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The Right to Fix the Venue of an Action—An Analysis of Molina v. De la Riva

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INTRODUCTION

This paper entitled "Critical Analysis of the Doctrine of the Case of Molina v. de la Riva," (6 Phil. 12) deals only and exclusively with one point of procedural law. Its only purpose is to answer a definite and narrow question, to wit: May litigants stipulate before the institution of any action as to the place where an action is to be tried, that is, may they fix in advance the venue of a certain action? Authorities squarely answer this question; but it is indeed unfortunate that they do not agree in answering it. This variance and conflict of authorities have led the writer to undertake the task of answering the question in a categorical manner, giving justifications for his answer, with special attention and reference to existing Philippine conditions and laws. It must be noted, however, that the case above cited has answered this question in the negative; but with due regard and respect to this judicial pronouncement of our Supreme Court, the writer is of the opinion that the answer should be otherwise.

Being confronted with a question on the procedural aspect of our laws and cognizant of the fact that our adjective law is of American origin, the author resorted to both American and English authorities as well as to Philippine decisions in the elucidation of this simple thesis.

I. SYNOPSIS OF THE CASE

To understand properly this simple dissertation, a comprehensive knowledge of the case which is to be analyzed is a necessary background. Thus a digest of the said case [Molina v. De la Riva (March 22, 1906) 6 Phil. 12] is hereby given as follows:

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This is an action brought in the Court of First Instance of the City of Manila for the recovery of a certain sum of money from the defendant alleged to be due and payable to the plaintiff. In the lower court, the defendant demurred to the complaint on the ground that the court had no jurisdiction of the subject of the action, and urged as one of the grounds for such want of jurisdiction the stipulation in the contract upon which this action is based, to the effect that the parties had mutually designated in the contract in question the town of Bato, Island of Catanduanes, as the place where all judicial and extra-judicial acts necessary under the terms of the said contract should take place. The defendant claimed that this stipulation amounted to an express submission by the contracting parties to the jurisdiction of the Court of First Instance of the Province of Albay, in which the town of Bato is located, all other courts being thereby inhibited from exercising jurisdiction over actions arising from the contract. The Supreme Court *Held:* The designation in the contract as to the place of trial had no legal force and could not have the effect of depriving the Court of First Instance of Manila of the jurisdiction conferred on it by law. This would be true even though it may be granted that the parties actually intended to waive the rights of domicile and expressly submit themselves to the exclusive jurisdiction of the Court of First Instance of Albay. The jurisdiction of a court is fixed by law and not by the will of the parties. As a matter of public policy, the parties can only stipulate in regard to that which is expressly authorized by law. Neither Section 377 of the Code of Civil Procedure nor any other provision of law authorizes the parties to make the stipulation in question. "We consequently hold that the agreement between the parties to submit themselves to the jurisdiction of the Court of First Instance of Albay * * * was null and void, in so far as it had for its object to deprive the Court of First Instance of Manila of its own jurisdiction." Judgment was affirmed for the plaintiff.

II. INTRODUCTION

It is striking to note that the Supreme Court did not cite any authority to support its conclusion. The writer, however, found the weight of authorities upholding the view of our local supreme court, giving reasons for so holding. But there are also authorities that hold otherwise, sustaining the validity of the stipulation in dispute. It is the prime purpose of the author to expose the "pros and cons" of the case, to express an opinion

as to what he thinks the doctrine to be followed in this jurisdiction with special reference to the existing conditions and laws of the Philippine Islands, and to make recommendations so that his opinion may be put in practice. Before entering into the discussion of the subject, it is, however, first necessary to know the nature and characteristics of jurisdiction and venue, because in the light of the meaning of these two terms this thesis is written.

III. JURISDICTION IN GENERAL DEFINED

Jurisdiction has been defined by our supreme court in the case of Herrera v. Barretto (25 Phil. 245) as the authority to hear and determine a cause—the right to act in a case. Since it is a power to hear and determine, it does not depend either upon the regularity of the exercise of that power or upon the rightfulness of the decision made. According to Permenter v. Ray (158 P. 1183) it does not relate to the rights of the parties as between themselves, but to the power of the court. The question is whether, on the case before a court, their action is judicial or extra judicial; with or without authority of law to render judgment or decree upon the rights of the litigant parties. If the law confers the power to render judgment or decree, then the court has jurisdiction. It has reference to the power of the court over the parties, over the subject-matter, over the res or property in contest, to the authority of the court to render the judgment or decree which it assumes to make, (Cooper v. Reynolds' Lessee, 19 L. Ed. 931, 932) and to the place where the court is to act or territorial jurisdiction. [Wolff v. McGaugh (Ala. 1912), 57 S. 754].

IV. WHAT CONSTITUTE JURISDICTION—ELEMENTS THAT MAY BE WAIVED

From the foregoing definition we see that in order that a court may have a full and complete power to exercise its judicial functions it must have jurisdiction over:

1. The subject-matter;
2. The res or property which is the subject of the litigation;
3. The parties litigant; and
4. The territory or the so called territorial jurisdiction.

A. *What is jurisdiction over the subject-matter?*

By this is meant the nature of the cause of action and of the relief sought. (Cooper v. Reynolds' Lessee, supra) It means not simply jurisdiction of the particular case then occupy-

ing the attention of the court, but jurisdiction of the class of cases to which the particular case belongs. (State v. Wolever, 29 N. E. 762. It does not depend on the existence of a sustainable cause of action (Fischer v. Langhein, 8 N. E. 257), because it is conferred by the sovereign authority, the law, which organizes the court and is part of the power inherent in the state by virtue of its sovereignty. [West Coast Life Ins. Co. v. Hurd, 27 Phil. 401; Cooperv. Reynolds' Lesse, supra; Watts v. Unione Austriaca di Navigazione, 224 Fed. 188; Tucker v. O'Neal (Ind. 1892), 30 N. E. 531, 532].

Jurisdiction over the subject-matter cannot be waived, expressly or impliedly, the reason being that when a court does not have or does not possess this kind of jurisdiction, all its proceedings are null and void, (U. S. v. Gariboso, 25 Phil. 171; Tucker v. O'Neal, supra; U. S. Envelop Co. v. Transo Paper Co., 229 Fed. 576; Phillips Code Pleading, Sec. 469) nor can it be conferred or abridged by consent or acquiescence of the parties, because the only source of jurisdiction over the subject-matter is the law. [Wolff v. McGough (Ala. 1912), 57 S. 754; Phillips Code Pleading, Sec. 462].

B. *Jurisdiction Over The Res Or Property*

This is acquired by a seizure under the process of the court, whereby the property which is the subject of the litigation is made to abide such orders as the court may make concerning it. (Cooper v. Reynolds' Lessee, supra.)

C. *Jurisdiction Over The Person*

This is obtained by the due service of process on the defendant or by his voluntary appearance and submission to the court's jurisdiction. [Sentenis et al v. Ladew (N. Y., 1893), 35 N. E. 650; Cooper v. Reynolds' Lessee, supra]. There is a voluntary appearance when the defendant appears or goes to the court without awaiting the service of any summons or process. If one wants to object to the court's jurisdiction over his person, he must enter a special appearance for that purpose, otherwise he will be deemed to have waived such objection. (Phillips Code Pleading, Sec. 463) An appearance is special when it is made for the sole purpose of objecting to the jurisdiction of the court over the person of the defendant. (Holstead v. Manning, 34 Fed. 565)

D. *Jurisdiction Over The Territory Or Territorial Jurisdiction*

This is the power of the tribunal considered with reference to the territory within which it is to be exercised. (Bouvier's

Law Dic., Vol. 2, p. 57) Territorial jurisdiction is the geographical limit within which a court may act. (Philips, Code Pleading, Sec. 461) The tract of land or district within which a court has jurisdiction is called his "territory", and his power in relation to his territory is called his "territorial jurisdiction." (4 Bouvier's Inst. p. 72, No. 2,532, cited in 15 C. J. p. 728) Sections 161 and 203 of the Revised Administrative Code of 1917 define the territorial jurisdiction of the Courts of First Instance and justice of the peace courts, respectively.

V. VENUE

A. *Definition.*

In legal phraseology "venue" means the county or place wherein an action is to be tried, not the judge or court by whom it is tried. (State ex rel McAllister v. State, 214 S. W. 85) In modern practice, it is used as synonymous with "place of trial." (Cyclopedic Law Dic. p. 1052)

B. *History*

The word "venue" was originally employed to indicate the county from which the jury was to come. Anciently a jury of one county could not try any action arising in another county, so that originally all actions were local. Later when it became necessary to meet the case of debtors who had learned to run away, transitory actions were invented. The courts then finally settled upon this distinction: If the cause of action was one that might have arisen anywhere, then the action was transitory; but, if the cause of action could arise in one place only, then the action was local. (27 R. C. L. 778; Wolff v. McGaugh, supra)

C. *Characteristics*

Venue may be waived. The bringing of an action in an improper county is not a jurisdictional defect, where the court has general jurisdiction of the subject-matter, and the statutes fixing the venue in certain actions confer a mere personal privilege which may be waived by a failure to claim it in a proper manner and at the proper time. Consent, however, cannot confer jurisdiction over the subject-matter, for that is derived from the law. (Wolff v. McGaugh, supra) As was observed by Brickell, C. J., in Ex parte Rice (102 Ala, 671; 15 S. 450) "There is a wide difference between conferring jurisdiction by consent, and consenting to something within the power of the court, deemed promotive of the convenience of the parties."

"Laying of venue is procedural rather than substantive. It relates to the jurisdiction of the court over the person rather than the subject-matter. Provisions of the law relating to the same are not intended to take anything from the power of the court but rather, to grant something to one or both of the parties. They establish a relation, not between the court and the subject matter, but between the plaintiff and the defendant. It relates simply to the personal rights of the parties as to the place of trial. Being not connected with the subject-matter, it may be waived, expressly, or by implication, because it is a general principle of law that a person may renounce any right which the law gives unless such renunciation is expressly prohibited or the right conferred is of such a nature that its renunciation would be against public policy." (Manila R. R. Co. v. Atty. Gen. 20 Phil. 523)

VI. JURISDICTION AND VENUE CONTRASTED

From what has been stated above we clearly see that jurisdiction is something that is intangible, something that is abstract and ideal; while venue is concrete and perceptible. Jurisdiction is a power, while venue is the place where such power is invoked. Jurisdiction is conferred by law and never by consent of the parties, while statutes regulate, not confer, venue, the purpose being not to make the jurisdiction over the subject-matter dependent on the right of venue, but to fix venue for the convenience of the parties litigant. Venue is not for the benefit of the court, but for the parties, and as such the parties may waive an improper venue when they think it wise that such waiver would be for their own convenience and promotive of their interest, while jurisdiction over the subject-matter can never be waived.

It is interesting to note that the case of Wolff v. McGaugh (supra) seems to imply that territorial jurisdiction and venue are the same. The writer however, believes that there is a great difference between them. The former is connected with the geographical limits within which a court may exercise its judicial powers and outside of which it cannot; while the latter has reference to the place where a certain cause of action is to be brought. Hence we have this practical distinction: A court in province "A" has to hold its sessions within the territorial limits of that province, but it may take cognizance of cases that may arise in places outside of the province "A"

VII. THE SUBJECT DEVELOPED

As has been stated above the purpose of this thesis is to show the propriety of a stipulation in a contract that any action based on said contract should be brought in a certain court, whether it is invalid or not. In the author's research for authorities on the subject, he found one line of judicial decisions holding that such a stipulation is null and void, while another sustaining the contrary view, that is, that such stipulation is valid and enforceable. To see which is the better course to be adopted, it would be necessary to know these different authorities, and the following is devoted in disclosing them.

A. *Authorities Holding Such A Stipulation Null And Void*

The leading case on the subject is that of Nute v. Hamilton Mutual Ins. Co. [6 Gray, (Mass. 1856) 174], wherein it was held that courts in general refuse to respect or enforce contractual provisions to the effect that any action based upon the contract shall be brought in a certain court or in the courts of a certain state or district, whether such provision is invoked to defeat the jurisdiction of a court of another state or of another district of the same state as that of the court or district specified. This is upon the principle that it is not competent for the parties by their contract, in advance, to oust the jurisdiction of the courts and is sometimes assimilated to the principle which invalidates stipulations for arbitration of questions that may arise under the contract. Such a provision is different from that which limits the time within which an action shall be commenced, declaring in effect that the latter is a condition annexed to the acquisition and continuance of legal rights and depends on contract and the acts of the parties; while the other is a stipulation concerning the remedy, which is created and regulated by law.

This doctrine was subsequently applied and followed in the same state in the cases of Hall v. People's Mutual Ins. Co. [6 Gray (Mass. 1856) 174] and Bowdich Mutual Fire Ins. [6 Gray (Mass. 1856), 596] In the Hall case the court said that the stipulation is not a proper matter of contract, because after the contract is broken, the remedy is regulated by law and governed by the law of the forum where the remedy is sought, and not by the law of the place where the contract is made; and that since parties cannot by their stipulation confer jurisdiction to

courts where the law has not given it, they, by the same line of reasoning, cannot take away jurisdiction where the law has given it.

After the Nute case a long line of decisions based primarily on its doctrine was decided in many states of the Union, some of them are as follows:

A stipulation in a policy of insurance that no action shall be maintained except in the county where the principal office of the insurer is situated is invalid, because the remedy is created and regulated by law. The parties cannot, by their consent, give jurisdiction to courts and it would seem to follow that policies cannot take away jurisdiction where the law has given it. The court citing May on Insurance said: "A condition in the contract limiting the venue or place where the action shall be brought is invalid. [Matt v. Iowa Mutual Aid Assn. (1890), 46 N. W. 857].

In the case of Nashua River Paper Co. v. Hammermill Paper Co., (Mass. 1916), 111 N. E. 678, the contract provided that no action at law, equity, or chancery shall be instituted or maintained by the corporation in any court of any state of the United States or in any circuit or district court of the courts of the United States against the company other than in the courts of the common pleas of the state of Pennsylvania. This was held to be invalid, because "it is not within the province of the parties to enter into an agreement concerning the remedy for breach of contract, which is created and regulated by law." The court cited C. J. Shaw saying that "the greatest inconvenience would be in requiring courts and juries to apply different rules of law to different cases * * * in matters relating merely to the remedy according to the stipulations of parties in framing and diversifying their contracts in regard to remedies." In concluding the court said, "It relates to a matter as to which uniformity of decisions and harmony of law among the several jurisdictions of this country is desirable. It would be unfortunate if contracts touching a subject of general commercial interest and which may be broadly operative as to jurisdiction should be held valid in one state and invalid in all others. All these circumstances bring us to the conclusion that the clause in the contract here in question is unenforceable * * *."

A stipulation that any action on the contract should be brought only in Toronto, Canada, and not elsewhere, is not valid

and the Federal Courts of New York may take cognizance of the case. [Slocum v. Western Assur. Co. (Dist. Ct. N. Y., 1890) 42 Fed. 235].

A stipulation in a contract of mutual fire insurance that if the assured should not acquiesce in the determination of the directors on his claim, he may bring an action against the company for the loss, which action should be brought at a proper court in the county in New Hampshire where the company was organized, was held in Bartlett v. Union Mutual Fire Ins. Co. (1859), 46 Mo. 500, not to be binding upon the insured. The decision, however, was not based upon narrower grounds, but was referred to the general principle that after a contract has been broken, the remedy is regulated by law, and must be governed by that of the forum where redress is sought, citing the Nute case.

A stipulation in a contract of insurance waiving all rights to bring any action for any claim under the policy, except in the courts of the state in which the company was organized, was held void in Reichard v. Manhattan Life Ins. Co., (1862) 31 Mo. 518 (Sup. Ct. Lib.) as contrary to public policy.

A provision on a charter party that all disputes should be settled at the point of discharge only is against public policy, for it ousts the jurisdiction of all courts except those in the port of Philadelphia (the port of discharge) and is void; the stipulation being void, it made no difference which party sought to take advantage of it. [Prince Steam Shipping Co. v. Lehman (Dist. Ct. of N. Y., 1889) 5 L. R. A. 464, 39 Fed. 704].

Other cases holding the same view are: Bension v. Eastern Bldg. & Life Assn., (1903), 66 N. E. 627; Healey v. Eastern Bldg. & Life Assn., (1901), 17 Pa. Super. Ct. 385; Savage v. People's Bldg. Loan & Sav. Assn., (1898), 31 S. E. 991; Buel v. Baltimore & O. S. W. R. Co. (1898) 53 N. Y. Supp. 745; Darling v. Protective Assur. Soc. 127 N. Y. supp. 486.

B. *Authorities Sustaining The Validity of Such Stipulation*

The famous case that lays down the doctrine that a contractual stipulation that a certain cause of action shall be brought only in the competent courts of a specified place should be respected and enforced is Mittenthal v. Mascagni (1903) (60 L. R. A. 812; 66 N. E. 425). This was a case to recover damages for an alleged breach of contract for performance of concerts and operas. The contract was made in Florence, Italy, where the defendant had his residence. It provided that whatever differ-

ences or questions there might arise between the parties would be acted upon by the civil authorities of Florence, Italy. Maestro Mascagni reserved the right to direct any action in New York for payment of recompense. The defendant demurred for lack of jurisdiction, the action having been brought in the Superior Court for Sulfok County. The court held: There is no attempt here to deprive either party of the right of appeal to the courts, but only an attempt to narrow the area within which suits may be brought. This is analogous to the limitation of the subjects of which the courts shall have exclusive jurisdiction, by a provision for arbitration of incidental and subsidiary questions out of the court, which is approved in the cases above cited. (The court had already cited many cases). It is also analogous to the limitation of the time within which suits may be brought, which is also sanctioned. "We are of the opinion that this stipulation is valid and the courts of Massachusetts would not take jurisdiction of an action to recover damages for an alleged breach of the contract. The true test seems to be whether such contract is so improvident and unreasonable—such as an abnegation of legal rights—that the judiciary, for the protection of mankind, will refuse to recognize it."

In Daley v. People's Bldg. Loan & Sav. Assn. (1901), (59 N. E. 452, 178 Mass. 13), it was held that a provision of a certificate of membership in New York building loan association, that any action against the association by a shareholder should be brought in a certain county of the state of New York, was valid. The court further said: "We are dealing with a New York corporation, most of whose members would live in New York, and the greater part of whose dealings and contracts naturally would take place also in New * * *. Courts are less and less disposed to interfere with parties making such contracts as they choose, so long as they interfere with no one's welfare but their own * * *. It plainly purports to attach a condition to the contract, and we are of the opinion that it does so effectually." This decision also stated that the Nute case was a somewhat hesitating decision, and that it did not intimate that when such a condition is attached to a contract and is valid, there is any technical difficulty in enforcing it as an answer to an action in another place.

In Gitler v. Russian Co., (1908), 108 N. Y. Supp. 793, it was held that an agreement upon a valuable consideration not to bring any action in the state of New York upon or in respect of a judgment, but to bring such action, if at all, in Russia, is not

void, as contrary to public policy, under the rule that forbids an agreement to withdraw from ordinary jurisdiction of the courts' future and unkown controversies. The court further held that "the agreement * * * has reference only to the method to be adopted for the collection of a particular judgment, and its purpose is not to cancel the judgment or to debar the plaintiff from pursuing any appropriate remedy for its collection, save only the prosecution of the particular remedy by action in the courts in this state. It is difficult to see how the public policy which forbids an agreement to withdraw from the ordinary jurisdiction of the courts' future and unknown controversies can have any proper application to such a contract as is relied upon in this case."

An insurance policy provided that any action thereon shall be brought and maintained only in the courts of the county of Warren, state of New York. The courts sustained the validity of this stipulation, holding that unless there are substantial grounds of public policy requiring that courts shall refuse to recognize or enforce stipulation, there is no sufficient reason for denying the parties' rights to make and enforce such an agreement. (Greve v. Aetna Live-Stock Ins. Co., 30 N. Y. Supp. 668, found in Supp. Ct. Lib.)

In England we also find cases holding that such stipulation is valid and enforceable. Thus in the case of Giener v. Mayar (1796) 2 H. Bl. Eng. 603, (found in Sup. Ct. Lib.) it was held that a Dutch seaman having entered into articles (meaning contract) at a Dutch port with a Dutch master(master of a ship), in which he agreed not to institute any suit against the master in foreign countries or cite him before any judge, but to abide by the adjudication of their own courts, an English court would not take jurisdiction of an action against the master for wages, although the cargo and the ship were confiscated in an English port.

The same is held in Johnson v. Machielsne (3 Campb. Eng. 44, 13 Revised Rep. 745) and Kerchner v. Graban (1909) 1 Ch. (Eng. 413, 78 L. J. Ch. N. S. 117, 99 L. T. N. S. 932) (Note: these two cases could not be located in the Sup. Ct. Lib., so their original could not be read; however they are cited in L. R. A. 1916D, p. 701). The last case cited involved an agreement between a German firm and a German subject who represented the firm in the United Kingdom, which agreement provided that any action thereon should be submitted exclusively in the courts of Leipsic. The court held that such agreement is *prima facie*

one by which the parties are bound, and upon which the court must act, unless for some cause there is reason to think that the matter ought to be determined otherwise than by the tribunal to which the parties have deliberately agreed to submit their differences.

C. *Analysis and Opinion*

We have seen above the two lines of judicial decisions: one condemns a stipulation that a certain action should be brought only in the competent courts of a particular and specified locality as void, because it is not competent for the parties by their consent to oust a court of its jurisdiction which is created and conferred by the law; because such stipulation affects the remedy which is regulated by the law; and because it is contrary to public policy. The other line of decisions sustains the validity of such an agreement because of the freedom of the parties to enter into contracts, when such contracts are not contrary to law, public policy, and public morals; because such stipulation attaches as a condition of the contract and of the substantive rights of the parties.

But in a jurisdiction both classes of judicial decisions cannot prevail at the same time; one of them must be upheld. Which is the better decision, the one better supported by reason, logic, and convenience is to be seen in the subsequent discussion.

1. Does That Stipulation Really Oust The Court Of Its Jurisdiction? The affirmative answer to this question has been advanced in holding a stipulation limiting the venue of a certain action as void. As has been seen above, it is only the jurisdiction of the court over the subject-matter that cannot be waived or conferred by the consent of the parties, for the obvious reason that such jurisdiction can only be given by the statute. To the author's mind the stipulation in question refers only to venue, and not to the jurisdiction over the subject-matter, because it does not deprive a court of its power to hear and decide a certain class of actions or a particular action belonging to a certain class; on the contrary it can be seen that such stipulation recognizes the power of the court to which the action is to be brought. The reasoning that this stipulation ousts a court of its jurisdiction over the subject-matter would hold true if such stipulation provides that a certain action which is cognizable in a particular class of courts should not be brought in any of them, but should be brought to a court that has no jurisdiction over

the subject-matter; or only to one of the courts having concurrent jurisdiction with others, the institution of the action in the latter being inhibited by the stipulation. [Dudley v. Mayhew, (1849), 3, N. Y. 9, 12] (Sup. Ct. Lib.) Thus, if it is stipulated that a cause of action involving an amount of less than ₱200 should not be brought in a justice of the peace court, but in a court of first instance, it is clear that such agreement deprives the justice of the peace court of its jurisdiction over the subject-matter conferred by law, which is, that all actions involving an amount not more than ₱200 should be instituted in justice of the peace court (Act No. 136, Sec. 68); and it would confer original jurisdiction on courts of first instance by the mere consent of the parties, which jurisdiction is not authorized by law. Or conversely, a stipulation that an action involving an amount of more than ₱200 but less than ₱600 should be brought only in courts of first instance would deprive the justice of the peace courts of their concurrent original jurisdiction with the courts of first instance. In the same manner, an agreement to the effect that an action involving more than ₱600 should be brought only in a justice of the peace court deprives the courts of first instance of their jurisdiction of such class of actions which by law is to be brought and cognizable only in the courts of first instance, and confers by the consent of the parties' jurisdiction over the subject-matter on the justice of the peace courts, which by law are not entitled to hear and decide cases involving more than ₱600. (Secs. 56 and 68, Act No. 136) Such stipulations are clearly null and void for they refer to the jurisdiction over the subject matter. The foregoing explanation has been sustained in Blair v. National Shirt & Overalls Co., (1907), 137 Ill. App. 413, where a provision in a policy against bringing suit in any court other than the court of the highest jurisdiction is declared void as against public policy, and hence not to interfere with the right to bring the action before a justice of the peace.

The clause in a policy of insurance that any action to enforce the same must be brought in the supreme court, county of New York, is held invalid. The constitution and statutes determine the jurisdiction which shall be exercised by the courts of the state, and, their jurisdiction having been lawfully conferred, they cannot be prevented from exercising it when it is properly invoked, by the private contract of individuals. The actions then was properly brought in the municipal court of the city of New York. [McLean v. Tobin (1908) 109 N. Y. Supp. 926].

A stipulation in a policy of insurance that no suit in law or equity shall be brought upon it except in the circuit courts of the United States is intended to oust the jurisdiction of the state courts. Any stipulation between the contracting parties distinguishing between the different courts of the country is contrary to public policy, and should not be enforced. [Mutual Reserve Fund Life Assn. v. Clevel and Woolen Mills (1897) 54 U. S. App. 290; 82 Fed. 508].

On the same principle the parties to a contract cannot stipulate that any question arising from the contract should be finally and conclusively decided by a certain person or group of persons who are not connected with the judiciary that is, that there should not be any resort to any competent court, the reason being that such an agreement is contrary to public policy. The state in creating the courts has for its objective to afford to every individual a fair and impartial remedy for a right that has been wronged and such purpose can only be attained through the courts which are administered by persons who in the eyes of the law are presumed to be just and impartial. It is obvious that a stipulation making the award of a board of arbitrators final and conclusive oust the courts of their jurisdiction; and any attempt to do so will be declared null and void as contrary to public policy. However, the parties may covenant to submit to arbitration any dispute they may ever have; such stipulation does not deprive the courts of their jurisdiction to take cognizance of a cause of action arising from the contract even though their difference was not first submitted to arbitration, unless it has been expressly stipulated or is necessarily inferred from the text of the contract that as a condition precedent for the bringing of any action before the courts the controversy must first be submitted to arbitration; and in the latter case no court will attempt to try the case unless an award was first rendered by the arbitrators. [Whal v. Donaldson, 2 Phil. 301; Puentebella v. Negros Coal Co., 50 Phil. 69, 90; Meacham v. Jamestown, F. & C. R. Co. (1914) 105 N. E. 653; Vega v. San Carlos Milling Co., 51 Phil. 908, 911].

Here in the Philippine Islands courts of first instance are courts of general jurisdiction, so that what class of causes of actions is cognizable in one particular court of first instance is also cognizable in other courts of first instance, that is, so far as jurisdiction over the subject-matter is concerned all courts of first instance have the same jurisdiction. (Manila R. R. Co. v. Atty. Gen., supra).

It is undeniable that when a case is brought in a court of improper venue and the defendant enters his appearance or files pleadings, without objecting to the venue but goes to trial on the merits of the case, he thereby waives his right to have the case tried in the court of proper venue, that is, there is a waiver of the defect of venue. (Samson v. Carratala, 50 Phil. 651; De la Rosa & Go Kee v. De Borja, 53 Phil. 990, 998), But would it make any difference if the waiver is made at the commencement of or during the proceedings and when it is waived previous thereof? We believe there would be no difference between the two, because the bringing of the case by the plaintiff in an improper venue and the waiver thereof by the defendant constitute a contract between the parties; and if a contract would be perfectly legal under certain set of circumstances, why would it not be equally legal under the same circumstances? There may be a difference as to the time of the execution of the contracts, but their purpose, subject-matter, and parties are the same. It would be making a hair-splitting distinction to hold that a waiver at the commencement of an action is good, but a waiver of a similar defect given in advance and prior to the beginning of the action is bad. In fact the kind of stipulation we are considering is much better than a waiver after the action has been commenced by mere failure to object to the improper venue, because the former is express while the latter is merely an implied one.

It is to be noted however that our supreme court seemed to have been inconsistent with itself in the case of Garcia v. Montague (12 Phil. 480, 485), a decision of later date than the Molina case. The Garcia case was for the annulment of a marriage due to fraud, the plaintiff a resident of Tarlac, while the defendant was of Batangas. The action was brought in the Court of First Instance of Pampanga. By affidavit attached to the complaint it appears that the defendant consented and gave his permission by means thereof to the filing of the complaint by the plaintiff's lawyers in Pampanga. The Supreme Court held: "As to the jurisdiction of the Court of First Instance of Pampanga * * * it is certain that the defendant Montague agreed to and acquiesced in plaintiff's solicitation to have the matter brought before the court of First Instance of Pampanga, notwithstanding the fact that he resided in the province of Batangas; for this reason the judge of Pampanga was able to hear and decide this litigation."

It must be observed that in the Garcia case the plaintiff solicited the defendant to have the case tried in Pampanga and that the defendant agreed to such solicitation. Is this not a contract made in advance and prior to the commencement of the action? And yet our supreme court maintained that the court of First Instance of Pampanga acquired jurisdiction over the case because the defendant had agreed to have the case tried in Pampanga. It is true that in that case no question as to venue was raised during the pendency of the case. But suppose the defendant after he had signed the affidavit objected to the venue of the action, should he be allowed to do so? According to the case of Molina v. De la Riva, he should be allowed to do so because such stipulation is void; according to the Garcia case the court acquired jurisdiction because of the defendant's acquiescence and consent. The latter decision seems to hold that because of the affidavit and of the showing that the defendant agreed to the place of trial other than that provided by the law, the court acquired jurisdiction; and by the principle that once jurisdiction is acquired it continues and attaches to the court until the case is finally decided by the court, the defendant Montague should not be allowed to object to the improper venue because he should not be allowed to defeat by his own initiative a jurisdiction already acquired. In other words he is estopped from denying that the court had jurisdiction, and this principle of estoppel as applied to venue was recognized in the case of Manila R. R. Co. v. Atty. Gen. (supra), with the only difference that in that case it was the plaintiff that was held to have been estopped. But if a plaintiff may be estopped, why may not a defendant? There is a clear contradiction between the two cases. As to which is to be followed, the later case (Garcia v. Montague) is preferrable, first because it is more logical and convenient, and second because it is of later date, and must be deemed to have abrogated the former.

A decision rendered by a court having jurisdiction over the subject-matter, though the venue is improper, is not void by reason alone of such defect in venue, so long as there has been a waiver of this defect. (McCormic Harvester Mach. Co. v. Walthers, 33 L. Ed. 833; U. S. v. Hvoslef, 59 L. Ed. 813) This principle holds true even if applied to the actions specified in the "first sixteen lines of this section (Sec. 377 of the Code of Civil Procedure) relating to real estate, and actions against executors, administrators, and guardians, and for the distribution of estates and payment of legacies," the reason being that

the law only provides that the failure of a defendant to object to the venue of the action at the time of entering his appearance in the action shall be deemed a waiver on his part of all objections to the place or tribunal in which the action is brought, except in those cases referred to in the "first sixteen lines." This simply means that despite the defendant's failure to object at the time he enters his appearance to the improper venue in the cases so referred to, he may still be allowed to object to the same even after his appearance has been entered. But this section does not contemplate that a court of Province "A" cannot try a case involving real property situated in Province "B" or that any decision rendered in province "A" is null and void simply because the "res" which is the subject of the action is situated in province "B". It will of course, be otherwise if there was a proper claim to the proper venue, that is, if there was no waiver of the defect in venue. Thus in the case of Sentenis et al v. Ladew (N. Y. 1893), 35 N. E. 650, a complaint for tresspass and damages to real property situated in Tennessee was filed in the court of New York. The plaintiffs (defendants in the court below) went to trial without objecting to the complaint and they appealed alleging that the lower court had no jurisdiction for the subject of the litigation is situated outside of the state of New York. The Court of Appeals of New York held that the lower court had jurisdiction. "Under the state constitution it has general jurisdiction in law and equity, and of the class of action to which this cause belongs. It is not prohibited by any statute from entertaining jurisdiction of a suit for damages for injuries to real property in another state. The general rule is that actions for injuries to real property must be brought in the *forum rei sitae*.....But a party may waive a rule of law or a statute, even a constitutional provision, enacted for his benefit or protection, where it is exclusively a matter of private rights, and no considerations of public policy or morals are involved; and having once done so, he cannot subsequently invoke its protection.....It might be different if the court was one whose jurisdiction was expressly limited by statute or there was some statutory inhibition of jurisdiction in a given case or class of cases." This decision clearly shows to us that venue is not of such jurisdictional defect as to render a court of improper venue impotent to hear and decide a case; that any defect as to venue of actions may not invalidate a judgment merely because of wrong venue whenever there is a waiver thereof; and that a waiver of venue does not

deprive the courts of their jurisdiction to hear a particular case belonging to a class of cases of which the court has general jurisdiction.

From the above observations, we are safe to conclude that an agreement making a certain cause of action cognizable only in a particular court of first instance does not deprive other courts of first instance of their jurisdiction; it does not take away a portion of the power of the courts of first instance and transfer it to other courts, but rather it submits a case which is within the jurisdiction of courts of first instance to a court of first instance.

2. Does Such Stipulation Affect the Remedy Which Is Regulated by Law? The courts holding such a stipulation void say that it does affect the remedy. A "remedy" is the means employed to enforce a right or redress an injury (Bouvier's Law Dic., vol. II, p. 870, cited in Missionary Soc. of M. E. Church v. Ely, 47 N. E. 537); in legal phraseology, it is a mode prescribed by law to enforce a duty or redress a wrong, and not an obligation to guaranty a right, or to indemnify against a wrong. (U. S. v. Lyman, Cir. Ct. Mass., 26 Fed. Cas. No. 15, 647, p. 1025, 1031). Under these definitions we cannot see how is the remedy of a party to a contract materially affected in such a way as to be prejudicial to him or to other persons simply because he consents in advance that any remedy sought under the contract should be had in the competent courts of a particular locality, inasmuch as all courts of the land are presumed to afford adequate and ample remedy when they are acting within the bounds of the law. Thus a stipulation waiving the right to appeal in consideration of plaintiff's releasing his attachment on defendant's property if the latter (defendant) would execute a bond, has been sustained and held valid; [Palmer v. Lavers (1914), Mass., 105 N. E. 1000] U. S. Consolidated Seed Raisin Co. v. Chaddock, (1909, 135 Fed. 513) in another case the contract which waived the right to change venue has been declared valid, this right being strictly a personal one, not affecting public policy. [Terre Haute Brewing Co. v. Ward (1913, Ind) 102 N. E. 395]. Even a stipulation that an action should be brought only within a specified period different from that provided for by the statutes of limitation, was sustained valid and enforceable. (Amesbury v. Bowditch, supra) It cannot be doubted that the right to appeal, the right to change venue, and the right to bring an action within the statutory period are rights granted to an individual for the purpose of affording

him a remedy whenever he thinks he does not get what he is entitled in accordance with law, or when he is prejudiced by the judgment which can be appealed, or his right is wronged. If such rights—rights that are purely remedial—can be waived, why cannot the right to have a particular case tried in the courts of a particular locality as provided for by law be also waived in advance so that it may be tried in the courts of another locality, when the latter courts are as legal and competent as the former? Is not the remedy available in the latter the same and as effective as that in the former? Nobody can contend in the negative, for writs of execution can be served in any part of the country. (Sec. 449, Act No. 190). Courts of the Philippine Islands are governed by the same rules of procedure, evidence, and execution. The word "remedy" as used in the statement that the law of the forum (lex fori) will govern in matters pertaining to the remedy, means such matters as the character and form of action, the admissibility of evidence, procedure, and the mode of redress, limitations, execution of judgments, and the like. (Thomas v. Western Union et al, 61 S. W. 501, 502). The lex fori (the local or territorial law of the country to which a court, wherein an action is brought, or other legal proceedings is taken, belongs) is to decide who are proper parties, the nature, extent, and character of the remedy. (Bouvier's Law Dic., Vol. 2, p. 197) If all those rules above mentioned are the same in a country, how can we say that a party's remedy is affected when an action is brought in a place specified in the contract other than that provided for by the law, since wherever a party may go he will be governed by the same law?

Even granting that the remedy is really affected by a stipulation regarding the specified place where actions should be instituted, yet it can be correctly presumed that both parties when they entered into the contract were aware of the effects of their stipulation from the legal standpoint, for everybody is conclusively presumed to know the law, and they should be held responsible for whatever they had done, unless of course when rights of third persons are thereby prejudiced. What has been said would particularly hold true in the Philippines where as has already been stated, there is a uniform system of law, both substantive and adjective.

3. Is such Stipulation Contrary to Public Policy? Now we come to a more important phase of the discussion. Some courts vehemently contend that if the parties to a contract stip-

ulate that any action on the contract should be brought in the courts of a particular locality, they contravene public policy. In order to comprehend the truth or fallacy of this contention, it will be necessary to know the real nature of "public policy."

The phrase "public policy" is that principle of the law which holds that no subject can do that which has a tendency to be injurious to the public or against the public good. (Marfield v. Cincinnati, D. Tracton Co., 144 N. E. 689; 40 A. L. R. 357). In substance "public policy" may be generally said to be the community of common sense and common conscience extended and applied throughout the state to matters of public morals, public health, public safety, public welfare, and the like. It is that general and well-settled public opinion relating to man's plain, palpable duty to his fellowman that has due regard to all circumstances of each particular situation. (Kintz v. Harriger, 124 N. E. 168, 170)

From the light of the above definitions, we ask, what is the particular phase of public policy that goes against the contract limiting the place wherein actions thereon can be brought, or in other words, what is the harm done by the parties to the public, to the interest of other persons, or to the welfare of the community in stipulating that no action should be brought except in the competent courts of a particular community? The cases that hold such stipulation void as against public policy do not cite particular and concrete instances to show an affirmative answer to this question; they merely say that they are contrary to public policy, without demonstrating in what manner it does so contravene public policy. If public policy involves third persons or the public in general, how can two private persons who make an agreement as to their private rights, for the enforcement and protection of which they choose the duly constituted authorities of a particular place as their agencies of remedy, affect others? In every contract there is a presumption that the stipulations therein contained are valid, for the reason that anything done is lawful until the contrary is shown. We must not at once make off-hand decisions without first going deep into the matter. Every contract must be fully scrutinized, and any doubt as to its validity must resolved in its favor. Thus, Owens v. Henderson Brewing Co. (215 S. W. 90, 91) holds "those contracts alone are against public policy which tend clearly to injure public health, public morals, public confidence in the purity of the administration of the law, or to undermine that sense of security for individual rights, whether

of personal liability or of private property, which any citizen ought to feel." It can be readily seen that none of those things enumerated in the decision last cited is violated by the stipulation which we are discussing, except probably that phrase "public confidence in the purity of the administration of the law". But after close and serious analysis, we find that public confidence is not in any manner disregarded, but on the contrary the parties show that they have confidence in the administration of justice and law, for they bind themselves that any dispute arising between them should be decided by the courts, of course of the competent courts of a specified locality of the country; they do not stipulate that no courts should be resorted to in the enforcement or redress of their rights, which is clearly void as against public policy.

To hold such stipulation void would mean an encroachment into or a limitation of the freedom to contract, which freedom is so engrained in every civilized political organization that any attempt to restrain the same by the legislative or the judicial branches of the government would never receive public sanction. Our everyday life is a net-work of contractual relation, and for this reason freedom to contract has commanded a high prominence in both ordinary and business life. The meaning of public policy should not be stretched to such an extent as to render it contrary to public policy itself. Thus, "a contract is not void as against public policy unless the contract itself requires that something be done which adversely affects the public welfare, is forbidden by law, or its consideration is illegal or immoral." (Hoston v. Vell, 112 N. E. 883, 888)

Going to the existing laws of the Philippine Islands, we find that the above principles are sanctioned by our codes and laws. Thus, Article 1255 of the Civil Code provides that "the contracting parties may establish any agreements, terms and conditions they may deem advisable, provided they are not contrary to law, morals,or public order." To hold a contract void, it must clearly be shown that it falls under any or all of those enumerated in the proviso of the above cited article. It must be recollected that in the case of Molina v. De la Riva, the Supreme Court said that parties can only stipulate in regard to that which is expressly authorized by law. This statement is indeed fallacious and contrary to the tenor of the above cited article 1255 of the Civil Code which confers freedom to contract except when the parties are prohibited by law; in other words, our Supreme Court said the opposite of Article 1255. The

Supreme Court said that there is no provision of law which authorizes parties to enter into the stipulation which we are considering; but it is equally true that there is no provision which prohibits them from entering into it. This being so, the parties have the right to so stipulate, unless such stipulation is contrary to morals. (Note: It was already shown in the previous discussion that in principle the stipulation we are discussing is not contrary to public policy.)

Continuing our exposition with special reference to the Philippine laws, we are again faced with the same problem, whether in the Philippines such contract is against public policy or public order. The writer is of the opinion that in this country, such stipulation should be sanctioned by the courts in view of the provisions of the Act No. 1627, Sec. 14, as amended by Act No. 1862, that "all other civil actions in justice of the peace courts shall be begun (a) at the place specified by the parties by means of a written agreement, whenever the justice of the peace shall have jurisdiction to try the action by reason of its nature or the amount involved." This specific provision of the law is exactly in accord with what has been expounded in the preceding pages. If such stipulation could be allowed in justice of the peace courts why cannot the same be permitted in the courts of first instance? If it were really contrary to public policy to allow it in courts of first instance, why could it not be contrary to the same public policy if allowed in the justice of the peace courts? Is public policy promoted and forwarded in the lower court, and is transgressed and defeated in the higher court by such stipulation?

It may be argued however that public policy is not defeated in justice of the peace courts because it is the law itself that permits such stipulation. But again we ask, what is the reason behind the law for discriminating between the courts of first instance and justice of the peace courts? The fact that one thing is expressly allowed in one court does not necessarily mean that it should be denied in another, simply because there is no express law granting it in the latter. Public policy is a term of general application and applies to all indiscriminately. The mere fact that the legislature has entered into one field does not of necessity preclude the citizens from entering the same.

It may be argued that the law fixes the place where actions are to be commenced and that any agreement of the parties should not be allowed to repeal the statute for the parties' benefit. This cannot be sustained as tenable for we must not

lose sight of the fact that the purpose which the statute has in view is to further the convenience of the parties, and the benefits assured by the statute to the parties are mere options, which may be waived as readily as other rights. (Greve v. Aetna Live-Stock Ins. Co., 30 N. Y. Supp. 668)

Looking at the question from the opposite view, we find that such stipulation, instead of hindering the administration of law and justice, it will promote the same. Let us take a concrete case. Suppose A, a farmer, contracted with B, a merchant, to deliver to the latter a certain quantity of hemp after having received the price therefor in advance. Before the time for the delivery of the hemp, B has removed to another province; and by the unhappy combination of circumstances, A's crop failed, thereby disabling him to comply with his obligation without his fault. But B would not believe that A is really unable to fulfill the promise due to natural causes, and so he sues A for specific performance and damages. According to our law such an action may be brought in the place of residence of the plaintiff "B" or in the place of the residence of the defendant "A" (Sec. 377, Act No. 190); but most likely such action will be brought in the former, because B, having the choice, must naturally choose the one in which he has less expense. But if there is a stipulation that any action on the contract should be brought only in the residence of A and if such stipulation should be sanctioned as valid, then A, a poor obligee, will not suffer much because all the means available to him for defense are within his immediate surrounding. To declare such stipulation void will be to compel A, who might have been ruined by the failure of his crop, to go to the place of residence of his creditor, the place of trial, a place that may be far and distant, and foreign to him. Hence we have this anomaly: A, the victim of the elements of nature would have to spend more if such stipulation is declared illegal, than when such stipulation is held valid; and instead of protecting him by enforcing his foresight of a possible contingency, the law, through the courts, would step in and say, "no, your foresight is wrong; such stipulation is contrary to public policy." We are then protecting the rich creditor who in fact needs no help.

It may be argued that the defendant may appear by an attorney, and this is true. But the case calls for the determination of the existence of some facts, the causes of the failure of the defendant's crop. Nobody will be in a better position to

testify on this matter than the defendant himself; and certain controversies may arise in the course of the trial, of which the attorney may be totally ignorant.

Another serious case is this: The captain of a ship contracted with several men engaging the latter to serve as members of the crew of his vessel, with a stipulation that they should not sue the captain at any port or court except in the courts of the place where the home office, say Manila, of the company which owns the ship managed by the captain is located. Now when the ship arrived in Zamboanga, which happens to be the residence of the crew, the captain was sued for the recovery of certain accrued salary. According to the doctrine of Molina v. De la Riva, the crew have the perfect right to sue the captain in Zamboanga despite the stipulation that actions should be brought only in Manila. This action may embarrass the captain and may delay his navigation, and consequently there will be some delay and loss in commerce. Whereas, if the stipulation would be held valid, no such delay or loss would ever happen.

Nor can it be said that this stipulation is against public morals. Public morals and morality are explained in Lyon v. Mitchell (93 Am. D. 502, 504) in the following tenor: "To make a contract thus void, (being in conflict with the morals of the time) it must be against sound morals. Morality is defined by Paley to be 'that science which teaches men their duty, and the reason of it;' Paley's Moral Philosophy, b. 1, c. 1. 'Morality is the rule which teaches us to live soberly and honestly; it hath four chief virtues—justice, prudence, temperance, and fortitude;' Bishop Horne's Works, vol. 6, Charge to Clergy of Norwich. To make a contract void on the principle claimed, it must be against morality as thus defined. The 'morals of the time' may be vicious; public sentiment may be depraved; the people may have all gone astray, so that not one good man can be found. Sound morals, as taught by the wise men of antiquity, as confirmed by the precepts of the Gospel, and as explained by Paley and Horne, are unchangeable; they are the same yesterday and today."

With this elucidation of what public morals and morality are, it is hardly possible, if not impossible, for us to see what rules of morality or principles of good morals are violated by merely saying that any action should be brought in the courts of a specified place. To say that something is against public

morals without substantiating why it is so is resorting into generalities, and such statement must be considered as devoid of any authoritative force.

Now let us go to the reasons of those courts that hold that such stipulation is perfectly unobjectionable and should be respected and enforced. They say that such stipulation is not void because the parties have the freedom to contract as to matters not prohibited by law, contrary to public policy, or public morals; and that it is not contrary to public policy. These two points have already been discussed above. We may go further by asking the following question:

4. What Is the Nature of Such Stipulation? The courts that sustain the validity of such stipulation vehemently maintain that it attaches as a condition of the contract and of the substantive rights of the parties. This argument is indeed very strong, for it can be said without fear of any contradiction that one of the parties to the contract might not have entered into the same unless such stipulation would be made a part and parcel of the contract. Let us again take the case of the poor farmer who promised to deliver certain quantity of hemp to his creditor. At the time of the execution of the contract he might have known that his creditor was in contemplation of removing to a far province. Poor as he is, yet he has the ingenuity to provide for himself some means of protection in the future, which is that it must be agreed by the parties that any suit should be brought in the residence of the debtor. Cognizant of this fact, why should we set aside his ingenuity and place as a price therefor the expenses to be incurred by him in going to and returning from the place of trial, together with those of his witnesses that he may bring with him, knowing further that the farmer would not have entered into such contract if such stipulation be not inserted therein? It is true that the creditor may incur the same if not more expenses as that to be incurred by the debtor if the trial were to be held in accordance with the stipulation; but it must be admitted that he took into account this contingency upon signing the contract and he cannot blame others except himself. On the other hand the poor debtor did not want to assume that contingency, on the contrary he wanted to avoid it. In short we may assume that the parties have agreed that no one of them shall have a cause of action against the other unless his action is brought in the competent courts of a designated province, and that when he brings a suit elsewhere, his action will not be established.

As to the propriety of the stipulation, this much we may say. When the parties stipulated that any action on the contract should be brought in the courts of a certain locality or province, they did so on the assumption that their convenience would be better served in that place. They might have thought that in that place reside their witnesses whom they expect to call in case of some judicial controversy on the contract; or in that some evidence is available to them and may not be available in the other parts of the country. Add to this the possibility of a party's having some relative who is an attorney, whom he may call at any time without any pay, residing in the place designated for the bringing of any action. These considerations are indeed legitimate and proper things to be taken into account by any reasonably prudent man when he enters into a contract, for his convenience and protection. If he can take them into consideration, there is no justifiable reason why he cannot be allowed to take the proper steps to make them not merely illusory, steps that would yield him some material value. Borrowing the line of reasoning used by Chief Justice Marshall in the Case of McCulloch v. Maryland (4 Wheat 316; 4 L.Ed. 576) we say this: Let the end be legitimate, let it be within the scope of the constitution and of the law, and all the means which are appropriate, which are plainly adapted to that end, which are not prohibited, but which are consistent with the letter and spirit of the laws in force, are legitimate.

It must be observed further, that in the Nute case, the court placed no great reliance upon considerations of public policy; but that the "greatest inconvenience would be in requiring courts and juries to apply different rules of law to different cases, in the conduct of suits, according to the stipulations of parties in framing and diversifying their contracts in regard to remedies." This same doctrine was applied in the Nashua case. Granting that this argument is plausible in the United States, a matter to which the author needs not comment, yet it can be clearly seen that when applied in the Philippine Islands, such an argument will have to fall on the ground, for the obvious and simple reason that here we have a uniform system of laws, unlike in the United States where each state has laws different from those of the others. Our courts then will not encounter any inconvenience in trial and decision of cases for they always administer and apply the same laws.

VIII. CONCLUSIONS

With particular reference to the laws and conditions of the Philippine Islands we have the following observations to make out of the foregoing discussions:

1. That a stipulation limiting the place of trial of a certain cause of action, contingent or actual, does not oust courts of theirs jurisdiction, because jurisdiction over the subject-matter is the only one that cannot be waived or conferred, while the stipulation does not go into such jurisdiction of the courts over the subject-matter, but only to the venue of the action, which may be waived by the parties, because such right to proper venue is given to them for their convenience, and not for the convenience or benefit of the courts.

2. That it is not void as affecting the remedy which is alleged to be regulated by the law, because whether in one competent court or in another the parties are entitled to the same adequate, effective, and proper remedy, taking into consideration the fact that here in the Philippines all courts administer the same laws.

3. That it is not contrary to public policy, because it is a matter exclusively affecting only the rights of the parties concerned, and does not in any manner involve the interests of third persons, the health and welfare of the public, nor does it put one of the parties to the contract in the clutches and at the mercy of the other; but on the contrary they have agreed to place themselves under the remedy provided for by law by going to particular courts. They recognize that there is something superior over them—the law and the courts. They do not agree to disregard the results of the decisions; on the contrary when they have submitted themselves to the jurisdiction of the particular court agreed by them, they are presumed to abide faithfully by the decision of said court. These considerations taken by the parties are far from being contrary to public policy, but rather are promotive of the same. This stipulation further is not contrary to law, for there is no provision of law that prohibits this kind of stipulation; and what is not prohibited is deemed granted, unless contrary to public policy or morals.

4. That this stipulation should not be disregarded, because it should be considered as one of the inducing elements of the contract that was taken into account by one or all of the parties to the contract. There is no valid reason why we cannot as-

sume that a party entered into a contract on condition that any action thereon should be brought in the courts of a particular locality.

5. That this kind of stipulation should be held valid in order to uphold and sanction the freedom to contract which is essential to every civilized community, and which is a potent factor in the advance of the commercial world.

IX. RECOMMENDATIONS

The foregoing clearly shows the evils of invalidating the stipulation we are considering and also the benefits of sustaining it. Such evils now exist in our country by virtue of the doctrine of the case of Molina v. De la Riva, which doctrine, good or bad, should be respected as part of the laws of the land as long as it remains a judicial decision unreversed by subsequent judicial pronouncement which clearly abrogates it or rendered not obsolete by some legislative enactment. Realizing that such doctrine is not conducive to the people's freedom to contract and hence has restraining effect on their progress, and knowing that it is now high time for us to cast aside what we sincerely think and deem an unjustified and unsound decision, and knowing further that by the doctrine of "stare decisis" our supreme court and lower courts will have to apply the doctrine laid down in the above mentioned case, we propose that our legislators would pass a law authorizing parties to an action in any court in the Philippines to agree before the filing of any pleading or commencement of an action as to the competent court where such action should be brought. This law will be in accord with some of the provisions of the different codes of civil procedure in many states of the Union, which they term as "the law for the change of venue." Thus in the State of Washington, we find the following provision of its code, found in Hill's Statutes and Codes of Washington, vol. 2, pp. 70 & 75 (Sup. Ct. Lib.):

SEC. 167.—Venue changed by stipulation: "Nothwithstanding the provisions of Section 163, all the parties to the action by stipulation in writing or by consent in open court entered in the records may agree that the place of trial be changed to any county of the State, and there-upon the court must order the change agreed upon."

The grounds of demands for change of venue are found in Sec. 163:—"The court may, on motion, in the following cases, change the place of trial, when it appears by affidavit or other satisfactory proof.—

"1. That the county designated in the complaint is not the proper county; or

"2. That there is reason to believe that an impartial trial cannot be had therein; or

"3. That the convenience of witnesses or the ends of justice would be forwarded by the change; or

"4. That from any cause the judge is disqualified; which disqualification exists in either of the following cases" (follow the grounds of disqualifications.)

In the code of civil procedure of California, we also find the following provisions:

"SEC. 397:—Place of trial may be changed in certain cases.—The court may, on motion, change the place of trial, in the following cases:

"1. When the county designated in the complaint is not the proper county;

"2. When there is reason to believe that an impartial trial cannot be had therein;

"3. When the convenience of witnesses and the ends of justice would be promoted by the change;

"4, When from any cause there is no judge of the court qualified to act."

"SEC. 398. When judge is disqualified, cause to be transferred.—If an action or proceeding is commenced or pending in a court and the judge or justice thereof is disqualified from acting as such, or if, from any cause, the court orders the place of trial changed, it must be transferred for trial to a court the parties may agree upon, by stipulation in writing, or made in open court and entered in the minutes;..."

These specified provisions of the Washington and California laws express the necessity of change of venue, a change absolutely advisable in certain instance as those enumerated in the above cited foreign laws. They do not however expressly provide that the parties may stipulate in advance or in anticipation of a cause of action that may arise between themselves

as to the venue of such action. However, it is urged that a provision to this effect should be inserted in our statute book by our legislature.

This advocacy for the enactment of a law authorizing change of venue should also be etxended to criminal cases, under certain circumstances, as for example, such a strong current of public opinion as to the guilt of the accused as to render his impartial trial impossible. The constitutionality of this particular provision of law was sustained in Oborn v. State (Wis. 1910, 126 N. W. 737, 741) which held: "That (the statute) contemplates competency to waive the constitutional right by invoking the statutory privilege to a change and has been held valid on the ground of such competency in fact existing. The idea is that the trial must be held in the county where the crime shall have been committed, unless changed upon application of the defendant. * * *. Such statute can be held valid only on the ground that it contemplates a constitutional privilege of an accused to waive his right of trial in the particular county. * * *. The doctrine of waiver applies to constitutional as well as statutory rights."