

LORENZO G. VALENTIN, PETITIONER, VS. HONORABLE ANDRES SANTA MARIA, PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, BRANCH II; YOLANDA MATIAS, BEING REPRESENTED BY JOS...*G.R. No. L-30158. January 17, 1974*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9dfee264c727/>**FERNANDO, J.:**

The invocation of *People vs. Soria*,^[1] promulgated in 1968, did suffice for this Court to entertain this certiorari and mandamus proceeding filed on February 10, 1969. It was the ruling therein that a judge who had qualified and assumed office in one district could not thereafter validly issue an order of dismissal in a criminal case formerly heard by him while holding such office in another. In this suit, petitioner's contention that the decision of December 20, 1963 of the then Judge Samuel F. Reyes at a time he had already qualified and assumed office in the Rizal Court of First Instance disposing of a civil case tried by him in Bulacan as well as the orders subsequently issued by respondent Judge Andres Santa Maria of Bulacan denying a motion to disregard such judgment should be declared null and void in accordance with the *Soria* holding. Whatever merit there might have been to a petition of this character no longer attaches to it as of January 31, 1973, when this Court, in *People vs. Donesa*,^[2] declined in a decision unanimously arrived at to give retroactive effect to *Soria*, thus sustaining an order of dismissal of the then Judge Donesa handed down after he had ceased to be such in Abra, having taken over his new post in the Tagaytay Court of First Instance. What poses an even greater obstacle to petitioner being sustained is that in a concurring opinion by Justice Teehankee, to which were affixed the votes of five other justices,^[3] he categorically affirmed: "The present decision signifies the abandonment and overturning of the contrary ruling in the case of *People vs. Soria* and other cases therein cited, * * * which should be so stated plainly for the guidance of the bench and bar as well as of litigants in general."^[4] This Court, now sitting en banc, after a thorough consideration of the matter, adopts such a view. As a consequence, *Soria* is bereft of any authoritative force. It is overruled. The petition must be, as it is hereby, dismissed.

The relevant facts are beyond dispute. Petitioner Lorenzo G. Valentin was the defendant in a civil case of the Court of First Instance of Bulacan with private respondent Yolanda Matias as plaintiff.^[5] A decision was rendered on December 20, 1963 in favor of the private respondent as plaintiff declaring null and void Transfer Certificate of Title No. T-32568 in the name of the defendant, now petitioner, who was likewise considered as a possessor in bad faith and thus must account for the fruits of the property from May 2, 1961, in addition to paying private respondent as plaintiff the amount of P1,000.00 as attorney's fees and the cost of the proceedings. The Register of Deeds of Bulacan was likewise thereby ordered to cancel Transfer Certificate of Title No. T-32568 of his office, reinstate Transfer Certificate of Title No. 15329 in the name of Petra Gatmaytan and thereafter cancel it and issue a new one in favor of private respondent after the payment of the corresponding fees. As noted, it was a decision of Judge Samuel F. Reyes.^[6] It was duly appealed to the Court of Appeals,^[7] which affirmed it in toto on May 13, 1968.^[8] There was a motion for reconsideration by petitioner as defendant-appellant therein, but it

was denied by the Court of Appeals on July 19, 1968.[9] Subsequently, on October 26, 1968, upon discovering that when Judge Samuel F. Reyes promulgated the decision dated December 20, 1963, he had already assumed office as District Judge for the Province of Rizal and the Cities of Pasay, Quezon and Caloocan, Branch X, and in view of the ruling in *People of the Philippines vs. Simpliciano Soria*,[10] petitioner filed in the Court of First Instance of Bulacan with respondent Judge Santa Maria a "Motion to Disregard Judgment of December 20, 1963 and to Render judgment Anew." [11] There was on October 29, 1968, a pleading of private respondent in opposition.[12] Respondent Judge, on December 12, 1968, denied said motion.[13] After a denial of a motion for reconsideration, petitioner came to this Court.[14]

Had there been no *Donesa* decision of January 31, 1973, the judicial path of duty is clear. Petitioner was on the right track, the one indicated by *Soria*. That was so before. It no longer holds true now. This petition, as earlier set forth, must be dismissed.

1. In *People vs. Donesa*,[15] the undisputed facts were culled from the petition thus: "As shown in the petition: "That on March 7, 1962, an information was filed charging the respondent, Lapaz Tuanquin with Homicide and Serious Physical Injuries through reckless imprudence for the death of the late Evaristo Gramaje and hospitalization of Antonio Tejada on December 23, 1960, said information docketed as Criminal Case No. 266 of the Court of First Instance of Abra, then presided over by herein respondent judge; That after presentation of its evidence, the prosecution * * * rested its case on October 15, 1963, whereupon, the accused * * * immediately made known her desire to file a motion to dismiss; That on April 23, 1964, respondent Lapaz Tuanquin through her lawyers, filed a motion to dismiss, and on August 7, 1964, petitioner *People of the Philippines*, filed its opposition to the motion to dismiss, and on August 12, 1964, a motion to reopen the case for purposes of having some exhibits translated from the Ilocano dialect to English was submitted, * * *; That while respondent judge was still the presiding judge of the Court of First Instance of Abra, he was nominated to his present position, which nomination was subsequently confirmed by the Commission on Appointments, and he qualified as District Judge of Cavite to preside at Branch IV of the Court of Tagaytay City on July 13, 1964, long before the opposition to the motion to dismiss and motion to reopen the case were filed, * * *; That on January 12, 1965, respondent judge issued an order dismissing Criminal Case No. 266 on the flimsy ground that the prosecution failed to present one witness, a witness whose presentation was made unnecessary in view of the admission of the accused-respondent as evidenced by her sworn statement and submitted during the course of presentation of evidence by the prosecution. * * * The order of dismissal is dated November 27, 1964." [16] On the above facts, the petition for certiorari was dismissed.[17] It was admitted in the unanimous opinion of the Court that "a serious jurisdictional question would have arisen if the doctrine in *People vs. Soria* were deemed controlling." [18] Why it was not considered applicable was next taken up in that portion of the opinion in these words: "There, this Court, through J.B.L. Reyes, ruled: 'It may be noted therefrom that the signing or writing of judgments outside the territorial jurisdiction of the court where the cases are pending, is allowed when the judge leaves the province "by transfer or assignment to another court of equal jurisdiction," or "expiration of his temporary assignment." In other words, the rule contemplates of a temporary occupancy by the judge of either the post he has left or of the one he is going to assume. Under such a doctrine, respondent judge certainly would be devoid of jurisdiction to issue the challenged order of dismissal. It should not, however, be made to apply. The *Soria* decision was promulgated on March 1, 1968. The two cases cited therein, *Ong Siu vs. Paredes* and *Jimenez vs. Republic*, were respectively decided on July 26, 1966 and January 31, 1968. The order of dismissal here was issued on November 27, 1964. Since, realistically, a judicial decision speaks as of the date it is handed down, *Soria* ought not to be given retroactive force and effect. For to do so, in a situation like the present, would amount to a deprivation of constitutional right which certainly is objectionable and should not be allowed. That is why, in whatever manner viewed, this petition cannot prosper." [19]

There was, as mentioned earlier, a separate concurrence by Justice Teehankee which, again as previously stated, elicited approval from the then Justice, now Chief Justice, Makalintal and Justices Castro, Makasias, Antonio and Esguerra.[20] The stand of Justice Teehankee was set forth thus: "I concur in the result of the main opinion of Mr. Justice Fernando, but believe that such result should not be reached on the principal ground of double jeopardy as therein invoked but rather by meeting frontally the fundamental issue of respondent judge's authority and jurisdiction to still act on and grant the motion to dismiss bearing on the sufficiency of the prosecution's evidence to establish beyond reasonable doubt respondent's guilt submitted to him in the Abra court after and notwithstanding his appointment and assumption of the office of district judge of the Cavite court (by virtue of said dismissal motion having been submitted to him and his having 'totally heard' the case before his subsequent appointment and permanent transfer to the Cavite court of first instance)."[21] After mentioning Soria, the concurrence was for what it characterized as "the contrary interpretation now adopted by the court that a district judge who has left the court of his original assignment or appointment by permanent (not merely temporary) transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel may lawfully prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment, as duly provided by section 51 of the Judiciary Act above-quoted." [22] In its view, therefore, the Donesa decision "signifies the abandonment and overturning of the contrary ruling in the case of People vs. Soria and other cases therein cited * * *"[23] The purpose, according to Justice Teehankee, for stating the matter thus plainly and unequivocally, is "for the guidance of the bench and bar as well as of litigants in general." [24]

2. As made clear in the opening paragraph of this opinion, it is the ruling of this Court en banc that for reasons to be more fully set forth, Soria should be overruled. In the language of Justice Laurel, it no longer "retains its virtuality as a living principle." [25] There should not be any doubt therefore that it could no longer be relied upon. It has been stripped of any authoritative force. This is not to deny that on purely conceptual grounds, our ruling may raise some questions. It may be argued that a decision speaks as of the moment of its promulgation. Unless the judge then still is authorized to do so, he is legally precluded from acting on such a case. His permanent transfer to another district then poses such a barrier. Such a view finds support from the standpoint of legal theory. Consistency in the application of jural norms would require such a conclusion. There is, as Cardozo did point out, a misuse of logic, "when its methods and its ends are treated as supreme and final." [26] For if it were otherwise, law remains merely a closed self-contained system of abstract rules independent of human needs and values. It should not be thus. Nor may there be neglect and indifference to things as they are. A court, no less than the general public, must not close its eyes to the realities of the situation. The law's efficacy then requires awareness of what actually transpires. The social facts upon which it must be grounded and to which it is applied cannot be ignored. The important question is not so much a norm's conformity with jural consistency, but how it functions. In the apt language of Justice Tuazon, "we test a rule by its results." [27]

Why Soria cannot survive under such an approach is made clear in the concurrence of Justice Teehankee thus: "Compelling considerations support such abandonment of Soria and a reversion to the old rulings cited in the main opinion that the public interest and the speedy administration of justice will be best served if the judge who heard the evidence (although he may have been permanently transferred to another province or station) renders the decision rather than to leave a mountain of evidence and transcripts for the perusal and appreciation of a new judge totally unfamiliar with the case and who did not have the opportunity of hearing the witnesses and observing their deportment for purposes of gauging their credibility and appraising their testimony." [28] Nor is there any offense to the sense of right, nor any affront to the cause of justice. More than the successor, the judge

who heard the witnesses testify, who presumably had pored over the documentary evidence, certainly is in a much better position to appraise the facts and thereafter to apply the statute or codal provision involved. A litigant's expectation as to his suit being adjudged with care and thoroughness has greater chances then of being satisfied under such circumstances. This is so even on the assumption that the one who succeeds him on the bench is much more skillful and penetrating in his scrutiny of the proof and much more proficient in the jurist's art. Independently then of the social considerations involved, the notion of law as a reflection of reason and given expression under conditions that assure an impartial and thorough adjudicative process is more likely to be served when the one who hears the case renders the decision himself.

3. The members of this Court, who in *Donesá*, gave their conformity to the concurring opinion, were not unaware of the possibility that under the specific provision of the Judiciary Act,[29] it could happen that after a new incumbent had been qualified to the position thus vacated, an abandonment of *Soria* could result in a situation where two judges would be legally competent to promulgate a decision. To avoid such an undesirable state of affairs, they likewise were in full agreement with what was said on the matter by Justice Teehankee: "The only qualification that I would add — for purposes of avoiding any unnecessary conflict in case another judge has already been appointed to his former court and the same is no longer vacant or unoccupied (although in the case at bar, it appears that respondent judge's former court remained vacant) — is that in line with the statutory proviso therein governing cases 'heard only in part,' as well as with the first paragraph of the cited section providing for detail of judges, the interested parties should obtain from this Court the corresponding authorization for the permanently transferred judge who heard in toto the case and the evidence to render the decision thereon, in the same manner as temporarily transferred or assigned judges on detail." [30] Such a view commends itself to the entire Court.

4. It appears, therefore, that both from the standpoint of the juristic process as justice and as social control, and with only the slightest departure from the demands of strict logic, the definitive abandonment of *Soria* has much to recommend it. Insofar as this particular proceeding is concerned, then, it is manifest that it is bereft of any support in law.

WHEREFORE, the petition for certiorari and mandamus is dismissed. With costs against petitioner.

Zaldivar, J., concurs.

Teehankee and Barredo, JJ., concur in their respective separate opinions.

Ruiz Castro, J., concurs in the separate opinion of Justice Teehankee.

Makalintal, C.J., Makasiar, Antonio, Esguerra, Fernandez, Muñoz Palma, and Aquino, JJ., concur in this and the separate concurring opinion of Justice Teehankee.

[1] L-25175, March 1, 1968, 22 SCRA 948.

[2] L-24162, January 31, 1973, 49 SCRA 281.

[3] The then Justice, now Chief Justice, Makalintal, and Justices Castro, Makasiar, Antonio and Esguerra.

[4] 49 SCRA 281, 294.

[5] Petition, par. II. The case, No. 2586 of the Court of First Instance of Bulacan, is entitled *Yolanda Matias vs. Lorenzo G. Valentin*.

[6] *Ibid*, par. III.

- [7] C.A. G.R. No. 34166-R.
- [8] Petition, par. IV.
- [9] Ibid, par. V.
- [10] L-25175, March 1, 1968, 22 SCRA 948.
- [11] Petition, par. VII.
- [12] Ibid, par. VIII.
- [13] Ibid, par. IX.
- [14] Ibid, par. X.
- [15] L-24162, January 31, 1973, 49 SCRA 281.
- [16] Ibid, 285.
- [17] Ibid, 291.
- [18] Ibid, 290.
- [19] Ibid, 290-291.
- [20] All five Justices likewise concurred with the main opinion.
- [21] Ibid, 291-292.
- [22] Ibid, 294.
- [23] Ibid.
- [24] Ibid.
- [25] Cf. Antamok Goldfields Mining Co. vs. Court of Industrial Relations, 70 Phil. 340, 360 (1940).
- [26] Cardozo, Nature of Judicial Process 47 (1921).
- [27] Araneta vs. Dinglasan, 84 Phil. 368, 376 (1949).

[28] 49 SCRA 281, 295.

- [29] Section 51, Rep. Act No. 296 (1948).

[30] 49 SCRA 281, 294.

CONCURRING OPINION

TEEHANKEE, J.:

The main opinion of Mr. Justice Fernando formally announces the Court's abandonment and overturning of the doctrine of *People vs. Soria*[1] and other cases cited therein[2] as urged in the writer's concurring opinion with a majority of the Court in *People vs. Donesá*[3] which is generously quoted therein.

The basic provision of law involved is the second paragraph of section 51 of the Judiciary Act^[4] as amended, which provides:

"Whenever a judge appointed or assigned in any province or branch of a court in a province shall leave the province by transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the Court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment: Provided, however, That if a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who had partly heard the case to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction."^[5]

Under Soria, the Court previously interpreted the law to mean that "the signing or writing of judgments outside the territorial jurisdiction of the court where the cases are pending, is allowed when the judge leaves the province 'by transfer or assignment to another court of equal jurisdiction' or 'by expiration of his temporary assignment.'^[6] In other words, the rule contemplates of a temporary occupancy by the judge of either the post he has left or of the one he is going to assume," reiterating that "in similar cases, decisions promulgated after the judge who penned the same had been appointed and had qualified to another court were declared not valid and without any effect." (Supra, at pages 951-953).

Soria recognized, however, that where the case was not yet submitted for decision but was heard only in part by the same permanently transferred judge, he could be duly authorized by this Court upon proper petition of any of the parties to the case and the recommendation of the district judge, under the proviso in the cited law, "to continue hearing and to decide said case notwithstanding his [permanent] transfer or appointment to another court of equal jurisdiction."^[7]

The Court now therefore overturns Soria in its ruling that the same permanently transferred judge may not decide cases totally heard by him and that it is only where he has been temporarily transferred or assigned to another court of equal jurisdiction that he is authorized to decide such cases totally heard by him. As was stressed in our concurrence in Donesa, "there seems to be no valid reason to authorize a permanently transferred judge who has heard the case only in part x x x 'to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction' x x x but to withhold such authorization to decide the case from the same permanently transferred judge who has 'totally heard' the case."^[8]

So, it is now definitely ruled that the factor of temporary occupancy stressed in Soria is inconsequential and that under the first part of section 51 of the Judiciary Act a judge who has left the court of his original assignment by permanent transfer or appointment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel may lawfully "prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in court to direct the filing of the judgment" — and is thus placed on an equal footing as a permanently transferred judge who has heard a case only in part who may be authorized under the proviso of the cited law to continue hearing and to decide the case thereafter.

In Donesa, as stated in the main opinion, the writer suggested adding the qualification in order to avoid conflicts in a situation where two judges would be legally competent to promulgate a decision for the same court or branch thereof (viz the permanently transferred judge and his successor in the court vacated by him) that "the interested

parties should obtain from this Court the corresponding authorization for the permanently transferred judge who heard in toto the case and the evidence to render the decision thereon, in the same manner as temporarily transferred or assigned judges on detail."^[9]

Upon further deliberation of the Court on this question — in the light of the text, policy and intent of the law as well as of the power of administrative supervision over all courts transferred to the Supreme Court under Article X, section 6 of the 1973 Constitution, — it is now believed that such qualification and requirement of prior authorization from this Court for the permanently transferred judge who heard in toto the case and the evidence to render the decision, is not necessary, because:

— The text of the law itself constitutes and grants such authorization, when it provides that "it shall be lawful for [such transferred judge who totally heard the case] to prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment;"^[10]

— As stressed by Justice Malcolm for the Court in the early case of *Delfino vs. Paredes*,^[11] the policy and intent of such statutory provisions dealing with detail, assignment and transfer of judges to another district or province is to promote the public interest and the interest of justice and "(O)bviously, the public interest and the speedy administration of justice will be best served if the judge who heard the evidence renders the decision" for "the law does not mean to authorize a judge to try a case and then deprive him of the power to render his decision after he has taken cognizance of it. The legislative purpose was not to make the judge holding a special term of court a mere referee for another judge." Surely these same fundamental considerations equally apply to a judge who has totally heard the case and is permanently transferred to another court of equal jurisdiction — he should not be deemed deprived by the mere fact of permanent transfer of the power to render his decision in a case totally heard by him and which was "duly argued or opportunity given for argument to the parties or their counsel;"^[12] and

— Finally, it should be noted that any doubts whether the doctrine hereinabove enunciated in overturning *Soria* comes clearly within the language and intent of section 51 of the Judiciary Act, have been totally set at rest with the express grant of power to the Supreme Court in the 1973 Constitution under Article X, section 5, paragraph (3) to "assign temporarily judges of inferior courts to other stations as public interest may require." Such power of temporary assignment and the Supreme Court's power of administrative supervision over all inferior courts certainly envisage the Court's power to require a permanently transferred judge to render the decisions in the cases totally heard by him and submitted for decision in the court left and vacated by him, and to prepare and sign such decisions in his new station and have them filed by the clerk of his old court in the manner provided by the law.

Experience has shown that such undecided cases left by permanently transferred judges who totally heard the cases have been the bane of their successors who more often than not, appalled by the voluminousness of the records and carried away by the pressures of their daily work, have left such old cases unattended and undecided to be handed down in turn to their successors. It will indeed redound then to the public interest and the cause of a speedy and efficient administration of justice will best be served by eliminating such a bottleneck and now pronouncing that the above-quoted basic provision of the second paragraph 1 of the Judiciary Act^[13] authorizes and requires the permanently transferred judge who totally heard the case and received the evidence (although he has been appointed to another province or station) to "render the decision rather than to leave a mountain of evidence and transcripts for the perusal and appreciation of a new judge totally unfamiliar with the case and who did not have the opportunity of hearing the witnesses and observing their deportment for purposes of gauging their credibility and appraising their testimony."^[14]

The mischief and harm of a contrary rule based on Soria is exemplified by the case at bar where after the adverse judgment rendered by Judge Samuel F. Reyes in a case totally heard by him as judge of the Bulacan court of first instance on December 20, 1963 after he had already been permanently transferred and assumed office as judge of the Rizal court of first instance at Pasig, had been affirmed on appeal on its merits by the Court of Appeals in its decision of May 13, 1968 and resolution denying reconsideration on July 19, 1968, petitioner as the losing party would seek on October 26, 1968 (upon discovering the incidental fact that Judge Reyes had already assumed his Pasig station at the time of rendition of the decision for the Bulacan court) to have Judge Reyes' decision declared null and void, just to have the new incumbent judge of the Bulacan court of first instance who is totally unfamiliar with the case and the evidence study the case and records and transcripts all over again and render judgment anew, subject once more to the appeal process!

With the definite overturning and abandonment of the doctrine of Soria, it should now be made clear for the guidance of the bench and bar as well as of litigants in general that the judge who has left a court by transfer or assignment (whether temporary or permanent) to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel is the judge authorized and required under the cited basic provision of the Judiciary Act (and not his successor in the court vacated or left by him) to prepare and render his decision in the case, signing his decision in his new station or anywhere else within the Philippines and filing the same by registered mail with the clerk of the court (vacated or left by him) for release in due course to the parties in the manner provided by the law.

Only when there exist countervailing circumstances and compelling considerations against the rendition of decision by such transferred judge who has totally heard the case — which must be submitted by him by proper petition to and approved by the Supreme Court — will such transferred judge be relieved from the obligation of preparing and rendering the decision in the case, which the Supreme Court may then assign to his successor in the court vacated or left by him.

The transferred judge who totally heard the case or his successor if assigned by the Supreme Court shall be bound by the same ninety-day period from (submittal in the case of the former and from notice of assignment in the case of the latter) within which to render the decision.

[1] 22 SCRA 948 (March 1, 1968).

[2] *Ong Siu vs. Paredes*, 17 SCRA 661 (July 26, 1966) and cases cited therein; *Jimenez vs. Republic*, 22 SCRA 622 (January 31, 1968).

[3] 49 SCRA 281 (January 31, 1973).

[4] Republic Act 296.

[5] Italics supplied.

[6] This alternative phrase "by expiration of his temporary assignment" is not found in the cited law but only in Rule 135, section 9.

[7] Note in brackets supplied.

[8] 49 SCRA at p. 295; italics supplied.

[9] *Idem*, at p. 294.

[10] Section 51, second paragraph, Rep. Act 296, full text reproduced on page 1 hereof.

[11] 48 Phil. 645, 649 (1926); italics supplied.

[12] Sec. 51, second paragraph, Republic Act 296, see page 1 hereof for full text.

[13] See page 1 hereof.

[14] Separate concurrence in Donesa, 49 SCRA at page 295.

CONCURRING OPINION

BARREDO, J.:

I am in complete agreement with the judgment upholding the validity of the decision of Judge Samuel F. Reyes of December 20, 1963 against herein private respondent, Yolanda Matias, which, it should be mentioned, had already been affirmed by the Court of Appeals on May 13, 1968, before said respondent tried to assail it on October 26, 1968 in her "Motion to Disregard Judgment etc.", rightly denied by respondent Judge Andres Santa Maria in his order, subject of the present petition. With all due respect to the able opinions of Justices Fernando and Teehankee, however, I deem it necessary to elucidate further on why the ruling laid down in *People vs. Soria*, G.R. No. L-25175, March 1, 1968 (22 SCRA 948) should be abandoned. As will be noted, that decision is a unanimous one, penned by no less than Our eminent former colleague, Justice J.B.L. Reyes, and so, I believe it behooves Us to be more explicit and elaborate in setting forth Our reasons for holding now that said ruling is not justified by the letter and spirit of the pertinent provisions of the Judiciary Act.

The first point I would like to stress is that, to be sure, under the juristic rationalization expounded by Justice Fernando in the main opinion in *People vs. Donesa*, G.R. No. L-24162, January 31, 1973, (49 SCRA 281) the instant case could perhaps be decided without passing on the merits of *Soria*, since the facts herein are materially parallel to those in *Donesa*. As in *Donesa*, the decision of Judge Reyes aforementioned was rendered before *Soria*, hence, to apply the *Soria* ruling thereto would give it the same "retroactive force and effect" which, Justice Fernando held for the Court, may not be done, considering that "a judicial decision speaks as of the date it is handed down" (*id.*, p. 290). Of course, there is the difference that the decision of Judge Reyes was rendered in a civil case whereas in *Donesa*, the judgment in question was one of acquittal in a criminal case which is infused with the element of jeopardy not constitutionally permitted to be "doubled". When it is considered, however, that judgments in civil cases do also create vested rights and that vested rights are not generally supposed to be affected retroactively by subsequent related legal or juridical developments, such distinction may not have importance, unless it is additionally taken into account that the decision of Judge Reyes did not become final until May 13, 1968, that is, subsequent already to *Soria* (which was on March 1, 1968), when it was affirmed by the Court of Appeals.

In any event, what I am trying to point out is that unless We make Ourselves clear enough, We may give the impression that We are actually overruling not only *Soria* but also the fundamental juristic principle on which the main opinion in *Donesa* rests. To be more specific, I am making it plainly understood as far as I am individually concerned, the ratio decidendi in *Donesa* still stands as good law, projecting as does the constitutional precept against double jeopardy in correlation with the juristic principle of non-retroactive application of posterior judgments, even if in reference to civil cases, the juristic basis of the *Donesa* ruling which could comprehend all kinds of vested rights, may not apply to judgments which have not yet become final.

It, therefore, goes without saying that even if the separate opinion of Justice Teehankee, which merited the concurrence of five other members of the Court,[1] had been incorporated in the main opinion, it could not have

had more force than an obiter dictum.

In the light of the basic considerations of the main opinion regarding the non-retroactive applicability of Soria lest doing so might create grave constitutional complications, I do not believe the occasion was appropriate for the overturning of an existing doctrine related, strictly speaking, to another aspect of the case. In other words, it may be assumed that in acting as he did, Judge Donesa merely relied on what was then the prevailing jurisprudence construing provisions of the Old Judiciary Act similar to Section 51,[2] and since on the basis of said construction, the acquittal of the accused could be validly rendered by him, there was hardly any need for the Court to inquire whether or not the subsequent ruling in Soria, which seemed to have overlooked earlier jurisprudence, is correct. At least, Justice Fernando saw it that way even then.[3] Otherwise stated, my point is that the task of uprooting a previous unanimous decision, granting it is questionable, should not perhaps be done when after all it is obvious that judgment with the same result may very well be predicated on other grounds, probably more formidably, and there are members of the Court who are not prepared to join the reversal for one reason or another.

It is thus in the present case, wherein the decision in question was rendered in a civil case which had not yet become final before Soria, that, without any risk of colliding with any vested rights principle, it is fitting and proper to rule categorically that Soria must give way to a more reasonable and realistic construction of Section 51 of the Judiciary Act relative to the authority of judges of the courts of first instance to continue acting in cases which they have started to hear while holding court in one station, either permanently or temporarily, after they are transferred or assigned therefrom to other stations, whether permanently or temporarily. I might add that the need for enlightenment on the subject has acquired more important relevance in the light of the transfer by the New Constitution of the power of administrative supervision of the lower courts from the Department of Justice to the Supreme Court and of the exclusive power of the Court, under said constitution, over the assignment of judges, which it formerly exercised only upon initiative of the Secretary of Justice.

It is probably best to begin by making it clear that the controlling legal provision is Section 51 of the Judiciary Act, as amended by Republic Acts 1186 and 1404, and that Section 9 of Rule 135, which is discussed in Soria, and any other related provisions of the Rules of Court are no more than of secondary significance. Inasmuch as we are dealing with a point of authority or jurisdiction of judges, it should be understandable that whatever is contained in any part of the Rules of Court relative to the same subject is of no moment, unless it can be reconciled with the spirit of the statutory provision. Hence, the decisive significance given by Soria to the phrase "by expiration of his temporary assignment" found in said Section 9, but not appearing in Section 51, is uncalled for. Surely, anything found in said rule cannot, because of the Rule's adjective character, alter or modify the substantive law. It must be read consistently with the latter, if it is to have any effect. Anything in the Rules which goes against the spirit of the substantive law must be disregarded.

Section 51 reads thus:

"Detail of judge to another district or province.- Whenever a judge stationed in any province or branch of a court in a province shall certify to the Secretary of Justice that the condition of the docket in his court is such as to require the assistance of an additional judge, or when there is any vacancy in any court, or branch of a court in a province, the Secretary of Justice may, in the interest of Justice, with the approval of the Supreme Court and for a period of not more than three months for each time, assign any judge of any court or province whose docket permits his temporary absence from said court, to hold sessions in the court needing such assistance or where such vacancy exists. No judge so detailed shall take cognizance of any case when any of the parties thereto objects and the objection is sustained by the Supreme Court.

"Whenever a judge appointed or assigned in any province or branch of a court in a province shall leave the

province by transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the Court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment: Provided, however, That if a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who has partly heard the case to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction. (RA Nos. 1186 and 1404.)."

The issue in *Soria* that hinged on this provision was whether or not the order of Judge Placido Ramos dated October 1, 1965 granting the motion to quash the information against the accused for alleged violation of Section 39 of Republic Act 1199 prohibiting pre-threshing without the consent of the landowner was valid, considering that while it was issued in a case which the Judge had heard and tried when he was still Judge of the Court of First Instance of Nueva Ecija, it was promulgated on October 19, 1965, after he had already assumed the position of Judge of the Court of First Instance of Manila, Branch III, on October 12, 1965 by virtue of an *ad interim* appointment extended to him by the President on October 11, 1965. The People, thru the fiscal, impugned the order on the ground that at the time it was promulgated, Judge Ramos had already ceased to be judge of Nueva Ecija, hence, he had no more authority to act in said case. Notwithstanding the contention of the Solicitor General, who disagreed with the Fiscal in questioning the order, that the same could be sustained under Section 9 of Rule 135, the Court declared it invalid, reasoning out briefly as follows:

"x x x. Evidently, therefore, while the order in question might have been written by Judge Ramos prior to his assumption of office as Judge of First Instance of Manila, the said order was promulgated after he had ceased as Judge of the Court of First Instance of Nueva Ecija. This renders the promulgation of the dismissal order invalid, for it is not the date of the writing of the decision or judgment that constitutes rendition thereof and gives it validity and binding effect, but the filing of such decision or judgment or order with the Clerk of Court, (*Ago vs. Court of Appeals*, G.R. No. L-17898, October 31, 1962). And, if the decision is sent by registered mail, it is considered filed in court, not as of the date of posting, but as of its receipt by the Clerk (Sec. 51, Judiciary Act of 1948, as amended by Republic Acts 1186 and 1404). In similar cases, decisions promulgated after the judge who penned the same had been appointed and had qualified to another court were declared not valid and without any effect (*Ong Siu vs. Paredes*, G.R. No. L-21638, July 26, 1966, and cases cited therein; *Jimenez vs. Republic*, L-24529, January 31, 1968).

The Solicitor General, however, advances the theory that, notwithstanding Judge Ramos' appointment and qualification to the Manila Court of First Instance, he did not cease "holding office" and could have continued discharging the functions of Judge of First Instance of Nueva Ecija, because nobody was immediately appointed to fill the latter position; and that the promulgation of the order even after the assignment of the judge to another court is allowed under Section 9 of Revised Rule 135 of the Rules of Court.

We cannot subscribe to this view. Under the law, after his acceptance of the appointment to preside over Branch III of the Court of First Instance of Manila, Judge Ramos could sit and attend to cases in any other court only upon proper authority of the Secretary of Justice, with the previous approval of this Court, (Sec. 51, Judiciary Act of 1948, as amended by Republic Acts 1186 and 1404) of which there is none in the present case. Nor is the validity of the questioned order of dismissal supported by Section 9 of Revised Rule 135 of the Rules, which reads:

'SEC. 9. Signing judgments out of province.— Whenever a judge appointed or assigned in any province or branch of a Court of First Instance in a province shall leave the province by transfer or assignment to another court of equal jurisdiction, or by expiration of his temporary assignment, without having decided a case totally heard by him and which was argued or an opportunity given for argument to the parties or their counsel, it

shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines. He shall send the same by registered mail to the clerk of the court where the case was heard or argued to be filed therein as of the date when the same was received by the clerk, in the same manner as if he had been present in court to direct the filing of the judgment. x x x'

The same provision appears in the Judiciary Act of 1948, as amended, as follows:

'SEC. 51. Detail of judge to another district or province. –

'xxx xxx xxx

'Whenever a judge appointed or assigned in any province or branch of a court in a province shall leave the province by transfer or assignment to another court of equal jurisdiction without having decided a case totally heard by him and which was duly argued or opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines and send the same by registered mail to the clerk of the court to be filed in the court as of the date when the same was received by the clerk, in the same manner as if the judge had been present in the court to direct the filing of the judgment. x x x'

It may be noted therefrom that the signing or writing of judgments outside the territorial jurisdiction of the court where the cases are pending, is allowed when the judge leaves the province 'by transfer or assignment to another court of equal jurisdiction,' or 'by expiration of his temporary assignment'. In other words, the rule contemplates of a temporary occupancy by the judge of either the post he has left or of the one he is going to assume. This is fortified by the appearance of the same provision in the Judiciary Act under the heading '(D)etail of judge to another district or province', which conveys the idea that the transfer or assignment of the judge treated therein is merely a detail and not one of permanent character. That cannot be said of the appointment of Judge Ramos from the Court of First Instance of Nueva Ecija to the Court of First Instance of Manila. Having been extended by the President, it could not be the temporary assignment or detail, from one court to another of equal jurisdiction and effected by the Secretary of Justice, specified in the above-quoted provisions.

As it has been repeatedly ruled, section 6 of Revised Rule 120 (old Rule 116) refers only to the physical absence of the judge, not to an absence by reason of cessation or removal from office (*Ong Siu vs. Paredes*, ante; *People vs. So y Ortega*, L-8732, July 30, 1957; *Jimenez vs. Republic*, L-24529, January 31, 1968)." (22 SCRA, at pp. 950-953.).

As may be seen, the above-quoted rationalization is predicated on three grounds. First, it holds that the questioned order could have been validly issued under the law had Judge Ramos only secured the proper authority therefor of the Secretary of Justice, with previous approval of the Supreme Court. Second, it further holds that "the rule (Section 9, Rule 135) contemplates of a temporary occupancy by the judge of either the post he has left or of the one he is going to assume." And third, it reiterates the ruling laid down in *Ong Siu*, *Ortega* and *Jimenez*, citing them, that Section 6 of Rule 120[4] (Old Rule 116) "refers only to the physical absence of the judge, not an absence by reason of cessation or removal from office." I am afraid that none of these three considerations can stand close scrutiny.

To begin with, almost the entire rationalization is devoted to a grammatical analysis of Section 9 of Rule 135 rather than of Section 51. And what is more lamentable, no effort whatsoever is made to discover the intent and purpose of the law. Consequently, the resulting construction of both the rule and the legal provision leaves much to be desired.

For instance, the conclusion therein that Section 9 "contemplates of a temporary occupancy by the judge of either the post he has left or of the one he is going to assume", is drawn from two premises: (1) that the said rule allows

the "signing or writing of judgments (by the judge) outside the territorial jurisdiction of the court where the cases are pending" only "when the judge leaves the province 'by transfer or assignment to another court of equal jurisdiction' or 'by expiration of his temporary assignment,'" and (2) the provision of the second paragraph of Section 51 which is similar to Section 9 appears under the heading "(D)etail of Judge to another district or province."

Frankly, I cannot see the point in such reasoning. As can be seen from a reading of Section 9 itself, the sentence therein from which the clauses in quotes were picked out begins thus: "Whenever a judge appointed or assigned in any province or a branch of the Court of First Instance in a province shall leave the province by transfer or assignment to another court of equal jurisdiction, or by the expiration of his temporary assignment etc." How such phraseology can be understood as signifying that the law contemplates exclusively "the temporary occupancy by the judge of either the post he leaves or of the one he is going to assume" escapes me. To my mind, it is more logical to maintain that the expression referring to a judge "who leaves the province by transfer or assignment", when read in relation to the other phrase in the provision regarding a judge who is "appointed or assigned in any province or a branch of the Court of First Instance in a province", readily connotes either a situation in which a judge "appointed (permanently) in a province or a branch of the Court of First Instance in a province" is "transferred" by appointment to "another court of equal jurisdiction" as well as one in which the judge who has been "assigned (by assignment, meaning temporarily) in a province or branch of the Court of First Instance in a province" is "assigned" by "assignment" (meaning again temporarily) to "another court of equal jurisdiction." I am convinced that the words "appointed" or "transfer" definitely mean permanent appointment and permanent transfer, as contra-distinct from the words "assignment" and "assigned", also used in the statute, which evidently imply temporariness. In the judiciary, the word "appointed" can never have the connotation of "temporary", for the simple reason that temporary appointments of judges is anathema in our judicial system, in which independence of the judges is of the essence. Thus, it is quite plain to me that the immediately discernible purpose of the phraseology of the provision in question is to cover all conceivable situations, such as: (1) that of a judge permanently "appointed" to "a province or branch of the Court of First Instance in a province" who shall "leave the province by transfer" permanently to "another court of equal jurisdiction"; [2] that of a judge permanently "appointed" to "a province etc." who "shall leave the province by assignment" temporarily to "another court of equal jurisdiction"; (3) that of a judge "assigned" temporarily to "a province etc." who "shall leave the province by assignment" again to "another court of equal jurisdiction"; and (4) that of a judge "assigned" temporarily to "a province etc." who "shall leave the province – by reason of the expiration of the temporary assignment" and has to return to his permanent station. This construction is so patently practical and comprehensive that it is a wonder how the element of temporariness imputed to the statute by Soria could have been conceived, considering particularly, that the other construction necessarily results in difficulties and hardships in the functioning of the courts and the administration of justice which the law must be deemed to have precisely intended to obviate.

Anent the significance of the word "(D)etail" in the heading of Section 51 to which Soria gave much stress, it is likewise very clear to me that logically, said word refers principally, if not exclusively, to the first paragraph of the provision, the subject of which is the authority of the Secretary of Justice, with the prior approval of the Supreme Court, to "assign" judges "for a period of not more than three months for each time x x x to hold sessions in (any) court needing x x x assistance or where (a) vacancy occurs." As can readily be noted, the second paragraph deals with a different, if somewhat related, matter, namely, the authority of a judge of "a province etc." who has been either permanently transferred or temporarily assigned to "another court of equal jurisdiction" to continue acting in cases heard by him either wholly or partially in the previous "province etc." to which he had been "appointed or assigned", which is precisely the subject of this discussion. Indeed, the second paragraph

could, as it should, have been made a separate section, in which event the word "detail" would have been inappropriate in the heading thereof. Properly, the heading of such separated section would have been "Authority of judge to continue acting after detail in cases fully or partially heard during detail" or other words of similar import.

Truth to tell, Soria overlooked that rightly understood, neither the second paragraph of Section 51 of the Judiciary Act nor Section 9 of Rule 135 has modified the old law on the point here in issue. There is absolutely no evidence that there ever was any intention to that effect. On the contrary, as correctly observed by Justice Fernando in his main opinion in *Donesá*, Section 9, and, for that matter, the second paragraph of Section 51, are in essence mere reiterations of the old law insofar as cases fully heard by a judge before his transfer or assignment to another station are concerned. Thus, Section 13 of Act 867 provided:

"SEC. 13. Judges in certain cases authorized to sign final judgment when out of territorial jurisdiction of court. – Whenever a judge of a Court of First Instance or a justice of the Supreme Court shall hold a session, special or regular, of the Court of First Instance of any province, and shall thereafter leave the province in which the court was held without having entered judgment in all the cases which were heard at such session, it shall be lawful for him, if the case was heard and duly argued or an opportunity given for argument to the parties or their counsel in the proper province, to prepare his judgment after he has left the province and to send the same back properly signed to the clerk of the court, to be entered in the court as of the day when the same was received by the clerk, in the same manner as if the judge had been present in court to direct the entry of the judgment: Provided, however, That no judgment shall be valid unless the same was signed by the judge while within the jurisdiction of the Philippine Islands. Whenever a judge shall prepare and sign his judgment beyond the jurisdiction of the court of which it is to be a judgment, he shall inclose the same in an envelope and direct it to the clerk of the proper court and send the same by registered mail."

The judicial construction of this provision was likewise noted by Justice Fernando. Indeed, in *Delfino vs. Paredes*, 48 Phil. 645, the separate statutes corresponding to the two paragraphs of Section 51, which, as I have explained, should have been the subject of distinct sections, were discussed as follows:

"Judge Filamor, prior to August 6, 1923, was Judge of the Court of First Instance of the First Judicial District made up of the Provinces of Cagayan and Batanes. On the date mentioned, he was authorized and instructed by the Acting Secretary of Justice in an administrative order 'to hold a special term of court at the municipality of San Pablo, Province of Laguna, beginning August 14, 1923, or as soon thereafter as practicable, until further orders, for the purpose of trying all kinds of cases, excepting criminal and election cases, and to enter final judgments therein.' (Administrative Order No. 100, 21 Off. Gaz., 1799.) On February 28, 1924, Judge Filamor was appointed Judge for the Thirteenth Judicial District comprising the Provinces of Batangas and Mindoro and took the oath of office and qualified as such on the same date (22 Off. Gaz., 821). Before the trial of the cases had been finished, the Acting Secretary of Justice issued another administrative order on March 13, 1924, authorizing and instructing Judge Filamor 'to continue holding special term of court in the municipality of San Pablo, Province of Laguna, beginning March 13, 1924, for the purpose of finishing the trial of such pending cases and to enter final judgments therein.' (Administrative Order No. 19, 22 Off. Gaz., 821.) Judge Filamor finished the trial of the cases above referred to on or before April 30, 1924.

Dominador Delfino, the petitioner herein, was one of the applicants in the land registration case No. 424 of the Court of First Instance of Laguna, G.L.R.O.R. No. 15052. The Director of Lands, one of the respondents, and others were opponents. This case was one of the many submitted to and duly taken cognizance of by Judge Filamor.

A decision in the case of *Delfino vs. Director of Lands et al.*, was rendered by Judge Filamor while he was Judge of the Thirteenth Judicial District on August 6, 1925, that is, after the expiration of both the original six months' period fixed by the Secretary of Justice and its extension. The decision was favorable to Dominador

Delfino and other applicants who were declared owners of the land with the exception of certain portions claimed by private parties.

A copy of the decision was received on September 29, 1925, by the Director of Lands, a party to the land registration case. He made no move to appeal from the decision. Instead, the Director of Lands filed a motion on October 9, 1925, in the Court of First Instance of Laguna, presided over by Judge Paredes, to have the judgment of Judge Filamor declared null and void. On October 29, 1925, Judge Paredes issued an order acceding to the motion of the Director of Lands and declaring the decision of Judge Filamor as of no effect.

The law on the subject is found in section 155 of the Administrative Code as amended by Act No. 3107 and in section 13 of Act No. 867. The first mentioned provision of the Administrative Code provides as follows:

'Detail of judge to another district or province. – If the public interest and the speedy administration of justice so require, a Judge of First Instance may be detailed by the Secretary of Justice to temporary duty, for a period which shall in no case exceed six months in a district or province other than his own for the purpose of trying all kinds of cases, excepting criminal and election cases.'

Section 13 of Act No. 867 provides as follows:

'Judges in certain cases authorized to sign final judgment when out of territorial jurisdiction of court. – Whenever a Judge of a Court of First Instance or a Justice of the Supreme Court shall hold a session, special or regular, of the Court of First Instance of any province, and shall thereafter leave the province in which the court was held without having entered judgment in all the cases which were heard at such session, it shall be lawful for him, if the case was heard and duly argued or an opportunity given for argument to the parties or their counsel in the proper province, to prepare his judgment after he has left the province and to send the same back properly signed to the clerk of court, to be entered in the court as of the day when the same was received by the clerk, in the same manner as if the judge had been present in court to direct the entry of the judgment: Provided, however, That no judgment shall be valid unless the same was signed by the judge while within the jurisdiction of the Philippine Islands. Whenever a judge shall prepare and sign his judgment beyond the jurisdiction of the court of which it is to be a judgment, he shall inclose the same in an envelope and direct it to the clerk of the proper court and send the same by registered mail.'

Consideration should be given to the question at issue with reference to the admitted facts and the law, having in view the familiar canons of statutory construction that effect be given to the intention of the Legislature; that absurd and inequitable results be avoided; and that all pertinent provisions of law be construed as a whole and harmonized if possible.

The policy of the government is evidenced by the wording of the amended section 155 of the Administrative Code. The detail of a district judge to another district is permitted to advance 'the public interest and the speedy administration of justice.' Obviously, the public interest and the speedy administration of justice will be best served if the judge who heard the evidence renders the decision. It might well happen that the full extent of the six months' period would be used by the trial judge to receive the evidence, giving him no opportunity to promulgate decisions, with the result that all the mountain of evidence would be left for the perusal of a judge who did not hear the witnesses – a result which should be dodged, if it be legally feasible.

The law does not mean to authorize a judge to try a case and then deprive him of the power to render his decision after he has taken cognizance of it. The legislative purpose was not to make the judge holding a special term of court a mere referee for another judge.

Section 155 as amended of the Administrative Code makes use of the key word 'trying.' Not one of the words, 'decision,' 'order,' 'decree,' or 'judgment,' appears in the section. 'Trying' would thus seem to have the same meaning as 'heard' found in section 13 of Act No. 867.

Section 13 of Act No.867 permits a Judge of First Instance who shall hold a session, special or regular, without having entered judgment in all of the cases which were heard, to prepare and render his judgment after he has left the province. It would be logical to suppose that the Legislature in enacting Act No. 3107 amendatory of section 155 of the Administrative Code had in mind section 13 of Act No. 867 and desired both the new and the old provisions to interblend."

Likewise, in *Baguinguito vs. Rivera*, 56 Phil. 423, also cited by Justice Fernando, it was held:

"An assignment of error common to the briefs of all of the appellants is directed towards the supposed lack of authority, or jurisdiction, on the part of the trial judge to sign the judgment in this case on the date signed to the opinion. In this connection it appears that the trial judge, Francisco Zanduetta, was specially assigned by the Secretary of Justice for duty in the Court of First Instance of Rizal during the vacation period of April and May, 1930; and this case was heard and finally submitted on May 28. Upon this occasion all the parties concerned were present in person or by attorney in the court; and after the submission of proof had been completed, the court declared the trial terminated. The attorney for the plaintiffs then requested that a period of twenty-five days be allowed for the presentation of his written argument, and a like period was asked by the attorney for the appellees. The court, however, conceded a period of fifteen days only to all. This announcement met the approval of all concerned, except De Guia who was present in person and objected. Upon these facts the point is now made that the hearing of the cause on the date mentioned was incomplete and that, inasmuch as the memorandums of the litigants were permitted to be filed after the assignment of the trial judge to the Court of First Instance of Rizal had lapsed, the court had no jurisdiction to prepare the judgment later. The point, in our opinion, is not well taken. Section 13 of Act No. 867 of the Philippine Commission authorizes the judge to prepare his judgment after leaving the province where the case is tried, 'if the case was heard and duly argued or an opportunity given for argument to the parties or their counsel in the proper province.' Under the facts above stated it must be considered that the parties waived the opportunity to present an oral argument at the time the cause was submitted; and the fact that they were permitted to file written memorandums later did not render the hearing incomplete. The submission of the memorandums was not, properly speaking, a part of the hearing or trial as understood in the provision cited. It has been held that memorandums of this sort form no necessary part of the bill of exceptions (*Alino vs. Villamor*, 2 Phil., 234). It results that the trial judge had authority to sign the judgment in this case."

In other words, until *Soria* came, there was no doubt whatsoever, whether from the clear language of the law or from prevailing jurisprudence, that what Judge Samuel F. Reyes did in the instant case was perfectly right and valid. I do feel very strongly, that it is high time We overturned *Soria* and followed instead the above-quoted jurisprudence.

Incidentally, Justice Teehankee points out that "*Soria* recognized, however, that where the case was not yet submitted for decision but was heard only in part, by the same permanently transferred judge, he could be duly authorized by this Court upon proper petition of any of the parties to the case and the recommendation of the district judge, under the proviso in the cited law, 'to continue hearing and to decide said case notwithstanding his [permanent] transfer or appointment to another court of equal jurisdiction.'" Not exactly, I might say. As I see it, the point stressed in *Soria* was simply that from the facts on record, it did not appear that Judge Ramos had secured the requisite authority from the Secretary of Justice and the Supreme Court. As the decision itself says, "Under the law, after his acceptance of the appointment to preside over Branch III of the Court of First Instance of Manila, Judge Ramos could sit and attend to cases in any other court only upon proper authority of the Secretary of Justice, with previous approval of this Court, of which there is none in the present case", thereby implying that if such authority were present, the result would have been otherwise, specially if account is taken of the subsequent arguments discussed in said decision. Frankly, I cannot find therein the distinction which Justice Teehankee refers to as having been drawn therein between cases fully heard and those partially tried. And in this

connection, it might just as well be clarified that under the provision, the authority is given, with respect to cases partially tried, not by the Secretary of Justice, for he is not even mentioned therein, but by the Supreme Court itself directly, "upon petition of any of the parties to the case and the recommendation of the respective district judge."

Also in connection with said authority or permission required, it is quite obvious that, under the second paragraph of Section 51, there is such express requirement only in instances when the judge concerned has still to continue the trial of a case, which has not yet been completed, but not when the case has already been fully heard. Nothing is mentioned about such requirement in the latter instance and I do not believe that permission or authority is needed therefor.

The reasons for the difference in the law for the two situations appear to me to be readily understandable. Generally, a judge is transferred or assigned to another station in order to decongest the docket therein which must be in worse condition than the one from where he is to come. To make the practice permissible as a matter of course and leave it to the judge and/or the parties themselves to determine whether or not he should continue hearing their case is to defeat the very purpose for which the transfer or assignment is made, since the judge would then have to utilize for such cases part of the needed time and effort he is supposed to dedicate to the cases in his new station.

Moreover, either the other party or any of the other parties involved or even the judge himself may have their own well-grounded objections to the petition, which the Court may deem weighty enough to warrant denial thereof. On the other hand, none of these considerations are present when all that the judge has to do is to prepare the decision of a case he has fully heard, not only because such preparation would be less complicated and time-consuming than the work of continuing a trial, which would naturally necessitate his going back physically to his former station, but also because, as a rule, none of the parties should have any objection to - their case being decided by the same judge who has seen and heard the witnesses testify and the respective counsel argue, and has, accordingly, a more comprehensive grasp of the issues, whether of fact or of law involved therein.

In fact, I might say, parenthetically, that I do not share the view of Justice Teehankee that, as a matter of good practice, permission of the Court should also be required in the instances just referred to (cases fully tried) in order to avoid the possibility, admitted by him to be remote, that the judge who has left a station and his successor may both make their respective decisions of the same case, (conflicting or not), for the simple reason that I consider such possibility not only remote but utterly improbable, granting as We must, the good sense and proper realization of their responsibility in the premises of the judges of this country and of the clerks of court concerned. If We cannot concede this much to these officials in the judiciary, what else can We assume they will be able to manage and do properly? Are they so incompetent and unaware of what they are supposed to do with the cases they are handling, such as to require the Supreme Court to constantly and continuously oversee every detail of their work, thus occupying its valuable time sorely needed for more important, delicate and pressing matters, lest they might fail to use their common sense in the circumstances contemplated, perhaps the least complicated that can ever confront them? Proudly, I have a higher regard for Filipino judges, particularly in matters which may well nigh involve their integrity, considering that the "remote possibility" contemplated in Justice Teehankee's concurrence, might amount to what in the current colloquialism is termed as "decision grabbing". Withal, the fact that during all the time that the law and the courts have existed, not a single instance of such "remote possibility" can be cited is, to my mind, more than sufficient assurance that the good sense of responsibility of our judges can still be trusted in at least the simple matter under discussion.

As indicated earlier above, the final argument in Soria is that "(a)s it has been repeatedly ruled, Section 6 of Revised Rule 120 (old Rule 116) refers only to the physical absence of the judge, not an absence by reason of

cessation or removal from office (Ong Siu vs. Paredes, ante; People vs. So Ortega, L-8732, July 30, 1957; Jimenez vs. Republic, L-24529, January 31, 1968), "which implies that the Court considered permanent transfer of a judge from one permanent station to another court of equal jurisdiction as tantamount to either his cessation or removal from office. I gather this inference from the fact that the decisions cited refer to instances wherein the judges concerned were actually either promoted to a higher court or had retired compulsorily after having reached the age of seventy. For instance, in Ong Siu vs. Paredes, supra, the facts and the ruling were as follows:

"xxx xxx xxx

"These four cases were jointly tried by Judge Andres Sta. Maria of Branch II of the Municipal Court, and a single decision was rendered under date of July 7, 1962. On July 9, 1962, and before the decision could be promulgated, Judge Sta. Maria was appointed to and assumed the position of Judge of the Court of First Instance of Mindoro. Judge Milagros German succeeded him as Municipal Judge of Manila. Charlie Fung and Benjamin Lu, the accused in Criminal Case Nos. F-038477 and F-038478 petitioned the court that the unpromulgated decision of Judge Sta. Maria be declared null and void. In her order of August 14, 1962, Judge German granted the petition and the unpromulgated decision of Judge Sta. Maria was declared a nullity, as if no trial was had before. But before a retrial of the cases could be held, Judge German resigned from the position. Solicitor Lauro C. Maiquez of the Solicitor General's Office, was temporarily assigned to preside over Branch II of the Municipal Court.

"Upon petition of herein appellants, the accused in Criminal Cases Nos. F-038479 and F-038480, Acting Judge Maiquez in his order of August 22, 1962, directed the promulgation of the decision of Judge Sta. Maria, for August 29, 1962. However, on August 23, 1962, respondent Judge Antonio P. Paredes was appointed to the vacant position of Municipal Judge. In his order of even date, Judge Paredes also scheduled the promulgation of the decision of Judge Sta. Maria. This was done with respect to appellants, the accused in Criminal Cases Nos. F-038479 and F-038480, but not with regard to Charlie Fung and Benjamin Lu who did not appear during the promulgation of the judgment. Defendants Fung and Lu, who were ordered arrested for their non-appearance, thereupon instituted certiorari and prohibition proceeding in the Court of First Instance of Manila to restrain the promulgation of the decision (Civ. Case No. 51468).

In its decision of November 5, 1962, the Court of First Instance of Manila (Judge Jose N. Leuterio presiding) granted the writ, on the ground that since Judge Sta. Maria was no longer a judge of the Municipal Court, the decision written by him could no longer be validly promulgated. Upon the decision of Judge Leuterio becoming final, Judge Antonio Paredes of the Municipal Court ordered a retrial of the four criminal cases (Nos. F-038477, F-038478, F-038479, and F-038480), which was set for March 14, 1963. Herein appellants now in turn went to the Court of First Instance of Manila and applied for a writ to restrain the Municipal Judge from retrying the four cases. It was alleged that, as the decision acquitting them had already been promulgated with respect to them, a retrial of the cases would subject them to double jeopardy for the same offenses.

On June 20, 1963, the Court of First Instance of Manila (Judge Arsenio Santos, presiding) dismissed the petition, for the reason that the decision of Judge Sta. Maria being invalid because its promulgation was effected when the judge had already ceased to be a municipal judge, the same cannot place defendants twice in jeopardy for the same offense. This is the decision that is the subject of the present appeal.

The appellants in effect contend that since the decision of Judge Sta. Maria was signed by him while he was still the judge of the Municipal Court of Manila where they were tried, its promulgation, although made in his absence, was valid. In support of this contention, they cite Section 6 of Rule 116 (now Rule 120) of the Rules of Court, which reads:

‘SEC. 6. Promulgation of judgment. – The judgment is promulgated by reading the judgment or sentence in the presence of the defendant and any judge of the court in which it was rendered. The defendant must be personally present if the conviction is for a grave offense; if for a light offense, the judgment may be pronounced in the presence of his attorney or representative. And when the judge is absent or outside of the

province or city, his presence is not necessary and the judgment may be promulgated or read to the defendant by the clerk of court. x x x.'

Pursuant to the above-quoted provisions, the petitioners-appellants argue, the decision of Judge Sta. Maria was promulgated in the presence of Judge Paredes, another judge of the Municipal Court. They claim that the absence of Judge Sta. Maria during the promulgation does not render the decision he penned prior to his appointment to the position of judge of the court of first instance null and void. Thus, it is alleged, the promulgation thereof, upon order of Judge Paredes, was valid and could be the basis of the defense of double jeopardy.

The above-quoted Section 6 of Rule 116 (now Rule 120) of the Rules of Court, allowing the dispensability of the presence of the judge in the reading of a sentence refers only to the physical absence of the judge, and not to his inability to be present during the promulgation of the judgment because of the cessation of or his removal from office. This is clear from the use of the disjunctive clause 'absent or outside of the province or city' in the provision. In other words, the decision of the judge may be promulgated even without his presence, as long as he is still a judge of that court (*Luna vs. Rodriguez*, 37 Phil. 186; *Garchitorena vs. Crescini*, 37 Phil. 675; *Barredo vs. Commission on Elections*, 45 O.G. 4457; *People vs. Court of Appeals*, G.R. Nos. L-9111-9113, Aug. 28, 1956; *People vs. So*, 101 Phil. 1257).

In the present case, what we have is not merely physical absence of the judge who penned the decision, but the cessation or termination of his incumbency as such judge. In the case of *People vs. Bonifacio So y Ortega*, (G.R. No. L-8732, *supra*) this Court ruled:

'It is well-settled that, to be binding a judgment must be duly signed, and promulgated during the incumbency of the judge who signed it.

'In *Lino Luna vs. Rodriguez*, *supra*, Judge Barreto signed his decision on January 14; two days later (January 16), he qualified as Secretary of Finance thereby retiring from the judiciary; and on January 17 his decision was promulgated. This Court held such decision to be void, because at the time of the promulgation the judge who prepared it was no longer a judicial officer.

'In criminal proceedings the Rules are more explicit. They require the judgment to be promulgated 'by reading the judgment or sentence in the presence of the defendant and the judge of the court who has rendered it' (Rule 116, sec. 6); and although it is true that it may be read by the clerk 'when the judge is absent or outside the province', it is implied that it may be read, provided he is still the judge therein.

'It is contended that herein decision was promulgated, to all intents and purposes, when it was delivered to the clerk for promulgation – June 18. That contention was however, indirectly overruled in *People vs. Court of Appeals*, a case similar to this wherein we regarded compliance with sec. 6 of Rule 116 as essential to promulgation, and held that as the judgment was promulgated after the judge who penned it had ceased to be judge, it was not legally binding.

'It is true that in *Cea vs. Cinco* (50 Off. Gaz. 5254) this section was interpreted to mean that were judgment is one of acquittal, 'reading in presence of the defendant' may be substituted by giving a copy of the decision to him. We declared that such act – delivery of copy – amounted to promulgation. In the case before us, notice that the decision would be read (on June 30) was sent out, while Judge Encarnacion was still a judge. Yet no copy of such decision was given the accused and he was not informed thereof during said judge's incumbency. No judgment was therefore validly entered. (Cf. *Landicho vs. Tan*, 48 Off. Gaz. 1007).'

"Here, in the present case, when the notice for the promulgation of the decision was sent out, the judge who signed the decision was no longer the judge of the court, and no copy of the judgment of acquittal was delivered to the appellants. With more reasons, therefore, is there no judgment validly entered in this case."

In So Ortega wherein the ruling was as quoted in the above excerpt from Ong Siu, the facts were:

"As a result of Republic Act No. 1186 which abolished the positions of Judges-at-large and cadastral judges, Judge Demetrio B. Encarnacion presiding over Branch II of the Rizal Court of First Instance ceased to be a member of the judiciary on June 19, 1954.

"However he signed the decision dated June 4, 1954, in Criminal Case No. 4673 which had been tried before him in Pasig. Then he delivered it on June 18, 1954 to Deputy Clerk Javillonar, who in turn on the same day sent out to the parties notice that decision in the case would be promulgated on June 30, 1954 at 8:30 a.m.

"On the last mentioned date, as there was no judge for Branch II, Deputy Clerk Javillonar transmitted the expediente to the First Branch for the reading of the sentence; but as the judge thereof entertained some doubts, promulgation was postponed.

"Thereafter, on October 6, 1954 Deputy Clerk Javillonar notified the parties that promulgation of the decision would be made on the 15th of the same month. Forthwith the fiscal objected, contending that the decision could no longer be validly promulgated because Judge Encarnacion had vacated his post on June 19, 1954. Such objection was overruled, and the decision of Judge Encarnacion absolving the defendant was read to the latter on November 12, 1954. The provincial fiscal appealed, insisting on the nullity of the decision, for the reason above indicated." (This decision is not reported but a syllabus thereof may be found in 101 Phil. 1257.)

And in Jimenez, these were the facts on the basis of which the Court applied the above ruling in Ong Siu:

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"Eduardo Jimenez, herein petitioner, together with others, was charged with homicide in an information, dated May 13, 1960, before the Court of First Instance of Rizal, criminal case No. 9531, of said court. The case was heard and tried before Judge Eulogio Mencias, presiding one of the branches of the court. Admittedly, the decision prepared and signed by Judge Mencias was delivered to the clerk of court on January 16, 1965. On the same date, the clerk of court issued and served notice on the petitioner to appear in court on January 21, 1965 for the promulgation of the sentence. In view that January 21, was declared by the President a special holiday, the promulgation of the decision could not be carried out on that day. On January 21, 1965, Judge Eulogio Mencias had reached the age of 70 and was retired on that day from the bench. Respondent Judge Pedro Navarro was immediately designated to take the place of Judge Mencias. The former judge ordered that the sentence be promulgated on January 29, 1965, but for some reason, it was postponed to March 1, 1965.

"On March 1, 1965, petitioner Jimenez filed a motion to set aside decision and promulgation thereof, on the following grounds: (a) 'That the case was heard and tried by the Hon. Eulogio Mencias and judgment was rendered by him before he retired on January 21, 1965, having reached the age of 70 years'; and (b) 'That said judgment cannot be validly promulgated since it is no longer the official act of a judge, either de jure or de facto.'

"The motion was opposed by the private prosecutor.

"On April 2, 1965, the respondent Judge issued an order denying the motion, and ordered that the decision be promulgated."

Clearly then, the cases cited by Soria are not in point and irrelevant. Surely, the transfer of a judge to a court of equal jurisdiction cannot by any stretch of reasoning be equated with cessation or removal of a judge from his post because he has already reached the age of compulsory retirement or he has been promoted to a court of higher jurisdiction. Of course, there can be no doubt that in these two cases, the judge loses entirely every bit of authority and power to act in any respect in cases he might have handled or heard before his retirement or promotion.

In closing, I should perhaps cite, as Justice Teehankee does, the advantages of the above construction of Section 51, and, incidentally, of Section 9, Rule 135, if only to emphasize that Soria failed to consider the intrinsic merit of the precedents before it which had convincingly demonstrated the soundness of construing the law in such a way as to promote a system of administering justice that permits maximum utilization of the available manpower in the judicial machinery and at the same time assures the parties, as long as it is feasible to do so, of a continued consideration and decision of their case by the same judge, regardless of where he might be transferred or assigned, with all the self-evident advantages that such an arrangement entails. But such advantages are too obvious to require further elucidation. Suffice it to state, therefore, that it must have been with the above construction of the existing law in mind that the Constitutional Convention of 1971 must have found it fitting and proper to ordain in the New Charter that the Supreme Court may "(a)ssign temporarily judges of inferior courts to other stations as public interest may require" (Section 5 (3), Article X) and "(o)rder a change of venue or place of trial to avoid a miscarriage of justice". (Section 5 (4) id.). Verily, Section 51 and Section 9 of Rule 135, as construed now, go hand in hand with these constitutional precepts to "provide a simplified and inexpensive procedure for the speedy disposition of cases." (Section 5 (5) id.).

FOR THE FOREGOING REASONS, I vote to dismiss the petition.

[1] Then Chief Justice Concepcion and this writer did not take part in Donesa.

[2] The cases of Baguinguito vs. Rivera, 56 Phil. 423, and Delfino vs. Paredes, 48 Phil. 645, applying Section 13 of Act 867.

[3] The observation of Justice Teehankee in his concurrence in Donesa that said "decision signifies the abandonment and overturning of the contrary ruling in the case of People vs. Soria and other cases therein cited" does not seem to be warranted by the text of the main opinion which simply refused to consider Soria as controlling, precisely because to have done so would have given rise to a "serious constitutional question" (See p. 290, 49 SCRA).

[4] SEC. 6 Promulgation of judgment. — The judgment is promulgated by reading the judgment or sentence in the presence of the defendant and any judge of the court in which it was rendered. The defendant must be personally present if the conviction is for a grave offense; if for a light offense, the judgment may be pronounced in the presence of his attorney or representative. And when the judge is absent or outside of the province or city, his presence is not necessary and the judgment may be promulgated or read to the defendant by the clerk of court.

If the defendant is confined or detained in another province or city, the judgment of conviction may be promulgated by the judge of the Court of First Instance having jurisdiction over the place of confinement or detention upon the request of the court that rendered the judgment. The court promulgating the judgment shall have authority to accept the notice of appeal and to approve the appeal bond.

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