CRIMINAL PROCEDURE

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A review of the 1961 Supreme Court decisions in the field of Criminal Procedure at once puts into full blaze the application and reiteration of time-tested doctrines, their amplifications and clarifications, and also the reversion to a past precedent. This is as it should be, for while the law should be stable, it must not, however, stand still.

PROSECUTION OF OFFENSES

The Rules of Court provide that all criminal actions must be commenced either by complaint or information [1] x x x and that a complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated.[2] Under article 344 of the Revised Penal Code, the offenses of seduction, abduction, rape or acts of lasciviousness shall not be prosecuted except upon complaint filed by the offended party or her parents, grandparents or guardian. This requirement is jurisdictional.[3]

In the case of *People v. Obaldo* [4] the defendant was found guilty of "rape with murder" by the trial court. Defendant-appellant contended, among others, that the trial court erred in holding that it has jurisdiction to try the case of rape with murder. The prosecution was able to establish the commission of both offenses. But the killing was done after the carnal assault. So it was not a complex crime, but two separate crimes were committed. Being separate crimes and the complaint for rape not having been signed by the parents, grandparents or guardian of the deseased, the trial court could not have acquired jurisdiction to take cognizance of the rape case. Appellant, therefore, cannot be convicted of the crime of rape, but only for the crime of murder. The case of rape was dismissed.

In the case of *People v. Yu*,[5] the defendant was charged of the crime of rape with murder. The complaint was not signed by the

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* Recent Documents Editor, *Philippine Law Journal*, 1961-62.

[1] Rule 106, section 1.

[2] Rule 106, section 2.

[3] 2 Moran, Comments on the Rules of Court (1957 ed.) p. 587 citing U.S. v. Narvas, 14 Phil. 410 (1909); U.S. v. de la Cruz, 17 Phil. 139 (1910); U.S. v. Castanares, 18 Phil. 210 (1911); U.S. v. Cruz and Reyes, 20 Phil. 363 (1911); U.S. v. de los Santos, 21 Phil. 404 (1912); U.S. v. Gomez, 12 Phil. 279 (1908); U.S. v. Ortiz, 19 Phil. 174 (1911); Samilin v. CFI of Pangasinan, 57 Phil. 298 (1932); People v. Trinidad, 58 Phil. 163 (1933); People v. Mandia, 60 Phil. 872 (1934).

[4] G.R. No. L-13976, April 29, 1961.

[5] G.R. No. L-13780, Jan. 28, 1961.

parents or guardian of the victim, but by the prosecuting fiscal only. The raping and the killing of the victim were simultaneously committed, making the crime a complex one. The accused had to choke and strangle the girl in order to silence her at the time that he was satisfying his lust on her. *Held:* The trial court acquired jurisdiction to try and decide the case. The crime committed being complex,[6] and one being a public crime, the fiscal alone could sign the complaint or information. The reason, therefor, is that since one of the component offenses is a public crime, the latter should prevail, public interest being always paramount to private interest.[7]

JURISDICTION

In order that a court may validly try a criminal case and render a valid judgment thereon, it must have jurisdiction both over the subject-matter and over the person of the defendant. The jurisdiction over the subject-matter is conferred upon courts by law.[8] Jurisdiction over the person of the defendant is acquired by the service of some coercive process upon him or by his voluntary appearance.[9]

The case of *People v. Delfin et al.,*[10] reiterated the rule that the jurisdiction of a court is determined in criminal cases by the allegations of the complaint or information and not by the result of the proof.[11] The allegations in the information being for slander by deed penalized under Article 359 of the Revised Penal Code by *arresto mayor* maximum to *prision correccional* minimum the Court of First Instance had jurisdiction over the case.[12] The contention that it had no jurisdiction since what was actually committed was simple slander is untenable. Besides, the facts proved constitute slander by deed.

In the case of *People v. Villanueva,*[13] the defendant was charged of the crime of serious and less serious physical injuries with damage to property in the amount of ₱2,636.00 through reckless imprudence. The question is whether the Justice of the Peace Court or the Court of First Instance had jurisdiction over the case. When the case was forwarded by the justice of the peace court to the Court of First Instance, a motion to quash was filed in the latter court on the ground that the court has no jurisdiction over the complex crime

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[6] Rape with Homicide (Homicide used in its generic meaning).
[7] Kapunan, Criminal Procedure (1960 ed.), p. 47.
[8] See The Judiciary Act of 1948, R.A. No. 296, as amended.
[9] Pennoyer v. Neff, 95 U.S. 714, 25 Law ed. 565 (1878); Banco Español Filipino v. Palanca, 37 Phil. 921 (1918); Perkins v. Dizon, 69 Phil. 186 (1939).
[10] G.R. Nos. L-15230 and 15979-81, July 31, 1961.
[11] People v. Co Hiok, 62 Phil. 501 (1935) and cases cited therein.
[12] Section 44(f), R.A. no. 296, as amended.
[13] G.R. No. L-15014, April 29, 1961.

charged. The CFI declared itself without jurisdiction on the ground that the penalty for the more serious offense of physical injuries through reckless imprudence is only *arresto mayor* minimum and medium, and even if applied in its maximum period, (for the complex crime) it would remain within the jurisdiction of the justice of the peace court. Upon appeal, the Supreme Court held that the CFI had jurisdiction. The fine fixed by law ranging from an amount equal to the value of the damage (₱2,636.00) to three times such value, but in no case less than twenty-five pesos,[14] is clearly beyond the jurisdiction of the justice of the peace court. Considering that it is the CFI that would undoubtedly have jurisdiction if the only offense were damage to property in the amount of ₱2,636.00 it would be absurd to hold that for physical injuries complexed with damage to property through reckless imprudence, jurisdiction would lie in the justice of the peace court.

In the case of *People v. Cuello*,[15] the accused was charged of violation of paragraph 2 of Art. 277 of the Revised Penal Code in the CFI of Manila. Defendant filed a motion to quash on the ground that the CFI has no jurisdiction over the case. The motion was denied. After the trial, defendant was found guilty. Upon appeal to the Court of Appeals the case was certified to the Supreme Court on the ground that appellant again had raised the question of jurisdiction. The justice of the peace and municipal courts have original jurisdiction over all offenses in which the penalty provided by law is imprisonment for not more than six months, or a fine of not more than two hundred pesos, or both such fine and imprisonment.[16] The Courts of First Instance have original jurisdiction in all criminal cases in which the penalty provided by law is imprisonment for more than six months, or a fine of more than two hundred pesos.[17] The penalty imposed by Article 277 of the Revised Penal Code "upon the parents who shall neglect their children by not giving them the education which their station in life require and financial condition permit" is *arresto mayor* and a fine not exceeding 500 pesos. The duration of *arresto mayor* is one month and one day to six months.[18] It must be noted that the penalty imposed is arresto mayor *and* a fine not exceeding 500 pesos. Where the fine fixed by law is beyond the jurisdiction of the municipal court and within that of the CFI, the latter is the one that has original jurisdiction.[19]

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[14] Art. 365 (3rd par.) Revised Penal Code, Act No. 3815, as amended.
[15] G.R. No. L-14307, Mar. 27, 1961.
[16] Section 87 (C), R.A. No. 296, as amended.
[17] Section 44(f), R.A. No. 296, as amended.
[18] Art. 27, Revised Penal Code.
[19] Angeles v. Jose, 50 OG 5764 (1954).

PROSECUTION OF CIVIL ACTION

Every person criminally liable for a felony is also civilly liable.[20] Except as otherwise provided by law, when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately.[21]

Waiver; partial—In the case of *People v. Verano* [22] a truck of the Mindanao Bus Co., driven by Jesus Verano figured in a vehicular accident resulting in the death of Dominador Paras and injuries to 23 other passengers. The Mindanao Bus Co., paid the victims certain sums of money and all of them including the heirs of Dominador Paras, waived and/or renounced their rights to recover damages. Verano was subsequently charged and convicted before CFI of Lanao for reckless imprudence, and sentenced to suffer imprisonment and to indemnify the heirs of the deceased D. Paras in the sum of ₱5,000. Verano moved for reconsideration contesting the legality of the indemnity award of ₱5,000 to the heirs of Paras, contending that the civil liability arising from the offense had been waived by the heirs of the deceased upon payment to them by the Mindanao Bus Co. of ₱3,000. The trial court denied the motion saying that the civil liability of the accused arising from the effects of the crime cannot be waived. The waiver is in favor of the Mindanao Bus Co., the employer of Verano, which is made by law subsidiarily liable for the civil obligation arising from the accident and in default of the person criminally liable. The waiver necessarily includes Verano, because the bus company in the final analysis have to pay. The Rules of Court, specifically Rule 107 section 1(a), provides that the civil liability is waivable. It must be noted that the waiver was signed by the victim's widow on her behalf and of her minor children. The widow, as legal administratix of the property pertaining to the children under parental authority,[23] has no authority to compromise their claims for indemnity arising from their father's death, for a compromise has always been deemed equivalent to an alienation and is an act of strict ownership that goes beyond mere administration.[24] Moreover, the court's approval necessary in compromise entered into by guardians or parents [25] is wanting. The indemnity award was reduced to ₱2,000 considering that the trial court awarded ₱5,000 and that ₱3,000 was paid pursuant to the compromise.

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[20] Art. 100, Revised Penal Code.
[21] Rule 107, Section 1(a), Rules of Court.
[22] Art. 320, Civil Code.
[23] Art. 320, Civil Code.
[24] Visayas v. Sugitan, G.R. No. L-8300, Nov. 18, 1955.
[25] Art. 2032, Civil Code.

PRELIMINARY INVESTIGATION

Definition—Preliminary investigation is a previous inquiry or examinaton made before the arrest of the defendant by the judge or officer authorized to conduct the same, with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the defendant is probably guilty thereof, so as to issue a warrant of arrest and to hold him for trial.[26]

Who may conduct preliminary investigation—Preliminary investigations may be conducted by the following: (1) justice of the peace or municipal judge; (2) city fiscal and provincial fiscal; and (3) municipal mayor, in the absence of the justice of the peace and auxiliary justice of the peace, when the investigation cannot be delayed without prejudice to the interest of justice. But the power vested in any of these officers does not exclude the Judge of the Court of First Instance from making the preliminary investigation if the complaint is filed directly before it.[27]

In the case of *People v. Reginaldo et al.*,[28] the preliminary investigation was conducted by the justice of the peace and discharged Pedro Padron, one of the three accused. The records were elevated to the Court of First Instance whereupon, after conducting his own preliminary investigation the provincial fiscal filed the information including Padron as an accomplice. The trial court dismissed the information as against Padron on the belief that "the provincial fiscal cannot conduct a preliminary investigation of his own under the provisions of R.A. 732 of the present case originally filed in the Justice of the Peace Court and thereafter include in the information an accused discharged from the complaint by said court for lack of evidence." [29] Upon appeal, the Supreme Court, relying on the case of *People v. Pervez*,[30] sustained the action of the provincial fiscal in conducting the preliminary investigation and afterwards filing an information against an accused who had previously been discharged by the justice of the peace. There is no substantial distinction between those cases originally investigated by the justice of the peace and dismissed by him, and those originally investigated by the provincial fiscal, in both of which, before filing an information

[26] Rule 108, section 1, Rules of Court.
[27] *Supra*, note 3 at 662.
[28] G.R. No. L-15960, April 29, 1961.
[29] Villanueva v. Gonzales, G.R. No. L-9037, July 31, 1956.
[30] G.R. No. L-15231, November 29, 1960

in the court, the provincial fiscal has to rely on the result of his own investigation. The ruling in the case of *Villanueva v. Gonzales*,[31] that R.A. 732 does not apply to cases began in the justice of the peace court and thereafter forwarded to the corresponding Court of First Instance, refers to those cases where the justice of the peace court conducted the second stage of the preliminary investigation and found a prima facie case, or where the accused waived the preliminary investigation therein. In such cases the provincial fiscal may rely on the evidence presented in the justice of the peace and is under no obligation to conduct an entirely new preliminary investigation. It does not apply to the present case. If the justice of the peace dismissed the charge, then the case stands as if no charge had been made, and the provincial fiscal may thereafter conduct his own investigation of the same charge.

In the case of *People v. Yu Go Kee, et al.*,[32] a complaint was filed against defendants with the City Fiscal's Office of Manila. Assistant Fiscal Jose Mayo of the Preliminary Investigation Division of said office, who conducted the investigation, recommended the dismissal of the cases in his Report of Investigation. Second Assistant City Fiscal Carlos Gonzalez, Chief of the Prosecution Division of the same office, instead filed three informations with the Court of First Instance of Manila charging Yu Go Kee and Vicente Sun for falsification of public and official documents, relying solely on the evidence submitted by Fiscal Mayo. Before arraignment, counsel for defendants filed separate motions to quash alleging, among others, that there was no valid preliminary investigation conducted by Fiscal Gonzalez. The trial court dismissed the cases. *Held:* a valid preliminary investigation preceded the filing of the informations in the three criminal cases. The recommendation of Fiscal Mayo, not being a final resolution of dismissal, was intended for the review and final action of either Fiscal Gonzales or the City Fiscal himself, and if it was forwarded to the City Fiscal directly, the latter probably referred it to Gonzales in whose division the ultimate duty of prosecuting cases in court devolves. The review by Gonzales was a continuance of the investigation conducted by Mayo, within the purview of section 38-C of R.A. 409, as amended. The reviewing Fiscal is not required to hear anew the same witnesses who appeared before another fiscal of the same office in case the latter has recommended dismissal.

[31] *Supra*, note 25.
[32] G.R. Nos. L-16155-57, November 29, 1961.

Waiver of preliminary investigation—The right of the accused to a preliminary investigation is a personal one and may be waived, expressly or by implication.[33]

In the case of *People v. Selfaison, et al.*,[34] the defendants were convicted of robbery with rape. On appeal, they contended among others that they were deprived of their right to preliminary investigation. *Held:* The appellants waived such right because immediately after their arrest, they filed bonds for their release and subsequently proceeded to trial without previously claiming that they did not have the benefit of a preliminary investigation. Moreover, as nothing appears on the record that such preliminary investigation has not been had, it is presumed that the inferior court proceeded in accordance with law.

In the case of *People v. Casiano*,[35] it was held that the trial court erred in dismissing the case for even if the defendant had a right to a preliminary investigation, the same was deemed waived upon her failure to assert it prior to or at least at the time of the entry of her plea in the court of first instance.[36]

BAIL

Definition—Bail is the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance.[37] It is not a punitive device which takes the place of punishment in case of forfeiture for non-appearance.[38]

In the case of *People v. Castelo et al.*,[39] the appellant's petition for bail upon the ground of the subsequent further delay in the final determination of the case pending the reconstitution of the testimony of five witnesses in the case was denied since the government cannot be solely blamed for the delay. Reconstitution is as much the duty of the prosecution as of the defense.

Forfeiture of bail—When the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear

[33] U.S. v. Cruz, 5 Phil. 575 (1906); U.S. v. Cockrill, 8 Phil. 742 (1906); U.S. v. Asebuque, 9 Phil. 24 (1907); U.S. v. Marfori, 35 Phil. 666 (1916); People v. Pili, 51 Phil. 965 (1926); U.S. v. Lete, 17 Phil. 79 (1910); U.S. v. Escalante, 36 Phil. 748 (1917); People v. Lara, 75 Phil. 786 (1946); People v. Magpale, 70 Phil. 176 (1940) citing People v. Solon, 47 Phil. 443 (1925); People v. Mejares, G.R. No. L-3494, Sept 28, 1951; People v. Lambino, G.R. No. L-10875, April 28, 1958.

[34] G.R. No. L-14782, Jan. 28, 1961.

[35] G.R. No. L-15309, Feb. 16, 1961.

[36] *Supra*, note 33.

[37] Rule 110, section 1, Rules of Court.

[38] Orfield, Criminal Procedure from Arrest to Appeal (1947), pp. 104-105; People v. Puyal, 52 O.G. no. 16, 6886 (1956)

[39] G.R. No. L-10774, Feb. 16, 1961.

as required, the bond is declared forfeited and the bondsmen are given thirty days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of the bond. Within the said period of thirty days, the bondsmen (a) must produce the body of their principal or give the reason for its non-production; and (b) must explain satisfactorily why the defendant did not appear before the court when first required to do so. Failing in these two requisites, a judgment shall be rendered against the bondsmen.[40]

In the case of *People v. de la Cruz*,[41] the Associated Insurance and Surety Co., posted ₱4,000 bail bond for the accused. After failure of the accused to appear on a given date as required by the court, the bail bond was ordered confiscated. Later the bonding company apprehended the accused and surrendered him to court. It also filed a motion to set aside the order of confiscation and for the cancellation of the bond. The motion was denied, hence this appeal. Appellant contends that it fully complied with its undertaking after it had surrendered the body of the principal to the court. *Held:* The bonding company failed to comply with the two requisites under Rule 110, section 15 within the 30-day period granted by the court. The explanation that the accused was ill at the date when required to appear before the court, was not satisfactory. Considering however that the accused was surrendered to the court 5 months after the judgment against the bond, and the recommendation of the Solicitor General, the liability was reduced to ₱2,000.

In the case of *People v. Omal*,[42] the accused was charged on Dec. 30, 1954 with robbery in band. The Luzon Surety Co., posted the bail bond of ₱10,000, for Omal's provisional liberty. He was later charged with rape in another criminal case and arrested anew on Aug. 10, 1956. On December 12, 1956 Omal disappeared while under the custody of the provincial governor. It was only on December 20, 1957 that the bonding company filed an *ex-parte* motion for the withdrawal of the bail bond. The State opposed on the ground that the motion was not made when Omal was re-arrested in connection with the charge for rape but only after he had disappeared, arguing that the bonding company had chosen to continue with its liability under the bond. The trial court cancelled the bail bond. It was of the opinion that appellee's inability to produce the person of Omal was due to the negligence or irregular conduct of the Provincial Warden and the Provincial Governor of Cotabato, which facilitated the escape of the prisoner. The Supreme Court *held* that while

[40] Rule 110, section 15, Rules of Court.
[41] G.R. No. L-15954, July 31, 1961.
[42] G.R. No. L-14457, June 30, 1961.

this may be true, it is not sufficient to justify the cancellation of the bail bond. A surety is the jailer of the accused. It is not merely his right but his obligation to keep the accused at all times under his surveillance.[43] Therefore, the appellee should not have allowed the irregular conduct of the Warden and the Provincial Governor for a considerable time resulting in the escape of the prisoner. It is equally chargeable with negligence, therefore, in this connection. The surety's rights, duties and liabilities after the prisoner is, for another offense, arrested and then escapes and/or absconds must be controlled by statutory provisions other than those of section 16. Rule 110, Rules of Court, or by the general principles of contract. The bail will be exonerated where the performance of its condition is rendered impossible by the act of God, the act of the obligee, or the act of law.[44] But even then, it is the surety's duty to inform the court of the happening of the event so that it may take action or decree the discharge of the surety. This duty, the appellee did not comply with. The subsequent arrest of the principal on another charge, or in other proceedings, while he is out on bail does not operate *ipso facto* as a discharge of his bail.[45] The lower court's order of cancellation was reversed.

In the case of *People v. Pecson et al.*,[46] 5 persons were charged of the crime of robbery in band. For their provisional liberty, 19 persons put up the requisite bail in the total amout of ₱40,000. The case was set for hearing in the court of first instance. Of the 19 bondsmen, only 8 received notice of hearing. The defendants did not appear due to the mistaken advise of counsel. But counsel, upon learning of his mistake, sent by registered mail a written motion for postponement of the day of hearing. The motion was denied and the lower court ordered the arrest of defendants and the confiscation of their bail bond, giving the bondsmen 30 days within which to produce the persons of accused and to explain why their bond should not be forfeited. Counsel then filed a motion to lift the order of confiscation alleging that if the bondsmen were not able to present the accused at the trial, it was because of the advise he gave them not to appear due to his mistaken belief that the same was only for preliminary investigation which the accused can waive and that if bondsmen failed to surrender them within the 30-day period it was because the accused had already been arrested and lodged in

[43] U.S. v. Addison, 27 Phil. 563 (1914); U.S. v. Bonoan, 22 Phil. 1 (1912); U.S. v. Sunico, 40 Phil. 826 (1920); People v. Uy Tuising, 61 Phil. 404 (1935); People v. Lee Diet, L-5256, November 27, 1953.

[44] *Ibid.*

[45] 6 C.J. 1026.

[46] G.R. No. L-15584, Oct. 27, 1961.

jail by virtue of the previous order of the court. The motion was denied, hence, this appeal. The Court set aside the order of confiscation. The eleven bondsmen who were not notified of the hearing cannot be held liable for their failure to produce the accused and their bonds cannot be forfeited on that ground. Neither can the order of confiscation be justified as to the eight bondsmen who were notified because their failure to produce the accused at the trial or within the 30-day period was satisfactorily explained by the reasons stated in the motion. As a matter of fact the trial took place immediately thereafter which eventually resulted in the exoneration of the accused.

MOTION TO QUASH

Concept—The motion to quash is a petition addressed by the accused to the court on the theory that, for any of the grounds enumerated by law,[47] the State has no reason to put him on his defense.[48]

In the case of *People v. Matondo, et al.*,[49] Matondo and 29 others were charged on March 11, 1955 upon complaint of the Philippine Women's Educational Association, before the Court of First Instance of Davao, with an alleged violation of R.A. 947 by entering and occupying, through force, strategy, and stealth, without proper permit from any competent authority, several portions of public agricultural land situated in the municipality of Panabo, Province of Davao and comprised within the area covered by Sales Application No. 19010 of the Philippine Women's Educational Association, a corporation which has been granted an entry permit thereto by the Bureau of Lands. On March 14, 1955 the defendants filed a Motion to Suspend the Issuance of the Warrant of Arrest against them, on the ground that they have been in possession of the land before June 30, 1953, the effectivity date of R.A. 947. After hearing the court found that defendants have been in possession since May 10, 1953 and that the permit of the Philippine Women's Educational Association to enter the land was issued on August 21, 1954, long after the defendant had taken possession of the premises and had introduced improvements thereon. The lower court dismissed the information. The State appealed and questioned the legality of the dismissal in spite of the fact that the hearing had was only on the motion to suspend the issuance of the warrant of arrest against the defendants. The Court affirmed the dismissal saying that although the regular procedure was not followed, the motion filed by the

[47] Rule 113, section 2, Rules of Court.
[48] Navarro, Criminal Procedure (1960), p. 321.
[49] G.R. No. L-12873, Feb. 24, 1961.

defendants could be considered a motion to quash, since it is not the caption of a pleading but the allegations contained therein that should prevail.[50] The defendants claimed that their possession of the land dates back before the effectivity of the law punishing the acts. It was virtually, therefore, a motion to quash on the ground that the information does not charge an offense, as in fact, the offense did not then exist. The State was not deprived of its day in court even if the prosecution did not present any evidence to substantiate the allegations of the information. The prosecution did not object to any of the documentary evidence presented which were official communication, but it cross-examined the sole witness for the defense.

DOUBLE JEOPARDY

Under Rule 113, section 9, the protection against double jeopardy may be invoked by the accused in any of the following cases: (1) previous acquittal; or (2) conviction of the same offense; or (3) when the case against him has been dismissed or otherwise terminated without his express consent. But in any of these cases, legal jeopardy does not exist but under the following conditions: (a) upon a valid complaint or information; (b) before a competent court; and (c) after he has been arraigned and has pleaded to the complaint, or information.[51] The plea of double jeopardy is a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustation thereof, or for any offense which necessarily includes or is included therein.

In the case of *People v. Archilla, et al.*,[52] Jose Luis Archilla and Alfreda Roberts were charged with bigamy. After pleading not guilty, Alfreda Roberts filed a motion to quash the information with regard to her on the ground that the facts therein alleged do not constitute the offense charged. The trial court sustained the motion. Reconsideration was denied, hence, this appeal. The prosecution correctly contended that the lower court erred in quashing the information because her act of contracting the second marriage with Archilla with knowledge of the fact that his former marriage was still valid constitutes an indispensable cooperation in the commission of bigamy which makes her responsible as an accomplice.[53] But appellee contended that even if that were true, the quashing of the information amounts to her acquittal which prevents the pros-

[50] *Supra*, note 3 at 598.
[51] People v. Ylagan, 58 Phil. 851 (1933).
[52] G.R. No. L-15632, Feb. 28, 1961.
[53] Viada, Codigo Penal de 1870, p. 561; Francisco's Revised Penal Code, Annotated, p. 1515; Guevara's Commentaries on the Revised Penal Code, pp. 757-758.

ecution from taking appeal as it would place her in double jeopardy. *Held:* Granting that appellee may be prosecuted for bigamy as an accomplice and that it was error for the lower court to quash the information, the appellee cannot be allowed to invoke the plea of double jeopardy after inducing the trial court to commit an error which otherwise it would not have committed. Parties to a judicial proceeding may not, on appeal, adopt a theory inconsistent with that which they sustained in the lower court.[54] Appellee is estopped from invoking the plea of double jeopardy. A party will not be allowed to make a mockery of justice by taking inconsistent positions which if allowed would result in brazen deception.[55]

In the case of *People v. Casiano,*[56] a complaint for estafa was filed with the justice of the peace against Rosalina Casiano. After conducting the first stage of the preliminary investigation and finding the existence of a probable cause, said court issued a warrant of arrest, whereupon defendant posted bail bond for her temporary release. When the case was called for preliminary investigation, defendant waived her right thereto and accordingly, the record was forwarded to the Court of First Instance. Subsequently the provincial fiscal filed therein an information for illegal possession and use of a false treasury or bank note. Upon arraignment the defendant pleaded not guilty. The prosecution began to present its evidence by introducing the testimony of a witness, who was cross-examined by the defense counsel. Then the case was postponed several times. Later the defendant appeared with a new counsel who was granted permission to submit a "motion to dismiss" on the ground that there had been no preliminary investigation of the charge of illegal possession and use of a false bank note, which affected the jurisdiction of the court. The motion was granted; hence, this appeal by the State. The trial court held that the waiver by defendant in the justice of the peace court did not deprive her of the right to a preliminary investigation of the crime of illegal possession and use of false bank note, for this offense does not include and is not included in that of estafa, the latter offense being covered by Article 315 of Title Ten entitled Crimes Against Property whereas the former is covered by Article 168 of Title Four entitled Crimes Against Public Interest, of the Revised Penal Code. Whether the defendant is entitled to such preliminary investigation depends upon whether or not such crime was included actually in the allegations

[54] Williams v. McMicking, 17 Phil. 408 (1910); Molina v. Somes, 24 Phil. 49 (1913); Agoncillo v. Javier, 38 Phil. 424 (1918); American Express v. Natividad, 46 Phil. 207 (1924); Toribio v. Decasa, 55 Phil. 461 (1930); San Agustin v. Barrios, 68 Phil. 475 (1939); Jimenez v. Bucoy, L-10221, Feb. 29, 1960; Northern Motors v. Prince Line, L-13884, Feb. 29, 1960; Model v. Calasanz, L-14885, Aug. 31, 1961.

[55] People v. Acierto, G.R. Nos. L-2708 and L-3355-60, Jan. 30, 1953.

[56] *Supra*, note 35.

of the complaint filed with the justice of the peace, regardless of the term used to designate the offense charged therein. The Supreme Court *held* that the lower court erred, since the allegations in the information for illegal possession and use of a false bank note were included actually in those of the complaint for estafa. Even if the defendant had a right to such other preliminary investigation the same was deemed waived upon her failure to assert it prior to or at least at the time of the entry of her plea in the Court of First Instance.[57] Independently of the foregoing, the absence of such preliminary investigation did not impair the validity of the information, nor did it affect the jurisdiction of the Court. On the question whether the appeal by the prosecution placed the defendant in double jeopardy, the Court ruled that it did not. The immunity from double jeopardy is a personal privilege which the accused may waive. When the defendant filed a brief in which she limited her discussion on the merits of the appeal, she not only failed to question the right of the prosecution to appeal but also conceded the existence of such right. She is deemed to have waived her constitutional immunity.[58] The present case was distinguished from the cases of *People v. Hernandez*;[59] *People v. Ferrer;*[59a] *People v. Bao*;[59b] and *People v. Golez*,[59c] where the Court dismissed the appeal by the prosecution despite defendant's failure to object thereto. In those cases, the defendants did not file any brief, hence, they had performed no affirmative act from which waiver could be implied. Regardless of the foregoing, she was estopped from pleading double jeopardy, for to do so it would be necessary for her to assert that the trial court had jurisdiction to hear and decide this case, which is exactly the opposite of her theory in her motion to dismiss. The ruling in the case of *People v. Acierto*[60] that a party will not be allowed to make a mockery of justice by taking inconsistent positions which if allowed would result in brazen deception, applies in this case. It is well settled that parties to a judicial proceeding may not on appeal, adopt a theory inconsistent with that which they sustained in the lower court.[61]

In the case of *People v. Blaza and Mangulabnan*[62] the defendants were charged in the Court of First Instance of Laguna of kidnapping

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[57] *Supra*, note 33.

[58] People v. Acierto, *supra* note 55; 14 Am. Jur. 958; Alexander v. State, 176 So. 835 (1937); Branch v. State, 78 So. 411 (1918); State v. Warner, 205 NW 692 (1925); State v. Mares, 199 P. 111 (1921); Fines v. State, 240 P. 1079 (1925); Fowler v. State, 120 SW 2d 1054 (1938); Mann v. State, 187 NE 343 (1933); Ballensky v. People, 178 P 2d 433 (1947); People v. McDonald, 10 NW 2d 309 (1943); State v. Davis, 238 P 2d 450 (1951).

[59] 49 O.G. 5342 (1953).

[59a] G.R. No. L-9072, Oct. 23, 1956.

[59b] G.R. No. L-12102, Sept. 29, 1959.

[59c] G.R. No. L-14160, June 30, 1960.

[60] *Supra*, note 55.

[61] *Supra*, note 54.

[62] G.R. No. L-13899, Sept. 29, 1961.

Dorotea, Fe, and Buenaventura, all surnamed Fernandez for the purpose of extorting ransom from them. Convicted by the trial court, both defendants appealed, but later Blaza withdraw his appeal. The appellant raised anew the question of double jeopardy in the Supreme Court. He contended that he had been charged with the complex crime of rebellion with multiple murder, robbery, arson and kidnapping in a criminal case of the CFI of Pampanga, *People v. Guillermo Paguinto et al.*, and after pleading guilty to simple rebellion the court sentenced him; and that in a criminal case of the CFI of Laguna, *People v. Apolinar Oracion et al.*, for rebellion complexed with murder, robbery, arson, rape, and kidnapping, the kidnapping of Dorotea, Fe and Buenaventura was alleged to be for the purpose of raising funds for the HMB organization and a necessary means of committing rebellion. He argued that the kidnapping is absorbed in rebellion [63] and that having been convicted of simple rebellion he is now put twice in jeopardy of punishment for the same offense. *Held:* The contention was untenable. The information in the criminal case in CFI of Pampanga shows that the kidnapping has never been mentioned as an overt act of rebellion, and the information in the CFI of Laguna and the decision rendered therein does not mention the appellant as a defendant therein. The appellant, therefore, was not put in jeopardy of punishment for the kidnapping and cannot claim double jeopardy. In the course of the trial of the case, in the absence of counsel de parte the lower court, after appointing counsel de oficio, proceeded with the trial. The Court upheld the procedure followed by the trial court. The defendant was under detention and it is his constitutional right and the duty of the court to have a speedy trial and disposition of the case.

In the case of *People v. Almirez and Principle*,[64] the defendants were found guilty of the murder of Crispin Santamena. Principe made a special defense that he had previously been convicted of rebellion in another criminal case, and the murder of Santamena having been committed in furtherance of the rebellion, the case should be dismissed in accordance with the doctrine laid down in *People v. Geronimo*.[65] *Held:* As it was not proved that the cause of the killing was the act of the deceased in divulging the camp or headquarter of the appellant to the police, the murder was not in furtherance of the rebellion. The conviction was affirmed.

[63] People v. Hernandez, 52 O.G. 5506 (1956); People v. Geronimo, L-8936, Oct. 28, 1956; People v. Togonon, L-8926, June 29, 1957.
[64] G.R. Nos. L-16109, and 16110, Oct. 20, 1961.
[65] 53 O.G. 68 (1956).

PLEA

Essence of plea of guilty—the essence of a plea of guilty is that the accused admits his guilt, freely, voluntarily, and with a full knowledge of the consequences and meaning of his act and with a clear understanding of the precise nature of the crime charged in the complaint or information.[66]

Plea of guilty personal—a plea of guilty can be put in only by the defendant himself in open court.[67]

Plea of guilty sufficient basis for conviction—It is well settled that a plea of guilty, when formally entered on arraignment, is sufficient to sustain a conviction even for a capital offense without the introduction of further evidence and that such plea admits all the material allegations of the information, including the attendant circumstances qualifying and/or aggravating the crime.[68]

In the case of *People v. Ama, et al.*,[69] Marcial Ama, with the assistance of counsel de oficio, pleaded guilty to a charge of murder with the special aggravating circumstance of quasi-recidivism[70] which cannot be offset by the mitigating circumstance of plea of guilty, hence the maximum period of the penalty for murder or death was imposed. Upon review by the Supreme Court, counsel for defendant argued that the lower court erred in not informing him that his plea cannot offset quasi-recidivism as to obviate the imposition of the death penalty. The Court *held* that the lower court has no such duty, but only to inform the defendant of the nature and cause of the charge against him.[71] With regard to the contention that the lower court erred in convicting appellant merely on his plea without the introduction of evidence in support of the charge, the Court held that the plea of guilty entered upon arraignment is sufficient to sustain a conviction for any offense, without the necessity of requiring additional evidence since by so pleading, the defendant himself has supplied the necessary proof.[72]

The same ruling was made in the case of *People v. Perete et al.*[73] and in *People v. Peralta et al.*[74] In the case of *People v. Abejero*,[75]

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[66] U.S. v. Burlado, 42 Phil. 72 (1921); U.S. v. Jamad, 37 Phil. 805 (1917); U.S. v. Dineros, 18 Phil. 566 (1911).

[67] Rule 114, section 3, Rules of Court.

[68] U.S. v. Dineros, 18 Phil. 566 (1911); U.S. v. Agcaoili, 31 Phil. 91 (1915); U.S. v. Talbanos, 6 Phil. 541 (1906); U.S. v. Burlado, 41 Phil. 72 (1921); U.S. v. Jamad, 37 Phil. 805 (1917); People v. Valencia, 59 Phil. 42 (1933); People v. Palupe, 69 Phil. 702 (1940); People v. Santa Rosa, L-3487, April 18, 1951; People v. Yamson, et al., L-14189, Oct. 25, 1960; People v. Ala, L-16633, Aug. 31, 1960; People v. Salazar, L-11601, June 30, 1959; People v. Acosta, L-7449, Mar. 23, 1956.

[69] G.R. No. L-14783, April 29, 1961.

[70] Art. 160, Revised Penal Code.

[71] Rule 111, section 1(b), Rules of Court.

[72] *Supra*, note 68.

[73] G.R. No. L-15515, April 29, 1961.

[74] G.R. No. L-15959, Oct. 11, 1961.

[75] G.R. No. L-18470, Mar. 27, 1961.

the motion to set aside the judgment of conviction based on a plea of guilty, and change the plea to not guilty was also denied. In the case of *People v. Escare*,[76] the defendant claimed that since he moved for substitution of plea before judgment was promulgated, it is a matter of right on his part to withdraw his plea of guilty and substitute it for not guilty for then it cannot be said that he decided to change his mind in view of the penalty imposed. *Held:* The motion for substitution is addressed to the sound discretion of the trial court and unless there is a clear showing that such discretion has been abused, the appellate court is not justified in interfering with the ruling of the trial court.[77]

In the case of *People v. Surbida*,[78] the defendant who is a minor pleaded guilty to frustrated homicide, and sentenced in accordance with Article 80 of the Revised Penal Code. After securing another counsel, he moved for new trial alleging that as he was below 15 and above 9 years of age at the time of the commission of the offense and on arraignment, the trial court erred in taking no evidence to determine whether or not he acted with discernment. The Court affirmed the denial of the motion, relying on the case of *People v. Nieto*,[79] wherein it was held that the combined effect of the allegation that the accused "with intent to kill, did then and there willfully, criminally and feloniously attack her victim" and "contrary to law" emphasizes her knowledge and understanding when she committed the act that it is unlawful and is penalized.

STATE WITNESS

The discharge of a co-accused to be used as a state witness and the dismissal of the information against a co-accused for insufficiency of evidence are matters which devolve upon the public prosecutor,[80] to be exercised upon the conditions set forth in Rule 115, section 9. The trial court has the exclusive responsibility to determine whether the conditions prescribed in the rule exist.[81]

JUDGMENT OR SENTENCE

The judgment shall contain clearly and distinctively a statement of the facts proved or admitted by the defendant and upon which

[76] G.R. No. L-16938, Oct. 27, 1961.
[77] U.S. v. Neri, 8 Phil. 669 (1907); U.S. v. Paquit, 5 Phil. 635 (1906); U.S. v. Molo, 5 Phil. 412 (1905); People v. Quinta, 51 Phil. 820 (1928); People v. Nueno, 70 Phil. 556 (1940); People v. Serrano y Sandoval, 47 O.G. 5106 (1950).
[78] G.R. N. L-15865, Oct. 30, 1961.
[79] G.R. No. L-11965, April 30, 1958.
[80] People v. Bergunio Luna, et. al., G.R. No. L-15480, Jan. 28, 1961.
[81] People v. Hon. Ibanez, Judge, CFI of Bukidnon, L-5242, April 20, 1953, Guiao v. Figueroa, 50 O.G. 4828 (1954); People v. Bautista, 49 Phil. 389 (1926).

the judgment is based. A judgment of conviction shall state, among others, the penalty imposed upon the defendant, and the civil liability or damages caused by the wrongful act to be recovered from the defendant by the offended party, if there is any.[82]

In the case of *People v. Despavellador*,[83] the defendant was charged with damage to property through reckless negligence committed to a jeep belonging to Librada Manalo in the sum of ₱200. Convicted by the trial court, he appealed to the Court of Appeals which held that the value of the damage sustained by the jeep essential to the determination of the imposable penalty, had not been established, and accordingly set aside the decision and remanded the case to the trial court for further proceedings. When the case was called in the trial court for the reception of additional evidence, the witnesses for the government failed to show up despite several postponements. Hence the case was deemed re-submitted for decision and another one was rendered which convicted the defendant of damage to property through reckless imprudence in the amount of ₱85.00 representing the value of the wares of the passenger Flaviana Enriquez. The question is whether the decision suffers from a fatal defect in that it convicted appellant of a crime not alleged in the information. *Held:* The crime of damage, thru reckless imprudence, to the wares of said passenger is not charged in the information for damage through reckless negligence to a jeep belonging to Librada Manalo. Hence the decision punishes appellant for a crime of which he was not legally informed, and denied him due process of law. The failure to establish the value of the damage to the jeep is not an insurmountable obstacle to the imposition of the penalty, for the third paragraph of Article 365 of the Revised Penal Code provides that the fine ranges from an amount equal to the value of said damage to three times such value but which shall in no case be less than twenty-five pesos. Hence the value of the damage in the present case should be deemed to be at least ₱25. The defendant was, therefore, convicted of damage through reckless negligence to the jeep of Librada Manalo in the amount of ₱25.00.

In the case of *People v. Daleon*,[84] the accused was acquitted of the charge of malversation of public funds. The judgment also ordered the payment of his salary during his suspension from office and his reinstatement. The prosecution appealed and contended that the trial court erred in so ordering. *Held:* The trial court has no power to order the payment of the salary of the accused during

[82] Rule 116, Section 2, Rules of Court.
[83] G.R. No. L-13814, Jan. 28, 1961.
[84] G.R. No. L-15630, Mar. 24, 1961.

the period of suspension.[85] The only issue joined by plea of not guilty is whether accused committed the crime charged and in such case the only judgment that the court is legally authorized to render is either one of acquittal or of conviction with indemnity to the injured party and accessory penalty. His relief lies in the proper administrative or civil action prescribed by law.

Modification of judgment—In the case of *People v. Gallardo*,[86] the appellant assails the action of the trial court in amending its decision after the appellant had appealed therefrom, so as to sentence him to *reclusion perpetua* instead of *reclusion temporal*, the penalty meted out in the original decision. This is a moot question for in view of the appeal, the Supreme Court has plenary authority to impose such penalty as may be deemed proper,[87] should he be eventually found guilty of any offense.

NEW TRIAL

In the case of *People v. Saez*,[88] a motion for reconsideration and/or new trial on the ground that new and material evidence has been discovered which the defendant could not with reasonable diligence have discovered and produced at the trial, and which if introduced and admitted, would probably change the judgment,[89] was filed. The newly discovered evidence is a sworn statement of one Roman Catian made right after his apprehension by the Philippine Constabulary 3 days after the killing of one Agripino Patrimonio in the evening of March 9, 1955. After Adolfo Saez was convicted and the case was pending appeal, the counsel chanced upon a certain Sgt. Honesto Samson of the Davao PC Command who turned out to be one of the original investigating PC officers. Samson inquired about the status of the case and when informed that Adolfo was convicted, volunteered the information that among the files of the Davao PC Command was a confession, signed by Roman Catian after his arrest in which Catian admitted having shot Agripino Patrimonio and pointed to Maximo Saez, appellant's brother, as the one who in the presence of 2 other persons had handed to Catian a rifle in order to shoot on sight any person found in the coconut plantation owned by the family. The statement was purposely suppressed by the Constabulary officers. The Solicitor General, in his answer, agreed to the motion, saying that in calling the attention of the court to the said newly discovered evidence, appellant in effect

[85] People v. Manago, 69 Phil. 496 (1940); Pueblo v. Lagutan, 70 Phil. 481 (1940); Manila Railroad Co. v. Baltazar, et al., L-5451, Sept. 14, 1953.
[86] G.R. No. L-12080, Jan. 28, 1961.
[87] See Rule 120, Section 11 and Rule 121, section 1, Rules of Court.
[88] G.R. No. L-15776, Nov. 29, 1961.
[89] Rule 117, section 2(b), Rules of Court.

points to his own brother, Maximo Saez, as the killer, which strikes the representation as rather unnatural and almost desperate for a brother to do, unless compelled by a conviction of his own innocence. *Held:* Considering that the extrajudicial confession made by Catian subsequent to the one mentioned was taken into account by the trial court in convicting appellant, that the sworn statement relied upon in the motion under consideration might render valueless the sworn statement upon which the trial court partly relied to convict appellant and might even affect the credibility of some of the prosecution witnesses, and that before and during the trial the defense had no reasonable opportunity to discover the existence of the sworn statement, in the interest of justice, new trial was granted.

APPEAL

From all final judgments of the Courts of First Instance or courts of similar jurisdiction, . . . an appeal may be taken to the Court of Appeals or to the Supreme Court.[90]

In the case of *People v. Espiritu,*[91] a bail bond of ₱6,000 was reduced to ₱4,000 and later to ₱2,000 considering that the accused was only 13 years old. Pending the posting of the bail, his counsel prayed that instead of posting a bail bond, he be released and placed under the care and custody of a responsible person pending trial on the merits, which was granted. The Government, appealed disputing the authority of the trial court to release the accused without bail and to commit him instead to the care and custody of a private person pending trial on the merits. *Held:* Considering that the order from which the government appealed is interlocutory which cannot be the subject of appeal unless final judgment is rendered,[92] the appeal was dismissed.

In the case of *People v. Longao,*[93] the accused was charged before the justice of the peace of Bontoc, Mountain Province of homicide thru reckless imprudence. Upon arraignment he pleaded guilty and was sentenced to indeterminate penalty of 2 months and 1 day of *arresto mayor* to 1 year and 8 months of *prision correccional* and to indemnify the heirs of the deceased. He appealed directly to the Supreme Court and in due time both the appellant and the government submitted their respective briefs. The Court dismissed the appeal saying that an appeal from an inferior court can only be taken to the court of first instance, even if the appeal only involves

[90] Rule 118, section 1, Rules of Court.
[91] G.R. No. L-15957, April 25, 1961.
[92] Rule 41, section 2, Rules of Court.
[93] G.R. No. L-16898, Mar. 25, 1961.

questions of law.[94] It seems, however, that the case falls under the last two paragraphs of section 87 of the Judiciary Act of 1948.[95]

In the case of *People v. Malayao,*[96] the defendant was convicted by the justice of the peace of Plaridel, Misamis Occidental of the crime of oral defamation. She appealed to the CFI where a new information was filed. On two occasions the hearing of the case was postponed on motion of the prosecution. On the date set for hearing the complainant did not appear. The case was dismissed, on motion of the defendant. On the very same day, the assistant provincial fiscal filed a motion for reconsideration of the order of dismissal on the ground that the complainant and her witnesses together with her private prosecutor had actually arrived in the courtroom 5 minutes after the order of dismissal had been promulgated. Supporting affidavits were attached to the motion attesting to the fact that their car had accidentally a flat tire while on their way and that complainant could not have lost interest in the case as shown by her effort in travelling a distance of 92 kilometers to go to court and employing her own counsel. The trial court denied the motion, hence, this appeal, contending that the court committed an abuse of discretion. *Held:* A better discretion would have been an ascertainment of the truth of the affidavits. As the motion was filed on the very day of dismissal, no damage is perceived to the right of the accused to a speedy trial. The order of dismissal was set aside and the case remanded to the trial court. The judgment of the justice of the peace court was vacated upon appeal to the CFI and a new arraignment is necessary because the case stands as if it were originally instituted in that court.[97] Considering that the accused has not yet been arraigned in the CFI, the reopening of the case cannot place the accused in double jeopardy.

An appeal may be dismissed due to failure to file a brief within the reglamentary period.[98]

In the case of *People v. Callanta,*[99] the Supreme Court certified the appeal to the Court of Appeals [100] considering that the errors assigned by appellant involve the appreciation of the evidence or the credibility of the witnesses which by their very nature involve questions of fact.

In the case of *People v. Casiano,*[101] it was held that Rule 118, section 2 of the Rules of Court cannot limit either the jurisdiction

[94] Rule 40, section 1, Rules of Court.
[95] Republic Act No. 296, as amended.
[96] G.R. No. L-12103, Feb. 28, 1961.
[97] People v. Jaranilla, G.R. No. L-8030, Nov. 18, 1955.
[98] People v. Manuel Baniaga, et al., G.R. No. L-14905, Jan. 28, 1961.
[99] G.R. No. L-16948, Nov. 29, 1961.
[100] See section 31, R.A. 296, as amended.
[101] *Supra*, note 35.

of the Supreme Court to entertain appeals by the government in criminal cases, or the right of the latter to appeal in such cases, because otherwise the Court which promulgated the Rules would have exceeded its rule-making power under the Constitution,[102] not only by legislating on a subject that concerns neither pleadings, practice or procedure but also by diminishing or modifying substantive rights, namely (a) the exclusive jurisdiction of the Supreme Court to review, revise, reverse,modify, or affirm on appeal . . . final judgments or decrees of inferior courts in . . . all cases in which only errors or questions of law are involved—which is statutory [103] as well as constitutional [104] and hence (b) the right of both parties in a case to appeal to the Supreme Court from the decision of the lower court and raise only questions of law, as in the case at bar. The rulings in the cases of *Marquez v. Prodigalidad* [105] and *Calano v. Cruz* [106] were cited by analogy—that section 178 of the Revised Election Code [107] which clearly denies, without any qualification, the right to appeal in election protests involving municipal vice-mayors and municipal councilors, had to give way to the constitutional provision granting the Supreme Court jurisdiction over all appealed cases involving purely questions of law.

RECONSTRUCTION UNDER ACT 3110.

In the case of *People v. Castelo et al.*[108] Castelo was sentenced to death by the CFI of Rizal (Pasay City) for murder, now pending review by the Supreme Court. He filed a Motion for New Trial on the ground that the stenographic notes containing the testimonies of Edgar Bond (now deceased), Mariano Almeda, Raymundo Tal Villareal, Matias Soriano and Francisco Espiritu are already definitely lost, and that said testimonial evidence is vital to the disposition of the case on the merits, that the loss of the notes would delay the filing of appellee's brief and consequently the final termination of the appeal. It is suggested that the loss of the stenographic notes constitutes an irregularity that has been committed during the trial prejudicial to the substantial rights of the defendant. *Held:* The irregularity that justifies a new trial under Rule 117, section 2, is one that has been committed during the trial. There is no showing

[102] Article VIII, section 13.
[103] R.A. 296, section 17(6).
[104] Article VIII, section 2.
[105] 83 Phil. 818 (1949).
[106] 50 O.G. 610 (1954).
[107] Sec. 178, R.A. 180, as amended. From any final decision rendered by the Court of First Instance in protests against the eligibility or the election of provincial governors, members of the provincial board, city councilors, and mayors, the aggrieved party may appeal to the Court of Appeals or to the Supreme Court as the case may be, within five days after being notified of the decision for its revision, correction, annulment or confirmation and the appeal shall proceed as in a criminal case. Such appeal shall be decided within three months after the filing of the case in the office of the clerk of court to which the appeal has been taken.
[108] *Supra*, note 39.

that an actual irregularity has been committed during the trial. The proceedings have been all in accordance with law and a decision on the merits has been duly rendered and promulgated.

The remedy is reconstitution of the missing evidence as provided in sections 14 and 15 of Act 3110 dealing with pending criminal cases.[109]

Following previous rulings,[110] and in the exercise of its inherent power to restore and supply deficiencies in its records and proceedings [111] and of its discretion to adopt, in the absence of specific procedure provided in the Rules, any suitable process or mode of proceeding which appears most conformable to the spirit of said rules,[112] the Court remanded the case to the court of origin solely for the purpose of reconstructing the testimony of the witnesses, the stenographic notes of whose original testimony have been lost, by retaking the testimony of those original witnesses still available, and if desired and necessary, of some other witnesses who had personal knowledge of the facts testified to by the first witness who had already died.

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[109] Sec. 14. The testimony of witnesses if any has already been taken, shall be reconstituted by means of an authentic copy thereof or by a rew transcript of the stenographic notes; but if it is impossible to obtain an authentic copy of the evidence and if the stenographic notes have been destroyed, the case shall be reheard anew as if it had never been tried.

Sec. 15. If the case has already been decided, the decision shall be reconstituted by means of an authentic copy. If an authentic copy is not attainable, the case shall be decided anew, as if it had never been decided.

[110] Madalang v. CFI of Romblon, 49 Phil. 487 (1926) and Almario v. Ibanez, 81 Phil. 592 (1948). The legal provisions concerning the reconstitution of pending criminal cases are identical in terminology *mutatis mutandis* to those referring to pending civil cases.

[111] Rule 124, section 5(h), Rules of Court.

[112] Rule 124, section 6, Rules of Court.