RECENT DECISIONS:

VALIDITY OF THE SALE OF LAND TO CHINESE CITIZENS DURING THE JAPANESE OCCUPATION

A complaint was filed by the plaintiff for the annulment of the sale made by him to the defendants, Chinese citizens, of two parcels of land during the Japanese occupation and cancellation of the certificate of title issued to the defendants, following the ruling in the Krivenko case to the effect that a conveyance of residential lands to aliens infringes the Constitution and is void.

The Supreme Court held the Krivenko case inapplicable because the Constitution was suspended during the Japanese occupation. The Civil Code not being a political law and, therefore, in force when the contract was entered into, Article 1306 [1] thereof was applied and the Court refused to give relief to the parties. (Cabautan v. Uy Hoo, G.R. No. L-2207, January 23, 1951).

The majority decision penned by Justice Angelo Bautista in holding that the Constitution was not in force during the Japanese occupation, relied on the following excerpt from the case of Peralta v. Director of Prisons: [2]

> " . . . . . No objection can be set up to the legality of its provisions in the light of the precepts of our Commonwealth Constitution because the latter was not in force during the period of the Japanese Military Occupation *as we have already stated.*" (Underscoring by the author).

It seems that Justice Bautista in selecting the same, did not consider it in relation to the other portions of the majority opinion of Justice Feria in the Peralta case. Justice Feria cited that excerpt in connection with the following portion of his decision previous thereto:

> "As the so-called Republic of the Philippines was a de facto government of paramount force, the questions involved in the present case cannot be decided in the light of the Constitution of the Commonwealth Government because the *belligerent occupant was totally independent of the Constitution of the occupied territory* in carrying out the administration over the said territory . . . ." (Italics by the author).

The belligerent occupant alone was independent of the Constitution, but not the inhabitants of the occupied territory. The Constitution was suspended only with respect to the Japanese occupants, but it was in force with respect to the inhabitants of the Philippines.

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[1] Art. 1306, Civil Code, par. 1—"When both parties are guilty, neither of them may recover what he has given by virtue of the contract nor demand the fulfillment of what the other party has offered."

[2] 42 O. G., pp. 198, 208.

Justice Feria's theory of one law existing at a time, citing Oppenheim [3] for support, is correct in a limited sense, i.e., the invaders were governed by only one law—by their law and not by the Philippine Constitution. His theory is limited, considering the various relations existing among the people staying in the occupied territory. There are at least three such relations:

(1) the relation between the belligerent occupants and the inhabitants of the occupied territory;

(2) the relation between the inhabitants themselves;

(3) the relation between the inhabitants of the occupied territory and their legitimate government.

The Constitution is not binding on the belligerent occupants so that in their relations with the inhabitants of the occupied territory, the former's law govern. The authority of the belligerent occupant to promulgate new laws and regulations or to apply their own laws, to the government of the inhabitants, is limited and qualified by the transient character of his occupation and the purpose thereof, which is the security, efficacy and success of his military operations.[4] As to securing his victory in the war, he has broad and absolute powers to make laws subject only to the restrictions of the Hague Regulations, the usages established by civilized nations, the law of humanity and the requirements of public conscience.[5] The most variations in the law occur in the relations between the belligerent occupants and the inhabitants; certain crimes, when committed by the former against the latter imperiling their war efforts, are repressed and punished more severely than when committed against their fellow subjects. Such crimes may be considered as taken out of the territorial law of the occupied territory and are governed by what is referred to as the martial law [6] imposed by the belligerent occupants.

However, in relations between the inhabitants themselves, the occupants are bound to respect the laws in force governing their social and commercial life [7] unless they are absolutely prevented by circumstances. They are forbidden to vary or suspend the laws affecting property and the personal relations of the inhabitants or those which regulate the moral order of the community.[8] The laws of the legitimate government, including the Constitution, regulate therefore such relations, since these do not impair the war efforts of the belligerent occupants and as to which they could have no interest.

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[3] Treaties on International Law, Vol. II, 6th Edition, Revised 1944, p. 342: "In carrying out the administration over the occupied territory and its inhabitants, the (belligerent) occupant is totally independent of the Constitution and laws of the territory since the occupation is an aim of warfare and the maintenance of the safety of his forces and the purpose of war stand in the foreground and must be promoted under all circumstances or conditions."

[4] U.S. Rules of Land Warfare, published 1940, pp. 76-77.

[5] Peralta v. Director of Prisons, G.R. No. L-49, November 12, 1945.

[6] Westlake, International Law, Part II—War, p. 96.

[7] Laurel v. Misa, 44 O.G., No. 4, p. 1176.

[8] Peralta v. Director of Prisons, G.R. No. L-49, November 12, 1945.

As to the third relation, since the sovereignty of the legitimate government subsists and is not transferred to the belligerent occupant,[9] the same cannot be affected by any act of the occupants. Justice de Joya in his concurring opinion in the Peralta case opined that in belligerent occupation, the original national character of the soil and the invader cannot as a general rule modify the permanent institutions of the country.

Such is the limitation on a government *de facto* validly established by the occupant enemy in the occupied territory. There would be far greater restrictions if the government established is illegal and contrary to the Laws of War. The government established by Japan in the Philippines during World War II is even denied legality by some eminent justices of the highest tribunal, whose opinions should be entitled to some consideration. Especially strong and vehement was Justice Hilado's denunciation of the particular brand of Japanese deceit which attempted to delude the Filipinos into believing that they at last had the independence that they had for so long wished and worked for, which fraud accordingly classified the government established here by the Japanese as counterfeit, not *de facto,* having its counterparts in the "puppet" governments of Manchuquo, Nanking and Burma.[10] In more uncomplimentary terms, the Japanese were compared to bandits and ruffians by Justice Perfecto under his theory of "illegal war" waged by Japan against us [11] or under the analogous theory of Justice Hilado of "unjustified war." [12]

The relations existing in the occupied territory being viewed in this light, the reference to the Peralta case by Justice Bautista must necessarily fall not only because of its misconstruction but also because the Peralta case by its own individual circumstances is a mile away from the present one.

The Peralta case dealt among others, with the validity of Executive Act No. 65 passed by the National Assembly of the so-called Republic of the Philippines penalizing robbery committed against the Japanese Army—which concerns relation No. 1, i.e., the relation between the belligerent occupants and the inhabitants of the occupied territory, while the present case deals with the validity of a contract of sale executed between private persons, not in any manner affecting the Japanese Army and therefore concerns relation No. 2, i.e., the relation between the inhabitants themselves. This statement alone in the light of the previous discussion, is sufficient to show the anomaly of the application of the Peralta doctrine to the present case.

Ironically enough, the Peralta case has been more than once cited in Laurel v. Misa to support the conclusion that the laws of the Commonwealth (including the Constitution) were in force during

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[9] Laurel v. Misa, *supra;* Co Kim Cham v. Valdez, G.R. No. L-5, 41 O.G., p. 779; Peralta v. Director of Prisons, *supra.*

[10] Concurring opinion in Peralta v. Director of Prisons, *supra.*

[11] Concurring opinion in Laurel v. Misa, *supra.*

[12] *Id.*

the Japanese occupation, contrary to the view of the majority decision in this case, advancing the same Peralta case in support, that the constitution was suspended during occupation period.

It has been held that the Constitution is a law applicable equally in war and in peace [13] with respect to the people under whose authority it was promulgated.

In the words of Justice Perfecto, "Can we conceive of an instance in which the Constitution was suspended even for a moment?" [14] The consequences of such a case would be frightful to contemplate.[15]

Justice Bautista in his decision applied the Civil Code provisions. It is submitted that the Constitution being in force, it should have been the law applied, having preference, as the fundamental law of the land,[16] to the Civil Code, and a judge has no more right to disregard it than a criminal has to violate the law.[17] The departments of our government including the Judiciary owe its obedience.

Granting as held by the majority decision in this case, that the Civil Code was the law applicable, it is submitted that the same conclusion would be reached, i.e., the invalidity of the sale of land to the defendant aliens. This is the very same conclusion reached by holding that the constitution is the law applicable to the contract of sale involved in the present case.

An exception to the irretroactivity of the application of laws is when the new law creates a new substantive right.[18] Article 526 [19] of the new Civil Code is submitted to create a new substantive right and therefore Article 526 is applicable retroactively to the present case, brought to the Supreme Court before the new Civil Code's effectivity. The question of the validity of the sale of land to aliens is submitted to be a difficult or doubtful legal question because in the decision of the Krivenko case on the same question, the justices were almost equally divided, being five against and four in favor of holding that the sale of land to aliens is valid. The decision could have been the other way around had one justice more, sided with the minority. If justices well versed in the law can differ, how much more a layman.[20] Therefore the provisions of Article 1306

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[13] Ex Parte Milligan, 4 Wallace 2.

[14] Concurring opinion in Laurel v. Misa, *supra.*

[15] Ex Parte Milligan, *supra.*

[16] 1 Willoughby on the Constitution, 2nd Ed., p. 16; Pampanga Bus Co. v. Pambusco Employees Union, 38 O.G. 984; Jelke Co. v. Emery, 214 N.W. 369.

[17] Ex Parte Siebol, 100 U.S. 371.

[18] Padilla, Civil Code Annotated, Vol. I, p. 6.

[19] Art. 526, New Civil Code, par. 3: "Mistake upon a doubtful or difficult question of law may be the basis of good faith."

[20] Padilla, Civil Code Annotated, Vol. II, p. 371 citing the Report of the Code Commission, p. 136: "When there is a mistake on a doubtful question of law . . . this is analogous to a mistake of fact and the maxim of 'Ignorantia legis neminem excusat' does not apply. When even the highest courts are sometimes divided upon difficult legal question . . . why should a layman be held accountable for his honest mistake on a doubtful legal issue?"

of the Civil Code substantially reproduced in Article 1412 of the new Civil Code is not applicable because the parties plaintiff and defendants in entering into the contract involved in the present case acted in good faith. They are not in pari delicto. They could not have known of the Krivenko decision at the time they entered into the contract of sale on March 18, 1943 since the Krivenko decision was promulgated on November 15, 1947. Having acted in good faith, the plaintiff should be granted his prayer for the return of his property and the cancellation of the transfer certificate of title issued to the defendants upon return of the purchase price to the defendants, who also acted in good faith.

Article 760 of the new Civil Code furnishes an apt analogy in the situation of a testator who has in good faith bequeathed his property or a portion thereof to an heir or legatee who also in good faith entered into possession thereof but was subsequently found to be incapacitated to succeed. The law requires the incapacitated heir to return the hereditary property because being incapable of succession, he cannot continue holding or owning the hereditary property. In the same manner, the vendee here, is submitted to have acted in good faith in transferring property to a person incapacitated to acquire it under the Constitution and the latter should return the land to the vendor.

In the case of Oh Cho v. Director of Lands,[21] the court invalidated a sale of land made to aliens, in view of the constitutional prohibition.

Even admitting as held by the majority decision that the parties are in pari delicto, they may still be allowed by the court to mutually return what they have given under the contract of sale on the ground that public policy will be advanced thereby. This is an exception to the pari delicto rule that the parties cannot obtain relief from the courts. The same case of Bough v. Cantiveros,[22] relied upon chiefly by Justice Bautista to prohibit the return of the land to the plaintiffs herein, intimated this exception.

It is submitted that public policy will be advanced by allowing relief to the vendors in the form of reconveyance of the land sold and return of the price paid because by such mutual restitution, the violation of our constitution will not be perpetuated and the nationalistic policy of the Constitution will be given effect.

The Constitution was promulgated by authority of the Filipino people and must necessarily reflect the intention of the people through the framers acting as their representatives. It was intended for the Filipino people to meet their needs and wants and to govern them in all cases.

Article XIII of the Constitution [23] is clearly nationalistic in character. The first of its three-fold purposes [24] is to insure the con-

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[21] 43 O.G., No. 3, p. 866.

[22] 40 Phil. 209.

[23] Conservation and Utilization of Natural Resources.

[24] 2 Aruego, *Framing of the Philippine Constitution*, p. 604.

servation for Filipino posterity, of the land, minerals, forests and other natural resources of the Philippines. They constitute the exclusive heritage of the Filipino nation and should therefore be preserved for those under their sovereign authority and their posterity.[25] They are analoguos to the vital organs of the body, the lack of any of which may cause instant death or the shortening of life, and being our God-given birthright, they should be 100% in Filipino hands,[26] consistent with the public policy of preserving the Philippines for the Filipinos.[27]

The second object in the nationalization of our natural resources is for it to serve as an instrument of national defense to help prevent extensions into our country of foreign control thru peaceful economic penetration. Our history reflects our relentless struggle ever since the Spanish conquest of the Philippines, to defend our national partimony against the aggressive onslaught of foreigners bent on grabbing our lands. First came the Spanish *encomenderos* and other gratuitous concessioners who were granted by the Spanish Crown immense areas of land. Thereafter came the friars and other religious corporations who notwithstanding their sacred vow of poverty, felt their greed whetted by the bountiful opportunities for easy and unscrupulous enrichment. By the use of moral intimidation based on the eternal tortures of hell, the big landed estates of the Catholic Church emerged [28] and no aspirin has as yet been concocted to relieve the government's headache on the matter.

The last, although not the least, aim in nationalizing our natural resources is to prevent the Philippines from becoming a source of international conflict with consequent danger to its internal security and independence. An example of this peril, given by the Committee on Nationalization and Preservation of Land and other Natural Resources in the preface of its report, is Texas which was originally a province of Mexico. To secure its rapid settlement and development and development, the Mexican Government offered free lands to settlers therein. With the consequent majority in numbers of the Americans over the Mexicans, a revolt organized by the former culminated in the annexation of Texas to the United States. As the Mexicans have profited from their bitter experience by including in their Constitution in 1917 serious limitations on the rights of aliens to hold lands and mines in Mexico,[29] so did we profit by our own bitter experience inserting in our fundamental law Article XIII. That the mouth fed may not bite the hand that feeds it.

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[25] Id., p. 595.

[26] Speech of Delegate Montilla at the Constitutional Convention quoted in Krivenko v. Register of Deeds, *supra*.

[27] Speech of Delegate Ledesma, Chairman of the Committee on Agricultural Development of the Constitutional Convention quoted in Krivenko v. Register of Deeds, *supra*.

[28] Justice Perfecto, Concurring opinion in Krivenko v. Register of Deeds, *supra*.

[29] 2 Aruego, *Framing of the Philippine Constitution*, pp. 605-606.

This intention of the people and the framers in adopting this provision should not therefore be frustrated in this case but should be given effect by the Supreme Court with other considerations overridden. It has done so in previous cases [30] construing the same provision and also in construing other provisions of the Constitution i. e. the provisions on the separation of the Church and State,[31] on the prohibition against self-incrimination [32] and on the independence of the Electoral Tribunal,[33] to cite a few examples.

It is therefore to be deplored that in the present case, the Supreme Court has not only been recreant of its obligation to uphold and enforce the Constitution,[34] but has acted in a manner practically equivalent to judicial abdication i. e. it assumed both parties were in pari delicto and solemely folding its hands whispered "Amen".

The present decision has upset the "legal apple cart" and we fear the time forthcoming unless the Supreme Court reverses its decision, when "we will rue the day we were born, for when a part of our country is in the hands of foreigners and not in ours, our independence will be just a mockery".[35]

LOURDES KAPUNAN TAYAO

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[30] Ashi v. Public Service Commission, 63 Phil. 428; Haw Pia v. Amana, 64 Phil. 469; Goldcreek Mining Co. v. Rodriguez, 37 O.G. 1632; Krivenko v. Register of Deeds, *supra*.

[31] Aglipay v. Ruiz, 64 Phil. 201.

[32] Bermulez v. Castillo, 64 Phil. 483.

[33] Angara v. Electoral Tribunal, 63 Phil. 139; Suanes v. Chief Accountant, 46 O.G. 462.

[34] "In the exercise of its powers and jurisdiction, this court is bound by the provisions of the Constitution"—Snneckenberger v. Moran, 63 Phil. 249.

[35] Speech of Delegate Montilla of the Constitutional Convention quoted in Krivenko v. Register of Deeds, *supra*.

Prohibition Against Members of the Senate and the House of Representatives to Appear as Counsel Before Courts-Martial.— Ferdinand Marcos and Manuel Concordia, both members of the House of Representatives, instituted two special civil actions of mandamus against the Chief of Staff and the General Court-Martial composed of different officers of the Armed Forces of the Philippines. Petitioners alleged that the respondent military tribunals excluded them unlawfully from the enjoyment of their right to appear as counsel for the accused prosecuted before said tribunals on the ground that they are attorneys duly admitted to practice law in the Philippines. Respondents contend that petitioners are disqualified by Sec. 17, Art. VI of the Contitution of the Philippines to appear as counsel for said accused.

The Supreme Court denied the petitions on the ground that courts-martial are considered as included under the phrase "any court" mentioned in Sec. 17, Art. VI of the Constitution and that the case in which they seek to appear as counsels is a criminal case under the meaning conceived of in that section. (Ferdinand Marcos and Manuel Concordia v. Chief of Staff and General Court-Martial, G.R.L.-4663 & G.R.L.-4671, promulgated May 30, 1951.)

The pertinent portion of Sec. 17, Art. VI of the Constitution involved in this case states:

> "* * * * * He (senator or member of the House of Representatives) shall not appear as counsel * * * before any court * * * in any criminal case wherein an officer or employee of the government is accused of an offense committed in relation to his office * * *."

To determine the question as to whether the petitioners are disqualified to appear as counsel in courts-martial, the Supreme Court through Justice Feria believed that the case presented two questions of law. First, whether courts-martial are included under the phrase "any court" of Sec. 17, Art. VI of the Constitution and second, whether the case brought before courts-martial are criminal cases.[1]

The first question requires an inquiry into the nature of courts-martial. The modern court-martial, it seems, is the evolution of the court of chivalry of former times.[2] They are instrumentalities of the executive power provided by congress for the President as Commander-in-Chief, to aid him in properly commanding the army and navy and in enforcing discipline therein, and utilized under his orders or those of his authorized military representatives.[3] Being

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[1] Ferdinand Marcos and Manuel Concordia v. Chief of Staff, *supra*.

[2] Ex parte Reed, 100 U.S. 13, 20.

[3] Winthrop's Military Law and Precedent, Vol. 1 & 2, 2nd Ed., p. 49, cited in Ruffy et. al. v. Chief of Staff, G.R. L.-533, promulgated Aug. 20, 1946.

instrumentalities of the executive power, courts-martial are not part of the judicial branch of the government.[4] It is indeed a creature of orders,[5] and except in so far as an independent discretion may be given it by statutes, it is as much subject to the orders of a competent superior as is any military body or person.[6] The military court in effect renders no judgment; it merely recommends that a judgment be rendered.[7]

Due to the peculiar nature of courts-martial as shown above, it was argued by the petitioners in the Marcos case that courts-martial are not included within the term "any court." Justice Feria opined that though courts-martial are not "inferior courts" as used in connection with the appellate jurisdiction of the supreme court and despite their peculiar nature, "they are yet, so far as they are courts at all, within their field of action, as fully courts of law and justice as is any civil tribunal." [8]

The fact is that courts-martial are lawful tribunals existing by the same authority as civil courts, have the same plenary jurisdiction in offenses against military laws as the latter courts have in controversies within their cognizance, and in their special and more limited sphere are entitled to an untrammeled exercise of their powers.[9] Although their jurisdiction is limited and special,[10] courts-martial have all the elements of a court. They have judges to hear evidence and to determine the facts and apply the law. They have parties, prosecutor and defendant. They have pleadings and a formal trial, render judgment, and issue process to enforce it. In short, they do everything within the sphere of their jurisdiction which any judicial tribunal can do to administer justice.[11] Winthrop, whose work on military law has been prodiguously cited by our supreme court in cases involving courts-martial, was quoted by Justice Feria as saying:

> 'As a court of law, it is bound, like any court, by fundamental principles of law, and in the absence of special provisions on the subject in the military code, it observes in general the rules of evidence as adopted in the common-law courts. As a court justice, it is required by the terms of its statutory oath to adjudicate between the United States and the accused 'without partiality, favor or affection' and according, not only to the laws and customs of the service, but to its 'conscience' i.e. its sense of substantial right and justice unaffected by technicali-

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[4] Dynes v. Hoover, 61 U.S. 838; State ex rel. Lanng v. Long, 66 So. 377.

[5] U.S. v. Colley, 3 Phil. 58, 63.

[6] Winthrop, *supra.*

[7] Glenn and Schiller, The Army and the Law, p. 51.

[8] Winthrop, *op. cit.*, p. 54.

[9] In re Davison, 21 F 618, 620; In the Matter of H.G. Smith, 14 Phil. 112, 115.

[10] Cabiling v. Prison Officer, 41 O.G. 465, 467; Runkle v. U.S., 7 Sup. Ct. 1141, 1146.

[11] People v. Van Allen, 55 N.Y. 31, 35.

ties. In the words of the Attorney General, courts-martial are thus, 'in the strictest sense courts of justice.' "[12]

As has been stated, the fact that a court-martial is an instrumentality of the executive branch of the government does not in any way diminish its character as an agency which dispenses justice and administers the law. Like our civil courts, its primary function is judicial in nature. And in the words of the late Justice Perfecto, "no amount of logodaedaly may change the nature of such functions. The trial and punishment of offenses, whether civil or military, naval or aerial, since time immemorial, have always been considered as judicial functions."[13] According to Justice Feria, not even the fact that the judgment rendered by a court-martial must be approved by the reviewing authority [14] will affect the character of the court-martial as a court, for a judgment of the Court of First Instance imposing death penalty must also be approved by the supreme court before it can be executed. The generic term "courts," therefore, embraces courts-martial.

The conclusion that courts-martial are courts as understood in the general sense does not fully answer the question as to whether they come under the phrase "any court" as used in the aforecited provision of the Constitution. Should this phrase be understood in the general sense? The supreme court resolved the question by stating the principle that in construing the constitution, it has been established that where words used have both a restricted and a general meaning, the general must prevail over the restricted unless the nature of the subject matter of the context clearly indicates that the limited sense is intended.[15]

Now, are the cases brought before courts-martial criminal in nature? The Supreme Court, speaking through Justice Feria, answered this question in the affirmative. Justice Feria, citing Winthrop, stated:

> "In regard to the class of courts to which it belongs, it is lastly to be noted that the court-martial is strictly a criminal court. It has in fact no civil jurisdiction whatsoever; cannot enforce a contract, collect a debt, or award damages in favor of an individual. Its judgment is a criminal sentence, not a civil verdict; its proper function is to award punishment upon the ascertainment of guilt."[16]

Commonwealth Act No. 408, otherwise known as the Articles of War, confirms the statement of Winthrop. The statute speaks of punishments, of guilt, and of offenses that may be committed thereunder, but one has to search in vain for an instance where a court-martial may have the opportunity to adjudicate a civil case.

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[12] Winthrop, *supra.*

[13] Dissent, Ruffy et al v. Chief of Staff, *supra.*

[14] Articles of War, Art. 46.

[15] See Gaiser v. Buck, 179 N.E. 1, 4; and Bronson v. Syverson, 152 Pac. 1039, 1043.

[16] Winthrop, *op cit.*, p. 55.

Criminal action is one instituted and prosecuted for the punishment of a crime.[17] And a crime has been defined, "generally as an act or omission which is forbidden by law, to which punishment is annexed, and which the state prosecutes in its own name."[18] Under Art. 17 of the Articles of War, actions before courts-martial are prosecuted in the name of the People of the Philippines. Our law, therefore, treats offenses prosecuted in our courts-martial as crimes regardless of whether such offenses be against the general law or merely violations of military discipline. The Supreme Court of the United States when it decided a case appealed from the Philippine Court made this clear when it said that conduct to the prejudice of good order and military discipline is actually a crime against society which is punishable by imprisonment in the penitentiary.[19] Thus, the prosecution of an accused before a court-martial is a criminal and not an administrative case, and, therefore, it would be, under certain conditions, a bar to another prosecution of the defendant for the same offense in a civil court.[20]

Considering, therefore, that courts-martial come under the phrase "any court" of Sec. 17 of Art. VI of the Constitution and that actions prosecuted before them are criminal cases, the conclusion must be that the prohibition embodied in said constitutional provision applies with equal force to courts-martial. Justice Feria, however, went further to state that there exist more reasons for prohibiting members of the Senate and of the House of Representatives to appear as counsel before courts-martial than in inhibiting them to appear in civil courts. According to Dean Aruego, the purpose of the constitutional prohibition was to insure justice in the decisions of the court without creating any suspicion that friendship with or fear of members of the Senate or of the House of Representatives had any controlling influence.[21] Since courts-martial are mere creatures of orders and subject to the orders of competent superiors, more precautions against such influence should be resorted to in courts-martial.

JOSE S. ARMONIO

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[17] Moran, Commentaries on the Rules of Court, Vol. III, 3rd ed., p. 487.

[18] People v. Conti 216 N.Y.S. 442, 447; Mossew v. U.S., 11 A.L.R. 1261, 1265.

[19] Grafton v. U.S., 11 Phil. 776, 790, citing Carter v. Roberts, 177 U.S. 496, 498.

[20] Grafton v. U.S., *supra;* U.S. v. Colley, *supra;* U.S. v. Tubig, 3 Phil. 244, 253.

[21] The Framing of the Constitution, Vol. I, p. 326.

"Jurisdiction of Inferior Court over Judgment Remanded to it from the Superior Court".—Natividad Doliente filed a case in the Court of First Instance to quiet title over two parcels of land and to recover damages against Jacinto Doliente and Federico Doliente. The court, presided by the respondent judge, absolved the defendants, without pronouncement as to costs. On appeal, the Court of Appeals affirmed the decision with costs against the appellant. On September 27, 1949, after the case was returned to the lower court, the defendants filed a motion for the execution of the judgment, and on September 28, 1949, another motion was filed to require the plaintiff to render an accounting of the products of the land. On October 27, 1949, the respondent judge issued two separate orders, one ordering the plaintiff to surrender possession of the lots to the defendants and to pay costs, and the other to render an accounting. When the plaintiff refused to render an accounting, respondent judge allowed the defendants to present evidence as to the damages allegedly suffered by them. On November 18, 1949, the respondent issued an order directing the plaintiff to deliver 57½ *bultos* of palay, or in lieu thereof, to pay ₱1,497.50 with legal interest until paid. Hence this petition for certiorari.

The question is whether the respondent judge acted legally and within his jurisdiction is issuing the orders of October 27, 1949 and November 18, 1949.

The Supreme Court ruled that these orders were issued by the respondent judge in excess of his jurisdiction because when the judgment of a higher court is returned to the lower court, the only function of the lower court is the ministerial duty of issuing the order of execution. (NATIVIDAD DOLIENTE V. MANUEL BLANCO, JUDGE OF THE COURT OF FIRST INSTANCE OF ILOILO, JACINTO DOLIENTE, FEDERICO DOLIENTE, G.R. No. L-3525, November 29, 1950).

The procedure to be followed when a case is appealed from the Court of First Instance to the Court of Appeals and a decision is rendered by the latter court is as follows:

> "*Remanding of case:*—Ten days after entry of judgment, the clerk shall remand the case to the lower court, unless notice is given of intention to petition the Supreme Court for a writ of certiorari, in which event the mittimus shall be stayed. Upon remanding the case, the clerk shall transmit to the court below a certified copy of the judgment for execution."[1]

The only function which the above quoted provision confers on the lower court is the ministerial one of issuing the order of execution. The proposition that where a cause has been appealed and a

[1] Rule 53, Sec. (9).

judgment rendered by the appellate court, no interference therewith will be tolerated on the part of the lower court by any proceeding in the cause other than such as is directed by the higher court, is well sustained by the authorities.[2] The inferior court is bound by the decree as the law of the case and must carry it into execution according to the mandate. They cannot vary it or examine it for any other purpose than execution, or give any other or further relief, or review it upon any matter decided on appeal, for error apparent, or intermeddle with it, further than to settle so much as has been remanded.[3] The function of the lower court being purely ministerial it cannot refuse to issue the writ of execution nor quash it or order its stay, for it cannot review or interfere with any matter decided on appeal. When case is appealed, the lower court loses its jurisdiction by reason of the appeal [4] and whatever was before the appellate court and there disposed of must be regarded as finally settled.[5] No court has power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction having equal power to grant the relief sought by injunction.[6] "A judge of lower court cannot enforce different decrees than those rendered by the superior court. If each and every court of first instance could enjoy the privilege of overruling decisions of the Supreme Court, there would be no end to litigation and judicial chaos would result.[7]

The stability of our property and individual interest and security demands the certainty and finality of judgments. "Slight reflection will show the wisdom of this rule. The necessity of giving finality to judgments that are not void is self-evident. The interests of society imposes it. The opposing view might make litigation more unendurable than the wrong that it is intended to redress. It would create doubt, real or imaginary, and controversy would constantly arise as to what the judgment or order was. 'Public policy and sound practice demand that at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were instituted was to put an end to controversies.' "[8] Indeed the *Rules of Court* contemplates speedy administration of justice.[9]

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[2] State v. Superior Court, 36 Pac. 443; Ex parte Dubuque & P.R. Co., 68 U.S. 514; Armstrong v. People, 5 S.E. 257.

[3] Sibbald v. U.S. 37 U.S. 485; Shioji v. Harvey, 43 Phil. 333. To the same effect is the ruling in Ex parte Dubuque & P.R. Co. v. Lutchfield, *supra*, where the court ruled that the district court had no power to set aside the judgment of the Supreme Court, its authority extending only to executing the mandate.

[4] Amor v. Jugo, G.R. No. L-922, Dec. 3, 1946.

[5] Cabigao v. Del Rosario, 44 Phil. 182; Lee v. Mapa, 51 Phil. 624.

[6] Hackstacker v. Levy, 11 Cal. 76; Crowley v. Davis, 37 Cal. 286; Indiana & Illinois RR. Co. v. Williams, 22 Ind. 198; Dyckman & McChain v. Kernochan, 2 Paige (N.Y.), 26; Deaderick v. Smith, 6 Humop. (Tenn.), 138.

[7] Shioji v. Harvey, *supra*, at p. 337.

[8] Contreras v. Felix, 44 O.G. 4306, 4310; Layda v. Legaspi, 39 Phil. 84; Dy Cay v. Crossfield, 38 Phil. 521.

[9] Rule 1, sec. 2; Rule 124, sec1.

At the risk of occasional injustice, we have to subordinate the equity of a particular situation to the overmastering need for certainty and immutability of judicial pronouncements. Public policy will be better subserved if this principle is adhered to, for the loss to society would be great if judges would be permitted to exercise the power to change or modify a judgment that has become final.

It would be strange if in establishing a hierarchy of courts the legislature had intended that a court at the bottom rung of the ladder could overrule that which has been decreed by its superior. Appellate jurisdiction would be a force if the Supreme Court did not have the power of preventing inferior courts from meddling with decisions when sent to them for complaince.[10]

When a judgment of the appellate court is remanded ten days after its entry such judgment has become final and it is well settled that the execution of a final judgment is a ministerial act.[11] A court cannot refuse to issue a writ of execution upon a final judgment; or quash it, or order its stay, for, as a general rule, the parties will not be allowed, after final judgment, to object to the execution by raising new issues of fact or of law except when there had been a change in the situation of the parties which makes such execution inequitable [12] or when it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or is issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or when the writ has been issued without authority.[13] The judge of first instance or the clerk of said court who, without just cause, refuses to issue it, may be compelled to do so through mandamus proceedings.[14]

Prudence dictates that the best and safest course is to follow the rule that inferior courts have no jurisdiction to review decisions or orders coming from superior courts and that their duty is the purely ministerial one of issuing the proper writ of execution. Although the court may commit occasional errors, yet, such may be cured in subsequent proceedings which may be granted through a timely motion for reconsideration or new trial or petition for relief from judgment. In criminal cases executive clemency may be availed of. But isolated cases of injustice must be suffered and borne for the common good and welfare.

JOSE DESIDERIO, JR.

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[10] Shioji v. Harvey, *supra.*

[11] Bonaplata v. Ambler & McMicking, 2 Phil. 392; Findlay & Co. v. Ambler, 3 Phil. 690;

[12] Warner, Barnes & Co. v. Jaucian, 13 Phil. 4; Behn, Meyer & Co. v. McMicking, 11 Phil. 276; Molina v. De la Riva, 8 Phil. 567; Espiritu v. Crossfield & Guash, 14 Phil. 588; Flor Mata v. Lichauco y Salinas, 36 Phil. 732.

[13] Wolfson v. Del Rosario & Fajardo, 46 Phil. 41; Dimayuga v. Raymundo 42 O.G. 2121.

[14] Hidalgo v. Crossfield. 17 Phil. 466.