NOTES

A PRESCRIPTION FOR PRESCRIPTION OF CRIMES

Article 91 of the Revised Penal Code reads as follows:

> Art. 91. *Computation of prescription of offenses.* — The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.
>
> The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

It is immediately apparent that the Legislators did not specify the court or office where the complaint or information must be filed in order to interrupt the period of prescription of crimes. As a result of this defect in the wording of the law, a doubt on the true intent of the above provision existed. The intent is so hidden that the Supreme Court has acknowledged two contradictory lines of its own decisions interpreting the same legal provision: one line declared that the period of prescription is interrupted by the filing of the complaint or information in the fiscal's office or in the inferior court for preliminary investigation,[1] while the other line of decisions required that the complaint or information must be filed in the competent court for trial before the period of prescription can be considered interrupted.[2] This was the unsettled status of the question up to early 1967. However, on February 28 of the same year, the Supreme Court, in the case of *People v. Olarte,*[3] had the occasion to rule on the issue of the interruption of the prescriptive period of offenses, and, with the intention of clarifying the applicable rule on the matter, declared that the "true doctrine is, and should be, the one established by the decisions holding that the filing of the complaint in the Municipal Court, even if it be merely for purposes of preliminary examination or investigation, should, and does, interrupt the period of prescription of the criminal responsibility, even if the court where the complaint or information is filed can not try the case on its merits.[4] This unequivocal statement certainly removes all doubts on the Court's position on the issue. However, as seen in relation to the facts of the

[1] People v. Aquino, 68 Phil. 588 (1939); People v. Uba, G.R. No. L-13106, October 16, 1959; People v. Olarte, G.R. No. L-13027, June 30, 1960.

[2] People v. del Rosario, G.R. No. L-15140, December 29, 1960; People v. Coquia, G.R. No.L-15456, June 29, 1963.

[3] G.R. No. L-22465, February 28, 1967.

[4] *Ibid.*

case that occasioned it, the ruling caused something more than its avowed purpose and ironically raised a more difficult, although collateral, question.

A brief summary of the facts of the *Olarte* case will immediately show this difficulty: On January 7, 1956, in the provincial fiscal's office of Pangasinan, Visitacion Merris charged Ascension Olarte with the crime of libel allegedly committed on February 24, 1954. The case was assigned to an assistant provincial fiscal who advised Visitacion Merris to file a complaint for libel in the Justice of the Peace Court of Pozorrubio, Pangasinan. She did so on February 22, 1956, two days short of two years from the alleged date of the crime of libel. The defendant waived her right to preliminary investigation and the case was forwarded to the Court of First Instance of Pangasinan, where a corresponding information was filed on July 3, 1956, more than two years after the alleged date of the crime charged. The defendant moved to quash the information upon the ground of prescription. The motion was granted. The prosecution appealed to the Supreme Court. The Supreme Court, after a lengthy study of the applicable law and jurisprudence, held that the statute of limitations was suspended by the filing of the complaint in the Justice of the Peace Court on February 22, 1956, and consequently, the crime of libel could still be prosecuted.[5] The case was thus remanded to the trial court. After the case was set for hearing on the merits, however, the Supreme Court, on June 29, 1963, promulgated the decision in the case of *People v. Coquia.*[6] In this case, the Court held that the filing of the complaint in the Justice of the Peace Court does not interrupt the course of the prescriptive period of offenses. On the basis of this ruling, the defendant *Olarte* filed in the Court of First Instance of Pangasinan, where the case was pending, a second motion to quash the information on the same ground of prescription. The lower court granted the motion and once more the prosecution brought the case to the Supreme Court. Obviously, the only issue presented for determination was the effect of the ruling on the *Coquia* case on the *Olarte* ruling of June 30, 1960. The Supreme Court held:

> Suffice it to say that our ruling in Case L-13027 (wherein the Court held that the filing of the complaint in the Justice of the Peace Court suspended the prescriptive period of the crime of libel charged) rendered on the first appeal constitutes the *law of the case,* and even if erroneous, it may no longer be disturbed or modified since it has become final long ago. A subsequent re-interpretation of the law may be applied to new cases but certainly not to an old one finally and conclusively determined.[7]

[5] People v. Olarte, *supra* note 1.

[6] *Supra.*

[7] People v. Olarte, *supra* note 3.

It is readily seen that the principle of the law of the case was a sufficient basis, by the Supreme Court's own admission, for deciding in favor of the prosecution. Notwithstanding the sufficiency of such principle, however, the Supreme Court thereafter laid down once and for all the rule on the question of the interruption of the prescriptive period of offenses: Filing of the complaint or information in the fiscal's office or in the inferior court, even if only for preliminary examination or investigation, interrupts the period of prescription.

Under ordinary circumstances, this pronouncement, while entitled to some weight and respect, cannot be considered as controlling, because it neatly falls under the description of an *obiter dictum* as that "which was said in opinion in deciding a case that was unnecessary to have been said." [8] However, there is no mistaking the language of the Court. The ruling was laid down precisely to be followed in the future. The Court said:

> In view of this diversity of precedent, and *in order to provide guidance for the Bench and Bar*, this Court has re-examined the question, and after mature consideration, has arrived at the conclusion that the true doctrine, is and *should be*, . . . that the filing of the complaint in the Municipal Court, . . . should and does interrupt the period of prescription of criminal responsibility. [9] (Emphasis mine).

The question therefore is: what is the binding effect of that portion of a final decision, which in relation to the facts of the case in which it was rendered was unnecessary but which expressly made itself the rule to be followed in subsequent cases involving the same point? Actually, the question is more theoretical than practical. For all intents and purposes, the Supreme Court has handed down a definite rule on the question of interruption of the prescriptive period of offenses. That rule will find itself "well-settled" in the procedure in our courts. Practicality and prudence on the part of the members of the Bench and the Bar will see to that. Nevertheless, it is an interesting point worth examining.

Whatever may be the theoretical answer to the question, the *Olarte* ruling is here to stay. Consequently, it is advisable to look at its more substantial aspect, namely, the merits and demerits, if any, of the rule laid down therein. Simply for the purpose of giving order to this discussion, the reasons given by the Supreme Court in support of its ruling will first be examined; then some arguments in favor of the abandoned line of decisions will be presented. In both instances, there will be an honest attempt to give each reason an adequate presentation.

[8] 29 WORDS AND PHRASES 15.

[9] People v. Olarte, *supra* note 3.

The Supreme Court gave three reasons for favoring the rule laid down in the *Olarte* case of 1967:

> first, the text of article 91 of the Revised Penal Code in declaring the period of prescription "shall be interrupted by the filing of the complaint or information," without distinguishing whether the complaint is filed in the court for preliminary examination or investigation merely, or for action on the merits. Second, even if the court where the complaint or information is filed may only proceed to investigate the case, its actuations represent the initial step of proceedings against the offender. Third, it is unjust to deprive the injured party of the right to obtain vindication on account of delays that are not under his control, all that the victim of the offense may do on his part to initiate the prosecution is to file the requisite complaint. [10]

As pointed out by the Court, the law does not distinguish between the filing of the complaint or information merely for preliminary examination or investigation and the filing for purposes of trial on the merits. Hence, technically speaking, the Court also should not distinguish, and any officially recognized act of filing a complaint or information should be sufficient to interrupt the prescriptive period. A less technical outlook, however, demands a resolution of the ambiguity resulting from the deficiency in the law. This in turn depends on one's view of how a legal provision of the nature as the one in question is to be construed. There is some authority in American law which looks upon statutes giving a limit to the prosecuting power of the state "as being acts of grace, and as a surrendering by the sovereign of its rights to prosecute. . . ." [11] Hence, like other surrenders of sovereign power, statute of limitations of crimes is to be construed strictly against the person invoking it. Obviously, the rule formulated in the *Olarte* case, because it provides an earlier date for interruption of the prescriptive period, is in accord with this view of strict construction, against the accused. Philippine jurisprudence, however, is well-settled on the construction of penal statutes. Penal statutes are to be strictly construed against the Government and in favor of the accused. [12] Moreover, strict construction against the State applies not only to substantive penal laws but also to criminal procedure as may be inferred from the case of *Esler v. Ledesma*, [13] wherein the Code of Criminal Procedure was held to be a penal statute, that must, consequently, be construed strictly. It is unfortunate that the Supreme Court did not further explain its reasoning on the deficiency of the law, and it is not clear whether or not the *Olarte* ruling constitutes a modifica-

[10] *Ibid.*

[11] 22 C.J.S. 223.

[12] U.S. v. Abad Santos, 36 Phil. 243 (1917); People v. Yu Hai, 52 O.G. 5116 (1956).

[13] 52 Phil. 114 (1928).

tion of what has all along been a settled maxim in Philippine jurisprudence.

As a second reason for the *Olarte* decision, the Supreme Court stated that the filing of the complaint or information for the purpose of investigation is already an initial step in the proceedings against the offender. This simple statement of fact, left to itself, does not really support the ruling unless certain suppositions left unsaid by the Court are brought out explicitly. The hidden syllogism seems to run as follows: The Legislature intended the prescriptive period to be interrupted by the initiation of the proceedings against the accused. But, the filing of the complaint or information, even if merely for preliminary examination or investigation, is already an initial step in the proceedings against the accused. Therefore, the Legislature intended the prescriptive period to be interrupted by the filing of the complaint or information for preliminary examination or investigation.

There is really no question concerning the second premise; the filing of the complaint or information is really an initial step in the proceedings against the offender. It is the first premise that must be carefully examined because the whole reasoning depends on its truth or falsity. The real question is: Did the Legislature really intend to interrupt the prescriptive period by the initiation of the proceedings against the accused? Again, it is unfortunate that the Supreme Court did not give any extended explanation for its position. However, there seems to be some proof from the history of the law which show that the Legislature did not in fact intend the initiation of the proceedings against the accused to interrupt the prescriptive period. A brief historical survey will bring this point out.

The Penal Code of 1870 is the immediate predecessor of the present Revised Penal Code. Article 91 of the Revised Penal Code was taken from Article 131 of the Penal Code of 1870, the pertinent provision of which is as follows:

> *This prescription shall be interrupted from the commencement of the proceedings against the offender*, and the term of prescription shall commence to run again when such proceedings terminate without the accused being convicted or the proceedings are suspended by reason of some cause other than the default of the defendant. (Emphasis mine)

It is apparent that the previous law did not use the words "the filing of the complaint or information" but instead used the words "the commencement of the proceedings against the offender." The important question now poses itself: Is there a difference in the meaning of these two phrases? If there is a difference, then the change in the wording implies a change in the determinative point for the interruption of the prescriptive period. If there is no difference, then the change in the law does not signify any substantial change in the legislative intent.

At the time of the approval of the Revised Penal Code, the phrase "commencement of the proceedings against the offender" had already a well-defined meaning in jurisprudence. In substance, it meant the filing of the complaint or information for the purpose of preliminary investigation and examination.[14] This meaning is presumed to have been known by the members of the Legislature, since "most of the legislators have consistently been Members of the Bar, and, as such, were and are familiar with pertinent jurisprudence and the practice prevailing in this jurisdiction."[15] Consequently, it may be argued that when the Legislature changed the wording of the law, it sought to alter in some way the meaning of the law. Otherwise, it could have used the same words which at that time had an already well-defined meaning. More particularly, when the Legislature substituted the words "filing of the complaint or information" for the words "commencement of the proceedings against the offender," it could not have meant by the former exactly what the latter meant. Otherwise, it would have been senseless to change the already established legal formula. Or, if the Legislature really intended to say the same thing in different words, it could have been more explicit and could have simply added "for preliminary examination or investigation." The fact remains, however, that the Legislature did change the words of the law and at the same time did not adopt the current expression for the then prevailing meaning of "the commencement of the proceedings against the accused." Hence, it seems logical to believe that the Legislature, in enacting the Revised Penal Code, could not have had in mind the filing of the complaint or information for preliminary examination or investigation for that was the meaning of the very words left unadopted from the Penal Code of 1870. "The filing of the complaint or information" must therefore refer to a filing other than the one for preliminary examination or investigation. Since a complaint or information is filed nowhere else except in the competent court for trial, then the Legislature must have intended such filing, and not the filing for preliminary examination or investigation, to interrupt the prescriptive period of offenses.

The third ground invoked in support of the *Olarte* ruling is justice. A contrary rule, according to the Court, will virtually deprive the offended party of the right to vindicate the personal offense committed against him due to delays beyond his control. This view seems to us a welcome confirmation of a gradual departure

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[14] U.S. v. Lozada, 9 Phil. 509 (1908); People v. Joson, 46 Phil. 380 (1924); Surbano v. Gloria, 51 Phil. 415 (1928); People v. Parao, 52 Phil. 712 (1929).

[15] People v. Olarte, *supra* note 1.

from the traditional conception of the nature of a criminal action.

It may be recalled that the prevailing theory behind our system of criminal law and procedure considers a crime primarily as an offense against the State and a criminal prosecution as an attempt of the State to punish the author of the outrage against her sovereignty. For this reason, criminal actions are brought "in the name of the People of the Philippines," [16] and their prosecution is "under the direction and control of the fiscal." [17] a government official. The offended party has very little participation in the prosecution of the offense. Hence, it is evident that criminal procedure is essentially an action by the State against the offender and provisions contained therein in favor of the offended party are simply incidents, and not necessary elements. It may well be said that the law could have if it wanted to, simply given the offended party a right to vindicate himself in some other proceeding and totally excluded him, save as principal witness, from the criminal prosecution.

This view of limited participation of the offended party in a criminal proceeding is supported by the existence in fact of ways by means of which the offended party who feels himself in danger of being prejudiced by undue delays in the prosecuting machinery of the State can seek reddress by way of a civil action. If the act complained of constitutes a wrong for which an independent civil action is granted by the Civil Code, like those mentioned in Articles 32, 33, 34, and 2177 in relation to Article 29, the offended party, may after proper reservation, file an action for damages against the offender. Since his suit can proceed independently of the criminal proceedings, he is thereby relieved of the prejudicial consequences of delays not due to him. Likewise, if the act complained of cannot be prosecuted in an independent civil action. the offended party may still bring an action for damages even if the fiscal or municipal judge believes that no crime has been committed. Article 35 of the Civil Code provides as follows:

> Art. 35. When a person, claiming to be injured by a criminal offense, charges another with the same, for which no independent civil action is granted in this Code or any special law, but *the justice of the peace finds no reasonable grounds to believe that a crime has been committed, or the prosecuting officer refuses or fails to institute criminal proceedings*, the complainant may bring a civil action for damages against the alleged offender. Such civil action may be supported by a preponderance of evidence. Upon defendant's motion, the court may require the plaintiff to file a bond to indemnify the defendant in case the complaint should be found to be malicious. (Emphasis mine)

[16] SEC. 1, RULE 110, RULES OF COURT.
[17] SEC. 4, RULE 110, RULES OF COURT.

With these provisions, the traditional view of a criminal prosecution as predominantly the affair of the State, with only the incidental participation of the offended party insofar as he seeks to recover civil indemnity, is well-entrenched in current legal thinking. The Supreme Court has been very emphatic on this point:

> It is evident, in the light of the history of the enactment of section 107 of General Orders No. 58, as reflected in the observations of one of its framers and the explanatory decisions of this court, that the offended party may, as of right, intervene in the prosecution of a criminal action, but then only when, from the nature of the offense, he is entitled to indemnity and his action therefor has not yet been waived or expressly reserved. This is the rule we have now embodied in section 15 of Rule 106 (now Rule 110) of the new Rules of Court . . ." [18]

In the light of this conception of a criminal action, the third ground for the *Olarte* ruling seems to be without basis. If the law conceived of the offended party's participation as simply a concession in order to give him an opportunity to secure civil indemnity, and if the law in fact gives him a means to secure reddress in a proceeding other than criminal. then no injustice is done to him even if the prosecution falters in the criminal action which is predominantly the concern of the State.

However, a dent in this narrow view of a criminal action has been made in an inconspicuous decision rendered by the Supreme Court at the end of 1953. In the case of *Lim Tek Goan v. Yatco*, [19] the issue before the Court was whether the intervention of the offended party in a criminal action which involves no civil liability is a matter of right or simply of mere tolerance of the trial court. The Supreme Court held:

> ". . . it is apparent that the ruling of the respondent judge that in cases like the one under consideration which do not involve any civil liability an offended party can only appear upon tolerance on the part of the court is not well taken it being contrary to the law and precedents obtaining in this jurisdiction . . . the law gives to the offended party the right to intervene, personally or by counsel, and he is deprived of such right only when he waives the civil action or reserves his right to institute one." [20]

Notice the difference in the terminology of the last two decisions mentioned. The *Maceda* ruling affirmed the party's right to intervene "only when, from the nature of the offense, he is entitled to indemnity and his action therefor has not yet been waived or ex-

[18] People v. Maceda, 73 Phil. 679 (1942).
[19] 94 Phil. 197 (1953).
[20] *Ibid.*

pressly reserved." The *Lim Tek Goan* decision, on the other hand, maintained that the right to intervene is lost "only when he waives the civil action or reserves his right to institute one." It may then be inferred from the latter that the interest of the offended party in a criminal action goes beyond his right to civil indemnity because even in cases where no civil liability is involved, his intervention is a matter of right and not of mere tolerance of the presiding judge.

Viewed from this shift in the thinking on the nature of a criminal action, the third ground for the *Olarte* decision assumes some significance for it may well be an indication of a trend towards a more open and explicit modification of our conception of a criminal action. The sooner it is admitted that the vindication of the personal offense against a person on whom a crime is committed means much more than the mere recovery of civil indemnity, the sooner will there be an incentive to prosecute the offenders more vigorously and with more determination on the part of the offended party. In the practical sphere of human living, unadulterated by legal theory, no one, not even the State, is more interested in the prosecution of a criminal than the person whom the criminal has wronged. The *Olarte* ruling, therefore, stands firm on the foundation offered by the need to free the offended party from the danger of being deprived the right to non-pecuniary vindication due to delays beyond his control.

The line of decisions abandoned by the *Olarte* ruling is not, however, without supporting reasons. For example, an argument may be made out of the technical meaning of the terms used by the Revised Penal Code. It may be recalled that nowhere in the said code are the words "complaint" and "information" defined. Their meaning must therefore be sought in the field of law to which they belong, namely, criminal procedure. Section 3 of Rule 110 of the Rules of Court defines an information "as accusation in writing charging a person with an offense subscribed by the fiscal and filed with the court." It is obvious that the above mentioned section requires that an information be filed with the court.[21] At that stage, a preliminary investigation has already been held, as may be deduced from the form of an information recommended by the Appendix of Forms in the Rules of Court which contains the following:

> A preliminary investigation has been conducted in this case under my direction, having examined the witnesses under oath.
>
> ....., Fiscal.

Hence, it is apparent that an information is not an information until it is filed in court for trial, and consequently, "filing of the information" must mean filing of the written accusation in court after preliminary investigation.

[21] Espiritu v. de la Rosa, 78 Phil. 827 (1947).

A similar case may be made from the technical meaning of "complaint." Section 2 of Rule 110 of the Rules of Court defines it as follows:

> Section 2. *Complaint defined.* — Complaint is a sworn written statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated.

At first, it seems that a complaint, in order to be technically a "complaint" need not be filed in the trial court. The Supreme Court in one case held:

> It is not correct to say that a complaint, as defined in section 2, Rule 106 (now Rule 110), must be filed in a court of justice, . . . Unlike Section 3 of said rule which requires an information to be "filed with the court", a complaint need not necessarily be filed with the court. Hence, it may be laid before the City Fiscal for investigation.[22]

Subsequently, however, the Supreme Court held in another case:

> The complaint contemplated in section 2 of Rule 106 (now Rule 110) is hence the one filed in court because it is the one prepared after the preliminary investigation is held under Republic Act No. 723 . . . the complaint referred to in Section 2 of Republic Act No. 723 . . . is precisely what is defined in Section 2 of Rule 106 (now Rule 110) of the Rules of Court made after the preliminary investigation is held.[23]

Hence it is clear that "complaint" is really one that is filed in court for trial. The form prescribed for complaints bolsters this theory because at the end thereof appear the same words which were quoted earlier in relation to the fiscal's statement on having conducted a preliminary investigation, but this time they must be followed by the signature of the justice of the peace.

It therefore appears that "complaint" and "information" are used to signify formal written accusations filed in court for trial. Such formal accusations become "complaint" or "information" only when they are filed in the trial court, because such filing is either expressly mentioned in the definition, as in the case of "information", or is gathered from the Supreme Court's decision, as in the case of "complaint."

[22] *Ibid.*

[23] Hernandez v. Albano, G.R. No. L-17981, May 31, 1961.

The words "complaint" or "information", however, are not always used with the meanings ascribed to them above. For example, Section 1 of Rule 112 of the Rules of Court reads as follows:

> Section 1. *Preliminary examination.* — Preliminary examination is a previous inquiry or examination made before the arrest of the accused by the judge or officer authorized to conduct the same, with whom a complaint or information has been filed imputing the commission of an offense cognizable by the Court of First Instance, for the purpose of determining whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial.

Obviously, the complaint or information mentioned in this section refers to the one filed in the fiscal's office or in the inferior court for preliminary examination. There is thus a need to show that the "complaint or information" used in the Revised Penal Code does not carry the meaning borne in Section 1 of Rule 112 but rather means the definitions in Sections 2 and 3 of Rule 110.

First, a distinction must be made in the manner in which the terms in question are used in the quoted sections of the Rules. Under Section 1 of Rule 112, the terms "complaint or information" are used merely to identify the person conducting the proceedings which the entire section seeks to define. The main concern of Section 1 of Rule 112 is to define "preliminary examination" and not to delineate the meaning of "complaint or information." On the other hand, Sections 2 and 3 of Rule 110 definitely state what complaint and information are in relation to the commencement of a criminal action. Hence, the meaning which seems more in consonance with the purpose of Article 91 of the Revised Penal Code is that expressed clearly by Sections 2 and 3 of Rule 110.

The argument is more telling if the analysis is made on the words used by the Revised Penal Code in the light of their use in the criminal procedure then in force at the time of the passage of the Code. Sections 4 and 5 of General Orders No. 58, series of 1900, define complaint and information respectively. They provide as follows:

> Sec. 4. A complaint is a sworn written statement made to a court or magistrate that a person has been guilty of a designated offense.
>
> Sec. 5. An information is an accusation in writing charging a person with a public offense, presented and signed by the promotor fiscal or his deputy and filed with the clerk of the court.

Under both definitions, complaint and information are properly such only when filed in court. If we are to presume that the legislators knew their law, then we may also believe that the intended point of interrupting the period of prescription of crimes is the time when the formal accusations are filed in the competent court for trial for only then can we speak of "complaint" or "information."

A second argument in favor of the line of decisions abandoned by the *Olarte* ruling may be built upon the nature of the law on the prescription of crimes. There is authority in support of the view that every prescriptive law for crimes which limits the prosecution of the offense by the State is actually an act of grace by the sovereign and a recognition that the passage of time wears away the probative value of pieces of evidence. A Spanish commentator explained it this way:

> La prescripcion del delito se justifica por el argumento de character procesal, que con el transcurso del tiempo se extinguen or se debelitan las pruebas del hecho punible. A la buena administracion de justicia interesa que las pruebas en los juicios criminales sean frescas y fenacientes pues las que, por haber transcurrido mucho tiempo desde la comision del hechos han perdido su vigor probatorio, puedan originar sensibles errores judiciales. [24]

In other words, by the mere fact of putting a limitation on its own right to prosecute the offenders, the State declares that if within such a period it cannot legitimately gather evidence sufficiently strong to convict the accused, it shall consider itself forever unable to prove the crime because the probative value of evidence gathered beyond the prescriptive period is weakened by the mere passage of time. This is a principle based on sound public policy.

If that is the meaning of a prescriptive period for offenses, then it must be interrupted only at a time when the state makes a positive act in the prosecution of the offender based on the belief that it has enough evidence on hand to convict him. The period of prescription is thus properly interrupted only when the State is already sure of the existence of a crime and confident of its evidence to prove it, but not when it is merely looking into the question of whether or not a crime has been committed and the accused is the one who committed it. Obviously, the theory that seeks to interrupt the period of prescription at the filing of the complaint or information for trial is in accord with this thinking behind the prescriptive law for crimes.

By way of conclusion, the main points brought out in this note may be summarized. The *Olarte* ruling has two points of interest. One concerns the binding force of the rule laid down therein, making the filing of the complaint or information for purposes merely of preliminary examination and investigation interrupt the pres-

[24] CUELLO CALON, I DERECHO PENAL (1960), pp. 709-710.

criptive period of offenses. While it was unnecessary to deal with that legal point, the Supreme Court did touch on it and promulgated a rule to be followed in the subsequent cases. The question is: is the *Olarte* ruling, in so far as that pronouncement is concerned, a precedent or merely *obiter dictum?* The second point goes into the intrinsic merits of the rule promulgated by the decision. It is unfortunate that the Supreme Court did no more than mention the various reasons which support its view, without unfolding the entire process of argumentation that led to that conviction. Of the three reasons presented by the Court, the most convincing seems to be the third. Since an offended party's interest in a criminal case goes beyond pecuniary terms in the form of damages, the fixing of the period of interruption at the filing of the complaint or information in the court for trial will "deprive the offended party of the right to obtain vindication on account of delays that are not under his control." As opposed to the *Olarte* decision, however, there seem to be two arguments in favor of the abandoned rule. One springs from the nominal definitions of "complaint" and "information", which require that the written accusation be first filed in the trial court before they can be called "complaint" or "information." The other arises from the realization that a prescriptive law for crimes is an admission that the lapse of time weakens the probative value of the evidence to prove the crime. Hence, the prescriptive period must be interrupted only when the State feels it has the proper evidence already on hand, and not when it is merely finding out if a crime has been committed.

Whatever value the arguments brought out for and against the *Olarte* ruling may have is, however, overshadowed by the unquestioned practical result of a definite pronouncement of a doubtful question of law. Theorists may speculate on its force and wisdom, but only time and usage can decide its permanence in the books, for in the science of law, the conditions imposed by practicality modify the means by which the ideals of justice are to be attained.

REYNALDO G. GERONIMO

MITIGATION AND THE PRIVILEGE OF MINORITY

The precise line of compromise between the individual's right to personal liberty, on the one hand, and the need to punish a criminal offender, on the other, varies according to the circumstances attendant in the commission of the crime. Among these are the mitigating circumstances which serve to lower the penalty that may be imposed. This note is concerned particularly with the mitigating circumstance of minority.

The relevant provisions of the Revised Penal Code are as follows:

> Art. 13. *Mitigating circumstances.* — The following are mitigating circumstances:
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> x x x x x
>
> 2. That the offender is under eighteen years of age . . . he shall be proceeded against in accordance with the provisions of article 80.
>
> x x x x x
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> Art. 68. *Penalty to be imposed upon a person under eighteen years of age.* — When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:
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> 1. Upon a person under fifteen but over nine years of age, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.
>
> 2. Upon a person over fifteen and under eighteen years of age the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.
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> Art. 80. *Suspension of sentence of minor delinquents.* — Whenever a minor of either sex, under sixteen years of age at the date of the commission of a grave or less grave felony, is accused thereof, the court, after hearing the evidence in the proper proceedings, instead of pronouncing judgment of conviction, shall suspend all further proceedings and shall commit such minor to the custody or care of a public or private, benevolent or charitable institution, established under the law for the care, correction or education of orphaned, homeless, defective, and delinquent children, or to the custody or care of