# RECENT DECISIONS

**Civil Law**—*One who has been unlawfully deprived of a movable may recover it from the person in possession of the same.*

CRUZ v. PAHATI, ET AL.
G.R. No. L-8257, April 13, 1956

The rule that the possession of movable property acquired in good faith is equivalent to a title[1] is subject to the exception that one who has lost any movable or who has been unlawfully deprived thereof may recover it from the person possessing the same without indemnifying the possessor except if the latter acquired it in good faith at a public sale. This is because no man can be divested of his property without his consent, so that even an honest purchaser, under a defective title, cannot resist the claim of the owner.[2] However, to the foregoing general rule there seem to be two exceptions:

First, where the owner has entrusted or delivered to an agent money or negotiable notes and where the money or negotiable notes have been delivered or transferred to some innocent third party. This exception is based on the exigencies of commerce and trade. Money bears no earmarks of peculiar ownership. It is intended to pass from hand to hand as a medium of exchange without evidence of its title. Negotiable promissory notes, so far as it is possible, are intended to represent money, and like it, to be a means of commercial intercourse, unfettered by any qualifications or conditions not appearing on its face.

Second, another exception to the general rule is based on the doctrine of estoppel. Thus, where a man voluntarily placed property in the possession of one whose ordinary business it is to sell similar property as an agent for the owners it is a warrantable inference, in the absence of anything to indicate a contrary intent, that he intends the property to be sold. For example, where the owner sends his goods to an auction room where goods of a like kind are constantly being sold, he will be estopped from recovering them in case they are actually sold. In such cases, however, under this exception, there must be some act on the part of the real owner whereby the party selling is clothed with the apparent *ownership* or *authority to sell* which the real owner will not be heard to deny or question to the prejudice of an innocent third party, dealing on the faith of such appearance. If the rule were otherwise, people would not be secure in sending their watches or jewelry to a jewelry establishment to be repaired.[3]

In *Cruz v. Pahati, et al.*, an action for replevin to recover an automobile, an attempt was made to bring the case under the second exception. The Court found that:

> "...the automobile in question was originally owned by the Northern Motors, Inc. which later sold it to Chinaman Lu Dag. This Chinaman sold it afterward to Jesusito Belizo and the latter in turn sold it to plaintiff. Belizo was then a dealer in second hand cars. One year thereafter, Belizo offered the plaintiff to sell the automobile for him claiming to have a buyer for it. Plaintiff agreed. At that time, plaintiff's certificate of registration was missing and, upon the suggestion of Belizo, plaintiff wrote a letter to the Motor Section of the Bureau of Public Works for the issuance of a new registration certificate alleging as a reason the loss of the one previously issued to him and stating that he was intending to sell his car. This letter was delivered to Belizo on March 3, 1952.

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[1] Art. 559, Civil Code.
[2] United States v. Sotelo, 28 Phil. 147, 158 (1914). Arenas v. Raymundo, 19 Phil. 47 (1911). Varela v. Matute, 9 Phil. 479 (1908). Varela v. Finnick, 9 Phil. 482 (1908).
[3] United States v. Sotelo, note 2 *supra*.

> He also turned over to Belizo the automobile on the latter's pretext that he was going to show it to a prospective buyer. On March 7, 1952, the latter was falsified and converted into an authorized deed of sale in favor of Belizo by erasing a portion thereof and adding in its place the words 'sold the above car to Mr. Jesusito Belizo of 25 Valencia, San Francisco Del Monte, for Five Thousand Pesos (₱5,000).' Armed with this deed of sale, Belizo succeeded in obtaining a certificate of registration in his name on the same date, March 7, 1952, and also on the same date, Belizo sold the car to Felixberto Bulahan who in turn sold it to Reynaldo Pahati, a second hand car dealer. These facts show that the latter was falsified by Belizo to enable him to sell the car to Bulahan for a valuable consideration."

Bulahan claimed that he had acquired the car from Jesusito Belizo for value and without having any knowledge of any defect in title of latter. The trial court held that defendant Bulahan was entitled to the car, hence this appeal to the Supreme Court by the plaintiff.

In reversing the decision of the lower court, the Court applied Article 559 of the Civil Code and held:

> "...plaintiff has a better right to the car in question than defendant Bulahan for it cannot be disputed that the plaintiff had been illegally deprived thereof because of the ingenious scheme utilized by Belizo to enable him to dispose of it as if he were the owner thereof. Plaintiff therefore can still recover the possession of the car even if defendant Bulahan had acted in good faith in purchasing it from Belizo. Nor can it be pretended that the conduct of plaintiff in giving Belizo a letter to secure the issuance of a new certificate of registration constitutes sufficient defense that would preclude recovery because of the undisputed fact that that letter was falsified and this fact can be clearly seen by a cursory examination of the document. If Bulahan had been more diligent he could have seen that the pertinent portion of the letter had been erased which would have placed him on guard to make an inquiry as regards the authority of Belizo to sell the car. This he failed to do."

It will be seen that Bulahan based his argument on the claim that he had no "knowledge of any defect in the title of the latter." In other words, Bulahan thought that Belizo was the true owner of the car because of the falsified letter. This contention cannot be sustained for the reason already given by the Court. But the defendant could have invoked estoppel, not on that score (apparent ownership) but on the ground that the plaintiff by his conduct made it appear that Belizo had *apparent authority to sell* the car. Precisely, the plaintiff delivered the car to Bulahan so that the latter might sell it. And previous to this delivery, plaintiff had in fact accepted Belizo's offer to sell the car for him. Certainly, under such circumstances, plaintiff could be held in estoppel. And the fact that Belizo was a dealer in second in second hand cars makes this position all the more tenable.[4]

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## Civil Law—*Rep. Act No. 1199 has no retroactive application.*

### TOLENTINO, ET AL. v. ALZATE, ET AL.
G.R. No. L-9267, April 11, 1956

According to the Civil Code,[1] "laws shall have no retroactive effect unless the contrary is provided." A statute operates prospectively and never retroactively unless the legislative intent to the contrary is made manifest either by the express terms of the statute or by necessary implication.[2] One exception

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[4] In fact, under Article 1506 of the Civil Code, which the Court cited in support of its conclusion, "where goods are sold by a person who is not the owner thereof, and who does not sell them under authority or with consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the good is by his conduct precluded from denying the seller's authority to sell."

[1] Art. 4.

[2] Segovia v. Noel, 47 Phil. 543, 546 (1926). Neri v. Rehabilitation Finance Corporation, 51 O.G. 6209 (1955). Manila Trading & Supply Co. v. Santos and Saez, 39 O.G. No. 3, 497.

to this rule is that statutes regulating the procedure of the courts will be construed as applicable to actions pending and undetermined at the time of their passage.[3]

In *Tolentino, et al. v. Alzate, et al.*, Antonio O. Alzate, manager of an hacienda in Nampicuan and Guimba, Nueva Ecija, asked the Court of Industrial Relations for permission to lay off nineteen tenants to enable its owner to introduce mechanization program and thus increase its production at a lesser cost. This petition was filed on August 12, 1954. The tenants denied that the portion sought to be mechanized was suitable to mechanized farming and alleged that the only purpose of the petitioner was to get even with them because they had filed a claim against the hacienda in which they sought certain improvements in their tenancy relations. On August 30, 1954, during the pendency of the case, Rep. Act No. 1199 (Agricultural Tenancy Act of the Philippines) was approved. Section 50, paragraph (a) of the law lists the causes whereby a tenant may be dispossessed of the land, among them being the desire of the landlord to cultivate the land "through the employment of farm machinery and implements" and provides that in order that the mechanization may be undertaken it is necessary that the landholder shall, at least one year but not more than two years before the date of his petition to dispossess the tenant, file a notice with the court and shall inform the tenant in writing in a language or dialect known to the latter of his intention to cultivate the land himself, either personally or through the employment of mechanical implements, together with a certificate of the Secretary of Agriculture and Natural Resources that the land is suited for mechanization.

The tenants then moved to dismiss the case on the ground that the landlord not having complied with requirement of Section 50 paragraph (a) before filing the petition, the Court of Industrial Relations had not acquired the requisite jurisdiction. The motion was denied. Hence this appeal.

The Supreme Court found the tenants' claim untenable, it appearing that the petition of Alzate was filed on August 12, 1954, or prior to the approval of the law. Invoking Article 4 of the Civil Code and the decision in *Segovia v. Noel*,[4] the Court ruled that there is nothing in Rep. Act No. 1199 which would make its provisions operate retroactively. Equally held untenable was the claim that the provision in question is merely procedural, because such is clearly substantive in nature and cannot be given retroactive effect unless clearly expressed in the law.

*Vicente V. Mendoza*

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**Civil Law**—*The rights of the parties under a contract vest at the time of the perfection of the contract.*

DOMINADOR NICOLAS, ET AL. v. VICENTA MATIAS, ET AL.
G.R. No. L-8093, Feb. 11, 1956

It is not seldom that the *perfection* of a contract is confused with the *performance* thereof. When the distinction is not properly appreciated, the re-

[3] People v. Sumilang, 44 O.G. No. 3, 881, 882 (1946). Guevara v. Salco, 64 Phil. 144 (1937). Hosana v. Diomana, 56 Phil. 741 (1927). Enrile v. Court of First Instance, 36 Phil. 574 (1917).
"...Retroactive operation will more readily be ascribed to legislation that is curative or legalizing than to legislation which may disadvantageously, though legally, affect past relations and transactions. (Statutory Construction, p. 243)." (People v. Esteban Zeta, 52 O.G. 222 [1956]).
[4] 47 Phil. 543 (1926).

sultant effect is obviously the inability to designate the precise moment at which the rights of the parties vest in them. Such inability in turn makes it difficult to choose the right law (as between an earlier and a later law on the same subject) to apply when issues arise regarding the rights of the parties under the contract.

This problem was presented to the Supreme Court in the instant case. The defendants urged the court to apply the new Civil Code, to a mortgage contract executed before the date of effectivity of the Code.[1]

The facts were: On June 29, 1944, a document of mortgage was executed between plaintiffs and defendants. By the terms thereof, defendants' debt was payable one year after the expiration of five years from date. Defendants maintained that said period expired on June 29, 1950, which should be deemed extended for ninety days, or until Sept. 27, 1950, because of the mortgagors' equity of redemption, under Section 2, Rule 70 of the Rules of Court, that as a consequence thereof, plaintiffs' rights, as mortgagees, became vested on the date last mentioned, when the new Civil Code was already in force. Hence, defendants concluded, said Code was applicable to the case.

The basis of this contention of the defendants was that the rights of the parties vested at the time of the performance of the contract. Under this theory, the proper law applicable would be that which is in force at the time of performance. In the instant case, it was the new Civil Code.

It is true that the proper law applicable is that which is in force at the time of the vesting of the rights of the parties. But the defendants committed a grave error in asserting that the vesting of the rights of the parties was at the time of performance. The Supreme Court made it explicit that the vesting was at the time of *perfection*, not *performance*. It said:

> "The date of maturity of an obligation affects the *enforcement* thereof, not its existence. In a contractual obligation, like the one under consideration, the right of the obligee accrues upon the *perfection* of the contract. The term fixed determines, not the *vesting* of the right of the creditor, but merely, the time at which he may exact *performance* of the debtor's obligation."

With respect to the argument of the defendant that the ninety-day period for redemption suspended the vesting of rights, the Supreme Court answered:

> "The 90-day period of the rules did not postpone the vesting of the mortgagee's right. On the contrary, it implied that the rights of the latter had vested already, for said provision of the rules directs the rendition of judgment in favor of the mortgagee — which would be inconceivable if his rights had not accrued as yet — although foreclosure shall not take place unless the mortgagor fails to satisfy the judgment within said period."

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**Civil Law**—*The widow may impugn a transfer made by her deceased husband during his lifetime, if such transfer is fictitious, simulated or inexistent.*

JOHANNA BORROMEO v. DR. VENUSTIANO BORROMEO, ET AL.
G.R. No. L-7548, Feb. 27, 1956
VASQUEZ v. PORTA
G.R. No. L-6767, Feb. 28, 1956

These two cases, decided one day apart, involved the same question of law: the authority of the widow to impugn a transfer made by her husband during

[1] Effective August 30, 1950.

his lifetime, which was without consideration or where the consideration was illegal.

In the *Borromeo* case, the deceased husband sold the property for ₱3,000, but the consideration was never paid. In the *Vasquez* case, the deceased husband made a simulated mortgage of the property to avoid the judgment for support in favor of the wife. And as a result of the connivance between the deceased husband and the mortgagee, a foreclosure sale was effected; this was not however confirmed.

In the first case, the defense was that the wife's right to contest the simulated sale by the husband arose only after the liquidation of the conjugal partnership.

The Supreme Court ruled that this rule applies only in cases where the sales are made under onerous title in violation of the Civil Code or in fraud of the wife, and not to sales where there is absolutely no consideration. Since the sale was fictitious, without any consideration, it should be regarded as nonexistent, not merely annullable.[1]

In the *Vasquez* case, the ruling of the Court was of the same tenor. It said that since the mortgage and the sale in favor of the appellant were fictitious, simulated and without consideration, they were not merely voidable but totally void *ab initio*, and inexistent in law. Consequently, the land remained the property of the deceased. Wherefore under Rule 88, Section 2, and Rule 75, Section 2, the plaintiff, as administratrix of the estate of the husband and as liquidator of the conjugal partnership, had a right to sue for the recovery of the lands which were fraudulently transferred.

Another important issue was raised in the case of *Vasquez v. Porta*, namely, the applicability of the principle of *in pari delicto non oritur actio* in the case of an action by a widow to annul the fraudulent conveyance made by the deceased husband. The Supreme Court was explicit in denying the applicability of said maxim in this case, first, because the widow sued not only as administratrix of the deceased, but also in her own behalf, and secondly, because the maxim applies only in cases of contracts with illegal consideration, and not to simulated or fictitious and inexistenet contracts, as when there is no consideration.

*Benjamin C. Santos*

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Civil Law—*Acquittal in a criminal action not a bar to a civil action; contract of trust, estoppel.*

PHILIPPINE NATIONAL BANK v. CATIPON
G.R. No. L-6662, Jan. 31, 1956

Under Article 100 of the Revised Penal Code, a person criminally liable for a felony is also civilly liable. It is a well-settled rule of statutory construction that criminal and penal laws are to be strictly construed against the state and liberally in favor of the accused,[1] so that an accused may be convicted only after proof beyond reasonable doubt as differentiated from civil actions in which only a preponderance of evidence is required. Thus, in the past, the

[1] Citing Pascual v. Pascual, 73 Phil. 561 (1942).
[1] United States v. Abad Santos, 36 Phil. 243 (1917); Fuentes v. Dir. of Prisons, 46 Phil. 22 (1924).

question often arose as to whether acquittal in a criminal action is a bar to an action for civil liability. This was finally resolved by Article 29 of the new Civil Code which provides:

> "When the accused in a criminal prosecution is acquitted on the ground that his guilt has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted. Such action requires only a preponderance of evidence. Upon motion of the defendant, the court may require the plaintiff to file a bond to answer for damages in case the complaint should be found to be malicious. If in a criminal case the judgment of acquittal is based upon reasonable doubt, the court shall so declare. In the absence of any declaration to that effect, it may be inferred from the text of the decision whether or not the acquittal is due to that ground."

In the instant case, the Court had the occasion to apply this provision. The defendant Catipon was a customer of J. V. Ramirez & Co., Inc., which was an indentor and importer. Because defendant desired to get the onions purchased by him from the said company, he affixed his signature to a trust receipt presented to him by J. V. Ramirez' son who told him that the only way to get the onions which he bought was to sign the trust receipt, making Ramirez and the defendant trustees of the merchandise belonging to the plaintiff bank. The plaintiff's claim filed in the insolvency proceedings of J. V. Ramirez & Co. was unsatisfied as the latter had no sufficient assets to meet all claims of its creditors.

At the instance of the Philippine National Bank,[2] Catipon was charged with estafa for having misappropriated, misapplied, and converted the merchandise covered by the trust receipt, but after due trial, the defendant was acquitted of the charge. The plaintiff brought the present action to recover the value of the goods. The defendant alleged that his acquittal in the estafa case was a bar to the present civil action, because the Bank did not reserve in the criminal case its right to separately enforce the defendant's civil liability.

The Supreme Court affirmed the decision of the lower court against the defendant, because the acquittal in the estafa case in the lower court was predicated on the conclusion that the "guilt of the defendant Catipon has not been *satisfactorily* established," as expressly recited in the decision. Said acquittal, being equivalent to one on reasonable doubt, did not preclude a suit to enforce the civil liability for the same act or omission under Article 29 of the Civil Code, and did not finally determine nor expressly declare that the fact from which the civil action might arise had not existed.[3] The declaration in the decision of acquittal to the effect that "if any responsibility was incurred by the accused—that is civil in nature and not criminal," amounted to a reservation of the civil action in favor of the offended party, for the court in its decision had no reason to dwell on a civil liability that it intended to extinguish.

The Court further ruled that the appellant having executed the trust receipt, he was liable *ex-contractu* for breach thereof. By merely signing the trust receipt he assumed the obligations thereunder and the Bank having acted on that assumption, and not having been warned nor having reason to believe that the latter did not intend to be bound by its terms or that there were special arrangements between Ramirez and him, the defendant could not deny that liability under the principle of estoppel.[4]

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[2] Hereinafter referred to as the Bank.

[3] Rule 107, § 1(d) of the Rules of Court provides: "Extinction of the penal action does not carry with it extinction of the civil, unless the extinction proceeds from a declaration in a final judgment that the fact from which the civil might arise did not exist. In the other cases, the person entitled to the civil action may institute it in the jurisdiction and in the manner provided by law against the person who may be liable for restitution of the thing and reparation or indemnity for the damages suffered."

[4] Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. (Art. 1431, Civil Code).

**Civil Law**—*Revocation of wills; its allowance and disallowance; what constitute undue influence.*

BARRETO v. REYES
G.R. No. L-5830, Jan. 31, 1956

The making of a will being a personal act,[1] the will shall be disallowed if it was procured by undue and improper pressure and influence, on the part of the beneficiary or of some other person.[2] In the instant case, the Court defined undue influence.

On March 30, 1948, Lucia Milagros Barreto filed a petition for the probate of a will supposed to have been executed on March 14, 1946 by Maria Gerardo vda. de Barreto who died March 5, 1948. Said will instituted the petitioner as the sole heir to her property. The appellant Reyes opposed the probate of the same, on the ground that the testatrix had two daughters, Milagros and the deceased Salud (wife of Reyes). On April 7, 1948, Reyes filed a petition for the probate of a will dated April 22, 1944, executed by the same testatrix. This will alleged that she had two daughters, one was Salud, married to Reyes with whom she had 3 children.

It was duly proved that Salud was not the legitimate daughter of the deceased but of Lim Boco and Dim Tansi; that she was 'adopted' (but not legally adopted in the strict sense of the word) when only three days old; that Milagros, the only legitimate daughter was born fifteen years later; that the family treated Salud as a daughter; that the will of 1944 was executed while Salud was still alive and to avoid hurting her feelings, the testatrix did not reveal the truth in the will; and the subsequent will was executed when Salud was already dead.

Although probate proceedings should be limited to the question as to whether a will was executed in accordance with the formalities required by law and whether the testator was in a condition to make such will,[3] the court said "this is correct only as a general proposition, but not where, as in the present case, two successive inconsistent wills were presented for probate and the issue of filiation was raised squarely to determine whether the testatrix intended really to revoke the first will. When the issue involved is revocation, it is the function of the court to examine the words of the will."

Assuming that Reyes had established that Milagros told the testatrix to change her will because of the conduct of Reyes in squandering the estate left by Salud and in trampling upon the rights of Milagros while the testatrix was still alive, the Court said that such importunities were not sufficient to constitute undue influence so as to invalidate the will of 1946.

The Court upheld said will to be a valid revocation of the previous one; and then quoted from American Jurisprudence:[4]

> "It is not enough to establish undue influence that the testator has been persuaded to make his will; it must be shown that he made his will under coercion, compulsion, or restraint, so that in fact the instrument does not represent his own wishes...Moderate and reasonable solicitation and entreaty addressed to the testator do not constitute undue in-

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[1] See Art. 784, Civil Code; 5 MANRESA 430 (3rd ed.).
[2] Art. 839, *id.*
[3] Among the evidence presented were the testimony of the attending physician when Milagros who was younger than Salud, was born to the effect that the birth was primepara; the birth certificate of Salud; the testimony of the neighbors, the nurse, the parish priest and the lawyer of the testatrix.
[4] *In re* Estate of Johnson, 39 Phil. 156 (1918).
[4] 57 AM. JUR., WILLS § 361.

fluence even though they induce the testator to make the kind of will requested, if he yields intelligently and from a conviction of duty. Even earnest entreaty and persuasion may be employed upon the testator without affecting the validity of the will so long as they are not irresistible."

Speaking for the Court, Chief Justice Paras said: "The alleged importunities merely constituted fair arguments, persuasion, appeal to emotions, and entreaties which, without fraud or deceit or actual coercion, compulsion or restraint, do not constitute undue influence sufficient to invalidate a will."

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**Civil Law**—*There is no prescription of action in the probate of a will.*

ERNESTO M. GUEVARA v. ROSARIO GUEVARA
G.R. No. L-5405, Jan. 31, 1956

The provisions on prescription of actions are contained in Articles 1139-1155 of the new Civil Code. The present case clarified doubts raised in previous cases[1] and definitely set down a ruling that these provisions on prescription of actions are applicable only to civil actions but not to special proceedings, particularly to a probate of a will.

It is provided in the Rules of Court,[2] that "any executor, devisee, or legatee named in a will, or any other person interested in the estate, may, at any time after the death of the testator, petition the court having jurisdiction to have the will allowed, whether the same be in his possession or not, or is lost or destroyed." The phrase "at any time after the death of the testator" is clear enough to warrant the inference that the law allows an indefinite period, after the testator's death for the presentation of the corresponding petition for the probate of a will.[3]

On Aug. 26, 1931, Victorino L. Guevara executed a will, distributing his assorted movables to his children, stepchildren and second wife and disposing of his 259-ha. land, thus: 100 hectares reserved for disposal during his lifetime; 108 has. to his legitimate son Ernesto; and 21 has. to his recognized natural ("mi hija natural reconocida") daughter Rosario. On July 12, 1933, the testator executed a deed of sale in favor of his son, Ernesto conveying to the latter the southern half of the lot, and expressly recognized him as the owner of the other half; so that a certificate of title for the whole tract of land was issued in the name of Ernesto, exclusively. The testator died on Sept. 27, 1933, but his will was not filed for probate. Four years later, Rosario, claiming to be a recognized natural child and on the assumption that her father died intestate brought suit to recover her legitime. That action reached the Supreme Court which rendered a decision in 1943, ordering the will to be presented for probate. Rosario acted accordingly by filing a special proceeding for probate of the will on Oct. 5, 1945.

Ernesto filed a motion to dismiss on the ground that whatever right to probate the parties might have had already prescribed.

The Court held that the will must be admitted for probate and said that the application of the statute of limitations to the probate of a will would be destructive of the right of testamentary disposition and violative of the owner's right to control his property within legal limits; that if prescription would be

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[1] Suntay v. Suntay, 50 O.G. 5221 (1954).
[2] Rule 77, § 1.
[3] Aquino, Ramon C., *Review of 1954 Decisions in Civil Law*, 30 PHIL. L.J. 220 1955).

applied, the will would be left at the mercy and whim of custodians and heirs interested in their suppression. Justice Concepcion, speaking for the Court, said: "It is not without purpose that the Rules of Court 77 prescribes that 'any person interested in the estate may, *at any time* after death of the testator, petition the Court having jurisdiction to have the will allowed'. Taken from the Code of Procedure of California, this provision has been interpreted as meaning that the statute of limitations has no application to probate of wills."

Having high persuasive value,[4] some American decisions were quoted, thus:

> "One of the most fundamental conceptions of probate law, is that it is the duty of the court to effectuate, in so far as may be compatible with the public interest, the devolutionary wishes of a deceased person."

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**Civil Law**—*Court's power to fix the duration of the period of an obligation.*

TIGLAO, ET AL. v. THE MANILA RAILROAD CO.
G.R. No. L-7900, Jan. 12, 1956

Under Article 1197 of the new Civil Code, there are two instances wherein courts have the power to fix the duration of the period of an obligation, namely: (1) when the obligation does not fix a period but the nature of the obligation and the circumstances warrant the inference that a period must have been intended by the parties; and (2) when the duration of the period depends upon the will of the debtor. An obligation, the duration of the period of which is made to depend upon the will of the debtor is different from an obligation whose condition is dependent upon the will of the debtor. The latter is void; but if what is left to the will of the debtor is not the existence or validity of the obligation but merely the duration of the term for its fulfillment, the obligation is valid and the courts may fix the period.[1] In the exercise of the power to fix the period of the obligation, the courts shall determine such period as may under the circumstances have been probably contemplated by the parties and once fixed, the period cannot be changed by them,[2] unless the parties change the period by means of novation.[3]

In order that the courts may exercise this power, it is not always necessary to expressly make the period dependent upon the will of the debtor.[4] Thus, when the debtor binds himself to pay when his means permit him to do so, the obligation shall be deemed to be one with a period, subject to the provisions of Article 1197.[5]

In this case, the plaintiffs, 35 employees of the defendant, brought this action to recover the sum of ₱7,275 representing the aggregate balance of salary

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[4] Cu v. Republic, G.R. No. L-3018, July 18, 1951.
[1] PADILLA, AMBROSIO, OBLIGATIONS AND CONTRACTS 166 (1960).
[2] Art. 1197, 3rd par., Civil Code.
[3] See Art. 1291, *id.*
[4] In the following cases the Court fixed the duration of the period of the obligation: when the contract fixed no period for fulfillment of condition, Barreto v. City of Manila, 7 Phil. 416 (1907); when the date for delivery of thing is not fixed, Smith, Bell & Co. v. Matti, 44 Phil. 874 (1922); when obligation stipulates payment in installments but without a fixed term, Levy Hermanos v. Paterno, 18 Phil. 353 (1911); when the contract of lease fixed no term, Yu Chin Piao v. Lim Tuaco, 33 Phil. 92 (1915).
[5] Art. 1180, Civil Code.

differentials still due them under a memorandum of agreement[6] concluded between them and the defendant. The defendant refused to pay said amount on the ground that pursuant to its agreement payment of the salary differentials after exhaustion of the P400,000 was subject to the condition that "funds for the purpose are available," and that no funds were available at that time because the defendant was losing in its business. The Court did not give merit to this contention of the defendant, as the memorandum of agreement did not stipulate that the salary differentials were to be paid only from surplus profits.

> "...in a going concern the availability of funds for a particular purpose is a matter that does not necessarily depend upon the cash position of the company but rather upon the judgment of its board of directors in the choice of projects, measures or expenditures that should be given preference or priority, or in the choice between alternatives. So if defendant was able to raise or appropriate funds to meet other obligations notwithstanding the fact that it was losing, we think it could have done likewise with respect to its debt to the plaintiffs, an obligation which is deserving of preferential attention because it is owed to the poor."

The Court said that viewed in this light, the ability to pay salary differentials really depended upon the judgment of the board of directors. Said obligation might be considered as one with a term whose duration had been left to the will of the debtor, and therefore, pursuant to Article 1197 of the new Civil Code, the duration of the term would be fixed by the court.

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**Civil Law**—*Currency in which payment is to be made; application of the Ballantyne scale of values.*

GREGORIO ARANETA, INC. v. TUAZON DE PATERNO AND VIDAL
G.R. No. L-7877, Jan. 31, 1956

The payment of debts in money shall be made in the currency which is the legal tender in the Philippines.[1] In case an extraordinary inflation or deflation of the currency stipulated should supervene, the value of the currency at the time of the establishment of the obligation shall be the basis of payment, unless there is a stipulation to the contrary.[2] It is well-settled that obligations contracted during the war and due and payable before liberation may be paid after liberation on the basis of the Ballantyne scale.[3]

The present case was a three-cornered contest among the purchaser, the seller and the mortgagee of certain portions of residential land owned by the defendant Paz Tuason de Paterno. In 1940, 1941, and 1943, she obtained from Jose Vidal loans secured by a mortgage on the several lots in question. The payment on the first loan was fixed at two years, and on the second and last, at four years. In 1948, the owner decided to sell the entire property for P400,000 and entered into negotiations with the plaintiff, which resulted into the execution of the contract "Promesa de Compra y Venta," whereby it was stipulated that subject to the preferred right of the lessees and the mortgagee, Paz Tua-

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[6] The basis of the plaintiff's claim is the contract which contains the following stipulations: "1. That the Manila Railroad Company hereby reiterates its approval of the standardized salaries provided for by the Standardization Committee effective as of July 1, 1948, to be carried in all subsequent budgets of the Company, payment to be made in accordance with Item 2; and immediate payment of said salaries will commence with the available funds of P400,000—already appropriated for this purpose; 2. That we hereby further agree that upon the exhaustion of the amount of P400,000, the employees and laborers affected by the standardized plan will receive their present salaries provided that any wage differential from date of exhaustion will be paid when funds for the purpose are available."

[1] Art. 1249, Civil Code.

[2] Art. 1250, *id.*

[3] Dela Cruz v. Del Rosario, G.R. No. L-4869, July 24, 1951; Arevalo v. Barreto, G.R. No. L-3518, July 31, 1951; Wilson v. Berkenkotter, 49 O.G. 1401 (1952).

zon would sell to Araneta and the latter would buy the estate for ₱400,000, 90% of which would be paid at the time of the execution of the contract.

On Oct. 20, 1943, the day before the execution of the contract, Tuazon offered Vidal a check amounting to ₱143,150 executed by Araneta in Vidal's favor, in full settlement of Tuazon's mortgage obligation, but Vidal refused to receive the same, contending that by their agreement, the mortgage debt was not to be paid either partially or totally before the end of four years from April, 1943.

In a previous case between the same parties,[4] the Supreme Court held that the plaintiff should bear the loss resulting from the non-collection of the checks. The question in this case was whether the aforementioned sum loaned during the Japanese occupation should be paid in Philippine currency, peso for peso or in its equivalent under the Ballantyne scale.

In ruling that the Ballantyne scale should be applied, the Court said that inasmuch as the sum was part of the ₱190,000 (90% of the entire price) advanced by the plaintiff to Tuazon on Oct. 19, 1943, as stipulated in the contract of promise to sell and said obligation became "due and payable during the occupation, the amount therein given should now be paid, pursuant to a long line of decisions of this Court, in its equivalent in Philippine currency as fixed in the Ballantyne scale. The argument of Tuazon to the effect that the credit of Vidal matured after liberation and as a consequence, should be fully satisfied in Philippine currency might have been good only against herself, as Vidal's debtor;[5] it may not be availed against plaintiff who has no juridical relation with Vidal, as it was specifically stated in the contract between the plaintiff and the defendant that the latter would settle her debts to Vidal."

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**Civil Law**—*A threat to enforce a just or legal claim through competent authority does not vitiate consent.*

SISON VDA. DE ASPERER v. DUNGAN, ET AL.
G.R. No. L-8016, Jan. 27, 1956

One of the essential requisites of a contract is the consent of the contracting parties.[1] Consent must be freely given;[2] a contract where consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.[3] There is intimidation when one of the contracting parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property, of his spouse, descendants, or ascendants, to give his consent.[4] Intimidation is the equivalent of threats under Article 282 of the Revised Penal Code;[5] and the degree of the same depends upon the age, sex and condition of the person intimidated.[6] However, under the last paragraph of Article 1335 of the Civil Code a threat to enforce one's

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[4] Araneta v. Tuazon, 49 O.G. 45 (1952).

[5] The Court further noted: "This is not altogether legally accurate, even as regards Paz Tuazon, for our decision of Aug. 22, 1952, directs the *application of the Ballantyne scale* to the loans obtained by her during the Japanese occupation. Consequently, if her contention were sustained, she would collect from plaintiff, peso for peso, but would pay her debt to Vidal with benefit, partly, of the Ballantyne scale."

[1] Art. 1318, Civil Code.

[2] Comment on the case of Osorio de Fernandez v. Howard, G.R. No. L-4436, January 28, 1955, 30 Phil. L.J. 535 (1955).

[3] Art. 1330, Civil Code.

[4] Art. 1335, second par., *id.*

[5] PADILLA, AMBROSIO, OBLIGATIONS AND CONTRACTS 575 (1950).

[6] Art. 1335, third par., Civil Code.

claim through competent authority, if the claim is just or legal, does not vitiate consent. This legal provision was applied in the instant case.

On April 30, 1935, the plaintiff sold to Ambrosio Garcia and Mariano Rivera II a parcel of land, with a right of redemption within 10 years. The transaction was closed through the intervention of Tomas Dungan, who continued tilling the land. On Dec. 4, 1944, Rivera and Guillerma Dungan (wife of Ambrosio Garcia) reconveyed to the plaintiff said lot for ₱2,100, representing the purchase price. Since 1947, however, Dungan who had been tilling the land refused to deliver to the plaintiff the latter's share in the produce. Hence, this action for forcible entry.

Among other things, the defendant contended that the redemption was null and void, because it was made through force and intimidation on account of the presence of a policeman and a Japanese soldier when the execution of the deed of redemption was made on Dec. 4, 1944. The Court held that the presence of the policeman and Japanese soldier did not taint the redemption with "duress that may nullify it, for plaintiff was then entitled, as a matter of legal right, to redeem the lot in question, and accordingly, to seek the assistance of the duly constituted authorities in the enforcement of such rights."[7] At their time of redemption, Japanese war notes had some value, apart from being legal tender,[8] and as such, sufficient to discharge obligations to effectively assert plaintiff's right of redemption.

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**Civil Law**—*Breach of a promise to sell is not covered by Art. 1592 of the Civil Code.*

AYALA Y COMPANIA v. ARCACHE
G.R. No. L-6423, Jan. 31, 1956

The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.[1] However, the power to rescind is not absolute,[2] and the general rule is that rescission will not be permitted for a slight or casual breach of a contract.[3] Thus, under Article 1592 of the Civil Code, it is provided that, in the sale of immovable property, even though it may have been stipulated that upon failure to pay the price at the time agreed upon, the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. The present case reiterated the rule that the above provision refers only to slight or casual violations of contractual obligations and not to substantial breach of contract; and that the same legal provision governs contract of purchase and sale, but has no application to a promise to sell. This rule has been applied in *Caridad Estates Inc. v. Santero*[4], *Albea v. Inquimboy*,[5] and the recently decided case of *Jocson v. Capitol Subdivision, Inc. and Court of Appeals*[6].

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[7] Doronila v. Lopez, 8 Phil. 240 (1904); Sabalvaro v. Erlanger, 64 Phil. 588 (1937). *See* 8 MANRESA 411 (5th ed. Rev.).
[8] Cia. General de Tabacalera v. Araneta, Inc. G.R. No. L-6450, Jan. 31, 1955, as commented on in 30 PHIL. L.J. 532 (1955).
[1] Art. 1191, last par., Civil Code.
[2] 30 PHIL. L.J. 540 (1955).
[3] Song Fo & Co. v. Hawaiian-Philippine Co., 47 Phil. 821 (1925).
[4] 71 Phil. 114 (1940).
[5] 47 O.G. 131 (1950).
[6] G.R. No. L-6473, Feb. 28, 1955.

On July 1, 1948, the plaintiff and the defendant executed a deed whereby, plaintiff agreed to sell to defendant and the latter to purchase from the former four lots for ₱447,972 payable as follows: ₱100,0000 on or before Aug. 9, 1948, a promissory note was executed simultaneously with the deed; the balance to be paid in annual installment of ₱100,000 each, payable on Aug. 9 of the subsequent years, except the last installment, which should be ₱47,972. It was further stipulated, among other things that upon payment of the first installment, title to the property would be transferred to the defendant who would secure payment of the balance with a first mortgage on said lots and improvements thereon; that the defendant could take immediate possession of the lots, but, until title thereto was transferred to him, as stated, his possession should be that of a tenant, with option to purchase.

When on Aug. 9, 1948, the defendant failed to pay the promissory note for ₱100,000, the date was extended to Oct. 8, 1948 and then to Jan. 31, 1949 and finally to April 4, 1949. The deed was properly amended.

On Aug. 9, 1949, when the first annual installment became due, the defendant did not pay. An amendment was made extending its payment to Feb. 9, 1950. Soon after the defendant's failure to pay at that time, this action was brought to rescind the contract and to recover damages.

In finding the defendant's contention that the plaintiff also incurred in delay by his failure to execute the deed of conveyance after full payment of promissory note to be without merit, the Court considered the evidence presented to the effect that the defendant himself asked for its postponement due to several suits filed by his creditors and that the defendant did not have the money required to meet his obligations to the plaintiff. "... it clearly appears that the plaintiff was well-meaning, considerate and accommodating in dealing with the defendant," said the Court, referring to a series of extension of time of payment of the obligation.

The defendant maintained that under Article 1592 of the Civil Code, rescission should not have been ordered without giving him opportunity to pay first the first annual installment of ₱100,000 which he claimed he was ready, willing and able to pay and which he offered in open court. Against this the Court ruled:

> "The cases cited in support thereof refer to slight or casual violations of contractual obligations, whereas the breach in the present case is substantial.... Lastly, said legal provision governs contracts of purchase and sale but has no application to a promise to sell, such as the one involved in the contract between the parties herein."

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**Civil Law**—*Time to exercise right of legal redemption; redemption under Com. Act No. 141.*

MANAOIS, ET AL. v. ZAMORA, ET AL.
G.R. No. L-6251, Jan. 31, 1956
BARADI AND BONITA v. IGNACIO
G.R. No. L-8324, Jan. 19, 1956

There are two kinds of redemption, namely, conventional and legal.[1] Legal redemption is the right to be subrogated, upon the same terms and conditions stipulated in the contract, in the place of one who acquires a thing by purchase or dation in payment, or by any other transaction whereby ownership is trans-

[1] Art. 1600, Civil Code.

mitted by onerous title.[2] The law specifically enumerates the persons who may exercise the right to redeem;[3] a co-owner of a thing may exercise the right of redemption in case the shares of all the other co-owners or any of them, are sold to a third person.[4] Article 1623 of the Civil Code provides: "The right of legal pre-emption or redemption shall not be exercised except within thirty days from the notice in writing by the prospective vendor, or by the vendor as the case may be." This repealed the old provision providing that the "right of legal redemption can be exercised only within nine days, counted from the inscription in the Registry, and in the absence thereof from the time the redemptioner shall have had knowledge of the sale."[5]

The case of *Manaois v. Zamora*,[6] clarified the said provision of the old Civil Code. The four plaintiffs and one of the defendants are brothers and sisters and were formerly owners *pro-indiviso* and in common of a parcel of land, left by their father. On Jan. 10, 1943, said property was partitioned among the heirs. On April 2, 1943, one of the heirs, Florencio Manaois, conveyed his one-fourth share of the lot to the defendant Zamora in consideration of ₱500. On same date, Zamora took possession thereof in the presence and with the acquiesence of the plaintiffs.

On May 3, 1943, Zamora, accompanied by one of the plaintiffs, got from the register of deeds the certificate of title of the property bought by him. Once in possession of the duplicate certificate of title, the defendant presented the deed of conveyance of the property in order to be recorded in the Registry of Property, however, he was advised that said deed could not be recorded unless a copy of the deed of partition among the heirs was presented. Due to difficulties encountered in securing the deed of partition, the defendant did not insist in registering the deed of conveyance. On July 22, 1946, the Register of Deeds upon being advised by the defendant why he could not secure the deed of partition, accepted the deed and entered the same in the entry book of his office. On the same date this action was brought for legal redemption, under Articles 1523 and 1524 of the old Civil Code. The evidence clearly showed that the plaintiffs had knowledge of the sale in question since its execution on April 2, 1943. The question to be decided was whether the nine-day period should start from July 22, 1946 (date of registration) or from April 2, 1943 (when petitioner had actual knowledge).

The Court held that the date when the petitioners had actual knowledge should be the starting point, because the date of registration was intended to be applied only to cases where the date of actual knowledge was unknown, the idea being that knowledge of the sale might be presumed from its mere registration and not to cases where the date of prior knowledge was known, otherwise, a legal presumption would be given more importance than a real fact.[7] Chief Justice Paras, speaking for the Court, said:

> "It is desirable that the purchaser of real property should not be left guessing or in suspense as to the status of their title, so as to allow or enable them to decide without delay on what to do with said property. It is true that the matter of registering a sale is within the power of the purchaser who should be blamed for any delayed registration. But

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[2] Art. 1619, *id.*
[3] Arts. 1601, 1620, 1621, 1622, *id.*
[4] Art. 1620, first par., *id.* *See* Saturnino v. Paulino, G.R. No. L-7385, May 19, 1955, 30 PHIL. L.J. 65 (1955).
[5] Art. 1524 of the old Civil Code.
[6] G.R. No. L-6251, January 31, 1956.
[7] The Court quoted Manresa, thus: "El Codigo,...no quiere establecer para todos uniforme de nueve dias a contar desde ella para todos los casos de titulos sujetos a inscripcion, un plazo el retracto, sino solo para el caso de no poder acreditarse se el retrayente tuvo o no conocimiento anterior de la *de jure*, basada en la publicidad del Registro. Si el retrayente conocia la venta, el plazo ha de contarse desde ese conocimiento...." 10 MANRESA 340 (4th ed.).

> there may be instances where early registration, as in the case at bar, cannot be effected due to the legitimate causes beyond the control of the purchaser. Upon the other hand, a redemptioner who has actual knowledge is afforded the same, if not more opportunity to exercise his right, as a redemptioner charged with knowledge of the sale merely in virtue of a registration."

Under the new Civil Code, it is doubtful if a similar question as in this case will arise, because the prospective vendor or the vendor is required to serve notice in writing to possible redemptioners who may exercise the right only within 30 days from said notice. The deed of sale shall not be recorded in the Registry of Property, unless accompanied by an affidavit of the vendor that he has given written notice thereof to all possible redemptioners.[8]

The case of *Baradi and Bonita v. Ignacio*,[9] clarified the phrase "from the date of conveyance" under Section 119 of Com. Act No. 141.[10] On Oct. 15, 1929, the defendant Ignacio acquired the land in question by virtue of a homestead patent and for which original certificate of title was issued by the Register of Deeds of Nueva Ecija on Nov. 9, 1929. The land was mortgaged to the Philippine National Bank[11] to guarantee payment of ₱160. For failure of the defendant to pay the debt, the Bank foreclosed the mortgage and the land was sold to it on May 30, 1941 as the higest bidder. The conveyance by the defendant to the Bank was made nearly ten years after the issuance of the patent, and therefore the transaction was valid and binding.[12] On Sept. 8, 1943, the Bank executed an affidavit of consolidation of ownership, by virtue of which the original title was cancelled and in lieu thereof a transfer certificate of title was issued in its favor. On Sept. 1, 1947, the Bank sold the land to the plaintiffs, and a transfer certificate of title was issued in their favor. Sometime in May, 1950, the defendant asked the plaintiffs to allow him to redeem the property pursuant to Section 119 of Com. Act No. 141 which provides:

> "Every conveyance of land acquired under free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of conveyance."

The question was: From what date shall the period of five years within which redemption should be made be counted? Is it from the date of conveyance to the bank or from the date of conveyance by the bank to the plaintiff? The Court answered thus:

> "The answer is not difficult to perceive. The law provides that the 5-year period of redemption shall be counted from the date of conveyance and this undoubtedly refers to the act of consolidation of its ownership made by the PNB on Sept. 8, 1943 on which date, the Register of Deeds issued in its favor Transfer Certificate of Title No. 19545. Since Manuel Ignacio attempted to repurchase the land only in May, 1950, or after nearly seven years, it is evident that he has already forfeited his right to redeem under the law."

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## Civil Law—*Sublease distinguished from assignment of lease.*

MANLAPAT v. SALAZAR
G.R. No. L-8221, Jan. 31, 1956

The contract of lease may either be (1) of things, or (2) of work and service.[1] Lease of things is defined in the Civil Code, thus: "In the lease of things, one of the parties binds himself to give to another the enjoyment or use of a

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[8] Art. 1623, Civil Code.
[9] G.R. No. L-8324, January 19, 1956.
[10] Public Land Law.
[11] Hereafter referred to as the Bank.
[12] Com. Act No. 141, § 118.
[1] Art. 1642, Civil Code.

thing for a price certain, and for a period which may be definite or indefinite".[2] The lessee cannot assign the lease without the consent of the lessor, unless there is a stipulation to the contrary,[3] but he may sublet the thing leased, when in the contract of lease of things there is no express prohibition.[4]

The assignment or cession of a lease would amount to a novation by the substitution of the obligor. Where this takes place the consent of the obligee who is the lessor is essential.[5] Without the proper consent, the assignment would be void.[6]

In this case, the fishpond in question formerly belonged to three co-owners who had taken turns in leasing it to the same person, Enriquez. The last lease was signed in 1931 and was to last until June 1, 1967. After the death of Enriquez, his widow, subleased the same to a certain Dr. Cruz and thereafter to the present defendant, the sublease to the latter to commence from May 31, 1947 and to last until May 31, 1967. The plaintiff, the sole heir of the deceased co-owners of the fishpond brought this action, in 1952, to recover the possession of the fishpond on the ground that the sublease as well as the leases executed by the plaintiff's predecessor-in-interest was null and void, because the sublease to the defendant was not really a sublease but an assignment of lease, which was void for want of the lessor's consent.

The Court held that the contract sought to be invalidated was not an assignment of lease but a sublease. It should be noted that the period of the sublease to the defendant was one day shorter than the original lease. The difference was shown, by quoting Manresa:[7]

> "...in the case of cession, the lessee transmits absolutely his rights, his personality disappears, there only remains in the juridical relation two persons, the lessor and the assignee, who is converted into a lessee. In the case of a sublease, no personality disappears; there are two distinct juridical relations although intimately connected and related to each other."

The same test is applied at common law, where the transfer of a leasehold by the lessee is deemed an assignment of lease only if he cedes his entire interest in the estate; whereas, if he retains a reversionary interest, however small, the transfer is deemed a mere sublease.[8] So, if the lessee underlets for a period less than the entire term or reserves for himself a reversionary interest in the term, the transaction is a subletting.[9]

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**Civil Law—*Rule on "possessor in good faith" not applicable to contract of lease.***

LOPEZ, INC. v. PHILIPPINE AND FAR EASTERN TRADING CO.
G.R. No. L-8010, Jan. 31, 1956

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] The same has been explained by the Supreme Court, thus: "Bona fide occupant" is "one who sup-

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[2] Art. 1643, *id.*
[3] Art. 1649, *id.*
[4] Art. 1650, *id.*
[5] ABAD SANTOS, VICENTE, STATUTORY PROVISIONS, CASES AND TEXT ON PROPERTY 581 (1951).
[6] Estate of Mota v. Serra, 47 Phil. 464 (1925); Vda. e Hijos de Barreto y Cia. v. Albo and Sevilla, Inc., 62 Phil. 593 (1935).
[7] 10 MANRESA 510 (1950 ed.).
[8] 32 AM. JUR. 290; 51 C. J. S. 553.
[9] 51 C. J. S. 555.
[1] Art. 526, Civil Code.

poses he has a good title and knows of no adverse claim; one who not only honestly supposes himself to be vested with true title but is ignorant that the title is contested by any other person claiming a superior right to it."[2] In the present case the Court reiterated the rule established in previous cases,[3] that the scope and extent of the rule or law on possessor in good faith refers only to the party who occupies or possesses the property in the belief that he is the owner thereof; it cannot apply to a lessee because as such he knows that he is not the owner of the leased premises.

Before the war, the defendant corporation, in the case under comment, had been occupying, as lessees, two doors of the plaintiff's building situated in Baguio City. During the bombing of the city by the American Air Forces in 1945, the Lopez building was burned and seriously damaged. Desiring to rebuild the building, the defendant tried, but failed to contact the president of the plaintiff corporation; so that at its own expense the defendant proceeded with the repair of the building. Notice was given to the plaintiff by a letter. Later, plaintiff and the defendant entered into an agreement whereby the latter reoccupied the premises paying a rental of ₱300 a month.

This action was brought for failure to pay the rental for the months of February to September of 1947. Although admitting its own delinquency, the defendant was of the belief that inasmuch as it was entitled to the value of improvements amounting to ₱14,583.45, the delinquency and future rentals could well be charged against it. The lower court sustained the contention that the defendant, being a possessor in good faith, was entitled to reimbursement until time of notice to vacate, when possession in good faith ceases.

It was ruled by the Court, through Justice Montemayor, that Article 453 of the old Civil Code[4] does not apply to leases:

> "...we believe it not only advisable but necessary to clear and resolve the misconception about the scope and extent of the rule or law on possessor in good faith... This rule or principle contained in the civil law refers only to a party who occupies or possesses property in the belief that he is the owner thereof and said good faith ends only when he discovers a flaw in his title so as to reasonably advise or inform him that after all he may not be the legal owner of said property. This principle of possession in good faith naturally cannot apply to a lessee because as such lessee he knows that he is not the owner of the leased premises. Neither can he deny the ownership or title of his lessor. Knowing that his occupation of the premises continues only during the life of the lease contract...he introduces improvement on said property upon termination at his own risk in the sense that he cannot recover their value from the lessor, much less retain the premises until such reimbursement."

The right of the defendant with respect to the improvements introduced thereto was governed by Article 1573[5] in relation to Article 487[6] of the old Civil Code, under which the lessee was given the rights of a usufructuary and could remove the improvements introduced, provided that no injury was done to the property.

If this case were decided under the new Civil Code, the result would have been different by virtue of Article 1678, which states:

> "If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property

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[2] 30 Phil. L.J. 199 (1955).
[3] The same ruling was applied in the following cases: Alburo v. Villanueva, 7 Phil. 277 (1907); Cortes v. Ramos, 46 Phil. 184 (1924); Rivera v. Trinidad, 48 Phil. 396 (1925); Pojas v. Velasco, 51 Phil. 520 (1928).
[4] Art. 546, new Civil Code.
[5] This provision was not reenacted in the new Civil Code.
"A lessee shall have, with respect to useful and voluntary improvements, the same rights which are granted to usufructuaries." (Art. 1573 of the old Civil Code)
[6] Art. 579, new Civil Code.

leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary."

*Pilipina A. Arenas*

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## Civil Law—*Duration of lease contract; unlawful detainer.*

CONSUELO VDA. DE PRIETO v. SANTOS
CONSUELO VDA. DE PRIETO v. GADDI
G.R. Nos. L-6639-40, Feb. 29, 1956

Article 1581 of the Spanish Civil Code as perpetuated under Article 1687 of the Civil Code provides that if the period for the lease has not been fixed, it is understood to be from month to month, if the rent agreed upon is monthly. It further provides that "even though a monthly rent is paid, and no period for the lease has been set, the courts may fix a longer term for the lease after the lessee has occupied the premises for over one year...." This article, which specially governs lease of urban lands, together with Article 1678 of the Civil Code in view of Article 2253 of the latter Code,[1] was applied in the present case the main operative acts of which had occurred before the effectivity of the Civil Code.

This case involved two unlawful detainer cases[2] appealed to and jointly tried and decided by the lower court and finally elevated to the Supreme Court. The defendants had been occupying separately the two urban lots in question since the enemy occupation under lease contracts which fixed no definite duration, but with the agreed rentals of so much a month. On June 1, 1950 plaintiff notified defendants of his desire to terminate the lease contracts on June 30, 1950. For this purpose defendants were given time until July 31, 1950 within which to remove their houses. The CFI, applying the codal provisions cited above, found the defendants guilty of unlawful detainer but allowed them possession of the lands for six months within which to either receive reimbursement of the value of their houses, or remove them therefrom, or yield them to be demolished as the circumstances warranted. The defendants argued that under Article 1687 of the Civil Code the courts may fix a longer term for the contracts of lease and accordingly they could not have been and were not guilty of unlawful detainer at the time of the institution of this proceedings. The Supreme Court, in affirming *in toto* the decision of the CFI, said:

> "We are of the opinion that this present appeal cannot be sustained, for plaintiff's notice of the termination of the respective contracts of lease was given to the defendants on June 1, 1950, when the Civil Code of the Philippines was not, as yet, effective. There being no stipulation as to the duration of said contracts and the parties thereto having agreed on a monthly rental, the lease — under the provision of Art. 1581 of the Spanish Civil Code, which was in force on said date — is understood to be from month to month and to have been terminated therefore, upon the expiration of each month, without necessity

[1] Art. 2253 provides: "The Civil Code of 1889 and other previous laws shall govern rights originating, under said laws, from acts done or events which took place under their regime, even though this Code may regulate them in a different manner, or may not recognize them. But if a right should be declared for the first time in this Code, it shall be effective at once, even though the act or event which gives rise thereto may have been done or may have occurred under the prior legislation, provided said new right does not prejudice or impair any vested or acquired right, of the same origin."

[2] Consuelo Vda. de Prieto v. Santos and Consuelo Vda. de Prieto v. Gaddi, G.R. Nos. L-6639-40, Feb. 29, 1956.

> of special notice, in the absence of an implied renewal (Art. 1566, Spanish Civil Code), which did not take place and could not have taken place, beginning from June 1, 1950 owing to said notice...."

The Supreme Court said further that Article 1687 of the Civil Code merely gives the court discretion to extend the term of a lease contract without fixed duration but providing for a definite rate of rentals.[3]

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**Civil Law**—*No actionable misrepresentation where area of land is not the principal consideration.*

SIBUG v. MUN. OF HAGONOY
G.R. No. L-7131, Feb. 29, 1956

The Civil Code provides that a contract in which consent is given through mistake, violence, intimidation, undue influence, or fraud is voidable.[1] It further provides that misrepresentation made in good faith is not fraudulent but may constitute error.[2] In order that mistake may invalidate consent, it should refer to the substance of the thing which is the object of the contract, or to those conditions which have principally moved one or both parties to enter into the contract.[3] In previous cases decided by the Supreme Court where the parties did not consider the area of a parcel of land as an essential element of the contract,[4] and where the alleged agrieved party had the opportunity to and actually did examine the object of the contract,[5] it was held that there could be no misrepresentation in such a case and the contract was valid.

The case at bar reiterated the aforementioned rulings in connection with the function of a notice of bid. The defendant municipal corporation leased to the plaintiff two fishponds which in the contract were described as having respectively areas of 86 and 74 hectares. The lease was annual and good for five years. In this suit for the reduction of the annual rentals and the reimbursement of expenses of repair the plaintiff contends that appellee was guilty of misrepresentation as to the areas of the fishponds, because they were actually 40 and 31 hectares in areas, respectively. In affirming the order of dismissal of the plaintiff's complaint, the Supreme Court observed:

> "The evidence shows that the notice of bid expressly stated that the bidding was by lot and not by the hectare... It is furthermore admitted that the appellant had gone to and investigated the fishponds before the public bidding and his findings undoubtedly led him to offer a higher rental for the smaller lot and a lower rental for the larger lot...a strong indication that the areas were not the principal consideration for his bids. The areas mentioned in the contract of lease and in the notice of bid were merely descriptive of the fishponds and not intended as a unit measure for computing the rentals."

Passing upon the issue of expenses of repair, the Court said:

> "With reference to the claim for reimbursement of the expenses incurred by the appellant for repairing the dikes due to damages resulting from typhoon and waves of the Manila Bay, it is sufficient to point out that in the contract of lease it is expressly provided that

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[3] Under the Spanish Civil Code courts have no power or discretion to fix a longer term for the lease under the circumstances governed by Art. 1687 of the Civil Code. *See* Art. 1581 of the Spanish Civil Code.
[1] Art. 1330.
[2] Art. 1343.
[3] Art. 1331.
[4] Teran v. Villanueva, 56 Phil. 677 (1932).
[5] Azarraga v. Gay, 52 Phil. 599 (1928); Saniga v. Zaballero and Santos, 59 Phil. 101 (1933).

the appellant obligated himself to make all the necessary repairs and to maintain the dikes at any and all times at his own expenses during the existence of the contract in good order and condition."[9]

*Jerry P. Rebutoc*

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**Civil Law**—*A contract which stipulates that if the mortgagor fails to pay the mortgage debt within a given period, the consideration of the mortgage shall be considered as payment of the mortgaged property which thereby becomes the property of the mortgagee is null and void for being pactum commissorium.*

JOSEFA REYES v. FELIPE NEBRIJA, ET AL.
G.R. No. L-8720, March 21, 1956

When the principal obligation becomes due, the things in which the pledge or mortgage consists may be alienated for the payment to the creditor.[1] But a contract of mortgage which amounts to *pactum commissorium* is expressly prohibited by the Civil Code.[2] The forfeiture clause has traditionally been outlawed because it is contrary to good morals and public policy.[3]

In the instant case, the plaintiffs brought an action to compel the defendants to execute in their favor the necessary deed of conveyance of a parcel of land in accordance with the stipulation which read as follows: "That the conditions of this mortgage are that if I Eduvigis Hernandez or my heirs cannot redeem this mortgage in the same amount plus 12% interest, then this consideration shall be consideration as full payment of this parcel of land without further action in court within two years from the date of this contract." The defendants claimed that this agreement was null and void.

In holding that the agreement was contrary to law because it amounted to *pactum commissorium*, the Supreme Court said that the terms of the covenant, especially the phrase that the money taken "shall be considered as full payment of his parcel of land without further action in court" meant that upon failure of redemption, the land would automatically pass to the mortgagee.

The Court cited with approval the case of *Tan Chun Tic v. West Coast Life Insurance Co.*,[4] which held that a stipulation in a mortgage that the mortgaged land shall become the property of the mortgagee is null and void.

The Court distinguished the instant case from *Dalay v. Aquiatin*[5] and *Maximo v. Rodrigues*.[6] It was held in these cases that a stipulation to pay the debt with the property given as security does not violate Article 2088 of the Civil Code, because such stipulation does not authorize the creditor to appropriate the property pledged or mortgaged or to dispose the same. Such a stipulatin constitutes only a promise to assign said property in payment of the obligation if, upon its maturity it is not paid.[7]

*Amelia R. Custodio*

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[1] Art. 2087, Civil Code.
[2] Art. 2088, Civil Code.
[3] Report of the Code Commission, p. 156.
[4] 54 Phil. 361 (1930).
[5] 47 Phil. 961 (1923).
[6] 69 Phil. 217 (1939).
[7] Art. 1255 of the Civil Code provides: "The debtor may cede or assign his property to his creditors in payment of his debts...."

**Civil Law**—*Adoption; natural children, whether recognized or not, may be adopted.*

LEOPOLDO PRASNIK v. REPUBLIC
G.R. No. L-8639, March 23, 1956

Under the modern trend, adoption is deemed not merely an act to establish the relation of paternity and filiation but one which may give the child a legitimate status. It is in this sense that adoption is now defined a "juridical act which creates between two persons a relationship similar to that which results from legitimate paternity and filiation."[1] In keeping with this modern trend of adoption statutes, our Supreme Court held in *Prasnik v. Republic* that an acknowledged natural child can properly be adopted under Art. 338 of the Civil Code. Said the court: "It should be borne in mind that the rights of an acknowledged natural child are much less than those of a legitimate child and it is indeed to the great advantage of the latter if he be given, even though through legal fiction, a legitimate status."

The petitioner in this case filed a petition seeking to adopt four minors all of whom he had previously acknowledged as his natural children. The solicitor general opposed the petition on the ground that the petitioner was disqualified to adopt acknowledged natural since Art. 338 refers only to a natural child who has not been acknowledged as such. Said ground of opposition was the main issue in this appeal. As mentioned earlier, the Court resolved the question in favor of the adoption of the child.

Said the Court further: "Article 331 of the New Civil Code provides that a natural child may be adopted by his natural father or mother. Apparently, Article 338 merely refers to the adoption of a natural child and not to one who has already been recognized but there is nothing therein which would prohibit the adoption of an acknowledged natural child even if the law does not expressly say so. The reason for the silence of the law is obvious. The law evidently intends to allow adoption whether the child be recognized or not."

This view finds further support in the comments of Manresa[2] to the effect that a natural child, not recognized, and other illegitimate children whose filiation does not appear, are legally total strangers to their parents and maybe adopted by the latter under Art. 337. But an acknowledged natural child or an illegitimate child whose filiation had already been established not being legally strangers to the parents cannot not be adopted under the general principles of adoption.[3] The present provisions, therefore, must be considered as creating an express exception to the general principles of adoption of recognized natural and illegitimate children.[4] This view is likewise justified by the rule that adoption statutes should be construed to encourage adoption.[5]

*Lilia R. Bautista*

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[1] VALENCIA 473.
[2] 20 MANRESA 80.
[3] See Art. 337 of the New Civil Code.
[4] I TOLENTINO, COMMENTARIES AND JURISPRUDENCE ON THE CIVIL CODE OF THE PHILIPPINES 640 (1953).
[5] In re Havsgord's Estate, 147 N.W. 378 (1914).

**Commercial Law—*A carrier is not exempt from liability for loss due to a natural disaster if he is negligent.***

STANDARD VACUUM OIL CO. v. LUZON STEVEDORING CO., INC.
G.R. No. L-5203, April 18, 1956

Article 361 of the Code of Commerce provides:

> "Merchandise shall be transported at the risk and venture of the shipper, if the contrary was not expressly stipulated.
>
> "Therefore, all damages and impairment suffered by the goods during the transportation, by reason of accident, *force majeure*, or by virtue of the nature or defect of articles, shall be for the account and risk of the shipper.
>
> "The proof of these accidents is incumbent on the carrier."

However, the carrier shall be liable for the losses and damages arising from the causes mentioned in Article 361 if it is proved that they occurred on account of his negligence or because he did not take the precautions usually adopted by careful persons, unless the shipper committed fraud in the bill of lading, making him believe that the goods were of a class or quality different from what they really were.[1]

Article 361, particularly its first paragraph, gives the impression that the exemption granted to common carriers is an absolute exemption from liability and, so in the light of the provisions of the new Civil Code, is deemed repealed, because it is unreasonable, unjust, and against public policy.[2] We believe, however, that Article 361 should be understood in a relative sense. Viewed in that light, there is no inconsistency between the provisions of the Civil Code and those of the Code of Commerce in question. Indeed, a reading of Articles 361 and 362 of the Code of Commerce and the cases thereunder conveys no such idea that the article was ever intended to clothe common carriers with blanket immunity to liability.

Thus, even before the advent of the new Civil Code,[3] the Supreme Court had already ruled that:

> Proof of the delivery of goods in good order to a carrier and of their arrival at the place of destination in bad order makes out a prima facie case; and it is incumbent on the carrier, in order to exonerate itself to prove that the loss or injury was due to some circumstance inconsistent with its liability.[4] This is so because as to how the merchandise was damaged, when and where, is a matter peculiarly and exclusively within the knowledge of the defendant, and in the very nature of things cannot be in the knowledge of the plaintiff. To require the plaintiff to prove as to when and how the damage was caused would be to force him to call and rely on the employees of the defendant's ship which in legal effect would be to say that he could not recover any damage for any reason.[5]

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* The Court applied the following codal provisions:
Art. 1306, Civil Code: The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.
Art. 1174, *id.*: Except in cases expressly specified by the law or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable.

[1] Art. 362, Code of Commerce.

[2] Arts. 1744 and 1745, Civil Code. For instance, Profs. Padilla and Campos, Jr. believe that "the first paragraph of this article (Art. 361 of the Code of Commerce) is repealed by article 1745." (LAW ON TRANSPORTATION 97 [1963]).

[3] The provisions of the Civil Code on Common Carriers are new ones.

[4] Yuchauoti Steamship Co. v. Dexter & Unson, 41 Phil. 289, 293 (1920), Mirasol v. Robert Dollar Steamship Co., 53 Phil. 124, 129 (1929).

[5] Mirasol v. Robert Dollar Steamship Co., note 4 *supra* at 129.

But even if the injury may have been caused by one of the excepted causes, still the carrier will be responsible, if the injury might have been avoided by the exercise of reasonable skill and attention on the part of the persons employed in the conveyance of the goods, but the *onus probandi* then is shifted upon the shipper to show the negligence.[6]

These decisions have found their way into the new Civil Code. Thus, Article 1741 of the same exempts the carrier from liability for loss due to natural disaster only if the disaster is the "*proximate* and *only* cause of the loss."[7]

In the case under review, we see a reiteration by the Court of this uniform construction placed on Article 361 of the Code of Commerce.[8]

The facts in that case were: Pursuant to their contract defendant's barge was laden with gasoline belonging to the plaintiff to be transported from Manila to the port of Iloilo. On February 2, 1947, the defendant's tugboat "Snapper" picked up the barge outside the breakwater and sailed on its voyage until February 4, 1947 when the engine of the tugboat developed trouble because of a broken idler. Upon receipt of a message informing it of the engine trouble, the defendant called up several companies in Manila to find out if they had any vessels in the vicinity of Santiago Point in Batangas, but said companies replied in the negative and so the defendant sent its tugboat "Tamban" which was docked at Batangas, ordering it to proceed to the place where the "Snapper" was. In the meantime, the captain of the "Snapper" tried to cast anchor, but the water areas off Elefante Island were deep and the anchor would not touch bottom. The sea became rough and the waves increased in size and force and despite the efforts of the crew to prevent the tug from drifting away, the force of the wind and the violence of the waves dashed the tug and the barge against the rock. The tug developed a hole in the hull and sank and the barge carrying the gasoline was so badly damaged that the gasoline leaked out. The "Tamban" came but it was too late.

The plaintiff sued the defendant to recover damages. The defendant pleaded that its failure to deliver the gasoline was due to fortuitous events. The lower court found that the disaster was the result of an unavoidable accident and the loss of the gasoline was due to a fortuitous event which was beyond the control of the defendant and so dismissed the case. Plaintiff then appealed. The Supreme Court found:

1. That the tugboat was a surplus boat, that it was used without first submitting it to an overhaul in a dry-dock, and that in 1946, the Bureau of Customs found it to be inadequately equipped and required the defendant to provide the boat with the requisite equipment but that the defendant was never able to complete it.

2. That when the idler was broken, the engineer of the tugboat examined it for the first time and it was only then that he found that there were no

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[6] G. Martini, Ltd. v. Macondray & Co., 39 Phil. 934, 946 (1919).

[7] For as was said, "...one who has placed the property of another, entrusted to his care, in an unseaworthy craft, upon the dangerous waters, cannot absolve himself by crying, 'an act of God,' when every effect which a typhoon produced upon that property could have been avoided by the exercise of common care and prudence. To be exempt from liability for loss because of an act of God, the common carrier must be free from any previous negligence or misconduct by which that loss or damage may have been occasioned." (*See* diss. opinion of Justice Moreland in Tan Chiong Sian v. Ynchausti & Co., 22 Phil. 152, 175 [1912]).

[8] The Supreme Court did not have the occasion to cite the corresponding provision of the Civil Code because the events which gave rise to the rights herein asserted occurred before the regime of the new Civil Code. (*See* Art. 2253, Civil Code).

spare parts to use except a worn out driving chain. The necessity of carrying such spare parts was emphasized by the very witness of the defendant.

3. That when ordered to do so, the "Tamban" set sail from Batangas for the rescue only to return to secure a map of the vicinity where the "Snapper" had stalled. This entailed a delay of two hours.

4. Another circumstance refers to the deficiency or incompetence in the man power of the tugboat. According to law,[9] a tugboat of the tonnage and powers of one like the "Snapper" is required to have a complement composed of one first mate, one second mate, one third mate, one chief engineer, one second engineer, and one third engineer, but when the trip was undertaken, the "Snapper" was manned by only one master, who was merely licensed as a bay, river and lake patrol, one second mate, who was licensed as a third mate, one chief engineer, who was licensed as a third motor engineer, one assistant engineer who was unlicensed.

On the basis of these findings, and applying Article 361 of the Code of Commerce the Court held that while the breaking of the idler might be due to an accident, the cause of the disaster which resulted in the loss of the gasoline could only be attributed to the negligence or lack of precaution to avert it on the part of the defendant.

The significant fact to be noted is that the defendant never raised the defense of absolute exemption from liability under the first paragraph of Article 361.

*Vicente V. Mendoza*

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**Commercial Law**—*Applicability of Section 18 of Act No. 1459 to sociedades anonimas.*

BENGUET CONSOLIDATED MINING CO. v. PINEDA, ET AL.
G.R. No. L-7231, March 28, 1956; 52 O.G. No. 4, 1951

The evident purpose of Act No. 1459 is to introduce the American corporation into the Philippines as a standard commercial entity and to hasten the day when the sociedad anonima of the Spanish law would be obsolete.[1] This avowed policy of the law was followed in the case of *Benguet Consolidated Mining Co. v. Pineda, et al.*

The petitioner here was organized on June 24, 1903 as a *sociedad anonima*[2] under the Code of Commerce of 1886 then in force in the Philippines. The articles of incorporation provided that it was organized for a term of fifty years. In 1953 two documents for alternative registration were filed with the Securities and Exchange Commission by petitioner; (1) for extension of another fifty years; (2) for reformation or reorganization as a corporation in accordance with Section 75 of Act 1459 otherwise known as Corporation Law.[3] Registration was denied hence this petition.

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[9] § 1203, Revised Administrative Code.
[1] Harden v. Benguet Consolidated Mining Co., 58 Phil. 141 (1933).
[2] *Sociedad anonima* is something very much like the English joint-stock company with features resembling those of both the partnership and the corporation. *Supra* note 1.
[3] "Any corporation or *sociedad anonima* formed, organized, and existing under the laws of the Philippines on the date of the passage of this Act, shall be subject to the provisions hereof so far as such provisions may be applicable and shall be entitled at its option either to continue business as such corporation or to reform and organize under and by virtue of the provisions of this Act, transferring all corporate interests to the new corporation which, if a stock corporation, is authorized to issue shares at par to the stockholders or members of the old corporation according to their interests."

In upholding the stand of the Commissioner the Supreme Court held that Section 18 of the Corporation Law which prohibits the extension of corporate life by amendment of the original articles of incorporation was designed to apply to a *sociedad anonima*. The duration of corporate life of the petitioner has evident connection with the petitioner's relation to the public and not to the petitioner's organization and method of transacting business.

The intention of petitioner to remain as a *sociedad anonima* was evidenced by its failure during 1906-1953, to adopt the alternative to transfer its corporate interests to a new corporation as required by Section 75.[4] Aside from such negative showing, the petitioner positively asserted in 1933 that as a *sociedad anonima* it was not a corporation within purview of the laws prohibiting a mining corporation from becoming interested in another mining corporation.[6]

Having made its choice, the company could not go back and seek to change its position and adopt the reformation that it has formerly repudiated. The election of one of the several alternatives is irrevocable.

*Lilia R. Bautista*

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**Commercial Law**—*Prescription of action under the Carriage of Goods by Sea Act.*

TAN LIAO v. AMERICAN PRESIDENT LINES
G.R. No. L-7280, Jan. 20, 1956

Subject to the provision of Section 6,[7] under every contract of carriage of goods by sea, the carrier in relation to the loading, handling, stowage, carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities set forth in the Carriage of Goods by Sea Act.[8]

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: *Provided*, That, if a notice of loss or damage, either apparent or concealed is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered."[9]

Thus, in the instant case, the action to recover loss suffered by the shipper, which was not brought within one year, was held to have prescribed. On July 30, 1946, the plaintiff entered into a contract with Kent Sales Co., Inc., New York, through its agent in Manila for the importation of 2,000 cases of fresh

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[4] See § 191, Act No. 1459.

[5] Justices Paras, Bautista Angelo and Jugo, dissenting, believed that § 75 did not take away the petitioner's right to exhaust its term as a *sociedad anonima* already vested before the enactment of the Corporation Law but merely granted it the choice to organize as a regular corporation, instead of extending its life as a *sociedad anonima*. As no period was fixed within which it should exercise the option of continuing as a *sociedad anonima* or reforming or organizing under a corporation, the petitioner should be entitled to registration in their view.

[6] Harden v. Benguet Consolidated Mining Co., *supra* note 1.

[7] "Notwithstanding the provisions of the preceding section, a carrier, master or agent of the carrier, and a shipper shall, in regard to any particular goods, be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier in respect of such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness (so far as the stipulation regarding seaworthiness is not contrary to public policy), or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care and discharge of the goods carried by sea..."

[8] Com. Act No. 65.

[9] § 3, par. 6, id.

hen eggs for ₱91,040, to be shipped aboard the "Marine Leopard," owned by the defendant. The eggs were delivered to the captain of the ship on Aug. 6, 1946; on Aug. 30, the eggs were transferred to another ship of the defendant. The eggs arrived in Manila on Dec. 26, 1946; 587 cases were in deteriorated and rotten condition. The plaintiff alleged that had the cargo arrived without any delay caused by transferring the load from one ship to another, he could have sold all the eggs for ₱120,000, thereby realizing a profit of ₱92,755. The defendant contended that under the bill of lading, it was at liberty to transship the eggs and that the delay was due to a strike of longshoremen in the western coast of the United States. While the plaintiff received the goods on Dec. 26, 1946, he filed the claim for damages only on July 25, 1946 (denied Feb. 16, 1948) and brought suit on May 25, 1948, that is, more than one year as allowed by Section 3 of Com. Act No. 65.

The Court held that the action had prescribed under the Carriage of Goods by Sea Act and did not give credit to the plaintiff's contention that this being an action for damages, the Civil Code should govern. "Actually any and all injury or damages suffered by the goods while in transit and in the custody of the carrier, amounts to a breach of the contract of carriage." In the same way there is no difference between damage to the goods and damage to the shipper for any damage suffered by the goods would also result to damage to the consignee or shipper. This Act not only refers to "loading, handling, stowage, carriage, custody, care and discharge of goods" but also to unreasonable delay because the obligation to carry the goods naturally includes the duty not to delay their transportation.

Speaking for the Court, Justice J. B. L. Reyes, said:

> "There would be some merit in appellant's insistence that the damages suffered by him as a result of the delay in the shipment of his cargo are not covered by the prescriptive provision of the Carriage of Goods by Sea Act above referred to if such damages were due, not to the deterioration and decay of the goods while in transit, but to other cause independent of the condition of the cargo upon arrival, like a drop in their market value."

As held in the cases of *Chua Kuy v. Everett Steamship Corp.*[4] *and Go Chan & Co. v. Aboitis & Co.*[5] the prescriptive period established in the Carriage of Goods by Sea Act modified *pro tanto* the provision of Act 190 (now embodied in the New Civil Code) as to goods transported to and from Philippine ports in foreign trade as the latter is a law of general application while the former is a special act.

*Pilipina A. Arenas*

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**Land Registration Law**—*Effect of transfer by private instrument of land registered under the Torrens system; knowledge necessary to constitute bad faith.*

BETIA, ET AL. v. GABITO, ET AL.
G.R. No. L-7677, Feb. 18, 1956

It is basic that a land registered under the Torrens system should be dealt with in accordance with the Land Registration Law, Act No. 496. It is also fundamental that registration is the operative act that conveys and binds lands covered by Torrens title.[1]

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[4] 50 O.G. 159 (1953).
[5] G.R. No. L-8319, Dec. 29, 1955.
[1] §§ 50, 51, Act No. 496.

These rules found application in the instant case. The plaintiffs were the heirs of Aungon, who inherited half of a parcel of land from Natividad and bought the other half from her co-heirs for value and in good faith and for which a Torrens title was issued in her name. Upon Aungon's death in 1948, plaintiffs found the defendants in possession of a portion of the land. Defendants claimed that Natividad, by means of a document never acknowledged before a Notary Public, conveyed said portion to their predecessor for value in 1919, long before the acquisition of the same by Aungon.

It is indisputable that the acquisition by Aungon even if it was subsequent to that of the predecessor of defendants, should prevail because it was duly registered, whereas the latter was not.

But the Court of Appeals ruled that the private transfer should prevail even if the land in question was covered by certificate of title which did not show any encumbrance on its face for the reason that Aungon or her successors-in-interest had acted in bad faith in acquiring the land.

It appeared, however, that the basis of the finding of the Court of Appeals was the knowledge of the administrator of the deceased Aungon's estate and the plaintiffs after the death of Aungon when they found the defendants in possession of the land, claiming ownership thereof.

This knowledge, according to the Supreme Court, which was acquired after, not before, the purchase did not constitute bad faith as to qualify the character of the acquisition.

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**Land Registration Law**—*A levy on execution duly registered takes precedence over a prior unregistered sale.*

BIBIANA DEFENSOR, ET AL. v. VICENTE BRILLO, ET AL.
G.R. No. L-7255, Feb. 21, 1956

It is a settled doctrine that a levy on execution duly registered takes preference over a prior unregistered sale;[1] that even if the prior sale is subsequently registered, before the sale in execution but after the levy was duly made and registered, the validity of the execution sale should be maintained, because it retroacts to the date of the levy,[2] otherwise the preference created by the levy would be meaningless.

The instant case was a reiteration of this doctrine. In this case, the plaintiffs purchased a lot from the registered owners thereof. After the purchase, defendant obtained a judgment against the vendors and a writ of execution. The lots were levied upon. The levy was duly registered on August 3, 1949. Subsequently, after plaintiffs had registered the sale on Nov. 5, 1949, they filed a third party claim and later on commenced this action. Execution sale was in the meantime effected on Dec. 13, 1949.

The issue was: which takes preference, the levy on execution duly registered or a prior sale of the property which is unregistered?

The Supreme Court was unanimous in reiterating the principle in the *Gomez* and *Vargas* cases. The registered levy takes preference over the unregistered sale. It explains thus:

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[1] Gomez v. Levy Hermanos, 67 Phil. 134 (1939).
[2] Vargas v. Tansioco, 67 Phil. 308 (1939); Chin Liu v. Mercado, 67 Phil. 409 (1939); Executive Commission v. Abadilla, 74 Phil. 68 (1942).

"This result is a necessary consequence of the fact that the properties herein involved were duly registered under Act 496, and of the fundamental principle that registration is the operative act that conveys and binds lands covered by Torrens Title.[3] Hence, if appellants became owners of the properties in question by virtue of the recording of the conveyance in their favor, their title arose already subject to the levy in favor of the appellee, which had been noted ahead in the records of the Register of Deeds."

The instant case was differentiated from the cases of *Potenciano v. Dineros*[4] and *Barredo v. Barretto*,[5] where the conveyances by the registered owners were duly presented for registration before the land was levied upon by the creditor.

*Benjamin C. Santos*

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**Civil Procedure**—*Implied withdrawal of an appeal to revive judgment appealed from.*

HELEN SMITH, ET AL. v. RUPERTO KAPUNAN, ET AL.
G.R. No. L-9307, Feb. 9, 1956

The Rules of Court provide that "a perfected appeal shall operate to vacate the judgment... If the appeal is withdrawn, the judgment shall be deemed revived and shall forthwith be remanded for execution."[1]

In the instant case, the Supreme Court had occasion to explain the phrase "If the appeal is withdrawn".

Briefly, the facts of this case are as follows: From a judgment of the Municipal Court of Manila, ordering the defendants, petitioners herein, to pay the plaintiffs rentals and water charges as lessees, the defendants took an appeal to the Court of First Instance. Upon notice by the Court, the appellants filed their answer, but did not serve a copy thereof on the plaintiffs. The latter then moved for the dismissal of the appeal for failure to comply with Section 7, Rule 40 of the Rules, and the Court, finding failure to serve notice within the prescribed period, dismissed the appeal. Two months later (during those two months defendants never took an appeal nor asked for relief from the order of dismissal of the appeal), plaintiffs petitioned for the remanding of the case to the municipal court for execution. Defendants opposed, on the ground that the appeal to the Court of First Instance vacated the judgment of the municipal court and deprived it of all jurisdiction. Opposition was denied, hence this petition for certiorari.

The precise question is: What is the effect of the failure to appeal or ask relief from the order of the court of first instance dismissing the appeal from the municipal court?

The Supreme Court observed that although the dismissal by the court of first instance of the appeal was erroneous (since the procedure in case of failure to answer is to declare the appealing defendant in default, hear evidence for the plaintiff, and render judgment in accordance therewith), the failure to take an appeal or ask relief therefrom is fatal.

It is true that the perfection of an appeal vacates the judgment appealed from, and that such judgment can be revived only by withdrawal of the appeal. And it is only the appellant who can ask for the withdrawal and revival.[2]

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[3] §§ 50, 51, Act No. 496.
[4] G.R. No. L-7614, May 31, 1955.
[5] 72 Phil. 187 (1942).
[1] Rules of Court, Rule 40, § 9.
[2] Evangelista v. Soriano, 48 O.G. 4372 (1951).

But the withdrawal of appeal by the appellant does not have to be express in order to have effect. This is the clear import of the ruling of the Supreme Court in the instant case. It recognizes an implied withdrawal of the appeal and a consequent revival of the judgment appealed from. It said that "as the petitioners failed to appeal from the order of dismissal, or to seasonably ask for relief therefrom under Rule 38, their silence and inaction is equivalent to an implied withdrawal of their appeal and an assent to the revival of the judgment of the municipal court."

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**Civil Procedure**—*Implied consent to a motion to dismiss; order of dismissal is with prejudice where order does not specify whether it is with or without prejudice.*

CAMPO, ET AL. v. CAMILON, ET AL.
G.R. No. L-7903, Feb. 28, 1956

When a party to a case was notified of the hearing of a motion to dismiss the case, and at the hearing he did not object but on the contrary gave his conformity, the fact that he did not sign the motion for dismissal is no bar to the order of dismissal becoming *res judicata*, if such order was with prejudice.

Such was the ruling of the Supreme Court in the instant case.

In this case, counsel for both sides signed a joint motion for dismissal alleging that the parties were willing to settle amicably their dispute. Pursuant thereto, the court dismissed the case. Plaintiff herein, who was a party to the previous case, did not sign said motion, but he appeared at the hearing and filed no objection thereto. In this action by the plaintiff, the defendants alleged that it was barred by the previous case which involved the same parties and same subject-matter.

The Supreme Court sustained the defendant. It held that the fact that plaintiff did not sign the motion was of no consequence, there being an implied consent through failure to object thereto. As the order of dismissal of the previous case did not state whether it was with or without prejudice, it should be considered as a dismissal on the merits.[1]

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**Civil Procedure**—*Only jurisdictional defects may warrant a collateral attack on an order of the court; lack of verification not jurisdictional.*

CARMEN PARDO DE TAVERA Y LOPEZ MANZANO
v.
EL HOGAR FILIPINO, ET AL.
G.R. No. L-5893, Feb. 28, 1956

This case reiterates the ruling in previous cases to the effect that if the court has jurisdiction over a case, irregularities in the proceedings which would or could invalidate the court's order may be assailed directly by means of an appeal but not collaterally.[1] It is also ruled in this case that lack of verifica-

[1] Rules of Court, Rule 30, § 4.
[1] Lerma v. Antonio, et al., 6 Phil. 236 (1906); Vicente, et al. v. Lucas, et al., G.R. No. 6745, August 31, 1954.

tion of a petition filed in a probate court for the sale of real property belonging to the estate of a minor is not a jurisdictional defect.[2]

The relevant facts: A parcel of land was owned in common by plaintiff, who was then a minor, and several others. In 1930, the co-owners agreed to organize a corporation for the purpose of building a modern structure on the parcel of land and of accepting shares of stock in the corporation in exchange of their share in the land. Sometime later, the guardian of plaintiff filed a petition with the court asking for the confirmation of the agreement and for an authority to receive the shares of stock for the minor. The petition was granted. Subsequently, plaintiff (within three years after attaining the age of majority) brought an action to annul the transfer made by the guardian. The basis for the action was the failure of the guardian to comply with Section 569, Act No. 190, in the filing of the petition.

The plaintiff contended that the petition was not verified, that it did not set forth the condition of the estate of the ward and the facts and circumstances upon which the petition was founded tending to show the necessity or expediency of the sale, and that the court did not serve notice on the next of kin; hence the order was a nullity for lack of jurisdiction of the court.

The Supreme Court recognized the rule that if the court had no jurisdiction over the petition, the order may be attacked collaterally. But if the court had jurisdiction, irregularities in the proceedings which would or could invalidate the court's order must be attacked only in an appeal and not collaterally.

The defects alleged in this instant case were not, according to the Supreme Court, jurisdictional, hence could not be the basis for a collateral attack on the order of the court. The Court was very explicit in ruling that failure to verify a petition in a probate court for the transfer of real property is not a jurisdictional defect.

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**Civil Procedure**—*The filing of the record on appeal implies, and is equivalent to, the filing of the notice of appeal.*

CALO, ET AL. v. COURT OF FIRST INSTANCE OF AGUSAN, ET AL.
G.R. No. L-8491, Feb. 17, 1956

In this case, petitioners asked for mandamus to compel the respondent to give due course to an appeal taken. The last day for filing the appeal was October 5, 1954. Petitioners sent to the respondent court on October 2, by registered mail and special delivery, the necessary notice of appeal, record on appeal and appeal bond, in one envelope. The letter was received on October 7. The court assumed that the record on appeal was filed on October 2, the date of mailing, but drew the conclusion that the notice of appeal and appeal bond were filed on October 7, from the mere fact that the appeal bond was found in the record immediately following the notice of appeal.

The Supreme Court ruled that the appeal was made on time, since there was no proof that the record on appeal, the notice of appeal and the appeal bond were not in the same envelope.

At any rate, the Court said, the filing of the record on appeal, which is admittedly made on time, implies the filing of the notice of appeal and is *equivalent thereto*.[1]

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[2] Citing American cases: Ellsworth v. Hall, 12 N.W. 512; Hamiel v. Donnely, 39 N.W. 210; Myers v. McGavock, 58 N.W. 522; and Ancel, et al. v. So. Ill. & Bridge Co., 122 S.W. 709.

[1] Citing the case of Lopez v. Lopez, 77 Phil. 133 (1946).

**Civil Procedure**—*In an action to revive a judgment, the facts of the original judgment may not be re-examined; destruction of records interrupts running of prescriptive period.*

JOSE FRANCISCO, ET AL. v. JOSE DE BORJA
G.R. No. L-7953, Feb. 27, 1956

There are two main rules of procedure put into test in this case: one on the question of whether or not in an action to revive a judgment the facts in the case wherein said judgment was rendered may be re-examined and a decision different from the judgment sought to be revived may be entered, and another on the prescription of such action.

The relevant facts of the case: In a registration case instituted by plaintiffs' predecessors before the war, wherein the defendant herein was an oppositor, the lots in question in said case were awarded to plaintiffs' predecessors. After a motion for reconsideration had been denied on August 7, 1942, by the Supreme Court, the decision became final and executory. On June 4, 1946, plaintiffs filed a motion for the execution of the final decision, but due to loss of records, reconstitution was to be accomplished first. This was completed on February 3, 1947. After the reconstitution, plaintiffs filed several other unsuccessful motions for execution each of which was opposed by Borja. In one of these motions, filed on June 17, 1953, Borja was allowed by the Court of First Instance of Rizal to introduce evidence to prove his ownership of the lots covered by the decision over the objection of the plaintiffs, and by virtue thereof was awarded ownership of said lots. This was an appeal from that ruling.

The first issue was: In an action to revive a judgment, may the facts in the case wherein said judgment was rendered be re-examined and a decision different from the judgment sought to be revived be entered?

The Supreme Court disposed of this question with a negative answer. It said through Justice Montemayor:

> "We hold that a judgment sought to be revived after the lapse of five years from its rendition must necessarily be final and executory. Consequently, it cannot be re-opened, much less, the facts found therein modified or changed. The only question presented in a revival of a judgment is whether the party asking for it is still entitled to it. The only defense to said revival would be that more than ten years had passed since the entry of judgment and so the action has prescribed, and facts occurring after the judgment, such as satisfaction thereof by the losing party or counterclaims arising out of transactions not connected with the former controversy."[1]

The other question to be determined was whether Section 41 of Act No. 3110[2] had been repealed by Article 1155 of the new Civil Code.[3] Holding that such was not the case, the Supreme Court came out with the recognized principle of statutory construction that a special law prevails over a general law, and the repeal of the former by the latter must be express or clearly implied.

Hence, in the instant case, the prescriptive period began to run in 1942, and was interrupted in February, 1945 when the records were destroyed, under Act No. 3110. The running of the period was resumed on March 31, 1951, when

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[1] Cia. Gral. de Tabacos v. Martinez, 29 Phil. 515 (1915).
[2] All terms fixed by law or regulations shall cease to run from the date of destructions of the records and shall only begin to run again on the date when the parties or counsel shall have received from the Clerk of Court notice to the effect that the records have been reconstituted.
[3] New Civil Code, Art. 1155. The prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor.

plaintiffs received notice of the reconstitution of the records. The action brought on June 17, 1953, therefore, was not barred, only about 5 years of the period having been consumed.

*Benjamin C. Santos*

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**Civil Procedure**—*Total demand in all causes of action arising out of the same transaction determines jurisdiction of the court.*

DESPO v. HON. STA. MARIA, ET AL.
G.R. No. L-6903, Jan. 31, 1956

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] while the Justices of the Peace and the Judges of the 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] The principle in the case under consideration is a mere reiteration of the previous rulings that in a complaint with several causes of action, arising out of the same transaction, the total amount of the claims and not the demand in each single cause of action determines the jurisdiction of the court.

Cristeto Reyes filed a detainer case against Librada Despo in the municipal Court of Manila. Despo denied the allegations in the complaint and by way of counterclaim prayed for the recovery of the total sum of P6,000 under the following causes of action: P500 for alleged improvement; (2) P2,000 for moral damages; (3) P1,000 for compensatory damages because of the demolition of her shop at the apartment in question; (4) P2,000 for exemplary damages; (5) P500 for attorney's fees. Reyes moved to dismiss the counterclaim on the ground that the aggregate sum therein exceeded the jurisdiction of the Municipal Court. The Municipal Court ordered the dismissal of the motion. Despo filed a petition for certiorari in the CFI of Manila against the Judge of the Municipal Court for grave abuse of discretion. The CFI of Manila granted certiorari and held that the counterclaim in question was within the jurisdiction of the Municipal Court because each separate cause of action was for an amount not in excess of P2,000. Reyes appealed.

In holding that the CFI, and not the Municipal Court is the proper court which has jurisdiction over the case, the Supreme Court cited the case of *Soriano v. Omila*,[3] and said that the jurisdiction of a court depends 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*. The case of *Go v. Go*,[4] was also cited to distinguish between (1) a claim composed of accounts each distinct from the other and arising out of different transactions and (2) claim which is composed of several accounts arising out of the same transaction. In the first case, each account furnishes the test of jurisdiction, while in the second case, the jurisdiction is determined by the total amount claimed. The present case falls under the second class because all the five items demanded under the counterclaim arose out of one and the same transaction, namely, the alleged untimely demolition of the apartment from which the defendant was ejected.

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[1] Rep. Act No. 296 (Judiciary Act of 1948) § 44.
[2] § 2, *id.*
[3] G.R. No. L-7112, May 21, 1955; 30 PHIL. L.J. 963 (1955).
[4] G.R. No. L-7620, June 30, 1954.

The instant case is different from *Argonza, et al. v. International Colleges*[5] and *Soriano y Cia. v. Jose*,[6] because in these cases, several plaintiffs having separate and distinct claims against the same defendant were allowed to litigate under the rule on permissive joinder of parties,[7] and while the totality of the claims of the several plaintiffs exceeded the jurisdiction of the inferior court, the demand of each claimant furnished the jurisdictional test.

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**Civil Procedure**—*Necessary parties; action for payment of debt.*

BUTTE v. RAMIREZ
G.R. No. L-6604, Jan. 31, 1956

Under the Rules of Court,[1] indispensable parties are distinguished from necessary parties, by defining the former as parties in interest without whom no final determination can be had of an action, while necessary parties are persons who are not indispensable but who ought to be parties if complete relief is to be accorded as between those already parties and the court may in its discretion, proceed in the action without making such persons parties, and the judgment rendered therein shall be without prejudice to the rights of such persons.

Thus, in this case, it was ruled that if judgment will prejudice third persons, these persons must be included as necessary parties so that complete relief may be accorded. On June 10, 1946, a document entitled "Loan with a Chattel Mortgage" was executed by and between the plaintiff as creditor, the defendant as debtor and Jose V. Ramirez as mortgagor, whereby the mortgagor executed a special mortgage on 149 shares of the Central Luzon Milling Co. to guarantee the debt of his son, the defendant. On Aug. 20, 1952, this action was brought to recover the sum of ₱12,000 with interest from the defendant. The defendant admitted the allegations in the pleading. He paid his debt accordingly and demanded the return of the shares covered by the certificate transferred by the mortgagor to the plaintiff. The lower court denied the defendant's prayer for the return of the shares on the ground that the matter was not covered by the pleadings and the ownership of said shares was being claimed by the plaintiff in virtue of a sale to her by the mortgagor subsequent to the execution of the chattel mortgage.

In affirming the decision of the lower court, the Supreme Court added two more reasons for denying defendant's prayer to have the share stocks returned: in the first place, the action instituted by the plaintiff was merely for the collection of a loan; although the document "loan with a Chattel Mortgage" was made part of the complaint, this circumstance did not make the suit one for foreclosure of a mortgage, as it was made only to establish the existence of the obligation. In the second place, the deceased mortgagor, being the owner of the shares, he or his legal representatives should have been included as necessary parties in this case.

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[5] G.R. No. L-3884, Nov. 29, 1951.
[6] 47 O.G. (12 Supp.) 156 (1950).
[7] § 6, Rule 3, Rules of Court.
[1] Rule 3, § 8.

**Civil Procedure**—*When declaratory relief not proper; res judicata.*

TANDA v. ALDAYA
G.R. Nos. L-9322-23, Jan. 30, 1956

By declaratory relief, 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.[1] Declaratory Relief is one of the special civil actions enumerated in the Rules of Court and the rules applicable to ordinary civil action shall also apply to said special civil actions, so far as said rules are not inconsistent with or may serve to supplement the provisions of the rules relating to such special civil actions.[2] In the present case, the Court ruled that the words "other written instrument" under which declaratory relief may be availed of do not include a court decision which has become final.

On April 10, 1948, the plaintiff instituted an action for the annulment of a certain contract of sale with *pacto de retro*. The trial court declared the contract valid. This decision was affirmed by the Supreme Court on July 23, 1951. After two motions for reconsideration filed by appellant had been denied, the decision became final and executory. On Nov. 8, 1951, the present case for declaratory relief was initiated; upon motion of the defendant, the action was dismissed because, while outwardly its aim was to seek a declaratory relief on certain matters, in effect its purpose was to nullify the judgment rendered previously. From that decision granting the defendant's motion to dismiss, the plaintiff appealed.

The appellant contended that this case came under the purview of declaratory relief because his purpose was to obtain a clarification of a previous decision of the Supreme Court which decision, in the opinion of the appellant, was vague and susceptible of double interpretation. It was furthermore contended that the words "other written instrument" should be interpreted as including a court decision. In holding said contentions without merit, the Court said:

> "Evidently, a court decision cannot be interpreted as included within the purview of the words 'other written instrument'...for the simple reason that the Rules of Court already provide for the ways by which an ambiguous or doubtful decisions may be corrected or clarified without need of resorting to the expedient prescribed by Rule 66."

The remedies that may be availed of before resorting to declaratory relief are motion for reconsideration or for a new trial,[3] or relief from a judgment or order of an inferior court on the ground of fraud, accident, mistake or excusable negligence.[4] The appellant had already availed himself of some of these legal remedies but was denied relief because his claim was without merit.

But the fundamental reason in denying the petition for declaratory relief was the principle of *res judicata*, which stamps the mark of finality and commands

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[1] Rule 66, § 1, Rules of Court.
In order that a petition for declaratory relief may prosper, the following requisites must be present: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue must be ripe for judicial determination. *See* II MORAN, COMMENTS ON THE RULES OF COURT 147 (1947).
[2] Rule 66, § 1, *id.*
[3] In the trial court, under Rule 37, § 1; in the Court of Appeals or the Supreme Court, under Rule 54, § 1, Rule 55, § 1 in connection with Rule 52, § 1 of Rules of Court.
[4] Rule 38, § 1.

that once a case is definitely litigated it should not be reopened.[5] The Court quoted the ruling in *Oberiano v. Sobremesana*:[6]

> "The foundation principle upon which the doctrine of *res judicata* rests is that parties ought not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties, and those in privity with them in law or estate."

*Pilipina A. Arenas*

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**Civil Procedure**—*Time requirement for continuances and postponements is only directory.*

CASILAN and GALAGNARA v. TOMASSI, ET AL.
G.R. No. L-9320, Jan. 31, 1956
GALAGNARA and CASILAN v. GANCAYCO, ET AL.
G.R. No. L-9321, Jan. 31, 1956

These cases were commenced in the Justice of the Peace Court of Guiuan, Samar, one for the recovery of possession of real property and the other for the delivery of personal property. The cases were heard and decided only after repeated postponements, at times for more than five days and all in all for more than fifteen days. The defendants appealed to the Court of First Instance which ordered the cases dismissed for want of appellate jurisdiction to try them on the merits, the court believing that the Justice of the Peace was relieved of his jurisdiction to hear the cases for granting postponements for longer periods than those allowed in the Rules of Court[1] so that the decision rendered by him was a nullity.

The Supreme Court reversed the decision of the Court of First Instance and held that the authority of inferior courts to adjourn hearings may conceivably refer only to continuances after the hearing is begun, the purpose of limiting the period of such continuances being to insure the continuity of trials[2] and thus promote the administration of justice.

Even assuming that Rule 4, Section 9 also governs postponements after the hearing is commenced, Justice Alex Reyes opined, the limitations therein prescribed for periods of adjournment are only directory, so that non-compliance therewith by a Justice of the Peace does not divest him of his jurisdiction thereafter to proceed with the trial and render a decision on the merits but only subjects him to disciplinary action.[3]

In the case of *Alvero v. de la Rosa, et al.*,[4] the Supreme Court had occasion to hold that strict compliance with the Rules of Court is mandatory and im-

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[1] Rule 4, § 9.
[2] *See* Rule 31, § 4.
[3] *See* 30 PHIL. L.J. 880 (1955).
[4] G.R. No. L-4622, May 30, 1953.
[5] This is the substance of the ruling of the court in the case of *Alejandro, et al. v. Judge of First Instance of Bulacan, et al.*, (70 Phil. 749 [1940]) wherein it was held that the requirement in said section for the judge of the inferior court to decide a case within the period prescribed by law after trial is not jurisdictional and that a violation thereof does not make the decision void or null but only subjects the judge to disciplinary action. This ruling had been reiterated in the cases of *Barrueco v. Abeto, et al.*, (71 Phil. 7 [1940]) and *Galiano v. Rivera, et al.*, (72 Phil. 277 [1941].)
[6] 76 Phil. 428 (1946).

perative and that the periods therein prescribed for the performance of certain acts are deemed absolutely indispensable in order to prevent needless delays and promote the orderly and speedy discharge of official business. Commenting on this, Justice Reyes said that it—

> "does not necessarily militate against the decisions holding that observance of the periods prescribed for adjournments of trial is merely directory, considering that those decisions have not failed to take account of the need for enforcing rules against needless delays and have for that reason emphasized that a willful disregard or reckless violation thereof on the part of judges would subject them to disciplinary action."

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**Civil Procedure**—*Amendment of pleadings after a responsive pleading is served may be made only by leave of court.*

BASCOS v. COURT, ET AL.
G.R. No. L-8400, Jan. 30, 1956

The facts of this case were as follows: The Goyena Lumber Company impleaded Ayson and others before the Court of First Instance of Pangasinan for the collection of a sum of money. All the defendants, except Ayson, filed an answer containing a general denial whereupon the plaintiff filed a petition for judgment on the pleadings.[1] Before the petition was heard, all the defendants except Ayson had filed an amended answer without leave of court. During the hearing, the herein petitioner signified his intention to assume the whole obligation. However, due to the failure of the parties to reach an agreement, the court rendered judgment on the evidence presented.

The petitioner assigned as error the failure of the trial court to accept the amended answer. The Supreme Court, found no error and held that a party may amend his pleading once as a matter of course at any time before a responsive pleading is served.[2] Thereafter, the court may, upon motion at any stage of an action and upon such terms as may be just, order or give leave to either party to alter or amend any pleading to the end that the real matter in dispute may be completely determined in a single proceeding.[3]

It must be remembered that in *Trias v. Court of First Instance of Cavite, et al*,[4] where an answer containing merely a general denial was filed, the defendant was allowed to file an amended answer containing a specific denial. This was held to be discretionary upon the trial court. Moreover, where the purpose of the amendment is to submit the real matter in dispute without any intent to delay the action, the court, in its discretion, may order or allow the amendment upon such terms as may be just.[5] But such may be made only at any stage of the action, not after the rendition of a final judgment.[6] The defendants in the instant case, having filed an amended answer after the plaintiff had interposed a reponsive pleading, had to ask leave of court for the admission of their amended answer.

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[1] Rule 36, § 1.
[2] Rule 17, § 1: "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served, or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it at any time within ten days after it is served."
[3] Rule 17, § 2.
[4] 42 O.G. 1485; 75 Phil. 757 (1946).
[5] Dacanay, et al. v. Locero, 76 Phil. 139, 42 O.G. 2119 (1946).
[6] Espiritu v. Crossfield, 14 Phil. 582, 591 (1909).

With respect to the claim that the trial court should not have allowed the introduction of evidence by the plaintiff, the court having proceeded with the case with only the petition for judgment on the pleadings, the Supreme Court said:

> "While as a rule, when judgment on the pleadings is proper, the court need not require plaintiff to advance evidence, there is nothing in the rules which would prohibit the court from doing so if in its opinion such is necessary for better clarification of facts alleged in the pleading. This is especially so when the pleading contains a claim for damages which, under the rule[7] is not deemed admitted even if not specifically denied. x x x. At any rate, the rule is well-settled that when one of the parties is entitled to and asked for judgment on the pleadings, neither trial nor notice is necessary."[8]

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**Civil Procedure**—*Res judicata; jurisdiction of the Court of Tax Appeals.*

NAMARCO v. MACADAEG and KHO KUN COMMERCIAL
G.R. No. L-10030, Jan. 18, 1956

The rule is well-settled that a final judgment on the merits, rendered by a court having jurisdiction over the parties and the subject matter, is conclusive in a subsequent case between the same parties and their successors in interest litigating upon the same thing and issue, no matter how erroneous such judgment may be.[1] The requisites of *res judicata*, therefore, are the following: (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, of subject matter, and of cause of action.[2]

The instant special civil action of prohibition and certiorari against the Court of First Instance of Manila involves these requisites of *res judicata*. The Commissioner of Customs seized two shipments of garlic belonging to the Kho Kun Commercial, an importing firm, for violation of Republic Act No. 1296. Said shipments were turned over to the NAMARCO in order to be sold to the public. In connection with an order of the President of the Philippines, the importing firm brought suit against the NAMARCO to prevent the latter from disposing of the shipments so that it may be able to redeem the same. The NAMARCO filed a motion to dismiss on several grounds, the most important of which are as follows: (a) that the action was barred by a prior resolution[3] of the Supreme Court; and (b) that the Court of First Instance was without jurisdiction of the subject matter because appeals from the decisions of the Commissioner of Customs may be taken only to the Court of Tax Appeals. The lower court denied the motion. Hence, this action.

The Supreme Court ruled that the action brought in the Court of First Instance of Manila is the same as that disposed of by it in a previous resolution. It noted that the subject matter of both was garlic. The parties, it said, were also the same although in the first case, the respondents were the NAMARCO and the Commissioner of Customs while in the second, only the NAMARCO was sued. Apparently, the Court was following the converse of the rule that al-

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[7] Rule 9, § 8: "Material averment in the complaint, other than those as to the amount of damage, shall be deemed admitted when not specifically denied...."
[8] Lichauco v. Guasch, 76 Phil. 5 (1946).
[1] San Diego v. Cardona, 70 Phil. 281, 292 (1940).
[2] Reyes v. Reyes, G.R. No. L-4761, Feb. 27, 1952; People v. Macadaeg, G.R. No. L-4316, May 28, 1952; Lao v. Dee and Lao, G.R. No. L-3890, Jan. 23, 1952; Caridad v. Novella, G.R. No. L-4707, Oct. 24, 1952.
[3] Kho Kun Commercial v. Commissioner of Customs and NAMARCO, G.R. No. L-9778.

though in the second action there are joined parties who were not so in the first, there is still *res judicata* if the party against whom the judgment is offered in evidence was a party in the first action,[4] when it stated that the failure to include the Commissioner did not save it from the objection that there were the same parties because the Commissioner was a necessary and indispensable party. Although more issues were involved in the second case, still the court considered the issues to be the same. It said that the mere fact that new issues are raised does not take the case out of the rule of *res judicata* because it is not only the issues actually passed upon that are barred, but also any other issue that could have been raised in the previous case.[5]

With regard to the second ground relied by the NAMARCO, the Supreme Court repeated its ruling in previous cases[6] to the effect that the Court of Tax Appeals has exclusive jurisdiction over appeals from the decisions of the Commissioner of Customs,[7] which jurisdiction excludes that of the Supreme Court and Courts of First Instance.

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**Civil Procedure**—*Execution of judgment as a matter of right lies only in case of failure of adverse party to appeal.*

LEDESMA v. TEODORO and AGAPUYAN
G.R. No. L-9174, Jan. 25, 1956

Jose Agapuyan brought an action against Joaquin Ledesma, mayor of Cadiz, Negros Occidental, in which he sought his reinstatement as chief of police of said municipality claiming that he was removed in 1946 and that despite his efforts, he was never restored to the same. In June, 1954, however, the provincial governor ordered his reinstatement which order the defendant ignored.

On April 15, 1955, after due trial, the court rendered its decision ordering the reinstatement of the plaintiff with back salaries until actual reinstatement. The motion for reconsideration was denied. On May 14, 1955, on motion of the prevailing party and before the time to appeal had expired, the court ordered the execution of the judgment despite the effort of the adverse party to stay execution by offering supersedeas bond.

It is to be noted that only a final[1] and not an interlocutory[2] judgment or order may be executed, the only exception being an order for alimony *pendente lite*, according to Rule 63, Section 6.[3] Hence, if the time to appeal has expired and no appeal has been perfected, the judgment rendered becomes executory, and the prevailing party is entitled as a matter of right to its execution.[4] It then becomes the ministerial duty of the court to issue the writ of execution.[5]

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[4] Peñalosa v. Tuason, 22 Phil. 303, 323 (1912). The reason for the rule is that otherwise, no matter how often a case may be heard and decided, the parties might renew the litigation by simply joining with them a new party. (Ahsua and Arnaiot v. Johnson, 21 Phil. 308, 374 [1912]).

[5] *See* Rule 39, § 45, Rules of Court; Peñalosa v. Tuason, 22 Phil. 303, 212 (1912).

[6] Millares v. Amparo, G.R. No. L-8364, June 30, 1955; Millares v. Amparo and Nepomuceno, G.R. No. L-8365, June 30, 1955; Millares v. Amparo and Seres Investments Co., G.R. No. L-8351, June 30, 1955.

[7] § 7, par. 2, Republic Act No. 1125.

[1] Perkins v. Perkins, 57 Phil. 223, 224 (1932); Phil. Trust Co. v. Santamaria, 53 Phil. 463 (1929); Yulo, et al. v. Powell, 36 Phil. 734 (1917); Mendoza v. Parungao, 49 Phil. 271 (1926).

[2] Rule 41, § 2: "No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal, until final judgment or order is rendered for one party or the other."

[3] I MORAN, COMMENTS ON THE RULES OF COURT 786 (1952).

[4] Lim v. Singian, 37 Phil. 817 (1918); Fiesta v. Llorente, 25 Phil. 554 (1913); Ebero v. Cañizares, 45 O.G. 7 5 (1947).

[5] Buenaventura v. Garcia, 78 Phil. 759 (1947).

The above rules and principles were applied by the court in disposing of the present petition for certiorari and mandamus. It declared that under Rule 39, Section 2, the court may, in the exercise of its discretion, issue an order of execution, on motion of the prevailing party with notice to the adverse party upon good reasons to be stated in a special order. However, if the execution is issued before the expiration of the time to appeal,[6] it may be stayed upon approval by the court of a sufficient bond by the appellant, conditioned on the performance of the judgment or order appealed from, in case it is affirmed in whole or in part.

Since the time to appeal in the present case had not expired, the question before the court was whether there was sufficient reason to deny the supersedeas bond which was offered. To answer this question, the court resorted its previous ruling:[7]

> "The requirements as to special reasons is one the importance of which trial courts must not overlook. If the judgment is executed and, on appeal, the same is reversed, although there are provisions for restitution, oftentimes damages may arise which cannot be fully compensated. Accordingly, execution should be granted only when these considerations are clearly outweighed by superior circumstances demanding urgency, and the above provision requires a statement of those circumstances as a security for their existence."

The court concluded that a perusal of the order of the Judge showed that the reasons given to justify the order did not outweigh the considerations above adverted to. It added that although as a general rule the power to deny or grant a motion for execution is addressed to the sound discretion of the court, and generally the appellate court should not interfere to modify, control or inquire into the exercise of such discretion, yet the intervention becomes necessary when it is shown that there had been an abuse thereof.[8] Such was the case here.

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**Civil Procedure**—*Charge of contempt of court need not be filed by Fiscal.*

PEOPLE v. VENTURANZA, ET AL.
G.R. No. L-7974, Jan. 20, 1956

Courts possess the inherent power to punish a party for contempt.[1] This power is essential to the preservation of order in judicial proceedings, and to the enforcement of judgments, orders, and mandates of courts, and, consequently, to the administration of justice.[2] Respect of the courts guarantees the stability of their institution.[3]

Civil contempt is the failure to do something ordered by a court to be done for the benefit of a party. Criminal contempt is any conduct directed against the authority or dignity of the court.[4] Under the Rules of Court, con-

[6] Rule 41, § 3.
[7] Aguilos v. Barrios, et al., 72 Phil. 285 (1941).
[8] Federal Firms, Inc. v. Ocampo, 44 O.G. 3819 (1947); Calvo v. Gutierrez, 4 Phil. 203 (1906); Case v. Metropole Hotel and Restaurant, 5 Phil. 49 (1905); Gamay v. Gutierrez David, 48 Phil. 768 (1926); Buenaventura v. Peña, 44 O.G. 4923 (1947); Ong Sit v. Piccio, 44 O.G. 4915 (1947); Naredo v. Yatco, 45 O.G. 3390 (1948).
[1] Slade Perkins v. Director of Prisons, 58 Phil. 271 (1933).
[2] In re Sotto, 46 O.G. 2570 (1949); In re Kelly, 35 Phil. 944 (1916); U.S. v. Lao Hoe, 36 Phil. 867 (1917).
[3] Salcedo v. Hernandez, 61 Phil. 724, 729 (1935).
[4] Slade Perkins v. Director of Prisons, *supra* note 1.

tempt is of two types: (a) direct contempt,[5] which may be punished summarily; and (b) constructive contempt,[6] or one that is committed outside the court.[7]

Respondent Atty. Torres, while appearing before the Court of First Instance of Capiz as counsel for one of the defendants in a criminal case, was found guilty of contempt in the first case for charging the judge with arbitrariness, inducing and encouraging his client not to appear in court for trial and to disobey its orders, uttering disparaging remarks against the judge in his actuations before the public, and for instituting an action for moral damages against the judge without lawful cause or reason; and in the second case, for sending a telegram to the judge containing derogatory statements against the latter's person and dignity. The charge was properly made in writing and an opportunity was given the respondent to be heard by himself or counsel. However, he failed to attend the hearing, whereupon he was declared in contempt.

Torres contended that since the charges filed against him were criminal in nature, the proceedings against him should have been begun by the filing of an information by the fiscal, because were proceedings to be filed by a judge against whom the contempt was committed, the latter would, in effect, act as accuser and arbiter. The respondent was apparently relying on a statement made by the court in a previous case[8] to the effect that proceedings for contempt are criminal in nature even when the acts complained of are incidents o civil actions.

The Supreme Court found no merit in this contention. It stated that the proceedings, not being prosecuted as an offense under the Revised Penal Code but under the Rules of Court, the intervention of the fiscal became unnecessary. It said:

> "Were the intervention of the prosecuting officer required and judges obliged to file complaints for contempts against them before the prosecuting officer, in order to bring the guilty to justice, courts would be inferior to prosecuting officers and impotent to perform their functions with dispatch and absolute independence. The institution of charges by the prosecuting officer is not necessary to hold persons guilty of civil or criminal contempt amenable to trial and punishment by the court. All that the law requires is that there be a charge in writing duly filed in court and an opportunity to the person charged to be heard by himself or counsel. The charge may be made by the fiscal, by the judge, or even by a private person."

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**Civil Procedure**—*When action for unlawful detainer is to be brought.*

ZOBEL v. ABREU and MERCADO
G.R. No. L-7663, Jan. 31, 1956

There is unlawful detainer when the defendant's possession which was originally lawful had become unlawful by virtue of the expiration of his right to

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[5] Rule 64, § 1.
[6] Rule 64, § 2.
[7] Lee Hick Hon v. Collector of Customs, 41 Phil. 548 (1921); Narciso v. Bowen, 22 Phil. 345, 371 (1912); Calalang v. Pecson, 46 O.G. 514 (1950).
[8] Lee Hick Hon v. Collector of Customs, *id* at 552: "In proceedings against a person alleged to be guilty of contempt of court, it is not to be forgotten that such proceedings are commonly treated as criminal in nature even when the acts complained of are incidents of civil actions. For this reason, the mode of procedure and rules of evidence in contempt proceedings are assimilated as far as practicable to those adapted to criminal prosecutions."

possess.[1] In the case under consideration, the Supreme Court, in accordance with Rule 72, Section 2, of the Rules of Court, held that the period for bringing an action for ejectment or unlawful detainer must be counted from the time the defendant has failed to pay the rents after demand therefor. It is not the failure to pay rents as agreed upon in a contract, but the failure to pay the rents after a demand therefor is made that entitles the lessor to bring the action.

Plaintiff Zobel leased a fishpond to the defendant on April 1, 1950 for a term of one year, renewable from year to year. Prior to and within one year from the filing of the complaint on February 5, 1954, the plaintiff had been deprived of the possession of the property by the defendant, despite the repeated demands of the former to return the same, the last demand being made on October 9, 1953. Further the defendant Mercado failed to pay the rents due from him from April 1, 1951 up to the filing of the complaint.

On motion of the defendant, the Justice of the Peace Court declared itself to be without jurisdiction on the ground that the cause of action accrued on April 1, 1952 when the plaintiff could have demanded the return of the property for failure of the defendant to pay rents from April 1, 1951 up to March 31, 1952.

The Supreme Court, in reversing the decision of the lower court held that it possessed jurisdiction, and declared:

> "Furthermore, even if the lessee had failed to pay the rents after a demand had been made upon him therefor, the lessor still had the privilege to waive his right to bring the action, or to allow the lessee to continue in possession, thereby legalizing such possession."[2]

*Gonzalo T. Santos*

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**Civil Procedure**—*Courts will not render a judicial declaration of presumption of death of petitioner's spouse for the sole purpose of defining petitioner's civil status.*

LUKBAN v. REPUBLIC
G.R. No. L-8492, Feb. 29, 1956

Can a presumption of death be judicially declared for the sole purpose of defining the civil status of a married person who wishes to contract a second marriage? This question may now be considered a moot one in view of the decision of our Supreme Court in the present case wherein the rulings of the same court

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[1] Rule 72, § 1 provides: A "person against whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, x x x may at any time within one year after such unlawful deprivation or withholding of possession, bring an action in the proper inferior court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs. The complaint must be verified".

*See* Medel v. Militante, 41 Phil. 526 (1921); Co Tiamco v. Diaz, et al., 75 Phil. 672 (1946).

According to the above-quoted legal provision, the action must be brought before the Justice of the Peace Court (*See* Rep. Act No. 296, § 88) within one year after the unlawful deprivation or withholding of possession complained of has taken place. (Alonso v. Municipality of Placer, 5 Phil. 71 [1905]; Gutierrez v. Rosario, 15 Phil. 116 [1910]; Gumiran v. Gumiran, 21 Phil. 174 [1912]). The avowed purpose of the law in fixing at one year the period within which such actions may be brought is to require cases of said nature to be tried as soon as possible and decided promptly. II MORAN, COMMENTS ON THE RULES OF COURT, 292 [1952]).

[2] This is the substance of the court's ruling in *Lucido and Lucido v. Vita*, 25 Phil. 414 (1913), wherein it was held that: "...the landlord might conclude to give the tenant credit for the payment of the rents and allow him to continue indefinitely in the possession of the property....During such period, the tenant woud not be in illegal possession of the property and the landlord could not maintain an action of *desahucio* until after he had taken steps to convert the legal possession into an illegal possession."

in two previous cases[1] are reiterated and affirmed. In 1933, after 17 days of married life the husband of the petitioner left her and since then he had not been heard from for more than 20 years despite diligent search. Because the petitioner intended to marry again, she asked that her civil status be determined. The Solicitor-General opposed the petition on the ground that the same was not authorized by law. From an adverse decision of the CFI the petitioner appealed. The Supreme Court said:

> "We believe that the petition at bar comes within the purview of our decision in the case of Nicolai Szatraw[2] wherein it was held that a petition for judicial declaration that petitioner's husband be presumed to be dead cannot be entertained because it is not authorized by law, and if such declaration cannot be made in a special proceeding similar to the present, much less can the court determine the status of petitioner as a widow since this matter must of necessity depend upon the fact of death of the husband. This court can then declare upon proper evidence, but not to decree that he is merely presumed to be dead."

The petitioner contended that her petition could be entertained by the Court because Article 349 of the Revised Penal Code, in defining bigamy, provides that a person commits that crime if he contracts a second marriage "before the absent spouse has been declared presumtively dead by means of a judgment rendered in the proper proceedings". The Court said that the argument was untenable for the words "proper proceedings" used in said article could only refer to those authorized by law such as those which refer to the administration or settlement of the estate of a deceased person.[3] In support the Court quoted from a case:[4]

> "For the purpose of the civil marriage law it is not necessary to have the former spouse judicially declared an absentee. The declaration of absence made in accordance with the provisions of the Civil Code has for its sole purpose to enable the taking of the necessary precautions for the administration of the estate of the absentee. For the celebration of civil marriage, however, the law only requires that the former spouse has been absent for seven consecutive years at the time of the second marriage: that the spouse present does not know his or her former spouse to be living; that such former spouse is generally reputed to be dead and the spouse present so believes at the time of the celebration of the marriage (Sec. 111, par. 2, Gen. Order No. 68)."[5]

Then the Court restated the reason behind the ruling that a declaration of presumption of death can not be made:

> "A judicial pronouncement to that effect, even of final and executory, would still be a *prima facie* presumption (*juris tantum*) only. It is still disputable. It is for that reason that it cannot be the subject of a judicial pronouncement, if it is the only question or matter involved in a case, upon which a competent court has to pass...."[6]

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## Civil Procedure—*Judgment by default.*

### TAGUINOD, ET AL., v. MANGANTULAO
### G.R. No. L-7970, Feb. 28, 1956

Under the Rules of Court[1] if the defendant fails to answer within the time specified therein, the court shall, upon motion of the plaintiff, order judgment against the defendant by default,[2] and thereupon the court shall proceed to re-

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[1] Nicolai Szatraw case, 46 O.G. (supp. 1) 243 (1948); Jones v. Hortiquela, 64 Phil. 179 (1937).
[2] *Supra*, note 2.
[3] *See* Articles 390 and 391, Civil Code.
[4] Jones v. Hortiquela, *supra* note 2.
[5] *See* Article 83, Civil Code for a similar provision.
[6] Nicolai Szatraw case, *supra* note 2.
[1] Rule 9 § 1; Rule 10 § 9; Rule 12, § 4.
[2] Rule 35, § 6. A defendant who answered but failed to appear at the trial cannot be declared in default, but the trial may proceed without him. Go Changjo v. Roldan Sy-Changjo, 18 Phil. 405 (1911); Cabahan v. Weissenhagen, 38 Phil. 804 (1918), cited in I MORAN, COMMENTS ON THE RULES OF COURT 702 (1952).

ceive the plaintiff's evidence and render judgment granting him such relief as the complaint and the facts proven may warrant.[3] The failure of the defendant who receives a summons to answer may be due to any of these causes; (a) either to his resolution not to oppose the plaintiff's allegations and relief demanded in the complaint and willingness to abide by the judgment granting said relief after the presentation of evidence by the plaintiff (b) or to fraud, accident, mistake or excusable negligence without which he could have filed his answer in time, for he has a good defense.[4]

In the instant case, the Supreme Court did not hold the failure of the client to find his former lawyer to defend his case in time an excusable negligence.[5] The defendant herein was served with summons but he failed to file his answer within the reglementary period. He appealed to the Supreme Court from an order of the CFI denying his motion for reconsideration of the judgment taken against him by default, and insisted that the lower court erred in declaring him in default and in rendering a judgment against him. The Court said that if the defendant could not find his former lawyer, he could have retained the services of another lawyer and proceeded with his case as soon as possible, but instead he allowed 23 days to pass without making an effort to get another lawyer.

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**Civil Procedure**—*Relief from judgments; service of pleadings and notices.*

VIVERO v. SANTOS, ET AL.
G.R. No. L-8105, Feb. 28, 1956

This is a suit to recover a money judgment upon a loan. For failure of the defendants or their counsel to appear on the date of hearing after their second motion to postpone the hearing to any date after the 1953 national election was denied, the court received the plaintiff's evidence and rendered judgment against the defendants. After an urgent motion to reopen the case was denied the judgment became final, so defendants sought relief under Rule 38[1] but was likewise denied.

On appeal the Supreme Court, passing on the right of defendants to petition for relief from judgments or orders under Rule 38, said that petitions of this nature, as a rule, are addressed to the sound discretion of the court,[2] and unless abuse of discretion is shown the order of the court should be left undisturbed.[3] In the case at bar the act of defendant's counsel in ignoring the court's warning to look for another lawyer to take over the case was reprehensible, but it was not a sufficient ground for granting the relief prayed for considering the postponements had in the case and the warning given to the defendants' counsel.

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[3] Rule 35, § 6.

[4] MORAN, *op. cit. supra* note 2 at 703-704 citing 31 AM. JUR. 137; Lim Toco v. Go Fay, 45 O.G. 3350 (1949).

[5] The defendant who is declared in default cannot appeal, unless he files a motion under Rule 38 asking that the order of default be set aside upon the ground of fraud, accident, error or mistake, or excusable negligence, and if his motion is denied he may appeal from the order denying such motion and he may, in the meantime, apply for a writ of preliminary injunction to stop the execution of the judgment rendered on the merits. *Id.* at 705, citing Lim Toco v. Go Fay, *see* note 4 *supra*; Son, et al. v. Melendres, et al., G.R. No. L-3824, May 16, 1951.

[1] § 2 provides that when a judgment or order is entered, or any other proceeding is taken, against a party in a CFI 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.

[2] Coombs v. Santos, 24 Phil. 446 (1913); Daipan v. Sigabu, 25 Phil. 184 (1913); Mapua v. Mendoza, 45 Phil. 424 (1923); Felismino v. Gloria, 47 Phil. 967 (1924); Phil. Guaranty Co. v. Belando, 53 Phil. 410 (1929).

[3] La O v. Dee, et al., G.R. No. L-3890, Jan. 23, 1953.

Commenting on the effect of the counsel's conduct the Court ruled that the lack of necessary diligence on the part of the counsel which was to his client's prejudice was a misconduct binding upon his clients and the latter could not be heard to complain that the result might have been different had he proceeded differently,[4] and quoted:

> "If such grounds were to be admitted as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent or experienced, or learned."[5]

Coming to the allegation that had the defendants been notified of the hearing or decision by the court or counsel, they could have taken appropriate action in due time, the Court observed:

> "Under our rules, if a party appears by an attorney who makes of record his appearance, service of the pleadings is required to be made upon the attorney, and not upon the party (Rule 27, Section 2). And this Court has held that in such a case notice given to the client and not to his attorney is not a notice in law."

This is true even where a copy of the decision is received by the client himself unless service to the client himself is ordered by the court.[6]

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**Civil Procedure**—*Amount of damages to be proved upon asking judgment on the pleadings or at least before judgment becomes final and executory.*

RILI v. CHUNACO, ET AL.
G.R. No. L-6630, Feb. 29, 1956

The rule that material allegations are deemed admitted if not specifically denied[1] is not applicable to allegations regarding amount of unliquidated damages. Such allegations need not be specifically denied, but shall be deemed to be in issue in all cases, unless expressly admitted.[2]

The operation of the rule stated is explained in the case of *Rili v. Chunaco*. In this action to vindicate ownership over two parcels of land and to recover damages for alleged illegal possession thereof, the lower court rendered judgment for plaintiffs on the pleadings because defendant was deemed to have admitted the material allegations of the complaint filed against him he having made a mere general denial thereof. After the judgment became final and executory the plaintiffs moved that the case be set for hearing with respect to the amount of damages allegedly suffered by them. Applying Rule 9, Section 8, the Supreme Court on appeal said—

> "Allegations regarding the amount of damages are not deemed admitted even if not specifically denied and so must be duly proved. Appellant did not offer to present evidence to prove their damages but merely asked for judgment on the pleadings. Hence, they must be considered to have waived or renounced their claim for damages."
>
> "Even assuming that plaintiffs could still prove their damages even after asking for judgment on the pleadings, they could do so only before said judgment became final and executory because thereafter the lower court lost control over its judgment save to order its execution... lost jurisdiction to alter or amend the same so as to include therein an award of damages in appellant's favor."

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[4] *See* United States v. Umali, 15 Phil. 33 (1910).
[5] Citing *Le Florus* v. Reynolds, Fed. Case No. 8442, 16 Blatch (US) 397.
[6] *Ibid.*
[1] Rule 9, § 8 provides that material averment in the complaint, other than those as to the amount of damages, shall be deemed admitted when not specifically denied.
[2] Lichauco v. Guash, 78 Phil. 5 (1946) cited with approval in the present case of Rili v. Chunaco, G.R. No. L-6630, Feb. 29, 1956.

In the instant case the Court in an *obiter dictum* held that the amount of damages may be proved even after the judgment rendered on the pleadings has become final and executory if there is an express reservation for that purpose in the motion for judgment on the pleadings.

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**Civil Procedure**—*"Calendar Month" as used in Section 8 Rule 72 defined.*

SALVADOR v. CALUAG
G.R. No. L-7458, Feb. 29, 1956

Under Rule 72, Section 8 an execution shall issue immediately upon a judgment rendered against the defendant in a forcible entry case, unless, among others, during the pendency of the appeal, he pays to the plaintiff or into the court, on or before the tenth day of each calendar month, the reasonable value of the use and occupation of the premises in question for the preceding month at the rate determined by the judgment. What is meant by the term "calendar month"? In the case of *De Guzman v. Lichauco*,[1] the court said that it does not mean every period of thirty days beginning from the date of the appeal, but it has reference to the month in the calendar. In the instant case of *Salvador v. Caluag*, the lower court relied on the *Lichauco* case; the Supreme Court, however, disagreed with it, and held:

> "It is our considered opinion that in cases of monthly rentals which could be paid from a given day of a month up to a given day of the following month, the calendar month within which the rent could be deposited or paid should be that following the month in which the rent matured, that is, if the rent matures on any day of the month of October, the calendar month referred to in Section 8, Rule 72 within which the rent should be paid to avoid execution of the decision shall be the month of November, and so on."

To show no inconsistency in its decisions the Supreme Court further said:

> 'In reaching the foregoing conclusion, we are not unmindful of the rulings laid down in the case of De Guzman v. Lichauco which the lower court took into consideration in issuing the disputed writ of execution, but the question raised in that case, was whether the starting point for computation of one month is the date of appeal and not the calendar month composed of 30 days as defined by Section 13 of Rev. Adm. Code. That case therefore has no parity with the present case where the point in issue is whether the decision of the Municipal Court of Quezon City should be executed only because the rent corresponding to September 26, 1953 to October 25, 1953 has been paid on October 20, 1953 and not on or before October 10, 1953..."

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**Civil Procedure**—*Time of objection to admissibility of evidence.*

PEOPLE v. HON. J. TEODORO
G.R. No. L-8070, Feb. 29, 1956

The instant case is a petition for certiorari to annul two orders issued by the respondent judge in the course of the trial of a criminal case. In both orders respondent prevented the assistant provincial fiscal from identifying two certified true copies of the service record of the accused in two bureaus of the Government as part of public records upon objection of the counsel for the accused that as the latter was being charged of falsification, the original documents must be produced. The Supreme Court, after observing that the offense charged was not falsification or forgery but the use of a falsified certificate under Article

[1] 32 Phil. 291 (1921).

175 of the Revised Penal Code, and that said official records could be proved by certified copies without question under Section 41 of Rule 123, held:

> "As the official records sought to be identified were not yet presented, nor the purpose thereof disclosed, the objection thereto and the ruling sustaining the objection were both premature."

And in support the Court quoted the following:

> 'Every objection to the admissibility of evidence shall be made at the time such evidence is offered, or as soon thereafter as the objection to its admissibility shall have become apparent; otherwise the objection shall be treated as waived..."

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## Civil Procedure—*Execution before expiration of time to appeal.*

ASTURIAS, ET AL. v. VICTORIANO, ET AL.
G.R. No. L-8817, Feb. 29, 1956

Section 2 of Rule 39 provides that prior to the expiration of the time to appeal, the court may issue execution on motion of the prevailing party and with notice to the adverse party, upon good reasons to be stated in a special order regardless of whether such order is issued before or after the filing of the record of appeal.[1] The reasons are required to be stated in the special order but it has been held that statement by reference is sufficient as when such reasons appear in a motion for execution, and reference thereto is made in the special order as grounds therefor.[2]

In the case at bar,[3] the Supreme Court, in granting the writ of certiorari found that the lower court's special order specified no reason, and said that while statement of the reasons by reference is sufficient, as when those reasons appear in the motion for execution and reference thereto is made in the special order as grounds therefor, the order complained of made no reference to the reasons alleged by the movant as grounds for the immediate execution.

Besides finding that judicial discretion was improperly exercised, the Court concluded that even if the lower court ordered the immediate execution of the judgment on the strength of the allegation contained in the motion for execution, the order would still be without sufficient basis, because the allegation of insolvency under oath was denied by the defendants and was not supported by proof.[4]

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## Civil Procedure—*Successors in interest.*

CATALINA DE LEON v. ROSARIO DE LEON
G.R. No. L-8965, Feb. 29, 1956

In order that a judgment or order rendered in a case may be conclusive in a subsequent case, the following requisites must be present:

> (1) It must be a final judgment or order;
> (2) The court rendering the same must have jurisdiction of the subject-matter and of

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[1] I MORAN, COMMENTS ON THE RULES OF COURT 792 (1952 ed.) citing the case of Phil. Alien Property Administration v. Castelo, G.R. No. L-8891, July 30, 1951.
[2] Heiman v. Cabrera, 73 Phil. 707 (1942); Jovea v. Boncan, 67 Phil. 252 (1939).
[3] Asturias et al. v. Victoriano et al., G.R. No. L-8817, Feb. 29, 1956.
[4] Filing of bond by successful party (Hacienda Navarra, Inc. v. Labrador et al., 65 Phil. 536 [1938]) and the fact that the appeal is being taken for purpose of delay (Presbitero et al. v. Rodas et al., 73 Phil. 300 [1941]); Iloilo Trading Center v. Rodas, 73 Phil. 327 [1941]) where considered good reasons to cause immediate execution of judgment or order before the expiration of time to appeal.

the parties;

(3) It must be a judgment or order on the merits; and

(4) There must be between the two cases identity of cause of action; identity of subject-matter and identity of parties.[1]

The parties in the second case must be the same as the parties in the first case, or at least, must be successors in interest by title acquired subsequent to the commencement of the former action or proceeding, as when the parties in the subsequent case are heirs or purchasers who acquired title after the commencement of the former action or proceeding.[2]

In *Catalina de Leon v. Rosario de Leon*, the plaintiff bought one-half of a parcel of land from a certain couple. She commenced this suit against her vendors asking for the formal execution of a transfer deed as well as the registration thereof. The trial court dismissed the case for lack of sufficient cause of action, in that in a decision rendered by the CFI of Quezon City the transfer of the land in question made by certain Roque and Bautista to the vendors of the herein plaintiff was declared rescinded and without effect, and since, the plaintiff was merely a successor in interest of the said vendors, the judgment against them was binding upon her. The Supreme Court, after citing Section 44(b) of Rule 39,[3] held:

> "That to be successor in interest a purchaser must acquire title *subsequent to the commencement of the action*, and not before as in the present case. If action is filed against the vendor after he had parted with his title in favor of a third person, the latter is not bound by any judgment which may be rendered against the former. In such a case the principle of *res judicata* does not apply."

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## Civil Procedure—*Affidavit of merit.*

GONZALES v. AMON
G.R. No. L-8963, Feb. 29, 1956

In the case of *Valerio v. Hon. B. T. Tan et al.*,[1] it was held that although affidavit of merit is required for a new trial under Rule 37 or for vacating a judgment under Rule 38, yet such affidavit is not necessary when an order is sought to be vacated because the movant has been deprived of his day in court through no fault or negligence on his part, because no notice of hearing was furnished him in advance so as to enable him to prepare for trial.

In this case of *Gonzales v. Amon* an action for the recovery of two parcels of land, the trial court ordered the complaint dismissed and authorized the clerk of court to receive defendant's evidence, for failure of plaintiff or his attorney to appear at the trial notwithstanding due notice thereof. The Court found no merit in this appeal because the motion for reconsideration, though supported by the affidavit of the clerk of court to the effect that through inadvertence she forgot to bring to the knowledge of plaintiff and his attorney the notice of hearing that she received, was not accompanied by an affidavit of merit, that is, a sworn statement that plaintiff had a good and valid cause of action against the defendant, notwithstanding the latter's defense that he had already redeemed the land in question.

*Jerry P. Rebutoc*

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[1] San Diego v. Cardona ,70 Phil. 281, 283 (1940).

[2] I MORAN, COMMENT, ON THE RULES OF THE COURT 870 (1952 ed.), citing a good number of cases decided by the Supreme Court of the Philippines.

[3] "In other cases the judgment so ordered is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity."

[1] G.R. No. L-8446, September 19, 1955.

**Constitutional Law**—*A petition to declare a statute invalid must show direct injury to petitioner.*

JUAN BAUTISTA v. THE MUNICIPAL COUNCIL OF MANDALUYONG, RIZAL ET AL.
G.R. No. L-7200, Feb. 11, 1956

In order that an individual may question the validity of a statute or law, what requisite fact must he show the court?

In two earlier cases,[1] the Supreme Court announced this doctrine: "The rule is that a person who questions the validity of a statute or law must show that he has sustained, or is in immediate danger of sustaining, some direct injury as the result of its enforcement."

This ruling was cited with approval and reiterated by the Supreme Court in the present case which involves a petition to declare an ordinance of the Municipality of Mandaluyong, Rizal, invalid. Said ordinance provides:

> "PROVIDED, HOWEVER, only one Special Watchman's Agency shall be granted the exclusive privilege or right to conduct a special watchman's agency within the territorial limits of this municipality subject to the power of the Municipal Mayor to revoke their license in view of the reasons provided elsewhere in this Ordinance."[2]

Petitioner alleged in support of his petition that the ordinance was violative of law because his rights were affected, he being engaged and licensed in the guard and watchman's business and having contracted to guard the Wack Wack Golf and Country Club.

The Supreme Court found the ground insufficient to constitute a cause of action. It was unanimous in declaring that the petitioner could not properly institute the present petition since his rights were not affected as he claimed in his petition.

Speaking through Justice J. B. L. Reyes, it said: "Appellant's petition does show that his interests are, or about to be, adversely affected or prejudiced by the enforcement of the ordinance which he claims to be invalid. On the other hand, it appears that he still has license to engage in the guard and watchman business, and there is no showing of any threat that his license would be revoked or cancelled."

It is implicit though in this ruling that it is not necessary that the rights or interests of the petitioner be actually and presently affected. It is sufficient that such rights or interests "are about to be adversely affected or prejudiced."

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**Political Law**—*The police power of the state justifies the abatement of nuisances* per se *by summary proceedings, without judicial process.*

SITCHON, ET ALS. v. ALEJO AQUINO, CITY ENGINEER OF MANILA
G.R. Nos. L-8191; L-8397; L-8500; L-8513; L-8516; L-8620, Feb. 27, 1956

These are six class suits to enjoin the City Engineer of Manila from carrying out his threat to demolish the houses of the petitioners which were standing

[1] Custodio v. President of the Senate, G.R. No. L-117, Nov. 7, 1945; Manila Race Horse Trainers' Association v. De la Fuente, G.R. No. L-2947, Jan. 11, 1951.
[2] Ordinance No. 13, § 3, Series of 1946, Mandaluyong, Rizal.

on public streets or built on portions of river beds, hence public nuisances under the Civil Code.

First basis for the petition was that the City Engineer had no power to take proper action against public nuisances, since Articles 700 and 702 of the Civil Code empower the district health officer and not the city engineer to take such action. The Supreme Court sustained the City Engineer since under the Revised Charter of Manila, he is expressly authorized to abate public nuisances. A special law prevails over a general law.[1]

A second ground for these petitions was the fact that petitioners were not given the chance to show in a judicial proceeding that their houses did not constitute public nuisances. The Supreme Court deemed such proceeding unnecessary since the petitioners' houses were nuisances *per se* aside from being public nuisances, so that summary proceeding was justified. It was enough that petitioners were given notice of the contemplated action within a reasonable time. The Court said:

> "Houses constructed, without governmental authority, on public streets, and waterways, obstruct and *at all times* the free use by the public of said streets and waterways, and, accordingly, constitute nuisances *per se*, aside from public nuisances. As such, the summary removal thereof, without judicial process or proceedings may be authorized by the statute or municipal ordinance, despite the due process clause.[2]

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**Political Law**—*The taxing power of a municipality or city is to be determined by the charter or law creating it.*

PEDRO ARONG v. MIGUEL RAFINAN, ET AL.
G.R. Nos. L-8673-74, Feb. 18, 1956

Questions have arisen as to whether a city or a municipality may impose taxes on business for the purpose of creating a source of revenue in addition to an imposition which is merely regulatory.

This issue was first considered by the Supreme Court in the case of *Eastern Theatrical Co., Inc. v. Victor Alfonso, et al.*[1] In that case the City of Manila enacted an ordinance which imposed a fee on every admission ticket sold by theatrical establishments in addition to other license fees paid by the same enterprises under another ordinance. The Court held that said ordinance imposed a tax on business and was not merely regulatory, but its validity was upheld because it was within the grant of power of the City of Manila under its charter.

In the subsequent case of *City of Baguio v. de la Rosa*,[2] the same kind of ordinance was considered, and its validity was sustained on the ground that the ordinance was within the taxing power of the City of Baguio under its charter.

It is clear from these cases that the validity of an ordinance imposing a tax for revenue purposes and not merely for regulatory purposes will depend on the grant of power to the particular municipality or city.

In the instant case, an ordinance of a similar nature was passed by the City of Cebu. On the basis of the two cases mentioned, the Supreme Court held

[1] Jose Francisco v. Jose de Borja, G.R. No. L-7953, Feb. 27, 1956.
[2] 66 C.J.S. 783-784.
[1] 46 O.G. 303 (1949).
[2] G.R. No. L-8668-70.

it to be one imposing a tax for revenue purposes. But unlike the cities of Manila and Baguio, the City of Cebu, under its charter, is empowered merely 'to regulate and fix the amount of the license fees for the following: ...theatres, theatrical performances, cinematographs." It does not have the power to tax, with respect to these enterprises. It is not so expressly provided nor can it be implied. The Court said:

> "When the law desires to grant the power to tax, it expressly so provides, otherwise it merely employs the words 'to regulate' or 'fix the license fees.' "

It is evident that the City of Cebu does not have the power to enact an ordinance for revenue purposes.

*Benjamin C. Santos*

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**Political Law**—*Civil service rule on suspension and reinstatement with back salaries applicable to employees of government-owned or controlled corporations.*

NATIONAL RICE AND CORN CORP. v. NARIC WORKERS' UNION
G.R. No. L-7788, Feb. 29, 1956

In the instant case a certain Mabagos held three civil service eligibilities. From government service he transferred to the Naric in 1937 and there served in various capacities. In 1948 he was suspended under Section 694 of the Revised Administrative Code as supervisor of all NARIC warehouses in the City of Manila pending an investigation for involvement in a theft case. Upon his acquittal he demanded his reinstatement and payment of his back salaries. From a decision of the CIR in favor of the claimant the NARIC appealed contending that as the claimant was not reappointed in the PRISCO within a fixed period under Executive Order No. 350, series of 1950, he should be considered separated from the service. The Supreme Court held:

> "As he was merely suspended from office pending determination of the criminal charge, there was a temporary cessation of his duties, not a removal, dismissal or permanent separation from service.
>
> "Having proven that he had been suspended and dismissed without cause, contrary to the express provision of the Constitution, his reinstatement becomes a plain ministerial duty of the Auditor General, a duty whose performance may be controlled and enjoined by mandamus. ...And the payment of the back salaries is merely incidental to and follows reinstatement...."

The principle stated above is applicable to officials and employees belonging to the Civil Service, but the Supreme Court ruled in this case that these right and privileges have also been extended to employees in Government-owned or controlled corporations, such as the NARIC, by virtue of Executive Order No. 399, series of 1951.

The Court further held that the petitioner should have retained the position of Mabagos during his suspension to await the result of the investigation of charges brought against him. The petitioner had no right to abolish the suspended employee's position or to give it permanently to another during the pendency of the case filed against the said employee.

*Jerry P. Rebutoc*

**Naturalization**—*An applicant becomes a citizen only upon taking an oath of allegiance in accordance with law.*

TIU PENG HONG v. REPUBLIC
G.R. No. L-8550, Jan. 25, 1956

Naturalization, the process by which a State adopts a foreigner and stamps upon him the impress of its own nationality,[1] is not a right[2] but a mere privilege.[3] An alien who possesses the qualifications required by law[4] and is not otherwise[5] disqualified may be naturalized as Filipino citizen. The moment he acquires Philippine citizenship, his minor children are considered citizens under the conditions prescribed by law.[6]

On July 30, 1952, the Court of First Instance of Manila handed down a decision granting the petition for naturalization of the applicant-petitioner in the instant case. Pursuant to the provisions of Republic Act No. 530, the court received the evidence presented by Tiu Peng Hong on October 9, 1954. On the same day, the court authorized the petitioner to take his oath of allegiance which he did, whereupon the corresponding certificate of naturalization was issued to him.

On October 19, 1954, the petitioner filed a motion praying that his daughter, who was a minor on July 30, 1952[7] but who became of age on March 15, 1953, be allowed to take her oath of allegiance as confirmation of her intention to retain Philippine citizenship. The court allowed the motion hence this petition for the review.

The petitioner contended that since he became a citizen of the Philippines 30 days after the rendition of the decision of July 30, 1952, his daughter, who was then a minor, also became a Filipino citizen by virtue of Section 15, Com. Act No. 473.

The Supreme Court, in rejecting this claim, declared that applicant for naturalization becomes a Filipino citizen only upon the taking of his oath of allegiance[8] and not before. He does not acquire Philippine citizenship by the mere fact that the decision granting his application for naturalization has become final. The taking of the oath of allegiance in conformity with the provisions of Section 2, Republic Act No. 530 determines the beginning of his new status as a regular member of the Philippine citizenry, according to the Constitution.

Moreover, the court noted that under the provisions of Section 1, Republic Act No. 530,[9] no decision granting an application for naturalization shall become

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[1] GARCIA, PHILIPPINE POLITICAL LAW PRINCIPLES AND PROBLEMS 266 (Revised Ed.).
[2] State ex rel. Gorelick v. Superior Court, 75 Wash. 239, 134 P. 916 (1913).
[3] United States v. Macintosh, 283 U.S. 606 (1931).
[4] Cf. §§ 2 and 3, Com. Act 473.
[5] Cf. § 4, Com. Act No. 473.
[6] § 15, par. 2, Com. Act No. 473 provides: "Minor children of persons naturalized under this law who have been born in the Philippines shall be considered citizens thereof."
[7] This was the date of approval of the applicant's petition.
[8] § 2, Republic Act No. 530: "After the finding mentioned in section one, the order of the court granting citizenship shall be registered and the oath provided by existing laws shall be taken by the applicant, whereupon, and not before, he will be entitled to the privileges of a Filipino citizen."
[9] § 1, Republic Act No. 530: "The provisions of existing laws notwithstanding, no petition for Philippine citizenship shall be heard by the court until after six months from the publication of the application required by law, nor shall any decision granting the application 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 any act prejudicial to the interest of the nation or contrary to any Government announced policies."

executory until after two years from its promulgation and after it is shown, and the court of finds on proper hearing, that during the intervening time, the applicant has complied with the conditions required of him by law. In other words, the decision made by the court in favor of the petitioner did not become final until October 9, 1954, at which time, the petitioner's daughter was twenty-two years of age, and, therefore, not entitled to the benefits of Section 15, Com. Act No. 473.

This decision of the Supreme Court prevented the absurd situation which would otherwise result: where a child, whose claim to citizenship was based solely upon the naturalization of the father, had become a citizen upon the approval of the petition for naturalization of her father, even before the latter acquired Filipino citizenship upon taking the requisite oath of allegiance.

*Gonzalo T. Santos*

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**Naturalization**—*Stay in foreign country for two weeks to settle the estate of a decedent falls within the prohibition against leaving the Philippines within the two-year period provided for in Naturalization Law.*

DEE SAM v. REPUBLIC
G.R. No. L-9097, Feb. 29, 1956

Last year the Supreme Court held that an absence for medical and business purposes not necessary to save applicant's life,[1] or for vacation purpose,[2] comes within the purview of the prohibition against leaving the Philippines provided for in Clause 1 of Section 1 of Rep. Act No. 530.

In the case of Uy v. Republic,[3] the Court said — albeit by way of dictum — that the requirement as to non-absence might possibly admit of some exceptions, as where the applicant is sent abroad on a government mission, or is kidnapped or forcibly removed from the Philippines, or is obliged to go and stay abroad to undergo an operation to save his life. The present case, however, obviously does not come under any of those exceptions. The petitioner was not allowed to take his oath of allegiance as a citizen of the Philippines on the sole ground that in 1953 he made a trip to Saigon where he remained for two weeks to settle, according to him, the estate of his father who had died in Paris, in violation of Clause 1 of Section 1 of Rep. Act No. 530 which requires the applicant during the interval period of two years from promulgation of the decision granting the application for naturalization not to leave the Philippines. The Court said:

> "...further relaxation of the aforesaid requirement in deference to private need or convenience should be avoided so as not to open the door to evasions and render the law ineffective."

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[1] Uy v. Republic, G.R. No. L-7054, April 29, 1955.
[2] Te Tek Lay v. Republic, G.R. No. L-7412, Sept. 27, 1955.
[3] See note 1 *supra*.

**Election Law**—*A vice-mayor acting as mayor does not "actually hold" the office of mayor.*

SALAYSAY v. CASTRO, ET AL.
G.R. No. L-9669, Jan. 31, 1956

The law is specific in providing that upon the death, resignation, removal or permanent disqualification of the duly elected mayor, the vice-mayor shall *ipso facto* become mayor,[1] and that in the event of a temporary vacancy in such office, the vice mayor shall discharge the duties pertaining to the same.[2] But in the latter case, does he actually hold the position of mayor? A divided Supreme Court,[3] with no precedents to follow, answered this question in the negative in the case under consideration.

The undisputed facts were as follows: The regularly elected mayor of San Juan del Monte, Rizal, was suspended from his office due to the institution of administrative charges against him. The petitioner, Salaysay, who was the duly elected vice-mayor of the municipality, acted as mayor during such suspension pursuant to the provisions of Section 2195 of the Revised Administrative Code, and while acting as such, he filed his certificate of candidacy for that position on September 8, 1955.

The Office of the President of the Philippines, interpreting the action of the petitioner as an automatic resignation from his office of vice-mayor, appointed a certain Sto. Domingo in his stead. At about the same time, the provincial governor informed him that having resigned as vice-mayor and, therefore, having relinquished his right to act as mayor, he should turn over the mayoralty to the new appointee. Salaysay, instead of complying with the order, brought this action of prohibition.

The issue hinged on the proper interpretation of Section 27 of the Revised Election Code which provides as follows:

> "Any elective provincial, municipal, or city official running for an office, other than the one which he is actually holding, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy."

It was the contention of the petitioner that he was not deemed to have resigned because when he filed his certificate of candidacy for the office of mayor, he was actually holding the same. The respondents, on the other hand, maintained that the position he was actually holding was that of vice-mayor because he was merely discharging the duties of mayor.

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[1] § 21(b), Republic Act No. 180 provides: "Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer who he is to replace, upon the recommendation of said party, save in the case of a mayor, which shall be filled by the vice-mayor."

[2] § 21(a), *id.*: "Whenever a temporary vacancy in any elective local office occurs, the same shall be filled by appointment by the President if it is a provincial or city office, and by the provincial governor, with the consent of the provincial board, if it is a municipal office."

§ 2196, Revised Administrative Code provides: "Upon the occasion of the absence, suspension, or other temporary disability of the mayor, his duties shall be discharged by the vice-mayor, or if there be no vice-mayor, by the councilor who at the last general election received the highest number of votes."

The latter section, being more specific and particular than the former as far as the office of mayor is concerned, must necessarily prevail.

In the case of *Ykalina v. Oricio, G.R.* No. L-6951, Oct. 30, 1953, it was held that § 2196 of the Revised Adm. Code does not distinguish between an appointive or elective vice-mayor to succeed the mayor.

[3] Justices Padilla, Montemayor, Reyes, A., Jugo, Labrador, and Endencia formed the majority. Chief Justice Paras and Justices Bengzon, Bautista Angelo, Concepcion and Reyes, J. B. L. dissented.

After delving into the historical background of the section concerned and after declaring that it was the intention of the legislature to make the exception[4] provided therein apply only to permanent, not temporary, officials, because the tenure of the latter is indefinite, uncertain and precarious, the court ruled that the phrase "actually holding office" as used in the section is equivalent to the term "incumbent" (that is, an official regularly selected for the post) and that since the petitioner was only a temporary official, he was considered to have resigned his office. From what office is he deemed resigned? It must, necessarily refer to an office from which said official can resign, or from which he could be considered resigned even against his will such as, for instance, a mayor who runs for the office of provincial governor. This, the court emphasized, could not be said of a vice-mayor acting as mayor, for how could he resign from the office of mayor when he was only a vice-mayor? A vice-mayor acting as mayor does not cease to be a vice-mayor; that is his real, principal and basic function. His acting as mayor is only an incident, an accessory.

In the case of *Gamalinda v. Yap*,[5] it was held that a mayor under temporary disability continues to be a mayor and actually holds the office in spite of his temporary disability to discharge the duties of the office. Proceeding from this premise, the court concluded that if the vice-mayor acting as mayor were also considered as actually holding the office of mayor, then the absurd and anomalous situation would arise whereby there would be two mayors at the same time.[6] This could not have been the intention of the legislature, for that body contemplated only one office, not two or more, when it used the singular instead of the plural in the phraseology of Section 27.

While admitting the fact that when a vice-mayor acts as mayor, people generally call him mayor or acting mayor and deal with him as though he were the regular incumbent, nevertheless, the Court stressed the distinction between the terms "acting mayor" and "acting as mayor". It explained that when a vacancy occurs in the office of mayor, the governor, under the provisions of section 21(a), or the President of the Philippines, under section 21(b), (d) and (e) of the Revised Election Code, appoints an acting mayor who becomes mayor and actually holds office for the portion of the term that has not yet expired because there is then no regular incumbent to the same. This, the court added, does not take place when a vice-mayor acts as mayor because there is a regular incumbent to the office. Strictly speaking, therefore, he is only acting as mayor.[7]

The question was posed: May a vice-mayor acting as mayor and running for the latter office be allowed to retain the office of mayor? The court, having

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[4] According to the majority, the general rule is that when a local elective official runs for an office, he is deemed to have resigned from his office from the moment of the filing of his certificate of candidacy: that the exception is when he runs for the same office, in which case, he is not deemed resigned.

[5] G.R. No. L-6121, May 30, 1953.

[6] The majority gave other examples of anomalous situations one of which was as follows: The regularly elected mayor files his certificate of candidacy for reelection, then goes on a vacation. The vice-mayor takes over his duties and while so doing also files his certificate of candidacy for the office of mayor. He also goes on vacation or falls sick. The councilor who obtained the highest number of votes in the last general election is next in line and does the same thing. The majority pointed out that in such a circumstance, there would be three officials running for the same office who would retain their respective positions despite the provisions of § 27 of the Revised Election Code.

[7] This was refuted by the minority of the court who argued that, aside from the fact that this distinction in expressions is imposed merely by the rules of grammar, when a permanent vacancy takes place in the office of mayor, under § 21(b), no appointment is made because the vice-mayor becomes mayor. Moreover, under either paragraphs (d) or (e), the designation may be permanent or temporary in character: if permanent, the appointee is certainly not an acting mayor; if temporary, he is acting mayor.

in mind the intention of the legislature that there should be continuity of the performance of public duties during elections in enacting section 27, answered in the negative. It explained that an incumbent mayor can and has a right to retain his office until the expiration of his tenure but a vice-mayor, whose term of office as mayor is only temporary, provisional and precarious, cannot do so because his term may end at any time when the regularly elected mayor returns.

That the provisions of law on this subject are ambiguous and susceptible to varied interpretations is evidenced by the fact that Justice Concepcion was able to register a very persuasive dissenting opinion in which he refuted the majority opinion point by point. His main argument is that by the phrase "actually holding office" is meant that which the person holds at the time he files his certificate of candidacy. When a vice-mayor, due to a temporary vacancy in the office of mayor, assumes the office of mayor, performs its functions, discharges its duties, and exercises its powers, he actually holds the office of mayor.

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**Election Law**—*In determining whether an elective municipal official filing his certificate of candidacy is deemed resigned under section 27 of the Revised Election Code, the office he is actually holding at the time of such filing is what is considered.*

CASTRO v. GATUSLAO
G.R. No. L-9688, Jan. 19, 1956

The issue in this case is whether a vice-mayor who had filed a certificate of candidacy for reelection, and who, on the next day, became mayor due to vacancy therein, comes within the sphere of action of section 27 of the Election Law[1] reading as follows:

> "Any elective provincial, municipal or city official running for an office, *other than the one which he is actually holding*,[2] shall be considered resigned from his office from the moment of the filing of his certificate of candidacy."

In this case Petitioner Castro was vice-mayor of Manapla, Negros Occidental on September 8, 1955. On the same date, he filed his certificate of candidacy for the same post. On the following day, September 9, the office of mayor held by one Gustilo was vacated due to his filing of a certificate of candidacy for the office of provincial board member, and the petitioner thereby assumed the same.[3] On September 16, respondent governor of Negros Occidental appointed a certain Delfin as mayor. The ground for this action was that, under Section 27 of the Election Law, Gustilo was considered to have resigned as mayor on account of his filing of a certificate of candidacy for a position other than that which he was holding; that the petitioner automatically became mayor, but since he filed a certificate of candidacy for the position of vice-mayor, he too was considered to have forfeited the office of mayor; and that, therefore, the office of mayor, being vacant on these accounts, the respondent was justified in the appointment made by him.

Upon the foregoing facts, the Supreme Court upheld the petitioner. In ruling that section 27 of the Revised Election Law does not apply to the herein petitioner, it declared that the last words of said section, "shall be considered

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[1] Republic Act No. 180, as amended by Republic Acts Nos. 599 and 867.
[2] Italics supplied.
[3] § 21(b), Republic Act No. 180.

resigned from the moment of the filing of his certificate of candidacy", indicates that the moment of such filing is the point of time to be considered in the application of the statute.

Through Justice J. B. L. Reyes, the Court said:

> "What office was petitioner Castro *actually holding* on September 8, 1955, when he filed his certificate of candidacy? Vice-mayor of Manapla. For what office did he run and file his certificate of candidacy? For Vice-mayor of Manapla. Clearly then, he was a candidate for a position that he was *actually holding at the time he filed his certificate of candidacy*, for 'actually' necessarily refers to that particular moment:...
>
> "That the petitioner came *later* to hold another office by operation of law, does not alter the case.... The law does not make the forfeiture dependent upon future contingencies, unforseen and unforeseable, since the vacating is expressly made effective *as of* the moment of the *filing of the certificate of candidacy*, and there is nothing to show that the forfeiture is to operate retroactively....
>
> "Since the law did not divest the petitioner of his position of Vice-mayor, he was entitled to the mayoralty of Manapla when that post became vacant the next day; and as his assumption of that office did not make herein petitioner hold a post different from that for which he became a candidate *at the time* his certificate of candidacy was filed, he did not forfeit the office of Mayor; therefore, the respondent could not legally appoint another mayor for Municipality Manapla...."

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**Election Law**—*Certificates of candidacy, when to be filed or withdrawn.*

MONTINOLA v. COMMISSION ON ELECTIONS
G.R. No. L-9860, Jan. 21, 1956

The fundamental law governing the elections of public officers and all voting in connection with plebiscites is the Revised Election Code.[1] The procedure to be followed for launching one's candidacy is outlined in this law. Under it no person is eligible for any elective office unless within the time fixed, he files a duly signed and sworn certificate of candidacy.[2] To be valid, such certificate must pass through two acts: (a) Its presentation by the candidate; and (b) Its acceptance by the official authorized by law for giving it due course. If it is rejected, it is not a certificate of candidacy for legal purposes but simply a piece of paper which the candidate has in his pocket.[3]

The certificate serves as the announcement for one's candidacy for the office mentioned, and of his eligibility therefor. He may state therein the political party to which he belongs, if any, and his post office address for all election purposes.[4] No person, however, is eligible for more than one office to be filled in the same election, otherwise he becomes ineligible for all of them.[5]

In connection with the elections held on November 8, 1955, the last day for filing certificates of candidacy was September 9. On September 8, the petitioner herein filed his certificate of candidacy for mayor of Victorias, Negros Occidental, and on September 9 at 5:00 p.m., his certificate for provincial board member. The following day at 9:40 a.m., he sent a telegram to the respondent withdrawing his certificate for the latter position stating that it was filed by mistake. The respondent required the petitioner to file with the provincial secretary a sworn statement of his withdrawal, which he did. On October 18, however, the respondent declared the petitioner ineligible for both offices on the

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[1] § 2, Republic Act No. 180.
[2] § 31, *id.*
[3] Ycain v. Canejs, 46 O.G. 433 (1950).
[4] § 32, Republic Act 180.
[5] § 31, *id.*

ground that he failed to file his withdrawal on or before September 9, under Section 31 of the Revised Election Code.[6] This declaration gave rise to the present case.

The Supreme Court, in holding that the petitioner's withdrawal of his certificate of candidacy for provincial board member on September 10 was effective for all legal porposes and left in full force his certificate of candidacy for mayor, said:

> "While section 31 of the Revised Election Code is definite in requiring the filing of a certificate of candidacy within the statutory period, and in providing that if one files certificate of candidacy for more than one office, he shall not be eligible for any of them, neither said section nor any other section provides that the withdrawal of a certificate should be made on or before the last day for filing the same.... We have already had occasion to rule[7] that there is no provision of law forbidding withdrawal of candidacy at any time before election."

The court noted that there was an honest mistake in the filing of petitioner's second certificate. Moreover, the court realized that the petitioner, having received more votes than his only opponent, a contrary holding would deprive the electorate of their choice.

*Gonzalo T. Santos*

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**Labor Law**—*"Dependency" as used in Workmen's Compensation Act defined.*

MALATE TAXICAB & GARAGE, INC. v. VILLAR
G.R. No. L-7489, Feb. 29, 1956

The Workmen's Compensation Act[1] considers certain classes of persons as dependents entitled to compensation thereunder only if, among others they are totally or partly dependent upon the deceased.[2]

In this action for compensation under the above-mentioned Act, the only question was whether the respondents were partly dependent for support upon their son, the deceased. The Court of Appeals found that although the record failed to show that the amount with which the deceased helped his parents in maintaining the family was a fixed one, yet he actually contributed to their expenses with varied sums, at times amounting to ₱20.00 a week or every ten days. In deciding the appeal in favor of the claimants, the Supreme Court quoted many cases in Philippine and American jurisprudence, one[3] of which disposed of the case at bar:

> "Within the terms of the Workmen's Compensation Act, 'dependency' does not mean absolute dependence for the necessities of life but rather that the plaintiff look to and relied on the contribution of the decedent in whole or in part, as a means of supporting and maintaining herself in accordance with her station in life. A person may be dependent, according to his view, although able to maintain himself without any assistance from the decedent."

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[6] "No person shall be eligible unless, within the time fixed by law, he filed a duly signed and sworn certificate of candidacy, nor shall any person be eligible for more than one office to be filled in the same election, and, if he files certificate of candidacy for more than one office, he shall not be eligible for any of them."

[7] Clutario v. Commission on Elections, G.R. No. L-1704, Nov. 5, 1947.

[1] Act No. 3428, as amended by Rep. Acts Nos. 772 and 889.

[2] § 9, Act No. 3428.

[3] Caspillo v. Cadwallader-Gibson Lumber Co., G.R. No. 41261, Sept. 26, 1934, citing BUTALID, CASES ON WORKMEN'S COMPENSATION ACT 513.

**Labor Law**—*Tournahauler and truck drivers of highly mechanized farming concern are industrial workers under Eight-Hour Labor Law; permit for overtime work.*

PAMPANGA SUGAR MILLS v. PASUMIL WORKERS UNION
G.R. No. L-7668, Feb. 29, 1956

One of the questions in the instant case was whether or not tournahauler and truck drivers employed by the Pampanga Sugar Mills in transporting sugar cane from the field to the "switch" where they are loaded on railroad cars for transportation to the mill are industrial workers and therefore entitled to 50% additional compensation for work done in excess of eight hours a day.[1] The Supreme Court, on appeal, resolved the question thus:

> "If petitioner were a small farmer using tractors and trucks on a small scale, its contention would perhaps merit serious, if not favorable consideration, because the very ones engaged in cutting the cane would be the same ones that bring it to the 'switch'. But petitioner is a highly mechanized industrial concern with the work of planting and harvesting clearly distinct from that of transporting the cane from fields, first to a 'switch' and later to the mill. The rule, therefore, should be that all its workers are to be considered industrial workers, except those devoted to purely agricultural work."

It was argued that as the Secretary of Labor had not issued the permit required by Section 5 of the Eight-Hour Labor Law,[2] the claimants should not be entitled to overtime pay in accordance with the ruling in case of *Pasumil Workers Union v. CIR.*[3] The Court said:

> "The case cited has become obsolete because of the repeal of Acts Nos. 41, 23 and 4242. Under Com. Act No. 444 only the employer has the obligation to secure authority to perform overtime work."

The Court cited the case of *Gotamco Lumber Co. v. CIR*[4] where it was held that such employer may not be heard to plead his own neglect as exemption or defense:

> "The employee in rendering extra service at the request of his employer has a right to assume that the latter has complied with the requirements of the law and therefore has obtained the required permit from the Department of Labor."

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**Labor Law**—*Additional compensation for night duty.*

DETECTIVE & PROTECTIVE BUREAU, INC.
v.
UNITED EMPLOYEES' WELFARE ASSOCIATION
G.R. No. L-8175, Feb. 29, 1956

Night work is not "overtime" work within the meaning of this term as employed in Eight-Hour Labor Law, it is a complete working day of eight hours,

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[1] Com. Act No. 444, applies to all persons employed in any industry or occupation, whether public or private, with the exception of farm-laborers, laborers who prefer to be paid on piece work basis, domestic servants and persons in the personal service of another and members of the family of the employer working for him. (§ 2.)

[2] § 2 provides "Exemption from the provisions of sections two and three hereof may be granted by the Secretary of Labor in the interest of the public, or if, in his opinion, such exemption is justifiable either because the organization or nature of the work requires it, or because of lack or insufficiency of competent laborers in a locality...."

[3] 69 Phil. 370, 375-376 (1940).

[4] 47 O.G. 3421 (1951). See also Manila Terminal Co. v. CIR, 48 O.G. 2725 (1952) for similar ruling.

only that instead of being performed in the daytime, it is done at night.[1] This being the case should night work be treated like daytime work or with better pay? The answer, favorable to the laborers, to this question as laid down in the *Shell Co.* case[2] was reiterated in the present case.

The petitioner filed with the CIR an action against the respondent praying that 26 employees, members of the association, be granted by the respondent corporation an additional compensation of 50% for night duty from Jan. 1, 1950 to Dec. 31, 1952. The respondent set up the defense that the employees asking for additional compensation for night duty were made to understand that they would not be paid additional compensation for work at night because salaries were fixed for such work. The Supreme Court, in affirming the CIR overruling the second defense, observed:

> "The decision is based on our rulings in the case of the Shell Co. v. National Labor where we held that work done at night is more strenuous than that performed during the day; that it is attended by innumerable inconveniences for hygienic, medical, moral, cultural and sociological reasons, and therefore deserves more compensation than work done during daytime...and that the CIR has the right to grant for night work additional compensation amounting to 50%...."

*Jerry P. Rebutoc*

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**Labor Law**—*Illegal strikers may be ordered reinstated.*

NATIONAL CITY BANK OF NEW YORK
v.
NATIONAL CITY BANK EMPLOYEES UNION
G.R. No. L-6843, Jan. 31, 1956

The law recognizes the right of employees to self-organization, to join labor unions of their own choosing, and to engage in concerted activities[1] such as strikes. A strike has been defined as any temporary stoppage of work by the concerted action of the employees as a result of an industrial dispute.[2]

The term employee includes "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment."[3] Referring to this provision of law in the case of *Rex Taxicab Co. v. Court of Industrial Relations*,[4] the Supreme Court said: "It need be only stated that the declaration of a strike does not amount to a renunciation of the employment relation."

If the strike is valid and the employer refuses to reinstate the workers, the Court of Industrial Relations in an appropriate action may order such reinstatement. Such an action will lie if the strike is occasioned by an unfair labor prac-

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[1] Shell Co. v. National Labor Union, 46 O.G. Supp. No. 1, 97 (1948). Com. Act No. 444, § 1 provides that the legal working day for any person employed by another person shall be of not more than eight hours daily. When the work is not continuous the time during which the laborer is not working and can leave his working place and rest completely shall not be counted.

[2] *Ibid.*

[1] § 3, Rep. Act No. 875 (Industrial Peace Act or Magna Carta of Labor, June 17, 1953): "Employees shall have the right to self-organization and to form, join or assist labor organization of their own choosing for the purpose of collective bargaining through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining and other mutual aid or protection. Individuals employed as supervisors shall not be eligible for membership in a labor organization of employees under their supervision, but may form separate organizations of their own."

[2] § 2(l), *id.*

[3] § 2(d), *id.*

[4] 70 Phil. 621, 623 (1940).

tice of the employer.[5] Where the strike is illegal, it would seem to follow that the employees have no legal right to reinstatement or back pay.[6] The instant case seems to belie the validity of this conclusion.

The facts were as follows: The employees of the petitioner went on a strike on June 11, 1952. The case was referred to the Court of Industrial Relations which ordered the employees to return to work on the following day, June 12, with the understanding that "should any striker fail or refuse to return to work, the bank, through its management, is hereby authorized to replace them."

The trial soon followed, and the court declared the strike illegal, ordered the dismissal of the leaders but allowed the return of the fifty-one striking employees. Thereupon petitioner complained of the order of reinstatement, claiming that the court itself authorized the petitioner to hire new employees in place of the strikers who did not return to work as ordered.

In deciding the case, the Supreme Court held that the order for the replacement of the striking employees was a provisional order, which did not finally determine the right of the striking employees to go back to work or of the new recruits to continue therein as permanent employees. According to the Court, the order of replacement was merely an expedient to allow the petitioner to comply with its functions which were closely related to the public interest. Moreover, from the very nature of things, the right of the striking employees to be reinstated to their former jobs was to depend upon the finding of the Court of Industrial Relations regarding the legality or illegality of the strike. In the words of Justice Labrador:

> "Certainly, no permanent right to the positions temporarily occupied could have been acquired by the recruits, or obligation on the part of the petitioner to retain them therein implied therefrom. The modification thereof by the decision of the court after trial, and in accordance with the results thereof, must be held to be perfectly proper, just and legal."

The fact that the Supreme Court affirmed the decision of the CIR would seem to make the conclusion drawn above invalid.

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## Labor Law—*What a labor dispute is.*

### CALTEX (PHIL.) INC. v. KATIPUNAN LABOR UNION
### G.R. No. L-7496, Jan. 31, 1956

The duty to bargain collectively is imposed by law on both labor union and an employer.[1] When an agreement is reached, while in effect and before nullified, it governs the rights, duties and obligations of the parties thereto,[2] and neither party may modify, or terminate such agreement without the knowledge of the other.[3] The case under consideration concerns one such agreement.

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[5] CARLOS AND FERNANDO, LABOR AND TENANCY LAWS 194 (1955).

[6] This conclusion may be drawn from the decision in the case of *National Labor Union v. Court*, 63 Phil. 732, 736 (1939). The court, in that case accepted the view of Chief Justice Hughes of the United States Supreme Court, who referred to the seizure and detention of the respondent's property in a sit-down strike as a high-handed proceeding without shadow of a legal right and sustained the right of management to discharge the strikers, holding that the strikers had by their misconduct taken "...a position outside the protection of the statute and accepted the risk of the termination of their employment upon grounds aside from the exercise of legal rights which the statute was designed to conserve." (National Labor Relations Board v. Metallurgical Corp., 306 U.S. 240, discussed in CARLOS AND FERNANDO, *id* at 194-195).

[1] § 13, Rep. Act 875.

[2] La Carlota Sugar Central v. Era, et al., CIR No. 106-V, Jan. 2, 1948, cited in CARLOS AND FERNANDO LABOR AND TENANCY LAWS 182 (1955).

[3] § 13(2), Rep. Act. 875. When the Supreme Court ruled in the case of *Davao Stevedores v. Compañia Maritima*, (G.R. No. L-4330, March 24, 1952) that the Court of Industrial Relations was without power to cancel or nullify existing agreements between employers and labor organizations, it showed its determination to uphold and respect collective bargaining agreements.

The Court of Industrial Relations received a petition of the Katipunan Labor Union alleging that an employee of the Caltex (Phil.) Inc., who was a member of the union, had been dismissed by the company without sufficient or valid cause and without investigation. The union alleged that this was in violation of an order of the Court of Industrial Relations incorporating an agreement between the company and the union to the effect that "the company prior to any dismissal, lay-off or suspension should give the union opportunity to be heard and the union should be given not less than three days notice before any hearing or investigation" was conducted.

During the hearing, the Court of Industrial Relations ordered the provisional reinstatement of the employee concerned, pending the determination of the legality of the dismissal. The motion for reconsideration having deen denied, the present petition was interposed, the company alleging that the court had no jurisdiction over the case because only one, not thirty-one,[4] employee is concerned and that there was no dispute between the workers and the company. The Supreme Court found no merit in this contention and held: "The term labor dispute is defined as including '...any controversy concerning terms, tenure or conditions of employment...'"

The existing agreement between the union and the company, the court concluded, was a condition or term of the employment agreement, the enforcement of which is not the concern of the employee alone but that of the whole labor union to which he belongs.

*Gonzalo T. Santos*

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**Labor Law**—*Employer-employee relationship distinguished from lessor-lessee relationship.*

NATIONAL LABOR UNION v. DINGLASAN
G.R. No. L-7949, March 23, 1956

Under the Industrial Peace Act, the term "employee" is given a broad meaning.[1] This enables the government to exercise complete jurisdiction over unfair labor practices.[2] Frequently employers seek to evade their obligations under labor laws by assuming to have formed different legal relationship with their employees. Some shield themselves under the guise of contractors, while others under the guise of lessors.

In the instant case, the Supreme Court found the following: Dinglasan was the owner and operator of TPU vehicles plying España-Quiapo-Pier routes. Petitioners were drivers who had verbal contracts with the respondent for the use of the latter's jeepneys at ₱7.50 per day. Said drivers did not receive salaries or wages from Dinglasan; their day's earnings or wages consist of whatever amount exceeded ₱7.50. If they did not earn more respondent did not have to pay them anything. Respondent's supervision consisted in the inspection of the jeepneys.

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[4] § 4, Com. Act No. 103, provides that the CIR shall take cognizance for purposes of prevention, decision and settlement of any industrial dispute causing or likely to cause a strike or lockout, arising from differences as regards dismissals, lay-offs or suspensions of employees, provided that the number of employees involved exceeds thirty.

[1] Rep. Act No. 875, § (2) provides: "The term employee shall include any employee and shall not be limited to the employee of a particular employer unless the Act explicitly states otherwise and shall include any individual whose work has ceased as a consequence of, or in connection with any current labor dispute or because of any unfair labor practice and who has not obtained any other substantially equivalent and regular employment."

[2] CARLOS AND FERNANDO, LABOR AND TENANCY LAW 152 (1955).

Through the National Labor Union, the drivers filed a complaint against the respondent for unfair labor practice. Respondent claimed that the relationship between him and the drivers was that of lessor and lessees. An Associate Judge of the Court of Industrial Relations declared that the relationship between the complainants and the respondent was that of employer-employee but this order was reversed by the Court of Industrial Relations in a resolution *in banc*. Hence this petition for review.

In holding that an employer-employee relationship existed, the Supreme Court said:

> "Not having any interest in the business because they did not invest anything in the acquisition of the jeeps and did not participate in the management thereof, their service as drivers of the jeeps being their only contribution to the business, the relationship of lessor and lessee cannot be sustained. In the lease of chattels, the lessor loses complete control over the chattel leased although the lessee cannot make bad use thereof, for he would be responsible for damages to the lessor should he do so. In this case there is a supervision and a sort of control that the owner of the jeeps exercises over the drivers. It is an attempt by an ingenious scheme, to withdraw the relationship of the owner of the jeeps and the drivers thereof from the operation of the labor laws enacted to promote industrial peace...."

*Amelia R. Custodio*

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**Taxation**—*A night's use or renting of a night club does not constitute a lease of a night club as contemplated in Section 260 of the Internal Revenue Code.*

COLLECTOR OF INTERNAL REVENUE
v.
JUNIOR WOMEN'S CLUB OF THE PHIL.
G.R. No. L-6992, Feb. 28, 1956

The Internal Revenue Code imposes a lower amusement tax on the proprietor, *lessee*, or operator of cockpits, cabarets, and *night clubs*, than on the proprietor, *lessee*, or operator of theaters, cinematographs, concert halls, circuses, and *other places of amusement*.[1]

The Junior Women's Club, a charitable organization, held a cultural pageant at the Fiesta Pavilion of the Manila Hotel which it rented for one night. The Collector assessed amusement tax on the club as a *lessee of other places of amusement*, and not as a *lessee of a night club*, as the respondent contended. In the latter case it would pay a lesser amusement tax.

> "A hotel is one which furnishes a traveler with lodging in addition to food and drinks."[2]
> "A night club is a place or establishment selling to the public food or drinks, where the customers are allowed to dance."[3]

Hence, a hotel is a night club; the Manila Hotel, or more properly the Fiesta Pavilion, is a night club.

But is a night's renting of a night club, like the Fiesta Pavilion, a lease of a night club as contemplated by the Revenue Code? The Supreme Court answered it in the negative:

> "Evidently, said paragraph contemplates *the operation of a certain place of amusement as a business or for profit* and not merely for special occasions more or less casual or cir-

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[1] § 260, Internal Revenue Code.
[2] Opinion of the Secretary of Justice, Dec. 10, 1951.
[3] Executive Order No. 319.

cumstancial. In other words, to come under the purview of said paragraph, the place must be used and operated as a night club in its true sense and not merely for some occasional celebrations. Otherwise, the subject of the lease would be merely a *place of amusement* and in that case it would come under the first paragraph."

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**Taxation**—*The compensating tax under Section 190 of the Internal Revenue Code is a tax on the use of imported goods and not on the importation of goods.*

MASBATE CONSOLIDATED MINING CO.
v.
COLLECTOR OF INTERNAL REVENUE
G.R. No. L-7898, Feb. 27, 1956

This case involved the question as to the nature of the tax imposed and collected under Section 190 of the Internal Revenue Code.[1]

The immediate issue involved was whether the tax under said section is an import tax. The question arose when the plaintiff sought to recover from defendant the amount it paid under Section 190. The basis of the claim was that said section was in effect a tax on imports and the same could have no valid effect unless approved by the President of the United States in line with the provisions of Section 1(9) of the Ordinance appended to the Constitution. And since the requisite approval was proclaimed only on Oct. 16, 1940, after the importation subject of the tax was made, plaintiff contended that the collection of the tax was invalid and unconstitutional.

In discussing the nature of the tax imposed by Section 190, the Supreme Court referred to the earlier case of *Internal Business Machines Corporation of the Philippines v. Collector of Internal Revenue*,[2] the first case where such issue was raised. It said in that case that the compensating tax imposed therein was not a tax on the importation of goods; it was rather a tax on the *use* of imported goods. Hence, the alleged requisite approval in the instant case was not necessary.

In justifying such interpretation, the Court made this observation:

> "This is evident from the proviso that imported merchandise which is to be disposed of in transactions subject of sales tax under Sections 184-187 and 189, of the Internal Revenue Code, is expressly exempted from the compensating tax. This feature shows that it is not the act of importation that is taxed under Section 190, but the use of imported goods not subjected to a sales tax: otherwise the compensating tax would have been levied on all imported goods regardless of any subsequent tax that might accrue. Moreover, the compensating tax accrues whether or not the imported goods are subject to pay customs duties."

*Benjamin C. Santos*

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[1] "All persons residing or doing business in the Philippines, who purchase or receive from without the Philippines any commodities, goods, wares, or merchandise, excepting those subject to specific taxes under Title IV of this Code, shall pay on the total value thereof at the time they are received by such persons,...a compensating tax equivalent to the percentage tax imposed under this Title on original transactions effected by merchants, importers, or manufacturers, such tax to be paid upon the withdrawal or removal of said commodities, goods, wares, or merchandise from the customhouse or the post office..."

[2] G.R. No. L-6732.

## Criminal Law—*Fraud and damage are requisites of estafa.*

### PEOPLE v. FRANCISCO
G.R. No. L-7562, Jan. 30, 1956

The Revised Penal Code punishes for estafa any person who, by using a fictitious name, or by falsely pretending to possess power, influence, qualifications, property, credit, agency business, or imaginary transactions, or by means of other similar deceits, shall defraud another.[1] The essential elements of ordinary estafa being deceit or fraud[2] and damage or injury,[3] there can be no conviction for the crime when these requisites do not exist or where there is reasonable doubt as to their existence.[4] These principles were applied in the instant case of *People v. Francisco.*[5]

In this case the accused was induced by one Tomas Catitis for a reasonable amount of compensation to aid him in bringing out of the NARIC compound one hundred sacks of rice which had previously been purchased by a certain M. de Guzman. In accordance with the instructions of Catitis, the accused signed the name "M. de Guzman" on the papers required by the NARIC to be signed, in the presence of a clerk of the NARIC, and was thus placed in possession of the sacks of rice. In the Supreme Court, the accused contended that the invoice he signed in the name of De Guzman was already paid for and only lacked the signature of De Guzman, so that there was no damage caused to the NARIC. The court ruled that the contention was untenable and declared that since De Guzman was not the one who received the one hundred sacks of rice, the NARIC was still liable to deliver the same to De Guzman. Hence, the rice delivered to the appellant and his confederate was lost by the NARIC as a result of which it suffered damage.

The second contention of the accused was that there was no sufficient proof of the existence of deceit inasmuch as he merely complied with the instructions of Catitis in good faith. In disposing of this contention, the Supreme Court held that the appellant's act in signing De Guzman's name[6] without permission or authority even if done upon the instructions of another, was unlawful. Criminal intent is presumed.[7]

*Gonzalo T. Santos*

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## Criminal Law—*Unlawful possession of jueteng paraphernalia.*

### PEOPLE v. SIQUENZA
G.R. No. L-8531, Feb. 29, 1956

The Revised Penal Code provides that the penalty of *arresto menor* or a fine not exceeding two hundred pesos and, in case of recidivism, the penalty of

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[1] Article 315, par. 4, no. 2(a).
[2] People v. An, 48 Phil. 183 (1925).
[3] United States v. Rivera, 22 Phil. 641 (1912).
[4] United States v. Pan Te Chia, 15 Phil. 507 (1910).
[5] G.R. No. L-7562, Jan. 30, 1956.
[6] The instant case follows the decisions in the cases of: United States v. Dedicatoria, 4 Phil. 183 (1905); United States v. Durban, 36 Phil. 797 (1917); People v. Concepcion, 59 Phil. 518 (1934); People v. Contreras, 47 O.G. 782 (1949). In the case of *United States v. de Castro and Aragon*, 18 Phil. 417 (1911), the accused represented that he was the owned of the copra and by such false representation secured ₱4,000 as advance payment on the price of said copra which did not exist.
[7] Rule 123, § 69(b).

*arresto mayor* or a fine ranging from two hundred to six thousand pesos, shall be imposed upon any person other than those referred to in subsections (b) and (c) who, in any manner, shall directly or indirectly take part in any game of monte, jueteng, etc.[1] Subsection (c) of Article 195 of the same code imposes the penalty of *prision correccional* in its medium degree upon any person who shall, knowingly and without lawful purpose, have in his possession any lottery list, paper or other matter containing letters, figures, signs or symbols which pertain to or are in any manner used in the game of jueteng or any similar game which has taken place or is about to take place.[2]

The present case was decided under the above subsection of the penal law. The appellant was charged with a violation of Article 195. Pleading guilty to the charge, he was sentenced to an indeterminate penalty under subsection (c) of said article. Appellant's counsel contended that his client should have been sentenced only to a fine under subdivision (a) of the same article. Against this contention the Supreme Court ruled:

> "It is clear that a person would come under subsection (a) of article 195 only if he did not come either under subsection (b) or subsection (c). But in this case before us, the accused comes under subsection (c) because the information to which he pleaded guilty charges him with unlawful possession of, among other things, jueteng lists used or intended to be used in a game of chance, commonly known as jueteng. The information, it is true, alleges that he is a jueteng collector. But this allegation is obviously made for the purpose of showing that he had possession of the articles mentioned 'knowingly and without lawful purpose' and should not be construed in the sense that he took part in the game of jueteng other than as a maintainer, conductor, or banker under subsection (b) or illegal possession of any lottery list under subsection (c)."

*Jerry P. Rebutoc*

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**Criminal Procedure**—*Plea of guilty imports unqualified admission of facts alleged in the information.*

PEOPLE v. JOSE DE LARA
G.R. No. L-8942, Feb. 29, 1956

In the parricide case of *People v. Gaite*[1] it was held that the plea of guilty made by the accused in accordance with law was an admission not only of his guilt but also of the material allegation in the information that he was the legitimate son of the deceased, notwithstanding the testimony of the mother during the preliminary investigation which tended to create doubt as to the status of the accused as a legitimate son, because it was not made a part of the proceedings in the lower court.

In the instant case a similar ruling was made. The appellant pleaded guilty to an information alleging "robbery in an inhabited house." The appellant's counsel contended that Article 302[3] of the Revised Penal Code instead of Article

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[1] Art. 195(a).

[2] The Supreme Court held that the mere possession of jueteng lists is enough to convict the accused, who has the burden of explaining that he has no *animus possidendi* in connection with the jueteng lists. Encarnacion v. People, 73 Phil. 668 (1942) cited in R. C. AQUINO, NOTES ON THE PHILIPPINE REVISED PENAL CODE 621 (1961). In the present case of *People v. Siguenas*, G.R. No. L-8531, Feb. 29, 1956 the question of *animus possidendi* did not arise because the accused pleaded guilty.

[1] G.R. No. L-7929, Nov. 29, 1955.

[3] Article 302 imposes the penalty of *prison correccional* or that next lower in degree, depending whether the value of the property taken exceeds 250 pesos or not, for any robbery committed in an uninhabited place or in a building other than those mentioned in the first paragraph of article 299, provided any of the circumstances enumerated under the former article is present.

299[8] of the same Code should have been applied, on the ground that as there was nothing in the record to show that the "bodega" where the alleged robbery was committed was itself an inhabited house or a dependency of an inhabited house, appellant could only be convicted of robbery in an uninhabited house and therefore sentenced to a lighter penalty. The Supreme Court, finding the contention to be without merit, said:

> "A plea of guilty imports unqualified admission of the facts alleged in the information...The fact that from the affidavits of the complaining witnesses, counsel could glean that the 'bodega' was uninhabited or that it was not a dependency of a dwelling house does not detract from appellant's admission in his plea of guilty. Those affidavits were not put in evidence to qualify the plea, and we cannot assume that, had that been done, the prosecution could not have countered with proof that, as it had alleged, the 'bodega' was in fact inhabited."

*Jerry P. Rebutoc*

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**Criminal Procedure**—*Justification for the mitigation of the liability on bonds already confiscated if there is mere delay in the presentation of the person of the defendant.*

PEOPLE OF THE PHILIPPINES v. PUYAL, ET AL.
G.R. No. L-8091, Feb. 17, 1956

Rule 110, Section 15, of the Rules of Court provides:

> "When the appearance of the defendant is required by the court, his sureties shall be notified to produce him before the court on a given date. If the defendant fails to appear as required, the bond is declared forfeited and the bondsmen are given thirty days within which to produce their principal and to show cause why a judgment should not be rendered against them for the amount of their bond....Failing in these two requisites, a judgment shall be rendered against the bondsmen."

This rule is the sanction for the forfeiture and confiscation of bonds when the accused does not appear in court when required to do so. When however there is but a delay in the production of the person of the accused when required, the Court does not render a judgment against the bondsmen for the full amount of the bond.[1]

There is no exact measure of the reduction of the amount of the bond for delayed appearance of the accused in court. The circumstances of each case must determine the reduction or mitigation to be allowed.

In the present case, the accused was required to appear in court on April 11, 1953, when the promulgation of sentence of the Court of Appeals in the criminal case against him was to take place. The accused submitted himself to the court only after ten months from the date when the order for the confiscation of the bond was issued. Upon petition of both the accused and the surety, the amount confiscated was reduced from ₱10,000, the amount of the bond, to ₱3,000.

The Supreme Court, in justifying the mitigation of the liability on the bond, said:

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[8] Article 299 imposes the penalty of *reclusion temporal* or *prision mayor* or *prision mayor* in its minimum period, depending whether the offenders carry arms and the value of the property taken exceeds 250 pesos, or without arms but the value exceeds 250 pesos, or without arms and the value does not exceeds 250 pesos, for any robbery committed in an inhabited house or public building or edifice devoted to religious worship, provided any of the circumstances enumerated therein is present.

[1] People v. Alamada, G.R. No. L-2153, May 23, 1951; People v. Arlantinco, G.R. No. L-3411, May 30, 1951; People v. Reyes, 48 Phil. 139 (1915).

[1] People v. Alger, 48 O.G. 4799 (1951).

> "The liberality which we have shown in dealing with bondsmen in criminal cases and in mitigating their liability on bonds already confiscated because of the delay in the presentation of defendant, finds explanation in the fact that the ultimate desire of the state is not the monetary reparation of the bondsman's default, but the enforcement or execution of the sentence... The interest of the state cannot be measured in terms of pesos.... The surrender of the person of the accused so that he can serve his sentence is its ultimate goal or object. The provision for the confiscation of bond...is not based upon a desire to gain from such failure; it is to compel the bondsman to enhance its efforts to have the person of the accused produced for the execution of the sentence."

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**Criminal Procedure**—*Conviction for the theft of a firearm is not a bar to a subsequent prosecution for illegal possession of the same.*

PEOPLE OF THE PHILIPPINES v. REMERATA
G.R. No. L-6971, Feb. 17, 1956

It has been ruled in this jurisdiction that a previous conviction for homicide is no bar to a subsequent prosecution for illegal possession of the firearm employed in the killing.[1] In the case of theft of firearm, the same rule obtains, so the Supreme Court ruled in this present case.

In this case, Remerata, was charged with illegal possession of firearm after having been convicted for the theft of the same. He set up the defense of *autefois convict*, that the conviction for theft bars the prosecution for illegal possession.

The Supreme Court disposed of the defense thus:

> "While in stealing a firearm the accused must necessarily come into possession thereof, the crime of illegal possession of firearms is not committed by mere transient possession of the weapon. It requires something more; there must also be not only intention to own but also intent to use[1] which is not necessarily the case in every theft of firearms. Thus stealing a firearm with intent not to use but to render the owner defenseless, may suffice for purposes of establishing a case of theft, but would not justify a charge of illegal possession of the firearm, since intent to hold and eventually use the weapon would be lacking."

Thus, in a prosecution for theft of a firearm, intent to use the weapon is not an essential element, whereas in the case of illegal possession of firearm it is a very indispensable element.

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**Criminal Procedure**—*Peace officers in U.S. military bases in the Philippines may enforce therein Philippine laws.*

CAYETANO LIWANAG v. ROBERT HAMILL
G.R. No. L-7881, Feb. 27, 1956

This case raises the issue of whether provost marshals in military bases established by agreement between the Philippines and the United States are peace officers and have the authority to file complaints for violation of Philippine laws inside the bases.

The case arose when respondent herein a provost marshal in a U.S. military base, filed a complaint against the petitioner herein with the justice of the peace court in the base, for violation of Section 174 of the Internal Revenue Code. The complaint was sworn to by respondent. Petitioner claimed that respondent had no authority to swear to the complaint.

[1] People v. Estoista, 49 O.G. 3330 (1952).

The Supreme Court sustained the respondent and upheld his authority to file complaints for violation of Philippine laws inside the military base.

The court explained thus:

> "Under the agreement between the Republic of the Philippines and the United States, for the establishment of bases by the latter within the territory of the former, laws of the Philippines continue to be in force in said bases except when otherwise agreed upon in the agreement.... The question of peace and order within the bases is left to peace officers of the United States, the chief of whom is the provost marshal."

The basis of this holding of the Supreme Court seems to be the apprehension that if peace officers and agents of the Philippine government are authorized to file complaints for violations of Philippine laws inside the bases, friction between Philippine and United States authorities may arise. The Court said:

> "To allow peace officers of said Republic to go therein and make arrests or institute prosecutions for violation of Philippine laws would certainly give occasion for conflicts of authority."

How wise this holding is, may be open to question.

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**Criminal Procedure**—*Grant of bail by justice of the peace in capital offenses.*

MANIGBAS, ET AL. v. JUDGE CALIXTO P. LUNA
G.R. No. L-8455, Feb. 27, 1956

May a justice of the peace or a municipal judge, in a case involving a capital offense, act on an application for bail and receive evidence to determine if the evidence of guilt is strong or otherwise grant bail if the evidence so warrants? May bail be granted on behalf of an accused who is not confined or detained?

The instant case answers these two important questions in criminal procedure.

Petitioners were charged with murder before the justice of the peace court of Rosario, Batangas. Petitioners filed a motion for the grant of bail for their provisional liberty. The accused were still at large at the time of filing of the motion for bail, no order for their arrest having issued so far. The justice of the peace dismissed the petition and refused bail on the ground that he had no jurisdiction to entertain a petition for bail for a person charged with a capital offense. Hence, this appeal.

The Supreme Court dismissed the petition as premature for the simple reason that the accused had no existing right to bail since they were not detained. It said:

> "The right to bail only accrues when a person is arrested or deprived of his liberty. The purpose of bail is to secure one's release and it would be incongruous to grant bail to one who is free. Thus, 'bail is the security required and given for the release of a person who is in the custody of the law' (Rule 110, Section 1), and evidently the accused do not come within its purview."

The Supreme Court could have dismissed the petition on that sole ground. But it went on to consider the more important issue of whether a justice of the peace may consider petitions for grant of bail, in cases involving capital offenses.

The Supreme Court began with the general rule that judicial officers having the power to hear and determine cases have the power to take bail, as an incident thereto. And with respect to justices of the peace, they may admit to bail, in their discretion, except where their power to take bail is limited by the Constitution or statute, in which case they should act within such limits.

From this premise, it concluded that in our jurisdiction justices of the peace have the power to admit to bail even persons accused of capital offenses, not only because there is no limitation in our Constitution but also because the Judiciary Act of 1948 "*seems* to expressly confer this power upon them." The only limitation to this power is that the bond must be approved by that court. The court admitted that the grant of power is not clear, though.

The Court was not unaware of the implication of its ruling, but it could do no less than apply the law. It said:

> "Some apprehension has been expressed by some members of the court over the fact that if such power is given to justices of the peace in capital cases the power may be abused or improperly exercised considering the fact that some of them are not lawyers or are politicians like the mayor who may act under the law when the incumbent justices are temporarily absent. While the possibility of abuse cannot be denied such cannot argue against the existence of the power and if there is need for a remedy such devolves upon Congress. But before such curative measure is adopted, our duty is to apply the law as we see it regardless of its implications."

On this point, the concurring and dissenting opinion of Justice Montemayor, which is more assertive than the majority, deserves notice:

> "To determine whether a person accused of a capital offense is entitled to bail, the court determines not only probable cause but also whether the evidence for the prosecution is strong. To make this determination involves a careful appraisal and weighing of the evidence.... In this appraisal and weighing of the evidence the court must pass upon and decide many legal points requiring legal training, experience, and knowledge if not mastery of the law of evidence.... I am not sure that a justice of the peace with some exceptions of course, is in a position to do all this. And I greatly doubt that the Legislature by the general, if not vague, terms used in the Judiciary Act intended to entrust all this task to a justice of the peace who may not even be a lawyer or to the town mayor who may be a complete stranger to a law book."

*Benjamin C. Santos*

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**Criminal Procedure**—*In a preliminary investigation, accused is not entitled as of right to cross-examine witnesses presented against him.*

PEOPLE v. RAMILO
G.R. No. L-7380, Feb. 29, 1956

The city attorney of Roxas City filed with the municipal court an information for grave oral slander against defendant who, upon arraignment, pleaded guilty and waived her right to preliminary investigation. After the record of the case had been forwarded to the CFI, the trial court, upon motion, remanded the case for preliminary investigation at which defendant asked that the witnesses for the prosecution be called for cross-examination and refused to submit to the reinvestigation unless she could cross-examine them. Thereafter, the city attorney moved for the continuation of the case in the CFI but the latter court dismissed the case allegedly because the city attorney had refused to hold fur-

ther preliminary investigation. The Supreme Court, in reversing the decision of the trial court, held:

> "If there has been no such preliminary investigation, it was because she explicitly waived her right thereto when she was arraigned for that purpose...and when the case was to be reinvestigated by the city attorney, she made an illegal demand instead of submitting her evidence.... As of right, therefore, in a preliminary investigation, an accused is not entitled to cross-examine the witnesses presented against him. Hence, the demand of the herein accused during the reinvestigation...that the witnesses for the prosecution be recalled so that she could cross-examine them was not based on a provision of law, and therefore, the city attorney...has correctly denied such demand."

*Jerry P. Rebutoc*

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**Criminal Procedure**—*Power of the judge to determine whether probable cause exists or not before the issuance of a warrant of arrest after preliminary investigation conducted by the fiscal.*

AMARGA v. ABBAS
G.R. No. L-8666, March 28, 1956
52 O.G. No. 5, 2545

The petitioner, the provincial fiscal of Sulu, filed an information for murder with a certification that he has conducted a preliminary investigation pursuant to Rep. Act No. 732.[1] The respondent judge dismissed the case without prejudice to its reinstatement should the fiscal support his information with further evidence to make out a *prima facie* case. Hence, this petition for certiorari and mandamus.

The main issue was whether or not it was ministerial on the part of a judge to issue a warrant of arrest after the fiscal had conducted the preliminary investigation.

Article III, Section 1, par. 3 of the Constitution provides that "no warrant shall issue upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce..."[2]

In the case of *United States v. Ocampo*,[3] it was said:

> "The question whether 'probable cause' exists or not must depend upon the judgment and discretion of the judge or magistrate issuing the warrant. It does not mean that the particular facts must exist in each particular case. It simply means that sufficient facts must be presented to the judge or magistrate issuing the warrant to convince him not that the particular person has committed the crime but that there is probable cause for believing that the person whose arrest is sought committed the crime charged. No rule can be laid down which will govern the discretion of the court in this matter."[4]

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[1] Rep. Act No. 732 authorizes the fiscal to conduct preliminary examinations even without the presence of the accused. This power, which was originally adopted for the city fiscal of Manila, was attacked as unconstitutional in the case of *United States* v. *Ocampo*, 18 Phil. 1 and *United States* v. *Kennedy*, 18 Phil. 122. In both cases, the Court held that the procedure constitutes due process of law, since it was adopted in order to avoid lengthy proceedings like that outlined in §§ 2 and 11 of Rule 108, and secure the dispatch in the disposition of criminal cases. Besides, the qualifications demanded of the position is a sufficient guarantee of promptness and impartiality even if accused is not present. (Rodriguez v. Arellano, G.R. No. L-8382, April 30, 1955.)

[2] According to the dissenting opinion of Justice Montemayor this provision refers to search warrants only. The reference to the word "persons" does not mean arrest of persons. This has reference to the security of one's person against unreasonable searches and seizures.

[3] 18 Phil. 1, 41-42 (1910).

[4] Dissenting, Justice Padilla believed that the power to determine "probable cause" is statutory which can be vested in another judicial officer. Rep. Act No. 732 seems to have vested it in the fiscal concurrently with the court.

If he decides, upon proof presented, that probable cause exists, no objection can be made upon constitutional grounds against the issuance of the warrant. His conclusion as to whether "probable cause" existed or not is final and conclusive.[5] If he is not satisfied, he may however call such witness as he may deem necessary before issuing the warrant. The issuance of the warrant of arrest is prima facie evidence that in his judgment at least, there existed "probable cause" for believing that the person against whom the warrant is issued is guilty of the crime charged. There is no law which prohibits him from reaching the conclusion that 'probable cause' exists from the statement of the prosecuting attorney alone[6] or any other person whose statement or affidavit is entitled to credit in the opinion of the judge.

However, the failure or refusal to present further evidence, although good as a ground for refusing to issue a warrant of arrest,[7] is not a legal cause for dismissal of the case.

*Lilia R. Bautista*

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## Criminal Procedure—*Effect of a plea of guilty.*

PEOPLE v. ACOSTA
G.R. No. L-7449, March 23, 1956

There are two kinds of pleas: guilty and not guilty.[1] The essence of a plea of guilty is that the accused admits his guilt, freely, voluntarily, and with a full knowledge of the consequences and meaning of his act and with a clear understanding of the precise nature of the crime charged in the complaint or information.[2] When formally entered on arraingment, a plea of guilty is sufficient to sustain a conviction of any offense charged in the information without the introduction of further evidence, the defendant himself having supplied the necessary proof of his guilt.[3]

When the defendant pleads guilty to an information charging a capital offense may the Court impose the death penalty without requiring the introduction of further evidence? In the instant case the Court answered this question in the affirmative. Here the defendant was charged with having shot and robbed one Olimpia Santos. The information alleged the aggravating circumstances of superior strength, the use of motor vehicles, and violence against or intimidation of persons, and habitual delinquency.

Upon arraingment, the accused pleaded not guilty. But when the case came up for trial, accused withdrew his plea of not guilty and when the informa-

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[5] Quianzon v. Provincial Fiscal of Ilocos Norte, 58 Phil. 594 (1933), People vs. Ocampo, et al., 63 Phil. 121 (1936).

[6] Justice Montemayor criticised this statement as inconsistent with the previous statement of the majority opinion of the applicability of the Constitution to warrants of arrest. If it is a duty imposed by the Constitution, how could a judge rely on the facts stated in the information filed by the fiscal when according to the Constitution the judge must examine under oath the complainant and the witnesses he may produce, he asked.

[7] According to the dissenting opinion, the preliminary investigation takes the place of the preliminary investigation by the judge before the issuance of a warrant of arrest and the judge has no other alternative but to issue the warrant because the fiscal acts as a committing magistrate and the reason why the court has to issue it is because the fiscal has no power to issue it. Citing the case of *Sayo v. Chief of Police*, 45 O.G. 4889 (1949), the dissenting opinion said that the issuance of warrant is mandatory unless questions of regularity or validity of the preliminary investigation is raised.

[1] Rule 114, §§ 1 and 2.

[2] United States v. Burlado, 42 Phil. 72, 74 (1921); United States v. Dineros, 18 Phil. 566, 572 (1911); United States v. Jamad, 37 Phil. 305 (1917).

[3] United States v. Burlado, *supra* note 2; United States v. Dineros, *supra*; United States v. Jamad, *supra*; United States v. Talbanos, 6 Phil. 541 (1906); United States v. Acaoili, 31 Phil. 91 (1915); People v. Sta. Rosa, L-3487, April 18, 1951.

tion was read to him again, he entered a plea of guilty. Asked by the Court whether he was fully aware of the consequences of his voluntary plea of guilty in view of the aggravating circumstances alleged in the information, the accused reiterated his plea of guilty. When the defendant was sentenced to death, his attorney *de oficio* appealed, praying for a new trial on the ground that it was an error for the lower court to mete out so heavy a penalty on the basis of a mere plea of guilty. He claimed that the court had not explained to the accused the consequences of his plea.

In affirming the decision (per curiam) the Court said:

> "This Court has already declared that the essence of the plea of guilty in a criminal trial is that the accused on arraignment 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 charged in the information, *even a capital offense*, without the introduction of further evidence, the defendant having himself supplied the necessary proof, and that while it may be prudent and advisable in some cases especially where grave crimes are charged to take additional evidence as to the guilt of the accused and the circumstances attendant upon the commission of the crime, nevertheless it lies in the sound discretion of the Court whether to take evidence or not in any case where it is satisfied that the plea of guilty has been entered by the accused with full knowledge of the meaning and consequences of his act."

The Court noted that the lower court had satisfied itself that the defendant was aware of the consequences of his plea and that this must have been brought home to him by his counsel who must be supposed to have duly performed his duty. It was observed by the Court that there was no offer to prove any mitigating circumstances and that the counsel must have figured that only a frank admission of guilt would mitigate the defendant's liability.

*Amelia R. Custodio*

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**Special Proceedings**—*In a guardianship proceeding, the court has the discretion to grant or not the petition depending on the attending circumstances of the case.*

CEFERINO BALABAT, ET AL. v. LILY BALABAT DE DAIROCAS, ET AL.
G.R. Nos. L-7733-34, Feb. 13, 1956

Between the grandfather who has shown much affection and care, and the mother who through her conduct and deeds, has shown not much, if any, maternal affection and concern, the Court would in all likelihood grant the custody and guardianship of the child to the former.

That is the import of the ruling of the Supreme Court in the instant case.

The relevant facts: Lily Balabat had a child by a void marriage. When the child was five years old, she left her with her (the child's) grandfather in order to elope with another man — her present husband. Three years later she went back to Ozamiz City to claim custody of the child but the child's grandfather opposed it and filed a petition for guardianship of the child.

The evidence showed that the grandfather was capable of taking good care of the child and that the child had in fact been well taken care of. On the other hand the mother had not lived long enough with the child, so much so that the child, when asked to make her choice between her grandfather and her mother, "without hesitation expressed her preference for the home and care of her grandparents, innocently disclaiming all knowledge or recognition of her mother who

years before had left her, to elope and later marry and live in another province and who only after three years, belatedly remembered her daughter and against the latter's will and desire now seeks thru the courts to uproot and separate her from the only home and loving parents she has ever known."

Considering the special circumstances attending the present case, the Court could not but unanimously grant the custody of the child to the grandfather.

However, the Court did not totally disregard the claim of the mother to the child. Through Justice Montemayor, it said:

> "Sometime in the future when Helen (the child) is older and better acquainted with her mother and if and when the latter shall have shown thru her conduct and deeds, more maternal affection for her daughter, perhaps herein petitioner may make another bid thru appropriate proceedings to let her have and keep her daughter in her home and persuade and convince the courts and Helen that the latter would be better off and happier by coming to live with her own mother."

The Supreme Court tried to distinguish the instant case from the earlier case of *Celis, et al. v. Cafuir, et al.*[1] where a natural mother was allowed to have the custody of her son in preference to one who had taken care of him from his infancy until he was about two years old. The Supreme Court justified its ruling in the *Celis* case on two grounds: (1) The mother was innocent of all blame for her failure to take care of the child herself, her father having prevented her from taking custody of the child, and (2) the person in whose custody it was given was a stranger. The facts of the present case were certainly different from those of the *Celis* case.

*Benjamin C. Santos*

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**Evidence**—*Documents not made during the performance of a duty required by law constitute hearsay evidence as to third persons.*

NGO SENG, ET AL. v. FERNANDEZ, ET AL.
G.R. No. L-7086, Jan. 20, 1956

When part of an act, declaration, conversation, or writing is given in evidence by one party, the whole of the same subject may be inquired into by the other;[1] and the witness may be cross-examined by the adverse party as to any matter stated in the direct examination, or connected therewith.[2] Hence documents never presented before the court, thus denying the adverse party an opportunity to question their authenticity and correctness shall be incompetent evidence as regards third persons. Said documents are hearsay,[3] except when circumstances are shown to justify their admission as an exception to the rule.[4]

In the present case, the defendant Paz Fernandez and Guadalupe Darjuan, were proprietors and operators of a carpentry shop for the construction of bus bodies. Through the intervention of Norberto Quisumbing, funds needed by them were secured from Ngo Seng and Go Pin, and mortgages were executed. Quisumbing was also authorized by the proprietors of the shop to purchase the materials and pay the laborers and to collect the accounts due said proprietors.

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[1] G.R. No. L-3352, June 12, 1950.
[2] Rule 123, § 23, Rules of Court.
[3] Rule 123, § 37, *id.*
[4] The rule on hearsay evidence is found in Rule 123, § 37 of the Rules of Court which provides: "A witness can testify to those facts only which he knows of his own knowledge; that is, which are derived from his own perception, except as otherwise provided in this rule."
[4] Aldecoa & Co. v. Warner Barnes & Co., 30 Phil. 153 (1915).

The creditors brought this action to recover the mortgage debt amounting to ₱28,600 which the defendants failed to pay. Quisumbing intervened, demanding accounting of the sums received by Fernandez in payment of constructed buses and his share of the profits. The defendants filed a counterclaim against Quisumbing and demanded payment for losses and damages, overpayment and usurious interest. The Court of Appeals did not give credit to expenses incurred by Quisumbing, the receipts of which were not signed and did not bear the conformity of Fernandez, and so decided against Quisumbing for ₱5,069.15 which represented the one-half profit due to Fernandez from Quisumbing.

The main issue raised by Quisumbing was the failure of the Court of Appeals to take into account the report of a certified public accountant, Exhibit O, in which it appeared that the balance of collections for which Quisumbing was responsible was ₱63.69 only.

The Court, in refusing to admit said evidence, said that the commissioner who submitted the statement of accounts was not designated for the purpose of trying or considering an issue in a case within the meaning of Section 1, Rule 34,[5] and was only asked to "examine all the records relevant to this case, now in the custody of the Anti-Usury Board." The papers examined were, most probably, statements prepared by Quisumbing himself, and said documents were never presented before the Court. The opposite party never had the opportunity to question them, therefore they were hearsay as regards other persons. The Court said that "no reason of necessity or circumstantial guarantee of trustworthiness was adduced; Quisumbing was living, indeed he actually testified. Neither were the documents shown to have been kept in the performance of a duty required by law."[6]

The Court quoted from American Jurisprudence:[6]

> "A mere ex parte memorandum of transaction or occurrence, even though made at the time of such transaction or occurrence, is not ordinarily admissible as evidence thereof against a third person, unless prepared in the discharge of some public duty or of some duty arising out of the business relations of the person making it with others, or in the regular course of his own business, or with knowledge and concurrence of the party to be charged and for the purpose of charging him."

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## Legal Ethics—*Attorney's fee.*

### MARCELINO ILADA, ET AL. v. FRANCISCO ILADA, ET AL.
### G.R. No. L-6458, Jan. 23, 1956

The right to collect attorney's fees is based on a contract of employment or service between the lawyer and his client. The contract may be express or implied. And the absence of an express promise on the part of the client to pay fees shall not prejudice the right of counsel to recover.[1] An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services.[2] What is a reasonable fee must depend in a large measure upon the facts of each particular case, and be determined like any other fact in issue in a judicial proceeding. Courts are qualified to form an inde-

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[5] By written consent of both parties, filed with the clerk, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the Court. As used in these rules the word "Commissioner" includes referee, an auditor, and an examiner.

[6] 20 AM. JUR., § 942.

[1] VENTURA, FRANCISCO, NOTES ON LEGAL AND JUDICIAL ETHICS 52 (1954).

[2] Rule 127, § 22, Rules of Court.

pendent judgment on such questions and it is their duty to do so.[3] It has already been ruled by the Supreme Court in the case of *Orozco v. Hernaez*,[4] that persons who receive benefit from the services of an attorney are not obliged to compensate him, when the same are rendered without their knowledge or consent, or against their protest. The instant case held that as long as the contract to hire the services of an attorney was authorized by the court, the persons benefited by his services shall be bound to pay the attorney.

The facts were: in a previous special proceeding, Marcelina Ilada was declared incompetent; and her husband, Martin Mendoza, was appointed guardian of her person and property. When Mendoza died, Francisco Ilada, nephew of Marcelina asked the court to be appointed as guardian in lieu of the deceased but Crispina Villadiego objected, claiming a preferential right, as he was named executrix in the will. Francisco Ilada was forced to employ the services of Atty. Manuel A. Alvero, in order to show to the court the need of appointing a person who could better protect the interests of the incompetent in the settlement of the estate of her deceased husband. Consequently, Francisco Ilada was appointed guardian of the property while Villadiego as guardian of the person of the incompetent. Incidentally, it should be noted that Francisco Ilada, upon request, was given authority to hire the services of Atty. Alvero to better protect the rights of the incompetent.

Meanwhile, Atty. Alvero moved for the payment of attorney's fees. Marcelina Ilada and Villadiego opposed on the ground that far from redounding to the benefit of the incompetent, the services of the attorney worked to her prejudice and that, if they served any purpose at all, it was to advance the interest of her own guardian. The lower court denied the motion of the incompetent, and awarded as reasonable fee ₱1,000 instead of ₱2,000 which had been asked by Atty. Alvero. The record wherein the services rendered were enumerated showed that the services of Atty. Alvero had, to a certain extent, served the interest of the incompetent Marcelina Ilada. That decision of the lower court was affirmed by the Supreme Court, holding that "a careful scrutiny of the pleadings would show that they redounded to the benefit of the incompetent" and so she was made to answer for the fees for the services rendered.

*Pilipina A. Arenas*

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[3] *Ibid.*; Delgado v. Dela Rama, 43 Phil. 419 (1922); Panis v. Yangco, 52 Phil. 499 (1928); Arevalo v. Adriano, 62 Phil. 671 (1935).

[4] 1 Phil. 77 (1901).