

BASILIO DE CASTRO PETITIONER VS. COURT OF APPEALS OF MANILA, ARSENIO LOCSIN IN HIS CAPACITY AS JUDGE OF FIRST INSTANCE OF MANILA AND FELIPE DE SANTOS RESPONDENTS

G. R. No. 49158. January 31, 1946

Ponente: JARANILLA, J.

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JARANILLA, J.:

This petition for certiorari was instituted for the review of the decision rendered by the Court of Appeals of Manila in case C.A.—G. R. No. 2 against the herein petitioner, Basilio de Castro, confirming the order of the Court of First Instance of Manila. After the filing of the written briefs and the hearing of the oral arguments of the parties sometime in October 1944, the record of the case was completely burned in or about February 1945, during the intensive fighting between the American and Japanese forces in the city of Manila. The record of the case was therefore reconstituted by the parties as far as could be possibly done and thereafter the case was again submitted to this Court for decision after the filing of the brief for the respondents.

In the course of the reconstitution, of the record of this case, the parties stipulated that the statement of facts appearing on pages one to four of the brief for the petitioner contains substantially all the facts of the case and that therefore they submit this case for decision on the facts and issues recited in said statement of facts, which reads as follows:

"STATEMENT OF FACTS"

"On March 3, 1943, respondent Felipe de Santos filed a complaint to eject petitioner Basilio de Castro from the premises occupied by him at No. 1045 M. de Santos, Manila, and for the collection of rentals for said premises at the rate of P140 monthly beginning February, 1942. After due trial, the Municipal Court of Manila disclosed the complaint. Respondent Santos then appealed the case to the Court of First Instance of Manila presided over by respondent Judge Arsenio Locsin. After trial in said court and while the case was pending decision the parties received notice of the decision of the Mayor of Manila rendered under the provisions of Executive Order No. 117 of the Chairman of the former Philippine Executive Commission, fixing the rentals for the premises in litigation at P100 a month.

"Without losing time in order that respondent Judge may have the opportunity of considering it in the determination of the case, petitioner personally prepared and immediately, filed on September 28, 1943, with due notice to respondent Santos, his constancia informing the court of the decision of the City Mayor. That Constancia reads as follows:

"Compareee el demandado en la causa arriba titulada por sí y en su propia representación y a este Honorable Juzgado respetuosamente hace constar;

"Que en la solicitud No. 159, presentada por el aquí demandado ante la Comisión de Rentas de la Ciudad de Manila, pidiendo la reduccion de la renta de la finca No. 1045 Marcelino de Santos, dicha commission en una decision de fecha 10 de septierabre de 1943, ha dictaminado que cualquier aumento de alquiler de más de P100 por dicho local (1045 Marcelino de Santos, es ilegal, nulo y sin valor como se demuestra por la copia de dicha

decisión que va sajunta como Exhíbito 7, y se hace parte integrante de esta constancia para los efectos que en derecho hubiera lugar.

"Manila, Filipinas, Septiembre 28, 1943

"(Fdo.) BASILIO DE CASTRO

"Demnandado

"1887 Juan Luna, Manila

"Se ha enviado copia de la anterior constancia al Abogado del demand ante Don Mariano de Joya por correo ordinario.

(Fdo.)"BASILIO DE CASTRO

* * * * *

"Exhíbito (7)

"(HEADING AND TITLE OMITTED)

"DECISION

"Mr. Basilio de Castro, applies to decrease the monthly rental of the house located at 1045 Marcelino de Santos, Manila, and owned by Don Felipe de Santos, from P100 to P70. The prewar rate was P140 a month.

"It appears that sometime in February of this year an action for ejectment was brought by the owner against the applicant; that while the decision of the Municipal Court, of Manila denied the prayer for ejection, it also ordered the defendant tenant to pay a monthly rental of P140 beginning said month; and, that although said decision has not become final and executory, an appeal therefrom having been brought to the Court of First Instance by the plaintiff-owner, the applicant lies, since the rendition of said decision, been paying the latter at the rate ordered by the Court.

"It is clear from the foregoing that the applicant is under no obligation to pay a monthly rental of P140. This, for two reasons: namely, first, because said decision aid not become final and executory; second, because even if it did, the rental increases ordered by the Court is void and unenforceable (section 2, Executive Order No. 117). It is the Mayor of Manila, not the Court, which is vested with the authority to order an increase in rent; an application to increase rental, not an action for ejectment, is the procedure prescribed (section 3, id.).

"It appears further that before January 4, 1943, the tenant has not consented to pay at the increased rate of P140 demanded by his landlord. A valid rental increase has not therefore been effected and the monthly rental for the house in question has always remain ad at P100, neither an increase nor decrease thereof having been duly authorized after said date.

"The house in question is located in a commercial district and is actually dedicated to commercial purposes. Consequently, we do not deem unreasonable the present monthly rental of P100, which is a little less than 75 per cent of the prewar rate. The decrease herein applied for should be, as it is hereby, denied.

"Manila, September 10, 1943,

"(Sgd.) LEON G. GUINTO

"Mayor

"On September 30, 1943, two days after the constancia was filed, respondent Judge Locsin rendered his decision ordering the petitioner to vacate the premises in litigation and to pay a monthly rental of P140 until he vacates the premises, entirely ignoring the decision of the Mayor of Manila. Copy of the court's decision was received by the petitioner on October 6, 1945.

"On November 2, 1943, petitioner gave notice of his intention to appeal, paid the appeal bond, and submitted his record-on appeal for approval.

"Copy of the record on appeal was sent to respondent Santos by registered mail and no opposition to its approval having, been filed within the five-day period fixed by Rule 41, section 7 of the Rules of Court, respondent judge should have approved it, but instead, for reasons that we are still trying to find out, the parties were notified that the 'Exception and Notice of Appeal' would be set for hearing on December 18, 1943. In this hearing, respondent Santos submitted for the first time his opposition to the approval of the record on appeal. Petitioner objected to the consideration of this opposition for having been filed too late, but this objection was overruled, and on the basis of said opposition, respondent judge ordered the elimination of the Constancia from the record on appeal.

"Petitioner moved to have this order reconsidered, but this was denied in the order dated January 11, 1944, which reads:

"After considering the motion for reconsideration filed by the attorneys for the defendant on December 31, 1943, and opposition thereto of the attorney for the plaintiff filed on January 8, 1944, this Court is of the opinion that said motion should be, as it hereby is, denied. The defendant is ordered to comply with the order of this Court of December 18, 1943, within five days, otherwise his record on appeal would be disapproved and his appeal declared abandoned.'

"On January 13, 1944, petitioner received a copy of said order and the following January 17, within the period fixed therein, gave notice of his intention to file a petition for mandamus, and at the same time requested the suspension of all proceedings. We quote:

"It is respectfully prayed of this Honorable Court that all proceedings in this case be suspended, including compliance with the order dated January 11, 1944, pending the outcome of the mandamus proceedings above mentioned.'

"Due to the reorganisation of the Court of Appeals into five districts, the petition for mandamus could not be immediately accepted for filing and it was only on January 27, 1944, that it was docketed as CA-G.R. No. 2 of the Court of Appeals of Manila.

"The petition for a writ of mandamus was given due course and on March 18, 1944, the Court of Appeal of Manila promulgated its decision denying the petition. A copy of this decision had been attached to this brief. On April 3, 1944, within the period fixed by law, petitioner filed his motion for reconsideration citing plenty of authorities against the decision of the court. This was denied by the Court of Appeals the following day but the petitioner received notice thereof by ordinary mail only on April 10, 1944. Even before notice of denial was received, the clerk of court entered judgement, petitioner on April 8, 1944. On April 10, 1944, on the very date of the receipt of the notice of the denial of the motion for reconsideration and having no notice of the entry of judgement, petitioner requested permission and at the same time filed his second motion for reconsidered. This was denied in a resolution dated April 18, 1944, on the ground that judgement had already been entered. Notice of this resolution was not mailed at once and had not the undersigned inquired about the case on April 15, 1944, it is possible that it would have been received after April 18, 1944, the last day for filing the petition for review by certiorari. On certiorari was filed with the Court of Appeals and the petition itself filed on the following day.

"Meanwhile, in the Court of First Instance of Manila presided over by respondent judge, even while the motion for reconsideration in the Court of Appeals was pending; even while no entry of Judgment in the latter court had yet been made; even while the time to appeal by writ of certiorari to this Honorable Court had not yet expired; and, in spite of the fact that no resolution had yet been made on the motion before it asking for suspension of proceedings including compliance with its order about the filing of an amended record on appeal, respondent judge on April 4, 1944, made the following order:

“It appearing that more than seventeen days have already elapsed since counsel for defendant Basilio de Castro has received copy of the decision of the Court of Appeals of Manila, on March 18, 1944, denying the mandamus proceedings instituted by said defendant in this case; and, considering that notwithstanding this fact, he has not perfected his record on appeal in accordance with the order of this Court dated January 11, 1944, this Court, upon notion of counsel for plaintiff and, pursuant to the provisions of Rule 41, sections 7, 13, and 14, of the New Rules, of Court, hereby orders the dismissal of the appeal interposed by the defendant in this case.’

“A copy of this order was received by the petitioner on April 7, 1944. On April 15, 1944, petitioner moved to have it set aside in view of the fact that the decision of the Court of Appeals is not yet final and reminding the court at the same time of our motion still pending asking for suspension of proceedings. The court was further told that since a record on appeal had been filed on time, all the remedies available to the petitioner having been exhausted, compliance with its order could easily be done by just crossing out the part to be eliminated and this could be done by the clerk of court himself. And upon learning that a writ of execution had already been issued, petitioner asked for its stay in view of the grounds stated above. In spite of all these, respondent judge Arsenio Locsin ordered the sheriff to execute his decision. Hence in our petition for certiorari, we prayed for the issuance of a writ of preliminary injunction, to restrain respondent judge and all persons acting under him from executing said decision.”

The decision of the Court of Appeals referred to in the foregoing statement of facts reads:

”DECISION”PADILLA, J.:

”Petitioner prays for a writ directing the respondent Judge to allow a record on appeal filed in a case for detainer and collection of rentals appealed from the Municipal Court.

”The record on appeal submitted for allowance sets out a pleading entitled constancia and a decision rendered by the Mayor of the City of Manila upon petitioner’s application for decrease of house rentals. The inclusion, thereof was objected to and the objection sustained by the respondent judge.

”It is a fact that the hearing or trial of the appealed case for detainer and collection of rentals had already been terminated and the case submitted for decision when the constancia and the decision attached thereto was filed. Such being the case, the constancia and the decision have no place in the record on appeal. They are not part of the evidence submitted, and though they may have relation to the decision from which the appeal is being taken, they do not fail, however, within the purview of Rule 41, section 6, which provides: ‘* * * copies of all pleadings, petitions, motions and’ all interlocutory orders relating to the appealed order or judgment,’ for these have reference to pleadings that had been filed before the case was submitted for decision. To otherwise construe the provisions just quoted, parties who intend to take an appeal may, after the hearing or trial, file pleadings and documents attached thereto that may have reference to the issues involved—perhaps of evidentiary character—which cannot, however, be considered as such because the period for its presentation or reading in evidence had already lapsed by the very action of the parties. To allow such a practice would bring about confusion in judicial proceedings. If petitioner believed that the decision attached to his constancia would help him, why did he not take the legal step indicated by the Rules of Court? (Rule 57) At any rate, the decision attached to the constancia might at best influence the decision of the respondent judge as to the amount of rental but not as to the main action for detainer.

”The act that petitioner prays this Court to order be done or performed by the respondent Judge not being ministerial, not being enjoined by law for him to do or perform, the writ of mandamus prayed for clearly does not lie.

”Petition denied, with costs against the petitioner.”

With the above uncontroverted facts, no better starting point for this opinion can be found than the aforesaid

incorporated decision of the Court of Appeals which the petitioner herein prays be revoked.

The important question herein which merits resolution, on which the petitioner and the respondents fully disagree, relates to the constancia and the decision of the Mayor of the City of Manila, which the petitioner included in the record on appeal and the respondent Judge of the Court of First Instance of Manila ordered excluded therefrom. Said documents were never formally offered as evidence at the hearing and therefore cannot be considered as such. (Section 72, Rule 123, Rules of Court.) The petitioners did not even follow the procedure outlined in Rule 37 of the Rules of Court in order that they may be admitted as evidence if he had considered them material to the case. He simply filed them after the trial of the case and while the case was already pending decision of the Court a quo. They cannot even be considered as evidence that had been offered and rejected during the hearing so that they may be include in the record on appeal. (Ayala de Roxas vs. Valencia, 5 Phil., 182.)

The petitioner herein argues that the Rules of Court should be liberally interpreted so as to permit the inclusion of the said constancia and the decision of the Mayor of the City of Manila in order that he may base one of his assignments of error intended by him to be raised in the appellate court. After carefully reviewing the case, we are of the opinion that the contention of the petitioner cannot be sustained for the reason that the pertinent provision of the Rules of Court (section 6, Rule 41) governing the inclusion of documentary evidence or exhibits in the records on appeal cannot be stretched to such an extent as to include such pleadings or documents not presented nor offered at the hearing of the case. In fact, when the respondent Judge of First Instance decided the case he could not take into consideration said constancia and accompanying documents because the rule is that "the court shall consider no evidence which has not been formally offered." (Rule 123, section 72, Rules of Court.) Such being the case, the appellate court can neither take into consideration the same documents on appeal. It is obvious that the petitioner's intention is to incorporate said documents in the record on appeal for the purpose of affecting the court's sympathies and inducing it to revise the findings at trial. Such step, however, on the part of the petitioner is not sanctioned by the rules of civil procedure. (4 C. J., 226, 227, 307-310)

"* * * The object of a bill of exceptions is simply to present in an intelligible form the facts necessary to enable the appellate court to review the rulings, orders, or judgments excepted to * * *." (Aliño vs. Villamor, 2 Phil. 234.)

"Documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action." (Dayrit vs. Gonzalez, 7 Phil. 182; 5 Encyc. of Evidence, 469.)

Moreover, if petitioner's contention is what is meant by liberal interpretation, there will be no limit as to the kind of documents, pleadings and evidence which may be included in the record on appeal. We are, therefore, of the opinion and so hold that the decision of the Court of Appeals is correct and should be affirmed.

The petitioner further insists that, in the event the decision of the Court of Appeals be upheld, the Court of First Instance of Manila presided by the respondent judge should be ordered to approve the record on appeal filed before it with instruction "that his clerk of court or the petitioner himself cross out in the said record on appeal that part ordered to be eliminated by the trial court." We find no law authorizing it. Section 7, Rule 41 of the Rules of Court reads in part as follows:

"* * * If the trial judge orders the amendment of the record, the appellant, within, the time limited in the order, or such extension thereof as may be granted, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall there upon submit the redrafted record for approval, upon notice to the appellee, in like manner as the original draft."

From the above-quoted express provision of law, it was clearly the duty of the appellant, or the petitioner herein,

to redraft the record on appeal and present it for approval within the time limited in the order of the court, and not for the judge to trust the clerk of court to perform such duty, which clearly devolves upon the petitioner. It is true that said section only provides "by including therein * * * such additional matters as the court may have directed him to incorporate * * *." But it is quite evident, from a reading of the whole section of said rule, that the court has been given the power to exercise full discretion to approve or not to approve the record on appeal. In view thereof, the court may also order the exclusion or; the striking out of immaterial and unnecessary matters before approving the record on appeal, formerly termed by law "bill of exceptions." (4 C. J., 226, 227)

"* * * Mandamus can issue only to compel the trial judge to act; it cannot direct how he shall act, or compel him to decide in a particular way what the bill shall contain, for the law imposes on the trial judge alone the duty to determine whether a bill of exceptions is correct or not." (4 C. J., 308; emphasis added.)

In the instant case, appellant was ordered to eliminate the constancia from the record on appeal, but instead of obeying the order he filed an action for mandamus. By such attitude, appellant chose to stand on his record on appeal, as it was presented, thus preferring to rise or fall with it rather than to amend it within the time fixed by the court. And, consequently, if in the mandamus proceedings the action of the Court a quo is found to be correct, appellant would be regarded as having failed, to file in time the amended record on appeal, and the notice of appeal he had filed before would be dismissed. Accordingly, though the dismissal of the appeal decreed by the trial Court was not altogether correct at the time it was decreed because the petition for certiorari was still appealable to this Court, now it becomes well-founded for it is merely the effect of the present decision. Such being the opinion of this Court, it is necessary to pass upon the other Questions raised in this case.

An urgent motion was filed by respondents' counsel praying for the dissolution of the writ of preliminary injunction pendent lite and the issuance of the writ of execution of the decision of the respondent Judge dated September 30, 1944, alleging that the petitioner failed to file a new bond in lieu of the original bond which was lost or destroyed by fire together with the other record of the case, and that according to Information the petitioner was trying to sublet the premises in question to some Chinese merchants. Respondents' counsel further filed another motion for the immediate issuance of said writ of execution above referred to due to the noncompliance on the part of the petitioner with the provisions of section 8, Rule 72, Rules of Court. Without deciding whether these motions are well-founded or not, we believe that the court a quo, after giving due consideration to the circumstances of the case, may comply now with the provisions of the law and issue the necessary writ of execution of the judgment in this case, which was temporarily suspended by the writ of preliminary injunction pendent lite.

Wherefore, the decision of the Court of appeals is hereby affirmed and the said preliminary injunction pendent lite dissolved, with costs against the petitioner. So ordered.

Moran, C. J., Ozaeta, Feria, and Bengzon, JJ., concur.

HILADO, J., concurring:

Before I go into the merits, it is convenient to explain my position in view of the theory consistently upheld by me as regards the validity or nullity of judicial proceedings had in the Japanese-sponsored courts during the Japanese occupation of the Philippines, as expressed in my dissenting opinion in *Co Kim Cham vs. Valdez Tan Keh and Dizon* (p. 199, ante, G. R. No. L—5), my dissenting opinion in the resolution of the motion for reconsideration therein, my concurring opinion in *Peralta vs. Director of Prisons* (p. 355, ante, G. R. No. L—49) and my concurring opinion in *People vs. Jose y Santos* (p. 625, ante G. R. No. L-22), I still adhere to that theory, and so convinced am I of its correctness, particularly in cases where the judicial proceedings have not gone beyond the

procedural stage and there is no final judgment or adjudication involved which might give rise to questions of vested rights, that before I adopt the course presently to be stated, I deem it proper to further strengthen said view. After doing so, I propose to deal with this case on the merits out of deference to the majority who uphold the view opposite to mine, and considering that this is a collegiate court where the majority decide and, finally, in view of the fact that no party litigant herein has raised, the question, of validity or nullity of such proceedings herein as happened in the Japanese-sponsored courts. However, where, in any particular case, such question is raised by any of the parties litigant, in all fairness and justice to him, I think that I would then again feel in duty bound to assert the same theory in the corresponding dissenting opinion should the majority of the Court as presently or hereafter constituted adhere to their present view.

Coming now to the considerations above announced in further support of ray aforesaid theory. The judicial proceedings involved in the instant case were commenced during the Japanese occupation of the Philippines, that is, on March 3, 1943, by a complaint for ejectment or unlawful detainer filed by Felipe de Santos against Basilio de Castro in the Municipal Court of Manila which was then existing and functioning under the Philippine Executive Commission. The latest proceedings took place some time in October, 1944, in the form of the written briefs and oral arguments mentioned in the majority decision. Thereafter, that is, in or about the month of February, 1945, during the battle for Manila, the record of the case was completely burned. It, therefore, results that all of said judicial proceedings, including the decisions of the then Municipal Court of Manila, of the then Court of First Instance of Manila, and of the then Court of Appeals of Manila, occurred during the short-lived and infamous Japanese regime, partly under the Philippine Executive Commission and partly under the so-called Republic of the, Philippines.

All the reasons and arguments set forth in my dissenting opinion in *Go Chan vs. Tan Keh and Dizon* (p. 199, ante), my dissenting opinion in the resolution of the motion for reconsideration in the same case, my concurring opinion in *Peralta vs. Director of Prisons* (p. 355, ante), and my concurring opinion in *People vs. Jose y Santos* (p. 624, ante), are applicable to the judicial proceedings had in the present case. I am, by reference, using them in support of my proposition that the judicial proceedings had in this case under the Philippine Executive Commission and the so-called Republic of the Philippines were and are null and void and that neither organization was a de facto government within the meaning of International Law. Without reiterating verbatim those reasons and arguments, I would only call attention to the fact that, in his proclamation dated October 23, 1944 (41 Off. Gaz., 147, 148), promulgated at Leyte three days after the first American landing, the Commander in Chief of the liberation army, General of the Army Douglas MacArthur, in the legitimate exercise of his powers and prerogatives as such, and, in my opinion, in representation of both the governments of the United States and the Commonwealth of the Philippines (which according to President Osmeña were in a "military partnership," 41 Off. Gaz., 247), unequivocally evinced his purpose and determination not to recognize the so-called Republic of the Philippines (the Philippine Executive Commission was no longer in existence) even as a de facto government, and to include judicial proceedings or processes within the condemnation of the proclamation. A de facto government is positively a kind of government, and if General MacArthur had intended to recognize the "Republic of the Philippines" as a de facto government, he would undoubtedly have referred to it as such, instead of calling it a "so-called government", in the preamble of his aforesaid proclamation wherein he said:

"* * * Whereas, under enemy duress, a so-called government styled as the 'Republic of the Philippines' was established on October 14, 1943, based upon neither the free expression of the people's will nor the sanction of the Government of the United States, and is purporting to exercise Executive, Judicial and Legislative powers of government over the people."; (41 Off. Gaz., 147, italic supplied).

It must be presumed that General MacArthur knew, when issuing his proclamation, that a de facto government is a kind of government and not merely a "so-called government" in the sense in which he evidently used this

phrase in the preamble of said proclamation. It is very patent that said phrase, as there used, carries with it the meaning that he did not consider that “so-called government” as any government at all. It will be noticed also from the above-quoted paragraph of said preamble that judicial powers were among those which, according to it, he said “so-called government” was purporting to exercise over the people. An unbiased and dispassionate construction of this preamble would naturally and logically imply that in the following condemnation and declaration of nullity, the author of the proclamation intended to include judicial processes, proceedings or acts of that “so-called, government” no less than executive and legislative ones. In the enumeration that he made of governmental powers, he mentioned the judicial next to the executive, mentioning the legislative at the end. Why should we, in our interpretation of the proclamation, exclude the judicial which comes second and include the legislative which comes third and last? The rules of statutory construction as applied to ordinary legislative enactments should, for reasons of analogy, be applied to military decrees or orders issued by Army Commanders in the form of proclamations like the one under consideration. It is well settled in the law of statutory, construction that the preamble of an act is among the important guides to the intention of the legislature (II Sutherland Statutory Construction, 2d ed., pp. 652 et seq., section 341). In the work just cited (p. 653), the Supreme Court of Alabama is quoted as saying

“* * * If the legislative intent is clearly expressed in the preamble, and the body of the act is so constructed as to render its meaning and intent uncertain; and if the act admits of two constructions, one in accord with the intent clearly expressed in the preamble, and the other in conflict with it, courts should adopt that construction which harmonizes with the preamble.” (White vs. Levy, 91 Ala. 175, 8 So., 563, cited at p. 653 of the cited volume).

At page 654 of the same volume we read the following rule:

“* * * Where there is such generally in the text of the statute as renders it ambiguous as to scope, the preamble may be referred to determine whether such general language is to have the most extensive or only a restricted operation; for the purpose of the preamble is to state the reason and object of the law.” (Italics supplied).

At page 657 of the same volume of the aforesaid work, the following quotation from an English case is contained:

“We are to give effect to the preamble to this extent, namely, that it shows us what the legislature was intending; and if the words of the enactment have a meaning which does not go beyond that preamble, or which may come up to the preamble, in either case we prefer that meaning to one showing an intention of the legislature which would not answer the purposes of the preamble or which would go beyond them”. (Per Lord Bluckburn, Hurst Ham Overseers vs. Iles, L. R. 8 App. Cases, 386).

If the proceedings had in this case up to the time of the battle for Manila were declared null and void by virtue of General MacArthur's above-mentioned proclamation, no question of vested rights being prejudiced could be raised for the reason that there has been no final judgment or adjudication in the case of the Japanese-sponsored courts when the record was burned. All that there had been were judicial proceedings and processes of a purely procedural nature. It is settled law that there can be no vested right in mere matters of procedure. The State is entirely free to change the rules of procedure, reorganize its courts—much more, replace those organized or ordered, organized by its enemy during military occupation, by the duly constituted courts of its own rightful government, and introduce other changes of a procedural nature even affecting pending cases so long as no vested rights of a substantive character are prejudiced. To declare null and void judicial proceedings which have not culminated in a final judgment or adjudication, without prejudice to the parties' litigating their claims in the duly constituted courts of their rightful government, does not contravene any constitutional guarantee nor infringe any substantive right. In a litigation the judicial proceedings do not create any vested right until there is a final judgment of a competent court. These considerations, apart from the fundamental grounds of my said view,

further strengthen the writers conviction as to the nullity of the judicial proceedings aforesaid.

Now we come to the merits. The sole question to be decided on the merits is whether the Court of Appeals acted in excess of jurisdiction or with abuse of discretion in refusing to compel the Court of First Instance of Manila by mandamus to approve a record on appeal which included a writing entitled constancia, as stated in the majority opinion. Rule 41, section 6, of the Rules of Court provides what shall be included in the record on appeal. It says:

“* * * it shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of all pleadings, petitions, motions, and all interlocutory orders relating to the appealed order or judgment.”

The constancia in question is none of these. It would, therefore, seem clear that the law or rule did not specifically enjoin the Court of First Instance to allow the insertion of said writing in the record on appeal—that the rule did not impose upon said court the duty, much less a ministerial duty, to allow said insertion. The most that could be said, if at all, is that the Court of First instance had discretion to allow or not to allow it. And, in my opinion, said court has not been shown to have gravely abused that discretion. The fact that this Court itself is divided six to five upon the question is the strongest proof that the Court of First Instance did not incur in an abuse of discretion, its action is perfectly consistent with a mere error of judgment.

As I infer from the record, the supposition is not whimsical that Judge Locsin, in acting as he did, was of opinion that the Japanese-sponsored Mayor of Manila had no legal power to render the so-called decision as quoted in that constancia, the ordinances of the puppet government to the contrary notwithstanding. Upon the merits, therefore, I concur in the result of the majority decision.

PARÁS, J.; with whom concur PABLO and BRIONES, JJ., dissenting;

I dissent. The first erroneous argument of the majority is that the petitioner's record on appeal was properly disapproved by the court of first instance, simply because it included a constancia and its accompanying decision of the Mayor of Manila, not filed before or at the trial or formally offered as evidence by the petitioner. No pretense is here made that said constancia and decision did not form part of the record or that they had been ordered stricken out by the court of First Instance *motu proprio* or at the instance of respondent Santos. In my opinion, under Section 6 of Rule 41 cited by the majority, the matters to be incorporated in the record on appeal need not always be presented before or at the trial or offered as evidence, as long as they bear some relation to the appealed judgment. As admitted in the decision of the Court of Appeals, the allegedly objectionable matters included in the petitioner's record on appeal “may have some relation to the decision from which the appeal is being taken”; and, indeed, the safe course for a court of first instance to adopt is to leave the question of relevancy to the appellant, since the latter is in the best position to determine the nature of the Issues he would raise in the appeal. Otherwise, a trial court may frustrate or defeat the efficacy of an appeal. In other words, it should always be borne in mind that substantial rights may be prejudiced more by requiring the record on appeal to contain less than by allowing it to contain more. At any rate the appellate can pass upon the propriety or relevancy of any matter incorporated in the record on appeal. It is undoubtedly with a view to permitting the parties to raise and thresh out any and all questions on appeal that section 7, Rule 41, authorizes the Judge of First Instance to order the amendment of the record on appeal by the inclusion, not exclusion, of additional matters. Who bears the expenses for the printing of the record on appeal any way? It is none other than the appellant.

"We also think that the court below erred in rejecting the record of appeal on the ground that it contained matters irrelevant to the appeal. It may be true that some of the documents included in the record of appeal have no direct connections with the petitioners' claims, but as the appeal relates to preferences among the various claims presented in the insolvency proceedings, matters which at first sight appear to be irrelevant, may in the course of

the arguments on appeal be found to be of value in the determination of the questions at issue. The courts should exercise caution: in ordering the exclusion from a record of appeal or a bill of exceptions of matters which the appellant has thought necessary for the proper development of his argument; he pays for the printing of the record and there is very little danger of his overburdening it with wholly irrelevant matter. On the contrary, he is more likely to omit matter which ought to be included.

"For the reasons stated, the petition for a writ of mandamus is hereby granted, ordering the respondent judge to approve and certify to this court the aforesaid record of appeal. The respondents Unson, Belo, and Altavas will pay the costs. So ordered." (Smith, Bell & Co. vs. Santamaria, 49 Phil. 820.)

The other untenable proposition of the majority is that, in case the Court of First Instance should find the record on appeal to contain unnecessary matter, it becomes the duty of the appellant, under section 7 of Rule 41, to "redraft the record on appeal and present it for approval within the time limited in the order of the court." In the first place, said provision speaks of the submission of a redrafted record when the amendment or correction consists of inclusion of "additional matters." In the second place, the position of the majority will result in extra expense on the part of the appellant and in the delay of the perfection of the appeal. The practical and, I think, expedient procedure is for the Court of First Instance to merely order the deletion of the matter considered unnecessary or superfluous. In any event, the record on appeal will be printed when the case is elevated to the appellate court.

The majority have likewise erred in laying down the following pronouncements;

"In the instant case, appellant was ordered to eliminate the constancia from the record on appeal, but instead of obeying the order he filed an action for mandamus. By such attitude, appellant chose to stand on as record on appeal as it was presented, thus preferring to rise or fall with it rather than to amend it within the time fixed by the court. And, consequently, if in the mandamus proceedings the action of the Court a quo is found to be correct, appellant would be regarded as having failed to file in time the amended record on appeal, and the notice of appeal he had filed before would be dismissed. Accordingly, though the dismissal of the appeal decreed by the trial Court was not altogether correct at the time it was decreed because the petition for certiorari was still appealable to this Court, now it becomes well-founded for it is merely the effect of the present decision."

There can be no dispute that the decision of the Court of Appeals was not yet final when the Court of First Instance dismissed the appeal, it being stipulated in this case that said dismissal was ordered "even while the action for reconsideration in the Court of Appeals was pending; even while no entry of judgment in the latter court had yet been made; even while the time to appeal by writ of certiorari to this Honorable Court had not yet expired; and, in spite of the fact that no resolution had yet been made on the motion before it asking for suspension of proceedings including compliance with its order about the filing of an amended record on appeal." The filing of the petition for mandamus in the Court of Appeals of course suspended the proceedings in the Court of First Instance. I cannot see how the petitioner could obey the order for the submission of a redrafted record on appeal without converting into a moot case his petition for mandamus. I am of the opinion that the decision in the mandamus case unfavorable to the petitioner cannot legalize the erroneous and premature order of dismissal. Said decision, upon becoming final after having been affirmed by the decision in the present case, merely restores the proceedings in the Court of First Instance at the stage where it had been suspended.

PERFECTO, J., dissenting:

On March 3, 1943, Felipe de Santos filed a complaint to eject Basilio de Castro from the premises at No. 1045 M. de Santos, Manila, and for the collection of rentals at the rate of P140 monthly beginning February, 1943. After

trial, the Municipal Court of Manila dismissed the complaint. Santos appealed. After trial before respondent Judge Arsenio Locsin, of the Court of First Instance of Manila, the parties received notice of the order of the Mayor of Manila rendered under the provisions of Executive Order No. 117 of the Chairman of the Philippine Executive Commission, under the Japanese military administration, fixing the rentals of the premises in litigation at P100 a month.

On September 28, 1943, petitioner filed a pleading entitled constancia, informing the court of the above-mentioned order of the Mayor of Manila. Two days after, Judge Locsin, disregarding the order of the Mayor, rendered his decision ordering Castro to vacate the premises in litigation and to pay a monthly rental of P140 until he vacates the premises. On November 2, 1943, Castro gave notice of his intention to appeal, filed the appeal bond, and submitted his record on appeal. No opposition to the approval of the record on appeal was made within the five-day period fixed by section 7, Rule 41, Rules of Court. Notwithstanding, the court set the appeal for hearing on December 18, 1943, when Santos submitted his opposition to the record on appeal. On the strength of said opposition, the court ordered the elimination of the constancia from the record on appeal. Castro moved to have the order reconsidered, but the court denied the motion on January 11, 1944, and ordered Castro to comply with the order of December 18, 1943, for the elimination of the constancia within five days, failing in which the record on appeal would be disapproved and the appeal declared abandoned.

On January 13, 1944, Castro gave notice of his intention to file a petition for mandamus, and prayed for the suspension of all proceedings, pending the outcome of the petition for mandamus, which was filed before the Court of Appeals on January 27, 1944.

On March 13, 1944, after due course given to the petition for the writ of mandamus, the Court of Appeals of Manila rendered its decision denying its position. On April 3, 1944, petitioner filed a motion for reconsideration, which was denied on the following day. On April 10, 1944, the very day when petitioner received notice of the denial of the motion for reconsideration, Castro requested permission to file a second motion, for reconsideration, which was denied on April 13, 1944, on the ground that judgment had already been entered on April 8, 1944. On April 17, 1944, notice of intention to file a petition for a writ of certiorari was filed with the Court of Appeals, which was done on the following day.

Meanwhile, notwithstanding the steps taken by petitioner in the Court of Appeal, as above narrated, Judge Locsin, on April 4, 1944, issued an order dismissing the appeal against his decision, on the ground that Castro had not perfected his appeal in accordance with the order of January 11, 1944, although more than seventeen days had elapsed since he was notified of the decision of the Court of Appeals in the mandamus case.

On April 15, 1944, Castro moved to have the order of dismissal of the appeal set aside in view of the fact that the decision, of the Court of Appeals was not yet final; adding that his motion asking for suspension of proceedings has not as yet been acted upon; and, since the record on appeal had been filed on time, if all remedies available to the petitioner were exhausted, compliance with the order of January 11, 1944, for the elimination of the constancia, could easily be done by the clerk of court himself. Upon learning that a writ of execution had already been issued, Castro asked also its stay. The petitions were denied, and Judge Locsin ordered the sheriff to execute his decision. To stay said execution, Castro prayed, in the petition for certiorari, for the issuance of a writ of preliminary injunction to restrain the respondent Judge from, executing said decision.

The main question in this case hinges on whether or not Judge Locsin was right in ordering the elimination, from the record on appeal, of the constancia in question and in dismissing the appeal and ordering the execution of his decision, because the appellant failed to comply with the order of elimination.

Before proceeding to discuss this question, we want to make it clear that we are not changing our stand that all

the processes in this case and in the ejectment proceeding, initiated in the Municipal Court on March 3, 1943, are null and void and without legal effect, in accordance with the October Proclamation of General Douglas MacArthur; and that, in the absence of an enabling act, no tribunal of the Commonwealth of the Philippines, including the Supreme Court, has power nor jurisdiction to take cognizance of any judicial processes of the courts which were created and functioned under the Japanese military administration, during the period of the enemy occupation in the Philippines.

This stand is stated and explained at length in our dissenting opinion in the case of *Co Kim Cham vs. Dizon*, (G. R. No. L-5, p. 153, ante)

But, as this Court has decided to take cognizance of this case, following the decision rendered in said case of *Co Kim Cham*, supra, it is unavoidable for us to express our opinion on the legal questions presented in this, case, subject to the above-mentioned qualification

Upon the facts of this case, we are of the opinion that Judge Locsin erred in ordering the elimination of the constancia trait the record, on appeal and in dismissing the appeal, because the appellant failed to make said elimination.

Upon the submission for approval of the record on appeal, if no objection is filed within five days, the trial judge may approve it as presented, or, upon his own motion or at the instance of the appellee, "may direct Its amendment by the inclusion of any matters omitted which are deemed essential to the determination of the issue of law or fact involved in the appeal." (section 7, Rule 41, Rules of Court.)

From the foregoing, it is evident that the trial Judge may order the amendment of the record on appeal, "by the inclusion" of any matters not included therein, but not by the "exclusion" of any matter included therein.

It, seems needless to state that, in accordance with the elemental principle in legal hermeneutics that inclusion unius est exclusio alterius, there should not be any doubt that the evident purpose of the authors of section 7, Rule 41, of the Rules of Court, was not to authorize the trial judge to order the "exclusion" of any matter included in a record on appeal, but only to amend it by the "inclusion" of any matters deemed essential to the determination of the issue of law or fact involved in the appeal.

If we stop to think on the reasons of the rule, we will find immediately how well-founded it is.

If any matter, considered by the appellee or the trial court as superfluous is included in the record on appeal, such inclusion cannot do any harm to any of the parties, nor can it affect the merits of the case. If the matter is really superfluous, it will not be taken into consideration by the tribunal ad quem. But, in case the appellee or the trial Judge is mistaken in his judgment as to the superfluity of the matter sought to be excluded,; the exclusion thereof will prejudice the substantial rights of the appellant or will affect the merits of the case, impairing, therefore, the administration of justice. If the appellee has nothing to be afraid of from the proceedings in the appealed case, his rights cannot be affected by the inclusion in the record on appeal of any matter concerning said proceedings, whether he may consider it superfluous or not. If it is really superfluous, in any case, its inclusion will only affect the pocket of the appellant, who is the one who will bear the additional expenses entailed by a longer record on appeal and the printing of superfluous matter.

In the false hypothesis that the trial Judge has the authority to order the elimination of the constancia in question, which occupies just a small portion of a type-written page, we believe that it was a useless, superfluous, unjustified measure to order the appellant to re-write a long record on appeal, imposing upon the appellant additional expenses and entailing waste of time which would not serve any useful purpose. If we remember the scarcity of paper during the Japanese régime, the order to rewritten the record on appeal had to result in an unwise

waste of scarce and dear material, and unreasonable hardship to the appellant.

Was not it easier for the court to include in the order of approval of the record on appeal a statement to the effect that the constancia in question must be considered eliminated? Was there any reason in the world which would inhibit the trial judge from ordering his clerk to cross out the constancia if said judge was convinced that he had the authority to order its elimination? He would have saved time, effort, and expenses, in a matter so easy and so simple, and, under the circumstances prevailing during the enemy occupation, so advisable.

The respondent judge committed an error in ordering the elimination of the constancia, and in trying to give effect to his erroneous order, resorted to a technical procedure which, without serving any useful purpose in the administration of justice, unjustly defeated the substantial rights of the appellant.

On the legal question presented to us, we conclude that the respondent Judge erred in ordering the elimination of the constancia and in dismissing the appeal; and, if the validity of the case must be upheld, the court where the ejectment case was pending, must be ordered to transmit said case with the record on appeal in question to the tribunal ad quem, for the disposal of the case on its merits.

On the merits of this case, we are in accord with the dissenting opinion penned by Mr. Justice Parás.

The legal question confronting us should be viewed in a broader plane.

No attempt has been made to show that the inclusion of the constancia in the record on appeal could in any way be harmful. The appellee did not complain of any of his rights being adversely affected because the record on appeal carried in its text said constancia.

If he is of opinion that it should not be taken into consideration by the tribunal ad quem, there is absolutely no legal obstacle for the appellee to express his objection which, if it has any merit, will surely be upheld by the appellate court.

There is here a situation wherein a difference of opinion on an insignificant detail, the inclusion or exclusion of the constancia in the record on appeal, will affect a substantial right of appellant, by impairing his right to be heard on appeal, which is expressly guaranteed in the Constitution of the Philippines.

The injustice of the situation is undeniable.

It sacrifices a fundamental right for the sake of a debatable procedural technicality, which is entirely wrong. To sacrifice a substantial right for the sake of an adjectival requirement of no consequence, to sacrifice the basic for the sake of the accessory, to sacrifice the substance for the sake of an accident, is to do away with all sense of proportion as to the relative importance of things and ideas.

We believe that there is absolutely no reason why the constitutional right of appeal of a litigant shall be denied, on account of a trivial procedural detail.

As a matter of fact, the record on appeal itself is not of substantial importance that should affect the constitutional right of appeal.

The necessity of maintaining in the judicial rules the provisions concerning the necessity of filing a record on appeal as one of the indispensable steps to perfect an appeal is a subject for conflicting opinions, for honest disagreement.

In this respect, as a result of our long experience in the practice of law, we arrived at the conclusion that bills of exceptions and records on appeal should completely be abolished as an unjust and unreasonable imposition on appellants.

Do they serve any substantial purpose in the scheme of the administration of justice? No. They are required only as a matter of convenience for the members of the appellate court. By the arrangement of the pleadings in a record on appeal, said members are able to save a brief time for the perusal of said pleadings, all of which appear after all in the original record in a case.

The convenience is better served when the record on appeal is presented in printed form, which is not strictly required, especially under the printing difficulties still prevailing.

But the members of the appellate court, to study the appeal, must have to read also, not only the pleadings contained in the record on appeal, but the transcript of the stenographic notes, the documentary evidence and, very often, the other papers and proceedings appearing in the original record and which are not included in the record on appeal. Thus, convenience is served only in part.

The idea of a record on appeal is to help the members of the appellate court to read easily and with comfort the pleadings appearing in the record on appeal in printed form. If that convenience is to be fully served, there is no reason why the whole original record or, at least, the transcript of the stenographic notes and all the documentary evidence should not be printed too with the record on appeal.

This omission only shows how contrary to reason and logic are the rules regarding records on appeal.

If, as a matter of principle, a record on appeal is not an indispensable element in a system of proper administration of justice, the inclusion or exclusion of a brief document, the constancia in question, written in a few lines, in the record on appeal, fades in importance to a mere trifling that should not merit any serious consideration in tribunals.

A record on appeal is only a means to perfect an appeal. To deprive appellant of his right of appeal because of the constancia incident, is to sacrifice the end for the sake of the means, the purpose for the sake of the way of attaining it.

The injustice of the result in this case can be further emphasized if we take into consideration that one of the two inferior court fudges, equally competent to pass upon the litigation, rendered a decision favorable to Basilio de Castro by dismissing the complaint of Felipe de Santos for ejectment. There is no one who can be sure as to what decision this Supreme Court will render as to the merits of the case; but no one can also deny the possibility of this Supreme Court deciding the case, if appeal is given due course, in favor of Basilio de Castro.

The denial of the petition in this case will result, not only in the denial of the constitutional right of appeal of De Castro, but, without deciding the merits of the case, also in making ipso facto executory the decision for ejectment rendered by the other judge, and giving Felipe de Santos the right to have the sheriff oust immediately Basilio de Castro from the premises in litigation, without granting him his day in court on appeal.

The situation of petitioner Basilio de Castro becomes more tragic considering the housing difficulties prevailing in the city since the liberation.

Therefore, we dissent from the action taken by the majority in recognizing validity in the proceedings in this case and in taking cognizance thereof. We also disagree with the majority opinion as to the merits of the case.

Judgment affirmed; writ dissolved.

RESOLUTION ON MOTION FOR RECONSIDERATION OF**MARCH 25, 1946**

Upon consideration of respondents' petition in RG. R. No. 49158, Basilio de Castro, petitioner, vs. Court of Appeals of Manila et al., respondents, filed on February 8, 1946, praying that the different sums of money totaling P840 deposited by Basilio de Castro as payment of rents on the premises subject of this litigation from August, 1945 to January, 1946, at the rate of P140 per month, be delivered by the clerk of this Court to Attorney Fidel J. Silva in his capacity as counsel for the respondents, and of petitioner's answer thereto objecting, for the reasons stated therein, to the delivery of the whole amount except one-half thereof, that is P420, at the rate of P70 per month; and considering also petitioner's motion for reconsideration wherein he alleges that he was not permitted to answer the brief of the respondents and that the case was not set for oral argument and praying, in view thereof and for other reasons, that the decision of the Court promulgated on January 31, 1946, confirming that of the Court of Appeals, etc., be reconsidered so that the respondent Court of First Instance could reinstate petitioner's appeal;

It appearing that this case had already been argued before the Supreme Court sometime in October, 1944 (see paragraph 5, petition for reconstitution of record, dated July 14, 1945) and had been pending decision by it since then; that the brief for the respondents had been filed since August 27, 1945, and that about five months had already elapsed when this case was decided by the Court on January 31, 1946, and no reply-brief having been submitted by the petitioner; and that there is absolutely no ground for reconsidering the decision of this Court;

The Court resolved to deny the motion for reconsideration and, following the result of this case, the respondents' motion for the delivery of the amount of P840 deposited with the clerk of this Court for the rents of the premises in question is hereby granted.

Justices Parás and Perfecto dissented in separate opinions; Justices Pablo and Briones dissented; and Justice De Joya did not take part.

Per Perfecto, J., dissenting:

- **IMPORTANT PROCEDURAL QUESTION MUST BE MET SQUARELY.**—The facts stated raise a procedural question which, notwithstanding its importance and implications, the majority resolution fails to meet squarely. We cannot help feeling disappointed at such unjustified avoidance to face a legal issue, openly presented by one of the litigants, the resolution on which must necessarily affect basic questions of principle.

- **SPORTMANSHIP.**—Among gentlemen, in all enlightened circles, in any civilized community, sportmanship calls for sportmanship, an act of generosity should not remain unanswered, and in the social symbiosis even a showing of formal courtesy needs to be reciprocated.

- **REQUEST NOT ACTED UPON.**—Petitioner's request to be allowed to answer belatedly respondents' brief, after so many months, remained unacted upon even until now. No reason or explanation had been given for it; but the fact is there, undeniable, boldly staring at us, flinging the reality of its truth, more unanswerable than the riddle of the Theban sphinx.

- **OPPORTUNITY DENIED.**—Petitioner complains that the case has not been set for oral argument and he was thus deprived of the opportunity to answer respondents' contentions and of presenting additional facts and arguments why the petition for certiorari and mandamus should be granted. The complaint is well-taken.

- **DISMISSAL OF APPEAL ERRONEOUS ON FOUR GROUNDS.**—Petitioner's appeal in the lower court was dismissed, and in the order of dismissal said court committed four errors: (1) that of the mistaken belief that the decision of the Court of Appeals had already become final; (2) that petitioner was notified of said decision one week before actual notification; (3) that the order of dismissal was issued upon an alleged motion of counsel for plaintiff which, in fact, has never been filed; and (4) that it was issued without hearing and without giving petitioner his day in court.

- **REDRESS UNJUSTLY DENIED.**—All the four grounds of petitioner are well-taken. For each and all of them petitioner is entitled to redress under the laws of the land. He appears before us to seek relief, believing that in this tribunal of last resort he will find the last bulwark of his trampled rights. Unfortunately, it seems that he clamored in the desolate vastness of a desert, where even the echo of his voice failed to answer with a deceitful consolation.

- **DISSENTING OPINION.**—It is our hope that this dissenting opinion might serve as a warning that might linger in the conscience long enough so that, by virtue of its righteousness, it may resound stronger than a clarion call and with enough force to avoid the repetition of petitioner's tragedy.

- **TRAGEDY MORE PITIFUL.**—The tragedy becomes more pitiful if we take into consideration that the majority assert conclusively in the decision that the trial court erred in issuing the order dismissing the appeal, and that notwithstanding this unmistakable recognition of a flagrant judicial error substantially impairing the rights of petitioner, the logically expected remedy—that is, the renewal of the erroneous order and the consequent reinstatement of the case to its situation when the order was issued—is unjustly denied.

- **RHETORIC, NOT REASON.**—Petitioner was ordered to eliminate the constancia from the record en appeal. He filed a petition for a writ of mandamus to seek reversal of said order. The majority said that, if the mandamus is not granted "appellant would be regarded as having failed to file in time the amended record on appeal, and the notice of appeal he had filed before would be dismissed." The ground for this position is not substantial but pure rhetoric, wholly unrealistic, better intended to coin the gem of a lapidary phrase, for the sake of a beautiful image, rather than to answer to the dry and cold logic of reason. It says: "By such attitude, appellant chose to stand on his record on appeal as it was presented, thus preferring to rise or fall with it rather than to amend it within the time fixed by the court."

- **CONJECTURE AND FICTION.**—The whole structure of the majority's argument stands on two fantastic legs: conjecture and fiction.

- **DECEITFUL PROPOSITION.**—The "rise and fall" proposition of the majority, undressed of the metaphorical tinsels with which it tries to dazzle and deceive, and reduced to a legal thesis, appears what to the untrained would be a demimondaine, full of sophisticated charms, when in reality is but a rough sack, stuffed with shavings and uncleaned cotton, used as a modiste's manikin.

- **LEGAL REMEDY A GAME OF CHANCE.**—The right of the injured party to appeal, by means of a recourse or extraordinary remedy, to an appellate court from the order of the lower court, under the legal thesis of the majority, turns completely into a simple game of chance. The result is to make the injured party litigant either a coward or a gambler.

- **METAPHYSICAL IMPOSSIBILITY.**—One of the immediate disastrous effects of the majority's thesis is the pronouncement that the effect is made to appear as producing its own cause, a proposition that is absurd from all points of view. The pronouncement maintains a metaphysical impossibility, the same as making a child the progenitor of its own parents, the creator, the offspring of its own creation.

- **STROKE OF MAGIC.**—On April 4, 1944, date of its issuance, the order of dismissal of appeal was erroneous

according to all the members of the Supreme Court. But twenty-two months later, on January 31, 1946, it was declared well-founded. By a stroke of magic, an error ceased to be an error, turning it instead to be an act of judicial wisdom. The statements are made in the same page, in the same paragraph, and, if one asks more, in the very same sentence.

- ABSURDITY OF A JUDICIAL PARADOX.—The conflicting assertions of the majority are a paradox simply beyond our ken. We tried in vain to reconcile them, but we feel that there is no power on earth that can control the protest of our reason, revolting against such a stark judicial absurdity. "Not correct" and "well-founded" denote ideas reciprocally repellent, incompatible, inconsistent, irreconcilable, nullifying, the same as to be and not to be, good and bad, right and wrong, light and darkness, finite and infinite, universe and nothingness, truth and falsehood, justice and injustice.

- CATASTROPHIC CONSEQUENCES.—We cannot but shudder at the catastrophic consequences of a judicial decision which advances, as a legal postulate, the proposition that a mistaken judicial action is well-taken, that an erroneous order is well-founded. It throws over-board all differences between opposites: between what is right and what wrong, between what is erroneous and what is correct, between what is just and what is unjust. The resulting mental chaos and anarchy cannot but draw the administration of justice under the cataclysmic deluge of destruction of all ethical and spiritual values.

- LACK OF STANDARD.—Is there any rule or standard by which the litigants and the people may determine when an erroneous order will be declared by the Supreme Court as well-founded and when it will not? The majority's answer to this question is most distressing: an absolute silence, enveloping everybody in an absolute darkness in the wilderness of judicial mis-orientation.

- FOUR SUCCESSIVE ERRORS. — Confucius said that "a man who knows he has committed a mistake and does not correct it is committing another mistake." In this case, a string of four successive errors, each one contributing to aggravate the other three, have been committed. We wish they be the harmless errors of a dramatic farce and then we can just let the case go as a comedy of errors, but unfortunately the resulting injustices turn this case into a tragedy of errors.

PARÁS, J., dissenting:

I dissent. The basis for the mandamus and certiorari proceedings was an unlawful detainer case decided in the Municipal Court of the City of Manila against the plaintiff landlord. On appeal by the latter to the Court of First Instance, judgment was rendered reading in part as follows:

"It appears from the evidence that in February, 1942, Felipe de Santos, the owner of premises known as 1045 M. de Santos, Manila, entered into a verbal contract of lease with Basilio de Castro and Jose Tan giving unto the latter by way of lease the above-mentioned premises, with rent of P100 a month, payable monthly; to expedite matters, however, the receipt was placed only in the name of the defendant Basilio de Castro and his co-lessee that beginning with the month of January, 1943, the rent of the premises in question would be P140 a month, * * * that Jose Tan was not judicially required any more to vacate the premises inasmuch as he would also leave as soon as Basilio de Castro leaves.

"In view of the foregoing, this Court renders judgment ordering the defendant Basilio de Castro to vacate the premises in question, to pay P140 a month as reasonable rent of the premises while he does not leave the same, from February, 1943, and the costs."

This decision reversing that of the municipal court is on its face erroneous, because the maximum rent that could be awarded in favor of the plaintiff and against the defendant is P70 per month. The appeal, therefore, from said

decision is on the merits far from being frivolous.

Upon the reconstitution of the certiorari proceedings it was shown that while the petitioner had duly filed his brief, the respondent had not presented any. The resolution of the majority says:

"Considering that this case was already argued before the Supreme Court sometime in October, 1944 (see paragraph 5, Petition for Reconstruction of Records, dated July 14, 1945) and had been pending decision by it since said month of October, 1954."

But paragraph 5 of the petition only states:

"5. That within the period prescribed by law, an appeal was taken by the herein petitioner before this Honorable Supreme Court, by virtue of a writ of certiorari; and after the parties had presented their respective briefs, this Honorable Court in or about the month of October, 1944, set this case for oral argument, and now the same is pending decision,"

And the report of the Commissioner for Reconstitution contains the following statement:

"In the course of the hearing, Attorney Silva prayed that he be given ten days within which to file a typewritten brief for the respondents. Attorney Lerum made the observation that, although the original record of this case did not contain any brief for the respondents, as the latter's counsel had failed to file one, he would not object to the request of Attorney Silva, provided that Attorney Lerum be given the opportunity to file a typewritten brief in answer to that to be filed by Attorney Silva.

"It is now incumbent upon the Court to act upon said prayers, and to decide whether it would require the parties to file copies of the briefs sufficient for all the members of the Court."

It now appears that a brief for the respondent was in fact filed. Since no action has been taken by this Court on the report of the Commissioner, the attorney for the petitioner was at a loss and has not as yet filed a reply-brief or memorandum. Under this circumstance, the decision was promulgated without a hearing or before the case had been formally submitted to the Court.

In my opinion the motion for reconsideration is well founded. Very recently, or in the case of *People vs. Luna* (G. R. No. L-24), the court upon motion granted the defendant and appellant time to file a memorandum. However, we promulgated a decision even before the time for filing said memorandum had expired. In justice to the appellant, we readily set aside or suspended the effect of our decision so as to allow the appellant to exercise the right which had just been given to him.

Again, in the case of *People vs. Moreno*, the defendant and appellant submitted a letter and the Solicitor General sent a telegram in the form of constancias. We have practically admitted both very recently. This is just to show that such constancias are not mere scraps of paper which when presented in the Court of First Instance have no value whatsoever so as to be excluded from the Record on Appeal.

I vote to set aside the decision and to grant a hearing to the parties. When a party appeals from a clearly erroneous decision, and files his notice to that effect and the record within the reglementary period together with a bond, a grave injustice is committed when this Court, without a hearing, denies on mere technicality the petition for a writ of mandamus to compel the Court to give due course to the said appeal.

PERPECTO, J., dissenting:

Praying for reconsideration of the decision promulgated on January 31, 1946, petitioner begins his motion by stating the following:

"It may be surprising to this Honorable Court, but it is nevertheless true, that the present case as reconstituted, had not yet been submitted by the petitioner for decision. It will be recalled by the members of the Court who were sitting as such when this case was filed, that the Honorable Justice De Joya who was then counsel for the respondents in this case, did not file any brief and consequently, when the records were ordered reconstituted, his successor had no brief to reconstruct. Neither is he entitled to file a new brief for the simple reason that the time for filing it had already expired. In the interest of justice, however, and in order to give the Court the opportunity of hearing both sides fully, petitioner did not object to the filing of respondents' brief, subject to the condition which we stated in our oral petition, that we be allowed to answer it, which is but reasonable. No action was taken on that petition and neither was the case set for oral argument, thus we have been deprived of answering respondents' contentions and of presenting additional facts and arguments why our petitions for certiorari and mandamus should be granted. For this reason, we therefore request that in fairness to us, this motion for reconsideration be set for hearing and oral argument and that we be permitted to file additional memorandum in support thereof."

The facts stated by petitioner raise a procedural question which, notwithstanding its importance and implications the majority resolution fails to meet squarely.

We cannot help feeling disappointed at such unjustified avoidance to face a legal issue, openly presented by one of the litigants, the resolution on which must necessarily affect basic questions of principle.

The present record of the case is a reconstitution of one which was destroyed. Because respondents failed to file on time their brief in the original record, no such brief has been reconstituted. After reconstitution, respondents requested for an opportunity to file a brief. Petitioner has been sportsman-like enough not to assert his legal right to oppose the belated filing of said brief, but even went to the extent to manifesting expressly his conformity and agreement to respondent's petition, although with the condition that he be allowed to reply.

No one will dispute the reasonableness of this condition, much less considering the fact that petitioner's mere inaction or omission to oppose respondent's petition would have been enough to defeat the same, and much more, if he had opposed it expressly.

Among gentlemen, in all enlightened circles, in any civilized community, sportsmanship calls for sportsmanship, an act of generosity should not remain unanswered, and in the social symbiosis even a showing of formal courtesy needs to be reciprocated. So respondents, on their own part, did not object that petitioner be allowed to file an answer to respondent's brief.

But fate willed that petitioner's request to be allowed to answer respondents' brief remained unacted upon even until now. No reason or explanations had been given for it; but the fact is there, undeniable, boldly staring at us, flinging the reality of its truth, more unanswerable than the riddle of the Theban sphinx.

The majority's resolution recites simply the fact that since respondents had filed their brief, five months had elapsed when the case was decided on January 31, 1946, and no reply-brief has been submitted by petitioner, failing to state that the petition for permission to file said reply-brief has not so far been acted upon, and that, under the rules, it cannot be expected that petitioner would file said reply-brief without the previous permission from this Court.

True, we have to confess that this Court, not only the majority, but including ourselves of the minority, committed an oversight by failing to act upon the petition to allow petitioner to file a reply-brief. How that oversight occurred is of no consequence in the present discussion. The important question is that such an oversight has been a decisive factor for petitioner's failure to file the reply-brief.

Petitioner complains, furthermore, that the case has not been set for oral argument and he was thus deprived of the

opportunity to answer respondents' contentions and of presenting additional facts and arguments why the petition for certiorari and mandamus should be granted. The complaint is well-taken, and it is only fair that petitioner's request that his motion for reconsideration be set for hearing and oral argument and that he be permitted to file additional memorandum should be granted.

Petitioner's request, even invoking the principle of fairness, has been completely ignored by the majority's resolution. We cannot avoid regretting such attitude, being-incompatible with the most elemental principle of justice.

As clearly stated by petitioner, there are two questions involved in this case: certiorari, to review the decision of the Court of Appeals dated March 18, 1944, denying defendant's petition to compel the Court of First Instance of Manila to approve petitioner's record on appeal; and mandamus, to compel the Court of First Instance of Manila to reinstate petitioner's appeal which had been illegally dismissed by order of respondent judge dated April 4, 1944, in the mistaken belief that the decision of the Court of Appeals had already become final when in truth it had not. Regarding the question raised in connection with the writ of certiorari, we deem it necessary to elaborate further than we had already done in our dissenting opinion when the decision in this case was promulgated.

The issues relating to the writ of mandamus call for our opinion on them.

On December 18, 1943, the Court of First Instance issued an order requiring petitioner to amend the record on appeal "by deleting from it all of its No. VI," meaning the constancia.

Petitioner moved for the reconsideration of said order, and on January 11, 1944, the court issued an order denying petitioner's motion and ordering him to comply with the order of December 18, 1943, within five days, otherwise, his record on appeal would be disapproved and his appeal declared abandoned.

Notified on January 13, 1944, of said order, four days later, that is, on January 17, petitioner filed a motion praying that all proceedings in the case be suspended, including compliance with the order dated January 11, 1944, pending the outcome of the mandamus proceedings in the Court of Appeals.

No action has ever been taken on said motion.

On March 18, the Court of Appeals rendered its decision denying the petition for mandamus. Petitioner filed on time a motion for reconsideration. While said motion was still pending, respondent judge issued on April 4 an order dismissing petitioner's appeal "it appearing that more than seventeen days have already elapsed since counsel for defendant Basilio de Castro has received copy of the decision of the Court of Appeals of Manila, on March 18, 1944, denying the mandamus proceedings instituted by said defendant in this case."

Petitioner complains that the order of dismissal was illegal, was without any basis, was made in the mistaken belief that the decision of the Court of Appeals of Manila had already become final.

Petitioner complains also that the statement in the order that more than seventeen days that had already elapsed since counsel for Basilio de Castro has received copy of the decision of the Court of Appeals, based on the assumption that he received the copy of the decision on March 18, the date it was promulgated, is contrary to fact, because said counsel received it only one week later by ordinary mail.

Petitioner complains, besides, that the statement in the order to the effect that the order was issued "upon motion of counsel for plaintiff" is not borne out by the record of the case where no motion appears to have been filed to said effect.

Lastly, petitioner contends that, aside from the fact that the order was based on false assumption of facts, it was issued without a hearing and without giving him his day in court, in flagrant violation of the constitutional

guarantee that no person shall be deprived of any right without due process of law nor shall any person be denied the equal protection of the laws.

All the four complaints are well-taken. For each and all of them petitioner is entitled to redress under the laws of the land. He appears before us to seek relief, clamoring for redress against the errors and injustices committed by a lower court, undoubtedly believing that in this tribunal of last resort he will find the last bulwark of his trampled rights.

Unfortunately, it seems that he clamored in the desolate vastness of a desert, where even the echo of his voice failed to answer with a deceitful consolation. It is our hope that this dissenting opinion might serve as a warning that might linger in the consciences long enough so that, by virtue of its righteousness, it may resound stronger than a clarion call and with enough force to avoid the repetition of petitioner's tragedy.

The tragedy becomes more pitiful if we take into consideration that the majority assert conclusively in the decision that the trial court erred in issuing the order in question on April 4, dismissing the appeal; and that, notwithstanding this unmistakable recognition of a flagrant judicial error substantially impairing the rights of petitioner, the logically expected remedy—that is, the reversal of the erroneous order and the consequent reinstatement of the case to its situation when the order was issued—is unjustly denied.

The recognition appears in the following paragraph of the decision:

"In the instant case, appellant was ordered to eliminate the constancia from the record on appeal, but instead of obeying the order he filed an action for mandamus. By such attitude, appellant chose to stand on his record on appeal as it was presented, thus preferring to rise or fall with it rather than to amend it within the time fixed by the court. And, consequently, if in the mandamus proceedings the action of the Court *a quo* is found to be correct, appellant would be regarded as having failed to file in time the amended record on appeal, and the notice of appeal he had filed before would be dismissed. Accordingly, though the dismissal of the appeal decreed by the trial court was not altogether correct at the time it was decreed because the petition for certiorari was still appealable to this Court, now it becomes well-founded for it is merely the effect of the present decision. Such being the opinion of this court, it is unnecessary to pass upon the other questions raised in this case."

Regarding the pronouncement contained in this paragraph, let us hear what petitioner says in his motion for reconsideration:

"From what could be seen from the foregoing, it clearly appears that the one and only basis for the majority's justification of the illegal order of dismissal of the appeal was that by his 'attitude, appellant chose to stand on his record on appeal as it was presented, thus preferring to rise or fall with it rather than to amend it within the time fixed by the court.' But there is absolutely nothing, no evidence at all to support this conclusion. If it was our avowed intention and purpose to stand pat on our record on appeal rather than to amend it, what reason would there be for us to file the following motion in the court below:

"It is respectfully prayed of this Honorable Court that all proceedings in this case be suspended, including compliance with the order dated January 11, 1944, pending the outcome of the mandamus proceedings above mentioned."

"And according to counsel for said respondent Judge, 'the respondent judge indeed suspended the proceedings on the case (page 6, lines 1, 2 and 3 of respondents' brief)."

"Then still later, to apprise the respondent Judge of our true intentions, we filed a motion asking for permission, in the event that mandamus is not granted, to allow us to just cross out the constancia from the record on appeal already filed with the court. In this connection, it should be remembered that the order of the

respondent court was to amend their record on appeal by deleting from it all of its No. VI', and our motion is perfectly in harmony with the provision that 'These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining just, speedy and inexpensive determination of every action and proceeding.' (Section 1, rule 1, Rules of Court.) For who can say that the filing' of a new record on appeal with the consequent time and labor to be spent by the petitioner in preparing it and those of the respondent and the court in studying it, is more speedy and less expensive than merely to cross out the part objected to, for after all it would reach the appellate court in printed form? Here again, we have a conclusion of the Court which is not supported by any evidence and to repeat the language used in *Edwards vs. McCoy*, supra, 'a decision which has nothing to support it is a nullity.'

"Another justification made by the majority of the Court of the illegal order of dismissal was this:

" 'Accordingly, though the dismissal of the appeal decreed by the trial court was not altogether correct at the time it was decreed because the petition for certiorari was still appealable to this Court, now it becomes well-founded for it is merely the effect of the present decision.'

"With all due respect to the wisdom of the members of this Honorable Court, we must confess that we are still at a loss to follow the logic behind this, for how could the cause be produced by its own effect? We have been taught that cause produces effect but never for an effect to produce its own cause. It was precisely because of this immutable law that cause produces effect and not for an effect to produce its cause that up to the present a perpetual motion machine had not yet been invented.

"To follow then the reasoning of the Court, the effect was already in existence on April 4, 1944, the date of the illegal order of dismissal, while its cause, the present decision of this Honorable Court, came into existence only last January 31, 1946. This is an admission that on April 4, 1944, when respondent Judge issued his order of dismissal, there was absolutely nothing to support it and is therefore, a nullity (*Edwards vs. McCoy*, supra). It is possible that respondent Judge may have surmised or conjectured that his order for the elimination of the constancia may be affirmed but it is a well settled rule of law that mere surmise and conjectures could not have the effect of proof.

"Had this Honorable Court ever stopped to consider that by the illegal order of dismissal of the appeal petitioner had been prevented from complying with the order for the elimination of the constancia in the record on appeal? Indeed, it was our intention, if and when our motion for reconsideration should be denied by the Court of Appeals, to bow to its ruling and to comply with it, but even if we wanted to, we could not do so because our appeal had already been dismissed.

"We are afraid a very dangerous precedent is being created in this case in an effort to justify the illegal order of dismissal and to give it effect. In other words, from now on, a trial court, although the time to appeal had not yet expired, has the power to dismiss the appeal and to execute his decision, with the full knowledge that if his decision is confirmed, that would be the justification for his illegal order of dismissal. There would be no longer any stability in judicial proceedings for no longer could an appellant rely on the Rules of Court, but he is always at the mercy of the trial judge. People then would lose their respect for the law and the courts and the result is that they will take the law into their own hands. God grant that such a situation shall not come to pass!

"In view of the unanimous opinion of this Court that the order of dismissal of the appeal is erroneous, it is clearly its duty to grant the petition for mandamus and order the respondent Judge to reinstate petitioner's appeal. The proceedings then would be returned to the Court of First Instance of Manila and restored as of the time the petition for suspension of proceedings had been filed. It would then be the duty of the respondent court to act on said position. He should likewise act on the petition asking for permission to merely strike out from the record on appeal the constancia, instead of filing a new record on appeal, and if after the period granted, the petitioner still does not comply with the order of the Court, then, and only then, would the respondent court be right in dismissing the appeal. Only then would this Honorable Court be right in saying that the order of dismissal is but the result of its decision, the petitioner having allowed it to become final

without complying with it."

For the sake of brevity, we are not going to quote further, although all the remaining portions of the motion are not only interesting, but worth reading to appreciate fully the extent of the injustice committed against petitioner.

We wish to avail ourselves of this opportunity to discuss the theory advanced in the first half of the paragraph of the majority decision above quoted, because, as we see it, the same appears to be a dangerous explosive which, in many cases, will blast the substantial rights of party litigants.

Before proceeding, we should take into account the following facts:

- (1) That petitioner, upon filing his petition for mandamus before the Court of Appeals, filed before the lower court a petition praying for the suspension of all proceedings in the case;
- (2) That, according to counsel for said respondent Judge, "the respondent Judge indeed suspended the proceedings in the case";
- (3) That the Supreme Court issued a writ of preliminary injunction for the suspension of said proceedings, the same preliminary injunction pendente lite, declared dissolved in the decision rendered in this case.

All these facts become absolutely meaningless under the theory in question.

Petitioner was ordered to eliminate the constancia from the record on appeal. Instead of complying with the order, he filed a petition for a writ of mandamus to seek the reversal of said order. The majority said that, if the mandamus is not granted, "appellant would be regarded as having failed to file on time the amended record on appeal, and the notice of appeal he had filed before would be dismissed." The ground for this position is not substantial but pure rhetoric, wholly unrealistic, better intended to coin the gem of a lapidary phrase, for the sake of a beautiful image, rather than to answer to the dry and cold logic of reason. It says: "By such attitude, appellant chose to stand on his record on appeal as it was presented, thus preferring to rise or fall with it rather than to amend it within the time fixed by the court."

So it can be seen that the whole structure of the majority's argument stands on two fantastic legs: conjecture and fiction.

Conjecture and fiction is to say that the appellant preferred "to rise or fall" with his record on appeal, when there is nothing in the record to support it.

Conjecture and fiction is to attribute to appellant that the latter preferred to rise or fall with his record on appeal "rather than to amend it," when it is a fact that the petition for mandamus was filed precisely to attack the validity of the order to amend said record on appeal, and there is absolutely nothing to support the supposition that appellant, in case of failure of the recourse, committed himself not to comply with the order to amend the record on appeal.

Conjecture and fiction is to suppose that, notwithstanding the filing of the petition for mandamus attacking the validity of said order, the same should be regarded as enforceable, in spite of the possibility of it being revoked or annulled by the appellate court. Conjecture and fiction is to suppose that appellant, once the order of the lower court is upheld, would be stubborn enough not to amend the record on appeal, preferring to "fall" with it.

Fiction is to imagine that "appellant would be regarded as having failed to file in time the amended record on appeal" when no time could run in view of the mandamus recourse.

Conjecture and fiction is to suppose that the order, if upheld by the appellate court, shall be considered as enforceable from the beginning, forgetting that with such a thesis a bold inferior court judge may ignore the

higher court's proceedings and decide to execute the order in question without waiting for any chance of it being nullified.

The theory, in effect, turns petitioner's act in filing the petition for mandamus into a gambling process, where a desperate gambler tries by one stroke to catch all the money on the table or lose his last penny, then commit suicide.

The "rise and fall" proposition of the majority, undressed of the metaphorical tinsels with which it tries to dazzle and deceive, and reduced to a legal thesis, appears what to the untrained would be a demimondaine, full of sophisticated charms, when in reality is but a rough sack, stuffed with shavings and uncleaned cotton, used as a modiste's manikin.

The majority's thesis, in effect, is that, if the lower court's order is found wrong by the appellate court, its effects shall then be considered suspended as from the time the petition for mandamus was filed; but if it should find it well-founded, as it did in the present case, the order shall then be considered to continue in full effect, uninterruptedly the mandamus proceedings notwithstanding.

As a consequence, if the lower court guesses correctly that its order will be upheld, then it may proceed to execute it, ignoring completely the proceedings in the appellate court.

As can be seen, the right of the injured party to appeal, by means of a recourse or extraordinary remedy, to an appellate court from the order of the lower court, under the legal thesis of the majority, turns completely into a simple game of chance. The result is to make the injured party litigant either a coward or a gambler. The fear that his recourse to the appellate court may not prosper will compel him to resign to and accept in shameful submission the full effects of an order, which impairs his rights, and which he feels is wrong and unjust. But, if he has enough courage to take chances by appealing to an appellate court, he engages into a veritable gambling process.

To say the least, the thesis appears to us to be unacceptable, unilateral, unreasonable, unjust, and subversive for the purposes of the administration of justice.

One of the immediate disastrous effects of such a thesis is the pronouncement made in the last part of the paragraph we are commenting upon where, as petitioner points out in his motion for reconsideration, the effect is made to appear as producing its own cause, a proposition that is absurd from all point of view. The pronouncement maintains a metaphysical impossibility, the same as making a child the progenitor of its own parents, the creator, the offspring of its own creation.

It is admitted, nay, it is actually confessed, that the order of dismissal of the lower court "was not altogether correct at the time it was decreed" because the petition for certiorari was still appealable, but "now it becomes well founded for it is merely the effect of the present decision."

Since April 4, 1944, the date of its issuance, the order was without question erroneous. The judicial blunder is being minimized or attenuated with the diplomatic euphemism that the order was "not altogether correct." But twenty-two months later, on January 31, 1946, it became well-founded. By a stroke of magic, an error, almost two years old, ceased to be an error, turning it instead into an act of judicial wisdom. How was this miracle performed? By the promulgation of the decision rendered in this case wherein said order of dismissal is firstly declared erroneous and later well-founded. The contradictory statements are made in the same page, in the same paragraph, and, if one asks more, in the very same sentence.

The conflicting assertions are a paradox simply beyond our ken. We tried in vain to reconcile them, but we feel

there is no power on earth that can control the protest of our reason, revolting against such a stark judicial absurdity. "Not correct" and "well-founded" denote ideas reciprocally repellent, incompatible, inconsistent, irreconcilable, nullifying, the same as to be and not to be, good and bad, right and wrong, light and darkness, finite and infinite, universe and nothingness, truth and falsehood, justice and injustice.

Our understanding has always been that a judicial error is corrected; that an erroneous order is either annulled or, at least, modified; that a mistaken action of a lower court is reversed or revoked by the reviewing tribunal. This understanding is shared, if not by all, at least by the great majority of the members of the bench and of the bar.

We are sure that they will get one of the most startling surprises of their lives if they happen to know that a wrong order of a lower court, after having been declared erroneous by the Supreme Court, before the wink of an eye is over, is sanctioned and affirmed as well-founded by the same Court.

Since reason began to dawn in the mind of homo sapiens, an error has always been and will always be an error; a mistake, a mistake; a blunder, a blunder; and an error, a mistake, or a blunder, has never been nor will ever be well-founded.

Between an erroneous judicial action and a well-founded one, there is a metaphysical incompatibility which no one, even the divine omnipotence, may solve or cure.

We cannot but shudder at the catastrophic consequences of a judicial decision which advances, as a legal postulate the proposition that a wrong judicial action is well-taken, that an erroneous order is well-founded. It throws overboard all differences between opposites: between what is right and what is wrong, between what is erroneous and what is correct, between what is just and what is unjust. The resulting mental chaos and anarchy cannot but draw the administration of justice under the cataclysmic deluge of destruction of all ethical and spiritual values.

If the petition for relief of the victim of an erroneous order, as the case of the petitioner herein, is coldly met by the Supreme Court by a shrug of the shoulder, under the whimsical pretext that the error is well-founded, is there any force that can prevent the same absurd judicial assertion to be flung again and again at the anguishing faces of despairing victims of errors, wrongs, and iniquities of lower courts?

At least, is there any rule or standard by which the litigants and the people may determine when an erroneous order will be declared by the Supreme Court well-founded and when it will not? The answer to this question is most distressing: an absolute silence, enveloping everybody in an absolute darkness in the wilderness of judicial mis-orientation.

If an erroneous order of dismissal of an appeal is declared, as in the present case, well-founded, is there anything to preclude that any other order, however wrong may be also declared well-founded and that any blundering decision of a lower court will be sanctioned and affirmed as well-founded?

It is our duty to firmly oppose all and any action that leads to such situation. We refuse to be an accomplice to an action that will spell doom to our system of administration of justice.

Confucius said that "a man who knows he has committed a mistake and does not correct it is committing another mistake". In the case at bar, it is conclusively declared, with the unanimity of all the Justices of this Court, that the lower court erred in issuing the order of dismissal of petitioner's appeal. The Supreme Court, recognizing this error, not only fails to correct it, by its own motion, to avoid the second mistake pointed out by Confucius, but refuses to grant petitioner's prayer that it be corrected. Furthermore, the Supreme Court concludes by declaring the error as well-founded. There is, therefore, in this case a string of four successive errors, each one contributing to aggravate the remaining three others. We wish they be the harmless errors of a dramatic farce and then we can

just let the case go as a comedy of errors, but unfortunately the resulting injustices turn this case into a tragedy of errors.

We, therefore, vote (a) that the motion for reconsideration be granted; (b) that the case be set for a new hearing on the merits; or (c) that, in any case, the order of dismissal of the lower court be declared annulled, that petitioner be granted time to amend his record on appeal as ordered by the lower court, and that, once said record on appeal is amended, due course be given to the appeal on the merits of the case to the Supreme Court.

Motion for reconsideration denied; motion for delivery of amount deposited granted.

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