RECENT DECISIONS

Decision Reported in Full

IDONAH SLADE PERKINS,
Petitioner,

versus

ARSENIO P. DIZON, as Judge of the Court of First Instance of Manila;

EUGENE ARTHUR PERKINS and BENGUET CONSOLIDATED MINING COMPANY.
Respondents.

G. R. No. 46631.
Promulgated:
November 16, 1939

DECISION

MORAN, J.:

On July 6, 1938, respondent, Eugene Arthur Perkins, instituted an action in the Court of First Instance of Manila against the Benguet Consolidated Mining Company for dividends amounting to ₱71,379.90 on 52,874 shares of stock registered in his name, payment of which was being withheld by the company; and, for the recognition of his right to the control and disposal of said shares, to the exclusion of all others. To the complaint, the company filed its answer alleging, by way of defense, that the withholding of such dividends and the non-recognition of plaintiff's right to the disposal and control of the shares were due to certain demands made with respect to said shares by the petitioner herein, Idonah Slade Perkins, and by one George H. Engelhard. The answer prays that the adverse claimants be made parties to the action and served with notice thereof by publication, and that thereafter all such parties be required to interplead and settle the rights among themselves. On September 5, 1938, the trial court ordered respondent Eugene Arthur Perkins to include in his complaint as parties defendant petitioner, Idonah Slade Perkins, and George H. Engelhard. The complaint was accordingly amended and in addition to the relief prayed for in the original complaint, respondent Perkins prayed that petitioner Idonah Slade Perkins and George H. Engelhard be adjudged without interest in the shares of stock in question and excluded from any claim they assert thereon. Thereafter, summons by publication were ants, Idonah Slade Perkins and George H. Engelhard, pursuant to the order of the trial court. On December 9, 1938, Engelhard filed his answer to the amended complaint, and served upon the non-resident defendon December 10, 1938, petitioner Idonah Slade Perkins, through counsel, filed her pleading entitled "objection to venue, motion to quash, and demurrer to jurisdiction" wherein she challenged the jurisdiction of the lower court over her person. Petitioner's objection, motion and demurrer having been overruled as well as her motion for reconsideration of the order of denial, she now brought the present petition for certiorari, praying that the summons by publication issued against her be declared null and void, and that, with respect to

her, respondent Judge be permanently prohibited from taking any action on the case.

The controlling issue here involved is whether or not the Court of First Instance of Manila has acquired jurisdiction over the person of the present petitioner as a non-resident defendant, or, notwithstanding the want of such jurisdiction, whether or not said court may validly try the case. The parties have filed lengthy memorandums relying on numerous authorities, but the principles governing the question are well settled in this jurisdiction.

Section 398 of our Code of Civil Procedure provides that when a non-resident defendant is sued in the Philippine courts and it appears, by the complaint or by affidavits, that the action relates to real or personal property within the Philippines in which said defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part in excluding such person from any interest therein, service of summons may be made by publication.

We have fully explained the meaning of this provision in El Banco Español Filipino *vs.* Palanca, 37 Phil. 921, wherein we laid down the following rules:

(1) In order that the court may validly try a case, it must have jurisdiction over the subject-matter and over the persons of the parties. Jurisdiction over the subject-matter is acquired by concession of the sovereign authority which organizes a court and determines the nature and extent of its powers in general and thus fixes its jurisdiction with reference to actions which it may entertain and the relief it may grant. Jurisdiction over the persons of the parties is acquired by their voluntary appearance in court and their submission to its authority, or by the coercive power of legal process exerted over their persons.

(2) When the defendant is a non-resident and refuses to appear voluntarily, the court cannot acquire jurisdiction over his person even if the summons be served by publication, for he is beyond the reach of judicial process. No tribunal established by one State can extend its process beyond its territory so as to subject to its decisions either persons or property located in another State. "There are many expressions in the American reports from which it might be inferred that the court acquires personal jurisdiction over the person of the defendant by publication and notice; but such is not the case. In truth, the proposition that jurisdiction over the person of a non-resident cannot be acquired by publication and notice was never clearly understood even in the American courts until after the decision had been rendered by the Supreme Court of the United States in the leading case of Pennoyer *vs.* Neff (95 U. S., 714; 24 L. ed., 565.) In the light of that decision, and of other decisions which have subsequently been rendered in that and other courts, the proposition that jurisdiction over the person cannot be thus acquired by publication and notice is no longer open to question; and it is now fully established that a personal judgment upon constructive or substituted service against a non-resident who does not appear is wholly invalid. This doctrine applies to all kinds of constructive or substituted process, including service by publication and personal service outside of the jurisdiction in which the judgment is rendered; and the only exception seems to be found in the case where the non-resident defendant has expressly or impliedly consented to the mode of service.

(Note to Raher *vs.* Raher, 35 L. R. 585; 35 L. R. A. (N.S.), 312.)"

(3) The general rule, therefore, is that a suit against a non-resident cannot be entertained by a Philippine court. Where, however, the action is *in rem* or *quasi in rem* in connection with property located in the Philippines, the court acquires jurisdiction over the *res*, and its jurisdiction over the person of the non-resident is non-essential. In order that the court may exercise power over the *res*, it is not necessary that the court should take actual custody of the property, potential custody thereof being sufficient. There is potential custody when, from the nature of the action brought, the power of the court over the property is impliedly recognized by law. "An illustration of what we term potential jurisdiction over the *res*, is found in the proceeding to register the title of land under our system for the registration of land. Here the court, without taking actual physical control over the property, assumes, at the instance of some person claiming to be owner, to exercise a jurisdiction *in rem* over the property and to adjudicate the title in favor of the petitioner against all the world."

(4) As before stated, in an action *in rem* or *quasi in rem* against a non-resident defendant, jurisdiction over his person is non-essential, and if the law requires in such case that the summons upon the defendant be served by publication, it is merely to satisfy the constitutional requirement of due process. It may be said, in this connection, that "many reported cases can be cited in which it is assumed that the question of the sufficiency of publication or notice in a case of this kind is a question affecting the jurisdiction of the court, and the court is sometimes said to acquire jurisdiction by virtue of the publication. This phraseology was undoubtedly originally adopted by the court because of the analogy between service by publication and personal service of process upon the defendant; and, as has already been suggested, prior to the decision of Pennoyer vs. Neff (*supra*), the difference between the legal effects of the two forms of service was obscure. It is accordingly not surprising that the modes of expression which had already been moulded into legal tradition before that case was decided have been brought down to the present day. But it is clear that the legal principle here involved is not affected by the peculiar language in which the courts have expounded their ideas."

The reason for the rule that Philippine courts cannot acquire jurisdiction over the person of a non-resident, as laid down by the Supreme Court of the United States in Pennoyer vs. Neff, *supra*, may be found in a recognized principle of public law to the effect that "no State can exercise direct jurisdiction and authority over persons or property without its territory. Story, Confl. L., ch. 2; Wheat, Int. L., pt. 2, ch. 2. The several States are of equal dignity and authority, and the independence of one implies the exclusion of power from all others. And so it is laid down by jurists, as an elementary principle, that the laws of one State have no operation outside of its territory, except so far as is allowed by comity; and that no tribunal established by it can extend its process beyond that territory so as to subject either persons or property to its decisions. 'Any exertion of authority of this sort beyond this limit,' says Story, 'is a mere nullity, and incapable of binding such persons or property in any other tribunals.' Story,

Confl. L., sec. 539." (Pennoyer *vs.* Neff, 95 U. S. 714; 24 L. ed. 565, 568-569.)

When, however, the action related to property located in the Philippines, the Philippine courts may validly try the case, upon the principle that a "State, through its tribunals, may subject property situated within its limits owned by non-residents to the payment of the demand of its own citizens against them; and the exercise of this jurisdiction in no respect infringes upon the sovereignty of the State where the owners are domiciled. Every State owes protection to its own citizens; and, when non-residents deal with them, it is a legitimate and just exercise of authority to hold and appropriate any property owned by such non-residents to satisfy the claims of its citizens. It is in virtue of the State's jurisdiction over the property of the non-resident situated within its limits that its tribunals can inquire into the non-resident's obligations to its own citizens, and the inquiry can then be carried only to the extent necessary to control the disposition of the property. If the non-resident have no property in the State, there is nothing upon which the tribunals can adjudicate." (Pennoyer *vs.* Neff, *supra*).

In the instant case, there can be no question that the action brought by Eugene Arthur Perkins in his amended complaint against the petitioner, Idonah Slade Perkins, seeks to exclude her from any interest in a property located in the Philippines. That property consists in certain shares of stock of the Benguet Consolidated Mining Company, a *sociedad anonima*, organized in the Philippines under the provisions of the Spanish Code of Commerce, with its principal office in the City of Manila and which conducts its mining activities therein. The situs of the shares is in the jurisdiction where the corporation is created, whether the certificates evidencing the ownership of those shares are within or without that jurisdiction. (Fletcher Cyclopedia Corporations, Permanent ed., Vol. 11, p. 95). Under these circumstances, we hold that the action thus brought is *quasi in rem*, for, while the judgment that may be rendered therein is not strictly a judgment *in rem*, "it fixes and settles the title to the property in controversy and to that extent partakes of the nature of the judgment *in rem*." (50 C. J., p. 503). As held by the Supreme Court of the United States in Pennoyer *vs.* Neff (*supra*):

> "It is true that, in a strict sense, a proceeding *in rem* is one taken directly against property, and has for its object the disposition of the property, without reference to the title of individual claimants; but, in a larger and more general sense, the terms are applied to actions between parties, where the direct object is to reach and dispose of property owned by them, or of some interest therein."

The action being *quasi in rem*, the Court of First Instance of Manila has jurisdiction to try the same even if it can acquire no jurisdiction over the person of the non-resident. In order to satisfy the constitutional requirement of due process, summons has been served upon her by publication. There is no question as to the adequacy of the publication made nor as to the mailing of the order of publication to the petitioner's last known place of residence in the United States. But, of course, the action being *quasi in rem* and notice having been made by publication, the relief that may be granted by the Philippine court must be confined to the *res*, it having no jurisdiction to render a

personal judgment against the non-resident. In the amended complaint filed by Eugene Arthur Perkins, no money judgment or other relief *in personam* is prayed for against the petitioner. The only relief sought therein is that she be declared to be without any interest in the shares in controversy and that she be excluded from any claim thereto.

Petitioner contends that the proceeding instituted against her is one of interpleading and is therefore an action *in personam*. Section 120 of our Code of Civil Procedure provides that whenever conflicting claims are or may be made upon a person for or relating to personal property, or the performance of an obligation or any portion thereof, so that he may be made subject to several actions by different persons, such person may bring an action against the conflicting claimants, disclaiming personal interest in the controversy, and the court may order them to interplead with one another and litigate their several claims among themselves, and thereupon proceed to determine their several claims. Here, the Benguet Consolidated Mining Company, in its answer to the complaint filed by Eugene Arthur Perkins, averred that in connection with the shares of stock in question, conflicting claims were being made upon it by said plaintiff, Eugene Arthur Perkins, his wife Idonah Slade Perkins and one named George H. Engelhard and prayed that these last two be made parties to the action and served with summons by publication, so that the three claimants may litigate their conflicting claims and settle their rights among themselves. The court has not issued an order compelling the conflicting claimants to interplead with one another and litigate their several claims among themselves, but instead ordered the plaintiff to amend his complaint including the other two claimants as parties defendant. The plaintiff did so, praying that the new defendants thus joined be excluded from any interest in the shares in question, and it is upon this amended complaint that the court ordered the service of the summons by publication. It is, therefore, clear that the publication of the summons was ordered not in virtue of an interpleading, but upon the filing of the amended complaint wherein an action *quasi in rem* is alleged.

Had not the complaint been amended, including the herein petitioner as an additional defendant, and has the court, upon the filing of the answer of the Benguet Consolidated Mining Company, issued an order under section 120 of the Code of Civil Procedure, calling the conflicting claimants into court and compelling them to interplead with one another, such order could not perhaps have validly been served by publication or otherwise, upon the non-resident Idonah Slade Perkins, for, then, the proceeding would be purely one of interpleading. Such proceeding is a personal action, for it merely seeks to call conflicting claimants into court so that they may interplead and litigate there several claims among themselves, and no specific relief is prayed for against them, as the interpleader simply disclaims any personal interest in the controversy. What would be the situation if, after the claimants have appeared in court, one of them pleads ownership of the personal property located in the Philippines and seeks to exclude a non-resident claimant from any interest therein, is a question which we do not decide now. Suffice it to say that here the service of the summons by publication was ordered by the lower court in virtue

of an action *quasi in rem* against the non-resident defendant.

Respondents contend that, as the petitioner in the lower court has pleaded *res adjudicata, lis pendens* and lack of jurisdiction over the subject-matter, she has submitted herself to its jurisdiction. We have noticed, however, that these pleas have been made not as independent grounds for relief, but merely as additional arguments in support of her contention that the lower court had no jurisdiction over her person. In other words, she claimed that the lower court had no jurisdiction over her person not only because she is a non-resident, but also because the court had no jurisdiction over the subject-matter of the action and that the issues therein involved have already been decided by the New York court and are being relitigated in the California court. Although this argument is obviously erroneous, as neither jurisdiction over the subject-matter nor *res adjudicata* nor *lis pendens* has anything to do with the question of jurisdiction over her person, we believe and so hold that the petitioner has not, by such erroneous argument, submitted herself to the jurisdiction of the court. Voluntary appearance cannot be implied from either a mistaken or superfluous reasoning but from the nature of the relief prayed for.

For all of the foregoing, petition is hereby denied, with costs against petitioner.

(Sgd.) MANUEL V. MORAN

WE CONCUR:

(Sgd.) RAMON AVANCEÑA
" ANTONIO VILLA-REAL
" CARLOS A. IMPERIAL
" ANACLETO DIAZ
" JOSE P. LAUREL concurs in the result
" PEDRO CONCEPCION

Digest of Current Cases

CERTIORARI.—*Julita Sarayba de Arnaldo, Petitioner vs. Diego Locsin, Judge of the Court of First Instance of Cavite, et al., Respondents, G. R. No. 46616, November 4, 1939.* This is a petition for a writ of certiorari to declare null and void the order of the respondent judge wherein he required the petitioner, by means of a *subpoena duces tecum*, to bring with her certain documents among which were: (1) The list of supposed debts in the name of Julita Sarayba de Arnaldo, and exhibited by her to her brother and sisters at the time the document Exhibit "A" was being prepared and from which the amount of ₱19,243.32 was taken. (2) The original or a true copy of the income tax returns of Julita Sarayba de Arnaldo singly or jointly with her husband. (3) All the books, papers, and documents showing the income of the drug store of Julita Sarayba de Arnaldo from 1920 to 1938. The parties to this petition, except the respondent judge, are nephew and nieces of one Julita Trias now deceased. During the lifetime of Julita Trias she made a partition *inter vivos* of all her properties among her mentioned relatives with the understanding that if she should need any money loans shall be secured on the property which she conveyed to her relatives. Several loans were obtained during her lifetime and upon her death a liquidation of the loans was made which resulted in the execution of the document marked Exhibit "A" wherein the petitioner undertook to answer for the payment of a loan of ₱19,243.-32. The petitioner having refused to pay the loan a suit was brought to recover the amount of said loan. In the course of the trial a *subpoena duces tecum* was issued by the respondent judge directed to the petitioner and concerning the documents above-mentioned. *Held:* Petition granted. As to item (1), in order to entitle a party to the issuance of a *subpoena duces tecum*, it must appear, by clear and unequivocal proof, that the documents sought to be produced contain evidence relevant and material to the issue before the court, and that the precise documents containing such evidence have been so designated or described that they may be identified. As to item (2), the courts are not authorized by law to require the production of income tax returns (Act 2835). As to item (3), no mention having been made of the drug store in the complaint in the civil case the documents showing the income of such drug store are immaterial and irrelevant. Inasmuch as the *subpoena duces tecum* is a process which easily lends itself to abuse, it should be controlled by the courts with a view to making it conformable to law and justice. (Per Villa-Real, J., Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concurring).—*Briefed by* VICENTE ABAD SANTOS.

CITIZENSHIP.—*Paz Chua, Petitioner-Appellant vs. Secretary of Labor, Respondent-Appellee, G. R. No. 46451, Sept. 30, 1939.* Chua Uang was born in the Philippines of Chinese parents in 1914. She left for China in 1927 and four years afterwards married a Chinaman with whom she had two daughters. She returned to the Philippines with her children in 1938, but the Board of Special Inquiry denied them admission. The Secretary of Labor affirmed the decision, hence the petitioner sued for a writ of habeas corpus. *Held:* Ac-

cording to Section 2, paragraph 2, Article II of the Revised Nationality Laws of China, Chua Uang followed the nationality of her Chinese parents and was a Chinese citizen when she left for China. Even if she had been a citizen of a different country, she acquired Chinese citizenship upon her marriage. She could not claim Filipino citizenship by the mere fact of birth in the Philippines because she did not have the qualifications provided for in the Jones Law, not being a Spanish subject on April 11, 1899. (Per Imperial, J.; Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concurring).—*Briefed by* MARTINIANO P. VIVO.

COMMODATUM.—*Margarita Quintos and Angel A. Ansaldo, Plaintiffs-Appellants vs. I. Beck, Defendant-Appellee, G. R. No. 46240, November 8, 1939.* Defendant leased a house of plaintiff. Pursuant to clause 7 of the contract of lease, plaintiff delivered to defendant certain movables so that the latter may make use of them, the only condition being that defendant will return them whenever so requested by plaintiff. Subsequently, plaintiff did request. Defendant offered to return some but not all of the movables in question, claiming the right to make use of the rest till the termination of the lease. Plaintiff rejected said offer. Before defendant left the house, he deposited the movables with the sheriff. *Held:* That defendant's offer to return *some* of the movables in question was not a sufficient compliance with his obligation. The contract is a *commodatum*. Defendant must deliver *all* the movables, upon plaintiff's demand, at the latter's residence or domicile. Defendant, as *commodatario*, has no right to constitute the deposit of said movables. (Per Imperial, J.; Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, Moran, JJ., concurring). —*Briefed by* GUILLERMO P. VILLASOR.

CONTRACTS.—*The Manila Racing Club, Inc., Plaintiff-Appellant vs. The Manila Jockey Club, Defendant-Appellee, G. R. No. 46533, October 28, 1939.* The Manila Jockey Club, a non-registered association, sold to plaintiff a parcel of land together with its improvements, good-will and personal property for the sum of ₱1,200,000.00 to be paid in installments on dates stated in the contract. It was further provided in the contract that in case the vendee fails to pay on the dates stipulated, the vendor can rescind the contract and the amounts already paid shall be forfeited in favor of the vendor. After making two payments, the vendee failed to pay the next installments even after being granted an extension. The Manila Jockey Club, therefore, took possession of the properties mentioned and kept the amount of ₱100,000.00 already paid by the plaintiff. This action instituted by the plaintiff to recover the ₱100,000.00 was decided in favor of the defendants. Hence, this appeal from that decision. *Held:* The clause in the contract giving the defendant association the right to rescind the contract and confiscate the amount already paid to it in case the plaintiff fails to perform his obligation is valid. It is not contrary to law, morals or public order but is in fact equitable to both parties and voluntarily entered into by them. Besides if the amount forfeited is deemed interest, it would be equivalent to 8%, a rate which is not excessive. Judgment affirmed with costs against the appellant. (Per Avanceña, C. J.; Villa-Real, Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concurring).—*Brief by* ALEJANDRO D. YANGO.

CORPORATION.—*The Bank of the Philippine Islands as Assignee in In-*

solvency of the Dizon and Company, Plaintiff-Appellee vs. Pedro M. Cuyugan, Defendant-Appellant, G. R. No. 46058, November 1, 1939. The defendant subscribed for 50 shares of stock of the Dizon and Company at a par value of ₱50.00 or a total of ₱2,500. Having paid only the sum of ₱300, the assignee in insolvency of the said Company instituted this action to recover from the defendant the balance due on his contract of subscription. *Held:* When insolvency supervenes upon a corporation and the court assumes jurisdiction to wind it up, unpaid stock subscriptions become payable on demand, and are at once recoverable in an action instituted by the assignee in insolvency. (Per Villa-Real, J.; Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, Moran, JJ., concurring).—*Briefed by* GELASIO M. IBARRA.

CRIMINAL PROCEDURE.—*The People of the Philippines, Plaintiff-Appellee vs. Ricardo Gemora, Defendant-Appellant, G. R. No. 46700, October 30, 1939.* The complaint against the accused for attempted homicide was dismissed by the Judge of the Court of First Instance upon motion of the Provincial Fiscal for lack of cause sufficient to constitute an action. Whereupon, the attorneys for the offended party filed a petition asking that they be appointed by the judge as special fiscals in order to institute the complaint and continue the cause against the accused, which petition was granted. The accused, having been tried and convicted, appealed on the ground that the lower court had no power to appoint the attorneys as special fiscals to continue the proceedings against him. *Held:* According to article 1679 of the Revised Administrative Code as amended by article 2 of Commonwealth Act No. 144, it is no longer the judge of the Court of First Instance but the Secretary of Justice who has the power to appoint an acting provincial fiscal when the regular provincial fiscal shall be disqualified by personal interest to act in a particular case or when, for any reason, shall be unable or shall fail to discharge any of the duties of his position. The appointment being therefore null and void, neither the attorneys have acquired legal personality to institute the complaint nor has the judge acquired jurisdiction over the case. Judgment reversed. (Per Concepcion, J.; Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Moran, JJ., concurring).—*Briefed by* GELASIO M. IBARRA.

ELECTIONS.—*Primitivo S. Perez, Petitioner vs. Nicomedes Suller, Respondent, G. R. No. 46710, November 18, 1939.* Petitioner was a candidate for municipal mayor. In twenty-six of the ballots he claims in his favor he appears to have been voted as "F. Perez", "F. S. Ferez", "F. S. Perez", or "F. Peres". The question is whether these twenty-six ballots shall be counted in his favor. *Held:* The ballots shall be counted in favor of the petitioner. Said ballots sufficiently identify the candidate Primitivo S. Perez, the erroneous initial of the Christian name accompanying the correct surname notwithstanding. No technical rule or rules should be permitted to defeat the intention of the voter, if that intention is discoverable from the ballot itself, not from evidence *aliunde*. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of the established authority. He has a voice in his government and whenever possible it is the solemn duty of the judiciary when called upon to act in justiciable cases, to give it efficacy and not to stifle or frustrate it. This, fundamentally, is the reason for

the rule that ballots should be read and appreciated, if not with utmost, with reasonable, liberality. (Per Laurel, J.; six Justices concurring).—*Briefed by* LUIS J. GONZAGA.

PREFERENCES.—*Intestate Estate of the Deceased Jesus Mendoza. Catalina Santos Vda. de Mendoza, Administratrix-Appellee vs. Arsenio V. Mendoza, Oppositor-Appellant, G. R. No. 46520, Nov. 9, 1939.* In the action for the summary distribution of the estate of the deceased Jesus Mendoza, the Court of First Instance authorized the administratrix to seal a parcel of land belonging to the estate in order to pay certain obligations left by the deceased and the expenses of administration, and to convey to Natalia G. Cruz and Canuto Luciano another parcel which the deceased has sold to them under *pacto de retro* and has not redeemed on time. Oppositor, a son of the deceased by his first marriage, presented a motion to the court asking that he be given preference in purchasing the two parcels of land. The court denied the motion on the ground that, as to the first parcel oppositor offered only ₱1,500 for it which is less than the ₱1,600 offered by others, and that, as to the second parcel, its ownership has already been consolidated in Cruz and Luciano. The court also approved the deed of sale of the first parcel for ₱1,600 to certain third persons and the conveyance of the second parcel to Cruz and Luciano. Oppositor appealed. *Held:* Art. 1067, Civil Code, on which oppositor relies provides: "If any of the heirs should sell his hereditary rights to a stranger before the partition, any or all of his coheirs may be subrogated to the rights of the purchaser by reimbursing him the purchased price, provided it be done within the period of one month, to be counted from the time they were informed thereof." This article refers to a sale of hereditary rights made by any heir before the partition. The sales under discussion are not of a hereditary right but of real property belonging to the estate of a deceased, which sales the court authorized and approved in order to complement the sale under *pacto de recto* made by the deceased and to obtain funds to pay the debts and the costs of administration. But, even supposing that the article is applicable, oppositor cannot invoke it with regard to the second parcel, for he offered a lower price for it than what the administratrix obtained. Affirmed. (Per Imperial, J.; Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, Moran, JJ., concurring). —*Briefed by* CICERON SEVERINO.

REGISTRATION OF LAND.—*Dionisia Jamora, Plaintiff-Appellee vs. Dominga Duran et al., Defendant-Appellant, G. R. No. 46454, October 18, 1939.* In a prior civil case, the defendants presented an action to recover title to and possession of the same land involved in the present case against Salustiana Jamora. Jamora was absolved in that case and the decision was confirmed by the Supreme Court in August 1930. On November 4, 1930, Dionisia Jamora, the plaintiff herein, bought the land from Salustiana Jamora, her sister. Two years thereafter, the defendants filed a joint claim to the same lot in a cadastral case alleging that they were owners of the land by inheritance. The land was granted, and the decree of registration was filed June 23, 1926. The present action was therefore instituted by the plaintiff, Dionisia Jamora. While the case was pending, the *lis pendens* was noted in the Office of the Register of Deeds and on the original certificate of title on August 12, 1937. But it was not noted on the duplicate certificate of title. After this, the land was sold by the defendants to Gerardo Villasin. The trial court held

for the plaintiff and ordered Villasin to execute an instrument of transfer in favor of the plaintiff, and the Register of Deeds to cancel the title granted to Villasin and execute one in favor of Jamora. There were two defenses presented, to wit: (1) That the decree of registration having been granted could not be annulled and, that since the action was presented after the lapse of one year, under article 38 of Act 496, the action is barred; and (2) Since the notice of *lis pendens* was not noted in the duplicate certificate of title, Villasin, being a third person, is not charged with notice and, therefore, under the case of Pineda vs. Santos (56 Phil. 635), he is an innocent purchaser for value. *Held:* (1) The action does not seek to annull the decree of registration. The defendants knew when they filed their petition in the cadastral case that they were not the true owners of the land, the court having adjudged it already in favor of the defendants in a prior case. Such is not permitted by justice and equity that they enrich themselves at the expense of others. This Court in the case of People of the Philippines vs. Court of First Instance of Nueva Ecija (49 Phil. 452) *Held:* "When a person obtains a certificate of title in his name on a land pertaining to another, and the circumstances are such that it can be presumed that he has the true knowledge of the rights of the true owner, it is culpable fraud and he can be obliged to transfer the land to the defrauded party with the payment of damages and injuries. (2) The notice of *lis pendens* in the Office of the Register of Deeds and on the original certificate of title constitutes tacit notice to third persons who buy land subject to such lien. The syllabus of the case of Pineda vs. Santos does not reflect the true doctrine stated in the body of the decision. (Per Villa-Real, J.; Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concurring).—*Briefed by* EUGENIO R. FILIO.

SUCCESSION.—*Commonwealth of the Philippines, Claimant-Appellee vs. Vicente Singson Encarnacion, Administrator-Appellant, G. R. No. 46053, October 31, 1939.* Jose Syquia, son of the testate decedent Juan Syquia, was indebted to the latter in the amount of ₱507,759.13, while his share in the estate, as a forced heir amounted only to ₱17,142.29. The terms of the will clearly recited that the debts should be paid and that they were not intended to be mere donations to Jose. The Solicitor-General sought to have paid as a preferred credit from the share of Jose the various internal revenue dues owing from the decedent to the Collector of Internal Revenue, pursuant to section 1586, Act 2711, as amended by Act 2833. The judicial administrator, however, presented a project of partition, approved and later disapproved by the lower court, in accordance with which Jose Syquia, in view of his debts, would have no share in the estate, both on account of collation provided for in articles 1035 and 1043 and of compensation in article 1196 of the Civil Code. The result of the project of partition, if sustained, would be to bar a recovery by the Government from the estate, represented by the share of Jose. *Held:* Article 1035 of the Civil Code provides as collationable only those property or securities received during the lifetime of the decedent, by way of *dowry donation, or other lucrative title.* The amounts referred to in article 1043, paid by the decedent to *discharge the debts* of his children, refer to those paid as an act of liberality, without the intention of having them paid back. The legal effects of collationable credits and debts, construed as such, are very different. As donee, the forded heir is not obliged to bring

into collation whatever he may have received if he renounces his share in the inheritance; renunciation does not exempt the debtor from paying the amount received. As donee, he answers only to the other forced heirs; as debtor, also to any other kinds of heirs, to the creditors, and legatees. As donee, he cannot resist collation on the ground of prescription; as debtor, he can allege prescription in bar to payment. (Manresa, 3rd edition, vol. 7, pp. 561, 562). The debts of Jose Syquia must therefore be paid in order to satisfy the obligations of the estate. Nor can, as claimed, compensation take place, because none of the debts must be subject to any lien or suit instituted by third persons with due notice to the debtor. (Article 1196, par. 5). In this case the Government has timely presented its claim which, conformably to section 1586 of Act 2711, as amended by Act 2833, constitutes a lien. The order of the lower court sustaining the contention of the Solicitor-General is upheld, with costs against the appellant. (Per Imperial, J.; Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, Moran, JJ., concurring).—*Briefed by* EMILIANO R. NAVARRO.

SUSPENSION OF ATTORNEYS. —*Roman de Jesus, etc., Petitioner vs. Juan S. Rustia, Respondent, Adm. Case No. 916, October 20, 1939.* Attorney Juan S. Rustia was accused of contempt in the lower court for having advised his clients to disobey the court's order in a certain civil case. While the case was still pending, the Provincial Fiscal presented a motion for the immediate suspension of the defendant from the practice of law for gross violation of the attorneys' oath in having committed the acts imputed to him in the criminal case. On the day set for the hearing the defendant and the Provincial Fiscal appeared and informed the court that they would submit the motion after all the evidence in the criminal action should have been presented; hence the hearing was cancelled. Upon the termination of the trial of the criminal case, the fiscal presented the motion for the suspension of the accused, and requested the reproduction of all the evidence presented in that case. The attorney for the defendant requested for the inclusion in the record of translations of their exhibits. Thereafter, the criminal case was presented for decision. The trial judge, believing that the motion for suspension had likewise been presented for decision by both parties on the same evidence as presented in the criminal case, and that both had agreed to the reproduction thereof, rendered judgment ordering the suspension of the defendant. Defendant appealed, invoking Sec. 25 of the Code of Civil Procedure. *Held:* According to Art. 25 of the Code of Civil Procedure, no lawyer can be suspended from the practice of his profession unless he had been given full opportunity to answer the charges against him and to produce witnesses in his own behalf. In the present case neither were the charges against the respondent proved nor was he given an opportunity to defend himself. The evidence presented in the criminal case for contempt cannot be considered as having been presented in the administrative case because, in truth, such motion had never been tried nor had there been agreement to consider such evidence as presented and reproduced. The suspension, having been done without due process of law in violation of Article 1 (1) Title III of the Constitution and not in accordance with Sec. 25 of the Code of Civil Procedure, was therefore null and void. (Per Imperial, J.; Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, Moran, JJ., concurring).—*Briefed by* MARTINIANO P. VIVO.

TAXATION.—*Lope Nieto as Manager of the Ilagan Electric and Ice Plant, Inc., Plaintiff-Appellee vs. Fernando M. Laggui, in his capacity as Municipal Treasurer of Ilagan, Isabela, Defendant-Appellant, G. R. No. 46114, Promulgated November 2, 1939.* By virtue of the authority granted by Act 3422, the municipal council of Ilagan, Isabela passed an ordinance imposing a license tax on certain business occupations and privileges. Among the items enumerated therein was a tax of ₱50 per annum for each administrator or manager of business corporations or commercial firms. The defendant municipal treasurer required the plaintiff as manager of Ilagan Electric and Ice Plant, Inc., to pay ₱12.50 as tax for the first trimester of 1936. Plaintiff paid under protest, and so action was filed to recover such amount, and to declare the ordinance void to the extent of the particular item in question. Lower Court ordered the refund of the amount and declared the ordinance void as prayed for. On appeal, judgment was affirmed. *Held:* Under Act 3422 as amended by Act 3790, a municipal council cannot levy percentage taxes and taxes on specified articles, and neither can it impose municipal license tax on persons selling light, heat, or power, and engaged in installation of gas, or electric light, heat, or power. The Ilagan Electric and Ice Plant, Inc., under its franchise granted by Act 3407, is a *sociedad anonima* which is dedicated to the installation, operation, and maintenance of an electric light, heat, and power system. Since the plaintiff is just an agent of the electric company, he is exempt from payment of the municipal license tax in question. (Per Imperial, J.; Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, Moran, JJ., concurring).—*Briefed by* BIENVENIDO C. AMBIÓN.