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FIRST DIVISION

[G.R. No. 113032. August 21, 1997]

WESTERN INSTITUTE OF TECHNOLOGY, INC., HOMERO L. VILLASIS, DIMAS ENRIQUEZ, PRESTON F. VILLASIS & REGINALD F. VILLASIS, *petitioners, vs.* **RICARDO T. SALAS, SALVADOR T. SALAS, SOLEDAD SALAS-TUBILLEJA, ANTONIO S. SALAS, RICHARD S. SALAS & HON. JUDGE PORFIRIO PARIAN,** *respondents.*

SYNOPSIS

Private respondents, majority and controlling members of the Board of Trustees of Western Institute of Technology, Inc., were acquitted of the crimes of estafa and falsification of public document. The falsification charge was anchored on private respondents submission of the school's income statement for fiscal year 1985-1986 with the Securities and Exchange Commission reflecting therein the disbursement of corporate funds for the compensation of private respondents based on Resolution No. 4, series of 1986, and making it appear that the Resolution was passed by the board on March 30, 1986, when in truth the same was actually passed on June 1, 1986, a date not covered by the corporation's fiscal year. The charge of estafa is based on private respondent's having disbursed funds of the corporation by effecting payment of their retroactive salaries of ₱186,470.00 and subsequently paying themselves every 15th and 30th of the month starting June 15, 1986 in the amount of ₱19,500.00 per month. After trial, the court acquitted the private respondents on both counts without imposing any civil liability against them. The individual petitioners, minority stockholders of the corporation, thus seek to hold the private respondents civilly liable despite their acquittal based on the alleged illegal issuance by private respondents of Resolution No. 4, series of 1986, ordering the disbursement of corporate funds and that the grant of compensation to private respondents is proscribed under Sec. 30 of the Corporation Code.

The Supreme Court held that the proscription against granting compensation to directors/trustees of a corporation is not a

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sweeping rule. The implication under Sec. 30 of the Corporation Code is that members of the board may receive compensation in addition to reasonable per diems when they render services to the corporation in a capacity other than as directors/trustees. Resolution No. 4 s. 1986 granted compensation to private respondents not in their capacity as members of the board but rather as officers of the corporation. The instant case which is merely an appeal on the civil aspect of the criminal cases for estafa and falsification of public document, is not a derivative suit. Even if the case is a derivative suit, the same was wrongfully filed in the regular court as the proper forum is the Securities and Exchange Commission which exercises original and exclusive jurisdiction over intra-corporate disputes. The acquittal in the criminal cases is not merely based on reasonable doubt but rather on a finding that the accused-private respondents did not commit action *ex delicto* cannot prosper.

Petition denied.

SYLLABUS

1. **COMMERCIAL LAW; CORPORATION LAW; BOARD OF DIRECTORS; GENERAL RULE ON COMPENSATION; EXCEPTION; CASE AT BAR.—** There is no argument that directors or trustees, as the case may be, are not entitled to salary or other compensation when they perform nothing more than the usual and ordinary duties of their office. This rule is founded upon a presumption that directors/trustees render service gratuitously, and that the return upon their shares adequately furnishes the motives for service, without compensation. Under the foregoing section, there are only two (2) ways by which members of the board can be granted compensation apart from reasonable per diems: (1) when there is a provision in the by-laws fixing their compensation; and (2) when the stockholders representing a majority of the outstanding capital stock at a regular or special stockholders' meeting agree to give it to them. The proscription, however, against granting compensation to directors/trustees of a corporation is not a sweeping rule. Worthy of note is the clear phraseology of Section 30 which states: "x x x [T]he directors shall not receive any compensation, *as such directors*, x x x." The phrase *as such directors* is not without significance for it delimits the scope of the prohibition to

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compensation given to them for services performed purely in their capacity as directors or trustees. The unambiguous implication is that members of the board may receive compensation, in addition to reasonable per diems, when they render services to the corporation in a capacity other than as directors/trustees. In the case at bench, Resolution No. 48, s. 1986 granted monthly compensation to private respondents not in their capacity as members of the board, but rather as officers of the corporation, more particularly as Chairman, Vice-Chairman, Treasurer and Secretary of Western Institute of Technology. Thus, the prohibition with respect to granting compensation to corporate directors/trustees *as such* under Section 30 is not violated in this particular case.

2. **ID.; ID.; DERIVATIVE SUIT; NOT THE CASE AT BAR WHICH IS MERELY AN APPEAL ON THE CIVIL ASPECT OF A CRIMINAL CASE.—** A derivative suit is an action brought by minority shareholders in the name of the corporation to redress wrongs committed against it, for which the directors refuse to sue. It is a remedy designed by equity and has been the principal defense of the minority shareholders against abuses by the majority. Here, however, the case is not a derivative suit but is merely an appeal on the civil aspect of Criminal Cases Nos. 37097 and 37098 filed with the RTC of Iloilo for estafa and falsification of public document. Among the basic requirements for a derivative suit to prosper is that the minority shareholder who is suing for and on behalf of the corporation must allege in his complaint before the proper forum that he is suing on a derivative cause of action on behalf of the corporation and all other shareholders similarly situated who wish to join. This is necessary to vest jurisdiction upon the tribunal in line with the rule that it is the allegations in the complaint that vests jurisdiction upon the court or quasi-judicial body concerned over the subject matter and nature of the action. This was not complied with by the petitioners either in their complaint before the court *a quo* nor in the instant petition. By no amount of equity considerations, if at all deserve, can a mere appeal on the civil aspect of a criminal case be treated as a derivative suit.

3. **ID.; ID.; ID.; JURISDICTION; SECURITIES AND EXCHANGE COMMISSION.—** Granting, for purposes of discussion, that this is a derivative suit, the same is outrightly

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dismissible for having been wrongfully filed in the regular court devoid of any jurisdiction to entertain the complaint. The case should have been filed with the Securities and Exchange Commission (SEC) which exercises original and exclusive jurisdiction over derivative suits, they being intra-corporate disputes, per Section 5 (b) of P.D. No. 902-A. Once the case is decided by the SEC, the losing party may file a petition for review before the Court of Appeals raising questions of fact, of law, or mixed questions of fact and law. It is only after the case has ran this course, and not earlier, can it be brought to us *via* a petition for review on *certiorari* under Rule 45 raising only pure questions of law.

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; ACQUITTAL FOR NOT COMMITTING CRIME IMPUTED BARS CIVIL ACTION.—** As an appeal on the civil aspect of Criminal Cases Nos. 37097 and 37098 for falsification of public document and estafa, which this petition truly is, we have to deny the petition just the same. From the factual findings, which we find to be amply substantiated by the records, it is evident that there is simply no basis to hold the accused, private respondents herein, civilly liable. The acquittal in Criminal Cases Nos. 37097 and 37098 is not merely based on reasonable doubt but rather on a finding that the accused-private respondents did not commit the criminal acts complained of. Thus, pursuant to Section 2(b) of Rule III of the New Rules on Criminal Procedure and last paragraph of Section 2, Rule 120, and settled jurisprudence, any civil action *ex delicto* cannot prosper. Acquittal in a criminal action bars the civil action arising therefrom where the judgment of acquittal holds that the accused did not commit the criminal acts imputed to them.

APPEARANCES OF COUNSEL

Tranquilino R. Gale for petitioners.

Quisumbing Torres & Evangelista for Western Institute of Technology.

Teodulfo L.C. Castro for private respondents.

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DECISION

HERMOSISIMA, JR., *J.*:

Up for review on *certiorari* are: (1) the Decision dated September 6, 1993 and (2) the Order dated November 23, 1993 of Branch 33 of the Regional Trial Court of Iloilo City in Criminal Cases Nos. 37097 and 37098 for estafa and falsification of a public document, respectively. The judgment acquitted the private respondents of both charges, but petitioners seek to hold them civilly liable.

Private respondents Ricardo T. Salas, Salvador T. Salas, Soledad Salas-Tubilleja, Antonio S. Salas, and Richard S. Salas, belonging to the same family, are the majority and controlling members of the Board of Trustees of Western Institute of Technology, Inc. (WIT, for short), a stock corporation engaged in the operation, among others, of an educational institution. According to petitioners, the minority stockholders of WIT, sometime on June 1, 1986 in the principal office of WIT at La Paz, Iloilo City, a Special Board Meeting was held. In attendance were other members of the Board including one of the petitioners Reginald Villasis. Prior to aforesaid Special Board Meeting, copies of notice thereof, dated May 24, 1986, were distributed to all Board Members. The notice allegedly indicated that the meeting to be held on June 1, 1986 included item No. 6 which states:

"Possible implementation of Art. III, Sec. 6 of the Amended By-Laws of Western Institute of Technology, Inc. on compensation of all officers of the corporation."[1]

In said meeting, the Board of Trustees passed Resolution No. 48, s. 1986, granting monthly compensation to the private respondents as corporate officers retroactive June 1, 1985, *viz.*:

"*Resolution No. 48 s. 1986*

On the motion of Mr. Richard Salas (accused), duly seconded by Mrs. Soledad Tubilleja (accused), it was unanimously resolved that:

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[1] Annex "E"; *Rollo*, p. 92.

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'The Officers of the Corporation be granted monthly compensation for services rendered as follows: Chairman — ₱9,000.00/month, Vice-Chairman — ₱3,500.00/month, Corporate Treasurer — ₱3,500.00/month and Corporate Secretary — ₱3,500.00/month, retroactive June 1, 1985 and the ten percentum of the net profits shall be distributed equally among the ten members of the Board of Trustees. This shall amend and superceed (sic) any previous resolution.'

There were no other business.

The Chairman declared the meeting adjourned at 5:11 P.M.

This is to certify that the foregoing minutes of the regular meeting of the Board of Trustees of Western Institute of Technology, Inc. held on March 30, 1986 is true and correct to the best of my knowledge and belief.

(Sgd) ANTONIO S. SALAS
Corporate Secretary"[2]

A few years later, that is, on March 13, 1991, petitioners Homero Villasis, Preston Villasis, Reginald Villasis and Dimas Enriquez filed an affidavit-complaint against private respondents before the Office of the City Prosecutor of Iloilo, as a result of which two (2) separate criminal informations, one for falsification of a public document under Article 171 of the Revised Penal Code and the other for estafa under Article 315, par. 1(b) of the RPC, were filed before Branch 33 of the Regional Trial Court of Iloilo City. The charge for falsification of public document was anchored on the private respondent's submission of WIT's income statement for the fiscal year 1985-1986 with the Securities and Exchange Commission (SEC) reflecting therein the disbursement of corporate funds for the compensation of private respondents based on Resolution No. 4, series of 1986, making it appear that the same was passed by the board on March 30, 1986, when in truth, the same was actually passed on June 1, 1986, a date not covered by the corporation's fiscal year 1985-1986 (beginning May 1, 1985 and ending April 30,

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[2] Annex "F"; *Rollo*, p. 93.

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1986). The Information for falsification of a public document states:

"The undersigned City Prosecutor accuses RICARDO T. SALAS, SALVADOR T. SALAS, SOLEDAD SALAS-TUBILLEJA, ANTONIO S. SALAS and RICHARD S. SALAS (whose dates and places of birth cannot be ascertained) of the crime of FALSIFICATION OF A PUBLIC DOCUMENT, Art. 171 of the Revised Penal Code, committed as follows:

That on or about the 10th day of June, 1986, in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then the Chairman, Vice-Chairman, Treasurer, Secretary and Trustee (who later became the Secretary), respectively, of the board of trustees of the Western Institute of Technology, Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines, conspiring and confederating together and mutually helping one another, to better realized(sic) their purpose, did then and there wilfully, unlawfully and criminally prepare and execute and subsequently cause to be submitted to the Securities and Exchange Commission, an income statement of the corporation for the fiscal year 1985-1986, the same being required to be submitted every end of the corporation fiscal year by the aforesaid Commission and therefore, a public document, including therein the disbursement of the retroactive compensation of accused corporate officers in the amount of ₱186,470.70, by then and there *making it appear that the basis thereof Resolution No. 4, Series of 1986 was passed by the board of trustees on March 30, 1986, a date covered by the corporation's fiscal year 1985-1986 (i.e., from May 1, 1985 to April 30, 1986), when in truth and in fact, as said accused well knew, no such Resolution No. 48, Series of 1986 was passed on March 30, 1986.*

CONTRARY TO LAW.

Iloilo City, Philippines, November 22,1991."[3] [Italics supplied].

The Information, on the other hand, for estafa reads:

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[3] Annex "V"; *Rollo,* p. 237.

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"The undersigned City Prosecutor accuses RICARDO SALAS, SALVADOR T.SALAS, SOLEDAD SALAS-TUBILLEJA, ANTONIO S. SALAS, RICHARD S. SALAS (whose dates and places of birth cannot be ascertained) of the crime of ESTAFA, Art. 315, par 1(b) of the Revised Penal Code, committed as follows:

That on or about the 1st day of June, 1986, in the City of Iloilo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the Chairman, Vice-Chairman, Treasurer, Secretary and Trustee (who later became the Secretary), respectively, of the Board of Trustees of Western Institute of Technology, Inc., a corporation duly organized and existing under the laws of the Republic of the Philippines, conspiring and confederating together and mutually helping one another, to better realize their purpose, did then and there wilfully, unlawfully and feloniously defraud the said corporation (and its stockholders) in the following manner, to wit: *herein accused, knowing fully well that they have no sufficient, lawful authority to disburse — let alone violation of applicable laws and jurisprudence, disbursed the funds of the corporation by effecting payment of their retroactive salaries in the amount of ₱186,470.70 and subsequently paying themselves every 15th and 30th of the month starting June 15, 1986 until the present,* in the amount of ₱19,500.00 per month, as if the same were their own, and when herein accused were informed of the illegality of these disbursements by the minority stockholders by way of objections made in an annual stockholders' meeting held on June 14, 1986 and every year thereafter, they refused, and still refuse, to rectify the same *to the damage and prejudice of the corporation* (and its stockholders) *in the total sum of ₱1,453,970.79 as of November 15, 1991.*

CONTRARY TO LAW.

Iloilo City, Philippines, November 22,1991."[4] [Italics supplied]

Thereafter, trial for the two criminal cases, docketed as Criminal Cases Nos. 37097 and 37098, was consolidated. After a full-blown hearing, Judge Porfirio Parian handed down a verdict of acquittal on both counts[5] dated September 6, 1993 without imposing any civil liability against the accused therein.

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[4] Annex "U"; *Rollo,* p. 233.

[5] Decision, p. 11; *Rollo,* p. 64.

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Petitioners filed a Motion for Reconsideration[6] of the civil aspect of the RTC Decision which was, however, denied in an Order dated November 23, 1993.[7]

Hence, the instant petition.

Significantly on December 8, 1994, a Motion for Intervention, dated December 2, 1994, was filed before this Court by Western Institute of Technology, Inc., supposedly one of the petitioners herein, disowning its inclusion in the petition and submitting that Atty. Tranquilino R. Gale, counsel for the other petitioners, had no authority whatsoever to represent the corporation in filing the petition. Intervenor likewise prayed for the dismissal of the petition for being utterly without merit. The Motion for Intervention was granted on January 16, 1995.[8]

Petitioners would like us to hold private respondents civilly liable despite their acquittal in Criminal Cases Nos. 37097 and 37098. They base their claim on the alleged illegal issuance by private respondents of Resolution No. 48, series of 1986 ordering the disbursement of corporate funds in the amount of ₱186,470.70 representing the retroactive compensation as of June 1, 1985 in favor of private respondents, board members of WIT, plus ₱1,453,970.79 for the subsequent collective salaries of private respondent every 15th and 30th of the month until the filing of the criminal complaints against them on March 1991. Petitioners maintain that this grant of compensation to private respondents is proscribed under Section 30 of the Corporation Code. Thus, private respondents are obliged to return these amounts to the corporation with interest.

We cannot sustain the petitioners. The pertinent section of the Corporation Code provides:

"Sec. 30. *Compensation of directors.* — In the absence of any provision in the by-laws fixing their compensation, the directors shall not receive any compensation, as *such directors,* except for reasonable

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[6] Annex "B"; *Rollo,* p. 66.

[7] *Rollo,* p. 87.

[8] *Rollo,* p. 403.

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per diems: *Provided, however,* That any such compensation (other than per diems) may be granted to directors by the vote of the stockholders representing at least a majority of the outstanding capital stock at a regular or special stockholders' meeting. In no case shall the total yearly compensation of directors, *as such directors*, exceed *ten (10%) percent of the net income before income tax* of the corporation during the preceding year." [Italics supplied]

There is no argument that directors or trustees, as the case may be, are not entitled to salary or other compensation when they perform nothing more than the usual and ordinary duties of their office. This rule is founded upon a presumption that directors /trustees render service gratuitously, and that the return upon their shares adequately furnishes the motives for service, without compensation.[9] Under the foregoing section, there are only two (2) ways by which members of the board can be granted compensation apart from reasonable per diems: (1) when there is a provision in the by-laws fixing their compensation; and (2) when the stockholders representing a majority of the outstanding capital stock at a regular or special stockholders' meeting agree to give it to them.

This proscription, however, against granting compensation to directors/trustees of a corporation is not a sweeping rule. Worthy of note is the clear phraseology of Section 30 which states: "x x x [T]he directors shall not receive any compensation, *as such directors,* x x x." The phrase *as such directors* is not without significance for it delimits the scope of the prohibition to compensation given to them for services performed *purely in their capacity as directors or trustees.* The unambiguous implication is that members of the board may receive compensation, in addition to reasonable per diems, when they render services to the corporation in a capacity other than as directors/trustees.[10] In the case at bench, Resolution No. 48, s. 1986 granted monthly compensation to private respondents not in their capacity as members of the board, but rather as officers

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[9] Agbayani, Aguedo F., Commentaries and Jurisprudence on the Commercial Laws of the Philippines, Vol. 3, 1988 ed., p. 259.

[10] *Ibid.*

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of the corporation, more particularly as Chairman, Vice-Chairman, Treasurer and Secretary of Western Institute of Technology. We quote once more Resolution No. 48, s. 1986 for easy reference, *viz.:*

"*Resolution No. 48 s. 1986*

On the motion of Mr. Richard Salas (accused), duly seconded by Mrs. Soledad Tubilleja (accused), it was unanimously resolved that:

> The *Officers of the Corporation* be granted monthly compensation *for services rendered as* follows: Chairman — ₱9,000.00/month, *Vice-Chairman* — ₱3,500.00/month, *Corporate Treasurer* — ₱3,500.00/month and *Corporate Secretary* — ₱3,500.00/month, retroactive June 1, 1985 and the ten percentum of the net profits shall be distributed equally among the ten members of the Board of Trustees. This shall amend and superceed(sic) any previous resolution.'

There were no other business.

The Chairman declared the meeting adjourned at 5:11 P.M.

This is to certify that the foregoing minutes of the regular meeting of the Board of Trustees of Western Institute of Technology, Inc. held on March 30, 1986 is true and correct to the best of my knowledge and belief.

(Sgd) ANTONIO S. SALAS
Corporate Secretary"[11] [Italics supplied]

Clearly, therefore, the prohibition with respect to granting compensation to corporate directors/trustees *as such* under Section 30 is not violated in this particular case. Consequently, the last sentence of Section 30 which provides:

"x x x. In no case shall the total yearly compensation of directors, *as such directors*, exceed *ten (10%) percent of the net income before income tax* of the corporation during the preceding year." [Italics supplied]

does not likewise find application in this case since the compensation is being given to private respondents in their capacity as officers of WIT and not as board members.

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[11] Annex "F"; *Rollo*, p. 93.

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Petitioners assert that the instant case is a derivative suit brought by them as minority shareholders of WIT for and on behalf of the corporation to annul Resolution No. 48, s. 1986 which is prejudicial to the corporation.

We are unpersuaded. A derivative suit is an action brought by minority shareholders in the name of the corporation to redress wrongs committed against it, for which the directors refuse to sue.[12] It is a remedy designed by equity and has been the principal defense of the minority shareholders against abuses by the majority.[13] Here, however, the case is not a derivative suit but is merely an appeal on the civil aspect of Criminal Cases Nos. 37097 and 37098 filed with the RTC of Iloilo for estafa and falsification of public document. Among the basic requirements for a derivative suit to prosper is that the minority shareholder who is suing for and on behalf of the corporation must allege in his complaint before the proper forum that he is suing on a derivative cause of action on behalf of the corporation and all other shareholders similarly situated who wish to join.[14] This is necessary to vest jurisdiction upon the tribunal in line with the rule that it is the allegations in the complaint that vests jurisdiction upon the court or quasi-judicial body concerned over the subject matter and nature of the action.[15] This was not complied with by the petitioners either in their complaint before the court *a quo* nor in the instant petition which, in part, merely states that "this is a petition for review on *certiorari* on pure question of law to set aside a portion of the RTC decision in Criminal Cases Nos. 37097 and 37098"[16] since the trial court's judgment of acquittal failed to impose any civil liability against

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[12] Agbayani, *supra.*, p. 540.

[13] Commart (Phils.) Inc. *v.* Securities and Exchange Commission, 198 SCRA 73, 80 [1991].

[14] Agbayani, *supra.*, p. 543.

[15] See Sarmiento *v.* Court of Appeals, 250 SCRA 108 [1995]; De Leon *v.* Court of Appeals, 245 SCRA 166 [1995]; Alleje *v.* Court of Appeals, 240 SCRA 495 [1995].

[16] Petition, p. 6; *Rollo*, p. 13.

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the private respondents. By no amount of equity considerations, if at all deserved, can a mere appeal on the civil aspect of a criminal case be treated as a derivative suit.

Granting, for purposes of discussion, that this is a derivative suit as insisted by petitioners, which it is not, the same is outrightly dismissible for having been wrongfully filed in the regular court devoid of any jurisdiction to entertain the complaint. The case should have been filed with the Securities and Exchange Commission (SEC) which exercises original and exclusive jurisdiction over derivative suits, they being intra-corporate disputes, per Section 5(b) of P.D. No. 902-A:

"In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x x x x x x x

b) *Controversies arising out of intra-corporate* or partnership *relations*, between and among stockholders, members, or associates; *between any or all of them and the corporation*, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the State insofar as it concerns their individual franchise or right to exist as such entity;

x x x x x x x x x." [Italics supplied]

Once the case is decided by the SEC, the losing party may file a petition for review before the Court of Appeals raising questions of fact, of law, or mixed questions of fact and law.[17] It is only after the case has ran this course, and not earlier, can it be brought to us *via* a petition for review on *certiorari* under Rule 45 raising only pure questions of law.[18] Petitioners, in pleading

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[17] Sections 1 & 3, Circular No. 1-91; Sections 1 & 3, Revised Administrative Circular No. 1-95; Now incorporated in Sections 1 & 3, Rule 43 of the 1997 Rules of Civil Procedure.

[18] Section 1, Rule 45.

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that we treat the instant petition as a derivative suit, are trying to short-circuit the entire process which we cannot here sanction.

As an appeal on the civil aspect of Criminal Cases Nos. 37097 and 37098 for falsification of public document and estafa, which this petition truly is, we have to deny the petition just the same. It will be well to quote the respondent court's ratiocinations acquitting the private respondents on both counts:

"The prosecution wants this Court to believe and agree that there is falsification of public document because, as claimed by the prosecution, Resolution No. 48, Series of 1986 (Exh. '1-E-1') was not taken up and passed during the Regular Meeting of the Board of Trustees of the western Institute of Technology (WIT), Inc. on March 30, 1986, but on June 1, 1986 special meeting of the same board of trustees.

This Court is reluctant to accept this claim of falsification. The prosecution omitted to submit the complete minutes of the regular meeting of the Board of Trustees on March 30, 1986. It only presented in evidence Exh. 'C', which is page 5 or the last page of the said minutes. Had the complete minutes (Exh. '1' consisting of five (5) pages, been submitted, it can be readily seen and understood that Resolution No. 48, Series of 1986 (Exh. '1-E-1') giving compensation to corporate officers, was indeed included in Other Business, No. 6 of the Agenda, and was taken up and passed on March 30. 1986. The mere fact of existence of Exh. 'C' also proves that it was passed on March 30, 1986 for Exh. 'C' is part and parcel of the whole minutes of the Board of Trustess Regular Metting on March 30, 1986. No better and more credible proof can be considered other than the Minutes (Exh. '1') itself of the Regular Meeting of the Board of Trustees on March 30, 1986. The imputation that said Resolution No. 48 was neither taken up nor passed on March 30, 1986 because the matter regarding compensation was not specifically stated or written in the Agenda and that the words 'possible implementation of said Resolution No. 48, was expressly written in the Agenda for the Special Meeting of the Board on June 1, 1986, is simply an implication. This evidence by implication to the mind of the court cannot prevail over the Minutes (Exh.'1') and cannot ripen into proof beyond reasonable doubt which is demanded in all criminal prosecutions.

This Court finds that under the Eleventh Article (Exh. '3-D-1') of the Articles of Incorporation (Exh. '3-B') of the Panay Educational

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Institution, Inc., now the Western Institute of Technology, Inc., the officers of the corporation shall receive such compensation as the Board of Directors may provide. These Articles of Incorporation was adopted on May 17, 1957 (Exh. '3-E'). The Officers of the corporation and their corresponding duties are enumerated and stated in Sections 1, 2, 3 and 4 of Art. III of the Amended By-Laws of the Corporation (Exh. '4-A') which was adopted on May 31, 1957. According to Sec. 6, Art. III of the same By-Laws, all officers shall receive such compensation as may be fixed by the Board of Directors.

It is the perception of this Court that the grant of compensation or salary to the accused in their capacity as officers of the corporation, through Resolution No. 48, enacted on March 30, 1986 by the Board of Trustees, is authorized by both the Articles of Incorporation and the By-Laws of the Corporation. To state otherwise is to depart from the clear terms of the said articles and by-laws. *In their defense the accused have properly and rightly asserted that the grant of salary is not for directors, but for their being officers of the corporation who oversee the day to day activities and operations of the school.*

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x x x *[O]n the question of whether or not the accused can be held liable for estafa under Sec. 1 (b) of Art. 315 of the Revised Penal Code, it is perceived by this Court that the receipt and the holding of the money by the accused as salary on basis of the authority granted by the Articles and By-Laws of the corporation are not tainted with abuse of confidence. The money they received belongs to them and cannot be said to have been converted and/or misappropriated by them.*

x x x x x x x x x."[19] [Italics ours]

From the foregoing factual findings, which we find to be amply substantiated by the records, it is evident that there is simply no basis to hold the accused, private respondents herein, civilly liable. Section 2(b) of Rule 111 on the New Rules on Criminal Procedure provides:

"SEC. 2. Institution of separate civil action.

x x x x x x x x x

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[19] Decision, pp. 9-11; *Rollo*, pp. 62-64.

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(b) 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.*" [Italics supplied]

Likewise, the last paragraph of Section 2, Rule 120 reads:

"SEC. 2. Form and contents of judgment.

x x x x x x x x x

In case of acquittal, *unless there is a clear showing that the act from which the civil liability might arise did not exist,* the judgment shall make a finding on the civil liability of the accused in favor of the offended party." [Italics ours]

The acquittal in Criminal Cases Nos. 37097 and 37098 is not merely based on reasonable doubt but rather on a finding that the accused-private respondents did not commit the criminal acts complained of. Thus, pursuant to the above rule and settled jurisprudence, any civil action *ex delicto* cannot prosper. Acquittal in a criminal action bars the civil action arising therefrom where the judgment of acquittal holds that the accused did not commit the criminal acts imputed to them.[20]

WHEREFORE, the instant petition is hereby DENIED with costs against petitioners.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and *Kapunan, JJ.,* concur.

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[20] Regalado, Florenz D., Remedial Law Compendium, Vol. II, 1995 ed., p. 287, citing Tan *v.* Standard Vacuum Oil Co., 91 Phil. 672.