

## Recent Cases

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### ART. 1524 CIVIL CODE; DISTINCTION BETWEEN LEGAL REDEMPTION AND THE RIGHT TO COMMENCE ACTIONS.

The plaintiff and his three brothers and sisters became the owner of a tract of land by donation in 1926 but registered only in 1936. In 1931, the legal guardian of the minors sold the shares of the three minors to the defendant. In 1939, upon reaching majority, the plaintiff offered to repurchase the shares of his minor brothers and sisters. When the offer was rejected, this suit was commenced to compel defendant to allow legal redemption. Defendant's contention is that the right of redemption has already expired under article 1524 of the Civil Code. The trial court sustained the defendant and so an appeal was made.

In affirming the decision of the lower court, the Supreme Court held that article 1524 "which fixes the period of nine days within which the right of legal redemption may be exercised has not been repealed or modified by the Code of Civil Procedure or the Rules of Court. The right of legal redemption and the right to commence actions are entirely of different nature. The first is a substantive right which, in the absence of the article would never exist; the second restricts the period in which the cause of action may be asserted. x x x An action is addressed to a court of justice; legal redemption partakes of a rescission of contract and is addressed to one of the contracting parties by the other. An action may be brought only by persons not working under any disability; legal redemption may, we believe, be exercised by a minor of sufficient discretion; at any rate, his natural guardian or whoever has the minor in his custody may validly make the repurchase in his behalf. An action seeks to assert a fundamental primary right of which the plaintiff has been unlawfully deprived, or to redress a wrong which has been inflicted; legal redemption is the nature of a mere privilege created by law partly for reasons of public policy and partly for the benefit and convenience of the redemptioner, to afford him a way out of what might be a disagreeable or inconvenient association into which he has been thrust." The court then concluded that the running of the period for legal redemption is not suspended by minority or non-age. (Villasor v. Medel, Medalla et al, R-CA-GR-No. 8677, September 29, 1948.)

## REVISED ELECTION CODE; SECTIONS 163 AND 168.

The board of election inspectors issued a certificate showing the number of votes polled and then submitted a different return to the municipal board of canvassers. Colasito who should have been elected if the change was not made, sought and obtained from the Court of First Instance an order of recounting pursuant to sections 163 and 168 of the Revised Election Code. Petitioners seek to prohibit the recounting contending that the certificate issued is not one of those contemplated in section 163.

Section 163 of the Revised Election Code reads: When statements of a precinct are contradictory.—In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected.

In refusing to issue the writ of prohibition, the court declared that "no one should believe that the lawmakers had contemplated difference of votes in other authentic copies of statements or copies of the same statements when the municipal treasurer can not submit to the municipal board of canvassers more than one copy of the election returns. Undoubtedly, the other copies referred to are the certificates in question, as they are in fact copies of what the poll inspectors have written in the return prepared and signed immediately after the counting, in the presence of all watchers and the public, before whom the results are announced *viva voce*, while everybody may check if the announcement tallies or not with the figures written on the blackboard. Even on the wrong hypothesis that there should be a doubt as to whether the statements mentioned in sections 163 and 168 of the Revised Election Code may also include the certificates mentioned by section 153, the doubt should be resolved in favor of the unmistakable intention of the lawmakers that any conflict between the several statements and certificates issued by the same board of election inspectors as to the result of the election regarding municipal and provincial positions should be right away threshed by the summary procedure of the judicial re-

counting of the votes, which will take a small fraction of the day." (Board of Election Inspectors et al vs. Judge Piccio and Colasito, GR-L-1852, Oct. 14, 1948.)

CONSTITUTIONAL LAW ; SEARCH AND SEIZURE OF CONTRABAND.

While petitioner was detained for robbery in band, four policemen entered his home, searched it without any warrant issued by a competent court and over the objection of his wife, and found a gun, hand grenade, and ammunition. Prosecuted for illegal possession of firearms, petitioner moved for the return of the contraband seized and sought to prohibit the fiscal from using them as evidence. The motion was denied and so this petition for certiorari.

Stating that the question involved is whether the petitioner has a right to the return of the contrabands, the Supreme Court declared that "the possession of contraband is penalized by law. When an individual possesses a contraband he committed a crime, and may be detained without warrant of arrest not only by an agent of authority but also by a private individual, and his contraband may be seized without necessity of search warrant. The Constitution does not guaranty immunity to smugglers. To return to the accused the contraband and to prevent the provincial fiscal from presenting it is to exonerate him from criminal responsibility prescribed by Act No. 42. This will make the State useless. The possession of a thing which is susceptible to legal appropriation and which is the object of a free commerce, as a watch, should not be confused with a case of firearms the possession of which is prohibited by law. In the first case, the constitutional guaranty against unreasonable search and seizure may be invoked because to possess a watch is not a crime; but the possession of a firearm, without a license, is a flagrant violation of the law and this will subject the possessor to arrest without writ duly issued and the contraband may be seized. (Magoncia v. Judge Palacio of CFI Pangasinan, GR-L-1486, April 26, 1948.)

RENTAL LAW ; WHEN TENANT'S ABODE BECOMES COMMERCIAL ESTABLISHMENT.

The petitioner has been occupying the premises in litigation situated at Rizal Avenue pursuant to an oral contract of lease. The ground floor is used as a barbershop, wherein the petitioner and a number of haircutters employed by him, pursue their calling.

The upper story is used for dwelling purposes by the petitioner's family. Due to the irregularity in the payment of rentals, the respondent sought to eject the petitioner. Among others, petitioner contends that he maintains a home industry and therefore included in the protective provisions of Republic Act 66. The Court of Appeals held the premises commercial and not within Republic Act 66. So this petition for certiorari.

In distinguishing between a home industry and a commercial establishment, the Supreme Court stated that "when a barber or tailor pursues his calling by serving customers in his dwelling, he is merely exercising a home industry and his place of abode does not thereby become commercial. But when he engages other tailors or barbers to expand his business and increases his returns, his establishment becomes commercial and the incidental fact that his family lives therein would not include him in that class of tenants especially favored by recent emergency legislation on housing." (Morales v. Zamora, GR-L-1433-34-35, June 30, 1948.)

*NOTE:* Republic Act 66 amends Commonwealth Act 689 entitled "AN ACT TO PENALIZE SPECULATION ON RENTS OF BUILDINGS DESTINED FOR DWELLING PURPOSES." See XXII Philippine Law Journal, No. 4, August 1947.

—G. V. J.

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## BOOK RECEIVED

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