RECENT DECISIONS

Criminal Law — *Obscenity; the actual exhibition of the sexual act, preceded by acts of lasciviousness, precludes the element of art.*

PEOPLE v. PADAN, et als.
G.R. No. L-7295, June 28, 1957

In this jurisdiction, however intangible a moral concept is the *obscene* and though it may not be susceptible of exact definition, there had been attempts to arrive at some.[1] Be that as it may, acts of gross and open indecency or obscenity, injurious to public morals, are indictable at common law, as violative of the public policy that requires from the offender retribution for acts that flaunt accepted standards of conduct.[2] And to constitute crimes against public morals and decency, there is no necessity for the existence of any specific intent or motive.[3] The test is, where the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to such immoral influences.[4] What is its probable, reasonable effect on the sense of decency, purity and chastity of society, extending to the family, made up of men and women, young boys and girls — the family, which is the common nursery of mankind, the foundation rock upon which the state reposes?[5]

By our penal laws,[6] those who in theaters, fairs, cinematographs, or any other place open to public view, shall exhibit indecent or immoral plays, scenes, acts, or shows are punished appropriately. This provision of law was applied for the punishment of the appellants who were charged with performing in the presence of many spectators of the real human drama, termed by the Court as *human fighting fish* — the actual act or copulation.

The facts may be briefly stated, thus: On September 13, 1953, in a one story building which was nothing but a shed used mainly for playing table tennis, ninety paying customers charged at three pesos each were admitted inside aforementioned building. Another sixteen who were close friends of the appellants were admitted inside freely. Inside, at the center of the building, was placed a bed, the usual *ping pong* table having been removed for the special occasion. Arranged in a circular manner were benches or seats for the accommodation of the audience. From among the spectators were chosen the co-appellants Cosme Espinosa and Maria Padan as performers. The exhibition commenced when the "two proceeded to disrobe while standing around the bed. When completely naked, they turned around to exhibit their bodies to the spectators. Then they indulged in lascivious acts, consisting of petting, kissing, and touching the private parts of each other. When sufficiently aroused, they lay in the bed and proceeded to consummate the act of coitus in three different positions . . ."

Thus, sufficiently described, the case at hand presents to the public at large one of the gravest, if not the gravest, forms of indecency. Heretofore, nothing of its kind has ever been cognized by the Supreme Court. American State decisions are replete with cases on indecent exposure,[7] obscene language,[8]

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1 "Obscene may be defined as meaning something offensive to chastity, decency, or delicacy." ALBERT, REVISED PENAL CODE 478 (1948).
2 Winters v. New York, 333 U.S. 507, 515 (1947).
3 2 FRANCISCO, REVISED PENAL CODE 149 (1954).
4 People v. Kottinger, 45 Phil. 352, 358 (1923).
5 Id. at 359.
6 Revised Penal Code, Art. 201, par. 3.
7 Faulkner v. State, 1 So. 2d 857 (1941); Com. v. Broadland, 51 N.E. 2d 961 (1943).
8 Watson v. State, 199 S.E. 323 (1938); Ricks v. State, 28 S.E.2d 303 (1943).

and obscene publications, pictures and articles,[9] yet the obscenity committed in this case finds no counterpart in those jurisdictions.

Four of the five witnesses for the prosecution, members of the police force, who were present themselves and who made the arrests, asked about their reaction to what they saw, frankly admitted that they were excited beyond description. The test[10] having been met, the hammer must fall, as it did fall.

Justice Montemayor, speaking for the Court, reproved the appellants, saying:

> "In those cases,[11] one might yet claim that there were involved the element of art; that connoisseurs of the same and painters and sculptors might find inspiration in the showing of pictures in the nude, or the human body exhibited in sheer nakedness, as models or in tableux vivants. But an actual exhibition of the sexual act, preceeded by acts of lasciviousness, can have no redeeming feature. In it, there is no room for art. One can see nothing in it but clear and unmitigated obscenity, indecency, and offenses to public morals, inspiring and causing as it does, nothing but lust and lewdness, and exerting a corrupting influence especially on the youth of the land."

Samuel T. Bañez

9 Com. v. Isenstadt, 62 N.E. 2d 840 (1945); Hadley v. State, 172 S.W.2d 287 (1943).
10 See notes 4 and 5, supra.
11 The writer of the decision was referring to those cases of obscenity in their milder forms such as the exhibition of still or moving pictures of women in the nude.

———oOo———

Political Law — *Citizenship: Alien woman married to a Filipino citizen does not follow ipso facto his political status.*

LY GIOK HA, et al. v. GALANG, et al.
G.R. No. L-10760, May 17, 1957

CUA v. BOARD OF IMMIGRATION COMMISSIONERS
G.R. No. L-9997, May 22, 1957

The bare fact of a valid marriage by an alien woman to a Filipino citizen does not suffice to confer his citizenship upon the wife, unless she "might herself be lawfully naturalized."[1] This ruling of the Supreme Court in the two above-cited cases is one of first impression in this jurisdiction.

In the *Ly Giok* case, Ly Giok, alias Wy Giok Ha, entered the Philippines on May 14, 1955 as a temporary visitor for a period of three (3) months which was extended up to March 14, 1956. Ly Giok Ha married Restituto Lucasta, a Filipino, on March 8, 1956. In the *Cua* case, Tjies Wu Suan, an Indonesian, was admitted as a transient in the Philippines because she was the holder of a passport issued by the Republic of Indonesia. Later the Indonesian Embassy in Manila reported to the Commissioner of Immigration that the passport was allegedly forged. In the meantime, Ricardo Cua, a Filipino, and Tjies Wu Suan got married. Inasmuch as deportation proceedings were being conducted, Cua applied for writs of prohibition and mandamus in the CFI which were denied. Hence, the appeal. In both cases, it was contended that the marriage was valid and automatically conferred Philippine citizenship upon the alien woman. In the *Cua* case, it was further contended that by reason of such marriage, the wife became immune to deportation.

In the *Ly Giok* case, the Court found out that there was neither proof nor

1 The pertinent part of sec. 15 of Com. Act No. 473 (Revised Naturalization Law, June 17, 1939) reads: "Any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philppines."

allegation in the pleadings that Ly Giok Ha does not fall under any of the classes disqualified by law.[2] In the *Cua* case, the Court likewise observed that the claim of Philippine citizenship by Tjies Wu Suan is untenable because no evidence that she is not disqualified appears on the record of the case. The Court held that in addition to the valid marriage, the alien woman must show that she "might herself be lawfully naturalized as a Filipino citizen and hence, she must not belong to any of the groups of persons disqualified to acquire Philippine citizenship under the Naturalization Law.

The Secretary of Justice in several opinions,[3] in construing section 15 of the law,[4] believes that the alien woman married to a Filipino must not fall under any of the classes of persons disqualified under the law. In this connection, it must be borne in mind that it is not within the province of the courts to make bargains with applicants for naturalization. The courts have no choice but to require that there be full compliance with the statutory provisions.[5] Compliance with the requirements provided by law may occasion harships, but citizenship in this Republic, be it ever so small and weak, is always a privilege.[6]

In the United States after September 22, 1922 up to the present, the marriage of an alien woman to an American citizen does not *ipso facto* make her an American citizen; she, if possessing all the requisites for naturalization, may be naturalized.[7] Hence, a subject or citizen of a foreign country who is an alien under the immigration laws remains such under the provisions of the present law,[8] notwithstanding marriage to an American citizen,[9] while in the Philippines, the fact of marriage *plus* a manifest showing that the alien wife "might herself be lawfully naturalized" and is not disqualified under the law, will confer upon her Philippine citizenship.

Emmanuel S. Flores

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2 Ibid., Sec. 4 provides: "The following can not be naturalized as Philippine citizens:
(a) Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
(b) Persons defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas;
(c) Polygamists or believers in the practice of polygamy;
(d) Persons convicted of crimes involving moral turpitude;
(e) Persons suffering from mental alienation or incurable contagious diseases;
(f) Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;
(g) Citizens or subjects of nations with whom the x x x Philippines is at war, during the period of such war;
(h) Citizens or subjects of a foreign country other than the United States, whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof."

3 Op. No. 290, s. of 1956; Ops. No 52 & 28, s. 1950; Op. No. 96, 1949; Ops. No. 281, 98, 55, & 43, s. 1948; Op. No. 95, s. 1941; Ops. No. 176, 168 & 79, s. 1940.

4 Supra, note 1.

5 2 AM. JUR. 577 (1936).

6 Ng Sin v. Republic, G.R. No. L-7590, Sept. 20, 1955; Dy Chan Tiao v. Republic, G.R. No. L-6430, Aug. 31, 1954; Quing Ku Chay v. Republic, G.R. No. L-5477, April 12, 1954.

7 U.S.C.A. title 8, sec. 368 (1927) states: "Any woman who marries a citizen of the United States after September 22, 1922, or any woman whose husband is naturalized after that date, shall not become a citizen of the United States by reason of such marriage or naturalization; but, if eligible to citizenship, she may be naturalized upon full and complete compliance with all requirements of the naturalization laws . . . ."

8 Ibid.

9 2 AM. JUR. sec. 181 (1936).

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Commercial Law — *Three-year period after dissolution of a corporation — for winding up its affairs.*

CEBU PORT LABOR UNION
V.
STATE MARINE CORPORATION, et al.
G. R. No. L-9350, May 20, 1957

In this case, a resolution dissolving the State Marine Corporation was duly registered in the Office of the Securities and Exchange Commission on October 17, 1952.

However, on September 12, 1953, a petition was filed by the Union against the corporation to be declared to have the right to the stevedoring work in question pursuant to the contract between the petitioning Union and Elizalde & Co. and subsequently enforced and continued by the respondent State Marine Corporation.

It was claimed that the State Marine Corporation is no longer in existence. Section 77 of the Corporation Law[1] reads as follows:

> "Sec. 77 Every corporation whose character expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and of enabling it gradually to settle and close its affairs, to dispose of and convey its property and to divide its capital stock, but not for the purpose of continuing the business for which it was established."

The court in deciding the question said that the three-year period allowed by section 77 of the Corporation Law is for the purpose only of winding up its affairs and not for continuing the business for which it was created. The petition in question being for the continuation of the business for which it was created having been filed when the State Marine Corporation was already dissolved, it cannot now be compelled to respect such agreement specially considering the fact that it cannot even be made a party to the suit.

Celia S. Lipana

1 Act No. 1459, as amended.

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Taxation: *Collection of income tax by means of administrative methods of distraint and levy, when null and void; effect of chattel mortgage executed to guarantee payment of tax liabilities on the question of prescription.*

SAMBRANO V. COURT OF TAX APPEALS ET AL.

G.R. No. L-8652, March 30, 1957

The procedure for the collection of taxes is generally prescribed and regulated by statute. The Legislature may provide the most summary measures for the enforcement of the collection of taxes without divesting a citizen of his property without due process of law. Hence, legislative bodies have provided for distress and sale of property; imposition of penalties for non-payment; and making payment a condition precedent to the exercise of some legal right.[1]

The civil remedies for the collection of internal revenue taxes, fees, or charges, and any increment thereto resulting from delinquency shall be (a) by distraint of goods, chattels, or effects, and other personal property of whatever character, including stocks and other securities, debts, credits, bank accounts, and interest in and rights to personal property, and by levy upon real property and interest in the rights to real property; and (b) by judicial action. Either of these remedies or both simultaneously may be pursued in the discretion of the authorities charged with the collection of such taxes.[2]

Section 51 of the National Internal Revenue Code prohibits however the

1 FRANCISCO, TAXATION 459 (1950) citing 51 AM. JUR. sec. 980, 957-958.
2 National Internal Revenue Code, sec. 316.

use of the extra-judicial methods of distraint and levy for the collection of income taxes after the lapse of three years from the time the return has been filed or is due.

The Supreme Court of the Philippines found an occasion to elucidate on this provision as well as sections 331 and 332 of the Tax Code in this case of *Sambrano v. Court of Tax Appeals*, et al. In this case, petitioner Sambrano failed to pay income, percentage and residence taxes for the years 1945, 1946, 1947, and 1948. On May 3, 1951 he executed a chattel mortgage on 67 of his TPU buses in favor of the Government. On account of petitioner's failure to comply with the terms and conditions of the mortgage, the Collector issued, on September 27, 1952, warrants of distraint and levy on the petitioner's residential house and lot and on all the rolling stocks of 87 passenger stocks. To stop the sale, petitioner filed a petition for a writ of certiorari with the Court of Tax Appeals and when such was denied, elevated the case to the Supreme Court. The issue before the Court is two-fold:

(a) Whether the Collector could effect in 1952 the collection of income, percentage, and residence taxes for the years 1945-1948 by the summary methods of distraint and levy; and

(b) The effect of the chattel mortgage executed by petitioner on his tax obligations, taking into consideration the petitioner's defense of prescription.

It appears from the records that petitioner Sambrano filed his income tax returns for tax years 1945, 1946, 1947, and 1948 and that 50% surcharge was imposed on him because of the great disparity between the returns he filed and the assessment arrived at by the Bureau of Internal Revenue. This is a case of inaccurate, false, or fraudulent income tax returns and therefore comes within the scope of section 51(d) of the National Internal Revenue Code. This provision prohibits the use of extra-judicial methods of distraint and levy for the collection of income taxes after the lapse of three (3) years from the time the return has filed or is due. In this case the warrants of distraint and levy were issued after 3 years, 6 months and 26 days from the date when the last income tax return for 1948 should have been submitted; therefore, the Collector was divested of the right to collect petitioner's income tax liabilities by administrative methods and his only recourse was to institute the corresponding civil action.[3]

Passing to the second part of the issue, the Court said that although the percentage taxes for 1939-1941 and 1945 may have been extinguished by prescription on account of sections 331 and 332 of the Tax Code, yet petitioner's obligation to pay such as well as other tax deficiencies was acknowledged by means of the chattel mortgage of May 31, 1951, an act which amounts to a renewal (renovación) of the obligation or a waiver of the benefit granted by law. The petitioner is thereby estopped from raising the defense of prescription. The Court, considering taxes already due as debts, applied the principle that a prescribed debt may be novated.[4]

In conclusion, the Court held:

> "Although the respondent had no right to use the summary methods of distraint 3-year period, and therefore the warrants issued therein were null and void, yet we have to take cognizance of the fact that petitioner executed a chattel mortgage in favor of the Government to guarantee the settlement of his tax obligations, and the records

3 Collector of Internal Revenue v. Avelino, et al., G.R. No. L-9202, November 19, 1956; Collector of Internal Revenue v. Reyes et al., G.R. No. L-8685, January 31, 1957; Collector of Internal Revenue v. Zulueta et al., G.R. No. L-8840, February 8, 1957.

4 Estrada v. Villareal, 40 Off. Gaz. 5 Suppl. to 9, 201 (1941).

show that upon petitioner's failure to comply with its terms the vehicles covered by said mortgage were regularly distrained and sold at public auction . . . The sale of the vehicles in so far as those covered by the mortgage is concerned, was practically similar to the sale in foreclosure proceedings and petitioner could not claim to have suffered damages by the sale of the mortgaged vehicles."

Agnes L. Mamon

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Transportation Law — *Liability of carriers while the goods are in the custody of customs authorities.*

LU DO & LY YM CORP. v. BINAMIRA
G.R. No. L-9840, April 22, 1957

In transporting goods, the common carrier is enjoined to exercise extraordinary diligence from the time he receives the goods until the same are delivered to the consignee.[1] And this responsibility continues even when the goods are temporarily unloaded while in transit.[2] Upon arrival at the place of destination, it is the duty of the carrier to notify the consignee and tender delivery of the goods. Otherwise, he will be liable for any damage done to the goods for failure to exercise the extraordinary care required of him.[3]

We can see thus that, in this particular contractual relationship, the law prescribes a different standard of care which may be considered an exception to the rule of ordinary diligence or the diligence of a good father of a family.[4] Extraordinary responsibility is required of common carriers for reasons of public policy and the very nature of their business.[5]

While the goods, therefore, are in the possession and control of the carrier, he must respond for any damage done thereto and not otherwise excusable. Goods imported from foreign countries are invariably delivered to the customs authorities for inspection. In this particular instance, the carrier surrenders actual possession of the goods. In case of damage to the goods, the determinative question is whether delivery to the customs authorities relieves the carrier of his responsibility.

The question was first brought to the courts in the case of *Cordoba v. Warner, Barnes & Co.*[6] In determining whether the claim for short delivery was presented on time or not,[7] the Supreme Court ruled that the delivery of merchandise at the customs house under customs supervision and control was not delivery to the consignee. This is so because the packages were then in

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1 Civil Code, Art. 1736.

2 Civil Code, Art. 1737.

3 Civil Code, Art. 1738.

4 Civil Code, Art. 1173, par. 2 provides: "If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required."

5 Civil Code, Art. 1733.

6 1 Phil. 7 (1901).

7 Code of Commerce, Art. 366 provides: "Within the 24 hours following the receipt of the merchandise a claim may be made against the carrier on account of damage or average found upon the opening of the packages, provided that the indications of the damage or average giving rise to the claim cannot be ascertained from the exterior of said packages, in which case said claim shall only be admitted at the time of the receipt of the packages.

"After the periods mentioned have elapsed, or after the transportation charges have been paid, no claim whatsoever shall be admitted against the carrier with regard to the condition in which the goods transported were delivered."

the hands of the government and the consignee could exercise no dominion whatever over them until the duties are paid.

In the recent case of *Lu Do & Ly Ym Corporation v. Binamira*, the same question was again raised. The plaintiff filed an action against defendant to recover the value of certain missing goods. The Delta Photo Supply Company of New York shipped photographic supplies consigned to the order of respondent Binamira.

The ship arrived at the port of Cebu and discharged the shipment in question, placing it in the possession and custody of the arrastre operator, who was appointed by, and under the supervision of the customs authorities. The goods were then in good condition. Three days after the goods were unloaded from the ship, respondent took delivery of his cases of photographic supplies from the arrastre operator. At that time the cases showed signs of pilferage.

The question now to be determined is: Is the carrier responsible for the loss considering that the same occurred after the shipment was discharged from the ship and placed in the possession and custody of the custom authorities?

The Court of Appeals applied the doctrine of the *Cordoba* case to the effect that delivery to the customs authorities is not the delivery contemplated by the Civil Code. The Supreme Court, however, reversed the Court of Appeals and held:

> "While we agree with the Court of Appeals that while delivery of the cargo to the customs authorities is not delivery to the consignee, or "to the person who has a right to receive them", contemplated in article 1736 (Civil Code), because in such case the goods are still in the hands of the government and the owner cannot exercise dominion over them, we believe however that the parties may agree to limit the liability of the carrier considering that the goods have still to go through the inspection of the customs authorities before they are actually turned over to the consignees. This is a situation where we may say that the carrier loses control of the goods because of a custom regulation and it is unfair that it be made responsible for what may happen during the interregnum . . . ."

With these two decisions confronting us, can we say that the ruling in the Cordoba case is necessarily overruled by the present case or rather the former case is modified by the latter?

It would seem that the ruling in the *Binamira* case is a mere modification rather than a reversal of the *Cordoba* case for while the Supreme Court admits that delivery of the cargo to the customs authority is not delivery to the consignee or the person who has a right to receive them contemplated in the Civil Code and thus subscribing to the same view expressed in the *Cordoba* case, yet it did not consider this rule absolute but subject to stipulation by the parties. It is worthwhile to note that the bill of lading in the *Binamira* case contained the following stipulation which was not present in the *Cordoba* case and which became the basis of the modification of the rule:

> ". . . The responsibility of the carrier in any capacity shall altogether cease and the goods shall be considered to be delivered and at their own risk and expense in every respect when taken into the custody of customs or other authorities . . . ."

A reading of this stipulation shows expressly and in clear terms the real intention of the parties to free the carrier from liability for any loss or damage to the goods once they are in the custody of the customs authorities. The provision does not admit of any other construction or interpretation for the terms are without ambiguity.

Precisely the stipulation was made to lessen or mitigate the responsibility of the carrier considering the present law on the matter and no public policy nor morals nor public interest will be contradicted by the stipulations in the bill of lading that will justify their nullification.

Celia S. Lipana

Civil Procedure: — *Joinder of causes of action subject to rules of venue and joinder of parties.*

MIJARES, et al. v. PICCIO, et al.
G.R. No. L-10458, April 22, 1957

MONTE v. JUDGE MOYA, et al.
G.R. No. L-10754, April 23, 1957

Subject to rules regarding venue and joinder of parties, a party may in one complaint counterclaim, cross-claim and third party claim, state in the alternative or otherwise, as many different causes of action as he may have against an opposing party.[1] Several causes of action, therefore, with no common venue cannot be joined. Likewise, parties may not be joined unless they fall under the contemplation of the rule on permissive joinder of parties.[2] The provision regarding joinder of causes of action is permissive and not compulsory.[3]

When two independent actions are improperly joined in one proceeding, it is the duty of the court to order their separation, and each action should be dealt with according to its own merits.[4] The case of *Mijares, et al. v. Piccio, et al.*[5] is an application of the rule that an action should be dismissed if there is a misjoinder of causes of action.

Pastora Alvarez Guanzon filed in the CFI of Cebu against her husband two causes of action: (1) annulment of a deed of sale in favor of Sulpicia Guanzon of property situated in Negros Occidental and annulment of a deed of donation inter vivos in favor of Joven Salvador Guanzon of another set of property situated in Cebu, and (2) separation of their conjugal properties acquired during their marriage. The plaintiff sought to include the vendee and donee as defendants in the first cause of action. The defendants (petitioners herein) moved for dismissal of the case against them on the grounds of improper venue, misjoinder of causes of action and lack of jurisdiction over the persons of the defendants.

The Supreme Court upheld the contention that there was a misjoinder of causes of action, not only as regards venue but also as regards parties. The real properties subject matter of the action for annulment are situated in two different provinces, namely, Negros Occidental and Cebu; it follows that the Court of First Instance of Cebu has no jurisdiction over the annulment of the sale of property situated in Negros.[6] It also appeared that the sale and the donation were made to two different persons and there is nothing from which it may be inferred that the two defendants have common interest that may be joined in one cause of action.

Monte v. Judge Moya, et al.[7] is a very interesting and liberal interpretation of the rule on joinder of causes of action which was very strictly construed

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1 Sec. 5, Rule 2, Rules of Court.

2 Sec. 6, Rule 3 of the Rules of Court, provides: "All persons in whom or against whom any right to relief in respect to or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or in the alternative, may, except as otherwise provided in these rules, join as plaintiffs or be joined as defendants in one complaint, where any question of law or fact common to all such plaintiffs or to all such defendants may arise in the action; but the court may make such orders as may be just to prevent any plaintiff or defendant from being embarrased or put to expense in connection with any proceedings in which he may have no interest."

3 Palomar Badovi v. Sarte, 36 Phil. 550 (1917).

4 Pacal v. Ramos, 45 O.G. 4946 (1948).

5 G.R. No. L-10458, April 22, 1957.

6 The plaintiff argued that the action for annulment of sale is a personal one and it is not necessary therefore that it be brought in the place where the real property is situated. This argument is untenable in the light of the statement of the Court in Gavieres v. Sanches, G.R. No. L-6206, April 13, 1954, that the fact that the action is for the annulment or rescission of the sale does not operate to efface the fundamental and prime objective and nature of the action which is to recover said real property.

7 G.R. No. L-10754, April 27, 1957.

in the previously cited case. The plaintiff Monte filed a complaint of replevin against Ortega and Caceres in connection with an alleged illegal impounding of certain trucks. The defendants claimed to have authority to impound said trucks because they were being used by the petitioner in violation of sec. 2753 (c) of the Revised Administrative Code.[8] In the meantime the Provincial Fiscal Estipona (one of the respondents herein) field a charge against Monte for said violation of the provision, but the latter was acquitted on reasonable doubt.

Monte moved to include the Fiscal in the complaint in the replevin case alleging as a second cause of action that the Fiscal filed the criminal charge upon inducement by the two defendants in order to evade their responsibility for costs complained of, although the Fiscal knew very well that the petitioner did not violate any legal provision. The Fiscal's contention which was upheld by the respondent Judge was that there was a misjoinder of parties because the Fiscal had no interest in the first cause he, having nothing to do with the seizure of petitioner's trucks.

The Supreme Court reversed the decision of the lower court and ruled that there is an intimate relation between the two causes of action, namely, illegal impounding of the truck and malicious prosecution to justify the said illegal impounding. They may be threshed out in a single proceeding in order to avoid multiplicity of suits. It is only proper that the lower court should allow the amendment to include the Fiscal as a party to the action of replevin.

The soundness of this ruling is subject to criticism, considering the previous decisions of the Supreme Court on the subject.

Filipina A. Arenas

8 "Any person who for commercial purposes and without proper license takes directly or indirectly stone, gravel, sand and earth from lands of the public domain or from the beds of seas, rivers, streams, creeks and other public waters, shall be punished by a fine of not more than one hundred pesos or by imprisonment not exceeding thirty days or both such fine and imprisonment, in the discretion of the court."

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Civil Procedure — *"Demand" in unlawful detainer.*

MANOTOK v. GUINTO
G.R. No. L-9540, April 30, 1957

Although the special civil action of forcible entry and detainer is contained only in one rule, actually, there are two kinds of actions involved.[1] Unlawful detainer refers to the second portion of the rule, that is, the unlawful withholding after the expiration of the right to possess. In order that detainer by the tenant may come within the jurisdiction of the Justice of the Peace Court, three requisites must concur, namely, (1) illegal possession because his right to possess under the contract with the landlord has expired (2) demand to comply with the terms of the contract and to return the possession of the property, and the tenant failed to satisfy within 15 days or 5 days in case of building, and

1 Sec. 1, Rule 72, provides: "Subject to the provisions of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a landlord, vendor, vendee, or other 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, or the legal representatives or assigns of any such landlord, vendor, vendee, or other person, 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, claimng under them, for the restitution of such possession, together with damages and costs."

(3) the complaint must be filed within one year from the date of the demand.[2] So that, if the action is brought after the lapse of one year from the demand to vacate the premises, the JP loses jurisdiction, the proper court being the CFI.

Manotok v. Guinto,[3] clarified the rule in determining when demand may be considered to have been made. The lessor, plaintiff in this case, demanded from the defendant the monthly rental of ₱6.25 effective April, 1953. This amount represented an increase in the rental because of the fact that the land tax in the City of Manila has been considerably increased within the last two years. The defendant refused to pay said amount so an ejectment case was brought in the municipal court on Aug. 1954.

The defendant questioned the jurisdiction of the municipal court and alleged that the action was brought more than one year from the demand. The plaintiff-appellee contended that demand to vacate was made on July 12, 1954.

In deciding that the date of the demand was on July 12, 1954 and not March, 1953, the Court, speaking through Chief Justice Paras said: "We shall assume that in March, 1953, appellant received notice giving him the alternative either to pay the increased monthly rental or otherwise to vacate the land. We however, do not find such notice to be the demand contemplated by the Rules of Court in 'unlawful detainer' cases. After notice the appellant elected to stay, he thereby merely assumed the obligation of paying the new rental and could not be ejected until he defaulted in said obligation and necessary demand was first made."

Filipina A. Arenas

2 Gonzalez v. Salas, 49 Phil. 1 (1926); Rorado v. Viriña, 34 Phil. 263 (1916); Caridad Estates Inc. v. Santero, 71 Phil. 114 (1940).
3 G.R. No. L-9540, April 30, 1957.

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Civil Procedure — *Docket fee indispensable requisite for the perfection of an appeal.*

BERMUDEZ, et al. v. JUDGE BALTAZAR and BAMBA
G.R. No. L-10268, April 30, 1957

An appeal from the inferior court to the Court of First Instance shall be perfected within 15 days after notification to the party of the judgment complained of (a) by filing with the justice of the peace or municipal judge a notice of appeal; (b) by delivering a certificate of the municipal treasurer showing the receipt of said fee; and (c) by giving a bond.[1]

Many cases had already been decided by the Supreme Court, ruling that all these requisites must first be complied with in order that an appeal may be deemed to have been perfected, although in exceptional instances where there were good excuses for the delay the rule had been relaxed.[2] The amount of docket fee varies according to the amount of claim or demand.[3]

In the instant case, Bamba, (on of the respondents) brought an action for forcible entry in the Justice of the Peace. A copy of the decision dismissing the complaint was received by the defendant's attorney on Sept. 12, 1955. On Sept. 13, said counsel filed a notice of appeal and at the same time deposited

1 Sec. 2, Rule 40, Rules of Court.
2 Segovia v. Barrios, 75 Phil. 764 (1946) is an exception to the rule followed in Lazaro v. Endencia, 57 Phil. 552 (1932) and subsequent cases.
3 See Rule 130 of the Rules of Court.

₱25 as appeal bond. On Oct. 1, 1955 he forwarded to the Clerk of the Court of First Instance where the case was appealed to, a postal money order for the amount of ₱10 as the appellate court's docket fee. Same was received on Oct. 4, 1955.

The Supreme Court upheld the dismissal of the appeal on the ground that the appeal had not been perfected in due time in as much as the court's docket fee had been deposited only on Oct. 4, or 22 days after the appellant had received copy of the appealed decision. According to the Court, even supposing that the deposit of the appellate court's docket fee took place on Oct. 1, when the money order was sent, 19 days had already elapsed from Sept. 12. Under the rules, the deposit should have been made within 15 days after Sept. 12.

Filipina A. Arenas

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Civil Law — *Lessor and not the lessee has the option to reimburse one-half of value of improvements made in good faith on the leased premises.*

LAPENA and PINEDA v. JUDGE MORFE, et al
G. R. No. L-10089, July 31, 1957

Under the Spanish Civil Code, the rights of a lessee with respect to improvements made by him on the leased property, even if made in good faith, were limited in extent. Considering the fact that the lessee is not regarded as a possessor in good faith[1], he is consequently deprived of many of the advantages appertaining to such possessor.[2] Thus, the lessee's position with respect to improvements was equated with that of a usufructuary's.[3] He was not entitled to be reimbursed for any improvements made, whether useful or recreative, but he could remove his improvements if the principal did not suffer any injury thereby.[4] The law has been substantially changed, however, in order to prevent the unjust enrichment of the lessor.[5] According to Article 1678 of the new Civil Code, "If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease in intended, without altering the form or substance of the property 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 damages thereby. He shall not, however, cause any more impairment upon tne property leased than is necessary. xxxx."

This new provision was interpreted in the instant case. Lapena and Pineda, petitioners herein, had been the lessees of a part of a residential lot owned by

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1 The provisions of the Civil Code which define the rights of a possessor in good faith with respect to improvements made on the land do not apply to the lessee, since the Code supplies specific provisions designed to cover the lessee's rights. Furthermore, the lessee cannot be said to be a builder in good faith as he has no pretension of being the owner. Feldman v. Brownell, G.R. No. L-7196, May 11, 1956; Lopez Inc. v. Philippine and Eastern Trading Co., Inc., G.R. No. L-8010, Jan. 31, 1956; Fojas v. Velasco, 51 Phil. 520 (1928); Rivera v. Trinidad, 48 Phil. 396 (1925).

2 Possessors in good faith are granted wide rights with respect to accession and reimbursement of necessary and useful expenses. Furthermore, it should be noted that under Article 1671 of the new Code, "if the lessee continues enjoying the thing after the expiration of the contract, over the lessor's objection, the former shall be subject to the responsibilities of a possessor in bad faith."

3 Article 1573 of the old Civil Code provides that "a lessee shall have, with respect to useful and voluntary improvements, the same rights which are granted to usufructuaries."

4 Article 487 of the Spanish Civil Code.

5 See Report of the Code Commission, pp. 144-145.

6 The lessor may judicially eject the lessee when the period agreed upon has expired. Article 1673, par. 1, new Civil Code. If the lease was made for a determinate time, it ceases upon the day fixed, without the need of a demand. Article 1669, new Civil Code.

the respondents Gutierrez since April 1, 1939. The term of the lease was ten years. A residential house claimed to be worth ₱8,000 was built upon the leased property by the lessees.

In 1951, the respondent lessors brought an action praying that since the contract of lease had terminated on April 1, 1951, the petitioners should be ordered to vacate the land.' When the case was called for hearing in 1952, however, the parties entered into a written agreement, extending the period of the lease for another three years.

Upon the lapse of the three year-period agreed upon, the respondent lessors filed a motion in the case seeking a court order commanding the provincial sheriff to demolish the residential house erected on the land. Petitioners objected, averring that since they had introduced useful improvements on the land, i.e., the residential house, they have a right to demand that the respondents pay them one-half the value of the said improvements, pursuant to Article 1678.

Petitioners now seek to annul the order of the respondent court directing them to remove their house within fifteen days from receipt of notice, with a warning that should they fail to do so, the court would order its immediate demolition.

The Supreme Court denied the writ of injunction prayed for and dissolved the writ of preliminary injunction heretofore issued, inasmuch as the three-year period agreed upon had already expired and the judgment was already final and executory. The Court upheld the trial court's ruling that under Article 1678 of the new Civil Code, it is the lessor and not the lessee that is given the option provided for therein. With regard to petitioners' contention that as the respondents had received monthly rentals from April to September 1955, inclusive, a longer period of lease is called for, the Court ruled that Article 1678 [7] of the new Civil Code is not applicable, since the period of the lease in this case had been fixed.

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7 Article 1687 provides: "If the period for the lease has not been fixed, it is understood to be from year to year, if the rent agreed upon is annual; from month to month, if it is monthly; from week to week, if the rent is weekly; and from day to day, if the rent is to be paid daily. However, 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 a year. If the rent is weekly, the courts may likewise determine a longer period after the lessee has been in possession for over six months. In case of daily rent, the courts may also fix a longer period after the lessee has stayed in the place for over one month."

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Civil Law — *Attorney's fees as a part of recoverable damages.*

REYES v. YATCO, et al.
G. R. No. L-11425, February 27, 1957.

As a general rule, attorney's fees and expenses of litigation are not recoverable other than judicial costs.[1] The rule in this jurisdiction prior to the effectivity of the new Civil Code had been that attorney's fees are not a proper element of recoverable damages. The Supreme Court has declared that it is not sound public policy to place a penalty on the right to litigate.[2] To compel the

1 Rule 131, RULES OF COURT.
2 Tan Ti v. Alvear, 26 Phil. 566 (1918).

defeated party to pay the fees of counsel for his successful opponent, it was believed, would "throw wide the door of temptation to the opposing party and his counsel to swell the fees to undue proportions, and to apportion them arbitrarily between those pertaining properly to one branch of the case from the other".[3]

Among the innovations introduced by the new Civid Code is the awarding of attorney's fees in certain special cases, even in the absence of stipulation. These are enumerated in Article 2208. In the exceptional cases enumerated, the Code Commission, following the example of the statutes of some States of the American Union, felt that it was but just that the losing party should pay the attorney's fees and expenses of litigation.[4] One of the instances is "when defendant's act or omission has compelled the plaintiff to litigate with third persons, or to incur expenses to protect his interest."[5] This situation is illustrated in the recent case of *Reyes v. Yatco.*

It appears that petitioners filed in the CFI of Rizal a complaint against Fidel Villanueva to recover the aggregate sum of ₱4,000. The complaint was later amended to include Manuel Villanueva as party defendant. The amount claimed was based on two promissory notes, one for ₱2,000 issued by Fidel and another for ₱2,000 issued by Manuel. Both notes were without interest and there was no stipulation as to payment of damages or attorney's fees.

The respondent Judge Yatco sustained a motion to dismiss on the ground of misjoinder of actions. Thereupon, petitioners filed two separate actions in the same court, one against Manuel and the other against Fidel wherein they claimed in each the sum of ₱3,500 itemized as follows: ₱2,000 — promissory note; ₱1,000 — moral damages; ₱500 — attorney's fees. Respondent Judge again granted a motion to dismiss, this time on the ground that inasmuch as the amount covered by each note is only ₱2,000 without interest[6], petitioners cannot now include in their complaint any additional claim for damages or attorney's fees, in the absence of stipulation in the notes.

Upon petition for certiorari, the Supreme Court upheld the contention of petitioners and set aside the lower court's order. Holding that it is unreasonable to say that the action of petitioners is capricious or whimsical, Justice Bautista Angelo concluded that the inclusion of moral damages and attorney's fees in the complaint was proper. While as a rule, if the obligation consists in the sum of money, the only damage a creditor may recover, if the debtor incurs delay, is the payment of the interest agreed upon, or the legal interest, unless the contrary is stipulated[7], however, under the new Civil Code, the creditor may now claim other damages, such as moral or exemplary damages, in addition to interest.[8]

The Court noted that the law has been changed with respect to the granting of attorney's fees. While previously a party could not claim attorney's fees as

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3 Koster, Inc. v. Zulueta, G.R. No. L-9805, Sept. 23, 1956, Barreto v. Arevala, G.R. No. L-7748, Aug. 26, 1956; Borden Co. v. Doctors Pharmaceuticals, Inc., G.R. No. L-4199, Nov. 29, 1951; Jesswani v. Hassaram Dialdas, G.R. No. L-4651, May 12, 1951; Tan Ti v. Alvear, supra, note 2.

4 Report of the Code Commission, p. 73.

5 Par. 2, Art. 2208, new Civil Code.

6 The justice of the peace courts have jurisdiction in civil cases where the value of the subject-matter or amount of the demand does not exceed two thousand pesos, exclusive of interest and costs. Sec. 88, R.A. 296.

7 Art. 2209, new Civil Code.

8 Arts. 2196 and 2197, new Civil Code.

damages unless there was a stipulation to that effect[9], Art. 2208 of the new Civil code has changed the situation. In the light of paragraph 2 of the aforementioned article, it cannot be pretended that petitioners' claim of attorney's fees was merely to place the actions within the jurisdiction of the court of first instance.

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9 Although the Supreme Court had on numerous occasions prior to the new Civil Code placed itself on record as favoring the view that attorney's fees are not a proper element of damages, it should be noted that there were certain instances when attorney's fees were granted, even in the absence of stipulation. Thus, in Lanzuela v. Sweeney, 4 Phil. 79 (1904), the Court ordered the husband, during the pendency of a divorce suit, to pay not only alimony to the wife and make provision for the support of the children but also to pay the sum of $200 to the plaintiff's attorney. In another case, in 1917, the Court ruled that a wife who was unjustly refused support by her husband may recover attorney's fees and expenses of litigation together with the award of the amount due her as legal support. Mercado v. Ostrand, 37 Phil. 179 (1917). In the last cited case, Justice Johnson, speaking for the Court, declared: "it would seem to be perfectly reasonable and just and within the sound discretion of the court if the husband makes it necessary for the wife to resort to the courts for the purpose of enforcing said legal obligation, that then and in that case he should be required to pay the expenses necessarily incurred by her for the purpose of enforcing her legal rights. Judicial costs and a reasonable amount for attorney's fees are necessary results of litigation."

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Labor Law — *Employee dismissed for cause not entitled to termination pay under Rep. Act No. 1052.*

MARCAIDA v. PHILIPPINE EDUCATION CO.
G.R. No. L-9960, May 29, 1957

The Termination Pay Law, Rep. Act No. 1052, provides that "In cases of employment, without a definite period, in a commercial, industrial, or agricultural establishment or enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance," and that "The employee, upon whom no such notice was served, shall be entitled to one month's compensation from the date of the termination of his employment."[1] Termination pay is regarded as a sort of an aid given to a laborer upon his separation from the service so that he may have something on which to fall back when he loses his means of livelihood.[2] And there is even authority that justifies, without any express legal provision, a month's pay upon separation from service without just cause and without notice.[3]

This is an action to recover one month's salary, by way of separation pay under Rep. Act No. 1052. Plaintiff was a sales clerk in defendant's store. Due to several absences in the store of the defendant on August 7, 1954, the Assistant Manager of the Retail Department, and after him, the Manager of said Department, asked the plaintiff to help in another section of the store which at the time was short-handed due to the several absences. Plaintiff claimed that she could not be pushed around and refused to go to the section where she was being assigned temporarily. Whereupon, plaintiff was forthwith dismissed from defendant's employ because "We (the defendant) cannot permit an employee to defy the authority of the management thereby destroying the factor of control." Plaintiff was not paid a month's salary in lieu of a month's notice as provided for in Rep. Act No. 1502. Issue: whether an employee dismissed, without one-month

1 Sec. 1. The law was approved and took effect on June 12, 1954.
2 Chuan & Sons v. Nahag et al., G.R. Nos. L-7201 and 7211, Sept. 24, 1954.
3 Sta. Mesa Slipways & Engineering Co. Inc., v. The Court of Industrial Relations et al., 48 O.G. 8, 3353 at 3357 (1952).

advance notice, for a just cause imputable to his or her fault, such as insubordination,[4] is entitled to the separation pay provided in Rep. Act No. 1052.

Decision: No.[5] The considerations that led to this decision are as follows: (1) The Court thought it contrary to common sense to apply the Termination Pay Law to an employee separated due to malfeasance, misfeasance or negligence equivalent thereto:

> "xx xx xx if the employment is terminated on account of embezzlement committed by the employee or serious physical injuries illegally inflicted by him upon the employer, would the latter be bound, either to retain him for another month, with notice that his service would be dispensed with at the end thereof, or to give him one month separation pay? Common sense readily suggests a negative answer."

(2) The Court repudiated plaintiff's argument based on the legislative history of Rep. Act No. 1052, which argument was to the effect that inasmuch as the law as finally approved by Congress does not require, as the original bill did require, that the separation be "for any just cause not attributable to the fault of the employee" or "through no fault of his own," the lawmaker intended to give the employee the benefits of the advance notice and separation pay provided in the law, regardless of whether or not he is to blame for the termination of his employment. The Court's own review of the legislative proceedings relative to said statute revealed that several members of Congress expressly favored the limitation of the benefits in question to employees separated without any fault on their part.[6]

(3) The law did not explicitly declare that the separation must be due to causes not attributable to the fault of the employee, because no such requirement appears in Article 302 of the Code of Commerce,[7] and Rep. Act No. 1052

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4 Among the fundamental duties of the employees is the obligation to yield obedience to all reasonable rules, orders and instructions of the employer, and wilful or intentional disobedience thereof, as a general rule, justifies a rescission of the contract of service and the peremptory dismissal of the employees whether the disobedience consists in the disregard of the express provisions of the contract, general rules of instructions, or particular commands. 35 AM. JUR. p. 478.

5 The lower court granted the plaintiff the separation pay prayed for upon the authority of Chuan & Sons v. Nahag et al., supra, which upheld the right of the employees separated from service, on account of the closing of the employer's business, to the aforementioned separation pay. The Supreme Court distinguished the case at bar from said Chuan case, pointing out that plaintiff herein was dismissed due to her fault whereas the employees in the Chuan case were separated for a cause beyond their control. The statement in the Chuan case that "whether the cause of the termination of the employment is the closing of the business or other justifiable cause, a laborer is entitled to separation pay if the requisite notice is not given to him" must be construed according to the principle of ejusdem generis so that the phrase "or other justifiable cause" would be understood to refer only to such justifiable causes as are analagous, similar or akin to the "closing of business." The authority of the Chuan case as a precedent, must be deemed limited to cases in which the employee is separated for causes independent of his will.

See 2 FRANCISCO, THE LAW GOVERNING LABOR DISPUTES IN THE PHILIPPINES 82-85 (3rd ed. 1957).

6 Thus, Senator Montano said:

"I think that every senator will agree with me when I say that any employee of this country who is separated from his employment should at least be given a one month compensation, if the separation was not due to any fault of the employee and without any advance notice given to him by the employer. I think on this general principle all the members of the Senate can agree." (Bold type supplied). Congressional Record for the Senate — Vol. I, p. 268.

7 Article 302 of the Code of Commerce provides:

"In cases in which the contract does not have a fixed period, anyone of the parties may terminate it upon giving one month notice thereof to the other.

"The factor or shop clerk shall have a right, in this case, to the salary corresponding to said one month."

was passed to fill the "void" or "gap"[8] from the repeal of said provision by the Civil Code of the Philippines.[9]

(4) The intention of Congress to exclude from the benefits of Rep. Act No. 1052 those employees removed for good cause, imputable to them, becomes more manifest when it is considered that the original Senate Bill No. 17 referred, in its title, to "dismissed employees," and that the term "dismissed" was substituted by the verb "terminated." The law's reference to termination of employment, instead of dismissal, is precisely to exclude employees separated from the services for causes attributable to their own fault.

(5) Considering that Rep. Act No. 1052 is limited in its operation to cases of employment without a definite period, and that when the employment is for a fixed duration, the employer may terminate it, even before the expiration of the stipulated period, should there be a substantial breach of his obligations by the employee,[10] in which event the latter is not entitled to advance notice or separation pay, it would be patently absurd to grant a right thereto to an employee guilty of the same breach of obligation, when the employment is without a definite period, as if he were entitled to greater protection than employees engaged for a fixed duration.

(6) Lastly, it is doubtful whether Congress could validly require the employer to give the separation pay in question, if the employment were terminated due to the fault of the employee. Indeed, the imposition of said obligation, under such conditions, would open Rep. Act No. 1052 to the charge that it constitutes an unreasonable restraint upon the liberty of the employer, and a deprivation of his property, without due process of law.[11]

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8 The explanatory note to Senate Bill No. 17 stated:
"In repealing the provisions of the Code of Commerce on agency, including Article 302 thereof governing the payment of one month's salary to dismissed employees, the new Civil Code provides in Article 1710 that the 'dismissal of laborers shall be subject to the supervision of the government, under special laws.' But, when the said Civil Code took effect, no special law was enacted to protect the rights of many workers who, since then, have been dismissed from their employment without the benefit of one month's compensation.
"To fill the void left by the enforcement of the aforesaid Code, immediate approval of the attached bill is, therefore, strongly recommended."
In his sponsorship speech on said bill, Senator Montano declared that it was "intended to fill a gap in our legislation, because of the repeal of that provision of the Code of Commerce" — referring to section 302 thereof — "giving one month's compensation for laborers who have been separated from their employment." (Congressional Record for the Senate, Vol. I, p. 269.)
Senator Primicias, author of said bill, and Senator Sumulong, author of the amendment to the amendment by substitution, which became Republic Act No. 1052, confirmed said statement of Senator Montano. (Congressional Record for the Senate, Vol. I, pp. 317 and 318).

9 Indeed, in Lara v. Canlas, G.R. No. L-6389, April 20, 1954, it was held:
"As to the month pay (mesada) under Art. 302 of the Code of Commerce, Article 2270 of the new Civil Code (Republic Act 386) appears to have repealed said Article 302 when it repealed the provisions of the Code of Commerce governing Agency. This repeal took place on August 30, 1950, when the new Civil Code went into effect, that is one year after its publication in the Official Gazette."
Construing Article 302 of the Code of Commerce before its repeal, it was held that an employee was not entitled to a month's notice or a month's salary in lieu thereof, where his dismissal was justified. Sanchez v. Harry Lyons Construction Inc., 48 O.G. 2, 605 (1950); Frisco del Puerto v. Gregg Car Co., Inc., 40 O.G. Supp. to 18, 103 (1941); Cruz v. Zamora, (C.A.) 47 O.G. 12, 6201 (1949).

10 Articles 1169, 1191 and 1198, Civil Code of the Philippines; De la Cruz v. Legaspi, 51 O.G. 12, 6212 (1955); Hodges v. Granada, 59 Phil. 429 (1934); Gonzalez v. Haberer, 47 Phil. 580 (1925); Pabalan v. Velez, 22 Phil. 29 (1912).

11 Citing Opinion No. 33 of the Secretary of Justice, September 3, 1954:
"The right to dismiss an employee for cause is inherent in every employer. As announced in the leading case of Manila Trading Company vs. Zulueta, 40 Off. Gaz., 6th Supp., 1, 183, Sept. 6, 1941, an employer cannot be legally compelled to continue with the employment of a person guilty of misfeasance or malfeasance towards his employer, and whose continuance in the service of the latter is patently inimical to his interests. 'The law, in protecting the right of the laborer, authorizes neither oppression nor self-destruction of the employer.' And in line with the above doctrine, it was further held in Philippine Sheet Metal Workers Union vs. Court of Industrial Relations, G.R. No. L-2028, 46 Off. Gaz., No. 11, p. 5462, that the right to dismiss cannot be denied when it is shown that the laborers are not discharging their

duties in a manner consistent with good discipline and the efficient operation of the industrial enterprise. (See also: Manila Chauffeur's League vs. Bachrach Motor Co., 40 Off. Gaz., 7th Supp., p. 159; Jacinto vs. Standard Vacuum Oil Co., 40 Off. Gaz., 9th Supp., p. 20; Batangas Transportation Co., vs. Bagong Pagkakaisa, 40 Off. Gaz., 9th Supp., p. 51; and Cy Pac. vs. Katipunan, 40 Off. Gaz., 13th Supp., p. 82).

"It could not have been the intention of Congress in enacting the aforecited Act, to curtail that right by requiring, as a condition precedent to its exercise, that notice be served one month in advance, or a month's compensation be paid in lieu of notice, to the erring employee. Such a requirement would be manifestly unreasonable and oppressive upon the employer." (Bold type supplied by the Court.)

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Labor Law — *Leader and members of orchestra not considered as employees of hotel, but are independent contractors.*

VDA. DE CRUZ v. MANILA HOTEL COMPANY
G. R. No. L-9110, April 30, 1957

One of the more bothersome, not to say fine, distinctions that insistently has to be made in the field of labor law is that between an employee and an independent contractor. The distinction is well-settled and has been amply applied in American labor law and jurisprudence. Our courts, therefore, can only too easily adopt, or perhaps merely refer to, the American authorities, especially in view of the strongly American flavor of virtually all our labor legislation. This recent case gave the Supreme Court opportunity to declare the distinction — i.e., to apply the distinction generally recognized by the American courts.

The facts of the case: In view of the projected lease of the Manila Hotel to the Bay View Hotel, the corporation owning the former announced that those employees who would be laid off as a result of such lease would be granted separation gratuity. Plaintiffs, leader and members of the Tirso Cruz orchestra which, under contract, has been furnishing the music in the said Manila Hotel, claimed the gratuity; but the Manila Hotel management denied their claim saying they were not its employees. In the suit upon such claim, the problem of whether plaintiffs were employees of defendant naturally became an issue. So, the Court, in resolving the case, had to rule that the plaintiffs were merely independent contractors, and not employees, of the defendant. The Court's stand was justified by the very terms of the contract engaging the services of plaintiffs' orchestra. The contract was entered with Tirso Cruz for the "services of your orchestra" (of Tirso Cruz) "composed of fifteen musicians including yourself plus Ric Cruz as vocalist" at ₱250.00 per day, said orchestra to "play from 7:30 p.m. to closing time daily". The Court then went on to observe:[1]

> "xx xx xx What pieces the orchestra shall play, and how the music shall be arranged or directed, the intervals and other details — such are left to the leader's discretion. The musical instruments, the music papers and other paraphernalia are not furnished by the Hotel; they belong to the orchestra, which in turn belongs to Tirso Cruz — not to the Hotel. It reserved no power to discharge any musician. How much salary is to be given to the individual members is left entirely to 'the orchestra' or the leader. Payment of such salary is not made by the Hotel to the individual musicians, but only a lump sum compensation is given weekly to Tirso Cruz."

In laying down the rule/distinction, the Court just quoted from the Corpus Juris Secundum the following:[2]

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1 Cf. Phil.Manufacturing Co. v. Santos, G. R. No. L-6968, Nov. 29, 1954. Se Mansal v. P. P. Gocheco Lumber Co., G.R. No. L-8017, April 30, 1955 (involving Workmen's Compensation Act).

2 When a worker possesses one attribute of an employee and others of an independent contractor, which make him fall within an intermediate area, he may be classified under the category of an employee when the economic facts of the relation make it more nearly one of employment than one of independent business enterprise with respect to the ends sought to be accomplished. Sunripe Coconut Products Co., Inc. v. Court of Industrial Relations, 46 O.G. 11, 5506 (1949).

Leaders of dance orchestra and their members were not "employees" of ballroom operators, but the leaders were "independent contractors." Bartels v. Birmingham, 59 F. Supp 84, 87 (1945).

"An independent contractor is one who in rendering services, exercises an independent employment or occupation and represents the will of his employer only as to the results of his work and not as to the means whereby it is accomplished; one who exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work: and who engages to perform a certain service for another, according to his own manner and method, free from the control and direction of his employer in all matters connected with the performance of the servise, except as to the result of the work." 3

"Among the factors to be considered are whether the contractor is carrying on an independent business; whether the work is part of the employer's general business; the nature and extent of the work; the skill required; the term and duration of the relationship; the existence of a contract for the performance of a specified piece of work; the control and supervision of the work; the employer's powers and duties with respect to the hiring, firing, and payment of the contractor's servants; the control of the premises; the duty to supply the premises, tools, appliances, material and labor; and the mode, manner, and terms of payment." 4

Antonio R. Bautista

3 56 C.J.S. pp. 41-43.
4 56 C.J.S. pp. 46.

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Labor Law — *Recovery from third person of damages for accident in the course of employment may be with implied reservation of right to recover deficiency from the employer.*

ALBA et al. v. BULAONG and DE LEON
G. R. Nos. L-10308 & L-10385 to L-10388, April 30, 1957

Workmen's compensation involves an entirely new economic and legal principle — *liability without fault.* It arose from the recognition of industrial accidents as one of the inevitable hazards of modern industry. It is, therefore, a recognition of the costs of industrial accidents as a legitimate cost of production.[1]

This case is for the recovery of workmen's compensation under our Workmen's Compensation Law (Act No. 3428 as amended). Petitioners were employees of Dr. Horacio Bulaong in his business of threshing palay. Early one morning, while said petitioners were, upon specific order of Dr. Bulaong, on their way to thresh palay, riding on a tractor which was pulling a threshing machine, a speeding bus of the Victory Liner Inc. suddenly collided with the thresher which in turn hit the tractor, and as a result those on board were violently thrown out. Some of the victims died, while the others sustained physical injuries. Wherefore, claims were filed before the Workmen's Compensation Commission against the employer Dr. Bulaong. It appears, however, that the claimants had received, after the mishap, various amounts of money from the owner of the colliding bus, the Victory Liner Inc., each of them having executed a written release or waiver in favor of said Liner, the pertinent part of which reads as follows:

"And I likewise freely and completely cede and transfer into said Company (Victory Liner Inc.) any right given to me by law against any person or company that should be liable for the said accident except my right to claim against Dr. Horacio Bulaong in accordance with and under the Workmen's Compensation Act (Rep. Act No. 772)."

The Workmen's Compensation Commission ruled that claimants had elected to hold the Liner responsible for the accident, and could not therefore turn around

1 SOMERS and SOMERS, WORKMEN'S COMPENSATION 26-7 (1954).
For a full discussion of the constitutionality of workmen's compensation legislation, see Powell, Thomas Reed, The Workmen's Compensation Cases, 32 POL. SCI. Q. No. 4 (1917) and 58 AM. JUR. pp. 580-593.

to recover compensation from their employer, citing as basis for said ruling section 6 of the Workmen's Compensation Law.[2]

Could the petitioners yet recover compensation for the accident from the employer Dr. Bulaong?

The Supreme Court answered: Yes. While the petitioners have not sued the Liner for damages, yet, even without suing, they received some damages from said Liner. And the intent of the law is that they shall not receive payment twice for the same injuries from the third party[3] (the Liner) and from the employer:[4]

> "xx xx if without suing they receive full damages from the third party, they should be deemed to have practically made the election under the law, and should be prevented from thereafter suing the employer. Full damages means, of course what they would have demanded in a suit against the third party or what they would receive in compensation as complete settlement. Needless to say, where the injured employee is offered, by the third party, compensation which he deems insufficient, he may reject it and thereafter litigate with such third party. Or choose instead to complain against his employer."

But the Court added this significant qualification:

> "Nevertheless there is nothing in the law to prevent him from accepting such insufficient compensation but expressly reserving at the same time his right to recover additional damages from his employer. If the third party agrees to the reservation, such partial payment may legally be made and accepted. We say 'if', because the reservation necessarily entails some disadvantages to the third party, inasmuch as pursuant to legal principles when the employer subsequently pays, he may in turn recover from the third party (See sec. 6). The employer can not validly object to such reservation by the employee, because in effect the settlement helps to reduce the amount he will afterwards have to disgorge."

In this case, claimants' acceptance of the Victory Liner's offer of compensation, showed, especially in view of the written acknowledgments, that they were not content with the amount received — they did not consider it sufficient — so they reserved their right to require additional compensation from their employer; but, of course, the employer, Dr. Bulaong, may in turn demand reimbursement from Victory Liner Inc.

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2 SEC. 6. Liability of third parties. — In case an employee suffers an injury for which compensation is due under this Act by any other person besides his employer, it shall be optional with such injured employee either to claim compensation from his employer, under this Act, or sue such other person for damages, in accordance with law; and in case compensation is claimed and allowed in accordance with this Act, the employer who paid such compensation or was found liable to pay the same, shall succeed the injured employee to the right of recovering from such person what he paid: Provided, That in case the employer recovers from such third person damages in excess of those paid or allowed under this Act, such excess shall be delivered to the injured employee or any other person entitled thereto, after deduction of the expenses of the employer and the costs of the proceedings. The sum paid by the employer for compensation or the amount of compensation to which the employee or his dependents are entitled under the provisions of this Act, shall not be admissible as evidence in any damage suit or action. (As amended by section 3 of Act No. 3812)."
But see Article 1712, Civil Code.

3 The question as to who is a third party within the meaning of the Workmen's Compensation Act must usually be determined in view of the circumstances of the particular case. 58 AM. JUR. p. 818.

4 Cf. Lobrin v. Singer Sewing Machine Co., 40 O.G. Supp. to 18, 176 (1940).
Commenting on section 6 of the English Compensation Act of 1906, after which ours is modelled, Labatt says in his treatise on Master and Servant:
"The acceptance of payments by the injured workman from a person other than the employer, who was alleged to be liable for negligence, although such liability is not admitted, precludes the workman, under section 6, subsection 1, from obtaining compensation from the employer." 5 LABATT, MASTER AND SERVANT 5441 (2nd ed.).

Labor Law — *The Philippine National Red Cross is not subject to the Eight Hour Labor Law.*

MARCELO, et al. v. PHILIPPINE NATIONAL RED CROSS
G. R. No. L-9448, May 23, 1957

The Eight Hour Labor Law (Commonwealth Act No. 444) is the law in this jurisdiction that regulates the working hours of laborers. The power to enact legislation limiting hours of labor is conferred by the Constitution in its broad principle of promotion of social justice and the protection to labor. Aside from this, the authority to enact such laws is generally sought upon the theory that they constitute exercise of the police power.[1] The cry for regulation of hours initially stemmed from the worker's concept of citizenship,[2] although when the factory system developed the health argument became uppermost.[3] And it has even been said that the 8-hour labor law was enacted not only to safeguard the health and welfare of the laborer or employee, but in a way to minimize unemployment by forcing employers, in cases where more than 8-hour operation is necessary, to utilize different shifts of laborers or employees working only for 8-hours each.[4]

In the instant case of **Marcelo, et al. v. Philippine National Red Cross**, the application of the Eigh Hour Labor Law was in issue. Plaintiffs, employees (janitors, drivers, technicians and manual laborers) of the Philippine National Red Cross, brought suit against the latter to recover pay for alleged overtime work and for services rendered on Sundays and holidays under the Eight Hour Labor Law. Defendant Philippine National Red Cross resists the claim, contending that it is not engaged in an industry or occupation and is therefore exempt from the obligation imposed by said Law by virtue of section 2[5] thereof. Plaintiffs, on the other hand, maintained that they are employed by the defendant in its occupation of performing humanitarian work. The Court therefore had to resolve the question of the applicability of the Eight Hour Labor Law to the defendant in the light of its section 2.

In resolving the question, the Court held that the phrase "employed in an industry or occupation", as used in section 2 of the Law, does not refer to the employees but to the employer, who is the one that shall be engaged in an indus-

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1 FRANCISCO, THE LAW GOVERNING LABOR DISPUTES IN THE PHILIPPINES 525 (3rd ed. 1956).

2 1 COMMONS, HISTORY OF LABOUR IN THE UNITED STATES 170 (cited in FORKOSCH, A TREATISE ON LABOR LAW 131, 1953 ed.): "Around two different grievances (during the late 1820's) xx xx xx the workingmen of this period rallied. First was the demand for leisure xx xx xx Work from 'sun to sun' was held to be incompatible with citizenship, for it did not afford the workingman the requisite leisure for the consideration of public questions and therefore condemned him to an inferior position in the state. xx xx" See also: 5 McMASTER, HISTORY OF THE PEOPLE OF THE UNITED STATES 84 (1900 ed.): "Less hours of labor, higher wages, better treatment, payment in honest money, and not in depreciated bank paper, became the demand of the time. xx xx"

3 1 COMMONS, id. at 384. (cited in FORKOSCH, op. cit. supra.)
Pope Leo XIII in his Encyclical Letter on the Condition of Labor, of May 15, 1891, said: "It is neither justice nor humanity so to grind men down with excessive labor as to stupefy their minds and wear out their bodies. Man's powers, like his general nature, are limited, and beyond these limits he cannot go. His strength is developed and increased by use and exercise, but only on condition of due intermission and proper rest. Daily labor, therefore, must be so regulated that it may not be protracted during longer hours than strength admits. How many and how long the intervals of rest should be, will depend upon the nature of the work, on circumstances of time and place, and on the health and strength of the workmen. Those who labor in mines and quarries, and in work within the bowels of the earth, should have shorter hours in proportion, as their labor is more severe and more trying to health. Then, again, the season of the year must be taken into account; for not infrequently a kind of labor is easy at one time which at another is intolerable or very difficult. Finally, work which is suitable for a strong man cannot reasonably be required from a woman or a child."

4 Manila Terminal Co., Inc. v. The Court of Industrial Relations, et al., G.R. No. L-4148, July 16, 1952.

5 "SEC. 2. This Act shall apply 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."

try or occupation. And the Court went on to say that the defendant is indisputably not engaged in any industry (as it was a national Red Cross society dedicated to render humanitarian services). That defendant was also not engaged in an occupation, it held after resorting to American authorities[6] to define the meaning of the word "occupation":

> "xx xx xx the word 'occupation' ordinarily implies the idea of one's employment in a principal or regular business or the dedication of time and attention to a trade, profession or calling which is taken up as a means of livelihood, or for profit, or for the obtention of wealth. In other words, the weight of authority is to the effect that in its legal sense and as used in labor laws, the term 'occupation' ordinarily involves the idea of gain, profit or return for the time, attention and energies devoted in the performance of the occupation by either the master or the servant concerned. xx xx xx"

Yet, the Court hastened to add that the benefits of the Eigh Hour Labor Law may be extended to the Philippine National Red Cross employees, if the PNRC Board of Governors so decide.[7]

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6 67 C.J.S. pp. 74-76.

7 Citing Opinion No. 102, series of 1954, of the Secretary of Justice: "This does not mean that it cannot extend the benefits of the Act to its employees. As pointed out in Opinion No. 142, series of 1939, Commonwealth Act No. 444 may be extended to employees and laborers of the Government as a matter of administrative policy if (1) the current appropriations so allow, and (2) if it is consistent with public interest. (See also Op. of Sec. of Justice No. 175, Series of 1939). Accordingly, as a matter of policy and in the exercise of its power to determine the compensation of the paid staff of the corporation (Sec. 5, Rep. Act No. 95), the Board of Directors of the Philippine National Red Cross may extend the benefits of the Eight-Hour Labor Law to its employees if, and to the extent that, the financial condition of the corporation would warrant."

Compare the aforecited Opinion with Opinion No. 261, Sec. of Justice, Oct. 5, 1954 (holding that the National Power Corporation may, as a matter of policy, extend the benefits of the Eight Hour Labor Law to its employees) and also with Opinion No. 82, Sec. of Justice, Mar. 28, 1955 (to the effect that the Eight Hour Labor Law may be extended to employees and laborers of the Government).

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Tenancy Law — *Lease of landlord's land is not just cause for dispossessing tenant; sections 9 and 50 of R. A. No. 1199 held constitutional.*

PRIMERO v. COURT OF AGRARIAN RELATIONS and QUION

G.R. No. L-10594, May 29, 1957

The law regulating landholder-tenant relations in agriculture is a new one: Republic Act No. 1199 (The Agricultural Tenancy Act of the Philippines, approved and effective on August 30, 1954). There is therefore niggard jurisprudence on it. And while there are broad similarities in our tenancy laws with United States state legislations, i.e., policy goal on security of tenure, regulation of rental rates and relationships, etc., the Act is eminently Philippine in conception and our approaches are peculiarly our own and there was no attempt to adopt from any foreign law or system.[1]

Among the more significant provisions of the Act are those dealing with the tenant's security of tenure and the modes of terminating the tenant-landlord relationship. *Primero v. Court of Agrarian Relations and Quion* involves just such provisions. Primero (the landlord), desiring to lease his riceland in which Quion is the tenant, to one Porfirio Potente for the purpose of raising thereon zacate (a species of grass for horses' feed), served a written notice thereof to Quion and requested him to vacate the premises, but Quion refused to do so.

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1 Santos, Guillermo S., Land Reform: The Agricultural Tenancy Act of 1954, 20 LAWYERS JOURNAL 11, 521 at 524 (1955).

Primero nonetheless executed a contract of lease in favor of Potente, but Quion still continued in the land thereby hindering its delivery to the lessee. Hence, Primero filed with the Court of Agrarian Relations a petition to secure an order directing Quion to vacate the premises in question so that it may be delivered to the lessee. Quion contended, and he was upheld by the CAR, that none of the causes specified in sections 49 and 50 of the Agricultural Tenancy Act[2] for the dispossession of a tenant exists in the instant case, and that under section 9[3] of the same Act, the lease of the land in question did not of itself extinguish the relationship between Quion as tenant and Primero as landowner. Primero appeals from the CAR's decision and claims that he has the right to dispossess his tenant in case he leases his land for purposes of converting it into a zacatal, and that the leasee Potente, as new landholder, has the right to employ a man of his choice in the zacatal.

The Court affirmed the CAR's decision on the following grounds:

> "xx xx xx firstly, because under the aforequoted section 9 of Republic Act 1199, the contract of lease entered into by the petitioner and Porfirio Potente did not of itself extinguish the relationship of landlord and tenant between the petitioner and the respondent, and the lessee Potente should assume the obligations of the former landholder, the herein petitioner, in relation to his tenant, the herein respondent; secondly, because under section 49, a tenant cannot be dispossessed of his holding except for any of the causes enumerated in said section 50, and certainly the lease of the land in question to Potente is not one of those causes for the dispossession of a tenant enumerated in section 50 of the Tenancy Law xx xx xx once a tenancy relationship is established, the tenant is entitled to security of tenure with right to continue working on and cultivating the land until he is dispossessed of his holdings for just cause provided by law or the tenancy relationship is legally terminated."

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2 "SEC. 49. Ejection of Tenant. — Notwithstanding any agreement or provision of law as to the period, in all cases where land devoted to any agricultural purpose is held under any system of tenancy, the tenant shall not be dispossessed of his holdings except for any of the causes hereinafter enumerated and only after the same has been proved before, and the dispossession is authorized by, the court.

"SEC. 50. Causes for the Dispossession of a Tenant. — Any of the following shall be a sufficient cause for the dispossession of a tenant from his holdings:

(a) The bona fide intention of the landholder to cultivate the land himself personally or through the employment of farm machinery and equipments: Provided, however, That should the landholder not cultivate the land himself or should fail to employ mechanical farm implements for a period of one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and damages for any loss incurred by him because of said dispossession: Provided, further, That the land-holder shall, at least one year but not more than two years prior to the date of his petition to dispossess the tenant under this subsection, file 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 certification of the Secretary of Agriculture and Natural Resources that the land is suited for mechanization: Provided, further, That the dispossessed tenant and the members of his immediate household shall be preferred in the employment of necessary laborers under the new set-up.

(b) When tenant violates or fails to comply with any of the terms and conditions of the contract or any of the provisions of this Act: Provided, however, That this subsection shall not apply when the tenant has substantially complied with the contract or with the provisions of this Act.

(c) The tenant's failure to pay the agreed rental or to deliver the landholder's share: Provided, however, That this shall not apply when the tenant's failure is caused by a fortuitous event or force majeure.

(d) When the tenant uses the land for a purpose other than that specified by agreement of the parties.

(e) When a share-tenant fails to follow those proven farm practices which will contribute towards the proper care of the land and increased agricultural production.

(f) When the tenant through negligence permits serious injury to the land which will impair its productive capacity.

(g) Conviction by a competent court of a tenant or any member of his immediate family or farm household of a crime against the landholder or a member of his immediate family."

3 "SEC. 9. Severance of Relationship. — The tenancy relationship is extinguished by the voluntary surrender of the land by, or the death or incapacity of, the tenant, but his heirs or the members of his immediate farm household may continue to work the land until the close of the agricultural year. The expiration of the period of the contract as fixed by the parties, and the sale or alienation of the land do not of themselves extinguish the relationship. In the latter case, the purchaser or transferee shall assume the rights and obligations of the former landholder in relation to the tenant. In case of death of the landholder, his heirs shall likewise assume his rights and obligations."

4 "Section 1. (1) No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

The contention that sections 9 and 50 are unconstitutional and void as being against paragraph 1, section 1 of Article III of our Constitution,[4] is untenable:

> "xx xx xx the provisions of law assailed as unconstitutional did not impair the right of the landowner to dispose or alienate his property nor prohibit him to make such transfer or alienation; they only provide that in case of transfer or in case of lease, as in the instant case, the tenancy relationship between the landowner and his tenant should be preserved in order to insure the well-being of tenant or protect him from being unjustly dispossessed by the transferee or purchaser of the land; in other words, the purpose of the law in question is to maintain the tenants in the peaceful possession and cultivation of the land or afford them protection against unjustified dismissal from their holdings. Republic Act 1199 is unquestionably a remedial legislation promulgated pursuant to the social justice precepts of the Constitution and in the exercise of the police power of the State to promote the common weal. 5 It is a statute relating to public subjects within the domain of the general legislative powers of the State and involving the public rights and public welfare of the entire community affected by it. Republic Act 1199, like the previous tenancy laws enacted by our lawmaking body, was passed by Congress in compliance with the constitutional mandates that 'the promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State' (Art. II, sec. 5) and that 'the State shall regulate the relations between landlord and tenant x x x in agriculture x x .' (Art. XIV, sec. 6)." 6

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5 "SEC. 2. Purpose. — It shall be the purpose of this Act to establish agricultural tenancy relations between landholders and tenants upon the principle of social justice; to afford adequate protection to the rights of both tenants and landholders; to insure an equitable division of the produce and income derived from the land to provide tenant-farmers with incentives to greater and more efficient agricultural production; to bolster their economic position and to encourage their participation in the development of peaceful, vigorous and democratic rural communities." (Agricultural Tenancy Act of the Philippines.)

6 The agricultural tenants' security of tenure in their holdings has deservedly become one of their most important rights under our tenancy legislation. Progressively, from the original Rice Share Tenancy Act of 1933, (Sec. 19, Act 4054), through Commonwealth Act No. 461, as amended, to the present Agricultural Tenancy Act of 1954 (Secs. 6, 7 & 49, R.A. No. 1199) this security of tenure of tenants may be said to be a pronounced public policy. For without it, a tenant becomes the easy prey of the landholder's whims and caprices; without it, he can be deprived of his principal sole means of livelihood, for no cause at all. This the law seeks to prevent. So that this guaranty cannot and should not be violated, and if a landholder does violate it he does so at his peril. For by doing so, he sets naught a guaranty which our laws have seen fit to give the tenants of this country in the larger interests of our society. Noble, et al. v. Fatagani, et al. No. 54-Iloilo, Feb. 14, 1956; B. Lapuz, et al. v. Lucia Vda. de Tiño, E. Joson, et al., No. 190.

Successive leases over the landholdings cannot affect tenant's status as to deprive him of security of tenure. Legarda et al. v. Digdigan, Case No. 161-Iloilo, February 13, 1956; 1 CAR Journal, No. 1, 29.

But the bona fide intention of a landowner to convert the use of his land from agricultural to subdivision or residential purposes is a mode of terminating tenancy relationship — subject to approval by the CAR, if contested by the tenant — consequently, a ground for the removal of the tenant from said land; although so long as the land is devoted to agriculture the tenant may not be dispossessed of his holding except for any of the causes enumerated in section 50 of R.A. No. 1199, and without the cause having been proved before, and the dispossession authorized by this Court. Mariano J. Santos v. Alejandro de Guzman, Case No. CAR-4, Rizal, June 12, 1956.

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Tenancy Law — *The work done by the members of a tenant's family is included in the work that the tenant undertakes to perform on the land given to him in tenancy.*

PANGILINAN, et al. v. ALVENDIA
G.R. No. L-10690, June 28, 1957

Who is a tenant? Under Act 4054, the old Tenancy Act, the world "tenant" was defined to mean "a farmer or farm laborer who undertakes to work and cultivate land for another or a person who furnishes the labor with the consent of the landlord." Republic Act 1199 (The Agricultural Tenancy Act of the Philippines), which took effect on August 30, 1954, defines "tenant" as "a person who, himself and with the aid available from within his immediate farm household, cultivates the land belonging to, or possessed by another, with the latter's con-

sent, for purpose of production, sharing the produce with the landholder under the share tenancy system, or paying to the landholder a price certain or ascertainable in produce or in money or both, under the leasehold tenancy system";[1] while "immediate farm household," according to the same Act, includes "members of the family of the tenant, and such other person or persons, whether related to the tenant or not, who are dependent upon him for support and who usually help him operate the farm enterprise."[2]

In the instant case, petitioners are tenants of respondent Alvendia, and the latter ejected the petitioners on the ground that said petitioners did not personally perform the principal work of plowing and harrowing on their respective landholdings, but entrusted said work to their sons-in-law or grandsons who were not dependent upon petitioners for support and were living separately from them.

The Court ruled that the petitioners were within their legal rights in asking assistance in their farm work from their sons-in-law or grandsons:

> "xx xx Such relatives fall within the phrase 'the members of the family of the tenant'; and the law does not require that these members of the tenant's family be dependent on him for support, such qualification being applicable only to 'such other person or persons, whether related to the tenant or not', whom, as they are 'dependent upon him for support' and 'usually help him operate the farm enterprise', the law considers also part of the tenant's immediate household."

It was noted that Act 4054 was so broad that it even includes in its definition of "tenant" the labor of third persons hired by the farmer to work on his farm, under the clause "or a person who furnishes the labor with the consent of the landlord." It is the hiring of third persons to do the farm work for the tenant that the new tenancy law, Rep. Act No. 1199, eliminated from the old concept of "tenant" under Act 4054. But whether under the new or the old tenancy law, the work done by the members of a tenant's family is, in legal contemplation, included in the work that the tenant undertakes to perform on the land given to him in tenancy.[3]

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1 Sec. 5, (a).
2 Sec. 5, (c).
3 One who is a public school teacher by occupation, his principal source of income being this occupation, and to whom farming is a mere sideline which he indulges in with the aid of hired farm hands, is a tenant by proxy. He does not perform, personally and with the aid available from within his immediate farm household, those labors required of a tenant by Section 38 of R.A. No. 1199, and is therefore not a real tenant within the definition of "tenant" in Section 5 (a) of the said Act, to whom the security of tenure attaches. Martin v. Mallari, CIR Case No. 312 (Pampanga), October 25, 1956.

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Criminal Procedure — *Requirement of complaint by the offended party as defined in section 2, Rule 106 and article 344 RPC jurisdictional.*

PEOPLE v. ENGRACIO SANTOS
G.R. No. L-8520, June 29, 1957

As provided in section 2, Rule 106,[1] a complaint may be filed (1) by the offended party or (2) by any peace officer or (3) by any employee of the government or governmental institution in charge of the enforcement or execution of the law violated. No other person can file a complaint and the offended party cannot delegate to another the filing of such, for the right to file a complaint

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1 Complaint is a sworn statement charging a person with an offense, subscribed by the offended party, any peace officer or other employee of the government or governmental institution in charge of the enforcement or execution of the law violated.

is personal. The only exception to this is in the case of private crimes under the express provisions of articles 344 and 360 of the Revised Penal Code.[2]

Under article 344, the offenses of adultery, concubinage, rape, seduction, abduction and acts of lasciviousness cannot be prosecuted except upon complaint of the offended party, or her parents, grandparents, or guardian. This requirement is not a mere formal one but is jurisdictional and may be raised at any time.[3]

The Supreme Court has invariably maintained strict compliance with this jurisdictional requirement of a complaint by the offended party as defined in section 2 of Rule 106 and article 344 of the Revised Penal Code.[4]

The instant case is a clear illustration of this doctrine. Accused Engracio Santos was charged with the crime of rape. The offended party Policarpia Bansuelo executed and signed a "Salaysay" before and in the presence of the provincial fiscal of Rizal. Said fiscal conducted a preliminary investigation and then filed the information at bar, himself accusing Santos and without even mentioning that the offended party requested its filing. Respondent Santos filed a motion to quash on the ground that the trial court was without jurisdiction there having been no valid complaint subscribed and sworn to by the offended party. Said motion was granted.

On appeal the Supreme Court affirmed the order of dismissal in the following language:

> "We cannot consider the information, although signed by the petitioner together with the fiscal, as equivalent to the complaint required by law, because said information lacks the oath of complainant; the jurat contained therein is the subscribed and sworn certification of the fiscal that he had conducted the preliminary investigation in which obviously the offended party had taken no participation whatsoever; in very unequivocal terms, the information commences with the statement that the 'undersigned fiscal accuses Engracio Santos of the crime of rape, 'the offended party not having been mentioned at all as one of the accusers."

The "Salaysay" in question was a mere narration of how the crime of rape was committed against the offended party. It was submitted to the fiscal, on the basis of which said fiscal conducted a preliminary investigation. It was not the complaint contemplated by section 2 of Rule 106[5] and article 344[6] RPC.

The complaint contemplated by the law and the rules is one which is filed in court. The "Salaysay" was certainly not filed with the court. What was filed with the court was the information whereby the fiscal himself accused the defendant herein. Said information did not in any way start criminal proceedings. For this reason, a motion to quash was properly filed and granted on the ground that the trial court did not acquire jurisdiction over the case.[7]

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2 Article 344
The crimes of adultery and concubinage shall not be prosecuted except upon complaint filed by the offended party.
x x x x x x
The offenses of seduction, abduction, rape or acts of lasciviousness shall not be prosecuted ecept upon a complaint filed by the offended party, or her parents, grandparents or guardian, nor in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.
Article 360
x x x x x x
No criminal action for defamation which consists in the imputation of a crime which cannot be prosecuted de oficio shall not be brought except at the instance and upon complaint expressly filed by the offended.

3 People v. Manaba, 58 Phil. 665, 668 (1933).

4 People v. Martinez, 76 Phil. 559 (1946); People v. Palabao, G.R. L-3027 August 31, 1954; People v. Ugalde, 58 Phil. 968 (1933).

5 Note 1, supra.

6 Note 2, supra.

7 Section 2, Rule 113, Rules of Court
The defendant may move to quash the complaint or information on any of the following grounds:
(b) That the court trying the cause has no jurisdiction of the offense charged or of the person of the defendant.

Criminal Procedure — *Promulgation of judgment.*

PEOPLE v. BONIFACIO SO y ORTAGA
G.R. No. L-8732, July 30, 1957

The Rules of Court fixes no time when a criminal case should be decided and the judgment promulgated. The court may render its decision immediately or may reserve its judgment to a later date when it desires some time for deliberation.[1] It is well-settled that to be binding, a judgment must be duly signed and promulgated during the incumbency of the judge who signed it.[2] A judgment signed by the judge and delivered to the clerk of court is not a judgment in law. It has no legal effect nor can it be executed until it has been read or promulgated.[3]

The Supreme Court once again found ocassion to apply this long established doctrine in the instant case.

By virtue of Rep. Act No. 1186[4] Judge Demetrio Encarnacion, presiding over Branch 11 of the Rizal Court of First Instance ceased to be a member of the Judiciary on June 19, 1954. However, prior to this date, on June 4, 1954, Judge Encarnacion signed the decision in Criminal Case No. 4674 which had been tried before him in Pasig. He delivered it on June 18, 1954 to Deputy Clerk Javillonar, who in turn on the same day sent out to the parties notice that the decision in the case would be promulgated on June 30, 1954 at 8:30 a.m. But on said date, the promulgation could not take place, there being no judge for Branch 11.

Deputy Clerk Javillonar, on October 5, 1954 notified the parties that promulgation of the judgment would be made on the 15th of the same month. The fiscal objected on the ground that the decision could not be validly promulgated because Judge Encarnacion had vacated his post on June 19, 1954. The objection was overruled and the decision absolving the defendant was read to the latter on November 12, 1954.

On appeal, the Supreme Court held that no judgment was validly entered. Said the Court:

> "In criminal proceedings, the Rules are more explicit. They require the judgment to be 'promulgated by reading the judgment or sentence in the presence of the defendant and the judge of the court who has rendered it; (5) and although it is true that it may be read by the clerk when the judge is absent or outside the province' it is implied that it may be read provided he is still the judge therein."

Rule 116 section 6 has specifically provided for the manner and requirements of promulgation of judgments. The judge rendering the judgment must be present. But how can a judgment be validly promulgated when the judge rendering it has ceased to be a member of the judiciary?

This case should be distinguished from the case of Cea v. Cinco[6] where the Supreme Court allowed the delivery of a copy of the decision in substitution to the reading thereof. In the case under comment no copy of the decision was given the accused nor was he notified of it during the incumbency of the Judge. No judgment was therefore validly entered. The Supreme Court found no reasons why it should deviate from the long line of decisions where it had faithfully applied the explicit provision of the Rules on the promulgation of judgments.

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1 People v. Machuca, G.R. No. 4336, March 31, 1936.
2 Lino Luna v. Rodriguez, 37 Phil. 187 (1918); Garchitorena v. Crescini, 37 Phil. 675 (1918); Barredo v. Commission on Elections, 45 OG 4457 (1949).
3 Kapunan, CRIMINAL PROCEDURE ANNOTATED 280, (2nd ed., 1953).
4 Rep. Act 1186 abolished the positions of judges-at-large and cadastral judges.
5 Rules of Court, sec. 6, Rule 116.
6 50 OG 5254 (1954).