

Notes and Comments

THE PRESENT STATUS OF THE LAW ON ADMISSIBILITY OF ILLEGALLY OBTAINED EVIDENCE

THIS discussion was induced by the case of *Moncado v. People's Court* decided by our Supreme Court on Jan. 14, 1948. The writer believes that the case has drifted away from the trend of decisions before the war, and veers away from the direction of decisions of the United States Supreme Court.

For the purposes of this discussion, evidence is illegally obtained if in its acquisition, the constitutional guaranty against unreasonable searches and seizures has been violated.¹ I need not discuss the historical background of this guaranty nor its extent. Suffice it to say that its aim is to secure the privacy of domicile and of the individual. As early as 1903, our Supreme Court has shown its concern for this right when it waxed eloquent in extolling it as sacred,² and it has consistently expressed itself strongly as a guardian of this right whenever it has found the opportunity to do so.³ It only sanctioned intrusions into the dwelling in the valid exercise by the State of its police power in order to prevent the owner from "using his home as a citadel of aggression"⁴ or because the complainant or the public has an interest in the object to be seized, or in its possession, or because possession by the accused is rendered unlawful by the state.⁵ But except as an incident of a legal arrest or in hot pursuit of an offender or an escaped prisoner, the house may not be entered, even in the exercise of police power, by agents of the law, or by any other person for that matter, against the will of the owner, without a valid warrant. And what is a valid warrant? It is that which is in conformity with procedural requirements of our Constitution, Art. III, Sec. 1 (3) viz:

"The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the things to be seized."

¹ Art. III, Section 1, (3).

² *U.S. v. Arceo* 3 Phil. 381

³ *U.S. v. Macaspac* 9 Phil. 207, *Moreno v. Ago* Chi 12 Phil. 439, *U.S. v. Reyes & Esguerra* 20 Phil. 467

⁴ *U.S. v. Vallejo* 11 Phil. 193

⁵ *People v. Veloso* 48 Phil. 169, *Uy Kheytin v. Villareal* 42 Phil. 886, *Yee Sue Koy v. Almeda* 40 OG 263, *Magancia v. Palacio* GR-L-1486, April 26, 1948

The Supreme Court has ordained that the probable cause must be determined by the judge himself, and not by the officer applying for the warrant. Thus, when he states in an affidavit that "to his best knowledge and belief" the objects mentioned are found in the place described, the warrant thus obtained was illegal, and the documents and things yielded by it, though relevant, were ordered returned upon timely objection.⁶ The theory is that evidence obtained in a manner violative of the constitutional provision is equivalent to compelling the accused to testify against himself, and therefore traversing the constitutional protection against self-incrimination. Likewise, in *Pasion v. CFI*, G.L. No. 45950, the court ordered the return of the relevant evidence seized under a warrant illegally obtained.⁷ The warrant must strictly conform to the procedure outlined in the Constitution in order that the court will uphold the seizure made thereunder.⁸ And even when the acquisition of the search warrant is legal, if its purpose is to fish evidence, the court will nevertheless reject the things seized under it when introduced as evidence, if seasonable objection is made.⁹ The above cases moulded definitely the state of the law before the war. Thus:

The defendant may ask for the return of his property which was seized, even if they form relevant evidence. Although these things are recited in the warrant, if seasonable objection is made against their use as evidence, their admission would violate the prohibition against self-incrimination, and would therefore be returned.

We will note that the above drift ran parallel to the trend in the United States federal jurisdiction from the *Boyd* case to the latest case on the matter.¹⁰ The first state to make any pronouncement on this matter was the Massachusetts Supreme Court when in 1841 it declared that "when papers are offered in evidence, the court can take no notice of how they were obtained, whether lawfully or unlawfully; nor would they form a collateral issue to determine that question."¹¹ This is the orthodox common-law rule—that competency of evidence is not tainted by the illegality of the manner of acquisition. But the Federal Supreme Court seemed to frown upon this doctrine because on the first opportunity that it had, it declared that a "compulsory production of the private books and papers of the owner of goods sought to be forfeited is compelling him to be a witness against himself within the meaning of the 5th Amendment (against self-incrimination)". The court went out of its way to link the guaranty

⁶ *Alvarez v. CFI* 64 Phil. 167

⁷ Also *People v. Sy Juco* 64 Phil. 167

⁸ *Yee Sue Koy v. Almeda* 40 OG 263

⁹ *Alvarez v. CFI* supra

¹⁰ *Boyd v. U.S.*, 116 U.S. 616 (1886) to *Anne Johnson v. U.S.* decided sometime in February or March 1948, and found in *Lawyer's Journal*, April 30, 1948.

¹¹ *Commonwealth v. Dana*, 2 Meich 329.

against self-incrimination with that against unreasonable searches and seizures. It said that the above procedure is "the equivalent of a search and seizure, and an unreasonable search and seizure within the meaning of the 4th Amendment."¹² At the start, let it be said that our clause on unreasonable searches and seizures follows substantially, if not literally, the 4th Amendment of the United States Constitution, which the Federal Supreme Court interpreted in these cases. This doctrine held sway for almost twenty years. Some states adopted it. Others, spearheaded by New York, stuck to the orthodox common-law rule. In fact, in a case originating from the highest court of this state, the Federal Supreme Court adopted the former's view that papers, though not described in the valid search warrant, "are not the subject of an unreasonable search and seizure but incidentally seized in the lawful execution of the warrant. And the courts, in the course of the trial would not make an issue to determine the manner in which witnesses have possessed themselves to papers or other articles which are material and properly offered as evidence."¹³ Ten years later, the Supreme Court practically discarded the Adams case, when it rejected as evidence, articles seized by police officers in the house of the accused without a warrant, as being an unconstitutional search and seizure, and "seasonable objection being made the trial court should have restored these papers to the accused."¹⁴ Of course the court distinguished the latter case by saying that seasonable objection was interposed, but we know that "a case which is distinguished ceases to be distinguished." The court held on to this doctrine and even extended it to cover copies and photographs of originals of relevant evidence seized without benefit of warrant. Justice Holmes, speaking for the Court, said that "the essence of the provision forbidding the introduction of evidence in a certain way is that not merely such evidence so acquired shall not be used before the courts but it shall not be used at all." This doctrine even included corporations within the scope of the constitutional inhibition.¹⁵ To violate the constitutional guarantee, it is not necessary that force or illegal threat be employed. It is sufficient if the search and seizure be effected by stealth, for "the security and privacy of the home and office and the papers of the owner would be as much invaded and the search and seizure as much against the will in one case as in the other, and it must therefore be regarded as equally in violation of his constitutional rights."¹⁶ But searches without the warrant may be permissible as an incident of a valid arrest, as when the occupants of a car were arrested on the reason-

¹² *Boyd v. U. S.*, *supra*.

¹³ *Adams v. New York*, 192 U.S. 585 (1904).

¹⁴ *Weeks v. U. S.*, 233 U.S. 383 (1914).

¹⁵ *Silverthorne Lumber Co. v. U. S.*, 251 U.S. 385, 1920.

¹⁶ *Gould v. U. S.*, 255 U.S. 298, 1921.

able belief of the officers that they were using the car to commit the crime of illegal trade in liquors, and the car consequently searched.¹⁷ In this case there was no doubt that the arrest was valid. But even if the arrest is legally justified, the things seized must be visible and readily accessible to satisfy the constitutional sanction.¹⁸ If, as an incident of valid arrest, explorations for objects not visible are made on the possibility that the search would turn up articles or documents usable as evidence, the things seized would be objectionable as violating the constitutional guarantees against unreasonable searches and seizures and self-incrimination.¹⁹ And where the search was made some blocks away from the scene of the arrest, such search was not an incident of the arrest and the things seized are objectionable as evidence.²⁰ This smooth trend, however, suffered a jolt when the Federal Supreme Court admitted in evidence unlawful cards possessed by the accused and turned up by a five-hour search, on the authority of a valid warrant of arrest for an offense utterly different from that for which the defendant was finally indicted.²¹ But the situation was righted back in no time in the subsequent cases of Michael de Ri and Anne Johnson, decided in the first months of 1948. In the former case, the Supreme Court limited the valid arrest to the individuals in the car as to whom the probable cause could have existed, that is, to the one against whom the officers received the tip, and the informer himself. With respect to the third man in the car, the defendant, this probable cause could not have existed because he was never mentioned by the informer, nor was he implicated by the latter at the time of the apprehension. As to the fact that all three of them were in the same car, the Court said that a cursory examination of the car would not lead an officer to suspect that the car was used in the crime (selling counterfeit ration coupons), which would not be the case if the object of the crime was a thing difficult to conceal in a car as bottles of liquor (Carroll case).²² In the latest case of Anne Johnson, found in *Lawyers Journal*, April 30, 1948, the legality of the arrest was very doubtful, therefore, the search itself could not be regarded as an incident of an arrest. The prosecution tried to justify the arrest by the search, and the search by the arrest. "This will not do," said the Court. Moreover, the officers could have adequately procured a search warrant were they inclined to do so, because the quarry was not in flight. She was in an hotel room. In view of the above decisions, we can crystallize the rule prevailing in the Federal jurisdiction to be:

¹⁷ *Carroll v. U. S.*, 267 U.S. 131.

¹⁸ *Marron v. U. S.*, 275 U.S. 192, 1927.

¹⁹ *Gobart v. U. S.*, 282 U.S. 344, 1931; *U. S. v. Lefkowitz*, 285 U.S. 452, 1932.

²⁰ *Agnello v. U. S.*, 269 U.S. 20, 1925.

²¹ *Harris v. U. S.*, 330 U.S. 386, May, 1947.

²² *U. S. v. Michael de Ri*, decided January 5, 1948 and found in *Lawyers Journal*, March 31, 1948.

1. Objects illegally seized, though relevant as evidence, would be rejected if seasonably objected to;
2. For the search and seizure to be justified as an incident of an arrest the latter must be clearly legal, and any doubt is resolved in favor of the constitutional guarantee;
3. As in the Philippines, unlawful objects or articles to which the public has an interest may be illegally seized and may not be returned, but unlike in the Philippines, the Federal Supreme Court rejects these as evidence.²³

In this jurisdiction, the effects, if *corpus delicti* or pertinent or relevant thereto are perfectly admissible."²⁴ The Counter Intelligence Corps of the liberation army played a part in the development of the subject under discussion. Armed with a black list of alleged enemy collaborators, its members arrested Filipino and aliens, searched their houses, seized their effects without any warrants. In one case, the CIC men arrested the accused and searched his place at a time when no courts were functioning. When the Commonwealth was reestablished and the People's Court created, the papers and effects seized served as the basis of the information for treason filed against the accused. In the hearing of his application for bail, the defendant did not object to the presentation of these objects to show that evidence of guilt was strong. His bail was denied, and on certiorari to the Supreme Court, he raised the constitutional objection against unreasonable searches and seizures for the first time. The Supreme Court said that his failure to object in the hearing of his application for bail amounted to a waiver. The court further said, citing the federal doctrine in *Burdau v. MacDowell*, 256 U.S. 465, that the government is not prohibited "from taking advantage of unlawful searches and seizures made by a private person", and here the CIC agents were private persons as far as the Philippine government was concerned.²⁵ Close on the wake of this case is that of *Moncado v. People's Court* decided on Jan. 14, 1948. Similarly the defendant was arrested by CIC agents on April 4, 1945. On this date, a few municipal courts were already functioning in Manila. One week later, his residence was ransacked by the CIC without any warrant, but in the presence of the defendant's wife whose refusal to accompany the officers drew the rejoinder that "with or without your presence we would search the house." This explains her presence when the search was made. Numerous papers, documents, pictures, books, pamphlets, magazines and a promissory note made by the defendant were seized. The defendant moved for the return of these things. He objected against their purported use as evidence in the

²³ *Agnello v. U. S.*, *supra*.

²⁴ *People v. Malasugui*, 63 Phil. 121 and *Magonsia v. Judge Palacio of the CFI*, G.R. L-1486, April 26, 1948.

²⁵ *Alvero v. Dizon*, G.R. L-342, decided May 4, 1946.

treason charge against him. This motion was denied by the People's Court. Hence this resort to the Supreme Court on certiorari, on the ground of violation of the constitutional provision on unreasonable search and seizure. The highest court sustained the lower court and denied the certiorari, saying that the "constitutional limitations to the power of the authorities or agents of authority do not go to the extreme of excluding competent evidence illegally or unduly obtained. The Rules of Court, Rule 123, determines what evidence shall be excluded, what should be admitted and competent, and does not classify as incompetent evidence those that are illegally obtained. . . . It is well established doctrine in the Philippines, United States, England, and Canada that admissibility of evidence is not affected by the illegal means by which the party has availed himself of to obtain them." Our court cited *Commonwealth v. Dana*, *supra*

We see, then, that under the *Moncado* case, the rule at present would be:

The things seized, with or without a search warrant even against the consent of the owner, recited or not in the search warrant if any, may be used as evidence if relevant according to the Rules of Court. The admissibility of evidence does not depend on the legality or illegality of acquisition. However, the rule remains the same with respect to properties not relevant, which should be returned.²⁶

Thus, with one stroke, our Supreme Court has cut off from under the accused one of the strongest props of his defense, his right to privacy under the Constitution!

— DEMOSTHENES B. GADIOMA

²⁶ *Moncado v. People's Court*, G.R. L-724, Jan. 4, 1948.

WILL MANDAMUS LIE AGAINST THE COMMISSION ON ELECTIONS?

Respondent Osmundo Pasugac was proclaimed mayor-elect by the municipal board of canvassers of Bato, Camarines Sur. Subsequently, a representative of the defeated party addressed a complaint to the Commission on Elections requesting an investigation and annulment of the canvass made on the ground that a falsified, instead of the genuine, election return was counted. The Commission having abstained from proceeding with the investigation in view of an electoral protest then pending in the Court of First Instance, the protestant brought an original action for mandamus praying for a reversal of the Commission's ruling and directing the canvassing board to make a recount.¹

The question presented is whether the duty of the respondent Commission to investigate and act on the propriety or legality of a canvass of election made by the municipal board of canvassers is ministerial or discretionary. If of the former then it may be compelled to perform such duty through mandamus proceedings; if of the latter, then not.

The vote being five to five, the petition was dismissed pursuant to Rule 56, Sec. 2 of the Rules of Court. The Supreme Court was of the opinion that the Commission on Elections had not unlawfully neglected to perform an act specifically enjoined as a duty, the duty involved being merely discretionary.

It is a well-settled principle of law that mandamus will only lie to compel an officer to perform a ministerial duty,² but not one that is discretionary.³ It is not denied that officers charged with the conduct of elections and with the ascertainment and promulgation of the results thereof may be compelled by mandamus proceedings to perform specific ministerial duties. The difficulty lies in that, with very few exceptions, the Constitution and the statutes have not defined with specificity which of the Commission's functions and duties are ministerial and which are not.

The Commission on Elections is an independent entity. By constitutional mandate, it has "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and exercise

¹ Ramos v. Commission on Elections, G.R. No. L-1882, April 10, 1948.

² Hoey v. Baldwin, 1 Phil. 551; Lamb v. Phipps, 22 Phil. 456; Cia Gral. v. French, 39 Phil. 34; Zobel v. City of Manila, 47 Phil. 866.

³ Inchausti v. Wright, 47 Phil. 866.

all other functions which may be conferred upon it by law. It shall decide, save involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and other election officials.⁴ It also has the duty to submit to the President and Congress, following each election a report on the manner in which such election has been conducted.⁵

A perusal of Republic Act No. 180, otherwise known as the Revised Election Code, will show the following powers and duties and the more important instances whereby the Commission is called upon to act:

1. The Commission shall have direct and immediate supervision over provincial, municipal, and city officials designated by law to perform duties relative to the conduct of elections, suspend any of such officials and recommend their removal to the President.⁶

2. It has the ministerial duty to receive certificates of candidacy and to immediately acknowledge receipt therefore as well as the preparation and distribution of certificates of candidacy for national offices.⁷

The Commission was justified in requiring petitioner to state specifically the party to which he belongs in view of the express provision of Sec. 27 of the Election Code that the candidate shall state in his certificate of candidacy the name of the political party to which he belongs if he belongs to any party.⁸ The Supreme Court affirmed the decision of the Commission as to the question of whether or not the Young Philippines party was entitled to have its plantilla of candidates printed in the official ballot and whether different political parties may nominate the same candidates for the office.⁹ Where petitioners have not been able to prove their organization's existence as a political party as contemplated by the Election Code, the Commission denied their right to have the party ticket printed on the official ballots for national elections.¹⁰

3. It prepares and furnishes the ballot boxes, forms, stationaries, and other materials necessary for the registration of voters and the holding of election.¹¹

4. It appoints election inspectors and poll clerks in accordance with the requirements of law,¹² their successors in case of disqualification¹³ as well as appoint substitutes in case of incapacity or absence of members of provincial board of canvassers.¹⁴

⁴ Sec. 2, Article X, Phil. Constitution.

⁵ Sec. 4, Article X, *id.*

⁶ Sec. 3, R.A. 180.

⁷ Sec. 35, 36, 37, *do.*

⁸ *Lava v. Vito, Luna, and Abreu*, 40 O.G. No. 22, p. 4308.

⁹ *Vinzons v. Commission on Elections*, 40 O.G. No. 17, p. 3478.

¹⁰ *Legasca v. Commission on Elections*, No. L-1649, Oct. 29, 1947.

¹¹ Sec. 73, *do.*

¹² Sec. 75, 76, *do.*

¹³ Sec. 82, *do.*

¹⁴ Sec. 159, *do.*

It has been decided that mandamus will lie to compel the proper officials to meet and appoint election officers in accordance with the requirements of law.¹⁵ However, in *Taylor v. Kolb*, 13 So 779, it was there held that the duties to be performed by certain officers requiring them to appoint three inspectors of election, "two of whom shall be members of opposing political parties, if practicable," are not purely ministerial but require judgment and discretion and consideration of evidence, and therefore mandamus while it lies to compel them to act, does not lie to control their action." The Commission in giving to so-called rebel candidates and free zone factions of the Nationalista Party the right to propose election inspectors has acted within the limits of the discretion granted it by law.¹⁶ Where no party is entitled to minority representation, the Commission could accordingly exercise its discretion in the appointment of the second inspector.¹⁷ And where the minimum number of voters required by law was polled by a mere coalition or alliance of minority parties, any of such aggroupment cannot claim the right to minority representation in the board of inspectors and the Commission shall have the discretion to choose the minority inspector.¹⁸ The purpose of giving the Commission a broad discretion on the matter is to enable it to select such persons as may aid it in the performance of one of its most important functions—to insure free, orderly, and clean elections.¹⁹

5. It decides cases appealed to it regarding corrections in the transfer of names from the permanent to the current list²⁰ and also cancellations in such list.²¹

6. It canvasses the votes for senators; declares those who are elected and furnishes a copy to the elected candidates; and takes charge of the drawing of lots in case of a tie between senatorial electees.

Mandamus is available to compel the board of canvassers or other proper official to discharge their ministerial duties in canvassing votes or returns.²² If the canvassers neglect or refuse to canvass the returns sent to them, mandamus will lie to compel them to do so.²³ Inasmuch as the duties of canvassing boards including the issuance of certificates

¹⁵ *Dingall v. Detroit*, 46 NW 938.

¹⁶ *Sumulong v. Commission on Elections*, 40 O.G. No. 18, p. 3663.

¹⁷ *Rimando v. Commission on Elections*, 40 O.G. No. 15, p. 3135.

¹⁸ *Sumulong v. Commission on Elections*.

¹⁹ *Vinzons v. Commission on Elections*, 40 O.G. No. 15, p. 3130.

²⁰ Sec. 103, do.

²¹ Sec. 104, do.

²² *Rosenthal v. State*, 32 Pac. 129.

²³ *McCoy v. State*, 36 Alt. 81; *Tanner v. Deene*, 33 SE 832; *Houston v. Steele*, 34 SW 6; *Hilton v. Grand Rapids*, 70 NW 1043; *Vance v. St. Clair County*, 54 NW 1084; *Aity. Gen. v. Iron County*, 31 NW 539; *State v. Hill*, 4 NW 514; *In re Sloan*, 25 Pac. 930.

of election are purely ministerial, it follows that if the canvassers neglect or refuse to perform their duties, mandamus will lie to compel them to issue a certificate to the person having the greatest number of votes as shown by the returns.²⁴ Mandamus proceedings will lie to compel election officers to perform their duty of settling a tie vote.²⁵

While the decisions, orders, and rulings of the Commission are subject to review by the Supreme Court²⁶ yet the Constitution and laws have not in definite terms defined its specific duties, except in very few particular instances. That being the case it is submitted that the remedy of mandamus would be available only in very few cases. As pointed out by the Supreme Court in the *Cortez v. Commission* case²⁷ "its functions and powers are limited by law. It has no legislative power to change or modify the law . . ." On the other hand, the body is clothed with broad discretion in the performance of its functions. Of this tenor is the judicial pronouncement in *Sumulong v. Commission on Elections*.²⁸ to wit:

"The Commission on Elections is a constitutional body. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of less responsible organizations. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created—free, orderly and honest elections. We may not agree with its choice of means but unless these are clearly illegal or constitute gross abuse of discretion, this court should not interfere. Politics is a practical matter, and political questions must be dealt with realistically—not from the standpoint of pure theory of law. Due regard to the independent character of the Commission, as ordained by the Constitution, requires that the power of this court to review the acts of that body should as a general proposition, be used sparingly but firmly in appropriate case."

— ROLANDO VILLARAZA

²⁴ *Howes v. Walker*, 17 SW 576; *Coll v. Detroit*, 47 NW 227; *Page v. Utah Commission*, 39 Pac. 499.

²⁵ *Johnston v. State*, 128 Ind. 16, 27 NE 422; *People v. Crabb*, 40 NE 319; *State v. Grace*, 53 NW 444.

²⁶ Art. X, Sec. 2, Const.

²⁷ *Cortez v. Commission on Elections*, G.R. No. L-1679, Oct. 16, 1947.

²⁸ *Sumulong v. Commission on Elections*, 40 O.G. No. 18, p. 366.

EFFECT OF A JUDGMENT OF EJECTION ON PERSONS NOT PARTIES TO THE ACTION

THE destruction and havoc wrought on realties by the last war has foisted especially on Manila and its suburban residents, the bogey of an acute housing shortage. An aftermath of this lopsided ratio between the spaces available for occupancy and the demand therefor is the complexity of lessor-lessee-sub-lessee relationships. A real estate owner would lease his property to a principal lessee. The lessee in turn, either for profit or convenience, re-leases part or all of his rented space to a sub-lessee who may and often does sublet it to others. These relationships have generated manifold legal problems. One such problem is the effect of a judgment of ejection against the original lessee on the sub-lessees who are not made parties to the action. The present study seeks to clarify that phase of the problem and give an answer to the inquiry.

The persons bound by a judgment of ejection are the (1) parties of record (2) those whose bonafide possession is disputed (3) those whose possession has been taken in connivance with the defeated litigant with the view to frustrate the judgment (4) their successors in interest (5) and privies.¹

A judgment to be binding under the doctrine of *res adjudicata* must be for the same cause and between the same parties or their privies. The term "parties" include all persons who though not directly interested in the subject matter have "a right to make a defense or control the proceedings and to appeal from the judgment."² Successors in interest refer to persons who after the beginning of an action succeed to the interest of one of the parties.³ Privies are those who succeed to the rights or properties of the parties to the judgment and include executors administrators, assignees, partners,⁴ heirs, and sublessees.⁵

¹ Moran, Rules of Court.

² Words and Phrases, vol. 33, p. 731.

³ Restatement of the Law, No. 89, p. 433.

⁴ State ex rel Terry v. Holthamp, MO 51 SW 2nd 13, 17.

⁵ Anderson v. Steger, 10 NE 665, 666; 173 Ill. 112.

Privies are either in law, by blood, or by estate.⁶ Privies in law are the executors or administrators of the deceased lessee.

Privity by blood refers to the relatives of the parties. Thus, in an ejection proceeding, the court so held that the defendant-lessee and all members of his family who occupy the premises by his consent, are all bound by the judgment although technically, only the lessee was made party defendant.⁷ The wife of the lessee is presumed to be in possession under her husband and has been held bound by a writ of dispossession against him.⁸ The children of the lessee are similarly bound.⁹ Privity by estate extends between the lessor and the lessee. So does it cover the lessee and sub-lessee relationship.¹⁰ However no privity exists between the lessor and the sublessee.¹¹

The sublessee holds the premises subject to the right of the lessee and when such right terminates, the former's right terminates too.

If there is a forfeiture of the lease because of the violation of the terms like non-payment of rents, the sublessee loses his rights despite his payment in advance of the rents.¹² The sublessee acquires as to the original lessor, no greater rights in the use and enjoyment of the premises than the original lessee and express stipulations or restrictions contained in the original lease apply with equal force upon him.¹³

Thus, when the sheriff of Manila undertook to execute a judgment of ejection against a lessee, the sublessees then occupying the premises sought the stay of the order claiming that not being parties to the action, they were not bound by the judgment.

The sole question is whether the eviction order can prejudice the sublessees who have not been named parties to the ejection proceedings. The Supreme Court decided the issue in the affirmative.¹⁴

A boarder is in privity with the lessee and his rights are intertwined with that of the latter. He is not entitled to notice to quit nor

⁶ *Alling v. Brevda*, DCNY 17 F. Supp. 586, 987.

⁷ *Johnston v. Duncan*, 67 GA 61, 70.

⁸ *Gozon v. de la Rosa*, G.R. No. L-906, January 30, 1947.

⁹ *Freeman on Judgment*, No. 475.

¹⁰ *Church v. Shulter*, 4 App. Div. 378; 38 NYS 842.

¹¹ *Mygatt v. Coe*, 11 LRA 646.

¹² *D'Astostino v. Sheppard*, 130 ATL 520, NJ.

¹³ *Am. Jur.*, 32:341, No. 422.

¹⁴ *Ng Siu Tam v. Amparo*, G.R. No. L-2130, May 12, 1948.

need he be made a party to the action.¹⁵ The same rule applies to a lodger¹⁶ and a house guest.¹⁷

A judgment of eviction binds the *aforecited* persons regardless of whether they are made parties to the action or not. All others are considered strangers and such judgment is not binding on them.¹⁸ It is not *res adjudicata* and is not conclusive for or against them nor are they barred nor estopped by it.¹⁹

Every person in actual possession of a land or building is presumed to have a legal claim therein²⁰ and such right is to be respected and protected by law. A summary ejection of persons found in the premises after the lessee has left the place, whether such persons claim to be sublessees or mere intruders constitute a deprivation of property rights without due process of law.²¹ In such cases the proper procedure followed is to order a summary hearing on the matter of such possession and to deny or to accede to the enforcement of the judgment as the finding shall warrant.²² It is the practice here to cite the possessors to appear and show cause why they should not vacate the premises.²³ The court has ample powers to do this pursuant to Section 6, Rule 12.1 of the Rules of Court, to wit:

“When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by these rules, any suitable process or mode of procedure may be adopted which appears most conformable to the spirit of said rules.”

— CAMILO QUIAZON

¹⁵ McAdam on Landlord and Tenant, vol. 1, 3rd Ed., p. 619.

¹⁶ Amber v. Srimor, 7 Robt. 561.

¹⁷ Cruz v. Roxas, 42 O.G. 488.

¹⁸ Andres v. Pimentel, 21 Phil. 429.

¹⁹ Corpus Juris Secundum, Vol. 50, 375, No. 820.

²⁰ Art. 446, Civil Code.

²¹ Omana v. Gatulayao, 40 O.G., p. 2277, Sept. 13, 1941.

²² Moran, Rules of Court.

²³ Proddgett v. de la Rosa, G.R. No. L-783.

THE RIGHT OF THE MILITARY OCCUPANT TO ESTABLISH COURTS IN THE OCCUPIED TERRITORY

THE right of the victor to govern the territory of the enemy during its military occupation is one of the incidents of war. In so doing, the belligerent occupant is given great latitude with respect to the means and mode of governing the territory so occupied.¹ In consequence of his assumption of gubernatorial prerogatives, the occupant "shall take all steps in his power to reestablish and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."² He possesses absolute power to enact laws and administer them, to substitute his will for the prior existing law, to replace the civil and judicial administration with a military administration.³ This freedom is partly due to the ineludible necessity for the occupant to protect and buttress the security, support, efficacy and success of his own forces in a hostile land. Thus we deduce from the authorities that the power of the occupant is broad and absolute in matters affecting his safety. "But in affairs which do not affect the efficacy and success of his military operations, his power is qualified by the transient character of his administration".⁴

The power of a military government of an occupied territory undoubtedly extends to the establishment of courts of justice for the adjudication of civil cases and for the trial and punishment of criminal offenses.⁵ "In practice, the local ordinary tribunals are authorized to continue administering justice and the judges and other judicial officers are kept in their posts if they accept the authority of the belligerent occupant or are required to continue their positions under the supervision of the military or civil authorities appointed by the commander-in-chief of the occupant."⁶ But if on occupying the territory the courts are closed and it is impossible to administer criminal and civil justice according to law, there is the necessity of establishing new ones.⁷

In the United States, the weight of authority supports this doctrine. In the case of *Santiago v. Nogueras*, the U. S. Supreme Court held:

¹ Hyde, *International Law*, Vol. III, p. 1882.

² Article 43, Sec. III, Hague Conventions of 1907.

³ Hall, *International Law*, p. 498-499.

⁴ *Peralta v. Director of Prisons*, 40 O.G. No. 2, p. 198; 207.

⁵ *American Jurisprudence*, Vol. 56, p. 296. *Coleman v. Tennessee*, 97 U.S. 509; 517.

⁶ *Go Kim Cham v. Valdez*, 41 O.G. No. 8, Nov. 1945, p. 779; 786.

⁷ Wilson, *International Law*, p. 313; Lauterpacht, *Oppenheim's International Law*.

*"But whatever may be the limits of the military power, it certainly must include the authority to establish courts of justice which are so essential a part of any government. So far it seems to have been thought in Leitsendorfer v. Webb. With this thought in mind, the military power not only established this particular court (U.S. provisional court) in Porto Rico, but as well a system of courts which took the place of the courts under Spanish sovereignty and were continued by the organic act. The same course was followed in the Philippines."*⁸

Thus we note that the establishment of the Provisional Court of Louisiana during the American Civil War, was held to have been proper.⁹ The creation of courts by the Territorial Government of New Mexico was upheld.¹⁰ It has also been sustained that the Constitution did not prohibit the creation by military authority of courts for the trial of civil cases during the Civil War in conquered portions of the insurgent states.¹¹ In another case, the creation of the U.S. Provisional Court of Porto Rico between April 11, 1899, when the ratification of the treaty of peace by which Porto Rico was ceded to the United States were exchanged and May 1, 1900, when the Act of April 12, 1900, establishing a civil government in Porto Rico took effect, was held to be within the scope of the military power.¹²

The occupant may also establish military commissions to act upon cases involving persons not in the military forces and in cases for which the civil court cannot act.¹³ Offenses against military law are tried as the law may prescribe, but usually by military tribunals. It is unquestioned that it is within the authority of the belligerent occupant to establish court-martials. "A court-martial is one of the ordinary judicial institutions of the country, employed in time of peace as in time of war to administer according to the articles of war upon persons actually or constructively in the military or naval service."¹⁴

In the Philippines, the same doctrine has been consistently applied. In the case of *Duarte v. Dade*,¹⁵ the Supreme Court, citing *Santiago v. Nogueras*, has ruled that the military government had the authority to establish judicial tribunals, and the fact that such a step had been ap-

⁸ *Santiago v. Nogueras*, 214 U.S. 260.

⁹ *The Grapeshot v. Wallerstein*, 7 Wall. 563.

¹⁰ *Leitsendorfer v. Webb*, 61 U.S. 891; 892. *Burke v. Tregue*, 19 Wall. 519.

¹¹ *Mechanics and Traders' Bank v. Union Bank*, 22 Wall. 276; *Burke v. Tregue*, 19 Wall. 519.

¹² *Rutledge v. Fogg*, 3 Cald. 554.

¹³ *Wilson, International Law*, p. 113; *Ex parte Vollandigham*, 1 Well. 243; *Ex parte Ortiz*, 100 F. 955.

¹⁴ *Ex parte Milligan*, 4 Wall. 2; *Carver v. U. S.*, 111 U.S. 609; *Dyne v. Hoover*, 20 How. 65; *Carter v. McClaughry*, 183 U.S. 365; *Jecker v. Montgomery*, 13 How. (U.S.) 498; 499.

¹⁵ *Duarte v. Dade*, 35 Phil. 35; 44.

proved by the U.S. Congress showed the validity of such a creation. General Orders No. 8 of August 22, 1898, while recognizing for certain purposes the local civil courts, provided for the creation not only of civil courts for the trial of given offenses but also for military commissions for the trial of cases of murder and homicide. General Orders No. 64 of 1900 provided that the department commander might cause offenses to be tried before military commissions or provisional courts. "Such courts or tribunals organized in conquered territory have then jurisdiction prescribed by the military authority constituting them, which possesses plenary legislative power to establish courts, to define crimes and to prescribe the corresponding punishments."¹⁶ So we find that the orders of the Commanding General, acting under the authority of the President of the United States, creating new courts, whenever and wherever in his judgment the administration of justice by that means was feasible all lead to the clear conclusion that it is within the power of the military occupant to establish such courts.¹⁷

After the liberation of the Philippines, the Supreme Court found itself confronted with the same question. In cases brought before it, it has ruled that under the principles of International Law, courts can be legally constituted by the military occupant¹⁸ for the protection and benefit of the people or inhabitants of the occupied territory and those not in the military service, in order that the ordinary pursuits and business of society may not be unnecessarily disturbed.¹⁹ The Supreme Court has sustained the creation of the Court of Special and Exclusive Criminal Jurisdiction, established by the Philippine Executive Commission during the Japanese occupation.²⁰ It has ruled that even assuming that the Court of Appeals of Northern Luzon was a new court created by the belligerent occupant, it was a valid creation by a *de facto* government.²¹ It took judicial notice of the fact that in the occupied areas there were courts established by the Philippine Executive Commission and the occupation Republic of the Philippines.²² As a necessary corollary to such rulings, the judgments and decrees, not of a political complexion, of the ordinary courts in these Islands during the Japanese occupation are held to be good and valid,²³ they being considered acts of a *de facto* government.²⁴

¹⁶ Cabantag v. Wolfe, 6 Phil. 273.

¹⁷ U. S. v. Beecham, 15 Phil. 292; 300.

¹⁸ Ognir v. Director of Prisons, G.R. L-1870; Sameth v. Director of Prisons, 43 O.G.

¹⁹ Eforma v. Ravelo and Dir. of Lands, 44 O.G. No. 7, July 1948; p. 2247; 2255.

²⁰ Peralta v. Director of Prisons, 42 O.G. No. 2, p. 198; 207.

²¹ Alcantara v. Director of Prisons, 42 O.G. No. 3, March 1946, p. 480; 482.

²² Palma v. Celda, G.R. L-2187, Aug. 20, 1948.

²³ Ibañez v. Hernandez, 44 O.G. No. 3, March 1948, p. 889; 891; Herrero v. Crisostomo, 42 O.G. No. 6, June 1946, p. 116; 1167; Asican v. Quirino, 42 O.G. No. 7 July 1946, p. 1500; 1502; P. P. I. v. Benedicto Jose, G.R. L-22, Dec. 20, 1945.

²⁴ Go Kim Cham v. Valdez, 41 O.G. No. 8, Nov. 1945, p. 179; 786.

We gather, therefore, from the authorities and decided cases that although the military occupant should respect, unless absolutely prevented by the exigencies of the occupation, those laws regarding public order and regulating the commercial and social life of the inhabitants, he has in all respects, the powers of a *de facto* government and may change the laws or make new ones. But such a power is based on necessity²⁵ and therefore, may only exercised "when it is necessary for the occupier to do so for the control of the country and the protection of his army, subject to the restrictions or limitations imposed by the Hague Regulations, the usages established by civilized nations, the laws of humanity and requirement of public conscience."²⁶

— MILAGROS C. NARTATEZ

²⁵ Wilson, *International Law*, p. 313.

²⁶ *Laurel v. Misa*, 44 O.G. No. 4, April 1948, p. 1176; 1781.

* * *

LIBERTY

Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can save it.

LEARNED HAND