RECENT DECISIONS*

Civil Law —*Presumption as to property acquired during the marriage; fraud to annul a contract must be proved by clear and convincing evidence.*

GAMBOA HILADO v. ASSAD AND ASSAD
G.R. No. L-6397, August 30, 1955

The facts involved in this appeal were as follows:

On May 3, 1943, a parcel of land registered in the name of Justice S. Hilado was sold to Salim Jacob Assad, a naturalized Filipino citizen. One month before the liberation of Manila by the American armed forces, Justice Hilado was forcibly taken by the Japanese and from them on never returned. In April, 1945, an action for the annulment of the contract of sale was filed by the widow of the vendor, based on several grounds. From an adverse ruling of the trial court, plaintiff brought this appeal.

Two questions were submitted to the Supreme Court for decision, namely, (1) whether the property sold was conjugal partnership property; and (2) whether the contract of sale could be invalidated by reason of fraud.

Under the Civil Code,[1] all property of the marriage is presumed conjugal, unless it be proved that it pertains exclusively to the husband or to the wife.[2] To overcome this presumption, the proofs presented must be clear, satisfactory and convincing.[3] Aside from Mrs. Hilado's testimony, no other evidence was presented to prove that the lot in question was her paraphernal or exclusive property. On the other hand, documents submitted showed that it was purchased during the marriage and the title was even registered in her husband's name.[4] The building contract for the construction of the duplex apartments also showed they were built in 1939 during coverture. The legal presumption, therefore, properly applies to this case.

The main point involved in the appeal was whether the vendor Justice S. Hilado was induced to execute and sign the contract of sale by reason of deceit or fraud,[5] practiced on him by Joseph Jacob Assad. The plaintiff claimed that Joseph Jacob Assad, a Syrian, used his uncle, Salim Jacob Assad, as a dummy and represented himself to the vendor that it was his uncle, a Filipino naturalized citizen, who was buying the property.

To declare a contract null and void because of fraud, it is necessary that there be allegation and proof of concrete facts constituting deceit or fraud,[6] that is, "insidious words or machinations on the part of one of the contracting parties whereof the other was induced to execute the contract which without them, he would not have agreed to."[7] The fraud or deceit which annuls the

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* Writers of the Notes on Recent Decisions acknowledge the help extended by Miss Leonida G. Tanalgia, Miss Fe S. Bordador, Miss Alicia T. Serapio, Messrs. Roman D. Tanjuakio, Gregorio C. Castillo, Benjamin C. Santos, Gonzalo T. Santos, Luis J. Fe, Jr. in briefing the cases herein noted.

[1] Art. 160 reproduced from Art. 1407 of the Civil Code of Spain.

[2] *See, e.g.*, Viloria v. Aquino, 28 Phil. 258 (1914); Staples-House Printing Co. v. Building and Loan Ass'n, 36 Phil. 417 (1917); Hartake v. Frankel, et al., 54 Phil. 156 (1929); Camia de Reyes v. Reyes de Dano, 63 Phil. 629 (1936); Lajarao v. Clar. 43 O.G. 163 (1947); Tuleg v. Tanbengco, G.R. No. L-4623, Oct. 24, 1952; Flores v. Escudero, G.R. No. L-5102, March 11, 1953.

[3] Fulgencio v. Gatchalian, 21 Phil. 252 (1912); Abera v. Julian, 30 Phil. 607 (1918); De Guinoo v. Court of Appeals, et al., G.R. No. L-5541, June 25, 1954.

[4] Registration of the property in the sole name of the husband or the wife, however, is not sufficient to destroy the presumption implied by Art. 160 of the new Civil Code. Other kind of proof is required to rebut such legal presumption. Mariano v. Macabentos, 17 Phil. 107 (1910); Guingguing v. Abuton, 48 Phil. 144 (1926); Commonwealth v. Sandiko, 72 Phil. 264 (1941).

[5] See Art. 1338, Civil Code.

[6] Ramos v. Valmeda, 47 O.G. 1897 (1951)

[7] See note 5 *supra*

contract is that which brings about consent;[8] it is termed *causal*[9] and is not such as is merely incidental.[10] It is also an elementary rule[11] of contract law that fraud is never presumed,[12] but must be proved by satisfactory, clear and convincing evidence. In the instant case, the plaintiff's claim of fraud was not proved. Said the court:

> "Were there evidence that Justice Hilado would not have sold it to Joseph Jacob Assad's uncle, the fraud could have been conceived by Joseph Jacob Assad to secure Justice Hilado's consent to the sale. But there is no evidence to this effect, plaintiff himself insinuated that the sale was induced by desire to raise money to meet his personal needs. Justice Hilado could not have been interested in who the buyer would be. The identity of the buyer was immaterial to him. All that he was interested in was to have a buyer who was a Filipino citizen so that there would be no need for securing previous approval of the sale by the Japanese Military Administration. And he was satisfied with purchaser, Salim Jacob Assad, when the latter's naturalization and registration papers as Filipino citizen were shown him."

Expressing disapproval with the assumption by the trial court that Joseph Jacob Assad was merely circumventing the law as he himself wanted to buy the property, the Supreme Court, speaking through Justice Labrador stated thus:

> "A court of Justice cannot and should not make that assumption. The legal presumption is that men act in good faith and intend the consequences of their acts." A violation of law is never presumed. If we are to render justice therefore, we must find, because of the absence of any fact or circumstance to the contrary sufficiently sustained by evidence that Joseph Jacob Assad bought the property for his uncle, Salim Jacob Assad."

Civil Law —*Third person is bound by his promise to the vendor to pay the balance of the purchase price.*

RFC v. COURT OF APPEALS AND REALTY INVESTMENTS INC.
G.R. No. L-7185, August 31, 1955

The instant case lays down the rule that where the vendor of real property parts with title thereto upon a third person's assurance that he would himself pay to the vendor the balance of the purchase price still due from the vendee, such third person is bound to make good his promise to pay upon the fulfillment of the condition[1] agreed upon.

On June 17, 1948, one Dominguez entered into a contract of sale of a registred lot belonging to the Realty Investments Inc.,[2] making an initial payment of ₱39.98 with the balance payable in 119 monthly installments. Subsequently, said lot and the improvements made thereon were mortgaged to the Rehabilita-

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[8] Hill v. Veloso, 31 Phil. 160 (1915).

[9] "*Dolo causante* is that fraud without which the contract would not have been executed or that which affects the essence of the same or the substance of the thing which is the object of the contract." 4 SANCHEZ ROMAN 197, cited in III PADILLA, CIVIL LAW 481 (1953 ed.).

[10] "*Dolo incidente* is that fraud whoch does not have the effect of *dolo causante* but consists of the deceit used by one party upon the other which is inconsistent with principle of good faith." See *op cit. supra* note 9.

The test whether *dolo* is *causante* or *incidente* is: Determine whether misrepresentation was the *principal consideration*, the *main inducement* that led the other party to enter into the contract. If it were not so, then the fraud was *dolo incidente* and the contract was not vitiated. Woodhouse v. Halili, G.R. No. L-4811, July 31, 1953

[11] "The rule is founded on public policy to guard against the speculative tendencies of the human mind and its readiness to accept as facts theories that appeal to the imagination."

[12] La Cia Gral. de Tabacos v. Obed, 18 Phil. 391 (1919); Arroyo v. Granada, 18 Phil. 484 (1910); De Roda v. Lalk, 48 Phil. 104 (1926); Musngi & Co. v. Bastida, 48 Phil. 16 (1926); De Santos v. Bank of the P.I., 66 Phil. 38 (1938).

[13] Rule 123, Sec. 69(c), Rules of Court.

[1] Art. 1181 of the Civil Code provides: "In conditional obligations, the acquisition of rights, as well as the extinguishment or loss of those already acquired shall depend upon the happening of the event which constitutes the condition."

[2] Hereafter referred to as "vendor."

tion Finance Corporation as security for a loan of ₱10,000. The RFC requested the vendor to execute the necessary documents for the transfer of title to the vendee, with the assurance that as soon as title would have been issued and registered in the name of the vendee, Dominguez, with the mortgage entered therein as a first lien in favor of the RFC, the latter would pay the balance of the purchase price. The vendor readily assented to this request.[3]

However, after the land's title had been registered in the name of the vendee, the RFC released only ₱6,500. The balance was never released because the vendee defaulted in the payment of the amortization due on the amount received. Thereafter, the mortgage was foreclosed and the RFC obtained title to the property.

When the vendor demanded from the RFC the payment of the balance of the purchase price, the latter refused to pay and contended that its obligation had been modified if not extinguished by the vendor's letter of September 20, 1948.[4] Hence, this action was instituted to recover the unpaid balance.

The Supreme Court, in declaring RFC's claim to be untenable, held that the period of grace was granted by the vendor in the belief that the information furnished by the vendee was true. The RFC never informed the vendor that said information was not correct. It would be unreasonable to construe vendor's letter as willingness on its part to have the payment made only if and when there was to be a second release of the proceeds of the loan. If the RFC was not to make any further release of funds on the loan, or if such release was to be the subject of future developments, it was clearly its duty to answer the vendor's letter and to appraise him of the terms and conditions of the loan. The records of the case, however, showed that the RFC failed to do so. It was also the RFC that induced the vendor to issue the title to the land to Dominguez, upon its assumption of the vendee's obligation, and therefore, it could not, without any fault of the vendor, keep said property without paying anything.

While the amount sought to be recovered by the vendor was originally owing from Dominguez, being the balance of the purchase price of the lot he agreed to buy, the obligation of paying it had been assumed by the RFC with no other condition than that title to the lot be first conveyed to the vendee and RFC's mortgage entered therein as a first lien and that condition had already been satisfied. Consequently, the RFC cannot, now, escape from the legal obligation which it has voluntarily assumed.

Civil Law —*Allegation in the complaint that instrument to be reformed does not express the real agreement or intention of the parties is essential in an action for reformation.*

GARCIA v. BISAYA, ET AL.
G.R. No. L-8060, September 28, 1955

When, there having been a meeting of the minds of the parties to a contract, their true intention is not expressed in the instrument purporting to embody the agreement, by reason of mistake, fraud, inequitable conduct or accident, one of

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[3] This constitutes a novation of the obligation. Art. 1293 of the Civil Code provides: "Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in Articles 1236 & 1237."

[4] The letter of the Realty Investments Inc. to the RFC gave the latter until the "second release of the proceeds of the loan," which according to Dominguez would be on or about Oct. 15, 1948, within which to pay the unpaid balance of the purchase price.

the parties may ask for the reformation [1] of the instrument to the end that such true intention may be expressed.[2] The rationale of the doctrine is that it would be unjust and inequitable to allow the enforcement of a written instrument which does not reflect or disclose the real meeting of the minds of the parties.[3]

Under the chapter [4] providing for reformation of instruments, this relief can now be obtained directly as a cause of action and not merely as a matter of defense.[5] But the complaint, in an affirmative action by the plaintiff, must state that the instrument to be reformed does not express the real agreement or intention of the parties and this allegation is essential since the object sought in an action for reformation is to make an instrument conform to the real agreement or intention of the parties. This was the ruling laid down by our Supreme Court in the instant case.

This was an action for the correction of an alleged mistake [6] in a deed of sale covering a parcel of land. Plaintiff alleged in his complaint that in 1938, defendant executed in his farm a deed of sale covering a piece of land; that said "land was erroneously designated by the parties in the deed of sale as an unregistered land when in truth and in fact said land is a portion of a big mass of land registered in the office of the Register of Deeds of Oriental Mindoro;" and that despite persistent demands to have the error corrected, defendants have refused to do so.

Commenting on the sufficiency of the allegation in the complaint, the appellate court said:

> "We note however, that appellant's complaint states no cause of action, for it fails to allege that the instrument to be reformed does not express the real agreement or intention of the parties. Such allegation is essential since the object sought in an action for reformation is to make an instrument conform to the real agreement or intention of the parties.[7] But the complaint does not even allege what the real agreement or intention was. How then is the court to know that the correction sought will make the instrument conform to what was agreed or intended by the parties? It is not the function of the remedy of reformation to make a new agreement, but to establish and perpetuate the true existing one."[8]

By way of explaining the position of the court, the Supreme Court, speaking through Justice A. Reyes stated in this wise:

> "Moreover courts do not reform instrument merely for the sake of reforming them, but only to enable some party to assert rights under them as reformed.[9] If the instrument in the present case is reformed by making it state that the land herein conveyed is already covered by a Torrens Certificate of Title what right will appellant as vendee be able to assert under the reformed instrument when according to himself said title is in the name of Torcuata Sandoval, obviously a person other than the vendor? Would not the sale to him be ineffective considering that he would be in the position of one who knowingly purchased property not belonging to the vendor."

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[1] "Reformation is that remedy in equity by means of which a written instrument is made or construed so as to express or conform to the real intention of the parties when some error or mistake has been committed." 53 C.J. 906.

[2] Art. 1359, par. 1, Civil Code

[3] Report of the Code Commission, p. 54.

[4] Chapter 4, Title II, Book IV, Civil Code.

[5] The Rules of Evidence allow the introduction of oral evidence to reform a written agreement. See Rule 123, Sec. 22(a).

"The Parol Evidence rule is usually a matter of defense on the part of the defendant. Now these articles on Reformation allow the application of the same rule by affirmative action by the plaintiff." III PADILLA, CIVIL LAW 541 (1953 ed.)

[6] "To justify the reformation of a written instrument upon the ground of mistake, the concurrence of three things are necessary: First, that the mistake should be of a fact; second that the mistake should be proved by clear and convincing evidence; and, third, that the mistake should be common to both parties to the instrument." Bank of P. I. v. Fidelity & Surety Co. of P. I., 51 Phil. 57 (1927).

[7] Art. 1359, Civil Code.

[8] 23 R.C.L., par. 4, p. 311.

[9] 23 R.C.L., par. 2, p. 311.

Civil Law —*Commixtion in bad faith and at the instance of an owner.*

SIARI VALLEY ESTATE INC. v. LUCASAN
G.R. No. L-7046, August 31, 1955

Commixtion or confusion has been defined as the mixture of things, solid or liquid, pertaining to different owners.[1] The Civil Code distinguishes whether commixtion or confusion occurs by the will of the owner or owners or by chance and, also, whether it is done in good or bad faith.[2] In the instant case, the Supreme Court found occasion to apply these legal rules.

The relevant facts of the case were as follows:

Plaintiff-corporation started raising livestock in its 950 hectares ranch in 1921. During the Japanese occupation, a portion of the fence enclosing plaintiff's ranch was destroyed with the result that some cattle strayed into the adjoining unfenced ranch of the defendant. Taking advantage of this situation, several men in the employ of Lucasan rounded up and drove several heads of cattle from Siari pasture towards his grazing lands.

In 1948, plaintiff filed this action asking for the return of its animals with their offspring or for the payment of those disposed of by defendant plus damages. The trial court rendered judgment for the plaintiff and so the defendant brought this appeal. The issues which the appellate court had to resolve were: (1) whether plaintiff's cattle were commingled with those of the defendant's; and (2) whether commixture was made in bad faith.

The Supreme Court, speaking through Justice Bengzon, answered both questions in the affirmative.

Evidence disclosed that defendant started raising his own cattle only in 1939 with 58 heads of cattle. A 30% increase per year should give him around 417 heads of cattle in 1951. Yet he had 400 after disposing of 280 heads according to his own evidence, or less than 800 according to his answer. As of 1951, therefore, defendant had an excess of 200 or 800 heads of cattle.[3] Another significant point brought out during the trial and which convinced the court that there was commixtion was the fact that the great majority of the cattle kept in defendant's ranch were *mestizos*.[4]

That Lucasan acted in bad faith in commingling the cattle were disclosed by the following circumstances: Defendant's sons and employees wilfully drove plaintiff's cattle into his pasture and maliciously retained and refused to return them despite the latter's repeated demands. He did not allow plaintiff's men to get into his pasture to identify its flock and even threatened them when they persistently tried to retrieve their animals. He was responsible in rebranding several Siari Valley cattle with his own brand and that he sold several heads of cattle without registering the sales. And lastly, he disposed of some of the cattle entrusted to his custody as trustee without lawful authority. Concluding, the court said:

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[1] 2 SANCHEZ ROMAN 101 cited in I PADILLA, CIVIL LAW 627 (1953 ed.).

[2] See Arts. 472 and 473, Civil Code. Also Santos v. Bernabe, 54 Phil. 19 (1929); Montelibano v. Bacolod-Murcia Milling Co. Inc., G.R. No. L-5416, July 26, 1954.

[3] "On the other hand, the report of Siari for September, 1941 to 1945 showed that the company had or should have 1762 heads of cattle, 249 of which were slaughtered or died leaving a total of 913 heads. It sold 593 and, therefore, it should have 925 heads. Actually it could count only 102 heads. Therefore, it lost 823 heads of cattle."

[4] Defendant's flock could not have been *mestizos*, as all his original flock were entirely native.

[5] To the owner belongs the natural fruits. Art. 441 of the Civil Code; United States v. Caballero, 25 Phil. 256 (1913)

"Natural fruits are the spontaneous products of the soil, and the young and other products of animals." Art. 443 of the Civil Code

[6] Art. 473, par. 2, Civil Code.

"Of course, it is quite possible that some of the mestizos are the result of the intermingling which begun in 1943 and continued up to 1951. Although generally, the offspring or increase of domestic animals belongs to the owner by accretion,[5] yet it is impossible to trace such ownership of these mestizos under the circumstances.

As . . . Lucasan has been actuated by bad faith in retaining in his ranch to multiply and increase for his own benefit, the cattle belonging to the Siari Estate and under the Civil Code "if the comingling of two things be made in bad faith, the one responsible for it will lose his share. . . ."[6]

Civil Law —*Prescription of actions.*

JAEN v. AGREGADO
G.R. No. L-7921, September 28, 1955
MINA, ET AL. v. COURT OF APPEALS AND RIVERO
G.R. No. L-7584, September 27, 1955

By extinctive prescription, the owner loses his property rights, and the causes of action[1] to enforce said rights are barred.[2] Inasmuch as extinctive prescription is primarily a special defense, it must be especially pleaded and proved.[3] The Civil Code provides for the periods within which different actions must be brought.[4]

Briefly, the facts of *Jaen v. Agregado* were as follows: Juan Goronado was the owner of a parcel of land situated in the province of Cebu. In 1920, the provincial government used a portion thereof for the construction of a road after reaching an agreement[5] with him. After Goronado's death in 1934, his estate underwent a judicial settlement and in 1941, the property in question was inherited by Telesfora Jaen. On June 9, 1953, she demanded payment of the entire lot but the respondent, Auditor-General, ruled that her claim had already prescribed since the road was constructed way back in 1920 while the claim for payment of the land was filed only in 1953, or after a period of 33 years. Petitioner appealed this ruling and cited in support of her contention that "no title to registered land in derogation to that of the registered owner shall be acquired by prescription or adverse possession."[6]

The Supreme Court, in upholding the Auditor-General's decision, said:

"We are not here concerned with acquisitive prescription[7] which is contemplated in the above quoted provision of the law but with the claim for a sum of money which, in the opinion of the respondent, is already barred by the statute of limitations. The validity of the transfer is not disputed and what petitioner merely seeks is the payment of its value which she claims has not been paid since 1920. If this is the nature of the claim, it is clear that the same has already prescribed."

For the purpose of interrupting the period of limitation, the Civil Code[8] has provided three ways, namely, the exercise of the right before the courts, written extrajudicial demand by the creditors, and the act of the acknowledg-

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[1] Art. 1139 of the Civil Code provides: "Actions prescribe by the mere lapse of time fixed by law."

[2] Art. 1106, par. 2, Civil Code

[3] Palaez v. Abreu, 25 Phil. 415 (1913); Corporacion de PP. Agustinos Recoletos v. Crisostomo, 32 Phil. 415 (1915); Karagdag v. Barado, 33 Phil. 529 (1916); Calma v. Calma, 56 Phil. 102 (1931); PNB v. Escudero, 72 Phil. 150 (1941)

[4] Chapter 3, Title V, Book III, more specifically Arts. 1140 to 1142 and 1144 to 1147.
However, "The limitations of actions mentioned in articles 1140 to 1142 and 1144 to 1147 are without prejudice to those specified in other parts of this Code, in the Code of Commerce, and in special laws." Art. 1148, Civil Code

[5] "It was agreed that payment would be deferred until after actual width of the road had been determined."

[6] Act No. 496, Sec. 46 (The Land Registration Law, Feb. 1, 1903).

[7] By acquisitive prescription "one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law." Art. 1106, Civil Code.

[8] Art. 1155, Civil Code

ment of the debt by the debtor. The case of *Veloso et al. v. Fontañosa et al.*[9] is also authority for the rule that the period of prescription of action against a deceased debtor may be interrupted by act of one of his several heirs and, furthermore, such interruption operates against all heirs alike. These principles were reiterated and reaffirmed in the instant case of *Mina et al. v. Court of Appeals and Rivero.*

On December 11, 1919, Rufina Clarin executed a real estate mortgage in consideration of a loan of ₱1000 from Salvador Rivero. The mortgage was payable within one year with 12% interest per annum until complete payment. In 1929, the mortgage debtor died, survived by the petitioner and two other heirs. The petitioner, in behalf of the other heirs of Rufina Clarin and herself acknowledge the debt. Furthermore, she sent a relative, Justo Bautista, to the creditor to pay the interests already accrued. For failure to make subsequent payments, the creditor instituted this action. The trial court, in a decision subsequently affirmed by the Court of Appeals, found that the amount, including interests, was ₱5,159. Hence, this petition for review.

The Supreme Court, in rejecting the petitioner's claim that the action had already prescribed, ruled that the period in this case was interrupted not only when the debtor in her lifetime paid interests but also when her heirs acknowledged the debt and paid interests, and this interruption furthermore prejudiced all heirs.[10]

Cornelio T. Peralta

Civil Law —*Payment of obligations contracted during Japanese occupation and payable after the war.*

NICOLAS, ET AL. v. MATIAS, ET AL.
G.R. No. L-8093, October 29, 1955

In our jurisdiction, the following rules are quite settled: Obligations contracted before the war, becoming due during the Japanese occupation, could be validly paid with Japanese war notes, the same being considered legal tender during the time.[1] Those contracted during the war, due and payable before liberation or could have been paid during that time, may be enforced in courts after liberation on the basis of the Ballantyne schedule.[2] Obligations contracted during the occupation, payable after the war, should be paid peso for peso.[3] The instant case is covered by the third situation. Defendants and her son mortgaged to the plaintiff spouses four parcels of land to guarantee an indebtedness of ₱30,000 lent by the latter to the former in Japanese military notes and payable one year after the expiration of five years from June 29, 1944. On July 15, 1944, the mortgagors offered to pay the debt, but payment was refused, and an attempted consignation of the same was refused by the court on the ground that the mortgagors, without the consent of the mortgagees, cannot

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[9] 12 Phil. 79 (1909).

[10] "When the running of the statute is interrupted with respect to the obligations of an heir of the deceased debtor, the interruption benefits or prejudices all heirs alike, inasmuch as each and all of them represent the ancestor and jointly succeed him in his rights and obligations."

[1] Haw Pia v. China Banking Corp., 45 O.G. Supp. to No. 9, 229 (1949); Pilos v. Yanga, G.R. No. L-5522, May 13, 1953.

[2] Hilado v. De la Costa, 46 O.G. 5472 (1950); Samson v. Andal, G.R. No. L-5932, Feb. 25, 1954; De la Cruz v. Del Rosario, G.R. No. L-4859, July 24, 1951; Segovia v. Garcia, G.R. No. L-5984, Jan. 22, 1954.

[3] Rodo v. Gomez, 46 O.G. Nov. Supp. 299 (1950); Gomez v. Tabia 47 O.G. 641 (1951); Arevalo v. Barreto, G.R. No. L-3519, July 31, 1951; Garcia v. De los Santos, G.R. No. L-5054, Aug. 31, 1953.

accelerate the date of maturity of the obligation. On August 22, 1951, the mortgagees instituted the present action for foreclosure. The only issue before the Court was whether payment should be made in Philippine currency, peso for peso, or in accordance with the Ballantyne schedule. In holding in favor of the plaintiffs-mortgagees, the Court said:

> "It is thus settled that the contracting parties are free to stipulate on the currency in which their respective obligations shall be settled, and that whenever, pursuant to the terms of an agreement, an obligation assumed during the Japanese occupation is not payable, until after liberation of the Philippines, the parties to the agreement are deemed to have intended that the amount stated in the contract be paid in such currency as may be legal tender at the time when the obligation becomes due."

Civil Law —*Mortgage and antichresis.*

VERZOSA v. BUCAG, ET AL.
G.R. No. L-8031, October 29, 1955

Mortgage is "a contract by which the debtor secures for the creditor the fulfillment of a principal obligation especially subjecting to such security real property in case of the non-fulfillment of said obligation at the time stipulated." [1] As a general rule, in a contract of mortgage, the mortgagor retains possession of the property mortgaged, and pays the mortgagee a certain per cent of the amount borrowed as interest by way of compensation for his sacrifice in depriving himself of the use of said money and the enjoyment of the fruits of the property; but, it not being an essential requisite of the contract of mortgage that the property remain in the possession of the mortgagor,[2] the latter may deliver the property to the mortgagee and the interest to be paid on the loan may be in the form of fruits of the property, without the contract's losing thereby its character of a mortgage contract.[3] Oftentimes, however, disputes have arisen as to whether a contract is one of antichresis [4] or mortgage whenever the property is delivered by the borrower to the lender with the fruits of the property to be appropriated by the latter. The case of *Legaspi v. Celestial*,[5] however, laid down the rule that when a contract of loan with security does not stipulate the payment of interest but provides for the delivery to the creditor by the debtor of the real property in order that the creditor may administer the same and avail himself of its fruits, without stating that said fruits are to applied to the payment of interest, if any, and afterwards, to that of the principal of the credit, the contract shall be considered to be one of mortgage and not of antichresis.[6]

The contract involved in the present case was one wherein the defendants, to secure an indebtedness of ₱1,620, conveyed a parcel of land to the predecessors in interest of the plaintiff, with the condition, among others, that the indebtedness shall be paid in full before the property shall be returned and that the borrowers are not to pay interest. According to the local custom, the owner

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[1] 12 MANRESA, CODIGO CIVIL 467.
[2] See Art. 2085 of the Civil Code.
[3] Legaspi v. Celestial, 66 Phil. 372 (1938).
[4] By the contract of antichresis the creditor acquires the right to receive fruits of an immovable of his debtor, with the obligation to apply them to the payment of interest, if owing, and thereafter to the principal of his credit. (Art. 2132, Civil Code.)
[5] See note 3 *supra*.
[6] As to the nature of an antichretic contract, see Arts. 2132, *et seq.*, Civil Code; Barretto v. Barretto: 37 Phil. 234 (1917); Macapinlac v. Gutierrez Repide, 43 Phil. 770 (1922); Distor v. Dorado, 46 Phil. 162 (1924); Diaz v. De Mendezona, 48 Phil. 666 (1926).
[7] The use of the term "mortgage" or "antichresis," however, is not always determinative of the real nature of a contract. They may actually intend otherwise. Villanueva v. Iponde, *et al.* (C.A.) 44 O.G. 4377 (1948); De la Vega v. Balilos, 34 Phil. 683 (1916).

or possessor of the land shall administer the same and shall be entitled to ½ of the produce of the property. After the lapse of 24 years, the defendants took possession of the property without the consent of the plaintiff and without paying the amount of the indebtedness. Plaintiff instituted the instant action to recover possession of the property. Defendants resisted the action by claiming that the contract was one of antichresis and that the original indebtedness has been sufficiently paid from the products of the land. In holding that the contract was a mortgage and not antichresis, the Court said:

> "A careful study of the contract Exhibit A discloses the existence of three provisions which are indicative of the contract as one of mortgage and not of antichresis. In the first place, it is agreed that the full amount of P1,820 must be returned to the lenders before the borrowers could demand the return of the property. This is contrary to an antichretic contract where the products of the land should be applied to the interest and then to the principal. In the second place, the contracting parties used the term mortgage (hipoteca) in various parts of the contract.[7] In the third place, the parties agreed that the lenders are not to pay rentals on the property in consideration of the fact that the borrowers do not pay interest on the land which they obtained as a loan."

Civil Law —*Possessor in good faith not required to pay rentals.*

MIRANDA v. FADULLON, ET AL.
G.R. No. L-8220, October 29, 1955

Possession may be in good or in bad faith. A possessor in good faith is one who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.[1] Good faith consists in the possessor's belief that the person from whom he received a thing was the owner of the same and could convey his title.[2] On the other hand, a possessor in bad faith is one who is not ignorant of the fact that there exists a defect in his title, or his mode of acquiring possession.[3] Good faith is presumed, and bad faith must be proved by him who alleges it.[4] In the last analysis, however, good faith, or the want of it, is a question of intention, and in ascertaining such intention, the courts are necessarily guided by the evidence as to the conduct and outward acts by which alone the inward motive may, with safety, be determined.[5] Thus, one who has knowledge of facts which should have put him upon such inquiry and investigation as might be necessary to acquaint him with defects in the title of his vendor cannot claim to have acquired title in good faith.[6]

The present case involves an application of the foregoing principles. Briefly, the pertinent facts are: In 1939, Lucio Tio, husband of the plaintiff, owner of a parcel of land covered by a transfer certificate of title, executed a power of attorney in favor of Esteban Fadullon, which was registered in the land records of Cebu City and annotated on the back of the title. On the same date, a mortgage over said parcel of land was executed in favor of the Cebu Mutual and Building Loan Association and likewise annotated on the back of said title. In 1946, Fadullon, on the strength of such power of attorney, sold the property to the defendant spouses with right to repurchase within 30 days. Upon failure of Fadullon to repurchase, the defendants, about 10 days later, filed a petition for consolidation of their ownership over the said parcel of land and registered the same in the Registry of Property. Learning of this, Tio brought action to

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[1] Art. 526, Civil Code.
[2] Arriola v. Gomez de la Serna, 14 Phil. 627 (1909).
[3] Art. 526, second par., Civil Code; Lerma v. Cruz, 7 Phil. 581 (1907).
[4] Art. 527
[5] Leung Yee v. Strong, 37 Phil. 644 (1918).
[6] Leung Yee v. Strong, *id.*; Director of Lands v. Martin, et al., 47 O.G. 120 (1951); Republic v. Hospital San Juan de Dios, et al., 47 O.G. 1823 (1951).

annul the same. The trial court rendered judgment for him and upon appeal by the defendants to the Court of Appeals, the decision was affirmed and the defendants were further required to pay Tio reasonable rentals on the property from the filing of the action until the return of the property. This decision became final and the corresponding writ of execution was issued directing the sheriff to put plaintiff in possession. It appears, however, that improvements had been made by the defendants on the property, so they filed a motion asking the court that since they were possessors in good faith, the plaintiff should reimburse them or permit them to buy the land.[7] Plaintiff, on the other hand, contended that defendants were possessors in bad faith, and as such they were not entitled to reimbursement for the improvements.[8] After a careful examination of the records of the case, the Supreme Court found the following circumstances an indicative of the fact that defendants were "not possessors in good faith":

> (1) The finding of the trial court that the power of attorney appearing on the back of the title was 5 or 6 years previous, the comparatively limited period of one month granted to vendor Fadullon to redeem the property, and the steps taken by defendants to consolidate ownership within a short period of 10 days after default by Fadullon.
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> (2) The finding of the Court of Appeals that the encumbrance consisting of the deed of mortgage annotated on the Torrens Title should have been sufficient to put the defendants upon an inquiry as to the authority of Fudallon to sell property 6 years later; and that the defendants did not require Fadullon to produce his power of attorney which they should have done to determine the scope and authority of Fadullon under the power of attorney.

Continuing, the Court said:

> "Moreover, the very fact that the Court of Appeals sentenced the defendants to pay rentals is an indication, even proof that defendants were considered possessors and builders in bad faith, or at least that they were not possessors and builders in good faith. A builder in good faith may not be required to pay rentals. He has a right to retain the land on which he has build in good faith until he is reimbursed the expenses incurred by him.[9] Possibly, he might be required to pay rental only when the owner of the land chooses not to appropriate the improvement and requires the builder in good faith to pay for the land, but the builder is unwilling or unable to buy the land, and then they decide to leave things as they are and assume the relation of lessor and lessee, and should they disagree as to the amount of the rental, they can go to court to fix that amount." [10]

Civil Law —*Validity of payment to Enemy Property Custodian during Japanese occupation.*

TESTATE ESTATE OF ISABEL DE ROHDE, ET AL.
v.
INTESTATE ESTATE OF MANUEL URQUICO, ET AL.
G.R. No. L-6838, October 10, 1955

Payment shall be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive it.[1] The phrase "person authorized to receive it" includes not only a person authorized by the creditor, but also a person authorized by law do so.[2] In

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[7] See Art. 448 of the Civil Code.
[8] See Art. 449 of the Civil Code. Also De Guzman v. Rivera, 4 Phil. 620 (1905); Ysrael v. Madrid, (C.A.) 45 O.G. 2177 (1949).
[9] See Art. 546 of the Civil Code.
[10] See note 7 *supra*.
[1] Art. 1240, Civil Code.
[2] Haw Pia v. China Banking Corp., 45 O.G. Supp. No. 9, 229 (1949).

several cases,[3] for instance, the Bank of Taiwan has been held to be among those "authorized to receive payment" during the Japanese occupation. In the instant case, the question raised was whether the voluntary payment of a mortgage debt to the Enemy Property Custodian was valid. Before the war, Manuel Urquico became indebted to William J. Rohde, an American, in the amount of ₱77,500.00, and as a security, the former executed a mortgage in favor of the latter over two parcels of land covered by T.C.T.'s Nos. 116 and 1275. Gradually, through partial payments, the indebtedness was reduced in 1938 to ₱71,743.00 payable in 4 years. Consequently, the property covered by TCT No. 1275 was released and only that covered by TCT No. 126 remained outstanding. On May 1, 1944, Urquico sold the mortgaged property covered by TCT No. 126 to Lucila Cruz, Jose Perez, Margarita Prodon and Graciano de Llamado married to Crispin Llamado, with the stipulation that the vendee assume the mortgage indebtedness in favor of Rohde. During the war, upon refusal of Rohdes to accept payment, the vendees paid the total amount of indebtedness then outstanding to the Enemy Property Custodian, an entity of the Imperial Japanese Forces, and a certificate of payment was issued therefore. After the war, the validity of the payment made during the Japanese occupation was questioned.

The trial court held in favor of the plaintiffs on the theory that even following the doctrine laid down in the case of *Haw Pia v. China Banking Corporation*,[4] the validity of defendant's payment during the Japanese occupation cannot be upheld, because while in the Haw Pia case there was a sequestration of the properties and assets of the enemy alien creditors and the debtors ordered by the Japanese army to pay, in the present case, there is no sequestration of Rohde's property and the payment was made voluntarily. The Supreme Court, citing the case of *Hodges v. Gay, et al.*,[5] held that "inasmuch as the Enemy Property Custodian was an entity authorized by law to receive payment of an indebtedness due to enemy aliens, under Article 1162 of the Civil Code,[6] the payment was valid and bound the creditor," and the voluntary nature of the payment was "immaterial since the decisive consideration was that the Japanese military authorized to receive payment" in behalf of enemy aliens.

Augusto E. Villarin

Civil Procedure —*Declaratory relief not proper in citizenship determination; CFI jurisdiction.*

AZAJAR v. ARDALES
G.R. No. L-7918, October 31, 1955

In Philippine jurisdiction may a person avail himself of the remedy of declaratory relief to have his citizenship determined?[1] Our Supreme Court, in view of section 1, Rule 66 of the Rules of Court in the Philippines[2] together

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[3] Haw Pia v. China Banking Corp., *id.*; La Orden v. Phil. Trust, 47 O.G. 2894 (1951); Wilson v. Berkenkotter, G.R. No. L-4476, April 10, 1953.

[4] In this case it was held that the Japanese Military Forces having the power to sequestrate and impound the assets or funds of enemy aliens in the Philippines, and for that purpose, it could validly appoint the Bank of Taiwan as liquidator to collect the debts due the debtors and pay the creditors, "it follows evidently that the payments by the debtors to the Bank of Taiwan of their debts to the China Banking Corporation have extinguished their obligation to the latter."

[5] 48 O.G. 136 (1952).

[6] Now Art. 1240, Civil Code.

[1] The Uniform Declaratory Judgments Act authorizes broadly the declaration of rights, status, and other legal relations. 16 AM. JUR. 275, 292.

[2] "Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute or ordinance, may bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder." Sec. 1, Rule 66.

with the doctrine of exhaustion of administrative remedies,[3] and of its previous rulings,[4] answered in the negative in the instant case. The appellant Azajar applied for the purchase of a parcel of land of the public domain. Ardales opposed the sale application on the ground of citizenship disqualification. The stipulation of facts shows that the appllicant Azajar was born on August 25, 1922 in Amoy, China. Her father was born on June 25, 1896 in Manila and the appellant alleged that her father elected Philippine citizenship under the law then existing in the Philippine Islands.[5] The applicant's mother, a Chinese, was born in Amoy, China, in 1897, and residing presently in Naga, Camarines Sur. The stipulation of facts further shows that the applicant registeted as voter in Manila in 1949 and in Quezon City in 1951. The lower court dismissed the complaint of the applicant seeking declaratory relief to have herself declared a Filipino citizen. On appeal, the Supreme Court ruled:

> "The applicant is not interested under a deed, will, contract or other written instruments; nor are her rights affected by a statute or ordinance, and so her grievance against the oppositor has not brought her within the scope of sec. 1, Rule 66.
>
> "In sale applications filed with the Bureau of Lands, until after all the administrative remedies shall have been exhausted no court may compel the Director of Lands or the Secretary of Agriculture and Natural Resources to decide one way or another any sale application as that power is vested exclusively in them.
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> "*Citizenship, therefore, cannot be determined in an action for declaratory relief or judgment.* It is not the proper remedy or proceeding. The applicant may resort to courts to compel the officials concerned to allow her to exercise her rights of citizenship. Such was not the action brought herein."

It is well settled that a proceeding for a declaratory judgment or relief must be based upon an actual controversy,[6] and cannot be invoked solely to determine a moot, abstract or theoretical question, or to decide claims which are uncertain or hypothetical.[7] The Court said in the case of *Delumen et al., v. Republic*,[8]—

> "It is not accurate to say, as appellees do, that an actual controversy arose after the filing by the Solicitor General of an opposition to the petition, *for the reason that the cause of action must be made out by the allegations of the complaint or petition*, without the aid of the answer . . ."
>
> and ". . . where nobody had ever contested the allegations of the pvtition before it was filed with the court." (syllabus).[9]

In connection with the question of jurisdiction of the trial court to decide the case on the merit, the Court held that the question is not one of jurisdiction of the CFI but one of the availability of remedy sought on the basis of the averments in the complaint. The CFI has jurisdiction to hear and determine all

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[3] "This doctrine obviously means that the administrative agency or authority is entitled to hear first and say the last word in a given case, subject to administrative cognizance." RIVERA, J. F., LAW OF PUBLIC ADMINISTRATION 911 (1955).

[4] Pablo, et al. v. Republic, G.R. No. L-6868, April 30, 1955; Delumen et al. v. Republic, 50 O.G. 578 (1954); Obiles v. Republic, 49 O.G. 923 (1953).

[5] Sec. 2 of the Phil. Autonomy Act of 1916 provides: "All inhabitants of the Philippine Islands who were Spanish subjects on the 11th day of April, 1899, and then resided in said islands, and *their children born subsequent thereto*, shall be deemed and held to be *citizens of the Philippine Islands*, except such as shall have elected to preserve their allegiance to the Crown of Spain in accordance with the provisions of the treaty of peace between the United States and Spain, signed at Paris December 10, 1898 . . ."

Sec. 1, Article IV of the Phil. Const. provides "The following are citizens *of the Philippines*:

(1) Those who are citizens *of the Philippine Islands* at the time of the adoption of this Constitution.

(2) Those whose fathers are citizens *of the Philippines*.

[6] 16 AM. JUR. 282.

[7] Delumen et al. v. Republic, *supra* note 4.

[8] *Ibid.*

[9] Obiles v. Republic, *supra* note 4

actions and special proceedings because of its general jurisdiction, except those the cognizance of which have been vested by law in other courts.[10]

Civil Procedure —*Defense of prescription of action on judgment need not be pleaded specifically in answer when it does not raise question of fact.*

CHUA LAMKO v. DIOSO, ET AL.
G.R. No. L-6928, October 31, 1955

Section 9 of Rule 9 provides: "The defendant may set forth by answer as many affirmative defenses as he may have. All such grounds of defense as would raise issues of fact not arising upon the preceding pleading[1] must be specifically pleaded, including fraud, *statute of limitations*,[2] release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and all other matter by way of confession and avoidance. . . ." The Supreme Court, speaking through Justice Bengzon, said—

> "It is true that if the defense of prescription is not raised in the answer it is deemed waived under Rule 9, sec. 10 of the Rules of Court.[9] But the waiver applies to defenses of prescription 'that would raise issues of fact not appearing upon the preceding pleading.'"

The facts of the present case were: In March 1939, Chua Lamko obtained a judgment to foreclose Dioso's debt. The mortgaged property was accordingly sold at a public action to Chua Lamko beingthe highest bidder. Lamko, however, never secured judicial confirmation of the said sale.[4] He sold the property in 1946 to defendants Maranan and Suarez; the latter in turn sold it to defendants Velo and Reyes in 1948; and the latter in turn conveyed the same property to Deza and Sto. Domingo in 1949. In an action to recover the mortgaged property on the ground of nullity of the sale to Lamko, the latter as third-party defendant prayed by way of a counterclaim that the judgment he obtained in March 1939 against the predecessors of the plaintiffs in said action should be paid, if the said plaintiffs persist in their refusal to validate the foreclosure sale aforementioned. From an adverse ruling of the trial court, which was affirmed by the Court of Appeals, Lamko brought this present petition for review. He insisted on his counterclaim contending that it has not prescribed because of the Moratoruim Law, and that the courts below could not consider prescription *because it had not been alleged by plaintiffs in their answer to his counterclaim*

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[10] Sec. 43 provides "The Jurisdiction of Courts of First Instance shall be of two kinds: (a) Original, and (b) Appellate (Rep. Act No. 296 as amended).
Sec. 44 provides "Courts of First Instance shall have original jurisdiction: (a) In all civil actions in which the subject of litigation is not capable of pecuniary estimation. (Rep. Act No. 296, as amended).

[1] Motion to dismiss Rule 8, Rules of Court.

[2] Pertinent provisions of law are.
"Sec. 6. *Execution by motion or by independent action*—A judgment may be executed on motion within five years from 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." (Rule 39, Rules of Court.)
"Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:
(3) Upon a judgment." (Rep. Act No. 386, Civil Code of the Philippines: effective Aug. 30, 1950).

[9] Sec. 10, Rule 9 provides "Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived; except the defense of failure to state a cause of action, which may be alleged in a later pleading, if one is permitted, or by motion for judgment on the pleading, or at the trial on the merits . . ."

[4] Sec. 3, Rule 70—". . . Such sale shall not affect the rights of persons holding prior incumbrance upon the property or a part thereof, and when *confirmed by an order of the court, it shall operate to divest the rights of all* the parties to the action and to vest their rights in the purchaser, subject to such rights of redemption as may be allowed by law."

in the court of first instance and hence, waived.[5] The Supreme Court in rejecting this claim said:

> "The trial court, it should be noted, dismissed the counterclaim for the reason that said judgment had bee entered in March 1939 whereas Lamko for the first time asserted it in this proceeding in March 1950 after *more than ten years*. In other words his action to enforce judgment is now barred by the statute of limitations (Rule 39 sec. 6; sec. 43 Act 190).[6]
>
> "It is true that if the defense of prescription is not raised in answer it is deemed waived under Rule 9 secs. 9, 10 of the Rules of Court. But the waiver applies to defenses of prescription 'that raise issues of fact not appearing upon the preceding pleading.'
>
> "The plaintiffs *were not required* to specifically plead prescription because the pending of Lamko disclosed that the judgment had been rendered in March 7, 1939 and it was asserted only in March 1950. No issue of fact was involved by their claim of prescription: those two dates were not denied. Therefore their failure to plead it did not constiute waiver."

Petitioner Lamko, however, asserted that as he was prevented from enforcing the judgment of 1939 during the moratoruim interval, his right of action was suspended and the ten-year period did not lapse. The Court said—

> "This poses the important question whether in view of our ruling in Rutter v. Esteban, G.R. No. L-3708, May 18, 1953, the Moratorium Law had the effect of stopping temporarily the running of the statute of limitations . . . .'[7] We found, however, that this was not raised in Chua Lamko's brief subemitted to the Court of Appeals; and under our rulings[8] petitioner is precluded from raising the question here specially because the Moratorium order is an excuse that may be renounced."

Civil Procedure —*Sufficiency in form of a petition for certiorari.*

AGAPITO ALAJAR v. COURT OF INDUSTRIAL RELATIONS
G.R. Nos. L-8174 & L-8280-86, October 8, 1955

This case involves the formal sufficiency[1] of a petition for a writ of certiorari.[2] It is a petition for certiorari to review the decision of the CIR in eight tenancy cases wherein the landholdings involved formed part of the tracts of land which the government sought to expropriate for resale to the tenants. The Batangas CFI decided in favor of the expropriation and ordered the transfer of the lands to the Bureau of Lands. On appeal, the Supreme Court reversed the decision and dismissed the proceedings. These tenancy cases arose before the

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[5] See note 3 *supra*.
[6] See note 2 *supra*.
[7] Rep. Act No. 342 is null and void and of no legal effect since its continuous operation at the present time is unreasonable and oppressive. Likewise, Executive Order Nos. 25 and 32 (relative to debt moratorium) are also null and void and with more reason, considering that said orders contain no limitation whatsoever in point of time as regards the suspension of the endorsement and effectivity of monetary obligations. Rutter v. Esteban, G.R. No. L-3708, May 18, 1953.
[8] Tiacbo v. Tan Si Kiok, 45 O.G. 2466 (1949); I MORAN, COMMENTS ON THE RULES OF COURT, 952 (1952).
[1] Sec. 6.Rule 67, Rules of Court provides that if the petition is sufficient in form and substance to justify such process, the court in which it is filed, or a judge thereof, shall issue an order requiring the defendant or defendants to answer the petition within ten days from the receipt of a copy thereof.
"Before issuing the order the court should inquire as to whether or not the petition is sufficient in form and substance, and if it is not, dismissal would be proper." II MORAN, COMMENTS ON THE RULES OF COURTS 179 (1950 ed.).
[2] Sec. 1, Rule 67, Rules of Court.
The certiorari contemplated in sec. 1, Rule 67 is not that "certiorari" provided for by the Constitution (Art. VIII, sec. 2) and the Rules of Court (Rules 46, 44, 43) on matters of appeal, for the latter is one of the modes by which appellant may elevate his case to the appellate or superior court which is by constitutional and statutory provisions empowered to review solely questions or errors of law decided on committed by the lower court. II MORAN, COMMENTS ON THE RULES OF COURT 126 (1950 ed.).

expropriation proceedings and as the tenants, among the respondents herein, harvested their palay produced for the crop year 1950-51 before the transfer of the landholdings to the Bureau of Lands in the expropriation proceedings, the CIR ordered the division of the harvest on the ratio of 70-30 in favor of the tenants on the basis of the estimates of the number of cavans produced in each landholdings. It is claimed now by the petitioners that the CIR acted with grave abuse of discretion in estimating the harvest in terms of cavans instead of in cans alleging that the court disregarded the decisions of the CFI of Batangas and of the Supreme Court in G.R. L-6191. The question to be resolved is the effect of the failure of the petitioners to attach the copy of the decisions allegedly violated by the court below to the petitioner. The Supreme Court held that—

> "The petition is patently without merits. In the first place it is not even sufficient in form and substance to justify the issuance of the writ of certiorari prayed for. It charged the Court of Industrial Relations abused its discretion in disregarding the decisions of the Court of First Instance of Batangas and of this Court in G.R. L-6191, yet it does not attach to the petition the decisions allegedly violated by the court below and point out which particular portion or portions thereof have been disregarded by the respondent court."

In finally disposing of the case the Court touched upon the substantial sufficiency of the petition, thus,

> "We have taken upon ourselves to look up and consult the decisions referred to; and have found that neither our decision in G.R. No. L-6191, nor that of the Court of First Instance of Batangas in Expropriation Proceedings No. 84 said anything about harvest, or the division thereof. We are thus constrained to agree that these certiorari proceedings were instituted merely to further delay the division of the harvest between the parties which has been pending litigation since 1950."

Jerry P. Rebutoc

Civil Procedure—*In an action to recover real property, defendant's counterclaim for repairs and necessary expenses is compulsory.*

MACLAN v. GARCIA
G.R. No. L-7622, May 27, 1955

The defendant may allege in his answer any counterclaim which he may have against the plaintiff provided that the court has jurisdiction to entertain the claim and can if the presence of third parties is essential for its adjudication, acquire jurisdiction of such parties.[1] There are two kinds of counterclaims, namely, the permissive and the compulsory.[2] It is well-settled that if in an action for the recovery of real property, the defendant failed to set up a counterclaim for the improvements, such counterclaim is forever barred.[3] A counterclaim for repairs and necessary expenses not set up is likewise barred. This was the ruling in the case under review. In this case, Mariano, the defendant's

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[1] Rule 10, sec. 8, Rules of Court.
[2] See Rule 10, sec. 6.
[3] Bautista v. Jimenez, 24 Phil. 111 (1913); Berens v. Villanueva, 25 Phil. 473 (1913); Lopez v. Gloria, 40 Phil. 26 (1919); Beltran v. Balbuena, 53 Phil. 697 (1927); Galit v. Ginosa, 61 Phil. 481 (1935). There is authority, however, to the effect that in an action to declare a contract void, any claim which the defendant may have had to recover on an implied contract for work done and expenditures made are at most a permissive counterclaim which the defendant was not required to plead in the action and the judgment holding the contract void would therefor not bar a subsequent action by the defendant on the implied contract. Big Cola Corp. v. World Bottling Co., Ltd. 7 Fed. Rules Service p. 231, U.S. Circuit Court of Appeals, Sixth Circuit, 1943, cited in I MOORE, COMMENTS ON THE RULES OF COURT 237 (rev. ed. 1951).

predecessor in interest, sold two parcels of land in favor of the plaintiff. Subsequently, Mariano successfully sued for the annulment of the deed of sale and for the recovery of the parcels of land on the ground of fraud. In that action, the defendant therein (plaintiff in the instant case) set up a certain amount for "repairs" as a "special defense." Subsequently, plaintiff herein brought the present action to recover the amount allegedly expended for the preservation of the property. With respect to the sum of money which plaintiff Maclan sought to recover as defendant in the suit for annulment and which he designated erroneously as a "special defense," the court held that it was in reality a counterclaim.[4] The judgment rendered in the first suit, therefore, bars any subsequent action based upon said claim. Again, even if the claim for repairs were deemed not filed in the first suit, the counterclaim being compulsory, it is likewise barred under the Rules of Court.[5] As to the claim for necessary expenses it was held to be necessarily connected with the action to recover the real property from Maclan. Said connection is substantially identical with that which exists between an action for recovery of a land and the claim for improvements therein made by the defendant in said case, the claim being barred forver, cannot be recovered in the present action.

We may pose the question: Does it make any difference whether the defendant is a possessor in good faith or one in bad faith? It does make a difference if we were to follow the ruling in the case of *Beltran v. Valbuena*[6] wherein it was held that in an action for the recovery of real property which the defendant possesses in good faith as owner, defendant's failure to set up a counterclaim for the improvements is no bar to a subsequent action therefor. The reason is that it would have been inconsistent for the plaintiff to claim in good faith the ownership of the property and at the same time assert a counterclaim for the improvements alone.[7] It should be observed that in the case at hand, Maclan was in bad faith. But in *Camara v. Aguilar*,[8] a later case, the Supreme Court held that a counterclaim for the improvements is compulsory although the possessor is in good faith. Perhaps we may safely say that the distinction between a possessor in good faith and a possessor in bad faith has been abandoned for as was held in the *Camara* case the defendant in the action for recovery of real property should have set up, alternatively, that they were entitled to the land, or assuming hypothetically that they were not the owners of the land, that at least they were entitled to the improvements of the land or their value as possessors in good faith.

In the case under consideration, the Supreme Court also passed upon the question of whether or not the claim for repairs should have been filed in the proceedings for the settlement of the estate of the deceased Mariano, predecessor in interest of the defendant. Plaintiff argued that it was not necessary since the money claim arose from law and not from contract, express or implied.[9] The Court disposed of this contention by holding that the claim of the plaintiff arose from an "implied contract" as the term is understood in the common law, which is the sense in which it is used in our remedial laws. The obligations which in the Civil Code are indicated as quasi-contracts, as well as those arising *ex lege*,

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[4] According to sec. 9, Rule 9 of the Rules of Court, when a party has mistakenly designated a defense as a counterclaim, or a counterclaim as a defense, the court may treat the pleading as if it had been properly designated without repleading.
[5] Rule 10, sec. 6.
[6] 53 Phil. 637 (1927).
[7] See Lopez v. Gloria, 40 Phil. 26 (1919); Bautista v. Jimenez, 24 Phil. 111 (1913).
[8] G.R. No. L-6337, March 12, 1954, 50 O.G. 1549 (1954).
[9] See Rule 87, sec. 5.

are in the common law system merged into the category of obligations imposed by law and all are denominated "implied contracts." [10]

Civil Procedure —*The jurisdiction of a court depends not upon the value of demand in each single cause of action contained in the complaint but upon the totality of the demand in all causes of action.*

SORIANO v. OMILIA
G.R. No. L-7112, May 21, 1955

Courts of First Instance have original jurisdiction in all cases "in which the demand, exclusive of interest, or the value of the property in controversy, amounts to more than two thousand pesos." [1] Justices of the peace and the judges of municipal courts have exclusive original jurisdiction in all civil actions "where the value of the subject matter or amount of the demand does not exceed two thousand pesos, exclusive of interests and costs." [2]

Where the plaintiff has several claims against the same defendant and in a single suit seeks to recover them, some difficulty is met with respect to the meaning of the phrase, "amount of the demand" in connection with jurisdiction. The Supreme Court in the case under consideration has come with an answer that seems to depart partly from some of its past rulings. Plaintiff brought an action in the CFI to recover on four causes of action, to wit: (1) ₱800 for a promissory note executed by the defendant in favor of the plaintiff; (2) ₱700 for another promissory note; (3) ₱3,000 as moral damages for the derogatory remarks made against the personality of the plaintiff; (4) ₱600 as attorney's fees. Defendant contended that the court had no jurisdiction over the subject matter of the first, second and fourth causes of action and that with respect to the third cause of action, the amount therein involved was not decisive of the court's jurisdiction because the demand for the same was not made in good faith.

Justice Labrador, speaking for the Supreme Court said that "under the law now, as previously, the jurisdiction of a court is made to depend, not upon the value or demand in *each single cause of action* contained in the complaint, but upon the *totality of the demand* in all causes of action." Respecting the defendant's contention in connection with the third cause of action ,it was held that the principle that a party may not unduly exaggerate a demand for the purpose of defeating a legal provision as to the jurisdictional amount, is not applicable to a demand which is not fictitious.

In the past [3] the Supreme Court made a distinction between accounts arising from different transactions and those arising from the same transaction. With respect to the former they may be joined in a single action even if the total amount exceeded the jurisdiction of the justice of the peace, each account

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[10] The Supreme Court explained thus: "It will be observed that according to the Civil Code (Article 1157) obligations are supposed to be derived either from (1) the law, (2) contracts, (3) quasi-contracts, (4) acts or omissions punished by law, (5) quasi-delicts. This enumeration of the sources of obligations supposes that the quasi-contractual obligations and the obligations imposed by law are of different types. The learned Italian jurist, Jorge Giorgi, criticises the assumption and says that the classification embodied in the Code is theoretically erroneous. His conclusion is that one or the other of these categories should have been suppressed or merged in the other. (Georgi, Teoria de las obligaciones, Spanish ed., Vol. 5, Arts. 5, 7 & 9).

"The validity of the criticism is, we think, self-evident and it is of self-interest to note that the common law makes no distinction between the two sources of liability. The obligations which in the code are indicated as quasi-contracts, as well as those arising *ex lege*, are in the common law system merged into the category of obligations imposed by law and all are denominated implied contracts."

[1] Rep. Act No. 296 (Judiciary Act of 1948), sec. 44.

[2] *Id.*, sec. 88.

furnishing the test. As to the latter the entire amount of the claim governs; it cannot be divided into several causes of action for the purpose of bringing the case within the jurisdiction of the inferior court. In the instant case the Supreme Court failed to consider this distinction. However Justice Bautista Angelo, in a lone dissent, took quarrel[4] with the opinion that in all cases the totality of the demand is the test of the jurisdiction of the court. Relying on the case of *Go v. Go*[5] he said that "the totality of the demand can only be the test for purposes of jurisdiction if the amounts aggregating the same arise out of the same transaction; otherwise, each amount is determinative of jurisdiction."

The majority opinion observed that from the time the judicial system was established here under the American regime, the jurisdiction of the court has always been based on the amount of demand.[6] A literal meaning (disregarding the amount involved in each cause of action), as given by the Supreme Court in the same opinion to the phrase "amount of the demand" may stand precarious. But the Rules of Court permit joinder of causes of action. It is provided that a complaint shall state the ultimate facts constituting the plaintiff's cause of action or *causes of action*.[7] A party may in one complaint state in the alternative or otherwise as many different causes of action as he may have against the other party.[8] Construing, therefore, the phrase "amount of the demand" in connection with the rule on permissive joinder of causes of action, the result is that it is the amount of the demand which is determinative of jurisdiction and not the sums involved in each account.

The avoidance of multiplicity of suits[9] is the better policy and this should be implemented where no provision of law is contravened, rather than make distinctions, where there are none, based on limits arbitrarily set by law.

Civil Procedure—*The resolution of the Court of Appeals adopting the policy of one extension only for the filing of briefs is merely directory; several extensions may be granted for good and sufficient reasons shown.*

JOVITO RAGO, ET AL. v. COURT OF APPEALS & F. RAGO, ET AL.
G.R. No. L-7016, May 30, 1955

In the above case, Cirisco Rago's motion praying for the cancellation of the old certificate of title covering inherited real property was granted. Ponciana Rago and others filed a motion for reconsideration claiming part ownership of said property, but said motion was denied. The movants appealed but the Court of Appeals dismissed the appeal on the ground of abandonment, and ordered the defendants, now the petitioners, to vacate the land and deliver the same to the plaintiffs, herein respondents. The former contended, *inter alia*,

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[4] The most recent case is Go v. Go, G.R. No. L-7020, June 30, 1954. It cited the cases of Villaseñor v. Erlanger, 19 Phil. 574 (1911) and Soriano & Co. v. Jose, 47 O.G. 154 (1950). In the latter case it was held that "where several claimants have several and distinct claims against the defendants which may be properly joint in a single suit, the claims cannot be added together to make up the required jurisdictional test."

[5] Nevertheless he concurred in the result, since the amount involved in the third cause of action, viz., P3,000 was anyway within the jurisdiction of the C.F.I.

[6] See note 3 *supra*.

[7] See secs. 56 and 58 of Act No. 136; sec. 3 of Act No. 1627; sec. 44(e) and sec. 88 of Rep. Act No. 296.

[8] Rule 6, sec. 1.

[9] Rule 2, sec. 5.

[10] The philosophy of the Federal Rules of Civil Procedure, from where the provisions of our Rules of Court largely were taken, is to discourage separate actions which make for multiplicity of suits. I MORAN, COMMENTS ON THE RULES OF COURT 229 (rev. ed. 1952).

that the cadastral court[1] had no jurisdiction over the motion filed by Ciriaco in view of the fact that the lot being in dispute the motion became controversial and cannot be looked over by a cadastral court but that the same should be litigated in an ordinary civil action and not in cadastral proceedings which are summary in nature. With respect to this contention, the Supreme Court held that there was no factual basis for it, Ponciana Rago not having impugned the jurisdiction of the court on that ground.

It was also argued that the action of the Court of Appeals in granting two extensions of time within which counsel for respondents was to submit his brief was in violation of its own resolution of June 27, 1951,[2] adopting a policy of only one extension, and of the provision of the Constitution[3] which confers upon the Supreme Court the exclusive power to promulgate rules of court. The Supreme Court ruled that the resolution of the Court of Appeals is only directory and not mandatory. Moreover section 16, Rule 48[4] (which applies both to the Court of Appeals and the Supreme Court) indicates that the court may grant as many extensions as may be asked if good and sufficient reasons are shown.

The general rule is that extensions of time for the filing of briefs will not be allowed.[5] Protracted trials should be frowned upon particularly if they result from lack of zeal on the part of lawyers and judges. Far from favoring automatic or indiscriminate granting of extensions of time to file a brief, the policy of the Supreme Court on the matter shows a tendency to make such concessions sparingly.[6] It has been the policy of the Supreme Court to grant no more than 15 days for the first extension and 10 days for the second extension.[7] However, against the cogent purposes behind the disposition of cases with dispatch must be weighed the other interests of justice which require a judicious determination of the case. Justice must not be sacrificed in the name of its speedy administration.

Civil Procedure—*A party, for an injunction improperly obtained may recover upon the injunction bond all the damages he may sustain thereby; article 2209 held inapplicable where debt becomes uncollectible.*

LAY v. ROCES HNOS., INC. & MUNICIPAL COURT
G.R. No. L-8040, May 28, 1955

Before a plaintiff may obtain a preliminary injunction it is required that he file a sufficient bond executed to the party enjoined and answerable to the latter for all damages that he may sustain by reason of the injunction if the court should finally decide that the plaintiff was not entitled thereto.[1]

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[1] Rep. Act No. 1125 (June 22, 1954) has repealed sec. 53 of Rep. Act No. 296 (The Judiciary Act of 1948) creating the positions of Cadastral Judges and Judges-at-large. Under the later law the functions and powers of Cadastral Judges and Judges-at-large are now vested in the District Judges.

[2] The resolution of the Court of Appeals, June 27, 1951, reads as follows:
"The Court RESOLVED that as a matter of policy only one (1) extension of time for the filing of briefs should be allowed; provided, however, that proper publicity be given this policy, and during the first months of its enforcement parties or their counsel should be informed thereof." 47 O.G. 3018 (1951)

[3] Phil. Const. Art. VII, sec. 13.

[4] Rules 48, sec. 16 of the Rules of Court provides: "Extension of time for the filing of briefs will not be allowed, except for good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended."

[5] *Ibid.*

[6] I MORAN, COMMENTS ON THE RULES OF COURT 964 (rev. ed. 1963).

[7] Roncesa de Yabut v. Ventura, et al., 43 O.G. 4602 (1946).

[8] Rule 50, sec. 4(b), Rules of Court.

The issue in the present case is the amount of damages which the respondent may recover by reason of a preliminary injunction improperly obtained. The petitioner obtained a writ of preliminary injunction to enjoin an order of the municipal court requiring said petitioner to pay in monthly installments of ₱200 the unsatisfied part of a judgment rendered against him and in favor of the respondent. Meanwhile, petitioner voluntarily applied for and was declared insolvent. The sureties of petitioner, invoking Article 2209 of the Civil Code, contended that they should only answer for the legal interest on the amounts that respondent was prevented from collecting.[3] The Supreme Court held that Article 2209 is inapplicable. The rule enunciated therein, that in obligations to pay money the indemnity for damages shall consist in the payment of interest where the debtor incurs in delay, presupposes that the principal debt remains collectible after the delay. The judgment in question having become uncollectible and thereby losing its value, and there being no evidence that the judgment was not realizable before the debtor had become insolvent, the injunction bond must be chargeable with the loss of the ₱200 monthly installments covering the period from the date of the order of the lower court to the date of the debtor's insolvency. This is in conformity with the provision of the Rules of Court that the injured party may recover upon the injunction bond "all damages which he may sustain by reason of the injunction." A different rule would encourage the "reckless procuring of injunctions that should never lightly be sought nor prodigally granted."

The decision of the Court is eminently sound. Where a party improperly obtained this provisional remedy he should be made to respond fully for the loss he has caused thereby.

Civil Procedure —*Unless a proper substitution of attorneys had been made, notice of the court's decision to the first counsel allegedly substituted is notice to the client.*

OLIVARES v. LEOLA, ET AL.
G.R. No. L-6156, June 30, 1955

While a client may at anytime dismiss his attorney or substitute another in his place,[4] certain requisites must be complied with before a substitution can become effective.[5] From the mere fact that another lawyer enters an appearance in behalf of the client, the presumption will not arise that the authority of the first attorney had been withdrawn.[6]

In the instant case the question arose as to whether or not the notice of the decision of the trial court in an action, sent to the first lawyer of the defendant

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[3] "If the obligation consists in the payment of a sum of money and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six percent per annum." Art. 2209, Civil Code.

[4] Rule 127, sec. 24.

[5] No substitution of attorneys will be allowed unless the following requisites concur:
1. There must be filed a written application for substitution.
2. There must always be filed the written consent of the client to the substitution.
3. There must be filed the written consent of the attorneys substituted if such consent can be obtained.
4. In case such written consent cannot be procured there must be filed with the written application for substitution proof of the service of notice of such motion in the manner required by the rules upon the attorney to be substituted.
Unless these formalities are complied with no substitution will be permitted and the attorney who appeared last in the cause before such application for substitution will be regarded as the attorney of record and will be responsible for the conduct of the case. United States v. Borromeo, 20 Phil. 189 (1911).

[6] "In case of such substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party." Rule 127, sec. 24).

[7] Asmar v. Hon. Norris, 3 Phil. 636 (1904).

was notice to the latter. The defendants filed a petition for relief from judgment well beyond the period allowed by the Rules of Court[4] counting from the time the defendants' first lawyer received a copy of the decision. During the pendency of the case another attorney filed with the clerk of court a notice of his appearance as counsel for the defendants. The defendants claimed they actually knew of the decision only about four months from the time their first counsel received a copy thereof. The petition for relief was dismissed having been filed more than sixty days after the petitioners had been notified of the decision. It was not shown that a proper substitution of lawyers had been made, that the services of the first lawyer had been dispensed with or that the second one had assumed exclusive control over the case. Consequently the first lawyer continued to be counsel, or at least one of the counsels for the defendants. And the service of the notice of the decision upon him bound the defendants.

Civil Procedure —*Motion to set aside a judgment.*

PRICE STABILIZATION CORP. v. JUDGE, ET AL.
G.R. No. L-7959, May 30, 1955

On August 7, 1953, petitioner obtained judgment against respondent surety company by default in a suit brought against Batchelder and the Surety company as Batchelder's surety. On September 8, the surety company filed a motion for reconsideration and new trial, alleging that its failure to file an answer was due to excusable neglect and that it had a cross-claim against its co-defendant. The motion was denied because it did not contain an affidavit of merit showing that if a new trial were granted the surety company would have a good defense against the plaintiff. The surety company subsequently filed another motion for reconsideration, this time alleging that it had a good defense against the plaintiff. This second motion was granted, hence this petition for certiorari.

The Supreme Court held that the two motions even when taken together cannot be considered as a petition for relief under Rule 38, because of the fatal defect of lack of an affidavit of merit. It is necessary that a petition for relief under said rule must be accompanied by an affidavit of merit showing that petitioner has a valid cause of action or defense. The first motion for reconsideration did not comply with this requisite, because, although supported by an affidavit explaining its failure to answer, it contained no sworn allegation of a valid defense against the plaintiff. The fact that the defendant had a cross-claim against its co-defendant does not necessarily mean he has a good defense to the plaintiff's cause of action. As to the second motion for reconsideration, it contains an allegation that it has a valid defense against the plaintiff but the allegation is not verified. The affidavit of merit should state facts and not mere opinions or conclusions of law.[1] Furthermore, when the first motion for reconsideration and new trial was filed, the alleged valid defense which the surety company wanted to set up against the plaintiff was already in existence and available, and yet the same was not set up in the motion. Consequently the defense cannot be raised in the subsequent pleading.[2]

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[4] See Rule 38, sec. 3.

[1] Estrella v. Zamora, 5 Phil. 415 (1905); Phil. Engineering Co. v. Argosino, 49 Phil. 983 (1935); Cortes v. Co Bun Kim, G.R. No. L-3926, Oct. 10, 1951.

[2] As was said in the case of Rill v. Chunaco, 48 O.G. 614 (1950), "the grounds existing and available at the time a motion to set aside a judgment was filed cannot be raised in a petition for relief under Rule 38 because under Rule 36, sec. 2, a motion attacking a pleading or proceeding shall include all objections then available and all objections not so included shall be deemed waived."

In connection with this case it should be noted that relief from judgments under Rule 38, may be prayed for only when the judgments have become final[3] for otherwise the remedy would be a motion for new trial under Rule 37, or to appeal to the Court of Appeals or Supreme Court. If the party is in default, he must first move to set aside the order of default before judgment before he can move for a new trial or appeal.[4] If the party in default has failed to have set aside the order of default before judgment is rendered, he is not entitled to notice of judgment and to appeal therefrom.[5] After judgment has been rendered, his remedy is a petition for relief from judgment under Rule 38. The decision in the instant case does not state whether the surety company had moved to set aside the order of default but it may be inferred that it did not. The appropriate remedy left was that under Rule 38.

Civil Procedure —*Execution pending appeal.*

SAMBRANO, ET AL. v. DE CASTRO, ET AL.
G.R. No. L-7868, June 28, 1955

Ordinarily, the power to grant or deny a motion for execution before the expiration of the time to appeal is discretionary with the court[1] and the appellate court will not interfere with the exercise of such discretion unless there has been an abuse thereof.[2] In the case under review, the Supreme Court held that there was such an abuse of discretion. The facts were: Respondents obtained a judgment against petitioners, owners of a transportation company, for the death of one of the latter's passengers. Petitioners filed a notice of appeal which was dismissed by the trial court because of the appellants' (Petitioners herein) failure for three times to amend their record on appeal as ordered by the court.[3] Respondents filed an urgent motion for execution of judgment under Section 2, Rule 39, of the Rules of Court. The Court then ordered the issuance of a writ of execution. The sheriff proceeded to levy on the certificate of public convenience for the line covered by the petitioners' bus company, and the date of sale of said certificate was set for May 27. Petitioners subsequently filed with the trial court an urgent motion to lift the execution and attaching thereto a supersedeas bond. The lower court granted the motion to lift the execution on the condition that the petitioners file a ₱28,000 bond. Such bond was filed but it was disapproved on the ground that it was not conditioned for the performance of the judgment appealed from in case it be affirmed wholly or in part.[4] The supersedeas bond thereafter filed was also disapproved because it

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[1] Velux v. Justice of the Peace, 42 Phil. 557 (1921).

[2] See Manila Motor Co., Inc. v. Endencia & Teus, 72 Phil. 130 (1941), Velez v. Ramos, 40 Phil. 787 (1920).

[3] No service of papers shall be necessary on a party in default except when he files a motion to set aside order of default, in which event he is entitled to notice of all further proceedings." (Rule 27, sec. 9). See cases of Manila Motor Co., Inc. v. Endencia & Teus, *supra* note 4; Lim Toco v. Go Fay, 45 O.G. 3350 (1948).

[4] Federal Films Inc. v. Ocampo, et al., 44 O.G. 3819 (1947).

[5] Calvo v. Gutierrez, 4 Phil. 203 (1905), Case v. Metropole Hotel & Restaurant, 5 Phil. 49 (1905).

[3] A motion for reconsideration of the order of dismissal of the appeal was filed by petitioners but was not yet heard at the time the decision in the instant petition for certiorari was rendered

Rule 39, sec. 2 of the Rules of Court provides: "Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the special order shall be included therein. Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part."

[1] When execution is issued prior to the expiration of the time to appeal, the court is vested with discretion to stay the same, upon the filing of a sufficient supersedeas bond by the appellant conditioned for the performance of the judgment in case it be affirmed wholly or in part. Mapua v. Gutierrez, David, 43 O.G. 2039 (1946).

mentioned as attorney's fees a lesser amount than that awarded in the judgment and because it also falsely stated that an appeal had been perfected. The sheriff on the date scheduled sold to the respondents the certificate of public convenience. The petitioners in this petition for certiorari sought to annul all the orders of the lower court disapproving the supersedeas bond filed by them and to declare illegal the sale by the sheriff.

The Supreme Court ruled that the lower court committed a grave abuse of discretion in not suspending the sale. It should have suspended the same, knowing that it had granted stay of execution on the filing of a supersedeas bond in the amount required by it, and although the petitioners thrice failed to file a satisfactory bond, it was perfectly possible and feasible for them to file one to the satisfaction of the court. What is more important, when the trial court granted the lifting of the writ of execution, the writ of execution previously issued was set aside, or at least suspended so that there was no execution valid and effective under which the certificate could be lawfully sold. Consequently the sale was void.

While the court below, said the Supreme Court, did not err in disapproving the three supersedeas bond for the reasons stated in its orders, nevertheless, instead of being levied on execution said certificate of public convenience could well have been merely attached. A certificate of public convenience is not like any ordinary property from the standpoint of its owners. The personnel, motor units and all equipment and facilities of the company would be useless and of no benefit without the certificate.

The Supreme Court perhaps did not mean to lay down the rule that a certificate of public convenience is absolutely beyond the reach of a writ of execution.[8] But where, on the one hand, an execution would work severely on the defendant, and, on the other hand, the rights of the plaintiff would not be impaired by mere attachment, the certificate should be merely attached.[9] Thus in the instant case, the sale of the certificate of public convenience would result in the paralysis of the company's operations. Whereas if merely attached, the owner could continue to operate and even make money which may later be attached or even levied upon.

Teodorico C. Taguinod

Commercial Law —*Agent of shipowner not liable for demurrage;* damnum absque injuria.

PLUMELET v. MORALES SHIPPING CO., INC.
G.R. No. L-7767, October 26, 1955

This case involves the application of the principle of *damnum absque injuria*.[1] It appears that the respondent Morales Shipping Co. engaged the petitioner to act as its agent to secure cargo for its vessels with the instruction that the bills of lading were to be in the name of the shipping company. Subsequently, petitioner Plumelet was able to secure cargo from the Bureau of Public Works to be shipped to Marinduque. The cargo was loaded on one of respondent's ships. The evidence disclosed that petitioner in negotiating for this cargo acted and issued a bill of lading in his own name, without revealing that

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[8] Unless otherwise provided by law, all properties in general, except those mentioned in sec. 18, Rule 39 are subject to execution for the satisfaction of a judgment. I MORAN, COMMENTS ON THE RULES OF COURT 818 (rev. ed. 1963).

[9] By weight of authority, exception statutes or rules should be liberally construed with a view to giving effect to their beneficient and humane purposes. To this end every reasonable doubt as to whether a given property is or is not exempt should be resolved in favor of exemption. I MORAN, *id.*, at 817.

[1] Damages without legal wrong, loss without injury. See also 17 C.J. 1126.

he was merely an agent for the shipping company. Upon learning these facts, the latter, as a measure of self-protection, demanded from petitioner payment of advance freightage. Petitioner requested for time to raise the money, and the shipping company agreed. One month elapsed without the petitioner having been able to raise the necessary amount, for which reason the cargo of the Bureau of Public Works was unloaded by the shipping company. The instant action was instituted by the shipping company to recover (1) value of freightage, (2) demurrage for delaying the ship's departure, and (3) damages for inability of the shipping company to accept a shipment offered by Atlantic Gulf & Refining Co. The trial court dismissed the first and third claims, but adjudged Plumelet liable for demurrage. Only Plumelet appealed. The only question submitted on appeal was Plumelet's liability for demurrage.

In absolving Plumelet from liability, the Supreme Court said:

> "The Code of Commerce [1] speaks of demurrage: and amount stipulated in the charter party to be paid to the shipowner for any delay in the sailing of his ship. It is payable by the charterer or shipper."

Since Plumelet was not the charterer or shipper, he was not liable for demurrage. Furthermore, according to the Court, Plumelet was not liable for the delay and subsequently cannot be liable for damages caused by such delay. Instead of sailing with the loaded cargo and informing the Bureau of Public Works that it was the owner of the ship and Plumelet merely its agent, the shipping company had to demand advance freightage from Plumelet which the court believed to be unnecessary. And when Plumelet requested for time to raise the money, the shipping company agreed to it, without fixing the time within which the money should be produced. It was thus a case of *damnum absque injuria*, with the shipping company suffering damages for the delay, and Plumelet losing his commission. Neither may the shipping company claim damages for Plumelet's having acted in his own name,[2] because by agreeing to carry the cargo provided freightage was advanced, the shipping company waived such irregularity.[4]

Augusto E. Villarin

Criminal Law — *Liability of co-perpetrators where there is conspiracy in the commission of the felony; conspiracy inferred from the circumstances of the case.*

PEOPLE v. MONADI, ET AL.
G.R. Nos. L-8770-71, September 27, 1955

When in the commission of a felony two or more persons take part therein, or are charged thereof, the question at once presents itself as to their liabilities therefor. Under the Revised Penal Code, a person charged with the perpetration of a felony may be liable therefor as a principal,[5] as an accomplice,[6]

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[1] See Arts. 652, 656, 689, and 691, Code of Commerce.

[2] Art. 1883 of the Civil Code provides: "If an agent acts in his own name, the principal has no right of 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.

"The provisions of this article shall be understood to be without prejudice to the actions between the principal and agent."

[4] This is properly a case of ratification, which is defined as "the adoption by a person as binding upon himself of an act done in such relations that he may claim it as done for his benefit, although done under such circumstances as could not bind him but for his subsequent assent." 52 C.J. 1164-65.

[5] Art. 17, Rev. Penal Code.

[6] Art. 18, *id.*

or merely as an accessory.[3] Thus there is a necessity of ascertaining the degree of participation of the accused to determine his criminal liability. This task, however, is dispensed with if in the commission of the felony the existence of a conspiracy among the accused is shown.[4]

In the instant case, the accused, Datumanong Monadi, Mascara Monadi, Racid Lucman and Palawan Lucman, were charged with and convicted of the murder of one Pangandaman Aguam. It appears that on November 14, 1947, at about 7:30 in the evening, as the victim was about to enter his house in Dan-

Criminal Law—*Rape must be established by clear and positive* salan, Lanao, he was mortally shot in the back. The four defendants were charged with the murder[5] of the victim. At the trial, it was shown that the killing was the off-shoot of ill-feelings between the families of the deceased and the defendants who are related to each other. Palawan Lucman was convicted as a principal and the other three as accomplices. Upon appeal, the Solicitor General contended that all the four should be convicted as principals in view of the fact that the circumstances of the case tended to show the existence of conspiracy. The Court sustained this contention, for while there was no direct evidence as to conspiracy among the accused, conspiracy was inferred by the Court from the acts of the defendants. It should be noted that conspiracy may be express or implied from the circumstances of the case.[6] In this case, the defendants were seen together at or near the scene of the crime, all armed with revolvers. They are close relatives by blood. They had a common ill-feeling towards the deceased. After the shooting they were seen running from the scene of the crime. Citing the case of *People v. Mahlon*[7] with approval, on the point that conspiracy may be inferred from the circumstances of the case, the Court held that the circumstances mentioned above sufficiently proved conspiracy among the accused and accordingly convicted all four as principals.

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evidence; treachery in murder; presence of mitigating and aggravating circumstances.

PEOPLE v. FORTIN, ET AL.
G.R. No. L-7892, August 11, 1955

The instant case was a prosecution for the crime of rape[1] with murder.[2] Defendant Vitaliano Fortin and two others[3] were charged with the rape and murder of one Juana Magpili. The proven facts revealed that on October 4, 1953, Fortin and his companions hired a jeep and went to a restaurant and drank beer. Later they picked up the victim somewhere in the neighborhood. Upon reaching a certain place, Fortin and the girl alighted. After some time, Fortin was seen coming from a secluded place buttoning his pants. He then told one of his companions to "use" the girl next. The girl refused and Fortin threatened to kill her with his gun if she did not submit to be used by Fortin's companion. Almost at the same time, he fired at the girl, resulting in her death.

At the trial, the lower court found that the crime of rape was not sufficiently proven and accordingly dismissed the same. The Supreme Court sustained the

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[3] Art. 18, *id.*
[4] United States v. Bundal, 3 Phil. 89 (1903). For later rulings on this point, see People v. Sasota, *et al.*, G.R. No. L-3544, April 18, 1952; People v. Mendoza, *et al.*, G.R. Nos. L-4141-7, March 28, 1952; and People v. Cancy, *et al.*, G.R. Nos. L-4853-4, Jan. 30, 1953.
[5] Art. 248, Rev. Penal Code
[6] People v. Tian, *et al.*, G.R. No. L-36, Aug. 29, 1946.
[7] G.R. No. L 5192, April 17, 1953.
[1] Art. 335, Rev. Penal Code.
[2] Art. 248, *id.*
[3] Alfredo Lasquete and Paulino Rielo. Rielo was subsequently excluded from the information and utilized as a state witness. Lasquete was acquited on the ground of reasonable doubt by the lower court.

decision of the lower court for the reason that no one actually testified having seen the defendant in carnal act with the girl and much less that force and intimidation was employed by him in committing the act. The Court held thus:

> ". . . the crime of rape is of such a nature that it can only be established by clear and positive evidence; the same cannot be made to depend on inference or dubious circumstantial evidence."

Under Article 335, one of the ways by which the crime of rape (*violación*) may be committed is by having carnal knowledge of a woman through force and intimidation.[4] Force and intimidation may be shown not only by the testimony of the injured girl, but also, externally, by signs of violence on the victim's body, like finger grips on the front of her neck, on the arms and forearms, on her cheeks and on her mouth, as well as by her torn garments stained with blood,[5] or, internally, by the findings of the medical examination of the victim's genital organs.[6] As neither of these circumstances was shown, the dismissal of the charge as to rape was properly made. The fact that Fortin was seen buttoning his pants coming from a secluded place with the girl was taken by the Court to be "at most an indication that a sexual act was had with her consent."

The charge as to murder was, however, found proven by the lawer court. This finding was sustained by the Supreme Court. The killing was held to be murder due to the fact that it was attended by the circumstance of treachery (*alevosía*).[7] The fact that the shooting was so sudden and unexpected,[8] coupled with the fact that the act was done without risk to the defendant "arising from the defense which the victim might avail of in her favor" was considered treacherous by the Court.

The Solicitor General recommended that the penalty be lowered by one degree because of the mitigating circumstance of drunkness.[9] But the Court refused to do so for the reason that this circumstance was offset by at least two aggravating circumstances: taking advantage of the accused's public position [10] and the use of motor vehicle.[11]

Criminal Law —*Serious illegal detention; acts of lasciviousness; no complex crime of serious illegal detention and acts of lasciviousness in this case.*

PEOPLE v. CHING SUY SIONG, ET AL.
G.R. Nos. L-6796-97, September 23, 1955

Under the Revised Penal Code, kidnapping or illegal detention is committed by any private individual who shall kidnap or detain, or in any other manner deprived another of his liberty.[1] Illegal detention may be serious [2] or slight.[3]

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[4] Par. 1.
[5] People v. Licerio, 61 Phil. 361 (1935).
[6] People v. Caubat, *et al.*, G.R. No. L-7285, June 28, 1955; People v. Huertas, 39 Phil. 440 (1918).
[7] Art. 248, par. 1. "There is treachery when the offender commit 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." (Art. 14, par. 16, Rev. Penal Code.)
[8] In People v. Palomo, 43 O.G. 4190 (1947), the Court held that the killing was treacherous as it was sudden and unexpected. But in People v. Delgado, 43 O.G. 1209 (1947), it was held that mere suddenness of the attack is not enough if the mode adopted does not positively tend to prove that it was knowingly intended to insure the accomplishment of the criminal purpose without any risk to the perpetrators arising from the defense that the victim might offer.
[9] Art. 15, Rev. Penal Code.
[10] Art. 14, par. 1, *id.* The defendant and his companions were soldiers of the 21st BCT of the Armed Forces of the Philippines stationed in the province of Batangas.
[11] Par. 10, *id.*
[1] Art. 267, Rev. Penal Code, as amended by Rep. Act No. 1084.
[2] *Ibid*

Illegal detention is serious if the detention: (1) lasted for more than five days;[4] (2) is committed by simulating public authority,[5] (3) by inflicting serious physical injuries [6] or making threats to kill;[7] or (4) if the victim is a minor, female, or a public officer.[8] Either of these four circumstances makes the illegal detention serious.

Thus in the case under comment, defendant Siong and David Mata were charged with and convicted of the crime of serious illegal detention, committed as follows: The complaining witnesses, Luz Zamora and Celia Mendoza, were recruited by persons under the employ of the defendants from their homes in the province and brought to Manila with the promise that they will be given employment in the city. Upon arrival at Manila, they were taken to the employment agency of the defendants. During the time that they were there, they were under constant watch.[9] At one time, defendant Siong tried to abuse Celia but his attempt was frustrated by the girl's resistance. Later, the two girls were offered for sale by defendants to certain customers but the girls refused. Realizing their dangerous situation, they finally escaped. Brought to trial, defendants were convicted by the lower court of the complex crime [10] of serious illegal detention with acts of lasciviousness.[11] Upon appeal, the Supreme Court sustained their conviction as to serious illegal detention but reversed the lower court insofar as the appealed judgment considered the offense committed as a complex crime.

It should be noted that under Article 48 of the Revised Penal Code, there are two kinds of complex crimes, namely, (1) a single act constituting two or more grave [12] or less grave [13] felonies, and (2) when an offense is a necessary means for committing the other. In the present case, the crimes charged were serious illegal detention and acts of lasciviousness. Inasmuch as these crimes did not result from a *single* act, it cannot fall within the first class. Does it fall under the second class? Neither. For as correctly noted by the Supreme Court, "certainly one cannot be considered as a means to commit the other." Thus, while both of the defendants were convicted of serious illegal detention, only Siong was further convicted of the separate crime of acts of lasciviousness.[14]

Ernesto T. Duran

Criminal Law —*Murder; treachery.*

PEOPLE v. GALLANO
G.R. No. L-6642, November 18, 1955

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[4] Art. 268, par. 1, Rev. Penal Code.
[5] Art. 267, par. 1.
[6] Par. 2, *id.*
[7] Art. 268, Rev. Penal Code
[8] Art. 267, par. 3, Rev. Penal Code.
[9] Par. 4, *id.* For the definition of a "public officer" under the Rev. Penal Code, see Art. 203.
[10] The evidence on this point were conflicting but the court gave more credence to the testimonies of the girls upon the ground that they were more credible. In fact, even if their testimonies were a bit exaggerated, this fact was held by the court as not arguing against their credibility as in the main they were proven to be truthful. (People v. Durante, 47 Phil. 654 (1925))
[11] Art. 48, Rev. Penal Code.
[12] Art. 336, Rev. Penal Code.
[13] Art. 9, par. 1 of the Rev Penal Code defines grave felonies as "those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with article 25 of this Code."
[14] Par. 2, *ibid.* "Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional, in accordance with the above-mentioned article."
[14] There are two cases involved here: G.R. No. L-6796 and G.R. No. L-6797. In the first case, both were convicted of serious illegal detention, but defendant Siong was further convicted of the separate crime of acts of lasciviousness. In the second case, both were convicted only of serious illegal detention.

PEOPLE v. JUMAUAN
G.R. No. L-5746, November 29, 1955
PEOPLE v. BOLANDO
G.R. No. L-5096, November 18, 1955

The aggravating circumstance of treachery or *alevosia*,[1] when sufficiently and clearly proved qualifies homicide to murder.[2] There are numerous instances wherein the Court found treachery to exist.[3]

In the case of *People v. Gallano*,[4] the court followed the previous ruling that there is treachery when the attack is sudden. The facts show that one evening, defendants Leon and Gallano appeared in the house of the deceased Metran and greeted him "Good evening." Without any warning, Leon fired at the deceased, but the gun did not explode. While the deceased was crawling to the next room to escape, Valentin grabbed the gun from Leon and fired it. This time, the gun exploded and hit the deceased who was killed instantly. Because of the suddenness of the attack, treachery was held to be present.

In *People v. Jumauan*,[5] the court had the occasion to reiterate the well-established rule that when the attack is made from behind, such attack is treacherous.[6] Parreño the victim, was the owner and driver of a passenger truck. In one of the trips, a woman lost her bundle of rattan placed under the driver's seat. The defendant was the one who took it, so the deceased went to his house and demanded the return of the rattan. The defendant refused, claiming that it was his. The deceased then started to leave, but as soon as he stepped to the balcony, the defendant snatched a bolo from the rafter and struck him at the back of the neck. Parreño staggered and as he was about to fall, the appellant gave him another blow. The Court held the defendant guilty of murder; the killing was qualified by treachery, as the first blow was delivered quite suddenly while the victim had his back at the assailant.

Treachery was, however, absent in *People v. Bolando*.[7] It appears that while a dance was being held in the house of the defendant's relative, the deceased Ranay, chief of the rural police, arrived and started writing something on a piece of paper. After the dance, the defendant asked him what he was writing, but instead of answering, the deceased asked the appellant who gave him permit to hold the dance, to which question, the defendant said it was "none of his business." A heated altercation followed, in the course of which, the accused drew out his bolo and killed the deceased.[8] Although the assault was with a deadly weapon, it was none the less a frontal attack and made after a heated discussion, and therefore, there could not be treachery. Nocturnity[9] could not be considered aggravating, either, as it was not deliberately sought.

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[1] 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. Art. 14(16), Rev. Penal Code.

[2] People v. Ananias, G.R. No. L-5591, arch 28, 1955; People v. Tabalba, G.R. No. L-4443, April 30, 1955

[3] See 30 PHIL. L.J. 23-25, 865-68 (1955).

[4] G.R. No. L-6442, prom. Nov. 18, 1955.

[5] G.R. No. L-5746, Nov. 29, 1955.

[6] G.R. Nos. L-4412-13, Feb. 17, 1954; People v. Ramos, G.R. No. L-5843, May 16, 1954; People v. Fuentes et al., G.R. No. L-6027, May 26, 1954.

[7] G.R. No. L-5096, Nov. 18, 1955.

[8] The claim of self-defense by the accused was not given credit by the court, considering that the deceased had no weapon at the time, and that this defense was not contained in the affidavit.

[9] Art. 14(6) provides: "The following are aggravating circumstances: . . . . . 6. That the crime be committed in the nighttime or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense."

Criminal Law—Robo con homicidio; *liability of a conspirator; accessory.*

PEOPLE v. LINGAD, ET AL.
G.R. No. L-6989, November 29, 1955

In conspiracy[1] to commit a crime, all the co-conspirators may be regarded as co-principals regardless of the extent of their actual participation.[2]

The instant case reiterated the rule initiated in the case of *United States v. Macalalad*,[3] that a conspirator shall be liable for all the acts of the other conspirators although such acts have not been contemplated in the original plan unless they endeavored to prevent the unlawful act of the others. Such ruling was reiterated in *People v. De la Cruz*[4] and *People v. Bautista*.[5]

In the present case, the facts show that one evening two persons appeared in the store of the deceased Vicente Go to buy coca-cola and cigarettes. After they had gone away, one of them appeared again with two others. One proceeded to an alley adjoining the store while the two others went to the counter, and with a gun pointed at the two store attendants, took all the money at the drawer. At the same time, the storeowner who was standing beside the store was pushed and shot.

The lower court found them guilty of robbery with homicide[6] under Article 294 and sentenced all of them to *reclusion perpetua*[7] and indemnify the heirs of the deceased.

The storekeepers identified all the accused and pointed to Lingad as the man in the alley who shot their father. Although there is no doubt as to the other defendants who robbed the store, the evidence was insufficient to show that Lingad was the one who assaulted the deceased and fired the shot which killed him.

However, the above circumstances did not affect the responsibility of the accused Lingad. By confessions submitted, all the accused plotted the hold-up and all of them participated in the perpetration of the crime. It was immaterial whether it was Lingad or Real who shot the deceased because conspiracy was conclusively shown by their common concurrence and coordinate acts, and all of them should be equally responsible.

The ruling in *People v. Basisten*,[8] that in *robo con homicidio*, the homicide not having been the subject of conspiracy, the others not having any intervention therein, only that one who actually committed the homicide may be held responsible for the complex crime and the rest are guilty only of robbery in band, is no longer applicable.

Amado Mucod, the driver of the taxi used by the other defendants did not take part in the original plan to rob; as he was aware of the crime, he should be liable as accessory,[9] as held in the case of *People v. Ubi*.[10]

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[1] A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it." Art. 8, 2nd par., Rev. Penal Code.

[2] The recent cases decided applying this principle are: People v. Amaja, G.R. No. L-7235, April 29, 1955; People v. Santos, G.R. No. L-7315, July 27, 1954.

[3] 9 Phil. 1 (1907).

[4] G.R. No. L-4532, May 26, 1952.

[5] 49 Phil. 229 (1926).

[6] See Art. 294 (1), Rev. Penal Code.

[7] "Robbery with homicide under Art. 294 is different from the complex offense punished in Art. 48. Art. 48 contemplates a situation where one offense is a necessary means for committing the other. In Art. 294, the homicide may not be necessary to the robbery. It may be necessary only to avoid future identification of the robbers." II AQUINO, NOTES ON CRIMINAL LAW 743 (1953).

[8] 4 Phil. 493 (1905).

[9] See Art. 19, Rev. Penal Code.

[10] G.R. No. L-6969, Aug. 31, 1955.

Criminal Law —*Homicide through reckless imprudence; civil liability of the accused.*

PEOPLE v. DIZON
G.R. No. L-8002, November 23, 1955

The general rule is that in order to hold civilly liable a person who is criminally liable for a felony, there must be statutory basis therefor. But in the instant case, the Court ruled that in the absence of such provision in the Motor Vehicle Law, the Revised Penal Code shall be supplementary.

The defendant was driving a motorcycle where two other persons were riding. He was driving recklessly and in trying to avoid a collission with a truck, he suddenly swerved to the wrong side of the street to a canal, resulting to the death of the two other persons. The accused was convicted of double homicide through reckless imprudence [1] and was sentenced to imprisonment for not less than 6 months nor more than 1 year and 8 months and to indemnify the heirs of the deceased in the sum of ₱2,000 each and the government in the sum of ₱350 with subsidiary imprisonment in case of insolvency.

As the accident took place on May 18, 1940, the Motor Vehicle Law [2] shall be applicable; the penalty imposed by this law is imprisonment from 15 days to 6 years, without provision as to civil liability. In the absence of such provision, Arts. 100 [3] and 39 [4] of the Revised Penal Code shall be supplementary.

Pilipina A. Arenas

Criminal Law —*Conspiracy which is merely inferred cannot be the basis of an aggravating circumstance of evident premeditation; defense of alibi.*

PEOPLE v. CUSTODIO, ET AL.
G.R. No. L-7442, October 24, 1955

The reformation of the criminal is the very core and fundamental basic policy underlying our criminal laws. Because of this idealistic end in view the almost illimitable power of the state to punish criminals [1] is tempered with an attitude of mercy. In the consideration of criminal cases the court must not overlook the existence of mitigating [2] and aggravating [3] circumstances whenever they are properly and clearly proven in order that in the imposition of the appropriate penalty, justice is dispensed with a certain degree of accuracy.

One of the aggravating circumstances provided for in the Revised Penal Code is the existence of evident premeditation in the commission of the crime.

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

[2] The same ruling was held in United States v. Manabat, 28 Phil. 560 (1914); United States v. Crame, 30 Phil. 2 (1915); People v. Santiago, 43 Phil. 120 (1922).

[3] Act 3992. This was passed after the Revised Penal Code took effect. It provides that offenses involving negligence in the operation of a motor vehicle, which results in the death or serious bodily injury, should be punished under the Motor Vehicle Law. Republic Act No.587, effective Jan. 1, 1951, amends sec. 67(d) of the said law and restores the original rule in Art. 365 of the Revised Penal Cole that negligence in operating a car is punished under Art. 365.

[4] "Every person criminally liable for a felony is also civilly liable."

[5] "If the convict has no property with which to meet the pecuniary liabilities mentioned in paragraphs 1st, 2nd and 3rd of the next preceding article, he shall be subject to a subsidiary liability at the rate of one day for each 2 pesos and 50 centavos." (1st par.)

[1] The power of the legislature to punish offenses is not absolute but finds a constitutional limitation. PHIL. CONST. Art. III, Sec. 1(19) expressly provides: "Excessive fines shall not be imposed nor cruel and unusual punishment inflicted."

[2] Art. 13 of the Rev. Penal Code, enumerates the mitigating circumstances.

[3] Art. 14 of the Rev. Penal Code, enumerates the aggravating circumstances.

The presence of evident premeditation must be proved as the criminal act itself.[4] It must be shown that the accused not only made a decision to commit the crime prior to the moment of its execution but that this decision was the result of meditation, calculation or reflection or persistent attempt[5] and a sufficient time must elapse between the inception of the plan to commit the act and its fulfillment giving the accused an interval to consider and accept the consequences[6] or overcome the resolution of his will if he desires to hearken to its warnings.[7] It is not enough that it arose at the moment of the aggression.[8] Thus in one case[9] it was held by the court that a brief period of time intervening between challenge and actual shooting sufficed to preclude the circumstance of evident premeditation in the commission of the crime. Likewise it is equally well-settled that the fact that there was an extra-judicial confession made by the accused that he prepared to kill the deceased does not warrant the consideration of evident premeditation, such statement, if it has to be given credit at all was just an expression of his determination to commit the crime which is entirely different from the premeditation which the law requires to be well defined and established.[10] Summing up the elements of this circumstance in order to aggravate criminal responsibility, the Court of Appeals enumerated the following elements to be fulfilled: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; (3) a lapse of time between the determination and the execution sufficient to allow him to reflect upon the consequences of his act.[11]

Under the foregoing elucidation of the meaning of evident premeditation as provided for in the Revised Penal Code, it may be asked whether conspiracy[12] by several accused persons to commit the crime may necessarily point that there was premeditation. The correct view seems to be that proof of conspiracy does not necessarily provide a basis for the conclusion that premeditation was made prior to the commission of the crime. In one case[13] it was intimated that while conspiracy implies reflection on the part of the confederates just as the offering of money to another to commit the crime implies that the offeror has thought things over, premeditation in such a case would not be evident in the sense contemplated by the law. This conclusion is based on the settled rule of law embodied in a long line of decisions that the conspiracy need not be proved directly but the community of design may be inferred from the peculiar circumstances of the case[14] whereas in evident premeditation, such fact must be shown and clearly proved as the criminal act itself,[15] and when conspiracy has been es-

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[4] United States v. Ellcanal, 35 Phil. 209 (1917); I KAPUNAN, REV. PEN. CODE ANN. 226-227 (1952).

[5] People v. Carillo, G.R. No. L-1283, Oct. 30, 1946.

[6] People v. Bangug, 52 Phil. 87 (1928); United States v. Dasal, 3 Phil. 6 (1903); United States v. Pala, 19 Phil. 190 (1911); United States v. Cornejo, 28 Phil. 457 (1914).

[7] United States v. Gil, 13 Phil. 531 (1909).

[8] People v. Diokno, 63 Phil. 601 (1939).

[9] People v. Visagar, G.R. No. L-5384, June 12, 1953.

[10] United States v. Angeles, 6 Phil. 480 (1906).

[11] People v. Leaño, (CA.), 36 O.G. 1120.

[12] Art. 8, Rev. Penal Code provides: "A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it."

[13] People v. Leaño, *supra* note 11.

[14] People v. Magdagay, 46 Phil. 838 (1924); People v. Manalo, 52 Phil. 848 (1928); People v. Enriquez, 58 Phil. 536 (1933); People v. Kalalo, 59 Phil. 715 (1934); People v. Diokno, 63 Phil. 601 (1936); People v. Bordador, 63 Phil. 805 (1936); People v. Ibañez, et al., 44 O.G. 30 (1948); People v. San Luis, G.R. No. L-2365, May 29, 1950; People v. Macul, G.R. No. L-2828, May 19, 1950; People v. Remalante, G.R. No. L-3515, Sept. 26, 1952; People v. Camo, G.R. No. L-4240, Feb. 14, 1952. In this case, a man was shot while eating supper. Three witnesses claimed to have seen the defendant and two others in the victim's front yard shortly before and after the shooting. The court held that in the absence of a plausible explanation the natural inference was that they are privy to a conspiracy to do away with the victim.

People v. Agsalona, G.R. No. L-3959, Nov. 29, 1952: The conspiracy in this case was inferred from the act of waylaying the victim together with the proof of a previous threat made by two of the defendants and the long standing animosity between the accused and the deceased.

[15] See note 5 *supra*.

tablished by the evidence the accused may be regarded as principals irrespective of their actual participation in every detail of the execution of the crime, everyone being considered as guilty as those who had directly participated.[16] It is evident therefore that conspiracy requires a more liberal manner of proof than that which is required in establishing the existence of evident premeditation. However, in order to justify the inference of conspiracy, it is not enough that the persons supposedly engaged or connected with the crime be present when the crime was committed even though he might have been interested in its commission [17] and in the absence of a well-founded inference of the existence of conspiracy the liability of the participants will be individual and not collective.[18]

Finally, the query would be whether or not there may be a case wherein conspiracy maybe a safe basis to draw a conclusion that evident premeditation exists. The analytical study of decisions of the Supreme Courts reveals that in order that conspiracy may imply the presence of evident premeditation, the conspiracy must be shown with proof, clear and unmistakable, that a sufficient time for reflection and persistent resolution to consummate the crime were present before the plan to commit it is accomplished.

In this case of *People v. Custodio, et al.*, the court had occasion to decide the question of whether conspiracy can be the basis of premeditation. Prosecuted and convicted of murder, the accused herein appealed. It was established that the victim, Balancio was shot from behind while he was descending the rear stairway of his house. The wife wailed, "My God why is this done to us?" to which someone whom she recognized as Valentin Custodio was heard to reply, "That is what befits a bully." Thereupon, Valentin was rejoined by his brothers, Tomas and Silvestre and the three bearing firearms went away. The deed was also witnessed by Antonio Goc, a brother-in-law of the deceased. There is no question that there is conspiracy but can this inference of conspiracy be sufficient to establish evident premeditation? The court relied in previous cases [19] declaring:

> "Under normal conditions where the act of conspiracy is directly established with proof of the attendant deliberation and selection of the method, time and means of executing the crime, the existence of evident premeditation can be taken for granted. In the case before us, no such evidence exists. There is no proof how and when the plan to kill Balancio was hatched or what time elapsed before it was carried out. We are therefore unable to determine if the appellants enjoyed sufficient time between its inception and its fulfillment dispassionately to consider and accept the consequences. In other words, there is no showing of the opportunity for reflection and the persistence in the criminal intent that characterize the aggravating circumstance of evident premeditation."

The defense of the accused in this case was alibi, but it was flatly rejected by reiterating the ruling laid down in a long array of cases that when the ac-

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[16] People v. Carbonel, 48 Phil. 848 (1925); People v. Dayug, 49 Phil. 423 (1926); People v. Chan Lin Wat, 50 Phil. 182 (1927); People v. Caringan, 61 Phil. 416 (1924); People v. Cu Unjieng, 61 Phil. 236 (1934); People v. Daos, 60 Phil. 143 (1934); People v. Masin, 64 Phil. 767 (1937); People v. Go, G.R. No. L-1527, Feb. 27, 1951; People v. Timbang, et al., 74 Phil. 296 (1942); People v. Bersamin, G.R. No. L-3097, March 5, 1951; People v. Valeriano, G.R. No. L-3013, Sept. 19, 1951; People v. De la Cruz, G.R. No. L-3013, Jan. 9, 1951; People v. Galit, 51 O.G. 5176 (1955); People v. Mendoza, G.R. No. L-4146, March 28, 1952.

[17] People v. Samano, 43 O.G. 2043 (1947); People v. Bernal, G.R. No. L-4409, July 14, 1952. An examination of this case would make the conclusion clearer. It appears that Bernal had two previous altercations with the deceased, Pilones. Upon report of the matter by Bernal to the authorities, a military police patrol was dispatched to apprehend Pilones and Bernal went with the patrol as guide. In the apprehension of Pilones, he was killed upon the order of the sergeant in command of the patrol. The prosecution sought to establish the complicity of the defendant Bernal. The court held that the mere fact the accused had two previous altercations with the deceased and that his report of the incidents had been the cause for the dispatch of the patrol do not suffice to establish his liability as a co-conspirator. The actuations of the accused indicate that he was quite content to leave the case with the authorities.

[18] United States v. Magcomot, 13 Phil. 386 (1909); United States v. Macuti, 26 Phil. 17 (1913); United States v. Abiog, 37 Phil. 137 (1917); United States v. Lacson, 20 Phil. 516 (1911); People v. Tamayo, 44 Phil. 38 (1922); People v. Caballero, 53 Phil. 585 (1929); People v. Ortiz, 55 Phil. 993 (1931); People v. Tamayo, 56 Phil. 587 (1932); People v. Ibañez, 44 O.G. 30 (1948).

[19] People v. Iturriaga, 47 O.G. Supp. to No. 12, 166 (1951); People v. Lasada, 70 Phil. 625 (1940); People v. Mendoza, G.R. No. L-4146, March 28, 1952.

cused have been clearly identified by the creditable witnesses for the prosecution at the locus of the crime, by means of clear, explicit and positive testimony, the alibi cannot prevail.[20]

Criminal Law—*Aggravating circumstance of taking advantage of a public position.*

PEOPLE v. SALES
G.R. No. L-7187, October 26, 1955

One of the aggravating circumstances provided for in the Revised Penal Code is that the offender has taken advantage of his public position.[1] However, in the consideration of this circumstance, it is not enough that the criminal is occupying or has occupied a public office at the time of the commission of the crime. There must be a clear, evident abuse of his public position[2] and that this circumstance is not necessary and integral element of the offense committed because the fact of being a public officer is inherent in the crime itself.[3] There is however authority to the effect that even if the public officer did not abuse his office if it is proven that he has failed in his duties as such public officer, this circumstance would still warrant the aggravation of his penalty.[4]

In the instant case the Supreme Court had another occasion to explain the correct application of this provision. There is no question that the crime of murder was committed by the accused. The facts are that Mallari and Tan were members of the police force of the City of Iloilo and detailed to guard the house of a certain judge. On the evening of August 14, 1951, Suaten and Sales were halted by Tan while they were approaching the house of the judge. Suaten and Sales identified themselves as Constabulary agents but because they were in plain clothes and armed with .45 caliber automatic pistols, Tan told them that he was not satisfied with their identification. As a means of precaution Tan picked up his Thompson sub-machinegun at the same time shouting that he was not convinced that they were constabulary agents. Irked by what Tan said, Sales, after coming near Tan, pushed the latter. Mallari pacified the two and the matter was believed to have been patched up. But Sales went to their camp, put on his fatigue uniforms, took his garand rifle and returned. Upon seeing Tan, he fired eight shots at him killing him instantly. Under the foregoing facts, did Sales take advantage of his public position, being then a non-commissioned officer of the Philippine Constabulary? The trial court considered his being a public officer as aggravating.

In rejecting the lower court's finding, the Supreme Court said:

> "But as to the aggravating circumstance appreciated by the lower court there is error. Appellant has not taken advantage of his position to commit the crime. At most his public position enabled him to take a garand rifle from the armory of the provincial jail but he could have taken a garand rifle from other sources to shoot the victim."

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[20] People v. De Asis, 61 Phil. 884 (1934); People v. Medina, 71 Phil. 288 (1940); People v. Nieva, 75 Phil. 668 (1946); People v. Dy Toa, 47 O.G. 5482 (1951); People v. Faltado, G.R. No. L-1604, June 27, 1949; People v. Mendoza, G.R. No. L-1797, June 30, 1949; People v. Napili, 47 O.G. 4111 (1951); People v. Liberia, G.R. No. L-6485, July 16, 1954; People v. Jistiado, G.R. No. L-5478, April 29, 1954; People v. Fader, G.R. No. L-5782, March 12, 1954.

[1] Art. 14, par. 1, Rev. Penal Code.

[2] United States v. Torrida, 23 Phil. 189 (1912); People v. Domondon, 69 Phil. 729 (1934); People v. Cardona, 51 Phil. 298 (1905).

[3] People v. Teves, 44 Phil. 275 (1922); People v. Caledron, et al., 56 Phil. 344 (1931). For instance the aggravating circumstance of taking advantage of a public position cannot be considered in these cases provided for under Book II, Title VII of the Rev. Penal Code.

[4] United States v. Cagayan, 4 Phil. 424 (1904). Here, one of the defendants was shown to be a vice president of the town of Bocoboco where the brigandage was perpetrated. In considering the aggravating circumstance against him, the Court declared: "The fact that the defendant was the vice president of a town at the time he voluntarily joined a band of brigands makes his liability greater for the reason that he thus failed in his duties as such municipal officer."

Criminal Law —*Civil liability of an accused person.*

PEOPLE v. PANTIG
G.R. No. L-8325, October 25, 1955

The liability of a person accused of a crime is two-fold, namely, criminal and civil.[1] This seems to be the general rule only for there are certain cases wherein the accused even if guilty of the crime charged would not be civilly liable[2] or where the law does not expressly authorize the payment of indemnity,[3] On the other hand there are cases where the perpetrator of an offense is by express provision of law exempt from criminal liability and yet may still be held civilly liable therefor.[4]

The civil liability that is due from the accused must be that which is a necessary consequence of or that which arises from the criminal action[5] not one that is entirely foreign or separate from the cause that gave rise to the criminal prosecution.[6]

Before the effectivity of the New Civil Code,[7] the Rules of Court[8] was the sole governing law regarding the procedure that must be followed in the enforcement of civil liability of an accused person. However, the New Civil Code contains provisions[9] modifying certain matters of procedure enunciated in the decisions of the Supreme Court and those provided for in the Rules of Court.[10]

In this case of *People v. Avelino Pantig*,[11] the defendant was acquitted by the trial court of the crime of estafa but the trial court ordered the defendant to pay the offended party the amount of ₱1,200 which is the amount alleged in

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[1] Art. 100, Rev. Penal Code, provides: "Every person criminally liable for a felony is also civilly liable."

[2] For instance, crimes against national security, as treason. Nevertheless, civil liability may arise in a case of treason where the overt act that constitutes the giving of aid and comfort to the enemy consists in the killing of a suspected guerrilla. I KAPUNAN, REV. PENAL CODE ANN. 439 (1952). Also crimes, the commission of which are not usually attended with damages to third persons as contempt of court, crimes against religious worship, resistance to authorities, etc., United States v. Heery, 25 Phil. 600 (1913); People v. Orias, 65 Phil. 744 (1937).

[3] United States v. Patiño, 4 Phil. 160 (1904); *Contra*: Dizon v. People, G.R. No. L-8002, Nov. 23, 1955. See also People v. Moreno, 60 Phil. 178 (1934); Copiaco v. Luzon Brokerage, 66 Phil. 184 (1938).

[4] Art. 101, Rev. Penal Code; United States v. Bagsay, 20 Phil. 42 (1911).

[5] People v. Moll, 68 Phil. 626 (1939); Manila R.R. v. Baltazar, 49 O.G. 2874 (1953); People v. Abellera, 69 Phil. 622 (1940); People v. Mañago, 69 Phil. 496 (1939). These three last cases were cited by the court in the case under comment. In all these cases, the defendants were acquitted previously and after their acquittal they filed motions to demand the payment of their salaries due them during their suspension. The court ruled that they cannot recover their salaries in the same criminal action. The only civil responsibility that may be imposed by the court is that which arises from the criminal act.

To this ruling, it is believed that an exception has been created in view of the enactment of Republic Act No. 557 and the pronouncement of the court in the case of People v. Bautista, 50 O.G. 5286 (1954), which declared that under Rep. Act No. 557, after acquittal of the accused, he is ipso facto entitled to payment of his salaries during suspension.

[6] Art. 31, New Civil Code.

[7] The New Civil Code took effect on August 30, 1950, as settled in the cases of Lara v. Del Rosario, G.R. No. L-6339, April 20, 1954; Raymundo v. Peñas, G.R. No. L-6705, Dec. 23, 1954; Casabar v. Cruz, G.R. No. L-6853, Dec. 29, 1954.

[8] Rule 107, Rules of Court.

[9] The new provisions of the Civil Code pertinent to the enforcement of civil liability in criminal cases are: Arts. 29-33, 35, and 36.

[10] It is submitted that the cases of *Almeda v. Abaroa*, 8 Phil. 178 (1907), *Wise & Co. v. Larion*, 45 Phil. 814 (1923), and *Francisco v. Onrubia*, 46 Phil. 827 (1924), which declare that exemption from the criminal action implies the exemption from civil liability, seem to have been modified by Article 29 of the New Civil Code, which allows the filing of a civil action based on the same act or omission which has been the subject matter of the criminal prosecution but the defendant was acquitted because his guilt has not been proved beyond reasonable doubt. See De Guzman v. Alvia, G.R. No. L-6207, Feb. 21, 1955, for the correct interpretation of the provision.

Likewise, Sec. 1(e) of Rule 107, Rules of Court and the principle laid down in the case of *Alba v. Acuña*, 53 Phil. 380 (1929), to the effect that after a criminal action has been commenced, no civil action arising from the same offense can be prosecuted; and the same shall be suspended in whatever stage it may be found, until final judgment in the criminal proceeding has been rendered, are deemed modified by Arts. 32 and 33 of the New Civil Code, because even in the commencemnt of a criminal action in th cases enumerated by the provisions, a civil action may still be instituted and may proceed independently from the criminal action. For the correct interpretation of Art. 33, See Carandang v. Santiago, 51 O.G. 2872 (1955).

[11] G.R. No. L-8325, Oct. 25, 1955, 51 O.G. 5627 (1955).

the information to have been obtained by the defendant through false and fraudulent representations from the offended party. It was however found out by the judge that the same amount was obtained by the defendant as a loan. The question is whether or not in spite of the acquittal of the accused, he can be ordered to pay the offended party without the necessity of filing a civil action for the purpose of recovering the loan as found out by the court.

The court decided in favor of the accused by declaring that "the liability of the defendant for the return of the amount so received arises from a civil contract and may not be enforced in the criminal case." Thus, the order of the court to the effect that the defendant should reimburse the offended party was revoked without prejudice to the filing of a civil action to recover the same.

Mariano M. Tajon

Criminal Procedure —*Venue.*

PEOPLE v. DIPAY
G.R. No. L-8880, November 29, 1955

Venue has reference merely to the place of suit. Consequently, while jurisdiction is a question of the power of a court, venue is a question of locality.[1] In all criminal prosecutions the action shall be instituted and tried in the court of the municipality or province wherein the offense was committed or any one of the essential ingredients thereof took place.[2]

In the instant case, the CFI of Zamboanga convicted the appellant of violating section 2702 of the Revised Administrative Code.[3] The information alleged that the accused "wilfully, unlawfully, feloniously and fraudulently and knowingly buy 81 cartons of Herald Cigarettes, manufactured in the U.S., the same having been imported contrary to law." While the information alleged that the illegal purchase was made in the city of Zamboanga and the trial was held in that city, the evidence shows that the purchase was made in Sitangkay in the province of Sulu.

As was held in *Beltran v. Ramos*,[4] the Court ruled that the trial should be held in the province where the offense was committed.

> "This is a fundamental principle, the purpose being not to compel the defendant to move to and appear in a different court from that of the province where the crime was commited, as it would cause him great inconvenience in looking for his witnesses and other evidence in another place."

The Judiciary Act,[5] creating judicial districts each of which may consist of several provinces is not in conflict with section 14 (a) Rule 106 of the Rules of Court and therefore they should be enforced together harmoniously.

The case of *Duran v. Tan*,[6] confirmed the ruling that venue in criminal cases may not be waived. However, this ruling has been criticised by some writers.[7]

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[1] NAVARRO, A TREATISE ON THE LAW OF CRIMINAL PROCEDURE IN THE PHILIPPINES 58 (1953).
[2] Rule 106, sec. 14(a).
[3] "Any person who shall fraudulently or knowingly import or bring into the Philippines, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, shall be punished by a fine of not less than six hundred pesos but not more than five thousand pesos and by imprisonment for not less than three months nor more than two years and, if the offender is an alien, he may be subject to deportation. (As amended by Rep. Act No. 455.)
[4] 50 O.G. No. 12, p. 5762. (1954).
[5] Rep. Act No. 296.
[6] 47 O.G. 4075 (1950).
[7] See NAVARRO, *supra* note 1, at 59-60.

Criminal Procedure—*Double jeopardy.*

PEOPLE v. POMEROY, TARUC, ET AL.
G.R. No. L-8229, November 28, 1955
PEOPLE v. JARAMILLA
G.R. No. L-8080, November 18, 1955

The doctrine that no one shall be twice put in jeopardy for the same offense is ancient, being embedded in the common law and in most constitutions.[1] The doctrine applies to criminal prosecutions only. The rule not only prohibits a second punishment for the same offense but it goes further and forbids a second trial for the same offense, whether the accused has suffered punishment or not, or in the former trial has been acquitted or convicted.[2]

The first sentence of sec. 2, Rule 118 of the Rules of Court provides: "The people of the Philippines cannot appeal if the defendant would be placed thereby in double jeopardy."

In the case of *People v. Pomeroy*,[3] the Court reiterated the rule that in criminal cases, the State cannot appeal when the defendant would be placed thereby in double jeopardy. Here, the defendant-appellee Luis M. Taruc together with William Pomeroy and six others were charged with the crime of rebellion with murders, arsons, robberies, and kidnappings. The defendants Pomeroy and Celia Mariano Pomeroy have already been convicted and are, at present, already serving their respective sentences, while the others are still at large. All the defendants were affiliated with the Communist Party of the Philippines and "Hukbong Mapagpalaya Ng Bayan" otherwise known as the Hukbalahaps (Huks), the latter being the armed force of the said Communist Party. The appellee, Taruc, pleaded guilty to the crimes charged in the information after counts 1 to 6, and 8 of which were suppressed. The lower court convicted him of rebellion under Arts. 134[4] and 135[5] of the Revised Penal Code, and sentenced him to 12 years of prison mayor,[6] together with its accessory penalties. The Government appealed on the ground that a more severe penalty should have been meted out on him.

As was held in *U.S. v. Kepner*,[7] the Court ruled that our laws being of American origin, Anglo-American precedents should be followed, and that no error however flagrant, committed by the court against the state, can be reviewed by the Supreme Court when the defendant has once been placed in jeopardy and discharged, even though the discharge of error is committed.

Quoting from the case of *People v. Ang Cho Kio*,[8] the Court said:

> "Creemos que en el presente se pone al acusado en *double jeopardy*, estos es, en el peligro de recibir la condena de reclusion perpetua despues de haber sido condenado ya por el jugado inferior a una menor."

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[1] 22 C.J.S. sec. 238, p. 268.
[2] The recent cases where the Court held double jeopardy to attach are: Crisologo v. Villalobos, G.R. No. L-6277, Feb. 26, 1954; Cea v. Cinco, G.R. No. L-7075, Nov. 18, 1954; People v. Ang Chio Kio, G.R. No. L-6688, July 29, 1954. See 30 PHIL. L.J. 815-18 (1955).
[3] G.R. No. L-8229, Nov. 28, 1955.
[4] "The crime of rebellion or insurrection is committed by rising publicly and taking arms against the Government for the purpose of removing from the allegiance to said Government or its laws, the territory of the Philippine Islands or any part thereof of any body of land, naval or other armed forces, or depriving the Chief Executive or Legislative wholly or partially, of any of their powers or prerogatives."
[5] "Any person who promotes, maintains, or heads a rebellion or insurrection, or who, while holding any public office of employment takes part herein, engaging in war against the forces of the Government, destroying property or committing serious violence, exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated, shall suffer the penalty of prision mayor and a fine not to exceed 20,000 pesos." (1st par.).
[6] See Art. 27, 3rd par.
[7] 11 Phil. 669 (1904).
[8] G.R. No. L-6687-6688, July 29, 1954.

In the case of *People v. Jaramilla*,[9] the Court ruled that double jeopardy does not attach when the case is an appealed one from the JP to the CFI and the proceedings in the latter have not been started. The defendant Jaramilla was convicted of less serious physical injuries and was sentenced accordingly by the Justice of the Peace. He appealed to the CFI where the hearing was postponed for two times on the motion of the accused. When the date for hearing was finally set, the fiscal did not appear, the judge dismissed the case "for lack of interest on the part of the prosecution."

This act of the lower court was held to be an abuse of discretion considering that the fiscal had a very reasonable excuse for not appearing, and that the two previous motions for postponement by the accused had easily been granted. The reopening of the case would not amount to double jeopardy because the case was dismissed before the accused had pleaded to the information in the CFI. An appealed case from the JP should be tried as if originally instituted,[10] although a new information need not be filed in the CFI provided said information charges the same criminal act for which the defendant was tried in the JP.[11]

Criminal Procedure—*Effect of plea of guilty; counsel* de oficio.

PEOPLE v. GAITE
G.R. No. L-7929, November 29, 1955

Under the Rules of Court, there are two pleas recognized, namely, plea of guilty and plea of not guilty.[1] Plea of guilty can be put in only by the defendant himself,[2] and any other person is absolutely prohibited from entering such a plea.[3] Plea of guilty amounts to a confession as differentiated from a mere admission,[4] and its form of language is not important.[5] It has the effect of admitting the material facts alleged in the information.[6]

In the instant case, the defendant was charged with parricide. As he was without a lawyer, a counsel *de oficio* was appointed. A penalty of *reclusión perpetua* was imposed on him. It is now contended that while the accused was willing to plead guilty, he wanted to explain, and therefore that is equivalent to a plea of not guilty. As the record shows that the plea was made in an open court with the aid of an attorney who was reminded of the effects of a plea of guilty and who had all the opportunity and time to take the proper course, it follows that the plea is "an admission not only of his guilt but also the material allegation in the information that he is the legitimate son of the deceased." The testimony of the mother during the preliminary investigation as to create doubt the defendant's legitimacy could not be taken into account as it was not made part of the proceedings in the lower court.

Pilipina A. Arenas

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[9] G.R. No. L-8038, Nov. 18, 1955.
[10] "After the notice of appeal, all the proceedings and judgment of the justice of the peace or municipal court are vacated, and the case shall be tried in all respects anew in the Court of First Instance as if it were a case originally instituted in that court."
[11] Crisostomo v. Dir. of Prisons, 41 Phil. 363 (1921).
[1] See Rule 114, sec. 1.
[2] Rule 114, sec. 3 provides: "A plea of guilty can be put only by the defendant himself in open court."
[3] United States v. Gimenez, 34 Phil. 74 (1916); Fiscal of Manila v. Del Rosario, 53 Phil. 20 (1928).
[4] United States v. Corrales, 28 Phil. 362 (1914); United States v. Grant, 18 Phil. 122 (1910); United States v. Razon, 37 Phil. 856 (1918).
[5] U.S. v. Dinero, 18 Phil. 566 (1911).
[6] People v. Ng Pek, 46 O.G.——(1950).

Criminal Procedure —*Imposition of penalty after a plea of "guilty"; discretion of judge.*

PEOPLE v. GO PIN
G.R. No. L-7491, August 8, 1955

Upon arraignment,[1] the defendant must plead to the complaint or information either by a plea of "guilty" or "not guilty."[2] If he pleads "not guilty" he in effect denies the facts alleged in the complaint or information;[3] whereas if he pleads "guilty" he is voluntarily admitting his guilt and all the material facts alleged in the compaint or information.[4]

After a plea of "guilty," may the defendant be punished immediately? It has been held that a plea of "guilty," formally entered on arraignment is sufficient to sustain a conviction of any offense charged in the complaint or information, without the introduction of further evidence, inasmuch as the defendant himself, with his plea, supplied the necessary proof.[5] However, in order to avoid the danger of improvident pleas, courts may exercise their sound discretion in the appreciation of the plea of guilty by taking testimonies of witnesses for the purpose of ascertaining the guilt and the degree of culpability of the accused,[6] and to determine what punishment shall be imposed.[7]

In the instant case the defendant was charged with the violation of Article 201[8] of the Revised Penal Code for having exhibited indecent films in the Globe Arcade in Manila. At first he pleaded "not guilty," but subsequently, he was allowed by the court to withdraw his "not guilty" plea and changed it to a plea of "guilty." The trial court, instead of sentencing him immediately, proceeded to view the films and after noting only a slight degree of obscenity, indecency and immorality in them, sentenced the defendant to six months and one day of *prisión correccional* and to pay a fine of ₱300.00. From this judgment, the defendant appealed to the Supreme Court, contending that in view of the slight degree of obscenity, indecency and immorality noted by the lower court, the prison sentence should be eliminated from the penalty imposed. The Supreme Court observed that the trial court could have imposed a graver penalty as recommended by the Solicitor General but refrained from doing so because of its conclusion as to the slight degree of obscenity in the films. Finding the penalty imposed by the lower court to be within the range provided for by Article 201, the Court dismissed the appeal upon the ground that it did not "feel justified in interfering with the discretion of the trial court in the imposition of the sentence in this case."

Ernesto T. Duran

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[1] Rule 112, Rules of Court.
[2] Rule 114, sec. 1. If the defendant refuses to plead, a plea of "not guilty" shall be entered for him. (Sec. 2).
[3] United States v. Lim San, 17 Phil. 273 (1910).
[4] The essence of the plea of guilty in a criminal trial is that the accused admits his guilt freely, voluntarily, and with full knowledge of the consequences and meaning of his act, and with a clear understanding of the precise nature of the crime or crimes charged. United States v. Burlado, 42 Phil. 72 (1921); United States v. Dineros, 18 Phil. 568 (1911); United States v. Jamad, 27 Phil. 305 (1917).
[5] United States v. Jamad, *supra* note 4.
[6] See 2 MORAN, COMMENTS ON THE RULES OF COURT 643 (2d ed.).
[7] Rule 114, sec. 5, Rules of Court.
[8] Art. 201 provides that the penalty of *prision correccional* in its minimum period or a fine ranging from 200 to 2,00 pesos, or both, shall be imposed upon " . . . 2. Those who in theaters, fairs, cinematographs or any other places open to public view, shall exhibit indecent or immoral plays, scenes, acts or shows . . ."

Evidence—*Extrajudicial confession; its admissibility; waiver of right to object.*

PEOPLE v. YATCO, ET AL.
G.R. No. L-9181, November 28, 1955

When the accused makes a declaration expressly acknowledging the truth of his guilt as to the offense charged, it may be given in evidence against him.[1] The general rule is that a confession is admissible only against him but not against co-defendants as to whom said confession is hearsay evidence, for he had no opportunity to cross examine the former.[2] Evidence offered by a party against the objection of another must be relevant to the issues of the case and tend to establish or disprove them. However, a matter may be relevant to the issues of the case and yet incompetent and inadmissible as evidence by reason of established rules of evidence.[3]

In the present case, the lower court ordered upon the motion of the defendant, the exclusion of evidence offered by the NBI Atty. Xavier of an extrajudicial confession allegedly made before him by the other defendant Consunji. The counsel for Panganiban interposed a general objection on the ground that it was hearsay and therefore incompetent as against him. The court's order was based on the ground that the prosecution could not be permitted to introduce confessions to prove conspiracy without proof of such conspiracy by a number of definite acts, conditions and circumstances.[4] The Court ruled that the evidence must be admitted. Confession made freely and voluntarily may be used as evidence at least against him.[5] The ground [6] upon which the lower court based its order, refers to statements made by a conspirator during the pendency of the unlawful enterprise in furtherance of its object and not confession made long after conspiracy has been brought to an end.[7] Under the rule of multiple admissibility of evidence, even if the confession of the accused may not be competent as against his co-accused, being hearsay as to the latter, or to prove conspiracy between them without the conspiracy being established by other evidence, the confession is nevertheless, admissible as evidence of the declarant's own guilt.

The Court quoted the ruling in *Pratt and Co. v. Phoenix Insurance Co.*[8]:

> "Justice is most effectively and expeditiously administered in the courts where trivial objections to the admission of proof are received with least favor. The practice of excluding evidence on doubtful objections to its materiality or technical objections to the forms of the questions should be avoided."

It was further ruled that the granting of order based on a ground different from that raised by the accused was not proper. Said the Court: "The right to

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[1] Rule 123, sec. 14, Rules of Court. People v. Libre, G.R. No. L-5196, May 4, 1953. See also 30 PHIL. L.J. 674 (1955), for notes on People v. Ganaco, G.R. No. L-6872, May 21, 1955.

[2] III MORAN, COMMENTS ON THE RULES OF COURT 279 (1947) citing United States v. Caligayan, 2 Phil. 433 (1903); United States v. Manalo, 6 Phil. 364 (1906).

[3] AM. JUR., sec. 245, pp. 232-233.

[4] Rule 123, sec. 12, Rules of Court. See 29 PHIL. L.J. 282 (1954), for notes on People v. Desmay, 49 O.G. 919 (1953).

[5] United States v. Vega, 43 Phil. 41 (1922); People v. Bande, 50 Phil. 87 (1927); People v. Buan, 64 Phil. 246 (1937).

[6] "The act or declaration of a conspirator relating to the conspiracy and during its existence, may be given in evidence against the conspirator after the conspiracy is shown by evidence other than such act or declaration." Rule 123, sec. 12, Rules of Court.

[7] United States v. Empinado, 9 Phil. 613 (1908); United States v. Raymundo, 14 Phil. 418 (1909); People v. Badilla, 48 Phil. 718 (1926); People v. Napkil, 52 Phil. 905 (1929).

[8] 52 Phil. 516-17 (1929).

object is a mere privilege which the parties may waive and if the ground is known and not seasonably made, the objection is deemed waived."

Pilipina A. Arenas

Evidence—*Admissibility of evidence; credibility of witnesses.*

PEOPLE v. MAMADRA
G.R. No. L-6580, August 20, 1955

The instant case was a prosecution for robbery with homicide.[1] The following facts were undisputed:[2] In the afternoon of October 5, 1950, a group of armed moros, led by the defendant, unexpectedly arrived at the house of Esteban Ortuoste. After stripping the latter's house of its belongings, the defendant and his companions proceeded to the house of Ricardo, a brother of Esteban, taking with them Esteban, his wife and one Baquero. There they met Rafael, another brother of Esteban, from whom they demanded money and arms. Rafael denied having money or arms. Angered by his reply, defendant and his companions fired at Rafael, killing him almost instantly. Tried and convicted, defendant raised in his appeal to the Supreme Court, the sufficiency of his identification by the prosecution witnesses and the admissibility of a certain "Narrative Report" presented by him in his defense.

In this jurisdiction, there can be no evidence of a writing other than the writing itself the contents of which is the subject of inquiry.[3] In other words, the original[4] writing, as a general rule,[5] must be produced and proved.[6] In the present case, the "Narrative Report" presented by the defendant tended to show that at the time of the alleged killing he was in Malabang because he was being trained in connection with his request to be a policeman of this town. This writing was supposed to contain a report of the activities of one Dipatuan who testified in support of the defendant's alibi. The lower court refused to admit this writing on the ground that it was of dubious admissibility. The Supreme Court agreed with the lower court. The latter court gave its reason thus:

> "The person certifying it was not presented as witness and the defense failed to give a satisfactory explanation why that report was submitted by Dipatuan directly to the provincial governor without coursing it thru his immediate chief, the mayor of Malabang. As the trial court observed, this report has the earmarks of a fabricated evidence."

With respect to the determination of the credibility of witnesses, courts take into account the witness' manner of testimony, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the probab-

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[1] Art. 294, par. 1, Rev. Penal Code. This is not a complex crime which falls under Art. 48. This is one indivisible felony punishable by one distinct penalty—*reclusion perpetua to death*. PADILLA, CRIMINAL LAW 863 (1951 ed.).

[2] In his appeal, defendant merely disputed the sufficiency of his identification by the witnesses, who, according to him, do not know him personally.

[3] Rule 123, sec. 46, Rules of Court.

[4] "Original" does not necessarily mean the first paper written. See III MORAN, COMMENTS ON THE RULES OF COURT 448 (3d ed.).

[5] The exceptions are: (1) When the original has been lost of destroyed; (2) When the original is in the possession of a party against whom the evidence is offered, and who fails to produce it after reasonable notice; (3) When the original is a record or other document in the custody of a public officer; (4) When the original has been recorded in an existing record a certified copy of which is made evidence by law; and (5) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the facts sought to be established from them is only the general result of the whole. (Rule 123, sec. 46, Rules of Court.).

[6] See MORAN, *op. cit. supra* note 4, at 447.

ility or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial.[7] In the instant case, the witnesses who identified the defendant were Esteban Ortuoste, his wife, and another brother of Esteban who came upon the defendants as they were leaving the scene of the crime. Their testimonies were properly admitted because, with respect to Esteban, the Court observed that "he was placed in a situation [8] that makes it difficult for him to forget appellant." In the same manner, the identification made by the wife was given credence for she "had been placed under the same ordeal." Moreover, the Court also found no improper motive on the part of these witnesses to impute this heinous crime to the defendant.[9]

Ernesto T. Duran

Naturalization —*Enrollment of minor children in government approved schools; burden of proof to show special qualification.*

Y. KIN CONTRA REPUBLICA
G.R. No. L-6894, April 27, 1955

NG SIN v. REPUBLIC
G.R. No. L-7590, September 20, 1955

Section 2, paragraph 6 of Commonwealth Act No. 473 [1] is a condition precedent for the grant of Philippine citizenship.[2] Hence, the applicant must prove affirmatively that he has complied with it, otherwise his application will be denied.[3] It is no valid excuse for non-compliance with it that the applicant cannot bring back to the Philippines his minor children of school age due to war,[4] or due to his financial difficulty.[5] Neither is it valid reason for such non-compliance that the applicant's minor children of school age died without having studied in the prescribed schools,[6] nor the fact that said children reached the age of majority without having thus studied.[7] To be exempted, the applicant must show that it is physically impossible to enroll his children as for instance when they are not of school age at the time of the filing and hearing of his petition.[8]

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[7] Rule 123, sec. 95, Rules of Court.

[8] Esteban, his wife, and Baquero were taken by the defendants and his companions from the former's house after the defendant and his companions robbed it, to the house of Ricardo where the shooting took place. With respect to Tomas, another brother, who also identified the defendant, the court gave credence to his testimony as he had previously met the defendant and on the fatal day he came upon him and his companions as they were leaving the scene of the crime.

[9] On the contrary, it was established at the trial that defendant had a motive for perpetuating the crime for he suspected the Ortuoste brothers of helping in dispossessing the defendant and his brother of certain parcels of land.

[1] "Qualifications.—Subject to section four of this Act, any person having following qualifications may become a citizen of the Philippines by naturalization.

"Sixth. He must have enrolled his minor children of age in any of the public schools or private schools recognized by the Office of Private Education of the Philippines, where Philippine history, government and civics are taught or prescribed as part of the school curriculum, during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as Philippine citizen.

[2] Co Cai v. Republic, G.R. No. L-5461, Dec. 17, 1951.

[3] Cuua Piang v. Republic, G.R. No. L-4032, Oct. 25, 1952; Tan Hi v. Republic, G.R. No. L-3554, Dec. 27, 1951; Chu Su Hok v. Republic, G.R. No. L-3470, Nov. 27, 1951; Hoa Lian Chua v. Republic, G.R. No. L-3265, Nov. 29, 1950.

[4] Anglo v. Republic, G.R. No. L-5104, April 29, 1953; Koe Sengkee v. Republic, G.R. No. L-3262, Dec. 7, 1951; Uy Boco v. Republic, G.R. No. L-2247, Jan. 23, 1950.

[5] Tan Hi v. Republic, *supra* note 3.

[6] Chu Ho Lay v. Republic, G.R. No. L-5464, March 30, 1950.

[7] Quing Ku Chay v. Republic, G.R. No. L-5477, April 18, 1954.

Thus, in *Y. Kin contra Republica*, the Supreme Court affirmed the trial court's decision denying the application for naturalization on the ground that the applicant did not enroll his daughter in government approved schools where Philippine history, government and civics are taught. The applicant's daughter was sent t oChina at the age of six years. At the time of the hearing of the petition, she was still in China studying in one of the schools there.

In *Ng Sin v. Republic*, the Supreme Court also affirmed the lower court's judgment rejecting the petition for naturalization on the same ground. It appeared that the two children of the petitioner, Vicente and Domingo, aged twenty-five and twenty-two years, respectively, at the time of the filing of the petition, were never enrolled in the prescribed schools although they were of school age during the ten years preceding the hearing of the petition.

The Supreme Court in these two cases had occasion to reiterate the reasons behind the afore-cited requirement. Said the Supreme Court in the *Ng Sin* case:

> "The law demands the enrollment of appellant's children in our schools not only to ensure that they are trained in our own way of life, but also as evidence of petitioner's honest and enduring intention to assume the duties and obligations of Filipino citizenship. If the applicant for naturalization is really inspired by an abiding love for this country and its institutions (and no other reason is admissable) he must prove it by acts of strict compliance with the legal requirements. It may mean hardship and sacrifices, but citizenship in this Republic be it ever so small and weak, is always a privilege, and no alien, be he a subject of the most powerful nation of the world can take such citizenship for granted and assume it as a matter of right."

In the same case, the Supreme Court had the opportunity to rule that the burden of proof was upon the petitioner to show that he possessed a special qualification[9] because the shortening of the ordinary period of 10 years to 5 years is an exception to the general rule. Here, since there was no proof on the record that petitioner's wife was a Filipina, his claim that he was held only to a five-year residence was considered unmeritorious.

Naturalization —*Exemption from filing of declaration of intention; affidavits of character witnesses.*

NG PENG SIA v. REPUBLIC
G.R. No. L-7789, September 27, 1955

PIDELO v. REPUBLIC
G.R. No. L-7796, September 29, 1955

The applicant for naturalization falling under the first class of persons exempted from filing a declaration of intention[1] must have completed or received primary and secondary education and not only a part of the latter.[2] So, an applicant who finished only the second year high school,[3] or second year high school

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[9] See Com. Act No. 473, sec. 2.

[1] Com. Act No. 473, sec. 6 provides: "Persons exempt from requirement to make a declaration of intention.—Persons born in the Philippines and have received their primary and secondary education in public schools or those recognized by the Government and not limited to any race or nationality, and those who have resided continuously in the Philippines for a period of thirty years or more before filing their application, may be naturalized without having to make a declaration of intention upon complying with the other requirements of this Act. . . ."

[2] Uy Boco v. Republic, G.R. No. L-2247, Jan. 23, 1950.

[3] De la Cruz v. Republic, G.R. L-4589, Feb. 27, 1953; Song v. Republic, G.R. No. L-3284, Nov. 29, 1950.

and a vocational course in a radio school,[4] or third year high school,[5] is not exempted from making a declaration of intention.[6]

With regards to the second class of persons exempted from filing a declaration of intention,[7] the applicant must have resided continuously and actually in the Philippines for at least thirty years prior to the filing of his petition for naturalization. The said thirty years must be actual or physical, not legal or constructive residence.[8]

However, whatever may be the basis of the exemption from making a declaration of intention, the petitioner must prove that he has enrolled all his minor children of school age wherever they be in the proper schools during the entire residence required of him prior to the hearing of his application.[9]

The foregoing doctrine were applied in the two cases under review. In the *Ng Peng Sia* case, although the applicant has resided continuously in the Philippines for thirty years before the filing of his application, yet he was not exempted from making a declaration of intention for the reason that he had not enrolled all his children of school age in the high school. Applicant's daughter studied only up to Grade IV in the Cagayan Central School before the war and later in the De Lux Fashion School where she took up dressmaking.

In the *Pidelo* case, the petition for naturalization was rejected for failure to file a declaration of intention. The petitioner was not exempted from making a declaration of intention in spite of the fact that he was born in Cebu City, because he completed only the third year high school and did not reside continuously and physically in the Philippines for thirty years preceding the filing of his petition.

Besides, another reason why the petition was refused in this case was the fact that the affidavits of the two character witnesses did not state that they personally knew the petitioner to be a resident of the Philippines for the period required by law, that the petitioner was a person of good repute and that he had in their opinion all the qualifications necessary to become a citizen of the Philippines and none of the disqualifications.[10]

Naturalization —*Affidavits of character witnesses; proof of foreign law; education of applicant.*

KARAM SINGH v. REPUBLIC
G.R. No. L-7567, September 29, 1955
NABIH AWAD v. REPUBLIC
G.R. No. L-7685, September 28, 1955

Under section 7 of Commonwealth Act No. 473, the two character witnesses must be citizens of the Philippines.[1] If only one of them is a Filipino citizen,

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[4] Tan v. Republic, G.R. No. L-5662, April 20, 1954.
[5] Ng v. Republic, G.R. No. L-5253, Feb. 23, 1954.
[6] But see, King v. Republic, G.R. No. L-2437, May 23, 1951, where the Supreme Court seemed to have departed from a strict literal interpretation of the law. In this case, the applicant who was a senior high school student at the time of the hearing of his application was granted Philippine citizenship over the objection of the Solicitor General that he has not finished his secondary education.
[7] See note 1 *supra*.
[8] Uytengsu v. Republic, G.R. No. L-6379, Sept. 29, 1954. Ng v. Republic, *supra* note 5; Yap v. Republic, G.R. No. L-4270, May 8, 1953; Dy Chinco v. Republic, G.R. No. L-4544, Nov. 26, 1951; Tan v. Republic, G.R. No. L-2611, July 31, 1951; Miranda Tio Liok v. Republic, G.R. No. L-4545, Oct. 25, 1952.
[9] Sec. 6 of Com. Act No. 473 provides: "... To such requirements shall be added that which establishes that the applicant has given primary and secondary education to all his children in the public schools or in private schools recognized by the Government and not limited to any race or nationality. ..."
[10] See Com. Act No. 473, sec. 7.
[1] "... The petition must be signed by the applicant in his own handwriting and be supported by affidavit of at least two credible persons, stating that they are citizens of the Phil-

the petition will be denied.[2] The character witnesses must state in their affidavits that they personally know the applicant to be a resident of the Philippines for the period required by law.[3] An affidavit stating that the witnesses personally know the applicant for more than five years when the applicant does not possess a special qualification which will reduce the ten years to five years residence[4] is fatally defective in the sense that such a defect is a ground for the denial of the application.[5]

In the case of *Singh v. Republic*, the Supreme Court was confronted with this question: Can a petitioner introduce a witness who is not one of those who signed the joint affidavit in substitution for an original affiant?

The petition in this case was supported by the joint affidavit of two witnesses, namely: Ernesto Morato and Ratan Singh. Nevertheless, Morato was not presented as a witness during the hearing, but in his stead Salumbides was introduced. No reason or excuse was given why Morato was not called upon to testify in support of the petition. The trial court granted the petition over the objection of the Solicitor General. Hence, this appeal.

In holding that the petitioner could not substitute Salumbides in the place of Morato in the absence of a valid and legitimate excuse for not introducing Morato, the Supreme Court declared:

> "For obvious reasons in order that an imposition may not be made upon the court, it is necessary that the government be informed in advance of the witnesses by whom or by whose testimony a petitioner for naturalization seeks to prove that he possesses all the qualifications and none of the disqualifications enumerated by law. Without previous investigation, it is difficult if not impossible on the part of the government to determine if the witnesses really know or had occasion or opportunity to know the petitioner and for such period of time as may qualify him to testify on petitioner's character, actuations and conduct during the entire period of his stay in the Philippines."

The other ground for the rejection of the petition was the failure of the petitioner to prove that the laws of India of which he was a citizen permit Filipinos to be naturalized therein as citizens. Since under section 10 the petitioner must prove to the satisfaction of the court that he has all the qualifications required by law and none of the disqualifications, and since failure to prove that the laws of the country of the applicant allow Filipino citizens to be naturalized is a disqualification,[6] therefore an applicant who failed thus can not be naturalized for being disqualified.

The application, in *Awad v. Republic*, was denied notwithstanding the fact that the applicant's ability to write Visayan and Tagalog might be implied from his ability to read and write English and to speak Visayan and Tagalog. It was denied because the affidavit of the two character witnesses simply stated that they had known the petitioner for five years when the latter did not have a special qualification which would reduce the ten years residence to five years.

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ippines and personally know the petitioner to be a resident of the Philippines for the period of time required by this Act and a person of good repute and morally irreproachable and that said petitioner has in their opinion all the qualifications necessary to become a citizen of the Philippines and is not in any way disqualified under the provisions of this Act. . . ."

[2] *In Re* Cu, G.R. No. L-3018, July 18, 1951.

[3] See note 1 *supra*.

[4] See Com. Act No. 473, sec. 8

[5] Yuchong Tian v. Republic, G.R. No. L-6029, April 12, 1954.

[6] Com. Act No. 473, sec. 4 provides: "Who are disqualified.—The following can not be naturalized as Philippine citizens: . . . . (h) Citizens or subjects of a foreign country other than the United States whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof."

Naturalization —*Absence within two years from the rendition of the decision granting Philippine citizenship; conviction for violation of government promulgated rule.*

UY v. REPUBLIC
G.R. No. L-7054, April 29, 1955
TE TEK LAY v. REPUBLIC
G.R. No. L-7412, September 27, 1955
TIU SAN v. REPUBLIC
G.R. No. L-7301, April 20, 1955

The law[1] provides that no decision granting an application for naturalization shall become executory until after two years from its promulgation and after the court, on proper hearing, with the attendance of the Solicitor General or his representative, is satisfied, and so finds, that during the intervening time the applicant has (1) not left the Philippines, (2) has dedicated himself continuously to a lawful calling or profession, (3) has not been convicted of any offense or violation of Government promulgated rules, (4) or committed[2] any act prejudicial to the interest of the nation or contrary to any Government announced policies.[3]

Is an absence for medical and business purpose or for vacation purpose included within the prohibition against leaving the Philippines provided for in clause 1 of the afore-cited provision? This is the issue which the Supreme Court had to resolve in the cases of *Uy v. Republic* and *Te Tek Lay v. Republic*.

In the first case, Uy left the Philippines for the United States after his petition for naturalization was approved on a dual purpose, to wit: (1) to submit himself to a medical check-up, and (2) to strengthen the business ties of the Associated Trading Corporation of which he was the general manager.

It was ruled that such an absence was covered by the prohibition above-mentioned. In support of this holding, the Supreme Court asserted:

> "The purpose of the requirement is that during that period of probation the Government and the community wherein an applicant for Philippine citizenship lives be given an opportunity to observe his conduct and behavior and see whether or not he has complied with the other requirements. Moreover, if he is absent from this jurisdiction how could he comply with the requirements of No. 2 to the effect that he has dedicated himself continuously to a lawful calling or profession?"

In this case, the Supreme Court mentioned three instances where an absence from the Philippines within the two years from the promulgation of the decision granting Philippine citizenship is not covered by the said prohibition. These are: (1) if a petitioner leaves the Philippines for an intelligence mission at the instance of the Philippine Government, (2) if the petitioner is kidnapped or otherwise forcibly removed from the Philippines for a short period of time, and (3) where the petitioner is obliged to go and stay abroad, for sometime not too long, to undergo an operation to save his life. In the instant case, however, the absence of the petitioner was not necessary to save his life.

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[1] See Rep. Act No. 530, sec. 1.
final, if the case is appealed to it, or from the time the decision of lower court becomes final if it is not appealed.
[2] Republic v. Makalintal, G.R. No. L-5424, Oct. 24, 1952; Chuasintek v. Barcelona, G.R. No. L-5124, Oct. 8, 1951; Liam Lian Teng v. Republic, G.R. No. L-5681, Nov. 21, 1952.
[3] It is not indispensable that the applicant under clause 4 be convicted of acts prejudicial to the national interest. It is sufficient that he has committed them, and the court may postpone the taking of the oath of allegiance until the criminal cases against him have been decided. Ching Leng v. Republic, G.R. No. L-6268, May 10, 1954.

In the *Te Tek Lay* case, the petitioner left the Philippines for Hongkong after the rendition of the judgment granting his petition for an eight day vacation. In holding that such an absence was included within the prohibition against leaving the Philippines, the Supreme Court declared:

> "If departure for vacation were allowed, so would an absence for business or educational purpose which generally are more meritorious, and often imperative, apart from entailing, in case of educational, a comparatively longer sojourn abroad."

Concerning the petitioner's contention that the prohibition referred to a departure which was intended to change domicile, the Supreme Court held that this is untenable because the word "left" used in said provision connotes material or physical absence, and not an absence with intent to change domicile.

In the *Tiu San* case, the Supreme Court was faced with these questions: (1) Is a municipal ordinance a government promulgated rule within the contemplation of clause 3 of the afore-mentioned provision?; (2) if so, is said clause applicable to a violation of an ordinance which took place before its enactment?; and (3) does said clause make a distinction between offenses *mala in se* and offenses *mala prohibita*?

The facts of this case are: On April 13, 1950, the application of the petitioner was approved. Over two years later, he moved that after due hearing pursuant to Republic Act No. 530, the certificate of naturalization in his favor be issued. The trial court denied the motion on the ground that on April 25, 1952, he was convicted of violating an ordinance of the Municipality of Lucena, Quezon Province, for failure to transfer his lumber yard from the prohibited zone. From this decision, he appealed.

The Supreme Court held that the violation of the municipal ordinance in question was within the prohibition contemplated in clause 3, section 1 of Republic Act No. 530. This is so because in the promulgation of said ordinance the said municipality acted in the exercise of its governmental functions as an agent of the National Government.

Regarding the second question, it was held that the commission of an offense or the violation of a government promulgated rule need not take place within the two-year period from the rendition of the decision granting Philippine citizenship. And as to third question, the Supreme Court ruled that the said clause does not differentiate between a crime *malum in se* and a crime *malum prohibitum* . This may be inferred from the expression "has not been convicted of any offense."

Naturalization —*Application of Rule 38 of the Rules of Court to naturalization cases.*

TY MA SIN v. REPUBLIC
G.R. No. L-7797, September 15, 1955.

It is well-settled that section 113 of Act No. 190 from which sections 2 and 3 of Rule 38 of the Rules of Court[1] are taken applies to all kinds of judgment proceedings.[2]

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[1] Rule 38, sec. 2 provides: "*Petition to the Court of First Instance for relief from judgment or other proceeding thereof.*—When a judgment or order is entered, or any other proceeding is taken, against a party in a Court of First Instance through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same cause praying that the judgment, order or proceeding be set aside."

See I MORAN, COMMENTS ON THE RULES OF COURT 774, 778 (1952 ed.).

However, in view of the provision that the Rules of Court shall not apply to naturalization cases except by analogy or in a suppletory character and whenever practicable and convenient,[2] a doubt arises as to the applicability of Rule 38 to naturalization cases. The Supreme Court in the above-entitled case has removed this doubt by holding that Rule 38 applies to naturalization cases.

In this case, the petitioner applied for naturalization on February 20, 1950. After the publication of petition but before trial, his counsel moved for the dismissal of said petition on the ground that the petitioner was no longer interested in its continuance. On May 23, 1953, the trial court dismissed the petition. However, on December 28, 1953, or 19 months after the case had been dismissed, counsel for petitioner filed a motion for the reconsideration of the order of dismissal and for the reinstatement of the petition claiming that he was mistaken in believing that the petitioner had lost interest in the petition due to his long stay in Manila when in fact the said petitioner only left for medical treatment and had returned to continue his case. The fiscal opposed the motion contending that it was filed beyond the time allowed by section 3 of Rule 38. The trial court held that Rule 38 was not applicable to naturalization cases and ordered the reinstatement of the petition. The fiscal opposed the reinstated petition on the same ground. The lower court granted the petition. Hence, the fiscal appealed.

The Supreme Court held that Rule 38 is applicable to naturalization cases. In the instant case, since the motion to reinstate the petition was filed 19 months after the dismissal thereof, said motion could no longer be sustained for having been filed out of time according to section 3 of Rule 38. Nevertheless, the petitioner may file another petition which should be published anew in accordance wit hthe Naturalization Law.

Felix C. Chavez

Labor Law —*Validity of dismissals, lay-offs, strikes.*

CITIZENS LABOR UNION v. STANDARD VACUUM OIL CO.
G.R. No. L-7478, May 6, 1955
UNION OF PHILIPPINE EDUCATION EMPLOYEES (NLU)
v.
PHILIPPINE EDUCATION CO.
G.R. No. L-7161, May 19, 1955
PHILIPPINE EDUCATION CO.
v.
CIR AND UNION OF PHILIPPINE EDUCATION EMPLOYEES (NLU)
G.R. No. L-7156, May 31, 1955
MACLEOD & CO. OF PHILIPPINES
v.
PROGRESSIVE FEDERATION OF LABOR
G.R. No. L-7887, May 31, 1955

Rule 38, sec. 3 provides: "*When petition filed; contents and verification.*—A petition provided for in either of the preceding sections of this rule must be verified, filed within sixty days after the petitioner learns of the judgment, order, or other proceeding to be set aside, and not more than six months after such judgment or order was entered, or such proceeding was taken; and taken; and must be accompanied with affidavits showing the fraud, accident, mistake, or excusable negligence relied upon, and the facts constituting the petitioner's good and substantial cause of action or defense, as the case may be, which he may prove if his petition be granted."

[2] *In re* Estate of Johnson, 39 Phil. 154 (1916); Reyes v. Gonzales, 47 Phil. 339 (1925); Pania v. Yangco, 52 Phil. 499 (1929); Elviña v. Filamor, 56 Phil. 505 (1931).

[3] See Rule 132, Rules of Court.

SAN MIGUEL BREWERY, INC.
v.
NATIONAL LABOR UNION AND SAMBELA
G.R. No. L-7905, July 30, 1955

Since the case of *Philippine Movie Pictures Workers' Association v. Premiere Production, Inc.*,[1] which held that the right of a person to his labor is property within the meaning of the due process clause, the claim of an employee or laborer to a vested right in his job, i.e., as something more than a mere contractual right,[2] has been laid upon an even firmer basis. At any rate, although the right of an employer to select whom to employ, when, and under what terms and conditions,[3] except as restricted by valid statute is not denied,[4] regulation by the state of the right of an employer to dismiss his employees is no longer open to question.[5] The rule now firmly settled is that an employer cannot dismiss an employee or

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[1] G.R. No. L-5821, March 25, 1953. In that case theCIR, on the basis of an ocular inspection, and without full reception of evidence, granted the company's petition for authority to lay-off 44 of its employees for alleged lack of work. In nullifying the orders of the CIR, Bautista Angelo, J., said: "The right to labor is a constitutional as well as a statutory right. Every man has a natural right to the fruits of his industry. A man who has been employeed to undertake certain labor and has put into it his time and effort is entitled to be protected. The right of a person to his labor is deemed to be property within the meaning of constitutional guarantees. That is his means of livelihood. He cannot be deprived of his labor or work without due process of law."

Compare with: "A laborer should not be dismissed for unimportant infraction and that before he is deprived of his job he should be given a fair hearing." Batangas Transportation Co. v. Bagong Pagkakaisa, 46 O.G. 4286 (1949).

For a review of the Premier Productions case on the due process aspect see Recent Decisions, 28 PHIL. L.J. 404-5 (1953); Comments, 28 PHIL. L.J. 572, 580 (1953); Villatuya and Barrion, *1953 Survey of Administrative Law*, 29 PHIL. L.J. 119, 183, 189 (1954); also FERNANDO & QUISUMBING FERNANDO, ADMINISTRATIVE LAW 147-152 (1953).

[2] Manila Trading & Supply Co. v. Manila Trading Labor Ass'n, G.R. No. L-5783, May 29, 1953, per Bautista Angelo, J.: ". . . we should not lose sight of what the New Civil Code provides that the relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. (Art. 1700). This is in keeping with social justice."

Pursuant to the constitutional mandate providing for state protection to labor said Art. 1700, provides: "The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes and lockouts, closed-shop, wages, working conditions, hours of labor and similar subjects." Rep. Act No. 386 (Civil Code of the Philippines: effective Aug. 30, 1950).

[3] The Court in this connection frequently cites 31 AM. JUR. Sec. 9, 887. Philippine Movie Pictures Workeds' Association v. Premier Productions, *supra*.; Visayan Transportation Co. v. Pablo Java, G.R. No. L-6111, Oct. 22, 1953; Philippine Education Co. v. CIR, G.R. No. L-7156, May 31, 1955. The basis of this employer's right is explained by the Court thus: "The general right to make a contract in relation to one's business is an essential part of the liberty of the citizens protected by the due process clause of the Constitution. The right of a laborer to sell his labor to such person as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person whom it chooses. The employer and the employee have thus an equality of right guaranteed by the Constitution. If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression." Pampanga Bus Co. v. Pambusco Employees' Union, 68 Phil. 541 (1939).

[4] Statutes referred to are ennumerated in Art. 1700, *supra* note 2.

[5] "The policy of Laissez Faire has to some extent given way to the assumption by the government of the right of intervention even in contractual relations affected with public interest." Per Laurel, J., in Ang Tibay v. CIR, 69 Phil. 635 (1940) (concurring opinion), quoted in Antamok Goldfields Mining Co. v. CIR, 70 Phil. 340 (1940); Manila Trading & Supply Co. v. PLU, 71 Phil. 578, 581 (1941); Leyte Land Transportation v. Leyte Farmers' & Laborers' Union, 40 O.G. 173 (1941).

". . . the right of an employer to freely select or discharge his employees, is subject to regulation by the State basically in the exercise of its paramount police power." Manila Trading & Supply Co. v. Zulueta, 69 Phil. 485, 487 (1941).

"Dismissal of laborers shall be subject to the supervision of the Government, under special laws." Art. 1710, Rep. Act No. 386, *supra* note 2. The foregoing provision is in effect a recognition of the power of the CIR to supervise and regulate dismissals in the exercise of its jurisdiction over disputes regarding discharge of employees and laborers under section 4, Com. Act No. 103 (Oct. 29, 1936).

". . . the power of the Court of Industrial Relations to protect employees or laborers unjustly dismissed or separated without just cause, and to order their reinstatement, has been judicially recognized." Luzon Brokerage v. Samahang Luzon Brokerage, G.R. No. L-2950, Sept. 18, 1950, citing Manila Electric Co. v. NLU, 40 O.G. 132 (1941), and Manila Trading & Supply Co. v. Zulueta, *supra*.

laborer except upon just or legal grounds[6] which the empoyer must establish and prove.[7]

The following have been considered just or legal grounds for dismissal: performance of acts inimical to the employer;[8] violation or disregard of company rules,[9] and instructions and orders of the employer or his representative;[10] wilful breach of duty;[11] inattentiveness to the work, or carelessness or negligence in the performance of such duties,[12] or in the care of equipments[13] necessary for the work; insubordination to or disrespect towards the employer or superior;[14] violation of trust or loss of confidence on the part of the employer in the employee where the employment involves the element of trust.[15] Lay-offs, or reduction of personnel due to lack of work[16] are also allowable. And formerly

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[6] The reason for the right of the employer to dismiss an employee when just cause therefor exists I stated in Manila Trading & Supply Co. v. Zulueta, *supra* note 5: ". . . the law, in protecting the right of the laborer, authorizes neither oppression nor self-destruction of the employer." To the same effect is Jacinto v. Standard Vacuum Oil Co., 40 O.G. 13, 20 (1941): "The law cannot compel an employee whose service for which he is paid is not satisfactory and may give cause to accident of which the employer may be civilly responsible." For a more extensive discussion of the right to dismiss to avoid liability, civil or criminal see also Destileria Ayala y. Cia v. Liga Nacional Obrera de Filipinas, 47 O.G. 645 (1949); also Montemayor, J., dissenting in Philippine Long Distance Telephone Co. v. Philippine Long Distance Telephone Workers' Union, G.R. No. L-4157, July 8, 1951.

[7] Mindanao Bus Co. v. Mindanao Bus Co. Employees Association, 40 O.G. 114, 122, (1941); Manila Electric Co. v. NLU, *supra* note 5; Union of Philippine Education Employees v. Philippine Education Co., G.R. No. L-4423, March 31, 1952; Atok Big Wedge Mining Co. v. Atok Big Wedge Mutual Ass'n, G.R. No. L-5594, May 15, 1953. Also Rural Transit Employees' Ass'n v. Rural Transit, CIR No. 142(1), October 4, 1948, cited in CARLOS AND FERNANDO, LABOR AND TENANCY LAW 277 (1953) affirmed by the Supreme Court on appeal; Bachrach Motor Co. v. Rural Transit Employees Ass'n, G.R. No. L-2570, December 29, 1949.

[8] For instance stealing company property although not proved beyond reasonable doubt, Manila R.R. v. CIR, G.R. No. L-4616, July 31, 1952, citing again the malfeasance or misfeasance rule in Manila Trading & Supply Co. v. Zulueta, *supra*; National Labor Union v. Standard Vacuum Oil Co., 40 O.G. 17, 3504 (1941); disorderly conduct such as fighting with coemployee, Dy Pac & Co. v. Katipunan Ng Mga Manggagawa so Kaboy sa Pilipinas, 40 O.G. 13, 22 (1941); Cebu Portland Cement Co. v. Philippine Land, Air and Sea Labor Union, G.R. No. L-4904, January 30, 1952.

[9] Driver of an autocalesa allowed others to drive the vehicle during regular runs in direct violation of company rules, Manila Chauffeurs' League v. Bachrach Motor Co., 40 O.G. 7, 150 (1941).

[10] Refusal to work upon being ordered by superior, Manila Trading & Supply Co. v. Zulueta, *supra* note 5; Union of Philippine Education Employees v. Philippine Education Co., *supra* note 7.

[11] Gatekeeper allowed one of customers who has not paid for the work done on his car to pass through the gate. Manila Trading & Supply Co. v. Zulueta, *supra* note 5.

[12] Laborer repeatedly absenting himself from work without permission. Manila Trading & Supply Co. v. PLU, *supra* note 5. Causing an accident through carelessness. Jacinto v. Standard Vacuum Oil, Co. *supra* note 6.

[13] Running on flat tires, racing with other buses, forgetting gasoline, not cleaning his truck, refusing to help passengers. Batangas Transportation Co. v. Bagong Pagkakaisa, 40 O.G. 9, 51 (1941).

[14] Refusal to submit to disciplinary action. Olaivar v. Manila Electric Co., 40 O.G. 14, 73 (1941); talking in a loud and arrogant tone of voice to the manager, telling him not to force employees to attend meeting called by the company (not proved however) Union of Philippine Education Employees v. Philippine Education Co. *supra* note 7; insulting superiors and chief upon being instructed to go home because he was drunk. Cebu Portland Cement Co. v. Philippine Land, Air and Sea Labor Union, *supra* note 8.

[15] A branch manager who failed to return company property entrusted to him after he joined strike. Manila Trading & Supply Co. v. Manila Trading Laborers' Ass'n, G.R. No. L-April 4, 1949, 46 O.G. 4874; Checker participating in the proceeds of property stolen from the company which could no thave been taken out without his consent. National Labor Union v. Standard Vacuum Oil Co., *supra* note 7, alleged breach of trust not proved. Editor responsible for the chaotic situation in the editorial department, dismissed for loss of confidence in him. Philippine Newspaper Guild Evening News Local v. Evening News, Inc., CIR No. 167-V, Sept. 4, 1948, upheld an appeal on ground that Supreme Court cannot reverse findings of fact of CIR, G.R. No. L-2584, April 28, 1954.

[16] Lack of work may arise from seasonal character of the employment. Central Azucarera de Tarlac v. CIR, 40 O.G. 8, 319 (1941); or use of labor saving devices. Philippine Sheet Metal Workers' Union v. CIR, G.R. No. L-2018, April 27, 1949; failure of the business. Philippine Movie Pictures Workers' Ass'n v. Premier Productions, *supra* note 1.

[17] "In cases in which no special time is fixed in the contracts of service, any one of the parties thereto may cancel it, advising the other party thereof one month in advance." Art. 302, Code of Commerce of Spain, extended to the Philippines in 1888.

Regarding effect of failure to give one month's previous notice the Court held: "The law gives an added proviso that in the case of factors or shop clerks, these shall be entitled to salary during this one month of standing notice. In any case, the one-month notice must be given to any employee, whether factor, shop clerk or otherwise . . . And when such notice is not given . . . not only the factor or shop clerk but any employee discharged without cause, is entitled to indemnity which may be one month's salary." Sanchez v. Lyons Construction Co., G.R. No. L-2779, Oct. 18, 1950. However, in Lara v. Del Rosario, G.R. No. L-6339, April 29, 1954, said provision was deemed repealed by Art. 2270 of Rep. Act 386, which repeals the agency provisions of the Code of Commerce.

under the Code of Commerce,[17] and now under Republic Act No. 1052,[18] termination of an employment the period for which has not been fixed is allowed upon one month's advance notice being given by anyone of the parties, or the payment of one month's separation pay to the employee discharged without service of the requisite notice.

On the other hand dismissals on the following grounds have been invalidated: dismissal of an employee for rejecting to be transferred to another employer for whom the original employer was acting as an agent;[19] for more suspicion or simple apprehension of danger or prejudice to the employer's interest which might result from the employee's continuance in the service of the employer;[20] for featuring in an accident where there is no blame on the part of the dismissed employee;[21] on account of a physical defect visible at the time of employment.[22] And as a corollary to the requirement of just cause for the validity of a dismissal, a stipulation in an employment contract authorizing the employer to discharge the employee even without just cause has been held void as contrary to "law, morals, and public policy." [23] The power of the courts to modify or mitigate dismissals (or suspensions) from work meted out as disciplinary measures when excessive or too severe has also been recognized.[24]

Of the causes for which dismissal is unlawful the one most strictly regulated is dismissal on account of legitimate union activity. Under section 21 of Commonwealth Act No. 103,[25] for instance, the discharge of an employee who acted or is about to act as a witness in any proceeding before the Court of Industrial Relations or any board of inquiry has been declared unlawful. Under Republic Act No. 875,[26] in defining unfair labor practices by employers, the scope of the provision referred to above has been broadened to include specifically the discharge of an employee who has filed charges against the employer under said act. Section 5 of Commonwealth Act No. 213,[27] likewise penalizes any employer who dismisses or threatens to dismiss any employee for the exercise of the right to self-organization, i.e. for having joined or for being a member of a legitimate labor organization. Republic Act No. 875,[28] moreover further secures the pro-

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[17] "In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance.

"The employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of the termination of this employment." Sec. 1, Rep. Act No. 1052 (June 12, 1954). Sec. 2 of said act provides that "any contract or agreement contrary to the provisions of sec. 1 . . . shall be null and void." To the same effect is the Sanchez case, *supra* note 17, regarding any stipulation waiving the benefits of Art. 302 of the Code of Commerce.

[18] Luzon Brokerage v. Samahang Luzon Brokerage, *supra* note 5.

[19] Destileria Ayala y Cia v. Liga Nacional Obrera de Filipinas, *supra* note 6.

[20] Bachrach Motor Co. v. Rural Transportation Employees' Association, *supra* note 7.

[21] Philippine Long Distance Telephone Co. v. Philippine Long Distance Telephone Workers' Union, *supra* note 6.

[22] Barowsky v. Isako, (CA) 40 O.G. 18, 286 (1941).

[23] Batangas Transportation Co. v. Bagong Pagkakaisa, 46 O.G. 9, 4236 (1949); Tidewater Associated Oil Co. v. Victory Employees and Laborers Ass'n, G.R. No. L-2936, Dec. 23, 1949.

[24] Said section provides: "It shall be unlawful for any employer to discharge or threaten to discharge, or in any other manner discriminate against, any laborer or employee because such person has testified or is about to testify, or because such employer believes that he may testify in any investigation, proceeding or public hearing conducted by the court or any board of inquiry."

[25] "Sec. 4. Unfair Labor Practices.—

"(a) It shall be unfair labor practice for an employer:

. . .

"(5) To dismiss, discharge, or otherwise prejudice or discriminate against an employee for having filed charges or for having given or being about to give testimony under this Act."

[26] Approved No. 21, 1936.

[27] The other unfair labor practices by employers under Rep. Act No. 875 are the following:

"(1) To interfere with, restrain or coerce employees in the exercise of their rights guaranteed in section three;

"(2) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

"(3) To initiate dominate, assist in or interfere with the formation or administration of any labor organization or to contribute financial or other support to it;

"(4) To discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . .

tection of the right to self-organization by the inclusion in its definition of unfair labor practices by employers, of an express prohibition against interference by the employer, directly or otherwise,[29] with the exercise of said right, a ban against yellow-dog contracts,[30] as well as any discrimination in regard to hire, tenure, term or condition of employment for the purpose of encouraging or discouraging membership in any labor organization.[31] In relation to the last mentioned unfair labor practice, the doubt as to whether there could be discrimination on account of union activities where there is no encouragement or discouragement of membership in a labor organization, has been settled by implication in the affirmative in *NLRB v. Mackay Radio and Telegraph Co.*,[32] thus expanding the scope of said provision. Any other union activity not covered by the statutory provisions enumerated above may nonetheless be brought within the broad language of the decisions of the Supreme Court as coming within the catch-all category, "on account of union activities."[33]

Union of Philippine Education Employees v. Philippine Education Co.,[34] and *Philippine Education Co. v. CIR and Union of Philippine Education Employees*,[35] (hereafter to be referred to collectively as the Philippine Education cases) involve the same facts. In August, 1950, the Philippine Education Co., petitioned the CIR for authority to reduce its personnel by 50% for the reason that the volume of its business has been substantially reduced as a result of the imposition of more stringent import and export controls. The company's petition was granted on October 30, 1951, and thirty among those included in the list which the company had attached to its petition were authorized to be laid-off for lack of work. Said authorized lay-off, however, was not carried out until January 15, 1958, presumably because the company wanted to comply with its agreement with the union that it will not suspend or dismiss any of its employees until the final termination of the union's appeal in another case[36] involving the same parties. In carrying out the lay-off order, however, it appears that the company had discriminated against union men. This conclusion was based on the following findings of facts:

> ". . . out of the nineteen persons laid-off . . . only eight were taken from among those for whose lay-off the company had asked for authority from the court and only one from the thirty authorized by the court to be laid-off. The court also found—and this fact was found of great weight— . . . almost all of the victims are union men . . . out of the nineteen . . . eighteen are members of the union and only one is not. And in effecting the elimination of said employees the management did not even take up the matter with the union officers."

While the Court nullified the order as a whole it authorized at the same time the temporary suspension of three of those laid-off having found that there was no work for them to do at the time.

Macleod & Co.,[37] is a case of dismissal under article 302 of the Code of Commerce. It appears in this case that the union addressed certain demands to the company for the improvement of their working conditions. Instead of

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"(5) . . .

"(6) To refuse to bargain collectively with the representatives of his employees subject to the provisions of sections thirteen and fourteen."

[29] *Id.*, par. 1

[30] *Id.*, par. 2.

[31] *Id.*, par. 4.

[32] 304 U.S. 333; 58 Sup. Ct. 904; 82 L. Ed. 1381 (1938). In this connection see CARLOS & FERNANDO, LABOR AND TENANCY LAW 76-83 (1953), which discusses the question fully.

[33] For instance see Pepsi-Cola Inc. v. NLU, 46 O.G. 1,130 (1948); Manila Electric Co. v. NLU, *supra* note 5; Bohol Land Transportation Co. v. BLT Employees Labor Union, 40 O.G. 18, 88 (1941).

[34] G.R. No. L-7161, May 19, 1955.

[35] G.R. No. L-7156, May 31, 1955.

[36] Union of Philippine Education Employees v. Philippines Education Co., *supra* note 6.

considering said demands, however, the company notified the laborers involved, who were being paid on piece work basis, that their services would be dispensed with thirty days thereafter, invoking the authority of the provision referred to above as applied in *Barretto v. Sta. Marina*,[38] and *Sanchez v. Lyons Construction, Inc.*[39] The Court here, through Justice Bautista Angelo, after holding said provision already repealed by the new Civil Code, reiterated his observation about article 1700 of said code upon the nature of the relationship between labor and capital in *Manila Trading & Supply Co. v. Manila Trading Labor Association*.[40]

In the *San Miguel Brewery*[41] case the Court reiterated the dictum in *Manila Trading & Supply Co. v. Zulueta*[42]—"an employer cannot legally be compelled to continue with the employment of a person who admittedly was guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interest."

The dismissed laborer in this case was employed by the company as a security guard, the nature of which employment was taken by the Court as an aggravating factor to the offenses he had committed, among them: 1) abandonment of his post twice without permission from his superior; 2) carrying the company pistol outside company premises in violation of company regulations; 3) falsification of report wherein he made it appear that he was on duty on a certain day although he was in fact at the Rizal Memorial stadium watching the Tirso-Mariño fight; 4) leading an immoral life by keeping two paramours and allowing them to stage a scandalous scene in the premises of the company. The Court observed all the above offenses taken together are more than sufficient to justify the dismissal. As regards the last offense, however, it is extremely doubtful if standing alone it would suffice as a ground for dismissing even a security guard.

After some hesitation in the case of *National Labor Union v. Philippine Match Co.*,[43] the Court in *Rex Taxicab Co. v. CIR*,[44] finally settled for an affirmative, if limited, statutory recognition of the right of laborers to strike—even under the system of compulsory arbitration provided for under Commonwealth Act No. 103. There it was held that under said act, strikes are prohibited only "when enjoined by the Court of Industrial Relations and after a dispute has been submitted thereto and pending award or decision by the Court." In any other case the validity of a strike, even of one called during the effective duration of an award,[45] depends ". . . first, upon the purpose for which it is maintained, and second, upon the means employed in carrying it out." The first test—as to the purpose of a strike—was however, subsequently modified in *Luzon Marine Department Union v. Roldan*,[46] to the effect that even if the purpose of a strike is lawful, nevertheless, if the same "is trivial, unreasonable, or unjust . . . the strike, although not prohibited by injunction, may be declared illegal." Accordingly, it has been held that a strike declared for the purpose of enforcing demands for fair labor standards, e.g., higher wages, vacation leave

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[38] G.R. No. L-7887, May 31, 1955.
[39] 26 Phil. 440 (1913).
[40] G.R. No. L-2719, Oct. 18, 1950
[41] *Supra* note 2.
[42] G.R. No. L-7905, July 30, 1955.
[43] *Supra* note 5.
[44] 70 Phil. 300 (1940).
[45] 70 Phil. 621 (1940).
[46] Art. 17, Com. Act No. 103 provides that an award shall be effective during the time specified therein, but in the absence of such specification it may be terminated by either or both parties after three years from its date by giving notice to that effect to the CIR. Dee C. Chuan & Sons v. CIR, G.R. No. L-2216, Jan. 21, 1955. For a contrary view see Quisumbing, *Forestalling Strikes*, 24 PHIL. L.J. 59 (1949).
[47] G.R. No. L-2660, May 30, 1950

and sick leave with full pay,[47] free medical and dental care, hospitalization, insurance benefit,[48] especially when the strike is prompted by the refusal of management to discuss said demands,[49] is not illegal. So also is a strike called in protest against unfair labor practices, such as interference with the right of self-organization[50] or one called to secure modification of stringent and harsh company regulations.[51]

On the other hand, a strike called for the purpose of forcing the dismissal of a foreman charged of unjustifiably assaulting one of the employees despite the efforts of the employer to secure an impartial investigation of the charge,[52] or one called in disregard of and during the efficacy of a settlement recently agreed upon by the parties before the CIR,[53] or in disregard of a grievance procedure embodied in a collective bargaining agreement,[54] have been held illegal as to purpose. So also is a strike instigated by the president of a union whose application for a loan from the company was not acted upon favorably due to his not possessing some of the required qualifications for the loan applied for.[55] A strike when called to protest an unjustified dismissal of a union member is ordinarily one for a lawful purpose. But one such strike was considered unjustified for failure of the union to seek redress through amicable settlement, and also because the strike was unnecessary in view of the fact that the employees dismissed had been paid or were promised one month's separation pay.[56] A sympathetic strike is also for an unlawful purpose.[57]

The second requirement—that the means employed be lawful—is satisfied if the strike is conducted "in an orderly and peaceful manner."[58] Consequently, when the strikers resort to unlawful acts such as sabotage and other acts of vandalism,[59] force, intimidation, violence, or when the top officials of the union use unnecessary and obscene language or ephitets,[60] the strike although for a lawful purpose, becomes illegal thereby. Disapproval of a sit-down strike[61] may be implied from the case of *Liberal Labor Union v. Philippine Can Co.*,[62] wherein the Court, in support of its ruling, invoked the case of *NLRB v. Fansteel Metallurgical Corp.*[63] which outlawed the sit-down strike in the United States.

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[47] Dee C. Chuan & Sons v. CIR, *supra* note 46.

[48] "The plea of the laborer for better conditions and for more workong days cannot be said to be trivial, unreasonable or unjust, much less illegal, because it is not only the inherent right but the duty of all free men to improve their living standards through honest work that pays a decent wage. We cannot hope to have a strong and progressive nation, as long as the laboring class (which constitutes the great majority) remains under constant economic insecurity and leads a life of misery." Per Paras, C. J., Central Vegetable Oil Mfg. Co. v. Philippine Oil Industry Workers Union, G.R. No. L-4061, May 28, 1952.

[49] Central Vegetable Oil Mfg. Co. v. Philippine Oil Industry Workers Union, *supra*, Caltex (Philippines) Inc. v. Philippine Labor Organization, G.R. No. L- 4758, May 30, 1953.

[50] Standard Coconut Corporation v. CIR, G.R. No. L-3723, July 30, 1951.

[51] Rex Taxicab Co. v. CIR, *supra* note 44.

[52] National Labor Union v. Philippine Match Co., *supra* note 42.

[53] Manila Oriental Sawmill v. NLU, G.R. No. L-4320, March 24, 1952.

[54] Liberal Labor Union v. Philippine Can Co., G.R. No. L-4534, March 28, 1952.

[55] Standard Vacuum Oil Co. v. Philippine Labor Organization, G.R. No. L-4556, March 21, 1952.

[56] Union of Philippine Education Employees v. Philippine Education Co., *supra* note 7.

[57] "A sympathy strike would be one that is staged to make common cause with other strikers in other firms or companies, without the existence of any dispute between the striking laborers and the employer. Such a strike is unwarranted and unjustifiable, and cannot be countenanced in this jurisdiction under our constitutional mandates and existing laws, and is highly inimical not only to the interests of the employer but also to the welfare of the laborers as well as to peace and order of the community. Dee C. Chuan & Sons v. Kaisahan, *supra* note 46.

[58] Rx Taxicab Co. v. CIR, *supra* note 44.

[59] National Labor Union v. CIR, 68 Phil. 732 (1939).

[60] Liberal Labor Union v. Philippine Can Co., *supra* note 54.

[61] "The sit down strike has been defined as occurring 'whenever a group of employees or others interested in obtaining a certain objective in a particular business forcibly take over possession of the property of such business, establish themselves within the plant, stop its production and refuse access to the owners or to the others desiring to work.' . . . The sit-down strike should more accurately be defined as a strike in the traditional sense, to which is added the element of trespass by the strikers upon the property of the employer." FRANCISCO, LABOR LAWS 7 (1949).

[62] *Supra* note 54.

[63] 306 U.S. 240 (1939).

In *Rex Taxicab Co.*,[64] it was also settled, following the lead in *NLRB v. Mackay Radio and Telegraph Co.*,[65] that "the declaration of a strike does not amount to a renunciation of the employment relation." Consequently, when a strike is declared valid and the management refuses to reinstate the strikers, the CIR may order their reinstatement. On the other hand, if the strike is illegal it would seem that the strikers have no right to reinstatement.[66] However, in view of the extensive powers lodged in the CIR by Commonwealth Act No. 103, in at least one case the Supreme Court sustained a ruling which declared a strike illegal but which ordered the reinstatement of the strikers.[67] But in that case the Court warned the strikers against the calling of a similar strike at the risk of dismissal.

The claim of strikers to the payment of backpay for the duration of a lawful strike is not a matter of right but is left primarily to the discretion of the CIR in the exercise of its broad powers as the compulsory arbitral tribunal of industrial disputes,[68] subject to the rule that "strikers may not collect their wages during the days they did not go to work."[69] Thus in one case, where a strike was declared lawful but at the same time found to be unnecessary, the striker's claim for back pay was denied.[70]

In the *Philippine Education* cases[71] the employees declared a strike in protest against the discriminatory dismissal of some union member-employees. Such a strike, the Court ruled, is not for a trivial purpose but "one necessary for the protection of their interest." In this regard it might be noted that the Court said, that if the union "staged a walk-out because it believed, rightly or wrongly, that the lay-off . . . was illegal," it is immaterial that the lay-off or dismissal was actually lawful. This rule is consequently, an unmistakable encouragement for vigilance in the assertion of their rights on the part of labor unions.

In the *Citizens Labor Union*[72] case it appears that one Mauricio tried to frame a co-employee, one Alvarez, of issuing a bottle of brake fluid to an outsider in violation of company rules, which nearly caused the latter's dismissal. The matter was investigated by the union and Mauricio was found guilty of the frame-up try. Thereupon the union expelled him as member and at the same time demanded his immediate transfer from the company. The company instead of immediately complying with the union's demand, requested for time to conduct its own investigation in view of Mauricio's protestation of innocence. The union, however, turned down the request and threatened and did declare a strike 48 hours thereafter. The strike reached the CIR in due course but was amicably settled by the parties before the dispute could be ruled upon by the CIR. Some eight months thereafter, the union filed a motion to dismiss the case inasmuch as the controversy had long since become moot. Instead of granting the union's motion, however, the CIR proceeded with the case and found the strike illegal

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[64] *Supra* note 44.
[65] *Supra* note 52.
[66] National Labor Union v. CIR, *supra* note 50.
[67] Union of Philippine Education Employees v. Philippine Education Co., *supra* note 7.
[68] *Ibid.*
[69] "When in case of strikes, and according to the CIR even if the strike is legal, strikers may not collect their wages during the days they did not go to work, for the same reasons of not more, laborers who voluntarily absent themselves from work to attend the hearing of the case in which they seek to prove and establish their demands against the company, the legality and propriety of which demands is not yet known, should lose their pay during the period of such absence from work. The age-old rule governing the relation between labor and capital or management and employees is that of a 'fair day's wage for a fair day's labor.'" J. J. Heilbronn Co. v. National Labor Union, G.R. No. L-5121, quoted in Manila Trading & Supply Co. v. Manila Trading Labor Association, G.R. No. L-5062, April 29, 1953.
[70] Standard Vacuum Oil Co. v. Philippine Labor Organization, *supra* note 55.
[71] *Supra* notes 24, 25.
[72] G.R. No. L-7478, May 6, 1955.

as to purpose. On review the Supreme Court, through Reyes (JBL) J., first inquired into the CIR's ruling upon the validity of the strike. Reversing the CIR's ruling the Court said: ". . . employees have a right to quit working because a fellow employee is obnoxious to them since employees may choose not only their employer but also their associates." [72]

In determining the effect of the above ruling upon the holding in the *Philippine Match Co.*[74] case—that a strike declared for the purpose of securing the dismissal of a foreman accused of having unjustifiably assaulted an employee where the employer had taken proper action on the matter is not for a valid purpose—due consideration should be given to the fact that the dispute in this case had already been settled long before the case was decided on review. Hence, even without an inquiry into the issue of the validity of the strike a similar result would have been arrived at. In this connection it may be pointed out that Mr. Justice Reyes (JBL), considered the uncompromising attitude of the strikers towards the request of the company for an opportunity to conduct its own investigation of the charges against Mauricio "an objectionable feature of the strike." The Court in the *Philippine Match Co.* case felt similarly about the uncompromising attitude of the strikers there towards the company's efforts to secure an impartial investigation of the obnoxious foreman. Perhaps, a more thorough ruling on the point, if not an entirely different one, would have been made were this not rendered unnecessary and inadvisable under the circumstances of the instant case.

As regards the propriety of a dismissal of an already moot controversy without a ruling on the merits, the Court observed:

> "The parties had both abandoned their original positions and come to a virtual compromise and agreed to resume unconditionally their former relations. To proceed with the declaration of illegality would not only breach this understanding, freely arrived at, but unnecessarily revive animosities to the prejudice of industrial peace."

The unusual enthusiam displayed here by the CIR in insisting to give due course to the case long after it had been settled by the parties themselves deserves stronger condemnation than the mild commentary of Mr. Justice Reyes (JBL). For in the least it reveals a misconception by the judges of the CIR of that court's function. For if the CIR was intended as an agency for settling and forestalling industrial disputes then its intervention in this case is not only superfluous but a serious abuse of authority. Plainly there is nothing here to forestall nor to settle. And to argue that the court's sole purpose in ruling upon the case on the merits is to protect the employer against unlawful union activities, is to confess a bias, which taking into account the nature of the court's function is immoral and intolerable, especially when it is considered that here the employer had not sought the court's protection, or at least had abandoned its plea for protection.

In *Macleod & Co.*,[75] there is an apparent modification of the rule as regards the right of strikers to backpay during the period of the strike. In this case although the laborers actually declared a strike the Court thought that the walkout—staged by the employees upon notification of their separation from the em-

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[72] Citing 31 Am. Jur. Sec. 211, pp. 937-38; 62 C.J. 658; 56 C.J.S. 154.
[74] *Supra* note 42.
[75] *Supra* note 37.
[76] "The age-old rule governing the relation between labor and capital . . . is that of a 'fair day's wage for a fair day's labor.' If there is no work performed by the employee there can be no wage or pay, unless of course, the laborer was able, willing and ready to work but was illegally locked out, dismissed or suspended. It is hardly fair or just for an employee or laborer to fight or litigate against his employer on the employer's time." J. P. Heilbronn Co. v. National Labor Union, *supra* note 68.

ployment one month thereafter—"was not of their own volition, but in spite of it" inasmuch as they "were practically locked out." Although this observation does not seem to conform with the facts because the workers were merely notified of their coming dismissal and not prevented from coming to work, it is at least consistent with its earlier ruling upon the issue of the validity of a dismissal under article 302 of the Code of Commerce, which the company attempted here. Here the Court held in support of its order for the payment of backpay, that in similar situations, i.e. where a strike is forced upon the strikers under circumstances amounting practically to a lockout (or alternatively, an unlawful dismissal), the "fair day's wage for a fair day's abor" rule does not apply.[76] Whether this ruling will be followed in future bona-fide strike case is at best a matter of conjecture.

Again in the *Philippine Education* cases it was found that acts of violence were committed by some of the strikers against some employees who refused to join the strike. These, however, were found to be merely "isolated . . . and committed without the knowledge and sanction of the officers of the union," hence not properly imputable to the union as a whole. Consequently, only the strikers responsible for said acts of violence were ruled to be the only ones who should be held responsible therefor. And it was within the power of the CIR to order disciplinary action against them. Here the guilty strikers were held not entitled to reinstatement and their readmission by the company was left at the latter's discretion. The Court here further upheld the power of the CIR to take disciplinary action against erring strikers, independently of other remedies which may be resorted to by the injured parties.

Labor Law —*Bonus, a mere act of liberality, or an enforceable obligation?*

ATOK-BIG WEDGE MINING CO. v. CASTILLO ET AL
G.R. No. L-7518, May 27, 1955
PAMBUJAN SUR UNITED MINE WORKERS v. CIR & SAMAR MINING CO.
G.R. No. L-7177, May 31, 1955

Nowhere, perhaps, is the quest for legal certainty more particularly frustrating than in the search for a definitive legal basis of the new seemingly positive and enforceable obligation of an employer to grant bonuses to his employees, the term bonus, as used in employment contracts, being ordinarily understood as partaking of the nature of a gratuitous concession to an employee, over and above his usual salary or wage.[1] To be sure, the traditional rules on contracts[2] no longer serve as certain guides, for the relation between capital and labor, being impressed with public interest, has been withdrawn from the realm of ordinary contracts[3] and brought within the area of effective governmental regulation.[4] Nonetheless, it is repeatedly asserted in the cases that the "general rule" still prevailing is the oft-quoted doctrine that the grant of a bonus is a mere act of generosity or liberality on the part of the employer to his employees, and is, therefore, not a demandable or enforceable obligation.[5] Ex-

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[1] 35 Am. Jur., Sec. 71, pp. 501-502.
[2] Articles 1305-1422, Rep. Act No. 386 (Civil Code of the Philippines: effective Aug. 30, 1950).
[3] Art. 1700 *et seq.*, *supra* note 2.
[4] Com. Act No. 103, Nov. 21, 1936.
[5] "As a rule a bonus . . . is an act of generosity of the employer for which the employee ought to be thankful and grateful . . . . The occasion for its grant or payment is usually during the time of the year when people are more generous and inclined to give. This is the Christmas holidays. . . . From the legal point of view a bonus is not a demandable and enforceable obligation." Philippine Education Co. v. CIR, G.R. No. L-5103, Dec. 24, 1952.
"The granting of a bonus is not obligatory but a mere act of generosity or liberality on the part of the management to the employees meriting the same." Dy Pac & Co. v. Kaisahan ng mga Manggagawa sa Kahoy, CIR Nos. 75-V and 75-(I), Oct. 14, 1947.

cept when the obligation to grant bonuses has been made part of a general agreement as to wages and salaries,[6] payment of which is either absolute,[7] or conditional,[8] and in such amount as the employer may determine,[9] or to be determined on some other basis.[10] However, even a unilateral promise to grant bonuses made by an employer, directly to the employees,[11] or indirectly, as for instance, through a newspaper advertisement,[12] is sufficient, provided that such promise is reasonably clear and definite.[13] A unilateral promise to grant bonuses, is moreover, no longer assailable on the ground of lack of consideration, the presumption that the same has been offered as an inducement for greater efficiency and loyalty, having been held sufficient consideration therefor.[14] Neither is the defense that the promise is an unratified undertaking of an officer of a corporation without sufficient authority,[15] considered a meritorious one if the promise had been made by an officer with apparent authority, e.g. the vice president who is at the same time the assistant general manager of the corporation,[16] and especially, under circumstances where the corporation may be held in estoppel, or to have ratified the unauthorized undertaking through acquiescence.[17] Furtheremore, the obligation to grant bonuses may be inferred as an "implied term" of an employment contract from the prior practice of granting the same over a period of years.[18] However, a satisfactory and practicable criterion for determining when an annual grant of bonuses over a period of years may be properly considered as merely a fortunate series of acts of liberality, or such "prior practice" as amounts to an "implied term" to continue such grants

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[6] "From the legal point of view a bonus is not a demandable . . . obligation. It is so when it is made a part of the wage or salary or compensation. In such a case the latter would be fixed amount and the former would be a contingent one dependent upon the realization of profits. If there be none, there would be no bonus." Philippine Education Co. v. CIR, *supra* note 5.

"Whether or not bonus forms part of wages depends upon the circumstances or conditions for its payment. It is an additional compensation which the employer promised and agreed to give without any conditions imposed for its payment, such as success of business or greater production or output, then it is part of the wage. But if it is paid only if profits are realized or a certain amount of productivity achieved it cannot be considered part of the wages." Atok-Big Wedge Mining Co. v. Atok-Big Wedge Mutual Benefit Ass'n, G.R. No. L-5276, March 3, 1953.

[7] Liebenow v. Philippine Vegetable Oil Co., 39 Phil. 69 (1918). In this case the contract of employment sued upon by the plaintiff provided that the latter would be "entitled to such further amount in the way of bonus as the board of directors might see fit to grant." Construing said bonus provision the Court held that while the undertaking to pay the same was absolute, yet the amount was discretionary upon the employer such that the one-peso bonus payment made here was held sufficient compliance with the above undertaking.

[8] For instances see Atok-Big Wedge Co. v. Atok-Big Cedge Mutual Benefit Ass'n, *supra* note 6.

[9] *Supra* note 7.

[10] *Supra* notes 6 and 8.

[11] H. H. Hencock Co. v. National Labor Union, G.R. No. L-5517, July 31, 1954. In this case after the publication in several daily newspapers that the company would grant its employees bonuses that year the employees were subsequently informed by two officials of the company about the bonus payments published in the newspapers.

[12] *Ibid.*

[13] Atok Big Wedge Mining Co. v. Atok Big Wedge Mutual Benefit Ass'n, *supra* note 6.

[14] "The company . . . maintins that no valid obligation to pay the bonus in question could arise, because there was no consideration thereof. It is sufficient to state that any extra concession granted by the employer to his employee or laborer is necessarily premised on the need of improving the latter's working conditions to the highest possible level, in return only for the efficient service and loyalty expected from the employee or laborer." *Supra* note 11.

[15] "Authority of Officers and Agents. . . . . Their authority to bind the corporation is not usually conferred merely by virtue of their office, but by resolution of the directors, by the by-laws of the corporation or impliedly by acquiescence in a general course of business. Contracts or acts in excess of their actual authority will not bind the corporation, in the absence of estoppel or ratification. When there is no holding out or clothing of an officer or agent with apparent authority, all persons dealing with him are bound to ascertain the scope of his authority. If they deal with him, they must verify his authority at their peril, and cannot hold the corporation if the officer or agent was without authority in fact, unless they can establish an estoppel against the corporation, or show a ratification." SALONGA, PRIVATE CORPORATIONS 219-220 (1952).

Under the Civil Code, however, employees or laborers dealing with corporate-employers are no longer treated strictly as third persons 1701 provides: "Neither capital nor labor shall act oppressively against the other, or impair the interest or convenience of the public." Or more pointedly, Art. 1702: "In case of doubt all labor . . . contracts shall be construed in favor of the safety and decent living for the laborer ." See also, Campos, Jr. and Lopez-Campos, *Survey of Mercantile Law*:1954, 30 PHIL. L.J. 255, 265 (1955).

[16] H. H. Hencock Co. v. National Labor Union, *supra* note 11.

[17] SALONGA, *op cit. supra* note 14.

[18] Shulman, *Reason, Contract, and Law in Labor Relation*, 68 HARV. L. REV. 999, 1010-11 (1954); Powell v. Republic Creosoting Co., 19 P.2d 918.

regularly in the future, has yet to be formulated.[18a] Citing an American case[19] which held that a regular annual bonus payment over a period of thirteen years constitutes an implied agreement, the Supreme Court ruled that the grant of bonuses over a period of three years is likewise such practice as amounts to an "implied term."[20] The familiar formula—"the demands of justice and equity"—has, of course, always proved conveniently sufficient. Where the company granted Christmas bonuses to high salaried employees but denied low-salaried employees similar benefits although the amount intended for them had already been set aside, are such "peculiar facts and circumstances" to which the old formula is the fit solution.[21] And when the question of a bonus is set in the context of an industrial dispute, the CIR, in the exercise of its broad power to settle and forestall such disputes in a proper case,[22] may include in its decision or award an order for the payment of a bonus, in such amount as it may determine,[23] taking into account the "justice, equity and substantial merits of the case,[24] whether or not a specific demand for such relief has been made[25] by the proper party.

In the instant case of *Atok-Big Wedge Mining Co. v. Castillo*,[26] the facts of which are not in dispute, the Court summarized the facts upon which it founded the company's obligation to grant the bonuses claimed as follows:

> "The payment of Christmas bonus is more justifiable in the case at bar than in the Philippine Education case[27] in which said bonus was given for three (3) consecutive years, for petitioner herein had paid it for five (5) consecutive years, and regarded the amount of the Christmas bonus for 1951 as 'current liability,' or 'part of the cost of production,' which was not done by the Philippine Education Co. These circumstances become more significant when we consider that a former superintendent of petitioner . . . had told its laborers . . . 'that the Christmas bonus . . . would be increased,' thus indicating, not only that said bonus would be paid . . . but that it would be 'increased.' Although the order of the Presiding Judge, reversed by the Court *in banc*, questions the competence of Canon to premise said payment, the presumption is that he had been duly authorized to act as he did, in the absence of satisfactory proof to the contrary . . . What is more, instead of being disauthorized by petitioner's board of directors, the manner in which it accounts were kept, particularly the inclusion of the amount of the bonus in 'the cost of production,' and the treatment thereof as 'current liability,' confirms said promise or amounts to a ratification and the implementation thereof. In this respect the situation is analogous to that which obtained in H. E. Heacock Co. v. National Labor Union,[28] . . . in which a promise of the President and General Manager of the Company was one of the factors which led to the decision favorable to the payment of bonus to the employees concerned."

In *Pambujan Sur United Mine Workers v. CIR & Samar Mining Co.*,[29] it appears that the company had caused to be published in a Manila daily a news item that a "loyalty bonus" would be paid to its laborers, particularly the members of another union working also for said company, mimeographed copies of which were circulated to all of the employees of the company. It also appears that the company had been paying in increasing amounts since 1949, Christmas

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[18a] "As has been held by this Court . . . Christmas bonus is a gift and a privilege and, therefore, its grant depends upon the liberality of the giver and is not a right on the part of the receiver; . . . the fact that Christmas bonus has been granted in the past cannot change the nature of Christmas bonus because its grant depends upon many circumstances." Atok Big Wedge Mining Co. v. Atok Big Wedge Benefit Ass'n, *supra* note 6.

[19] Powell v. Republic Creosoting Co., *supra* note 16.

[20] Philippine Education Co. v. CIR, *supra* note 2.

[21] H. E. Heacock Co. v. National Labor Union, *supra* note 11.

[22] Sec. 4, Com. Act No. 103, *supra* note 4.

[23] Philippine Education Co. v. CIR, *supra* note 2.

[24] Com. Act No. 103, Sec. 24.

[25] *Id.*, Sec. 13.

[26] G.R. No. L-7518, May 27, 1955.

[27] *Supra* note 2.

[28] *Supra* note 11.

[29] G.R. No. L-7177, May 31, 1955.

bonuses to all its employees. In 1952, however, although such bonuses were paid to the monthly-paid employees as usual in amounts equivalent to one-month's salary, similar benefits to the daily-paid laborers were omitted without explanation. Thereupon said laborers, through the union, demanded the payment of similar bonuses. In its letter to the union the company explained that Christmas bonuses were not paid to the claimant-laborers because the company was not in a position to do so in view of "tremendous losses during that year." Although after subsequent negotiations the company finally conceded and did pay Christmas bonuses to the laborers concerned in amounts equivalent to one week's wages, said laborers were not satisfied inasmuch as the amount granted to them the previous year was equivalent to one-month's wages, and during the other two years in inverse order, the equivalent of 26 days' and 18 days' wages respectively.

Upon review in due course, the Supreme Court, in reversing the CIR's denial of the union's demands on the theory that the bonuses being claimed by them was "an efficiency bonus . . . payable only if the desired goal of production is . . . obtained," based the company's liability for the unpaid Christmas bonuses on the following facts: 1) the newspaper advertisement which it considered as amounting to a clear unilateral promise to grant bonuses that year; year; 2) the company's letter to the union explaining the omission of the bonuses in question as due to losses, which the Court ruled was an implied recognition of an obligation to pay said bonuses provided that profits would be realized [30] which the Court found for a fact contrary to the company's allegation of losses; and 3) the three years' consecutive payment of said bonuses which was deemed sufficient to constitute such practice into an "implied aggreement." Here however, the Court did not think that the Christmas bonuses equivalent to one week's wages which the company subsequently granted were consonant with the "demands of equity and justice," inasmuch as they were patently discriminatory compared to the one month's salary bonuses granted to the monthly-paid employees. Instead of fixing the proper amount, however, the Court chose to remand the case to the CIR for a determination of a more equitable amount on the basis of the company's ability to pay. This last gesture on the part of the Supreme Court would seem to substantiate the observation made earlier that the CIR has authority not only to order the payment of bonuses, but also to determine the amount of such payments.[31]

Jose C. Laureta

Legal Ethics—*Violation of attorney's oath as ground of suspension or removal.*

GAUDENCIO TIAMZON v. DOMINADOR REYES
Administrative Case No. 165
October 12, 1955

In a sense, attorneys are officers of the court. As such, they are subject to the supervision of the court.[1] Thus, the Rules of Court [2] provide that the

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[30] The pertinent portion o fthe company's letter reads: "The daily workers of the mine were not paid bonuses during Christmas . . . because the Company had suffered *tremendous losses* . . . and is not in a position to effectuate the payment."

[31] *Supra* note 21.

[1] *In re* admission to the Bar of unsuccessful candidates of 1946 to 1948, Albino Cunanan, et al., petitioners, 50 O.G. 1602 (1954), at 1609-18. "The right or power to discipline attorneys by suspension or disbarment is inherent in the courts and has been exercised from the earliest times, and whenever a proper case is made out it is its duty to exercise it. The power to disbar

Supreme Court may suspend or remove a member of the Bar from his office as attorney on the ground of deceit,[3] malpractice or other gross misconduct in such office,[4] conviction of a crime involving moral turpitude,[5] willful disobedience of the lawful order of a superior court,[6] or corruptly or willfully appearing as attorney without proper authority,[7] or violation of his oath.[8]

Great as is this power, it is not to be exercised arbitrarily at the pleasure of the court. Rather, it is one to be used with moderation and caution in the exercise of sound discretion and only for the most weighty reasons and upon clear legal proof.[9] Thus, in the instant case of *Tiamzon v. Reyes*, the Supreme Court dismissed an administrative case after finding the charges levelled against the respondent baseless.

Briefly, the facts of the case are:

Complainant charged the respondent, a member of the Bar, with violation of the rules of legal ethics,[10] and the attorney's oath [11] in that respondent maliciously instigated Anacleto Tiamzon to file an application for the registration of a parcel of land when said respondent very well knew that the parents of Anacleto or at least his father was then alive, that the parcel of land belonged to said parents, that inasmuch as he and Anacleto were brothers, he (Gaudencio) had a half interest in the said parcel of land, and that as a result of the registration and adjudication of the land to Anacleto, complainant lost his share of the inheritance.

The case was referred to the Solicitor General who in turn indorsed it to the assistant fiscal. The fiscal found that the land in question formerly belonged to Baldomero Tiamzon, who in 1889 left to Hilario, father of Anacleto and the herein complainant, that Hilario transferred the land to Anacleto, that since then, Anacleto had been in possession of the land as owner and had it surveyed

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or suspend an attorney is judicial in its nature and can be exercised only by the courts, and cannot be defeated by the legislative or executive departments, although statutes may regulate its exercise. The suspension or cancellation of an attorney's license by a court exercising its inherent or statutory authority does not contravene either the federal or state constitution." 7 C.J.S. 728-9.

[3] Rule 127, sec. 25. The Court of Appeals or the courts of first instance are empowered to suspend attorneys for the same causes and are required to transmit to the Supreme Court a certified copy of suspension and full statement of the facts on which the same is based. Rule 127, secs. 26-27.

[4] *E.g., In re* Adriatico, 17 Phil. 324 (1910); *In re* Paraiso, 41 Phil. 24 (1920); *In re* Carmen, 41 Phil. 899 (1920); Monterey v. Arayata and Montoya, 61 Phil. 820 (1935); Rosenwaig v. Pineda, 70 Phil. 415 (1940).

[5] *E.g., In re* Carmen, 41 Phil. 899 (1920); Cantorne v. Ducusin, 57 Phil. 23 (1932); Malegrito v. Barba, 58 Phil. 513 (1933); Aguirre v. Ramos, 70 Phil. 63 (1940); *In re* Santiago, 70 Phil. 66 (1940).

[6] *E.g., In re* Bass, 41 Phil. 257 (1920); *In re* Asada, 60 Phil. 915 (1934).

[7] Rule 64, sec. 3 and Rule 127, sec. 20.

[8] *Supra* note 6.

[9] *In re* Hamilton, 24 Phil. 100 (1913); *In re* De la Lara, 27 Phil. 176 (1914); *In re*, Sotto, 33 Phil. 532 (1918).

[10] 7 C.J.S. 729-30. *In re* McDougall, 3 Phil. 70 (1903).

[10] The complainant must have in mind Canon 28 which states: "It is unprofessional for a lawyer to volunteer service to bring a lawsuit except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit or collect judgment, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of actions in order to secure them as clients or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office, or remunerate policemen, court or prison officials, physicians, hospital attaches, or others who may succeed, under the guise of giving disinterested friendly service, in influencing the criminal, the sick and injured, the ignorant or others, to seek his professional services. . . ."

[11] The Attorney's Oath reads in part: "I ———————— do solemnly swear that . . . I will not wittingly or unwittingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same."

Rule 127, sec. 19 also provides in part: "It is the duty of an attorney: . . . (c) To counsel or maintain such actions or proceedings only as appearing to him to be just, and such defenses only as he believes to be honestly debatable under the law. . . . (g) Not to encourage either the commencement or the continuance of an action or proceeding, or delay any man's cause, from any corrupt motive or interest."

for purposes of registration, and that complainant had no half interest as he claimed, he having received his share of the inheritance. What is more, the findings of the investigator showed that respondent did not instigate, much less maliciously, Anacleto to apply for registration and that he never knew whether or not Anacleto's father was dead because he had lost tract of him, that he was in no way responsible for the allegation in the application which Anacleto ratified before him to the effect that he inherited the parcel in question from his deceased parents. The Supreme Court approved the report and dismissed the case.

Legal Ethics—*Charging lien must be recorded before, not after, debtor has complied with judgment.*

GREY v. INSULAR LUMBER CO.
G.R. No. L-7777, October 31, 1955

The Rules of Court [1] secures to an attorney a lien on the funds, documents, and papers which have lawfully come into his hands and a lien on all judgments for the payment of money which he has secured for his client. Courts, in the exercise of their exclusive supervisory authority over attorneys as officers of the court, are bound to respect and protect the attorney's lien which in the words of Chief Justice Marshall "is necessary to preserve the decorum and responsibility of the profession." [2] Thus, Rule 127, Section 37 provides:

> "An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his possession, and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgment, or issuing such execution, and shall have caused a written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgment and execution as his client would have to enforce his lien and secure the payment of his just fees and disbursement."

The first sentence of the section refers to the retaining lien, and the second, to the charging lien. A retaining lien is a right of an attorney to retain funds, documents and papers of his client which have lawfully come into his possession. It does not attach to anything not in his hands. It exists only so long as the attorney retains possession of the subject matter and expires when the possession ends. Being only a passive right, the retaining lien cannot be actively enforced. It amounts to a mere right to retain papers as against the client until the attorney is fully paid.[3]

On the other hand, the charging lien is that which an attorney has upon all judgments for the payment of money and execution issued pursuant to such judgment which he has secured in the litigation of his client.[4] Thus, an attorney who has not obtained a judgment for his client does not have a right to enforce a lien.[5] The charging lien arises only from and after he shall have caused

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[1] Rule 127, sec. 37.
[2] Rustia v. Abeto, 72 Phil. 133 (1941).
[3] *Ibid.*, at 135, citing Note 51 Am. St. Rep. pp. 251, 255; 7 C.J.S., attorneys at-law, sec. 317, p. 817, p. 1161
[4] II MORAN, COMMENTS ON THE RULES OF COURT 923 (3rd ed. 1980), citing 6 C.J.S. 765-68, 5 AM. JUR. sec. 310 pp. 333-38.
[5] De la Peña v. Hidalgo, 20 Phil. 323 (1911); Morente v. Firmalino, 71 Phil. 49 (1940).

a statement of his claim of such lien to be entered upon the records of the court that renders the judgment or issues the execution. Hence, where *A* assigns his judgment credit to *B* on Nov 9, 1932, which *B* registered on Dec. 8, 1932, and *C*, attorney of *A*, made his lien appear of record only on Sept. 15, 1933, the Court held that the mortgage credit of *B*, was prior to *B*'s lien, and, therefore, should be paid first. But once recorded, the lien does not lose its preferential nature simply because it was subsequently assigned to another.[6]

In order to be entitled to such a lien, an attorney (1) must cause a statement of his claim to be entered on the records of the court rendering the judgment or issuing the execution, and (2) must cause a written notice thereof to be served on his client and the adverse party. As regards the first requirement, the attorney may cause the statement of his lien to be registered even before the rendition of any judgment, because the purpose is merely to establish his right to the lien. The recording is distinct from the enforcement of the lien which may take place only after judgment received in favor of his client. The provision also permits the registration of attorney's lien although the lawyer concerned does not finish the case successfully in favor of his client.[7]

But the mere recording of a lien for the reasonable value of legal services rendered does not of itself legally ascertain or determine the amount of the lien, especially, where the amount is contested. Upon the lawyer claiming such a lien devolves the duty of alleging and proving that the amount is unpaid, reasonable, and just, and upon that question the client has a legal right to be heard. Otherwise, he would be bound by the amount specified in the lien even though it is not just or it may have been paid.[8] When a judgment creditor assigns his right, it is not error for a court to grant the assignees the right to intervene because in the end, they will have to pay the fees to be allowed the attorneys for the original plaintiff.[9]

The question arises as to whether a lawyer who has secured a money judgment for his client can claim a lien on the amount of money *after* the judgment debtor has complied with the judgment. The Supreme Court held that he could not in the instant case under review. Briefly the facts of the case are:

In compliance with the judgment of the lower court, which was affirmed by the Supreme Court, defendant company issued a check for ₱88,453.56 in the name of Ruth Grey, administratrix of the plaintiff's estate and delivered it to Atty. Carlos Hilado, plaintiff's counsel. Hilado then filed a motion with the trial court asking that he be paid his contingent fee of 25% or ₱22,113.39 of the judgment by virtue of a contract between him and the deceased M. E. Grey. The defendant company objected, and after trial, the lower court ordered the defendant company to issue a check one for ₱66,340.39 in the name of Ruth Grey and another for ₱22,113.39 in the name of Atty. Carlos Hilado. From an order denying defendant's motion for reconsideration, defendant company appealed. In reversing the order, the Court through Justice Montemayor, held that the lien should have been recorded *before* and not *after* the defendant company had complied with the judgment. To do so, Attorney Hilado, first, should have proved the contract for contingent fee; and second, the fact that it was

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[6] Menzi & Co. v. Bastida, 63 Phil. 16 (1936).

[7] Palanca v. Pecson, 50 O.G. 4, 1585 (1954). But the abandonment of a case is fatal to an attorney's lien. Thus, where an attorney demanded of his client to allow him to turn the case over to some other lawyer or "I am considering that the case is closed," the court held there was abandonment. The court further held: "When he withdraws he breaks the charm that sustained his lien. He himself has destroyed the relationship necessary to support the equitable right that insured payment of his fees." Eisenberg v. Brand, 144 Misc. 878, 259 N.Y. Supp. 57 (1932).

[8] Dalhke v. Vina, 51 Phil. 707 (1928).

[9] Otto Gmur, Inc. v. Revilla, 55 Phil. 627 (1931).

unpaid, reasonable and just. The other party should also be heard. True it was that Atty. Hilado gave notice to Atty. Jose A. Strachan on March 8, 1954. But the order of the court was issued on March 16, 1954, which means a period of eight days only which the court considered to be too short a time to enable Atty. Strachan to communicate with Ruth Grey, then in the United States. Especially is this so in view of the fact that what Atty. Hilado was claiming were contingent fees.[10] The Court cited the case of *Ulanday v. Manila Railroad Co.*,[11] holding that contingent fees are not prohibited in the Philippines and, since impliedly sanctioned by law, should be under the supervision of the court in order that clients may be protected from unjust charges.

Moreover, the Court held that—

> "Upon the payment of judgment debt . . . the said amount may be considered to have formed part of the funds of the estate and so to be *in custodia legis* notwithstanding the probate court has jurisdiction over the properties belonging to the estate though temporarily held by third parties. Any payment of attorney's fees by the estate will have to be approved by the probate court." [12]

Vicente V. Mendoza

Taxation—*Real estate dealer's tax; double taxation.*

SANCHEZ v. COLLECTOR OF INTERAL REVENUE
G.R. No. L-7521, October 18, 1955
51 O.G. 5130 (1955)

The subject of taxation in this case is the business of dealing in real estate as defined in the National Internal Revenue Code.[1] It appears that Veronica Sanchez is the owner of a two-story four-door "accessoria" building at Pasay City which she constructed in 1947. Veronica lives in one of the apartments but the rest are leased to other persons. In 1949 she derived an income therefrom of ₱7,540.00. The evidence also shows that Veronica runs a small store in Pasay City market from which she derives an annual income of about ₱1,300. In 1951, the Collector of Internal Revenue made a demand upon the appellant for the payment of ₱168.51 as income tax for the year of 1950 and ₱637.00 as real estate dealer's tax for the years 1946 to 1950 plus ₱50 compromise. These amounts were paid under protest. This action is brought to compel the refund of the amounts collected. The first question that has to be decided by the court is whether or not the appellant is a real estate dealer under the provisions of Republic Act 42 as embodied in Section 194(s) of the Tax Code. The appellant

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[10] A contingent fee is a fee stipulated to be paid to an attorney for his services in conducting a suit or other forensic proceeding only in case he wins it; that is, a fee which is made to depend upon the success or failure in the effort to enforce a supposed right, whether doubtful or not. It may be a percentage of the amount recovered. 7 C.J.S. 1062.

[11] 45 Phil. 540 (1923). Canon 13: "CONTINGENT FEES—A contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness." *See* also MALCOLM, G. A., LEGAL AND JUDICIAL ETHICS 58 (1948).

In justifying contracts for contingent fees, the Committee of Censors of the Law Association of Philadelphia, reported that "a contingent fee arrangement is necessary for the protection of the general run of injured persons, who are usually in no financial condition to agree to pay expenses much less advance or provide for cost in case of no recovery." HICKS, F. C., ORGANIZATION AND ETHICS OF THE BENCH AND BAR 395 (1932).

[12] *Accord*: Palanca v. Pecson, *supra*, at 1587-88. The application for the fixing of attorney's fees may be passed upon by the probate court in the same proceedings where attorney's services were to be rendered.

[1] The pertinent provision which is Section 194(s) of the Tax Code as amended by Rep. Act No. 42, under which this case was decided, provides: "Real estate dealers include all persons who for their own account are engaged in the sale of lands, buildings or interests therein or in leasing real estate." The amendment made by Rep. Act No. 588 is broader.

invoked the earlier case of *Argellies v. Meer.*[2] But the Supreme Court, after pointing the salient distinction between that case and the case at bar, held that the Argellies case is not applicable and so the court declared in this case that:

> "Considering therefore that the appellant constructed her four-door 'accessoria' purposely for rent or profit; that she has been continuously leasing the same to third persons since its construction in 1947; that she manages her property herself; and that said lease holding appears to be her main source of livelihood, we conclude that appellant is engaged in the leasing of real estate and is real estate dealer as defined by section 194(s) of the National Internal Revenue Code as amended by Republic Act No. 42."

Another argument raised by the appellant is that there is double taxation inasmuch as she is already paying real estate tax on her property as well as income she derives therefrom. The Court resolved this objection by reiterating its previous ruling in *People v. Mendaros*,[3] to the effect that "it is a well settled rule that a license tax may be levied upon a business or occupation although the land or property used therein is subject to property tax," and that "the state may collect an *ad valorem tax* on property used in a calling and at the same time impose a license tax on the pursuit of that calling," the imposition of the latter kind of tax in no sense a double tax.[4]

Mariano M. Tajon

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[2] G.R. No. L-3780, April 25, 1952. The distinction is pointed out in this manner. "In that case, Argellies had always resided outside of the Philippines and his properties in Manila were administered and managed by a local real estate company. We held that Argellies could not be considered as engaged in business of letting real estate, because he did not appear to have invested the rents received by him from this country, nor to have taken part in the management of his local holdings. In the case at bar however, it was appellant who had the apartment in question constructed purposely for lease or profit and she manages the property herself. While she runs a small store in Pasay market, it is unlikely and the evidence does not show that she devotes all her personal time and labor to such store, considering its size and the fact that she derives little income therefrom. On the other hand, the work of attending to her leased property and her tenants would not take much of her time and attention especially since she lives in the premises herself. And the leasing of her apartment appears to be her principal means of livelihood, for the income she derives therefrom amounts to more than five times that which she makes from her store." *Cf.* Imperial v. Collector, G.R. No. L-7914, Sept. 30, 1955.

[3] G.R. No. L-6975, May 27, 1955. Briefly, the facts are the following: The defendants were convicted for violation of an ordinance of Palaing, Zambales, because they failed to pay the occupation tax for the year 1952 as prescribed by the ordinance. The Court of First Instance reversed the ruling of conviction of the Justice of the Peace Court and dismissed the case, on the theory that there was double taxation, because while the defendants' fishponds were already subject to tax, it was unfair to charge them for an occupation tax. On appeal by the fiscal, the Supreme Court ruled that there was no double taxation.

[4] Sec. 24, 33 AM. JUR., Licenses: "In general, the same property cannot be taxed twice by the same taxing authority. This rule however, does not preclude the imposition of a license tax upon a business or calling although the property used therein has been subject to a property tax. It is well-settled rule that the state may collect an *ad valorem tax* on property used in a calling and at the same time impose a license tax on the pursuit of that calling. This is in no sense a double tax; the state does not tax the calling as property, but simply requires a license for the privilege of engaging in it or for enjoying advantages, incident to its exercise. The same principle applies to the imposition of a privilege tax upon property which has been subjected to a property tax . . ."