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WHEREFORE, the guilt of the appellant having been proved beyond reasonable doubt, the judgment appealed from is affirmed, but modified as to the crime committed which is that of simple homicide as submitted by the Solicitor General, and not murder as found by the trial court. Accordingly, the penalty is reduced from *reclusion perpetua* to an indeterminate penalty of from (8) years (1) day of *prision mayor* as minimum, to (14) years, (8) months and (1) day of *reclusion temporal* as maximum. So modified, the judgment appealed from is affirmed in all other respects. Costs against appellant.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero and *Melencio-Herrera, JJ.*, concur.

FIRST DIVISION

[G.R. No. L-32599. June 29, 1979]

EDGARDO E. MENDOZA, *petitioner, vs.* **HON. ABUNDIO Z. ARRIETA, Presiding Judge of Branch VIII, Court of First Instance of Manila, FELINO TIMBOL, and RODOLFO SALAZAR,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; *RES JUDICATA*; REQUISITES.— Well-settled is the rule that for a prior judgment to constitute a bar to a subsequent case, the following requisites must concur: (1) it must be a final judgment; (2) it must have been rendered by a Court having jurisdiction over the subject matter and over the parties; (3) it must be a judgment on the merit; and (4) there must be, between the first and second actions, identity of parties, identity of subject matter and identity of cause of action.

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2. **ID.; ID.; ID.; ID.; ID.; NOT PRESENT IN CASE AT BAR.**— We agree with petitioner that there is no identity of cause of action between Criminal Case No. SM-227 and Civil Case No. 80803. Obvious is the fact that in said criminal case truck-driver Montoya was not prosecuted for damage to petitioner's car but for damage to the jeep. Neither was truck-owner Timbol a party in said case. In fact as the trial Court had put it "the owner of the Mercedes Benz cannot recover any damages from the accused Freddie 'Montoya, he (Mendoza) being a complainant only against Rodolfo Salazar in Criminal Case No. SM-228." And more importantly, in the criminal cases, the cause of action was the enforcement of the civil liability arising from criminal negligence under Article 100 of the Revised Penal Code, whereas Civil Case No. 80803 is based on *quasi-delict* under Article 2180, in relation to Article 2176 of the Civil Code.

3. **ID.; ACTIONS; CAUSE OF ACTION; REQUISITES.**— The two factors that a cause of action must consist of, namely: (1) plaintiff's primary right, *i.e.*, that he is the owner of a Mercedes Benz, and (2) defendant's delict or wrongful act or omission which violated plaintiff's primary right, *i.e.*, the negligence or lack of skill either of jeep-owner Salazar or of Timbol's employee. Montoya, in driving the truck, causing Salazar's jeep to swerve and collide with petitioner's car, were alleged in the Complaint.

4. **ID.; CRIMINAL PROCEDURE; PROSECUTION OF CIVIL ACTIONS; FAILURE OF THE PETITIONER TO MAKE RESERVATION IN CRIMINAL ACTION OF HIS RIGHT TO FILE CIVIL ACTION IS NOT A BAR TO THE INSTITUTION OF SUCH SEPARATE CIVIL ACTION.**— Inasmuch as Articles 2176 and 2177 of the Civil Code create a civil liability distinct and different from the civil action arising from the offense of negligence under the Revised Penal Code, no reservation, therefore, need be made in the criminal case; that Section 2 of Rule 111 is inoperative, "it being substantive in character and is not within the power of the Supreme Court to promulgate; and even if it were not substantive but adjective, it cannot stand because of its inconsistency with Article 2177, an enactment of the legislature superseding the Rules of 1940." We declare, therefore, that in so far as truck-owner Timbol is concerned, Civil Case No. 80803 is not barred by the fact that petitioner failed to reserve, in the criminal action, his right to file an independent civil action based on quasi-delict.

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5. ID.; ID.; ID.; IN NEGLIGENCE CASES, OFFENDED PARTY HAS THE OPTION BETWEEN AN ACTION FOR ENFORCEMENT OF CIVIL LIABILITY BASED ON ARTICLE 100 OF THE RPC AND AN ACTION FOR RECOVERY OF DAMAGES BASED ON ARTICLE 2177 OF THE CIVIL CODE.— At the outset it should be clarified that inasmuch as civil liability coexists with criminal responsibility in negligence cases, the offended party has the option between an action for enforcement of civil liability based on *culpa criminal* under Article 100 of the Revised Penal Code, and an action for recovery of damages based on *culpa aquiliana* under Article 2177 of the Civil Code. The action for enforcement of civil liability based on *culpa criminal* under Section 1 of Rule 111 of the Rules of Court is deemed simultaneously instituted with the criminal action, unless expressly waived or reserved for separate application by the offended party.

6. ID.; ID.; ID.; ID.; WHEN THE PETITIONER'S CAUSE OF ACTION IS BASED ON ARTICLE 100 OF THE RPC, THE CIVIL ACTION IS HELD TO HAVE BEEN EXTINGUISHED UPON THE TRIAL COURT'S PRONOUCEMENT THAT RESPONDENT CANNOT BE HELD LIABLE FOR DAMAGES.— Crystal clear is the trial Court's pronouncement that under the facts of the case, jeep-owner driver Salazar cannot be held liable for the damages sustained by petitioner's car. In other words, "the fact from which the civil might arise did not exist." Accordingly, inasmuch as petitioner's cause of action as against jeep-owner-driver Salazar is *ex-delictu*, founded on Article 100 of the Revised Penal Code, the civil action must be held to have been extinguished in consonance with Section 3(c), Rule 111 of t he Rules of Court

APPEARANCES OF COUNSEL

David G. Nitafan for petitioner.
Arsenio R. Reyes for respondent Timbol.
Armando M. Pulgado for respondent Salazar.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

Petitioner, Edgardo Mendoza, seeks a review on *Certiorari* of the Orders of respondent Judge in Civil Case No. 80803

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dismissing his Complaint for Damages based on *quasi-delict* against respondents Felino Timbol and Rodolfo Salazar.

The facts which spawned the present controversy may be summarized as follows:

On October 22, 1969, at about 4:00 o'clock in the afternoon, a three-way vehicular accident occurred along Mac-Arthur Highway, Marilao, Bulacan, involving a Mercedes Benz owned and driven by petitioner; a private jeep owned and driven by respondent Rodolfo Salazar; and a gravel and sand truck owned by respondent Felino Timbol and driven by Freddie Montoya. As a consequence of said mishap, two separate Informations for Reckless Imprudence Causing Damage to Property were filed against Rodolfo Salazar and Freddie Montoya with the Court of First Instance of Bulacan. The case against truck-driver Montoya, docketed as Criminal Case No. SM-227, was for causing damage to the jeep owned by Salazar, in the amount of ₱1,604.00, by hitting it at the right rear portion thereby causing said jeep to hit and bump an oncoming car, which happened to be petitioner's Mercedes Benz. The case against jeep-owner-driver Salazar, docketed as Criminal Case No. SM-228, was for causing damage to the Mercedes Benz of petitioner in the amount of ₱8,890.00.

At the joint trial of the above cases, petitioner testified that jeep-owner-driver Salazar overtook the truck driven by Montoya, swerved to the left going towards the *poblacion* of Marilao, and hit his car which was bound for Manila. Petitioner further testified that before the impact, Salazar had jumped from the jeep and that he was not aware that Salazar's jeep was bumped from behind by the truck driven by Montoya. Petitioner's version of the accident was adopted by truck-driver Montoya. Jeep-owner-driver Salazar, on the other hand, tried to show that, after overtaking the truck driven by Montoya, he flashed a signal indicating his intention to turn left towards the *poblacion* of Marilao but was stopped at the intersection by a policeman who was directing traffic; that while he was at a stop position, his jeep was bumped at the rear by the truck driven by Montoya causing him to be thrown out of the jeep, which then swerved

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to the left and hit petitioner's car, which was coming from the opposite direction.

On July 31, 1970, the Court of First Instance of Bulacan, Branch V, Sta. Maria, rendered judgment, stating in its decretal portion:

"IN VIEW OF THE FOREGOING, this Court finds the accused Freddie Montoya GUILTY beyond reasonable doubt of the crime of damage to property thru reckless imprudence in Crim. Case No. SM-227, and hereby sentences him to pay a fine of ₱972.50 and to indemnify Rodolfo Salazar in the same amount of ₱972.50 as actual damages, with subsidiary imprisonment in case of insolvency, both as to fine and indemnity, with costs.

"Accused Rodolfo Salazar is hereby ACQUITTED from the offense charged in Crim. Case No. SM-228, with costs *de oficio*, and his bond is ordered cancelled.

"SO ORDERED."[1]

Thus, the trial Court absolved jeep-owner-driver Salazar of any liability, civil and criminal, in view of its findings that the collision between Salazar's jeep and petitioner's car was the result of the former having been bumped from behind by the truck driven by Montoya. Neither was petitioner awarded damages as he was not a complainant against truck-driver Montoya but only against jeep-owner-driver Salazar.

On August 22, 1970, or after the termination of the criminal cases, petitioner filed Civil Case No. 80803 with the Court of First Instance of Manila against respondents jeep-owner-driver Salazar and Felino Timbol, the latter being the owner of the gravel and sand truck driven by Montoya, for indemnification for the damages sustained by his car as a result of the collision involving their vehicles. Jeep-owner-driver Salazar and truck-owner Timbol were joined as defendants, either in the alternative or *in solidum*, allegedly for the reason that petitioner was uncertain as to whether he was entitled to relief against both or only one of them.

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[1] p. 26. *Rollo*.

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On September 9, 1970, truck-owner Timbol filed a Motion to Dismiss Civil Case No. 80803 on the grounds that the Complaint is barred by a prior judgment in the criminal cases and that it fails to state a cause of action. An Opposition thereto was filed by petitioner.

In an Order dated September 12, 1970, respondent Judge dismissed the Complaint against truck-owner Timbol for reasons stated in the afore-mentioned Motion to Dismiss. On September 30, 1970, petitioner sought before this Court the review of that dismissal, to which petition we gave due course.

On January 30, 1971, upon motion of jeep-owner-driver Salazar, respondent Judge also dismissed the case as against the former. Respondent Judge reasoned out that "while it is true that an independent civil action for liability under Article 2177 of the Civil Code could be prosecuted independently of the criminal action for the offense from which it arose, the New Rules of Court, which took effect on January 1, 1964, requires an express reservation of the civil action to be made in the criminal action; otherwise, the same would be barred pursuant to Section 2, Rule 111 x x x."[2] Petitioner's Motion for Reconsideration thereof was denied in the Order dated February 23, 1971, with respondent Judge suggesting that the issue be raised to a higher Court "for a more decisive interpretation of the rule."[3]

On March 25, 1971, petitioner then filed a Supplemental Petition before us, also to review the last two mentioned Orders, to which we required jeep-owner-driver Salazar to file an Answer.

The Complaint against truck-owner Timbol

We shall first discuss the validity of the Order, dated September 12, 1970, dismissing petitioner's Complaint against truck-owner Timbol.

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[2] pp. 147-149, *Ibid.*

[3] pp. 138-139, *Ibid.*

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In dismissing the Complaint against the truck-owner, respondent Judge sustained Timbol's allegations that the civil suit is barred by the prior joint judgment in Criminal Cases Nos. SM-227 and SM-228, wherein no reservation to file a separate civil case was made by petitioner and where the latter actively participated in the trial and tried to prove damages against jeep-driver Salazar only; and that the Complaint does not state a cause of action against truck-owner Timbol inasmuch as petitioner prosecuted jeep-owner-driver Salazar as the one solely responsible for the damage suffered by his car.

Well-settled is the rule that for a prior judgment to constitute a bar to a subsequent case, the following requisites must concur: (1) it must be a final judgment; (2) it must have been rendered by a Court having jurisdiction over the subject matter and over the parties; (3) it must be a judgment on the merits; and (4) there must be, between the first and second actions, identity of parties, identity of subject matter and identity of cause of action.

It is conceded that the first three requisites of *res judicata* are present. However, we agree with petitioner that there is no identity of cause of action between Criminal Case No. SM-227 and Civil Case No. 80803. Obvious is the fact that in said criminal case truck driver Montoya was not prosecuted for damage to petitioner's car but for damage to the jeep. Neither was truck-owner Timbol a party in said case. In fact as the trial Court had put it "the owner of the Mercedes Benz cannot recover any damages from the accused Freddie Montoya, he (Mendoza) being a complainant only against Rodolfo Salazar in Criminal Case No. SM-228."[4] And more importantly, in the criminal cases, the cause of action was the enforcement of the civil liability arising from criminal negligence under Article 100 of the Revised Penal Code, whereas Civil Case No. 80803 is based on *quasi-delict* under Article 2180, in relation to Article 2176 of the Civil Code. As held in *Barredo vs. Garcia, et al.*[5]

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[4] Decision, p. 26, *Ibid.*

[5] 73 Phil. 607, 620 (1942).

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"The foregoing authorities clearly demonstrate the separate individuality of *cuasi-delitos* or *culpa aquiliana* under the Civil Code. Specifically they show that there is a distinction between civil liability arising from criminal negligence (governed by the Penal Code) and responsibility for fault or negligence under Articles 1902 to 1910 of the Civil Code, and that the same negligent act may produce either a civil liability arising from a crime under the Penal Code, or a separate responsibility for fault or negligence under Articles 1902 to 1910 of the Civil Code. Still more concretely, the authorities above cited render it inescapable to conclude that the employer in this case the defendant-petitioner is primarily and directly liable under Article 1903 of the Civil Code."

That petitioner's cause of action against Timbol in the civil case is based on *quasi-delict* is evident from the recitals in the complaint, to wit: that while petitioner was driving his car along MacArthur Highway at Marilao, Bulacan, a jeep owned and driven by Salazar suddenly swerved to his (petitioner's) lane and collided with his car; that the sudden swerving of Salazar's jeep was caused either by the negligence and lack of skill of Freddie Montoya, Timbol's employee, who was then driving a gravel and sand truck in the same direction as Salazar's jeep; and that as a consequence of the collision, petitioner's car suffered extensive damage amounting to ₱12,248.20 and that he likewise incurred actual and moral damages, litigation expenses and attorney's fees. Clearly, therefore, the two factors that a cause of action must consist of, namely: (1) plaintiff's primary right, *i.e.*, that he is the owner of a Mercedes Benz, and (2) defendant's delict or wrongful act or omission which violated plaintiff's primary right, *i.e.*, the negligence or lack of skill either of jeep-owner Salazar or of Timbol's employee, Montoya, in driving the truck, causing Salazar's jeep to swerve and collide with petitioner's car, were alleged in the Complaint.[6]

Consequently, petitioner's cause of action being based on *quasi-delict*, respondent Judge committed reversible error when he dismissed the civil suit against the truck-owner, as said case

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[6] *Racoma vs. Fortich*, 39 SCRA 521 (1971).

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may proceed independently of the criminal proceedings and regardless of the result of the latter.

"Art. 31. When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter."

But it is truck-owner Timbol's submission (as well as that of jeep-owner-driver Salazar) that petitioner's failure to make a reservation in the criminal action of his right to file an independent civil action bars the institution of such separate civil action, invoking Section 2, Rule 111, Rules of Court, which says:

"Section 2. — Independent civil action. — In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of the criminal case, provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

Interpreting the above provision, this Court, in *Garcia vs. Florido*,[7] said:

"As we have stated at the outset, the same negligent act causing damages may produce a civil liability arising from crime or create an action for quasi-delict or *culpa extra-contractual*. The former is a violation of the criminal law, while the latter is a distinct and independent negligence, having always had its own foundation and individuality. Some legal writers are of the view that in accordance with Article 31, the civil action based upon quasi-delict may proceed independently of the criminal proceeding for criminal negligence and regardless of the result of the latter. Hence, 'the proviso in Section 2 of Rule 111 with reference to x x x Articles 32, 33 and 34 of the Civil Code is contrary to the letter and spirit of the said articles, for these articles were drafted x x x and are intended to constitute as exceptions to the general rule stated in what is now Section 1 of Rule 111. The proviso, which is procedural, may also

[7] 52 SCRA 420 (1973).

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be regarded as an unauthorized amendment of substantive law, Articles 32, 33 and 34 of the Civil Code, which do not provide for the reservation required in the proviso.'x x x."

In his concurring opinion in the above case, Mr. Justice Antonio Barredo further observed that inasmuch as Articles 2176 and 2177 of the Civil Code create a civil liability distinct and different from the civil action arising from the offense of negligence under the Revised Penal Code, no reservation, therefore, need be made in the criminal case; that Section 2 of Rule 111 is inoperative, "it being substantive in character and is not within the power of the Supreme Court to promulgate; and even if it were not substantive but adjective, it cannot stand because of its inconsistency with Article 2177, an enactment of the legislature superseding the Rules of 1940."

We declare, therefore, that in so far as truck-owner Timbol is concerned, Civil Case No. 80803 is not barred by the fact that petitioner failed to reserve, in the criminal action, his right to file an independent civil action based on quasi-delict.

The suit against jeep-owner-driver Salazar

The case as against jeep-owner-driver Salazar, who was acquitted in Criminal Case No. SM-228, presents a different picture altogether.

At the outset it should be clarified that inasmuch as civil liability coexists with criminal responsibility in negligence cases, the offended party has the option between an action for enforcement of civil liability based on *culpa criminal* under Article 100 of the Revised Penal Code, and an action for recovery of damages based on *culpa aquiliana* under Article 2177 of the Civil Code. The action for enforcement of civil liability based on *culpa criminal* under Section 1 of Rule 111 of the Rules of Court is deemed simultaneously instituted with the criminal action, unless expressly waived or reserved for separate application by the offended party.[8]

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[8] *Padua vs. Robles*. 66 SCRA 485 (1975).

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The circumstances attendant to the criminal case yields the conclusion that petitioner had opted to base his cause of action against jeep-owner-driver Salazar on *culpa criminal* and not on *culpa aquiliana*, as evidenced by his active participation and intervention in the prosecution of the criminal suit against said Salazar. The latter's civil liability continued to be involved in the criminal action until its termination. Such being the case, there was no need for petitioner to have reserved his right to file a separate civil action as his action for civil liability was deemed impliedly instituted in Criminal Case No. SM-228.

Neither would an independent civil action lie. Noteworthy is the basis of the acquittal of jeep-owner-driver Salazar in the criminal case, expounded by the trial Court in this wise:

"In view of what has been proven and established during the trial, accused Freddie Montoya would be held liable for having bumped and hit the rear portion of the jeep driven by the accused Rodolfo Salazar.

"Considering that the collision between the jeep driven by Rodolfo Salazar and the car owned and driven by Edgardo Mendoza was the result of the hitting on the rear of the jeep by the truck driven by Freddie Montoya, this Court believes that accused Rodolfo Salazar cannot be held liable for the damages sustained by Edgardo Mendoza's car."[9]

Crystal clear is the trial Court's pronouncement that under the facts of the case, jeep-owner-driver Salazar cannot be held liable for the damages sustained by petitioner's car. In other words, "the fact from which the civil might arise did not exist." Accordingly, inasmuch as petitioner's cause of action as against jeep-owner-driver Salazar is *ex-delictu*, founded on Article 100 of the Revised Penal Code, the civil action must be held to have been extinguished in consonance with Section 3(c), Rule 111 of the Rules of Court[10] which provides:

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[9] pp. 25-26, *Rollo*.

[10] *Elcano vs Hill*, 77 SCRA 98 (1977).

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"Sec. 3. Other civil actions arising from offenses. — In all cases not included in the preceding section the following rules shall be observed:

x x x x x x x x x

(c) Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. x x x"

And even if petitioner's cause of action as against jeep-owner-driver Salazar were not *ex-delictu*, the end result would be the same, it being clear from the judgment in the criminal case that Salazar's acquittal was not based upon reasonable doubt, consequently, a civil action for damages can no longer be instituted. This is explicitly provided for in Article 29 of the Civil Code quoted hereunder:

"Art. 29. When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. x x x

"If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground."

In so far as the suit against jeep-owner-driver Salazar is concerned, therefore, we sustain respondent Judge's Order dated January 30, 1971 dismissing the complaint, albeit on different grounds.

WHEREFORE, 1) the Order dated September 12, 1970 dismissing Civil Case No. 80803 against private respondent Felino Timbol is set aside, and respondent Judge, or his successor, hereby ordered to proceed with the hearing on the merits; 2) but the Orders dated January 30, 1971 and February 23, 1971 dismissing the Complaint in Civil Case No. 80803 against respondent Rodolfo Salazar are hereby upheld.

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No costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrero, and *De Castro, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-32832. June 29, 1979]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUIS BERALDE,** *defendant-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; EXTRAJUDICIAL CONFESSION; ACCUSED'S CLAIM THAT HIS CONFESSION IS INVOLUNTARY CANNOT PREVAIL OVER THE TESTIMONIES OF THE WITNESSES THAT SAID CONFESSION WAS VOLUNTARILY GIVEN BY HIM.**— We made a painstaking study of the transcript of stenographic notes and We find that the claims of accused-appellant do not deserve serious consideration. They cannot overcome the testimonies of Chief of Police Narciso Laureta and Municipal Judge Francisco T. Valera that the confession of the accused-appellant was freely and voluntarily given by him. These public officials who testified for the state were not shown to have ulterior motives for testifying falsely against the accused. Moreover, there is in their favor the presumption of regularity in the performance of their official duties.

2. **ID.; ID.; ID.; MINOR INCONSISTENCIES BETWEEN THE TESTIMONIES GIVEN IN COURT AND THE STATEMENTS IN THE EXTRAJUDICIAL CONFESSION WOULD NOT LESSEN THE LATTER'S INTEGRITY.**— The foregoing alleged