And even the incumbent President himself, in his book, Today's Revolution: Democracy, acknowledges the continued existence of such rights even under martial law:

> "However, even during the period of employment of such extraordinary power to suppress a riot or disorder or the suspension of the privilege of the writ of habeas corpus, where persons may be arrested and kept under the custody for any period of time without any charge before the court, or under the proclamation of martial law, in a situation bordering upon war, where in effect, the armed forces of the Philippines assume power of government, *the rights of the citizens and residents of the country who are not participants in the Jacobin type of revolution should be respected.*"[37] (underscoring supplied)

Martial law or no martial law, therefore, the rights of the citizens continue to exist.

STOCKHOLDER INSPECTION OF CORPORATE RECORDS: MAKING SECTION 51 A MORE EFFECTIVE SAFEGUARD

RODOLFO V. ROMERO*

I. PREFATORY STATEMENT

One of the most significant elements in the development of the world economy in the last three hundred years has been the evolution of the corporation into the institution that we know today. Such, indeed, is the importance attached to the role played by the corporation in world economic development that some economic historians have suggested that the process would not have been as rapid in the absence of the corporate form of business enterprise. A. A. Berle, Jr. and Gardiner C. Means have written, for example, that

> "the true significance of the corporation can best be seen in the light of the development of business in the last three centuries."[1]

The evolution of the corporation as the dominant form of modern-day business enterprise has not been confined to the industrial societies, where

> "the relative growth of the large companies in the last twenty years has been such that if the same rate were maintained all corporate wealth would be in the hands of two hundred companies within fifty years — a concentration of economic power unknown in the world's history."[2]

The economic development of the what are referred to today as the developing countries has been characterized by the emergence of the corporation as the dominant form of business enterprise. Recent listings of the 1,000 largest business enterprises indicate that the economic development of the Philippines has not been the exception to the rule.[3] With the change in the legal structure of Philippine business has necessarily come a shift in its ownership pattern.

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* LL.B. '79.

[1] A. A. Berle, Jr. and Gardiner C. Means, *The Modern Corporation and Private Property*, Commerce Clearing House, New York, 1932.

[2] Ibid.

[3] *1,000 Largest Corporations in the Philippines*, Business Day, 1976.

II. INTRODUCTION

The principal factor in the progressive rise of the corporate form of business enterprise to a position of primacy has unquestionably been the wider equity capital base that it makes possible and the greater access to financial markets that this, in its turn, brings into being. When the needs of nations for what have come to be termed infrastructural facilities were modest, production and distribution processes were simple and markets for goods and services were essentially domestic, the financial requirements of business enterprises were within the capacity of families and small groups of individuals to meet. However, as the development of entire transportation, power and communication systems came to be the order of the day, as industrial and distribution processes assumed greater complexity and as the movement of goods and services became increasingly international in scope, the small-scale, modestly capitalized operation had to give way to the large, well-financed enterprise. In legal terms this transition involved the replacement of the single proprietorship, the partnership and the family firm by the widely-owned corporation as the dominant form of business organization, for in the majority of instances the equity capital base required by business enterprises undertaking large-scale industrial and trading operations had ceased to be within the capacity of small or closely-held business enterprises to provide. This has been the case as much in the Philippines as in other countries.[1] An inevitable concomitant of this change has been the tendency for the ownership of business enterprises to be separated from their control, with the management function performed largely by persons with little or no personal equity stake in them.

III. THE LEGAL PROBLEM

A. The Laws Involved

The key to acceptance of the idea of a business enterprise in which management is divorced from ownership is the ability of the small stockholder to reassure himself of the sound management of the enterprise whenever he feels a need for such reassurance, and investors will continue to buy minority interests in broadly-owned corporations only on the basis of knowledge that their managements can be held to account for their acts as much by small stockholders as by large stockholders. The question of safeguarding of interests in general and of access to information in particular generally does not arise for the largest stockholders, and this is understandable. They would by definition have holdings sufficient to entitle them to seats on their companies' boards of directors. If small investors were ever to come to feel that the managements of

[1] Frank Golay, *The Philippines: Public Policy and National Economic Development*, Cornell University, 1961.

large corporations cannot be made to account for their acts, the future of the concept of the corporation as we know it today would be in jeopardy, for such investors would thereafter want to invest their funds only in corporations in whose running they had a say.

Recognizing the implication of such a turn of events for the capacity of corporations to generate capital for expansion and, therefore, for their industrial development, most countries have passed laws incorporating the right of stockholders to be given access to corporate records and books of accounts, with the inspection a condition precedent for the determination of whether or not a basis exists for proceeding against the management of the corporation for wrongdoing. The pertinent provision in the Corporation Law of the Philippines (Act 1459 as amended) is Section 51, which reads as follows:

> "Sec. 51. All business corporations shall keep and carefully preserve a record of all business transactions and minutes of all meetings of directors, members or stockholders, in which shall be set forth in detail the time and place of holding of the meetings, how authorized, the notice given, whether the meeting was regular or special, if special its object, those present and absent and every act done or ordered done at the meeting. Upon the demand of any director, member or stockholder the time when any director, member or stockholder entered or left the meeting must be noted in the minutes, and on a similar demand the yeas and nays must be taken on any motion or proposition and a record thereof carefully made. The protest of any director, member or stockholder on any action or proposed action must be recorded in full on his demand.
> The record of all business transactions of the corporation and the minutes of any meeting shall be open to the inspection of any director, member or stockholder of the corporation at reasonable hours."

It goes without saying that Section 51 would be of no practical value if there were no corporate records for an inquiring stockholder to inspect, and so there has to be a companion provision requiring corporations to maintain records of all their meetings and business transactions. Section 52 is that provision.

> "Sec. 52. Business corporations must also keep a book to be known as the 'stock and transfer book, in which must be kept a record of all stocks, the names of the stockholders or members alphabetically arranged; the installments paid and unpaid on all stock for which subscription has been made and the date of payment of any installment; a statement of every alienation, sale or transfer of stock made, the date thereof and by and to whom made and such other entries as the by-laws may prescribe. The stock and transfer book shall be kept in the principal office of the corporation and shall be open to the inspection of any director, stockholder or member of the corporation at reasonable hours: Provided, That the corporation may open a share register in any state or territory of the United States and employ an agent or agents to keep such register and to record therein transfers of shares made in such state or territory or elsewhere. No such transfer shall be valid except as between the parties until they are noted upon such share register so as to show the names of the parties to the transaction, the date of the transfer, and the number of shares transferred."

B. Factual Situations

On the face of it, the interests of stockholders, and particularly of small stockholders, would seem to be well-protected. So long as he does so "at reasonable hours", that is to say, the hours of the day during which the corporation regularly conducts business, the stockholder may inspect the records on "all business transactions of the corporation" and the minutes of "all meetings of directors, members or stockholders", which it is required to keep along with a record of changes in the ownership of the corporation. Section 51 does not speak of the records of some transactions and some meetings being open to the inspection of any director or stockholder; it speaks, rather, of a director or a stockholder having the right to inspect the records on each and every business transaction of the corporation and each and every meeting of its directors and stockholders. It would seem entirely reasonable to infer from the wording of the provision that any stockholder with doubts about the way in which the affairs of his corporation are being conducted can expect in every instance to be given access to the records of its deliberations and transactions.

Expectation and reality are not always one and the same thing, however, and in practice it is by no means a certainty that the doubting stockholder will be allowed by the management of his corporation to either prove his doubts baseless or confirm them. More to the point, the average stockholder is unlikely to be granted, upon demand, access to the corporate records that he wishes to examine. That this is the situation is not altogether difficult to comprehend.

The reason why corporate managements are in most cases reluctant and/or unwilling to allow stockholders to examine corporate record lies in the very nature of the act. A person who exercises his right under Section 51 is, in the very nature of things, almost certain to be a person seeking either reassurance or confirmation. If he were satisfied with the picture of the corporation drawn by the information made available by managements on a normal basis, i.e., annual, semi-annual and quarterly reports, or if he had no reason whatsoever for believing that all might not be well with the manner in which the corporation was being run, he would not be asking that he be allowed to inspect its records. An altogether reasonable inference from a stockholder's desiring to exercise his visitorial right, therefore, is either that he wants to be reassured that the picture of a firm's operations that he is getting from the information normally made available by management is the true picture or that he seeks confirmation of the baselessness of any unfavorable information that may have come into his possession.

Given these possibilities, all but the most self-assured and the most public image-conscious of corporations, when confronted with a demand

for the exercise of the right to inspect corporate records, prefer to run the risk of a petition for a mandamus order — the appropriate legal remedy in such a situation — than accede to the inquiring stockholder's demand. Stated differently, unless a corporation's management is absolutely certain that inspection of corporate records will yield nothing damaging to the corporation, or unless it is so sensitive about the corporation's public image that it would do anything to avoid a situation with bad-publicity potential, it will run the risk of a mandamus order rather than allow a stockholder to exercise his right under Section 51. Many a corporate leadership that can be said to meet the criteria of sound management tends to take the view, when confronted by a demand for the exercise of a stockholder's visitorial right, that there is danger in allowing a stockholder to examine corporate records, it being possible that at one time or another in the past the corporation unwittingly performed, or was otherwise involved in, acts of a questionable nature and there being no telling what will be done with such information by a stockholder who comes upon it in the course of his inspection of corporate records. Given such danger, refusing to allow a stockholder to exercise his visitorial right is considered by many otherwise well-managed corporations to be the preferable course to take. As for corporations which operate in an unsound manner, stockholders obviously cannot expect to be granted access to their records; the management of such corporations really have no choice but to deny them access thereto.

What the foregoing discussion comes down to is that whereas in theory the right of the stockholder — and particularly that of the small stockholder — to determine for himself the condition of his interest in a corporation is something assured, in practice his being able to exercise it tends to be the exception rather than the rule.

The most common ground for denial of access to corporate records is the demanding stockholder's alleged antipathy toward the corporation or any of its officers and directors and his alleged intent to use whatever unfavorable information he may come across to embarrass the corporation publicly. Another ground on which stockholders are denied the exercise of their visitorial right is their allegedly being motivated by the intent to get hold of the corporation's secrets, particularly its technological secrets. In some instances the allegation is made that the stockholder seeking access to corporate records is prompted by nothing more than idle curiosity Whatever be the basis for the denial of his visitorial right, the effect of that act on the stockholder is the same, namely, the effective frustration of a right granted to him by law. Litigation is hardly ever a short process, and by the time the courts have reached a final judgment on the merits of a mandamus petition the inspection-refusing corporation will have taken the necessary protective action.

Unfortunately, a stockholder denied of his right to inspect a corporation's records has no choice but to go to court, and many stockholders bent on exercising it have done so. As a result, there now exists a body of domestic and foreign jurisprudence on this aspect of corporate law.

JURISPRUDENCE

A. Local Jurisprudence

There is not an abundance of domestic jurisprudence on the issue of a stockholder's right to inspect a corporation's records, but what jurisprudence there is tends to supports the view expressed above. Thus, whereas in a leading case it was held that

> "pretexts may not be put forward by officers of corporations to keep a director or shareholder from inspecting the books and minutes of the corporation, and the right of inspection is not to be denied on the ground that the director or shareholder is on unfriendly terms with the officers of the corporation whose records are sought to be inspected,"

in three other leading cases a limitation was placed by the court on the exercise of the right. In *Philpotts v. Philippine Manufacturing Co., et al.*[6] the Supreme Court held that

> "there are some things which a corporation may undoubtedly keep secret, notwithstanding the right of inspection given by law to the stockholder."

The thing at issue in the case was a process", not generally known, which had proved of utility to the company". In *Acuña v. Parlatone Hispano-Filipino*[7] the Court of Appeals held that a stockholder's right of inspection may be denied when the examination is for improper ends prejudicial to the corporation. And in *Grey v. Insular Lumber Co.*[8] the right of inspection was denied by the Court partly on the ground that the stockholder failed to show that the inspection was for the protection of his interests and not merely for the satisfaction of curiosity or for speculative purposes.

From the foregoing it can be seen that refusal to allow a stockholder to inspect a corporation's records by no means results always in the issue of a mandamus order, and in the case of *Teodoro v. Warns*[9] the Supreme Court pointedly stated that

> "(a) although mandamus is classified as a legal remedy, issuance of the writ x x x x may be denied, in the exercise of x x x x discretion x x x x."

B. Foreign Jurisprudence

In countries with legal systems founded on common law there is no shortage of jurisprudence relating to the exercise of the stockholder's right

[5] Veraguth v. Isabela Sugar Co. et al., 52 Phil. 266.
[6] 40 Phil. 471.
[7] 40 O.G. 11th Supp. 283.
[8] 40 O.G. 1st Supp. 1.
[9] L-9886, July 24, 1957.

of inspection, and there is a greater incidence of litigation over the right in common law countries that in countries whose legal systems have different foundations. Why this is so was explained by the Supreme Court of the U. S. in one of the leading cases in that jurisdiction. The court said:

> "It is well established at common law that a stockholder has a right to inspect the books and records of the corporation at a proper and reasonable time for a proper purpose. Statutes securing to stockholders such a right are generally regarded as conferring a right supplemental to the common-law right of inspection and as not abrogating such right, and a by-law providing for inspection by stockholders has been held to have the same effect."

This view was echoed by the Supreme Court of one of the American states in *Deadreck v. Wilson.*[10] The Court said:

> "That stockholders have the right to inspect the books of the corporation, taking minutes from the same, at all reasonable times, and may be aided in this by experts and counsel, so as to make the inspection valuable to them, is a principle too well settled to need discussion."

The stockholder's right of inspection, the highest tribunal of another state said in *Otis-Hidden Co. v. Scherich,*[11]

> "is founded on his beneficial interest through ownership of shares and the necessity of self-protection"

and only by its exercise is the stockholder able

> "to ascertain how the affairs of this company are being conducted by its directors and officers."

However, like its Philippine counterpart, American jurisprudence in the matter of the right of stockholders to inspect the records of a corporation holds that the right is not absolute and may be denied if the motive of a stockholder in demanding its exercise are considered to be tainted with impropriety. This was entirely to be expected, considering that the Corporation Law of the Philippines had an American progenitor.

The prevailing doctrine in U.S. jurisprudence on improper exercise by stockholders of the right to inspect corporate records has been stated in the following terms:

> "Most courts x x x have taken the view that the right of inspection is conferred by statute without any express limitations thereon, the right is nevertheless a qualified one and can be insisted upon only when made in good faith x x x. It has been held that relief would not be granted where it appeared that the statutory right of inspection was sought for an unlawful purpose or for an ulterior motive x x x. It has been pointed out that the statutory right of inspection is restricted to purposes germane to the stockholder's status as such and that the right will not be enforced where the inspection is desired only for idle curiosity or for the purpose of injuring the corporation or for purposes of annoyance or harassment."[12]

[10] 18 Am. Jur. 2d. 708.
[11] 8 Baxt. (Tennessee) 108.
[12] 187 Kentucky 423, 219 S.W. 22 A.L.R. 19.

Denial of the right to inspect corporate books and records has been sustained where there was a showing that the inspection was meant

> "to obtain information intended to be published so as to embarrass the company's business, depress the value of its assets and cause loss to all shareholdings and to create demoralization and dissension among the shareholders and, by depressing the value of the shares, be able to deal in them profitably, at their expense."[13]

V. DISCUSSION AND CONCLUSION

From the foregoing exposition a number of points may logically be deduced. These are (1) that it is by no means certain that a stockholder wishing to inspect the books of a corporation will be allowed to do so, (2) that the right to inspect such books may be denied on a variety of grounds, including bad faith; (3) that even *bona fide* stockholders desiring to exercise their right of inspection for perfectly legitimate reasons can be accused of bad faith by the corporate managements concerned; (4) that substandard corporate managements can deny stockholders their right of inspection, alleging bad faith; and (5) that the burden of establishing the nature of the stockholder's motive in wanting to inspect a corporation's books does not rest on the latter solely, i.e., there must also be a showing of *bona fides* on the part of the stockholder. In other words, there is no guarantee, indeed there is every possibility, that a bona fide stockholder wishing to inspect the records of a corporation for perfectly legitimate reasons will be prevented by its management from exercising that right on the ground that he is improperly motivated and the stockholder has to establish that his intention in seeking to exercise his right of inspection is *bona fide,* or, more to the point, is not *mala fide.*

The conclusion to which this inevitably leads is that, contrary to the dictate of Section 51 of the Corporation Law, the records of all the business transactions of a corporation and the minutes of any of its meeting are not always "open to the inspection," during reasonable hours, of any of its directors, members or stockholders. Indeed, one can go further and say that the records of corporations are in the majority of instances not open to the inspection of their directors, members, or stockholders. The basis for this belief, as already stated, is the very nature of the act of exercising the right of inspection.

The domestic and foreign jurisprudence on the question of stockholder inspection of corporate records shows that such inspection is at times sought to satisfy idle curiosity or for some other trivial reason; and it is virtually certain that in the days to come inspection will in some cases be sought on such basis, but when allowance has been made for such instances, it can be stated as a general rule that a stockholder's asking to be shown the records of the corporation indicates one

[13] 18 Am. Jur. 2d. 716-717.

of only two things. At best it indicates that the stockholder would like to obtain confirmation of one or more elements of the corporation's operations e.g., a particular financial transaction of the corporation; at worst it indicates that the stockholder is suspicious of wrongdoing on the part of the directors and/or officers of the corporation. Either indication is not favorable to the corporation, the implication in both cases being that a stockholder is no longer prepared to accept at face value all the representations of its management, which in the case of publicly held corporations includes the data contained in the financial statements required by law to be published. It is unrealistic to hold that most managements are incapable of appreciating the implications of a stockholder's asking to be shown the records of the corporation and of not allowing him to inspect them. It is equally unrealistic to believe that they regard with no sense of anxiety the possibility that in the course of his inspection the stockholder might come across data unflaterring to the corporation or, worse, the possibility that he might use the data in a manner unfavorable to it.

There is, in fact, general appreciation of the real meaning of a move to exercise the right embodied in Section 51 and of the implications of allowing it, and because there is such appreciation, the managements of most corporations cannot realistically be expected to allow the inspection of their records by stockholders not patently incapable of hostile action. Corporations which operate on a consistently impeccable basis have by definition nothing to hide from anyone and prize the good public image that goes hand in hand with a taint-free existence; accordingly they are not disposed to do anything which has potential for public-image impairment. Conducive as such an action would be to public belief that their operational record was not unquestionable, such corporations regard with disfavor the idea of not allowing stockholders to inspect their books and records. But the corporation which operates strictly according to law and which therefore can stand scrutiny are bound to be the exception rather than the rule. If this judgment is accepted — if, that is to say, it is agreed that the majority of corporations operate in a manner that renders them unwilling to maintain a policy of total openness—it follows that most stockholders are likely, given the wording of Section 51, to continue to be unable to exercise the right embodied in that segment of the Corporation Law.

VI. RECOMMENDATION:

As stated at the outset, the wording of Section 51, and particularly its last sentence, is such as to indicate security of a stockholder's right to inspect the records of all the business transactions of the corporation and the minutes of all its meetings. However, as the preponderance of both domestic and foreign jurisprudence indicates, the security is more

apparent than real. For this the explanation has to be found in the wording of Section 51 itself.

As it is now worded, Section 51 merely requires that all business corporations "keep and carefully preserve" a detailed "record of all business transactions and minutes of all meetings of directors, members or stockholders" and keep such a record "open to the inspection of any director, member or stockholder of the corporation at reasonable hours." The phraseology of the first requirement gives rise to no problems of implementation. Which business corporations are subject to the record-keeping requirement, what business transactions and minutes have to be recorded and how the record-keeping has to be done are clearly spelled out! "all" business corporations are required to keep and preserve "carefully" a record of "all" business transaction of the corporation and minutes of "all" meetings of directors, members and stockholders. This, it need hardly be added, is as it should be, for it would be impossible for interested parties, including the government, to obtain a true picture of a corporation's operations on the basis of an incomplete record.

What gives rise to difficulties in the implementation of Section 51 is the way in which its second requirement is worded. Provided that it is done "at reasonable hours" "any director, member or stockholder of the corporation may conduct an inspection of the "records of all business transactions of the corporation and the minutes of any meeting." The grant of right of inspection is all-embracing — "any director, member or stockholder of the corporation" — and all its directors, members and stockholders, have the right to inspect the corporation's books. Considering that not all inspections are *bona fide* and that some stockholders who seek access to corporate records do so for reasons that have nothing to do with legitimate protection of interest, a grant of the right of inspection that does is indiscriminate clearly cannot be justified, and because it is their duty, in cases where a literal interpretation would give rise to an injury, to apply the law in a manner which prevents it, the courts of necessity have had to qualify "any director, member or stockholder" so as to limit the right to inspect the records of a corporation to directors, members and stockholders who exercise the right *bona fide*. The net result has been that, instead of serving to effectively safeguard what is almost certainly the most important of a stockholder's inherent rights as a part-owner of a corporation. Section 51's second requirement as now worded has in practice worked to render generally doubtful its exercise without judicial intervention.

This ironic outcome would have been avoided if, instead of a blanket approach to the protection of stockholder's access to corporate records. the authors of the Corporation Law had adopted one that embodied recognition of the fact that some grounds for refusal to allow inspection

of such records are meritorious while others are not and also of the fact that certain elements of a corporation's records are of a nature that renders them inappropriate objects of stockholder inspection. Thus, if they had worded Section 51 so as to remove from the ambit of its protection stockholders who seek access to corporate records *mala fide* and to place beyond the realm of inspectability corporate documents of a decidedly confidential nature, the courts would very probably have been more disposed to limit the grounds for not allowing stockholder inspection of such records to those involving a clear and ascertainable threat to the existence of the corporation. In an age of rampant industrial espionage, the courts have unquestionably been right in upholding the right of a corporation to withhold the right of inspection from a stockholder who has a record as, or is strongly suspected to be, an industrial spy. It is difficult to reach the same judgment in those cases where courts have ruled in favor of corporations on the ground that the stockholder seeking access to the corporate records was not on friendly terms with some or all of the officers and directors, considering that failure on the part of the latter to furnish information on particular aspects of the corporation's operations may have been the very cause of the rise of unfriendly relations between them.[14] The same observation applies to those instances where courts have refused to grant a *mandamus* writ on the ground that in seeking access to the records of the corporation the stockholder was motivated by idle curiosity or by a desire to give vent to a vexatious disposition, for such an attitude is virtually tantamount to saying that as a part-owner of the corporation the stockholder has the right to take whatever steps are necessary to ensure its proper management but that it may be exercised only if the stockholder has a personality and a disposition that the management of the corporation considers to be satisfactory. Had the authors of the Corporation Law drawn a clear line, the courts would very probably have been far less prone to decide Section 51 cases in a manner suggesting belief that anything that was not demonstrably *bona fide* must have been tainted with malice or mischief.

If, then, Section 51 is in the future to be a more effective protector of the interests of stockholders without in the process placing in jeopardy the interests of corporations, its last sentence should be reworded to read as follows:

> "The record of all business transactions of the corporation and of minutes of all meetings of directors, members or stockholders, *with the exception of all data relating to or forming part of technical processes and technologies, whether belonging to the corporation or to its affiliates and clients,* shall be open to the inspection, at reasonable hours, of any director, member or stockoholder *unless*

[14] American Mortgage Co. v. Rosenbaum, 59 ALR 1368.
[15] See Veraguth v. Isabela Sugar Company, supra, on this particular point.

there is a showing that information is being sought for the benefit and use of the corporation's competitors or that the director, member or stockholder seeking to exercise the right of inspection has a record of malicious or vexatious conduct."

The adoption of the above wording may be expected to go a long way toward destroying the suspicion and the fear that has prevented many Filipinos from contributing to the further growth of the corporate ethic in the Philippines, with all the implications of this for future Philippine economic development.

ABSTRACT OF CASES

Compiled and Edited by NOEL MALAYA*

ADMINISTRATIVE LAW

Anonymous complaint should not be entertained.

Section 32, Art. VII of R. A. 2260 states that "No complaint against a civil service official or employee should be given due course unless the same is in writing and subscribed and sworn to by the complainant." (In Re Quijano, A. M. No. 361-MJ)

The law on abolition of positions is well settled. It gives rise to no doubt. It is notable for its clarity. As well settled as the rule that abolition of an office does not amount to an illegal removal of its incumbent is the principle that, in order to be valid, the aboltion must be made in good faith. Where the abolition is made in bad faith, for political or personal reasons, or in order to circumvent the constitutional security of tenure of civil service employees, it is null and void. (Baldoz vs. Department of Trade, G. R., No. L-44622, August 26, 1977)

APPEAL

A court has authority to extend the period for perfection of an appeal on two (2) conditions: first the motion for extension must be filed prior to the expiration of the period prescribed by law; and second, such motion shall be supported by justifiable reasons, (Trans-Philippines vs. Court of Appeals, G. R. No. L-42184, July 29, 1977)

The higher interest of justice and fairness justify the setting aside of a perempfory dismissal of appeal for failure to file appeal brief within the original reglamentary period due to a cause not entirely attributable to appelant's fault or negligence and that the exercise of the court's "inherent right" to reinstate an appeal that was dismissed as the result of fraud, mistake or unavoidable casualty is fully justfied.

Where judgment of a municipal court is appealed to the Court of First Instance, the former is vacated and upon the latter's dismissal of

* LL.B. 1978.