RECENT JURISPRUDENCE

POLITICAL LAW

ANGKLA: ANG PARTIDO NG MGA PILIPINONG MARINO, INC. (ANGKLA), and SERBISYO SA BAYAN PARTY (SBP) *v.* **COMMISSION ON ELECTIONS, *et al.***
G.R. No. 246816, 15 September 2020, *EN BANC* (Lazaro Javier, *J.*)

DOCTRINE OF THE CASE

Section 5(1), Article VI of the 1987 Constitution mandates that the party-list system shall compose twenty percent (20%) of the total membership in the House of Representatives. But the matter on how party-lists should qualify for a seat is left to the wisdom of the legislature.

The BANAT formula mirrors the textual progression of Section 11(b) of the law. The formula withstood the test of time and the Court is offered no cogent reason to depart therefrom.

FACTS

In these twin Petitions for *Certiorari* and Prohibition, and for Intervention, *ANGKLA: Ang Partido Ng Mga Pilipinong Marino, Inc.,* (ANGKLA) and *Serbisyo sa Bayan* Party (SBP) assail the constitutionality of Section 11(b), Republic Act No. 7941 (R.A. No. 7941) insofar as it provides that those garnering more than two percent (2%) of the votes cast for the party-list system shall be entitled to additional seats in proportion to their total number of votes.

They assert that the allocation of additional seats in proportion to a party-list's "total number of votes" results in the double-counting of votes in favor of the two-percenters. The same votes which guarantee the two-percenters a seat in the first round of seat allocation are again considered in the second round. The proviso purportedly violates the equal protection clause, hence, is unconstitutional.

ISSUE

Is Section 11(b), R.A. No. 7941 allocating additional seats to party-lists in portion to their total number of votes unconstitutional?

RULING

NO. Section 5(1), Article VI of the 1987 Constitution mandates that the party-list system shall compose twenty percent (20%) of the total membership in the House of Representatives. But the matter on how party-lists should qualify for a seat is left to the wisdom of the legislature.

Pursuant to this constitutional directive, Congress enacted R.A. No. 7941, setting forth the parameters for electing party-lists and the manner of allocating seats to them. The features of R.A. No. 7941 preclude the allocation of seats based solely on absolute proportionality:

> (a) To bar any single party-list party, organization or coalition from dominating the party-list system; and
>
> (b) To ensure maximization of the allotment of 20% of seats in the House of Representatives to party-list representatives.

As finally settled in the landmark case of *BANAT*, Section 11(b) of R.A. No. 7941 is to be applied, thus:

> **Round 1:**
>
> (a) The participating parties, organizations or coalitions shall be ranked from highest to lowest based on the number of votes they each garnered in the party-list election.
>
> (b) Each of those receiving at least two percent (2%) of the total votes cast for the party-list system shall be entitled to and guaranteed one seat each.
>
> Rationale: The statute references a two-percent (2%) threshold. The one-seat guarantee based on this arithmetical computation gives substance to this threshold.
>
> **Round 2, Part 1:**
>
> (a) The percentage of votes garnered by each of the parties, organizations, and coalitions is multiplied by the remaining available seats after Round 1. All party-list participants shall participate in this round regardless of the percentage of votes they garnered.

(b) The party-list participants shall be entitled to additional seats based on the product arrived at in (a). The whole integer of the product corresponds to a party's share in the remaining available seats. Fractional seats shall not be awarded.

Rationale: This formula gives flesh to the proportionality rule in relation to the total number of votes obtained by each of the participating party, organization, or coalition.

(c) A party-list shall be awarded no more than two (2) additional seats.

Rationale: The three-seat cap in the statute is to be observed.

Round 2, Part 2:

(a) The party-list party, organization or coalition next in rank shall be allocated one additional seat each until all available seats are completely distributed.

Rationale: This algorithm endeavors to complete the 20% composition for party-list representation in the House of Representatives.

The BANAT formula mirrors the textual progression of Section 11(b) of the law. The formula withstood the test of time and the Court is offered no cogent reason to depart therefrom.

IN THE MATTER OF THE PETITION FOR WRIT OF AMPARO AND WRIT OF HABEAS CORPUS IN FAVOR OF ALICIA JASPER S. LUCENA;
RELISSA SANTOS LUCENA AND FRANCIS B. LUCENA *v.* SARAH ELAGO, *et al.*
G.R. No. 252120, 15 September 2020, *EN BANC* (Peralta, *C.J.*)

DOCTRINE OF THE CASE

The remedy of amparo, in its present formulation, is confined merely to instances of "extralegal killings" or "enforced disappearances" and to threats thereof. Here, there is not much issue that AJ's situation does not qualify either as an actual or threatened enforced disappearance or extralegal killing. AJ is not missing. Her whereabouts are determinable.

The Rules of Court envisions the writ of habeas corpus as a remedy applicable to cases of illegal confinement or detention where a person is deprived of his or her liberty, or where the rightful custody of any person is withheld from the person entitled thereto. In this case, there was never any accusation that the Anakbayan employed violence, force or threat against AJ that would have influenced her in deciding to stay with the Anakbayan.

FACTS

Relissa Santos Lucena and Francis B. Lucena (Spouses Lucena) are the parents of Alicia Jasper S. Lucena (AJ) — a 19-year old Grade 11 student at the Far Eastern University (FEU). AJ was enticed to join the FEU Chapter of *Anakbayan* — a youth organization supposedly advocating ideals of national democracy.

On July 10, 2019, AJ left the family home for the third time and never came back. She has since dropped out from FEU. Seeking mainly to regain custody of AJ, Spouses Lucena instituted the present petition for the issuance of the writs of *amparo* and *habeas corpus*.

ISSUES

(1) Was Spouses Lucena's plea for the issuance of a writ of *amparo* proper?

(2) Was Spouses Lucena's plea for the issuance of a writ of *habeas corpus* proper?

RULING

(1) **NO.** The remedy of *amparo*, in its present formulation, is confined merely to instances of "extralegal killings" or "enforced disappearances" and to threats thereof.

"Extralegal killings" are killings committed without due process of law, *i.e.*, without legal safeguards or judicial proceedings. On the other hand, the elements constituting "enforced disappearance," are enumerated as follows:

> (a) That there be an arrest, detention, abduction or any form of deprivation of liberty;
>
> (b) That it be carried out by, or with the authorization, support or acquiescence of, the State or a political organization;
>
> (c) That it be followed by the State or political organization's refusal to acknowledge or give information on the fate or whereabouts of the person subject of the *Amparo* petition; and
>
> (d) That the intention for such refusal is to remove the subject person from the protection of the law for a prolonged period of time.

Here, there is not much issue that AJ's situation does not qualify either as an actual or threatened enforced disappearance or extralegal killing. AJ is not missing. Her whereabouts are determinable. By all accounts, she is staying with the *Anakbayan* and its officers which, at least insofar as AJ's case is concerned, are not agents or organizations acting on behalf of the State. Indeed, against these facts, Spouses Lucena's invocation of the remedy of *amparo* cannot pass.

(2) **NO.** The Rules of Court envisions the writ of *habeas corpus* as a remedy applicable to cases of illegal confinement or detention where a person is deprived of his or her liberty, or where the rightful custody of any person is withheld from the person entitled thereto.

In this case, Spouses Lucena failed to make out a case that AJ is being detained or is being kept by the *Anakbayan* against her free will. To start, there was never any accusation that the *Anakbayan* employed violence, force or threat against AJ that would have influenced her in deciding to stay with the *Anakbayan*.

It also cannot be said that Spouses Lucena were being excluded from their rightful custody over the person of AJ. As it was established, AJ has already reached the age of majority and is, thus, legally emancipated. This meant the termination of the Spouses Lucena's parental authority — which includes their custodial rights — over the person and property of AJ.

As she has already attained the age of majority, AJ — at least in the eyes of the State — has earned the right to make independent choices with respect to the places where she wants to stay, as well as to the persons whose company she wants to keep. Such choices, so long as they do not violate any law or any other persons' rights, have to be respected and let alone, lest the Court trample upon AJ's personal liberty — the very freedom supposed to be protected by the writs of *amparo* and *habeas corpus*.

MARIO M. MADERA *et al.* *v.*
COMMISSION ON AUDIT (COA) and COA REGIONAL OFFICE NO. VIII
G.R. No. 244128, 08 September 2020, *EN BANC* (Caguioa, *J.*)

DOCTRINE OF THE CASE

The Supreme Court pronounces the rules on return:

> *1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.*
>
> *2. If a Notice of Disallowance is upheld, the rules on return are as follows:*
>
> *(a) Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.*
>
> *(b) Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.*
>
> *(c) Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.*
>
> *(d) The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case-to-case basis.*

Examined under the rubric of the rules above, the Court holds that those who were the approving and certifying officers need not refund the disallowed amounts inasmuch as they had acted in good faith. They disbursed the subject allowances in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such reward.

FACTS

In December 2013, the Municipality of Mondragon, Northern Samar (the Municipality) passed and approved a *Sangguniang Bayan* (SB) Ordinance and four SB Resolutions, granting various allowances to its officials and employees. These allowances are:

(a) Economic Crisis Assistance (ECA);
(b) Monetary Augmentation of Municipal Agency (MAMA);
(c) Agricultural Crisis Assistance (ACA); and
(d) Mitigation Allowance to Municipal Employees (MAME).

On post-audit, the Audit Team Leader (ATL) and the Supervising Auditor (SA) of the Municipality issued Notices of Disallowance (NDs) on the grounds, among others, that the grants violated Section 12 of Republic Act No. 6758 (R.A. No. 6758) or the Salary Standardization Law (SSL) as regards the consolidation of allowances and compensation, and that the services rendered thereunder are not considered as government service.

Mario Madera, *et al.* (Madera, *et al.*) filed their appeal with the Commission on Audit (COA) Regional Director (RD), arguing that the grant of additional allowances to the employees is allowed by R.A. No. 7160 or the Local Government Code (LGC). Hence, the LGC actually repealed Section 12 of R.A. No. 6758 because the former law allows the municipality to grant additional allowances/financial assistance should its finances allow.

In a Decision, the RD affirmed the NDs. According to the RD, while it may be true that the subject allowances were not among those included in the list of authorized allowances and they may be granted if there is sufficient legal basis, the appropriation ordinance is not sufficient to become the legal basis.

The COA affirmed the ruling of the COA Regional Office, with modification in that the officials and employees who unwittingly received the disallowed benefits or allowances are not held liable for their reimbursement since they are recipient-payees in good faith.

ISSUE

Did the COA commit grave abuse of discretion in affirming the NDs?

RULING

NO. The Court upholds the NDs against the subject allowances, finding no grave abuse of discretion on the part of the COA in affirming the disallowance. The Court recognizes that the jurisprudence regarding the refund of disallowed amounts by the COA is evolving, at times conflicting, and is primarily dealt with on a case-to-case basis. The discussions made in this petition, however, have made it apparent that there is now a need to harmonize the various rulings of the Court. For this reason, the Court takes this opportunity to lay down the rules that would be applied henceforth in determining the liability to return disallowed amounts, guided by applicable laws and rules as well as the current state of jurisprudence.

(a) The statutory bases for the liability of approving and certifying officers and payees for illegal expenditures;

It is well-settled that administrative, civil, or even criminal liability, as the case may be, may attach to persons responsible for unlawful expenditures, as a wrongful act or omission of a public officer.

Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987 cover the civil liability of officers for acts done in the performance of official duties. By the very language of these provisions, the liability for unlawful expenditures is civil. Nonetheless, since these provisions are situated in Chapter 9, Book I of the Administrative Code of 1987 entitled "General Principles Governing Public Officers," the liability is inextricably linked with the administrative law sphere. Thus, the civil liability provided under these provisions is hinged on the fact that the public officers performed his official duties with bad faith, malice, or gross negligence.

(b) The badges of good faith in determining the liability of approving and certifying officers;

To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the

determination of whether an authorizing officer exercised the diligence of a good father of a family:

> (a) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code;
> (b) In-house or Department of Justice legal opinion;
> (c) That there is no precedent disallowing a similar case in jurisprudence;
> (d) That it is traditionally practiced within the agency and no prior disallowance has been issued; or
> (e) With regard the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.

(c) The body of jurisprudence which inequitably absolve responsible persons from liability to return based on good faith;

The history of the rule evinces that the original formulation of the "good faith rule" excusing the return by payees based on good faith was not intended to be at the expense of approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.

(d) The nature of the payees' participation and their liability for return and the acceptable exceptions as regards the liability to return disallowed amounts on the bases of unjust enrichment and solutio indebiti;

Being civil in nature, the liability of officers and payees for unlawful expenditures provided in the Administrative Code of 1987 will have to be consistent with civil law principles such as *solutio indebiti* and unjust enrichment. To be sure, the application of the principles of unjust enrichment and *solutio indebiti*

in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures. With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received.

Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term "net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees. The net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

To a certain extent, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payees' favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."

Consistent with this, "the amount of damage or loss [suffered by] the government [in the disallowed transaction]," another determinant of liability, is also indirectly attributable to payees by their mere receipt of the disallowed funds. This is because the loss incurred by the government stated in the ND as the disallowed amount corresponds to the amounts received by the payees. Thus, cogent with the application of civil law principles on unjust enrichment and *solutio indebiti*, the return by payees primarily rests upon this conception of a payee's undue receipt of amounts as recognized within the government auditing framework. In this regard, it bears repeating that the extent of liability of a payee who is a passive recipient is only with respect to the transaction where he participated or was involved in, *i.e.*, only to the extent of the amount that he unduly received.

The exception to payee liability is when he shows that he is, as a matter of fact or law, actually entitled to what he received, thus removing his situation from Section 16.1.5 of the RRSA and the application of the principle of *solutio indebiti*. This includes payees who can show that the amounts received were granted in consideration for services actually rendered. In such situations, it cannot be said that any undue payment was made. Thus, the government incurs no loss in making the payment that would warrant the issuance of a disallowance. Neither payees nor approving and certifying officers can be held civilly liable for the amounts so paid, despite any irregularity or procedural mistakes that may have attended the grant and disbursement.

The Court accepts the arguments raised by Madera, *et al.* as badges of good faith.

First, a review of the SB Resolutions and Ordinance used as basis for the grant of the subject allowances shows that these were primarily intended as financial assistance to municipal employees in view of the increase of cost on prime commodities, shortage of agricultural products, and the vulnerability of their municipality to calamities and disasters. Notably, these subject allowances were granted after the onslaught of typhoon Yolanda which greatly affected the Municipality. While noble intention is not enough to declare the allowances as valid, it nevertheless supports Madera, *et al.*'s claim of good faith.

Second, that these additional allowances had been customarily granted over the years and there was no previous disallowance issued by the COA against these allowances further bolster petitioners' claim of good faith. Indeed, while it is true that this customary scheme does not ripen into valid allowances, it is equally true that in all those years that the additional allowances had been granted, the COA did not issue any ND against these grants, thereby leading Madera, *et al.* to believe that these allowances were lawful.

Third, Madera, *et al.* relied on the Resolutions and Ordinance of the *Sangguniang Bayan* which have not been invalidated; hence, it was within their duty to execute these issuances in the absence of any contrary holding by the *Sangguniang Panlalawigan* or the COA. They were of the belief, albeit mistakenly, that these Resolutions and Ordinance were sufficient legal bases for the grant of the allowances especially since the LGC empowers the *Sangguniang Bayan* to approve ordinances and pass resolutions concerning allowances.

Thus, petitioners-approving and certifying officers are shielded from civil liability for the disallowance under Section 38 of the Administrative Code of 1987.

As for the payees, the Court notes that the COA Proper already excused their return; hence, they no longer appealed. In any case, while they are ordinarily liable to return for having unduly received the amounts validly disallowed by COA, the return was properly excused not because of their good faith but because it will cause undue prejudice to require them to return amounts that were given as financial assistance and meant to tide them over during a natural disaster.

RE: LETTER OF MRS. MA. CRISTINA ROCO CORONA REQUESTING THE GRANT OF RETIREMENT AND OTHER BENEFITS TO THE LATE FORMER CHIEF JUSTICE RENATO C. CORONA AND HER CLAIM FOR SURVIVORSHIP PENSION AS HIS WIFE UNDER REPUBLIC ACT NO. 9946
A.M. No. 20-07-10-SC, 12 January 2021 (Hernando, *J.*)

DOCTRINE OF THE CASE

An impeached public officer whose civil, criminal, or administrative liability was not judicially established may be considered involuntarily retired from service and is entitled to retirement benefits. Retirement is deemed involuntary when one's profession is terminated for reasons outside the control and discretion of the worker. Impeachment resulting in removal from holding office falls under the column on involuntary retirement.

Thus, until his liability under the law is so established before the courts of law, retirement eligibility and benefits have properly accrued to Chief Justice Corona when he was removed by impeachment on May 29, 2012. There being no such determination of liability, his entitlement thereto subsisted.

FACTS

Renato Coronado Corona (Corona) was the Chief Justice of the Philippines for eight years after his appointment on May 12, 2010 until being indicted through an impeachment by the House of Representatives pursuant to Section 2, Article VI of the 1987 Constitution. The grounds of his impeachment were betrayal of public trust, culpable violation of the Constitution, and graft and corruption.

Senate declared Corona unfit to hold the position and removed him from office because of non-declaration of Statement of Assets, Liabilities, and Net Worth (SALN). Because of the stress from trial, Corona's health quickly deteriorated leading to his death in 2016. The pending criminal cases on graft and corruption were all dismissed.

His widow, Mrs. Ma. Cristina Roco Corona (Mrs. Corona), asserted that the Senate judgment be voided for insufficiency and non-compliance with Section 14, Art. VIII of the Constitution because the impeachment merely stripped him of his political capacity as Chief Justice. Hence, she prayed for the retirement benefits and other gratuities provided for under R.A. No. 9946, and survivorship pension under Admin. Circ. No. 81-2010.

ISSUE

Should the retirement benefits, other gratuities, and survivorship pension be accorded to Mrs. Corona as the spouse of the late Chief Justice Corona despite the latter's ouster by impeachment?

RULING

YES. The Court grants the plea of Corona's widow. The effects of a judgment on an impeachment complaint extend no further than to removal from office and disqualification from holding any public office. Since the Constitution expressly limited the nature of impeachment, its effects must consequently and necessarily be confined within the constitutional limits. Impeachment proceedings are entirely separate, distinct, and independent from any other actionable wrong or cause of action a party may have against the impeached officer, even if such wrong or cause of action may have a colorable connection to the grounds for which the officer have been impeached.

An impeached public officer whose civil, criminal, or administrative liability was not judicially established may be considered involuntarily retired from service. Retirement is the termination of one's employment or career, especially upon reaching a certain age or for health reasons. To retire is to withdraw from one's position or occupation, or to conclude one's active working life or professional career. Retirement is deemed involuntary when one's profession is terminated for reasons outside the control and discretion of the worker. Impeachment resulting in removal from holding office falls under the column on involuntary retirement.

After the judgment of impeachment was announced on May 29, 2012, tax evasion charges, criminal cases for perjury, administrative complaints for violation of the R.A. No. 6713 of the Code of Conduct of Ethical Standards for Public Officials and Employees, and a civil case for forfeiture were slapped against Chief Justice Corona in 2014. These charges, however, were terminated upon his demise. The Court deems Chief Justice Corona to have been involuntarily retired from public service due to the peculiar circumstances surrounding his removal by impeachment, without forfeiture of his retirement benefits and other allowances.

Notably, from the time the impeachment court rendered its judgment, there has been no law that commands the automatic cancellation of post-employment benefits and other privileges pertaining to the impeached official. Considering the

foregoing, the Supreme Court holds that Chief Justice Corona was involuntarily retired by virtue of his conviction arising from impeachment.

This is where equity comes in. Under the prevailing circumstances, the fairer and more equitable treatment of the present claim for post-employment privileges is to first consider Chief Justice Corona as involuntarily retired, rather than to dismiss it outright without citing any legal basis.

An impeached public officer whose civil, criminal, or administrative liability was not judicially established is entitled to the retirement benefits provided under R.A. Nos. 9946 and 8291. The former Chief Justice can never be deemed to have retired at the age of 70, nor can he be considered as resigned by reason of any permanent disability, as his separation from service was not in any way effected through resignation.

Section 1 of R.A. No. 9946 yields two instances of retirement available to a magistrate — first, a compulsory retirement at 70 years old; and second, an optional retirement upon reaching 60 years of age. The following legal requisites must concur for the optional retirement of a magistrate and the consequent entitlement to the benefits under R.A. No. 9946:

(a) That the retiree be a magistrate, *i.e.*, a Justice of the Supreme Court, the Court of Appeals, the Sandiganbayan, or of the Court of Tax Appeals, or a judge of the trial courts, Shari'a court, or of any other judicial court;

(b) That the retiring magistrate has rendered at least 15 years of service in the judiciary, in any other branch of the government, or in both;

(c) That the retiring magistrate be at least 60 years of age at the time of retirement; and

(d) That the last 3 years of public service by the retiring magistrate be continuously rendered in the Judiciary.

The requirements are straightforward and have all been satisfactorily complied with by the late Chief Justice. However, whether criminal, civil, or administrative, no court imposed any such liability upon the late Chief Justice. Impeachment is only preparatory to liability. Since a removal by impeachment

does not explicitly provide for forfeiture as a consequence thereof, as opposed to a criminal conviction carrying the penalty of perpetual or absolute disqualification, an impeached official, like former Chief Justice Corona, cannot be deprived of his retirement benefits on the sole ground of his removal. Such forfeiture could have been imposed upon criminal conviction which, however, was pre-empted by his death. Viewing it from another angle, a judgment of liability in a separate legal proceeding is a resolutory condition after a verdict of ouster by impeachment has been rendered, in that the impeached official retains all the post- employment privileges already earned unless otherwise declared by the competent tribunals.

Until his liability under the law is so established before the courts of law, retirement eligibility and benefits have properly accrued to Chief Justice Corona when he was removed by impeachment on May 29, 2012. There being no such determination of liability, his entitlement thereto subsisted.