RECENT DECISIONS

Digest of Current Cases

ADMINISTRATORS. *Heraclio Villacin, Jose Villacin, and Emma Villacin, Plaintiffs-Appellants vs. Insular Lumber Co., Defendant-Appellee. G. R. No. 46678, June 28, 1940.*—The spouses Vicente Villacin and Jacinta de los Santos conveyed by way of first and second mortgages their two haciendas to secure payment of loans extended to them respectively by the Agricultural Bank of the Philippines and Sing Juco. The spouses defaulted and the creditors obtained judgments in separate civil cases. A writ of execution was issued in favor of the defendant Lumber Co., as successor of the Bank, but no action thereon had been made, as, upon the death of Vicente Villacin, the administrator of his estate entered into an agreement with the company whereby he asked for a loan sufficient to pay the claims of Sing Juco, the estate would cede to the defendant company a portion of the mortgaged property, consent to an easement in its favor, and give to it a further right of option to purchase the rest of the property. Assent appeared to have been given to the compromise by the interested parties including the plaintiffs (minor children) through their guardian; and the Court gave the necessary authority. The compromise was judicially approved Sept. 4, 1927. This action brought ten years later seeks judicial finding of nullity to all the proceedings in the afore-mentioned case, alleging among others, on error to this Court, that the lower court has no jurisdiction to grant the administrator authority to sell the property in question, and to substitute a private sale for the public auction sale ordered in the foreclosure proceedings. *Held:* The Court has jurisdiction. The transaction was not a sale of property, but one of analogous nature within the purview of Arts. 706 and 708 of the Code of Civil Procedure. It is true that the article first cited does not literally cover the case at bar; but the rule, *Ubi eadem ratio, ibi eadem lex,* extends its application to similar cases. Furthermore, the same Code, in its Chapter 36, authorizes the Court to allow the sale of property when necessary to pay with the proceeds thereof, all just debts and obligations of the estate. If that power exists with respect to sale, with greater reason it may be said that the power authorized here, that is, to enter into transaction beneficial to the estate, also exists, for it is without doubt, less or at most equal to the power of sale. Judgment affirmed. (Per Diaz, J.; Avanceña, C. J., Imperial, Laurel, Moran, JJ. concurring).—*Briefed by* HERACLEO HERRERA TAN.

ANNULMENT OF PROCEEDINGS.—*Leonor Zubeldia, et al., Plaintiff-Appellant vs. Gutierrez Hermanos, et al., Defendants-Appellees, G. R. No. 45308, July 19, 1940.*—Salustiano Zubeldia died intestate leaving considerable real and personal properties, including a commercial establishment. He was survived by his widow and six children, three of whom, the plaintiffs in this case, are minors. In the

judicial partition of his estate, it was agreed that the entire mass of property, together with the business and all its credits, will continue to be undivided property of the heirs for the purpose of carrying on said business and dividing the profits among the heirs in proportion to their respective shares. The agreement was signed by the administrator of the estate, by the widow, and by the guardian *ad litem* of the minors. To carry on the business a commercial loan of ₱50,000, then increased to ₱96,000, was obtained from defendant company, Gutierrez Hermanos. To secure this loan three different mortgages were executed by the heirs, through their guardians and attorneys-in-fact, in favor of defendant-creditor. Before the execution of the first two mortgages, there was asked and granted, in the guardianship proceedings of the minors, an authority for the guardian to mortgage, through her attorney-in-fact, the interest of the minors. Upon the same authority granted by the court, the third mortgage was executed by the general manager of the business. Later, defendant brought an action to foreclose the first two mortgages. At the institution of these foreclosure proceedings, the plaintiffs were still minors. An heir, of age, acting in several capacities including that of an attorney-in-fact for the guardian of the plaintiff-minors, after entering into an agreement with the counsel of defendant-creditor, confessed judgment in favor of the latter. On the ensuing execution defendant-creditor was the highest bidder. The three minor children, as plaintiffs, bring this action to (1) annul the agreement of partition because: (a) the parties were not properly represented, (b) the creditors of the estate, at that time, were not yet paid, (c) there was no partition made but an agreement, which the administrator and guardian had no authority to enter into, because it established a *de facto* general partnership prejudicial to the interests of the minors, and (d) that the guardian could not delegate to her attorney-in-fact the management of the property of her ward; (2) to annul the mortgages executed because the loans secured by said mortgages were obtained without previous authority from the court, and that the mortgages, though authorized, were never presented for approval of the court; (3) to annul the foreclosure proceedings that resulted in a judgment, execution, and public sale in favor of defendants; to this cause of action defendants interposed *res judicata* as a defense; and (4) for damages. *Held:* (1). The partition agreement is valid because: (a) it was signed by the administrator of the estate, in his capacity as such, by the plaintiffs' mother in her capacity as widow and heir of the deceased, and by the minor children, through their duly appointed guardian *ad litem;* (b) if the creditors were prejudiced by the partition, they are entitled, not the plaintiffs, to ask for its annulment; (c) the contention that the agreement created a general partnership is of no importance, because the agreement merely provided for the continuation of an existing business and not for the creation of a new one; and (d) there was no delegation of powers by the guardian because the whole estate remained undivided and as such, nothing determinate was given to the minors which the guardian could administer. (2) Previous judicial authority for obtaining the loans was not necessary because the partition agreement provided for the continuation of the existing business. The statement of account presented by defendant was approved by the heirs, who were of age, and by the guardian *ad litem* of the minors. So that if the loans

were presented for approval, the court would have approved them. Thus, strictly speaking, judicial approval was not necessary. To hold otherwise would cause irreparable injury to defendant-creditor. As to the mortgages, the court has already authorized the guardian to mortgage the proportional shares of her wards. The fact that the mortgages were not presented for approval by the court is immaterial, because had they been presented, they would have been approved. The objections raised are purely technical because plaintiffs are, as a matter of fact, proportionately indebted to defendants. The mortgages are, therefore, valid. (3). When the foreclosure of the first two mortgages was presented, the plaintiffs, with the exception of Leonor, were still minors. Leonor was not informed nor given the opportunity to be heard in said case. This irregularity is fatal and annuls all proceedings had in said case, including the judgment rendered therein. There is no *res judicata* because *res judicata* requires (1) that there must be a decision rendered by a competent court on the merits of the case and (2) that the causes of action and the parties, as well, of the previous case be the same as those of the present case. There is no identity of parties and of causes of action between the previous and present litigations. The agreement entered into by the parties in the trial of the foreclosure proceedings is also null and void, because the persons who executed the same, did not have a special power of attorney as required by paragraph 2 of article 1813 of the Civil Code. (4). The judgment and decrees of excution being null and void, defendant is, therefore, in duty bound to make good its liability by paying all damages caused upon plaintiffs from the time the latter were illegally deprived of their respective shares. Therefore, in so far as the interests of the minors are concerned, the judgment rendered in the foreclosure proceedings and the executions issued pursuant thereto, are null and void. (Per Imperial, J.; Avanceña, C. J., Diaz, Laurel, JJ., concurring. Concepcion, J., with whom Moran, J., concurs, dissents in part by holding that the mortgages are null and void.)—*Briefed by* CESAR C. CLIMACO.

TAXATION (Sec. 1459 of the Revised Administrative Code applied)—*Pacific Commercial Company, Plaintiff-Appellant vs. Alfredo L. Yatco, as Collector of Internal Revenue of the Philippines, Defendant-Appellee, G. R. No. 46722.*—Plaintiff, a Philippine Corporation, purchased for its New York office 6,000 tons of centrifugal sugar from the Calamba Sugar Estate Planters to be paid upon delivery of the shipping decuments. After the cargo had been loaded by the seller, and before the vessel left port, an agent of the seller indorsed in blank and delivered to plaintiff the shipping documents. Plaintiff made the corresponding payments which were later debited to the account of the New York office. The defendant herein assessed a consignment tax which the plaintiff paid under protest. This action is now brought to recover said tax. Plaintiff contends that under Sec. 1459 of the Revised Administrative Code it is not subject to a consignment tax because upon the facts of the case it is a consignee, not a consignor of the sugar in question. Reliance is placed upon the stipulation in the contracts to the effect that shipment is to be made by the seller. *Held:* A condition in a contract is at best *prima facie* evidence, and is b yno means conclusive, of what actually transpired after its execution. In the instant case, it appears that the bills of lading cover-

ing the sugar in question were indorsed in blank and delivered to the plaintiff by the agent of the seller before the vessels left port. This indorsement operates to pass title to, and constitutes a constructive but nonetheless complete delivery of the merchandise to the plaintiff at the point of shipment. (4 R.C.L. p. 31). Under such circumstance, plaintiff alone could logically ship the cargo to its New York Office. The making out of the bills of lading and the placing of the merchandise aboard the ship supply no decisive criterion for determining who the actual consignor is, for the application of the tax in question. The tax imposed by law is on merchandise "consigned abroad" and not from one party to another within the Philippines. The party, therefore, who ships the merchandise abroad is the consignor upon whom the consignment tax applies, irrespective of who made out the bills of lading or placed said merchandise on board the vessel. (Per Moran, J.; Avanceña, C. J., Imperial, Diaz, Concepcion, Laurel, JJ., concurring.)—*Briefed by* ISIDRO T. ALMEDA.

CIVIL PROCEDURE. — *Rhodora Lipanza, represented by her guardian ad litem Isabelo Lipana, Petitioner, vs. The Honorable Court of First Instance of Cavite, Joaquin Lipana, and Natividad Lipana, Respondents, G. R. No. 47174, June 28, 1940.*—An application for the probate of a will was filed in the respondent court, a carbon copy of the will having been attached thereto. The respondent court after inspecting the copy of the will, and without previous hearing, dismissed the application on the ground that such copy could not be admitted to probate, it not having been signed by the testatrix and the attesting witnesses at the end thereof and on the left margin of each page. Hence this petition for certiorari. *Held:* (1) It is apparent from the application that what is sought to be admitted to probate is the original of the will. It is alleged therein that the original was in the possession of a third person or that it was either lost or destroyed by some person other than the testatrix. Under Section 623 of Act No. 190 if a will is shown to have been torn by some other person, without the express direction of the testator, it may be admitted to probate, if its contents, due execution, and its unauthorized destruction are established by satisfactory evidence. The applicant, therefore, was entitled to hearing in order to present proof of such facts. Respondent court had no statutory authority to dismiss the application without due hearing. (2) Where the order or judgment is a nullity by virtue of its own recitals, as, in this instant case, wherein the order complained of recites that there had been no hearing of the facts alleged in the application, it may be attacked in any way at anytime, even when no appeal has been taken. Certiorari granted (Per Moran, J.; Avanceña, C. J., Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* ROSA SANTOS.

CIVIL PROCEDURE (Actions to Confirm Title to Real Estate).—*Enrique Bautista, Plaintiff-Appellant vs. Anastacio Exconde, Sergio Gutierrez, and Eriberto Aquino, Defendants-Appellees, G. R. No. 47168, June 29, 1940.*—The plaintiff-appellant was purchaser in public sale of two parcels of land. In the present action he seeks to remove cloud of his title thereto and compel the defendants-appellees to state the facts and reasons upon which they pretend to base their claims of ownership in the third-party suit that they interposed during the public sale. The defend-

ants-appellees denied generally and specifically each and every allegation of the complaint and reserved the right to file an amended answer, however, they failed to do so nor did they appear in the trial. By the answer filed by the defendants-appellees it is evident that the ownership of the parcels of land in question was put in issue. Neither in their answer nor in any other kind of pleadings did the defendants-appellees question the sufficiency of the allegations of the plaintiff-appellants' complaint. The plaintiff-appellant, placed in such a situation created by the defendants-appellees, entered into the trial and proved that they bought the said parcels of land at a public sale by virtue of a writ of execution issued in Civil Case No. 6359; that the defendants-appellees filed a third-party claim; and that none of the defendants-appellees exercised the right of redemption within the statutory period. The lower court a quo dismissed the complaint on the ground that what was alleged in the complaint and what was proved in the trial do not necessarily justify the pronouncement that the title of the plaintiff-appellant is valid as against the whole world. *Held:* The lower court erred in dismissing the complaint on the following grounds: (1) The court failed to decide the questions presented by the parties. (2) The dismissal of a civil case can take place only in those cases mentioned by Sec. 127, Act No. 190, the case at bar does not fall under any. (3) The procedure followed by the defendants-appellees was an act of disturbance of plaintiff-appellant's rights, the latter having a right to bring an action to asseverate and secure his rights. Judgment reversed. (Per Diaz, J.; Avanceña, C. J., Concepcion and Moran, JJ., concurring). *Laurel, J., concurring:* There is no precedent in our jurisdiction on the question raised in the present case. I am of the opinion that the action filed is authorized by Sec. 377, Act No. 190. The third party claim presented by the defendants-appellee's constitutes a *cloud* or at least a *doubt* on the plaintiff-appellant's title. And the density of the cloud can make no difference in the right to have it removed, so long as it has a tendency, even in a slight degree, to cast doubt upon the owner's title, and to stand in the way of a full and free exercise of his ownership. The circumstance that the plaintiff-appellant has not yet been disturbed or molested in his proprietary rights is not a bar to the maintenance of this suit. Actions to remove clouds are purely preventive remedies for avoiding apprehended injuries which may be occasioned to the plaintiff's title by reason of some action which may be taken in the future by the defendant, under and by virtue of the instrument alleged to be a cloud, for the presumption is that any cloud or unlawful encumbrance on real property inflicts such an injury on parties interested therein as will give a court jurisdiction to remove it at their suit without proof of another damage.—*Briefed by* DOMINGO B. LAUREA.

CIVIL PROCEDURE (Cancellation of *Lis Pendens*).—*The Municipal Council of Parañaque, Rizal, Petitioner vs. The Court of First Instance of Rizal and the Monte de Piedad y Caja de Ahorros de Manila, Respondents, G. R. No. 47051, June 28, 1940.*—On May 4, 1934, the municipal council of Parañaque, Rizal, petitioner herein, filed a petition seeking a declaration of escheat in its favor of the "Hacienda de Baclaran". This property was registered in favor of the "Monte de Piedad y Caja de Ahorros de Manila" and the Asiatic Petroleum Co. (P. I.), Ltd. By virtue of said pe-

tition, a notice of *lis pendens* was filed in the office of the Register of Deeds of Rizal. On May 31, 1939, respondent, "Monte de Piedad y Caja de Ahorros de Manila", moved for the cancellation of the notice of *lis pendens* and the dismissal of the petition. This motion was denied by the respondent Court of First Instance which postponed the consideration of the motion for cancellation until after the hearing of the petition for escheat, and set the case for hearing on August 16, 1939. On this date, the attorney for the petitioner asked for the postponement of the hearing, which was granted despite respondent's objection. This case was set for hearing on September 20, 1939 and for lack of time was transferred to September 28, 1939. On this date, the petitioner encountered with some difficulties in making an orderly offer of its proof, and the court postponed the hearing until further orders. In view of these delays, respondent, "Monte de Piedad y Caja de Ahorros de Manila", renewed its petition for cancellation of the notice of *lis pendens*, alleging great prejudice to its interests, it being precluded from transacting business on the property. The court granted the motion and ordered the cancellation on October 23, 1939. It is the review of this order that the petitioner seeks in the present petition for certiorari. *Held:* While ordinarily a *lis pendens* which has been filed in a proper case, cannot be cancelled while the action is pending and undetermined the proper court has the discretionary power to cancel it under peculiar circumstances, as for instance, where the evidence so far presented by the plaintiff does not bear out the main allegations of his complaint, and where the continuances of the trial, for which the plaintiff is responsible, are unnecessarily delaying the determination of the case to the prejudice of the defendant. (Victoriano vs. Rovira, 55 Phil. 1000). These peculiar circumstances are present in this case and the respondent court did not abuse its discretion ordering the cancellation of the notice of *lis pendens*. (Per Moran, J.; Avanceña, C.J., Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* EMMETT P. SHEA.

CIVIL PROCEDURE (Counterclaim distinguished from cross-complaint-jurisdiction of Inferior Courts).—*Vicente Romey, Petitioner, vs. Mamerto Roxas, Judge, Court of First Instance of Manila, and Dionisio Saddie, Respondents, G. R. No. 47184, June 29, 1940.*—Petitioner filed in the municipal court an action to recover money from Saddie, one of the respondents herein. The latter filed a cross-complaint which he designated as a counterclaim, claiming the rents of a house he had leased to the plaintiff, and asking that plaintiff be ordered to vacate the house. The municipal court dismissed the complaint and ordered plaintiff to pay the defendant the unpaid rentals and to vacate the house. Eleven days thereafter, plaintiff perfected his appeal to the Court of First Instance. In the latter court, a motion was filed by defendant, asking that judgment on the cross-complaint be executed, on the ground that plaintiff's appeal was not perfected within 10 days. The Court of First Instance held that the appeal was perfected in time as to that portion of the judgment dismissing the action, but not with respect to the cross-complaint, the theory being that, as the cross-complaint was for illegal detainer, the appeal should have been perfected within 10 days. Accordingly, execution was ordered on defendant's cross-complaint. It is this order that is now challenged in this petition for certiorari. *Held:* The pleading filed by the defendant

Saddie, which he designated as counterclaim, is in truth a cross-complaint. A counterclaim is merely a claim for money. When the defendant seeks any other relief than payment of money, his petition is a cross-complaint and not a counterclaim. Defendant seeks not merely the payment of rentals but that the plaintiff be ordered to vacate the premises. While the law authorizes the defendant, in actions before a justice of the peace or municipal court, to interpose any lawful defense or any "set-off, counterclaim or reconvention, within the justice's jurisdiction," (Act. No. 1627, Sec. 60) there is no provision entitling him to interpose a cross-complaint. Unless otherwise expressly provided by law, the provisions which govern the procedure in Courts of First Instance are not applicable in inferior courts. (Yu Lay vs. Galmes, 40 Phil. 651) Inferior courts have a limited jurisdiction which cannot be extended by implication. (Elumbaring vs. Elumbaring, 12 Phil. 384; Tuason vs. Crossfield, 30 Phil. 543; Africa vs. Gronke, 34 Phil. 50) Judgment of municipal court concerning the alleged illegal detainer is null and void, it having no jurisdiction to entertain the cross-complaint. It is, however, valid with respect to the claim of rentals, it being in the nature of a counterclaim. (Per Moran, J.; Avanceña, C.J., Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* DOMINADOR C. SAYON.

CIVIL PROCEDURE (Jurisdiction).—*Juan Ruiz, Plaintiff-Appellee vs. Jose Topacio, Defendant-Appellant, G. R. No. 45072, June 29, 1940.*—Ruiz brought this action for libel due to certain articles published by the defendant charging him with various alleged criminal acts in connection with his office as Director of the Bureau of Posts. Defendant-appellant contends that Judge Pedro Ma. Sison, who heard the case in the Lower Court, had no jurisdiction to try the case. He bases his contention on the fact that the case was assigned for hearing to Branch AC while Judge Sison, who was temporarily assigned to the Manila Court of First Instance, occupied Branch AB. *Held:* The distribution of cases from time to time among the Judges of the Court of First Instance is not determinative of the jurisdiction of the Judge who takes cognizance and tries the case. Jurisdiction over a civil case is conferred upon the court and is determined by law. It is acquired by the filing of the complaint and the serving of due notice on the defendant. Taking these legal principles into consideration, and the fact that the defendant was duly notified of the complaint filed against him and that he was present at the trial of the case, the jurisdiction of the Court of First Instance over the case, exercised by Judge Sison, duly appointed and qualified to act in the case, cannot be questioned. The defendant-appellee not having proved the truth of his charges against the plaintiff-appellee in the libelous articles, the judgment of the Lower Court is affirmed with costs. (Per Concepcion, J.; Avanceña, CJ., Imperial, Diaz, concurring.) *Moran, J., dissenting:* What is in reality challenged is the competency of the judge to act upon the case. The question then raised is not one of jurisdiction of the trial court but of the competency of a particular judge to act. (Laurel concurring).—*Briefed by* JOAQUIN GONZALEZ.

CIVIL PROCEDURE (Prescription of Actions).—*El Banco de las Islas Filipinas, Petitioner vs. Felicidad Kiamco, Respondent, G. R. No. 46647, June 27, 1940.*—This is a peti-

tion for the issuance of a writ of certiorari to review a decision of the Court of Appeals. While the respondent was still a minor she was under the guardianship of Y. Seven months before Y's appointment as guardian, he obtained a current account of ₱2,500 from the petitioner bank guaranteed by his personal properties. When Y assumed the guardianship he had not yet paid anything on the said loan. On the contrary, Y had overdrawn his account to an amount exceeding that granted to him. To settle his account with the bank Y secured the permission of the court to obtain a loan of ₱4,000 in behalf of the respondent on the pretext that said amount is necessary to secure the registration of certain parcels of land belonging to the respondent and to litigate for the same. The proper authorization was issued. But, instead of taking advantage of the authorization so given, he presented a second petition alleging that the conditions required by the El Hogar Filipino from which he hoped to obtain the loan of ₱4,000 was too burdensome, and that there are others willing to grant a loan of ₱5,000 with less onerous terms. The court granted his second petition to secure a loan from anyone. Y, as guardian of respondent and by virtue of the authority issued by the court obtained a loan of ₱5,000 from the petitioner, Y executing a promissory note payable within 30 days and mortgaged properties belonging to the respondent. Y, then deposited said amount with the petitioner and a liquidation was collected between Y and the petitioner, a balance still remaining in favor of the petitioner. When the mortgage in favor of the bank matured, Y was unable to pay the amount due, so petitioner filed suit against Y as guardian of the estate of the respondent. Judgment was rendered in favor of the petitioner and the properties of the respondent were sold at public auction and the petitioner became the purchaser. The respondent, being now of legal age, filed an action against Y and the petitioner bank. The lower court absolved the petitioner bank and respondent appealed to the Court of Appeals, which court held petitioner jointly and severally liable with Y. *Held:* The petitioner is jointly and severally liable with Y for the sum of ₱5,000 for petitioner knew that the amount which it loaned to Y was for and in behalf of the minor and petitioner has no right whatsoever to apply the said amount for the liquidation of Y's current account. The action filed by the respondent has not prescribed as claimed by the petitioner. The action filed was in accordance with Sec. 43, No. 2 of Act No. 190. Actions of this nature prescribe in 6 years and the respondent exercised her right 4 years, 2 months and 27 days after the publication of the notice of the sale at public auction of her properties. Affirmed. (Per Diaz, J.; Avanceña, CJ., Imperial, Laurel and Moran, JJ., concurring). —*Briefed by* RHODORA H. JARDELEZA.

CONTRACTS (Damages) — *Yek Hua Trading Corporation, Plaintiff-Appellant vs. P. Marquez Lim Inc., Defendant-Appellee, G. R. No. 46856, June 29, 1940.*—On November 24, 1034, Norman S. Wotherspoon in representation of Wise and Company, brokers with a branch office in Iloilo City, Province of Iloilo, signed a contract, Exhibit C, with Jose Marquez Lim in behalf of the defendant for the purchase of 500 tons of copra at ₱6.00 per hundred kilo. In the contract as signed, the space left for the buyer's name was filled in this wise: "Broker's nominee". The defendant was verbally informed that the plaintiff was the purchaser. On

Jan. 29, 1935, and Feb. 7, 1935, the plaintiff wrote the defendant two letters asking when the copra would be ready, and another telegram on Feb. 7, 1935, informing the defendant that it had arranged for the transportation of the copra. The defendant in answer referred the plaintiff to Wise & Co. and sent it a copy of its letter (Exhibit I-a) to Wise & Co. wherein the defendant informed Wise & Co. of its inability to comply with the contract though it would endeavor to deliver all the copra obtainable to the limit of its capacity. Then on Feb. 14, 1935, Wise & Co. wrote a letter (Exhibit 5) confirming all verbal advises to the defendant that the plaintiff Yek Hua Trading Corporation was the purchaser. The defendant failed to deliver the copra, hence the action by plaintiff to recover damages in the amount of ₱39,370 and interest from April 4, 1935 when the action was brought, and attached the funds of the defendant in the Iloilo Chartered Bank. The Court of First Instance awarded damages in the amount of ₱38,100.00 and costs. The defendant appealed. The Court of Appeals found in favor of the defendant, reversed the decision of the Lower Court and awarded damages to the defendant for illegal attachment in the form of interest on the amount attached. Hence this appeal by the plaintiff to the Supreme Court alleging among other things that it was an error to hold that Exhibit C was a unilateral contract and had been cancelled before the defendant was informed in writing as to who the purchaser was; that the Appellate Court erred in holding the plaintiff liable for damages for illegal attachment. *Held:* The letter, Exhibit I, together with Exhibit I-a is a confirmation of the existence of a binding contract between the plaintiff and the defendant which the defendant felt itself bound to comply with. The defendant's tacit admission of the existence of the binding contract was the root of its request for more time within which to comply with the obligation. With regards to the defendant's counterclaim for damages occasioned by the attachment of its funds in the Chartered Bank of Iloilo by the plaintiff, we believe that the defendant has failed to prove its claim. In this respect the holding of the Appellate Court to the effect that no compensatory damages can be awarded under our laws to the person whose property has been attached illegally where the proof is only as to speculative damages is affirmed. We wish to add that in order that there may be a right to claim indemnification for damages caused either under Art. 1101 etc. and Art. 1902, etc., of the Civil Code, the person so claiming must prove actual damages. Our Civil Code does not recognize either speculative or nominal damages. It was therefore erroneous to award to the defendant damages in the form of interests on the sum of ₱39,370.00, notwithstanding the fact that such attachment was illegal and is hereby ordered dissolved. With the exception of the judgment, dissolving the attachment on the defendant's funds in the Chartered Bank of Iloilo, the judgment of the Court of Appeals is reversed and the judgment of the Court of First Instance of Manila is hereby affirmed with costs against the defendant. (Per Diaz, J.; Avanceña CJ., Imperial, Laurel, Concepcion, JJ. concurring).—*Briefed by* MARY F. CONCEPCION.

CORPORATION LAW (Escrow Shares).—*Juan L. Ledesma, et. al., Plaintiff vs. Felipe Buencamino, Jr., et. al., Defendant,* G. *R. No. 46904, June 29, 1940.*—The Mapaso Goldfields, Inc., bought the mineral claims

of the Mapaso Exploration Co., and in consideration thereof, the former as vendee agreed to issue to the nominees of the vendor 6,000,000 shares at a par value of ten centavos, each, subject to certain conditions, among which are: 1. That the certificates of said shares shall be held by the treasurer of the vendee in escrow and in trust for the nominees of the vendor until the vendee is authorized to release said shares by the Securities and Exchange Commission; 2. that subject to the adverse action of the Commissioner of Securities and Exchange, the shares held in escrow shall be at all times entitled to vote and be voted at the stockholders' meetings of the vendee. In compliance with this agreement, stock certificates for the six million shares were issued in the name of the treasurer of the vendee corporation, with instruction to hold them in escrow and in trust for the nominees of the vendor. Subsequently, the vendee corporation was given a license to sell speculative shares, and was authorized to issue the shares held in escrow, but then only when their release was ordered by the Commission. At a meeting to elect a new board of directors, the question of the right of the escrow shareholders to vote was raised but not decided, so the meeting was adjourned with the agreement that such question be submitted to the Commission for a ruling. At another meeting, pending the decision of the Commissioner, the meeting was again adjourned because of the absence of a quorum. Some stockholders who represented 3,370 shares of the total of 6,197,500 shares of subscribed capital stock entitled to vote, remained and ascertaining a majority among them, proceeded with the meeting and elected a new board of directors. At a special meeting the new board elected a new set of officers. Thereafter, plaintiffs as members of the new board of directors demanded from the defendants, as officers of the old board, the surrender of their positions, and upon their refusal, the present action of *quo warranto* was instituted. The question is: were the plaintiffs lawfully elected as officers and members of the board of directors at the stockholders' meeting? *Held:* 1. Section 31 of the Corporation Law provides that "at the elections of directors there must be present, * * * the owners of the majority of the subscribed capital stock entitled to vote." The vendee corporation has a total of 6,197,500 shares actually subscribed, and of this total, the stockholders present at the meeting, held 3,370,850 shares; there was, therefore, present the required majority of the subscribed capital stock entitled to vote. 2. The contention of the defendants that the 3,370,850 shares do not constitute the required majority for the reason that the 6,000,000 shares held in escrow are entitled to vote, since the so-called escrow shares, were in legal effect subscribed by the nominees of the Mapaso Exploration Co., thus conferring upon them the voting power and other rights and privileges of the stockholders of the vendee corporation, is untenable for the following reason: if the contract is to be so construed, it may either be a mere offer of subscription to 6,000,000 shares of the vendee corporation which the latter agrees to accept and promises later to issue the certificates therefor, depending upon a fact to be found by the Securities and Exchange Commission, upon which hypothesis, the acceptance of such offer to subscribe was thus expressly made to depend upon a suspensive condition and consequently does not confer upon the offeror the rights of a stockholder until the condition is fulfilled (Lusk vs. Stevens, G. R. No. 45573, Mar. 13, 1937); or, if the con-

tract is an actual, and not a mere offer of subscription, it would, in this event, be void because, as established by a great weight of authority, a corporation cannot, in the absence of express statutory grant, subscribe to the capital stock of another corporation. And the fact that such subscription is in the name of unknown nominees of the Mapaso Exploration Company does not alter the legal principle because, what is prohibited directly cannot be done indirectly. 3. Although the contract provides that "the shares held in escrow shall be at all times entitled to vote in the stockholders' meetings of the vendee", still as such shares are held in escrow and are not to be released unless otherwise ordered by the Commission, the voting power thus intended to be conferred upon them must likewise be deemed to be subject to the same suspensive condition and cannot accordingly be exercised until the condition has been fulfilled. 4. The plaintiffs are not in estoppel in denying the escrow shares the right to vote, because estoppel by consent cannot be invoked where consent itself is nugatory, since the action consented to is either void or otherwise not recognized by law. 5. Whether the plaintiffs acted in bad faith or not, in proceeding with the election of a new board of directors, repudiating in effect, their agreement to submit the question of the voting power of escrow shares to a ruling of the Commission, is immaterial, under the circumstances of the case, because in law, they have the right to proceed. What the law gives, equity cannot nullify. Plaintiffs are declared legally elected officers and members of the new board of directors, and defendants ordered to surrender their positions to them. (Per Moran, J.; Avanceña CJ., Imperial, Diaz, Concepcion, Laurel—in the result—JJ., concurring.)—*Briefed by* CARLOS LEDESMA.

LAND REGISTRATION (Jurisdiction).—*Aaron Nadela and Felipa Jaca, Petitioners vs. Ricardo Cabras, Respondent, G. R. No. 46902, June 29, 1940.*—Plaintiff spouses and defendant spouses are owners of adjoining lots Nos. 1306 and 1303, respectively, of the cadastral survey of Cebu, Cebu, for which transfer certificates of title were respectively issued to them. The record shows that at the time of their purchase, plaintiffs already knew of the existence of an old cement wall separating their lot from lot No. 1303 of the defendants, and of the house of the latter standing on said lot. The plaintiffs filed in the Court of First Instance of Cebu a complaint alleging that the defendants were encroaching upon, and illegally withholding from them, two portions included in their lot No. 1306 as shown by their sketch plan. Defendants contended that plaintiffs' sketch plan was incorrect, and that the portions occupied by them form part of their lot 1303 ever since its purchase by them from the original owners. The trial court ordered a relocation whereby it was found that the recorder committed an error in fixing the boundary. It was found that, if plaintiff's sketch plan would be admitted as correct, their lot would include the cement wall and part of appellees' house and would also extend to a public canal and public street. The trial court rendered judgment ordering the correction of the plan. The Court of Appeals upheld the propriety of the correction but ruled that the trial court was without authority to order the same, a petition in the original registration case being the proper procedure. Petitioner now seeks to have this judgment reviewed. Appellants contended that the correction of the error sought by the appellees is barred by the decree of registration in the cadastral proceedings, and that they are entitled to the protec-

tion of the law as innocent purchasers for value. *Held:* Section 112 of Act No. 496 permits the correction of errors in the technical description of lands covered with a certificate of title, provided that the original decree of registration be not thereby reopened and the "title or other interest of a purchaser holding a certificate for value and in good faith" be not thereby impaired. It appears that when the appellants purchased lot 1306 they already knew of the existence of appellees' house in the portions of land claimed by them as well as the existence of the cement wall separating their lot from that of the appellees. The knowledge of such facts should have put them upon such inquiry and investigation as might be necessary to ascertain the true boundary of the land they purchased. Failing in this, they are not truly purchasers in good faith; and, on equitable grounds, they cannot now be permitted to claim as theirs what they have, by their silence, impliedly recognized as belonging to others. The Court of Appeals was correct in holding that the trial court, in the exercise of its general jurisdiction, is without authority to order the correction, and that the proper procedure is a petition in the original registration case. (Per Moran, J.; Avanceña, CJ., Imperial, Diaz, Laurel, Concepcion, JJ., concurring.)—*Briefed by* LUCIANO E. SALAZAR.

TAXATION (Intangibles).—*Wells Fargo Bank & Union Trust Company, Petitioner-Appellant vs. Collector of Internal Revenue, Respondent-Appellee, G. R. No. 46720, June 28, 1940.*—Birdie Lillian Eye died on Sept. 16, 1932 at Los Angeles, California, the place of her alleged last residence and domicile, leaving among the properties in her conjugal share 35,000 shares of stock in the Benguet Consolidated Mining Company, an anonymous partnership, organized under the laws of the Philippines, with its principal office in the City of Manila. She left a will which was duly admitted to probate in California where her estate was settled and the Wells Fargo Bank & Union Trust Co. was appointed trustee of the trust created by said will. The petitioner having already paid the Federal and the State of California's inheritance taxes due on said shares, objected to the taxation of the same by the Philippine Government. Wherefore, a petition for a declaratory judgment was filed in the lower court to determine whether the transfer of the aforesaid shares of stock is legally subject to the Philippines inheritance tax. The Court of First Instance held that the transmission by will of 35,000 shares of stock was taxable under Philippine laws. *Held*: Section 1436 of the Administrative Code, as amended, provides that every transmission by virtue of inheritance of any share issued by any corporation or sociedad anonima organized in the Philippines is subject to the tax therein provided. The principles laid down in Farmers Loan vs. Minnesota 280 U. S. 204; Baldwin vs. Missouri 281 U. S. 586; Beidler vs. So. Carolina 282 U. S. 1; First Nat. vs. Maine 284 U. S. 312 which are invoked by the petitioner to the effect that only the domicillary state may tax intangibles and regarding the application of the due process clause have been expanded and modified by two subsequent cases: Burnet vs. Brooks 288 U. S. 378 and Curry vs. McCanless 307 U. S. 370. The issue in this case is not the operation of the due process clause but the power of the Philippine Government to tax. The old law in the United States that intangibles have only one situs based on the maxim: "*mobilia sequuntur personam*" has been relaxed and modified due to:

(1) the recognition of the inherent power of each government to tax persons, properties and rights within its jurisdiction and enjoying, thus, the protection of its laws; and (2) the principle that as to intangibles, a single location in space is hardly possible, considering the multiple, distinct relationships which may be entered into with respect thereto. (Per Moran, J.; Avanceña, CJ., Imperial, Diaz, Concepcion, Laurel, JJ., concurring.)—*Briefed by* RAUL O. DEL CASTILLO.