RECENT DECISIONS*

Remedial Law.—*Capacity to sue; time when a guardian* ad litem *may be appointed; conclusiveness of judgment on ground that there is no cause of action.*

RUFINO CASTAÑO ET AL. v. CONRADO CASTAÑO ET AL.
G. R. No. L-7192, January 31, 1955

The instant case involved the following facts: Plaintiffs, adulterous children of the deceased Ramon Castaño, filed an action against defendants, the legitimate children of the said deceased, and alleged in the complaint that upon the death of their common father, the latter's property was partitioned among the defendants, and that they (the plaintiffs, who were minors, and their mother) were without property or occupation from which to derive support. The defendants moved for the dismissal of the complaint on three grounds:

> (1) that the plaintiffs, being minors, had no capacity to sue[1] because the guardian proposed (their mother) in their complaint was not appointed at the time of filing said complaint;
>
> (2) that the court had no jurisdiction over the persons of the defendants[2] because even as the plaintiffs' mother was later appointed by the court as guardian *ad litem*, the order of appointment was not attached to the original copy of the summons served upon the defendants; and
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> (3) that the action was barred by a prior judgment[3] rendered in 1940 in a civil case between the same parties, the same things, and for the same cause.[4]

The lower court consequently ordered the dismissal of the plaintiffs' complaint. On appeal, the Supreme Court reversed the order of dismissal and ruled against the aforementioned grounds for dismissal.

As to the first and second grounds: The record showed that at the time of the service of summons upon the defendants, no order of appointment of a guardian *ad litem* had yet been entered. It was, however, established that before the court actually heard the defendants' motion to dismiss, it appointed the plaintiffs' mother as their guardian *ad litem*.[5] The plaintiffs therefore had capacity to sue. As to the objection that the

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* Writers of the notes on recent decisions acknowledge the help extended by Messrs. Conrado Santos and Vicente Mendoza.

[1] Rule 8, Sec. 1, par. (c). But minors may sue or be sued through a guardian *ad litem* appointed by the court. Rule 3, Sec. 5.

[2] Rule 8, Sec. 1, par. (a).

[3] Rule 8, Sec. 1, par. (e).

[4] Defendants here invoked the doctrine of res judicata under Rule 39, Sec. 44 in relation to Rule 30, Sec. 3.

[5] See note 1 *supra*.

order of appointment was not attached to the original copy of the summons served upon the defendants, this defect was deemed by the Supreme Court a mere technicality. The Rules of Court are to be "liberally construed in order to promote their object, and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding."[6] The service of summons was sufficient to subject the defendants to the jurisdiction of the court.[7]

The third ground for the dismissal which the Supreme Court considered erroneous, invites a more extended study. The circumstances which attended the 1940 civil case between the same parties which was pleaded as a bar to the instant action were as follows: the complaint of the plaintiff was for the same purpose as in the case under review; that the defendants demurred on the ground that the complaint stated no cause of action[8] since the property of their common father had not yet been partitioned nor distributed; that upon failure of plaintiffs to amend their complaint upon order of the court, the said court ordered the dismissal of the action.[9]

Several questions immediately come to the fore. The defendants in this case invoked Section 3, Rule 30 of the Rules of Court which provides that a dismissal for failure of plaintiffs to comply with the order of the court to amend their complaint, was an adjudication upon the merits,[10] and as such, constituted a bar to the instant action under the rule of res judicata.[11] Was Rule 30, Section 3 the proper rule to apply in this case? The Court answered in the negative, holding that the effects of the order of dismissal should be governed by the old rules of court which provided—

> ". . . but if the party fails to amend his pleading within the time limited or elects not to amend, the court shall render such judgment upon the subject-matter involved in the pleading and demurrer

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[6] Rule 1, Sec. 2.

[7] Pagalaran v. Bal-latan, 13 Phil. 135 (1909). The most that the lower court could have done was to order that a new summons with a copy of the appointment, or the latter merely, be served upon the defendants.

[8] A cause of action is the delict or wrong by which the defendant violates the rights of the plaintiff. See I MORAN, COMMENTS ON THE RULES OF COURT (1950) 11 and I FRANCISCO, ANN. RULES OF COURT IN THE PHIL. (1940) 25 *et seq.*

[9] Sec. 101, Code of Civil Procedure; Soncuya v. Junta National de Prestamos e Inversiones, 69 Phil. 602 (1940); Martinez v. Pampolina, 67 Phil. 167 (1939).

[10] Under said Rule 30, Sec. 3, "when plaintiff fails to . . . comply with . . . any order of the court, the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."

[11] The doctrine of res judicata requires the existence of a judgment by a court of competent jurisdiction on the merits of the cause, that the subsequent litigation relates to the same matter and is among the same parties or their privies. *See, e. g.*, Paz v. Inandan, 75 Phil. 608 (1945); De Leon v. Padua, 75 Phil. 548 (1945); Zugeldia v. Gutierrez Hmos., 70 Phil. 419 (1940); Fernandez v. Sebido and Gomachiao, 70 Phil. 151 (1940); Roman Catholic Archbishop of Manila v. Bank of the Phil. Is., 58 Phil. 684 (1933); Aquino v. Director of Lands, 39 Phil. 850 (1919); Isaac v. Padilla, 31 Phil. 469 (1915); and Enriquez v. Watson & Co., 6 Phil. 84 (1906).

> as the law and the facts of the case as set forth in the pleading warrant. . . ." [12]

inasmuch as the order of dismissal was rendered under said old rules.[13] Under the old procedure, the dismissal was without prejudice.[14]

Was the 1940 order of dismissal then a final judgment barring the present action? The Court held that the said order of dismissal was final and conclusive *only as to the absence of a sufficient cause of action at that time* because the defendants who were sued in that case had not yet received their share, *but* said dismissal was not a bar to the new complaint, where the allegation was made that defendants had already received their shares in the inheritance. Under the new complaint, the cause of action had accrued against the appellees, the cause upon which the obligation of the latter depended having happened. For the rule is that a person who relies on a former judgment as a conclusive adjudication of any controversy must take the prior judgment for what it appears to be on its face; and if it is not a judgment on the merits (which was the effect of the 1940 order of dismissal), it does not conclude the right of action.[15] From another point of view, the Supreme Court declared that the 1940 case was dismissed because the action was premature, and therefore the order of dismissal was not a bar to the present action.[16]

Apparently, the Supreme Court applied in the case under review one of the two main rules governing the doctrine of res judicata — that of conclusiveness of judgment — which means that a point or question which was actually and directly in issue in a former suit (*i. e.*, the sufficiency or insufficiency of the cause of action in the 1940 case) and which was there judicially passed upon and determined by a court of competent jurisdiction cannot again be drawn in question in any future action between the same parties or their privies.[17] The dismissal in 1940 operated only as a conclusive judgment as to the sufficiency of the cause of action at that time, and nothing more.

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[12] Sec. 101, Code of Civil Procedure.

[13] Even under Rule 133 of the present Rules of Court, as regards cases pending at the date of effectivity of the new rules (July 1, 1940), the former or old procedure is to apply when in the opinion of the court, the application of the new rules would not be feasible or would work injustice. See also Gallardo and Garcia v. Banson and Roque, 74 Phil. 340 (1943).

[14] I MORAN, COMMENTS ON THE RULES OF COURT (1950) 562.

[15] Bayot v. Zurbito, 39 Phil. 650, 651 (1919). As to what is deemed to be adjudged under the present rules, see Rule 39, Sec. 45 of the Rules of Court.

[16] Maxion v. Manila R.R., 44 Phil. 597, 607 (1923); 34 C.J. 777-8.

[17] The other rule governing res judicata is called "bar by former judgment." For an extensive discussion of these two main rules, see I FRANCISCO, *op. cit. supra* note 8, at 1016 *et seq.* and I MORAN, *op cit. supra* note 14, at 785 *et seq.*

Remedial Law.—*Conclusiveness of judgment by consent; jurisdiction over the judgment and jurisidiction over the case distinguished.*

MIRANDA v. TIANGCO ET AL.
G. R. No. L-7044, January 31, 1955

The facts were that appellant Miranda, as sublessee of appellee Dominguez, was sued by the latter before the municipal court for non-payment of rentals; that at the trial the parties submitted a compromise agreement[1] which the court incorporated in its decision rendered on November 28, 1947; that when an order of execution was about to be entered against appellant (defendant in that case), another compromise was submitted which the court approved on June 23, 1948;[2] that upon failure of Miranda to comply again wtih the agreement, the court, upon Dominguez' petition, ordered the demolition of Miranda's house on February 18, 1949; that on April 7, 1949, Miranda filed the instant action in the Court of First Instance praying for the annulment of the second agreement on the ground that the municipal court had no jurisdiction to approve and enforce it and on the further ground that it modified the previous order of the court and/or the judgment rendered on November 28, 1947 had long become final and executory;[3] that the Court of First Instance dismissed Miranda's complaint; that Miranda subsequently appealed from this order of dismissal to the Supreme Court.

The purpose of Miranda's complaint before the Court of First Instance was in effect, in the opinion of the Supreme Court, for the annulment of the final judgment of the municipal court. Could his action prosper? The Court gave a negative answer, holding that the judgment of the municipal court was a judgment by consent. A judgment by consent of the litigants is more than a mere contract *in pais;* having the sanction of the court and entered as its determination of the controversy, it has all the force and effect of any other judgment, being conclusive as an estoppel upon the parties.[4]

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[1] This is allowed under Sec. 10, Rule 4 of the Rules of Court which provides: "*Offer to compromise.*—*If* the defendant, at any time before the trial, offers in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor, ..." In proceedings before superior courts, the applicable rule is Sec. 2, Rule 33 which provides thus: "*Agreed statement of facts.*—The parties to any action may agree, in writing, upon the facts involved in the litigation, and require the judgment of the court upon the questions of law arising from the facts agreed upon, without the introduction of evidence."

[2] Note that this order approving said compromise was given after almost seven months had elapsed since the rendition of the original judgment.

[3] Under Sec. 18, Rule 4 of the Rules of Court, execution shall issue upon a final judgment of an inferior court after the time for perfecting an appeal has been perfected. The party aggrieved by a decision of an inferior court has fifteen days to perfect his appeal, starting from his notification of the judgment. See Sec. 2, Rule 40 of the Rules of Court.

[4] Rivero v. Rivero, 59 Phil. (1933); Manila R.R. v. Arzadon, 20 Phil. 452 (1911). A decision in accordance with the terms of a compromise settlement has the authority of res judicata. Castillo v. Bustamate, 64 Phil. 839 (1937). A judgment entered on stipulation is none the less a judgment of the court because

The basis of the judgment of the municipal court was the stipulation of facts submitted by the parties and their compromise fixing the liability of appellant for the rentals and the manner in which his obligation was to be fulfilled. It was therefore, said the Court, a judgment on the merits,[5] and as such, under the express provision of Section 44, Rule 39 of the Rules of Court,[6] was conclusive between the parties not only as to the question on which the parties made stipulation but also as to any other possible issue which the parties could have raised in the case.

It is to be noted that the original judgment was rendered on November 28, 1947. Under the Rules of Court the judgment of an inferior court becomes final and executory after the time for perfecting an appeal has expired and no appeal has been perfected.[7] The appellant therefore claimed that the municipal court no longer had jurisdiction to approve the agreement of June 23, 1948, and subsequently to enforce the terms of the agreement, as the original judgment had long become final. This contention was erroneous, the Supreme Court declared, and was based on a failure to distinguish between the jurisdiction of the court over its judgment to change, alter, or modify it and the jurisdiction of the court over the case to enforce said judgment. The former terminates when the judgment becomes final and is governed by Rule 39, Section 1;[8] whereas the latter continues even after the judgment has become final for the purpose of execution and enforcement, being governed by Rule 39, Section 6.[9] The judgment of November 28, 1947 was not in any way disturbed by the order approving the agreement submitted on June

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consented to by the parties. Mercado and Lising v. Macapayag and Pineda, 69 Phil. 403 (1940). See also Stevenson & Co. v. Collector of Internal Revenue, 51 Phil. 183 (1927).

[5] "A judgment is 'upon the merits' when it amounts to a declaration of the law as to the respective rights and duties of the parties, based upon the ultimate fact or state of facts disclosed by the pleadings and evidence, and upon which the right of recovery depends, irrespective of formal, technical, or dilatory objections or contentions." Ordway v. Boston, 69 N.H. 429, 430, 45 A. 243, as cited in I FRANCISCO, ANN. RULES OF COURT IN THE PHIL. (1940) 1028. A judgment on the merits is res judicata. Meralco v. Artiaga, 50 Phil. 144 (1927).

[6] "*Effect of judgment.*—The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, . . . : (*b*) . . . is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity."

[7] See note 3 *supra*.

[8] "*Execution as of right.*—Execution shall issue upon a final judgment or order upon the expiration of the time to appeal when no appeal has been perfected." The prevailing party is therefore entitled to have his judgment executed as of right when the defeated party loses his right to appeal. Phil. Trust Co. v. Santamaria, 53 Phil. 463 (1929); De Fiesta v. Llorente and Manila R.R., 25 Phil. 554 (1913); and Behn, Meyer & Co. v. McMicking, 11 Phil. 276 (1908).

[9] "*Execution by motion or independent action.*—A judgment may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action." And under Art. 1144, par. (3) of the new Civil Code, an

23, 1948 because all that was done was to consolidate the rents remaining unpaid in accordance with the first agreement with those that had fallen due thereafter and up to the time of the later compromise and to provide a method of payment thereof.[10]

Remedial Law.—*Propriety of exclusion of pleadings from record on appeal.*

JAI-ALAI CORP. v. CFI OF MANILA ET AL.
G. R. No. L-7972, January 24, 1955

An appeal from a decision of the Court of First Instance is perfected by serving upon the adverse party and filing with the trial court within thirty days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal.[1] The record on appeal shall include the order or judgment from which the appeal is taken, and, in chronological order, copies of all pleadings, petitions, motions and all interlocutory orders relating to the appealed order or judgment.[2]

This was what the petitioner corporation did in submitting its record on appeal. At the hearing for approval of the record,[3] the defendant objected to the inclusion of twelve pleadings and orders on the ground that they were not appealed from and were irrelevant and immaterial to the appealed decision. The opposition was sustained by the respondent court. The appellant therefor petitioned for certiorari[4] to annul said order of exclusion and for mandamus[5] to direct the trial court to approve *in toto* the original record on appeal.

The Supreme Court, in granting the writs prayed for, held that the lower court abused its discretion as the orders and pleadings under consideration were relevant to the judgment appealed from. Under Section 7, Rule 41 of the Rules of Court, it is to be noted that at the

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action to enforce a judgment may be brought within ten years from the date the judgment becomes final.

The Supreme Court dismissed the appeal for other reasons. Under Sec. 68, par. (d) of Rule 123, the original judgment of the municipal court was conclusive upon the parties and was therefore conclusively presumed and could not be impunged by any of the parties thereto. Nor was any of the grounds for setting aside a judgment (Sec. 45, Rule 123) claimed by appellant as basis of his action before the CFI.

[10] The other question in this appeal was: Could the parties enter into the new agreement as to the rents falling due after the original judgment and was the municipal court empowered to act on such an agreement? The Court answered that as the case was still under the jurisdiction of the court for the execution of the original judgment, the plaintiff (Dominguez) may not institute a new action to recover the rents that had fallen due pending the complete payment of the judgment amount. Dominguez was prohibited from doing so by the rule against multiplicity of suits. (Sec. 2, Rule 5).

[1] Rule 41, Sec. 3.
[2] Rule 41, Sec. 6
[3] Rule 41, Sec. 7.
[4] Rule 67, Sec. 1.
[5] Rule 67, Sec. 3.

hearing for the approval of the record, the "trial judge may approve it as presented or, upon his own motion or at the instance of the appellee, may direct its amendment by the *inclusion* of any matters omitted which are deemed essential to the determination of the issue of law or fact involved in the appeal," and the "appellant . . . shall redraft the record by *including* therein . . . such additional matters as the court may have directed him to incorporate . . ." As the rule stands, only "inclusion" is provided. But the rule is not so inflexible as it seems, for the Supreme Court itself recognized the right of trial courts to order the exclusion of matters that are unnecessary in the earlier case of *Castro v. Court of Appeals*.[6] But in that same case the Supreme Court warned that trial courts should be cautious in ordering the exclusion of matters which at first sight appear to be irrelevant but may turn out to be of value in determining the questions at issue.[7] The fear that the inclusion of the rejected pleadings and motions may cause the appeal to get unnecessarily involved should, on the contrary, prove advantageous as it will enable the appellate court to have all matters before it for a just determination of the questions before it, thereby obviating possible remands or new trials.[8] And the objection that the increased costs of printing the additional matters would be shifted to appellee in case the appeal succeeds is a groundless fear since the Rules of Court provides that when the record contains any unnecessary, irrelevant, or immaterial matter, the party at whose instance the same was inserted or at whose instance the same was printed, shall not be allowed as costs any disbursement for preparing, certifying, or printing such matter.[9]

Remedial Law.—*Dismissal upon failure to prosecute.*

ELSER, INC. ET AL. v. MACONDRAY & CO. ET AL.
THE AUTOMOBILE INSURANCE CO. v. MACONDRAY & CO. ET AL.
G. R. Nos. L-5325-6, January 19, 1955

The facts in these inter-related cases were simply these: The plaintiffs and defendants had filed their respective pleadings so that by June, 1947, the cases were ready for trial.[1] For a period of four years, however, the plaintiffs did nothing to have the cases tried by the Court of First Instance of Manila. Consequently, the lower court, acting under

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[6] 42 O.G. 8, 1821 (1946).

[7] Similarly, in Smith, Bell & Co. v. Santamaria, 49 Phil. 820 (1926), the Court stated that caution should be exercised by the trial courts in ordering the exclusion from a record on appeal of matter which the appellant has thought necessary for the proper development of his argument.

[8] Prats & Co. v. Phoenix Insurance Co., 52 Phil. 807 (1929).

[9] Rule 131, Sec. 5.

[1] A case is ready for trial when the issue is joined, *i. e.*, when the last pleading has been filed. Rule 31, Sec. 1.

Section 3, Rule 30 of the Rules of Court,[2] dismissed the cases for failure to prosecute. Hence, this appeal.

The question was whether or not the order of dismissal for failure to prosecute was proper. The Supreme Court held that it was so. It is true that under the Rules of Court, the clerk of court has the duty to include the case, when the issue is joined, in the trial calendar of the court,[3] and that upon its entry in the corresponding trial calendar, the clerk shall fix a date for trial and shall cause a notice thereof to be served upon the parties.[4] But this duty of the clerk, the Supreme Court declared, did not relieve the plaintiffs in these cases from their obligation to have their cases set for trial.[5] The excuse that the plaintiffs were waiting for the distribution of five-hundred similar cases before the different branches of the Court of First Instance of Manila was not considered a valid excuse. Due diligence to prosecute was lacking. Courts have an inherent right to dismiss a suit for failure to prosecute with due diligence.[6]

Remedial Law.—*Claim for damages made for the first time in a motion for reconsideration of a decision of the Supreme Court cannot be entertained.*

IMPERIAL v. PHIL. AIR LINES, INC.
G. R. No. L-4923, January 10, 1955

The rule is that the judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.[1] This liberal rule is supported by decided cases.[2] But relief should have a necessary relation with

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[2] "When plaintiff fails to appear at the time of the trial, or to prosecute his action for an unreasonable length of time . . . the action may be dismissed upon motion of the defendant or upon the court's own motion. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise provided by court."

[3] Rule 31, Secs. 1 and 2.

[4] Rule 31, Sec. 3.

[5] For a similar holding, see Smith, Bell & Co. and Insurance Co. of North America et al. v. American Pres. Lines and/or Manila Terminal Co. et al., G.R. Nos. L-5304-5324, April 30, 1954.

[6] Brandt v. Behn, Meyer & Co., 38 Phil. 351, 354 (1918). An order of a court, in pursuance of an inherent and statutory power, dismissing an action for want of prosecution, will not be reversed by the appellate court unless there has been an abuse of discretion. Every presumption is in favor of the correctness of the court's action. It is incumbent on the appellant to establish affirmatively that there has been an abuse of discretion by the trial court. Grigsby v. Napa County, 36 Cal. 585 (1869), cited in I FRANCISCO, ANN. RULES OF COURT IN THE PHIL. (1940) 673.

[1] Rule 35, Sec. 9.

[2] See, *e. g.*, Santos v. Macapinlac, 51 Phil. 224 (1927); Alzua v. Johnson, 21 Phil. 308 (1912); and Iturralde v. Magacanas, 9 Phil. 599 (1908).

the allegations and prayer in the pleadings and in the evidence adduced.[3] In the case of appeal, however, no error which does not affect the jurisdiction over the subject matter will be considered unless stated in the assignment of errors and properly argued in the brief, save as the court, at its option, may notice plain errors not specified, and also clerical errors.[4]

And where a case has already been decided by an appellate court, and later a motion for reconsideration or re-hearing[5] is made in respect to said decision where a claim for damages is made for the first time, it is improper for the court, in the exercise of its appellate jurisdiction, to entertain such a claim. The instant case is authority for this rule. The plaintiff-appellant in this case, after the rendition by the Supreme Court of its decision, filed a motion with said tribunal asking that the decision be reconsidered and set aside and that a new one be rendered, adjudicating in movant's favor a sum not less than ₱15,000 for moral damages sustained by him in the accident which gave rise to the case in the first instance. The Supreme Court, in denying the motion, resolved thus:

> ". . . the question whether or not he may recover moral damages was not put in issue either in the lower court or before this Court, prior to the rendition of its aforesaid decision. Obviously, therefore, it is improper in the exercise of our appellate jurisdiction, even to entertain the plaintiff's claim for moral damages, the same having been made, for the first time, after the promulgation of the aforesaid decision."

The rule could not be otherwise, because aside from the fact that a rehearing rests on sound judicial discretion,[6] the office of a motion for reconsideration is to point out mistakes of law or fact, or both, which it is claimed the court has made in reaching its conclusion, or to present to the court some point which it overlooked or failed to consider, by reason whereof its judgment is alleged to be erroneous,[7] and not to submit a claim for the first time. Even a change of theory upon rehearing is prohibited.[8]

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[3] Ibañez v. Hongkong and Shanghai Banking Corp., 22 Phil. 572 (1912).

[4] Rule 53, Sec. 5. An error, not assigned by the appellant in his brief or discussed during the course of the trial in both instances, cannot be considered by the Supreme Court in finally deciding the action on appeal. Hernaez v. Montelibano, 34 Phil. 954 (1916). Unless special reasons exist, courts of appeal are not inclined to consider questions raised for the first time before them. Williams v. McMicking, 17 Phil. 408 (1910); Toribio v. Decasa, 55 Phil. 461 (1930).

[5] Rule 54, Secs. 1-3.

[6] 4 C.J. 622.

[7] I FRANCISCO, ANN. RULES OF COURT IN THE PHIL. (1940) 1322 and cases cited therein.

[8] Agoncillo v. Javier, 38 Phil. 424 (1918); Molina v. Somes, 24 Phil. 49 (1912).

Remedial Law.—*Acquittal in criminal action not a bar to civil proceedings upon the same subject matter.*

DE GUZMAN v. ALVIA
G. R. No. L-6207, February 21, 1955
REP. OF THE PHIL. v. ASSAD
G. R. No. L-4566, January 24, 1955

The general rule is that a person criminally liable is also civilly liable.[1] Civil liability arising from crime is recognized by the Civil Code of the Philippines.[2] But a person who is not criminally responsible may still be liable civilly. Thus, acquittal on the ground that the guilt has not been proved beyond reasonable doubt does not bar a civil action for damages.[3] And under the present Rules of Court, extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.[4] Before the promulgation of the present Rules of Court,[5] the decisions of the Supreme Court seemed to indicate that the effect of acquittal in a criminal prosecution was an "insuperable obstacle to civil proceedings."[6] The aforementioned rule under the Rules of Court is said to have repealed those cases which enunciated the doctrine that failure to secure conviction in the criminal action was fatal to a subsequent civil suit upon the same subject matter.[7]

This present rule was thus applied in the case of *De Guzman v. Alvia*. Defendants here were agents of the plaintiffs in the sale of jewelry. It was a practice of the defendants, known to the plaintiffs, to entrust the jewelry to other persons for purposes of sale. The jewelry in question was received by the defendant through her husband and she in turn turned over the jewelry to one Villarin, but the latter absconded with the jewelry. Plaintiffs, refusing to settle the matter amicably, filed a criminal complaint for estafa[8] against husband and wife. The former was acquitted being merely a *mandatario* or agent of his wife; the latter was likewise acquitted on the ground that there was no conversion nor bad faith. The lower court declared that the crime of estafa did not

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[1] Art. 100, Rev. Penal Code.

[2] Art. 1161. Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of article 2177, and of the pertinent provisions of chapter 2, Preliminary Title, on Human Relations, and of Title XVIII of this book, regulating damages.

[3] Art. 29, Civil Code of the Philippines.

[4] Rule 107, Sec. 1, par. (d). This rule is said to have been taken from article 116 of the Spanish Law of Criminal Procedure and is a re-statement of the rule in Oro v. Pajarillo, 23 Phil. 484 (1912).

[5] July 1, 1940.

[6] Francisco v. Onrubia, 46 Phil. 327 (1924); Wise & Co. v. Larion, 45 Phil. 314 (1923); Almeida v. Abarca, 8 Phil. 178 (1907), *aff'd* 218 U.S. 476, 54 L. Ed. 1116, 31 Sup. Ct. Rep. 34, 40 Phil. 1056 (1920); Iribar v. Millat, 3 Phil. 362 (1905).

[7] PADILLA, REVISED PENAL CODE ANN. (1951) 431.

[8] Art. 315, Rev. Penal Code.

exist, and that the liability of the defendant, if at all, was not criminal, but civil as she had received the jewelry. The plaintiffs thereafter instituted this instant civil action for the recovery of the property or its price. The lower court dismissed the action on the basis of the doctrine laid down in the case of *Wise & Co. v. Larion*[9] to the effect that an acquittal in a criminal prosecution is an insuperable obstacle to civil proceedings. Plaintiffs appealed from the order of dismissal.

The question before the Supreme Court was this: Was the dismissal proper?

The Court held that it was not. The rule enunciated in the *Larion* case is qualified, that is, an acquittal in a criminal prosecution is a bar to a subsequent civil proceeding when "the facts on which the civil liability is based are of such a nature as inevitably to constitute a crime." This was not so in the present case, because the facts alleged in the complaint and on which civil liability was based were not of such a nature as to constitute a crime. And under the present rule, the extinction of the penal action does not carry with it the extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist.[9] And there was no such declaration in the judgment of acquittal in the estafa case. On the contrary, the lower court noted that her responsibility was not criminal, but civil.

In the case of *Republic of the Philippines v. Assad*,[10] the question involved was: May the issues previously determined in criminal proceedings where defendant therein was acquitted be relitigated in a civil action instituted by the state against the same defendant? The record showed that before the defendant applied for and obtained a certificate of naturalization as a Filipino citizen,[11] he had been charged with, and after hearing, acquitted of the offenses of physical injuries, threat, falsification, unjust vexation, and profiteering. Five months after he had received his certificate of naturalization, the Solicitor General moved for the cancellation of said certificate, alleging *inter alia* that the same had been secured illegally and fraudulently. In support thereof, the Solicitor General cited the various criminal proceedings wherein the defendant had been accused of several felonies.[12] The trial court dismissed the Solicitor's action. On appeal, the Supreme Court held that the lower

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[9] See note 4 *supra*.

[10] G.R. No. L-4566, January 24, 1955.

[11] Com. Act No. 473, June 17, 1939, as amended.

[12] One of the pre-requisite qualifications that an applicant for naturalization as a Filipino citizen must possess is that he must be of good moral character and that he believes in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in his relation with the constituted government as well as the community in which he is living. (Com. Act No. 473, Sec. 2). And a certificate of naturalization previously issued may be cancelled if it is shown that said certificate was obtained fraudulently or illegally. (*Ibid.*, Sec. 18).

court erred in dismissing the case, and remanded it therefore for further procoeedings. The Court said:

> ". . . The great weight of authority supports the rule that a judgment of acquittal is not effective under the doctrine of res judicata in later civil proceedings, and does not constitute a bar to a subsequent civil action involving the same subject matter. This has even been held true in regard to a civil action brought against the defendant by the state. . . ."[18]

Remedial Law.—*Prejudicial questions; precedence of criminal over civil cases.*

OCAMPO AND DE LA CRUZ v. Hon. TANCINCO AND COCHINGYAN
G. R. No. L-5967, January 31, 1955

A prejudicial question is understood in law to be that which must precede the criminal action, that which requires a decision before a final judgment is rendered in the principal action with which said question is closely connected. Not all previous questions are prejudicial, although all prejudicial questions are necessarily previous.[1] And on a petition for suspension of criminal proceedings until a civil action is definitely decided, it must be shown that a judgment in the principal action is prejudicial to the criminal proceedings. Furthermore, if one action must be suspended, it would be the civil and in no way the criminal case.[2]

But where the civil and criminal cases have no relation to each other, the civil case involves no prejudicial question with respect to the latter. This was the holding in the instant case.

The petitioners were charged before the respondent's court with violation of the Copyright Law[3] on complaint of respondent Cochingyan. A month later, the petitioners brought an action to cancel the copyrights of Cochingyan on the ground that they were obtained through fraud, deceit and misrepresentation. At the hearing of the criminal case against petitioners, the latter moved for postponement on the assumption that the action for cancellation was a prejudicial question which had to be decided first before the court may proceed with the criminal proceeding. With their motion denied, they petitioned the Supreme Court

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[18] The Supreme Court cited 30 AM. JUR. 1003 and the cases of Farley v. Patterson, 152 N.Y.S. 59, 166 App. Div. 358 and Sourino v. United States, 86 Fed. Rep. (2d) 309-311.

[1] Berbari v. Concepcion, 40 Phil. 837, 839 (1920). The general rule is that when there is a civil case and a criminal case over the same felony the latter should be had before the first, because the procedure in a criminal case is more in accord with the determination of the offense and not the civil case. The rule, however, has an exception—that which refers to a prejudicial civil question. This exception was appreciated in, *e. g.*, United States v. Caballero, 25 Phil. 356 (1913); De Leon v. Mabanag, 70 Phil. 202 (1940); and Aleria v. Mendoza and Movilla, 46 O.G. 11, 5334 (1949).

[2] Almeida v. Abarca, 8 Phil. 178 (1907), *aff'd* in 218 U.S. 476, 54 L. Ed. 1116, 31 Sup. Ct. Rep. 34, 40 Phil. 1056 (1925).

[3] Act No. 3134.

to prohibit the respondent court from proceeding with the trial of the criminal case until after the civil action would have been decided.

Did the civil case involve any prejudicial question wth respect to the criminal action? The Court held that it did not, and that the civil case was independent from the criminal prosecution for infringement of copyrights because until Cochingyan's copyrights were ordered cancelled, they were to be presumed duly granted and issued. Justice Padilla reiterated the general rule that a criminal case should first be decided, adding that if the trial of any case is to be suspended on the ground that there is a prejudicial question, it is the hearing of the civil and not the criminal case which should be suspended.[4]

Remedial Law.—*Admission by adverse party; motion for summary judgment upon failure to answer request for admission.*

MOTOR SERVICE CO. v. YELLOW TAXICAB CO.
G. R. No. L-7063, March 29, 1955

Under the Rules of Court, a party may request the adverse party to admit the genuineness of any relevant document or of the truth of any relevant matters of fact set forth therein.[1] The purpose of requests for admission is to expedite trial and relieve the parties of the cost of proving facts which will not anyway be disputed at the trial and the truth of which can be ascertained by reasonable inquiry.[2]

In the instant case the defendants, whose admission as to certain facts had been sought by plaintiff, failed to heed the latter's request on the assumption that their answer to the plaintiff's complaint had already specifically denied the very facts recited in the request. The Supreme Court ruled that they were nonetheless bound to answer the request for admission. Since, however, the defendants did not do so, the matters of which admission had been requested were deemed admitted under Section 2, Rule 23 of the Rules of Court.[3]

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[4] Besides, the suspension of a proceeding pending the outcome of other proceedings, rests upon sound judicial discretion. *See, e. g.*, Viuda de Hernaez v. Jison, 72 Phil. 203 (1941); Santa Ana v. Zulueta, 69 Phil. 664 (1940); and Alvarez v. Commonwealth, 65 Phil. 302 (1938).

[1] Rule 20, Sec. 1. *"Request for admission.*—At any time after the pleadings are closed, a party may serve upon any other party a written request for the admission by the latter of the genuineness of any relevant documents described in an exhibited with the request or the truth of any relevant matters of fact set forth therein. Copies of the documents shall be delivered with the request unless copies have already been furnished."

[2] I FRANCISCO, ANN. RULES OF COURT IN THE PHIL. (1940) 571. To put it in another way, a request for admission is aimed at shortening the trial by eliminating from the proof any uncontroverted point or points which can safely be admitted.

[3] Rule 23, Sec. 2. *"Implied admission.*—Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, not less than ten days after service thereof or within such further time as the court may allow on motion and notice, the party to whom the request

Another issue raised by the appellants was that the plaintiff's motion for summary judgment was defective as being unsupported by affidavits.[4] This, the Court held, was an empty claim because "aside from the fact that the motion was under oath, supporting affidavits were superfluous, for it was already a matter of record that by defendant's failure to make admissions, the defendants had admitted all the material facts necessary against them."[5]

Remedial Law.—*Mandamus; availability thereof.*

GUERRERO ET AL. v. CARBONELL ET AL.
G. R. No. L-7180, March 15, 1955

Guerrero and Ofiana were assistant provincial fiscals of the province of La Union, and under Republic Act No. 732,[1] were among those public officers entitled to salary increases. The respondents, however, refused to appropriate the sum needed to increase their respective salaries. Protest was made before the Department of Finance, but unsuccessfully. Thereupon, petitioners instituted mandamus proceedings[2] against respondents. The issue then was whether mandamus was the

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is directed serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is rquested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters."

Where, on the other hand, the party answers the request by denying specifically the matters of which admission is requested, and it is later established that such denial is false, the party making such false denial is penalized under Section 4, Rule 24. This is necessary because the absence of a penalty might induce litigants to apparently comply with the rule on admission but at the same time defeat its purpose by unnecessarily or capriciously prolonging the litigation.

[4] Rule 36, Sec. 1. "*Summary judgment for claimant.*—A party seeking to recover upon a claim, counterclaim, or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with affidavits for a summary judgment in his favor upon all or any part thereof."

[5] Depositions or admissions of parties are still better than, and may be used instead of, affidavits. I MORAN, COMMENTS ON THE RULES OF COURT (1952) 727.

[1] Enacted June 18, 1952.

[2] Rule 67, Sec. 3 provides: "*Petition for mandamus.*—When any tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant with costs."

The office of mandamus is to enforce specific legal rights which are certain and clear, and not doubtful. Wolfson v. Manila Stock Exchange, 72 Phil. 492 (1941); Santiago v. Atienza and De la Fuente, 66 Phil. 436 (1938). Although mandamus may be invoked to compel exercise of discretion, it cannot compel its exercise in any particular way. Amante v. Hilado, 67 Phil. 338 (1939).

proper recourse notwithstanding the presence of an administrative remedy by appeal to the Secretary of Finance, and then to the President.[3]

The Supreme Court held that mandamus was proper. Under the particular facts of this case, no useful purpose could be served by dismissing the petition after it had been shown that the administrative remedy was futile, "considering the doubts as to their (petitioners) official personality to appeal to the President from the Department's determination and considering the several instances in which special civil actions were entertained notwithstanding the existence of another remedy by appeal."[4] From the language of the Court, it can be seen that the availability of appeal is no obstacle to the issuance of a writ of mandamus where said appeal does not provide any "plain, speedy, and adequate remedy in the ordinary course of the law."

Remedial Law.—*Parties in interest to civil actions; necessary parties; alternative defendants.*

PAJOTA v. JANTE ET AL.
G. R. No. L-6024, February 8, 1955

Plaintiff in this case entered into a contract of sale with Arabejo & Co., as broker and agent, involving a parcel of land owned by the Roman Catholic Archibishop of Manila whose administrator and attorney-in-fact was the Philippine Realty Corporation. More than a year later, defendants Jante and Jimenez, in collusion with the co-defendants, obtained through fraudulent means a transfer certificate of title issued in their favor covering the same parcel of land. In the action brought by the plaintiff to annul the second sale, the Archibishop sought to dismiss the complaint as to him on the ground that he did not agree to sell the lot in question to plaintiff and that Arabejo & Co. had no authority to convey the lot to the plaintiff. The Arabejo & Co., as agent, and the Phil. Realty Corp., as administrator and attorney-in-fact, also moved

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[3] For where appeal or some other speedy and adequate remedy is still available in the ordinary course of the law, mandamus will not lie. *See, e. g.*, Sherman v. Horilleno, 57 Phil. 13 (1932); Manalo v. Paredes, 47 Phil. 938 (1925); Malagum v. Pablo, 46 Phil. 19 (1924); Herrera v. McMicking, 14 Phil. 641 (1910); and Fajardo v. Llorente, 6 Phil. 426 (1906).

[4] In the case of Yu Cong Eng v. Trinidad, 47 Phil. 385 (1925), the validity of Act No. 2972 (otherwise known as the The Chinese Bookkeeping Law) was determined through proceedings for prohibition and injunction. Writ of certiorari was sought to quash an order of attachment issued without statutory authority in Leung Ben v. O'Brien, 38 Phil. 182 (1918). Likewise, certiorari was held the proper remedy in Rocha v. Crossfield, 6 Phil. 355 (1906) notwithstanding that the order appointing the receiver could be reviewed in an appeal from the final judgment in the action. The order in Yangco v. Rhode, 1 Phil. 404 (1902) granting alimony was restrained by a writ of prohibition. See also the case of Alfonso v. Yatco, 45 O.G. Supp. to No. 9, 35 (1948).

for dismissal on the theory that they were not real parties in interest.[1] The court below dismissed the plaintiff's complaint.

The Supreme Court on appeal held that the dismissal was an erroneous application of the law, and remanded the case for further proceedings.

Actions are prosecuted in the name of the real party in interest. A real party in interest is one who has an actual and substantial interest in the subject matter, as distinguished from one who has only a nominal interest, having reference not merely to the name in which the action was brought, but also to the facts as they appear on record.[2] Where the person made a defendant is not the proper party, necessarily the alleged cause of action cannot accrue against him and a motion to dismiss the complaint is in order.[3]

There was no doubt that defendants Jante and Jimenez, as subsequent vendees, were proper parties. More than that, they were indispensable parties.[4] On the other hand, what was the status of the three defendants who moved for dismissal? The Court held that they were all necessary parties[5] to plaintiff's action, because without them, the court could not adjudicate the whole controversy and grant complete relief to whoever was found entitled thereto. The propriety of plaintiff's making them alternative defendants was fully supported by the Rules of Court.[6]

It was shown that Arabejo & Co. was duly authorized and empowered to sell the lot in question. Under the rule laid down in the case of *Beaumont v. Prieto*[7] and likewise provided in the Civil Code,[8]

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[1] Under Rule 3, Sec. 3 of the Rules of Court, every action must be prosecuted in the name of the real party in interest.

[2] I FRANCISCO, ANN. RULES OF COURT IN THE PHIL. (1940) 46 *et seq.*; 47 C.J. 35.

[3] See Rule 8, Sec. 1.

[4] Rule 3, Sec. 7 defines parties in interest as those "without whom no final determination can be had of an action" which have to be "joined either as plaintiffs or defendants."

[5] Rule 3, Sec. 8 provides: "*Joinder of necessary parties.*—When persons who are not indispensable but who ought to be parties if complete relief is to be accorded as between those already parties, have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue, the court shall order them summoned to appear in the action. But the court may, in its discretion, proceed in the action without making such persons parties, and the judgment rendered therein shall be without prejudice to the rights of such persons."

[6] Rule 3, Sec. 13 provides: "*Alternative defendants.*—Where the plaintiff is uncertain against which of several persons he is entitled to relief, he may join any or all of them as defendants in the alternative, although a right to relief against one may be inconsistent with a right to relief against the other."

[7] 41 Phil. 670 (1916).

[8] Art. 1883 of the Civil Code provides: "If an agent acts in his own name, the principal has no right to action against the persons with whom the agent has contracted; neither have such persons against the principal.

"In such case the agent is the one directly bound in favor of the person with whom he has contracted, as if the transaction were his own, except when the contract involves things belonging to the principal.

"...."

not only was the Archbishop of Manila a proper party to the case but also Arabejo & Co. who was the authorized agent of the former. The Philippine Realty Corporation was also considered a proper party as is was the one who, in its capacity as administrator and attorney-in-fact of the owner of the land, had given authority to enter into the first contract of sale.[9]

Remedial Law.—*Unlawful detainer; requisite jurisdictional allegation.*

DE SANTOS v. VIVAS ET AL.
G. R. No. L-5910, February 8, 1955

This was a case which ought to have been filed and tried in the first place before the Court of Industrial Relations but which nevertheless reached the Supreme Court through the regular course of appeal. The plaintiff filed a complaint with a Justice of the Peace Court of the province of Davao for unlawful detainer[1] for the violation of the tenancy contract between the plaintiff and the defendants.

Under the Rules of Court,[2] no landlord shall bring such action against a tenant for failure to pay rent due or to comply with the conditions of his lease, unless the tenant shall have failed to pay such rent or comply with such conditions for a period of fifteen days after demand therefor, made upon him personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no persons be found thereon. Such previous demand should be alleged in the complaint, and inasmuch as this was not done by the plaintiff, the defendants moved for dismissal. The Justice of the Peace Court, however, denied their motion and thereafter rendered judgment against them. The defendants appealed to the Court of First Instance where they again claimed that the complaint was fatally defective for lack of allegation of previous demand. Whereupon, the complaint was dismissed, and plaintiff appealed to the Supreme Court.

The Court held that the dismissal was proper, and that such previous demand in unlawful detainer cases is jurisdictional. If none is made, the Justice of the Peace Court or Municipal Court acquires no jurisdiction and the case falls within the jurisdiction of the Court of

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[9] Note, however, that an *apoderado* or attorney-in-fact is not the proper party in an action maintainable against the principal, such that an action brought against him (attorney-in-fact) alone is subject to dismissal. *See, e. g.*, Salmon and Pacific Commercial Co. v. Tan Cueco, 36 Phil. 556 (1917); Lichauco v. Alejandrino and Weinmann, 21 Phil. 58 (1911); and Arroyo v. Granada and Gentero, 18 Phil. 484 (1911).

[1] Rule 72.

[2] Rule 72, Sec. 2.

First Instance.[3] The ruling in the case of *Co Tiamco v. Diaz*[4] cited by appellant that "the demand when required to be made by the Rules must be proved but need not be alleged in the complaint" was out of point here as it was also held in that case that such a demand, referring particularly to Section 2, Rule 72 of the Rules of Court, "is a prerequisite to an action for unlawful detainer where the action is 'for failure to pay rent due or to comply with the conditions of his lease' and not where the action is to terminate the lease because of the expiration of its term." The Court held that this ruling was on all fours wih the instant case, as the ground for the alleged illegal detainer was the violation of the tenancy, and not the expiration of the term of the lease which was involved in the *Co Tiamco* case.

Remedial Law.—*Jurisdiction of civil courts over ecclesiastical matters; finality of findings of fact by Court of Appeals.*

FONACIER v. COURT OF APPEALS
G. R. No. L-5917, January 28, 1955

In an appeal by certiorari from the Court of Appeals to the Supreme Court, only questions of law may be raised in the petition.[1] This is so because the Court of Appeals is primarily a fact finding body, and its judgment is conclusive as to the facts, and cannot be reviewed by the Supreme Court.[2]

In the case under review, the following facts were considered conclusive: Petitioner, who succeeded the deceased Mons. Aglipay as supreme bishop of the *Iglesia Filipina Independiente*, ordered the ouster of two bishops in a manner not in accordance with the constitution of their church. One of the ousted bishops, as president of their so-called supreme council, called a meeting of the *Asamblea General* which body, after considering the charges made against Fonacier, decreed the latter's forced resignation as supreme bishop and elected Bacaya to replace him. Petitioner refused to recognize the newly elected supreme bishop.

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[3] II MORAN, COMMENTS ON THE RULES OF COURT (1952) 310-311.
[4] 75 Phil. 672 (1946).
[1] Rule 46, Secs. 1 and 2.
[2] Sec. 29 of Rep. Act No. 296 (Judiciary Act of 1948, June 17, 1948) provides that the Court of Appeals shall have "exclusive jurisdiction over all cases, actions, and proceedings, not enumerated in section seventeen of this Act, properly brought to it from Courts of First Instance. The decison of the Court of Appeals in such cases shall be final: *Provided, however,* That the Supreme Court in its discretion may in any case involving a question of law, . . ., require by certiorari that the said case be certified to it for review and determination, as if the case has been brought before it on appeal."
See, e. g., Camus v. Court of Appeals, G.R. No. L-4560, Sept. 30, 1952; Montfort v. Aguinaldo, G.R. No. L-4104, May 2, 1952; Velasco v. Court of Appeals, G.R. No. L-3825, Jan. 23, 1952; and De Vera v. Fernandez, G.R. No. L-2260, May 14, 1951.
Also I MORAN, COMMENTS ON THE RULES OF COURT (1952) 952.

Thereupon, the instant case was brought against petitioner to require him to render an accounting of his administration of all the temporal properties of the church in his possession. The Court of First Instance rendered judgment against petitioner. Meanwhile, De los Reyes, Jr. was subsequently elected to replace Bacaya. From the decision of the Court of Appeals affirming the judgment of the Court of First Instance, the petitioner sought review before the Supreme Court.

Among the questions raised in the petition for certiorari was whether civil courts have jurisdiction over controversies which are ecclesiastical in nature. The Court decided in the affirmative, and agreed with the Court of Appeals in entertaining the view that since the ouster of the two bishops was claimed to have been made by an unauthorized person (the petitioner) or in a manner violative of the constitution of the church, the civil courts have jurisdiction to review said ouster.[3] While it is the established doctrine in our jurisdiction that, considering the complete separation of the church and state, the civil courts must not unduly intrude in matters of ecclesiastical nature[4] and that the decisions of proper church tribunals are conclusive upon the civil courts,[5] yet courts have jurisdiction to entertain actions to require church officers to account with respect to church funds in their custody, and even to remove them from office when they are found by the proper church authorities lacking in the qualifications necessary for the performance of their duties and responsibilities.[6] With more reason then that the jurisdiction of a civil court was properly invoked in the instant case, since the ouster decree by petitioner "plainly violates the law it professes to administer or is in conflict with the laws of the land."

Sotero B. Balmaceda

Criminal Law.—*Libel; Use of Headlines; Privileged Communications.*

QUISUMBING v. LOPEZ ET AL.
G. R. No. L-6465, January 31, 1955

A fair and true report of official proceedings is a privileged communication and as such, it negatives malice in law which is presumed in libel.[1] However, it must be made in good faith, without comments or remarks, for if the comments or remarks are libelous and are made with malice, the author as well as the editor of the newspaper making the report are not exempted from criminal liability.[2]

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[3] The Supreme Court cited 45 AM. JUR. 751-754.
[4] Gonzales v. Roman Catholic Archbishop of Manila, 51 Phil. 420 (1928).
[5] United States v. Cañete, 38 Phil. 253 (1918).
[6] Verzosa v. Fernandez, 55 Phil. 307 (1930).
[1] See Art. 354 (2) of the Rev. Penal Code. Also United States v. Bustos, 37 Phil. 731 (1918).
[2] See Art. 362, Rev. Penal Code. The privilege granted by law is not absolute but qualified, so that although the account constitutes a fair and true report,

In the present case, an action for damages was brought against the publisher, editor and manager of the *Manila Chronicle* as a result of the publication of a news item entitled *"NBI Men Raid Offices of 3 City Usurers."* As held by the trial court and as admitted by the petitioners, the news item was a fair, true and impartial report of an official investigation made by the Anti-Usury Division of the NBI and was, therefore, privileged.[3]

The petitioners, while admitting that the article was privileged, maintained that the headline did not form part of the basic press release and that it was merely added by the respondents, that it was libelous *per se* because it branded the petitioners as "usurer" although the latter had not been charged with usury and that, therefore, the respondents were not exempted from liability.[4] The petitioner cited authorities to the effect that the headline, in which the "sting" is frequently found, when unsupported by the article, is itself libelous while the body may be privileged.[5] On the other hand, the respondents contended that the published matter must be construed as a whole, on the strength of the cases of *Jimenez v. Reyes*,[6] *United States v. O'Connell*[7] and *United States v. Sotto*.[8] From the decision of the lower court absolving the respondents,[9] the petitioner appealed to the Supreme Court.

In dismissing the appeal, the Supreme Court held that the news item was a fair and true report of an official proceeding and was therefore privileged. With respect to the headline, the Court agreed with the court *a quo* that it must be construed together with the text of the news item. No malice could be found. Thus it would seem that the

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the publisher is liable in case he is prompted by express malice. United States v. Bustos, 13 Phil. 690 (1909).

[3] The said news item was, in the words of the Court of Appeals, "a substantial, if not faithful reproduction" of a press release which was in turn, "an accurate report of the official proceedings taken by the Anti-Usury Division."

[4] Under Art. 362, "libelous remarks or comments connected with the matter privileged under the provisions of Art. 354, if made with malice, shall not exempt the author thereof nor the editor or managing editor of a newspaper from criminal liability."

[5] See note to McAllister v. Detroit Free Press Co., 15 Am. St. Rep. 347 (1889); Dorr v. United States, 195 U.S. 138 (1904); Brown v. Globe Printing Co., 127 Am. St. Rep. 627 (1908); and Express Pub. Co., v. Lancaster, 270 S.W. 229 (1925). It is important to note that the case of Dorr v. United States relied upon by the petitioner was of Philippine origin. In the case of United States v. Dorr, 2 Phil. 269 (1903), the Philippine Supreme Court held that headlines to newspaper reports of judicial proceedings are remarks or comments within the meaning of Sec. 8 of Act No. 277 of the Phil. Commission and are, therefore, punishable if libelous. Said Sec. 8 corresponds to Art. 362 of The Revised Penal Code.

[6] 27 Phil. 52 (1914).

[7] 37 Phil. 767 (1918).

[8] 38 Phil. 666 (1918).

[9] Said the Court of Appeals, in affirming the decision of the trial court:

"The article must be construed as an entirety including the headlines, as they may enlarge, explain or restrict or be enlarged, explained, strengthened or restricted by the context . . . . Whether or not it is libelous depends upon the scope, spirit and motive of the publication taken in its entirety . . ."

Court ignored the contention of the petitioner that the headline may be libelous while the text of the article may be privileged and by so doing apparently refused to classify headlines as a "remark" or a "comment" under Art. 362 of the Revised Penal Code.

It is well worth restating at this point[10] that in the case of *United States v. Dorr*,[11] the majority held that headlines to newspaper reports of official proceedings are 'remarks or comments' and are punishable, if libelous. Said the Court:

> ". . . The intention of the statute, as shown in sections 7 and 8 is that the priviledged matter should be a fair and true report, and *must stand alone as such. If headlines or captions are used, the matter contained in them must not be remarks or comments of a libelous nature.* (Emphasis added.)
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> "The decisions of some courts of the United States have held that an index of words contained in the privilege, when fairly and truly made, will partake of the nature of the article indexed; but, . . . *our law does not permit this.*"[12]

It would seem then that in the case under review, the Supreme Court has departed from its pronouncement with respect to headlines in the *Dorr* case. It may be noted, however, that while the Supreme Court apparently agreed with the Court of Appeals that the published matter should be construed as a whole, including the headline and text, to determine if libel exists, yet it made its own observation with respect to headlines in such a way that the ruling in the *Dorr* case may not be considered overruled. That much may be gleaned when the Court declared that—

> ". . . . the headline complained of may fairly be said to contain a correct description of the news story. Nothing in the headline or in the context of the story suggested the idea that the petitioner was already charged with or convicted of usury."

Thus it can be said that the Supreme Court applied Art. 362 to the headline in question so as to categorize headlines into "remarks or comments" but since there was no finding of malice and the headline was not *per se* libelous,[14] the respondents could not be held liable.

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[10] See note 5.

[11] 2 Phil. 269 (1903).

[12] Which corresponds in substance to Arts. 354 (2) and 362 of the present Penal Code.

[13] At p. 287.

[14] The Court, in meeting the contention of the petitioner that the headline is oftentimes the only part of the article read, stated that "by merely reading the headline in question nobody would even suspect that the petitioner was referred to; and 'libel cannot be committed except against somebody and that somebody must be properly identified.' (People v. Andrada, 37 O.G. 1783)."

Criminal Law.—*Treachery.*

PEOPLE v. ANANIAS
G. R. No. L-5591, March 28, 1955

It is an established principle in criminal law that treachery[1] as a qualifying circumstance is never presumed and must, therefore, be proved beyond reasonable doubt.[2] Thus in prosecutions for murder, the defendant can only be convicted of homicide if treachery (which is relied upon to qualify the killing to murder) is not proved.[3]

In the instant case, the Supreme Court had another opportunity to reaffirm these principles. The facts show that in a previous quarrel, the deceased bested the accused. They were taken to the office of the chief of police of the municipality by one Amiano, a policeman who witnessed the affray. In the disposition of the case the Supreme Court adopted *in toto* the version of the prosecution to which the trial court also gave complete credence. According to this version, the accused and the deceased, while in the office of the chief of police, stated that as far as they were concerned the whole affair was closed, and they, then, shook hands. The Chief of Police then turned his back to write and it was while he was thus engaged that policeman Amiano saw the accused take a knife from the right hand pocket of his pants and stab the deceased, Gabriel, on the left side of the breast. The deceased was able to grasp the right hand of the accused and it was at this point that the chief of police turned to see what was going on. There was a further struggle until the deceased slumped to the floor and the defendant escaped through an open door. The deceased was able to make an *ante mortem* statement in which he spoke of an apparently sudden attack. In that declaration, the deceased used the Visayan phrase—"waray ako sabot" which the trial court interpreted to mean that the attack was treacherous. On the basis of these facts the lower court rendered a judgment of conviction for murder.

On appeal, the Supreme Court held that the crime committed was only homicide. The Court arrived at this conclusion thus:

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[1] "There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Art. 14 (16), Rev. Penal Code.

[2] United States v. Idica, 3 Phil. 313 (1904); United States v. Perdon, 4 Phil. 141 (1905); United States v. Asilo, 4 Phil. 175 (1905); United States v. Ortiz, 36 Phil. 303 (1917); People v. Bustos, 45 Phil. 9 (1923); People v. Durante 53 Phil. 363 (1929). In order to prove *alevosia*, "mere presumptions" or "arbitrary deductions from hypothetical or presumable facts" are not admissible. People v. Ramiscal, 37 Phil. 103 (1917). Also United States v. Amoroso, 5 Phil. 466 (1906); United States v. Cueva, 23 Phil. 553 (1912); People v. Alcala, 46 Phil. 739 (1924); People v. Mercado, 51 Phil. 99 (1927); People v. Abril, 51 Phil. 670 (1928).

[3] There is a wealth of cases on the point, among the latest of which are: People v. Julipa, 69 Phil. 751 (1936); People v. Gonzales, 76 Phil. 473 (1945); People v. Luna, 76 Phil. 101 (1945); People v. Delgado, 43 O.G. 1209 (1946); People v. Tumaob, 46 O.G. 190 (1949); People v. Abalos, 47 O.G. 1800 (1950); and People v. Visagar, G.R. No. L-3384, June 12, 1953.

> ". . . the evidence does not clearly show the presence of treachery in the commission of the crime. The action in the course of which the injury was inflicted was so swift and sudden that one connot say with precision when the wound was inflicted, whether immediately after the defendant had drawn the knife from the right hand pocket of his pant (s) or while the two were wrestling for the possession of the knife in the office of the chief of police."

In other words, the Supreme Court refused to qualify the crime committed with treachery because it believed that there was reasonable doubt as to the existence of that circumstance. It is submitted that a different conclusion will not be entirely insupportable. It should be noted that the Supreme Court gave unqualified credence to the testimony of the policeman Amiano. And according to that testimony, the deceased was attacked suddenly and swiftly, the defendant landing the initial thrust on the left breast of the deceased, and the injury resulting, was pronounced to be the most serious by the doctor who performed the autopsy. When one considers that there are many cases holding that a sudden and unexpected attack on an unarmed and unsuspecting victim under conditions which make it impossible for the party assaulted to flee or make defense qualifies the resulting killing to murder, the decision in this case would appear a bit strange.[4] Here the deceased was unarmed and it is fairly logical to presume that he was unsuspecting since to all appearances the matter had been patched up. Moreover, they were in the office of the chief of police in the municipal building, in the presence of the law. Indeed the Supreme Court appreciated the aggravating circumstance that the crime was committed "in contempt of or with insult to the public authorities."[5] Again it would not be remiss to conclude that the defendant consciously adopted the mode of attack in question ("swift and sudden") to insure the accomplishment of his criminal purpose without risk to himself arising from the defense that the deceased might make.

But the decisive factor in the case, that which seemed to have dictated the outcome, appears to be the fact that during the crucial stage in the commission of the crime (from the moment the accused pulled his knife out and stabbed the deceased on the left breast to the point where the latter was able to grasp the accused's right hand in an effort to wrest the knife) the policeman Amiano was the sole witness. Thus as to that part of the attack where the element of treachery can only be decried, the policeman's testimony was uncorroborated although

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[4] See United States v. Babasa, 2 Phil. 202 (1903); United States v. Santiago, 3 Phil. 112 (1903); United States v. Punzalan, 3 Phil. 260 (1904); United States v. Cabiling, 7 Phil. 469 (1906); People v. Pengzon, 44 Phil. 224 (1922); People v. Noble, 43 O.G. 2310 (1946); People v. Palomo (C.A.), 43 O.G. 4190 (1946); People v. Licuanan, G.R. No. L-2960, Jan. 9, 1951; and People v. Felipe, G.R. No. L-4619, Feb. 25, 1952 among others.

[5] Art. 14 (2) of the Revised Penal Code.

it was the version relied upon by the Supreme Court. In short, treachery as a circumstance that would have qualified the killing to murder was not sufficiently established because of the inherent weaknesses and fallibility of human perceptions, especially in this case where the action was "swift and sudden." In the words of the Solicitor General (which the Supreme Court quoted in the decision) "any witness to a similar event is apt to experience difficulty in convincing himself that what he saw so fleetingly was not perhaps merely an impression or a conclusion of which one could not really be certain."

With respect to the *ante mortem* declaration which seems to suggest perfidy, the Supreme Court held that the vernacular phrase "waray ako sabot" does not necessarily imply treachery as the trial court believed. According to the Supreme Court the phrase may be translated to mean that the deceased was merely "outmaneuvered or outsmarted."

Criminal Law.—*Criminal intent;* Actus non facit reum nisi mens sit rea.

PEOPLE v. BERONILLA
G. R. No. L-4445, February 28, 1955

"To constitute a crime, the act must, except in certain crimes made such by statute, be accompanied by a criminal intent, or by such negligence or indifference to duty or to consequence, as in law, is equivalent to criminal intent. The maxim is, *actus non facit reum nisi mens rea* — a crime is not committed if the mind of the person performing the act complained of be innocent."[1]

This fundamental rule in criminal law was reiterated in the present case. The facts go back to December 18, 1944 when the defendant was appointed military mayor of La Paz, Abra by Lt. Col. Arnold, who was the regimental commander of the 15th Inf., PA. Defendant was given instructions to constitute a "jury of 12 bolomen" to try persons accused of treason, espionage, and aiding or abetting the enemy. The name of the deceased, Arsenio Borjal, then puppet mayor of La Paz, was included in the said list. Conformably to the instructions, the deceased was apprehended and his trial began on March 23, 1944. He was given counsel and the nineteen-day trial was conducted fairly and impartially. Deceased was sentenced to death for the crime of treason.

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[1] United States v. Catolico, 18 Phil. 505, 507 (1911). The act itself does not make a man guilty unless his intentions were so. Also United States v. de los Reyes, 1 Phil. 375 (1902); United States v. Acebedo, 18 Phil. 428 (1911); United States v. Elvina, 24 Phil. 230 (1913); United States v. San Juan, 25 Phil. 213 (1913); United States v. Pascual, 26 Phil. 234 (1913); People v. Angeles, 44 Phil. 539 (1923); and People v. Pacana, 47 Phil. 48 (1924) for restatements of the rule.

The records of the trial were sent to Lt. Col. Arnold who, eight days later, returned said records and gave Beronilla complete authority to make any disposition of the case.[2] Upon receipt of this reply, the deceased was executed. On the same day, the defendant reported the matter to Lt. Col. Arnold.

After liberation, the defendants were charged with the murder of Borjal before the Court of First Instance of Abra. From a judgment of conviction the defendants appealed. The prosecution predicated its case mainly on the existence of a radiogram from Col. Volkmann, the over-all commander of the area, to Lt. Col. Arnold specifically calling attention to the illegality of Borjal's conviction, and which radiogram, according to the fiscal, was known to Beronilla. Upon examination of the evidence, however, the Supreme Court found no satisfactory proof that Beronilla did actually receive the message or that Lt. Col. Arnold did ever transmit it to Beronilla. Moreover, the Supreme Court was satisfied that the defendants did not act from personal motives or out of malice as evidenced by the fairness and impartiality of the whole proceedings.

The Supreme Court therefore held that inasmuch as the appellants "acted upon orders of superior officers that they, as military subordinates, could not question,[3] and obeyed in good faith, without being aware of their illegality,[4] without any fault or negligence on their part,[5] we cannot say that criminal intent has been established." The Supreme Court then cited the cases of *United States v. Catolico*[6] and *People v. Pacana*[7] and certain decisions or sentences of the Supreme Tribunal of Spain as authorities for its holding.[8] Because of the lack of criminal

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[2] The instructions read in part: ". . . . This is a matter best handled by your government and whatever disposition you make of the case is hereby approved . . ."

[4] The Revised Penal Code provides:

Art. 11. Justifying Circumstances.—"The following do not incur any criminal liability.

"6. Any person who acts in obedience to an order issued by a superior for some lawful purpose." Under this paragraph, the order so that it may justify the action taken under it must be lawful. Among the later cases holding similarly are: People v. Moreno, 43 O.G. 4644 (1946); People v. Monagso, 44 O.G. 4867 (1947); People v. Bernadez, 46 O.G. 47 (1949); People v. Calasang (C.A.), 46 O.G. 5045 (1949); People v. Margen, G.R. No. L-2891, March 30, 1950; and People v. Saladino, G.R. No. L-3634, May 30, 1951.

[4] QUAERE: What is the legal consequence of "unawareness of the illegality of the order of a superior"? Is it a mistake of fact which, in law, negatives criminal intent? Or is it a mistake of law which does not constitute a valid defense?

[5] In this connection it may be remembered that in cases of mistake of fact, there must be no negligence or carelessness on the part of the actor. United States v. Reodique, 32 Phil. 458 (1915); People v. Ramirez, 48 Phil. 204 (1925); People v. De Fernando, 49 Phil. 75 (1926); People v. Oanis, 74 Phil. 257 (1943); and People v. Mamasalaya, G.R. No. L-4911, Feb. 11, 1953.

[6] 18 Phil. 505 (1911).

[7] 47 Phil. 48 (1924).

[8] Those of July 3, 1886, March 23, 1900, Jan. 7, 1901, Feb. 21, 1921 and March 25, 1929.

intent which is an essential requisite of every crime punished by the Revised Penal Code, the defendant was acquitted.[9]

Criminal Law.—*Kidnapping with Murder; Accomplices; Conspiracy.*
PEOPLE v. FRANCISCO ET AL.
G. R. No. L-6270, February 28, 1955

The present case illustrates the seldom-appreciated tenuity of the line that divides principal from accomplice. The distinction usually relied upon is that the participation or cooperation of the accomplice, although necessary, is not indispensable, as in the case of a principal by cooperation.[1] This test, however, loses much vigor when one realizes that necessity and indispensability cannot be separately compartmentalized. Because of this difficulty in determining whether the participation of a co-accused is that of a principal or of an accomplice,[2] the Supreme Court has laid down the following rule:

> "Inference of guilty participation may be deduced for the purpose of holding a person guilty as an accomplice but not as a principal This is so because in case of doubt courts lean to the milder qualification of the offense." [3]

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[9] See Art. 3 of the Rev. Penal Code. In crmies punished by special statutes, criminal intent is not required and prosecuton will lie from the mere fact that the act punished was committed. See the cases of United States v. Go Chico, 14 Phil. 128 (1909); People v. Bayona 61 Phil. 181 (1934); People v. Paras (C.A.), 45 O.G. 3936 (1948) and People v. Conoea (C.A.), 45 O.G. 3953 (1948).

[1] PADILLA, CRIMINAL LAW (1953) 266: "Although the law has undertaken to differentiate as much as possible an accessory before the fact (accomplice) from a principal, yet it is a fact that the only difference existing between them lies in the fact that while the principal executes acts which are necessary to the consummation of the crime, the accessory takes part in its commission with an act which is not necessary for its consummation, although such an act may facilitate the commission of the offense." See also ALBERT, THE REVISED PENAL CODE (1948) 149.

Unity of purpose and of action must exist not only among principals themselves but also between principals and accomplices, what distinguishes the latter from the former is that the latter cooperates in the execution of the offense by previous and simultaneous acts other than those which would characterized principals under Art. 17 of the Rev. Penal Code. People v. Manalac and Viacruces (C.A.), 46 O.G. 111 (1949).

[2] This difficulty only exists where there is no express or implied conspiracy. If there is a conspiracy, "every act of one of the conspirators in the furtherance of the common design of purpose of such conspiracy is, in contemplation of law, the act of each one of them". United States v. Grant & Kennedy, 18 Phil. 122 (1910). Among the later cases on express conspiracy are: People v. Daos, 60 Phil. 143 (1934); People v. Cu Unjieng, 61 Phil. 236 (1935); People v. Caringan. 61 Phil. 416 (1935); People v. Masin, 64 Phil. 757 (1937); People v. Mendoza, 45 O.G. 2184 (1948); People v. Sagrario, 46 O.G. 312 (1949); People v. Go, G.R. No. L-1527, Feb. 27, 1951.

The rule on implied conspiracy has been clearly set forth in the case of People v. Carbonel, 48 Phil. 868 (1926) and reiterated, among others, in People v. Bordador, 63 Phil. 305 (1936); People v. Diokno, 63 Phil. 601 (1936); People v. Macul, G.R. No. L-2823, May 19, 1950; and People v. San Luis, G.R. No. L-2365, May 29, 1950.

[3] People v. Tamayo, 44 Phil. 38, 54 (1922).

In the present case, the accused Francisco, then mayor of Cordon, Isabela, with four others, brought along with them one Corpuz, whose hands were then bound behind his back, to the PC detachment at Santiago, Isabela. The Mayor informed the officer of the day that he was leaving Corpuz under the custody of the Constabulary because Corpuz was a bad man who wanted to take his life. The officer refused to take custody because there was no detention cell and because the commanding officer was absent. Later that same evening, the accused Francisco and his companions went to Raniag, a barrio of Santiago, where he delivered Corpuz to a group of men who were apparently his cohorts, indicating that he was leaving Corpuz' fate in their hands. Corpuz disappeared and was never seen since. On the basis of these facts the trial court found Francisco and his four companions guilty of kidnapping with murder, with Francisco as sole principal and his four companions as accomplices. This decision was appealed to the Supreme Court.

The decision of the trial court was affirmed by the Supreme Court. As a sort of first premise, the Supreme Court held that a conspiracy between Francisco and his four companions was not proved by the evidence. This being so, the liability of the five accused was individual and separate and not collective,[4] each being solely responsible for his exclusive acts. Then the Supreme Court adopted the finding of the lower court that Francisco was "the only one who had the criminal intent to kidnap Corpuz," and therefore, he was the only one who can be held guilty as principal. However, since the other four accused "helped Francisco in bringing Corpuz from the municipal building to the PC detachment in Santiago and ultimately to barrio Raniag," they must be held liable as accomplices since these acts constitute participation by "simultaneous or previous acts" under Article 18 of the Revised Penal Code.[5]

Criminal Law.—*Parricide through recklessness; Lack of Motive.*

PEOPLE v. RECOTE

G. R. No. L-5801, March 28, 1955

Article 365 of the Revised Penal Code provides that "any person who, by recklessness, shall commit any act which, had it been intentional,

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[4] If two or more persons participate in the commission of the crime and there was no conspiracy, express or implied their liability is individual, separate or several and not collective. United States v. Infante and Barreto, 27 Phil. 530 (1914). For later holdings on this point see People v. Tamayo, *supra*; People v. Cara, 48 Phil. 217 (1925); People v. Caballero, 53 Phil. 585 (1929); People v. Gorospe, 53 Phil. 960 (1929); People v. Carandang, 54 Phil. 503 (1930); People v. Ortiz and Zausa, 55 Phil. 993 (1931); People v. Tumayao, 56 Phil. 587 (1932); People v. Salcedo, 62 Phil. 812 (1936); People v. Aplegido, 43 O.G. 114 (1946); and People v. Ibañez, 44 O.G. 30 (1947).

[5] In People v. Tangbacan and Tadeo, G.R. No. 5113, Aug. 31, 1953, it was held that the act of accompanying another in the commission of the crime out of friendship and companionship may amount to complicity.

would constitute a grave felony, shall suffer the penalty of *arresto mayor* in its maximum period to *prisión correccional* in its minimum period . . ."[1]

In the present case, the accused committed an act, which had it been intentional, would have constituted parricide.[2] According to the findings of fact, the accused drank *tuba* while taking lunch in his house. Apparently the liquor taken was in such quantity as to have a soporific effect for no sooner had the accused finished the meal than he fell asleep on the bench. While he was thus sleeping, his son Jose woke him up and told him to move to the bedroom since the bench was uncomfortable. The accused did as he was told. When he pulled the folded blanket of his wife, an unlicensed .45 caliber pistol rolled out and fell to the floor. The accused picked it up, cocked it, and then in intoxicated tones asked who owned it.[3] His sons, Cipriano and Jose, tried to take the pistol away warning the accused that the weapon is liable to fire. Because of the resulting commotion, the wife of the accused came from the kitchen and it was at this precise moment that the pistol fired, the bullet hitting her at the throat causing almost instantaneous death.

Upon these facts the trial court found the defendant guilty of parricide and accordingly sentenced him to *reclusion perpetua*. The defendant appealed to the Supreme Court. After an examination of the evidence presented in the case, the Supreme Court decided that the crime committed was parricide through reckless imprudence punished under Article 365 of the Revised Penal Code and not parricide penalized under Article 246. The Court based its decision on the finding that the killing was not intentional considering the circumstances surrounding the discharge of the pistol and the condition of the accused

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[1] The same article also provides: "Reckless imprudence consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of inexcusable lack of precaution on the part of the person performing or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding persons, time and place."

[2] "Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death." Art. 246, Revised Penal Code.

[3] In a separate prosecution for illegal possession of firearms (People v. Recote, G.R. No. L-5802, March 28, 1955), the pistol was found to belong to Recote and he was held guilty.

[4] It would seem that the ruling in so far as it hinges on lack of motive is at odds with the pronouncement of the Supreme Court in the parricide case of People v. Ramponit, 62 Phil. 284 (1935) to the effect that "motive is important *only* when doubt exists as to whether defendants committed the crime as where the incriminating evidence is only circumstantial, "and that where the killing is admitted the exact motive or reason for the deed is not important." However, notwithstanding the apparently sweeping tenor of this dictum, it is believed that the excursus into the realm of motives made in the present case is apposite. There would seem to be valid objection to inquiring into motives for the purpose of determining whether a crime was committed intentionally or not. Perhaps the better rule with respect to proof of motives would be the

at the time. The Court said that no motive was shown why the defendant should kill his wife.[4] This lack of motive, according to the Court, was proved by the fact that after having been boxed by his sons for what he had done, the accused immediately went and wept over the body of his dead wife, asking her forgiveness because he did not intend to hit her.

As the crime committed was parricide through reckless imprudence, the penalty imposed by the trial court was reduced to one year of *prisión correccional* which is within the statutory period of *arresto mayor* in its maximum period (four months and one day) to *prisión correccional* in its minimum period (two years and four months).[5]

Criminal Law.—*Entrapment.*

PEOPLE v. TIU UA
G. R. No. L-6793, March 31, 1955

It is a well-settled rule that entrapment is not a defense to a criminal prosecution.[1] It is neither an exempting nor a mitigating circumstance.[2] Neither is it prohibited, as it is not considered contrary to public policy.[3]

In the case of *People v. Tan Tiong*,[4] the defendant was charged with a violation of Executive Order No. 62, Series of 1945, in that he sold one can of Mennen Talcum Powder for ₱1.00 instead of ₱0.86

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one given in People v. Zamora, 59 Phil. 568 (also on parricide) decided in 1934, where it was held that proof of motive is important in determining which of two conflicting theories is more likely to be true. Applying this rule in the present case, we can safely say that proof of motive is important in determining whether a crime is intentional or not. Indeed where intention or volition is the subject matter of inquiry an examination of probable motives seems to be called for.

See also United States v. Baltazar, 8 Phil. 592 (1907); United States v. Salamat, 36 Phil. 842 (1917); People v. Bingaan, 48 Phil. 925 (1926); People v. Ayaya, 52 Phil. 359 (1928); and People v. Francisco, 44 O.G. 4847 (1947), where lack of motive justified acquittal on charges for parricide.

[5] See Art. 365, par. 1, Rev. Penal Code.

[1] People v. Lua Chu, 56 Phil. 44 (1931); People v. Galicia (C.A.), 40 O.G. 4476 (1941); People v. Vinsol (C.A., 47 O.G. 294 (1949); People v. De Hilario, 49 O.G. 2242 (1953).

[2] See Arts. 12 and 13, Rev. Penal Code.

[3] People v. Galicia, *supra*, at p. 4478. See also 16 C.J. 91, n. 63.

Entrapment, however, must be distinguished from instigation. In instigation, the instigator practically induces the will-be accused into the commission of the offense and himself become a co-principal, while in entrapment, ways and means are resorted to for the purpose of trapping and capturing the lawbreaker in the execution of his criminal plan. People v. Galicia, *supra*. In instigation, the will-be accused is instigated, induced or lured by an officer of the law or other person, for the purpose of prosecution into the commission of a crime which he had otherwise no intention of committing. In entrapment proper, the officer or other person acted in good faith for the purpose of discovering or detecting crime and merely furnished the opportunity for the commission thereof by one who had the requisite criminal intent. 22 C.J.S. sec. 45.

as fixed by the said Executive Order. The accused interposed the defense of inducement or instigation since the purchase was made by a government agent. In finding the accused guilty, the Supreme Court declared that there was no instigation because the agent only discovered the violation when he purchased the article, the accused having charged and collected the price. For the same reasons, the Supreme Court ruled that there was no entrapment.

Similar facts obtained in the instant case. Republic Act 509 fixes the price of KLIM milk at ₱1,80 per can. A certain Mrs. Villa sent her houseboy to buy a can of powdered milk at the store of the accused telling the boy that the price was ₱1.80. At the store the accused insisted that the price was ₱2.20 and the boy was forced to return empty handed. Mrs. Villa was informed of the matter and she told her son Francisco about it. Francisco Villa was an employee of the NBI and he immediately reported the matter to the Price Enforcement Unit. When Francisco returned home, he was accompanied by two PRISCO agents. Francisco then gave the houseboy a five-peso bill and told him to buy a can of KLIM milk at the same store. When the boy returned with only ₱2,80 as change, Francisco and the two agents went to the store of the accused to verify the matter. The accused did not deny that he charged ₱2.20 for the article. In the prosecution for violation of Republic Act 509, the accused was found guilty by the lower court. He thereupon appealed to the Supreme Court alleging entrapment as a defense.

The Supreme Court, in affirming the judgment of the lower court, held that the agents did not employ entrapment as the accused had already charged the sum and the agents only tried to verify the illegal act of the accused.[5] And as a last word on the matter, the Supreme Court declared that even if there was entrapment that would not change the decision in the case because instigation and not entrapment is the valid defense.[6]

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[4] (C.A.), 43 O.G. 1285 (1946).

[5] In the United States, the use of decoys to present an opportunity for the commission of the crime and the act of detectives in feigning complicity or even in apparently assisting its commission are not valid defenses. "Especially is this (rule) true in that class of cases where the offense is one of a kind habitually committed, and the solicitation merely furnishes evidence of a course of conduct; it has been held that in such cases the entrapper may even provoke or induce the commission of a particular violation of the law, if he knows or has reasonable grounds to believe that the accused is a repeated or habitual offender. 22 C.J.S. sec. 45, pp. 101-2 citing the cases of United States v. Baker, 62 F. (2d) 1007 (1903) and Orsatti v. United States, 3 F. (2d) 778 (1925), *certiorari denied*, 268 U.S. 694 (1925).

[6] See Notes 1 and 2.

Criminal Law—*Murder; Treachery.*

PEOPLE v. LAMBAN
G. R. No. L-5913, February 25, 1955
PEOPLE v. ACLON
G. R. No. L-5507, February 28, 1955
PEOPLE v. LOGROÑO
G. R. Nos. L-5714-15, February 28, 1955

There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[1] And when treachery attends the killing of a man who does not bear such a relation to the killer to categorize the resulting crime into parricide,[2] murder is committed.[3]

The "means, methods or forms" spoken of are many and varied as may be discovered from the many murder cases involving treachery decided by the Supreme Court. Among the more common of these are where the killing was perpetrated while the victim was asleep[4] or where the victim was attacked suddenly and unexpectedly from behind and without warning[5] or from ambush.[6] Thus when a new murder case in which treachery is the qualifying circumstance reaches the Supreme Court, it will in all probability involve one or the other of these various species of treachery.

In *People v. Lamban*,[7] the Supreme Court affirmed the conviction of the accused for murder under the familiar rule that where the attack was made from behind upon an unsuspecting victim and without warning or under such circumstances as would amount to an ambush, there is treachery.[8] In this case the deceased was walking along the village street at about six o'clock in the evening when the accused fired at him

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[1] Art. 14 (16), Rev. Penal Code.
[2] Art. 246, Rev. Penal Code.
[3] See Art. 248 (2), Rev. Penal Code.
[4] United States v. Git, 3 Phil. 414 (1904); United States v. Villorente, 30 Phil. 59 (1915); United States v. Antonio, 31 Phil. 205 (1915); People v. Mamdayag, 46 Phil. 838 (1924); People v. Reyes, 52 Phil. 538 (1928); People v. Bangug, 52 Phil. 87 (1928); People v. Dequiña, 60 Phil. 279 (1934); People v. Nicolas, 72 Phil. 104 (1941); People v. Buransing, G.R. No. L-2543, March 19, 1951; People v. Miranda, G.R. No. L-3284, Sept. 28, 1951; People v. Antonio, G.R. No. L-3458, Oct. 28, 1951; People v. Amarante, G.R. No. L-4233, December 21, 1951.
[5] United States v. Babasa, 2 Phil. 202 (1903); United States v. Manalalang, 6 Phil. 339 (1906); United States v. De Guzman, 8 Phil. 21 (1907); United States v. Barnes, 8 Phil. 59 (1907); People v. Sombilon, 46 O.G. Sup. p. 11, 83 (1949); People v. Acopio, 58 Phil. 582 (1933); People v. Ambis, 68 Phil. 635 (1939); People v. Camoy, G.R. No. L-3400, July 24, 1951; People v. Escarro, G.R. No. L-3647, July 26, 1951; People v. Cabeda, G.R. No. L-4411, Feb. 8, 1952.
[6] United States v. Canaman, 9 Phil. 121 (1907); United States v. Pala, 19 Phil. 190 (1911).
[7] G.R. No. L-5913, Feb. 25, 1955.
[8] See notes 4 and 5.

without warning and while his back was turned. The shot was fired from the window of a nearby house, the bullet hitting the victim on the right side of his back. Under such circumstances a finding of treachery was inevitable.

The absence of an opportunity for defense or retaliation is recognized to be the decisive factor in treachery.[9] Thus it may be said that the most 'treacherous' means of killing a person is to perpetrate the said act while the victim is asleep since in that condition the latter is completely deprived of any opportunity for making defense. In *People v. Aclan*,[10] the Supreme Court had another opportunity of reiterating the rule that the killing of a man under such circumstances is murder. The facts show that the victim and his wife and brother-in-law were sleeping when the defendants came, armed with bolos and spears. The wife and brother-in-law of the victim were able to wake in time to hide themselves, but the deceased was not so fortunate. He was stabbed and killed while sleeping. His killers were therefor convicted of murder and sentenced to *reclusión perpetua*.

In the case of *People v. Lagroño*,[11] the Supreme Court held that the circumstance that the deceased was running when the assailant delivered some of the fatal blows, the said deceased later falling to the ground whereupon the assailant delivered the *coup de grace*, qualified the killing with treachery:

> "Cuando Claudio disparo tiros a Paterno Añora, que estaba corriendo, Añora no estaba en condisiones de oficar resistencia. Constituye alevasia al disparar tiros contra uno que esta corriendo y que esta completamente indefenso."

It was proved in this case that in the night in question the deceased with a companion was returning home when they were accosted by one of the companions of the defendants who threatened them with a bolo. In the meantime the defendants were hidden in the dark interior of a banana plantation nearby. When the victim's companion tried to wrest the bolo from the attacker, the appellants made their sudden appearance, their leader shouting "Adelante no dejarle escapar" (Go ahead, be sure to get). At this point the victim turned to flee with the defendants in pursuit. One of them finally overtook him and when deceased fell to the ground wounded, he was pounced upon and finally killed. Under these facts the Supreme Court sustained the conviction for murder made by the trial court.

Rodolfo I. Publico

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[9] Art. 14 (16), Rev. Penal Code. See Criminal Law: Criminal Liability and Specific Crimes, 27 Phil. L.J., 2, 280-1.

[10] G.R. No. L-5507, Feb. 28, 1955.

[11] G.R. No. L-5714-15, Feb. 28, 1955.

Political Law.—*Persons ineligible for municipal office-ecclesiastics; right of defeated candidates.*

VILLAR v. PARAISO
G. R. No. L-8014, March 14, 1955

Section 2175 of the Revised Administrative Code provides that "in no case shall there be elected or appointed to a municipal office, ecclesiastics . . ." In the instant case, Villar, the candidate obtaining the second highest number of votes in the elections of 1951 for the office of mayor of Rizal, Nueva Ecija, instituted quo warranto proceedings praying that Paraiso, who was proclaimed as the mayor duly elected, be declared ineligible to assume office because he was then a minister of the United Church of Christ in the Philippines and therefore disqualified to be a candidate under section 2175 of the Revised Administrative Code.

Respondent claimed that he resigned as minister of the United Church of Christ on August 21, 1951 and that his resignation was accepted by the cabinet of his church on August 27, 1951.

Petitioner, on the other hand, showed that respondent was issued a license to solemnize marriages by the Bureau of Public Libraries as minister of the United Church of Christ up to the end of April, 1952 and that said license has never been cancelled.

The Supreme Court, after weighing the evidence, held that the respondent had never ceased as minister and that his alleged resignation was but a scheme to circumvent the law regarding ecclesiastics. The Court counselled that if an ecclesiastic were to run for municipal office, he must do two things: first, he should resign in due form and have the acceptance of his resignation registered with the Bureau of Public Libraries,[1] and second, he should attach to his certificate of candidacy a copy of his resignation.

The petitioner also asked that he be declared the duly elected mayor. The Supreme Court upholding a well settled rule[2] held that when a

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[1] *Regulations for the Enforcement of the Marriage Law* issued by the Director of Public Libraries and approved by the Secretary of Education on February 26, 1951. Sec. 11. ". . . Likewise, it is the duty of the said Director to cancel the registration of a minister when request for such cancellation is made."

[2] In Topacio v. Paredes, 23 Phil. 238, 254-5 (1923) the court said: ". . . the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the election is quite different from that produced by declaring a person ineligible to hold such an office. In the former case, the Court, after an examination of the ballots may find that some other person than the candidate declared to have received a plurality by the board of canvassers actually received the greater number of votes in which case the court issues its mandamus to the board of canvassers actually received the number of votes in which case the courts issues its mandamus to the board of canvassers to correct the returns accordingly; . . . If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner, and that another candidate was the real victor, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as the wreath of victory cannot be transferred from an ineligible candidate to any other

person elected is ineligible, the court cannot declare that the candidate occupying the second place has been elected, even if he were eligible, since the law[3] only authorizes a declaration of election in favor of the person who has obtained a plurality of votes.

Political Law.—*Police Power—prohibition to sell meat outside markets.*

CO KIAM v. CITY OF MANILA
G. R. No. L-6762, February 28, 1955

Ordinance No. 3563 of the city of Manila prohibits the sale of fresh meat outside of the city markets. The plaintiffs, meat dealers selling outside public markets, assailed the validity of the ordinance, on the theory that a legitimate business like that of selling fresh meat may be regulated but not entirely prohibited, since the power to regulate does not include the power to prohibit, and also, that the enforcement of the ordinance would deprive them of their lawful occupation and means of livelihood because they cannot rent stalls in the public markets.

The lower court held the ordinance null and void, but the Supreme Court reversed the decision. Said the Court:

> "The City of Manila . . . is specifically empowered (by its Charter, section 18, par. (1), Republic Act No. 409) to regulate the sale of meat . . . And in addition, it has the authority in the exercise of its police power under the 'general welfare clause' to enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity and the promotion of the morality, peace, good order, comfort, convenience and general welfare of the city and its inhabitants.
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> ". . . But it is obvious that the ordinance does not prohibit the business of vending fresh meat. What it does prohibit is the sale of that commodity outside the public markets. In other words, the ordinance merely localizes the sale of fresh meat, confining the sale to the city public markets with a view to facilitating police inspection and suspension in the interest of the public health."[1]

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candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots. In the one case, the question is as to who received a plurality of the legally cast ballots; in the other, the question is confined to the personal character and circumstances of a single individual."

In Nuval v. Guray, 52 Phil. 645 (1928), the court said that ". . . section 408 of the Election Law, providing the remedy in case a person not eligible should be elected to a provincial or municipal office, does not authorize that it be declared who has been legally elected. . . ."

In the relatively recent case of Llamaso v. Ferrer, 47 O.G. 2, 727, 728-9 (1949), the court speaking of the new Election Code said: ". . . Section 173 of Republic Act No. 180 (Revised Election Code) does not provide that if the contestee is declared ineligible the contestant will be proclaimed. Indeed, it may be gathered that the law contemplates no such results, because it permits the filling of the contest by any registered candidate, irrespective of whether the latter occupied the next highest place or the lowest in the election returns."

[3] Sec. 173, Rep. Act No. 180.

[1] Commenting on the sale of fresh meat outside of public markets, the City Health Officer of Manila in his letter to the City Mayor, said: The clandestine

On the second argument, the Court said:

> ". . . And surely, the mere fact that some individuals in the community may be deprived of their present business, or a particular mode of earning a living cannot prevent the exercise of the police power."[2]

The doctrine is not a new one; as a matter of fact, it merely follows *People v. Montil*[3] and *People v. Sabarre*.[4]

In cases like this, the court has to weigh the interests of persons licensed to pursue their respective occupations on one hand, and the public need and interests, on the other. As long as the ordinance is not discriminatory, unreasonable and oppressive, the courts are prone to uphold its validity.[5] Here the individual's interest must yield to that 'necessity' which 'knows no law.'[6]

Political Law.—*Temporary designation of a public officer.*

GOROSPE v. DE VEYRA
G. R. No. L-8408, February 17, 1955

A public officer may not be suspended, removed or ousted from his position without cause.[1] But does a mere detail which is a mere temporary arrangement have the effect of removing or suspending the public officer from his position? Of course, a public officer designated temporarily to act as technical assistant has the right to denounce such designa-

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sale of meat without benefit of veterinary inspection poses a great menace. As a legitimate exercise of the police power, confining the sale of meat within the city public markets, would facilitate inspection and trafficking in meat that is unfix for human consumption will be minimized if not totally suppressed.

[2] It is noteworthy, however, that the Municipal Board of Manila suspended the enforcement of the ordinance in questioning for four months on the ground among other, that many butchers lost their jobs since the ordinance was in force. *Manila Times*, Vol. X, No. 361, August 13, 1955.

[3] 53 Phil. 580 (1929). This case upheld the validity of a municipal ordinance prohibiting the sale of pork outside of the public market.

[4] 65 Phil. 684 (1938). In this case, the Court sustained a municipal ordinance which prohibits butchers and any other person from selling meat in any place except in the public market.

[5] See People v. Chan Tienco, 25 Phil. 89 (1913) and People v. Toribio, 15 Phil. 85 (1910). In the latter case, the court cited the case of Lawton v. Steele, 152 U.S. 133, 136, (1893), which held that to justify the State in thus interposing its authority in behalf of the public, it must appear, first that the interest of the public generally, as distinguished from those of a particular class, require such interference and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals.

[6] COOLEY, CONSTITUTIONAL LIMITATIONS (6th Ed.) 738.

[1] Lacson v. Romero, 47 O.G. 4, 1778 (1949); Santos v. Mallare, 48 O.G. 5, 1787 (1950). In these cases the officials were appointive and held to be protected by the Civil Service System.

Lacson v. Roque, 49 O.G. 1, 93 (1953). This involves an elective municipal officer.

Jover v. Borra, 49 O.G. 7, 2765 (1953). This involves an appointive municipal official with a fixed term.

tion and return to his official post.[3] But he can always waive said right to renounce.[3]

In the present case, Dr. Angara, duly appointed City Health Officer of the City of Baguio was granted a PHILCUSA-FOA Training Grant to study and specialize in the United States. In the Training Grant Agreement, he agreed to conform to all rules and regulations prescribed by the Philippine Council for United States Aid and FOA and particularly to render upon his return no less than two years' service to the government for every year of training abroad. While abroad, his position was temporarily vacated and Dr. Gorospe, the petitioner was designated Acting City Health Officer of Baguio. Returning to the Islands, the Secretary of Health detailed Dr. Angara in the Division of Tuberculosis, Department of Health until further notice. Believing that he had been ousted from his post, he commenced quo warranto proceedings against petitioner, Gorospe.[4]

The Supreme Court ruled that Dr. Angara had not been suspended, removed or ousted from his position but was merely detailed to serve temporarily in Manila, in the Division of Tuberculosis, Department of Health. The clause 'until further orders' in the detail order cannot be construed as an indefinite assignment, since respondent's contract to serve the government limits his service to two years and no more.

A public officer, ordinarily,[5] has the right to refuse a temporary designation,[6] but the respondent cannot do so in this case, because the detail was in conformity with the contractual committments assumed by him under the Training Grant Agreement.[7] And he was now in estop-

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[3] Rodrigues v. Del Rosario, 49 O.G. 12, 5427, 5429 (1953). Si Jose v. Rodriguez es nombrado de un buro con aprobacion de la Comision de Nombramientos, adquiere el nuevo puesto de director y pierde automaticante el puesto de alcalde de la ciudad de Cebu; pero su designacion para el cargo de auxiliar tecnico tiene solo caracter temporal y el puede aceptarla o no; y si la acepta, puede renunciarla.

[3] There is no sanctity in such a claim of constitutional right as prevents it being waived as any other claim of right may be." Wall v. Parrot Silver and Copper Co., 244 U.S. 407, 411, 61 L. Ed. 1229, 1231 (1917).

"A person may by his act or omission to act waive a right which he might otherwise have under the Constitution as well . . . as under a statute . . ." Pierce v. Somerset Railway, 171 U.S. 641, 648, 43 L.Ed. 316, 319 (1898).

[4] The Court of First Instance of Baguio granted a preliminary injunction in the quo warranto proceedings instituted by Dr. Angara. This is now in the Supreme Court on a writ of certiorari to set aside said preliminary injunction.

[5] Sec. 951 of the Revised Administrative Code, however, empowers the Director of Health, subject to the approval of the proper head of Department, to require the services, without additional compensation, of any medical officer or employee in the Government service.

[6] Rodrigues v. Del Rosario, *supra* note 2.

[7] *Revised Memorandum to the Agencies of the Philippine Government for the Sending of Filipino Technicians Abroad under the ECA Technical Assistance Programme.* Sec. 8, *Obligations undertaken by participant and by the Government...* "The government undertakes to restore the participant to the position most advantageous to the government upon the completion of his training abroad." Construing this, the Supreme Court said that what position should be deemed most advantageous to the government for respondent to occupy is a question to be decided by the representatives of the government and not by respondent.

pel to urge the nullity[8] of his training agreement after having taken advantage thereof.

Summarizing, the Court said that the temporary detail of a public officer in the civil service to another position, pursuant to a contract voluntarily entered into by the officer, is neither removal, suspension or transfer in violation of the Constitution, in the absence of a showing of manifest abuse of discretion or that the detail is due to some improper motive or purpose.[9]

Political Law.—*Removal of temporary employees.*

TOLENTINO v. TORRES
G. R. No. L-6787, January 31, 1955

Republic Act No. 557[1] which safeguards the tenure of office of provincial guards and members of the city or municipal police, as construed by the Supreme Court in a number of cases,[2] gives protection to this

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[8]Respondent argued that the contract was against public policy in so far as it authorized the Department of Health to detail him to another position. The Supreme Court said that "public policy requires that officials in the classified or unclassified civil service be not removed, suspended or indefinitely transferred except with their consent or for sufficient cause. But this rule aims primarily to protect the tenure of public officials, to guard them from pressure or imposition and they may voluntarily relinquish the protection, at least for a limited period, as this respondent has done through his training agreement."

[9]The Supreme Court banked on two reasons for its conclusion, namely, that the detail was pursuant to a contract entered into by the officer and that there was no showing of manifest abuse of discretion or that the detail was due to some improper motive or purpose. It seems that even if there be no contract, if there has been no showing of manifest abuse of discretion or improper motive or purpose, the detail could have been valid. This conclusion stems from Sec. 951 of the Revised Administrative Code which empowers the Director of Health, subject to the approval of the proper head of the Department, to require the services... of any medical officer or employee in the government service. It may be said that this provision could take the place of the contract of waiver. Conversely it seems that even if the detail be pursuant to a contract (although it is most likely that the contract may show the absence of abuse of discretion or improper motive or purpose), should there be a manifest abuse of discretion or immproper motive or purpose, the detail would be declared illegal.

It appears, therefore, that the main and perhaps the real reason for the Supreme Court's decision is that there was no showing of manifest abuse of discretion or improper motive or purpose and that the mention of the contract of waiver was only to support the conclusion that there was, in fact, no abuse of discretion or imporper motive or purpose.

[1]*"An Act Providing for the Suspension or Removal of Members of the Provincial Guards, City Police and Municipal Police by the Provincial Governor, City Mayor or Municipal Mayor."*

[2]Orais v. Ribo, 49 O.G. 12, 5386 (1953). The Act (Rep. Act No. 557) guarantees the tenure of office of provincial guards, and members of City and municipal police who are eligibles. Non-eligibles do not come under the protection of the Act invoked by them.

Pana v. City Mayor, G.R. No. 5700, Dec. 18, 1953. In accordance with Sec. 682 of the Rev. Adm. Code, when a position in the classified civil service is filled

particular class of government personnel who are civil service eligibles, but not those who are not eligibles. The replacement, therefore, of non-eligibles by non-eligibles is lawful under and pursuant to section 682 of the Revised Administrative Code.[3] A slight twist in this general rule was introduced in the case of *Orais v. Ribo*[4] by virtue of Republic Act No. 65,[5] as amended by Republic Act No. 154. So that now, the replacement of non-eligibles but veterans by those who are non-eligibles, is unlawful, because the former are preferred under Republic Act No. 65, as amended by Republic Act No. 154, if they have been appointed within the term provided in said Acts.

As a general rule, however, the difference between eligibles and non-eligibles spells the difference between protection and ouster. Yet, strangely enough in a number of cases,[6] the Supreme Court never mentioned nor even hinted anything about eligibility. They presumed the eligibility of the government personnel ousted.

In the case of *Tolentino v. Torres*,[7] the Supreme Court predicated its decision solely on the non-eligibility of the petitioners, who were temporary provincial guards of Negros Occidental ousted by the respondent Governor of said province.

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by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a longer period than three months. Also Manigbas v. De Guzman, G.R. No. L-6137, Jan. 22, 1954 Inocente v. Ribo, G.R. No. L-4989, March 30, 1954.

Abella v. Rodriguez, G.R. No. L-6867, June 29, 1954. In this case, although the respondent Mayor alleged that the petitioner was not a civil service eligible, the Supreme Court said that this defense was not insisted upon. Furthermore, there was no evidence to support this defense.

[3] Section 682, Rev. Adm. Code: *"Temporary and emergency employees.* Temporary appointment without examination and certification by the Commission of Civil Service or his local representatve shall not be made to a competitive position in any case, except when upon the prior authorization of the Commissioner of Civil Service; and any temporary appointment so authorized shall continue only for such period not exceeding three months as may be necessary to make appointments through certification of eligibles and in no case shall extend beyond thirty days from receipt by the cheif of the bureau or officer of the Commissioner's certification of eligibles . . ."

[4] See note 21.

[5] *"An Act Providing for a Bill of Rights for Officers and Enlisted Men of the Philippine Army and of Recognized or Deserving Guerilla Organizations."*

[6] Manuel v. De la Fuente, 48 O.G. 11, 4829 (1952); Nuval v. De la Fuente, G.R. No. L-5695, Jan. 2, 1953; Llanco v. De la Fuente, G.R. No. L-5748, Jan. 2, 1953. In Mission v. Del Rosario, G.R. No. L-6754, Feb. 2, 1954, the Court was engrossed in the question whether detectives are members of the police force and therfore, within the protection of the Act. Instead of dealing on the crucial question of eligibility, it considered the rank and length of service of many of the petitioners involved. Also Palamine v. Zalgado, G.R. No. L-6901, March 5, 1954.

[7] G.R. No. L-6787, Jan. 31, 1955.

Administrative Law.—Sufficiency of evidence supporting decisions of administrative tribunals.

TABIOLO v. MARQUEZ
G. R. No. L-7035, March 25, 1955
RODRIGUEZ v. MARIANO
G. R. No. L-6523, January 31, 1955

It is a well settled rule that decisions of administrative tribunals on questions of fact are conclusive and cannot be reviewed by the court where there is ample evidence to support such decisions.[1]

In *Tabiolo v. Marquez*, the petitioner claimed that the lower court erred in finding that the expenses for planting and cultivation were born solely by the respondent. On this contention, the Supreme Court said:

> ". . . Suffice it to say that the findings of fact of the Court of Industrial Relations are conclusive upon this Court, unless it is shown that there is absolutely no credible evidence in support thereof; and with respect to the question as to who defrayed the planting and cultivation expenses especially, the decision appealed from even quotes an express admission by petitioner that while he furnished the carabao and the farm implements, the respondent paid for the expenses of planting."

In the case of *Rodrigues v. Mariano*, the Court of Industrial Relations, without touching on the evidence submtited by the parties,[2] concluded briefly that Paguio leased the land to Mariano and that, therefore, the relation between them is one of landlord and tenant.

Considering that in the petition for review only questions of law may be looked into, on the theory that the findings of fact by the Court of Industrial Relations are conclusive, such purpose cannot be accomplished if its findings are incomplete[3] or the decision does not contain a complete coverage of the facts as reflected from the evidence presented. Unless this is done, the Supreme Court cannot properly fulfill its duty of applying the law as may be warranted by the real facts and so the *Rodrigues* case was remanded to the Court of Industrial Relations for a proper evaluation of the evidence.

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[1] Halili v. Floro, G.R. No. L-3365, Oct. 25, 1951; Halili v. Balane, G.R. No. L-3365, April 11, 1951; Manila Yellow Taxicab v. Public Service Commission, G.R. No. L-2877, April 26, 1951.

Cf., Scope of Judicial Review of Administration Action, 28 PHIL. L.J., 4, 572 (1953).

[2] The Tenancy Law Enforcement Office found that Paguio, the previous owner of the land in question was indebted to Mariano and that it was understood between them that the latter will take over the land in question by paying the owner 50 cavanes of palay per agricultural year and that after receipt of said rental, Paguio paid Mariano his indebtedness; and later sold the land to Rodriguez, the petitioner, who as new owner placed a new tenant on the land.

[3] The Supreme Court said that the Court of Industrial Relations has not laid the proper factual basis on which this Court may pass intelligently upon the issue involved in the appeal. The court referred to the question whether the lease to Mariano was only until the indebtedness was paid or not.

Taxation; Statutory Construction.—*Prescriptive period under Section 306 of the National Internal Revenue Code.*

NORTH CAMARINES LUMBER CO. v. DAVID
G. R. No. L-6125, March 31, 1955

Section 306 of the National Internal Revenue Code[1] relating to recovery of tax erroneously or illegally collected, provides that "in any case, no suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty."

On June 9, 1949, Section 190[2] of the National Internal Revenue Code, relating to compensating taxes was further amended by Republic Act No. 361 by adding at the end thereof the following paragraph:

> "That phrase 'commodities, goods, wares or merchandise' as used in this title, shall not be construed as to include vessels, their equipments and/or appurtenances received from without the Philippines before or after the taking effect of this Act."

The question is: can one who has paid compensating taxes in 1944 or even before that time recover said taxes because of Republic Act No. 361, thereby impliedly repealing the two-year prescriptive period provided for in Section 306?

This question was raised in the present case wherein the plaintiff sought the refund of the ₱3,000 it paid in 1946 as compensating tax for the various barges it purchased from the Foreign Liquidation Commission. The Supreme Court in disposing of the case said:

> "According to the theory of the appellee, all compensating taxes paid on vessels purchased abroad at any time before June 9, 1949, shall be refunded without any limitation as to the time at which they were bought. This theory is so sweeping with regard to the time prior to the enactment of Republic Act No. 361 as to make such time limitless or infinite or from the beginning of the World. It is logical to conclude that Congress did not mean to repeal the two years' prescription established by section 306 of the National Internal Revenue Code with regard to the refund of the compensating taxes in question for the reason that it would be absurd. If Congress had meant to repeal the prescription . . . it would have said so in express term . . . Repeals by implication are not favored, especially if such repeal leads to unreasonable and unexpected results."

Administrative Law.—*Jurisdiction of Deportation Board; allegation of citizenship.*

CHUA HIONG v. THE DEPORTATION BOARD
G. R. No. L-6038, March 19, 1955

Jurisdiction in the executive to order deportation exists only if the person held in detention is an alien who is not entitled to enter or remain

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[1] Com. Act No. 466, as amended.

[2] Sec. 190. "*Compensating Tax.* All persons residing or doing business in the Philippines who purchase or receive from without the Philippines any commodities,

in the country under the terms of the immigration law. Alienage is a jurisdictional fact, and an order of deportation must be predicated upon a finding of that fact.[1] But what if the detainee alleges citizenship? Does that *ipso facto* deprive the deportation board of jurisdiction? Should the question of citizenship be passed upon by the deportation board or reserved to the courts?

In the earlier case of *Miranda v. The Deportation Board*,[2] the Supreme Court categorically said:

> "While the jurisdiction of the Deportation as an instrument of the Chief Executive to deport undesirable aliens exists only when the person arrested is an alien, however, the mere plea of citizenship does not divest the Board of its jurisdiction over the case. Petitioners should make a showing that his claim is not frivolous and must prove by sufficient evidence that they are Filipino citizens. If such is the primary duty of the petitioner, it follows that the Deportation Board has the necessary power to pass upon the evidence that may be presented and determine in the first instance if petitioners are Filipino citizens or not . . . It is not therefore correct to state that the question of citizenship should be determined exclusively by the courts."

In the present case, however, a question arose whether the allegation of citizenship could be determined by the courts without waiting for the decision of the Deportation Board on the matter where the allegation is supported by evidence although inconclusive.

Petitioner filed suit for a writ of habeas corpus on the ground that his arrest had been without jurisdiction, and for a writ of preliminary injunction to restrain the Deportation Board from hearing the case until after his petition is heard.

Petitioner's claim was founded, among others, on these propositions: (1) that the evidence submitted by him as to his Filipino citizenship was substantial; and (2) that as his liberty as a citizen is involved, the constitutional guarantee of due process of law demands that his alleged citizenship should be determined in judicial proceedings. The Supreme Court considering the evidence presented by both sides,[3] said:

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goods, wares or merchandise, . . . shall pay on the total value thereof at the time they are received by such persons, . . . a compensating tax . . . ."

[1] 2 AM. JUR., 524.

[2] G.R. No. L-6784, March 12, 1954.

[3] The petitioner submitted a letter of the Vice-Minister of Foreign Affairs under the Japanese Military Occupation dated August 17, 1944, and a letter of the Secretary of Labor dated October 31, 1945, finding the petitioner a natural son of a Filipino woman and therefore a Filipino citizen, and the decision of the Court of First Instance of Manila to the effect that the petitioner is the illegitimate son of a Filipino woman and therefore a Filipino citizen (although this decision was afterwards set aside in view of the dismissal of the appeal in the Supreme Court).

On the other hand, the above documents were contradicted by the findings of a member of the Board of Special Investigation of the Bureau of Immigration, who, after an analysis of the evidence, concluded that the testimony of the alleged mother of the petitioner had certain discrepancies which rendered it of doubtful veracity. The Secretary of Justice, in his communication addressed to the Commissioner of Immigration, found that petitioner's claim to citizenship was not

"We have therefore a case where the evidence is neither conclusive in form of petitioner's Filipino citizenship, nor conclusively against said claim . . .

"If the alienage of the respondent is not denied, the Board's jurisdiction, and its proceedings are unassailable; if the respondent is admittedly a citizen or conclusively shown to be such, the Board lacks jurisdiction and its proceedings are null and void *ab initio* and may be summarily enjoined in the courts. Naturally, the Board must have the power in the first instance, to determine the respondent's nationality. And the respondent must present evidence of his claim of citizenship before the Board and may not reserve it before the courts alone in a subsequent action of habeas corpus. It must quash the proceedings if it is satisfied that respondent is a citizen and continue it if it finds that respondent is not, even if he claims citizenship and denies alienage. Its jurisdiction is not divested by the mere claim of citizenship . . .

". . . When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the deportation proceedings. A citizen is entitled to live in peace, without molestations from any official or authority, and if he is disturbed by a deportation proceeding, he has the unquestioned right to resort to the courts for his protection . . . If he is a citizen and evidence thereof is satisfactory, there is no sense nor justice in allowing the deportation proceedings to continue, granting him the remedy only after the Board has finished its investigation of his undesirability."

There is therefore no difficulty if the petitioner is clearly a citizen or an alien. The difficulty arises when the evidence is not conclusive on either side, as in this case. The Court solved this difficulty by quoting the decision of the United States Supreme Court in the case of *Ng Fung Ho v. White:*[4]

". . . To deport one who so claims to be a citizen obviously deprives him of liberty, . . . It may result in loss of both property and life; or all that makes life worth living. Against the danger of such deportation without the sanction afforded by judicial proceedings, the 5th Amendment affords protection in its guaranty of due process of law. The difficulty in security of judicial over administrative action has been adverted to by this court . . .

"It follows that Gin Gan Get and San Mo are entitled to a judicial determination of their claims that they are citizens of the United States, . . ."[5]

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satisfactorily proved and ordered that he be required to register in accordance with the provisions of the Alien Registration Act. The petitioner, too, gained original entry into the Philippines as the son of a Chinese father and a Chinese mother, which fact entirely contradicted his claims of Filipino citizenship.

[4] 259 U.S. 276, 66 L.Ed. 938 (1922).

[5] The United States Supreme Court in this case said that the petitioners did not merely assert a claim of citizenship but supported the claim by evidence, sufficient, if believed, to entitle them to a finding of citizenship. It should, however, be observed that the United States Supreme Court in this case feared a ruling by the administrative tribunal because if the decision be made, then the finding of fact is conclusive—and the deportation of a resident may follow upon a purely executive order, and the courts have no power to interfere unless there be

It would be worthwhile to mention that the Court took cognizance of the fact that the issue of petitioner's citizenship was pending before a court in a criminal case filed against the petitioner for violation of the Alien Registration Act; hence the Executive Department itself saw it proper to have the issue resolved by a court.

The decision shows a great leaning towards protecting the rights of citizens, or even those who may show a *prima facie* case of citizenship. It laid emphasis on the citizen's right to his peace — this to be protected preferably through the medium of the courts. Such protection, if it is to be effective must be on time to prevent undue harrassment at the hands of ill-meaning or misinformed administrative officials.

But the Court cautioned:

> "However, it is neither expedient nor wise that the right to a judicial determination should be allowed in all cases; it should be granted only in cases where the courts themselves believe that there is such substantial evidence supporting the claim of citizenship, so substantial that there are reasonable grounds for the belief that the claim is correct. In other words, the remedy should be allowed only in the sound discretion of a competent court in a proper proceeding."

Tenancy Law.—*Tenancy contract violative of policy not expressed but implied by law.*

TABIOLO v. MARQUEZ
G. R. No. L-7035, March 25, 1955

The Tenancy Law[1] prohibits as against public policy the following stipulations:

> (a) If the tenant shall receive less than 55 per cent of the net produce, in case he furnishes the work animals and the farm implements and the expenses of planting and cultivation are borne equally by said tenant and the landlord.
>
> "(c) If the landlord is the owner of the work animals and the tenant the farm implements and the expenses are equally divided between them, the landlord and the tenant, for the tenant to receive less than 50 per centum of the net crop."

In the earlier case of *Sibulo v. Altar*,[2] the contract in question did not squarely fall under either paragraph. It provided that the owner of a first class agricultural land was to furnish the work animals and farm implements and the tenant to defray all the expenses of planting and cultivation, and the net produce to be divided equally between them. Is this prohibited?

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either denial of a fair hearing or the finding was not supported by evidence or there was an application of an erroneous rule of law. Whether the fear which induced the U.S. Supreme Court to give relief to the petitioners is also that which prompted our Supreme Court to follow suit is not clear.

[1] Act No. 4045, as amended by Rep. Act No. 34, Sec. 7, pars. (a) and (c).

[2] 46 O.G. 11, 5502 (1949).

The Court of Industrial Relations after a series of mathematical computations taking as basis Sections 7 and 8 of the Tenancy Law, arrived at the following formula: 30 per centum for land; 30 per centum for labor; 30 percentum for all expenses of planting and cultivation; 5 per centum for furnishing work animals; and 5 per centum for furnishing farm implements. The Court of Industrial Relations concluded that the contract was against public policy as contemplated in Section 7 of the Tenancy Law. This was affirmed by the Supreme Court on appeal when it said:

> ". . . We cannot subecribe to this narrow interpretation of the Tenancy Law. In declaring certain stipulations to be against public policy, the legislative could not have meant to sanction other stipulations which though not specified, are in effect similar to those expressly mentioned. Otherwise, by subtlety in the framing of the contract, the law might easily be circumvented and its purpose defeated.
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> ". . . Being a remedial statute, it (the Tenancy Law) should be construed so as to further its purpose in accordance with the general interest of the lawmaker."

In the instant case of *Tabiolo v. Marquez*, the Supreme Court had occasion to reiterate the above-mentioned doctrine. Here, the Court of Industrial Relations found that the work animals and farm implements were borne by the petitioner-tenant, Tabiolo, while the expenses of planting and cultivation were borne by the respondent-landlord, Marquez. Accordingly, it divided the net produce in the ratio of 60 per centum to the land lord and 40 per centum to the tenant. The Supreme Court affirmed the decision mentioning that the petitioner's 40 per centum share was for labor, 30 per centum and work animals and farm implements, 10 per centum, while the respondent's 60 per centum was 30 per centum for the land and 30 per centum for planting and cultivation expenses.

Legal Ethics.—*Improper conduct.*

SEVILLA v. ZOLETA
Adm. Case No. 31, March 28, 1955

In this administrative case, involving charges of malpractice, the respondent, as notary public, prepared and ratified a deed of sale purporting to sell a piece of land free from all liens, charges and encumbrances of whatever kind and nature, when as a matter of fact he knew that the contents of said document was false because on two different occasions he had acted as witness to the execution of two deeds of mortgages involving the same parcel of land. The respondent, in extenuation, submitted affidavits of the encumbrancers stating that they consented to the deed to help the owner pay her obligations. Was this act justified?

The Supreme Court ruled that the act done was improper and irregular and not in keeping with what a member of the bar, conscious of his oath, should have done. The proper step for him to take, the Court added, even if the encumbrancers had consented to the sale of the land, would have been to cancel the mortgage, or to state in the deed of sale that the land was encumbered but that the mortgagee was willing to release its encumbrance in order that a third person may be appraised of the situation, otherwise a third person maybe misled and this may involve him in litigation in the future. The Court admonished that the respondent should be more careful in the future in the performance of his duties as notary public and as member of the bar.

Lorenzo E. Dimatatga, Jr.

Constitutional Law.—*"Landed" or "large estates" and the "constitutional policy on land tenure.*

REPUBLIC OF THE PHILIPPINES v. BAYLOSIS ET AL.
G. R. No. L-6191, January 31, 1955

The recurrence of expropriation cases[1] calling for an interpretation, or more properly, a reinterpretation of Sec. 4, Art. XIII of the Constitution[2] and pertinent statutory enactments[3] attests to the fact that the Supreme Court's definition of the constitutional policy embodied in the above-cited constitutional provision enunciated in the leading case of *Guido v. Rural Progress Administration*[4] has failed to provide the legislative and executive branches of the government with a definite and satisfactory guide for the carrying out of such constitutional policy. Perhaps the truth is that the Supreme Court never intended to formulate such a guide, or that one was not deemed possible, or if possible, not practical. As the court pointed out:

> "No fixed line of demarcation . . . can be made; each case has to be judged according to its peculiar circumstances."[5]

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[1] Since the case of Guido v. Rural Progress Administration, 47 O.G. No. 4 1848 (1951) eleven other cases including the one under comment have come before the Supreme Court for decision. See note 11 for citations; also Notes 29 Phil. L.J. No. 6, pp. 832-4 (1954).

[2] Sec. 4, Art. XIII of the Constitution provides: "The Congress of the Philippines may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals."

[3] Statutes referrer to are C.A. No. 539 which authorizes the President "to acquire private lands for resale in small lots," and provides "for the creation of an agency to carry out the purposes of (said) act."; R.A. No. 267 which authorizes "cities and municipalities to contract loans for the purpose of purchasing or expropriating homesites and subdividing them for resale at cost."; R.A. No. 1162 which provides "for the expropriation of landed estates or haciendas or lands which formed part thereof in the City of Manila, their subdivision into small lots, and the sale of such lots at cost or their lease on reasonable terms."

[4] See note 1.

[5] Guido v. Rural Progress Administration, *supra*, at p. 1853.

The instant case of *Republic v. Baylosis et al.*,[6] once more belies the foregoing observation. Here indeed the Supreme Court found it necessary — and attempted — to spell out in greater detail the criteria set forth in general terms in the *Guido* case, and to elucidate on what may be termed "the constitutional policy on land tenure"[7] embodied in Sec. 4, Art. XIII of the Constitution.[8]

In the *Guido* case, however, it was made clear that in the exercise of the 'special' power of eminent domain conferred by said constitutional provision the question as to whether or not the intended condemnation is for public use or for a public purpose must be inquired into by the competent court. In other words "public use" or "public purpose" is not to be presumed nor substituted by the intention to "subdivide and resell" the land condemned to qualified individuals. In every case the existence of "public use" or "public purpose" in the intended condemnation must be inquired into by the competent court.[9]

And for the expropriation to be clothed with a public purpose the land sought to be condemned must be "large estates, trusts in perpetuity, and land that embraces a whole town, or a large section of a town or city." The expropriation moreover must be "reasonably calculated to solve serious economic and social problems," such as for instance an agrarian trouble in rural areas or an acute housing shortage in urban centers. The condemnation furthermore must inure to the benefit of a large number of individuals, and cannot be instituted "for the economic relief of

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[6] G.R. No. L-6191, Jan. 31, 1955.

[7] The phrase is borrowed from Dean Sinco. See Sinco, V. G., The Constitutional Policy on Land Tenure, 28 Phil. L.J. No. 6, p. 837 (1953).

[8] For purposes of brevity the constitutional provision will hereafter be referred to as "Sec. 4, Art. XIII."

[9] Dean Sinco however, maintains a contrary view. He states: "In view of these different factors that a court has to take in determining the validity of the exercise of the general power of expropriation in particular cases (i. e., as to the requirement of public use or public purpose) the need for an exception to the general rule is apparent when the state has a special and predetermined goal to attain. Thus when the Constitution, in the interest of social peace and economic security, provides that private land be taken and subdivided into small lots to be sold at cost to individuals, it thereby determines the purpose of the taking. Whether such purpose in itself constitutes what courts consider public use or not is beside the point. That question is withdrawn from their jurisdiction. The only question left for them to determine is whether the compensation is just or not. The conclusion therefore is evident: that when Congress authorizes the taking of private land for the purpose of subdividing it into small lots to be sold at cost to individuals, no court or any other authority has any lawful right to subject the validity of the taking to the tests ordinarily employed in determining the legitimate exercise of the general right of eminent domain." SINCO, V. G., THE CONSTITUTIONAL POLICY ON LAND TENURE, *supra.*; also SINCO, V. G. PHILIPPINE POLITICAL LAW (1954) 458-9.

This line of reasoning has been passed upon by the Supreme Court in Republic v. Samia, G.R. No. L-3900, prom. July 18, 1951, thus:

"It is argued that Commonwealth Act No. 539 'is for its object and purpose, a political question of the Government, the necessity and expediency of which cannot be the subject of a judicial inquiry.' The courts do not question the necessity or expediency of that piece of legislation; they merely hold that it applies only to lands which under the Constitution the Congress could expropriate for re-sale to individuals. Furthermore, a law that attempts to deprive a landowner

a few families," as for example, of only "10, 20 or 50 persons and their families." As summarized by the Supreme Court:

> "The size of the land expropriated, the large number of people benefited, the extent of social and economic reform secured by the condemnation, clothe the expropriation with public interest and public use."[10]

In laying down these criteria, however, the Court pointed out that the conception of "public use" or "public purpose" must vary with the "peculiar circumstances of each case" so that a definitive rule — "a fixed line of demarcation" — cannot be made. It is therefore unfortunate that most of the cases[11] that arose subsequently to the *Guido* case, both as to decisive operative facts and vital policy considerations, fitted snugly into the mold of the *Guido* case. Application of the rule there laid down was thereby greatly facilitated and did away with the necessity of clarifying and adapting the general criteria laid down in the *Guido* case to the "peculiar circumstances" of each of the subsequent cases.[12]

The marked divergence between the facts of the instant case and the *Guido* case, however, rendered inadequate the hitherto matter-of-fact manner of applying the *Guido* ruling.

In the *Guido* case the land sought to be expropriated was commercial land with an approximate area of two hectares; in the instant case the land involved was agricultural approximately seventy-seven hectares in area and formerly formed part of a large estate, the *Hacienda Lian*. In the *Guido* case the intended beneficiaries were only a "few families"; in the instant case expropriation was laid in behalf of forty-four tenants whose dependents numbered 214 persons in all. In the former case there was no existing landlord-tenancy dispute; in the instant

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of his private property without his consent does not merely raise a political question beyond the jurisdiction of the courts. The individual has a right to seek the protection of the Judiciary whenever his rights of ownership are invaded without constitutional authority, even when such invasion is committed by agents of the government."

[11] In point of area particularly almost all the cases are "in all fours" with the *Guido* case: De Borja v. Commonwealth, G.R. No. L-1496, 1, 565 sq. m.; Urban Estates v. Montesa, G.R. No. L-3830, March 15, 1951, 49,553 sq. m.; City of Manila v. Arellano Law College, G.R. No. L-2929, Dec. 28, 1950, 7,270 sq. m.; Lee Tay & Lee Chay, Inc. v. Choco, G.R. No. L-3297, Dec. 29, 1950, 900 sq. m.; Republic v. Santa, *supra*. 5,593, sq. m.; Rural Progress Adm. v. Reyes, G.R. No. L-4703, Oct. 8, 1953, 2 has.; Mun. of Caloocan v. Manotok Realty, Inc., G.R. No. L-6444, May 15, 1954, 39,374 sq. m.; Republic v. Gabriel, G.R. No. 6161, May 28, 1954, 12,086 sq. m.; However in Republic v. Castro, G.R. No. L-4370, Feb. 25, 1955, expropriation was allowed with the conformity of the owners of a land with an area of 22 hectares.

With the exceptions of the *Reyes* and *Castro* cases the lands involved were, as in *Guido*, urban lands. The purpose of the expropriation was also the same, being to provide the tenants of the lands with lots of their own upon which to erect their homes.

[12] "The repetition of a catchword," says a great judge, and it may be added, of a judicial ruling, "can hold analysis in fetters for fifty years." Cardozo, *Mr. Justice Holmes, Selected Writings* (1947) 83.

In the disposition of the cases listed in note 11 what the Court has been doing is simply to quote paragraphs from the decision in the *Guido* case as in the

case there was in fact such a dispute and one of the avowed purposes of the expropriation was "to nip in the bud and put an end to an explosive source of agrarian trouble."

Other facts of the instant case which the Court deemed significant were the following: (1) that at the time of the commencement of the expropriation proceedings the original owner of the land, one Sinclair, had already sold a greater portion of the land sought to be expropriated to the principal defendant, Baylosis, who in turn had sold the same land to twenty-one other individuals such that the land in question at that time was already owned in separate portions with areas ranging from thirteen hectares to a little more than a hectare by twenty-three different owners; and (2) that previous to the sale of the land to the present owners, however, both Sinclair and Baylosis had already been notified by the government[18] of its intention to expropriate the lands owned by them.

The issues raised in the instant case were the following: (1) In the light of the *Guido* ruling, is a seventy-seven hectare estate which formerly formed part of an hacienda such a "landed" or "large estate" the expropriation of which may be authorized by Congress pursuant to Sec. 4, Art. XIII of the Constitution? (2) Would the existence of a tenancy dispute in the land sought to be expropriated suffice to clothe the intended expropriation with the requisite public use or public purpose? (3) Would the breaking up of the land sought to be expropriated by the owner thereof through voluntary transactions after notice to such owner of an intended expropriation, into "parcels of reasonable areas" bar the subsequent expropriation of the "resulting smaller parcels"? (4) What is the effect of notice of an intended expropriation upon the right of the owner of the land to deal with the land by means of voluntary transactions?

The resolution of the first issue clearly manifested the ambiguity of the first criterion laid down in the *Guido* case — that Sec. 4, Art. XIII refers to "landed" or "large estates." In clarifying the meaning of the term "landed" or "large estates" the Court had to answer the question: what landed or large estates are contemplated by the constitutional provision, only those existing landed or large estates at the time of the adoption of the Constitution, or such estates as well as any other estate of a sufficiently extensive area whether or not it was a

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Araullano Law Colleges and *Urban Estates* cases. In the *De Borja* case the *Guido* ruling was quoted in full. A contributory factor to the uncritical attitude is perhaps the fact that almost the same justice had been assigned to write the decision in these cases. Thus will be seen why analysis was long "hold in fetters."

[18] Pursuant to C.A. No. 539, the Rural Progress Administration was created and charged with the expropriation of landed estates. It was however abolished by Ex. Order No. 376, Nov. 28, 1950, and its functions were transferred to the Division of Landed Estates of the Bureau of Lands. Notices in this case were served by the Rural Progress Administration although the proceedings was instituted later by the Bureau of Lands after the former had been abolished.

landed or large estate, or part thereof at the time of the adoption of the Constitution?[14] To answer the foregoing question was by no means easy in view of the ruling laid down in the case of *Rural Progress Administration v. Reyes*,[15] to the effect that said constitutional provision refers to landed or large estates existing "at the time of the adoption of the Constitution," and that "so long as any land formerly formed part of a landed or large estate, it may, regardless of its present area be still subject to expropriation under Sec. 4, Art. XIII, of the Constitution." But the mischief implicit in such a rule was readily perceived by Justice Montemayor who took occasion to expressly repudiate it. Said the Justice:

> ". . . the decision in that *Reyes* case was a departure from the doctrine laid down in the leading case of *Guido* which doctrine has been subsequently affirmed and reiterated in a long line of cases, and we now believe that in abandoning the ruling made in the *Reyes* case, this Tribunal is merely returning to and re-affirming the sound and wholesome doctrine laid down in the *Guido* case."[16]

From the foregoing it could be implied that in the *Guido* case the term landed or large estate was understood to mean any estate of a sufficiently extensive area regardless of whether or not it was such, or part thereof at the time of the adoption of the Constitution. This inference is supported by rulings in subsequent cases which relied heavily on the *Guido* case. In *Lee Tay & Lee Chay, Inc., v. Choco*,[17] the term was taken to refer to "big landed estates, and not to small parcels." In *Urban Estates, Inc. v. Montesa*,[18] reference was again to "lands comprising whole towns and municipalities." In the other cases[19] the court, after noting the size of the lands sought to be expropriated, none of

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[14] In Urban Estates v. Montesa, *supra*., Justice Tuason points out that ". . . there were and there are lands, comprising whole towns and municipalities, which were and are owned by one man or group of men from whom their inhabitants hold the lots on which their houses are built as perpetual tenants." From the foregoing it could indeed be deduced that the constitutional provision refers to large estates existing at the time of its adoption. The same could be said of the sponsorship speech of Delegate Cuaderno who was responsible for the enactment of said provision. His speech was incidentally adopted by the court in the *Guido* case as "embodying the intent of the framers of the organic law, and of Act No. 539."

[15] See note 11.

[16] The mischief in the *Reyes* ruling is explained thus:

". . . if a piece of land, regardless of size, formerly formed part of a big landed estate, it is necessarily subject to expropriation then there would be no limit or foreseeable end to expropriation. A landed estates of say 3,000 hectares is broken up into say-50-hectare lots and sold to the lessees or occupants thereof. The tenants in that 50-hectare lot may want to buy their holdings and because the lot was formerly a part of a landed estate, it is again expropriated and subdivided into say 5-hectare lots. A buyer of this 5-hectare portion may have tenants cultivating portions thereof and those tenants would again insist on expropriation into say one hectare lots and so this expropriation would and may go on endlessly until the minimum of a few square meters is reached, just to accomodate one single tenant. We hold that this could not have been the intention of the framers of the constitution."

[17] See note 11.

[18] *Ibid.*

[19] *Ibid.*, excepting the *Reyes* and *Castro* cases.

which exceeded five hectares, ruled that they could not rightly be considered as landed or large estates. From all of the foregoing it could be gathered that the decisive factor in determining whether or not the land sought to be expropriated is a landed or large estate is the extent of its actual area at the time expropriation is sought, and not its being a landed or large estate, or part thereof, at the time of the adoption of the Constitution, regardless of present area. No definite criterion in terms of area, however, was formulated in the instant case, again perhaps because the Court still doubts the practicable value of any such criterion. The Court merely contented itself, with a view to the disposition of the case, to pointing out that under hitherto declared legislative[20] and executive[21] policies a seventy-seven hectare land, under the "peculiar circumstances" of the present case, is not a "landed or large estate."

It is perhaps in the disposition of the second issue that the rationale of the Court's decision, not only in the instant case but in all the cases so far decided by it, is made manifest. It is also in the resolution of the second issue that the reason for the seemingly lukewarm attitude of the Supreme Court towards the government's program of expropriation is clearly revealed. It is evident from the decisions promulgated that the Court understands the purpose underlying the enactment of Sec. 4, Art. XIII of the Constitution which in brief is to make clear and definite the power of the government to expropriate big landed estates in order to enable it to deal more effectively with the pressing economic and social problems that are attendant to the continued existence of big landed estates.

But as Justice Tuason pointed out in the *Guido* case the exercise of the 'special' power of expropriation conferred by said Sec. 4, Art. XIII of the Constitution must be conditioned upon such exercise being "reasonably calculated to solve the serious economic and social problems" sought to be remedied.

In the present case the Supreme Court seriously doubted the efficacy of expropriation as a solution to the tenancy dispute sought to be remedied and averted. The Court for instance did not believe that the petitioning tenants were able, or indeed that they would be willing to pay the just compensation of the land, which under the law,[22] they would be legally obliged to pay. In such an event the constitutional objective of breaking up big landed estates would clearly be frustrated

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[20] Under the public land laws (Acts No. 926, 2874, and C.A. No. 141) an individual may acquire by purchase 144 hectares of public land while a qualified corporation may acquire by the same means 1024 hectares.

[21] Dept. of Agriculture and Natural Resources Adm. Order No. R-3 which governs the acquisition and disposition of landed estates in its section 3 provides: "Except in special cases, no proceedings shall be initiated for the appropriation of any estate unless the area thereof be at least five (5) hectares if for residential purposes; or at least one hundred (100) hectares if for agricultural purposes."

and nothing but a substitution of landlords, the government in place of the former owner, would have been accomplished.[23] Moreover, the Court found out that the land in question had already been broken up into "parcels of reasonable areas" by means of voluntary sales. Thus in the opinion of the Court "the main purpose of the constitutional provision" which is "to break up landed estates" has already been accomplished — just as effectively if through some other means. In this connection the fact that the vendees had not been the tenant-occupants of the land, who by themselves or through their ancestors had cleared the lands and had been cultivating it for so long a time already was not deemed to affect this primary result,[24] *i.e.* the breaking up of the land into "parcels of reasonable areas" among a number of persons. Furthermore the Court also took account of the fact that the vendees had no lands other than the portion they had bought of the land sought to be condemned, while some of the intended beneficiaries were found to have other lands of their own, a fact which the Court ruled disqualifies one from becoming a beneficiary to expropriation.[25] As regards the existing landlord-tenancy dispute the Court noted that it arose not through any fault of the landlord but on account of the refusal of

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[23] Art. XIII, Sec. 4 provides for expropriation upon payment of "just compensation." C.A. No. 539 stipulates that resale must be at "reasonable prices." R.A. No. 1162 provides the sale of the lands condemned "at cost or their lease on reasonable terms." Expropriation clearly does not contemplate the gratuitous doing out of lands by the government to qualified beneficiaries.

[24] In this connection the court cited as an example the previous failure of the expropriation of an extensive portion of the Lina Estate of which the land involved in this case was formerly a part. Upon testimony of an employee of the Bureau of Lands it was found out that the expropriated portion of the Lian Estate, in about 3,700 hectares of its area had remained "unsubdivided; that no portion of said big area has been resold or even contracted to be resold by the government to their occupants and all that the government is doing it to administer the same and receive the portion of the yearly harvest corresponding to the owner . . . (and) all that has been done thirteen years after the expropriation was to transfer the ownership and administration of the Lian Estate to the Government which has assumed the role of lessor and landlord. No reason or explanation was given for this rather strange if not anomalous situation."

The concurring opinion of Justice Torres in the *Guido* case is also instructive on this point. Referring to the expropriation of friar lands upon the advent of American rule he states: "After the lapse of a few years, the tenants for whose benefit those haciendas were purchased by the government, and who signed contracts of purchase by installments . . . having defaulted in their partial payment, had to be sued by the government. . . . If I am not misinformed, the whole transaction in the matter of the purchase of the friar lands has been a losing proposition, with the government still holding many lots originally intended for sale to their occupants, who for some reason or other failed to comply with the terms of the contract signed by them."

[25] In the *Reyes* case the fact that the occupants of the land there involved had cleared the land and had been cultivating it since then was taken into account by the Court in their favor in granting expropriation. This view was reiterated in the dissent by Chief Justice Paras and also by Justice J. B. L. Reyes.

[26] This might be a wise rule under the circumstances of the instant case because the land involved had already been resold by the original owner among a number of "small landowner" who have no other lands of their own. But where there had been no such breaking up previous to expropriation its wisdom becomes seriously doubtful.

the tenants, after the intended expropriation had been made known to them, to acknowledge the ownership of the defendants, and to their refusal to deliver to said owners their corresponding share of the harvest. It was therefore inevitable that the Court rule as it did—that

> "When a landed estate is broken up and divided into parcels of reasonable areas, either thru voluntary sales . . . or thru expropriation, the resulting parcels are no longer subject to further expropriation under sec. 4, Art. XIII of the Constitution."

and that

> ". . . tenancy trouble alone whether due to the fault of the tenants or of the landlord does not (clothe the intended expropriation the requisite public purpose to) justify expropriation."

And as regards the effect of notice upon the right of the owner of the land sought to be expropriated to deal with said land by means of voluntary transactions, the Court held:

> "Mere notice of the intention of the government to expropriate a parcel of land does not bind either the land or the owner so as to prevent subsequent disposition of the property such as mortgaing or even selling it in whole or in part or by subdivision."

It was also further intimated that the owner's right to dispose of the land remains unimpaired so long as "he can find persons willing to step into his shoes and deal with the government."

From what the Supreme Court has done so far in expropriation cases arising under Sec. 4, Art. XIII of the Constitution it cannot perhaps altogether escape the criticism that it has been rather conservative in the protection of property rights. But at the same time it would not be fair to say that it has altogether served as an unreasoning roadblock to the efforts of the government to solve the urgent and pressing economic and social problems posed by the continued existence of big landed estates.[26] For evidence is not wanting to show that the Supreme Court has been willing to go along with the government in its expropriation ventures, as in fact it had gone along, where it has been convinced that expropriation would accomplish definite economic and social reforms. In fact in the *Reyes* case, the Court went so far as to formulate an untenable doctrine—"that so long as any land formed part of a landed or large estate, it may, regardless of its present area be still subject to expropriation"—in an effort to find an authoritative basis for its decision to allow expropriation, it having previously tied its hands in the *Guido* case with the rule that a two-hectare land (which is the area of the land involved in the *Reyes* case) is not a landed

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[26] SINCO, V. G., *op. cit., supra.* note 7.

or large estate within the contemplation of Sec. 4 Art. XIII of the Constitution.[27]

Constitutional Law.—*Sale of land to aliens; effect of subsequent naturalization upon defect of alien's title.*

VASQUEZ v. LI SENG GIAP & SONS, INC.
G. R. No. L-5670, January 31, 1955

This is an action for the annulment of a sale by the plaintiff of a parcel of land to the defendant Li Seng Giap on January 20, 1940 on the ground that the latter was an alien who, under the Constitution is incapable of owning and holding title to lands.[1] In this case it appears from an agreed stipulation of facts that prior to the institution of the present action the defendant Li Seng Giap had in the meantime been naturalized as a Filipino citizen. So also had all but one of the shareholders of the defendant corporation, Li Seng Giap & Sons, Inc., to whom Li Seng Giap subsequently transferred the land in question on August 21, 1940, such that at the time the case was brought to court said corporation was already a Filipino corporation,[2] 96.76% of its stocks being owned by Filipino citizens.

The precise issue decided in this case was whether or not the defect of an alien's title to land is cured by the subsequent acquisition by such alien of Philippine citizenship through naturalization. In

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[27] Justice Montemayor points out in the instant case that what probably led the court to grant expropriation in the Reyes case was the fact that it found out that some 113 persons were actually living and entirely dependent for their livelihood upon the products of the land sought to be expropriated. There was therefore clearly, a real and pressing social and economic problem which condemnation could be reasonably expected to solve.

[1] Art. XIII, Sec. 5 provides: "Save in cases hereditary succession, no private agricultural land shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines."

In the *Krivenko* case the Court held that residential as well as commercial and industrial lands are also agricultural lands which under C.A. No. 141, particularly Secs. 123-4,, are prohibited to be ". . . alienated, or conveyed, except to persons, corporations or associations who may acquire land of the public domain." By virtue of Sec. 12 and sec. 22 of said act, only citizens of the Philippines and corporations of which 60% of its capital stocks "belongs wholly to citizens of the Philippines" are qualified to acquire lands of the public domain. By virtue of the Parity Amendment however, like citizens or corporations of the United States are also qualified. See also Art. XIII, Sec. 1 of the Constitution, note 2.

[2] Philippine law follows the English and American rule that the nationality of a corporation is that of the sovereign under whose law it was organized and that its nationality is not determined by the nationality of its shareholders (See Sec. 69 of Act No. 1459; also Philippine Sugar Estates v. United States, 39 U.S. Court of Claims, 225. This rule however, must be subject to the constitutional provisions (Art. XIII, sec. 1) which limits the disposition,, exploitation, development and utilization of agricultural and other lands and natural resources to ". . . citizens of the Philippines, or to corporations or associations at least sixty percentum of the capital of which is owned by such citizens." See also SALONGA, PRIVATE CORPORATIONS (1952) 14-16; also in his PRIVATE INTERNATIONAL LAW (1952) 196-201.

disposing of this issue the Court relied upon American authorities. Said the Court:

> ". . . in a sale of real estate to an alien disqualified to hold title thereto the vendor divests himself to the title to such real estate and has no recourse against the vendee despite the latter's disability on account of alienage to hold title to such real estate and the vendee may hold it against the whole world except as against the State. It is only the State that is entitled by proceedings in the nature of *office found* to have forfeiture or escheat declared against the vendee who is incapable of holding title to the real estate sold and conveyed to him.[3] However, if the State does not commence such proceedings and in the meantime the alien becomes naturalized citizen the State is deemed to have waived its right to escheat the real property and the title of the alien thereto becomes lawful and valid as of the date of its conveyance or transfer to him.[4]

Harmonizing the foregoing rule with the purpose of the constitutional prohibition against transfer of private agricultural lands to aliens, the Court said:

> ". . . if the ban on aliens from acquiring not only agricultural but also urban lands, as construed by this Court in the *Krivenko* case, is to preserve the nation's lands for future generations of Filipinos, that aim or purpose would not be thwarted but achieved by making lawful the acquisition by aliens who become Filipino citizens by naturalization."

It may be pointed out that this issue did not come before the Supreme Court upon first impression having been passed upon in a slightly different form and upon different grounds. In *Ricamara v. Ngo Ki alias Go Sin Sim*[5] the Court upheld the validity of a previous sale of a piece of land to an alien after finding that said land had been subsequently sold by said alien to a Filipino citizen. The concurring opinion of Justice Tuason in said case is more directly in point and is identical with the American rule relied upon in the instant case. He said:

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[3] Abrams v. State, 88 Pac. 327; Craig v. Leslie et al., 4 Law ed. 460; 2 Wheat. 563, 589-590; Croes v. Del Valle, 1 Wall. (U.S.) 513, 17 Law Ed., 515; Governeur v. Robertson, 11 Wheat. 332, 6 Law ed. 515. In Cabaustan v. Uy Hoo, G.R. No. L-2207, Jan. 23, 1951 the Supreme Court held that even if the Constitution was in force during the Japanese occupation, and the sale to an alien during that period consequently invalid, still the transferor cannot recover the land having voluntarily parted with such land in contravention of the constitutional prohibition. It is in this case that the *pari delicto* doctrine as to sale of lands to aliens was enunciated. Subsequently in Relloso v. Gaw Cho Hun, G.R. No. L-1411, prom. Sept. 29, 1953, the Court after reiterating the *pari-delicto doctrine*, ruled that the only remedy to prevent the continuing violation of the Constitution which the *pari delicto* doctrine impliedly sanctions inasmuch as it allows the retention of the land in question by the alien vendee, is either escheat or reversion under Secs. 122-124 of C.A. No. 141.

[4] Osterman v. Baldwin, 6 Wall. 116, 18 Law ed. 730 (1867); Manuel v. Wulff, 152 U.S. 505, 38 Law ed. 532 (1894); Pembroke v. Huston, 79 SW 470 (1904); Florella v. Jones, 259 SW 782 (1923).

[5] G.R. No. L-5836, April 28, 1953.

> "The effect of the sale . . . was simply the conversion or escheat of the land to the State through appropriate proceedings but since no such proceedings were ever instituted, and the land had passed into the hands of a Philippine citizen without collusion, the constitutional grounds for forfeiture have disappeared and the last owner's ownership and possession should be respected."

To the same effect, at least in result, is *Escoto v. Arcilla*[6] which involved the transfer by an alien of his right to repurchase the land litigated also to a Filipino citizen, after having been denied the right to exercise such right of repurchase by the lower court. As regards the right of the alien's widow who was a Filipina (who sought to exercise her deceased husband's right of repurchase, according to the Court, either because the transfer of the right to the Filipino citizen was fictitious, or in an effort to cure said transfer of any defect), the Court held:

> "The fact that Tangcungco's widow has recovered her Philippine citizenship and her surviving children are likewise Filipino citizens now, following the re-acquired nationality of their mother, has completely removed all objections to the conveyance on constitutional considerations."

In *Bautista v. Uy Isabelo*[7] the action for annulment having been instituted after one of the vendees had been repatriated to Philippine citizenship upon the death of her Chinese husband, the Court likewise sustained the validity of the sale.

The rule as it stands at present may therefore be summarized as follows: Where the defect in an alien's title to land unlawfully transferred to him is cured, either by the subsequent transfer[8] of the land to a duly qualified person or entity,[9] or by such alien subsequently acquiring Philippine citizenship through naturalization, or repatriation in the cases of Filipino women losing their Philippine citizenship on account of their acquiring their alien husbands' citizenship,[10] the constitutional grounds for forfeiture are likewise removed and the title of the owner becomes completely valid even as against the state.

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[6] G.R. No. L-2819, May 30, 1951.
[7] G.R. No. L-3006, Sept. 29, 1953.
[8] Escoto v. Arcilla, *supra* note 6; Ricamara v. Ngo Ki, *supra* note 5.
[9] See notes 1 and 2.
[10] Escoto v. Arcilla, *supra*; Bautista v. Uy Isabelo, *supra* note 7.
[11] The *pari delicto* theory adopted by the Court as the basis for denying the vendor the right to recover the land sold to an alien has been subject to severe criticism from the Court itself by dissenting justices particularly, Justice Padilla and Justice Pablo as well as from noted authorities on constitutional law (See Fernando, E. M., A Third Year of Constitutional Law, 29 Phil. L. J. 1, 51-59 (1953); Sinco, V. G., The Constitutional Policy on Land Tenure, 28 Phil. L. J., 837, 845-850 (1953). Justice Padilla argues against the *pari delicto* theory on the ground that it involves a presumption—that both vendor and the vendee are at fault for entering into a transaction prohibited by the Constitution, a fact which they could not have known until after the decision in the *Krivenko* case—which is manifestly contrary to "fact, actuality and reality." Prof. Fernando to whom the problem in cases of unlawful transfer of lands to aliens, is "to divest the alien of such

Constitutional Law.—*Constitutionality of C.A. No. 728; refund of royalty fees.*

PHILIPPINE SCRAPPERS, INC. v. AUDITOR GENERAL
G. R. No. L-5670, January 31, 1955

The instant case is a companion case of *Marc Donnelly & Associates, Inc. v. Agregado.*[1] There as here the law assailed as unconstitutional is C. A. No. 728 which makes it unlawful for any person, association, or corporation to export agricultural and industrial products, merchandise, articles, materials and supplies without a permit from the President and conferring upon the latter authority "to regulate, curtail, control and prohibit the exportation of materials abroad and to issue such rules and regulations as may be necessary to carry out the provisions of (said) Act through such department or office as he may designate."[2] Pursuant to said Act the President outhorized by executive orders[3] the exportation of scrap metals provided that an export license is first secured by the exporter from the Philippine Sugar Administration, and upon payment of a fee of ₱10 per ton of metals exported. Subsequently on October 24, 1947 the cabinet approved a resolution fixing a schedule of royalty rates to be charged on metal exports.

The petitioners on several occasions exported large amounts of scrap metals for which they paid by way of license fees and royalties the sum of ₱248,634.85 to the Sugar Quota Office which was the office authorized by the Chief of the Executive Office by authority of the President, to collect such fees and royalties. Petitioners subsequently filed formal claims with the Auditor General for the refund of said

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property rights on terms equitable to both parties" in deference to the constitutional mandate against alien landholding, objects to the theory because its consequence is to sanction, if impliedly, a violation of the Constitution. Dean Sinco on the other hand adopts the view of Justice Pablo to the effect that the parties cannot be said to be in *pari delicto* "because the sale was not fraudulent nor made in bad faith" hence the contract "was not merely voidable but void *ab initio*." Consequently "both seller and purchaser should be placed in the position they occupied before the sale took place. This means that the land should be returned to to the seller who should, in turn, reimburse the buyer with the amount of the purchase price."

In this case however, by adopting the American rule to the effect that the vendor divests himself of the title to the real property he sells to an alien prohibited to hold title to real property, and that the vendee may hold title to such land "against the whole world except as against the State" Justice Padilla successfully eschewed the case from the dubious *pari delicto* theory on which all previous cases from *Cabauatan* in 1951 to Arambulo v. Chua So, G.R. No. L-7196, Aug. 31, 1954, were decided.

[1] G.R. No. L-4510, prom. May 31, 1954.

[2] C.A. No. 728, Sec. 2.

[3] Executive Order No. 3 of July 10, 1946 prohibited the exportation of certain materials ennumerated in section 1 thereof, but allowing the exportation of other merchandise, like scrap metals, provided an export license is first obtained from the Philippine Sugar Administration.

Executive Order No. 23 of Nov. 1946 amended section 2 of Executive Order No. 3 by fixing the export license fee to be charged for the exportation of merchandise, including scrap metals, at ten pesos per ton of metals exported.

fees and royalties on several grounds, namely: (1) that C. A. No. 728 does not authorize such collection; (2) that the cabinet has no authority to provide for such collection, hence its resolution of Octo. 24, 1947 is null and void; and (3) that C. A. No. 728 is inoperative being an export law not approved by the President of the United States pursuant to the provision of the Ordinance appended to the Constitution of the Philippines.[4]

In *Marc Donnelly & Associates, Inc. v. Agregado*[5] the following issues regarding the constitutionality of C. A. No. 728 were laid at rest:

(1) that C. A. No. 728 is not an unlawful delegation of legislative authority inasmuch as it is merely a legislative authorization, pursuant to the Constitution,[6] to the President to fix tariff dues and import and export quotas.

(2) that the authority conferred upon the President by C. A. No. 728 not only to regulate, curtail, and control but to prohibit altogether the exportation of scrap metals includes the lesser power "to exact royalties for permissive or lawful use of property right" or as a condition or limitation which the President may impose upon the exercise of the right to export which he may allow;[7] and

(3) that the fact that the resolution fixing the schedule of royalty rates on metal exports was approved by the cabinet and not directly decreed by an executive order does not render the resolution invalid inasmuch as the act of the cabinet "is deemed to be, and essentially is, the act of the President."[8]

Inasmuch as the foregoing rulings in the *Marc Donnelly* case clearly dispose of petitioners' first two contentions the Supreme Court disposed of them by merely incorporating by reference[9] the decision in the said case. As regards the third contention of petitioners — that

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[4] The original ordinance appended to the Constitution, in its section 1, provides: "Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—

"x x x x

"(9) Acts affecting currency, coinage, imports, imports, and immigration shall not become law until approved by the President of the United States."

[5] See note 2.

[6] Art. VI, Section 22, par. 22 provides: "The Congress may by law authorize the President, subject to such limitation and restriction as it may impose, to fix, within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues."

[7] See note 6.

[8] Citing the case of *Villena v. Secretary of Interior*, 67 Phil. 451 (1939) the Court held that the reason for this is the fact that ". . . the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments performed and promulgated in the regular course of business, are unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive."

The observation has been put that ". . . with regard to the acts of the Cabinet, this conclusion acquires added force because, unless shown otherwise, the Cabinet is deemed to be presided over always by the President himself." Cortes, I. R., 1954 Decisions on Constitutional Law, 30 Phil. L. J. 35, 43 (1955).

[9] "It should be stated that the present case (*Philippine Scrappers*) is similar

C. A. No. 728 is unconstitutional because the same was never submitted to the President of the United States for aproval as required by the Ordinance appended to the Constitution — the Court held:

> ". . . there is no showing by competent evidence that such is the fact . . . On the other hand, it appears that Commonwealth Act No. 728 was approved on July 2, 1946 and the executive orders of the President of the Philippines implementing said Act were issued much after the proclamation of the Philippine Republic and it is to be presumed that the President had acted on the matter knowing that the law has been complied with."

Moreover the Court held that granting *arguendo* that the foregoing claim of the petitioners is correct, said petitioners

> ". . . are now stopped or prevented from setting up the invalidity or unconstitutionality of Commonwealth Act No. 728 it appearing that they had acted thereon or invoked the benefits deriving therefrom, when they applied for the exportation of scrap metals as provided for in said Act." [19]

José C. Laureta

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to the one recently decided by this Court,—*Marc Donnelly* . . . wherein the issues raised are practically the same as those involved therein and wherein this Court held that the collection by the Government of the license and royalty fees in question was valid and legal. For the purposes of this decision, it would suffice for us to incorporate herein by reference what we said in the decision rendered in the above mentioned case." (Title of case referred to supplied.)

[19] Cooley is cited by the Court to this effect: "There are cases where a law in its application to a particular case must be sustained, because the party who makes objection has, by prior action, precluded himself from being heard against it. Where a constitutional provision is designed for the protection solely of the property rights of the citizen, it is competent for him to waive the protection, and to consent to such action as would be invalid if taken against his will. On this ground, it has been held that an act appropriating the private property of one person for the private purposes of another, on compensation made was valid if he whose property was taken assented thereto; and that he did assent and waive constitutional privilege, if he received the compensation awarded, or brought an action to recover it. So if an act providing for the appropriation of property for a public use requires, although such an act would be void without the owner's assent, yet with it all objection on the ground of unconstitutionality is removed. So a person who obtains a license under a law, and seeks for a time to enjoy the benefits thereof cannot afterwards, and when the license is sought to be revoked, question the constitutionality of the act. "(I Constitutional Limitation, 368-70.)

The main opinion in the instant case, as well as in the *Marc Donnelly* case did not pass upon the question of the power of the Auditor General to pass upon constitutionality of a taxing measure when settling money claims against the government.

The Auditor-General in denying the claim of *Marc Donnelly & Associates, Inc.*, for the refund of the royalties and fees paid by them under C.A. No. 728 and pertinent executive orders explained that he had no power to pass upon the validity of the measures assailed as unconstitutional and that until declared otherwise by a competent court the same should be presumed to be constitutional.

In a lengthy concurring opinion in which he is joined by Justice Concepcion (and later in the instant case by Justice J.B.L. Reyes), in discussing the power of the Auditor General to pass upon the constitutionality of taxing measures Justice Pablo inquired into the nature and scope of the latter's power to settle money claims against government. Justice Pablo was of the view that a claim for refund based upon the invalidity of the taxing measure is not such a money claim which the Auditor-General can settle in the course of his accounting duties enjoined by C.A. No. 327, but is rather such a claim which may be laid under Sec. 306 of the National Internal-Revenue Code . . . alleged to have been erroneously or

Commercial Law.—*Requisites of General Average.*

A. MAGSAYSAY INC. v. AGAN
G. R. No. L-6339, January 31, 1955

Article 811 of the Code of Commerce provides that a general average includes all the damages and expenses which are deliberately caused in order to save the vessel, its cargo or both at the same time, from a real and known risk. This article enumerates twelve particular instances of general average.[1] This enumeration, however, is not exclusive but merely gives illustrations, and within the legal concept of the article, other cases of general average can be included.[2] Having been incurred for the common benefit, general average must be borne by the owners and of the cargo saved.[3]

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illegally assessed or collected . . . or of any sum alleged to have been excessive or in any manner wrongfully collected." He stated that the petitioners' claim for the refund of a "sum alleged to have been excessive or in any manner wrongfully collected" and therefore should have been brought in accordance with the procedure provided for in the National Internal Revenue Code and not that provided for in Secs. 1 and 2 of C.A. No. 327. He supports this view by citing Art. 584 of the Revised Administrative Code which defines the scope of the authority and power of the Bureau of Audits as extending to and comprehending "all matters relating to accounting procedure, including the keeping of the accounts of the Government, the preservation of vouchers, the methods of accounting, the examination and inspection of the books, records, and papers relating to such accounts, and to the audit and settlement of the accounts of persons respecting funds or property received or held by them in an accountable capacity, as well as to the examination and audit of all debts and claims of any sort due from or owing to the Government of the Philippine Islands in any of its branches . . ."

Consequently, inasmuch as the Auditor-General has not even the power to settle claims like that presented by the petitioners, all the more reason he does not have, or perhaps more properly, the occasion will never arise where he could exercise the power to pass upon the constitutionality of a taxing measure. And so the concurring Justices believed in these two cases. Inasmuch as the procedure contemplated by the National Internal Revenue Code is a judicial one it should go without saying that the issue of the constitutionality of a taxing measure is a judicial question. (See particularly concurring opinion of Justice J. B. L. Reyes on this last point.)

[1] "As a general rule, general or gross averages shall include all the damages and expenses which are deliberately caused in order to save the vessel, its cargo, or both at the same time, for a real and known risk, and particularly the following:

"(1) The goods or cash invested in the redemption of the vessel or of the cargo captured by the enemies, privateers, or pirates, and the provisions, wages, and expenses of the vessel detained during the time settlement or redemption is being made.

"(2) The goods jettisoned to lighten the vessel, whether they belong to the cargo, to the vessel, or to the crew, and the damage suffered through said act by the goods which are kept on board.

"(3) The cables and masts which are cut or rendered useless, the anchors and the chains which are abandoned, in order to save the cargo, the vessel, or both.

"(4) The expenses of removing or transferring a portion of the cargo in order to lighten the vessel and place it in condition to enter a port or roadstead and the damage resulting therefrom to the goods removed or transferred.

"(5) The damage suffered by the goods of the cargo by the opening made in the vessel in order to drain it and prevent its sinking.

"(6) The expenses caused in order to float a vessel intentionally stranded for the purpose of saving it.

"(7) The damage caused to the vessel which had to be opened, scuttled or

In the case of *A. Magsaysay, Inc. v. Agan*,[4] our Supreme Court had occasion to state the requisites for general average to exist. The *SS San Antonio*, owned by the plaintiff, left Manila for Basco, Batanes via Aparri, Cagayan. The vessel was carrying cargo belonging to different shippers, among whom was the defendant. The vessel reached Aparri safely, and after a day's stopover, proceeded to Basco. While still in port, however, in spite of the fine weather, it ran aground at the mouth of the Cagayan River due to the sudden shifting of sandbars which the port pilot did not anticipate. Attempts to refloat the ship under its own power were unsuccessful and plaintiff therefore contracted with the Luzon Stevedoring Co. to refloat it at an agreed compensation. Upon arrival of the vessel at Basco, the cargoes were delivered to their respective owners or consignees upon their filing a bond to answer for their contribution to the salvage cost. The defendant, one of the owners, refused to make a deposit or file a bond to answer for such average, hence the plaintiff brought an action to make defendant pay his contribution. Defendant, among other things, alleged that he was not liable because the stranding of the vessel was due to the negligence and lack of skill of the master, that the expenses incurred in putting it afloat did not constitute a general average, and that the liquidation of average was not made in accordance with law. The lower court found for the plaintiff, and on appeal, the defendant claimed that the "trial court erred in allowing the general average for floating a vessel unintentionally stranded inside a port and at the mouth of a river during fine weather."

On the allegation of lack of skill and negligence of the master, the Supreme Court accepted the trial court's finding that the stranding was due to the sudden shifting of the sandbars at the mouth of the river which the port pilot did not anticipate, and therefore regarded it as accidental, not due to negligence or lack of skill.

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broken in order to save the cargo.

"(8) The expenses for the treatment and subsistence of the members of the crew who may have been wounded or crippled in defending or saving the vessel.

"(9) The wages of any member of the crew held as hostage by enemies, privateers, or pirates, and the necessary expenses which he may incur in his imprisonment, until he is returned to the vessel or to his domicile, should be prefer it.

"(10) The wages and victuals of the crew of a vessel chartered by the month, during the time that it is embargoed or detained by force majeure or by order of the Government, or in order to repair the damage caused for the common benefit.

"(11) The depreciation resulting in the value of the goods sold at arrivals under stress in order to repair the vessel chartered by the month, during the time that it is embargoed or detained by force majuere or by order of the Government, or in order to repair the damage caused for the common benefit.

"(12) The expenses of the liquidation of the average."

[2] ECHAVARRI, 291, cited in I TOLENTINO, COMMENTARIES ON THE COMMERCIAL LAWS OF THE PHILIPPINES (1952) 155.

[3] Article 812, Code of Commerce.

[4] G.R. No. L-6339, Jan. 31, 1955.

On the question as to whether the floating expenses could be considered general average, the Court first of all referred to the provision of the Code of Commerce classifying averages into simple or particular and general or gross.[4] After restating the codal definitions of particular and general average,[5] the Court said:

> "In classifying averages into simple or particular and general or gross and defining each class, the Code (Arts. 809 and 811) at the same time enumerates certain specific cases as coming specially under one or the other denomination. Going over the specific cases enumerated we find that, while the expenses incurred in putting plaintiff's vessel afloat may well come under number 2 of Article 809—which refers to expenses suffered by the vessel 'by reason of an accident of the sea or force majeur', and should therefore be classified as particular average, the said expenses do not fit into any of the specific cases of general average enumerated in article 811. No. 6 of this article does mention' expenses caused in order to float a vessel intentionally stranded for the purpose of saving it', and would have no application where, as in the present case, the stranding was not intentional."

After the above quoted suggestion that the cost for floating plaintiff's vessel constituted not a general average, but only a particular average, the Supreme Court enumerated the requisites for general average[7] as follows:

> "First, there must be a common danger. This means that both the ship and the cargo, after it has been loaded, are subject to the danger, whether during the voyage, or in the port of loading or unloading; that the danger arises from accidents of the sea, dispositions of authority, or faults of men, provided, that the circumstance producing the peril should be ascertained and imminent or may rationally be said to be a certain and imminent. This last requirement excludes measures undertaken against a distant peril.
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> "Second, that for the common safety part of the vessel or of the cargo or both is sacrificed deliberately.
>
> "Third, that from the expenses or damages caused follows the successful saving of the vessel and cargo.
>
> "Fourth, that the expenses or damages should have been incurred or inflicted after taking proper legal steps and authority."

Applying the above requisites to the case under the Court's consideration, the Court was of the opinion that with respect to the first requisite, the evidence did not disclose that the floating expenses were incurred to save the vessel and cargo from a common imminent danger. The vessel ran aground while it was still in port, at a place described as "very shallow," and on a fine day. Although it was conceivable, the Court said, that if left indefinitely at the mercy of the elements,

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[4] Article 808, Code of Commerce.

[5] "Article 809. As a general rule, simple or particular averages shall include all the expenses and damages caused to the vessel or to her cargo which have not inured to the common benefit and profit of all the persons interested in the vessel and here cargo . . ." For definition of general average, see note 1.

[7] Citing TOLENTINO, A., COMMENTARIES ON THE CODE OF COMMERCE (1952).

the vessel and the cargo could have run to risk of being destroyed, they were at the time in no imminent danger. Furthermore, the court added, the first requirement "excludes measures undertaken against a distant peril," and it is deliverance from an immediate impending peril, by a common sacrifice, that constitutes the essence of general average.[8] The only reason which appears to have induced the plaintiff to undertake the floating expenses, was to enable the vessel to proceed to its port of destination.

With respect to the second requisite, the Court noted that the cargo could, without need of expensive salvage operation, have been unloaded by the owners had they been required to do so. The salvage was not necessary to the safety of the cargo, the Court repeated, since it was not in imminent peril.

As to the third requisite, the Court admitted that the salvage operation was a success, but held that since the sacrifice was only for the benefit of the vessel (to enable it to proceed to its port of destination) and not for the purpose of saving the cargo, the defendant was not in law bound to contribute to the expenses.

Neither was it proven that the floating expenses were incurred after following the procedure laid down in Arts. 813 of the Code of Commerce.[9] Hence, the last requisite was not present.

Failing in the requisites for general average, therefore, the plaintiff was not granted the relief prayed for and hence he had to suffer the expenses as a particular average. Judgment was therefore reversed.

The above decision is strongly supported not only by the provisions

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[8] The Court cited the Columbian Insurance Company of Alexandria vs. Ashby & Stribling et. al., 13 Peters 331, 10 L. Ed. 186 (1839).

[9] "In order to incure the expenses and cause the damages corresponding to gross average, there must be a resolution of the captain, adopted after deliberation with the sailing mate and other officers of the vessel, and after hearing the persons interested in the cargo who may be present.

"It the latter should object, and the captain and officers or a majority of them, or the captain, if opposed to the majority, should consider certain measures necessary, they may be executed in under his responsibility, without prejudice to the right of the shippers to proceed against the captain before the competent judge or court, if they can prove that he acted with malice, lack of skill or negligence.

"If the persons interested in the cargo, being on board the vessel, have not been heard, they shall not contribute to the gross average, their share being chargeable against the captain, unless the urgency of th case should be such that the time necessary for previous deliberations was wanting."

Article 814.—The resolution adopted to cause the damages which constitute general average must necessarily be entered in the log book, stating the motives and reasons for the dissent, should there be any, and the irresistible and urgent caused which impelled the captain if he acted on his own accord.

"In the first case the minutes shall be signed by all the persons present who could do so before taking action, if possible; and if not, at the first opportunity. In the second case, it shall be signed by the captain and by the officers of the vessel.

"In the minutes, and after the resolution, shall be stated in detail all the goods jettisoned, and mention shall be made of the injuries caused to those kept on board. The captain shall be obliged to deliver one copy of these minutes to the maritime judicial authority of the first port he may make, within twenty-four hours after his arrival, and to ratify it immediately under oath."

of the Code of Commerce, but also by the previous decisions of our Supreme Court. In *Campagnie de Commerce v. Hamburg*,[10] it was held that where a vessel, upon the outbreak of war, goes to a neutral port, its cargo not being of the kind that is subject to confiscation by the enemy,[11] the expenses and damages occasioned to the vessel by such arrival at a neutral port cannot be considered general average but merely particular average, because there was no danger common to both the vessel and the cargo.

In another case,[12] agricultural machinery was on board a belligerent merchant vessel, but said machinery belonged to a subject of a neutral power. Upon the outbreak of the war, since the vessel was on the high seas, it made the nearest neutral port — Manila. The Court held that the expenses in such neutral port could not constitute general average since the arrival at the neutral port was not necessary for the safety of the cargo. The danger was not common to both vessel and cargo, but only to the vessel.

However, in a case where a vessel caught fire while en route to Manila from Hongkong, the expenses incurred in saving the cargo and the vessel constituted general average, since there was a real and known risk to which they were both exposed.[13]

Fernando C. Campos

Civil Law.—*No duress in wartime payment of debts with occupation money.*

CIA. GENERAL DE TABACALERA v. ARANETA, INC.
G. R. No. L-6650, January 31, 1955

On the question as to whether the Japanese military occupant had power to issue military currency notes, the Supreme Court affirmatively recognized this in the case of *Haw Pia v. China Banking Corporation*.[1] Thus the occupation currency circulated during the Japanese regime was legal tender and consequently the payment therewith discharged obligations even if they were incurred prior to the occupation.[2] Hence

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[10] 36 Phil. 590 (1917).

[11] The cargo in question was rice.

[12] International Harvester Co. v. Hamburg-American Line, 42 Phil. 845 (1918).

[13] Irriber v. Millat, Marty and Mitjans, 5 Phil. 362 (1905).

[1] 45 O.G. 9, 229-(1948). The court said in the case that "under the rules of public international law the right of the military occupant in the exercise of his governmental powers, to order the liquidation of enemy banks and the reopening of others in the occupied territory, as well as to issue military currency as legal tender has never been seriously questioned."

[2] *Ibid.* The ruling in the *Haw Pia* case was subsequently affirmed in a series of cases, some of which are: Hongkong and Shanghai Bank v. Perez Samanillo G.R. No. L-1345, Nov. 10, 1948; Philippine Trust Co. v. Araneta, G.R. No. L-2734, March 17, 1949; Gibbs v. Rodriguez and Luzon Surety Co. G.R. No. L-1444, Aug. 3, 1949; La Orden de Padres Benedictinos v. Phil. Trust Co., 47 O.G. p. 2894 (1949); Larraga v. Bañez, 47 O.G. p. 696 (1949); Del Rosario v. Sandico, 47 O.G. p. 2866 (1949); Pinon v. Ynaga, G.R. No. L-5532, May 13, 1953.

if the creditor refused to accept payment, judicial consignation and deposit of the amount would constitute sufficient discharge of the debt.[3]

Another question usually raised in cases involving wartime payments is whether the proclamation of the Japanese authorities on January 3, 1942 which considered punishable the rejection of payment with such notes[4] amounted to coercion or duress such that acceptance of said payments was null and void. On this, the Supreme Court has laid down the well-settled rule that such payment cannot be considered as made under collective or general duress because an act done pursuant to the laws or orders of a competent authority can never be regarded as executed involuntarily or under duress or illegitimate constraint or compulsion that invalidates the act.[5] It was "immaterial whether duress or coercion, general or specific, was exerted on the creditor."[6]

When therefore the Supreme Court in the case of *Cia. General de Tabacalera v. Gregorio Araneta, Inc.*[7] was called upon to deal with the question concerning the power of the Japanese to issue the occupation fiat money and the question of duress or coercion alleged to result from the proclamation threatening severe penalties for refusal to accept said war-notes, it had ready answers at hand. It had nothing to do but fall back upon a long line of precedents to dispose of the case. The case involved first mortgage bonds issued on November 1928 by the corporation *Azucarera* payable to bearer on or before November 15, 1943. In 1943, *Azucarera* decided to call in its bonds then outstanding. The defendant company as attorney-in-fact of three bondholders applied for payment of the bonds. The bonds could not be delivered at the time; nevertheless their value including interest were paid by the *Tabacalera*, trustee under the mortgage bonds of the bondholders. The defendant Araneta, Inc. undertook to reimburse the *Azucarera* for any loss it might sustain in case of double payment and promised to deliver the bonds to *Azucarera* as soon as possible. After the war, the defendant Araneta, Inc. got possession of the bonds, gave them to a law firm for collection and refused to deliver the same to *Azucarera* despite the latter's demands. The *Azucarera* therefore brought this action to recover damages. Araneta, Inc. denied that it ever made application for payment; on the contrary it claimed that there was intimidation in making it accept payments, backed up by the warning of the Japanese authorities that refusal to accept the Japanese notes would result in severe punishment.

The Supreme Court after finding as a fact that Araneta, Inc. did apply for payment observed that applying for payment implies volun-

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[3] Hernandez v. McGrath; Reyes v. Zaballero, G.R. No. L-3561, May 23, 1951.
[4] 1 O.G. 9, 1942; Gustilo v. Lagunap, G.R. No. 4249, Nov. 20, 1951.
[5] Philippine Trust Co. v. Araneta et. al. 46 O.G. p. 1955 (1949).
[6] Gustilo v. Lagunap, G.R. No. L-4249, Nov. 20, 1951.
[7] G.R. No. L-6650, Jan. 31, 1955.

tariness which is incompatible with the alleged duress and coercion. Moreover, the Court said, there was no merit in the contention that Araneta, Inc. was acting under duress because of fear of severe punishment if it did not accept the war-notes. The rule is well settled that "payments of debts in said war notes and accepted by the creditor though in compliance with the orders of the Japanese authorities can not be considered as executed involuntarily or under duress, because an act done in pursuance to the laws of competent authority can never be regarded as an illegitimate constraint." The attitude of the creditor was immaterial. "The bonds were matured and due for payment and the *Azucarera* was authorized to redeem. Even if Araneta, Inc. refused to accept payment in defiance of the notice issued by the military occupants, the plaintiff could have consigned the value of said bonds in court and said consignments would have released it from the obligation."

Furthermore the Court considered the promise which Araneta, Inc. made to pay damages in case of double payment to the *Azucarera* as a factor which negatived any coercion alleged to have been exerted on it. As it said, "moreover the undertaking of Araneta, Inc. included in its letter to *Azucarera* far from implying any reluctance to accept payment would appear to show willingness. For why should it go out of its way and make said undertakings?"

It is to be observed that here, as in all other previous cases involving the same situation of wartime payment of a pre-occupation debt, payment was validated without revaluation. In the present case, the Supreme Court said that the Japanese military notes in February 1943 (when payments in question were made) were almost at par value with the Philippine peso. This observation was obviously made to meet the objection that the peso-for-peso validation rule ignored the lack of equal mutuality of consideration. Nevertheless, whether the Japanese peso was at par value with the Philippine peso, or a little better than useless would not have made any difference at all in deciding the case.[8]

Civil Law.—*Duress and intimidation in contracts.*

OSORIO DE FERNANDEZ v. HOWARD
G. R. No. L-4436, January 28, 1955

A contract where consent is given by reason of violence or intimidation is voidable.[1] There is violence when in order to wrest consent serious or irresistible force is employed. There is intimidation when one of the contracting parties is compelled by a reasonable and

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[8] Hernandez v. McGrath., supra. The court admitted that "was the unfortunate situation into which thousands of pre-war creditors were thrust by the war, most of them being forced to accept money which were little better than useless."

[1] Art. 1330, Civil Code.

well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants to give his consent.[2] The extent of the intimidation depends upon considerations of sex, age and condition of the person.[3] It must be direct[4] and the person who threatens the injury must have the necessary means to inflict the injury[5]

The reason why contracts to which consent was obtained by means of violence or intimidation are declared voidable is that the complaining party never really gave his consent thereto. He was *in vinculis*.[6] Consent should be free; force or intimidation transgresses upon this requisite.[7] So that if the party could still exercise judgment and will when he entered into the contract[8] or does so with mere reluctance or against his wishes or desires or even against his better judgment then it cannot be said that duress or intimidation exists such as to make the contract voidable.[9]

In a recent case,[10] it was held that if the party complaining of duress should go out of its way in executing a simultaneous contract which is not necessary for the existence of the contract allegedly tainted with duress and for reasons conducive to its own benefit, then said party cannot claim that duress or intimidation was used.[11]

The case under review also involved acts which negatived the existence of duress or intimidation in contracts. This was an action for the annulment of a deed of sale of a parcel of land executed during the Japanese occupation by plaintiff Fernandez in favor of the Osaka Boeki Kaisha Inc., a Japanese corporation, on the ground of duress and

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[2] Art. 1335, pars. 1 and 2 Civil Code; Vales v. Villa, 35 Phil. 769 (1916); Derequito v. Dolutan (C.A.), 45 O.G. 3, p. 1351 (1947); Mirano v. Mossesgeld Santiago (C.A.), 45 O.G. 1, 343 (1947); Tapia Vuida de Jones v. Carman & Elser, 60 Phil. 956 (1934).

[3] Art. 1335, par. 3, Civil Code.

[4] Doronila v. Lopez, 3 Phil. 360 (1904).

[5] Alarcon v. Kasilag, 40 O.G. (11s) 15, 203 (1941); Mirano v. Mossesgeld (C.A.), 45 1, 343 (1947).

[6] Martinez v. Hongkong and Shanghai Bank, 15 Phil. 252 (1910).

[7] Vales v. Villa, 35 Phil. 769 (1916).

[8] Martinez v. Hongkong and Shanghai Bank, *supra*. According to the court in this case distinction should be made between real duress and the motive which is present when he gives his consent reluctantly. Thus one may be confronted with a situation in which he finds the necessity of either making a reparation or taking the consequences, civil or criminal, of his unlawful acts. He makes the contract of reparation with extreme reluctance and only by the compelling force of the punishment threatened. Nevertheless such contract is binding and enforceable. "In legal effect there is no difference between a contract wherein one of the contracting parties exchanges one condition for another because he looks for greater profit or gain by reason of such exchange, and agreement wherein one of the contracting parties agrees to accept the lesser of two disadvantages. In either case he makes a choice free and untrammelled." In this connection see last paragraph of Art. 1335 of the Civil Code.

[9] Tabacalera v. G. Araneta, Inc., G.R. No. L-6650, Jan. 31, 1955.

[10] The defendant in this case alleged that the presentation for payment of certain bonds held by it and issued by the Arucarera Inc. was done under duress. The contract disproving such duress was the undertaking assumed by the defendant of paying damages to the Arucarera in case of double payment.

intimidation.[12] Fernandez was the owner of three parcels of land. In 1942 the plaintiff executed two documents concerning said lands; one was the aforementioned deed of sale to the Kaisha Inc., conveying one of the said parcels, and the other was an affidavit requesting the cancellation of the annotated lease with option to buy covering the second parcel of land in favor of Villacuesa, on the ground that both lease and option had already expired. Both documents were acknowledged by the plaintiff on the same day before a notary public and presented to the Register of Deeds for recording also on the same day. In support of her claim of duress in executing the contract of sale, plaintiff's husband testified that the manager of the Kaisha Inc. accompanied by a Japanese officer, offered to buy the land and threatened that refusal to accede would mean punishment or death. The Supreme Court refused to give credit to this testimony. It said:

> "The trial court has overlooked that the testimony of the notary public, whose neutrality has not been successfully assailed, was strikingly supported by the execution of the affidavit of cancellation of the option and lease of Lot no. 1 which had nothing to do with the alleged forced sale of Lot no. 2 to Osaka Boeki Kaisha Inc. and yet was executed, ratified and recorded contaneously with the questioned sale. Only Soledad Osorio Fernandez could have an interest in this affidavit and its simultaneous execution conclusively rebuts her claim that she executed the sale under duress. A party that is able to carry out an act redounding to its exclusive benefit simultaneously with the assailed contract cannot claim successfully in the latter case to have acted mechanically under the influence of duress or intimidation destroying its free agency."

The contract in the *Tabacalera* case[13] which was pointed out by the court as disproving the existence of the alleged duress was connected with the transaction allegedly entered into under duress and was partly for the benefit of the defendant therein. In the *Fernandez* case the second contract was entirely unrelated to the first contract and had as a second party a person different from the one claimed to be responsible for the intimidation; and the affidavit was for the exclusive benefit of the plaintiff. The finding of the Court in the *Tabacalera* case that the additional undertaking of the coerced party showed that the latter must have been acting on his own free will when he entered into the first transaction can only be justified if the coerced party did not claim that he was also forced into assuming the second obligation. For if he did make such a claim, to say that the latter contract disproves the existence of duress in the first transaction would be begging the question. The Court therefore assumed that the additional undertaking of the party intimidated was entirely his

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[12] The defendant Howard was the successor of the Alien Property Administrator which disallowed the claim to the property filed by the plaintiff Fernandez as required by the Trading With The Enemy Act.

[13] See note 10.

voluntary act and it was correct in doing so because said party never assailed the validity of such undertaking.

In the *Fernandez* case, however, the Court was working on a different theory. It proceeded on the belief that since the two acts were entirely alien to each other and if it were true that in the execution of the deed of sale the plaintiff was acting with fear of a grave and imminent danger upon her person, property or family, it was unnatural that she could have thought of cancelling the lease with option to buy granted to another person and found the time and urgency of executing the corresponding affidavit for the purpose on that very same day she was alleged to have been threatened. The fact that she did so could only be explained by the absence of duress or intimidation.

Besides, even if the plaintiff's story were true, the fact that she availed herself of the benefits under the contract by depositing the purchase price in a bank, and making several withdrawals therefrom operated as a bar to her defense of duress or intimidation. The Court said that there was waiver of plaintiff's right and ratification of the contract.

As a final argument for annulling the deed of sale, the contention was advanced that in a transaction between a military occupant and an inhabitant of the occupied territory, over property that was a war necessity, duress may be presumed and no evidence of a particular coercive act is necessary. This argument was brushed aside by the Supreme Court by saying that in numerous cases it has rejected the theory of "collective" or "general" duress allegedly exercised by the Japanese military occupant over the inhabitants of this country as a ground to invalidate acts that would otherwise be valid and voluntary, if done in times of peace.

The position of the Supreme Court in this case is consistent with the presumption that private transactions are fair and regular so that the burden of proof is on him who alleges intimidation or threat.[14]

Civil Law.—*Conventional Redemption.*

FERNANDEZ ET AL. v. SUPLIDO ET AL.
G. R. No. L-5977, February 17, 1955

The new Civil Code introduced some new rules with respect to the law on conventional redemption.[1] The principles underlying these innovations are two: first, to presume contracts in certain cases which are impressed with the form of a sale with *pacto de retro* as merely mortgages and thus prevent the commission of certain transgressions

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[14] Rule 123, Sec. 69 (p), Rules of Court; De Asis v. Buenviaje (C.A.), 45 O.G. 1,317 (1947).

[1] See Arts. 1602, 1603, 1604, 1605, 1606, third par., and 1607.

of the law made thru sales of this kind;[2] and second, to afford to the vendor *a retro* as much opportunity as possible to redeem his property even if the sale was truly one with *pacto de retro*.[3] This second principle is embodied in Article 1606 which grants to the vendor, against whom a judgment is rendered by the court ruling that the contract was truly a sale with the right to repurchase, to repurchase the property within thirty days from the time the judgment becomes final.[4] This provision is intended to cover suits where the seller claims that the real intention of the parties was a loan with equitable mortgage,[5] but the court decides otherwise.[6] So that when the transaction is specifically pleaded to be a sale with *pacto de retro*,[7] and tried on that theory, the character of the transaction as a sale with *pacto de retro* or as an equitable mortgage not being in question, the vendor cannot invoke the right granted by said article.[8]

In the instant case, the Supreme Court declined to discuss the applicability of Article 1606. It would seem however from the ruling in this case that Article 1606 would apply where an action putting in issue the nature of the transaction (*i.e.* whether the same is a sale with the right to repurchase or is merely a mortgage) is filed in court on the last day of the period for repurchase or when such period has already expired. For an action brought in good faith and relating to

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[2] The Code Commission in its report (pp. 61-63), explaining Art. 1602 of the new Civil Code, pointed out that said article was part of the plan to safeguard against and restrict the evils of a *pacto de retro* sale, "which have fostered like a sore on the body politic." The Commission recognized that "in practically all of the so called contracts of sale with *pacto de retro*, the real intention of the parties is money loaned and in order to secure the payment of the loan, a contact purporting to be a sale with the right to repurchase is drawn up. It is thus that the provisions contained in Articles 1859 and 1858 of the present (Spanish) Civil Code . . . are circumvented." The other evil sought to be removed is the circumvention of the Usury Law.

The provisions of Arts. 1603, 1604, and 1605 strengthen the plan referred to above.

[3] Under the Spanish Civil Code and the cases decided thereunder, if the vendor *a retro* failed to comply with his obligations, the vendee acquired irrevocably the title to the property and the consolidation of ownership in the purchaser is absolute. Patricio v. Aragon, 4 Phil. 615 (1905); Jumero v. Lirares, 17 Phil. 112 (1910); Yadao v. Yadao, 24 Phil. 260 (1911); Tuason v. Goduco, 23 Phil. 342 (1912); Dorado v. Virina, 34 Phil. 264 (1916); Krapfenbauer v. Orbeta, 52 Phil. 201 (1928).

Art. 1509 of the Spanish Civil Code provides, "If the vendor does not comply with the provisions of Art. 1518, the vendee shall acquire irrevocably the ownership of the thing sold."

Art. 1607 of the present Civil Code provides, "In case of real property, the consolidation of ownership in the vendee by virtue of the failure of the vendor to comply with the provisions of Art. 1616 shall not be recorded in the Registry of Property without a judicial order, after the vendor has been duly heard."

[4] Art. 1606, third par.: "However the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase."

[5] Art. 1602 Civil Code.

[6] IV CAPISTRANO, CIVIL CODE (1951) 157.

[7] Art. 1601, Civil Code.

[8] Feria v. Suva, G.R. No. L-5515. April 24, 1953.

the validity of the sale with *pacto de retro* as such, tolls the term within which the right to repurchase may be exercised.[9]

The facts of the instant case are these: The transaction between the plaintiffs and defendants involved a piece of land. Hardly three months had passed after the execution of the contract when the plaintiffs filed an action against the defendants for the purpose of acquiring possession of the land on the ground that the same was sold to them with the right to repurchase the property within two years from the date of sale in favor of the defendants as vendors. Defendants alleged that the transaction was in fact a loan with usurious interest secured by a mortgage. The trial court held that the transaction was a real sale with *pacto de retro* and its decision was subsequently affirmed by the Court of Appeals by final judgment. One month after the judgment of the Court of Appeals had been rendered, the defendants, invoking the provisions of Article 1606,[10] sought to exercise their right to repurchase the property. But the lower court held that Article 1606 was not applicable because the plaintiffs had already acquired a vested right to the land in question by reason of the defendants' failure to repurchase within the stipulated period (which period expired during the trial of the case). The Supreme Court reversed the decision of the court below and ruled that the right to repurchase the property was suspended from the filing of the action and only commenced to run after the decision of the Court of Appeals had become final. It said:

> "It is clear that, after the plaintiff had filed the present action on January 22, 1947, or less than three months after the execution of the *pacto de retro* sale on November 11, 1946, and until the decision of the Court of Appeals promulgated on February 18,1952 had become final, defendants could not fairly be expected to exercise their right to repurchase for the simple reason that they were claiming that the transaction was not a *pactro de retro* sale but merely an equitable mortgage securing a loan with usurious interest. Appellants cannot be said to have acted in bad faith as they had the right to wait for the final outcome of the present action."

Having thus arrived at such conclusion, the Court deemed it unnecessary to discuss the applicability of Article 1606 to the case.

Considering therefore both the *Suva*[11] case and the *Fernandez* case, it may be seen that even after the period for redemption had already expired and an action is brought[12] involving the validity of a sale with *pacto de retro*, the vendor *a retro* is given a chance of repurchasing the property so long as he was always in good faith. For as long

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[9] Ong Chua v. Carr, 53 Phil. 975 (1929).

[10] Defendants-appelants based their right to redeem under Art. 1606, in connection with Art. 2253 dealing with transitional provisions.

[11] See note 8.

[12] The action may have been brought by the vendee enforcing his rights under the contract and the defendant attacks therein the validity of the pacto de retro sale; the plaintiff may be the vendor who assails the contract as being one of pacto de reto sale.

as the period of redemption had not yet expired (and a suit pending during such period stops its running) the vendor can exercise his option independently of the provisions of Article 1606. Hence the policy of the new Civil Code favoring the vendor *a retro* is reinforced.[13]

Civil Law.—*Article 1592, Civil Code, in relation to a mere contract to sell.*

JOCSON v. CAPITOL SUBDIVISION, INC. AND COURT OF APPEALS
G. R. No. L-6573, February 28, 1955

When under a contract of sale the vendee fails to pay the price, the vendor has a choice of two remedies — (1) he may demand the fulfillment of the contract, or, (2) demand its recission.[1] The power to rescind obligations may be express or it may be implied in reciprocal obligations in case one of the obligors should not comply with what is incumbent upon him.[2] In order that the contract be rescinded it is necessary that the plaintiff take some affirmative action indicating his intention to rescind it.[3] In case of sale of immovable property, such intention should be manifested either by a judicial or a notarial demand.[4] And the right of recission may be invoked only by judicial action.[5]

The power to rescind, however, is not absolute since the court instead of declaring the recission may grant a period for the compliance with the obligation if there be a just cause for the fixing of the period.[6] That the power to rescind the contract is not absolute

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[13] An examination of the new provisions of the Civil Code respecting conventional redemption supports the opinion that the vendor a retro is favored more.

[1] Art. 1191, par. 2, 1380, 1381, 1385, Civil Code.

[2] Art. 1191, par. 1.

[3] Guevarra v. Pascual, 12 Phil. 311 (1908).

[4] Art. 1592.

[5] Escueta v. Pando 42 O.G. 11, 2759 (1946). In this case the court ruled that the right to rescind must be invoked judicially for Art. 1191, par. 3, provides, "the court shall declare the resolution demanded, unless there should be grounds which justify the allowance of a period for the performance of the obligation."

[6] Art. 1191, par. 3. There are other provisions of the Civil Code which show that the power to rescind a contract is not absolute. Rescission may be availed of only when he who demands rescission is in a position to return whatever he may be obliged to restore. (Art. 1385), par. 1). Neither may rescission take place when the object of the contract is in the possession of a third person who has not acted in bad faith. (Art. 1285, par. 2). Moreover in the case of Kapisanan Banahaw v. Dejarme and Alvero, 55 Phil. 338 (1930), it was held that under the third paragraph of Art. 1191, the court is granted discretionary power to allow a period within which a person in default may be permitted to perform the stipulation upon which the claim for rescission of the contract is based. In other words the power to rescind the contract is not absolute (Ocejo Perez and Co. v. International Banking Corp., 37 Phil. 631 (1918); this discretionary power of the court should be exercised without hesitation in the case where a virtual forfeiture of valuable rights is sought to be enforced as an act of mere reprisal for a refusal of the debtor to submit to a usurious charge. Furthermore, as was said in Song Fo and Co., v. Hawaiian-Philippine Co., 47 Phil. 821 (1925), the general rule is that rescission will not be permitted for a slight or casual breach of a contract.

is further amplified by the rule that in case of sale of an immovable property recission does not operate as of right upon failure of the vendee to pay the price at the time agreed upon, even if there be a stipulation to that effect, so that the vendee may still pay beyond the period agreed upon for payment provided that the vendor did not make a demand for recission either judicially or by notarial act.[7]

There are certain exceptions, however, to the applicability of Article 1592 of the Civil Code. One exception would be a contract of sale in installments in which the parties have laid down the procedure to be followed in the event the vendee failed to fulfill the obligations incumbent upon him.[8] This procedure usually takes the form of an option given to the vendor in case the vendee fails to pay any of the installments of either considering the total remaining purchase price due and payable and recoverable by an action at law or recovering the possession of the property in which case any and all sums paid by the vendee shall be regarded as rental for the use and occupancy of the property.[9]

Again the rule does not apply to a promise to sell. The Supreme Court said so in *Mella v. Bismanos*[10] and this was affirmed in the instant case. The Court in the latter case held that unlike in the case of *Adiarte v. Court of Appeals*[11] wherein Article 1592 was held to be applicable to a perfected contract of sale, the doctrine does not govern the instant case which involves a mere contract *to sell*.[12] The facts of the present case are as follows: De Oca, plaintiff's predecessor in interest, and the defendant entered into an agreement, whereby the latter promised to sell to De Oca a parcel of land. Payments were to be made in installments. De Oca defaulted with respect to several installments. Subsequently he assigned his interests under the contract to the plaintiff. The defendant called the plaintiff's attention to the overdue installments, declaring at the same time that unless payment was made within a specified period, the contract would be cancelled.

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[7] Art. 1952, Civil Code, provides: "In the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for the rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term."

[8] Caridad Estates Inc. v. Pablo Santero, 71 Phil. 114 (1940).

[9] *Ibid.*; Manila Racing Club Inc. v. Manila Jockey Club, 40 O.G. (3s) 7, 88 (1939). The Court said that this penal clause is a conclusive recognition of the right of the vendor to said sums and avoids unnecessary litigation designed to enforce fulfillment of the terms and conditions agreed upon." In its double purpose of insuring compliance with the contract and of otherwise measuring beforehand the damages which may result from non-compliance, it is not unjust or inequitable and does not make the vendor unduly rich at vendee's cost and expense; neither do they defeat morals or public order.

[10] 45 O.G. 5 2099 (1947).

[11] G.R. No. 3517; Also Albea v. Inquimboy, 47 O.G. Sup. 12, 13, (1950). (1950); Villaruel v. Tan King, 43 Phil. 251 (1922).

[12] Art. 1479, Civil Code.

The plaintiff protested as to the amount claimed to be overdue, but when he tendered payment he was informed by the defendant that the contract had already been forfeited. Invoking the provisions of Article 1529 the plaintiff contended that he still had the right to make payment since there was no previous notarial or judicial demand for the recission of the contract. The Supreme Court upheld the forfeiture of the contract.

The plaintiff further insisted that there was waiver on the part of the defendant of its right to cancel the contract because it permitted De Oca to lag behind in the payment of the installments. The Court disposed of this contention by saying that if the defendant company showed liberality or tolerance to De Oca it did not have the obligation to be liberal also to the plaintiff. Furthermore mere delay in exercising one's rights to forfeiture does not necessarily mean a waiver thereof. As the Court pointed out:

> "The intention to waive the advantage or right in question must be shown clearly and convincingly. The best evidence of the intention is to be found in the language used by the parties. When the only proof of intention rests in what a party does or forbears to do his acts or omissions to act relied upon should be so manifestly consistent with and indicative of, intent to voluntarily relinquish a then known particular right or benefit that no other reasonable explanation of his conduct is possible."

Land Registration.—*Validity of* composición con el estado *issued by chief of province.*

DE LA ROSA v. DIRECTOR OF LANDS ET AL.
G. R. No. L-6311, February 28, 1955

Since there are many lands which are covered by Spanish titles and which must be dealt with in accordance with Spanish registration laws pursuant to the provisions of Section 124 of the Land Registration Act No. 496,[1] it is essential to know the nature and probative value of said titles and the rights of the holders thereof. For this purpose a study of the Spanish systems of land grants is made necessary.[2]

Prior to 1690 the law governing the disposition of lands in the Philippines could be found in the instructions and decrees which were issued exclusively for the Philippines, and in those extended to the Philippines and other Spanish colonies in the Indies. In 1680 the "Re-

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[1] "As to lands not registered in accordance with the provisions of this Act, the system of registration and recording heretofore established by law in these Islands shall continue and remain in force, except in so far as hereinafter modified, and the evidential weight given by existing law to titles registered as existing law now provides, shall be accorded to such titles in the hearings had under this Act before the examinees and before the Court." Sec. 124, first par., Act No. 496.

[2] VENTURA, LAND REGISTRATION AND MORTGAGES (3rd Ed. 1951) 4.

copilacion de las Leyes de los Reinos de las Indias"[3] which was a compilation and digest of such colonial laws was published. After the Laws of the Indies, the most notable and important law governing the disposition of lands was the Royal Decree of June 25, 1880, which laid down the rules governing the grant of lands by adjustment proceedings (*composición con el estado*).[4] The said decree which for a decade was the basis of subsequent decrees concerning the disposal of public lands by adjustment proceedings may well be considered the first landmark in modern Spanish land registration.[5]

In the case under review, the Court considered the Royal Decree of August 31, 1888 in connection with the Royal Decree of June 25, 1880. It held that a *composición con el estado* title issued by the chief of the province in his capacity as deputy of the *Director General de Administración Civil* for land which was more than thirty hectares and bounded on all sides by private lands is invalid. In fact it is improbable that an adjustment title to said land could have been issued by such official, because it was contrary to the procedure laid down by the Royal Decree of June 25, 1880. The applicant here filed an application for registration of the land in question in a previous registration proceeding alleging that his father acquired the land by means of a *composición con el estado* title issued by the chief of the province in his capacity as deputy of the *Director General de Administración Civil.* The Court held that the land was public land. In the instant registration proceeding, applicant applied for the registration of several parcels of lands among which was the land in question decreed in the previous proceeding as public land. Oppositor Panimdim who had been granted a free patent over the land in question opposed the present application in so far as the land subject-matter of the previous case was concerned. The other oppositors herein, the government officials, were also oppositors in the first proceeding.

The Supreme Court, after holding that the present application in so far as it concerned the land in controversy cannot prosper because of the principle of res judicata, went on to say that the applicant failed to prove that he had a registerable title. It observed:

> "In this connection it should be noted that if applicant meant a *composicion con el estado* title, which was issued by the chief of the province in his capacity as deputy of the *Director General de Administracion Civil* in accordance with the provisions of the Royal

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[3] Better known as The Laws of The Indies. Under it, the modes of disposal of public lands were: (1) By apportionment; founding of a town; (2) grant of a town council; (3) by confirmation of long possession; (4) by confirmation of defective or imperfect titles; (5) composicion con el estado (adjustment); (6) sale; (7) Special grant; (8) prescription.

[4] Such proceeding consisted in the filing by the holder of a land an application with the competent authority for the confirmation of his possession and the issuance of a gratuitous or onerous title under certain conditions.

[5] VENTURA, *supra*, at 5-14.

Decree of August 31, 1888, the issuance of such title has no foundation in law and in fact, because all public lands in the Philippines which were subject to adjustment with the government pursuant to the provisions of the Royal decree of June 25, 1880 were divided into two groups: (1) to include all those lands which were bounded at any point by other public lands and those which although bounded on all sides by privately owned lands contained an area in excess of thirty hectares (2) to include all those lands containing not more than thirty hectares and bounded on all sides by privately-owned lands.

"The adjustment or composicion of lands under the first group was to continue as provided for in the rules of June 25, 1880 or with the intervention of the *Inspector General de Montes*, under the supervision of the *Director General de Administracion Civil*. The adjustment of the second group was delegated to the provincial board and issuance of title to the applicant after complying with the procedure outlined in said royal decree of 1880, and the approval thereof was made by the chief of the province in his capacity as deputy of the *Director General*."

Natural Resources.—*Effect of award of sale and issuance of patent over public agricultural land.*

VISAYAN REALTY, INC. v. MEER
G. R. No. L-6763, January 31, 1955

The Public Land Act[1] provides for the administration and disposition of alienable public lands.[2] Persons occupying and cultivating alienable public lands who have not obtained titles thereto from the government and who do not have the so-called 'imperfect titles' which may be confirmed under a judicial registration proceeding instituted under the Land Registration Act[3] may avail themselves of any of the means of acquiring a patent for their landholdings under the Public Land Law.[4] As to the alienable portions of the public domain which are unoccupied, the same may be acquired by homestead entry or by sale under the Public Land Law.[5] The patents[6] granted under the Public Land Law do not take effect as a conveyance or bind the land[7] but shall operate only as a contract between the government and the grantee

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[1] Com. Act No. 141.

[2] Central Capiz v. Ramirez, 40 Phil. 883 (1920).

[3] A person who has no absolute title to the property may prove that he has imperfect title thereto within the contemplation of section 48 of Act No. 141, that is he had applied for a grant of the same during the Spanish regime but failed to obtain title thereto, or that he had been in the continous possession of the property since July 26, 1894; if he proves he has imperfect title he may request that such title be registered in his name in accordance with Sec. 48, par. (a) and (b) and section 50 of Com. Act No. 141, in connection with Secs. 37 and 38 of Act No. 496.

[4] VENTURA, LAND REGISTRATION AND MORTGAGES, (3rd Ed. 1951) 240.

[5] *Ibid.*

[6] "A patent is a muniment of title issued by a goverment or state for the conveyance of some portion of the public domain." Wright v. Roseberry, 121 U.S. 488 (1887), cited in Bouvier's Law Dictionary (3rd. Ed. 1914).

[7] "The act of registration shall be the operative act to convey and effect the land . . ." Sec. 122, Act No. 496.

and as evidence of authority to the clerk or register of deeds to make registration.[8] The delay in the issuance, however, of the patent can not affect the vested right of the applicant of a public land.[9] A homesteader acquires a vested right to the land upon approval by the Director of Lands of the proof submitted to him showing that the applicant had complied with all the conditions necessary for the issuance of the patent,[10] provided the land, subject-matter of the homestead, was public land.[11] The issuance of the patent in such a case becomes a mere ministerial act of the officer charged with that duty.[12] Even without a patent a perfected homestead is "a property right in the fullest sense, unaffected by the fact that the paramount title to the land is in the government."[13]

The instant case, involving the sale under the Public Land Law of public agricultural lands, states the effect of the award of the sale and of the issuance of the patent and its registration upon the ownership of the land. The awardee acquires a vested right to the land when he has complied with all the conditions prescribed by the law and not from the date of the award. Before the issuance of the patent title remains in the government and the awardee may still be subjected to certain charges which the government may impose as such owner. The facts of the case are these: Four persons applied for the sale of four tracts of public agricultural lands. The lands were awarded to the applicants subject to the condition that the applicants cannot dispose of any timber thereon for commercial purposes without license from the Bureau of Forestry. In 1935 the plaintiff acquired the rights of the awardees over the lands. In 1940 patents were issued and registered. From 1935 to 1940 the plaintiff had been paying forest charges and in this action he sought the recovery of the amount he had paid on the ground that he was already the owner of the lands since title to the property passed to his predecessors in interest at the date of the award of the sales applications. The Supreme Court held the contention of the plaintiff untenable. It said that the effect of the award was merely to authorize the applicant or awardee to take possession of the land so that he could comply with the requirements prescribed by law before a final patent can be issued in his favor. Before these requirements are complied with the government is still the owner of the land as in fact the application may still be cancelled. What divests the government of title is the issuance of the sales patent and its sub-

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[8] Sec. 122, Act No. 496.
[9] Murphy v. Packer, 152 U.S. 398 (1894).
[10] VENTURA, *supra*. note 4.
[11] De los Reyes v. Raxon, 38 Phil. 480 (1918).
[12] *Ibid.*
[13] Balboa v. Farallon, 51 Phil. 498 (1928). The court said, "a perfected valid appropriation of public lands operates as a withdrawal of the tracts from the body of the public domain and so long as such appropriation remains valid and subsisting the lands covered thereby is deemed private property."

sequent registration in the office of the Register of Deeds. Since the timber in question was cut by the plaintiff before the issuance of the sales patent in its name or in those of its predecessors in interest, it follows that the plaintiff was not yet the owner of the lands when the timber thereon were cut and so it cannot claim exemption from the payment of forest charges on the mere plea that it had already acquired ownership of said lands.

Civil Law.—*Interpretation of contracts; concept of "termination of war" in relation to private contracts.*

FABIE v. COURT OF APPEALS AND MORENO
G. R. No. L-6368, March 29, 1955

War in the legal sense continues until and terminates at the time of some proclamation of peace by an authority competent to proclaim it.[1] The mere cessation of actual hostilities does not terminate war until followed by formal declaration or proclamation of peace.[2] These are settled principles in political and international law. When, however, the obligations of the parties (inhabitants of the same belligerent country) to a private contract are made to depend upon the "duration of war," or "termination of war," the question may well be raised: When does the war end for purposes of the contract? Authorities differ in answer. It has been held that as to citizens of one of the belligerents in their relations with each other, war terminates and peace is restored when hostilities cease, notwithstanding that where such relations are not involved or for other purposes, war may be deemed as continuing until peace has been proclaimed.[3] But according to our own Supreme Court in the instant case, the general rule even with respect to private contracts is that war terminates when peace is formally proclaimed. The exception is where the parties to the contract meant only the cessation of hostilities. When therefore the parties use the words "termination of war" the meaning of the phrase is a question of intention.

The case under review involved a contract of sale with the right to repurchase executed during the Japanese occupation, the vendor having reserved such right within the period of "three months from and after the termination of the war at present raging." Tender of repay ment was made by the vendor on April 8, 1946 but was refused by the

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[1] 67 C.J. 429 S. 195; United States v. Tubig, 3 Phil. 244 (1904); Raquiza v. Bradford, 41 O.G. 7, 626 (1945); Yamashita v. Styer, 42 O.G. 7, 664 (1945); Untal v. Chief of Staff, 47 O.G. 3, 1147 (1949).

[2] 67 C.J. 430.

[3] Nelson v. Manning, 53 Ala. 549 (1875).

vendee. The present complaint was filed on May 24, 1947 for the reconveyance of the property upon payment of the repurchase price. The Japanese formally surrendered on September 2, 1945. President Truman of the United States issued his proclamation of peace in December, 1946.

The Court of Appeals held the view that, as to private contracts, war ends when hostilities cease,[4] although it admitted that generally, war ends when peace treaties are signed and ratified or peace is formally proclaimed. The Supreme Court considered the opinion of the Court of Appeals as resulting from the failure of the latter to appreciate correctly the rulings in the cases cited by it to support its decision. The Supreme Court observed that in those cases the general rule was enunciated to the effect that war ends when peace treaties are signed and ratified or peace is formally proclaimed. It went on to say that the same authorities specifically qualify the rule "where the parties to a contract so intend" or in "determining the intent of the parties." It concluded:

> "Supposing therefore that the above enunciates the principle as to contracts, it appears from the same and the citations therein that war terminates when peace is formally proclaimed, except where the parties have intended otherwise and meant mere cessation of hostilities."

Furthermore, the Court added, in this jurisdiction the language of a writing "is to be interpreted according to the legal meaning it bears in the place of execution," and according to the cases decided by the Court,[5] war terminates in the legal sense upon official proclamation of peace. There was nothing to indicate that the parties to the contract under consideration had intended the mere cessation of fighting; on the contrary, the short period of three months indicated that both parties had contemplated the return of complete normalcy, not merely the end of the armed conflict, for everybody knows that months and years after such ending is a period of reconstruction and economic hardship. The vendor *a retro* therefore should be allowed to repurchase the property.

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[4] Therefore the Court of Appeals held that in so far as the contract under consideration was concerned, war terminated on February 27, 1945 when General MacArthur turned over the government of these Islands to President Osmeña in Malacañang palace, or at the latest on September 2, 1945 when the document of formal surrender was signed by the Japanese on board the U.S. battleship Missouri. The Court of Appeals cited the following authorities:

Kaisher v. Hopkins, 6 Cal. 2nd, 537, 58 Pac. 2nd 1278, 1279 (1936); Rupp. Hotel Operating Co. v. Donn, 158 Pla. 541, 29 So. 2nd 444 (1947); Darnall v. Day, 37 N.W. 2nd 277 (1949).

[5] See note 1.

Civil Law.—*Prescription of action for recovery of land based on fraud.*

RAYMUNDO v. AFABLE
G. R. No. L-7651, February 28, 1955

Fraud that affects obligations are of two kinds: causal fraud[1] and incidental fraud.[2] Causal fraud vitiates consent and when serious is a ground for annulling contracts.[3] Incidental fraud merely gives rise to an action for damages.[4] The action for annullment must be brought within four years from the time of the discovery of the fraud.[5] Otherwise the action is barred.[6]

Where the owner of real property deprived thereof thru fraud institutes an action for the recovery of his property, such action is barred if not brought within the statutory period of four years counted from the time the fraud is discovered. This is so even if the direct purpose of the action is the recovery of title and possession to the land,[7] for the action is based on fraud. This is the ruling in the present case. Plaintiffs in this case were registered owners of a parcel of land mortgaged to Macondray, Inc. Plaintiffs and defendant Afable agreed that the latter would repay the loan to the mortgagee and be subrogated to the company's rights; but abusing the confidence of the plaintiffs, defendant made them sign a deed of absolute sale of the property mortgaged. The fraud was discovered on June 27, 1945. Suit was brought only in 1953. Plaintiff contended that the action was for the recovery of title to realty and therefore under the applicable law[8] his action had not yet prescribed. The Supreme Court, rejecting the theory of the plaintiffs, said:

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[1] Casual fraud or *dolo causante* is that "fraud without which the contract would not have been executed, or that which affects the essence of the same of the substance of the thing which is the object of the contract." 4 SANCHEZ ROMAN 197 cited in III PADILLA, CIVIL CODE ANNOTATED, 481. "There is fraud when through insidious words or machinations of one of the contracting parties, the other is induced to enter into a contract which, without them, he would not have agreed to." Art. 1338, Civil Code.

[2] Incidental fraud or *dolo incidente* is that "fraud which does not have the effect of *dolo causante*, but consists of the deceit used by one party upon the other which is inconsistent with the principle of good faith." 4 SANCHEZ Roman 197.

[3] Hill v. Veloso, 31 Phil. 160 (1918). "A contract where consent is given through mistake, violence, intimidation, undue influence or fraud is voidable." (Art. 1330, Civil Code). "The following contracts are voidable or annulable, even though there may have been no damage to the contracting parties: . . . (2) Those where the consent is vitiated by mistake, violence, intimidation, undue influence, or fraud." (Art. 1390 Civil Code). "In order that fraud may make a contract voidable, it should be serious . . ."(Art. 1344), Civil Code).

[4] Art. 1344, second par., Civil Code.

[5] Art. 1391, Civil Code.

[6] Art. 1139, Civil Code.

[7] "Real actions over immovables prescribe after thirty years." Art. 1141, Civil Code.

[8] The law then applicable was Act No. 190 under which real actions prescribe after ten years.

> "It may be that the recovery of title to and possession of the lot was the ultimate objective of the plaintiffs, but to attain that goal they must need first travel over the road of relief on the ground of fraud; otherwise even if the present action were to be regarded as a direct action to recover title and possession, it would nevertheless be futile and could not prosper for the reason that the defendant could always defeat it, by merely presenting the deed of sale which is good and valid to legalize and justify the transfer of the land to the defendants until annuled by the courts."

The reason then for the above rule is that it is indispensable for the plaintiff if he were to win his case to attack the validity of the contract purporting to transfer the property to the defendant. But he could no longer do this because of prescription. It should be observed that the ruling of the Court covers not only actions for the annullment of contracts involving real property but also actions brought directly to recover the title to property. The instant case therefore is a qualification of the rule respecting prescription of actions brought for the recovery of the ownership and possession of immovables.

Besides, the defendant had sold the land prior to this action to a third person in good faith to whom a transfer certificate of title was issued. This alone would be enough to defeat the plaintiff's suit.

What then is the remedy of the plaintiffs in this case? The Court said that the only remedy would have been an action for damages but this remedy had also prescribed already, since it is only demandable judicially within four years after the discovery of the fraud.

Civil Law.—*Civil liability for quasi-delicts.*

IBAÑEZ v. NORTH NEGROS SUGAR CO. ET AL.
G. R. No. L-6790, March 28, 1955

An act or omission made punishable by the Penal Code or by special penal laws may give rise to a civil liability on the part of the offender in favor of the aggrieved party.[1] When the act or omission of the defendant for which he is criminally prosecuted is characterized with negligence, then the same negligent act or omission causing damages may produce civil liability arising from a crime, or create a cause of action for quasi-delict.[2] The distinction between the civil liabiity created by the commission of the felony or *ex delicto* and the responsibility for

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[1] Art. 100 Rev. Penal Code, provides that "every person criminally liable for a felony is also civilly liable." See also case of Copiaco v. Luzon Brokerage Co. 66 Phil. 184 (1938).

There are exceptions to the rule in Article 100. Thus persons may not be civilly liable when in fact there is no civil liability, although they are criminally liable. U.S. v. Heery, 25 Phil. 600 (1913).

The rule means that there is civil liability in those cases where damages actually resulted from the offense. (I AQUINO, NOTES ON THE REVISED PENAL CODE [Rev. Ed. 1952] 406).

[2] Barredo v. Garcia, 73 Phil. 607 (1942).

damages as a result of a quasi-delict or *culpa aquiliana* is important. The right of the aggrieved party to recover damages based on the act or omission complained of as a felony is governed by the Revised Penal Code.[3] The obligations derived from quasi-delicts are governed primarily by the Civil Code and secondarily by special laws.[4] However, should the plaintiff choose to proceed against the defendant for the civil liability incurred as a result of the crime, he cannot again recover damages for the second time on the basis of the quasi-delict.[5] The plaintiffs then may choose which remedy to enforce.[6] And in order to know what remedy the plaintiff has chosen, it is necessary to determine the nature of the obligation which the plaintiffs seek to enforce against the defendants.

In the present case, the Supreme Court had occasion to call attention to the distinction between actions based on *culpa aquiliana* and civil liability for criminal acts under the Penal Code. A collision took place at a railroad junction between a car driven by Gil Dominguez and a train with Gustilo and Perez as locomotiveman and brakeman respectively, and owned by the North Negros Sugar Co., Inc. As a result, the passengers Ibañez and Bargo died, and Celis sustained physical injuries, for which Dominguez, Perez and Gustilo were charged with double homicide and grave physical injuries. The defendants who were tried separately were acquitted in separate decisions. In the course of the trial of the criminal cases, the offended parties reserved their right to file a separate action for damages against the defendants. The present action was instituted by the heirs of the deceased Ibañez against the North Negros Sugar Co. and its two employees, seeking to recover damages for the death of the deceased Ibañez. The trial court dismissed the action on the ground that defendants Gustilo and Perez, having been acquitted in the criminal cases, could no longer be held civilly liable, much less the North Negros Sugar Co. The plaintiffs appealed.

The Supreme Court, after taking into consideration the reservation made by the plaintiffs in the criminal cases, observed that their present cause of action was predicated not only on the recklessness or negligence and infraction of special laws and regulations of the defendants Gustilo and Perez but also on certain acts and omissions committed by their co-defendant, the sugar company. In short, the action was based not on an obligation arising from the act or omission complained of as a felony. As the Court explained:

> "Thus among other things there are alleged in the complaint certain tortious acts committed by said corporation which consist in fail-

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[3] Art. 1161, Civil Code; Lu Chu Sing and Lu Tian Chong v. Lu Tiong Gui 43 O.G. 2, 453 (1946); City of Manila v. Manila Elec. Co., 52 Phil. 586 (1928).
[4] Art. 1162, Civil Code.
[5] Art. 2177, Civil Code.
[6] Barredo v. Garcia, *supra*.

> ing to exercise and employ due care and diligence, in the selection, supervision and control of its servants which by their very nature were not alleged in the criminal charge, for they are apart and independent of the acts of negligence imputed to its employees. In other words, the civil action they have instituted is based, not on the civil liability of the defendants arising from the criminal act they have supposedly committed giving rise to the death and injuries sustained by the victims but on the general provisions on negligence embodied in articles 1902-1910 of the old Civil Code." [7]

Thus, the Supreme Court in the foregoing case has reiterated the principle enunciated in past decisions and embodied in Article 2177 of the present Civil Code, that the responsibility for fault or negligence for a quasi-delict is entirely distinct from the civil liability arising from negligence under the Penal Code. The action for damages brought by the heirs of the deceased could proceed regardless of the result of the criminal prosecutions.[8]

With respect to the employer-defendant, the remedy chosen by the plaintiffs gains importance in that an employer is primarily liable if the source of the obligation to indemnify is quasi-delict,[9] whereas if the action were for indemnity for a criminal offense, its liability would only be secondary.[10]

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[7] Now Arts. 2176-2194, Civil Code.
[8] Art. 31, Civil Code.
[9] Art. 2180, Civil Code.
[10] Art. 103, Rev. Penal Code; City of Manila v. Meralco, 52 Phil. 586 (1928); The law applicable is the Revised Penal Code. Teleria v. Garcia, 40 O.G. 12 Supp. 115 (1940); Yumul v. Juliano, 40 O.G. 15, 3118 (1941); Torrebillas v. Soques C.A. 46 O.G. 5618 (1948).