, that the effectivity of a conditional pardon depends on that of the sentence inflicting the penalty remitted by the pardon.

A conditional pardon delivered and accepted is said to constitute a contract between the sovereign power and the grantee. (U.S. v. Wilson, 7 Pet. 150, 8 U.S. [L. ed.] 640, 12 A. R. 563) If a conditional pardon constitutes a contract between the sovereign power and the grantee, it is undeniable that it is entered into in consideration of a sentence of conviction. In other words, the sentence of conviction is the basis or foundation of the contract. Once the foundation is destroyed, what is built on it must necessarily fall.

A conditional pardon is an executive clemency, an act of grace (7 Pet. [U.S.] 160), which is undoubtedly intended for the benefit of a convicted person who merits the same. But if, notwithstanding the nullity of the sentence against him, the grantee of a pardon can be punished for its violation, then he is better off without the pardon—an absurdity not contemplated in law. For indeed, even without the pardon, he cannot be compelled to serve or continue to serve a void sentence.

FRANCISCO T. PAPA

CIVIL LAW—PACTO DE RETRO SALE CONSTRUED AS EQUITABLE MORTGAGE.

The petitioner assailed a document purporting to be a *pacto de retro* sale of a fishpond on the ground that it did not reflect the true agreement between the parties. The Supreme Court considered the following circumstances in construing the deed as

an equitable mortgage: (1) That the price of seven thousand pesos was inadequate for a fishpond assessed at over twenty thousand pesos; (2) That the petitioners were in urgent need of money to settle a litigation with a third person when they executed the deed; (3) That the alleged vendors paid the land tax, a usual burden attached to ownership. This last circumstance helped in showing that the contract was a loan; otherwise, there seemed to be no fairness in requiring the vendors, who ceased to be owners, to pay the same. At any rate, the arrangement, even if legally permissible, emphasized the extent to which the petitioners "had submitted to the dictation of the lender under the pressure of their wants." (Marquez v. Valencia, G. R. No. 49240, Dec. 20, 1946)

In this jurisdiction, the doctrine laid down in the case of Russell v. Southard (53 U. S. 139) is now followed. Whenever it is clearly shown that a deed of sale with pacto de retro, regular on its face, is given as a security for a loan ,it must be regarded as an equitable mortgage. (Ignacio v. Chua Hong, 52 Phil. 940) The Supreme Court has steadily held that whenever the issue is whether a written transaction is a sale or a loan secured by mortgage and it is alleged in the answer that the real intention of the parties was the latter, parol evidence may be adduced to prove it. (Cuyugan v. Santos, 34 Phil. 100; Rodriguez v. Pamintuan, 37 Phil. 876; Cuyugan v. Santos, 39 Phil. 970; Tolentino v. Gonzales, 50 Phil. 558; Ignacio v. Chua Hong, 52 Phil. 940; Fernandez v. Del Rosario, 57 Phil. 501).

The following circumstances have been considered by the Supreme Court in construing a contract to be an equitable mortgage, although the deed executed purported to be a deed of sale:

First, that the price paid, in relation to the value of the property, is grossly inadequate. (In Aguilar v. Rubiato, 40 Phil. 570, a piece of land valued at twenty-six thousand pesos was sold for eight hundred pesos. In Macapinlac v. Repide, 43 Phil. 770, the actual value of the land was eight-hundred thousand pesos but the contract price was only twelve thousand pesos. In Cabigao v. Lim, 50 Phil. 844, the alleged price was less than one-half of the annual revenue of the land sold. In Ignacio v. Chua Hong, 52 Phil. 940, the value of the property sold was over seven times the consideration for the alleged sale. In Correa v. Mateo, 55 Phil. 79, the land purchased at eighteen thousand pesos was sold for four thousand pesos.)

Second, that the terms used in the deed or power-of-attorney indicate that the conveyance was intended to be a loan secured by mortgage. (In Padilla v. Linsangan, 19 Phil. 66, the land in question was mentioned as "pledged" instead of "sold." In Malagnit v. Dy Puico, 34 Phil. 325, the alleged vendor used the term "sale with the right of repurchase," yet he described himself as a "debtor," the purchaser as a "creditor," and the contract as a "mortgage." In Rodriguez v. Pamintuan, 37 Phil. 876, the al-

leged vendor merely acted upon a power of attorney from the owner of the land 'authorizing him to borrow money in such amount and upon such conditions as he might deem proper and to secure payment of the loan by a mortgage.")

Third, that the supposed vendor remained in possession of the land sold. (Villa v. Santiago, 38 Phil. 157; Ignacio v. Chua Hong, 52 Phil. 940)

Fourth, that the supposed vendor invested the money he obtained from the alleged vendee in making improvements on the land sold. (Villa v. Santiago, 38 Phil. 157; Fernandez v. Rosario, 57 Phil. 501)

Fifth, that the purchaser accepted partial payments from the vendor, such acceptance being absolutely incompatible with the idea of irrevocability of the title of ownership at the expiration of the term stipulated in the original contract for the exercise of the right of repurchase. (Cuyugan v. Santos, 39 Phil. 970)

In the foregoing cases, the intention of the parties was the chief criterion in the reformation of the contract. However, in doubtful cases, the contract will be construed as a mortgage because it involves a lesser transmission of rights between the parties. In the case of a mortgage, the mortgagor, although he has not strictly complied with the terms of the mortgage, still has the equity of redemption, while in the case of sale with *pacto de retro*, violation of the condition of the contract will mean forfeiture of the rights of the transferor. (46 Am. Jur. Sales, Sec. 514; Olino v. Medina, 13 Phil. 379)

TOMAS P. AÑONUEVO

CRIMINAL LAW—JUSTIFYING CIRCUMSTANCE: OBEDIENCE TO AN ORDER ISSUED BY A SUPERIOR FOR SOME LAWFUL PURPOSE.

Defendant Miguel Moreno appealed from a judgment of conviction for the crime of murder. He was a Japanese-appointed commander of San Ramon Penal Colony when he decapitated the deceased in obedience to an order issued by a Japanese naval officer. The Supreme Court ruled that, even assuming that there was such an order, still it would not justify the crime committed on the ground that the order was not for a lawful purpose because the deceased was to be killed without any previous trial, and the superior was without authority to so issue. (People v. Moreno, G. R. No. L-64, Dec. 10, 1946)

A person should act in obedience to an order issued by a superior for some lawful purpose (Par. 6, Art. 11, Revised Penal Code) to justify his action. Our courts persistently have adhered to the interpretation that the person who gives the order and the person who executes it must act within limitations prescribed by law. (Decision of Supreme Court of Spain, Nov. 27, 1876; People v. Baugh, G. R. No. 17478, Feb. 8, 1922; People v. Wilson and Dolores, 52 Phil. 919) As Viada states, "the act of obedience must be in compliance with a lawful order not opposed to a higher positive duty of a subaltern, and the person commanding must act within the scope of his authority." (1 Penal Code, Viada, 5th edition, p. 528; People v. Barroga, 54 Phil. 247) It has

been decided that the killing of another, in obedience to an order given by an army officer or insurgent general, subjects the defendant to criminal liability (U. S. v. Alfont, 1 Phil. 114; U. S. v. Velasco, 1 Phil. 346; U. S. v. Garcia, 5 Phil. 57), it being shown that the order is illegal (People v. Baugh, G. R. No. 17478, Feb. 8, 1922; U. S. v. Alfont, 1 Phil. 114; U. S. v. Velasco, 1 Phil. 346; U. S. v. Capisonda, 1 Phil. 575; U. S. v. Tengco, 2 Phil. 189; U. S. v. Garcia, 5 Phil. 57; U. S. v. Cuison, 20 Phil. 433; U. S. v. Domingo, 23 Phil. 5; People v. Wilson and Dolores, 52 Phil. 919; People v. Barroga, 54 Phil. 247; Nassiff v. People, 40 O. G. No. 11, p. 2280). Once the order is proven illegal, then the subordinate is made liable regardless of whether he could have seen or not the illegality of the order on the face thereof. The common-law cases differ from our jurisprudence in this respect because they accept a modification of the rule in the light of certain circumstances. A soldier is not protected by an order illegal in itself and not justifiable by the rules and usages of war, if it is such that a man of ordinary sense and understanding would know, when he hears it read or given, that the order is illegal; an order given by an officer to a soldier under his command protects the soldier, unless the illegality of the order clearly appears on its face or in the body thereof. (15 Am. Jur. Sec. 318, p. 16; People v. McLeod, 25 Wend. [N.Y.] 483; 1 Hill 377; 37 Am. Dec. 328; Com. ex. rel. Wadsworth v. Shortall, 20 Pa. 165; 55 A. 952; 65 L. R. .A 193; 98 Am. St. Rep. 759; Riggs v. State, 3 Cold. [Tenn.] 85; 91 Am. Dec. 272) If a soldier or sailor is ordered by his superior officer to do an act which, so far as the inferior can see, is a legal one, he will be justified in obeying it. (U. S. v. Jones, Fed. Cas. No. 15; 494 [C.C. Pa. 1813]; U. S. v. Clark, 31 Fed. 710 [E.D.] Mich. 1887) If, on the other hand, the command is such that the inferior should have known it to be illegal, he will not be justified in obeying the command. (Axtell's case, J. Kil. 13 [1660]; U. S. v. Jones, Fed. Cas. No. 15; U. S. v. Bevans, Fed. Cas. No. 17589 [D. Mass. 1816]; Riggs v. State, 3 Cold. 85 [Tenn. 1866]; 41 H.L.R. 561-562)

DELFIN J. VILLANUEVA

CIVIL PROCEDURE—QUASHAL OR STAY OF EXECUTION.

Petitioner had successfully prosecuted an action for forcible entry against the respondent Shiu and had obtained execution on the judgment of ejectment, but said respondent secured the quashal of the execution on the ground that the petitioner and he had entered into a contract of lease on the premises before the trial of the case. Thereupon, petitioner brought the instant special civil action to have the Supreme Court compel the respondent Judge of the Court of First Instance to re-issue a writ of execution on the judgment against his fellow respondent.

Held, There was no legal or equitable ground upon which the quashal might be predicated. If the respondent had in fact entered into a con-

tract of lease with the petitioner, the former should have bared it to the trial court. (Amor v. Jugo & Shiu, G. R. No. L-922, Dec. 3, 1946)

The jurisdiction of courts to entertain motions to stay or to quash their writs of execution is unquestioned because every court has the inherent power, for the advancement of law and justice, to correct errors of its ministerial officers and to control its own process. (Rules of Court, Rule 124, Sec. 5-g; Dimayuga v. Raymundo, 42 O. G. 2121, citing 23 C. J. 535) The stay or quashal of an execution rests largely in the courts' discretion, that will be exercised in the furtherance of justice. (Id., citing 23 C. J. 545)

A writ of execution may be stayed or quashed when there is a change in the situation of the parties after final judgment, which makes the execution inequitable. In Lee v. Mapa, 51 Phil. 624, the judgment debtor, after execution had been issued against his properties (no mention made of pawn tickets, the pledged property), instituted a separate action against the judgment creditor for the recovery of damages arising from the lapsing of said pawn tickets in the possession of the latter, and thereby moved for stay of execution pending final determination of the action; the evidence disclosed that the lapsing of the tickets occurred subsequent to the remanding of the case against the judgment debtor from the Supreme Court to the trial court; it was held that a stay of execution may be allowed on grounds which are in their nature peculiarly equitable, as for instance to give the judgment debtor an opportunity to set off a claim against the judgment creditor.

In Dimayuga v. Raymundo (supra) resumption of the lease after there had been execution in favor of the plaintiff was renunciation of the judgment of ejectment, and amounted to payment of the judgment, which is a legal ground for the quashal of execution.

But matters of defense available at the time of the trial of the action do not constitute grounds for stay or quashal of execution, although the execution debtor did not know of the facts at the time of the trial. (33 C.J.S. 327; 21 Am. Jur. 291; Molina v. De la Riva, 8 Phil. 569, re claim of the sureties to be relieved of responsibility on account of the acts of the creditor; Cabigao v. Del Rosario, 44 Phil. 182, wherein the pendency of another action between the parties, alleged as ground for the stay of execution could have been brought into notice before the Supreme Court lost its jurisdiction over the case; Wolfson v. Del Rosario, 46 Phil. 41, re failure of the defendant to make payment on time due to his temporary absence in the provinces)

A writ of execution may be quashed also if the court has no authority to issue it, being based on no previous judgment (Yulo v. Powell, 36 Phil. 732), or on a judgment rendered without jurisdiction or otherwise null and void (33 C.J.S. 326), or upon a dormant judgment without a revivor thereof (21 Am. Jur. 300; see Rules of Court, Rule 39, Sec. 6). It is well settled that equity will enjoin a party from enforcing a judgment which he has obtained by means of fraud.

(Anuran v. Aquino, 38 Phil. 29) When a party by motion asks the court to issue execution before the expiration of the period for appeal, that motion must comply with the requirements of the Rules as to notice, to give the court jurisdiction to act on it. (Gamay v. Gutierrez David, 48 Phil. 768)

Quashal may further be in order if the writ was improvidently issued (see Rules of Court, Rule 39, Secs. 1-2), or is defective in substance, as when it is issued against the wrong property, or for or against the wrong party (33 C.J.S. 325; Silvestre v. Torres, 57 Phil. 885). An essential and prejudicial variance betwen the writ of execution and the judgment is a ground for quashing the writ. Thus, in Bank of the P. I. v. Green, 48 Phil. 284, the defendant was sentenced merely to pay the plaintiff a certain sum of money, but the execution issued by the same judge who had rendered judgment constituted foreclosure of mortgage; so the execution was quashed.

JOSE A. SALOMON.

CIVIL PROCEDURE—MOTION TO DISMISS APPEAL ESTOPPED BY SILENCE.

Appellant's motion to dismiss in the lower court was denied on April 2, 1946. He filed a motion for new trial on May 3, 1946, which was denied on May 11. He filed a notice of appeal and record on appeal on May 18, which record was approved on May 28. After appellant's brief had been filed with the Supreme Court, the appellee presented a motion to dismiss on the ground that the appeal had not been perfected on time.

Held, Motion to dismiss appeal denied. If a motion to dismiss is filed in the appellate court for the first time after the payment of the docketing fee, the cost of printing and record on appeal and after the filing of appellant's brief, the motion to dismiss will be denied because the appellee is estopped by silence or failure to object on time. (Resolution of the Supreme Court, Santiago v. Valenzuela, G. R. L-670, April 30, 1947)

The majority opinion is based on estoppel and laches on the part of the appellee and the cases of Luengo v. Herrero, 17 Phil. 29, and Perkins v. Perkins, 57 Phil. 223, are cited in support of the opinion.

It is admitted, however, that the appeal was made out of time and, therefore, as stated in the minority opinion of Justice Bengson, it should be dismissed. (Fortunato v. Viloria, 14 Phil. 232; Lim v. Singian, 37 Phil. 817; Liongson v. Insular Govt., 38 Phil. 447; Layda v. Legaspi, 39 Phil. 83; Salaveria v. Albindo, 39 Phil. 922; Govt. v. Abural, 39 Phil. 996; Pampolina v. Suiza, 42 Phil. 99)

The cases of Luengo and Perkins aforementioned do not support the decision of the majority because the former is not a case of an appeal perfected out of time and the latter deals with the question of whether or not an interlocutory order is appealable.

The majority quoted Corpus Juris to support its stand that there may be waiver of objection to appeal; the same Corpus Juris, however, (3 C.J.

269) and the Corpus Juris Secundum (4 C.J.S. 126) state that "as jurisdiction cannot be conferred on an appellate court by consent of the parties, want of jurisdiction cannot be waived by them, but may be taken advantage of at any time, and jurisdiction cannot be supplied by estoppel or laches."

Compliance with the requirements to perfect an appeal is jurisdictional in nature and the appellate court cannot acquire jurisdiction until such compliance, for in cases of tardy appeal, the decision of the lower court becoming final before the appeal is made, the court acquires no jurisdiction by virtue of the appeal. (Layda v. Legaspi, supra; Pampolina v. Suiza, supra; Lim v. Singian, supra) Jurisdiction of the appellate courts cannot be conferred by the consent of the parties. (Layda v. Legaspi, supra; Roman Catholic Bishop v. Director, 34 Phil. 623; Estate of Cordova v. Alabando, 34 Phil. 920; Bermudez v. Director, 36 Phil. 744; Lawton v. Judge, 32 Phil. 204; Yturralde v. Santos, 5 Phil. 485; Alvero v. de la Rosa, 42 O. G. 3165; Aquino v. Tongco, 61 Phil. 1072; Balance v. Forsyth, 21 How 389; Walker v. Taylor, 5 How. 64; Elgin v. Marshall, 106 U. S. 578; Grunner v. U. S., 11 How. 163; Merill v. Petty, 16 Well. 338) As a corollary to this proposition it may be said that jurisdiction cannot be waived and the question can be raised at any time. (Govt. v. American Surety, 11 Phil. 203; U. S. v. Ang Suyco, 17 Phil. 92; U. S. v. Castañares, 18 Phil. 210; U. S. v Bernardo, 19 Phil. 265; U.S. v. Regala, 28 Phil 57; Roxas v. Rafferty, 37 Phil. 957)

The proposition that courts can extend the time to appeal is correct (Alvero v. de la Rosa, G. R. L-289; Moya v. Barton, 43 O. G. 836; Lopez v. Lopez, G. R. L-786; Peralta v. Solon, G. R. L-827); but these cases are not in point with reference to the question we have before us because there was presented in these cases an application to extend the time to perfect the appeal before the expiration of the period fixed by the Rules of Court and in the present case that procedure was not followed.

From the foregoing, it appearing that the Supreme Court never had jurisdiction over the appeal, the motion to dismiss should have been sustained.

BIENVENIDO A. TAN, JR.

EJECTMENT — EFFECT OF FAILURE TO PAY RENTS DURING PENDENCY OF APPEAL

The respondent, La Perla de la India, a duly registered partnership, was ordered to vacate petitioner's premises and to pay the corresponding monthly rentals for the occupation of the same during the pendency of the appeal. Its motion to substitute a surety bond for the cash deposit to stay the execution was denied both by the Court of First Instance and by the Court of Appeals. The latter court, nevertheless, granted the respondent a ten-day extension within which to pay the rentals in arrears during the pendency of the appeal On petition for on certiorari the Supreme Court ruled that while the Court of Appeals correctly denied the motion to substitute a surety bond in lieu of the cash payment, section 9, Rule 72, Rules of Court not indicating any bond, it exceeded its jurisdiction when it extended the time for the payment of said rentals. (Ysrael v. The Hon. Court of Appeals and La Perla de la India, GR No. L-1302, July 31, 1947)

The foregoing decision was a reiteration of the mandatory character of the rule on execution of the ejectment order upon failure to pay or deposit the rents during the pendency of the appeal. (Lapus v. Court of First Instance of Pampanga, 46 Phil. 77) In Guillena v. Borja and Sumanpan, 53 Phil. 379, the Supreme Court expressed the view that such failure shall cause the judgment to be executed and that the law is mandatory and cannot be evaded. (See Tomboc v. Court of First Instance of Pangasinan, 46 Phil. 882; Sumintac v. Court of First Instance of Rizal, 40 Off. Gaz. 14th Suppl. No. 23, p. 16; Domingo v. Court of First Instance Nueva Ecija, R.G. No. L-362, August 31, 1946)

To stay execution in case of appeal the defendant must do two things: (1) file a supersedeas bond; and (2) during the pendency of the appeal, pay to the plaintiff or to the court the rents due from time to time under the contract, if any, as found by the judgment of the justice of the peace or municipal court to exist, or in the absence of a contract, to pay to the plaintiff or to the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises for the preceding month at the rate determined by the judgment. (Section 8, Rule 72, Rules of Court; Domingo v. Court of First Instance of Nueva Ecija, G.R. No. L-362, August 31, 1946; Aylon v. Jugo and Pablo, G.R. No. L-1082, July 31, 1947) It is indispensable that the order to pay the rent and the amount thereof must be determined by the decision of the court. (Igama and Reyes v. Soria and Nepomuceno, 42 Phil. 11)

This case should be distinguished from the case of De Castro and Morales v. Justice of the Peace of Bocaue, 33 Phil. 595, where it was held that upon the failure of the appellant to deposit the rents or value of the use of the land during the pendency of the appeal, the Court of First Instance has jurisdic-

tion to allow him a reasonable time to correct the omission. In the latter case, the justice of the peace gave judgment in favor of the plaintiff for possession and for P470 "en concepto de daños y perjuicios". To perfect an appeal the defendant filed the ordinary appeal bond of P16 and executed a good and sufficient bond to cover costs and damages in the sum of P700. The appeal was dismissed, however, by the Court of First Instance on motion of the plaintiff on the ground that the appellant had failed to pay to the plaintiff the amount of damages (P470), or deposit that amount in cash with the clerk of court in accordance with section 88 of Act No. 190, as amended by section 2 of Act No. 1778. It is apparent, however, that the money judgment rendered by the justice of the peace was not intended as a judgment for the reasonable value of the use of the land, nonpayment of which during the pendency of the appeal would entitle the plaintiff to execution.

The supersedes bond answers for the "rents, damages, and costs down to the time of final judgment in the action." (Fernando v. De la Cruz, 61 Phil. 435; Mitschiener v. Barrios, G.R. No. L-112, February 1, 1946; see Belmonte v. Marin, G.R. No. L-75, February 25, 1946) If the supersedeas bond takes the place of back rents or the deposit of back rents takes the place of the supersedes bond (Mitschiener v. Barrios, supra), execution will not issue for the alleged failure to pay the rents in arrears inasmuch as the default in the payment of rentals contemplated by section 8, Rule 72, refers to those rents due from time to time during the pendency of the appeal. (Aylon v. Judge Fernando Jugo and Ramona S. de Pablo, G.R. No. L-1082, July 31, 1947)

The proceeding in forcible entry and detainer cases is summary. For that reason execution of judgment rendered against the defendant is issued fortwith. (Co Tiamco v. Diaz, G.R. No. L-7, January 22, 1946; Aylon v. Judge Fernando Jugo and Ramona S. de Pablo, *supra*) For failure of the tenant to pay the monthly rental on time, execution of an ejectment order pending appeal may be demanded (Cunanan v. Rodas, G.R. No. L-1400, July 30, 1947); and the fact that the rents in arrears were deposited immediately after motion for execution had been filed will not aid the appellant (Zamora v. Dinglasan, G.R. No. L-750, 43 O.G., May, 1947, where the defendants were ordered to vacate the premises on January 14, 1946 and to pay the monthly rental of P175. While the case was on appeal, defendants failed to pay the rents for the succeeding months of April and May. Under such circumstances, mandamus was granted requiring the respondent judge to order the execution of the judgment pursuant to section 8, Rule 72, Rules of Court. The Supreme Court pointed out further that such default in the payment or deposit of rentals is not allowed even under the provisions of the House Rental Law, Commonwealth Act No. 682, as amended by Republic Act No. 66, relating to suspension of judgment); nor will

his penury justify the impairment of plaintiff's legal rights or the deprivation of the latter's use of his property without just compensation. (Arcega v. Dizon, G.R. No. L-195, February 20, 1946)

The Supreme Court, in Santos v. De Alvarez, G.R. No. L-332, June 18, 1944, ruled that under section 2, Republic Act No. 66 "a lessee cannot be ejected even for non-payment of rents, where such non-payment is not willful and deliberate and the lessor does not need the property for himself and the lessee has never subleased it without auhtority." The decision in this case touches on non-payment of rentals as a distinct cause under the House Rental Law for ejectment. (For a critical analysis of the aforementioned decision, see "May a Tenant's Failure to Pay His Agreed Rental Be Excused by Poverty or a Circumstance Beyond His Control?" by Prof. A. Padilla, page 238, *supra*") The rule under comment, that non-payment of rentals or the reasonable value of the use of the premises during the pendency of the appeal will entitle the plaintiff to an execution remains unaffected.

LOURDES L. LONTOK